STATE OF NEW YORK

452

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. BIAGGI, GOUNARDES, JACKSON, LIU, MYRIE, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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:

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 **sexual misconduct as defined in subdivisions one and two of section 130.20,** 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 the offense charged is sexual misconduct as defined in subdivisions one and two of section 130.20, 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 is under the influence of any drug, intoxicant, or other substance to a degree which renders such person temporarily incapable of appraising or controlling his or her conduct and such condition is known or reasonably should be known to a person in the actor's situation.

§ 2. This act shall take effect immediately.

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

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