



Newsletter of the NOW Foundation Family Law Advisory Committee Summer 2023

A WORD FROM THE COMMITTEE

This newsletter from the NOW Family Law Advisory Committee addresses the issues of child safety in custody cases and in cases of domestic violence.

The National Domestic Violence Hotline is 800-799-7233 (800-799-SAFE). You can call them from anywhere in the United States. You can chat live from here: [Get Help | The National Domestic Violence Hotline \(thehotline.org\)](#)

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KAYDEN'S LAW MAKES CHILD SAFETY A PRIORITY IN CUSTODY DISPUTES

By Nancy Fingerhood and Michael Smalz

According to the National Safe Parents Organization ([National Safe Parents Organization - Home](#)), it is a child's right to live free from abuse. The Keeping Children Safe from Family Violence Act (aka Kayden's Law) which is now in the reauthorized Violence Against Women Act, makes children's safety a priority in custody disputes between parents. It incentivizes states to implement the law by increasing grants for programs to keep children safe by including the allocation of federal funding for required training for judges and other court personnel on family violence subject matter. States passing bills compliant with the Kayden's Law requirements are eligible for a minimum of \$25 million in federal funds, now available in FY 23.

One might think an abuser being awarded custody is an exception in family court; however, it is not. A presumption that shared parenting is in the best interest of the child is pervasive. Parental rights seem to trump what is in the best interest of the child and is evident in many cases where parents raise allegations of abuse.

Colorado's bill, The Keeping Children Safe from Family Violence Act, which includes Kayden's Law language, passed the state legislature recently and is on the way to the Governor's desk. The judicial training piece is under consideration currently. More states are following suit. Legislators should make a commitment to ensure our children are safe.

People may ask "Why aren't court professionals already making sure children stay with the safe protective parent?" The truth is that conflict serves the family court industry. Court professionals such as lawyers, custody evaluators and guardians-ad-litem profit from keeping these cases within the family court system. Child custody determinations are often made in favor of the parent who has a better financial standing, frequently it is the father who may also not be the protective parent.

It is concerning that The Association of Family and Conciliation Courts, an international association that states it is dedicated to resolution of family conflict, is presenting a panel at their June 2023 training that may attack the child protective elements already adopted by some individual states, of the federal protective provisions in Kayden's Law. We should hope that all family court professionals would put safety above everything else when there is family conflict.

In a nutshell, Kayden's Law protects at-risk children through four measures:

1. Restricting expert testimony to only those who are appropriately qualified to provide it. Evidence from court-appointed or outside professionals may be admitted only when the professional possesses demonstrated expertise and experience in working with victims of domestic violence or child abuse, including child sexual abuse.

2. Limiting the use of reunification camps and therapies which cannot be proven to be safe and effective. No “reunification treatment” may be ordered by the court without scientifically valid and generally accepted proof of the safety, effectiveness, and therapeutic value of the treatment. (Reunification “camps” are generally unregulated, lack scientific support for effectiveness, and lack a standard of care.)
3. Providing evidence-based ongoing training to judges and court personnel on family violence subject matter.
4. Considering relevant abuse evidence including but not limited to arrests, convictions, and permanent protection orders for family violence perpetration.

You can reach out to your state legislators and tell them to introduce Kayden’s Law into this legislative session.

FLORIDA LEGISLATURE'S RECENT ATTEMPTS TO PROTECT CHILDREN – GREYSON'S LAW

By Adele Guadalupe

The Florida Legislature is currently contemplating SB 130, which they call Greyson's Law. Advocates urging passage of Greyson's Law developed the information piece below, which is an example of one of the steps involved to pass a law such as this.

Below are some statistics and information on why Greyson's Law (HB 97) is so needed, critical to pass now, and how it will help better protect Florida's children to help prevent anymore Florida families from having to needlessly lose their "Greyson."

According to Florida's Department of Children & Families, studies on co-occurrence of domestic violence and child maltreatment reveal there are adult and child victims in 30-60% of families experiencing domestic violence.

- In 2020, while overall crime in Florida decreased by 14.1 percent, reported domestic violence offenses continue to increase and are related to approximately 20% of all homicides in Florida.
- 1 in 4 women and 1 in 10 men experience sexual violence, physical violence and/or stalking by an intimate partner during their lifetime.
- Domestic violence includes a range of abuses including economic, physical, sexual, emotional, and psychological toward children, adults, and elders
- Despite being underreported, domestic violence victims come from every demographic and the violence they experience impacts families, co-workers, and communities at every socio-economic level.
- It causes diminished psychological and physical health, reduces the quality of life, and results in decreased productivity at the workplace
- 2/3 of nonfatal abuse victimizations of women and children in the United States occur at home and by someone they know.
- Self-reports by mothers who had experienced abuse also found that 44% of their children had also been involved or exposed in the victimization.
- In 2016, an estimated 1,750 children died from abuse and neglect in the United States.
- 65% of adults that abuse their partner also physically and/or sexually abuse their children.
- In Florida, domestic violence offenses result in approximately 200 deaths each year. Domestic violence accounts for approximately 20% of murders annually.

