STATE OF NEW YORK

8351

IN SENATE

February 15, 2022

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

AN ACT to amend the criminal procedure law and the civil practice law and rules, in relation to prohibiting a court from ordering certain physical examinations of the victim of a sexual assault and to the admissibility of evidence of the refusal of such victim to undergo such examinations

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

Section 1. The criminal procedure law is amended by adding a new section 60.56 to read as follows:

§ 60.56 Rules of evidence; admissibility of evidence of victim's refusal to undergo examination in sex offense cases.

1. The court may not order or otherwise require the alleged victim in a prosecution for a sexual offense to submit to or undergo a gynecological or physical examination of the breasts, buttocks, anus, or any part of the sex organs.

2. The refusal of an alleged victim to undergo an examination described in subdivision one of this section may not serve as the basis to exclude evidence obtained from other relevant examinations of the victim, except where constitutionally required.

3. For the purposes of this section, the term "sexual offense" means any offense in which sexual intercourse, sexual contact, or sexual intrusion is an element of the offense, and includes any prosecution under article one hundred thirty of the penal law.

§ 2. Section 3121 of the civil practice law and rules is amended by adding a new subdivision (c) to read as follows:

(c) (1) Notwithstanding the provisions of subdivision (a) of this section, in a matter involving injury allegedly attributable to a sexual assault, the court may not order or otherwise require a party who was the alleged victim in a prosecution for a sexual offense to submit to or undergo a gynecological or physical examination of the breasts, buttocks, anus, or any part of the sex organs.

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

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(2) The refusal of a party to undergo an examination described in subdivision one of this section may not serve as the basis to exclude evidence obtained from other relevant examinations of the party, except where constitutionally required.

(3) For the purposes of this subdivision, the term "sexual offense" means any offense in which sexual intercourse, sexual contact, or sexual intrusion is an element of the offense, and includes any prosecution under article one hundred thirty of the penal law.

§ 3. This act shall take effect immediately.