

STATE OF NEW YORK

5398--A

2021-2022 Regular Sessions

IN ASSEMBLY

February 16, 2021

Introduced by M. of A. HEVESI, SILLITTI, BARNWELL, DICKENS, FAHY, CLARK, HUNTER, GALEF, LAVINE, SEAWRIGHT, SIMON, JACKSON, J. RIVERA, McDONOUGH, MORINELLO, THIELE, BURDICK, K. BROWN, STIRPE, QUART, GONZALEZ-ROJAS, DURSO, OTIS, LAWLER, BRABENEC, MANKTELOW, ANGELINO, COOK, GRIF-FIN, GUNTHER, STERN, FRONTUS, McDONALD, JEAN-PIERRE, DeSTEFANO, BLANKENBUSH, FERNANDEZ, RA, FITZPATRICK, PHEFFER AMATO, ANDERSON, MIKULIN, L. ROSENTHAL, LALOR, LUPARDO, SIMPSON, EPSTEIN, KELLES, SMITH, JENSEN, BURGOS, JONES, STECK, ZINERMAN, CRUZ, AUBRY, GOTTFRIED, CUNNINGHAM, ABINANTI, HAWLEY -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law and the family court act, in relation to establishing "Kyra's Law"

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

1 Section 1. Short title. This act shall be known as and may be cited as
2 "Kyra's Law".

3 § 2. Subparagraph 5 of paragraph (a-1) of subdivision 1 of section 240
4 of the domestic relations law, as amended by chapter 295 of the laws of
5 2009, is amended to read as follows:

6 (5) Temporary emergency order. (i) Notwithstanding any other
7 provision of the law, upon the application of a party to an action
8 concerning custody of or a right to visitation with a child who alleges
9 that the other party to the proceeding has committed, has threatened to
10 commit, or is likely to commit an act of child abuse against such child,
11 or has committed, has threatened to commit, or is likely to commit an
12 act of domestic violence against the party making the allegation or a
13 family or household member of either party, as such family or household
14 member is defined in article eight of the family court act, the court

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

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1 shall hold a hearing to determine whether temporary limitations or
2 conditions on the custody or visitation rights of the party who is
3 alleged to have committed an act of child abuse against the child, or
4 committed an act of domestic violence against the party making the alle-
5 gation or a family or household member of either party is necessary to
6 avoid significant risk to the child's life or safety. The court shall
7 conduct an assessment of the best interests of the child to identify
8 significant risk to the child's life and safety, using a risk assessment
9 tool developed pursuant to clause (ii) of this subparagraph to evaluate
10 factors which shall include, but shall not be limited to:

11 (A) allegations of domestic violence, child abuse, child sexual abuse
12 or incidents involving harm, or risk of harm, to a child;

13 (B) prior police reports or domestic violence incident reports docu-
14 menting prior incidents involving child abuse or domestic violence, or
15 whether either party has been charged with an act which would constitute
16 disorderly conduct, unlawful dissemination or publication of an intimate
17 image, harassment in the first degree, harassment in the second degree,
18 aggravated harassment in the second degree, sexual misconduct, forcible
19 touching, sexual abuse in the third degree, sexual abuse in the second
20 degree as set forth in subdivision one of section 130.60 of the penal
21 law, stalking in the first degree, stalking in the second degree, stalk-
22 ing in the third degree, stalking in the fourth degree, criminal
23 mischief, menacing in the second degree, menacing in the third degree,
24 reckless endangerment, criminal obstruction of breathing or blood circu-
25 lation, strangulation in the second degree, strangulation in the first
26 degree, assault in the second degree, assault in the third degree, an
27 attempted assault, identity theft in the first degree, identity theft in
28 the second degree, identity theft in the third degree, grand larceny in
29 the fourth degree, grand larceny in the third degree, coercion in the
30 second degree or coercion in the third degree as set forth in subdivi-
31 sions one, two and three of section 135.60 of the penal law between
32 spouses or former spouses, or between party and child or between members
33 of the same family or household, regardless of the disposition;

34 (C) whether either party owns, possesses or has access to a firearm,
35 rifle or shotgun;

36 (D) decisions and reports on registries as required pursuant to
37 subparagraph three of this paragraph;

38 (E) confinement of a party or child by the other party;

39 (F) threats to harm or kill self or others, or threats to harm or kill
40 emotional support or comfort animals owned or possessed by self or
41 others, made by one party to the other party or child; and

42 (G) one party's concern about future assaults from the other party.

