

STATE OF NEW YORK

3170--A

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

Introduced by Sens. SKOUFIS, BORRELLO, CLEARE, COMRIE, COONEY, GOUNARDES, HARCKHAM, HINCHEY, KRUEGER, MARTINS, MATTERA, MURRAY, OBERACKER, PALUMBO, RAMOS, ROLISON, SEPULVEDA, WEBER, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. Short title. This act shall be known 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.

10 § 3. Paragraphs (a) and (a-1) of subdivision 1 of section 240 of the
11 domestic relations law, paragraph (a) as amended by chapter 567 of the
12 laws of 2015 and paragraph (a-1) as added by chapter 295 of the laws of
13 2009, are amended to read as follows:

14 (a) In any action or proceeding brought (1) to annul a marriage or to
15 declare the nullity of a void marriage, or (2) for a separation, or (3)
16 for a divorce, or (4) to obtain, by a writ of habeas corpus or by peti-
17 tion and order to show cause, the custody of or right to visitation with
18 any child of a marriage, the court shall require verification of the
19 status of any child of the marriage with respect to such child's custody
20 and support, including any prior orders, and shall enter orders for
21 custody and support as, in the court's discretion, justice requires,

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

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1 having regard to the circumstances of the case and of the respective
2 parties and to the best interests of the child and subject to the
3 provisions of subdivision one-c of this section. When the parties first
4 appear in court, the court shall advise the parties before proceeding of
5 the right to be represented by counsel of their own choosing, of the
6 right to have an adjournment of no longer than fourteen court days to
7 confer with counsel, and the right to obtain counsel fees and expenses,
8 pursuant to section two hundred thirty-seven of this article. When
9 appropriate, the court shall assign counsel to the parties, pursuant to
10 article two of the family court act. Where either party to an action
11 concerning custody of or a right to visitation with a child alleges in a
12 sworn petition or complaint or sworn answer, cross-petition, counter-
13 claim or other sworn responsive pleading that the other party has
14 committed an act of domestic violence against the party making the alle-
15 gation or a family or household member of either party, as such family
16 or household member is defined in article eight of the family court act,
17 and such allegations are proven by a preponderance of the evidence, the
18 court must consider the effect of such domestic violence upon the best
19 interests of the child, together with such other facts and circumstances
20 as the court deems relevant in making a direction pursuant to this
21 section and state on the record how such findings, facts and circum-
22 stances factored into the direction. If a parent makes a good faith
23 allegation based on a reasonable belief supported by facts that the
24 child is the victim of child abuse, child neglect, or the effects of
25 domestic violence, and if that parent acts lawfully and in good faith in
26 response to that reasonable belief to protect the child or seek treat-
27 ment for the child, then that parent shall not be deprived of custody,
28 visitation or contact with the child, or restricted in custody, visita-
29 tion or contact, based solely on that belief or the reasonable actions
30 taken based on that belief. If an allegation that a child is abused is
31 supported by a preponderance of the evidence, then the court shall
32 consider such evidence of abuse in determining the visitation arrange-
33 ment that is in the best interest of the child, and the court shall not
34 place a child in the custody of a parent who presents a substantial risk
35 of harm to that child, and shall state on the record how such findings
36 were factored into the determination. Where a proceeding filed pursuant
37 to article ten or ten-A of the family court act is pending at the same
38 time as a proceeding brought in the supreme court involving the custody
39 of, or right to visitation with, any child of a marriage, the court
40 presiding over the proceeding under article ten or ten-A of the family
41 court act may jointly hear the dispositional hearing on the petition
42 under article ten or the permanency hearing under article ten-A of the
43 family court act and, upon referral from the supreme court, the hearing
44 to resolve the matter of custody or visitation in the proceeding pending
45 in the supreme court; provided however, the court must determine custody
46 or visitation in accordance with the terms of this section.

47 An order directing the payment of child support shall contain the
48 social security numbers of the named parties. In all cases there shall
49 be no prima facie right to the custody of the child in either parent.
50 Such direction shall make provision for child support out of the proper-
51 ty of either or both parents. The court shall make its award for child
52 support pursuant to subdivision one-b of this section. Such direction
53 may provide for reasonable visitation rights to the maternal and/or
54 paternal grandparents of any child of the parties. Such direction as it
55 applies to rights of visitation with a child remanded or placed in the
56 care of a person, official, agency or institution pursuant to article

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

48 (a-1)(1) Permanent and initial temporary orders of custody or visita-
49 tion. Prior to the issuance of any permanent or initial temporary order
50 of custody or visitation, the court shall conduct a review of any find-
51 ings or allegations of child abuse, domestic violence, heightened danger
52 and risk of lethality, and the decisions and reports listed in subpara-
53 graph three of this paragraph.

