S T A T E O F N E W Y O R K

987

2015-2016 Regular Sessions

I N S E N A T E

January 7, 2015

Introduced by Sen. CARLUCCI -- 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 providing an exception to the hearsay rule to allow testimony from persons with developmental disabilities

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

Section 1. The criminal procedure law is amended by adding a new section 60.77 to read as follows:

S 60.77 STATEMENTS OF PERSONS WITH DEVELOPMENTAL DISABILITIES; HEARSAY EXCEPTION.

1. AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL DISABILITY, AS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW, NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY IS ADMISSIBLE IN ANY CRIMINAL OR DELINQUENCY PROCEEDING IN WHICH THE PERSON IS ALLEGED TO HAVE BEEN A VICTIM IF THE CONDITIONS OF SUBDIVISION FIVE OF THIS SECTION ARE SATISFIED.

2. (A) AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL DISABILITY, AS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW, THAT DESCRIBES ALL OR PART OF AN OFFENSE DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION PERFORMED WITH, BY, ON, OR IN THE PRESENCE OF THE DECLARANT, AND THAT IS NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY, IS ADMISSIBLE IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING IF THE CONDITIONS OF SUBDIVISION FIVE OF THIS SECTION ARE SATISFIED.

(B) THE EXCEPTION DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION APPLIES TO AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL DISABILITY, WHICH STATEMENT DESCRIBES ALL OR PART OF ANY OF THE FOLLOWING OFFENSES:

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

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(I) ANY OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW;
(II) LABOR TRAFFICKING AS DESCRIBED IN SECTION 135.35 OF THE PENAL LAW;
(III) AN OFFENSE INVOLVING INCEST AS DESCRIBED IN SECTION 255.25, 255.26 OR 255.27 OF THE PENAL LAW;
(IV) SEX TRAFFICKING AS DESCRIBED IN SECTION 230.34 OF THE PENAL LAW;
(V) ANY OFFENSE DESCRIBED IN ARTICLE TWO HUNDRED THIRTY-FIVE OF THE PENAL LAW;
(VI) CRIMINAL ATTEMPT TO COMMIT ANY OF THE ACTS SPECIFIED IN THIS PARAGRAPH.

3. AN OUT-OF-COURT STATEMENT BY A PERSON WITH A DEVELOPMENTAL DISABILITY, AS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW, THAT DESCRIBES ANY ACT OF CHILD ABUSE, CHILD NEGLECT OR CHILD MALTREATMENT TO WHICH THE DECLARANT WAS SUBJECTED OR WHICH THE DECLARANT WITNESSED, AND THAT IS NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY, IS ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING IN WHICH A CHILD IS ALLEGED TO BE A VICTIM OF CHILD ABUSE, NEGLECT OR MALTREATMENT, IF THE CONDITIONS OF SUBDIVISION FIVE OF THIS SECTION ARE SATISFIED.

4. AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL DISABILITY, AS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW, THAT DESCRIBES ALL OR PART OF AN OFFENSE CONTAINED IN ARTICLE ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, OR THAT DESCRIBES AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SUBDIVISION ONE OF SECTION FOUR HUNDRED EIGHTY-ONE-C OF THE SOCIAL SERVICES LAW, NOT OTHERWISE ADMISSIBLE BY STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY, IS ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING IF THE CONDITIONS OF SUBDIVISION FIVE OF THIS SECTION ARE SATISFIED.

5. THE EXCEPTIONS TO THE OBJECTION OF HEARSAY DESCRIBED IN SUBDIVISIONS ONE, TWO, THREE AND FOUR OF THIS SECTION SHALL APPLY ONLY IF THE COURT FINDS IN A HEARING CONDUCTED OUTSIDE THE PRESENCE OF THE JURY THAT THE TIME, CONTENT, AND CIRCUMSTANCES OF THE STATEMENT PROVIDE SUFFICIENT SAFEGUARDS OF RELIABILITY; AND EITHER:
(A) THE STATEMENT IS A NON-TESTIMONIAL STATEMENT; OR
(B) (I) THE DECLARANT TESTIFIES AT THE PROCEEDINGS; OR
(II) IF THE DECLARANT IS UNAVAILABLE TO TESTIFY, THE DEFENDANT HAS HAD AN OPPORTUNITY TO CROSS-EXAMINE THE DECLARANT IN A PREVIOUS PROCEEDING AND THERE IS CORROBORATIVE EVIDENCE OF THE ACT WHICH IS THE SUBJECT OF THE STATEMENT.

6. IF A STATEMENT IS ADMITTED PURSUANT TO THIS SECTION, THE COURT SHALL INSTRUCT THE JURY IN THE FINAL WRITTEN INSTRUCTIONS THAT DURING THE PROCEEDING THE JURY HEARD EVIDENCE REPEATING A PERSON'S OUT-OF-COURT STATEMENT, THAT IT IS FOR THE JURY TO DETERMINE THE WEIGHT AND CREDIT TO BE GIVEN THE STATEMENT, AND THAT, IN MAKING THE DETERMINATION, THE JURY SHALL CONSIDER THE NATURE OF THE STATEMENT, THE CIRCUMSTANCES UNDER WHICH THE STATEMENT WAS MADE, AND ANY OTHER RELEVANT FACTOR.

7. THE PROPONENT OF THE STATEMENT SHALL GIVE THE ADVERSE PARTY REASONABLE NOTICE OF HIS OR HER INTENTION TO OFFER THE STATEMENT AND THE PARTICULARS OF THE STATEMENT.

S 2. This act shall take effect immediately.