From Awareness to Action

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Implementing Limits to Reunification Therapy: Is There a Way Forward for Canada?

ALLIANCE OF CANADIAN RESEARCH CENTRES ON GENDER-BASED VIOLENCE

Western
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Department of Justice Canada
Ministère de la Justice Canada

Implementing Limits to Reunification Therapy: Is There a Way Forward for Canada?

EXECUTIVE SUMMARY

This brief was developed as a resource and reference point for legislators, policymakers, legal professionals, and advocates in Canada who are considering legislative reforms to limit the use of reunification therapy in family court proceedings, particularly in cases involving family violence and parent-child-contact-problems. The brief outlines federal- and state-level laws implemented in the United States that illustrate how jurisdictions can prioritize children's safety during custody proceedings by placing strict limits on the use of reunification treatments, as well as by prohibiting practices that restrict or remove a child from their protective parent, enhancing judicial and court personnel training in family violence and ensuring that remediation of the child's resistance only occurs after perpetrators take accountability for their use of violence and demonstrate behavioural change. Legislation in this field is rapidly evolving and in the months to come, there will likely be other state laws with different approaches to address the complex issues surrounding parent-child-contact-problems after parental separation. The brief provides helpful frameworks for Canada to enhance protections for children. The enacted and pending legislation, as well as the tragic child homicide stories that have prompted these legal changes offer a snapshot of the ongoing efforts to ensure the well-being and safety of children caught in the crossfire of custody and parenting disputes.

INTRODUCTION

Some of the most challenging situations dealt with by family court are those in which a child resists or refuses contact with one of their parents and judges are asked to repair parent-child relationships through court orders and counselling. In more persistent or extreme situations, parenting evaluators may recommend that judges order reunification interventions. There are many issues that arise for courts and families when orders for reunification therapy are being considered. An earlier brief in this series entitled "Sober second thoughts about the benefits and limitations of reunification therapy" explored many of these issues, raising concerns about the use of reunification therapy without the consent of both parents and the involved children, in the absence of a thorough assessment of the reasons for a child's reluctance or resistance to contact, and in cases involving family violence (Jaffe et al., 2023).

There is general agreement that there are multiple contributors and explanations for parent-child contact problems including, but not limited to, child factors (such as age, temperament, special needs), parent factors (such as parenting style and capacity, mental health, beliefs and behaviours), sibling relationships, difficulties with a stepparent, and many more (Chester, 2022; Fidler & Bala, 2020). There is also general agreement that, in the context of family violence, children's resistance or refusal is better understood as realistic estrangement – in other words, a child might choose to refuse contact with a parent for understandable reasons, as a result of the impact of a parent's past abusive behaviours and/or due to a child's ongoing concerns about their safety or the safety of the parent who has been a victim of family violence. Realistic estrangement is distinct from parental alienation, which occurs in situations when one parent manipulates a child to reject the other parent without a justifiable reason.

When reunification therapy is ordered without a proper assessment — particularly when it is used in the context of family violence and a child's realistic estrangement from an abusive parent— there are many harms that can result. There is a large body of research showing that coercive control and domestic violence often extend past separation and that exposure to family violence (direct or indirect) at any point can have adverse effects on all domains of children's development (Artz et al., 2014). In instances where claims of violence and abuse are legitimate, forcing children into this therapeutic intervention can be potentially harmful and traumatizing (Dallam & Silberg, 2016; Jaffe et al., 2010; Mercer, 2019). Child physical safety is also a realistic concern. Although child homicides are rare, one of the most common reasons for father-child homicide is to take revenge against an ex-partner (Scott, 2014; 2020; Tsellou et al., 2023).

With a growing number of high-conflict separation cases involving conflicting claims of parental alienation and family violence (Bala et al., 2024; Chester, 2022; Kline Pruett et al., 2023), and an increasing number of personal anecdotes from children and young adults who had experienced significant psychological abuse from court-ordered intensive reunification treatments (Avalle et al, 2022; Martin, 2010; The Center for Investigative Reporting, 2019), there have been calls for governments worldwide to enact legislation that limit these harmful therapeutic practices (Alsalem, 2023). While Canada has yet to respond, the United States has taken action by implementing both federal and state-specific laws that limit the use of reunification therapy. This Brief provides a comprehensive description of the current (and pending) legislation that has been enacted in the United States to create guard rails on the use of reunification therapy. We provide this resource for those in Canada who may be considering putting forward or advocating for such legislative measures. The stories of children whose deaths have prompted these legislative changes, and for whom laws are often named, are interspersed. Links are provided to legislation that has been passed and details are provided.

REUNIFICATION THERAPY LEGISLATION IN THE UNITED STATES: A FEDERAL MANDATE FOR CHANGE

Each year, an estimated 58,000 children in the United States are court-ordered into unsupervised contact with an abusive parent (Silberg, 2008). The US Center for Judicial Excellence (2024) documents nearly 1000 child murders in the United States since 2008 committed by a divorcing or separating parent, more than 139 of which involved clearly reported system failures, "where safety concerns were ignored, and where there was… family court involvement prior to the death of a child" (p. 1). In March of 2022, the federal government recognized these issues and began to address them by enacting the "Keeping Children Safe from Family Violence Act," also known as "Kayden's Law," into the reauthorized Violence Against Women Act (34 U.S.C. § 10446(k)). This Act, developed in consultation with the National Family Violence Law Center at George Washington University and stakeholders, financially incentivizes states to adopt specific legislation, standards, and training that prioritizes children's safety in custody proceedings. States are encouraged to enact laws that limit the use of reunification treatments, ensure that those providing expert evidence on abuse are appropriately qualified, and implement enhanced training for judges and court personnel on family violence. As it relates to the purpose of this brief, Kayden's Law provides funding to states that implement child custody laws that:

1. Limit, in various ways, the use of reunification camps, programs, treatments, or therapies
2. Ensure a child cannot be restricted access to, or removed from, a protective parent to which they are bonded
3. Provide initial and continued education and training to judges and relevant court personnel on family violence
4. Require abusive parents to take accountability for their use of violence before protective parents are expected to engage in remediation of the child's resistance.