54 (2) Successive temporary orders of custody or visitation. Prior to the
55 issuance of any successive temporary order of custody or visitation, the
56 court shall conduct a review of any findings or allegations of child

1 abuse, domestic violence, heightened danger and risk of lethality, and
2 the decisions and reports listed in subparagraph three of this para-
3 graph, unless such a review has been conducted within ninety days prior
4 to the issuance of such order.

5 (3) [~~Decisions~~] Findings and allegations of child abuse, domestic
6 violence, heightened danger and risk of lethality, and the decisions and
7 reports for review. The court shall conduct a review of the following:

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

11 (ii) whether either party to the action alleges that the other party
12 to the proceeding has committed, or has threatened to commit, an act of
13 child abuse against such child, or has committed, or has threatened to
14 commit, an act of domestic violence against the party making the allega-
15 tion or a family or household member of either party, as such family or
16 household member is defined in article eight of the family court act;

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

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

21 (v) findings and allegations of child abuse, domestic violence,
22 heightened danger and risk of lethality, including but not limited to:

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

24 (b) use or threats to use a weapon or dangerous instrument, or
25 possession of or access to firearms;

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

28 (d) sexual abuse or coerced sexual activity of the child or other
29 party;

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

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

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

35 (h) incidents of violence during pregnancy;

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

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

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

44 (4) Conditions of custody or visitation. If the court determines that
45 limitations or restrictions of a party's custody, visitation or contact
46 with the child are necessary pursuant to a review of any findings or
47 allegations of child abuse, domestic violence, heightened danger and
48 risk of lethality, and the decisions and reports listed in subparagraph
49 three of this paragraph, the court shall set forth conditions of custody
50 or visitation in a temporary order of custody or visitation that prior-
51 itizes the avoidance of significant risk to the child's safety. When
52 the court decides to issue or to not issue such temporary order, the
53 parties shall be notified of their right to appeal, pursuant to article
54 eleven of the family court act.

55 (i) There shall be a rebuttable presumption that the court shall not
56 award, in a temporary order for custody or visitation, sole or joint

1 custody or unsupervised visitation to a party who poses a significant
2 risk to the child's safety.

3 (ii) The court shall state on the record, and in writing, any findings
4 or allegations of child abuse, domestic violence, heightened danger and
5 risk of lethality, and any decisions and reports considered in rendering
6 its decision and the reasons for the limitations or restrictions placed
7 on a party's custody, visitation or contact with such child.

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

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

18 [~~(5)~~] (6) Temporary emergency order. Notwithstanding any other
19 provision of the law, upon emergency situations, including computer
20 malfunctions, to serve the best interest of the child, the court may
21 issue a temporary emergency order for custody or visitation in the event
22 that it is not possible to timely review decisions and reports on regis-
23 tries as required pursuant to subparagraph three of this paragraph.

24 [~~(6)~~] (7) After issuing a temporary emergency order. After issuing a
25 temporary emergency order of custody or visitation, the court shall
26 conduct reviews of the decisions and reports on registries as required
27 pursuant to subparagraph three of this paragraph within twenty-four
28 hours of the issuance of such temporary emergency order. Should such
29 twenty-four hour period fall on a day when court is not in session, then
30 the required reviews shall take place the next day the court is in
31 session. Upon reviewing decisions and reports the court shall notify
32 associated counsel, self-represented parties and attorneys for children
33 pursuant to subparagraph [~~four~~] five of this paragraph and may issue
34 temporary or permanent custody or visitation orders.

35 [~~(7)~~] (8) Feasibility study. The commissioner of the office of chil-
36 dren and family services, in conjunction with the office of court admin-
37 istration, is hereby authorized and directed to examine, study, evaluate
38 and make recommendations concerning the feasibility of the utilization
39 of computers in courts which are connected to the statewide central
40 register of child abuse and maltreatment established and maintained
41 pursuant to section four hundred twenty-two of the social services law,
42 as a means of providing courts with information regarding parties
43 requesting orders of custody or visitation. Such commissioner shall make
44 a preliminary report to the governor and the legislature of findings,
45 conclusions and recommendations not later than January first, two thou-
46 sand nine, and a final report of findings, conclusions and recommenda-
47 tions not later than June first, two thousand nine, and shall submit
48 with the reports such legislative proposals as are deemed necessary to
49 implement the commissioner's recommendations.

