

5001

2013-2014 Regular Sessions

I N S E N A T E

May 3, 2013

Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law, the penal law and the family court act, in relation to termination of parental rights in cases of a child conceived through rape

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 111-a of the domestic relations
2 law, as amended by chapter 353 of the laws of 1993, is amended to read
3 as follows:
4 1. Notwithstanding any inconsistent provisions of this or any other
5 law, and in addition to the notice requirements of any law pertaining to
6 persons other than those specified in subdivision two of this section,
7 notice as provided herein shall be given to the persons specified in
8 subdivision two of this section of any adoption proceeding initiated
9 pursuant to this article or of any proceeding initiated pursuant to
10 section one hundred fifteen-b relating to the revocation of an adoption
11 consent, when such proceeding involves a child born out-of-wedlock
12 provided, however, that such notice shall not be required to be given to
13 any person who previously has been given notice of any proceeding
14 involving the child, pursuant to section three hundred eighty-four-c of
15 the social services law, and provided further that notice in an adoption
16 proceeding, pursuant to this section shall not be required to be given
17 to any person who has previously received notice of any proceeding
18 pursuant to section one hundred fifteen-b. In addition to such other
19 requirements as may be applicable to the petition in any proceeding in
20 which notice must be given pursuant to this section, the petition shall
21 set forth the names and last known addresses of all persons required to
22 be given notice of the proceeding, pursuant to this section, and there
23 shall be shown by the petition or by affidavit or other proof satisfac-
24 tory to the court that there are no persons other than those set forth

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 in the petition who are entitled to notice. For the purpose of determin-
2 ing persons entitled to notice of adoption proceedings initiated pursu-
3 ant to this article, persons specified in subdivision two of this
4 section shall not include any person who has been convicted of rape in
5 the first degree [involving forcible compulsion, under subdivision one
6 of section 130.35 of the penal law,] AS DEFINED IN SECTION 130.35, RAPE
7 IN THE SECOND DEGREE AS DEFINED IN SECTION 130.30 OR RAPE IN THE THIRD
8 DEGREE AS DEFINED IN SECTION 130.25 OF THE PENAL LAW, OR WHERE IT IS
9 ESTABLISHED AFTER A HEARING, BY CLEAR AND CONVINCING EVIDENCE, THAT SUCH
10 PERSON COMMITTED ANY SUCH OFFENSE, when the child who is the subject of
11 the proceeding was conceived as a result of such rape.

12 S 2. Section 130.92 of the penal law is amended by adding a new subdi-
13 vision 4 to read as follows:

14 4. THE PARENTAL RIGHTS AND RESPONSIBILITIES WITH RESPECT TO A CHILD OF
15 A PARENT CONVICTED OF THE CRIME OF RAPE IN THE FIRST DEGREE AS DEFINED
16 IN SECTION 130.35 OF THIS ARTICLE, RAPE IN THE SECOND DEGREE AS DEFINED
17 IN SECTION 130.30 OF THIS ARTICLE, OR RAPE IN THE THIRD DEGREE AS
18 DEFINED IN SECTION 130.25 OF THIS ARTICLE, THAT RESULTED IN THE
19 CONCEPTION OF SUCH CHILD SHALL BE TERMINATED IN ACCORDANCE WITH ARTICLE
20 SIX OF THE FAMILY COURT ACT.

21 S 3. Subdivision 5 of section 240 of the domestic relations law, as
22 added by section 103 of chapter 398 of the laws of 1997, is renumbered
23 subdivision 6 and a new subdivision 7 is added to read as follows:

24 7. NOTWITHSTANDING ANY OTHER PROVISION OF ANY LAW TO THE CONTRARY, NO
25 COURT SHALL AWARD CUSTODY TO A PARENT WHO HAS BEEN CHARGED WITH VIOLAT-
26 ING SECTION 130.25 (RAPE IN THE THIRD DEGREE), 130.30 (RAPE IN THE
27 SECOND DEGREE), OR 130.35 (RAPE IN THE FIRST DEGREE) OF THE PENAL LAW,
28 WHERE THE CHILD THAT SUCH PARENT SEEKS CUSTODY OR VISITATION OF WAS
29 CONCEIVED AS A RESULT OF SUCH RAPE, UNTIL THE CONCLUSION OF ALL
30 PROCEEDINGS ASSOCIATED WITH SUCH CHARGES. NEITHER CUSTODY NOR VISITATION
31 SHALL BE AWARDED TO A PARENT WHO HAS BEEN CONVICTED OF VIOLATING SECTION
32 130.25 (RAPE IN THE THIRD DEGREE), 130.30 (RAPE IN THE SECOND DEGREE),
33 OR 130.35 (RAPE IN THE FIRST DEGREE) OF THE PENAL LAW.

