STATE OF NEW YORK

3170--C

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

Introduced by Sens. SKOUFIS, ADDABBO, ASHBY, BORRELLO, BRESLIN, CANZONERI-FITZPATRICK, CHU, CLEARE, COMRIE, COONEY, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, KRUEGER, MARTINEZ, MARTINS, MATTERA, MAY, MAYER, MURRAY, MYRIE, OBERACKER, O'MARA, PALUMBO, RAMOS, RHOADS, RIVERA, ROLISON, SCARCELLA-SPANTON, SEPULVEDA, WEBB, 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 -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law, the family court act and the civil practice law and rules, 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 and may be cited as "Kyra's Law".

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

The legislature recognizes that the safety of children is of paramount importance and is an integral element of their best interests. To that end, the legislature finds that judicial decisions regarding custody of, and access to, children shall promote the safety of children as a threshold issue.

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

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

LBD06231-13-4

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. **When the parties first appear in court, the court shall advise the parties before proceeding of the right to be represented by counsel of their own choosing, of the right to have an adjournment of no longer than fourteen court days to confer with counsel, and the right to obtain counsel fees and expenses, pursuant to section two hundred thirty-seven of this article. The court shall assign counsel to the eligible parties and children, pursuant to article two of the family court act and subdivisions seven and eight of section thirty-five of the judiciary law.** Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court [~~must~~] **shall** consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. Where a proceeding filed pursuant to article ten or ten-A of the family court act is pending at the same time as a proceeding brought in the supreme court involving the custody of, or right to visitation with, any child of a marriage, the court presiding over the proceeding under article ten or ten-A of the family court act may jointly hear the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of the family court act and, upon referral from the supreme court, the hearing to resolve the matter of custody or visitation in the proceeding pending in the supreme court; provided however, the court [~~must~~] **shall** determine custody or visitation in accordance with the terms of this section.

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~~] **shall** 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.

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

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

~~(3) Decisions and reports for review. The court shall conduct a review of~~] Prompt evidentiary hearing. Upon the application of any party to an action concerning custody of or visitation with a child, or of an attorney for the child, asserting credible allegations of incidents or threats of domestic violence, child abuse or child neglect that, if true, would pose a serious or imminent risk to the safety of the child, the court shall hold a prompt evidentiary hearing to determine whether temporary limitations or conditions on the custody or visitation rights of the party who is alleged to have committed or threatened to commit domestic violence, child abuse or child neglect are necessary to avoid serious or imminent risk to the child's safety. Except for good cause shown, the hearing for such determination shall commence within twenty court days of the application for such hearing. The court shall remind the parties of their right to the assistance of counsel for the prompt evidentiary hearing. During such hearing, only material and relevant evidence shall be admitted. If a party waives his or her right to a hearing under this section, the court shall advise such party at that time that, notwithstanding such waiver, an application under this section may be made at any time during the pendency of the proceedings. After a hearing has been held pursuant to this provision, a party may request a subsequent prompt evidentiary hearing during the pendency of litigation for good cause shown. During a prompt evidentiary hearing, the court shall consider the following, if available:

(i) related decisions in court proceedings initiated pursuant to article ten of the family court act, and all warrants issued under the family court act; [~~and~~]

(ii) any party's history of domestic violence, child abuse or child neglect, child sexual abuse or incidents involving harm to a child, or serious or imminent risk to the child's safety;

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

(iv) evidence and findings of child abuse, child neglect, domestic violence, or serious or imminent risk to the child's safety, including but not limited to:

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

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

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

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

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

(f) incidents involving obstruction of breathing or strangulation;

(g) any party's pattern of alcohol or substance abuse that poses serious or imminent risk to the child's safety;

(h) incidents of violence during pregnancy;

(i) incidents of stalking or cyber stalking; and

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

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

[~~(4)~~] (2) Conditions of custody or visitation. If the court determines that limitations or restrictions of a party's custody, visitation or contact with the child are necessary pursuant to a review of any findings or credible allegations of child abuse, child neglect, domestic violence, or serious or imminent risk to the child's safety, and the decisions and reports listed in subparagraph one of this paragraph, the court shall set forth conditions of custody or visitation in a temporary order of custody or visitation that prioritizes the avoidance of serious or imminent risk to the child's safety.

