

3803

2013-2014 Regular Sessions

I N S E N A T E

February 15, 2013

Introduced by Sen. CARLUCCI -- 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 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 ASSEMBLY, 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:

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

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1 (I) ANY OFFENSE DESCRIBED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL
2 LAW;

3 (II) LABOR TRAFFICKING AS DESCRIBED IN SECTION 135.35 OF THE PENAL
4 LAW;

5 (III) AN OFFENSE INVOLVING INCEST AS DESCRIBED IN SECTION 255.25,
6 255.26 OR 255.27 OF THE PENAL LAW;

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

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

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

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

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

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

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

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

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

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

50 7. THE PROPONENT OF THE STATEMENT SHALL GIVE THE ADVERSE PARTY REASON-
51 ABLE NOTICE OF HIS OR HER INTENTION TO OFFER THE STATEMENT AND THE
52 PARTICULARS OF THE STATEMENT.

53 S 2. This act shall take effect immediately.