

STATE OF NEW YORK

8634--A

2019-2020 Regular Sessions

IN ASSEMBLY

October 2, 2019

Introduced by M. of A. DINOWITZ, PAULIN -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to prohibiting the use of the intoxication of a victim as a defense to a 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 intoxi-
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.

14 § 2. Section 15.25 of the penal law is amended to read as follows:
15 § 15.25 Effect of intoxication upon liability.

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

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

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

LBD13702-06-9

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

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

10 (d) Where the offense charged is sexual misconduct as defined in
11 subdivisions one and two of section 130.20, rape in the third degree as
12 defined in subdivision three of section 130.25, or criminal sexual act
13 in the third degree as defined in subdivision three of section 130.40,
14 in addition to forcible compulsion, circumstances under which, at the
15 time of the act of intercourse, oral sexual conduct or anal sexual
16 conduct, the victim clearly expressed that he or she did not consent to
17 engage in such act, and a reasonable person in the actor's situation
18 would have understood such person's words and acts as an expression of
19 lack of consent to such act under all the circumstances[-]; or

20 (e) Where the offense charged is sexual misconduct as defined in
21 subdivisions one and two of section 130.20, rape in the third degree as
22 defined in subdivision three of section 130.25, or criminal sexual act
23 in the third degree as defined in subdivision three of section 130.40,
24 in addition to forcible compulsion, circumstances under which, at the
25 time of the act of intercourse, oral sexual conduct or anal sexual
26 conduct, the victim is under the influence of any drug, intoxicant, or
27 other substance to a degree which renders that person incapable of
28 giving consent and that condition is known or reasonably should be known
29 to a person in the actor's situation.

30 § 5. This act shall take effect immediately.