

8342--A

2013-2014 Regular Sessions

I N A S S E M B L Y

December 27, 2013

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

CHILD THE ENTIRE FILE RELATED TO THE PROCEEDING INCLUDING BUT NOT LIMITED TO, ALL UNDERLYING NOTES, TEST DATA, RAW TEST MATERIALS, UNDERLYING MATERIALS PROVIDED TO OR RELIED UPON BY THE COURT ORDERED EVALUATOR AND ANY RECORDS, PHOTOGRAPHS OR OTHER EVIDENCE FOR INSPECTION AND PHOTOCOPYING, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

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

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

S 3. Subdivision (c) of section 251 of the family court act is relettered subdivision (d) and a new subdivision (c) is added to read as follows:

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

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

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

(3) PURSUANT TO A DEMAND MADE UNDER RULE THREE THOUSAND ONE HUNDRED TWENTY OF THE CIVIL PRACTICE LAW AND RULES, THE COURT ORDERED EVALUATOR SHALL PROVIDE TO A PARTY, HIS OR HER ATTORNEY OR THE ATTORNEY FOR THE CHILD THE ENTIRE FILE RELATED TO THE PROCEEDING INCLUDING BUT NOT LIMITED TO, ALL UNDERLYING NOTES, TEST DATA, RAW TEST MATERIALS, UNDERLYING 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.