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

1458

2011-2012 Regular Sessions

I N A S S E M B L Y

January 10, 2011

Introduced by M. of A. ROSENTHAL, GOTTFRIED, KELLNER, SCHIMEL, PAULIN, V. LOPEZ, N. RIVERA, PHEFFER, JAFFEE, CAHILL -- Multi-Sponsored by -- M. of A. GLICK, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to admissibility of a victim's sexual conduct in a sex offense

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

Section 1. Section 60.42 of the criminal procedure law, as added by chapter 230 of the laws of 1975 and subdivision 3 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 60.42 Rules of evidence; admissibility of evidence of victim's sexual conduct in sex offense cases.

Evidence of a victim's sexual conduct shall not be admissible in a prosecution for an offense or an attempt to commit an offense defined in article one hundred thirty of the penal law unless such evidence:

1. proves or tends to prove specific instances of the victim's prior sexual conduct with the accused; or

2. [proves or tends to prove that the victim has been convicted of an offense under section 230.00 of the penal law within three years prior to the sex offense which is the subject of the prosecution; or

3.] rebuts evidence introduced by the people of the victim's failure to engage in sexual intercourse, oral sexual conduct, anal sexual conduct or sexual contact during a given period of time; or

[4.] 3. rebuts evidence introduced by the people which proves or tends to prove that the accused is the cause of pregnancy or disease of the victim, or the source of semen found in the victim; or

[5.] 4. is determined by the court after an offer of proof by the accused outside the hearing of the jury, or such hearing as the court may require, and a statement by the court of its findings of fact essen-

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

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tial to its determination, to be relevant and admissible in the interests of justice.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.