

10080

I N A S S E M B L Y

May 3, 2012

Introduced by M. of A. ESPINAL, GRAF -- read once and referred to the
Committee on Children and Families

AN ACT to amend the family court act, in relation to the basis for
removal of children

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

1 Section 1. This act shall be known and may be cited as "Melinda's
2 law".

3 S 2. Legislative intent. The legislature hereby finds and declares
4 that in cases of battered spouse syndrome the abuse sometimes moves from
5 the spouse to the children. Once the abusive spouse begins to over-dis-
6 cipline the children, they will often use threats or the removal of the
7 children by child protective services as a means to compel subjugation
8 from the non-abusive spouse. In addition, the abusive spouse prevents
9 the reporting of such incidents to child protective services by making
10 the non-abusive spouse an accomplice in this abuse. Under this threat,
11 children are subjected to escalating abuse that could have been
12 prevented if the non-abusive spouse had a safe harbor to report such
13 abuse at the early stages without fear of losing their children. By this
14 act the legislature intends to take such tool away from the abusive
15 spouse by providing the non-abusive spouse a way to report such inci-
16 dents without fear of having their children removed from their custody.

17 The sequence of events above are an apt description of "Melinda".
18 Melinda is a woman suffering from battered women's syndrome. She has
19 been abused by her husband over a twenty year period. The abuse had been
20 verbal, psychological, and physical. She has taken the abuse in the
21 belief that her children needed a father.

22 Recently the abuse has been transferred to the children. It started
23 with excessive spanking, locking a young teenager in the basement, and
24 pushing a five year old to the ground.

25 Melinda confronted her husband and put herself between her husband and
26 her children resulting in a black-eye (to Melinda).

27 She told her husband that she would not let him hit the children and
28 would call the police and have him arrested.

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

LBD15512-02-2

1 Her husband responded that if she called the police, her children
2 would be taken away from her by Child Protective Services.

3 The husband recently graduated to hitting his teenage son with a wood-
4 en rod leaving welts.

5 The abuse in this cycle of domestic violence is escalated over time
6 when the abuser believes that the non-abusive parent or caretaker is
7 afraid to report such abuse, under the fear of losing their children.

8 By creating a safe harbor under Melinda's Law we have the opportunity
9 to prevent the escalation of abuse to both the spouse victim and the
10 children who are the victims of domestic violence.

11 S 3. Section 1017 of the family court act is amended by adding a new
12 subdivision 1-a to read as follows:

13 1-A. (A) IN DETERMINING WHETHER THERE IS A SUITABLE NON-RESPONDENT
14 PARENT OR OTHER PERSON RELATED TO THE CHILD WITH WHOM SUCH CHILD MAY
15 APPROPRIATELY RESIDE UNDER SUBDIVISION ONE OF THIS SECTION AND IF BOTH
16 PARENTS ARE RESPONDENTS THE COURT SHALL INQUIRE AS TO THE FOLLOWING:

17 (I) WHETHER EITHER RESPONDENT SUFFERS FROM BATTERED SPOUSE SYNDROME
18 AND IF SO;

19 (II) WHETHER SUCH BATTERED SPOUSE REPORTED THE INCIDENT PRECIPITATING
20 A REMOVAL ORDER OR HEARING UNDER THIS ARTICLE AND IF SO;

21 (III) WHETHER SUCH BATTERED SPOUSE HAS BEEN NEGLECTFUL OR ABUSIVE IN
22 THEIR BEHAVIOR TOWARDS THE CHILD OR CHILDREN AT ISSUE.

23 (B) IF THE COURT SHALL DETERMINE UNDER PARAGRAPH (A) OF THIS SUBDIVI-
24 SION THAT A RESPONDENT IS A BATTERED SPOUSE AND REPORTED THE INCIDENT
25 PRECIPITATING THE ORDER OR HEARING UNDER THIS ARTICLE THEN THE COURT
26 SHALL DEEM SUCH BATTERED SPOUSE A NON-RESPONDENT FOR PURPOSES OF THE
27 REMOVAL ORDER OR HEARING; PROVIDED THAT, SUCH BATTERED SPOUSE IS NOT
28 NEGLECTFUL OR ABUSIVE IN THEIR BEHAVIOR TOWARDS THE CHILD OR CHILDREN AT
29 ISSUE. IF THE COURT SO FINDS, THE COURT SHALL AWARD CUSTODY TO SUCH
30 NON-RESPONDENT PARENT PROVIDED THAT SUCH CUSTODY IS IN THE BEST INTER-
31 ESTS OF THE CHILD OR CHILDREN.