Beyond the scope of this brief, Kayden's Law also calls on states to develop legislation that would require courts to consider past evidence of abuse prior to making parenting orders and restrict expert testimony to qualified family violence and child abuse professionals.

THE STORY OF KAYDEN MARCUSO

Kayden's Law is named in memory of 7-year-old Kayden Mancuso, a girl from Bucks County, Pennsylvania, who was killed during court-ordered unsupervised parenting time with her father (National Safe Parents Coalition, n.d.). Over the course of a six-year long custody battle, Kayden's mother repeatedly warned the court that the father was dangerous and that she was fearful of him having unsupervised access with their child (Sherlock, 2019). Two months prior to Kayden's murder, the court was aware of and *acknowledged* that:

- The father had an extensive history of violence, including multiple assault charges,
- The mother had experienced IPV during their relationship, including strangulation and physical assault,
- The father had been banned from entering Kayden's school or having any contact with the staff after repeatedly threatening and harassing multiple teachers through emails and online school forums,
- The mother had been granted a three-year protection from abuse order against the father for threats and harassment,
- The father had been diagnosed with major depressive disorder and anxious distress, exhibited antisocial and narcissistic personality traits, and had endorsed feelings of hopelessness and suicidal ideation as determined by the court-ordered psychological evaluation,
- Kayden had experienced instances where her father screamed at her and witnessed her father fighting with her grandmother, abusing the family dog, and hitting himself in the face. She told the custody evaluator that she wanted to spend less time with her father,

- The father consistently "minimized and defended his actions and continually lack[ed] remorse or regret for his behaviors. [He did] not take responsibility for his conduct and maintain[ed] that his actions [were] always the result of provocations or otherwise caused by others" (2nd Amended Decision & Order, p. 5).[1]

Despite the custody evaluator recommending the father to mental health treatment prior to unsupervised access, the court allowed him unsupervised contact with Kayden, concluding that neither parent had committed any past or present physical child abuse, and that Kayden presented as a "happy kid" (2nd Amended Decision & Order, p. 5), who "did not appear to be afraid" (p. 3) of either parent during the custody evaluation process. On August 6, 2018, Kayden's father beat her to death with a dumbbell, placed a bag over her head, left a note of retribution on her body, and then committed suicide (Sherlock, 2019).

Over the last year and a half, eight states have fully, or partially, adopted Kayden's Law, and multiple additional states have pending legislation that has yet to pass. As outlined in Table 1, the majority of these states have prioritized passing laws that limit reunification therapy and/or enhance judicial training standards; fewer have implemented legislation that prohibits removing or restricting a child's access to their protective parent and having the abusive parent demonstrate accountability prior to remediation with a child as outlined in the Kayden's Law. This is a rapidly developing area of legislation and, by the time this brief is published, it is quite possible that additional states will have enacted changes and amendments made to legislation that has already been passed. As such, this table is simply a snapshot in time as of October 2024.

While some states have closely followed the language outlined in Kayden's Law, others have taken their own approach by altering, extending, or reducing the subject matter outlined in the federal requirements. These variations, in addition to Kayden's Law, are important to consider as they offer perspectives and promising strategies for drafting legislation in other countries, such as Canada, that increases the priority given to child safety in family court proceeding affecting the custody and care of children. Herein, we describe these variations as they relate to reunification therapy and child safety below.

[1] Documents relating to the Mancuso child custody case are publicly available and can be accessed here: https://www.dropbox.com/sh/3wt0ctdax39o0r8/AACS629JWdZHRzJ_V2MgIIGra?dl=0

Table 1. Enacted and Pending Legislation that Improves Children's Safety During Custody Proceedings:

State	Name of Legislation[a]	Date(s)	Contents of Legislation[b]			
			1	2	3	4
Colorado	HB 23-1178 Court Personnel and Domestic Violence Awareness	Signed and took immediate effect May 25, 2023	✓	✓	✓	✓
	HB 23-1108 Victim and Survivor Training for Judicial Personnel; companion bill to HB 23-1178	Signed and took immediate effect May 25, 2023			✓	
California	**Piqui's Law** (SB 331 Child custody: child abuse and safety)	Signed and took immediate effect October 13, 2023	✓		✓	
Tennessee	**Abrial's Law** (SB 722)	Signed April 28, 2023; took effect January 1, 2024			✓	
	HB 2760	Signed and took immediate effect April 23, 2024	✓	✓		
Arizona	SB 1372 Family reunification treatment; prohibitions	Signed and took immediate effect April 16, 2024	✓			
Utah	**Om's Law** (HB 272 Child Custody Proceedings Amendments)	Signed March 20, 2024; took effect May 1, 2024	✓	✓	✓	✓
Maryland	SB 17 Child Custody- Cases Involving Child Abuse or Domestic Violence- Training for Judges	Signed July 1, 2022; took effect two years later on July 1, 2024			✓	
New Hampshire	HB 306 Relative to prohibiting reunification therapy	Signed July 3, 2024; took effect July 1, 2024	✓			
Pennsylvania	**Kayden's Law** (SB 55 Preventing Abuse in Child Custody Proceedings)	Signed April 15, 2024; took effect August 13, 2024			✓	
New York	**Kyra's Law** (SB S3170C An act to amend the domestic relations law and the family court act)	Pending legislation; in Senate Judiciary Committee as of May 7, 2024	✓	✓	✓	✓
New Jersey	SB S2337 Implements child safety provisions in custody disputes	Pending legislation; in Senate Judiciary Committee as of January 29, 2024	✓	✓	✓	✓

Note: [a]*SB* = Senate Bill; *HB* = House Bill; [b]1 = Limits on reunification therapy, 2 = Prohibiting restriction/removal of protective parent, 3 = Enhanced education/training for judges and court personnel, 4 = Requires the abusive parent to take accountability prior to remediation.

