

# STATE OF NEW YORK

8110

2021-2022 Regular Sessions

## IN ASSEMBLY

June 11, 2021

Introduced by M. of A. WEINSTEIN, SEAWRIGHT, TAYLOR, HUNTER, DURSO --  
Multi-Sponsored by -- M. of A. BRAUNSTEIN, COOK, GLICK -- 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.