

4252

2009-2010 Regular Sessions

I N S E N A T E

April 20, 2009

Introduced by Sens. SCHNEIDERMAN, DIAZ, PARKER -- (at request of the Division of Criminal Justice Services) -- 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 the testimony of certain child witnesses

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

1 Section 1. Subdivision 1 of section 65.00 of the criminal procedure
2 law, as amended by chapter 320 of the laws of 2006, is amended to read
3 as follows:
4 1. "Child witness" means a person fourteen years old or less who is or
5 will be called to testify in a criminal proceeding, other than a grand
6 jury proceeding, concerning an offense defined in article ONE HUNDRED
7 TWENTY, ONE HUNDRED TWENTY-FIVE, one hundred thirty OR ONE HUNDRED THIR-
8 TY-FIVE of the penal law or section 255.25, 255.26 [or], 255.27 OR
9 260.10 of such law which is the subject of such criminal proceeding.
10 S 2. Subdivision 7 of section 65.20 of the criminal procedure law, as
11 amended by chapter 320 of the laws of 2006 and as renumbered by chapter
12 548 of the laws of 2007, is amended to read as follows:
13 7. Notwithstanding any other provision of law, the child witness who
14 is alleged to be vulnerable may not be compelled to testify at such
15 hearing or to submit to any psychological or psychiatric examination.
16 The failure of the child witness to testify at such hearing shall not be
17 a ground for denying a motion made pursuant to subdivision one of this
18 section. Prior statements made by the child witness relating to any
19 allegations of conduct constituting an offense defined in article ONE
20 HUNDRED TWENTY, ONE HUNDRED TWENTY-FIVE, one hundred thirty OR ONE
21 HUNDRED THIRTY-FIVE of the penal law [or], incest as defined in section
22 255.25, 255.26 or 255.27 of such law, ENDANGERING THE WELFARE OF A CHILD
23 AS DEFINED IN SECTION 260.10 OF THE PENAL LAW or to any allegation of
24 words or conduct constituting an attempt to prevent, impede or deter the

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

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1 child witness from cooperating in the investigation or prosecution of
2 the offense shall be admissible at such hearing, provided, however, that
3 a declaration that a child witness is vulnerable may not be based solely
4 upon such prior statements.
5 S 3. This act shall take effect immediately and shall apply to crimi-
6 nal proceedings conducted on or after such date; provided, however, that
7 the amendments to sections 65.00 and 65.20 of the criminal procedure law
8 made by sections one and two of this act shall not affect the repeal of
9 such sections pursuant to chapter 505 of the laws of 1985, as amended,
10 and shall be deemed repealed therewith.