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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 and may be cited as
2 "Kyra's Law".

3 § 2. Subdivision 1 of section 240 of the domestic relations law is
4 amended by adding a new opening paragraph to read as follows:

5 The legislature recognizes that the safety of children is of paramount
6 importance and is an integral element of their best interests. To that
7 end, the legislature finds that judicial decisions regarding custody of,
8 and access to, children must ensure children's safety as a threshold
9 issue.

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

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§ 3. Paragraphs (a) and (a-1) of subdivision 1 of section 240 of the domestic relations law, paragraph (a) as amended by chapter 567 of the laws of 2015 and paragraph (a-1) as amended by chapter 295 of the laws of 2009, are amended to read as follows:

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. When the parties first appear in court, the court shall advise the parties before proceeding of the right to be represented by counsel of their own choosing, of the right to have an adjournment of no longer than fourteen court days to confer with counsel, and the right to obtain counsel fees and expenses, pursuant to section two hundred thirty-seven of this article. The court shall assign counsel to the parties and children, pursuant to article two of the family court act.

Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has 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 member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent 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. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. Where a proceeding filed pursuant to article ten or ten-A of the family court act is pending at the same time as a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage, the court presiding over the proceeding under article ten or ten-A of the family court act may jointly hear the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of the family court act and, upon referral from the supreme court, the hearing to resolve the matter of custody or visitation in the proceeding pending in the

1 supreme court; provided however, the court must determine custody or
2 visitation in accordance with the terms of this section.

3 An order directing the payment of child support shall contain the
4 social security numbers of the named parties. In all cases there shall
5 be no prima facie right to the custody of the child in either parent.
6 Such direction shall make provision for child support out of the proper-
7 ty of either or both parents. The court shall make its award for child
8 support pursuant to subdivision one-b of this section. Such direction
9 may provide for reasonable visitation rights to the maternal and/or
10 paternal grandparents of any child of the parties. Such direction as it
11 applies to rights of visitation with a child remanded or placed in the
12 care of a person, official, agency or institution pursuant to article
13 ten of the family court act, or pursuant to an instrument approved under
14 section three hundred fifty-eight-a of the social services law, shall be
15 enforceable pursuant to part eight of article ten of the family court
16 act and sections three hundred fifty-eight-a and three hundred eighty-
17 four-a of the social services law and other applicable provisions of law
18 against any person having care and custody, or temporary care and custo-
19 dy, of the child. Notwithstanding any other provision of law, any writ-
20 ten application or motion to the court for the establishment, modifica-
21 tion or enforcement of a child support obligation for persons not in
22 receipt of public assistance and care must contain either a request for
23 child support enforcement services which would authorize the collection
24 of the support obligation by the immediate issuance of an income
25 execution for support enforcement as provided for by this chapter,
26 completed in the manner specified in section one hundred eleven-g of the
27 social services law; or a statement that the applicant has applied for
28 or is in receipt of such services; or a statement that the applicant
29 knows of the availability of such services, has declined them at this
30 time and where support enforcement services pursuant to section one
31 hundred eleven-g of the social services law have been declined that the
32 applicant understands that an income deduction order may be issued
33 pursuant to subdivision (c) of section fifty-two hundred forty-two of
34 the civil practice law and rules without other child support enforcement
35 services and that payment of an administrative fee may be required. The
36 court shall provide a copy of any such request for child support
37 enforcement services to the support collection unit of the appropriate
38 social services district any time it directs payments to be made to such
39 support collection unit. Additionally, the copy of any such request
40 shall be accompanied by the name, address and social security number of
41 the parties; the date and place of the parties' marriage; the name and
42 date of birth of the child or children; and the name and address of the
43 employers and income payors of the party from whom child support is
44 sought or from the party ordered to pay child support to the other
45 party. Such direction may require the payment of a sum or sums of money
46 either directly to the custodial parent or to third persons for goods or
47 services furnished for such child, or for both payments to the custodial
48 parent and to such third persons; provided, however, that unless the
49 party seeking or receiving child support has applied for or is receiving
50 such services, the court shall not direct such payments to be made to
51 the support collection unit, as established in section one hundred
52 eleven-h of the social services law. Every order directing the payment
53 of support shall require that if either parent currently, or at any time
54 in the future, has health insurance benefits available that may be
55 extended or obtained to cover the child, such parent is required to
56 exercise the option of additional coverage in favor of such child and

1 execute and deliver to such person any forms, notices, documents or
2 instruments necessary to assure timely payment of any health insurance
3 claims for such child.

