STATE OF NEW YORK

1640--A

2025-2026 Regular Sessions

IN SENATE

January 13, 2025

Introduced by Sens. FERNANDEZ, BORRELLO, ROLISON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to admissibility of a complainant's outcry and disclosures in cases of sexual abuse

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 60.41 to read as follows:

§ 60.41 Rules of evidence; admissibility of outcry and disclosures in cases of sexual abuse.

1. Evidence that a complainant disclosed the alleged sexual abuse, or any portion thereof, to another person may be admissible on the prosecution's case-in-chief, including during the direct examination of relevant witnesses in a prosecution for an offense or an attempt to commit an offense defined in article one hundred thirty or two hundred sixty-three or section 230.34, 230.34-a, 235.22, 255.25, 255.26, 255.27, 260.10, 260.24, 260.25, 260.32, or 260.34 of the penal law.

2. Such evidence may come from the complainant and also from any other person who heard or saw any disclosure, and such evidence may include multiple disclosures if applicable. Such evidence may include but is not limited to (a) the details of the complaint itself; (b) the demeanor of the complainant at the time of any disclosure; (c) any witness to any disclosure; and (d) any surrounding circumstances or statements that provide context to a disclosure.

3. Evidence regarding the details of the complaint itself as described in paragraph (a) of subdivision two of this section shall not be received into evidence for its truth but only for the limited purposes of one or more of the following: (a) providing context and background to the allegations charged; (b) demonstrating the state of

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

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mind of the complainant and other witnesses; (c) explaining the nature of the timing and any delay in the making of any disclosure; and (d) assisting the jury to determine whether to credit the complainant's testimony.

4. In determining the admissibility of such evidence, the court must balance the relevance and materiality of such evidence against any unfair prejudicial effect on the defendant. Such determination of the court shall be made after an offer of proof by the prosecution, outside the hearing of the jury, or after such hearing as the court may require. The court shall place on the record the court's findings essential to the court's determination.

5. Upon receiving evidence described in this section during any proceeding, the court shall instruct the jury as to the permissible uses of such testimony.

6. Nothing in this section shall be construed to (a) prohibit a defendant from introducing evidence of a complainant's failure to promptly disclose the alleged crime; or (b) prevent the admission of evidence of a disclosure for its truth if such would be permissible under another provision of law.

§ 2. This act shall take effect immediately.