

STATE OF NEW YORK

9136

IN SENATE

May 10, 2022

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, in relation to concurrent jurisdiction of criminal and family courts

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

1 Section 1. Subdivision 1 of section 812 of the family court act, as
2 amended by chapter 326 of the laws of 2008, the opening paragraph as
3 amended by chapter 109 of the laws of 2019, is amended to read as
4 follows:

5 1. Jurisdiction. The family court and the criminal courts shall have
6 concurrent jurisdiction over any proceeding concerning acts which would
7 constitute disorderly conduct, unlawful dissemination or publication of
8 an intimate image, unlawful surveillance in the first degree, unlawful
9 surveillance in the second degree, unlawful surveillance in the third
10 degree, dissemination of unlawful surveillance in the first degree,
11 dissemination of unlawful surveillance in the second degree, criminal
12 impersonation in the second degree, computer trespass, unauthorized use
13 of a computer, harassment in the first degree, harassment in the second
14 degree, aggravated harassment in the second degree, sexual misconduct,
15 forcible touching, sexual abuse in the third degree, sexual abuse in the
16 second degree as set forth in subdivision one of section 130.60 of the
17 penal law, stalking in the first degree, stalking in the second degree,
18 stalking in the third degree, stalking in the fourth degree, criminal
19 mischief, menacing in the second degree, menacing in the third degree,
20 reckless endangerment, criminal obstruction of breathing or blood circu-
21 lation, strangulation in the second degree, strangulation in the first
22 degree, assault in the second degree, assault in the third degree, an
23 attempted assault, identity theft in the first degree, identity theft in
24 the second degree, identity theft in the third degree, grand larceny in
25 the fourth degree, grand larceny in the third degree, coercion in the
26 second degree or coercion in the third degree as set forth in subdivi-
27 sions one, two and three of section 135.60 of the penal law between
28 spouses or former spouses, or between parent and child or between

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

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1 members of the same family or household except that if the respondent
2 would not be criminally responsible by reason of age pursuant to section
3 30.00 of the penal law, then the family court shall have exclusive
4 jurisdiction over such proceeding. Notwithstanding a complainant's
5 election to proceed in family court, the criminal court shall not be
6 divested of jurisdiction to hear a family offense proceeding pursuant to
7 this section. In any proceeding pursuant to this article, a court shall
8 not deny an order of protection, or dismiss a petition, solely on the
9 basis that the acts or events alleged are not relatively contemporaneous
10 with the date of the petition, the conclusion of the fact-finding or the
11 conclusion of the dispositional hearing. For purposes of this article,
12 "disorderly conduct" includes disorderly conduct not in a public place.
13 For purposes of this article, "members of the same family or household"
14 shall mean the following:

15 (a) persons related by consanguinity or affinity;
16 (b) persons legally married to one another;
17 (c) persons formerly married to one another regardless of whether they
18 still reside in the same household;

19 (d) persons who have a child in common regardless of whether such
20 persons have been married or have lived together at any time; [and]

21 (e) persons who are not related by consanguinity or affinity and who
22 are or have been in an intimate relationship regardless of whether such
23 persons have lived together at any time. Factors the court may consider
24 in determining whether a relationship is an "intimate relationship"
25 include but are not limited to: the nature or type of relationship,
26 regardless of whether the relationship is sexual in nature; the frequen-
27 cy of interaction between the persons; and the duration of the relation-
28 ship. Neither a casual acquaintance nor ordinary fraternization between
29 two individuals in business or social contexts shall be deemed to
30 constitute an "intimate relationship"[-]; and

31 (f) persons who are not related by consanguinity, affinity, or intima-
32 cy and who are or have been party to unreciprocated offensive contact.
33 "Unreciprocated offensive contact" shall be defined as a pattern of
34 communication or activity wherein one person (the respondent) is engaged
35 in primarily one-sided assaultive or threatening conduct and/or a course
36 of repeated, unwelcome communication at or about another person (the
37 petitioner). Factors the court may consider in determining whether an
38 alleged offender is engaging in unreciprocated offensive contact include
39 but are not limited to: the extent to which the petitioner has not
40 consented to such contact, the volume and frequency of such contact by
41 the respondent, the coercive, threatening, and/or harassing content of
42 any communications sent by the respondent, and the seriousness and/or
43 one-sidedness of such contact.

44 § 2. This act shall take effect immediately.