

11.05. Anatomically Correct Dolls (CPL 60.44)

Any person who is less than 16 years old may, in the discretion of the court and where helpful and appropriate, use an anatomically correct doll in testifying in a criminal proceeding based upon conduct prohibited by article 130 (Sex Offenses), article 260 (Offenses Relating to Children, Disabled Persons and Vulnerable Elderly Persons), or sections 255.25, 255.26, or 255.27 (Incest) of the Penal Law.

Note

This section reproduces verbatim CPL 60.44, while adding the text in parentheses (*see People v McGuire*, 152 AD2d 945 [4th Dept 1989] [approving use of anatomically correct dolls]; *People v Guce*, 164 AD2d 946, 950 [2d Dept 1990] [same]).

The statute has been held not to preclude the use of anatomically correct dolls for persons more than 16 years of age (*People v Herring*, 135 Misc 2d 487 [Sup Ct, Queens County 1987] [73-year-old aphasic victim of a sex offense]; *People v Rich*, 137 Misc 2d 474, 480 [Sup Ct, Monroe County 1987] [a victim of a sex offense over 16 years old]).

Irrespective of the statute, New York has long approved the admission in evidence of a map, diagram, drawing, photograph, model and similar demonstrative evidence when the evidence is properly authenticated, is relevant to a particular issue, and would assist the finder of fact in understanding of the case. (Guide to NY Evid rule 11.03; *People v Del Vermo*, 192 NY 470, 482-483 [1908]; *see People v Feld*, 305 NY 322, 331-332 [1953] [although a recording is the best evidence of its contents, permitting the jurors to hold a transcript of the recording to assist their understanding “was no different than allowing them to have . . . a photograph, a drawing, a map or a mechanical model”]; *People v Acevedo*, 40 NY2d 701, 704-705 [1976] [“both courts and commentators have noted, with respect to demonstrative evidence, that, when validly and carefully used, there is no class of evidence so convincing and satisfactory to a court or a jury. However, though tests and demonstrations in the courtroom are not lightly to be rejected when they would play a positive and helpful role in the ascertainment of truth, courts must be alert to the danger that, when ill-designed or not properly relevant to the point at issue, instead of being helpful they may serve but to mislead, confuse, divert or otherwise prejudice the purposes of the trial” [internal citations omitted]).