

STATE OF NEW YORK

753

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. BIAGGI, KRUEGER, THOMAS -- 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

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

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

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

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

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

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

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

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

1 child the entire file related to the proceeding including but not limit-
2 ed to, all underlying notes, test data, raw test materials, underlying
3 materials provided to or relied upon by the court ordered evaluator and
4 any records, photographs or other evidence for inspection and photocopy-
5 ing, subject to the provisions of section three thousand one hundred
6 three of the civil practice law and rules; and

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

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

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

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

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

36 (2) Any report or evaluation prepared by the court ordered evaluator,
37 to be known as a "forensic report" for the purposes of this subdivision,
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 paragraph three of
50 this subdivision to be provided to any person retained to assist counsel
51 or any party, subject to the provisions of section three thousand one
52 hundred three of the civil practice law and rules; and

53 (3) 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 (4) 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 (5) 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 § 4. Section 651 of the family court act is amended by adding a new
18 subdivision (g) to read as follows:

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

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

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

51 (3) Pursuant to a demand made under rule three thousand one hundred
52 twenty of the civil practice law and rules, the court ordered evaluator
53 shall provide to a party, his or her attorney or the attorney for the
54 child the entire file related to the proceeding including but not limit-
55 ed to, all underlying notes, test data, raw test materials, underlying
56 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 section three thousand one hundred three of the civil
3 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 fifty-
7 three of the judiciary law. The court shall notify the parties and coun-
8 sel on the record that a willful failure to comply with the court order
9 shall be contempt of court which may include punishment of a fine or
10 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 § 5. This act shall take effect on the ninetieth day after it shall
16 have become a law, provided, however, that effective immediately the
17 chief administrator of the courts, with the approval of the administra-
18 tive board of the courts, is authorized and directed to promulgate any
19 rules necessary to implement the provisions of this act on or before
20 such effective date.