

CLE Legal Update Family Law October 17, 2019

Hon. Shahabuddeen Ally

Bronx Criminal Court

Agenda – “a little something for everyone”

1:30pm to 2:45pm

- 1:30pm to 1:45pm – Legislative updates
- 1:45pm to 2pm – Custody/Visitation updates
- 2pm to 2:15pm – Family Offense
- 2:15pm to 2:30pm – Parental Alienation
- 2:30pm to 2:45pm – Questions/Comments/Compliments

We encourage discussion – seriously



TOPs & spousal support

- Amends FCA section 828 to allow the issuance of spousal support in addition to a temporary order of protection and temporary order of child support;
- 36 other states permit the issuance of temporary spousal support with a TOP;
- An order of spousal and/or child support shall be deemed made under article 4 of the FCA;
- Enforcement proceedings through local department of social services;
- Order could be issued even if income information not available for Respondent;
and
- There does not need to be a showing of immediate or emergency need.

Marie's Law – restriction on custody & visitation

- Bill establishes a rebuttable presumption that it is not in the best interests of a child to be placed in the custody of or to have unsupervised visits with a person who has been convicted of one or more delineated felony sex offenses where the victim of such offense or offenses is the child who is the subject of the proceeding seeking custody or visits;
- Delineated felony sex acts: (1) rape in the 1st or 2nd degree; (2) course of sexual conduct against a child in the 1st degree; (3) predatory sexual assault and (4) predatory sexual assault against a child.
- Considers out of state convictions of similar crimes.
- Introduced by Assemblyman Fall from Staten Island (his 1st piece of legislation) – after 12 year old placed in the home of relative with prior sexually abuse conviction.

Simplified Domestic Violence Notice

- An act to amend the family court act (section 812) and the criminal procedure law (section 530.11), in relation to notification of rights of victims of domestic violence in criminal and family court proceedings.
- The language in the proposed notice mirrors the basic principles of writing in English – in particular, the use of short, declarative sentences, use of personal pronouns, use of active voice, avoidance of legal terms and organization into easy-to-read bullets.
- Every police officer, peace officer, or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of legal rights and remedies available to a victim of a family offense under the relevant provisions of this act and the CPL.
- Such notice shall be available, at minimum, in plain English, Spanish, Chinese and Russian and, if necessary, shall be delivered orally.
- Language found on the attached submissions.

Revenge porn – Unlawful dissemination or publication of intimate image

- Amends and add CPL section 245.15 (class A misdemeanor) for the unlawful dissemination or publication of intimate images, colloquially known as “revenge porn.” The offense requires an intent to cause emotional, financial or physical harm through the disclosure of intimate images of an **identifiable** person without that person’s consent. The new offense is added to Family Court Act §812 and Criminal Procedure Law §530.11(1) as a family offense for which the criminal and family courts have concurrent jurisdiction.

Criminal Justice reform – Key provisions

- Bail – mandatory DAT provision that provides for court notification – court will contact Defendants re: upcoming court appearances;
- DAT for cases not including A,B,C or D felonies;
- Police not required to issue DAT for cases where TOP can be issued or driver's license suspend;
- All Misd. (except sex offenses or DV contempt)/non-violent felonies, rob 2 and burg 2 must be released unless court makes a determination that principal poses a risk of flight;
- Court must set 3 forms of bail including unsecured or partially secured security bond;
- Court must consider D's financial circumstances;
- Court will now have to issue on the record findings to justify their decision-making;
- A prohibition on employment and housing discrimination against people w/open ACDs; and
- 364-day maximum sentence for misdemeanors (to address potential immigration consequences);
- 48 hour window to allow D to appear prior to issuance of a warrant.



