**GOAL: Adopt A.1065 (Assemblyman Dinowitz)/S.4555 (Sen. Fernandez)**

Eliminate the *Voluntary Intoxication Exclusion* in order to focus rape queries on the defendant’s actions, eliminate victim-blaming and bring survivors under the protection of our justice system.

**BACKGROUND**

This exclusion was created in the 1990s when “date-rape” drugs became prevalent. Legislators aimed to criminalize rape cases where the victims were unwillingly intoxicated by their assailants. However, by stating that ***only*** victims who were intoxicated ***unwillingly***at the time of their assault qualified as ***rape victims***, legislators left victims who became intoxicated out of their own volition at the time of their rape outside the protection of the legal system.

**RESULT**

We have lived in this rubric of what is deemed a rape for decades. The result has been two-fold:

1. To write into our black-letter laws ***victim-blaming*** for sexual assault crimes. By requiring that a survivor only qualify for the protection of our laws due to arriving at their intoxication because of the defendant’s malfeasance, the current laws focuses on the behavior of the victim ***before*** the offense. The implication is that by a victim willingly imbibing one-drink too many, for example, they are then consenting to any violence that befalls them later in the evening. Yet, consider, if that same victim were mugged, would that victim be told their assault was not a mugging?
2. To close the doors of justice to survivors. The *Voluntary Intoxication Exclusion* closes the doors of justice to all survivors as NYS rape laws create a class of survivors who are excluded out of legal protections as if there was a metric of virtue for sexual assault victims. The current requirement that sexual assault survivors be only ***unwillingly*** intoxicated serves to defeat prosecution altogether unless there are extenuating additional facts such as forcible compulsion. Do we really want to say that victims only merit the State’s attention if they have endured serious physical injury beyond the actual rape?

**CURRENT CLIMATE**

At the moment, 2 out of 3 sexual assaults go unreported. Factors that influence a survivor’s decision to come forward are: fear of not being believed, self-blaming and retraumatization through the reporting and legal process. Eliminating the *Voluntary Intoxication Exclusion* would end the mindset that our law enforcement has long been trained to focus on: a query of the crime that begins with an examination of the survivor’s conduct instead of the assailant’s. If we hope to reduce incidents of rape, then we need to end the *Voluntary Intoxication Exclusion* to bring clarity that a rape has occurred regardless of how a victim became impaired due to intoxication. The current disparity between NYS black-letter law definition of rape and our societal norms is vastly different. Realigning the meaning of rape in these instances will go a long way to providing an avenue of justice for survivors.