(i) There shall be a rebuttable presumption that the court shall not award, in a temporary order of custody or visitation, sole or joint custody or visitation that is unsupervised or without sufficient protections of the child's safety to a party who poses a serious or imminent risk to the child's safety.

(ii) The court shall state in writing any findings of child abuse, child neglect, domestic violence, or serious or imminent risk to the child's safety, and the factors, decisions and reports considered in making such findings and the reasons for the limitations or restrictions placed on a party's custody, visitation or contact with such child. When a prompt evidentiary hearing has been held regarding serious or imminent risk to the child's safety and the court has rendered such decision, the parties shall be notified of their right to appeal.

(iii) In addition to the right of appeal regarding a final order, any party or the attorney for the child in a proceeding for a temporary order of custody or visitation pursuant to this subparagraph in which a prompt evidentiary hearing has been held regarding imminent risk to the child's safety pursuant to the provisions of this paragraph shall have a right to appeal the granting or denial of the temporary order, or the terms of such order, to the appropriate appellate division. An appeal under this subparagraph shall be given a preference pursuant to rule five thousand five hundred twenty-one of the civil practice law and rules.

A notice of appeal regarding the granting or denial of the temporary order, or the terms of such order, by the supreme court under this subparagraph shall be filed in accordance with subdivision (a) of section five thousand five hundred thirteen of the civil practice law and rules. A notice of appeal regarding the granting or denial of the temporary order, or the terms of such order, by a family court under this subdivision shall be filed no later than thirty days after the service by a party or the child's attorney upon the appellant of any order from which the appeal is taken or receipt of the order in court or thirty-five days from mailing or electronic transmission of the order by the court, whichever is earliest.

Pending the determination of such appeal, the appellate division in which the appeal is pending may stay the order on appeal pursuant to

subdivision (c) of section five thousand five hundred nineteen of the civil practice law and rules where such court determines that the effect of the order on appeals creates an imminent risk to the safety of the child and that a stay is necessary to avoid such risk. The party applying for the stay shall notify the attorneys for all parties and the attorney for the child of the time and place of such application. The party applying for the stay shall state in the application the errors of fact or law allegedly committed by the trial court. A party applying to the appellate division for the stay shall make every reasonable effort to obtain a complete transcript of the proceeding before the trial court in accordance with the rules of the applicable appellate division.

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

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

[~~(5)~~] (4) Temporary emergency order. Notwithstanding any other provision of the law, upon emergency situations, including computer malfunctions, to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not possible to timely review decisions and reports on registries as required pursuant to subparagraph [~~three~~] one of this paragraph.

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

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

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

§ 240-e. Custody and visitation; safety of the child. The legislature recognizes that the safety of children is of paramount importance and is an integral element of their best interests. To that end, the legislature finds that judicial decisions regarding custody of, and access to, children shall promote the safety of children as a threshold issue. 1. For the purposes of this section, the following terms shall have the following meanings:

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

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

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

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

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

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

(v) compelling the other party by force, threat of force or intimidation, including but not limited to threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage;

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

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

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

2. Notwithstanding any other provision of law to the contrary, a court making a final determination of custody or visitation based on the best interests of a child pursuant to the provisions of this chapter shall prioritize and promote the safety of such child when making such determinations. Only competent, material, and relevant evidence shall be admitted, however, the hearsay statements of the child may be admitted when corroborated by other evidence, pursuant to article ten of the family court act. Promoting the safety of a child shall include preventing direct physical or emotional harm to such child. In making such final determinations, the court, if possible, should consider:

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

(b) whether any party to the proceeding has committed, or has threatened to commit, an act of child abuse or child neglect against the child, or has committed or threatened to commit 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;

(c) any party's history of domestic violence, child abuse or child neglect, child sexual abuse or incidents involving harm to a child or serious or imminent risk to the child's safety;

