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IN SENATE

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Introduced by Sens. SKOUFIS, ADDABBO, ASHBY, BORRELLO, BRESLIN, CANZON-
ERI-FITZPATRICK, CHU, CLEARE, COMRIE, COONEY, GOUNARDES, HARCKHAM,
HINCHEY, HOYLMAN-SIGAL, KENNEDY, KRUEGER, MARTINS, MATTERA, MAY,
MAYER, MURRAY, MYRIE, OBERACKER, O'MARA, PALUMBO, RAMOS, RHOADS,
RIVERA, ROLISON, SCARCELLA-SPANTON, SEPULVEDA, WEBB, WEBER, WEIK --
read twice and ordered printed, and when printed to be committed to
the Committee on Judiciary -- committee discharged, bill amended,
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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 Assem-
bly, 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 amended by chapter 295 of the laws
13 of 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-

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

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tion and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. When the parties first appear in court, the court shall advise the parties before proceeding of the right to be represented by counsel of their own choosing, of the right to have an adjournment of no longer than fourteen court days to confer with counsel, and the right to obtain counsel fees and expenses, pursuant to section two hundred thirty-seven of this article. The court shall assign counsel to the parties and children, 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, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must 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

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

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

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

~~(3) Decisions and reports for review. The court shall conduct a review]~~ Prompt evidentiary hearing. Upon the application of a party to

an action concerning custody of or visitation with a child, or of an attorney for the child, credibly alleging that the other party has committed, has threatened to commit, or is likely to commit an act of child abuse or neglect against such child, or has committed, has threatened to commit, or is likely to commit domestic violence against the party making the allegation or a family or household member of either party, and that allegation, if true, would pose a serious risk to the safety of the child, the court shall hold a prompt evidentiary hearing to determine whether temporary limitations or conditions on the custody or visitation rights of the party who is alleged to have committed an act of child abuse against the child, or committed an act of domestic violence against the party making the allegation or a family or household member of either party is necessary to avoid serious risk to the child's safety. Except for good cause shown, the hearing for such determination shall commence within twenty court days of the application for such hearing. Parties shall be notified of their right to the assistance of counsel at the initiation of such hearing. During such hearing, only material and relevant evidence shall be admitted. If a party waives his or her right to a hearing under this section, the court shall advise such party at that time that, notwithstanding such waiver, an application under this section may be made at any time during the pendency of the proceedings. During the hearing, the court shall conduct an assessment of serious risk to the child's safety, which shall include, but not be limited to, consideration 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) a party's history of domestic violence, child abuse or neglect, child sexual abuse or incidents involving harm, or risk of harm, to a child;

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

(iv) evidence and findings of child abuse, domestic violence, serious risk of safety or risk of lethality by a party, including but not limited to:

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

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

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

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

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

(f) incidents involving obstruction of breathing or strangulation;

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

(h) incidents of violence during pregnancy;

(i) incidents of stalking or cyber stalking; and

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

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

8 ~~[(4)]~~ (2) Conditions of custody or visitation. If the court deter-
9 mines that limitations or restrictions of a party's custody, visitation
10 or contact with the child are necessary pursuant to a review of any
11 findings or credible allegations of child abuse, domestic violence,
12 serious risk of safety and risk of lethality to the child, and the deci-
13 sions and reports listed in subparagraph one of this paragraph, the
14 court shall set forth conditions of custody or visitation in a temporary
15 order of custody or visitation that prioritizes the avoidance of serious
16 risk to the child's safety. When the court decides to issue or to not
17 issue such temporary order, the parties shall be notified of their right
18 to appeal, pursuant to article eleven of the family court act.

19 (i) There shall be a rebuttable presumption that the court shall not
20 award, in a temporary order for custody or visitation, sole or joint
21 custody or unsupervised visitation to a party who poses a serious risk
22 to the child's safety.

