

Victim Intoxication and Capacity to Consent in Sexual Assault Statutes Across the United States

APPENDIX A Reproduction of the Review, Plain Language Analysis, and Classification of Sexual Assault Statutes Relating to Victim Intoxication in the Fifty States of the United States and the District Of Columbia

Jurisdiction	Statute	Language	Assigned Category and Notes
Alabama	Ala. Code § 13A-6-60(2) (2019)	<p>“Incapacitated. The term includes any of the following:</p> <p>...</p> <p>A person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender.”</p>	Voluntary or involuntary
Alaska	Alaska Stat. § 11.41.470(2) (2021)	<p>“‘incapacitated’ means temporarily incapable of appraising the nature of one’s own conduct or physically unable to express unwillingness to act”</p>	Voluntary or involuntary
Arizona	A.R.S. § 13-1401(A)(7) (2021)	<p>“Without consent” includes any of the following:</p> <p>...</p> <p>The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant.”</p>	Voluntary or involuntary
Arkansas	Ark. Code Ann. § 5-14-101(6) (2021)	<p>“‘Mentally incapacitated’ means that a person is temporarily incapable of appreciating or controlling the person’s conduct as a result of the influence of a controlled or intoxicating substance:</p> <p>...</p> <p>Administered to the person without the person’s consent; or (t) hat renders the person unaware a sexual act is occurring. . . .”</p>	Voluntary or involuntary
California	Cal. Penal Code § 261(a) (2022)	<p>“Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:</p> <p>...</p> <p>Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.”</p>	Voluntary or involuntary
Colorado	Colo. Rev. Stat. § 18-3-402(1), (4) (2022)	<p>“Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:</p> <p>...</p> <p>The actor knows that the victim is incapable of appraising the nature of the victim’s conduct[.]</p> <p>...</p> <p>Sexual assault is a class 3 felony if it is attended by any one or more of the following circumstances:</p> <p>...</p> <p>The actor has substantially impaired the victim’s power to appraise or control the victim’s conduct by employing, without the victim’s consent, any drug, intoxicant, or other means for the purpose of causing submission.”</p>	Voluntary or involuntary

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Connecticut		Conn. Gen. Stat. § 53a-65(5) (2019)	"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent."	Involuntary only
Delaware		Del. Code Ann. tit. 11, § 761(k) (2021)	"Without consent" means: ... The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance."	Involuntary only
District of Columbia		D.C. Code § 22-3002(a) (2013)	"A person shall be imprisoned for any term of years or for life . . . if that person engages in or causes another person to engage in or submit to a sexual act in the following manner: ... After administering to that other person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct."	Voluntary or involuntary
Florida		D.C. Code § 22-3003 (2013)	"A person shall be imprisoned for not more than 20 years . . . if that person engages in or causes another person to engage in or submit to a sexual act in the following manner: ... Where the person knows or has reason to know that the other person is: (A) Incapable of appraising the nature of the conduct; (B) Incapable of declining participation in that sexual act; or (C) Incapable of communicating unwillingness to engage in that sexual act"	Involuntary only
Georgia Hawaii		Fla. Stat. Ann. § 794.011(1)(c) (2017) Not statutorily defined, see <i>Appendix B</i> Haw. Rev. Stat. Ann. § 707-730(1) (2021)	"Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent." "A person commits the offense of sexual assault in the first degree if: ... The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent."	Involuntary only

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	Haw. Rev. Stat. Ann. § 707-700 (2021)	<p>"In this chapter, unless a different meaning plainly is required: . . .</p> <p>'Mentally incapacitated' means a person rendered temporarily incapable of appraising or controlling the person's conduct as a result of the influence of a substance administered to the person without the person's consent."</p> <p>"Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with a penis accomplished under any one (1) of the following circumstances:</p> <p>. . .</p> <p>Where the victim . . . or is unable to resist due to any intoxicating, narcotic, or anaesthetic [sic] substance."</p> <p>"A person commits criminal sexual assault if that person commits an act of sexual penetration and:</p> <p>. . .</p> <p>knows that the victim is unable to understand the nature of the act or is unable to give knowing consent . . ."</p> <p>"A person commits aggravated criminal sexual assault if that person commits criminal sexual assault and any of the following aggravating circumstances exist during the commission of the offense</p> <p>. . .</p> <p>the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception for other than medical purposes . . ."</p> <p>"[A] person who knowingly or intentionally has sexual intercourse with another person or knowingly or intentionally causes another person to perform or submit to other sexual conduct . . . when:</p> <p>. . .</p> <p>the other person is unaware that the sexual intercourse or other sexual conduct . . . is occurring</p> <p>. . .</p> <p>[c]ommits rape, a Level 3 felony.</p> <p>. . .</p> <p>An offense described in subsection (a) is a Level 1 felony if:</p> <p>. . .</p> <p>the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug . . . or a controlled substance . . . or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge."</p>	Voluntary or involuntary
Idaho	Idaho Code § 18-6101 (2021)		
Illinois	720 Ill. Comp. Stat. Ann. 5/11-1.20(a) (2016)		Voluntary or involuntary
Indiana	720 Ill. Comp. Stat. Ann. 5/11-1.30(a)-(b) (2016)		
Indiana	Ind. Code Ann. § 35-42-4-1 (2014)		Involuntary only

