

# STATE OF NEW YORK

---

3869--A

2019-2020 Regular Sessions

## IN SENATE

February 20, 2019

---

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act, in relation to factoring domestic violence convictions into family court decisions regarding visitation, custody and parental rights

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (vii) and (viii) of subdivision (a) of section  
2 1046 of the family court act, paragraph (vii) as amended by chapter 432  
3 of the laws of 1993, paragraph (viii) as added by chapter 1015 of the  
4 laws of 1972, are amended and a new paragraph (ix) is added to read as  
5 follows:  
6 (vii) neither the privilege attaching to confidential communications  
7 between husband and wife, as set forth in section forty-five hundred two  
8 of the civil practice law and rules, nor the physician-patient and  
9 related privileges, as set forth in section forty-five hundred four of  
10 the civil practice law and rules, nor the psychologist-client privilege,  
11 as set forth in section forty-five hundred seven of the civil practice  
12 law and rules, nor the social worker-client privilege, as set forth in  
13 section forty-five hundred eight of the civil practice law and rules,  
14 nor the rape crisis counselor-client privilege, as set forth in section  
15 forty-five hundred ten of the civil practice law and rules, shall be a  
16 ground for excluding evidence which otherwise would be admissible[~~-~~];  
17 and  
18 (viii) proof of the "impairment of emotional health" or "impairment of  
19 mental or emotional condition" as a result of the unwillingness or  
20 inability of the respondent to exercise a minimum degree of care toward  
21 a child may include competent opinion or expert testimony and may  
22 include proof that such impairment lessened during a period when the

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

LBD01936-02-9

1 child was in the care, custody or supervision of a person or agency  
2 other than the respondent[-]; and

3 (ix) previous convictions of disorderly conduct, harassment in the  
4 first degree, harassment in the second degree, aggravated harassment in  
5 the second degree, sexual misconduct forcible touching, sexual abuse in  
6 the third degree, sexual abuse in the second degree as set forth in  
7 subdivision one of section 130.60 of the penal law, stalking in the  
8 first degree, stalking in the second degree, stalking in the third  
9 degree, stalking in the fourth degree, criminal mischief, menacing in  
10 the second degree, menacing in the third degree, reckless endangerment,  
11 strangulation in the first degree, strangulation in the second degree,  
12 criminal obstruction of breathing or blood circulation, assault in the  
13 second degree, assault in the third degree, an attempted assault, coer-  
14 cion in the third degree as set forth in subdivisions one, two and three  
15 of section 135.60 of the penal law between spouses or former spouses, or  
16 between parent and child or between members of the same family or house-  
17 hold except that if the respondent would not be criminally responsible  
18 by reason of age pursuant to section 30.00 of the penal law, shall be  
19 taken into consideration for any hearing deciding on the visitation,  
20 custody, or rights of a parent with mandatory, batterer specific rehabi-  
21 litative measures of no less than twelve months, successfully completed  
22 by the respondent prior to a final judgment; provided, however, that any  
23 parent undergoing mandatory batterer specific rehabilitation measures  
24 shall only be granted supervised visitation.

25 § 2. This act shall take effect on the sixtieth day after it shall  
26 have become a law.