STATE OF NEW YORK

4555

2023-2024 Regular Sessions

IN SENATE

February 10, 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 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:

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.

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

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§ 2. Section 130.10 of the penal law is amended by adding a new subdivision 5 to read as follows:

5. In any prosecution for the crime of 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 which lack of consent is based on the circumstances set forth in paragraph (e) of subdivision three of section 130.05 of this article, it shall be an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such lack of consent.

§ 3. This act shall take effect immediately.