1) Limiting the Use of Reunification Treatments

One of the initial challenges the US federal government has sought to rectify is the significant ambiguity surrounding the definition and limits on use of reunification therapy. In both research and clinical practice, there is no consensus on how to label, define, and carry out this therapeutic intervention. Terms like 'reunification therapy,' 'reintegration therapy,' and 'reconciliation therapy' are frequently used interchangeably (Baker et al., 2020; Martin, 2023). Kayden's Law addresses this problem by incorporating the term **'reunification treatment'** into federal legislation and defines it as *"a treatment or therapy aimed at reuniting or reestablishing a relationship between a child and an estranged or rejected parent or other family member of the child"* (34 U.S.C. § 10446(k)(1)(C)).

Significant concerns have also been raised about the lack of regulation involved in providing reunification therapy. Currently, no guidelines or standards of practice have been established for this therapeutic intervention, which leaves mental health professionals relatively unrestricted in defining the purpose, theoretical basis, goals, and practices of this therapy (Kleinman, 2017; Polak, 2017). To remedy these problems and enhance a child's protection during the custody process, Kayden's Law provides a framework to states on what legislative restrictions must be imposed on court-ordered reunification treatments. This law stipulates that:

> *During a child custody proceeding… a court may not order a reunification treatment:*
> *a. …Unless there is generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment,*
> *b. …That is predicated on cutting off a child from a parent with whom the child is bonded or to whom the child is attached (34 U.S.C. § 10446(k)(3)(B)(iii)-(iv)).*

At the state level, three different approaches have been taken to implementing this legislation. In the first approach, Colorado and Utah have adopted legislation that most closely mirrors that of Kayden's Law, albeit with a few adjustments. Specifically, both states have narrowed restrictions on reunification treatments to apply specifically in custody proceedings that involve claims or suspicions of domestic violence and child abuse. For example, Colorado states that this legislation is to apply where *"a claim of domestic violence or child abuse, including child sexual abuse, has been made to the court, or the court has reason to believe that a party has committed domestic violence or child abuse, including child sexual abuse"* (Colo. Rev. Stat. § 14-10-127.5(3)(b)). Expanding upon this idea, Utah states that reunification treatments limits shall be imposed *"in custody proceedings where the court has reasonable cause to believe that there is domestic violence, child abuse,* ***or an ongoing risk to the child****"* (Utah Code § 30-3-41(5)).

Utah has also included an additional measure for a reunification treatment to be deemed acceptable, stating that it must *"not [be] associated with causing harm to a child"* (Utah Code § 30-3-41(5)(a)(ii)). Meanwhile, both states have expanded on the role of the preferred parent to ensure that, in addition to a child's bond and attachment with that parent, reunification treatments cannot cut off a child from a *"protective"* parent (Colo. Rev. Stat. § 14-10-127.5(3)(b)(IV)) *"who is competent [and] not physically or sexually abusive"* (Colo. Rev. Stat. § 14-10-127.5(2)(b); Utah Code § 30-3-41(5)(b)(i)).

Rather than rely on a more general definition of reunification treatment, California legislators have taken the approach of specifically prohibiting many of the controversial and concerning practices used in intensive reunification treatments. These restrictions have been enacted in Piqui's Law, named in honour of Aramazd Andressian Jr. Under this new law, family courts cannot order *"family reunification treatments, programs, or services including, but not limited to camps, workshops, therapeutic vacations, or educational programs"* that result in or require:

1. *A no-contact order.*
2. *An overnight, out-of-state, or multiday stay.*
3. *A transfer of physical or legal custody of the child.*
4. *The use of private youth transporters or private transportation agents engaged in the use of force, threat of force, physical obstruction, acutely distressing circumstances, or circumstances that place the safety of the child at risk.*
5. *The use of threats of physical force, undue coercion, verbal abuse, isolation from the child's family, community, or other sources of support, or other acutely distressing circumstances* (Cal. Fam. Code § 3193(a)).

This approach has been adopted and enacted verbatim in both Arizona and New Hampshire. Arizona, however, has added one additional clause: a family court can order a family reunification treatment if *"both parents consent"* (Ariz. Rev. Stat. § 25-418(A)).

THE STORY OF ARAMAZD "PIQUI" ANDRESSIAN JR.

Piqui's Law is named in honour of Aramazd Andressian Jr., a 5-year-old boy affectionately called "Piqui," from South Pasadena, California, who was murdered by his father after a trip to Disneyland in April 2017, in an assumed act of revenge against the child's mother (Santa Cruz, 2017). One year earlier, Piqui's mother had filed for divorce and sole custody of their child, claiming that the father was an abusive man, who had a gambling problem and was addicted to prescription medications (Chow & Chambers, 2023). In September 2016, the father fabricated a false claim of child sexual abuse against the child's mother in an attempt to gain full custody and compromise her job. He claimed that she had a boyfriend, and the boyfriend's son had molested the child (Gonzales & Baer, 2017). While Piqui initially corroborated this story with a child psychologist and Department of Children and Family Services social worker, he later told the social worker that this was a lie, there was no boyfriend or abuse, and his father had forced him to tell that story (Gonzales & Baer, 2017).

Subsequently, Piqui's mother filed for a domestic violence restraining order against the child's father, claiming a "series of unusual and disturbing events" (Gonzales & Baer, 2017). In addition to the false claim of child abuse, she told the courts about a conversation with Piqui where he said his father "tries to hurt mommy so she can go to the hospital, so he can have me," and also that he overheard his father say his grandma "needed to go be with the angels because she didn't belong here anymore" (Gonzales & Baer, 2017).