4 (a-1)(1) [~~Permanent and initial temporary orders of custody or visita-~~
5 ~~tion. Prior to the issuance of any permanent or initial temporary order~~
6 ~~of custody or visitation, the court shall conduct a review of the deci-~~
7 ~~sions and reports listed in subparagraph three of this paragraph.~~

8 ~~(2) Successive temporary orders of custody or visitation. Prior to the~~
9 ~~issuance of any successive temporary order of custody or visitation, the~~
10 ~~court shall conduct a review of the decisions and reports listed in~~
11 ~~subparagraph three of this paragraph, unless such a review has been~~
12 ~~conducted within ninety days prior to the issuance of such order.~~

13 ~~(3) Decisions and reports for review. The court shall conduct a~~
14 ~~review]~~ Prompt evidentiary hearing. Upon the application of a party to
15 an action concerning custody of or visitation with a child, or of an
16 attorney for the child, credibly alleging that the other party has
17 committed, has threatened to commit, or is likely to commit an act of
18 child abuse or neglect against such child, or has committed, has threat-
19 ened to commit, or is likely to commit domestic violence against the
20 party making the allegation or a family or household member of either
21 party, and that allegation, if true, would pose a serious risk to the
22 safety of the child, the court shall hold a prompt evidentiary hearing
23 to determine whether temporary limitations or conditions on the custody
24 or visitation rights of the party who is alleged to have committed an
25 act of child abuse against the child, or committed an act of domestic
26 violence against the party making the allegation or a family or house-
27 hold member of either party is necessary to avoid serious risk to the
28 child's safety. Except for good cause shown, the hearing for such deter-
29 mination shall commence within twenty court days of the application for
30 such hearing. Parties shall be notified of their right to the assistance
31 of counsel at the initiation of such hearing. During such hearing, only
32 material and relevant evidence shall be admitted. If a party waives his
33 or her right to a hearing under this section, the court shall advise
34 such party at that time that, notwithstanding such waiver, an applica-
35 tion under this section may be made at any time during the pendency of
36 the proceedings. During the hearing, the court shall conduct an assess-
37 ment of serious risk to the child's safety, which shall include, but not
38 be limited to, consideration of the following:

39 (i) related decisions in court proceedings initiated pursuant to arti-
40 cle ten of the family court act, and all warrants issued under the fami-
41 ly court act; ~~[and]~~

42 (ii) a party's history of domestic violence, child abuse or neglect,
43 child sexual abuse or incidents involving harm, or risk of harm, to a
44 child;

45 (iii) police reports, including domestic violence incident reports of
46 incidents involving child abuse or domestic violence by a party;

47 (iv) evidence and findings of child abuse, domestic violence, serious
48 risk of safety or risk of lethality by a party, including but not limit-
49 ed to:

50 (a) an increase in frequency or severity of domestic violence;

51 (b) use or threats to use a weapon or dangerous instrument, or unlaw-
52 ful possession of firearms;

53 (c) threats to harm or kill the child, the other party, the other
54 party's children, self or others, or companion animals;

55 (d) sexual abuse or other sexual offenses against the child or the
56 other party;

(e) unlawful dissemination or publication of an intimate image, pursuant to section 245.15 of the penal law;

(f) incidents involving obstruction of breathing or strangulation;

(g) a party's pattern of alcohol or substance abuse that places the child at serious risk or risk of lethality;

(h) incidents of violence during pregnancy;

(i) incidents of stalking or cyber stalking; and

(j) coercive control, as defined in paragraph (c) of subdivision one of section two hundred forty-e of this article; and

(v) reports of the statewide computerized registry of orders of protection established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

~~[(4)]~~ (2) Conditions of custody or visitation. If the court determines that limitations or restrictions of a party's custody, visitation or contact with the child are necessary pursuant to a review of any findings or credible allegations of child abuse, domestic violence, serious risk of safety and risk of lethality to the child, and the decisions and reports listed in subparagraph one of this paragraph, the court shall set forth conditions of custody or visitation in a temporary order of custody or visitation that prioritizes the avoidance of serious risk to the child's safety. When the court decides to issue or to not issue such temporary order, the parties shall be notified of their right to appeal, pursuant to article eleven of the family court act.

