

# STATE OF NEW YORK

5272

2021-2022 Regular Sessions

## IN SENATE

March 1, 2021

Introduced by Sens. PARKER, GOUNARDES, KRUEGER, RIVERA, SALAZAR, STAVISKY -- 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 a victim's sexual conduct in a sex offense

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

1 Section 1. Section 60.42 of the criminal procedure law, as amended by  
2 section 1 of part R of chapter 55 of the laws of 2019, is amended to  
3 read as follows:

4 § 60.42 Rules of evidence; admissibility of evidence of victim's sexual  
5 conduct in sex offense cases.

6 Evidence of a victim's sexual conduct shall not be admissible in a  
7 prosecution for an offense or an attempt to commit an offense defined in  
8 article one hundred thirty or in section 230.34 of the penal law unless  
9 such evidence:

10 1. proves or tends to prove specific instances of the victim's prior  
11 sexual conduct with the accused; or

12 2. [~~proves or tends to prove that the victim has been convicted of an~~  
13 ~~offense under section 230.00 of the penal law within three years prior~~  
14 ~~to the sex offense which is the subject of the prosecution; or~~

15 ~~3.]~~ rebuts evidence introduced by the people of the victim's failure  
16 to engage in sexual intercourse, oral sexual conduct, anal sexual  
17 conduct or sexual contact during a given period of time; or

18 [~~4.]~~ 3. rebuts evidence introduced by the people which proves or tends  
19 to prove that the accused is the cause of pregnancy or disease of the  
20 victim, or the source of semen found in the victim; or

21 [~~5.]~~ 4. is determined by the court after an offer of proof by the  
22 accused outside the hearing of the jury, or such hearing as the court  
23 may require, and a statement by the court of its findings of fact essen-

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

LBD00311-01-1

1 tial to its determination, to be relevant and admissible in the inter-  
2 ests of justice.  
3 § 2. This act shall take effect on the first of November next succeed-  
4 ing the date on which it shall have become a law.