

8342--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

December 27, 2013

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Introduced by M. of A. WEINSTEIN, WEPRIN -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, BRONSON, CLARK, COOK, FARRELL, GLICK, JAFFEE, MARKEY, MILLMAN, OTIS, SEPULVEDA, SKARTADOS -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law and the family court act, in relation to child custody forensic reports

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 70 of the domestic relations law is amended by  
2     adding a new subdivision (c) to read as follows:  
3     (C) COURT ORDERED FORENSIC EVALUATIONS IN PROCEEDINGS INVOLVING CHILD  
4     CUSTODY AND VISITATION. WHERE A COURT ORDER IS ISSUED FOR AN EVALUATION  
5     OF THE PARTIES OR A CHILD BY A FORENSIC MENTAL HEALTH PROFESSIONAL OR  
6     ANY OTHER PERSON, BOTH OF WHOM SHALL BE CONSIDERED "COURT ORDERED EVALU-  
7     ATORS" FOR PURPOSES OF THIS SUBDIVISION, APPOINTED BY THE COURT TO  
8     ASSIST WITH THE DETERMINATION OF CHILD CUSTODY OR VISITATION PURSUANT TO  
9     THIS ARTICLE, FOR PURPOSES OF SUCH COURT ORDERED FORENSIC EVALUATIONS:  
10    (1) ANY REPORT OR EVALUATION PREPARED BY THE COURT ORDERED EVALUATOR,  
11    TO BE KNOWN AS A "FORENSIC REPORT" FOR THE PURPOSES OF THIS SUBDIVISION,  
12    SHALL BE CONFIDENTIAL AND KEPT UNDER SEAL EXCEPT THAT, ALL PARTIES,  
13    THEIR ATTORNEYS AND THE ATTORNEY FOR THE CHILD SHALL HAVE A RIGHT TO  
14    RECEIVE A COPY OF ANY SUCH FORENSIC REPORT UPON RECEIPT OF SUCH A REPORT  
15    BY THE COURT, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE  
16    HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES. PROVIDED, HOWEVER, IN  
17    NO EVENT SHALL A PARTY OR HIS OR HER COUNSEL BE PREVENTED FROM ACCESS TO  
18    OR REVIEW OF A FORENSIC REPORT IN ADVANCE OF AND DURING TRIAL. ANY  
19    CONDITIONS OR LIMITATIONS IMPOSED BY THE COURT PURSUANT TO THIS SUBDIVI-  
20    SION RELATING TO DISCLOSURE OF THE FORENSIC REPORT SHALL ACCOMMODATE FOR

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 LANGUAGE ACCESS AND DISABILITY. UPON APPLICATION BY COUNSEL OR A PARTY  
2 THE COURT SHALL PERMIT A COPY OF THE FORENSIC REPORT AND A COPY OF THE  
3 COURT ORDERED EVALUATOR'S FILES AS PROVIDED FOR UNDER PARAGRAPH TWO OF  
4 THIS SUBDIVISION TO BE PROVIDED TO ANY PERSON RETAINED TO ASSIST COUNSEL  
5 OR ANY PARTY, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE  
6 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

7 (2) PURSUANT TO A DEMAND MADE UNDER RULE THREE THOUSAND ONE HUNDRED  
8 TWENTY OF THE CIVIL PRACTICE LAW AND RULES, THE COURT ORDERED EVALUATOR  
9 SHALL PROVIDE TO A PARTY, HIS OR HER ATTORNEY OR THE ATTORNEY FOR THE  
10 CHILD THE ENTIRE FILE RELATED TO THE PROCEEDING INCLUDING BUT NOT LIMIT-  
11 ED TO, ALL UNDERLYING NOTES, TEST DATA, RAW TEST MATERIALS, UNDERLYING  
12 MATERIALS PROVIDED TO OR RELIED UPON BY THE COURT ORDERED EVALUATOR AND  
13 ANY RECORDS, PHOTOGRAPHS OR OTHER EVIDENCE FOR INSPECTION AND PHOTOCOPY-  
14 ING, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE HUNDRED  
15 THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