(i) There shall be a rebuttable presumption that the court shall not award, in a temporary order for custody or visitation, sole or joint custody or unsupervised visitation to a party who poses a serious risk to the child's safety.

(ii) The court shall state on the record, and in writing, any findings or credible allegations of child abuse, domestic violence, serious risk of safety or risk of lethality, and any decisions and reports 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.

(iii) 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 order as is otherwise provided by law.

(3) Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of the family court act, and registry reports and notifying counsel involved in the proceeding, or in the event of a self-represented party, notifying such party of the results thereof, including any court appointed attorney for children, the court may issue a temporary, successive temporary or final order of custody or visitation.

~~[(5)]~~ (4) Temporary emergency order. 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~~ one of this paragraph.

~~[(6)]~~ (5) After issuing a temporary emergency order. After issuing a temporary emergency order of custody or visitation, the court shall conduct reviews of the decisions and reports on registries as required pursuant to subparagraph ~~three~~ one of this paragraph within twenty-

1 four hours of the issuance of such temporary emergency order. Should
2 such twenty-four hour period fall on a day when court is not in session,
3 then the required reviews shall take place the next day the court is in
4 session. Upon reviewing decisions and reports the court shall notify
5 associated counsel, self-represented parties and attorneys for children
6 pursuant to subparagraph ~~[four]~~ three of this paragraph and may issue
7 temporary or permanent custody or visitation orders.

8 ~~[(7)]~~ (6) Feasibility study. The commissioner of the office of chil-
9 dren and family services, in conjunction with the office of court admin-
10 istration, is hereby authorized and directed to examine, study, evaluate
11 and make recommendations concerning the feasibility of the utilization
12 of computers in courts which are connected to the statewide central
13 register of child abuse and maltreatment established and maintained
14 pursuant to section four hundred twenty-two of the social services law,
15 as a means of providing courts with information regarding parties
16 requesting orders of custody or visitation. Such commissioner shall make
17 a preliminary report to the governor and the legislature of findings,
18 conclusions and recommendations not later than January first, two thou-
19 sand nine, and a final report of findings, conclusions and recommenda-
20 tions not later than June first, two thousand nine, and shall submit
21 with the reports such legislative proposals as are deemed necessary to
22 implement the commissioner's recommendations.

23 § 4. The domestic relations law is amended by adding a new section
24 240-e to read as follows:

25 § 240-e. Custody and visitation; safety of the child. 1. For the
26 purposes of this section, the following terms shall have the following
27 meanings:

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

30 (b) "Friendly parent" means the actions of a parent or legal guardian
31 that support a child's contact and relationship with the other parent or
32 legal guardian.

33 (c) "Coercive control" means a pattern of behavior that in purpose or
34 effect unreasonably restricts a party's safety or autonomy through
35 implicit or explicit threats, or intimidation, or by compelling compli-
36 ance. This conduct includes, but is not limited to:

37 (i) isolating the other party from friends, family or other sources of
38 support;

39 (ii) interfering with a party's freedom of movement;

40 (iii) depriving the other party of basic necessities such as food,
41 sleep, clothing, housing, medication or medical care;

42 (iv) controlling, regulating, surveilling or monitoring the other
43 party's movements, communications, daily behavior, appearance, finances,
44 economic resources or access to services;

45 (v) compelling the other party by force, threat of force or intim-
46 idation, including but not limited to threats based on actual or
47 suspected immigration status, to engage in conduct from which the other
48 party has a right to abstain or to abstain from conduct in which the
49 other party has a right to engage;

50 (vi) interfering with the other party's education or employment;

51 (vii) forcing or compelling the other party to perform sex acts, or
52 threats of a sexual nature, including but not limited to threatened acts
53 of sexual conduct, threats based on a person's sexuality or threats to
54 release intimate images; or

55 (viii) cleaning, accessing, displaying, using or wearing a firearm or
56 other dangerous weapon in an intimidating or threatening manner.

