# STATE OF NEW YORK

8823--A

2017-2018 Regular Sessions

# IN ASSEMBLY

December 6, 2017

Introduced by M. of A. BRAUNSTEIN, GALEF, GLICK, JAFFEE, M. G. MILLER, MOSLEY, ZEBROWSKI, DINOWITZ, SKARTADOS, GOTTFRIED -- Multi-Sponsored by -- M. of A. CROUCH -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to establishing incapacity to consent when a person is under arrest, in detention or otherwise in actual custody

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

Section 1. Subdivision 3 of section 130.05 of the penal law is amended by adding a new paragraph (j) to read as follows:

**(j) under arrest, in detention or otherwise in the actual custody of a police officer, peace officer or other law enforcement official and the actor is a police officer, peace officer or other law enforcement official who either: (i) is responsible for effecting the arrest of such person or maintaining such person in detention or actual custody; or (ii) knows, or reasonably should know, that such person is under such arrest, detention or actual custody.**

§ 2. Subdivision 4 of section 130.10 of the penal law, as amended by chapter 205 of the laws of 2011, is amended to read as follows:

4. In any prosecution under this article in which the victim's lack of consent is based solely on his or her incapacity to consent because he or she was less than seventeen years old, mentally disabled, a client or patient and the actor is a health care provider**, under arrest, in detention or otherwise in actual custody of law enforcement under the circumstances described in paragraph (j) of subdivision three of section 130.05 of this article**, or committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital and the actor is an employee, it shall be a defense that

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

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the defendant was married to the victim as defined in subdivision four of section 130.00 of this article.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.