# STATE OF NEW YORK

4992--B

2023-2024 Regular Sessions

# IN ASSEMBLY

February 27, 2023

Introduced by M. of A. PAULIN, DINOWITZ, GUNTHER, BURDICK, RAGA, SIMON, GLICK, HEVESI, SHIMSKY, WALLACE, SANTABARBARA, FAHY, CURRAN, L. ROSENTHAL, SEAWRIGHT, McDONALD, CONRAD, THIELE, ARDILA, KIM, COLTON, LEE, PHEFFER AMATO, SIMONE, EACHUS, ZACCARO, PRETLOW, LEVENBERG, McDONOUGH, HUNTER, ROZIC, BARRETT, STIRPE, CLARK, BUTTENSCHON, STERN -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to allowing evidence of a defendant's prior sexual assault to be admissible in a sexual assault proceeding

**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 60.77 to read as follows:

**§ 60.77 Rules of evidence; admissibility of defendant committing another sexual offense in a sexual offense case.**

**1. In a criminal proceeding, evidence of any other crime, wrong, or act may be admissible for any non-propensity purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, state of mind of the defendant, state of mind of the victim or other party, identity, absence of mistake, lack of accident, modus operandi, common scheme or plan, or any other non-propensity purpose.**

**2. In a criminal proceeding in which a defendant is accused of a sexual offense, the court may admit evidence that the defendant committed any other sexual offense. Such evidence may be considered on any matter to which it is relevant.**

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

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**3. The court, in its discretion, may exclude evidence described in this section if its probative value is outweighed by the probability that its admission will create undue prejudice to the defendant.**

**4. For purposes of this section, "sexual offense" shall include an act committed in any jurisdiction that involves conduct proscribed by any section of article one hundred thirty of the penal law, or by section 230.34 or 230.34-a of the penal law.**

§ 2. This act shall take effect immediately.