

3922

2011-2012 Regular Sessions

I N S E N A T E

March 9, 2011

Introduced by Sen. SMITH -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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:

1 Section 1. The criminal procedure law is amended by adding a new
2 section 60.47 to read as follows:
3 S 60.47 RULES OF EVIDENCE; ADMISSIBILITY OF CERTAIN OUT-OF-COURT STATE-
4 MENTS OF CHILDREN LESS THAN TWELVE YEARS OLD.
5 THE COURT MAY DETERMINE THAT A STATEMENT OF THE COMPLAINING WITNESS IS
6 NOT MADE INADMISSIBLE BY THE HEARSAY RULE IF THE COURT FINDS ALL OF THE
7 FOLLOWING:
8 1. THE STATEMENT WAS MADE BY A CHILD LESS THAN TWELVE YEARS OLD, AND
9 THE CONTENTS OF THE STATEMENT WERE INCLUDED IN A WRITTEN REPORT OF A
10 LOCAL OR STATE LAW ENFORCEMENT OFFICIAL OR OF AN EMPLOYEE OF A LOCAL
11 DEPARTMENT OF SOCIAL SERVICES OR OF THE OFFICE OF CHILDREN AND FAMILY
12 SERVICES.
13 2. THE STATEMENT DESCRIBES THE MINOR CHILD AS A VICTIM OF A SEX
14 OFFENSE INCLUDED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW.
15 3. THE STATEMENT SHOWED SPONTANEITY AND A CONSISTENT REPETITION OF THE
16 FACTS, WAS STATED IN THE TERMINOLOGY CONSISTENT WITH THE AGE OF THE
17 CHILD, AND WAS REFLECTIVE OF THE MENTAL STATE OF THE CHILD.
18 4. THE STATEMENT WAS MADE BY A CHILD WHO HAD NO MOTIVE TO FABRICATE
19 SUCH STATEMENT. THE COURT SHALL VIEW WITH CAUTION THE TESTIMONY OF A
20 PERSON RECOUNTING HEARSAY WHERE THERE IS EVIDENCE OF PERSONAL BIAS OR
21 PREJUDICE.
22 5. THE CHILD IS FOUND TO BE UNAVAILABLE OR REFUSES TO TESTIFY.
23 S 2. This act shall take effect on the first of November next succeed-
24 ing 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.

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