Dept. of Health -- Sexual Violence Prevention

Number: INFORMAL

Date: May 06, 2016

Ms. Bea Hanson
Principle Deputy Director
Office on Violence Against Women
U.S. Department of Justice
145 N. Street, NE Suite 10W.121
Washington, D.C. 20530

Dear Director:

This office writes in support of the Florida Department of Health's application for a federal grant from the Department of Justice related to supplemental funding for sexual violence prevention programs.

The Florida Department of Health's Sexual Violence Prevention Program (SVPP) administers federal funds awarded by the U. S. Department of Justice (DOJ) to states and territories for several programs including the Sexual Assault Services Program (SASP), and the Services-Training-Officers-Prosecutors (STOP) program.

We are advised that last year Congress enacted the Rape Survivor Child Custody Act (RSCCA) which authorized the U. S. Department of Justice, Office on Violence Against Women, to supplement STOP and SASP programs in states that have qualifying laws regarding termination of the parental rights of an offender when a court determines that a child was conceived as a result of an act of sexual battery. Michelle A. Brickley, the Associate Director of the Office on Violence Against Women, has contacted the SVPP administrator regarding the opportunity to apply for these additional funds. As a component of the packet of application documents the Florida Department of Health is preparing, they have requested that this office provide you with a legal opinion relating to the provisions of Florida's qualifying statute, section 39.806(1)(m), Florida Statutes.

Florida's Attorney General is statutorily authorized to "perform the duties prescribed by the Constitution of this state and also perform such other duties appropriate to his or her office as may . . . be . . . required . . . by law or by resolution of the Legislature."[1] It is the responsibility of the Florida Attorney General to give her "official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer."[2] Further, it is the responsibility of the Department of Legal Affairs to provide "all legal services required by any department" of state government.[3] As a Senior Assistant Attorney General representing the Florida Department of Legal Affairs, I certify the following:

Florida's qualifying statute, adopted in 2013, provides:

"39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

* * *

(m) The court determines by clear and convincing evidence that the child was conceived as a result of an act of sexual battery made unlawful pursuant to s. 794.011, 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 this paragraph may be filed at any time. The court must accept a guilty plea or conviction of unlawful sexual battery pursuant to s. 794.011 as conclusive proof that the child was conceived by a violation of criminal law as set forth in this subsection."

This qualifying law was enacted by the Legislature and designated Chapter 2013-132, Laws of Florida. The bill was approved by the Governor on June 7, 2013, and became effective on July 1, 2013.

The statute provides that:

- a father's parental rights may be terminated upon a finding by the court that clear and convincing evidence exists that the child was conceived as a result of an act of sexual battery pursuant to section 794.011, Florida Statutes,[4] or pursuant to a similar law of another state, territory, possession, or Native American tribe where the offense of may have occurred.

- Chapter 2013-132, Laws of Florida, includes a provision authorizing retroactive application of the act to "all unlawful acts of sexual battery occurring before, on, or after (July 1, 2013)."[5]

- The standard of proof required for a termination of parental rights under the statute is "clear and convincing" evidence.

- Finally, section 39.806(1)(m), Florida Statutes, presumes that termination of parental rights is in the best interest of the child under the terms of the statute and a petition for termination using the provisions of section 39.806(1)(m), may be filed at any time.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General
Florida Department of Legal Affairs

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[1] Section 16.01(2), Fla. Stat. *See also* Art. IV, s. 4, Fla. Const.

[2] Section 16.01(3), Fla. Stat.

[3] Section 16.015, Fla. Stat.

[4] Section 794.011, Fla. Stat., defines "sexual battery" for purposes of that chapter.

[5] *See* s. 3, Ch. 2013-132, Laws of Fla.