34 S 4. Article 6 of the family court act is amended by adding a new part
35 6 to read as follows:

36 PART 6

37 TERMINATION OF PARENTAL RIGHTS UPON A FINDING OF CONCEPTION BY 38 RAPE

39 SECTION 681. TERMINATION OF PARENTAL RIGHTS UPON A FINDING OF CONCEPTION
40 BY RAPE.

41 682. HEARING.

42 S 681. TERMINATION OF PARENTAL RIGHTS UPON A FINDING OF CONCEPTION BY
43 RAPE. 1. A PROCEEDING FOR TERMINATION OF PARENTAL RIGHTS ON THE GROUNDS
44 OF A FINDING OF CONCEPTION BY RAPE IS ORIGINATED BY A PETITION ALLEGING
45 THAT THE RESPONDENT COMMITTED THE CRIME OF RAPE IN THE FIRST DEGREE AS
46 DEFINED IN SECTION 130.35, RAPE IN THE SECOND DEGREE AS DEFINED IN
47 SECTION 130.30, OR RAPE IN THE THIRD DEGREE AS DEFINED IN SECTION 130.25
48 OF THE PENAL LAW, AND THAT THE CHILD WAS CONCEIVED AS A RESULT OF SUCH
49 RAPE. EXCEPT AS OTHERWISE PROVIDED IN THIS PART, THE PROVISIONS OF PART
50 ONE OF THIS ARTICLE SHALL APPLY TO ALL PROCEEDINGS.

51 2. AT THE CONCLUSION OF THE HEARING UNDER SECTION SIX HUNDRED EIGHTY-
52 TWO OF THIS PART THE COURT MAY TERMINATE ALL OF THE PARENTAL RIGHTS AND
53 RESPONSIBILITIES OF THE RESPONDENT IF THE RESPONDENT IS FOUND BY CLEAR
54 AND CONVINCING EVIDENCE TO HAVE COMMITTED RAPE IN THE FIRST DEGREE AS
55 DEFINED IN SECTION 130.35, RAPE IN THE SECOND DEGREE AS DEFINED IN

1 SECTION 130.30 OR RAPE IN THE THIRD DEGREE AS DEFINED IN SECTION 130.25
2 OF THE PENAL LAW, AND THE CHILD WAS CONCEIVED AS A RESULT OF SUCH ACT.
3 AN ORDER OF DISPOSITION SHALL BE MADE, PURSUANT TO THIS SECTION, SOLELY
4 ON THE BASIS OF THE BEST INTERESTS OF THE CHILD, AND THERE SHALL BE NO
5 PRESUMPTION THAT SUCH INTERESTS WILL BE PROMOTED BY ANY PARTICULAR
6 DISPOSITION.

7 S 682. HEARING. THE COURT SHALL HOLD A HEARING UNDER THIS PART TO
8 DETERMINE WHETHER THE ALLEGATIONS IN THE PETITION THAT THE RESPONDENT
9 COMMITTED RAPE IN THE FIRST DEGREE AS DEFINED IN SECTION 130.35, RAPE IN
10 THE SECOND DEGREE AS DEFINED IN SECTION 130.30 OR RAPE IN THE THIRD
11 DEGREE AS DEFINED IN SECTION 130.25 OF THE PENAL LAW, AND THAT THE CHILD
12 WAS CONCEIVED AS A RESULT OF SUCH ACT ARE SUPPORTED BY CLEAR AND
13 CONVINCING PROOF. ONLY COMPETENT, MATERIAL AND RELEVANT EVIDENCE MAY BE
14 ADMITTED IN A HEARING PURSUANT TO THIS SECTION. A CONVICTION OF THE
15 RESPONDENT ON THE CHARGES ALLEGED SHALL NOT BE REQUIRED FOR A FINDING
16 UNDER THIS SECTION.

17 S 5. This act shall take effect immediately.