**“My divorce didn’t turn out so good.
I got custody of my lawyer’s teenage children.”**

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Child custody/visitation updates (1)

- *Order of custody/forensic reports – Matter of Raymond v. Raymond*, 2019 NY Slip Op 05546.
- *Incarcerated parent visitation – In re Giovanni H.B.*, 2019 NY Slip Op. 03680.
- *Custody/Extraordinary circumstances – Jose C. v. Janet V.*, 171 A.D.3d 651.
- *Hearings/Suspended access/limitation (prohibition) on filing new cases – Michael G. v. Katherine C.*, 167 A.D.3d 494 & *Matter of Lakeya P. v. Ajja M.*, 169 A.D.3d 1409
- *Non-custodial parent access – Parris v. Wright*, 170 A.D.3d 731.

Child custody/visitation updates (2)

- *Change of custody – Saylor v. Bukowski*, 170 A.D.3d 862
- *Custodial agreement – R.K. v. R.G.*, 169 A.D.3d 892
- *Trial/abuse of discretion – Judith DD v. Ahava DD*, 2019 NY Slip Op 03420.
- *Trial/abuse of discretion – Mauro NN. V. Michelle NN.*, 2019 NY Slip Op. 03423.
- *Non-custodial parent visitation & ineffective assistance of counsel – Aaron OO v. Amber PP.*, 170 A.D.3d 1436.
- *Custody order/abuse of discretion/dispositive factor – Lionel PP. v. Sherry QQ.*, 170 A.D.3d 1460.

Child custody/visitation updates (3)

- *Improper pre-condition/delegation of authority – Rice v. Wightman*, 167 A.D.3d 1529.
- *Grandparent visitation – Jones v. Laubacker*, 167 A.D.3d 1543.
- *Relocation granted – Matter of BB.Z. v. CC.AA.*, 166 A.D.3d 1334;
Matter of Michael B. v. Latasha T.M., 2018 NY Slip Op 07929 (2019)
- *Vacatur of default/Meritorious defense – Matter of Abel A. v. Imanda M.*, 167 A.D.3d 528.
- *Custody/change of schools/biracial child – Verfenstein v. Verfenstein*, 171 A.D.3d 841.

Child custody/visitation updates (4)

- *Appeals/aggrieved party/timely findings of custody – Matter of Newton v. McFarlene*, 2019 WL 2363541.
- Miller, Sondra. “The Voice of the Child: Critical and Often Compelling”. New York Law Journal. September 12, 2019.
- Solomon, Gary; Freedman, Karen; Simmons, Karen. “Giving a Greater Voice to the Child Enhances Fact-Finding and Decision-Making”. New York Law Journal. August 5, 2019.
- Zeiderman, Lisa. “Does Empowering Children During Divorce Litigation Serve Them Well?” New York Law Journal. July 26, 2019.

Family offense case updates (1)

- *Change of venue/DV: In Re Natalie A. v. Chadwick P.*, 166 A.D.3d 528
- *DV/UCCJEA/Emergency venue: Alger v. Jacobs*, 169 A.D.3d 1415
- *Failure to specify findings for O & V: Benson v. Smith*, 170 A.D.3d 1640
- *Ineffective assistance of counsel: Wood v. Rebich*, 166 A.D.3d 1416
- *Harassment finding – Wilson v. Wilson*, 169 A.D.3d 1279; *Shirley D.-A. v. Gregory D. – A.*, 168 A.D.3d 635
- *Standing – Jasmin NN. v. Jasmin C.*, 167 A.D.3d 1274
- *Notice/sufficiency of pleadings – Qin Fen Wang v. Chee Kiang Foo*, 171 A.D.3d 1187

Family offense case updates (2)

- *Dismissal of petition w/prejudice – Hersh v. Cohen, 171 A.D.3d 1062*
- *Subject matter jurisdiction/premature dismissal – Matter of Rizzo v. Pravato, 170 A.D.3d 860.*

Parental Alienation

- "Parental Alienation: What a concept". New York Law Journal. January 11, 2019.
- Montagnino, Jim. "Appellate Review of Law and Facts in Child Custody Cases: Some Observations." New York Law Journal. September 13, 2019.
- Trager, Jordan. "Parental Alienation – A Broader Perspective." New York Law Journal. April 9, 2019.
- *J.F. v. D.F.*, 2018 N.Y.Slip. Op. 51829(U).