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 safety of such child when making such determinations. Only competent, material, and relevant evidence shall be admitted, however, the hearsay statements of the child may be admitted when corroborated by other evidence, pursuant to article ten of the family court act. Promoting the safety of a child shall include preventing direct physical and/or emotional harm to such child. Factors the court shall consider in making such determination shall include, but not be limited to:

(a) which party is more likely to protect the safety of the child, and whether either party poses a serious risk to the safety of the child;

(b) a history of domestic violence, child abuse or neglect, child sexual abuse or incidents involving harm, or risk of harm, to a child;

(c) any findings or credible allegations of child abuse, domestic violence, serious risk or risk of lethality to the child, including but not limited to:

(i) an increase in frequency or severity of domestic violence;

(ii) use or threats to use a weapon or dangerous instrument, or unlawful possession of firearms;

(iii) threats to harm or kill the child, the other party, the other party's children, self or others, or companion animals;

(iv) sexual abuse or coerced sexual activity of the child or other party;

(v) unlawful dissemination or publication of an intimate image, pursuant to section 245.15 of the penal law;

(vi) incidents involving obstruction of breathing or strangulation;

(vii) a party's pattern of alcohol or substance abuse that places the child at serious risk or risk of lethality;

(viii) incidents of violence during pregnancy;

(ix) incidents of stalking or cyber stalking; and

(x) coercive control, as defined in paragraph (c) of subdivision one of this section;

(d) whether either party has been found to have committed 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;

(e) whether either party has used or threatened to use a dangerous instrument to harm the other party, child, or a third party, including a firearm, except in incidents involving self-defense, or has unlawfully

1 possessed a weapon or firearm, or has been convicted of criminal
2 possession of a weapon or criminal use of a firearm pursuant to article
3 two hundred sixty-five of the penal law, or is or has been subject to an
4 extreme risk protection order, pursuant to article sixty-three-A of the
5 civil practice law and rules; and

6 (f) which party has been attending to the daily physical, emotional,
7 developmental, educational, and special needs of the child.

8 3. There shall be a rebuttable presumption that custody or unsuper-
9 vised visitation shall not be awarded to a party who jeopardizes the
10 safety of the child.

11 4. (a) In any proceeding for custody or visitation where a party cred-
12 ibly alleges domestic violence or child abuse, allegations that a party
13 is not a friendly parent or has alienated the child or children against
14 the other party shall not be considered in assessing a child's or chil-
15 dren's best interests.

16 (b) The court shall not presume that a child's reluctance to interact
17 with a party was caused by the other party, nor shall a party be given
18 custody for the purpose of improving a relationship between the child
19 and such party or in an attempt to address the child's reluctance to
20 interact with such party.

21 (c) No psychological or medical theories related to a child's reluc-
22 tance to interact with a party shall be admitted into evidence or
23 considered by the court unless based on empirical proof of scientific
24 reliability and validity and generally accepted by the scientific and
25 professional community.

26 (d) No treatment program intended to reunite a child with a party whom
27 that child is estranged shall be ordered by the court without consent of
28 both parties and the attorney for the child and supported by scientif-
29 ically valid and generally accepted proof of the effectiveness and ther-
30 apeutic value of such program.

31 5. In cases involving domestic violence, child abuse or neglect, or a
32 history of coercive control, or where the parties cannot effectively
33 communicate, cooperate with each other and make joint decisions concern-
34 ing the child, or in cases where there is an existing or prior full stay
35 away order of protection against a party or when there is an existing
36 temporary order of protection entered ex parte, no order of joint custo-
37 dy shall be made without the consent of both parties. The court shall
38 not suggest that in order to retain custody, a party must agree to joint
39 custody. The court shall not use a party's refusal to consent to joint
40 custody against such party when making its final custody or visitation
41 determination.

42 6. (a) Before judges, referees, or other hearing officers preside over
43 child custody proceedings in which one or more parties have alleged
44 domestic violence or child abuse, they shall complete comprehensive
45 training on domestic violence and child abuse that addresses current
46 knowledge and law relating to domestic violence and child abuse and
47 neglect, with the goal of making appropriate custody and visitation
48 decisions that prioritize children's safety and are culturally sensitive
49 and appropriate for diverse communities. Such judges, referees and other
50 hearing officers shall complete supplemental training every two years
51 thereafter to remain eligible to preside over such proceedings. The
52 office of court administration, in consultation with the office for the
53 prevention of domestic violence, shall develop and conduct such train-
54 ing, which shall be reviewed and updated at least once every two years.
55 Such training shall include, but not be limited to:

(1) relevant statutes and case law pertaining to domestic violence and child abuse;