Despite the child's mother's expressed concerns to the court that her husband was using Piqui "as a weapon in this matter to hurt" her (Gonzales & Baer, 2017), the judge denied her request for a domestic violence restraining order and for sole custody. Instead, on April 13, 2017, the judge made a final ruling of joint custody and extended the previous alternating cycle of physical custody from two days to one week. The father was allotted the first week of this new custody agreement, which allowed him to take Piqui on a vacation to Disneyland (Gonzales & Baer, 2017). When the boy and his father failed to show up for the exchange of custody on April 22, the mother reported her son as missing. On this same day, the father was found in a park without his child, unconscious from taking prescription pills, and his vehicle was doused in gasoline (Santa Cruz, 2017). While he originally claimed to not know where his son was, he confessed more than two months later that he had smothered Piqui with a sweatshirt while he was sleeping. After sharing the location of his son's body, Piqui was found on June 30, under a tree in a forest (Santa Cruz, 2017).

Piqui's senseless death has brought attention to the numerous gaps that exist in protecting children from harm and violence during the separation process. The social workers who investigated the father's false allegations of child sexual abuse failed to recognize and identify this behaviour as an act of coercive control. Additionally, the mother's claims of abuse were dismissed due to a personal bias, which was later revealed in one social worker's report where he wrote that "the mother [was] more difficult than the father to deal with" (City News Service, 2017). Additionally, the family court system ignored the mother's claims of violence and pleas to safeguard the child, and instead prioritized the father's relationship with the child.

By contrast, Tennessee has interpreted the reunification treatment specifications outlined by the federal legislation in a somewhat less restrictive manner, affording the courts more discretionary power in determining when children should be ordered into reunification with a rejected parent. This legislation, known as Abrial's Law, states that:

> *The court shall not order reunification treatment to reestablish a relationship with a parent or caregiver if a court has made findings [of violence and abuse] against the parent or caregiver… unless the court finds that reunification efforts are in the best interest of the child* (Tenn. Code Ann. § 36-6-NEW(b)).

Importantly though, Abrial's Law ensures that *"an order of reunification must not cut off contact with a parent who is non-abusive"* (Tenn. Code Ann. § 36-6-NEW(b)), and prohibits reunification treatments being implemented in instances of family violence. Specifically, Abrial's Law stipulates that the family court should not order children into reunification treatments with a rejected parent when that parent or caregiver has been charged with an offense outlined under § 36-6-406(a) or (c) or § 37-1-102(b)(27) of the Tennessee Code Annotated, which includes willful abandonment, physical, sexual, and emotional abuse, and/or severe child abuse, and sexual offending (Tenn. Code Ann. § 36-6-NEW(b)).

2) Prohibiting Practices that Restrict or Remove a Child from Their Preferred, Protective Parent

The second provision in Kayden's Law is to ensure a child cannot be restricted access to, or removed from, a non-abusing protective parent to whom they are bonded. The most extreme of these measures is custody reversal. Although not all reunification treatments include restricted contact between a child and a preferred parent, there are several forms of reunification treatment that involve court-ordered prohibition of contact between the child and the preferred parent for at least 90 days, with the potential for extended aftercare treatment which limits the preferred parent's contact. Reunification treatment can also be accompanied by an order to reverse custody, putting the child in the care of the rejected parent. There is research to suggest a gendered impact of such measures; where allegations of domestic violence, and especially cross-allegations of domestic violence and parental alienation, increase the likelihood of reversal of custody from a mother alleging domestic violence to a father alleging parental alienation (Meier, 2020). Significant concerns have been raised about the harmful effects of reversing custody of a child from a protective parent to a potentially abuse parent, especially for the purposes of reunification (Avalle et al., 2022; Chester, 2022; Silberg & Dallam, 2019). Researchers have noted that children who are forced into reunification camps or treatments that hold them against their will, while pressuring them to reject their preferred parent, have experienced significant trauma and psychological abuse (Avalle et al., 2022; Dallam & Silberg, 2016). Additionally, children who are obligated, through a custody reversal, to live full-time with an abusive parent have experienced detrimental impacts to their mental health, including depression, anxiety, post-traumatic stress disorder, self-harming behaviours, and suicidal ideation (Dallam & Silberg, 2016; Silberg & Dallam, 2019). To reduce the potential of harm to a child during a custody proceeding, the federal government has instructed through Kayden's Law that states enact legislation that ensures:

> *A court may not, solely in order to improve a deficient relationship with the other parent of a child, remove the child from a parent or litigating party…*[and/or] *restrict contact between the child and a parent or litigating party—*
> *I. who is competent, protective, and not physically or sexually abusive; and*
> *II. with whom the child is bonded or to whom the child is attached* (34 U.S.C. § 10446(k)(3)(B)(i)-(ii)).

To date, only three states – Colorado, Utah, and Tennessee – have successfully implemented this aspect of the law. In one approach, Colorado and Utah have elected to retain language that is virtually identical to that of the federal legislation; however, adjustments have been made to the scope of this law's application during a child custody proceeding. Similar to the legislation for limits on reunification treatments, Colorado has restricted this law to cases that involve allegations or suspicions of domestic violence and child abuse (Colo. Rev. Stat. § 14-10-127.5(3)(b)). Conversely, Utah has retained the general approach used in Kayden's Law that this legislation applies *"as part of a child custody proceeding,"* but extends further by prohibiting custody reversals *"including in the context of reunification treatment"* (Utah Code § 30-3-41(4)). In doing this, Utah has clarified and ensured that at no point in time during a custody proceeding, regardless of whether violence and/or abuse is suspected or alleged, can a child be separated from a safe parent to whom they are bonded.

