STATE OF NEW YORK

4686

2019-2020 Regular Sessions

IN SENATE

March 20, 2019

Introduced by Sen. BIAGGI -- 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:

Section 1. Section 70 of the domestic relations law is amended by adding a new subdivision (c) to read as follows:

(c) 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 article, 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 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 two of

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

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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

(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.

§ 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 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.

§ 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 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 article four or six of this act, for purposes of such court ordered forensic evaluations and investigations:

(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

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

(4) 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

(5) 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.

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

(g) 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 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 article or article four of this act, for purposes of such court ordered forensic evaluations and investigations:

(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 any records, photographs or other evidence for inspection and photocopy-

ing, subject to section three thousand one hundred three of the civil practice law and rules; and

(4) 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

(5) 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.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law, provided, however, that effective immediately the chief administrator of the courts, with the approval of the administrative board of the courts, is authorized and directed to promulgate any rules necessary to implement the provisions of this act on or before such effective date.