

STATE OF NEW YORK

8872

IN ASSEMBLY

January 19, 2022

Introduced by M. of A. STECK -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to admissibility of evidence of a victim's sexual conduct, sexual predisposition, or manner of dress

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

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 4549 to read as follows:

3 § 4549. Admissibility of evidence of victim's sexual conduct, sexual
4 predisposition, or manner of dress. The following evidence shall not be
5 discoverable or admissible in a civil action or proceeding:

6 (a) Evidence of the victim's or alleged victim's previous sexual
7 conduct or sexual predisposition shall not be discoverable or admitted,
8 nor reference made to it in the presence of a jury, except as provided
9 in this section. When a defendant seeks to discover or admit such
10 evidence for any purpose, the defendant shall apply for an order of the
11 court. After the motion is made, the court shall conduct a hearing in
12 camera to determine the discoverability or admissibility of such
13 evidence. Upon the hearing and determination of such a motion, there
14 shall be a presumption that any such reference to a victim's sexual
15 conduct, sexual predisposition or manner of dress, is both inadmissible
16 as evidence and not subject to disclosure. If the court finds that
17 evidence offered by the defendant regarding the sexual conduct, sexual
18 predisposition, or manner of dress of the victim or alleged victim is
19 relevant and that its probative value substantially outweighs the danger
20 of harm, shame or embarrassment to any victim or alleged victim; and the
21 probative value of the evidence offered is not outweighed by its collat-
22 eral nature or by the probability that its admission will create undue
23 prejudice, confusion of the issues, or unwarranted invasion of the
24 privacy of the victim or alleged victim, or lead to harm, shame or
25 embarrassment on the part of the victim or alleged victim; the court
26 shall enter an order setting forth with specificity what evidence may be
27 discovered or introduced and the nature of the questions which shall be

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

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1 permitted, and the reasons why the court finds that such evidence satis-
2 fies the standards contained in this section. The defendant may then
3 discover or offer evidence under the order of the court.

4 (b) Unless the court orders otherwise, the motion, related materials,
5 and the record of the hearing under subdivision (a) of this section
6 shall be and remain sealed.

7 (c) Evidence of the victim's or alleged victim's previous sexual
8 conduct shall not be discoverable or considered relevant unless it is
9 material to proving that the source of semen, pregnancy or disease is a
10 person other than the defendant or the alleged perpetrator. For the
11 purposes of this section, "sexual conduct" shall mean any conduct or
12 behavior relating to sexual activities of the victim, including but not
13 limited to previous or subsequent experience of sexual penetration or
14 sexual contact, use of contraceptives, living arrangement and life
15 style.

16 (d) Evidence of the manner in which the victim or alleged victim was
17 dressed at the time of the commission of a sexual offense or sexual
18 misconduct shall not be admitted, unless such evidence is determined by
19 the court to be relevant and admissible in the interests of justice,
20 after an offer of proof by the proponent of such evidence outside the
21 hearing of the jury, or such hearing as the court may require, and a
22 statement by the court of its findings of fact essential to its determi-
23 nation.

24 (e) The court may admit evidence of a victim's or alleged victim's
25 reputation only if such victim or alleged victim has placed it in
26 controversy.

27 § 2. This act shall take effect immediately.