(2) the power and control dynamics of domestic violence and child abuse, including but not limited to, stalking, and emotional, financial, physical, technological, cyber, sexual, and litigation abuse, and the tactics commonly used to induce fear in or to dominate or control a partner or child, including coercive control;

(3) the barriers and fears associated with reporting domestic violence and child abuse and neglect, and the increased risk of escalating violence during child custody and visitation proceedings;

(4) the science and experience of trauma and other psychological impacts of abuse in adults and children, including the importance of judges maintaining trauma-informed courts, and the dangers and inadmissibility of non-scientific theories, such as parental alienation, parental alienation syndrome, parental gatekeeping, or any other theory that is not supported by scientific research and not generally accepted by the scientific community;

(5) the distinction between inappropriate interference with the child-parent relationship versus protective parenting in the context of domestic violence or child abuse and neglect;

(6) how to conduct an assessment of serious risk and risk of lethality to a child or such child's parent, pursuant to subdivision four of this section for the purpose of issuing a temporary order of custody or visitation;

(7) best practices in assessing allegations of domestic violence and child abuse and neglect; in assessing the value and limitations of reports of suspected child abuse or neglect conducted by law enforcement or departments of social services; and

(8) assessing the qualifications and reports of child custody evaluators and mental health treatment providers.

§ 5. 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 the court issues any initial or successive temporary order of custody or visitation or permanent order of custody or visitation, the court shall conduct a review of any findings or credible allegations of child abuse, domestic violence, serious risk and risk of lethality, and the decisions and reports listed in subparagraph one of paragraph (a-1) of subdivision one of section two hundred forty of this chapter, unless such a review has been conducted within ninety days prior to the issuance of such order.

(ii) When issuing any temporary order of custody or visitation, the court shall state on the record, and in writing, any findings or credible allegations of child abuse, domestic violence, serious risk or risk of lethality, and the prior decisions and reports considered in render-

1 ing its decision and the reasons for any limitations or restrictions
2 placed on a party's custody, visitation or contact with such child. Any
3 party to a proceeding for a temporary order pursuant to this chapter
4 shall have a right to appeal to the appropriate appellate division,
5 pursuant to article eleven of the family court act.

6 (iii) Notwithstanding any other provision of law to the contrary, a
7 court making a final determination of custody or visitation based on the
8 best interests of a child pursuant to the provisions of this chapter
9 shall prioritize and promote the safety of such child when making such
10 determinations. Only competent, material and relevant evidence shall be
11 admitted, pursuant to article ten of the family court act, however the
12 hearsay statements of the child may be admitted when corroborated by
13 other evidence. Promoting the safety of a child shall include preventing
14 direct physical and/or emotional harm to such child and shall be
15 assessed by considering any findings or credible allegations of child
16 abuse, domestic violence, serious risk and risk of lethality, and deci-
17 sions and reports identified in subparagraph one of paragraph (a-1) of
18 subdivision one of section two hundred forty of this chapter.

19 (iv) In making a decision pursuant to paragraph (i) of this subdivi-
20 sion, the court shall be bound by the presumptions and admissibility
21 described pursuant to section two hundred forty of this chapter.
22 Further, the court shall not take into consideration whether either
23 party is married, was formerly married or has ever been married to the
24 other party or anyone else.

25 (v) In cases involving domestic violence, child abuse or neglect, or a
26 history of coercive control, or where the parties cannot effectively
27 communicate, cooperate with each other and make joint decisions concern-
28 ing the child, or in cases where there is an existing or prior full stay
29 away order of protection against a party or when there is an existing
30 temporary order of protection entered ex parte, no order of joint custo-
31 dy shall be made without the consent of both parties. The court shall
32 not suggest that in order to retain custody, a party must agree to joint
33 custody. The court shall not use a party's refusal to consent to joint
34 custody against such party when making its final custody or visitation
35 determination, as described in subdivision five of section two hundred
36 forty-e of this chapter.

37 (vi) Before judges, referees and other hearing officers preside over
38 child custody proceedings in which one or more parties have alleged
39 domestic violence or child abuse, they shall complete initial training
40 for the handling of such cases as described pursuant to paragraph a of
41 subdivision six of section two hundred forty-e of this chapter. Once
42 initial training requirements have been met, judges, referees and other
43 hearing officers shall complete additional training every two years as
44 described pursuant to paragraph (a) of subdivision six of section two
45 hundred forty-e of this chapter.