50 § 4. The domestic relations law is amended by adding a new section
51 240-e to read as follows:

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

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

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

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

11 (d) "Coercive control" means a pattern of behavior that in purpose or
12 effect unreasonably restricts a parent's safety or autonomy through
13 implicit or explicit threats, or intimidation, or by compelling compli-
14 ance. This conduct includes, but is not limited to:

15 (i) isolating the other parent from friends, family or other sources
16 of support;

17 (ii) interfering with the other parent's freedom of movement;

18 (iii) depriving the other parent of basic necessities such as food,
19 sleep, clothing, housing, medication or medical care;

20 (iv) controlling, regulating, surveilling or monitoring the other
21 parent's movements, communications, daily behavior, appearance,
22 finances, economic resources or access to services;

23 (v) compelling the other parent by force, threat of force or intim-
24 idation, including but not limited to threats based on actual or
25 suspected immigration status, to engage in conduct from which the other
26 parent has a right to abstain or to abstain from conduct in which the
27 other parent has a right to engage;

28 (vi) interfering with the other parent's education or employment;

29 (vii) forcing or compelling the other parent to perform sex acts, or
30 threats of a sexual nature, including but not limited to threatened acts
31 of sexual conduct, threats based on a person's sexuality or threats to
32 release intimate images; or

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

35 2. Notwithstanding any other provision of law to the contrary, a court
36 making a final determination of custody or visitation based on the best
37 interests of a child pursuant to the provisions of this chapter shall
38 prioritize and promote the safety of such child when making such deter-
39 minations. Only competent, material, and relevant evidence may be admit-
40 ted, pursuant to article ten of the family court act. Promoting the
41 safety of a child shall include preventing direct physical and/or
42 emotional harm to such child. Such assessment shall include, but not be
43 limited to:

44 (a) whether either party is more likely to protect the safety of the
45 child, and whether either party poses a significant risk to the safety
46 of the child;

47 (b) whether such order would disrupt continuity in the child's home,
48 environment or existing primary caretaking relationships;

49 (c) 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 (d) any findings or allegations of child abuse, domestic violence,
52 heightened danger and risk of lethality, including but not limited to:

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

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

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

3 (iv) sexual abuse or coerced sexual activity of the child or other
4 parent;

5 (v) unlawful dissemination or publication of an intimate image, pursu-
6 ant to section 245.15 of the penal law;

7 (vi) incidents involving obstruction of breathing or strangulation;

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

10 (viii) incidents of violence during pregnancy;

11 (ix) incidents of stalking or cyber stalking; and

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

14 (e) whether either party has been found to have committed an act which
15 would constitute disorderly conduct, unlawful dissemination or publica-
16 tion of an intimate image, harassment in the first degree, harassment in
17 the second degree, aggravated harassment in the second degree, sexual
18 misconduct, forcible touching, sexual abuse in the third degree, sexual
19 abuse in the second degree as set forth in subdivision one of section
20 130.60 of the penal law, stalking in the first degree, stalking in the
21 second degree, stalking in the third degree, stalking in the fourth
22 degree, criminal mischief, menacing in the second degree, menacing in
23 the third degree, reckless endangerment, criminal obstruction of breath-
24 ing or blood circulation, strangulation in the second degree, strangula-
25 tion in the first degree, assault in the second degree, assault in the
26 third degree, an attempted assault, identity theft in the first degree,
27 identity theft in the second degree, identity theft in the third degree,
28 grand larceny in the fourth degree, grand larceny in the third degree,
29 coercion in the second degree or coercion in the third degree as set
30 forth in subdivisions one, two and three of section 135.60 of the penal
31 law between spouses or former spouses, or between parent and child or
32 between members of the same family or household;

33 (f) whether either party has used or threatened to use a dangerous
34 instrument to harm the other party, child, or a third party, including a
35 firearm, except in incidents involving self-defense, or has unlawfully
36 possessed a weapon or firearm, or has been convicted of criminal
37 possession of a weapon or criminal use of a firearm pursuant to article
38 two hundred sixty-five of the penal law, or is or has been subject to an
39 extreme risk protection order, pursuant to article sixty-three-A of the
40 civil practice law and rules; and

41 (g) which party has been attending to the daily physical, emotional,
42 developmental, educational, and special needs of the child.

43 3. There shall be a rebuttable presumption that custody or visitation
44 shall not be awarded to a party who jeopardizes the safety of the child.

45 4. (a) In any proceeding for custody or visitation where a party cred-
46 ibly alleges domestic violence or child abuse, allegations regarding
47 parental alienation or friendly parent shall not be admissible against
48 the party that has credibly alleged domestic violence or child abuse,
49 nor shall allegations of parental alienation or friendly parent be
50 considered in assessing a child's best interests.

