

STATE OF NEW YORK

4754

2021-2022 Regular Sessions

IN ASSEMBLY

February 8, 2021

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:

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

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

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

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

14 (o) "Domestic violence" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 § 8. This act shall take effect immediately.