16 (3) A WILLFUL FAILURE TO COMPLY WITH A COURT ORDER CONDITIONING OR  
17 LIMITING ACCESS TO A FORENSIC REPORT SHALL BE CONTEMPT OF COURT AND MAY  
18 BE PUNISHABLE AS SUCH AS PROVIDED UNDER SECTION SEVEN HUNDRED  
19 FIFTY-THREE OF THE JUDICIARY LAW. THE COURT SHALL NOTIFY THE PARTIES AND  
20 COUNSEL ON THE RECORD THAT A WILLFUL FAILURE TO COMPLY WITH THE COURT  
21 ORDER SHALL BE CONTEMPT OF COURT WHICH MAY INCLUDE PUNISHMENT OF A FINE  
22 OR IMPRISONMENT OR BOTH; AND

23 (4) ADMISSIBILITY INTO EVIDENCE OF THE FORENSIC REPORT OR THE COURT  
24 ORDERED EVALUATOR'S FILE SHALL BE SUBJECT TO OBJECTION OF ANY PARTY, HIS  
25 OR HER ATTORNEY OR THE ATTORNEY FOR THE CHILD PURSUANT TO THE RULES OF  
26 EVIDENCE AND SUBJECT TO THE RIGHT OF CROSS-EXAMINATION.

27 S 2. Subdivision 1 of section 240 of the domestic relations law is  
28 amended by adding a new paragraph (a-3) to read as follows:

29 (A-3) COURT ORDERED FORENSIC EVALUATIONS IN PROCEEDINGS INVOLVING  
30 CHILD CUSTODY AND VISITATION. WHERE A COURT ORDER IS ISSUED FOR AN EVAL-  
31 UATION OF THE PARTIES OR A CHILD BY A FORENSIC MENTAL HEALTH PROFES-  
32 SIONAL OR ANY OTHER PERSON, BOTH OF WHOM SHALL BE CONSIDERED "COURT  
33 ORDERED EVALUATORS" FOR PURPOSES OF THIS SUBDIVISION, APPOINTED BY THE  
34 COURT TO ASSIST WITH THE DETERMINATION OF CHILD CUSTODY OR VISITATION  
35 PURSUANT TO THIS SUBDIVISION, FOR PURPOSES OF SUCH COURT ORDERED FOREN-  
36 SIC EVALUATIONS:

37 (1) ANY REPORT OR EVALUATION PREPARED BY THE COURT ORDERED EVALUATOR,  
38 TO BE KNOWN AS A "FORENSIC REPORT" FOR THE PURPOSES OF THIS PARAGRAPH,  
39 SHALL BE CONFIDENTIAL AND KEPT UNDER SEAL EXCEPT THAT, ALL PARTIES,  
40 THEIR ATTORNEYS AND THE ATTORNEY FOR THE CHILD SHALL HAVE A RIGHT TO  
41 RECEIVE A COPY OF ANY SUCH FORENSIC REPORT UPON RECEIPT OF SUCH A REPORT  
42 BY THE COURT, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE  
43 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES. PROVIDED, HOWEVER, IN  
44 NO EVENT SHALL A PARTY OR HIS OR HER COUNSEL BE PREVENTED FROM ACCESS TO  
45 OR REVIEW OF A FORENSIC REPORT IN ADVANCE OF AND DURING TRIAL. ANY  
46 CONDITIONS OR LIMITATIONS IMPOSED BY THE COURT PURSUANT TO THIS SUBDIVI-  
47 SION RELATING TO DISCLOSURE OF THE FORENSIC REPORT SHALL ACCOMMODATE FOR  
48 LANGUAGE ACCESS AND DISABILITY. UPON APPLICATION BY COUNSEL OR A PARTY  
49 THE COURT SHALL PERMIT A COPY OF THE FORENSIC REPORT AND A COPY OF THE  
50 COURT ORDERED EVALUATOR'S FILES AS PROVIDED FOR UNDER SUBPARAGRAPH TWO  
51 OF THIS PARAGRAPH TO BE PROVIDED TO ANY PERSON RETAINED TO ASSIST COUN-  
52 SEL OR ANY PARTY, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND  
53 ONE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

54 (2) PURSUANT TO A DEMAND MADE UNDER RULE THREE THOUSAND ONE HUNDRED  
55 TWENTY OF THE CIVIL PRACTICE LAW AND RULES, THE COURT ORDERED EVALUATOR  
56 SHALL PROVIDE TO A PARTY, HIS OR HER ATTORNEY OR THE ATTORNEY FOR THE

