

STATE OF NEW YORK

5398

2021-2022 Regular Sessions

IN ASSEMBLY

February 16, 2021

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

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:

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

3 § 2. Paragraph (a) of subdivision 1 of section 240 of the domestic
4 relations law, as amended by chapter 567 of the laws of 2015, is amended
5 to read as follows:

6 (a) In any action or proceeding brought (1) to annul a marriage or to
7 declare the nullity of a void marriage, or (2) for a separation, or (3)
8 for a divorce, or (4) to obtain, by a writ of habeas corpus or by peti-
9 tion and order to show cause, the custody of or right to visitation with
10 any child of a marriage, the court shall require verification of the
11 status of any child of the marriage with respect to such child's custody
12 and support~~[, including any prior orders, and shall enter orders for~~
13 ~~custody and support]~~ as, in the court's discretion, justice requires,
14 having regard to the circumstances of the case and of the respective
15 parties and to the best interests of the child and subject to the
16 provisions of subdivision one-c of this section. Where either party to
17 an action concerning custody of or a right to visitation with a child
18 alleges in a sworn petition or complaint or sworn answer, cross-peti-
19 tion, counterclaim or other sworn responsive pleading that the other
20 party has committed an act of child abuse against such child, or commit-
21 ted an act of domestic violence against the party making the allegation
22 or a family or household member of either party, as such family or
23 household member is defined in article eight of the family court act,
24 ~~[and such allegations are proven by a preponderance of the evidence, the~~
25 ~~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.

LBD09163-01-1

~~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

1 care of a person, official, agency or institution pursuant to article
2 ten of the family court act, or pursuant to an instrument approved under
3 section three hundred fifty-eight-a of the social services law, shall be
4 enforceable pursuant to part eight of article ten of the family court
5 act and sections three hundred fifty-eight-a and three hundred eighty-
6 four-a of the social services law and other applicable provisions of law
7 against any person having care and custody, or temporary care and custo-
8 dy, of the child. Notwithstanding any other provision of law, any writ-
9 ten application or motion to the court for the establishment, modifica-
10 tion or enforcement of a child support obligation for persons not in
11 receipt of public assistance and care must contain either a request for
12 child support enforcement services which would authorize the collection
13 of the support obligation by the immediate issuance of an income
14 execution for support enforcement as provided for by this chapter,
15 completed in the manner specified in section one hundred eleven-g of the
16 social services law; or a statement that the applicant has applied for
17 or is in receipt of such services; or a statement that the applicant
18 knows of the availability of such services, has declined them at this
19 time and where support enforcement services pursuant to section one
20 hundred eleven-g of the social services law have been declined that the
21 applicant understands that an income deduction order may be issued
22 pursuant to subdivision (c) of section fifty-two hundred forty-two of
23 the civil practice law and rules without other child support enforcement
24 services and that payment of an administrative fee may be required. The
25 court shall provide a copy of any such request for child support
26 enforcement services to the support collection unit of the appropriate
27 social services district any time it directs payments to be made to such
28 support collection unit. Additionally, the copy of any such request
29 shall be accompanied by the name, address and social security number of
30 the parties; the date and place of the parties' marriage; the name and
31 date of birth of the child or children; and the name and address of the
32 employers and income payors of the party from whom child support is
33 sought or from the party ordered to pay child support to the other
34 party. Such direction may require the payment of a sum or sums of money
35 either directly to the custodial parent or to third persons for goods or
36 services furnished for such child, or for both payments to the custodial
37 parent and to such third persons; provided, however, that unless the
38 party seeking or receiving child support has applied for or is receiving
39 such services, the court shall not direct such payments to be made to
40 the support collection unit, as established in section one hundred
41 eleven-h of the social services law. Every order directing the payment
42 of support shall require that if either parent currently, or at any time
43 in the future, has health insurance benefits available that may be
44 extended or obtained to cover the child, such parent is required to
45 exercise the option of additional coverage in favor of such child and
46 execute and deliver to such person any forms, notices, documents or
47 instruments necessary to assure timely payment of any health insurance
48 claims for such child.