WHAT WILL THIS BILL WILL DO

This bill will provide judges the ability to better protect children – particularly when there’s concern an intimate partner is either threatening or abusing the other parent -- a more common situation than often thought.

It also helps close gaps in the law, better align with DCF’s child maltreatment index, and provide courts with a more streamlined ability to better prevent any more children or parents from having to suffer the same fate as Greyson.

Given the increasing cases of domestic violence and abuse which occur in every Florida county and impact all our communities – regardless of age, income, education, race, sex, or any other demographic — this bill is much-needed and critical to helping save children’s lives and keep communities safe in Florida.

HOW THIS BILL WILL HELP

Greyson’s mom tried to get a restraining order for domestic violence against Greyson’s father shortly before Greyson’s death, but a judge denied it. Certain gaps in our current laws (i.e., abuse not specifically directed toward the child does not automatically extend an adult’s protections to child(ren) in cases of domestic violence) are addressed by Greyson’s Law.

KAYDEN, GRAYSON, PIQUI, KYRA & KEIRA'S LIVES FAILED BY THE FAMILY COURTS

By Renee Beeker

Our guest author wrote about Kayden's Law pg. 2-3. However, other children are also victims of murder despite pleas to the court to protect them. In addition to Kayden's Law, other mothers are asking for legislation to protect children from abuse and possible death in the names of their victim children.

Judges often ignore the pleas of mothers or consider they are not being truthful when they ask for protective orders or full custody out of fear that their ex-partner will harm their child. Despite the opposition to Piqui's Law's claiming "additional training as burdensome" and represents an "impermissible interference in operations of the judicial branch" or their "caseloads are too heavy," judges need the latest trauma-informed training on domestic violence and coercive control to fully understand and recognize the patterns of abuse and see the children's danger. It is not uncommon when men murder their children with the purpose of making the mother suffer. These acts of "revenge murder" are the ultimate act of abuse and violence. Judges must err on the side of safety instead of thinking mothers are lying. BELIEVE WOMEN when they come to your court for protection for their children and themselves.

Florida's passed Greyson's Law SB 130 /HB 97 discussed on pgs. 4-5 above. You can read more at [Greyson's Law \(greyschoice.org\)](https://www.greyschoice.org) about Grayson's story at the link included.

Greyson's law was signed into law on May 25, 2023, by Florida Governor Ron DeSantis and will go into effect July 1, 2023. You can read more here:

<https://www.nbcmiami.com/news/local/desantis-signs-greysons-law-bill-aimed-at-protecting-kids-during-custody-battles/3041771/>

California

Piqui's Law has passed the assembly. <https://judyburger.com/california-assembly-passes-piquis-law/>

For more on Piqui's Story, follow this link to Piqui's Justice <https://www.piquisjustice.org/about-piqui/>.

New York

Kyra's Law requiring forensic psychologist training (A2375/S6385) has passed, resulting in evaluators receiving "40 hours of training to understand the dynamics of domestic abuse in child custody cases. With additional training every two years. This Law also mandates forensic evaluators be licensed psychologists, psychiatrists, or social workers." <https://www.kyraschampions.org/forensic-evaluators>

Other laws pending are Kyra's Law A 3342 Hevesi /S3170 Skoufis which "prioritizes child safety in custody proceedings."

Supervised Visits Guidelines. A 3314/ S1584 To "establish Supervised Visits Guidelines."

To follow and learn about Kyra's story and legislation in her name, check this link where all information was found: [Kyra's Law \(kyraschampions.org\)](http://kyraschampions.org)

"Kyra's eighth birthday would have been April 4, the beginning of National Child Abuse Prevention Month. Throughout the month, Kyra's Champions is planting 745 pinwheels at Port Washington's Blumenfeld Park and Mary Jane Davies Green Park in Manhasset, where Kyra loved to play.

