STATE OF NEW YORK

6852

2019-2020 Regular Sessions

IN SENATE

November 13, 2019

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the criminal procedure law, in relation to discovery restrictions for photographs of minors depicting sexual or other intimate parts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (h) of subdivision 1 of section 245.20 of the criminal procedure law, as added by section 2 of part LLL of chapter 59 of the laws of 2019, is amended to read as follows:

(h) All photographs and drawings made or completed by a public servant engaged in law enforcement activity, or which were made by a person whom the prosecutor intends to call as a witness at trial or a pre-trial hearing, or which relate to the subject matter of the case**; provided, however, that any photographs depicting the sexual or other intimate parts of a person under the age of eighteen at the time the photograph was taken shall first be subject to in camera review and other restrictions provided by subdivision eight of section 245.70 of this article**.

§ 2. Section 245.70 of the criminal procedure law is amended by adding a new subdivision 8 to read as follows:

8. Photographs depicting the sexual or other intimate parts of a minor. Any photograph depicting the sexual or other intimate parts of a person under the age of eighteen at the time the photograph was taken, and which is otherwise subject to disclosure pursuant to paragraph (h) of subdivision one of section 245.20 of this article, shall be subject to in camera review prior to disclosure to determine the manner in which such photograph shall be disclosed, without need for a motion by either party. In determining the manner of disclosure, the court shall consider the body parts depicted in the photograph, the age of the minor depicted, the nature of the photograph, the relevance and materiality of

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

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the photograph to the pending case, the impact disclosure may have on the minor depicted, the nature of the crime or crimes charged, the relationship between the minor depicted and the defendant and any alleged relationship between the minor depicted and the defendant, and, when known, the wishes of the minor depicted. There shall be a rebuttable presumption that such photograph shall be disclosed only to the counsel and relevant experts for the defendant.

§ 3. This act shall take effect on the same date and in the same manner as section 2 of part LLL of chapter 59 of the laws of 2019, takes effect.