

# STATE OF NEW YORK

3170--A

2023-2024 Regular Sessions

## IN SENATE

January 30, 2023

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

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

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

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

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

5 The legislature recognizes that the safety of children is of paramount  
6 importance and is an integral element of their best interests. To that  
7 end, the legislature finds that judicial decisions regarding custody of,  
8 and access to, children must ensure children's safety as a threshold  
9 issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (h) incidents of violence during pregnancy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (viii) incidents of violence during pregnancy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

1 its decision and the reasons for any limitations or restrictions placed  
2 on a party's custody, visitation or contact with such child. Any party  
3 to a proceeding for a temporary order pursuant to this chapter shall  
4 have a right to appeal to the appropriate appellate division, pursuant  
5 to article eleven of the family court act.

6 (iii) Notwithstanding any other provision of law to the contrary, a  
7 court making a final determination of custody or visitation based on the  
8 best interests of a child pursuant to the provisions of this chapter  
9 shall prioritize and promote the safety of such child when making such  
10 determinations. Only competent, material and relevant evidence may be  
11 admitted, pursuant to article ten of the family court act. Promoting the  
12 safety of a child shall include preventing direct physical and/or  
13 emotional harm to such child and shall be assessed by considering any  
14 findings or allegations of child abuse, domestic violence, heightened  
15 danger and risk of lethality, and decisions and reports identified in  
16 subparagraph three of paragraph (a-1) of subdivision one of section two  
17 hundred forty of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (h) incidents of violence during pregnancy;

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

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

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

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

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

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

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

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

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

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

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

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