



NEW YORK STATE SENATOR

Malcolm Smith

Senate Measure Allows Use Of Hearsay Evidence From Sexually Abused Minors

MALCOLM A. SMITH May 12, 2008

Measure helps children talk about alleged abuse

ALBANY, NY – May 13, 2008 – Senate Democratic Leader Malcolm A. Smith (D – St. Albans) sponsored a bill (S. 4390) that was unanimously passed by the Senate aimed at allowing the out-of-court testimony from a child less than 12 years of age to be admissible during a sex abuse trial.

"We must protect those who cannot protect themselves and this measure is geared towards that result," Senator Smith said. "Children are the most precious parts of our family. We must protect children from being abused and neglected while providing a stable home environment. But when the system fails we must provide these children with a safe and secure setting that is essential to their healing, success and recovery."

Under the measure, the testimony would only be admissible if the sexually abused child:

- is unable to testify in court or an official court proceeding;
- has been determined to suffer possible severe trauma by testifying;
- when the testimony of an individual is relevant to the case in question.

Senator Smith has been a longtime proponent of protecting children. Two other measures he is sponsoring are aimed at increasing penalties for crimes against children.

- S. 2438 increases the penalties for the rape or sexual assault of a child under age five.
- S. 1862 makes crimes against children involving alcohol or drugs a class D felony. This measure passed the Senate earlier this year.

"More still needs to be done to protect our children, the most valuable and vulnerable among us," Senator Smith said. "Recognizing the significant safety concerns for our children, this measure (S. 1862) seeks to punish those who utilize controlled substances or alcohol in facilitating sexual performances by a child. By enacting the criminal offense of facilitating a sexual performance with a child with controlled substance or alcohol, the safety of our children will be further protected."

Regarding S. 2438, Smith said: "Laws against sexual predators who commit crimes against children less than five years of age must be strengthened. Something must be done in order to protect our youth from predators who wish them harm. Increasing the punishment offenders receive for raping children will help to deter future rapes and allow our children to grow up with a feeling of peace and safety."

The bills must also be passed in the state Assembly before they become law.