



# Empire Justice Center

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## Memorandum of Support

### Standardize Access to Court Ordered Forensic Evaluations in Child Custody Cases

S.4686 (Biaggi)/A.5621 (Weinstein)

Empire Justice Center supports **S.4686 (Biaggi)/A.5621 (Weinstein)**, which will amend and standardize the procedures involved in court-ordered forensic evaluations and reports in child custody and visitation proceedings statewide.

Empire Justice Center is a statewide support center for legal services programs and the clients they serve. We undertake research and training, act as an informational clearinghouse, and provide litigation backup to local programs. We also undertake impact litigation and engage in legislative and administrative advocacy. We currently have staff attorneys specializing in domestic violence law, civil rights, public assistance benefits, health and Medicaid, Supplemental Security Income (SSI) and Social Security Disability (SSD) benefits, housing and foreclosure, immigration, and consumer law. In addition to our offices in Albany and Rochester, we also have offices in Westchester County and on Long Island.

As a support center for civil legal services offices throughout New York State, we are very aware of the many complexities in custody and visitation matters, particularly those involving families impacted by domestic violence. We understand that the practice around court-ordered forensic evaluations and access to completed reports varies considerably from judge to judge, as well as region to region. We believe that standardizing disclosure practices is long overdue in New York State. Litigants in these most trying and sensitive of proceedings deserve uniformity.

We also believe that the current practice of limiting access to forensic reports for attorney representatives and parties involved in these matters is unjust and hampers their ability to properly prepare the custody the case they are making or opposing. For example, some courts allow the client's attorney a copy but will not permit counsel to let the client have a copy or review it directly. *Pro se* individuals who are undertaking the difficult task of self-representation are even more prejudiced, as they may only be allowed to view their reports in

the courthouse under the supervision of court staff. Despite the fact that they also have to prepare and present a case—perhaps against a represented party—they do so without direct access to a critical tool that judges specifically rely on to make their life-altering ruling, access that may be given to their rival.

We recognize that greater access to forensic reports carries the risk that someone may violate the bill's confidentiality provisions and inappropriately release the report to embarrass or harass the opposing party. While this is a legitimate concern, the bill contains safeguards such as protective order and contempt provisions that can limit or condition access or address actual or potential breaches. As the current practice undermines due process for many litigants, we believe that the statewide benefits of this bill outweigh wrongful disclosure concerns. The bad actions of a few litigants should no longer be allowed to justify a policy that hampers many who will be appropriate and responsible.

We urge the Senate and Assembly to support this legislation.

**This memorandum was prepared by:**

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