

STATE OF NEW YORK

8069

2017-2018 Regular Sessions

IN ASSEMBLY

May 25, 2017

Introduced by M. of A. MOYA -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing lack of consent for sex offenses where a person intentionally removes or damages a sexually protective device without permission

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (d) of subdivision 2 of section 130.05 of the penal law, as amended by chapter 40 of the laws of 2004, is amended and a new paragraph (e) is added to read as follows:

(d) Where the offense charged is rape in the third degree as defined in subdivision three of section 130.25, or criminal sexual act in the third degree as defined in subdivision three of section 130.40, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances~~[-]~~;or

(e) Where a person freely agrees to have sexual intercourse or sexual contact with another person on the condition that a sexually protective device is used, and that other person intentionally removes or damages the sexually protective device without permission before or during sexual intercourse or sexual contact. For the purposes of this paragraph, "sexually protective device" means a male or female condom, spermicide, diaphragm, cervical cap, contraceptive sponge, dental dam, or any other physical device intended to prevent pregnancy or sexually transmitted infection.

§ 2. This act shall take effect immediately.

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

LBD11885-01-7