

STATE OF NEW YORK

5621

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. WEINSTEIN, SEAWRIGHT, TAYLOR -- Multi-Sponsored
by -- M. of A. BRAUNSTEIN, COOK, GLICK, JAFFEE -- read once and
referred to the Committee on Judiciary

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 Assem-
bly, 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

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

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1 court ordered evaluator's files as provided for under paragraph two of
2 this subdivision to be provided to any person retained to assist counsel
3 or any party, subject to the provisions of section three thousand one
4 hundred three of the civil practice law and rules; and

5 (2) Pursuant to a demand made under rule three thousand one hundred
6 twenty of the civil practice law and rules, the court ordered evaluator
7 shall provide to a party, his or her attorney or the attorney for the
8 child the entire file related to the proceeding including but not limit-
9 ed to, all underlying notes, test data, raw test materials, underlying
10 materials provided to or relied upon by the court ordered evaluator and
11 any records, photographs or other evidence for inspection and photocopy-
12 ing, subject to the provisions of section three thousand one hundred
13 three of the civil practice law and rules; and

14 (3) A willful failure to comply with a court order conditioning or
15 limiting access to a forensic report shall be contempt of court and may
16 be punishable as such as provided under section seven hundred fifty-
17 three of the judiciary law. The court shall notify the parties and coun-
18 sel on the record that a willful failure to comply with the court order
19 shall be contempt of court which may include punishment of a fine or
20 imprisonment or both; and

21 (4) Admissibility into evidence of the forensic report or the court
22 ordered evaluator's file shall be subject to objection of any party, his
23 or her attorney or the attorney for the child pursuant to the rules of
24 evidence and subject to the right of cross-examination.

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

27 (a-3) Court ordered forensic evaluations in proceedings involving
28 child custody and visitation. Where a court order is issued for an eval-
29 uation or investigation of the parties or a child by a forensic mental
30 health professional, a probation service, a child protective service or
31 any other person authorized by statute, all of whom shall be considered
32 "court ordered evaluators" for purposes of this subdivision, appointed
33 by the court to assist with the determination of child custody or visi-
34 tation pursuant to this subdivision, for purposes of such court ordered
35 forensic evaluations and investigations:

36 (1) Any report or evaluation prepared by the court ordered evaluator,
37 to be known as a "forensic report" for the purposes of this paragraph,
38 shall be confidential and kept under seal except that, all parties,
39 their attorneys and the attorney for the child shall have a right to
40 receive a copy of any such forensic report upon receipt of such a report
41 by the court, subject to the provisions of section three thousand one
42 hundred three of the civil practice law and rules. Provided, however, in
43 no event shall a party or his or her counsel be prevented from access to
44 or review of a forensic report in advance of and during trial. Any
45 conditions or limitations imposed by the court pursuant to this subdivi-
46 sion relating to disclosure of the forensic report shall accommodate for
47 language access and disability. Upon application by counsel or a party
48 the court shall permit a copy of the forensic report and a copy of the
49 court ordered evaluator's files as provided for under subparagraph two
50 of this paragraph to be provided to any person retained to assist coun-
51 sel or any party, subject to the provisions of section three thousand
52 one hundred three of the civil practice law and rules; and

53 (2) Pursuant to a demand made under rule three thousand one hundred
54 twenty of the civil practice law and rules, the court ordered evaluator
55 shall provide to a party, his or her attorney or the attorney for the
56 child the entire file related to the proceeding including but not limit-

1 ed to, all underlying notes, test data, raw test materials, underlying
2 materials provided to or relied upon by the court ordered evaluator and
3 any records, photographs or other evidence for inspection and photocopy-
4 ing, subject to the provisions of section three thousand one hundred
5 three of the civil practice law and rules; and

6 (3) A willful failure to comply with a court order conditioning or
7 limiting access to a forensic report shall be contempt of court and may
8 be punishable as such as provided under section seven hundred fifty-
9 three of the judiciary law. The court shall notify the parties and coun-
10 sel on the record that a willful failure to comply with the court order
11 shall be contempt of court which may include punishment of a fine or
12 imprisonment or both; and

13 (4) Admissibility into evidence of the forensic report or the court
14 ordered evaluator's file shall be subject to objection of any party, his
15 or her attorney or the attorney for the child pursuant to the rules of
16 evidence and subject to the right of cross-examination.

