

STATE OF NEW YORK

4434

2023-2024 Regular Sessions

IN SENATE

February 8, 2023

Introduced by Sen. FERNANDEZ -- 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

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

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1 this subdivision to be provided to any person retained to assist counsel
2 or any party, subject to the provisions of section three thousand one
3 hundred three of the civil practice law and rules; and

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

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

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

24 § 2. Subdivision 1 of section 240 of the domestic relations law is
25 amended by adding a new paragraph (a-4) to read as follows:

26 (a-4) Court ordered forensic evaluations in proceedings involving
27 child custody and visitation. Where a court order is issued for an eval-
28 uation or investigation of the parties or a child by a forensic mental
29 health professional, a probation service, a child protective service or
30 any other person authorized by statute, all of whom shall be considered
31 "court ordered evaluators" for purposes of this subdivision, appointed
32 by the court to assist with the determination of child custody or visi-
33 tation pursuant to this subdivision, for purposes of such court ordered
34 forensic evaluations and investigations:

35 (1) Any report or evaluation prepared by the court ordered evaluator,
36 to be known as a "forensic report" for the purposes of this paragraph,
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 subparagraph two
49 of this paragraph to be provided to any person retained to assist coun-
50 sel or any party, subject to the provisions of section three thousand
51 one hundred three of the civil practice law and rules; and

52 (2) 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 (3) 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 (4) 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 § 3. Subdivision (c) of section 251 of the family court act is relet-
17 tered subdivision (d) and a new subdivision (c) is added to read as
18 follows:

19 (c) 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 article four or six of this act, for purposes of such court
28 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 the provisions of section three thousand one hundred
3 three of the civil 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 § 4. Section 651 of the family court act is amended by adding a new
16 subdivision (g) to read as follows:

17 (g) 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 this article or article four of this act, for purposes of
26 such court 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 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. Effective immediately, the chief administrator of the
16 courts, with the approval of the administrative board of the courts, is
17 authorized to promulgate any rules necessary to implement the provisions
18 of this act on or before such effective date.