**REVISED KYRA’S LAW**

***S3170-A****SKOUFIS   No Same as  OLD BILL:**S 7425-A OF 2022**Add Alert****Text Versions:****S 3170-A**,**S 3170*
**S3170-A**  SKOUFIS  No Same as
NOT ON FILE Domestic Relations Law
TITLE....Establishes "Kyra's Law"

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| 01/30/23 | REFERRED TO JUDICIARY |  |
| 03/28/23 | AMEND (T) AND RECOMMIT TO JUDICIARY |  |
| 03/28/23 | PRINT NUMBER 3170A |  |

SKOUFIS, BORRELLO, CLEARE, COMRIE, COONEY, GOUNARDES, HARCKHAM, HINCHEY, KRUEGER, MARTINS, MATTERA, MURRAY, OBERACKER, PALUMBO, RAMOS, ROLISON, SEPULVEDA, WEBER, WEIK
Amd §§240 & 70, add §240-e, Dom Rel L; amd §§1112 & 651, Fam Ct Act
Requires the court to consider a child's health and safety when making a decision regarding child custody and visitation; directs the court to review certain information as it relates to allegations of child abuse, domestic violence and child safety.

 **STATE OF NEW YORK**

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 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, OBER-

 ACKER, 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 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 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

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 1 ten of the family court act, or pursuant to an instrument approved under

 2 section three hundred fifty-eight-a of the social services law, shall be

 3 enforceable pursuant to part eight of article ten of the family court

 4 act and sections three hundred fifty-eight-a and three hundred eighty-

 5 four-a of the social services law and other applicable provisions of law

 6 against any person having care and custody, or temporary care and custo-

 7 dy, of the child. Notwithstanding any other provision of law, any writ-

 8 ten application or motion to the court for the establishment, modifica-

 9 tion or enforcement of a child support obligation for persons not in

 10 receipt of public assistance and care must contain either a request for

 11 child support enforcement services which would authorize the collection

 12 of the support obligation by the immediate issuance of an income

 13 execution for support enforcement as provided for by this chapter,

 14 completed in the manner specified in section one hundred eleven-g of the

 15 social services law; or a statement that the applicant has applied for

 16 or is in receipt of such services; or a statement that the applicant

 17 knows of the availability of such services, has declined them at this

 18 time and where support enforcement services pursuant to section one

 19 hundred eleven-g of the social services law have been declined that the

 20 applicant understands that an income deduction order may be issued

 21 pursuant to subdivision (c) of section fifty-two hundred forty-two of

 22 the civil practice law and rules without other child support enforcement

 23 services and that payment of an administrative fee may be required. The

 24 court shall provide a copy of any such request for child support

 25 enforcement services to the support collection unit of the appropriate

 26 social services district any time it directs payments to be made to such

 27 support collection unit. Additionally, the copy of any such request

 28 shall be accompanied by the name, address and social security number of

 29 the parties; the date and place of the parties' marriage; the name and

 30 date of birth of the child or children; and the name and address of the

 31 employers and income payors of the party from whom child support is

 32 sought or from the party ordered to pay child support to the other

 33 party. Such direction may require the payment of a sum or sums of money

 34 either directly to the custodial parent or to third persons for goods or

 35 services furnished for such child, or for both payments to the custodial

 36 parent and to such third persons; provided, however, that unless the

 37 party seeking or receiving child support has applied for or is receiving

 38 such services, the court shall not direct such payments to be made to

 39 the support collection unit, as established in section one hundred

 40 eleven-h of the social services law. Every order directing the payment

 41 of support shall require that if either parent currently, or at any time

 42 in the future, has health insurance benefits available that may be

 43 extended or obtained to cover the child, such parent is required to

 44 exercise the option of additional coverage in favor of such child and

 45 execute and deliver to such person any forms, notices, documents or

 46 instruments necessary to assure timely payment of any health insurance

 47 claims for such child.

 48 (a-1)(1) Permanent and initial temporary orders of custody or visita-

 49 tion. Prior to the issuance of any permanent or initial temporary order

 50 of custody or visitation, the court shall conduct a review of **any find-**

 51 **ings or allegations of child abuse, domestic violence, heightened danger**

 52 **and risk of lethality, and** the decisions and reports listed in subpara-

 53 graph three of this paragraph.

 54 (2) Successive temporary orders of custody or visitation. Prior to the

 55 issuance of any successive temporary order of custody or visitation, the

 56 court shall conduct a review of **any findings or allegations of child**

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 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**

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 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:**

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 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;**

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 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.**

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 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**

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 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**

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 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.

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 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;**

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 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

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 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.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S3170A

**SPONSOR:** SKOUFIS

**TITLE OF BILL**:

An act to amend the domestic relations law and the family court act, in

relation to establishing "Kyra's Law"

**PURPOSE OR GENERAL IDEA OF BILL**:

To protect children by ensuring courts assess any risk to their safety

in child custody and visitation proceedings.

**SUMMARY OF PROVISIONS**:

Section 1 of the bill identifies the name of this legislation as "Kyra's

Law.