1 CHILD THE ENTIRE FILE RELATED TO THE PROCEEDING INCLUDING BUT NOT LIMIT-  
2 ED TO, ALL UNDERLYING NOTES, TEST DATA, RAW TEST MATERIALS, UNDERLYING  
3 MATERIALS PROVIDED TO OR RELIED UPON BY THE COURT ORDERED EVALUATOR AND  
4 ANY RECORDS, PHOTOGRAPHS OR OTHER EVIDENCE FOR INSPECTION AND PHOTOCOPY-  
5 ING, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE HUNDRED  
6 THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

7 (3) A WILLFUL FAILURE TO COMPLY WITH A COURT ORDER CONDITIONING OR  
8 LIMITING ACCESS TO A FORENSIC REPORT SHALL BE CONTEMPT OF COURT AND MAY  
9 BE PUNISHABLE AS SUCH AS PROVIDED UNDER SECTION SEVEN HUNDRED  
10 FIFTY-THREE OF THE JUDICIARY LAW. THE COURT SHALL NOTIFY THE PARTIES AND  
11 COUNSEL ON THE RECORD THAT A WILLFUL FAILURE TO COMPLY WITH THE COURT  
12 ORDER SHALL BE CONTEMPT OF COURT WHICH MAY INCLUDE PUNISHMENT OF A FINE  
13 OR IMPRISONMENT OR BOTH; AND

14 (4) ADMISSIBILITY INTO EVIDENCE OF THE FORENSIC REPORT OR THE COURT  
15 ORDERED EVALUATOR'S FILE SHALL BE SUBJECT TO OBJECTION OF ANY PARTY, HIS  
16 OR HER ATTORNEY OR THE ATTORNEY FOR THE CHILD PURSUANT TO THE RULES OF  
17 EVIDENCE AND SUBJECT TO THE RIGHT OF CROSS-EXAMINATION.

18 S 3. Subdivision (c) of section 251 of the family court act is relet-  
19 tered subdivision (d) and a new subdivision (c) is added to read as  
20 follows:

21 (C) COURT ORDERED FORENSIC EVALUATIONS IN CHILD CUSTODY AND VISITATION  
22 PROCEEDINGS. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION TO THE  
23 CONTRARY, WHERE A COURT ORDER IS ISSUED FOR AN EVALUATION OF THE PARTIES  
24 OR A CHILD BY A FORENSIC MENTAL HEALTH PROFESSIONAL OR ANY OTHER PERSON,  
25 BOTH OF WHOM SHALL BE CONSIDERED "COURT ORDERED EVALUATORS" FOR PURPOSES  
26 OF THIS SUBDIVISION, APPOINTED BY THE COURT TO ASSIST WITH THE DETERMI-  
27 NATION OF CHILD CUSTODY OR VISITATION PURSUANT TO ARTICLE FOUR OR SIX OF  
28 THIS ACT, FOR PURPOSES OF SUCH COURT ORDERED FORENSIC EVALUATIONS:

29 (1) NOTWITHSTANDING SECTION ONE HUNDRED SIXTY-FIVE OF THIS ACT AND  
30 SECTION FOUR HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES, THE  
31 PROVISIONS AND LIMITATIONS OF SECTIONS THREE THOUSAND ONE HUNDRED ONE  
32 AND THREE THOUSAND ONE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES  
33 SHALL APPLY; AND

34 (2) ANY REPORT OR EVALUATION PREPARED BY THE COURT ORDERED EVALUATOR,  
35 TO BE KNOWN AS A "FORENSIC REPORT" FOR THE PURPOSES OF THIS SUBDIVISION,  
36 SHALL BE CONFIDENTIAL AND KEPT UNDER SEAL EXCEPT THAT, ALL PARTIES,  
37 THEIR ATTORNEYS AND THE ATTORNEY FOR THE CHILD SHALL HAVE A RIGHT TO  
38 RECEIVE A COPY OF ANY SUCH FORENSIC REPORT UPON RECEIPT OF SUCH A REPORT  
39 BY THE COURT, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE  
40 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES. PROVIDED, HOWEVER, IN  
41 NO EVENT SHALL A PARTY OR HIS OR HER COUNSEL BE PREVENTED FROM ACCESS TO  
42 OR REVIEW OF A FORENSIC REPORT IN ADVANCE OF AND DURING TRIAL. ANY  
43 CONDITIONS OR LIMITATIONS IMPOSED BY THE COURT PURSUANT TO THIS SUBDIVI-  
44 SION RELATING TO DISCLOSURE OF THE FORENSIC REPORT SHALL ACCOMMODATE FOR  
45 LANGUAGE ACCESS AND DISABILITY. UPON APPLICATION BY COUNSEL OR A PARTY  
46 THE COURT SHALL PERMIT A COPY OF THE FORENSIC REPORT AND A COPY OF THE  
47 COURT ORDERED EVALUATOR'S FILES AS PROVIDED FOR UNDER PARAGRAPH THREE OF  
48 THIS SUBDIVISION TO BE PROVIDED TO ANY PERSON RETAINED TO ASSIST COUNSEL  
49 OR ANY PARTY, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE  
50 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

