STATE OF NEW YORK

4358

2023-2024 Regular Sessions

IN SENATE

February 7, 2023

Introduced by Sen. FERNANDEZ -- 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 consent

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

Section 1. Subdivision 2 of section 130.05 of the penal law, as amended by chapter 1 of the laws of 2000, paragraph (c) as amended by chapter 264 of the laws of 2003 and paragraph (d) as amended by chapter 40 of the laws of 2004, is amended to read as follows:

2. **(a) Consent to sexual contact is a knowing, voluntary, and mutual decision among all participants. Consent can be given by words or actions, as long as those words or actions create clear ongoing permission regarding willingness to engage in the sexual activity.**

(b) Lack of consent results from:

[~~(a)~~] **(i)** Forcible compulsion**, duress, coercion, or verbal withdrawal of previously granted consent**; or

[~~(b)~~] **(ii)** Incapacity to consent**, regardless of whether the victim's own actions rendered him or her incapable of consent**; or

[~~(c)~~] **(iii)** Where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or

[~~(d)~~] **(iv)** Where the offense charged is 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.

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

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

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