Section 2 of the bill amends subdivision 1 of section 240 of the domes-

tic relations law to require courts to conduct a review of any findings

or allegations of child abuse, domestic violence, heightened danger and

risk of lethality prior to the issuance of any permanent, initial tempo-

rary, or successive temporary order of custody or visitation. This

section defines what the court shall consider when assessing findings

and allegations of child abuse, domestic violence, heightened danger or

risk of lethality. It clarifies that parties are allowed legal represen-

tation by their own choosing or through a court appointed attorney

during such court proceedings, and requires courts to put decision-mak-

ing in writing and on the record. This section also creates a rebuttable

presumption that the court shall not award sole or joint custody or

unsupervised visitation to a party who poses a significant risk to the

child's safety.

Section 2 of the bill amends the domestic relations law to create a new

section 240-e to ensure the court prioritizes and promotes the safety of

children when making a final determination of custody or visitation.

This section identifies specific factors to be considered during this

assessment; and creates a rebuttable presumption that custody or visita-

tion shall not be awarded to a party who jeopardizes the safety of the

child. Definitions for the terms "parental alienation", "friendly

parent", "coercive control," and "victims of domestic violence" are

clarified. This section prohibits the admissibility of allegations

regarding parental alienation or friendly parent when a party credibly

alleges domestic violence or child abuse, nor shall such allegations be

considered in assessing a child's best interests. Reunification therapy

can only be ordered when both parties and the child's attorney agree and

the program meets scientific reliability and validity standards.

Further, in cases involving domestic violence, child abuse and neglect,

or in cases when parties cannot effectively communicate, cooperate with

each other and make joint decisions concerning the child, or in cases

involving certain orders of protection or a history of coercive control,

this section prohibits joint custody without the consent of both

parties. Finally, this section requires comprehensive training for judg-

es, referees and other hearing officers who preside over child custody

proceedings in which one or more parties have alleged domestic violence

or child abuse.

Section 3 of the bill amends subdivision (a) of section 70 of the domes-

tic relations law to ensure that the same protections as noted above are

in place regardless of whether the parents of the child have ever been

married.

Section 4 of the bill amends Section 651 of the Family Court Act to

require the Office of Court Administration in collaboration with the

Office for the Prevention of Domestic Violence to update petitions to

initiate custody and visitation proceedings to include findings or alle-

gations of child abuse, domestic violence, heighted danger and risk of

lethality to a child safety.

Section 5 of the bill amends the Family Court Act to ensure that the

same protections as noted above are in place for custody and visitation

proceedings in Family Court.

Section 6 of the bill amends subdivision a of section eleven hundred

twelve of the family court act to ensure a party's decision to appeal an

initial or successive temporary order is permitted.

Section 7 is the effective date.

**JUSTIFICATION**:

This bill, known as "Kyra's Law," seeks to address the systemic weak-

nesses in the current law regarding child custody and visitation and the

failures of the court system to keep New York's children safe from

dangerous abusers.

Domestic violence can have very harmful effects on children. When there

is domestic violence in the home, children are at greater risk of being

abused or neglected. But even when they are not "directly" abused, chil-

dren who witness violence and abuse by one parent against another can be

affected in ways similar to children who are physically abused. Seeing

or hearing violence at home can hurt children emotionally, psychologi-

cally, and even physically due to the stress they suffer. Too many abus-

ers who use coercive power and control tactics against their intimate

partners go so far as to use their children as pawns, even harming or

murdering them, to try to maintain control over or devastate their

former partners.

Kyra Franchetti, a toddler, was ordered by the court to have unsuper-

vised visits with her father, despite repeated reports and eyewitness

accounts of his anger and rage issues, suicidal ideation, stalking and

history of coercive tactics and abuse. During two years of child custody

hearings in Nassau County Family Court, Kyra Franchetti's mother repeat-

edly pleaded with the court to acknowledge the risk of harm to Kyra. The

court dismissed these urgent pleas to protect Kyra and permitted unsu-

pervised visitation to proceed. In July 2016, Kyra was on an unsuper-

vised, court-ordered visit with her abusive father in Virginia when he

shot her to death while she slept. He then set his house on fire and

killed himself. Kyra was only 2 years old. (1)

Tragically, countless children in New York have been injured or murdered

at the hands of a parent who is seeking to cause pain and trauma to

their former intimate partners. Yet courts continue to discount or mini-

mize the risks posed in cases where domestic violence is present,

dismissing allegations of domestic violence or child abuse as an attempt

by one parent to win custody from the other. According to research by

Dr. Daniel Saunders of the University of Michigan, in conjunction with

the U.S. Department of Justice, "domestic violence is frequently unde-

tected in custody cases or ignored as a significant factor in determin-

ing custody or visitation." The study also found that a lack of know-

ledge in domestic violence and child abuse leads judges to accuse

victims of abuse of lying, and even when there is evidence the courts

dismiss and discount the violence. (2)

Moreover, there is now a specialized body of scientific research about

domestic violence and child abuse that was not available when custody

courts developed their present practices. Children exposed to domestic

violence and child abuse will live shorter lives and suffer a lifetime

of health and social problems.(3) Most of the harm is not caused by the

immediate physical injuries, but from living with the fear and stress

abusers cause.

