

# STATE OF NEW YORK

10632

## IN SENATE

June 1, 2026

Introduced by Sens. FERNANDEZ, ADDABBO, BORRELLO, CANZONERI-FITZPATRICK, CHAN, GALLIVAN, GONZALEZ, GOUNARDES, HELMING, JACKSON, KRUEGER, MARTINS, MATTERA, MURRAY, MYRIE, OBERACKER, PALUMBO, RAMOS, RHOADS, ROLISON, C. RYAN, SEPULVEDA, SERRANO, WEBB, WEBER, ZELLNER -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Paragraph (d) of subdivision 2 of section 130.05 of the  
2 penal law, as amended by chapter 23 of the laws of 2024, 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, two and three of section 130.20, rape in the third  
6 degree as defined in subdivision seven, eight or nine of section 130.25,  
7 or a crime formerly defined in subdivision three of section 130.40 of  
8 this article, in addition to forcible compulsion, circumstances under  
9 which, at the time of the act of vaginal sexual contact, oral sexual  
10 contact or anal sexual contact, the victim clearly expressed that [~~he or~~  
11 ~~she~~] such victim did not consent to engage in such act, and a reasonable  
12 person in the actor's situation would have understood such person's  
13 words and acts as an expression of lack of consent to such act under all  
14 the circumstances[~~-~~]; or

15 (e) Where the offense charged is sexual misconduct as defined in  
16 subdivisions one, two and three of section 130.20, rape in the third  
17 degree as defined in subdivision seven, eight or nine of section 130.25,  
18 or a crime formerly defined in subdivision three of section 130.40 of  
19 this article, in addition to forcible compulsion, circumstances under  
20 which, at the time of the act of vaginal sexual contact, oral sexual  
21 contact or anal sexual contact, the victim was under the influence of  
22 any drug, intoxicant, or other substance to a degree which rendered the  
23 victim temporarily incapable of appraising or controlling such person's  
24 conduct and such condition was known or reasonably should have been  
25 known to a person in the actor's situation.

26 § 2. This act shall take effect immediately.

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

LBD00357-01-5