(d) police reports, including domestic violence incident reports or reporting of incidents involving child abuse, child neglect or domestic violence by a party;

(e) evidence and findings or allegations of child abuse, child neglect, domestic violence, or serious or imminent risk to the child's safety, including but not limited to:

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

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

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

(iv) sexual abuse or other sexual offenses against the child or other party;

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

(vi) incidents involving obstruction of breathing or strangulation;

(vii) any party's pattern of alcohol or substance abuse that poses serious or imminent risk to the child's safety;

(viii) incidents of violence during pregnancy;

(ix) incidents of stalking or cyber stalking; and

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

(f) whether any party has been found to have committed an act pursuant to section eight hundred twelve of the family court act between spouses or former spouses, or between parent and child or between members of the same family or household;

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

(h) which party has been the primary caretaker of the child, primarily attending to the physical, emotional, developmental, educational, and any special needs of the child.

3. There shall be a rebuttable presumption that custody or visitation that is unsupervised or without sufficient protection of the child's safety shall not be awarded to a party who poses a serious or imminent risk to the child's safety.

4. (a) In any proceeding for custody or visitation where a party asserts credible allegations of incidents or threats of domestic violence, child abuse or child neglect, the court shall not find that the party who has made such allegations has alienated the child against the other party or failed to support the child's relationship with the other party.

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

(c) In cases involving domestic violence, coercive control, child abuse or child neglect, the court shall not order the child to a reunification camp with a party that poses a serious or imminent risk to the child's safety.

(d) Nothing in this section shall be construed to create an exception to section seven hundred fifty-three of the judiciary law, or any other enforcement provision, such that a party may seek to enforce any proper ruling of the court, unless stayed, concerning access to the child or conditions of access to the child.

5. In cases involving domestic violence, coercive control, child abuse or child neglect, there shall be a rebuttable presumption that no order of joint custody shall be made. The court shall not suggest that in order to retain custody, a party must agree to joint custody. The court shall not use a party's refusal to consent to joint custody against such party when making its final custody or visitation determination.

6. (a) The chief administrator of the courts shall promulgate and enforce rules mandating comprehensive training on domestic violence, child abuse and child neglect before judges, referees, or other hearing officers preside over child custody proceedings in which one or more parties have alleged domestic violence or child abuse and supplemental training every two years thereafter to remain eligible to preside over such proceedings. Such training shall address current knowledge and law relating to domestic violence, child abuse and child neglect, with the goal of making appropriate custody and visitation decisions that prioritize children's safety and are culturally sensitive and appropriate for diverse communities. The office of court administration, in consultation with the office for the prevention of domestic violence, shall develop and conduct such training, which shall be reviewed and updated at least once every two years. Such training shall include, but not be limited to:

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

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

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

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

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

(6) how to consider serious and imminent risk to a child or such child's parent, pursuant to subdivision one of section two hundred forty of this article for the purpose of issuing a temporary order of custody or visitation;

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

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

§ 5. Section 70 of the domestic relations law, as amended by chapter 457 of the laws of 1988, is amended to read as follows:

§ 70. Habeas corpus for child detained by parent. (a) **The legislature recognizes that the safety of children is of paramount importance and is an integral element of their best interests. To that end, the legislature finds that judicial decisions regarding custody of, and access to, children shall promote the safety of children as a threshold issue.**

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

(ii) When issuing any temporary order of custody or visitation, the court shall state in writing any findings of child abuse, child neglect, domestic violence, or serious or imminent risk to the child's safety, and the factors, decisions and reports considered in making such findings, and the reasons for any limitations or restrictions placed on a party's custody, visitation or contact with such child. Any party or the attorney for the child in a proceeding for a temporary order in which a prompt evidentiary hearing has been held regarding imminent risk to the child's safety pursuant to this chapter shall have a right to appeal to the appropriate appellate division, pursuant to article eleven of the family court act.

