

Advocates push NY lawmakers to pass Kyra's Law to protect children from parental abuse

by Brittany Kriegstein



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State lawmakers left Albany last summer without taking action on Kyra's Law, a bill that would reshape child custody decisions in New York by requiring judges to consider a parent's overall history of abuse or neglect more than the current norm.

Now, supporters of the bill are rallying behind a renewed fight to pass it as the state Legislature reconvenes this month.

"We need it to be the first bill that passes in January," said Jacqueline Franchetti, whose 2-year-old daughter Kyra — after whom the bill is named — died in 2016. According to investigators, Kyra's father killed her during an unsupervised, court-approved visit to his house in Virginia, then set the home on fire and killed himself.

Divorce attorneys, child safety advocates and mothers in custody cases involving

domestic violence allegations said Kyra’s Law could prevent future tragedies by better enabling courts to keep children away from parents and guardians who can be shown to pose a risk of harm to their children. Advocates including Franchetti estimate more than 20 children have been killed by a parent in New York family court proceedings since 2016.

Today, state judges can weigh a parent’s history of violence in adjudicating child custody but aren’t legally required to do so. The family court system also tends to prioritize giving both parents in separations at least partial custody of their children — something that doesn’t make sense in every case, according to backers of Kyra’s Law.

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“‘The law favors relationships, it favors parental-child relationships,’ said Dror Bikel, an attorney specializing in divorce and domestic violence cases. He said 10-15% of divorce cases involve domestic violence between spouses, but stressed that judges don’t always see it as a reason to keep a child away from a parent as they navigate a nuanced set of boundaries around custody.”

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Kyra’s Law would call for courts to examine any allegations of child abuse, domestic violence, sexual abuse, animal cruelty or threatening behavior when deciding child custody and unsupervised visitation. In cases where domestic violence is substantiated, judges would no longer be allowed to award sole custody to a parent deemed potentially dangerous, nor consider arguments that one parent accused another of violence to “alienate” them from a child.

The legislation would also mandate 30 hours of additional training

for family court judges and officials on domestic violence, child abuse, coercive control and lethality assessment — all factors that could bear on a child’s safety during court-approved visits or in longer-term living arrangements, advocates and experts say.

Still, some parents and attorneys have expressed concerns that the bill, if passed, would overly restrict parental rights, while state court officials have indicated it could further burden an already-swamped system. And in interviews with Gothamist, proponents acknowledged the complexities of family court cases have made the bill difficult to pass, and that there are a wide range of perspectives on how to address longtime problems plaguing family court.

Two iterations of Kyra’s Law have already passed the state Senate, but the legislation didn’t make it to a vote in the state Assembly before the 2023 session ended, despite bipartisan support. According to one of the lawmakers behind the bill, it’s being tweaked as the 2024 session gets underway.

“The problem from my perspective is that you’re trying to change a system under constraints,” said New York Assemblymember Andrew Hevesi, a Queens Democrat and one of the bill’s main sponsors. “So any normal solutions

that you would propose to a system that was functioning at an optimum level, you can’t really do because you’re already underfunded and under-resourced and overburdened.”

‘The system sees the children as divisible property’

Data from New York family courts shows more than 32,000 custody and visitation cases were filed in New York City last year, down from 36,000 in 2022. But it’s unclear how many of them related directly to domestic violence claims, as the sensitive and confidential nature of those cases makes them hard to track.

Divorcing parents told Gothamist the decision to break up with an allegedly violent or abusive partner can expose children to more danger if a court allows that partner to have unsupervised visits or shared custody.

“The system sees the children as divisible property,” said one mother who requested to be identified only by her initials, DR, fearing for her safety. “The system is built under this premise of what is good for them if both parents are decent, safe parents. It does not contemplate when that is not the case.”

DR said she left her husband of almost two

decades in January 2018, after his physical and verbal abuse toward her had escalated to where she feared for her life. At the time, her two children were young; one was still an infant.

But physically leaving the relationship was just the beginning. “It’s been an incredible, grueling effort and battle to keep my kids safe,” DR said.

