

4000

2015-2016 Regular Sessions

I N   A S S E M B L Y

January 28, 2015

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Introduced by M. of A. McKEVITT, GRAF, KOLB -- Multi-Sponsored by -- M.  
of A. HAWLEY -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the civil practice law  
and rules, in relation to admission of evidence of proof of similar  
sex offenses in criminal and civil proceedings involving the commis-  
sion of a sex offense

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 60.41 to read as follows:  
3     S 60.41 RULES OF EVIDENCE; PROOF OF SIMILAR OFFENSES IN SEX OFFENSE  
4         CASES.  
5     1. IN A CRIMINAL PROCEEDING IN WHICH THE DEFENDANT IS ACCUSED OF A SEX  
6     OFFENSE, EVIDENCE THAT THE DEFENDANT WAS CONVICTED OF ANOTHER SEX  
7     OFFENSE OR OFFENSES IS ADMISSIBLE, AND MAY BE CONSIDERED FOR ITS BEARING  
8     ON ANY MATTER TO WHICH IT IS RELEVANT.  
9     2. IN A CASE IN WHICH THE PROSECUTION INTENDS TO OFFER EVIDENCE PURSU-  
10    ANT TO THIS SECTION, THE PROSECUTOR SHALL DISCLOSE THE EVIDENCE TO THE  
11    DEFENDANT, INCLUDING STATEMENTS OF WITNESSES OR A SUMMARY OF THE  
12    SUBSTANCE OF ANY TESTIMONY THAT IS EXPECTED TO BE OFFERED, AT LEAST  
13    FIFTEEN DAYS BEFORE THE SCHEDULED DATE OF TRIAL OR AT SUCH LATER TIME AS  
14    THE COURT MAY ALLOW FOR GOOD CAUSE.  
15    3. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE ADMISSION OR  
16    CONSIDERATION OF EVIDENCE UNDER ANY OTHER PROVISION OF LAW.  
17    4. FOR PURPOSES OF THIS SECTION, "SEX OFFENSE" MEANS A CRIME UNDER  
18    FEDERAL LAW OR THE LAW OF A STATE THAT INVOLVED:  
19    (A) ANY CONDUCT PROSCRIBED BY ARTICLE ONE HUNDRED THIRTY OF THE PENAL  
20    LAW;  
21    (B) CONTACT, WITHOUT CONSENT, BETWEEN ANY PART OF THE DEFENDANT'S BODY  
22    OR AN OBJECT AND THE GENITALS OR ANUS OF ANOTHER PERSON;

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

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1 (C) CONTACT, WITHOUT CONSENT, BETWEEN THE GENITALS OR ANUS OF THE  
2 DEFENDANT AND ANY PART OF ANOTHER PERSON'S BODY;

3 (D) DERIVING SEXUAL PLEASURE OR GRATIFICATION FROM THE INFLECTION OF  
4 DEATH, BODILY INJURY, OR PHYSICAL PAIN ON ANOTHER PERSON; OR

5 (E) AN ATTEMPT OR CONSPIRACY TO ENGAGE IN CONDUCT DESCRIBED IN PARA-  
6 GRAPHS (A) THROUGH (D) OF THIS SUBDIVISION.

7 S 2. The civil practice law and rules is amended by adding a new  
8 section 4549 to read as follows:

9 S 4549. PROOF OF SIMILAR OFFENSES IN CIVIL CASES CONCERNING SEX  
10 OFFENSES AND CHILD MOLESTATION. 1. IN ANY ACTION FOR DAMAGES OR OTHER  
11 RELIEF PREDICATED ON A PARTY'S ALLEGED COMMISSION OF CONDUCT CONSTITUT-  
12 ING A SEX OFFENSE OR CHILD MOLESTATION, EVIDENCE OF THAT PARTY'S COMMIS-  
13 SION OF ANOTHER SEX OFFENSE OR CHILD MOLESTATION SHALL BE ADMISSIBLE  
14 FOR CONSIDERATION BY THE COURT.

15 2. A PARTY WHO INTENDS TO OFFER EVIDENCE UNDER THIS SECTION SHALL  
16 DISCLOSE THE EVIDENCE TO THE PARTY AGAINST WHOM IT WILL BE OFFERED,  
17 INCLUDING STATEMENTS OF WITNESSES OR A SUMMARY OF THE SUBSTANCE OF ANY  
18 TESTIMONY THAT IS EXPECTED TO BE OFFERED, AT LEAST FIFTEEN DAYS BEFORE  
19 THE SCHEDULED DATE OF TRIAL OR AT SUCH LATER TIME AS THE COURT MAY ALLOW  
20 FOR GOOD CAUSE.

21 3. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT THE ADMISSION OR  
22 CONSIDERATION OF EVIDENCE UNDER ANY OTHER PROVISION OF LAW.

23 S 3. This act shall take effect on the thirtieth day after it shall  
24 have become a law.