(iii) Notwithstanding any other provision of law to the contrary, a court making a final determination of custody or visitation based on the best interests of a child pursuant to the provisions of this chapter shall prioritize and promote the safety of such child when making such determinations. Only competent, material and relevant evidence shall be admitted, pursuant to article ten of the family court act, however the hearsay statements of the child may be admitted when corroborated by other evidence. Promoting the safety of a child shall include preventing direct physical or emotional harm to such child and shall be assessed by considering any findings or credible allegations of child abuse, child neglect, domestic violence, or serious or imminent risk to the child's safety, and decisions and reports identified in subparagraph one of paragraph (a-1) of subdivision one of section two hundred forty of this chapter.

(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 of this chapter. Further, the court shall not take into consideration whether either

party is married, was formerly married or has ever been married to the other party or anyone else.

(v) In cases involving domestic violence, coercive control, child abuse or child neglect, there shall be a rebuttable presumption that no order of joint custody shall be made. The court shall not suggest that in order to retain custody, a party must agree to joint custody. The court shall not use a party's refusal to consent to joint custody against such party when making its final custody or visitation determination, as described in subdivision five of section two hundred forty-e of this chapter.

(vi) Before judges, referees and other hearing officers preside over 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 paragraph (a) of subdivision six of section two hundred forty-e of this chapter. Once initial training requirements have been met, judges, referees and other hearing officers shall complete additional training every two years thereafter to remain eligible to preside over such proceedings as described pursuant to paragraph (a) of subdivision six of section two hundred forty-e of this chapter.

(c) Any order under this section which 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 the provisions of part eight of article ten of such act, 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 or official having care and custody, or temporary care and custody, of such child.

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

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

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

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

(e) The legislature recognizes that the safety of children is of paramount importance and is an integral element of their best interests. To that end, the legislature finds that judicial decisions regarding custody of, and access to, children shall promote the safety of children as a threshold issue.

1. [~~Permanent and initial temporary orders of custody or visitation. Prior to the issuance of any permanent or initial temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in paragraph three of this subdivision.~~] Prompt evidentiary hearing. Upon the application of a party to an action concerning custody of or visitation with a child, or of an attorney for the child, asserting credible allegations of incidents or threats of domestic violence, child abuse or child neglect that, if true, would pose a serious or imminent risk to the safety of the child, the court shall hold a prompt evidentiary hearing to determine whether temporary limitations or conditions on the custody or visitation rights of the party who is alleged to have committed or threatened to commit domestic violence, child abuse or child neglect are necessary to avoid serious or imminent risk to the child's safety, pursuant to paragraph (a-1) of subdivision one of section two hundred forty and section two hundred forty-e of the domestic relations law. When the parties first appear in court, the court shall advise the parties before proceeding of the right to be represented by counsel of their own choosing, of the right to have an adjournment of no longer than fourteen court days to confer with counsel, and the right to obtain counsel fees and expenses, pursuant to section two hundred thirty-seven of the domestic relations law. The court shall assign counsel to the eligible parties and children, pursuant to article two of this chapter and subdivisions seven and eight of section thirty-five of the judiciary law.

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

~~3. Decisions~~] Findings and allegations of child abuse, child neglect, domestic violence, and serious or imminent risk to a child's safety, and the decisions and reports for review. The court shall conduct a review of the following, if available:

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

(ii) whether any party to the action alleges that the other party to the proceeding has committed, or has threatened to commit, an act of child abuse or child neglect against the child, or has committed, or has threatened to commit, 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 this chapter;

(iii) any party's history of domestic violence, child abuse or child neglect, child sexual abuse or incidents involving harm to a child, or serious or imminent risk to a child's safety;

(iv) police reports, including domestic violence incident reports, or reporting of incidents involving child abuse, child neglect or domestic violence by a party;

(v) evidence, findings and credible allegations of child abuse, child neglect, domestic violence, or serious or imminent risk to a child's safety, including but not limited to:

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

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

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

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

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

(f) incidents involving obstruction of breathing or strangulation;

(g) any party's pattern of alcohol or substance abuse that poses serious or imminent risk to the child's safety;

(h) incidents of violence during pregnancy;

(i) incidents of stalking or cyber stalking; and

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

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

3. Appeal. In addition to the right of appeal regarding a final order, any party or the attorney for the child in a proceeding for a temporary order of custody or visitation pursuant to this paragraph in which a prompt evidentiary hearing has been held regarding imminent risk to the child's safety by reason of a family offense or child maltreatment in an application for a permanent or temporary order of custody or visitation shall have a right to appeal the granting or denial of the temporary order, or the terms of such order, to the appropriate appellate division. An appeal under this subparagraph shall be given a preference pursuant to rule five thousand five hundred twenty-one of the civil practice law and rules.

