

STATE OF NEW YORK

1280

2017-2018 Regular Sessions

IN ASSEMBLY

January 11, 2017

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 subdivi-
15 sion 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.