Rape Survivor Child Custody Act

Number: INFORMAL

Date: February 15, 2019

Katharine Sullivan
Acting Director
Office on Violence Against Women
U.S. Department of Justice
145 N Street, NE, Suite 10W.121
Washington, DC 20530

Dear Director Sullivan:

This letter is written in conjunction with the Florida Department of Health's application to receive a federal grant from the Department of Justice providing supplemental funding for sexual violence recovery programs in this state.

The Florida Department of Health's Violence and Injury Prevention Program administers federal funds awarded by the U.S. Department of Justice (DOJ) for several programs, including the Sexual Assault Services Formula Grant Program (SASP) and the Services-Training-Officers-Prosecutors (STOP) program. The federal Rape Survivor Child Custody Act (RSCCA) authorizes the Office on Violence Against Women to supplement SASP and STOP program funding in states which have qualifying laws regarding termination of parental rights of rapists for children conceived through rape.[1] In connection with the Florida Department of Health's application to receive such funds, this office has been asked to certify that the state's qualifying statute has not been amended since Florida received federal funds to supplement funding for these programs in fiscal year 2018.

Section 39.806(1)(m), Florida Statutes, enacted in 2013, is Florida's qualifying statute regarding the termination of a rapist's parental rights when a child is conceived through rape. As a Senior Assistant Attorney General representing the Florida Department of Legal Affairs, I certify both that the statute's provisions have not been changed since enactment of section 39.806(1)(m), Florida Statutes, and that such provisions remain in full force and effect. In pertinent part, the statute continues to provide that:

> § parental rights may be terminated upon the court's determination that clear and convincing evidence exists that the child was conceived as a result of a sexual battery as defined in section 794.011, Florida Statutes, or pursuant to a similar law of another state, territory, possession, or Native American tribe where the offense occurred;
> § it is presumed that termination of parental rights is in the best interest of the child if the child was conceived as a result of the unlawful sexual battery;
>
> § a petition for termination of parental rights under section 39.806(1)(m), Florida Statutes, may be filed at any time; and

§ the provisions of the statute apply retroactively to "all unlawful acts of sexual battery occurring before, on, or after [July 1, 2013]."[2]

Sincerely,

Teresa L. Mussetto
Senior Assistant Attorney General
Opinions Division
Florida Department of Legal Affairs

TLM/tsh

cc: Michele Tallent

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[1] *See* Op. Letter to Ms. Katharine Sullivan, Principal Deputy Director, February 22, 2018; Op. Letter to Ms. Nadine M. Neufville, Acting Director, February 28, 2017; Op. Letter to Ms. Bea Hanson, Deputy Director, May 4, 2016.

[2] *See* § 3, Ch. 2013-132, Laws of Fla.