51 (3) PURSUANT TO A DEMAND MADE UNDER RULE THREE THOUSAND ONE HUNDRED  
52 TWENTY OF THE CIVIL PRACTICE LAW AND RULES, THE COURT ORDERED EVALUATOR  
53 SHALL PROVIDE TO A PARTY, HIS OR HER ATTORNEY OR THE ATTORNEY FOR THE  
54 CHILD THE ENTIRE FILE RELATED TO THE PROCEEDING INCLUDING BUT NOT LIMIT-  
55 ED TO, ALL UNDERLYING NOTES, TEST DATA, RAW TEST MATERIALS, UNDERLYING  
56 MATERIALS PROVIDED TO OR RELIED UPON BY THE COURT ORDERED EVALUATOR AND

1 ANY RECORDS, PHOTOGRAPHS OR OTHER EVIDENCE FOR INSPECTION AND PHOTOCOPY-  
2 ING, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE HUNDRED  
3 THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

4 (4) A WILLFUL FAILURE TO COMPLY WITH A COURT ORDER CONDITIONING OR  
5 LIMITING ACCESS TO A FORENSIC REPORT SHALL BE CONTEMPT OF COURT AND MAY  
6 BE PUNISHABLE AS SUCH AS PROVIDED UNDER SECTION SEVEN HUNDRED  
7 FIFTY-THREE OF THE JUDICIARY LAW. THE COURT SHALL NOTIFY THE PARTIES AND  
8 COUNSEL ON THE RECORD THAT A WILLFUL FAILURE TO COMPLY WITH THE COURT  
9 ORDER SHALL BE CONTEMPT OF COURT WHICH MAY INCLUDE PUNISHMENT OF A FINE  
10 OR IMPRISONMENT OR BOTH; AND

11 (5) ADMISSIBILITY INTO EVIDENCE OF THE FORENSIC REPORT OR THE COURT  
12 ORDERED EVALUATOR'S FILE SHALL BE SUBJECT TO OBJECTION OF ANY PARTY, HIS  
13 OR HER ATTORNEY OR THE ATTORNEY FOR THE CHILD PURSUANT TO THE RULES OF  
14 EVIDENCE AND SUBJECT TO THE RIGHT OF CROSS-EXAMINATION.

15 S 4. Section 651 of the family court act is amended by adding a new  
16 subdivision (g) to read as follows:

17 (G) COURT ORDERED FORENSIC EVALUATIONS IN CHILD CUSTODY AND VISITATION  
18 PROCEEDINGS. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION TO THE  
19 CONTRARY, WHERE A COURT ORDER IS ISSUED FOR AN EVALUATION OF THE PARTIES  
20 OR A CHILD BY A FORENSIC MENTAL HEALTH PROFESSIONAL OR ANY OTHER PERSON,  
21 BOTH OF WHOM SHALL BE CONSIDERED "COURT ORDERED EVALUATORS" FOR PURPOSES  
22 OF THIS SUBDIVISION, APPOINTED BY THE COURT TO ASSIST WITH THE DETERMI-  
23 NATION OF CHILD CUSTODY OR VISITATION PURSUANT TO THIS ARTICLE OR ARTI-  
24 CLE FOUR OF THIS ACT, FOR PURPOSES OF SUCH COURT ORDERED FORENSIC EVALU-  
25 ATIONS:

26 (1) NOTWITHSTANDING SECTION ONE HUNDRED SIXTY-FIVE OF THIS ACT AND  
27 SECTION FOUR HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES, THE  
28 PROVISIONS AND LIMITATIONS OF SECTIONS THREE THOUSAND ONE HUNDRED ONE  
29 AND THREE THOUSAND ONE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES  
30 SHALL APPLY; AND