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

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

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

39 ~~[(5)]~~ (4) Temporary emergency order. Notwithstanding any other
40 provision of the law, upon emergency situations, including computer
41 malfunctions, to serve the best interest of the child, the court may
42 issue a temporary emergency order for custody or visitation in the event
43 that it is not possible to timely review decisions and reports on regis-
44 tries as required pursuant to subparagraph ~~three~~ one of this para-
45 graph.

46 ~~[(6)]~~ (5) After issuing a temporary emergency order. After issuing a
47 temporary emergency order of custody or visitation, the court shall
48 conduct reviews of the decisions and reports on registries as required
49 pursuant to subparagraph ~~three~~ one of this paragraph within twenty-
50 four hours of the issuance of such temporary emergency order. Should
51 such twenty-four hour period fall on a day when court is not in session,
52 then the required reviews shall take place the next day the court is in
53 session. Upon reviewing decisions and reports the court shall notify
54 associated counsel, self-represented parties and attorneys for children
55 pursuant to subparagraph ~~four~~ three of this paragraph and may issue
56 temporary or permanent custody or visitation orders.

1 ~~(7)~~ (6) Feasibility study. The commissioner of the office of chil-
2 dren and family services, in conjunction with the office of court admin-
3 istration, is hereby authorized and directed to examine, study, evaluate
4 and make recommendations concerning the feasibility of the utilization
5 of computers in courts which are connected to the statewide central
6 register of child abuse and maltreatment established and maintained
7 pursuant to section four hundred twenty-two of the social services law,
8 as a means of providing courts with information regarding parties
9 requesting orders of custody or visitation. Such commissioner shall make
10 a preliminary report to the governor and the legislature of findings,
11 conclusions and recommendations not later than January first, two thou-
12 sand nine, and a final report of findings, conclusions and recommenda-
13 tions not later than June first, two thousand nine, and shall submit
14 with the reports such legislative proposals as are deemed necessary to
15 implement the commissioner's recommendations.

16 § 4. The domestic relations law is amended by adding a new section
17 240-e to read as follows:

18 § 240-e. Custody and visitation; safety of the child. 1. For the
19 purposes of this section, the following terms shall have the following
20 meanings:

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

23 (b) "Friendly parent" means the actions of a parent or legal guardian
24 that support a child's contact and relationship with the other parent or
25 legal guardian.

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

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

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

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

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

38 (v) compelling the other party by force, threat of force or intim-
39 idation, including but not limited to threats based on actual or
40 suspected immigration status, to engage in conduct from which the other
41 party has a right to abstain or to abstain from conduct in which the
42 other party has a right to engage;

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

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

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

50 2. Notwithstanding any other provision of law to the contrary, a court
51 making a final determination of custody or visitation based on the best
52 interests of a child pursuant to the provisions of this chapter shall
53 prioritize and promote the safety of such child when making such deter-
54 minations. Only competent, material, and relevant evidence shall be
55 admitted, however, the hearsay statements of the child may be admitted
56 when corroborated by other evidence, pursuant to article ten of the

1 family court act. Promoting the safety of a child shall include prevent-
2 ing direct physical and/or emotional harm to such child. Factors the
3 court shall consider in making such determination shall include, but not
4 be limited to:

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

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

9 (c) any findings or credible allegations of child abuse, domestic
10 violence, serious risk or risk of lethality to the child, including but
11 not limited to:

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

13 (ii) use or threats to use a weapon or dangerous instrument, or unlaw-
14 ful possession of firearms;

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

17 (iv) sexual abuse or coerced sexual activity of the child or other
18 party;

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

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

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

24 (viii) incidents of violence during pregnancy;

