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I N   S E N A T E

March 23, 2016

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Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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     OR INVESTIGATION OF THE PARTIES OR A CHILD BY A FORENSIC MENTAL HEALTH  
6     PROFESSIONAL, A PROBATION SERVICE, A CHILD PROTECTIVE SERVICE OR ANY  
7     OTHER PERSON AUTHORIZED BY STATUTE, ALL OF WHOM SHALL BE CONSIDERED  
8     "COURT ORDERED EVALUATORS" FOR PURPOSES OF THIS SUBDIVISION, APPOINTED  
9     BY THE COURT TO ASSIST WITH THE DETERMINATION OF CHILD CUSTODY OR VISI-  
10    TATION PURSUANT TO THIS ARTICLE, FOR PURPOSES OF SUCH COURT ORDERED  
11    FORENSIC EVALUATIONS AND INVESTIGATIONS:  
12    (1) ANY REPORT OR EVALUATION PREPARED BY THE COURT ORDERED EVALUATOR,  
13    TO BE KNOWN AS A "FORENSIC REPORT" FOR THE PURPOSES OF THIS SUBDIVISION,  
14    SHALL BE CONFIDENTIAL AND KEPT UNDER SEAL EXCEPT THAT, ALL PARTIES,  
15    THEIR ATTORNEYS AND THE ATTORNEY FOR THE CHILD SHALL HAVE A RIGHT TO  
16    RECEIVE A COPY OF ANY SUCH FORENSIC REPORT UPON RECEIPT OF SUCH A REPORT  
17    BY THE COURT, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE  
18    HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES. PROVIDED, HOWEVER, IN  
19    NO EVENT SHALL A PARTY OR HIS OR HER COUNSEL BE PREVENTED FROM ACCESS TO  
20    OR REVIEW OF A FORENSIC REPORT IN ADVANCE OF AND DURING TRIAL. ANY  
21    CONDITIONS OR LIMITATIONS IMPOSED BY THE COURT PURSUANT TO THIS SUBDIVI-  
22    SION RELATING TO DISCLOSURE OF THE FORENSIC REPORT SHALL ACCOMMODATE FOR  
23    LANGUAGE ACCESS AND DISABILITY. UPON APPLICATION BY COUNSEL OR A PARTY  
24    THE COURT SHALL PERMIT A COPY OF THE FORENSIC REPORT AND A COPY OF THE  
25    COURT ORDERED EVALUATOR'S FILES AS PROVIDED FOR UNDER PARAGRAPH TWO OF  
26    THIS SUBDIVISION TO BE PROVIDED TO ANY PERSON RETAINED TO ASSIST COUNSEL  
27    OR ANY PARTY, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE  
28    HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

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

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

(A-3) COURT ORDERED FORENSIC EVALUATIONS IN PROCEEDINGS INVOLVING CHILD CUSTODY AND VISITATION. WHERE A COURT ORDER IS ISSUED FOR AN EVALUATION OR INVESTIGATION OF THE PARTIES OR A CHILD BY A FORENSIC MENTAL HEALTH PROFESSIONAL, A PROBATION SERVICE, A CHILD PROTECTIVE SERVICE OR ANY OTHER PERSON AUTHORIZED BY STATUTE, ALL 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 THIS SUBDIVISION, FOR PURPOSES OF SUCH COURT ORDERED FORENSIC EVALUATIONS AND INVESTIGATIONS:

(1) ANY REPORT OR EVALUATION PREPARED BY THE COURT ORDERED EVALUATOR, TO BE KNOWN AS A "FORENSIC REPORT" FOR THE PURPOSES OF THIS PARAGRAPH, 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 SUBPARAGRAPH TWO OF THIS PARAGRAPH 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

(2) 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 ANY RECORDS, PHOTOGRAPHS OR OTHER EVIDENCE FOR INSPECTION AND PHOTOCOPY-

1 ING, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE HUNDRED  
2 THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

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

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

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

17 (C) 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 OR INVESTI-  
20 GATION OF THE PARTIES OR A CHILD BY A FORENSIC MENTAL HEALTH PROFES-  
21 SIONAL, A PROBATION SERVICE, A CHILD PROTECTIVE SERVICE OR ANY OTHER  
22 PERSON AUTHORIZED BY STATUTE, ALL OF WHOM SHALL BE CONSIDERED "COURT  
23 ORDERED EVALUATORS" FOR PURPOSES OF THIS SUBDIVISION, APPOINTED BY THE  
24 COURT TO ASSIST WITH THE DETERMINATION OF CHILD CUSTODY OR VISITATION  
25 PURSUANT TO ARTICLE FOUR OR SIX OF THIS ACT, FOR PURPOSES OF SUCH COURT  
26 ORDERED FORENSIC EVALUATIONS AND INVESTIGATIONS:

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

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

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

1 ING, SUBJECT TO THE PROVISIONS OF SECTION THREE THOUSAND ONE HUNDRED  
2 THREE OF THE CIVIL PRACTICE LAW AND RULES; AND

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

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

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

16 (G) COURT ORDERED FORENSIC EVALUATIONS IN CHILD CUSTODY AND VISITATION  
17 PROCEEDINGS. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION TO THE  
18 CONTRARY, WHERE A COURT ORDER IS ISSUED FOR AN EVALUATION OR INVESTI-  
19 GATION OF THE PARTIES OR A CHILD BY A FORENSIC MENTAL HEALTH PROFES-  
20 SIONAL, A PROBATION SERVICE, A CHILD PROTECTIVE SERVICE OR ANY OTHER  
21 PERSON AUTHORIZED BY STATUTE, ALL OF WHOM SHALL BE CONSIDERED "COURT  
22 ORDERED EVALUATORS" FOR PURPOSES OF THIS SUBDIVISION, APPOINTED BY THE  
23 COURT TO ASSIST WITH THE DETERMINATION OF CHILD CUSTODY OR VISITATION  
24 PURSUANT TO THIS ARTICLE OR ARTICLE FOUR OF THIS ACT, FOR PURPOSES OF  
25 SUCH COURT ORDERED FORENSIC EVALUATIONS AND INVESTIGATIONS:

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.