The 745 pinwheels represent the 20 New York children murdered by their parent during a child custody case, divorce, or separation in the last five years and the 725 deaths of New York children in the last decade reportedly kept hidden by Child Protective Services, according to the Times Union." <https://www.nysenate.gov/newsroom/in-the-news/anna-m-kaplan/kyras-law-inspired-manhasset-residents-tragedy-takes-step-towards>

<https://www.timesunion.com/news/article/State-agency-suppressed-725-child-death-reports-15644839.php>

Canada

Keira's Law

To provide training for judges to include domestic violence and coercive control. <https://www.cbc.ca/news/politics/keira-kagan-domestic-violence-coercive-control-1.6815711>

NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES APPROVES NEW MODEL CODE ON DOMESTIC ABUSE AND CHILD CUSTODY

By Michael Smalz

In 1994, the National Council of Juvenile and Family Court Judges (NCJFCJ) approved the Model Code on Domestic and Family Violence (Model Code). The Model Code provided a statutory framework for promoting effective responses to domestic violence by the criminal, civil, and family courts. Chapter Four, the Family and Children Chapter, elevated the safety of abused parents and children above other child custody factors and included a rebuttable presumption against awarding sole custody, joint legal custody (decision making), or joint physical custody to a perpetrator of domestic violence.

The provisions of Chapter Four of the 1994 Model Code have been adopted at least in part in most states. As of 2018, all states and the District of Columbia had included domestic violence as a “best interest of the child” factor to be considered by their family courts in making child custody determinations, with 26 states and the District of Columbia providing some type of statutory presumption against awarding custody to perpetrators of domestic violence. However, many children continue to be subjected to unsafe and unworkable court-ordered parenting arrangements, and many survivors still live with harassment, threats, and danger. According to the NCJFCJ, several factors drive these poor outcomes, including persistent disbelief that abuse allegations are true, a continuing perception that allegations of abuse are simply attempts to manipulate the family court system, inattention to or inadequate information on the full nature and context of the abuse, ignorance of the effects of domestic abuse on children, and a failure to account for the belief system of a parent who is abusive and how it can shape parenting and harm children.

These persistent poor outcomes drove an intensive examination of Chapter 4 of the Model Code and, as a result, in December 2022 the NCJFCJ approved a revised Chapter 4. The resulting changes to Chapter 4 address Family Court systems’ barriers to accurately identify domestic abuse and child abuse and adequately account for their effects on abused parents and children. New Chapter 4 requires that adequate information on domestic abuse be obtained and provided to the court, allowing for a comprehensive assessment of the context, nature, and effects of domestic abuse on the abused parent and children who experienced or witnessed abuse. New Chapter 4 also incorporates provisions that require family courts to recognize and account for “coercive control” and other abusive behaviors beyond the inflicted or attempted physical violence to which many current statutory definitions of domestic violence are limited.

There are also provisions addressing claims of “parental alienation” raised by the abusive parent. Notably, Chapter 4 prohibits courts from adversely considering the actions of abused parents that are intended to protect themselves or their children from the risk of harm posed by the other parent. These provisions and other highlights of revised Chapter 4 of the Model Code are discussed in greater detail below.

Domestic Abuse and Coercive Control

The term “domestic violence” is replaced by the term “domestic abuse.” Revised Chapter 4 defines “domestic abuse” to include forms of abuse in addition to physical assault or threats to cause bodily harm to another family member. These forms of abuse include stalking, sexual abuse, health-related abuse, a course of controlling abuse, technological abuse, financial abuse, and human trafficking. “Coercive controlling abuse” is defined as “a pattern of conduct that has the purpose or effect of substantially restricting the other parent’s safety or autonomy through intimidation, implicit or explicit threats, or by compelling compliance.”

Best Interest of the Child

This section applies to states that do not have a statutory presumption against awards of shared or sole legal or physical custody to abusive parents. Four significant features of this section guide family courts to consider domestic abuse when analyzing the best interest of the child.

First, courts must consider and make findings regarding the nature, context, and effects of abuse on the child; the parenting behaviors and decisions of the parent perpetrating domestic abuse; the risk of harm to child or parent; and any abuse experienced by the child. This analysis must be done before the court moves to consider any other factors.