43 Except for good cause shown, the hearing for such determination shall
44 commence within fourteen court days of the application for such hearing
45 and shall not be adjourned. Parties shall be noticed of their right to
46 the assistance of counsel at the initiation of such hearing. When the
47 parties first appear in court, the judge shall advise them before
48 proceeding of the right to be represented by counsel of his or her own
49 choosing, of the right to have an adjournment to confer with counsel,
50 and the right to obtain counsel fees and expenses, pursuant to section
51 two hundred thirty-seven of this article. During such hearing, compe-
52 tent, material and relevant evidence may be admitted, in addition to
53 evidence that may include or consist of hearsay and documents or photo-
54 graphs for which a proper foundation cannot be laid. If a party waives
55 his or her right to a hearing under this section, the court shall advise
56 such party at that time that, notwithstanding such waiver, an applica-

tion under this section may be made at any time during the pendency of the proceedings.

(ii) The office for the prevention of domestic violence, in coordination with the office of court administration and in consultation with the New York state coalition against domestic violence, the New York state coalition against sexual assault, prevent child abuse New York, victims of domestic violence, sexual assault, child abuse or child sexual abuse, civil attorneys representing such victims in custody and visitation proceedings, and researchers and academics with expertise in developing risk assessment tools shall develop a risk assessment tool for use by the court when assessing significant risk to child's life or safety for the purposes of issuing a temporary emergency order. These entities will review and, when appropriate, update the risk assessment tool at least once every two years.

(iii) If the court determines that limitations or restrictions of a party's custody, visitation or contact with the child are necessary to avoid significant risk to the child's life or safety, the court shall issue a temporary emergency order for custody or visitation stating as such. Such order shall set forth conditions of custody or visitation which may be revised by the court upon application by either party only for good cause shown. Any order of the court under this section shall terminate when the court makes a final order of custody or of visitation concerning the child or children, unless the supreme court continues the order to family court.

(iv) There shall be a rebuttable presumption that the court shall not award, in a temporary emergency order for custody or visitation, sole or joint custody or unsupervised visitation to a party who jeopardizes or may jeopardize the life or safety of the child.

(v) The court shall state on the record, and in writing, its findings, the factors considered in rendering its decision and the reasons for the limitations or restrictions placed on a party's custody, visitation or contact with such child.

(vi) All costs, including attorney and expert fees incurred by the non-offending party and the child, to prepare for and participate in such hearing shall be paid by the party who is found to have committed child abuse or domestic violence, unless the offending party has insufficient means to fund such expenses.

(vii) If a party makes a good faith allegation based on a reasonable belief supported by facts that a child is the victim of child abuse, child neglect, or has been exposed to domestic violence, and if that party acts lawfully and in good faith in response to that reasonable belief to protect the child, seek treatment for the child or to protect self, then that party shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief.

(viii) If the court does not make a finding that limitations or restrictions on a party's custody or visitation with such child are necessary to avoid significant risk to the child's life or safety, the court shall hold an additional hearing whenever a party alleges that a temporary order may be necessary to promote and protect the best interest of the child pending entry of a final order.

(ix) With the exception of hearsay or other non-competent evidence, the court may not refuse to consider, at further proceedings, evidence presented during a hearing for a temporary emergency order or additional evidence of domestic violence or child abuse presented in further

proceedings. The presentation of any facts or evidence at a hearing for a temporary emergency order shall not preclude the presentation of any facts or evidence.

(x) Nothing contained in this subparagraph shall be deemed in any way to limit, restrict, expand or impair the rights of any party to file for a modification of a temporary emergency order as is otherwise provided by law.

(xi) Any party to a proceeding for a temporary emergency order pursuant to this section shall have a right to appeal to the appropriate appellate division. An appeal under this subdivision must be taken no later than five days after the service by a party or the child's attorney upon the appellant of any order from which the appeal is taken or five days from receipt of the order by the appellant in court, whichever is earliest.

(xii) Notwithstanding any other provision of the law, upon emergency situations, including computer malfunctions, to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not possible to timely review decisions and reports on registries as required pursuant to subparagraph three of this paragraph.

§ 3. The domestic relations law is amended by adding a new section 240-e to read as follows:

§ 240-e. Custody and visitation; life and safety of the child. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Parental alienation" means claims that a child has become estranged from a parent or legal guardian as a result of psychological manipulation by the other parent or legal guardian.

(b) "Victim of domestic violence" shall have the same meaning as defined in section four hundred fifty-nine-a of the social services law.

(c) "Friendly parent" means the propensity of a parent or legal guardian to actively support a child's contact and relationship with the other parent or legal guardian, or the ability of such parent or legal guardian to cooperate in, and resolve disputes, regarding matters affecting such child.