According to her, the children’s father still has some visitation rights despite a family court substantiating her claims of domestic violence last year. Court records show he denied those allegations.

DR said she believes court officials mean well, but added the law isn’t designed to protect children in cases like hers because it assumes both parents should be involved in their child’s upbringing. Kyra’s Law, she argued, would help clarify what courts should do in custody cases when allegations of domestic violence are found true.

“The law needs to step in, and that’s where it’s infuriating with legislators,” she said.

“They’re making laws about potholes? Are you kidding me? Children in our state are dying. Dying.”

Emotional tolls

Mairead Corrigan, one of Dror Bikel’s

clients, also said Kyra’s Law would have benefited her in her own legal battle.

Corrigan has been wrapped up in divorce proceedings with her husband of five and a half years, who she claims frequently abused her both physically and emotionally.

After allegedly throwing the family cat against a wall of their apartment in 2019, he was arrested on animal cruelty charges, but the case was eventually dropped by then-Manhattan District Attorney Cy Vance for insufficient evidence, according to court papers. (A spokesperson for the DA’s office said the case was sealed, so she could not say why the charges were dropped.)

The husband denied all the charges through his lawyer, Michael Moscarello.

Without a substantiated criminal finding on her husband’s record, Corrigan has little legal standing under current guidelines to demonstrate that visitation between her husband and their now 7-year-old daughter should remain supervised by a court-appointed therapist.

“The judge in the civil court is just constrained by the facts,” Bikel said.

“There has to be a [criminal] record.”

Corrigan said she’s concerned the court order governing those visits, including

required supervision, could expire at any point as the divorce proceeds. And with a custody trial set for this year, she worries about protecting her daughter from her husband's allegedly abusive behavior.

“A fear that DV [domestic violence] survivors have is ‘what happens to my child once I’m not there to protect my child?’” she said. “And that’s how I feel.”

Corrigan said she supports Kyra’s Law because it would compel judges making custody decisions to recognize coercive control and animal abuse as forms of domestic violence — and thus as reasons to keep a child away from a potentially dangerous parent or ensure visits continue under supervision.

But some who work in the family court system say the bill, at least in its current form, is not the solution.

Jennifer Feinberg, supervisor for policy and government affairs at the Center for Family Representation, a New York City-based nonprofit providing legal and social services to families and young people, said her organization opposes Kyra’s Law because it could have unintended negative consequences.

“A lot of the terms that are in that legislation are not well-defined, they are

overly broad and they would leave judges room to speculate and leave room for bias in decision making,” she said, adding the bill could allow more parents to make false or exaggerated allegations against other parents.

Delays and differing perspectives

Child welfare experts, parents and lawmakers interviewed by Gothamist largely agreed the state’s family court system has myriad shortcomings, especially in cases where child custody and domestic violence intersect.

“Everyone that walks through the doors of family court in New York State walks out of those doors convinced that the system is broken,” said State Sen. James Skoufis, a Democrat from the Hudson Valley who sponsored Kyra’s Law.

As for concerns about the legislation leading to faulty allegations of violence or abuse between parents, Skoufis argued current laws against false accusations would prevent such outcomes. “The vast majority of domestic violence, other violence and allegations in that space are demonstrably true,” he said. “And let’s be clear, it’s criminal. You can’t file legal papers alleging false domestic violence. That is against the law.”

Assemblymember Hevesi said he's worked since last year with the state Office of Court Administration to address court officials' reservations about the bill, which he claimed stem from the fact that the system is already overwhelmed by ongoing cases.

One iteration of the bill would have required courts to hold hearings to determine whether abuse and domestic violence allegations are true — a provision that troubled court officials dealing with massive caseloads, according to the assemblymember.

OCA did not respond to requests for comment. Last year, a spokesperson for the court system told NY1 it did not have an opinion on the bill while it was still being finalized.

“We had initially thought that hearing to determine the safety of the child was absolutely the optimal way to go,” said Hevesi. “But then when you try to add a hearing to a court system where their dockets are so overburdened that families are already waiting months and months, to add into their current list of cases more hearings would have been really problematic.”

