

# 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.