2. Notwithstanding any other provision of law to the contrary, a court making a final determination of custody or visitation based on the best interests of a child pursuant to the provisions of this chapter shall prioritize and promote the life and safety of such child when making such determinations. Promoting the life and safety of a child shall include preventing direct physical and/or emotional harm to such child.

3. Prior to the issuance of a final order of custody or visitation, during its assessment of the best interests of the child, the court shall determine the life and safety of the child who is the subject of such order by considering all relevant factors and by giving weighted consideration to those factors which affect the life and safety of such child, which shall include, but not be limited to:

(a) whether either party is more likely to ensure the life and safety of the child and whether either party jeopardizes the life or safety of the child. There shall be a rebuttable presumption that custody or visitation shall not be awarded to a party who jeopardizes the life or safety of the child;

(b) the impact of disrupting continuity in the child's home, environment and established parenting contacts;

(c) any allegations of domestic violence, child abuse or child sexual abuse, or incidents involving harm, or risk of harm, to a child;

(d) prior police reports or domestic violence incident reports documenting incidents involving child abuse or domestic violence, or whether either party has been charged with an act which would constitute disorderly conduct, unlawful dissemination or publication of an intimate image, 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 members of the same family or household, regardless of the disposition;

(e) whether either party owns, possesses or has access to a firearm, rifle or shotgun;

(f) whether either party is better able and more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child; and

(g) any previously made statements by the child about a party indicating they are fearful of or resistant to having contact or visitation with such party.

4. (a) The court shall not presume that a child's deficient or negative relationship with a party was caused by the other party, nor shall a party be given custody for the purpose of improving a deficient relationship between the child and such party or in an attempt to remediate a child's resistance to contact or visitation with a party.

(b) Allegations regarding parental alienation shall not be admissible in any proceeding for custody or visitation and shall not be considered in assessing a child's best interests.

(c) No psychological or medical theories or labels related to a child's resistance to contact with a party shall be admitted into evidence unless they are based on empirical proof of scientific reliability and validity and generally accepted by the scientific and professional community.

(d) No reunification treatment or any similar program designed to repair a party's relationship with a child due to parental alienation shall be ordered by the court without scientifically valid and generally accepted proof of the effectiveness and therapeutic value of such treatment or program; nor shall a treatment or program be ordered which is predicated on separating a child from their primary caregiver.

(e) In cases involving domestic violence or child abuse, whether such abuse has occurred or is occurring, a court shall not consider whether either parent is a friendly parent.

5. In cases where the court has found a parent to be a victim of domestic violence and/or where child abuse has occurred or is occurring:

(a) the court shall award joint legal custody only on consent of the parties or where it has been determined that the parties can effectively communicate, cooperate with each other, and make joint decisions

1 concerning the child; provided, however, that where final orders are on
2 the consent of the parties, in no event shall an order of joint legal
3 custody be awarded when there is an existing or prior full stay away
4 order of protection against a party on behalf of another party to the
5 proceeding or when there is an existing temporary order of protection
6 entered ex parte; and

7 (b) all costs, including attorney and expert fees, incurred by the
8 non-offending parent and the child, shall be paid by the parent who is
9 found to have committed child abuse or domestic violence, unless the
10 offending parent has insufficient means to pay such costs.

11 6. (a) Before judges, referees, or other hearing officers preside over
12 child custody proceedings in which one or more parties have alleged
13 domestic violence or child abuse, they shall complete at least twenty
14 hours of initial training for the handling of such cases. The office for
15 prevention of domestic violence shall, within amounts appropriated for
16 such purpose, contract exclusively with the New York state coalition
17 against domestic violence, and other nonprofit entities with whom it
18 subcontracts with expertise in child abuse or gender-based violence, to
19 develop such training. Such entity, or entities in partnership, shall
20 review and update the training at least once every two years. In
21 consultation with the office of court administration, such entities, or
22 entities in partnership, shall be responsible for providing such train-
23 ing to judges, referees, and other hearing officers handling child
24 custody proceedings. Such training shall include, but not be limited
25 to:

26 (1) a review of relevant statutes and case law pertaining to domestic
27 violence and child abuse;

28 (2) the dynamics and effects of domestic violence and child abuse,
29 including but not limited to, emotional, financial, physical, technolog-
30 ical and sexual abuse, and an understanding of the barriers and fears
31 associated with reporting domestic violence and child abuse and why
32 victims may not have documented evidence of abuse;

