

STATE OF NEW YORK

8634

2019-2020 Regular Sessions

IN ASSEMBLY

October 2, 2019

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

AN ACT to amend the penal law, in relation to prohibiting the use of evidence of a voluntarily intoxicated victim in any criminal charge for sex crimes

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

1 Section 1. Subdivision 3 of section 15.05 of the penal law is amended
2 to read as follows:

3 3. "Recklessly." A person acts recklessly with respect to a result or
4 to a circumstance described by a statute defining an offense when [~~he~~]
5 such person is aware of and consciously disregards a substantial and
6 unjustifiable risk that such result will occur or that such circumstance
7 exists. The risk must be of such nature and degree that disregard there-
8 of constitutes a gross deviation from the standard of conduct that a
9 reasonable person would observe in the situation. A person who creates
10 such a risk but is unaware thereof solely by reason of voluntary intoxici-
11 cation also acts recklessly with respect thereto; provided, however,
12 that intoxication of a victim is not a defense to any criminal charge of
13 article one hundred thirty of this chapter. Voluntary intoxication of a
14 victim may not be offered as evidence for a defense to any criminal
15 charge of article one hundred thirty of this chapter.

16 § 2. Section 15.25 of the penal law is amended to read as follows:

17 § 15.25 Effect of intoxication upon liability.

18 Intoxication is not, as such, a defense to a criminal charge; but in
19 any prosecution for an offense, evidence of intoxication of the defend-
20 ant may be offered by the defendant whenever it is relevant to negative
21 an element of the crime charged; provided, however, that intoxication of
22 a victim is not a defense to any criminal charge of article one hundred
23 thirty of this chapter. Voluntary intoxication may not be offered as

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

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1 evidence for a defense to any criminal charge of article one hundred
2 thirty of this chapter.

3 § 3. Subdivision 6 of section 130.00 of the penal law is amended to
4 read as follows:

5 6. "Mentally incapacitated" means that a person is rendered temporar-
6 ily incapable of appraising or controlling his or her conduct owing to
7 the influence of a narcotic or intoxicating substance administered to
8 him or her with or without his or her consent, or to any other act
9 committed upon him or her with or without his or her consent. Such term
10 shall include when a person is voluntarily intoxicated.

11 § 4. This act shall take effect immediately.