A notice of appeal regarding the granting or denial of the temporary order, or the terms of such order, by the supreme court under this subdivision shall be filed in accordance with subdivision (a) of section five thousand five hundred thirteen of the civil practice law and rules. A notice of appeal regarding the granting or denial of the temporary order, or the terms of such order, by a family court under this subdivision shall be filed no later than thirty days after the service by a party or the child's attorney upon the appellant of any order from which the appeal is taken or receipt of the order in court or thirty-five days from mailing or electronic transmission of the order by the court, whichever is earliest.

Pending the determination of such appeal, the appellate division in which the appeal is pending may stay the order on appeal pursuant to subdivision (c) of section five thousand five hundred nineteen of the civil practice law and rules where such court determines that the effect of the order on appeals creates an imminent risk to the safety of the child and that a stay is necessary to avoid such risk. The party applying for the stay shall notify the attorneys for all parties and the attorney for the child of the time and place of such application. The party applying for the stay shall state in the application the errors of fact or law allegedly committed by the trial court. A party applying to the appellate division for the stay shall make every reasonable effort to obtain a complete transcript of the proceeding before the trial court in accordance with the rules of the applicable appellate division.

4. Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of this act, and registry reports and notifying counsel involved in the proceeding, or in the event of a self-represented party, notifying such party of the results thereof, includ-

ing any court appointed attorney for children, the court may issue a temporary, successive temporary or final order of custody or visitation.

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

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

7. Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in family courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing family courts with information regarding parties requesting orders of custody or visitation. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January thirty-first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

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

a. An appeal may be taken as of right from any order of disposition and, in the discretion of the appropriate appellate division, from any other order under this act. An appeal **may be taken as of right to the appropriate appellate division of the supreme court** from an intermediate or final order in a case involving abuse or neglect [~~may be taken as of right to the appellate division of the supreme court~~] **under article ten of this act or from an order of the court after a prompt evidentiary hearing under section six hundred fifty-one of this act or section seventy or two hundred forty of the domestic relations law determining an allegation of imminent risk to the child's safety and granting or denying a temporary emergency order of custody or visitation**. **(i)** Pending the determination of such appeal, such order shall be stayed where the effect of [~~such~~] **the** order **on appeal** would be to discharge the child[~~, if the family court or the court before which such appeal is pending finds that such a stay is necessary to avoid imminent risk to the child's life or health~~] **in a case alleging abuse or neglect pursuant to article ten of this act. In an appeal from an order in a custody or visitation proceeding under article six of this act or section seventy or two hundred forty of the domestic relations law that was issued upon**

a prompt evidentiary hearing regarding an allegation of imminent risk to a child's safety, the court before which the appeal is taken may stay the order on appeal where the order would cause an imminent risk to the child's safety during the pendency of the appeal and where such court finds that a stay is necessary to avoid such imminent risk. (ii) A preference in accordance with rule five thousand five hundred twenty-one of the civil practice law and rules shall be afforded, without the necessity of a motion, for appeals under article three; parts one and two of article six; articles seven, ten, and ten-A of this act; and sections three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four, and three hundred eighty-four-b of the social services law and appeals from orders issued under part three of article six of this act or section seventy or two hundred forty of the domestic relations law upon a prompt evidentiary hearing regarding an allegation of imminent risk to the child's safety.