Second, every other best interest factor should be evaluated in light of any domestic abuse, and the court must make findings to reflect that analysis. This recommendation recognizes that domestic abuse can intersect with or affect other (non-domestic abuse) aspects of parenting and child raising. The Ohio Supreme Court has already issued a helpful tool explaining how domestic violence relates to other traditional best interest factors.¹

Third, after assessing the nature, context, and effects of any abuse, family courts must enter orders which address these effects, and this section of Chapter 4 of the Model Code includes an inexhaustible list of the types of provisions which promote a child’s safety, recovery, and resilience, such as requiring the abusive parent to pay for any associated costs of services needed to respond to the domestic abuse and requiring the abusive parent to attend a program aimed at raising awareness of the harm domestic abuse caused to the child in the family and addressing safe and healthy parenting.ⁱⁱ Moreover, if the court grants any type of custody or parenting time to a parent who perpetrated domestic abuse or child abuse, the court must make detailed findings regarding how the custody and parenting time adequately protects the child and the parent who is abused from the risk of future physical or psychological harm and addresses the effects of the domestic abuse or child abuse.

Fourth, in cases where both parents have committed acts of domestic abuse (mutual abuse) the court must determine which of the parents is less likely to continue to commit domestic abuse and to pose the least risk of harm to the child.

There are also related provisions that address so-called “friendly parent” factors and claims of “parental alienation” in the domestic violence context. For example, one provision specifies that efforts to protect a child from abuse may not be considered as unwillingness to facilitate contact with the other parent. Furthermore, in cases where the child’s behavior stems, in whole or in part, from domestic or child abuse, the court: (1) must not presume that the protective parent is the cause of the child’s resistance for contact with the other parent; and (2) the court may not order the parties to participate in any programs (e.g., reunification programs) unless the program meets the relevant standards of practice and is accepted in research, is effective in addressing the effects of the abuse of the child, and addresses the safety of the child and the parent who was abused.

Rebuttable Presumption

As an alternative to a “best interest of the child” approach described above, revised Chapter 4 of the Model Code offers specific guidance on the application of a rebuttable presumption. The presumption would be triggered by a finding of a “pattern or serious act” of “domestic abuse.” As earlier noted, domestic abuse is broadly defined to include coercive control and other types of domestic abuse not necessarily involving actual or threatened acts of physical assault. The court must consider all relevant evidence regarding the nature and context of the abuse. Additionally, the court must consider whether the abusive parent can and will prioritize the child’s safety and well-being, can and will safely make shared decisions, has acknowledged the harm caused, and has changed their behavior.

The related provisions addressing “friendly parent” factors and allegations of “parental alienation” also apply to rebuttable presumption cases. Moreover, the best interest of the child remains the overarching issue, but the analysis starts with a rebuttable presumption against awarding the abusive parent sole or joint legal or physical custody.

Parenting Time and Visitation

This section includes an extensive list of potential ways a court can minimize the risk to children or to a parent who is abused, including but not limited to prohibiting consumption of alcohol or controlled substances during or preceding the parenting time, requiring surrender of all firearms, prohibiting overnight parenting time, and limiting communication with the child or the parent who is abused.ⁱⁱⁱ When a court orders supervised visitation or exchange, it should be provided by a supervised visitation center using qualified, trained professionals in domestic abuse and operated in conformity with the Guiding Principles for Supervised Visitation and Safe Exchange developed by the U.S. Department of Justice. Courts should also engage with supervised visitation centers to ensure that courts receive reports in order to enforce or modify orders in the event of abusive behavior during the exchange or visitation.

However, where the use of professional supervised visitation services is not feasible or available, courts should require supervision by someone who can ensure the necessary safety conditions are met.

Use of Experts

This section details the qualifications which could be required of third-party custody evaluators and child custody/parenting time cases involving abuse. It calls for an evaluator

to be a mental health professional with certain training, skills, and expertise. However, to the extent that a jurisdiction continues using non-mental health professionals, such as guardians ad litem (GALs) or attorney evaluators, they must be competent in various areas, including language capacity, cultural competence, humility, responsiveness, and expertise in domestic abuse and family dynamics. Courts must also include in their orders for appointment of custody evaluators information about the uses or conditions that led to the need for evaluation and any other expectations, including that the evaluator screen for and assess any domestic abuse. Finally, non-mental health providers such as GALs or attorney evaluators may do information gathering and analysis, but they may not make specific custody or parenting time recommendations.

Alternative Dispute Resolution

This section governs the use of alternative dispute resolution (ADR) processes, such as mediation. ADR programs are required to implement policies and practices in four areas: mandatory screening for domestic abuse, including coercive control; informed and voluntary consent to participation by each party; the establishment of safety procedures; and the qualifications required for handling domestic abuse cases, including a minimum of 10 hours of training on domestic abuse and its effects, including trauma.

Relocation

Abused parents may need to flee from one place or jurisdiction to another in order to escape ongoing abuse. This section is the only section of new Chapter Four that is not limited in its applicability to cases involving domestic abuse. It is intended to remove unnecessary obstacles to relocation in cases involving domestic abuse while protecting the rights of noncustodial parents and ensuring that the move would be in the children's best interest. However, the section is limited to cases in which the child's custody is governed by the terms of an existing custody order and it only addresses relocation from one state to another.

