

2668

2009-2010 Regular Sessions

I N   S E N A T E

February 26, 2009

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

AN ACT to amend the criminal procedure law, in relation to admissibility  
of a victim's sexual conduct in a sex offense

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 60.42 of the criminal procedure law, as added by  
2 chapter 230 of the laws of 1975 and subdivision 3 as amended by chapter  
3 264 of the laws of 2003, is amended to read as follows:  
4     S 60.42 Rules of evidence; admissibility of evidence of victim's sexual  
5         conduct in sex offense cases.  
6     Evidence of a victim's sexual conduct shall not be admissible in a  
7 prosecution for an offense or an attempt to commit an offense defined in  
8 article one hundred thirty of the penal law unless such evidence:  
9     1. proves or tends to prove specific instances of the victim's prior  
10 sexual conduct with the accused; or  
11     2. [proves or tends to prove that the victim has been convicted of an  
12 offense under section 230.00 of the penal law within three years prior  
13 to the sex offense which is the subject of the prosecution; or  
14     3.] rebuts evidence introduced by the people of the victim's failure  
15 to engage in sexual intercourse, oral sexual conduct, anal sexual  
16 conduct or sexual contact during a given period of time; or  
17     [4.] 3. rebuts evidence introduced by the people which proves or tends  
18 to prove that the accused is the cause of pregnancy or disease of the  
19 victim, or the source of semen found in the victim; or  
20     [5.] 4. is determined by the court after an offer of proof by the  
21 accused outside the hearing of the jury, or such hearing as the court  
22 may require, and a statement by the court of its findings of fact essen-  
23 tial to its determination, to be relevant and admissible in the inter-  
24 ests of justice.  
25     S 2. This act shall take effect on the first of November next succeed-  
26 ing the date on which it shall have become a law.

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

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