

MEMORANDUM OF SUPPORT

PRIORITIZE CHILDREN'S SAFETY IN CHILD CUSTODY COURT 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 in New York's family court, particularly those involving domestic violence and/or child abuse.

Groundbreaking research¹ conducted by George Washington University School of Law Professor Joan Meier and her colleagues looked into 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 mother's 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 in order to win custody – virtually doubling courts' rejection of mothers' abuse claims, and increasing 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 family court to recognize and appropriately respond to domestic violence and/or 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, 18 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 for the purpose of obtaining sole custody. In fact, DV advocates 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 them out of hand. Children who are harmed by a parent are the direct result of family court personnel minimizing or intentionally ignoring abusers' coercive behavior and tactics.

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

- Require the court to hold an evidentiary hearing at the initiation of a child custody or visitation proceeding to investigate claims of domestic violence and/or child abuse before assessing best interest factors;
- Require the court to award sole custody of the child to the non-offending parent and award supervised visitation to the parent found to be engaging in a pattern of violence or abusive behavior;
- Restrict the court from basing decisions on a legal presumption of shared parenting in cases where the court has substantiated claims of family violence;

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 the court must prioritize and promote the health and safety of a child when making custody and visitation decisions. This includes preventing direct physical and/or emotional harm of the child and giving weighted consideration to such factors as whether either parent is more likely to ensure the health and safety of the child; the negative consequences associated with separating the child from its primary attachment figure; whether either parent jeopardizes the child by placing them at substantial risk of severe emotional distress or bodily injury; and whether either parent has committed current or past abuse against the child, the other parent, a family member or a household member of either parent. Consideration of which parent is better situated economically to care for the child would be secondary to these other health and safety factors;
- Restrict the court from presuming that a child's deficient or negative relationship with a parent was caused by the other parent, or that one parent is not being "friendly" to the other parent's relationship with the child;
- Restrict either party from alleging the other parent intentionally alienated the child from them; and,
- Enhance current training requirements for judges and other court professionals handling child custody proceedings and require such training to be developed and offered by DV and child abuse advocates.

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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