

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, 20 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:

- Permit parents and legal guardians experiencing domestic violence, or whose children experience child abuse or child sexual abuse, to motion the court during custody or visitation proceedings for a hearing to identify significant risk to the child's life and safety. Should such risk be identified, the court would have the authority to issue a temporary emergency order setting limitations or restrictions on the offending parent's contact with the child;
- Require the state Office for Prevention of Domestic Violence, along with NYSCADV, the NYS Coalition Against Sexual Assault, Prevent Child Abuse New York, victims of DV, sexual assault and child abuse, civil

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>

attorneys, researchers and academics, to develop an evidence-based tool for use by the court when assessing risk to the child's life or safety;

- Prohibit the court from awarding joint or sole custody or unsupervised visitation to a party who jeopardizes or may jeopardize the life or safety of the child;
- Require courts to set forth the reasons for their decision-making on the record and in writing. Parties would have the ability to appeal a court's decision to issue or not to issue a temporary emergency order or the conditions or restrictions contained within the temporary emergency order. 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 determine the life and safety of the child by considering all relevant factors, and by giving weighted consideration to such factors as whether either parent is more likely to ensure the life and safety of the child; any allegations of abuse; prior police reports, commission of a family offense, or existing or prior orders of protection demonstrating a history of family violence; whether either party possesses or has access to firearms; any previously made statements by the child indicating they are fearful or resistant to having contact with a parent; and whether either parent is better able and more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child;
- Restrict the court from basing decisions on a presumption of joint legal custody and only permitting the court to order joint legal custody when the parties' consent or where it has been determined that the parties can effectively communicate, cooperate with each other 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*;
- 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, 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 and DV and child abuse advocates, 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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