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

20 (c) Court ordered forensic evaluations in child custody and visitation
21 proceedings. Notwithstanding the provisions of this section to the
22 contrary, where a court order is issued for an evaluation or investi-
23 gation of the parties or a child by a forensic mental health profes-
24 sional, a probation service, a child protective service or any other
25 person authorized by statute, all of whom shall be considered "court
26 ordered evaluators" for purposes of this subdivision, appointed by the
27 court to assist with the determination of child custody or visitation
28 pursuant to article four or six of this act, for purposes of such court
29 ordered forensic evaluations and investigations:

30 (1) Notwithstanding section one hundred sixty-five of this act and
31 section four hundred eight of the civil practice law and rules, the
32 provisions and limitations of sections three thousand one hundred one
33 and three thousand one hundred three of the civil practice law and rules
34 shall apply; and

35 (2) Any report or evaluation prepared by the court ordered evaluator,
36 to be known as a "forensic report" for the purposes of this subdivision,
37 shall be confidential and kept under seal except that, all parties,
38 their attorneys and the attorney for the child shall have a right to
39 receive a copy of any such forensic report upon receipt of such a report
40 by the court, subject to the provisions of section three thousand one
41 hundred three of the civil practice law and rules. Provided, however, in
42 no event shall a party or his or her counsel be prevented from access to
43 or review of a forensic report in advance of and during trial. Any
44 conditions or limitations imposed by the court pursuant to this subdivi-
45 sion relating to disclosure of the forensic report shall accommodate for
46 language access and disability. Upon application by counsel or a party
47 the court shall permit a copy of the forensic report and a copy of the
48 court ordered evaluator's files as provided for under paragraph three of
49 this subdivision to be provided to any person retained to assist counsel
50 or any party, subject to the provisions of section three thousand one
51 hundred three of the civil practice law and rules; and

52 (3) Pursuant to a demand made under rule three thousand one hundred
53 twenty of the civil practice law and rules, the court ordered evaluator
54 shall provide to a party, his or her attorney or the attorney for the
55 child the entire file related to the proceeding including but not limit-
56 ed to, all underlying notes, test data, raw test materials, underlying

1 materials provided to or relied upon by the court ordered evaluator and
2 any records, photographs or other evidence for inspection and photocopy-
3 ing, subject to the provisions of section three thousand one hundred
4 three of the civil practice law and rules; and

5 (4) A willful failure to comply with a court order conditioning or
6 limiting access to a forensic report shall be contempt of court and may
7 be punishable as such as provided under section seven hundred fifty-
8 three of the judiciary law. The court shall notify the parties and coun-
9 sel on the record that a willful failure to comply with the court order
10 shall be contempt of court which may include punishment of a fine or
11 imprisonment or both; and

12 (5) Admissibility into evidence of the forensic report or the court
13 ordered evaluator's file shall be subject to objection of any party, his
14 or her attorney or the attorney for the child pursuant to the rules of
15 evidence and subject to the right of cross-examination.

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

18 (g) Court ordered forensic evaluations in child custody and visitation
19 proceedings. Notwithstanding the provisions of this section to the
20 contrary, where a court order is issued for an evaluation or investi-
21 gation of the parties or a child by a forensic mental health profes-
22 sional, a probation service, a child protective service or any other
23 person authorized by statute, all of whom shall be considered "court
24 ordered evaluators" for purposes of this subdivision, appointed by the
25 court to assist with the determination of child custody or visitation
26 pursuant to this article or article four of this act, for purposes of
27 such court ordered forensic evaluations and investigations:

28 (1) Notwithstanding section one hundred sixty-five of this act and
29 section four hundred eight of the civil practice law and rules, the
30 provisions and limitations of sections three thousand one hundred one
31 and three thousand one hundred three of the civil practice law and rules
32 shall apply; and

33 (2) Any report or evaluation prepared by the court ordered evaluator,
34 to be known as a "forensic report" for the purposes of this subdivision,
35 shall be confidential and kept under seal except that, all parties,
36 their attorneys and the attorney for the child shall have a right to
37 receive a copy of any such forensic report upon receipt of such a report
38 by the court, subject to the provisions of section three thousand one
39 hundred three of the civil practice law and rules. Provided, however, in
40 no event shall a party or his or her counsel be prevented from access to
41 or review of a forensic report in advance of and during trial. Any
42 conditions or limitations imposed by the court pursuant to this subdivi-
43 sion relating to disclosure of the forensic report shall accommodate for
44 language access and disability. Upon application by counsel or a party
45 the court shall permit a copy of the forensic report and a copy of the
46 court ordered evaluator's files as provided for under paragraph three of
47 this subdivision to be provided to any person retained to assist counsel
48 or any party, subject to the provisions of section three thousand one
49 hundred three of the civil practice law and rules; and

50 (3) Pursuant to a demand made under rule three thousand one hundred
51 twenty of the civil practice law and rules, the court ordered evaluator
52 shall provide to a party, his or her attorney or the attorney for the
53 child the entire file related to the proceeding including but not limit-
54 ed to, all underlying notes, test data, raw test materials, underlying
55 materials provided to or relied upon by the court ordered evaluator and
56 any records, photographs or other evidence for inspection and photocopy-

1 ing, subject to section three thousand one hundred three of the civil
2 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 fifty-
6 three of the judiciary law. The court shall notify the parties and coun-
7 sel on the record that a willful failure to comply with the court order
8 shall be contempt of court which may include punishment of a fine or
9 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 § 5. This act shall take effect on the ninetieth day after it shall
15 have become a law, provided, however, that effective immediately the
16 chief administrator of the courts, with the approval of the administra-
17 tive board of the courts, is authorized and directed to promulgate any
18 rules necessary to implement the provisions of this act on or before
19 such effective date.