

1437

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT, GOTTFRIED -- Multi-Sponsored by -- M. of  
A. J. RIVERA -- read once and referred to the Committee on Children  
and Families

AN ACT to amend the social services law and the family court act, in  
relation to the definition of a neglected child

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraph (B) of paragraph (i) of subdivision 4-a of  
2 section 371 of the social services law, as amended by chapter 984 of the  
3 laws of 1981, is amended to read as follows:  
4 (B) in providing the child with proper supervision or guardianship, by  
5 unreasonably inflicting or allowing to be inflicted harm, or a substan-  
6 tial risk thereof, including the infliction of excessive corporal  
7 punishment; or by misusing a drug or drugs; or by misusing alcoholic  
8 beverages to the extent that he loses self-control of his actions; or by  
9 any other acts of a similarly serious nature requiring the aid of the  
10 court; provided, however, that where the respondent is voluntarily and  
11 regularly participating in a rehabilitative program, evidence that the  
12 respondent has repeatedly misused a drug or drugs or alcoholic beverages  
13 to the extent that he loses self-control of his actions shall not estab-  
14 lish that the child is a neglected child in the absence of evidence  
15 establishing that the child's physical, mental or emotional condition  
16 has been impaired or is in imminent danger of becoming impaired as set  
17 forth in THIS paragraph [(i) of this subdivision], AND PROVIDED FURTHER,  
18 THAT A CHILD SHALL NOT BE FOUND TO BE A NEGLECTED CHILD AS A RESULT OF  
19 DOMESTIC VIOLENCE BY THE VICTIM OF THE DOMESTIC VIOLENCE UNLESS THE  
20 CHILD WAS PRESENT DURING THE DOMESTIC VIOLENCE, IT IS ESTABLISHED BY  
21 EXPERT TESTIMONY THAT THE CHILD WAS HARMED BY THE DOMESTIC VIOLENCE, THE  
22 VICTIM WAS PROVIDED WITH PREVENTIVE SERVICES INCLUDING, BUT NOT LIMITED  
23 TO, REMOVAL OF THE BATTERER, ARREST AND PROSECUTION OF THE BATTERER,

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

LBD00103-01-9

1 PROVISION OF SAFE HOUSING AND ALTERNATIVE FINANCIAL SUPPORT, AND THE  
2 VICTIM FAILED TO UTILIZE SUCH SERVICES; or

3 S 2. Subparagraph (B) of paragraph (i) of subdivision (f) of section  
4 1012 of the family court act, as amended by chapter 984 of the laws of  
5 1981, is amended to read as follows:

6 (B) in providing the child with proper supervision or guardianship, by  
7 unreasonably inflicting or allowing to be inflicted harm, or a substan-  
8 tial risk thereof, including the infliction of excessive corporal  
9 punishment; or by misusing a drug or drugs; or by misusing alcoholic  
10 beverages to the extent that he loses self-control of his actions; or by  
11 any other acts of a similarly serious nature requiring the aid of the  
12 court; provided, however, that where the respondent is voluntarily and  
13 regularly participating in a rehabilitative program, evidence that the  
14 respondent has repeatedly misused a drug or drugs or alcoholic beverages  
15 to the extent that he loses self-control of his actions shall not estab-  
16 lish that the child is a neglected child in the absence of evidence  
17 establishing that the child's physical, mental or emotional condition  
18 has been impaired or is in imminent danger of becoming impaired as set  
19 forth in THIS paragraph [(i) of this subdivision], AND PROVIDED FURTHER,  
20 THAT A CHILD SHALL NOT BE FOUND TO BE A NEGLECTED CHILD AS A RESULT OF  
21 DOMESTIC VIOLENCE BY THE VICTIM OF THE DOMESTIC VIOLENCE UNLESS THE  
22 CHILD WAS PRESENT DURING THE DOMESTIC VIOLENCE, IT IS ESTABLISHED BY  
23 EXPERT TESTIMONY THAT THE CHILD WAS HARMED BY THE DOMESTIC VIOLENCE, THE  
24 VICTIM WAS PROVIDED WITH PREVENTIVE SERVICES INCLUDING, BUT NOT LIMITED  
25 TO, REMOVAL OF THE BATTERER, ARREST AND PROSECUTION OF THE BATTERER,  
26 PROVISION OF SAFE HOUSING AND ALTERNATIVE FINANCIAL SUPPORT, AND THE  
27 VICTIM FAILED TO UTILIZE SUCH SERVICES; or

28 S 3. This act shall take effect immediately.