In a second interpretation of this child custody law, Tennessee has omitted language that relates to the protective, preferred parent and has adapted the legislation to apply to cases that involve substantiated claims of child abuse – though notably not child exposure to domestic violence – and where courts have discretion in restoring parenting time between an abusive parent and child if they feel the child is no longer at risk of harm. Abrial's Law stipulates that:

> *In any proceeding in which a court makes an initial custody or custody modification determination after a court has made findings [of willful abandonment; physical, sexual, and/or emotional abuse; severe child abuse; and/or sexual offending] against a parent or caregiver…the court shall not issue an order restoring parenting time of the child to the parent or caregiver unless the court finds that the child will not be subject to further abuse or harm. The court shall file written findings of fact that are the basis of its conclusions on that issue in the order addressing parenting time* (Tenn. Code Ann. § 36-6-NEW(c)).

This new legislation may serve as an additional barrier to protect a child from being forced into contact with an abusive parent; however, it is important to recognize that the successful application of this law relies on the courts competency in assessing risk of further abuse or harm.

While all currently enacted legislation has avoided any mention of parental alienation, likely due to the controversy and polarity that exists around the legitimacy of this concept, should Kyra's Law in New York pass and take effect this would drastically change. Kyra's Law would be the first piece of legislation that takes a stance on parental alienation, limiting its validity and impact during child custody proceedings by stating that for parents who bring forth *"credible allegations of incidents or threats of domestic violence, child abuse or child neglect"* during a custody proceeding:

> *The court shall not find that the party who has made such allegations has alienated the child against the other party or failed to support the child's relationship with the other party* (N.Y. Legis. S, 2023 (§4)(4)(A)).

Kyra's Law, which uses similar language to that of Pennsylvania's Kayden's Law, would also specify, more generally, that:

> *The court shall not presume that a child's reluctance to interact with a party was caused by the other party, nor shall a party be given custody for the purpose of improving a relationship between the child and such party or in an attempt to address the child's reluctance to interact with such party* (N.Y. Legis. S, 2023 (§4)(4)(B)).

THE STORY OF KYRA FRANCHETTI

Kyra's Law is named after 28-month-old Kyra Franchetti, from Long Island, New York, who was murdered by her father in 2016, only a few days after the family court judge had commented that the case was "not a life-or-death situation" (Kyra's Champions, n.d., para. 3). Kyra's mother took proactive steps to safeguard her child from harm by leaving the emotionally and verbally abusive relationship with Kyra's father while she was pregnant (Kyra's Champions, n.d.). Nevertheless, after she was born, ensuring Kyra's safety became far more difficult as the father's requests for custody were supported by the court despite the mother's concerns about his abusive behaviour.

In the two years of custody proceedings that followed, Kyra's mother repeatedly warned the courts that her ex-partner was dangerous, angry, and suicidal, and that she feared for

her child's safety (Kyra's Champions, n.d.). However, when she expressed concerns to the court about her ex-partner purchasing two guns (CBS New York, 2021), as well as recent incidences where he had stalked, harassed, and threatened her, the judge scolded her and told her to "grow up" (Young, 2023, para. 6). Similarly, when Child Protective Services noted that the father exhibited "extreme anger and rage issues, and an inability to care for [his child]," the judge proceeded to label the case as "low risk" (Young, 2023, para. 7).

Months prior to Kyra's murder, the judge followed the recommendations of the forensic custody evaluator and ordered joint custody of the child. Despite hearing from eyewitnesses and receiving documented evidence of the father's abuse, the custody evaluator prioritized the co-parenting approach, stating that "a father should always play a role in a child's life" (Young, 2023, para. 8). On July 27, 2016, Kyra was murdered in a homicide-suicide where her father fatally shot her twice in the back, before setting fire to his house, and then turning the gun on himself (NBC Washington, 2016).

3) Enhancing Education and Training Standards in Child Custody Proceedings

A third component of the US federal government's legislation is training and education in family violence and child abuse. Given that custody outcomes are significantly influenced by a judge's experiences and training, and a family court professional's expertise in providing testimony (Chester, 2022), when either party lacks specialized training in domestic violence and child abuse, family law professionals, including lawyers, judges, and court-appointed professionals, may fail to recognize and identify the dynamics of family violence, the risk factors for harm, and the potentially valid reasons for why a child is resisting contact with a parent (Chester, 2022; Milchman, 2017).

To counter this, Kayden's Law has called for states to implement enhanced training standards that follow current, *"evidence-based and peer-reviewed research by recognized experts in…abuse"* (34 U.S.C. § 10446(k)(5)), and are *"culturally sensitive and appropriate for diverse communities"* (34 U.S.C. § 10446(k)(5)(E)(ii)(II)). These education and training programs are to be designed for *"judges and magistrates who hear child custody proceedings and other relevant court personnel involved in child custody proceedings, including guardians ad litem, best interest attorneys, counsel for children, custody evaluators, masters, and mediators"* (34 U.S.C. § 10446(k)(3)). The content of the training is to focus:

> *…solely on domestic and sexual violence and child abuse, including—*
> *(i) child sexual abuse;*
> *(ii) physical abuse;*
> *(iii) emotional abuse;*
> *(iv) coercive control;*
> *(v) implicit and explicit bias, including biases relating to parents with disabilities;*
> *(vi) trauma;*
> *(vii) long- and short-term impacts of domestic violence and child abuse on children; and*
> *(viii) victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence* (34 U.S.C. § 10446(k)(5)(A)(i)-(viii)).

This legislation is two-fold, in that it outlines specific content matter that should be incorporated into training and education programs, but also recommends a multitude of individuals in varying roles within the family court system that should receive this training. While certain states like California, Pennsylvania, and Utah were able to pass training legislation in family violence for all the court-related entities listed in Kayden's Law through in one single bill, others had to take a different approach. Colorado elected to create two separate bills – HB 23-1108 for judges and magistrates and HB 23-1178 for other court personnel – due to concerns over separations of power. Maryland has taken a similar approach, with SB 17 being enacted for judicial personnel; however, SB 365, which mandates training for child custody evaluators, is still pending. Conversely, Tennessee has chosen to enact required training in family violence solely for judges.

