

# STATE OF NEW YORK

7648

## IN SENATE

January 5, 2022

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

AN ACT to amend the penal law, the domestic relations 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. Section 130.92 of the penal law is amended by adding a new  
2 subdivision 4 to read as follows:

3 4. The parental rights and responsibilities with respect to a child of  
4 a parent convicted of the crime of rape in the first degree as defined  
5 in section 130.35 of this article, rape in the second degree as defined  
6 in section 130.30 of this article, or rape in the third degree as  
7 defined in section 130.25 of this article, that resulted in the  
8 conception of such child shall be terminated in accordance with article  
9 six of the family court act.

10 § 2. Subdivision 1 of section 111-a of the domestic relations law, as  
11 amended by chapter 371 of the laws of 2013, is amended to read as  
12 follows:

13 1. Notwithstanding any inconsistent provisions of this or any other  
14 law, and in addition to the notice requirements of any law pertaining to  
15 persons other than those specified in subdivision two of this section,  
16 notice as provided herein shall be given to the persons specified in  
17 subdivision two of this section of any adoption proceeding initiated  
18 pursuant to this article or of any proceeding initiated pursuant to  
19 section one hundred fifteen-b of this article relating to the revocation  
20 of an adoption consent, when such proceeding involves a child born out-  
21 of-wedlock provided, however, that such notice shall not be required to  
22 be given to any person who previously has been given notice of any  
23 proceeding involving the child, pursuant to section three hundred eight-  
24 y-four-c of the social services law, and provided further that notice in  
25 an adoption proceeding, pursuant to this section shall not be required  
26 to be given to any person who has previously received notice of any  
27 proceeding pursuant to section one hundred fifteen-b of this article. In

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

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1 addition to such other requirements as may be applicable to the petition  
2 in any proceeding in which notice must be given pursuant to this  
3 section, the petition shall set forth the names and last known addresses  
4 of all persons required to be given notice of the proceeding, pursuant  
5 to this section, and there shall be shown by the petition or by affida-  
6 vit or other proof satisfactory to the court that there are no persons  
7 other than those set forth in the petition who are entitled to notice.  
8 For the purpose of determining persons entitled to notice of adoption  
9 proceedings initiated pursuant to this article, persons specified in  
10 subdivision two of this section shall not include any person who has  
11 been convicted of one or more of the following sexual offenses in this  
12 state or convicted of one or more offenses in another jurisdiction  
13 which, if committed in this state, would constitute one or more of the  
14 following offenses, where it is established after a hearing, by clear  
15 and convincing evidence, that such person committed any such offense or  
16 when the child who is the subject of the proceeding was conceived as a  
17 result: (A) rape in first [~~or~~], second or third degree; (B) course of  
18 sexual conduct against a child in the first degree; (C) predatory sexual  
19 assault; or (D) predatory sexual assault against a child.

20 § 3. Paragraph (b) of subdivision 1-c of section 240 of the domestic  
21 relations law, as amended by chapter 182 of the laws of 2019, is amended  
22 to read as follows:

23 (b) Notwithstanding any other provision of this chapter to the contra-  
24 ry, there shall be a rebuttable presumption that it is not in the best  
25 interests of the child, whether born in or out-of-wedlock, to:

26 (A) be placed in the custody of or to visit with a person who has been  
27 convicted of one or more of the following sexual offenses in this state  
28 or convicted of one or more offenses in another jurisdiction which, if  
29 committed in this state, would constitute one or more of the following  
30 offenses, when a child who is the subject of the proceeding was  
31 conceived as a result:

- 32 (1) rape in the first or second degree;  
33 (2) course of sexual conduct against a child in the first degree;  
34 (3) predatory sexual assault; or  
35 (4) predatory sexual assault against a child; or

36 (B) be placed in the custody of or have unsupervised visits with a  
37 person who has been convicted of a felony sex offense, as defined in  
38 section 70.80 of the penal law, or convicted of an offense in another  
39 jurisdiction which, if committed in this state, would constitute such a  
40 felony sex offense, where the victim of such offense was the child who  
41 is the subject of the proceeding.

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

45 7. Notwithstanding any other provision of any law to the contrary, no  
46 court shall award custody to a parent who has been charged with violat-  
47 ing section 130.25 (rape in the third degree), 130.30 (rape in the  
48 second degree), or 130.35 (rape in the first degree) of the penal law,  
49 where the child that such parent seeks custody or visitation of was  
50 conceived as a result of such rape, until the conclusion of all  
51 proceedings associated with such charges. Neither custody nor visitation  
52 shall be awarded to a parent who has been convicted of violating section  
53 130.25 (rape in the third degree), 130.30 (rape in the second degree),  
54 or 130.35 (rape in the first degree) of the penal law.

55 § 5. Article 6 of the family court act is amended by adding a new part  
56 6 to read as follows:

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

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

682. Hearing.

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

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

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

§ 6. This act shall take effect immediately.