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

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

28 (d) whether either party has been found to have committed an act which
29 would constitute disorderly conduct, unlawful dissemination or publica-
30 tion of an intimate image, harassment in the first degree, harassment in
31 the second degree, aggravated harassment in the second degree, sexual
32 misconduct, forcible touching, sexual abuse in the third degree, sexual
33 abuse in the second degree as set forth in subdivision one of section
34 130.60 of the penal law, stalking in the first degree, stalking in the
35 second degree, stalking in the third degree, stalking in the fourth
36 degree, criminal mischief, menacing in the second degree, menacing in
37 the third degree, reckless endangerment, criminal obstruction of breath-
38 ing or blood circulation, strangulation in the second degree, strangula-
39 tion in the first degree, assault in the second degree, assault in the
40 third degree, an attempted assault, identity theft in the first degree,
41 identity theft in the second degree, identity theft in the third degree,
42 grand larceny in the fourth degree, grand larceny in the third degree,
43 coercion in the second degree or coercion in the third degree as set
44 forth in subdivisions one, two and three of section 135.60 of the penal
45 law between spouses or former spouses, or between parent and child or
46 between members of the same family or household;

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

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

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

4 4. (a) In any proceeding for custody or visitation where a party cred-
5 ibly alleges domestic violence or child abuse, allegations that a party
6 is not a friendly parent or has alienated the child or children against
7 the other party shall not be considered in assessing a child's or chil-
8 dren's best interests.

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

14 (c) No psychological or medical theories related to a child's reluc-
15 tance to interact with a party shall be admitted into evidence or
16 considered by the court unless based on empirical proof of scientific
17 reliability and validity and generally accepted by the scientific and
18 professional community.

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

24 5. 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.

35 6. (a) Before judges, referees, or other hearing officers preside over
36 child custody proceedings in which one or more parties have alleged
37 domestic violence or child abuse, they shall complete comprehensive
38 training on domestic violence and child abuse that addresses current
39 knowledge and law relating to domestic violence and child abuse and
40 neglect, with the goal of making appropriate custody and visitation
41 decisions that prioritize children's safety and are culturally sensitive
42 and appropriate for diverse communities. Such judges, referees and other
43 hearing officers shall complete supplemental training every two years
44 thereafter to remain eligible to preside over such proceedings. The
45 office of court administration, in consultation with the office for the
46 prevention of domestic violence, shall develop and conduct such train-
47 ing, which shall be reviewed and updated at least once every two years.
48 Such training shall include, but not be limited to:

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

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

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

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

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

14 (6) how to conduct an assessment of serious risk and risk of lethality
15 to a child or such child's parent, pursuant to subdivision four of this
16 section for the purpose of issuing a temporary order of custody or visi-
17 tation;

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

22 (8) assessing the qualifications and reports of child custody evalu-
23 ators and mental health treatment providers.

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

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

46 (ii) When issuing any temporary order of custody or visitation, the
47 court shall state on the record, and in writing, any findings or credi-
48 ble allegations of child abuse, domestic violence, serious risk or risk
49 of lethality, and the prior decisions and reports considered in render-
50 ing its decision and the reasons for any limitations or restrictions
51 placed on a party's custody, visitation or contact with such child. Any
52 party to a proceeding for a temporary order pursuant to this chapter
53 shall have a right to appeal to the appropriate appellate division,
54 pursuant to article eleven of the family court act.

55 (iii) Notwithstanding any other provision of law to the contrary, a
56 court making a final determination of custody or visitation based on the

1 best interests of a child pursuant to the provisions of this chapter
2 shall prioritize and promote the safety of such child when making such
3 determinations. Only competent, material and relevant evidence shall be
4 admitted, pursuant to article ten of the family court act, however the
5 hearsay statements of the child may be admitted when corroborated by
6 other evidence. Promoting the safety of a child shall include preventing
7 direct physical and/or emotional harm to such child and shall be
8 assessed by considering any findings or credible allegations of child
9 abuse, domestic violence, serious risk and risk of lethality, and deci-
10 sions and reports identified in subparagraph one of paragraph (a-1) of
11 subdivision one of section two hundred forty of this chapter.

