STATE OF NEW YORK

4404

2025-2026 Regular Sessions

IN SENATE

February 4, 2025

Introduced by Sen. MAY -- 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 establishing incapacity to consent when a person is a witness to or subject of an investigation under certain circumstances

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

Section 1. Paragraphs (j) and (k) of subdivision 3 of section 130.05 of the penal law, paragraph (j) as added by section 1 of part JJ of chapter 55 of the laws of 2018, and paragraph (k) as added by chapter 503 of the laws of 2024, are amended and a new paragraph (l) is added to read as follows:

(j) detained or otherwise in the custody of a police officer, peace officer, or other law enforcement official and the actor is a police officer, peace officer or other law enforcement official who either: (i) is detaining or maintaining custody of such person; or (ii) knows, or reasonably should know, that at the time of the offense, such person was detained or in custody[.]**; or**

(k) under the supervision of a local probation department, pursuant to section two hundred seventy-two of the correction law, or another local department or agency which fulfills a similar function and the actor is an employee who knows or reasonably should know that such person is committed to the supervision of a local probation department. For purposes of this paragraph, "employee" means an employee of such local probation department or agency who, as part of his or her employment, supervises the victim at the time of the offense or has supervised the victim and the victim is still under supervision of a local probation department or agency at the time of the offense[.]**; or**

(l) a witness to or victim of an incident under investigation by a police officer, peace officer or other law enforcement official, or a suspect or person of interest in such an investigation, and the actor is

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

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a police officer, peace officer or other law enforcement official who either: (i) is participating in the investigation of such incident; or (ii) knows, or reasonably should know, that at the time of the offense, such person was a witness, victim, suspect, or person of interest in such investigation. Notwithstanding the provisions of this paragraph, a witness to, victim, suspect, or person of interest in an incident under investigation by a police officer, peace officer, or other law enforcement official shall not be deemed incapable of consent where the actor and such witness, victim, suspect, or person of interest had engaged in a sexual relationship prior to the commencement of such investigation.

§ 2. Subdivision 4 of section 130.10 of the penal law, as amended by section 2 of part JJ of chapter 55 of the laws of 2018, is amended to read as follows:

4. In any prosecution under this article in which the victim's lack of consent is based solely on [~~his or her~~] their incapacity to consent because [~~he or she~~] such victim was less than seventeen years old, mentally disabled, a client or patient and the actor is a health care provider, detained or otherwise in custody of law enforcement under the circumstances described in paragraph (j) of subdivision three of section 130.05 of this article, a witness to or subject of an investigation under the circumstances described in paragraph (l) of subdivision three of section 130.05 of this article, or committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital and the actor is an employee, it shall be a defense that the defendant was married to the victim as defined in subdivision four of section 130.00 of this article.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law; provided however, that if chapter 503 of the laws of 2024 shall not have taken effect on or before such date then the amendments to paragraph (k) of subdivision 3 of section 130.05 of the penal law made by section one of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2024, takes effect.