STATE OF NEW YORK

6736

2019-2020 Regular Sessions

IN SENATE

September 20, 2019

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 and establishing the batterer intervention program

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

Section 1. Paragraphs (vii) and (viii) of subdivision (a) of section 1046 of the family court act, paragraph (vii) as amended by chapter 432 of the laws of 1993, paragraph (viii) as added by chapter 1015 of the laws of 1972, are amended and a new paragraph (ix) is added to read as follows:

(vii) neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, nor the rape crisis counselor-client privilege, as set forth in section forty-five hundred ten of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible[~~.~~]**;**

and

(viii) proof of the "impairment of emotional health" or "impairment of mental or emotional condition" as a result of the unwillingness or inability of the respondent to exercise a minimum degree of care toward a child may include competent opinion or expert testimony and may 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.

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

(ix) previous convictions of disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, coercion in the third degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, shall be taken into consideration for any hearing deciding on the visitation, custody, or rights of a parent with mandatory, batterer specific rehabilitative measures of no less than twelve months, successfully completed by the respondent prior to a final judgment; provided, however, that in a case where a party seeking custody and/or visitation with a child under the jurisdiction of the family court has a prior criminal conviction for any enumerated family offense under section eight hundred twelve of this act, absent extraordinary circumstances, the non-offending parent shall be granted temporary custody during the pendency of the case; visitation with the offending parent shall be supervised by a party designated by the court; and the offending parent shall attend and successfully complete a minimum twenty-six week batterer intervention program or sessions with a court approved counselor.

§ 2. The family court act is amended by adding a new section 842-b to read as follows:

§ 842-b. Batterer intervention program. 1. As part of a final order of protection pursuant to section eight hundred forty-two of this part, the court may order the defendant to receive professional domestic violence counseling from either a private source or a source appointed by the court, and in such event, require the defendant to provide the court with documentation of attendance.

2. Such batterer intervention program shall include, but not be limited to, the following components:

(a) periodic, ongoing risk assessments to protect the safety of the victim and any children;

(b) offender accountability for their acts of domestic violence as a central component of the program, requiring that offenders be held accountable for their behavior, and provided with services geared towards behavioral change;

(c) information and education concerning the tactics of power and control and the understanding of domestic violence as a domination and control issue;

(d) a swift and certain compliance protocol, including a prompt and effective review by the court for noncompliance; and

(e) regular reviews of the program and compliance audits by the courts and designated domestic violence advocacy groups.

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