

Memorandum in Support

FAMILY LAW SECTION

FLS # 2

June 13, 2017

S. 6579

By: Senator Avella
Senate Committee: Rules
Effective Date: 90th day after it shall have become a law

AN ACT to amend the domestic relations law and the family court act, in relation to child custody forensic reports.

LAW AND SECTION REFERRED TO: DRL §70 and §240; FCA §251 and §651.

THE FAMILY LAW SECTION SUPPORTS THIS BILL

The Family Law Section (Section) supports this Bill (S. 6579). We have opposed other bills on this issue because they did not provide certain safeguards. *See* attached Memorandum. We believe this Bill provides the safeguards that previous bills did not. Most importantly, this Bill addresses our concerns about a litigant in a child custody case -- especially a *pro se* litigant -- showing the report to the subject children or others. Additionally, other aspects of the Bill maximize efficiency. For example, attorneys and experts retained by attorneys are permitted to have a copy of the forensic report without having to issue a demand pursuant to the CPLR.

In a prior Memorandum (*see* attached), we recommended the inclusion of a directive prohibiting the courts from reading/reviewing the forensic report prior to its receipt, if any, in evidence in a custody case unless the parties and their counsel agree otherwise in a written stipulation submitted to the court. This Bill would authorize the court to read the forensic report at the commencement of a trial or hearing -- subject to further objection made prior to or at such trial or hearing -- prior to accepting an agreement between the parties in connection with its determination concerning child custody matters. The Section continues to hold the view that the court should not be permitted to read/review the forensic report before being admitted in evidence in a custody case, unless the parties and their counsel agree otherwise in writing.

The Section suggests that this limited issue could be left to a further determination by the Chief Administrative Judge as to whether or not it would nonetheless be appropriate for judges to read/review forensic reports in particular types of cases (*e.g.*, abuse, neglect) at the commencement of a trial or hearing.

Therefore we recommend that the Chief Administrative Judge should receive input from practitioners and judges in the domestic relations bar for the purpose of determining the scope of such excepted cases.

The Family Law Section reaffirms its prior objections to A. 1533; S. 6300 as set forth in our May 15, 2017 Memorandum—FLS#1, attached.

Based on the foregoing, the Family Law Section **SUPPORTS** this Bill (S. 6579).