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

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

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

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

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

51 (ii) The family court shall, in collaboration with the office for the
52 prevention of domestic violence, update its petition used by parties to
53 initiate child custody and visitation proceedings in a manner to permit
54 petitioners to identify findings or allegations of child abuse, domestic
55 violence, serious risk or 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 credible allegations of child abuse, domestic violence, serious risk and risk of lethality to a child's safety, and the decisions and reports listed in [~~paragraph three of this subdivision~~] subparagraph one of paragraph (a-1) of subdivision one of section two hundred forty of this chapter. When the parties first appear in court, the court shall advise the parties before proceeding of the right to be represented by counsel of their own choosing, of the right to have an adjournment of no longer than fourteen court days to confer with counsel, and the right to obtain counsel fees and expenses, pursuant to section two hundred thirty-seven of the domestic relations law. The court shall assign counsel to the parties and children, 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 credible allegations of child abuse, domestic violence, serious risk and risk of lethality, and the decisions and reports listed in [~~paragraph three of this subdivision~~] subparagraph one of paragraph (a-1) of subdivision one of section two hundred forty of this chapter unless such a review has been conducted within ninety days prior to the issuance of such order.

3. [~~Decisions~~] Findings and allegations of child abuse, domestic violence, serious risk or 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 credible allegations of child abuse, domestic violence, serious risk or 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 unlawful possession of firearms;

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

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

1 (e) unlawful dissemination or publication of an intimate image, pursu-
2 ant to section 245.15 of the penal law;
3 (f) incidents involving obstruction of breathing or strangulation;
4 (g) a party's pattern of alcohol or substance abuse that places the
5 child at serious risk or risk of lethality;
6 (h) incidents of violence during pregnancy;
7 (i) incidents of stalking or cyber stalking; and
8 (j) coercive control, as defined in paragraph (c) of subdivision one
9 of section two hundred forty-e of the domestic relations law; and
10 (vi) reports of the statewide computerized registry of orders of
11 protection established and maintained pursuant to section two hundred
12 twenty-one-a of the executive law, and reports of the sex offender
13 registry established and maintained pursuant to section one hundred
14 sixty-eight-b of the correction law.

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

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

41 ~~[5.]~~ 6. Temporary emergency order. Notwithstanding any other provision
42 of the law, upon emergency situations, including computer malfunctions,
43 to serve the best interest of the child, the court may issue a temporary
44 emergency order for custody or visitation in the event that it is not
45 possible to timely review decisions and reports on registries as
46 required pursuant to paragraph three of this subdivision.

47 ~~[6.]~~ 7. After issuing a temporary emergency order. After issuing a
48 temporary emergency order of custody or visitation, the court shall
49 conduct reviews of the decisions and reports on registries as required
50 pursuant to paragraph three of this subdivision within twenty-four hours
51 of the issuance of such temporary emergency order. Should such twenty-
52 four hour period fall on a day when court is not in session, then the
53 required reviews shall take place the next day the court is in session.
54 Upon reviewing decisions and reports the court shall notify associated
55 counsel, self-represented parties and attorneys for children pursuant to

1 paragraph [~~four~~] five of this subdivision and may issue temporary or
2 permanent custody or visitation orders.

3 [~~7-~~] 8. Feasibility study. The commissioner of the office of children
4 and family services, in conjunction with the office of court adminis-
5 tration, is hereby authorized and directed to examine, study, evaluate
6 and make recommendations concerning the feasibility of the utilization
7 of computers in family courts which are connected to the statewide
8 central register of child abuse and maltreatment established and main-
9 tained pursuant to section four hundred twenty-two of the social
10 services law, as a means of providing family courts with information
11 regarding parties requesting orders of custody or visitation. Such
12 commissioner shall make a preliminary report to the governor and the
13 legislature of findings, conclusions and recommendations not later than
14 January thirty-first, two thousand nine, and a final report of findings,
15 conclusions and recommendations not later than June first, two thousand
16 nine, and shall submit with the reports such legislative proposals as
17 are deemed necessary to implement the commissioner's recommendations.