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

1 (c) No psychological or medical theories or labels related to a
2 child's reluctance to interact with a party shall be admitted into
3 evidence unless they are based on empirical proof of scientific reli-
4 ability and validity and generally accepted by the scientific and
5 professional community.

6 (d) No treatment program intended to reunite a child with a party for
7 whom that child is estranged shall be ordered by the court without
8 consent of both parties and the attorney for the child and scientifi-
9 cally valid and generally accepted proof of the effectiveness and ther-
10 apeutic value of such program.

11 5. In cases involving domestic violence, child abuse or neglect, or a
12 history of coercive control, or where the parties cannot effectively
13 communicate, cooperate with each other and make joint decisions concern-
14 ing the child, or in cases where there is an existing or prior full stay
15 away order of protection against a party or when there is an existing
16 temporary order of protection entered ex parte, no order of joint custo-
17 dy shall be made without the consent of both parties. The court shall
18 not suggest that in order to retain custody, a party must agree to joint
19 custody. The court shall not use a party's refusal to consent to joint
20 custody against such party when making its final custody or visitation
21 determination.

22 6. (a) Before judges, referees, or other hearing officers preside over
23 child custody proceedings in which one or more parties have alleged
24 domestic violence or child abuse, they shall complete at least thirty
25 hours of initial training for the handling of such cases. The office for
26 the prevention of domestic violence shall, within amounts appropriated
27 for such purpose, contract exclusively with the organization designated
28 by the federal department of health and human services to coordinate
29 statewide improvements within local communities, social services
30 systems, and programming regarding the prevention and intervention of
31 domestic violence in New York state and other nonprofit entities with
32 whom it subcontracts with expertise in child abuse or gender-based
33 violence, to develop such training. Such entity, or entities in partner-
34 ship, shall review and update the training at least once every two
35 years. In consultation with the office of court administration, such
36 entities, or entities in partnership, shall be responsible for providing
37 such training to judges, referees, and other hearing officers handling
38 child custody proceedings. Such training shall include, but not be
39 limited to:

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

42 (2) the dynamics and effects of domestic violence and child abuse,
43 including but not limited to, emotional, financial, physical, technolog-
44 ical and sexual abuse, and an understanding of the barriers and fears
45 associated with reporting domestic violence and child abuse and why
46 victims may not have documented evidence of abuse;

47 (3) tactics commonly used by one party to induce fear in, or dominate
48 or control a partner or child, including verbal, emotional, psycholog-
49 ical, and/or economic abuse; isolation; efforts to build trust and an
50 emotional connection with a child to support future manipulation; coer-
51 cive control; exploitation; abuse; threats; controlling and harassing
52 behaviors, including monitoring of a partner's location and activities;
53 use of oppressive behavior designed to deprive a partner of their rights
54 and liberties and establishing a regime of domination in the partner's
55 personal life; litigation abuse; unlawful dissemination or publication

1 of an intimate image; and demands for custody in order to pressure the
2 partner to return or punish the partner for leaving;

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

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

8 (6) how to assess findings or allegations of child abuse, domestic
9 violence, heightened danger and risk of lethality to a child's safety,
10 pursuant to paragraph (d) of subdivision two of this section for the
11 purpose of issuing a temporary emergency order;

12 (7) education regarding the harm courts may cause children in child
13 custody cases where domestic violence or child abuse is present by rely-
14 ing on non-scientific theories such as parental alienation, parental
15 alienation syndrome, the friendly parent concept, or any other theory or
16 label that is not supported by scientific research and not generally
17 accepted by the scientific community and the danger of basing child
18 custody decisions on claims that a child's deficient or negative
19 relationship with a parent is caused by the other parent;

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

24 (9) appropriate experience and qualifications of child custody evalu-
25 ators and mental health treatment providers.

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

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

34 (a) (i) Where a minor child is residing within this state, either
35 parent may apply to the supreme court for a writ of habeas corpus to
36 have such minor child brought before such court; and on the return ther-
37 eof, the court, on due consideration, may award the natural guardian-
38 ship, charge and custody of such child to either parent for such time,
39 under such regulations and restrictions, and with such provisions and
40 directions, as the case may require, and may at any time thereafter
41 vacate or modify such order. In all cases there shall be no prima facie
42 right to the custody of the child in either parent, but the court shall
43 determine solely what is for the best interest of the child, and what
44 will best promote its welfare and happiness, and make award accordingly.
45 Where the court issues any initial or successive temporary order of
46 custody or visitation or permanent order of custody or visitation, the
47 court shall conduct a review of any findings or allegations of child
48 abuse, domestic violence, heightened danger and risk of lethality, and
49 the decisions and reports listed in subparagraph three of paragraph
50 (a-1) of subdivision one of section two hundred forty of this chapter,
51 unless such a review has been conducted within ninety days prior to the
52 issuance of such order.

