

# STATE OF NEW YORK

6679

2019-2020 Regular Sessions

## IN SENATE

August 30, 2019

Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 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. 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.