

STATE OF NEW YORK

3558

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. GONZALEZ-ROJAS -- read once and referred to the Committee on Judiciary

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

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

LBD06938-01-3

1 second degree or coercion in the third degree as set forth in subdivi-
2 sions one, two and three of section 135.60 of the penal law between
3 spouses or former spouses, or between parent and child or between
4 members of the same family or household except that if the respondent
5 would not be criminally responsible by reason of age pursuant to section
6 30.00 of the penal law, then the family court shall have exclusive
7 jurisdiction over such proceeding. Notwithstanding a complainant's
8 election to proceed in family court, the criminal court shall not be
9 divested of jurisdiction to hear a family offense proceeding pursuant to
10 this section. In any proceeding pursuant to this article, a court shall
11 not deny an order of protection, or dismiss a petition, solely on the
12 basis that the acts or events alleged are not relatively contemporaneous
13 with the date of the petition, the conclusion of the fact-finding or the
14 conclusion of the dispositional hearing. For purposes of this article,
15 "disorderly conduct" includes disorderly conduct not in a public place.
16 For purposes of this article, "members of the same family or household"
17 shall mean the following:

18 (a) persons related by consanguinity or affinity;
19 (b) persons legally married to one another;
20 (c) persons formerly married to one another regardless of whether they
21 still reside in the same household;
22 (d) persons who have a child in common regardless of whether such
23 persons have been married or have lived together at any time; ~~[and]~~
24 (e) persons who are not related by consanguinity or affinity and who
25 are or have been in an intimate relationship regardless of whether such
26 persons have lived together at any time. Factors the court may consider
27 in determining whether a relationship is an "intimate relationship"
28 include but are not limited to: the nature or type of relationship,
29 regardless of whether the relationship is sexual in nature; the frequen-
30 cy of interaction between the persons; and the duration of the relation-
31 ship. Neither a casual acquaintance nor ordinary fraternization between
32 two individuals in business or social contexts shall be deemed to
33 constitute an "intimate relationship" ~~[-]; and~~

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

47 § 2. This act shall take effect immediately.