

# ASSEMBLY, No. 3249

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

**Sponsored by:**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

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**District 38 (Bergen and Passaic)**

**SYNOPSIS**

Establishes circumstances when court may order physical or psychological examination of sexual assault victim in civil action for damages from sexual assault.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 8/13/2020)**

1 AN ACT concerning physical and psychological examinations of  
2 sexual assault victims and supplementing Title 2A of the New  
3 Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. a. In a civil action for damages arising from an alleged  
9 violation of aggravated sexual assault, sexual assault, aggravated  
10 criminal sexual contact, criminal sexual contact, or human  
11 trafficking involving sexual activity, the court may, on motion by  
12 the defendant and after conducting a hearing in camera, order a  
13 physical or psychological examination of the alleged victim upon  
14 making findings as provided in subsection b. of this section.

15 b. An order under this section may be entered only if the court  
16 determines that:

17 (1) the defendant has made a sufficient showing, by clear and  
18 convincing evidence, that:

19 (a) an examination can produce competent evidence that has  
20 overwhelming probative worth; and

21 (b) the evidence produced by the examination, if admitted and  
22 believed by the trier of fact, could refute or neutralize incriminating  
23 evidence or impugn the credibility of a plaintiff's witness; and

24 (2) the need for an examination clearly outweighs the possible  
25 harmful consequences to the alleged victim.

26  
27 2. This act shall take effect immediately.

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30 STATEMENT

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32 This bill establishes the circumstances under which a court may  
33 order a physical or psychological examination of an alleged victim  
34 of sexual assault in a civil action filed by the victim for damages  
35 arising out of the alleged sexual assault.

36 With regard to criminal prosecutions, the New Jersey Supreme  
37 Court has set forth the standard for compelling, at the request of a  
38 criminal defendant, a child victim of sexual assault to submit to a  
39 physical examination for evidence relating to the alleged abuse. In  
40 the case of State v. D.R.H., 127 N.J. 249 (1992), the court held that  
41 courts may order the physical examination of a child sex-abuse  
42 victim only when satisfied that the defendant has made a sufficient  
43 showing that such an examination can produce competent evidence  
44 that has substantial probative worth and, if admitted and believed  
45 by the trier of fact, that the evidence could refute or neutralize  
46 incriminating evidence or impugn the credibility of prosecution  
47 witnesses. The court further held that it must be satisfied that the

1 defendant's need clearly outweighs the possible harmful  
2 consequences to the alleged victim.

3 This bill codifies a higher standard of proof than the standard set  
4 forth in State v. D.R.H. and applies it to alleged victims who file  
5 civil actions for damages arising from an alleged violation of  
6 aggravated sexual assault, sexual assault, aggravated criminal  
7 sexual contact, criminal sexual contact, or human trafficking  
8 involving sexual activity. This heightened standard established  
9 under the bill relates to both physical and psychological  
10 examinations and to both adult and child alleged victims of sexual  
11 assault.

12 Under the bill, a court may order a physical or psychological  
13 examination of an alleged victim of aggravated sexual assault,  
14 sexual assault, aggravated criminal sexual contact, criminal sexual  
15 contact, and human trafficking involving sexual activity, on motion  
16 and after conducting a hearing *in camera*, provided the court makes  
17 sufficient findings as set forth under the bill. Prior to ordering an  
18 examination, the court is required to determine that: the defendant  
19 has made a sufficient showing, by clear and convincing evidence,  
20 that an examination can produce competent evidence that has  
21 overwhelming probative worth, and that the evidence produced by  
22 the examination, if admitted and believed by the trier of fact, could  
23 refute or neutralize incriminating evidence or impugn the credibility  
24 of a prosecution witness. The court also is required to find that the  
25 need for an examination clearly outweighs the possible harmful  
26 consequences to the alleged victim.