

SENATE, No. 164

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen and Passaic)

SYNOPSIS

Establishes circumstances under which court may order physical or psychological examination of sexual assault victim.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning physical and psychological examinations of
2 victims of sexual assault and supplementing chapter 61B of Title
3 2A of the New 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 prosecutions for aggravated sexual assault, sexual
9 assault, aggravated criminal sexual contact, criminal sexual contact,
10 and human trafficking involving sexual activity, the court may, on
11 motion and after conducting a hearing in camera, order a physical
12 or psychological examination of the victim upon making findings as
13 provided in subsection b. of this section.

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

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

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

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

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

26 2. This act shall take effect immediately.
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29 STATEMENT
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31 This bill establishes the circumstances under which a court may
32 order a physical or psychological examination of an alleged victim
33 of sexual assault.

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

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1 This bill codifies a higher standard of proof than the standard set
2 forth in State v. D.R.H., and applies that standard to both physical
3 and psychological examinations and to both adult and child alleged
4 victims of sexual assault.

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