

2876

2013-2014 Regular Sessions

I N   S E N A T E

January 24, 2013

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Introduced by Sen. SMITH -- 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 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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