He said supporters of the bill are now trying to change tack: “We are still in negotiations, but yes, we are considering a

safety check instead of a full hearing.”

What the courts say

The New York state courts' website includes a section that explains what happens in child custody cases involving alleged domestic violence.

“Domestic violence against either a parent or a child is considered in deciding custody and visitation,” it reads. “It is possible that the parent who commits domestic violence gets custody or visitation if the Judge thinks the child will not be in danger and it would be in the best interest of the child.”

That term — the “best interest of the child” — is currently the key guideline for judges making decisions about custody and visitation.

According to some experts, “best-interest protections” already require judges to keep a child's safety top of mind. Feinberg of the Center for Family Representation said they prompt judges to look at families holistically, rather than at individual incidents, when determining child custody.

But other experts say those terms leave too much up for judges' interpretation, with the courts' website acknowledging “there is no standard definition of ‘best interest’ of the child, and judges can weigh factors like

work schedules and financial stability in custody rulings.”

Because the court system places significant emphasis on allowing children to have relationships with both parents, judges sometimes permit visits when a parent has allegedly committed violence toward their partner but not their child. Feinberg said in most cases her organization works on, “children want to have contact with their parent, even in situations where they may have harmed another parent.”

But the mothers interviewed by Gothamist said the fact that their husbands had never directly abused their children did not mean it wouldn’t happen sometime in the future.

According to Kyra’s mother Jacqueline Franchetti, Nassau County Judge Danielle Peterson pressed her on that issue when signing off on unsupervised visits between Franchetti’s former husband and their daughter. “I was repeatedly told just because he abused me doesn’t mean he’ll abuse Kyra,” she recalled.

Franchetti noted Kyra was killed by her father just days after Peterson said the case was “not a life-or-death situation.” The judge did not respond to a request for comment.

Potential impacts

Should Kyra’s Law pass, it could have a major impact on family court cases in New York. But experts, advocates, lawmakers and parents differ on whether it would ultimately be positive or negative.

Skoufis, the state senator, said enacting the legislation would be a “major step forward,” though he acknowledged it wouldn’t fix all the problems people experience with family court.

Muna Heaven, interim executive director of the New York Society for the Prevention of Cruelty to Children, told Gothamist one of the best features to emerge from Kyra’s Law could be the increased training for judges and court officials on domestic violence issues.

“I think that what this law is aiming to do is to raise awareness ... and I can’t imagine that would be a bad thing,” she said.

Lisa Fischel-Wolovick, an attorney who’s spent decades representing battered women in court and teaches classes in CUNY’s graduate program in forensic psychology, also praised the potential training requirements.

“It’s not okay when a custody evaluator gives an opinion about something which

they are not trained to do,” she said. “And I have seen them do this and it’s a significant concern, because they’re mischaracterizing, for example, domestic abuse, coercive control, child maltreatment and the signs and symptoms and the red flags.”

Still, others worry Kyra’s Law could contribute to disparate treatment of people of color in the family court system or force judges to decide child custody based on long-ago allegations that could end up hindering relationships between parents and their children.

“We have concerns about how this would impact Black and Brown low-income parents specifically, particularly with the requirement that there be supervised contact with the parent alleged to have committed acts of domestic violence,” Feinberg said.

“Do courts always get it right? No, because they’re fallible,” she continued. “But we think that this would make it even harder to get it right.”

Meanwhile, Derek Sells, an attorney who has represented fathers trying to gain custody over their children whose mothers allegedly abused them, said the bill in its current form doesn’t do enough to protect children of unmarried parents. “The law, if passed, must not discriminate based on

whether there is a marriage or not that produced the child,” he said.

But Corrigan and DR, the mothers who spoke with Gothamist, said Kyra’s Law could help them and other parents in similar straits look out for their children’s best interests.

“Keeping children safe against a violent abuser is a terrifying process,” said Corrigan. “I see so many things in this law that make me hopeful.” ■