STATE OF NEW YORK

7425

2021-2022 Regular Sessions

IN SENATE

October 8, 2021

Introduced by Sens. KAPLAN, GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

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

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

§ 2. Paragraph (a) of subdivision 1 of section 240 of the domestic relations law, as amended by chapter 567 of the laws of 2015, is 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. 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 **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 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~~

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

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~~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~~] the court must first, before considering any other best interest factors, hear and determine upon competent admissible evidence such allegations set forth, and enter any findings regarding any child abuse or domestic abuse. The evidentiary hearing for such determination shall be held within sixty days of the filing of a verified pleading. The court shall not be precluded from issuing any necessary emergency orders to protect the child. All costs, including attorney and expert fees incurred by the non-offending parent and the child, to prepare for and participate in such evidentiary hearing, shall be paid by the parent who is found to have committed child abuse or domestic violence, unless the offending parent has insufficient means to fund such activities. 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 disposition's 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 supreme court; provided however, the court must determine custody or visitation in accordance with the terms of this section~~] the court finds a pattern of domestic violence or child abuse by a parent, the court shall award sole custody of the child to the non-offending parent or party and shall suspend visitation or only award professionally supervised visitation to the parent engaged in a pattern of violence or abusive behavior. If the court does not make a finding that a party has engaged in a pattern of domestic violence or child abuse, the court may not refuse to consider additional evidence of domestic violence or child abuse presented later in the case.

An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the

care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

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

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

(a) "Adverse childhood experiences" means any stressful or traumatic experience of a child during such child's childhood which are strongly related to the development and prevalence of a wide range of health

problems throughout such child's lifetime, including, but not limited to, physical or sexual abuse, domestic violence, parental mental illness, substance abuse, and incarceration.

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

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

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

(e) "Primary attachment figure" means the parent who best provides emotional security and comfort to the child and takes into consideration which parent provided most of the child care during the first two years of the child's life.

2. Notwithstanding any other provision of law to the contrary, a court making a determination based on the best interests of a child pursuant to the provisions of this chapter shall prioritize and promote the health and safety of such child when making such determinations. Promoting the safety of a child shall include preventing direct physical and/or emotional harm to such child and creating situations that may decrease the likelihood such child will engage in harmful behaviors.

3. Prior to the issuance of any form of an order of custody or visitation, the court shall determine the 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 health and safety of such child, which shall include, but not be limited to:

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

(b) the negative consequences associated with separating the child from its primary attachment figure;

(c) whether either parent jeopardizes the health and safety of the child by unreasonably placing the child at substantial risk of severe emotional distress or bodily injury;

(d) any present or past abuse committed by a parent, or a member of a parent's household against the child, regardless of whether there is continued risk of harm to the child;

(e) whether either parent has committed an act of child abuse against the child, or committed an act of domestic violence against the party making the allegation, a family member, or a household member of either party;

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

(g) any history of violence or abuse committed by a parent or a member of a parent's household against:

(1) any other party;

(2) another child in the parent's household; or

(3) the child's other parent or any other individual who currently resides, or formerly resided, in the other parent's household;

(h) any fear held by the child of a parent based on such parent's specific conduct that is contrary to the child's best interest, and specifically to the child's health and safety; and

(i) the presence of adverse childhood experiences, and whether either parent's behaviors have contributed to the presence of adverse childhood experiences for such child.

4. (a) The court shall not presume that a child's deficient or negative relationship with a parent was caused by the other parent, nor shall a child be separated from a parent found to be the primary attachment figure for the purpose of improving a deficient relationship with the other parent.

(b) Concerns regarding unconscious or subliminal 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 one parent 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 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 the child's primary attachment figure.

(e) Any order attempting to remediate a child's resistance to contact or visitation with a parent shall address any parental behaviors or contributions the court determines to be the cause of, either wholly or in part, such resistance.

(f) 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 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 not base decisions on a legal presumption of shared parenting; and

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

6. (a) Before judges and other court professionals handle child custody proceedings in which one or more parties have alleged domestic violence or child abuse, they shall complete at least twenty hours of initial training for the handling of such cases. The office of children and family services shall, within amounts appropriated for such purpose, contract exclusively with a nonprofit entity designated by the federal department of health and human services to coordinate statewide improvements within local communities, social services systems, and programming regarding the prevention and intervention of domestic violence in the state of New York, and other nonprofit entities with whom it subcontracts with expertise in child abuse and adverse childhood experiences to develop such training. Such entity, or entities in partnership, shall be responsible for providing such training to judges and other court professionals handling child custody proceedings and for reviewing and updating training topics at least once every two years. Such training shall include, but not be limited to:

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

(2) the dynamics and effects of domestic violence and child abuse, including but not limited to, emotional, financial, physical, technolog-

ical and sexual abuse, and an understanding of the barriers and fears associated with reporting domestic violence and child abuse and why victims may not have documented evidence of abuse;

(3) tactics commonly used by one party to induce fear in another party or child, including verbal, emotional, psychological, and/or economic abuse, isolating tactics and efforts to build trust and an emotional connection with a child to support future manipulation, exploitation and abuse, coercive control, threats, controlling and harassing behaviors, including monitoring of a partner's location and activities, litigation abuse and demands for custody or joint custody in order to pressure the partner to return or punish the partner for leaving;

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

(5) the increased risk of escalating violence that occurs during child custody proceedings;

(6) education regarding the harm courts may cause children in child custody cases where domestic violence or child abuse is present by relying 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;

(7) 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

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

(b) Once initial training requirements have been met, judges and other court professionals handling 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 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 child abuse against such child, or committed an act of domestic violence against the party making the allegation or family or household member of either party, as such family or household is defined in section four hundred fifty-nine-a of the social services law, the court must first, before considering any other best interest factors, conduct an evidentiary

hearing and enter findings regarding any child abuse or domestic abuse, as described pursuant to section two hundred forty-a of this chapter.

(ii) Notwithstanding any other provision of law to the contrary, a court making a determination based on the best interests of a child pursuant to the provisions of this chapter shall prioritize and promote the health and safety of such child when making such determinations. Promoting the safety of such child shall include preventing direct physical and/or emotional harm to such child and creating situations that may decrease the likelihood such child will engage in harmful behaviors.

(iii) Prior to the issuance of any form of any order of custody or visitation, the court shall determine the safety of the child who is the subject of such order by considering the factors described in section two hundred forty-d of this chapter and by giving weighted consideration to those factors which affect the health and safety of such child.

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

(v) 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, the court shall not base decisions on a legal presumption of shared parenting and all costs, including attorney and expert fees, incurred by the non-offending parent and the child, shall be paid by the parent who is found to have committed child abuse or domestic violence, unless the offending parent has insufficient means to pay such costs.

(vi) Before judges and other court professionals handle child custody proceedings in which one or more parties have alleged domestic violence or child abuse, they shall complete initial training for the handling of such cases as described pursuant to section two hundred forty-d of this chapter. Once initial training requirements have been met, judges and other court professionals shall complete additional training every two years as described pursuant to section two hundred forty-d of this chapter.

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