

# STATE OF NEW YORK

4555--B

Cal. No. 350

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 -- 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 -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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

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 23 of the laws of 2024, 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, two and three of section 130.20, rape in the third degree as defined in subdivision seven, eight or nine of section 130.25, or a crime formerly defined in subdivision three of section 130.40 of this article, in addition to forcible compulsion, circumstances under which, at the time of the act of vaginal sexual contact, oral sexual contact or anal sexual contact, 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, two and three of section 130.20, rape in the third degree as defined in subdivision seven, eight or nine of section 130.25,

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

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1 or a crime formerly defined in subdivision three of section 130.40 of  
2 this article, in addition to forcible compulsion, circumstances under  
3 which, at the time of the act of vaginal sexual contact, oral sexual  
4 contact or anal sexual contact, the victim was under the influence of  
5 any drug, intoxicant, or other substance to a degree which rendered the  
6 victim temporarily incapable of appraising or controlling such person's  
7 conduct and such condition was known or reasonably should have been  
8 known to a person in the actor's situation.

9 § 2. This act shall take effect on the same date and in the same  
10 manner as section 66 of chapter 777 of the laws of 2023 takes effect.