

ASSEMBLY HIGHER EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5639

STATE OF NEW JERSEY

DATED: OCTOBER 22, 2026

The Assembly Higher Education Committee reports favorably Assembly Bill No. 5639.

This bill clarifies that the fact that an alleged victim of sexual assault was voluntarily incapacitated at the time of the assault does not bar a prosecution for aggravated sexual assault or sexual assault.

Aggravated sexual assault is a crime of the first degree. A crime of the first degree is punishable by a term of imprisonment of 10 to 20 years, a fine of up to \$200,000, or both. Sexual assault is a crime of the second degree. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.

Currently, New Jersey uses an affirmative consent standard for sexual assault prosecutions. The New Jersey Supreme Court has held that any act of sexual penetration engaged in by the defendant without the affirmative and freely-given permission of the alleged victim to the specific act of penetration constitutes the offense of sexual assault. State in Interest of M.T.S., 129 N.J. 422 (1992). The Legislature codified this holding in 2020 with the enactment of P.L.2019, c.474. In 2021, the New Jersey Supreme Court reaffirmed its support of M.T.S. in C.R. v. M.T., 248 N.J. 428 (2021). Because New Jersey requires affirmative consent, it is not a bar to prosecution for aggravated sexual assault or sexual assault that an alleged victim who had voluntarily consumed alcohol or drugs was unable to or did not refuse sexual intercourse.

To better reflect current law, this bill removes potentially ambiguous language, specifically the phrase “without his prior knowledge or consent,” from the definition of “mentally incapacitated” for purposes of the definition of aggravated sexual assault. In addition, the bill makes technical and grammatical changes to enhance readability.

This bill is in response an alleged sexual assault that took place at Cornell University in 2024, in which the victim had voluntarily consumed drugs and alcohol before the sexual assault.