

5001--A

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 -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 371 of the laws of 2013, 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 of this article relating to the revocation
11 of an adoption consent, when such proceeding involves a child born out-
12 of-wedlock provided, however, that such notice shall not be required to
13 be given to any person who previously has been given notice of any
14 proceeding involving the child, pursuant to section three hundred eight-
15 y-four-c of the social services law, and provided further that notice in
16 an adoption proceeding, pursuant to this section shall not be required
17 to be given to any person who has previously received notice of any
18 proceeding pursuant to section one hundred fifteen-b of this article. In
19 addition to such other requirements as may be applicable to the petition
20 in any proceeding in which notice must be given pursuant to this
21 section, the petition shall set forth the names and last known addresses

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

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1 of all persons required to be given notice of the proceeding, pursuant
2 to this section, and there shall be shown by the petition or by affida-
3 vit or other proof satisfactory to the court that there are no persons
4 other than those set forth in the petition who are entitled to notice.
5 For the purpose of determining persons entitled to notice of adoption
6 proceedings initiated pursuant to this article, persons specified in
7 subdivision two of this section shall not include any person who has
8 been convicted of one or more of the following sexual offenses in this
9 state or convicted of one or more offenses in another jurisdiction
10 which, if committed in this state, would constitute one or more of the
11 following offenses, WHERE IT IS ESTABLISHED AFTER A HEARING, BY CLEAR
12 AND CONVINCING EVIDENCE, THAT SUCH PERSON COMMITTED ANY SUCH OFFENSE OR
13 when the child who is the subject of the proceeding was conceived as a
14 result: (A) rape in first [or], second OR THIRD degree; (B) course of
15 sexual conduct against a child in the first degree; (C) predatory sexual
16 assault; or (D) predatory sexual assault against a child.

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

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

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

29 7. NOTWITHSTANDING ANY OTHER PROVISION OF ANY LAW TO THE CONTRARY, NO
30 COURT SHALL AWARD CUSTODY TO A PARENT WHO HAS BEEN CHARGED WITH VIOLAT-
31 ING SECTION 130.25 (RAPE IN THE THIRD DEGREE), 130.30 (RAPE IN THE
32 SECOND DEGREE), OR 130.35 (RAPE IN THE FIRST DEGREE) OF THE PENAL LAW,
33 WHERE THE CHILD THAT SUCH PARENT SEEKS CUSTODY OR VISITATION OF WAS
34 CONCEIVED AS A RESULT OF SUCH RAPE, UNTIL THE CONCLUSION OF ALL
35 PROCEEDINGS ASSOCIATED WITH SUCH CHARGES. NEITHER CUSTODY NOR VISITATION
36 SHALL BE AWARDED TO A PARENT WHO HAS BEEN CONVICTED OF VIOLATING SECTION
37 130.25 (RAPE IN THE THIRD DEGREE), 130.30 (RAPE IN THE SECOND DEGREE),
38 OR 130.35 (RAPE IN THE FIRST DEGREE) OF THE PENAL LAW.

39 S 4. Article 6 of the family court act is amended by adding a new part
40 6 to read as follows:

41 PART 6

42 TERMINATION OF PARENTAL RIGHTS UPON A FINDING OF CONCEPTION BY 43 RAPE

44 SECTION 681. TERMINATION OF PARENTAL RIGHTS UPON A FINDING OF CONCEPTION
45 BY RAPE.

46 682. HEARING.

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

1 2. AT THE CONCLUSION OF THE HEARING UNDER SECTION SIX HUNDRED EIGHTY-
2 TWO OF THIS PART THE COURT MAY TERMINATE ALL OF THE PARENTAL RIGHTS AND
3 RESPONSIBILITIES OF THE RESPONDENT IF THE RESPONDENT IS FOUND BY CLEAR
4 AND CONVINCING EVIDENCE TO HAVE COMMITTED RAPE IN THE FIRST DEGREE AS
5 DEFINED IN SECTION 130.35, RAPE IN THE SECOND DEGREE AS DEFINED IN
6 SECTION 130.30 OR RAPE IN THE THIRD DEGREE AS DEFINED IN SECTION 130.25
7 OF THE PENAL LAW, AND THE CHILD WAS CONCEIVED AS A RESULT OF SUCH ACT.
8 AN ORDER OF DISPOSITION SHALL BE MADE, PURSUANT TO THIS SECTION, SOLELY
9 ON THE BASIS OF THE BEST INTERESTS OF THE CHILD, AND THERE SHALL BE NO
10 PRESUMPTION THAT SUCH INTERESTS WILL BE PROMOTED BY ANY PARTICULAR
11 DISPOSITION.

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

22 S 5. This act shall take effect immediately.