STATE OF NEW YORK

101--A

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. DINOWITZ, PAULIN, LEE, OTIS, SIMON, SEAWRIGHT, WEPRIN, SEPTIMO, HEVESI, ROSENTHAL, RA, DAVILA, STIRPE, BORES, LAVINE, GONZALEZ-ROJAS, GLICK, SHIMSKY, LUCAS, JACOBSON, ZINERMAN, LEVENBERG, LUNSFORD, BURDICK, BICHOTTE HERMELYN, RAMOS, BARRETT, ZACCARO, REYES, COLTON, McMAHON, SIMONE, CRUZ, TAPIA, GANDOLFO, SLATER, JONES, CLARK, WOERNER, ALVAREZ, SAYEGH, DeSTEFANO, BERGER, CUNNINGHAM, KELLES, COOK, RAGA, JENSEN, BLANKENBUSH, NOVAKHOV, BUTTENSCHON, LUPARDO, GALLAHAN, PHEFFER AMATO, STERN, ANGELINO, DE LOS SANTOS, BRAUNSTEIN, CHANDLER-WATERMAN, ROZIC, RAJKUMAR, SANTABARBARA, TAYLOR, STECK, ANDERSON, MANKTELOW, SEMPOLINSKI, SCHIAVONI, EPSTEIN, KAY, DURSO, KIM, HOOKS, WRIGHT, McDONALD, LASHER, GRIFFIN, KASSAY, WIEDER, BEEPHAN, MAHER, BAILEY, CHANG, TORRES, BURROUGHS, YEGER, JACKSON, P. CARROLL, BENEDETTO, EACHUS, RIVERA, MOLITOR -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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

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

LBD00357-02-5

contact or anal sexual contact, the victim clearly expressed that [~~he or she~~] such victim 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[~~.~~];

(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 subdivisions 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 was clearly under the influence of any drug, intoxicant, or other substance to such a degree which rendered the victim incapable of controlling such victim's conduct and incapable of clearly expressing lack of consent and such condition was known or reasonably should have been known to a person in the actor's situation.

§ 2. This act shall take effect immediately.