Although some states, like Colorado and Utah, have elected to follow and implement the exact training requirements outlined by Kayden's Law, other states have expanded upon, or reinterpreted, the federal training requirements to include additional content that indirectly relates to and somewhat addresses these issues. Protective parents frequently face significant challenges in demonstrating to the courts that family violence has occurred, especially if such incidents have not been reported and prosecuted criminally. To rectify this, California and Maryland have established training measures that address the invisibility of family violence and strengthen the protective parents' and children's voices, ensuring that training includes:

a. *That child abuse and child sexual abuse may have occurred even without an indicated finding of abuse, any physical evidence of abuse, or a verbal disclosure of abuse by the child* (Md. Code, Fam. Law § 9-101.3(b)(3)(iii));
b. *That domestic violence can occur without a party seeking or obtaining a protective order or without documented evidence of abuse* (Md. Code, Fam. Law § 9-101.3(b)(6); see also Cal. Gov. Code § 68555(b)(2)(I)).

Pennsylvania has further added to training requirements for court-related professionals by establishing an additional list of factors that must be considered when making custody decisions. One of the factors included on this list concerns *"situations when one party attempts to turn a child against another party"* (42 Pa.C.S.A. § 1908 (b)), with the associated training in cases that involve abuse:

> *A party's reasonable concerns for the safety of the child and the party's reasonable efforts to protect the child shall not be considered attempts to turn the child against the other party. A child's deficient or negative relationship with a party shall not be presumed to be caused by the other party* (23 Pa.C.S.A. § 5328(a)(8)).

California also adds to the list of training requirements the topic of *"the detriment to children of residing with a person who perpetrates domestic violence"* (Cal. Gov. Code § 68555(b)(2)(H)) and the Maryland legislation specifies that judges receive education on *"best practices to ensure that reasonable and feasible protective measures are taken to reduce the risk of traumatizing or retraumatizing a child through the court process"* (Md. Code, Fam. Law § 9-101.3(b)(9)).

Despite the prevalence of cross-claims of family violence and parental alienation, training is currently not legislated on this topic specifically, rather Kayden's Law takes the approach of training proactively relying on evidence-based research on abuse and trauma. Maryland sought to provide training on the "origins" and "inappropriateness" of parental alienation during child custody proceedings, however, this was

removed during the bill passage process (see SB 17, Amendment 1, 993923). If New York successfully passes Kyra's Law without any revisions to the current bill, it would be the first piece of legislation that frames training for the courts explicitly through the lens of rejecting parental alienation claims, proposing training on:

1. *The dangers and inadmissibility of non-scientific theories, such as parental alienation, parental alienation syndrome, parental gatekeeping, or any other theory that is not supported by scientific research and not generally accepted by the scientific community;*
2. *The distinction between inappropriate interference with the child parent relationship versus protective parenting in the context of domestic violence or child abuse and neglect* (N.Y. Legis. S, 2023 (§4)(6)(A)(4)-(5)).

Other states have refrained from outlining a specific set of criteria/topics for training and instead relied on general wording. Tennessee, for example, in Abrial's Law simply specifies that judges be trained on *"any relevant topic addressing the best interest of the victim"* (Tenn. Code Ann. § 36-6-702(b)(I)).

THE STORY BEHIND ABRIAL'S LAW

Rather than referencing one specific child homicide case, *Abrial's Law* is named to represent and honour the thousands of children who have suffered abuse and neglect at the hands of a parent (Duncan Massey & Alexander, 2024). In 2023 alone, more than 66,000 cases of child abuse were reported by The Sycamore Institute in Tennessee (The Annie E. Casey Foundation Kids Count Data Center, 2023). The name "Abrial" means protected and secure, which reflects Tennessee's mission to fix the shortcomings within the child custody framework, and provide children with enhanced legal protections that safeguard them against physical, sexual, and emotional abuse (Duncan Massey & Alexander, 2024).

Abrial's Law responds to cases where the courts have compromised children's safety in custody decisions due to legal loopholes and insufficient training on family violence and child abuse. In one instance, a court overturned a child's no-contact order with her abusive father and replaced it with an order for reunification therapy because the father's abuse history with the entirety of the family was not allowed as a factor in the custody decision-making process. The courts justified reintegrating the child into her father's home, even though she had been diagnosed with PTSD from her father's prior severe abuse, by citing the lack of restrictions on her younger sister's visits to the father (Duncan Massey & Alexander, 2024). In another instance, a court ordered an abusive father to have sole custody of the children, and imposed a five-week no-contact period on the children with their non-abusive mother, despite 25 investigations by the Department of Children's Services and five forensic interviews verifying that the father had sexually abused the children (Duncan Massey & Alexander, 2024).

4) Ensuring Parents Who Perpetrate Violence Take Accountability Prior to Protective Parents Engaging in Remediation of the Child's Resistance

For children to recover from exposure to violence and abuse, researchers and family violence experts repeated stress that children require, amongst other things, a sense of physical and emotional safety, a strong bond with the non-abusive parent and their siblings, and that contact with the abusive parent only occurs when it is safe and when the child is ready (Bancroft & Silverman, 2002). As such, when a child is resisting contact with the abusive parent, intervention must start with addressing and remediating the abuser's conduct (Jaffe et al., 2023). It is essential that courts order assessments on the perpetrator's willingness and capacity to change their behaviour, including that the abusive parent:

- Makes a full disclosure of their history of the abuse, and overcomes denial and minimization of their use of violence
- Recognizes that their abusive behaviour is unacceptable, and their past behaviour is not justifiable
- Accepts full responsibility for their past abusive behaviour, and recognizes that perpetrating abuse is a choice
- Shows empathy for the impact of their abuse on their children and the other parent
- Develops respectful behaviours and attitudes towards their children and the other parent
- Makes amends and takes accountability for their use of violence, such that their children and the other parent feel physically, emotionally, and psychologically safe (Bancroft & Silverman, 2002).

