

## MEMORANDUM OF SUPPORT

### ESTABLISHING FAMILY COURT GUIDELINES FOR CHILD CUSTODY CASES INVOLVING DOMESTIC VIOLENCE OR CHILD ABUSE

A.3314 Hunter/S.1584 Sanders

The New York State Coalition Against Domestic Violence (NYSCADV) urges the New York State Legislature to pass this legislation, which will establish judicial guidelines for child custody cases involving domestic violence and/or child abuse. This critical bill is needed to rectify years of gross failures of the New York Family Court system to protect children from abusive parents.

Children have the right to live safely in their homes and communities. They deserve to be kept free from harm, even when their parents become abusive. That's what New York's judicial system is intended to do. Yet, as illuminated in a four-part series in the *Albany Times-Union*, when parents allege domestic violence or child abuse during child custody or child visitation proceedings in New York's Family Court, such allegations are routinely minimized or categorically dismissed. Judges discount these allegations as untruthful, choosing to believe a parent is making such claims to improve their chances of gaining full custody, rather than a truthful acknowledgement of trauma and fear for the child's safety.

According to research by Professor Joan S. Meier, Esq., of George Washington University Law School,<sup>1</sup> an analysis of more than 2,000 court opinions confirms that "courts are skeptical of mothers' claims of abuse by fathers; this skepticism is greatest when mothers claim child abuse." Less than half (41%) of mothers' claims of abuse are credited as believable. Further, mothers' claims of child abuse are credited even less often than their claims of partner abuse (2.23 times lower) and child sexual abuse is very rarely accepted by courts (15%). According to the study's authors, "these findings support protective parents' complaints that courts are not protecting at-risk children from future abuse. The data also refute assertions that women frequently succeed in falsely claiming abuse in court; on the contrary, the data indicate that women's reports of even intimate partner violence are *disbelieved more often than not.*"

Judges' presumptions that allegations of domestic violence and child abuse are false can lead to disastrous results. Kyra Franchetti, Thomas Valva, Davonte Paul, Gabriella Collins, Jovani Ligurgo, Autumn Coleman — these are only some of New York's children who were murdered by their abusive parents, despite pleadings from their non-offending parents that the children would be harmed if the court ordered them to live with the offenders or have unsupervised visitation.

#### **NYSCADV urges passage of S.1584 which:**

- Requires courts to hold an evidentiary hearing within 30 days of a filing to assess any allegations of domestic violence, family violence or child abuse before determining the "best interests of a child";
- Requires the court to award sole physical custody to the non-offending parent in cases where the court finds by clear and convincing evidence that domestic violence or child abuse has occurred;

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<sup>1</sup> 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>

- Requires the court to issue a supervised physical custody plan before supervised visitation is initiated. Such plan must include, among other requirements, the conditions and safeguards necessary to minimize risk of harm to the child during visitation and specific measures the offending parent must take for supervised visitation to continue;
- Requires supervised visitations to be conducted by a court-approved professional with expertise in domestic violence and/or child abuse, in a therapeutic setting and under conditions that ensure the health and safety of the child;
- Requires immediate suspension of supervised visitation if an offending parent commits additional harm to the child while physical custody arrangements are ongoing; and
- When the court determines unsupervised visitation can occur, requires the court to explain in writing its justification for making such a determination and how unsupervised visitation is now in the child's best interest.

**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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