33 (3) tactics commonly used by one party to induce fear in, or dominate
34 or control a partner or child, including verbal, emotional, psycholog-
35 ical, and/or economic abuse; isolation; efforts to build trust and an
36 emotional connection with a child to support future manipulation;
37 exploitation; abuse; threats; controlling and harassing behaviors,
38 including monitoring of a partner's location and activities; use of
39 oppressive behavior designed to deprive a partner of their rights and
40 liberties and establishing a regime of domination in the partner's
41 personal life; litigation abuse; and demands for custody in order to
42 pressure the partner to return or punish the partner for leaving;

43 (4) knowledge of trauma, particularly as it relates to sexual abuse
44 and the risks posed to children and the long-term dangers and impacts
45 posed by the presence of adverse childhood experiences;

46 (5) the increased risk of escalating violence that occurs during child
47 custody proceedings and methods for assessing a child's safety during
48 custody and visitation proceedings, particularly in cases involving
49 domestic violence or child abuse;

50 (6) the assessment of legality or signs of lethal violence, and
51 instruction on the use of a risk assessment tool to assess risk to a
52 child's life or safety for the purpose of issuing a temporary emergency
53 order;

54 (7) education regarding the harm courts may cause children in child
55 custody cases where domestic violence or child abuse is present by rely-
56 ing on non-scientific theories such as parental alienation, parental

alienation syndrome, the friendly parent concept, or any other theory or label that is not supported by scientific research and not generally accepted by the scientific community;

(8) the investigation process once a law enforcement agency or a local department of social services has received a report of suspected child abuse, including the limitations of investigating reports of suspected child abuse; and

(9) appropriate experience and qualifications of child custody evaluators and mental health treatment providers.

(b) Once initial training requirements have been met, judges, referees, and other hearing officers presiding over child custody proceedings in which one or more parties have alleged domestic violence or child sexual abuse shall complete at least ten hours of training every two years in order to remain eligible to handle such proceedings.

§ 4. Subdivision (a) of section 70 of the domestic relations law, as amended by chapter 457 of the laws of 1988, is amended to read as follows:

(a) (i) Where a minor child is residing within this state, either parent may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the natural guardianship, charge and custody of such child to either parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order. In all cases there shall be no prima facie right to the custody of the child in either parent, but the court shall determine solely what is for the best interest of the child, and what will best promote its welfare and happiness, and make award accordingly. Where either party to an action concerning custody of or a right to visitation with a child alleges that the other party has committed an act of child abuse against such child, or committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household is defined in article eight of the family court act, the court must first, before considering any other best interest factors, hold a hearing to determine whether temporary limitations or conditions on the custody or visitation rights of the party who is alleged to have committed an act of child abuse against the child, or committed an act of domestic violence against the party making the allegation or a family or household member of either party is necessary to avoid significant risk to the child's life or safety, as described pursuant to subdivision five of section two hundred forty of this chapter.

(ii) Notwithstanding any other provision of law to the contrary, a court making a determination that limitations or restrictions of a party's custody, visitation or contact with the child are necessary to avoid significant risk to the child's life or safety shall issue a temporary emergency order for custody or visitation stating as such.

(iii) Notwithstanding any other provision of law to the contrary, prior to the issuance of a temporary emergency order of custody or visitation, the court shall conduct an assessment of the best interests of the child to identify significant risk to the life or safety of the child who is the subject of such order by considering the factors described in section two hundred forty of this chapter.

(iv) Notwithstanding any other provision of law to the contrary, a court making a final determination of custody or visitation based on the best interests of a child pursuant to the provisions of this chapter

1 shall prioritize and promote the life and safety of such child when
2 making such determinations. Promoting the safety of a child shall
3 include preventing direct physical and/or emotional harm to such child.
4 Prior to the issuance of a final order of custody or visitation, during
5 its assessment of the best interests of the child, the court shall
6 determine the safety of the child who is the subject of such order by
7 considering all relevant factors and by giving weighted consideration to
8 those factors which affect the life and safety of such child, pursuant
9 to subdivision three of section two hundred forty-d of this chapter.

10 (v) In making a decision pursuant to paragraph (i) of this subdivi-
11 sion, the court shall be bound by the presumptions and admissibility
12 described pursuant to section two hundred forty-d of this chapter.
13 Further, the court shall not take into consideration whether either
14 party is married, was formerly married or has ever been married to the
15 other party or anyone else.

16 (vi) In cases where the court has found a party to be a victim of
17 domestic violence and/or where child abuse has occurred or is occurring,
18 the court shall award joint legal custody only on consent of the parties
19 or where it has been determined that the parties can effectively commu-
20 nicate, cooperate with each other, and make joint decisions concerning
21 the child; provided, however, that where final orders are on the consent
22 of the parties, in no event shall an order of joint legal custody be
23 awarded when there is an existing or prior full stay away order of
24 protection against a party on behalf of another party to the proceeding
25 or when there is an existing temporary order of protection entered ex
26 parte and all costs, including attorney and expert fees, incurred by the
27 non-offending parent and the child, shall be paid by the parent who is
28 found to have committed child abuse or domestic violence, unless the
29 offending parent has insufficient means to pay such costs.