Unfortunately, when court-related professionals lack competency in the complex dynamics of family violence, and concurrent claims of abuse and parental alienation are raised, the prevailing belief that it is in the child's best interests to have a relationship with both parents supersedes addressing the possibility of violence and abuse, as well as ensuring the needs of the child (Champion et al., 2022; Chester, 2022). As a result, the requirements outlined above are ignored, and children are court-ordered into reunification therapy with the abusive parent. Making such orders even more concerning and potentially harmful are reunification treatment programs that position the rejected parent as the "victim," and place responsibility-taking on the protective, "alienating" parent and child for the harm they are causing to the rejected parent (see Gottlieb, 2020).

To guard against these kinds of harmful narratives and enhance protections for both the child and non-abusive parent, the federal government has stipulated in Kayden's Law that states must create legislation that ensures:

> *Any order to remediate the resistance of a child to have contact with a violent or abusive parent primarily addresses the behavior of that parent or the contributions of that parent to the resistance of the child before ordering the other parent of the child to take steps to potentially improve the relationship of the child with the parent with whom the child resists contact* (34 U.S.C. § 10446(k)(3)(B)(v)).

Colorado and Utah have incorporated this law into their child custody legislation, specifically in the context of suspected and substantiated claims of domestic violence and child abuse; however, each has uniquely expanded upon either the role of the abusive parent, and/or implemented an additional protective measure for the child. First, Colorado has elaborated on the role of the abusive parent, stating that:

> *If a court issues an order to remediate the resistance of a child to have contact with an accused party, the order must primarily address the behavior of the accused party, who shall accept responsibility for the accused party's actions that negatively affected the accused party's relationship with the child* (Colo. Rev. Stat. § 14-10-127.5(3)(c)).

This approach varies from the federal legislation in that it forces the abusive parent to take accountability for how they have negatively impacted the child. Adapting the portion of Kayden's Law that says the order will address *"the behavior of that parent **or** the contributions of that parent," and changing it to "the order **must** primarily address the behavior of the accused party, **who** shall accept responsibility for [their] actions,"* removes the option and makes the abusive parent's taking responsibility compulsory.

Colorado has also established criteria by which the court should assess whether an abusive parent that has taken sufficient responsibility is ready for reunification therapy, requiring that:

> *A mental health professional approved by the domestic violence offender management board shall verify the accused party's behavior before the court orders a protective party to take steps to improve the relationship with the accused party* (Colo. Rev. Stat. § 14-10-127.5(3)(c)).

It is important to note that while this additional step in verifying the abusive parent's behaviour prior to ordering remediation potentially adds an additional layer of protection for the child, it has also subtly changed the degree of co-operation required by the non-abusive parent. If the mental health professional feels that the abusive parent has taken sufficient responsibility for their behaviours, the state legislation requires that the non-abusive parent will *"take steps to improve,"* rather than *"**potentially** improve"* the relationship of the child with the abusive parent, which was originally stated in Kayden's Law.

Utah has also adapted the federal legislation to include an additional measure that potentially enhances the protection and well-being of the child during a court-imposed ruling for remediation of the relationship. Rather than having a mental health professional verify the abusive parent's behaviour prior to ordering remediation, Utah has extended the role of the non-abusive parent, with whom the child is bonded, providing that:

> *Any order…that requires the parent to take steps to potentially improve the minor child's relationship with a violent or abusive parent, shall:*
> *I. prioritize the minor child's physical and psychological safety and needs; and*
> *II. be narrowly tailored to address specific behavior* (Utah Code § 30-3-41(5)(d)(i)-(ii)).

Other states have been silent on the issue of responsibility of the accused party and on how such responsibility might be assessed.

NEXT STEPS: ENSURING CHILDREN HAVE A VOICE

Although the federal government has incentivized States to enact new laws and standards that prioritize a child's safety and well-being in custody proceedings, they suggest that Kayden's Law is rather a template, or a key starting point, for construction, and *"additional protective provisions are encouraged"* (34 U.S.C. § 10446(k)(8)). As such, while the current measures outlined above address some of the controversial issues and problems that affect children involved in custody disputes with co-occurring family violence and abuse, a key factor that is missing from consideration, but requires inclusion, is the voice of the child.

The United Nations Conventions on the Rights of the Child (1989) *recognizes children as competent actors that have a right to participate and be heard in legal proceedings that affect them*. Although not ubiquitous, a requirement to consider children's preferences is often included as a factor to consider in decisions about parenting time and decision-making. Section 16(2) of Canada's *Divorce Act* specifies that when considering the best interest factors, the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being, including consideration of several factors, one of which is "the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained." An earlier Family Violence, Family Law Brief written by the Honourable Donna Martinson and the Honourable Judge Rose Raven (2021), entitled "Implementing Children's Participation Rights in All Family Court Cases," provides further discussion of the value and need to include children's voice as part of family law matters, judicial responsibilities under the UN convention and Canadian legislation, as well as practical guidelines on how judges might obtain and factor in children's views and preferences.

Despite these provisions, researchers and advocates for children highlight concerns that, in many cases, family courts still fail to give children the opportunity to share their views, forcing them to fight to be heard, while decisions are often made for and about them without the judge knowing their perspective (Chester, 2022). This issue arises from two prevailing assumptions in the family law system. First, children are presumed to lack the maturity and competency to make informed decisions about their best interests (Holt, 2018). Second, involving children in the decision-making process is believed to put them at risk by compromising their innocence and undermining their "right to remain as children" (Holt, 2018, p. 462); Consequently, children's voices are only selectively considered – heard when they seek contact, but disregarded if they express opposition to contact, with the rationale being age and maturity, as if no other reason could explain their preference (Harrison, 2008; Holt, 2011).