46 § 6. Subdivision (b) of section 651 of the family court act, as
47 amended by chapter 657 of the laws of 2003, is amended to read as
48 follows:

49 (b) (i) When initiated in the family court, the family court has
50 jurisdiction to determine, in accordance with subdivision one of section
51 two hundred forty of the domestic relations law and with the same powers
52 possessed by the supreme court in addition to its own powers, habeas
53 corpus proceedings and proceedings brought by petition and order to show
54 cause, for the determination of the custody or visitation of minors,
55 including applications by a grandparent or grandparents for visitation

1 or custody rights pursuant to section seventy-two or two hundred forty
2 of the domestic relations law.

3 (ii) The family court shall, in collaboration with the office for the
4 prevention of domestic violence, update its petition used by parties to
5 initiate child custody and visitation proceedings in a manner to permit
6 petitioners to identify findings or allegations of child abuse, domestic
7 violence, serious risk or risk of lethality to a child's safety.

8 § 7. Subdivision (e) of section 651 of the family court act, as
9 amended by chapter 295 of the laws of 2009, is amended to read as
10 follows:

11 (e) The legislature recognizes that the safety of children is of para-
12 mount importance and is an integral element of their best interests. To
13 that end, the legislature finds that judicial decisions regarding custo-
14 dy of, and access to, children must ensure children's safety as a thres-
15 hold issue.

16 1. Permanent and initial temporary orders of custody or visitation.
17 Prior to the issuance of any permanent or initial temporary order of
18 custody or visitation, the court shall conduct a review of any findings
19 or credible allegations of child abuse, domestic violence, serious risk
20 and risk of lethality to a child's safety, and the decisions and reports
21 listed in [paragraph three of this subdivision] subparagraph one of
22 paragraph (a-1) of subdivision one of section two hundred forty of this
23 chapter. When the parties first appear in court, the court shall advise
24 the parties before proceeding of the right to be represented by counsel
25 of their own choosing, of the right to have an adjournment of no longer
26 than fourteen court days to confer with counsel, and the right to obtain
27 counsel fees and expenses, pursuant to section two hundred thirty-seven
28 of the domestic relations law. The court shall assign counsel to the
29 parties and children, pursuant to article two of this chapter.

30 2. Successive temporary orders of custody or visitation. Prior to the
31 issuance of any successive temporary order of custody or visitation, the
32 court shall conduct a review of any findings or credible allegations of
33 child abuse, domestic violence, serious risk and risk of lethality, and
34 the decisions and reports listed in [paragraph three of this subdivi-
35 sion,] subparagraph one of paragraph (a-1) of subdivision one of section
36 two hundred forty of this chapter unless such a review has been
37 conducted within ninety days prior to the issuance of such order.

38 3. Decisions Findings and allegations of child abuse, domestic
39 violence, serious risk or risk of lethality, and the decisions and
40 reports for review. The court shall conduct a review of the following:

41 (i) related decisions in court proceedings initiated pursuant to arti-
42 cle ten of this act, and all warrants issued under this act; [and]

43 (ii) whether either party to the action alleges that the other party
44 to the proceeding has committed, or has threatened to commit, an act of
45 child abuse against such child, or has committed, or has threatened to
46 commit, an act of domestic violence against the party making the allega-
47 tion or a family or household member of either party, as such family or
48 household member is defined in article eight of this chapter;

49 (iii) a history of domestic violence, child abuse or neglect, child
50 sexual abuse or incidents involving harm, or risk of harm, to a child;

51 (iv) police reports, including domestic violence incident reports,
52 reporting incidents involving child abuse or domestic violence;

53 (v) findings and credible allegations of child abuse, domestic
54 violence, serious risk or risk of lethality, including but not limited
55 to:

56 (a) an increase in frequency or severity of domestic violence;

1 (b) use or threats to use a weapon or dangerous instrument, or unlaw-
2 ful possession of firearms;

3 (c) threats to harm or kill the child, the other party, the other
4 party's children, self or others, or companion animals;

5 (d) sexual abuse or coerced sexual activity of the child or other
6 party;

7 (e) unlawful dissemination or publication of an intimate image, pursu-
8 ant to section 245.15 of the penal law;

