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

5490

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. McKEVITT, KOLB, ERRIGO, CROUCH, WALKER, GIGLIO, ALFANO, BARRA -- Multi-Sponsored by -- M. of A. McDONOUGH, OAKS -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the civil practice law and rules, in relation to admission of evidence of proof of similar sex offenses in criminal and civil proceedings involving the commission of a sex offense

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 60.41 to read as follows:

S 60.41 RULES OF EVIDENCE; PROOF OF SIMILAR OFFENSES IN SEX OFFENSE CASES.

1. IN A CRIMINAL PROCEEDING IN WHICH THE DEFENDANT IS ACCUSED OF A SEX OFFENSE, EVIDENCE THAT THE DEFENDANT WAS CONVICTED OF ANOTHER SEX OFFENSE OR OFFENSES IS ADMISSIBLE, AND MAY BE CONSIDERED FOR ITS BEARING ON ANY MATTER TO WHICH IT IS RELEVANT.

2. IN A CASE IN WHICH THE PROSECUTION INTENDS TO OFFER EVIDENCE PURSUANT TO THIS SECTION, THE PROSECUTOR SHALL DISCLOSE THE EVIDENCE TO THE DEFENDANT, INCLUDING STATEMENTS OF WITNESSES OR A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT IS EXPECTED TO BE OFFERED, AT LEAST FIFTEEN DAYS BEFORE THE SCHEDULED DATE OF TRIAL OR AT SUCH LATER TIME AS THE COURT MAY ALLOW FOR GOOD CAUSE.

3. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE ADMISSION OR CONSIDERATION OF EVIDENCE UNDER ANY OTHER PROVISION OF LAW.

4. FOR PURPOSES OF THIS SECTION, "SEX OFFENSE" MEANS A CRIME UNDER FEDERAL LAW OR THE LAW OF A STATE THAT INVOLVED:

(A) ANY CONDUCT PROSCRIBED BY ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW;

(B) CONTACT, WITHOUT CONSENT, BETWEEN ANY PART OF THE DEFENDANT'S BODY OR AN OBJECT AND THE GENITALS OR ANUS OF ANOTHER PERSON;

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

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(C) CONTACT, WITHOUT CONSENT, BETWEEN THE GENITALS OR ANUS OF THE DEFENDANT AND ANY PART OF ANOTHER PERSON'S BODY;

(D) DERIVING SEXUAL PLEASURE OR GRATIFICATION FROM THE INFLICTION OF DEATH, BODILY INJURY, OR PHYSICAL PAIN ON ANOTHER PERSON; OR

(E) AN ATTEMPT OR CONSPIRACY TO ENGAGE IN CONDUCT DESCRIBED IN PARAGRAPHS (A) THROUGH (D) OF THIS SUBDIVISION.

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

S 4549. PROOF OF SIMILAR OFFENSES IN CIVIL CASES CONCERNING SEX OFFENSES AND CHILD MOLESTATION. 1. IN ANY ACTION FOR DAMAGES OR OTHER RELIEF PREDICATED ON A PARTY'S ALLEGED COMMISSION OF CONDUCT CONSTITUTING A SEX OFFENSE OR CHILD MOLESTATION, EVIDENCE OF THAT PARTY'S COMMISSION OF ANOTHER SEX OFFENSE OR CHILD MOLESTATION SHALL BE ADMISSIBLE FOR CONSIDERATION BY THE COURT.

2. A PARTY WHO INTENDS TO OFFER EVIDENCE UNDER THIS SECTION SHALL DISCLOSE THE EVIDENCE TO THE PARTY AGAINST WHOM IT WILL BE OFFERED, INCLUDING STATEMENTS OF WITNESSES OR A SUMMARY OF THE SUBSTANCE OF ANY TESTIMONY THAT IS EXPECTED TO BE OFFERED, AT LEAST FIFTEEN DAYS BEFORE THE SCHEDULED DATE OF TRIAL OR AT SUCH LATER TIME AS THE COURT MAY ALLOW FOR GOOD CAUSE.

3. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE ADMISSION OR CONSIDERATION OF EVIDENCE UNDER ANY OTHER PROVISION OF LAW.

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