STATE OF NEW YORK

6536

2019-2020 Regular Sessions

IN ASSEMBLY

March 11, 2019

Introduced by M. of A. SMITH -- 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:

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

§ 2. Legislative intent. The legislature hereby finds and declares that in cases of domestic violence, the abuse sometimes moves from the spouse to the children. Once the abusive spouse begins to over-discipline the children, the abusive spouse will often use threats or the removal of the children by child protective services as a means to compel subjugation from the non-abusive spouse. In addition, the abusive spouse prevents the reporting of such incidents to child protective services by making the non-abusive spouse an accomplice in this abuse. Under this threat, children are subjected to escalating abuse that could have been prevented if the non-abusive spouse had a safe harbor to report such abuse at the early stages without fear of losing their children. By this act the legislature intends to take such tool away from the abusive spouse by providing the non-abusive spouse a way to report such incidents without fear of having their children removed from their custody. The sequence of events above are an apt description of "Melinda". Melinda is a woman suffering from domestic violence. She had been abused by her husband over a twenty year period. The abuse had seen verbal, psychological, and physical. She took the abuse in the belief that her children needed a father. Eventually the abuse was transferred to the children. It started with excessive spanking, locking a young teenager in the basement, and pushing a five year old to the ground. Melinda confronted her husband and put herself between her husband and her children resulting in a black-eye to Melinda. She told her husband

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

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that she would not let him hit the children and would call the police and have him arrested. Her husband responded that if she called the police, her children would be taken away from her by child protective services. The husband than graduated to hitting his teenage son with a wooden rod that left welts. The abuse in this cycle of domestic violence is escalated over time when the abusive spouse believes that the non-abusive spouse or caretaker is afraid to report such abuse, under the fear of losing their children. By creating a safe harbor under Melinda's Law we have the opportunity to prevent the escalation of abuse to both the spouse victim and the children who are the victims of domestic violence.

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

(o) "Domestic violence" means:

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

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

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

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

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

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

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

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

(b) If the court shall determine under paragraph (a) of this subdivision that a respondent is a victim spouse or domestic partner subjected to domestic violence and reported the incident precipitating the order or hearing under this article then the court shall deem such victim spouse or domestic partner subjected to domestic violence a non-respondent for purposes of the removal order or hearing; provided that, such victim spouse or domestic partner subjected to domestic violence is not neglectful or abusive in their behavior towards the child or children at issue. If the court so finds, the court shall award custody to such non-respondent parent provided that such custody is in the best interests of the child or children.

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

(d) The court may conduct in camera interviews, bar the appearance of the respondent abuser or take any other steps as it deems necessary

within its statutory and constitutional powers to determine whether or not a respondent is a victim spouse within the meaning of subparagraph (i) of paragraph (a) of this subdivision.

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

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

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

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

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

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

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

§ 8. This act shall take effect immediately.