9 (f) incidents involving obstruction of breathing or strangulation;

10 (g) a party's pattern of alcohol or substance abuse that places the
11 child at serious risk or risk of lethality;

12 (h) incidents of violence during pregnancy;

13 (i) incidents of stalking or cyber stalking; and

14 (j) coercive control, as defined in paragraph (c) of subdivision one
15 of section two hundred forty-e of the domestic relations law; and

16 (vi) reports of the statewide computerized registry of orders of
17 protection established and maintained pursuant to section two hundred
18 twenty-one-a of the executive law, and reports of the sex offender
19 registry established and maintained pursuant to section one hundred
20 sixty-eight-b of the correction law.

21 4. Appeal. Such permanent and temporary orders of custody or visita-
22 tion may be taken as of right to the appellate division of the supreme
23 court. Pending the determination of such appeal, such order shall be
24 stayed. A preference in accordance with rule fifty-five hundred twenty-
25 one of the civil practice law and rules shall be afforded, without the
26 necessity of a motion, for appeals under article three; parts one and
27 two of article six; articles seven, ten and ten-A of this act; and
28 sections three hundred fifty-eight-a, three hundred eighty-three-c,
29 three hundred eighty-four, and three hundred eighty-four-b of the social
30 services law. A notice to appeal under this subdivision must be taken
31 no later than twenty court days after the service by a party or the
32 child's attorney upon the appellant of any order from which the appeal
33 is taken, or twenty court days from receipt of the order by the appel-
34 lant in court, whichever is earliest. Except for good cause shown, the
35 appeal hearing shall be expedited and held no later than ninety court
36 days from the notice to appeal. Whenever an attorney has been appointed
37 to represent a party in a proceeding described in this paragraph, the
38 appointment shall continue without further court order or appointment,
39 pursuant to subdivision (b) of section eleven hundred twenty of this
40 chapter.

41 5. Notifying counsel and issuing orders. Upon consideration of deci-
42 sions pursuant to article ten of this act, and registry reports and
43 notifying counsel involved in the proceeding, or in the event of a self-
44 represented party, notifying such party of the results thereof, includ-
45 ing any court appointed attorney for children, the court may issue a
46 temporary, successive temporary or final order of custody or visitation.

47 ~~[5-]~~ 6. Temporary emergency order. Notwithstanding any other provision
48 of the law, upon emergency situations, including computer malfunctions,
49 to serve the best interest of the child, the court may issue a temporary
50 emergency order for custody or visitation in the event that it is not
51 possible to timely review decisions and reports on registries as
52 required pursuant to paragraph three of this subdivision.

53 ~~[6-]~~ 7. After issuing a temporary emergency order. After issuing a
54 temporary emergency order of custody or visitation, the court shall
55 conduct reviews of the decisions and reports on registries as required
56 pursuant to paragraph three of this subdivision within twenty-four hours

1 of the issuance of such temporary emergency order. Should such twenty-
2 four hour period fall on a day when court is not in session, then the
3 required reviews shall take place the next day the court is in session.
4 Upon reviewing decisions and reports the court shall notify associated
5 counsel, self-represented parties and attorneys for children pursuant to
6 paragraph ~~[four]~~ five of this subdivision and may issue temporary or
7 permanent custody or visitation orders.

8 ~~[7-]~~ 8. Feasibility study. The commissioner of the office of children
9 and family services, in conjunction with the office of court adminis-
10 tration, is hereby authorized and directed to examine, study, evaluate
11 and make recommendations concerning the feasibility of the utilization
12 of computers in family courts which are connected to the statewide
13 central register of child abuse and maltreatment established and main-
14 tained pursuant to section four hundred twenty-two of the social
15 services law, as a means of providing family courts with information
16 regarding parties requesting orders of custody or visitation. Such
17 commissioner shall make a preliminary report to the governor and the
18 legislature of findings, conclusions and recommendations not later than
19 January thirty-first, two thousand nine, and a final report of findings,
20 conclusions and recommendations not later than June first, two thousand
21 nine, and shall submit with the reports such legislative proposals as
22 are deemed necessary to implement the commissioner's recommendations.

