

# STATE OF NEW YORK

452--A

Cal. No. 100

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. BIAGGI, BROUK, COMRIE, COONEY, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN, JACKSON, KAVANAGH, LIU, MANNION, MAY, MYRIE, PARKER, REICHLIN-MELNICK, RIVERA, SALAZAR, SEPULVEDA, SERRANO, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 and creating an affirmative defense for such criminal charges

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

1 Section 1. Paragraph (d) of subdivision 2 of section 130.05 of the  
2 penal law, as amended by chapter 40 of the laws of 2004, is amended and  
3 a new paragraph (e) is added to read as follows:

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

14 (e) Where the offense charged is sexual misconduct as defined in  
15 subdivisions one and two of section 130.20, rape in the third degree as  
16 defined in subdivision three of section 130.25, or criminal sexual act  
17 in the third degree as defined in subdivision three of section 130.40,  
18 in addition to forcible compulsion, circumstances under which, at the

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

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1 time of the act of intercourse, oral sexual conduct or anal sexual  
2 conduct, the victim is under the influence of any drug, intoxicant, or  
3 other substance to a degree which renders such person temporarily inca-  
4 pable of appraising or controlling his or her conduct and such condi-  
5 tion is known or reasonably should be known to a person in the actor's  
6 situation.

7 § 2. Section 130.10 of the penal law is amended by adding a new subdi-  
8 vision 5 to read as follows:

9 5. In any prosecution for the crime of sexual misconduct as defined in  
10 subdivisions one and two of section 130.20, rape in the third degree as  
11 defined in subdivision three of section 130.25, or criminal sexual act  
12 in the third degree as defined in subdivision three of section 130.40 in  
13 which lack of consent is based on the circumstances set forth in para-  
14 graph (e) of subdivision three of section 130.05 of this article, it  
15 shall be an affirmative defense that the defendant, at the time he or  
16 she engaged in the conduct constituting the offense, did not know of the  
17 facts or conditions responsible for such lack of consent.

18 § 3. This act shall take effect immediately.