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

4686

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. V. LOPEZ -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to admissibility of certain out-of-court statements by a child less than twelve years old

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 60.47 to read as follows:

S 60.47 RULES OF EVIDENCE; ADMISSIBILITY OF CERTAIN OUT-OF-COURT STATEMENTS OF CHILDREN LESS THAN TWELVE YEARS OLD.

THE COURT MAY DETERMINE THAT A STATEMENT OF THE COMPLAINING WITNESS IS NOT MADE INADMISSIBLE BY THE HEARSAY RULE IF THE COURT FINDS ALL OF THE FOLLOWING:

1. THE STATEMENT WAS MADE BY A CHILD LESS THAN TWELVE YEARS OLD, AND THE CONTENTS OF THE STATEMENT WERE INCLUDED IN A WRITTEN REPORT OF A LOCAL OR STATE LAW ENFORCEMENT OFFICIAL OR OF AN EMPLOYEE OF A LOCAL DEPARTMENT OF SOCIAL SERVICES OR OF THE OFFICE OF CHILDREN AND FAMILY SERVICES.

2. THE STATEMENT DESCRIBES THE MINOR CHILD AS A VICTIM OF A SEX OFFENSE INCLUDED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW.

3. THE STATEMENT SHOWED SPONTANEITY AND A CONSISTENT REPETITION OF THE FACTS, WAS STATED IN THE TERMINOLOGY CONSISTENT WITH THE AGE OF THE CHILD, AND WAS REFLECTIVE OF THE MENTAL STATE OF THE CHILD.

4. THE STATEMENT WAS MADE BY A CHILD WHO HAD NO MOTIVE TO FABRICATE SUCH STATEMENT. THE COURT SHALL VIEW WITH CAUTION THE TESTIMONY OF A PERSON RECOUNTING HEARSAY WHERE THERE IS EVIDENCE OF PERSONAL BIAS OR PREJUDICE.

5. THE CHILD IS FOUND TO BE UNAVAILABLE OR REFUSES TO TESTIFY.

S 2. This act shall take effect on the first of November next succeeding 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.

LBD04442-01-9