30 (vii) Before judges, referees and other hearing officers preside over
31 child custody proceedings in which one or more parties have alleged
32 domestic violence or child abuse, they shall complete initial training
33 for the handling of such cases as described pursuant to section two
34 hundred forty-d of this chapter. Once initial training requirements have
35 been met, judges, referees and other hearing officers shall complete
36 additional training every two years as described pursuant to section two
37 hundred forty-d of this chapter.

38 § 5. The family court act is amended by adding a new section 654 to
39 read as follows:

40 § 654. Temporary order of custody or of visitation. (a) Notwithstand-
41 ing any other provision of the law, upon the application of either party
42 to an action concerning custody of or a right to visitation with a child
43 who alleges that the other party has committed an act of child abuse
44 against such child, or committed an act of domestic violence against the
45 party making the allegation or a family or household member of either
46 party, as such family or household member is defined in article eight of
47 the family court act, the court shall hold a hearing to determine wheth-
48 er temporary limitations or conditions on the custody or visitation
49 rights of the party who is alleged to have committed an act of child
50 abuse against the child, or committed an act of domestic violence
51 against the party making the allegation or a family or household member
52 of either party is necessary to avoid significant risk to the child's
53 life or safety, in accordance with subparagraph five of paragraph (a-1)
54 of subdivision one of section two hundred forty of the domestic
55 relations law. If the court determines that limitations or restrictions
56 of a party's custody, visitation or contact with the child are necessary

1 to avoid significant risk to the child's life or safety, the court shall
2 issue a temporary emergency order for custody or visitation stating as
3 such, in accordance with clause (iii) of subparagraph five of paragraph
4 (a-1) of subdivision one of section two hundred forty of the domestic
5 relations law.

6 (b) Such temporary order of custody or of visitation may be taken as
7 of right to the appellate division of the supreme court. Pending the
8 determination of such appeal, such order shall be stayed where the
9 effect of such order would be to discharge the child, if the family
10 court or the court before which such appeal is pending finds that such a
11 stay is necessary to avoid significant risk to the child's life or safe-
12 ty. A preference in accordance with rule five thousand five hundred
13 twenty-one of the civil practice law and rules shall be afforded, with-
14 out the necessity of a motion, for appeals under article three; parts
15 one and two of article six; articles seven, ten, and ten-A of this act;
16 and sections three hundred fifty-eight-a, three hundred eighty-three-c,
17 three hundred eighty-four, and three hundred eighty-four-b of the social
18 services law. An appeal under this subdivision must be taken no later
19 than five days after the service by a party or the child's attorney upon
20 the appellant of any order from which the appeal is taken, five days
21 from receipt of the order by the appellant in court.

22 § 6. Subdivision a of section 1112 of the family court act, as amended
23 by section 28 of part A of chapter 3 of the laws of 2005, is amended to
24 read as follows:

25 a. An appeal may be taken as of right from any order of disposition
26 and, in the discretion of the appropriate appellate division, from any
27 other order under this act. An appeal from an intermediate or final
28 order in a case involving abuse or neglect, the decision to grant or
29 deny a temporary emergency order, as determined pursuant to section six
30 hundred fifty-four of this act, or a temporary emergency order issued to
31 avoid significant risk to the child's life or safety, as determined
32 pursuant to section six hundred fifty-four of this act, may be taken as
33 of right to the appellate division of the supreme court. Pending the
34 determination of such appeal, such order shall be stayed where the
35 effect of such order would be to discharge the child, if the family
36 court or the court before which such appeal is pending finds that such a
37 stay is necessary to avoid imminent risk to the child's life or health.
38 A preference in accordance with rule five thousand five hundred twenty-
39 one of the civil practice law and rules shall be afforded, without the
40 necessity of a motion, for appeals under article three; parts one and
41 two of article six; articles seven, ten, and ten-A of this act; and
42 sections three hundred fifty-eight-a, three hundred eighty-three-c,
43 three hundred eighty-four, and three hundred eighty-four-b of the social
44 services law.

45 § 7. This act shall take effect on the ninetieth day after it shall
46 have become a law. Effective immediately, the addition, amendment and/or
47 repeal of any rule or regulation necessary for the implementation of
48 this act on its effective date are authorized to be made on or before
49 such effective date.