

10285

I N A S S E M B L Y

May 18, 2012

Introduced by M. of A. WEISENBERG -- read once and referred 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The criminal procedure law is amended by adding a new
2 section 60.77 to read as follows:
3 S 60.77 STATEMENTS OF PERSONS WITH DEVELOPMENTAL DISABILITIES; HEARSAY
4 EXCEPTION.
5 1. AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL
6 DISABILITY, AS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE
7 MENTAL HYGIENE LAW, NOT OTHERWISE ADMISSIBLE BY A STATUTE OR COURT RULE
8 THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY IS ADMISSIBLE IN
9 ANY CRIMINAL OR DELINQUENCY PROCEEDING IN WHICH THE PERSON IS ALLEGED TO
10 HAVE BEEN A VICTIM IF THE CONDITIONS OF SUBDIVISION FIVE OF THIS SECTION
11 ARE SATISFIED.
12 2. (A) AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL
13 DISABILITY, AS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE
14 MENTAL HYGIENE LAW, THAT DESCRIBES ALL OR PART OF AN OFFENSE DESCRIBED
15 IN PARAGRAPH (B) OF THIS SUBDIVISION PERFORMED WITH, BY, ON, OR IN THE
16 PRESENCE OF THE DECLARANT, AND THAT IS NOT OTHERWISE ADMISSIBLE BY A
17 STATUTE OR COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF
18 HEARSAY, IS ADMISSIBLE IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING
19 IF THE CONDITIONS OF SUBDIVISION FIVE OF THIS SECTION ARE SATISFIED.
20 (B) THE EXCEPTION DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION
21 APPLIES TO AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOP-
22 MENTAL DISABILITY, WHICH STATEMENT DESCRIBES ALL OR PART OF ANY OF THE
23 FOLLOWING OFFENSES:
24 (I) ANY OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL
25 LAW;
26 (II) LABOR TRAFFICKING AS DESCRIBED IN SECTION 135.35 OF THE PENAL
27 LAW;

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

LBD15718-02-2

1 (III) AN OFFENSE INVOLVING INCEST AS DESCRIBED IN SECTION 255.25,
2 255.26 OR 255.27 OF THE PENAL LAW;

3 (IV) SEX TRAFFICKING AS DESCRIBED IN SECTION 230.34 OF THE PENAL LAW;

4 (V) ANY OFFENSE DESCRIBED IN ARTICLE TWO HUNDRED THIRTY-FIVE OF THE
5 PENAL LAW;

6 (VI) CRIMINAL ATTEMPT TO COMMIT ANY OF THE ACTS SPECIFIED IN THIS
7 PARAGRAPH.

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

18 4. AN OUT-OF-COURT STATEMENT MADE BY A PERSON WITH A DEVELOPMENTAL
19 DISABILITY, AS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE
20 MENTAL HYGIENE LAW, THAT DESCRIBES ALL OR PART OF AN OFFENSE CONTAINED
21 IN ARTICLE ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW, OR THAT DESCRIBES
22 AN ACT OF DOMESTIC VIOLENCE AS DEFINED IN SUBDIVISION ONE OF SECTION
23 481-C OF THE SOCIAL SERVICES LAW, NOT OTHERWISE ADMISSIBLE BY STATUTE OR
24 COURT RULE THAT PROVIDES AN EXCEPTION TO THE OBJECTION OF HEARSAY, IS
25 ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL, DELINQUENCY, OR CIVIL PROCEEDING
26 IF THE CONDITIONS OF SUBDIVISION FIVE OF THIS SECTION ARE SATISFIED.

27 5. THE EXCEPTIONS TO THE OBJECTION OF HEARSAY DESCRIBED IN SUBDIVI-
28 SIONS ONE, TWO, THREE AND FOUR OF THIS SECTION SHALL APPLY ONLY IF THE
29 COURT FINDS IN A HEARING CONDUCTED OUTSIDE THE PRESENCE OF THE JURY THAT
30 THE TIME, CONTENT, AND CIRCUMSTANCES OF THE STATEMENT PROVIDE SUFFICIENT
31 SAFEGUARDS OF RELIABILITY; AND EITHER:

32 (A) THE STATEMENT IS A NON-TESTIMONIAL STATEMENT; OR

33 (B) (I) THE DECLARANT TESTIFIES AT THE PROCEEDINGS; OR

34 (II) IF THE DECLARANT IS UNAVAILABLE TO TESTIFY, THE DEFENDANT HAS HAD
35 AN OPPORTUNITY TO CROSS-EXAMINE THE DECLARANT IN A PREVIOUS PROCEEDING
36 AND THERE IS CORROBORATIVE EVIDENCE OF THE ACT WHICH IS THE SUBJECT OF
37 THE STATEMENT.

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

45 7. THE PROPONENT OF THE STATEMENT SHALL GIVE THE ADVERSE PARTY REASON-
46 ABLE NOTICE OF HIS OR HER INTENTION TO OFFER THE STATEMENT AND THE
47 PARTICULARS OF THE STATEMENT.

48 S 2. This act shall take effect immediately.