

# STATE OF NEW YORK

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1280

2017-2018 Regular Sessions

## IN ASSEMBLY

January 11, 2017

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Introduced by M. of A. BRAUNSTEIN, STECK -- read once and referred to the Committee on Judiciary

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  
22 of all persons required to be given notice of the proceeding, pursuant  
23 to this section, and there shall be shown by the petition or by affida-  
24 vit or other proof satisfactory to the court that there are no persons

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

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1 other than those set forth in the petition who are entitled to notice.  
2 For the purpose of determining persons entitled to notice of adoption  
3 proceedings initiated pursuant to this article, persons specified in  
4 subdivision two of this section shall not include any person who has  
5 been convicted of one or more of the following sexual offenses in this  
6 state or convicted of one or more offenses in another jurisdiction  
7 which, if committed in this state, would constitute one or more of the  
8 following offenses, where it is established after a hearing, by clear  
9 and convincing evidence, that such person committed any such offense or  
10 when the child who is the subject of the proceeding was conceived as a  
11 result: (A) rape in first ~~or~~, second or third degree; (B) course of  
12 sexual conduct against a child in the first degree; (C) predatory sexual  
13 assault; or (D) predatory sexual assault against a child.

14 § 2. Section 130.92 of the penal law is amended by adding a new subdi-  
15 vision 4 to read as follows:

16 4. The parental rights and responsibilities with respect to a child of  
17 a parent convicted of the crime of rape in the first degree as defined  
18 in section 130.35 of this article, rape in the second degree as defined  
19 in section 130.30 of this article, or rape in the third degree as  
20 defined in section 130.25 of this article, that resulted in the  
21 conception of such child shall be terminated in accordance with article  
22 six of the family court act.

23 § 3. Paragraph (b) of subdivision 1-c of section 240 of the domestic  
24 relations law, as amended by chapter 371 of the laws of 2013, is amended  
25 to read as follows:

26 (b) Notwithstanding any other provision of this chapter to the contra-  
27 ry, there shall be a rebuttable presumption that it is not in the best  
28 interests of the child, whether born in or out-of-wedlock, to be placed  
29 in the custody of or to visit with a person who has been convicted of  
30 one or more of the following sexual offenses in this state or convicted  
31 of one or more offenses in another jurisdiction which, if committed in  
32 this state, would constitute one or more of the following offenses, when  
33 a child who is the subject of the proceeding was conceived as a result:  
34 (A) rape in the first or second degree; (B) course of sexual conduct  
35 against a child in the first degree; (C) predatory sexual assault; or  
36 (D) predatory sexual assault against a child.

37 § 4. Subdivision 5 of section 240 of the domestic relations law, as  
38 added by section 103 of chapter 398 of the laws of 1997, is renumbered  
39 subdivision 6 and a new subdivision 7 is added to read as follows:

40 7. Notwithstanding any other provision of any law to the contrary, no  
41 court shall award custody to a parent who has been charged with violat-  
42 ing section 130.25 (rape in the third degree), 130.30 (rape in the  
43 second degree), or 130.35 (rape in the first degree) of the penal law,  
44 where the child that such parent seeks custody or visitation of was  
45 conceived as a result of such rape, until the conclusion of all  
46 proceedings associated with such charges. Neither custody nor visitation  
47 shall be awarded to a parent who has been convicted of violating section  
48 130.25 (rape in the third degree), 130.30 (rape in the second degree),  
49 or 130.35 (rape in the first degree) of the penal law.

50 § 5. Article 6 of the family court act is amended by adding a new part  
51 6 to read as follows:

52 PART 6  
53 TERMINATION OF PARENTAL RIGHTS UPON A FINDING OF CONCEPTION BY  
54 RAPE

1 Section 681. Termination of parental rights upon a finding of conception  
2 by rape.

3 682. Hearing.

4 § 681. Termination of parental rights upon a finding of conception by  
5 rape. 1. A proceeding for termination of parental rights on the grounds  
6 of a finding of conception by rape is originated by a petition alleging  
7 that the respondent committed the crime of rape in the first degree as  
8 defined in section 130.35, rape in the second degree as defined in  
9 section 130.30, or rape in the third degree as defined in section 130.25  
10 of the penal law, and that the child was conceived as a result of such  
11 rape. Except as otherwise provided in this part, the provisions of part  
12 one of this article shall apply to all proceedings.

13 2. At the conclusion of the hearing under section six hundred eighty-  
14 two of this part the court may terminate all of the parental rights and  
15 responsibilities of the respondent if the respondent is found by clear  
16 and convincing evidence to have committed rape in the first degree as  
17 defined in section 130.35, rape in the second degree as defined in  
18 section 130.30 or rape in the third degree as defined in section 130.25  
19 of the penal law, and the child was conceived as a result of such act.  
20 An order of disposition shall be made, pursuant to this section, solely  
21 on the basis of the best interests of the child, and there shall be no  
22 presumption that such interests will be promoted by any particular  
23 disposition.

24 § 682. Hearing. The court shall hold a hearing under this part to  
25 determine whether the allegations in the petition that the respondent  
26 committed rape in the first degree as defined in section 130.35, rape in  
27 the second degree as defined in section 130.30 or rape in the third  
28 degree as defined in section 130.25 of the penal law, and that the child  
29 was conceived as a result of such act are supported by clear and  
30 convincing proof. Only competent, material and relevant evidence may be  
31 admitted in a hearing pursuant to this section. A conviction of the  
32 respondent on the charges alleged shall not be required for a finding  
33 under this section.

34 § 6. This act shall take effect immediately.