

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, particularly those involving domestic violence, child abuse or child sexual abuse.

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 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 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, 23 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 during or following custody or visitation proceedings 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 and Family Court Act to:

- Require courts to conduct a review of any findings or allegations of child abuse, domestic violence, heightened danger and risk of lethality before issuing permanent and initial orders of custody or visitation, or successive temporary orders of custody or visitation. The bill includes a series of considerations that should be reviewed, including allegations of violence, a history of violence perpetrated by either 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 avoidance of significant risk to the child's safety;

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>

- Require courts to set forth the reasons for their decision-making on the record and in writing. Parties would have the ability to appeal any orders of custody or visitation or the conditions or restrictions contained within such orders. Appeals would be heard on an expedited timeframe;
- 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 whether either parent is more likely to protect the safety of the child and whether either party poses a significant risk to the safety of the child; any findings or allegations of abuse, heightened danger and risk of lethality; conviction of family offenses; 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;
- Restrict the court from ordering joint legal custody unless the parties' consent or where it has been determined that the parties can effectively communicate, cooperate with one another and make joint decisions concerning the child. In no case could a court order joint legal custody when there is an existing full stay away order of protection or when there is an existing temporary order of protection entered *ex parte*;
- Prohibit the court from awarding custody or visitation to a party who jeopardizes the safety of the child;
- In cases involving DV or child abuse, restrict the court from presuming that a child's reluctance to interact with a parent was caused by the other parent, and restrict the court from ordering custody to a parent for the purpose of improving a relationship between the child and such parent;
- In cases involving DV or child abuse, restrict either party from alleging the other parent is intentionally alienating the child from them; 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, NYSCADV and other nonprofits with expertise in child abuse and gender-based 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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