32 (C) THE COURT MAY CONDUCT IN CAMERA INTERVIEWS, BAR THE APPEARANCE OF
33 THE RESPONDENT ABUSER OR TAKE ANY OTHER STEPS AS IT DEEMS NECESSARY
34 WITHIN ITS STATUTORY AND CONSTITUTIONAL POWERS TO DETERMINE WHETHER OR
35 NOT A RESPONDENT IS A BATTERED SPOUSE WITHIN THE MEANING OF SUBPARAGRAPH
36 (I) OF PARAGRAPH (A) OF THIS SUBDIVISION.

37 (D) THIS SUBDIVISION SHALL NOT APPLY TO INSTANCES OF SEXUAL CRIMES,
38 MURDER OR WHERE THERE HAS BEEN PRIOR INCIDENTS INVOLVING DISFIGUREMENT
39 OF THE CHILD OR CHILDREN AT ISSUE.

40 S 4. Paragraphs (vi) and (vii) of subdivision (a) of section 1022 of
41 the family court act are renumbered paragraphs (vii) and (viii) and a
42 new paragraph (vi) is added to read as follows:

43 (VI) IF THE COURT SHALL DETERMINE, PURSUANT TO SUBDIVISION ONE-A OF
44 SECTION ONE THOUSAND SEVENTEEN OF THIS ARTICLE THAT A RESPONDENT PARENT
45 IS A NON-RESPONDENT FOR THE REASONS GIVEN THEREUNDER, THE COURT SHALL
46 ISSUE A TEMPORARY ORDER OF PROTECTION AGAINST THE RESPONDENT ABUSER
47 PURSUANT TO PARAGRAPH (V) OF THIS SUBDIVISION.

48 S 5. Subdivision (b) of section 1027 of the family court act is
49 amended by adding a new paragraph (vi) to read as follows:

50 (VI) IF THE COURT SHALL DETERMINE, PURSUANT TO SUBDIVISION ONE-A OF
51 SECTION ONE THOUSAND SEVENTEEN OF THIS ARTICLE THAT A RESPONDENT PARENT
52 IS A NON-RESPONDENT FOR THE REASONS GIVEN THEREUNDER, THE COURT SHALL
53 ISSUE A TEMPORARY ORDER OF PROTECTION AGAINST THE RESPONDENT ABUSER
54 PURSUANT TO PARAGRAPH (V) OF THIS SUBDIVISION.

1 S 6. Subdivision (a) of section 1028 of the family court act, as
2 amended by chapter 41 of the laws of 2010, is amended to read as
3 follows:

4 (a) Upon the application of the parent or other person legally respon-
5 sible for the care of a child temporarily removed under this part or
6 upon the application of the child's attorney for an order returning the
7 child, the court shall hold a hearing to determine whether the child
8 should be returned (i) unless there has been a hearing pursuant to
9 section one thousand twenty-seven of this article on the removal of the
10 child at which the parent or other person legally responsible for the
11 child's care was present and had the opportunity to be represented by
12 counsel, or (ii) upon good cause shown, WHICH SHALL INCLUDE A FINDING BY
13 THE COURT, AT ANY TIME IN THE PROCEEDINGS, THAT A RESPONDENT PARENT IS A
14 NON-RESPONDENT PURSUANT TO SECTION ONE THOUSAND SEVENTEEN OF THIS ARTI-
15 CLE. Except for good cause shown, such hearing shall be held within
16 three court days of the application and shall not be adjourned. Upon
17 such hearing, the court shall grant the application, unless it finds
18 that the return presents an imminent risk to the child's life or health.
19 If a parent or other person legally responsible for the care of a child
20 waives his or her right to a hearing under this section, the court shall
21 advise such person at that time that, notwithstanding such waiver, an
22 application under this section may be made at any time during the
23 pendency of the proceedings.

24 S 7. This act shall take effect immediately.