



## Legislation Text

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### Res. No. 177

Resolution urging the New York State Legislature to amend the Penal Law Section 130.05 to include individuals in police custody as being categorically incapable of consenting to sexual conduct with a police officer

By Council Members Treyger, Rivera, Richards. Yeger, Holden, Miller, Gibson, Rosenthal, Menchaca, Williams, Brannan, Powers and Constantinides

Whereas, Pursuant to section 130.05 of the New York State Penal Law, individuals in certain custodial situations, such as incarcerated or hospitalized individuals, are incapable of consenting to sexual relations with those placed in charge of their custody; and

Whereas, These laws protect vulnerable individuals from abuse; and

Whereas, New York State law contains no such provisions categorically preventing an individual in police custody from consenting to sexual conduct with a police officer; and

Whereas, The power dynamic between police officers and individuals in their custody is such that genuine consent cannot be provided; and

Whereas, The power dynamic between police officers and individuals in their custody is substantially similar to that between correction officers and inmates and other relationships already addressed in State law, and

Whereas, The lack of a State law to address this issue has already led to the alleged abuse of a person in custody by police officers; and

Whereas, For example, on September 15, 2017, two New York City Police Department detectives, placed an eighteen year old woman in custody and both police officers engaged in sexual conduct with the woman who was handcuffed in the back of their police van; and

Whereas, Both officers claim that the sexual conduct was consensual, and the woman alleges that the officers forced her to engage in sexual conduct in exchange for being released from custody without facing criminal charges; and

Whereas, Consent should not be a defense when an officer is accused of a sex crime by someone in their custody; now, therefore, be it

Resolved, That the Council of the City of New York urges the New York State Legislature to amend the Penal Law Section 130.05 to include individuals in police custody as being categorically incapable of consenting to sexual conduct with a police officer.

JDK  
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