

STATE OF NEW YORK

8159

2023-2024 Regular Sessions

IN ASSEMBLY

October 18, 2023

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

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 Assem-
bly, 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 828 of the laws of 2022, 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: (a) in the case of the adoption of a child transferred to the
23 custody and guardianship of an authorized agency, foster parent, or
24 relative pursuant to section three hundred eighty-four-b of the social

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

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

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

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

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

37 (1) rape in the first or second degree;

38 (2) course of sexual conduct against a child in the first degree;

39 (3) predatory sexual assault; or

40 (4) predatory sexual assault against a child; or

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

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

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

1 shall be awarded to a parent who has been convicted of violating section
2 130.25 (rape in the third degree), 130.30 (rape in the second degree),
3 or 130.35 (rape in the first degree) of the penal law.

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

6 PART 6

7 TERMINATION OF PARENTAL RIGHTS UPON A FINDING OF CONCEPTION BY

8 RAPE

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

11 682. Hearing.

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

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

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

42 § 6. This act shall take effect immediately.