The case of Om Moses Gandhi in Utah exemplified this. His mother fought for more than 14 years to have the court recognize the dangers her children faced each time they were forced into contact with their father. Through this process, Om perspectives and wishes were not heard by the court. Consequently, Utah's legislation, named after Om, prioritizes the best interests of the child and includes specific statements about how a child's preferences might be heard and factored into parenting arrangement decisions (Utah Code § 30-3-10(2)(p)). Further to this, Utah has also established a loose framework for the requirements and limitations to incorporating the child's voice, specifying that:

a. *A minor child may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the minor child be heard and there is no other reasonable method to present the minor child.*
b. *(i)The court may inquire of the minor child's and take into consideration the minor child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the minor child's custody or parent-time otherwise.*
   (ii)The desires of a minor child 14 years old or older shall be given added weight, but is not the single controlling factor.
c. *(i) If an interview with a minor child is conducted by the court…the interview shall be conducted by the judge in camera.*
   (ii)The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with a minor child is the only method to ascertain the minor child's desires regarding custody (Utah Code § 30-3-10(5)(a)-(c)).

Colorado, the first state to adopt the federal Kayden's Law provisions after Congressional enactment in 2022, has in 2024 moved to also expand the role of the voice of the child by enacting HB 24-135, providing that:

> *If allegations of domestic violence, child abuse or neglect, or child sexual abuse have been made, the court shall give strong consideration to a child's stated preference made to the court, child and family investigator, evaluator, or the child's legal advocate, if the stated preference is consistent with the paramount consideration given to the child's safety and the physical, mental, and emotional conditions and needs of the child* (Colo. Rev. Stat. § 14-10-127.5(3.5)).

Although these provisions still provide judges with a good deal of discretion as to whether, when, and how to hear the perspectives of children, they represent an important first step forward in the US for ensuring that children's experiences and opinions are considered in the parenting arrangement process. As this legislation is relatively new, it will be interesting to see if other states and the federal government adopt similar measures to incorporate the children's voice, and whether making these specific provisions has the intended effect of promoting more access to children's views and preferences.

THE STORY OF OM MOSES GANDHI

Om's Law is named after 16-year-old Om Moses Gandhi, an adolescent boy from Salt Lake City, Utah, who was murdered the day before Mother's Day in 2023, after enduring a lifetime of violence and abuse at the hands of his father ("Om's Law," n.d.). For more than 14 years, Om's mother fought for sole custody of Om and his sister. She provided law enforcement and the courts with extensive evidence of the father's physical and sexual violence, use of coercive control, threats, and history of substance use ("Om's Law," n.d.). Om's father was a certified neuropsychologist and psychedelic therapist, who had the means to access a team of experts that he used to aggressively litigate, whereas Om's mother worked as a midwife and frequently had no choice but to appear self-represented (Squires, 2024).

Om's mother filed for divorce in 2009, however, Om's father's manipulation of the court process, counter allegations, and the resulting extensive child custody disputes resulted in the separation not being finalized until 2014 (Reavy, 2023). He also created an environment of fear. Despite over 40 reports being filed against the father in several different law enforcement agencies, by multiple individuals, no criminal charges were ever laid (Johns & Brugger, 2023). When Om and his sister repeatedly disclosed to the courts several instances where their father had physically and sexually abused them, court-ordered professionals were scared to intervene out of fear for the father's retaliation (Moses, 2024). In two such instances, a therapist had to retain legal counsel after the father threatened to have their license revoked, and a custody evaluator asked for relief from the court after dealing with his inappropriate behaviour and demands (Moses, 2024).

This case involved three custody evaluations. The first of these, completed by a custody evaluator who had no experience in domestic violence, child abuse, or trauma, resulted

in an order of reunification therapy, despite the expressed wishes of the children to stay with their mother (Moses, 2024). These treatments were provided by a parent coordinator who also lacked training or experience in family violence or child abuse, and who quickly became aligned with the father (Moses, 2024). In 2022, a second custody evaluation resulted in the courts issuing a temporary order for the children to be separated from each other. Om was placed in the custody of his father (Moses, 2024). Throughout the litigation, even as a young child, Om wanted a chance to speak to the court. He was never provided with this opportunity (Arnold, 2024).

In 2023, an unannounced third custody evaluation recommended that both children be returned to their mother, who would have sole custody, however, the court failed to ensure that the necessary protections for Om were put in place prior to making this ruling (Moses, 2024). In the days leading up to Om being returned to his mother's care, the father brought the child to his office complex where he fatally shot his son twice in the back and once in the face, and then committed suicide (Moses, 2024).

CONCLUSION

This brief serves as an important resource and reference point for legislators, policymakers, legal professionals, and advocates in Canada who are considering legislative reforms to limit the use of reunification therapy in family court proceedings, particularly in cases involving family violence and parent-child-contact-problems. The federal- and state-level laws implemented in the United States illustrate how jurisdictions can prioritize children's safety during custody proceedings by placing strict limits on the use of reunification treatments, as well as by prohibiting practices that restrict or remove a child from their protective parent, enhancing judicial and court personnel training in family violence, and ensuring remediation of the child's resistance only occurs after perpetrators demonstrate behavioural change through taking accountability for their use of violence. Legislation in this field is rapidly evolving and in the months to come, there will likely be other state laws with different approaches to address the complex issues surrounding parent-child-contact-problems where there has been family violence. It is useful for Canadian stakeholders to continue to follow and reflect on these developments and consider how similar frameworks might enhance protections for children. By providing insights into the enacted and pending legislation, as well as the tragic child homicide stories that have prompted these legal changes, this document offers a snapshot of the ongoing efforts to ensure the well-being and safety of children caught in the crossfire of custody disputes.

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