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:

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

1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, unlawful dissemination or publication of an intimate image, **unlawful surveillance in the first degree, unlawful surveillance in the second degree, unlawful surveillance in the third degree, dissemination of unlawful surveillance in the first degree, dissemination of unlawful surveillance in the second degree, criminal impersonation in the second degree, computer trespass, unauthorized use of a computer,** harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree, coercion in the second degree or coercion in the third degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between 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.

LBD14488-03-2

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

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

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

(e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"[~~.~~]**; and**

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

§ 2. This act shall take effect immediately.