

MEMORANDUM OF SUPPORT

PRIORITIZE CHILDREN'S SAFETY IN CHILD CUSTODY PROCEEDINGS

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The New York State Coalition Against Domestic Violence (NYSCADV) urges the New York State Legislature to pass this legislation, which seeks to prioritize the well-being and safety of children during child custody and visitation proceedings, particularly those involving domestic violence, child abuse and child neglect.

Groundbreaking research¹ conducted by George Washington University School of Law Professor Joan Meier and her colleagues examined how judges in family court make decisions about child custody when there are allegations of abuse and alienation. The findings were startling. Analysis of more than 2,000 court opinions confirmed that courts are skeptical of mothers' claims of abuse by fathers. This skepticism is greatest when mothers claim child abuse. The findings also confirm that fathers' cross-claims of parental alienation – the idea that one parent deliberately alienates the child from the other parent to win custody – virtually double courts' rejection of mothers' abuse claims, and increases mothers' losses of custody to the father accused of abuse. Fathers who accuse mothers of abuse, on the other hand, do not experience the same losses.

The inability of New York's courts to recognize and appropriately respond to domestic violence and child abuse has led to several tragedies. A 2020 Times Union series by Chris Bragg highlighted six cases since 2014 where children were murdered after a parent filed a petition in New York's family court alleging abuse. They included the deaths of Davonte Paul (aged 6) of Troy; Gabriella Collins (aged 6) of Syracuse; Jovani Ligurgi (aged 2) of Long Island; Autumn Coleman (aged 3) of Queens; Thomas Valva (aged 8) of Long Island; and Kyra Franchetti (aged 2) of Long Island. **According to research compiled by Kyra's mother, Jacqueline Franchetti, 35 children have been killed by a parent during custody proceedings in New York since 2016.**

These are not isolated or rare events. Non-offending parents are losing custody of their children at alarming rates. A parent's pleas to protect a child are mistaken for false claims made to obtain sole custody. In fact, DV advocates and many family court attorneys routinely tell DV survivors not to raise family violence allegations in court because it invariably works against them. New York's judges must take these allegations seriously, rather than dismissing or minimizing them.

NYSCADV supports the passage of this bill, known as Kyra's Law, which would:

- Require courts to conduct a prompt evidentiary hearing to assess any reports or credible allegations of domestic violence, child abuse or child neglect that, if true, would pose a serious or imminent risk to the safety of the child, before issuing temporary or final orders of custody or visitation. The bill includes a series of considerations that should be reviewed, including a history of violence perpetrated by any party, police reports, use or threats to use a weapon, coercive control, etc. Should the court determine limitations or restrictions of a party's custody, visitation or contact with the child are necessary, the court would be required to set forth conditions in the order that prioritize the child's safety;
- Ensure parties can appeal any orders of custody or visitation or the terms of such orders. Appeals would be heard on a preferential timeframe;

¹ Meier, Joan S. and Dickson, Sean and O'Sullivan, Chris and Rosen, Leora and Hayes, Jeffrey, Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations (2019). GWU Law School Public Law Research Paper No. 2019-56, GWU Legal Studies Research Paper No. 2019-56, Available at SSRN: <https://ssrn.com/abstract=3448062> or <http://dx.doi.org/10.2139/ssrn.3448062>

- Clarify that, when evaluating best interest factors of the child for issuance of a final order of custody or visitation, the court shall prioritize and promote the safety of children by assessing, among other factors, which party is more likely to protect the safety of the child and whether either party poses a serious or imminent risk to the safety of the child; any party's history of domestic violence, child abuse or child neglect; evidence and findings or allegations of child abuse, child neglect or domestic violence; use or threats to use a weapon; threats to harm or kill the child, the other parent, or companion animals; and incidents of stalking, cyber stalking, or coercive control;
- Create a rebuttable presumption that no order of joint custody shall be made in cases involving domestic violence, coercive control, child abuse or child neglect;
- In cases where credible allegations of incidents or threats of domestic violence, child abuse or child neglect have been made, restrict the court from finding that the party who has made the allegations has alienated the child against the other party or failed to support the child's relationship with the other party;
- In cases involving domestic violence, child abuse or child neglect, restrict the court from ordering a child to a reunification camp with a party that poses a serious or imminent risk to the child's safety; and,
- Enhance current training requirements for judges, referees and other hearing officers handling child custody proceedings and require such training to be developed and offered by the state Office for the Prevention of Domestic Violence in consultation with the Office of Court Administration.

New York State must improve family court outcomes for DV survivors and their children or more children's lives will be tragically lost. **NYSCADV urges the NYS Legislature to pass this legislation as soon as possible.**

ABOUT NYSCADV:

Established in 1978, NYSCADV is designated by the U.S. Department of Health and Human Services as the information clearinghouse, primary point of contact, and resource center on domestic violence for the State of New York. NYSCADV is responsible for supporting the development of policies, protocol, and procedures to enhance domestic violence intervention and prevention and also provides education and technical assistance to the network of primary-purpose domestic violence service providers statewide.

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