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

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

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

39 (a) In a proceeding under article three, seven, ten, ten-A or ten-C of
40 this act or where a revocation of an adoption consent is opposed under
41 section one hundred fifteen-b of the domestic relations law or in any
42 proceeding under section three hundred fifty-eight-a, three hundred
43 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b
44 of the social services law or when a minor is sought to be placed in
45 protective custody under section one hundred fifty-eight of this act or
46 in any proceeding where a minor is detained under or governed by the
47 interstate compact for juveniles established pursuant to section five
48 hundred one-e of the executive law, the family court shall appoint an
49 attorney to represent a minor who is the subject of the proceeding or
50 who is sought to be placed in protective custody, if independent legal
51 representation is not available to such minor. In any proceeding to
52 extend or continue the placement of a juvenile delinquent or person in
53 need of supervision pursuant to section seven hundred fifty-six or 353.3
54 of this act or any proceeding to extend or continue a commitment to the
55 custody of the commissioner of mental health or the commissioner of
56 people with developmental disabilities pursuant to section 322.2 of this

1 act, the court shall not permit the respondent to waive the right to be
2 represented by counsel chosen by the respondent, respondent's parent, or
3 other person legally responsible for the respondent's care, or by
4 assigned counsel. In any proceeding under article ten-B of this act, the
5 family court shall appoint an attorney to represent a youth, under the
6 age of twenty-one, who is the subject of the proceeding, if independent
7 legal representation is not available to such youth. In any proceeding
8 under article six of this act, the court shall appoint an attorney to
9 represent the child when credible allegations of serious risk to the
10 child's safety have been made. In any other proceeding in which the
11 court has jurisdiction, the court may appoint an attorney to represent
12 the child, when, in the opinion of the family court judge, such repre-
13 sentation will serve the purposes of this act, if independent legal
14 counsel is not available to the child. The family court on its own
15 motion may make such appointment.

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

19 (a) In a proceeding under article three, seven, ten, ten-A or ten-C of
20 this act or where a revocation of an adoption consent is opposed under
21 section one hundred fifteen-b of the domestic relations law or in any
22 proceeding under section three hundred fifty-eight-a, three hundred
23 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b
24 of the social services law or when a minor is sought to be placed in
25 protective custody under section one hundred fifty-eight of this act,
26 the family court shall appoint an attorney to represent a minor who is
27 the subject of the proceeding or who is sought to be placed in protec-
28 tive custody, if independent legal representation is not available to
29 such minor. In any proceeding to extend or continue the placement of a
30 juvenile delinquent or person in need of supervision pursuant to section
31 seven hundred fifty-six or 353.3 of this act or any proceeding to extend
32 or continue a commitment to the custody of the commissioner of mental
33 health or the commissioner of the office for people with developmental
34 disabilities pursuant to section 322.2 of this act, the court shall not
35 permit the respondent to waive the right to be represented by counsel
36 chosen by the respondent, respondent's parent, or other person legally
37 responsible for the respondent's care, or by assigned counsel. In any
38 proceeding under article ten-B of this act, the family court shall
39 appoint an attorney to represent a youth, under the age of twenty-one,
40 who is the subject of the proceeding, if independent legal represen-
41 tation is not available to such youth. In any proceeding under article
42 six of this act, the court shall appoint an attorney to represent the
43 child when credible allegations of serious risk to the child's safety
44 have been made. In any other proceeding in which the court has jurisdic-
45 tion, the court may appoint an attorney to represent the child, when, in
46 the opinion of the family court judge, such representation will serve
47 the purposes of this act, if independent legal counsel is not available
48 to the child. The family court on its own motion may make such appoint-
49 ment.

50 § 11. This act shall take effect on the one hundred twentieth day
51 after it shall have become a law; provided, however, that the amendments
52 to subdivision (a) of section 249 of the family court act made by
53 section nine of this act shall be subject to the expiration and rever-
54 sion of such subdivision pursuant to section 8 of chapter 29 of the laws
55 of 2011, as amended, when upon such date the provisions of section ten
56 of this act shall take effect. Effective immediately, the addition,

1 amendment and/or repeal of any rule or regulation necessary for the
2 implementation of this act on its effective date are authorized to be
3 made and completed on or before such effective date.