STATE OF NEW YORK

994

2023-2024 Regular Sessions

IN SENATE

January 9, 2023

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

AN ACT to amend the civil practice law and rules, in relation to admissibility of evidence of a victim's sexual conduct, sexual predisposition, or manner of dress

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

Section 1. The civil practice law and rules is amended by adding a new section 4550 to read as follows:

§ 4550. Admissibility of evidence of victim's sexual conduct, sexual predisposition, or manner of dress. The following evidence shall not be discoverable or admissible in a civil action or proceeding:

(a) Evidence of the victim's or alleged victim's previous sexual conduct or sexual predisposition shall not be discoverable or admitted, nor reference made to it in the presence of a jury, except as provided in this section. When a defendant seeks to discover or admit such evidence for any purpose, the defendant shall apply for an order of the court. After the motion is made, the court shall conduct a hearing in camera to determine the discoverability or admissibility of such evidence. Upon the hearing and determination of such a motion, there shall be a presumption that any such reference to a victim's sexual conduct, sexual predisposition or manner of dress, is both inadmissible as evidence and not subject to disclosure. If the court finds that evidence offered by the defendant regarding the sexual conduct, sexual predisposition, or manner of dress of the victim or alleged victim is relevant and that its probative value substantially outweighs the danger of harm, shame or embarrassment to any victim or alleged victim; and the probative value of the evidence offered is not outweighed by its collateral nature or by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim or alleged victim, or lead to harm, shame or

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

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embarrassment on the part of the victim or alleged victim; the court shall enter an order setting forth with specificity what evidence may be discovered or introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then discover or offer evidence under the order of the court.

(b) Unless the court orders otherwise, the motion, related materials, and the record of the hearing under subdivision (a) of this section shall be and remain sealed.

(c) Evidence of the victim's or alleged victim's previous sexual conduct shall not be discoverable or considered relevant unless it is material to proving that the source of semen, pregnancy or disease is a person other than the defendant or the alleged perpetrator. For the purposes of this section, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, living arrangement and life style.

(d) Evidence of the manner in which the victim or alleged victim was dressed at the time of the commission of a sexual offense or sexual misconduct shall not be admitted, unless such evidence is determined by the court to be relevant and admissible in the interests of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury, or such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination.

(e) The court may admit evidence of a victim's or alleged victim's reputation only if such victim or alleged victim has placed it in controversy.

§ 2. This act shall take effect immediately.