§ 9. Subdivision (d) of section 1114 of the family court act, as amended by chapter 41 of the laws of 2010, is amended to read as follows:

(d) Any party to a child protective proceeding, or the attorney for the child, may apply to a justice of the appellate division for a stay of an order issued pursuant to part two of article ten of this chapter returning a child to the custody of a respondent. Such an application may also be made in accordance with section one thousand one hundred twelve of this act or subdivision (c) of section five thousand five hundred nineteen of the civil practice law and rules to stay a court order of custody or visitation pursuant to this act or the domestic relations law where the order on appeal would cause an imminent risk to the child's safety and where the court before which such appeal is pending finds that such a stay is necessary to avoid such imminent risk. The party applying for the stay shall notify the attorneys for all parties and the attorney for the child of the time and place of such application. If requested by any party present, oral argument shall be had on the application, except for good cause stated upon the record. The party applying for the stay shall state in the application the errors of fact or law allegedly committed by the [~~family~~] trial court. A party applying to the [~~court~~] appellate division for the granting or continuation of such stay shall make every reasonable effort to obtain a complete transcript of the proceeding before the [~~family~~] trial court in accordance with the rules of the applicable appellate division.

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

(a) In a proceeding under article three, seven, ten, ten-A or ten-C of this act or where a revocation of an adoption consent is opposed under section one hundred fifteen-b of the domestic relations law or in any proceeding under section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act or in any proceeding where a minor is detained under or governed by the interstate compact for juveniles established pursuant to section five hundred one-e of the executive law, the family court shall appoint an attorney to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six or 353.3

of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of people with developmental disabilities pursuant to section 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by counsel chosen by the respondent, respondent's parent, or other person legally responsible for the respondent's care, or by assigned counsel. In any proceeding under article ten-B of this act, the family court shall appoint an attorney to represent a youth, under the age of twenty-one, who is the subject of the proceeding, if independent legal representation is not available to such youth. **In any proceeding under article six of this act, the court shall appoint an attorney to represent the child when credible allegations of serious or imminent risk to the child's safety have been made.** In any other proceeding in which the court has jurisdiction, **including all proceedings under article six of this act,** the court may appoint an attorney to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

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

(a) In a proceeding under article three, seven, ten, ten-A or ten-C of this act or where a revocation of an adoption consent is opposed under section one hundred fifteen-b of the domestic relations law or in any proceeding under section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act, the family court shall appoint an attorney to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six or 353.3 of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of the office for people with developmental disabilities pursuant to section 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by counsel chosen by the respondent, respondent's parent, or other person legally responsible for the respondent's care, or by assigned counsel. In any proceeding under article ten-B of this act, the family court shall appoint an attorney to represent a youth, under the age of twenty-one, who is the subject of the proceeding, if independent legal representation is not available to such youth. **In any proceeding under article six of this act, the court shall appoint an attorney to represent the child when credible allegations of serious or imminent risk to the child's safety have been made.** In any other proceeding in which the court has jurisdiction, **including all proceedings under article six of this act,** the court may appoint an attorney to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

§ 12. Subdivision (b) of rule 5521 of the civil practice law and rules, as amended by chapter 707 of the laws of 2019, is amended to read as follows:

(b) Consistent with the provisions of section one thousand one hundred twelve of the family court act, appeals from orders, judgments or decrees in proceedings brought pursuant to articles three, seven, ten and ten-A and parts one and two of article six of the family court act, and pursuant to sections three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four, and three hundred eighty-four-b of the social services law, and pursuant to paragraph (d) of subdivision four and subparagraph (ii) of paragraph (d) of subdivision five of section eighty-nine of the public officers law, **and appeals from orders issued under part three of article six of the family court act or section seventy or two hundred forty of the domestic relations law upon a prompt evidentiary hearing regarding an allegation of imminent risk to a child's safety** shall be given preference and may be brought on for argument on such terms and conditions as the court may direct without the necessity of a motion.

§ 13. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that the amendments to subdivision (a) of section 249 of the family court act made by section ten of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 8 of chapter 29 of the laws of 2011, as amended, when upon such date the provisions of section eleven of this act shall take effect. 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 and completed on or before such effective date.