53 (ii) When issuing any temporary order of custody or visitation, the
54 court shall state on the record, and in writing, any findings or allega-
55 tions of child abuse, domestic violence, heightened danger and risk of
56 lethality, and the prior decisions and reports considered in rendering

1 its decision and the reasons for any limitations or restrictions placed
2 on a party's custody, visitation or contact with such child. Any party
3 to a proceeding for a temporary order pursuant to this chapter shall
4 have a right to appeal to the appropriate appellate division, pursuant
5 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 may be
11 admitted, pursuant to article ten of the family court act. Promoting the
12 safety of a child shall include preventing direct physical and/or
13 emotional harm to such child and shall be assessed by considering any
14 findings or allegations of child abuse, domestic violence, heightened
15 danger and risk of lethality, and decisions and reports identified in
16 subparagraph three of paragraph (a-1) of subdivision one of section two
17 hundred forty of this chapter.

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

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

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

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

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

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

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

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

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

27 2. Successive temporary orders of custody or visitation. Prior to the
28 issuance of any successive temporary order of custody or visitation, the
29 court shall conduct a review of any findings or allegations of child
30 abuse, domestic violence, heightened danger and risk of lethality, and
31 the decisions and reports listed in paragraph three of this subdivision,
32 unless such a review has been conducted within ninety days prior to the
33 issuance of such order.

34 3. [~~Decisions~~] Findings and allegations of child abuse, domestic
35 violence, heightened danger and risk of lethality, and the decisions and
36 reports for review. The court shall conduct a review of the following:

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

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

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

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

49 (v) findings and allegations of child abuse, domestic violence,
50 heightened danger and risk of lethality, including but not limited to:

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

52 (b) use or threats to use a weapon or dangerous instrument, or
53 possession of or access to firearms;

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

1 (d) sexual abuse or coerced sexual activity of the child or other
2 parent;

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

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

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

8 (h) incidents of violence during pregnancy;

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

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

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

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

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

43 [~~5.~~] 6. Temporary emergency order. Notwithstanding any other provision
44 of the law, upon emergency situations, including computer malfunctions,
45 to serve the best interest of the child, the court may issue a temporary
46 emergency order for custody or visitation in the event that it is not
47 possible to timely review decisions and reports on registries as
48 required pursuant to paragraph three of this subdivision.

49 [~~6.~~] 7. After issuing a temporary emergency order. After issuing a
50 temporary emergency order of custody or visitation, the court shall
51 conduct reviews of the decisions and reports on registries as required
52 pursuant to paragraph three of this subdivision within twenty-four hours
53 of the issuance of such temporary emergency order. Should such twenty-
54 four hour period fall on a day when court is not in session, then the
55 required reviews shall take place the next day the court is in session.
56 Upon reviewing decisions and reports the court shall notify associated

1 counsel, self-represented parties and attorneys for children pursuant to
2 paragraph [~~four~~] five of this subdivision and may issue temporary or
3 permanent custody or visitation orders.

4 [~~7-~~] 8. Feasibility study. The commissioner of the office of children
5 and family services, in conjunction with the office of court adminis-
6 tration, is hereby authorized and directed to examine, study, evaluate
7 and make recommendations concerning the feasibility of the utilization
8 of computers in family courts which are connected to the statewide
9 central register of child abuse and maltreatment established and main-
10 tained pursuant to section four hundred twenty-two of the social
11 services law, as a means of providing family courts with information
12 regarding parties requesting orders of custody or visitation. Such
13 commissioner shall make a preliminary report to the governor and the
14 legislature of findings, conclusions and recommendations not later than
15 January thirty-first, two thousand nine, and a final report of findings,
16 conclusions and recommendations not later than June first, two thousand
17 nine, and shall submit with the reports such legislative proposals as
18 are deemed necessary to implement the commissioner's recommendations.

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

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

38 § 9. This act shall take effect on the one hundred twentieth day after
39 it shall have become a law. Effective immediately, the addition, amend-
40 ment and/or repeal of any rule or regulation necessary for the implemen-
41 tation of this act on its effective date are authorized to be made and
42 completed on or before such effective date.