31 (2) ANY REPORT OR EVALUATION PREPARED BY THE COURT ORDERED EVALUATOR,  
32 TO BE KNOWN AS A "FORENSIC REPORT" FOR THE PURPOSES OF THIS SUBDIVISION,  
33 SHALL BE CONFIDENTIAL AND KEPT UNDER SEAL EXCEPT THAT, ALL PARTIES,  
34 THEIR ATTORNEYS AND THE ATTORNEY FOR THE CHILD SHALL HAVE A RIGHT TO  
35 RECEIVE A COPY OF ANY SUCH FORENSIC REPORT UPON RECEIPT OF SUCH A REPORT  
36 BY THE COURT, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE  
37 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES. PROVIDED, HOWEVER, IN  
38 NO EVENT SHALL A PARTY OR HIS OR HER COUNSEL BE PREVENTED FROM ACCESS TO  
39 OR REVIEW OF A FORENSIC REPORT IN ADVANCE OF AND DURING TRIAL. ANY  
40 CONDITIONS OR LIMITATIONS IMPOSED BY THE COURT PURSUANT TO THIS SUBDIVI-  
41 SION RELATING TO DISCLOSURE OF THE FORENSIC REPORT SHALL ACCOMMODATE FOR  
42 LANGUAGE ACCESS AND DISABILITY. UPON APPLICATION BY COUNSEL OR A PARTY  
43 THE COURT SHALL PERMIT A COPY OF THE FORENSIC REPORT AND A COPY OF THE  
44 COURT ORDERED EVALUATOR'S FILES AS PROVIDED FOR UNDER PARAGRAPH THREE OF  
45 THIS SUBDIVISION TO BE PROVIDED TO ANY PERSON RETAINED TO ASSIST COUNSEL  
46 OR ANY PARTY, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE  
47 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

48 (3) PURSUANT TO A DEMAND MADE UNDER RULE THREE THOUSAND ONE HUNDRED  
49 TWENTY OF THE CIVIL PRACTICE LAW AND RULES, THE COURT ORDERED EVALUATOR  
50 SHALL PROVIDE TO A PARTY, HIS OR HER ATTORNEY OR THE ATTORNEY FOR THE  
51 CHILD THE ENTIRE FILE RELATED TO THE PROCEEDING INCLUDING BUT NOT LIMIT-  
52 ED TO, ALL UNDERLYING NOTES, TEST DATA, RAW TEST MATERIALS, UNDERLYING  
53 MATERIALS PROVIDED TO OR RELIED UPON BY THE COURT ORDERED EVALUATOR AND  
54 ANY RECORDS, PHOTOGRAPHS OR OTHER EVIDENCE FOR INSPECTION AND PHOTOCOPY-  
55 ING, SUBJECT TO SECTION THREE THOUSAND ONE HUNDRED THREE OF THE CIVIL  
56 PRACTICE LAW AND RULES; AND

1 (4) A WILLFUL FAILURE TO COMPLY WITH A COURT ORDER CONDITIONING OR  
2 LIMITING ACCESS TO A FORENSIC REPORT SHALL BE CONTEMPT OF COURT AND MAY  
3 BE PUNISHABLE AS SUCH AS PROVIDED UNDER SECTION SEVEN HUNDRED  
4 FIFTY-THREE OF THE JUDICIARY LAW. THE COURT SHALL NOTIFY THE PARTIES AND  
5 COUNSEL ON THE RECORD THAT A WILLFUL FAILURE TO COMPLY WITH THE COURT  
6 ORDER SHALL BE CONTEMPT OF COURT WHICH MAY INCLUDE PUNISHMENT OF A FINE  
7 OR IMPRISONMENT OR BOTH; AND

8 (5) ADMISSIBILITY INTO EVIDENCE OF THE FORENSIC REPORT OR THE COURT  
9 ORDERED EVALUATOR'S FILE SHALL BE SUBJECT TO OBJECTION OF ANY PARTY, HIS  
10 OR HER ATTORNEY OR THE ATTORNEY FOR THE CHILD PURSUANT TO THE RULES OF  
11 EVIDENCE AND SUBJECT TO THE RIGHT OF CROSS-EXAMINATION.

12 S 5. This act shall take effect on the ninetieth day after it shall  
13 have become a law, provided, however, that effective immediately the  
14 chief administrator of the courts, with the approval of the administra-  
15 tive board of the courts, is authorized and directed to promulgate any  
16 rules necessary to implement the provisions of this act on or before  
17 such effective date.