49 § 3. The domestic relations law is amended by adding a new section
50 240-d to read as follows:

51 § 240-d. Custody and visitation; health and safety of the child. 1.
52 For the purposes of this section, the following terms shall have the
53 following meanings:

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

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

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

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

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

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

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

24 3. Prior to the issuance of any form of an order of custody or visita-
25 tion, the court shall determine the safety of the child who is the
26 subject of such order by considering all relevant factors and by giving
27 weighted consideration to those factors which affect the health and
28 safety of such child, which shall include, but not be limited to:

29 (a) whether either parent is more likely to ensure the health and
30 safety of the child. There shall be a rebuttable presumption that custo-
31 dy or visitation shall not be awarded to a parent or party who jeopard-
32 izes the health and safety of the child;

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

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

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

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

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

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

50 (1) any other party;

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

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

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

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

4 4. (a) The court shall not presume that a child's deficient or nega-
5 tive relationship with a parent was caused by the other parent, nor
6 shall a child be separated from a parent found to be the primary attach-
7 ment figure for the purpose of improving a deficient relationship with
8 the other parent.

9 (b) Concerns regarding unconscious or subliminal parental alienation
10 shall not be admissible in any proceeding for custody or visitation and
11 shall not be considered in assessing a child's best interests.

12 (c) No psychological or medical theories or labels related to a
13 child's resistance to contact with one parent shall be admitted into
14 evidence unless they are based on empirical proof of scientific reli-
15 ability and validity and generally accepted by the scientific and
16 professional community.

17 (d) No reunification treatment or any similar program shall be ordered
18 by the court without scientifically valid and generally accepted proof
19 of the effectiveness and therapeutic value of such treatment or program;
20 nor shall a treatment or program be ordered which is predicated on sepa-
21 rating a child from the child's primary attachment figure.

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

26 (f) In cases where the court has found a parent to be a victim of
27 domestic violence and/or where child abuse has occurred or is occurring,
28 a court shall not consider whether either parent is a friendly parent.

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

31 (a) the court shall not base decisions on a legal presumption of
32 shared parenting; and

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

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

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

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

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

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

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

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

17 (6) education regarding the harm courts may cause children in child
18 custody cases where domestic violence or child abuse is present by rely-
19 ing on non-scientific theories such as parental alienation, parental
20 alienation syndrome, the friendly parent concept, or any other theory or
21 label that is not supported by scientific research and not generally
22 accepted by the scientific community;

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

27 (8) appropriate experience and qualifications of child custody evalu-
28 ators and mental health treatment providers.

29 (b) Once initial training requirements have been met, judges and other
30 court professionals handling child custody proceedings in which one or
31 more parties have alleged domestic violence or child sexual abuse shall
32 complete at least ten hours of training every two years in order to
33 remain eligible to handle such proceedings.

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

37 (a) (i) Where a minor child is residing within this state, either
38 parent may apply to the supreme court for a writ of habeas corpus to
39 have such minor child brought before such court; and on the return ther-
40 eof, the court, on due consideration, may award the natural guardian-
41 ship, charge and custody of such child to either parent for such time,
42 under such regulations and restrictions, and with such provisions and
43 directions, as the case may require, and may at any time thereafter
44 vacate or modify such order. In all cases there shall be no prima facie
45 right to the custody of the child in either parent, but the court shall
46 determine solely what is for the best interest of the child, and what
47 will best promote its welfare and happiness, and make award accordingly.
48 Where either party to an action concerning custody of or a right to
49 visitation with a child alleges in a sworn petition or complaint or
50 sworn answer, cross-petition, counterclaim or other sworn responsive
51 pleading that the other party has committed an act of child abuse
52 against such child, or committed an act of domestic violence against the
53 party making the allegation or family or household member of either
54 party, as such family or household is defined in section four hundred
55 fifty-nine-a of the social services law, the court must first, before
56 considering any other best interest factors, conduct an evidentiary

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

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

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

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

21 (v) In cases where the court has found a parent to be a victim of
22 domestic violence and/or where child abuse has occurred or is occurring,
23 the court shall not base decisions on a legal presumption of shared
24 parenting and all costs, including attorney and expert fees, incurred by
25 the non-offending parent and the child, shall be paid by the parent who
26 is found to have committed child abuse or domestic violence, unless the
27 offending parent has insufficient means to pay such costs.

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

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