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

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

42 § 9. Subdivision (a) of section 249 of the family court act, as
43 amended by chapter 3 of the laws of 2012, is amended to read as follows:

44 (a) In a proceeding under article three, seven, ten, ten-A or ten-C of
45 this act or where a revocation of an adoption consent is opposed under
46 section one hundred fifteen-b of the domestic relations law or in any
47 proceeding under section three hundred fifty-eight-a, three hundred
48 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b
49 of the social services law or when a minor is sought to be placed in
50 protective custody under section one hundred fifty-eight of this act or
51 in any proceeding where a minor is detained under or governed by the
52 interstate compact for juveniles established pursuant to section five
53 hundred one-e of the executive law, the family court shall appoint an
54 attorney to represent a minor who is the subject of the proceeding or
55 who is sought to be placed in protective custody, if independent legal
56 representation is not available to such minor. In any proceeding to

1 extend or continue the placement of a juvenile delinquent or person in
2 need of supervision pursuant to section seven hundred fifty-six or 353.3
3 of this act or any proceeding to extend or continue a commitment to the
4 custody of the commissioner of mental health or the commissioner of
5 people with developmental disabilities pursuant to section 322.2 of this
6 act, the court shall not permit the respondent to waive the right to be
7 represented by counsel chosen by the respondent, respondent's parent, or
8 other person legally responsible for the respondent's care, or by
9 assigned counsel. In any proceeding under article ten-B of this act, the
10 family court shall appoint an attorney to represent a youth, under the
11 age of twenty-one, who is the subject of the proceeding, if independent
12 legal representation is not available to such youth. In any proceeding
13 under article six of this act, the court shall appoint an attorney to
14 represent the child when credible allegations of serious risk to the
15 child's safety have been made. In any other proceeding in which the
16 court has jurisdiction, the court may appoint an attorney to represent
17 the child, when, in the opinion of the family court judge, such repre-
18 sentation will serve the purposes of this act, if independent legal
19 counsel is not available to the child. The family court on its own
20 motion may make such appointment.

21 § 10. Subdivision (a) of section 249 of the family court act, as
22 amended by chapter 672 of the laws of 2019, is amended to read as
23 follows:

24 (a) In a proceeding under article three, seven, ten, ten-A or ten-C of
25 this act or where a revocation of an adoption consent is opposed under
26 section one hundred fifteen-b of the domestic relations law or in any
27 proceeding under section three hundred fifty-eight-a, three hundred
28 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b
29 of the social services law or when a minor is sought to be placed in
30 protective custody under section one hundred fifty-eight of this act,
31 the family court shall appoint an attorney to represent a minor who is
32 the subject of the proceeding or who is sought to be placed in protec-
33 tive custody, if independent legal representation is not available to
34 such minor. In any proceeding to extend or continue the placement of a
35 juvenile delinquent or person in need of supervision pursuant to section
36 seven hundred fifty-six or 353.3 of this act or any proceeding to extend
37 or continue a commitment to the custody of the commissioner of mental
38 health or the commissioner of the office for people with developmental
39 disabilities pursuant to section 322.2 of this act, the court shall not
40 permit the respondent to waive the right to be represented by counsel
41 chosen by the respondent, respondent's parent, or other person legally
42 responsible for the respondent's care, or by assigned counsel. In any
43 proceeding under article ten-B of this act, the family court shall
44 appoint an attorney to represent a youth, under the age of twenty-one,
45 who is the subject of the proceeding, if independent legal represen-
46 tation is not available to such youth. In any proceeding under article
47 six of this act, the court shall appoint an attorney to represent the
48 child when credible allegations of serious risk to the child's safety
49 have been made. In any other proceeding in which the court has jurisdic-
50 tion, the court may appoint an attorney to represent the child, when, in
51 the opinion of the family court judge, such representation will serve
52 the purposes of this act, if independent legal counsel is not available
53 to the child. The family court on its own motion may make such appoint-
54 ment.

55 § 11. This act shall take effect on the one hundred twentieth day
56 after it shall have become a law; provided, however, that the amendments

1 to subdivision (a) of section 249 of the family court act made by
2 section nine of this act shall be subject to the expiration and rever-
3 sion of such subdivision pursuant to section 8 of chapter 29 of the laws
4 of 2011, as amended, when upon such date the provisions of section ten
5 of this act shall take effect. Effective immediately, the addition,
6 amendment and/or repeal of any rule or regulation necessary for the
7 implementation of this act on its effective date are authorized to be
8 made and completed on or before such effective date.