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:

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 must ensure children's safety 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 added by chapter 295 of the laws of 2009, are amended to read as follows:

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

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

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

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

(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) whether either party to the action alleges that the other party to the proceeding has committed, or has threatened to commit, an act of child abuse against such 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 the family court act;

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

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

(v) findings and allegations of child abuse, domestic violence, heightened danger and risk of lethality, 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 possession of or access to 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 coerced sexual activity of 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) a party's pattern of alcohol or substance abuse that places the child at heightened danger or risk of lethality;

(h) incidents of violence during pregnancy;

(i) incidents of stalking or cyber stalking; and

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

(4) 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 allegations of child abuse, domestic violence, heightened danger and risk of lethality, and the decisions and reports listed in subparagraph three 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 significant risk to the child's safety. When the court decides to issue or to not issue such temporary order, the parties shall be notified of their right to appeal, pursuant to article eleven of the family court act.

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

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

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

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

(5) 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)~~] (6) 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 of this paragraph.

[~~(6)~~] (7) 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 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~~] five of this paragraph and may issue temporary or permanent custody or visitation orders.

[~~(7)~~] (8) 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. 1. For the purposes of this section, the following terms shall have the following meanings:

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

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

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

(d) "Coercive control" means a pattern of behavior that in purpose or effect unreasonably restricts a parent'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 parent from friends, family or other sources of support;

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

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

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

(v) compelling the other parent 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 parent has a right to abstain or to abstain from conduct in which the other parent has a right to engage;

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

(vii) forcing or compelling the other parent 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 may be admitted, pursuant to article ten of the family court act. Promoting the safety of a child shall include preventing direct physical and/or emotional harm to such child. Such assessment shall include, but not be limited to:

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

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

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

(d) any findings or allegations of child abuse, domestic violence, heightened danger and risk of lethality, 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 possession of or access to firearms;

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

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

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

(vi) incidents involving obstruction of breathing or strangulation;

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

(viii) incidents of violence during pregnancy;

(ix) incidents of stalking or cyber stalking; and

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

(e) whether either party has been found to have committed an act which would constitute disorderly conduct, unlawful dissemination or publication of an intimate image, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree, coercion in the second degree or coercion in the third degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household;

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

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

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

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

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

(d) No treatment program intended to reunite a child with a party for whom that child is estranged shall be ordered by the court without consent of both parties and the attorney for the child and scientifically valid and generally accepted proof of the effectiveness and therapeutic value of such program.

5. In cases involving domestic violence, child abuse or neglect, or a history of coercive control, or where the parties cannot effectively communicate, cooperate with each other and make joint decisions concerning the child, or in cases where there is an existing or prior full stay away order of protection against a party or when there is an existing temporary order of protection entered ex parte, no order of joint custody shall be made without the consent of both parties. 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) 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, they shall complete at least thirty hours of initial training for the handling of such cases. The office for the prevention of domestic violence shall, within amounts appropriated for such purpose, contract exclusively with the organization designated by the federal department of health and human services to coordinate statewide improvements within local communities, social services systems, and programming regarding the prevention and intervention of domestic violence in New York state and other nonprofit entities with whom it subcontracts with expertise in child abuse or gender-based violence, to develop such training. Such entity, or entities in partnership, shall review and update the training at least once every two years. In consultation with the office of court administration, such entities, or entities in partnership, shall be responsible for providing such training to judges, referees, and other hearing officers handling child custody proceedings. Such training shall include, but not be limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

its decision and the reasons for any limitations or restrictions placed on a party's custody, visitation or contact with such child. Any party to a proceeding for a temporary order 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 may be admitted, pursuant to article ten of the family court act. Promoting the safety of a child shall include preventing direct physical and/or emotional harm to such child and shall be assessed by considering any findings or allegations of child abuse, domestic violence, heightened danger and risk of lethality, and decisions and reports identified in subparagraph three 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, child abuse or neglect, or a history of coercive control, or where the parties cannot effectively communicate, cooperate with each other and make joint decisions concerning the child, or in cases where there is an existing or prior full stay away order of protection against a party or when there is an existing temporary order of protection entered ex parte, no order of joint custody shall be made without the consent of both parties. 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 as described pursuant to paragraph (b) of subdivision six of section two hundred forty-e of this chapter.

§ 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, domestic violence, heightened danger and risk of lethality 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 must ensure children's safety 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 any findings or allegations of child abuse, domestic violence, heightened danger and risk of lethality to a child's safety, and the decisions and reports listed in paragraph three of this subdivision. 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. When appropriate, the court shall assign counsel to the parties, pursuant to article two of this chapter.

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 any findings or allegations of child abuse, domestic violence, heightened danger and risk of lethality, and 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, domestic violence, heightened danger and risk of lethality, and the decisions and reports for review. The court shall conduct a review of the following:

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

(ii) whether either party to the action alleges that the other party to the proceeding has committed, or has threatened to commit, an act of child abuse against such 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) a history of domestic violence, child abuse or neglect, child sexual abuse or incidents involving harm, or risk of harm, to a child;

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

(v) findings and allegations of child abuse, domestic violence, heightened danger and risk of lethality, 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 possession of or access to firearms;

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

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

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

(f) incidents involving obstruction of breathing or strangulation;

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

(h) incidents of violence during pregnancy;

(i) incidents of stalking or cyber stalking; and

(j) coercive control, as defined in paragraph (d) 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.

4. Appeal. Such permanent and temporary orders of custody or visitation may be taken as of right to the appellate division of the supreme court. Pending the determination of such appeal, such order shall be stayed. A preference in accordance with rule fifty-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. A notice to appeal under this subdivision must be taken no later than twenty court 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 twenty court days from receipt of the order by the appellant in court, whichever is earliest. Except for good cause shown, the appeal hearing shall be expedited and held no later than ninety court days from the notice to appeal. Whenever an attorney has been appointed to represent a party in a proceeding described in this paragraph, the appointment shall continue without further court order or appointment, pursuant to subdivision (b) of section eleven hundred twenty of this chapter.

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

[~~5.~~] 6. 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 of this subdivision.

[~~6.~~] 7. 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 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~~] five of this subdivision and may issue temporary or permanent custody or visitation orders.

[~~7.~~] 8. 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 from an intermediate or final order in a case involving abuse or neglect pursuant to section six hundred fifty-one of this act may be taken as of right to the appellate division of the supreme court. Pending the determination of such appeal, such order shall be stayed where the effect of such order 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. A preference in accordance with rule [~~five thousand five~~] fifty-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.

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