Tragically, the courts have been slow to integrate this research into

its practices. This bill would require Family and Supreme courts to

conduct a review of any findings or allegations of child abuse, domestic

violence, heightened danger, and risk of lethality prior to issuing a

permanent, initial temporary or successive temporary order of custody or

visitation. Such review would include assessing allegations that one

party committed or threatened to commit, an act of domestic violence; a

history of domestic violence, child abuse or neglect, child sexual abuse

or incidents involving harm or risk of harm to the child; police

reports, including domestic incident reports; and other factors finding

or alleging heightened danger or risk of lethality for the child.

If the court determines that limitations or restrictions of a party's

custody, visitation or contact with the child are necessary, the bill

requires the court to issue a temporary order of custody or visitation

that prioritizes the avoidance of significant risk to the child's safe-

ty.

The bill would create a rebuttable presumption that the court shall not

award sole or joint custody to any party who jeopardizes or may jeopard-

ize the safety of the child. The court's decision-making would be stated

on the record and in writing, and both parties to the proceeding would

have the right to appeal to the appropriate appellate division.

The bill specifies that, when making a final determination of custody or

visitation based on the best interests of a child, the court must prior-

itize and promote the safety of the child. Such assessment would

include: whether either party is more likely to protect the safety of

the child; any allegations of domestic violence or child abuse; prior

police reports, such as domestic incident reports or orders of

protection; commission of family offenses; whether either party has

access to firearms; threats to harm or kill the child, the other parent,

others or companion animals; sexual abuse or coerced sexual activity;

and other factors indicating potential heightened danger and risk of

lethality for the child.

Research finds that courts often err in awarding child custody or visi-

tation to abusers due to the debunked theory of "parental alienation,"

the idea that when parents allege that a child is not safe with the

offending parent, they are doing so illegitimately to alienate the child

from such parent. In fact, cross-claims of parental alienation

**VIRTUAL-**

**LY DOUBLE** the courts' rejection of parents' abuse claims, causing non-

offending parents to lose custody to the parent accused of abuse. This

bill would prohibit the court in cases involving domestic violence or

child abuse from denying custody or visitation to a party due to allega-

tions that the child has become estranged from a parent as a result of

"parental alienation." Nor would the court be permitted from ordering

reunification treatment designed to repair a party's relationship with a

child due to parental alienation. Further, the court would not be able

to base custody or visitation decisions on its presumption that a

child's deficient or negative relationship with a parent was caused by

the other parent.

In any final order of custody or visitation where domestic violence or

child abuse is found, the bill would prohibit courts from awarding joint

custody, unless both parties' consent and the court determines the

parties can effectively communicate, cooperate with each other and make

joint decisions concerning the child.

Currently, judges hearing custody and visitation cases must obtain

training in domestic violence every two years, not nearly enough to

understand the complexities and nuances of family violence. This bill

would expand those receiving such training to include referees and other

hearing officers and would require such individuals to obtain a minimum

of thirty hours of initial training in domestic violence and child

abuse, followed with ten hours of additional training every two years.

The Office for the Prevention of Domestic Violence would contract with

the New York State Coalition Against Domestic Violence, to develop the

training, along with other nonprofit entities with expertise in child

abuse or gender-based violence. Such training, which would be updated at

least once every two years, would include instruction on: relevant stat-

utes and case law; the dynamics of domestic violence and child abuse;

abusive tactics and coercive control; increased risk of violence during

court proceedings; assessment of lethality; etc. Training would be

offered by the state agency and domestic violence advocates, in consul-

tation with the office of court administration.

**PRIOR LEGISLATIVE HISTORY**:

Senate

2021-2022: S07425A, Recommitted to Rules

Assembly

2021-2022: A5398A, Amended and Recommitted to Judiciary

**FISCAL IMPLICATIONS**:

Undetermined

**EFFECTIVE DATE**:

The 120th day after it shall have become law; effective immediately, the

addition, amendment and/or repeal of any rule or regulation necessary

for the implementation of this act on its effective date are authorized

to made and completed on or before such effective date.

(1) https://kyraschampions.org/kyras-story/

(2) Daniel G. Saunders, Ph.D., Kathleen C. Faller, Ph.D., Richard M.

Tolman, Ph.D., Child Custody Evaluators' Beliefs About Domestic Abuse

Allegations: Their Relationship to Evaluator Demographics, Background,

Domestic Violence Knowledge and Custody-Visitation Recommendations

(2012) Available at https://www.ojp.gov/pdffilesl/nij/grants/238891.pdf

(3) Vincent J. Felitti, Robert F. Anda, D. Nordenberg, D. F. Williamson,

AM Spitz, V. Edwards., MP Ross, at al. "The Relationship of Adult Health

Status to Childhood Abuse and Household Dysfunction." American Journal

of Preventive Medi- cine. 1998; 14:245- 258. Available at

https://www.ncbi.nlm.nih.gov/pubmed/9635069.