This section allows a parent who must temporarily relocate with the child to be safe from domestic abuse to do so without providing advance notice to the abusive noncustodial parent. When a court considers the noncustodial parent's objections to the relocation, it must apply three presumptions: (1) a parent having physical primary custody has the right to change the child's residence unless the court finds that removal would, on balance, prejudice the rights and welfare of the child more than it benefits the child; (2) where the court finds that the relocation is needed in order to meet the needs of the parent who is abused to escape or recover from domestic abuse, it is presumed that the court will grant the request; and (3) where the court finds that the objecting parent has not significantly exercised court-ordered parenting time, it is presumed that the court shall approve the relocation plan.

When applying those presumptions to individual cases, the court must also consider: (1) whether the relocation will increase the physical or psychological well-being on the relocating parent or child; and (2) domestic abuse, regardless of whether the abuse was directed against the child, or the child was exposed to the abuse.

Modification and Enforcement

When a request to modify a custody or parenting time order includes an allegation of domestic abuse, this section requires courts to make the same analysis and findings regarding the requested modification would be in the best interest of the child as required in the initial custody and parenting time determination, using all the standards set forth in the best interest of the child provision.

In cases involving requests by abusive parents to remove restrictions (such as supervised exchange or visitation or a prohibition of overnight parenting time), this section provides additional guidance. Of particular significance is the requirement that an abusive parent has genuinely acknowledged past harm, has committed to avoiding it in the future, and has made the necessary changes to address the reasons for ordering the supervised visitation. In addition, a parent's compliance with the requirements for supervised exchanges or visitation does not, by itself, constitute evidence that they have made the necessary changes.

Conclusion

In summary, the newly revised Chapter 4 of the Model Code on Domestic and Family Violence provides invaluable guidance to advocates and policymakers, including state legislatures and supreme courts, in shaping and implementing changes to existing child custody and parenting time laws. The best interest of the child remains the overarching issue in these cases, but the new Model Code provisions are intended to ensure that the impact of domestic abuse on children and the abused parent and their safety are fully considered by family courts in making determinations of child custody and parenting time.

The issuance of revised Chapter 4 of the NCFJCJ's Model Code is especially timely because a growing number of state legislatures are facing an onslaught of new bills – usually sponsored by “fathers’ rights” groups that would create presumptions of equal custody and shared parenting in child custody cases. If enacted, these new laws would further endanger many domestic abuse victims and their children. The Model Code – which incorporates the legislative and policy recommendations of leading family and juvenile court judges across the country – is a powerful tool for advocates and policymakers fighting these battles.

Finally, Chapter Four of the Code is a valuable educational tool that provides extensive commentaries, additional resources, useful examples, and best practices. This article has highlighted many of the key provisions of revised Chapter 4, but readers should go directly to the Model Code provisions and commentaries to better understand the proposed statutory changes and their ramifications. To do so, go to:

<https://www.ncjfcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/>

A Call to Action

Publicize the information shared above. Whether within your state or nationwide. Use this information to educate your local news media, to encourage research into your state either by investigative news outlets or by students.

Investigate whether your state has statutes that protect children when their parents divorce or have custody proceedings. Work to educate your legislators as to the need for these statutes. Investigate and work to implement practices and statutes as recommended in the Model Code from the National Conference of Juvenile and Family Court Judges.

Please contact us with your findings. We would love to hear from someone from every state.

General Information on Family Courts

A clearinghouse of materials the committee has compiled can be found on the NOW Foundation website at this link, <http://now.org/now-foundation/crisis-in-family-courts/>. Resources | National Organization for Women (now.org) There are additional materials at the Chapters-only website on the NOW Inc. website.

The Family Law Advisory Committee's Brochure the Family Courts (Updated 2021) is available here: <https://now.org/wp-content/uploads/2021/07/NOW-Family-Law-Committee-Brochure-2021.pdf>

To reach the Family Law Committee, please email: famlaw@now.org

¹ The Supreme Court of Ohio, *Domestic Violence & Allocation of Parental Rights and Responsibilities* 6-7, at <https://www.supremecourt.ohio.gov/JCS/domesticViolence/publications/DVAllocationParentalRights.pdf>.

ⁱⁱ See Section 402 of the Model Code, at <https://www.ncifcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/>.

ⁱⁱⁱ See Section 404 of the Model Code, at <https://www.ncifcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/>.