

# STATE OF NEW YORK

9725

## IN ASSEMBLY

February 2, 2018

Introduced by M. of A. GIGLIO -- 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 and the creation of "Melinda's Law"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as "Melinda's  
2 Law".  
3 § 2. Legislative intent. The legislature hereby finds and declares  
4 that in cases of domestic violence, the abuse sometimes moves from the  
5 spouse to the children. Once the abusive spouse begins to over-discip-  
6 line the children, the abusive spouse will often use threats or the  
7 removal of the children by child protective services as a means to  
8 compel subjugation from the non-abusive spouse. In addition, the abusive  
9 spouse prevents the reporting of such incidents to child protective  
10 services by making the non-abusive spouse an accomplice in this abuse.  
11 Under this threat, children are subjected to escalating abuse that could  
12 have been prevented if the non-abusive spouse had a safe harbor to  
13 report such abuse at the early stages without fear of losing their chil-  
14 dren. By this act the legislature intends to take such tool away from  
15 the abusive spouse by providing the non-abusive spouse a way to report  
16 such incidents without fear of having their children removed from their  
17 custody. The sequence of events above are an apt description of "Melin-  
18 da". Melinda is a woman suffering from domestic violence. She had been  
19 abused by her husband over a twenty year period. The abuse had seen  
20 verbal, psychological, and physical. She took the abuse in the belief  
21 that her children needed a father. Eventually the abuse was transferred  
22 to the children. It started with excessive spanking, locking a young  
23 teenager in the basement, and pushing a five year old to the ground.  
24 Melinda confronted her husband and put herself between her husband and  
25 her children resulting in a black-eye to Melinda. She told her husband  
26 that she would not let him hit the children and would call the police  
27 and have him arrested. Her husband responded that if she called the  
28 police, her children would be taken away from her by child protective

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

LBD05608-01-7

1 services. The husband than graduated to hitting his teenage son with a  
2 wooden rod that left welts. The abuse in this cycle of domestic violence  
3 is escalated over time when the abusive spouse believes that the non-a-  
4 busive spouse or caretaker is afraid to report such abuse, under the  
5 fear of losing their children. By creating a safe harbor under Melinda's  
6 Law we have the opportunity to prevent the escalation of abuse to both  
7 the spouse victim and the children who are the victims of domestic  
8 violence.

9 § 3. Section 1012 of the family court act is amended by adding two new  
10 subdivisions (o) and (p) to read as follows:

11 (o) "Domestic violence" means:

12 (i) any conduct which would constitute an offense in the penal law,  
13 and created a substantial risk of physical or emotional harm, regardless  
14 of whether such injury occurred; or

15 (ii) any other abuse, including but not limited to verbal, emotional  
16 or psychological abuse, including slapping, that creates a substantial  
17 risk of physical or emotional harm to such person or such person's  
18 child, regardless of whether such harm occurred.

19 (p) "Victim spouse or domestic partner subjected to domestic violence"  
20 means the respondent spouse or domestic partner who is the non-abusive  
21 spouse or domestic partner, and is determined to be subjected to domes-  
22 tic violence as defined by subdivision (o) of this section.

23 § 4. Section 1017 of the family court act is amended by adding a new  
24 subdivision 1-a to read as follows:

25 1-a. (a) In determining whether there is a suitable person related to  
26 the child with whom such child may appropriately reside under subdivi-  
27 sion one of this section and if both parents are respondents the court  
28 shall first inquire as to the following:

29 (i) whether either respondent has been subjected to domestic violence  
30 by the other respondent and if so;

31 (ii) whether such victim spouse or domestic partner subjected to  
32 domestic violence reported the incident precipitating a removal order or  
33 hearing under this article and if so;

34 (iii) whether such victim spouse or domestic partner subjected to  
35 domestic violence has been neglectful or abusive in their behavior  
36 towards the child or children at issue.

37 (b) If the court shall determine under paragraph (a) of this subdivi-  
38 sion that a respondent is a victim spouse or domestic partner subjected  
39 to domestic violence and reported the incident precipitating the order  
40 or hearing under this article then the court shall deem such victim  
41 spouse or domestic partner subjected to domestic violence a non-respon-  
42 dent for purposes of the removal order or hearing; provided that, such  
43 victim spouse or domestic partner subjected to domestic violence is not  
44 neglectful or abusive in their behavior towards the child or children at  
45 issue. If the court so finds, the court shall award custody to such  
46 non-respondent parent provided that such custody is in the best inter-  
47 ests of the child or children.

48 (c) If a determination is made that both parents remain as respon-  
49 dents, the court may then determine whether there is a suitable person  
50 related to the child with whom such child may appropriately reside under  
51 subdivision one of this section.

52 (d) The court may conduct in camera interviews, bar the appearance of  
53 the respondent abuser or take any other steps as it deems necessary  
54 within its statutory and constitutional powers to determine whether or  
55 not a respondent is a victim spouse within the meaning of subparagraph  
56 (i) of paragraph (a) of this subdivision.

1 (e) This subdivision shall not apply to instances of sexual crimes,  
2 murder or where there has been prior incidents involving disfigurement  
3 of the child or children at issue.

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

7 (vi) If the court shall determine, pursuant to subdivision one-a of  
8 section one thousand seventeen of this article that a respondent parent  
9 is a non-respondent for the reasons given thereunder, the court shall  
10 issue a temporary order of protection against the respondent abuser  
11 pursuant to paragraph (v) of this subdivision.

12 § 6. Subdivision (b) of section 1027 of the family court act is  
13 amended by adding a new paragraph (vi) to read as follows:

14 (vi) If the court shall determine, pursuant to subdivision one-a of  
15 section one thousand seventeen of this article that a respondent parent  
16 is a non-respondent for the reasons given thereunder, the court shall  
17 issue a temporary order of protection against the respondent abuser  
18 pursuant to paragraph (v) of this subdivision.

19 § 7. Subdivision (a) of section 1028 of the family court act, as  
20 amended by chapter 41 of the laws of 2010, is amended to read as  
21 follows:

22 (a) Upon the application of the parent or other person legally respon-  
23 sible for the care of a child temporarily removed under this part or  
24 upon the application of the child's attorney for an order returning the  
25 child, the court shall hold a hearing to determine whether the child  
26 should be returned (i) unless there has been a hearing pursuant to  
27 section one thousand twenty-seven of this article on the removal of the  
28 child at which the parent or other person legally responsible for the  
29 child's care was present and had the opportunity to be represented by  
30 counsel, or (ii) upon good cause shown, which shall include a finding by  
31 the court, at any time in the proceedings, that a respondent parent is a  
32 non-respondent pursuant to section one thousand seventeen of this arti-  
33 cle. Except for good cause shown, such hearing shall be held within  
34 three court days of the application and shall not be adjourned. Upon  
35 such hearing, the court shall grant the application, unless it finds  
36 that the return presents an imminent risk to the child's life or health.  
37 If a parent or other person legally responsible for the care of a child  
38 waives his or her right to a hearing under this section, the court shall  
39 advise such person at that time that, notwithstanding such waiver, an  
40 application under this section may be made at any time during the  
41 pendency of the proceedings.

42 § 8. This act shall take effect immediately.