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Iowa	Iowa Code § 709.1A(1) (1999)	“‘Mentally incapacitated’ means that a person is temporarily incapable of appraising or controlling the person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance.”	Voluntary or involuntary
Kansas	Kan. Stat. Ann. § 21-5503(a) (2011)	“Rape is: . . . (2) Knowingly engaging in sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender. . . .”	Voluntary or involuntary
	Kan. Stat. Ann. § 21-5505(b) (2021)	“Aggravated sexual battery is sexual battery . . . under any of the following circumstances: . . . when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.”	
Kentucky	Ky. Rev. Stat. § 510.010(5) (2021)	“‘Mentally incapacitated’ means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of an intoxicating substance administered to him or her without his or her consent or as a result of any other act committed upon him or her without his or her consent. . . .”	Involuntary only
Louisiana	La. Rev. Stat. Ann. § 14:42.1(A) (2020)	“Second degree rape is rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances: . . . When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim.”	Voluntary or involuntary
	La. Rev. Stat. Ann. § 14:43(A) (2015)	“Third degree rape is a rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of a victim because it is committed under any one or more of the following circumstances: . . . When the victim is incapable of resisting or of understanding the nature of the act by an intoxicating agent or any cause and the offender knew or should have known of the victim’s incapacity.”	
Maine	Me. Rev. Stat. tit. 17-A, § 253(2) (2021)	“A person is guilty of gross sexual assault if that person engages in a sexual act with another person and: . . . The actor has substantially impaired the other person’s power to appraise or control the other person’s sexual acts by furnishing . . . administering or employing drugs, intoxicants or other similar means.”	Involuntary only

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Maryland	Md. Code Ann., Crim. Law § 3-301(b) (2016)	“Mentally incapacitated individual” means an individual who, because of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed on the individual without the individual’s consent or awareness, is rendered substantially incapable of: (1) appraising the nature of the individual’s conduct; or (2) resisting vaginal intercourse, a sexual act, or sexual contact.”	Voluntary or involuntary
Massachusetts Michigan	Not statutorily defined, see <i>Appendix B</i> Mich. Comp. Laws Serv. § 750.520a(k) (2014)	“Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.”	Involuntary only
Minnesota Mississippi	Statute amended in June 2021, see accompanying <i>Analysis and Commentary</i> Miss. Code Ann. § 97-3-65(4)(a) (2017)	“Every person who . . . shall have sexual intercourse not constituting forcible sexual intercourse or statutory rape with any person without that person’s consent by administering to such person any substance or liquid which shall produce such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, upon conviction, shall be imprisoned . . .” “A ‘mentally incapacitated person’ is one rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent.”	Involuntary only
Missouri	Miss. Code Ann. § 97-3-97(c) (1980) Mo. Rev. Stat. § 566.030 (2017)	“A person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim’s knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.”	Involuntary only by plain text, but voluntary or involuntary by caselaw. <i>State v. Campbell</i> , 600 S.W.3d 780 (Mo. Ct. App. 2020); <i>State v. Hunter</i> , 626 S.W.3d 867 (Mo. Ct. App. 2021)
Montana	Mont. Code Ann. § 45-5-501(1)(b) (2019)	“[T]he victim is incapable of consent because the victim is: mentally disordered or incapacitated . . .”	There is no statutory definition of mentally incapacitated, see <i>Appendix B</i>
Nebraska	Neb. Rev. Stat. Ann § 28-319(1) (2006)	“Any person who subjects another person to sexual penetration. . . who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct . . . is guilty of sexual assault in the first degree.”	There is no statutory definition of mentally incapacitated, see <i>Appendix B</i>

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Jurisdiction	Statute	Language	Assigned Category and Notes
Nevada	Nev. Rev. Stat. Ann. § 200.366 (2021)	“A person is guilty of sexual assault if he or she: . . . [s]ubjects another person to sexual penetration, or forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct”	There is no statutory definition of mentally incapacitated, see <i>Appendix B</i>
New Hampshire	N.H. Rev. Stat. Ann. § 632-A:2(i) (2021)	“A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances: . . . When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.”	Involuntary only
New Jersey	N.J. Stat. § 2C:14-1(i) (2012)	“Mentally incapacitated” means that condition in which a person is rendered temporarily incapable of understanding or controlling his conduct due to the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling his conduct”	Involuntary only
New Mexico New York	Not statutorily defined, see <i>Appendix B</i> N.Y. Penal Law § 130.00(6) (2010)	“Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent.”	Involuntary only
North Carolina	N.C. Gen. Stat. § 14-27.20(2) (2019)	“Mentally incapacitated. — A victim who due to any act is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.”	Voluntary or involuntary
North Dakota	N.D. Cent. Code § 12.1-20-07(1) (2017)	“A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if: . . . That person or someone with that person’s knowledge has substantially impaired the victim’s power to appraise or control the victim’s conduct, by administering or employing without the victim’s knowledge intoxicants, a controlled substance as defined in chapter 19–03.1, or other means for the purpose of preventing resistance”	Involuntary only

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Jurisdiction	Statute	Language	Assigned Category and Notes
Ohio	Ohio Rev. Code Ann. § 2907.02(A) (2021)	“No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies: . . . [f]or the purpose of preventing resistance, the offender substantially impairs the other person’s judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.” “No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply: . . . The offender knows that the other person’s ability to appraise the nature of or control the other person’s own conduct is substantially impaired.”	Voluntary or involuntary
Oklahoma	Okla. Stat. tit. 21, § 1111(A) (2021)	“Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances: . . . Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit” “‘Mentally incapacitated’ means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense.” “A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant: . . . Where the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.”	Involuntary only
Oregon	Or. Rev. Stat. Ann. § 163.305(3) (2021)	“‘Mentally incapacitated’ means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense.”	Voluntary or involuntary
Pennsylvania	18 Pa. Cons. Stat. Ann. § 3121 (2003)	“A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant: . . . Where the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.”	Involuntary only
Rhode Island	R.I. Gen. Laws § 11-37-1(5) (1999)	“‘Mentally incapacitated’ means a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or who is mentally unable to communicate unwillingness to engage in the act.”	Voluntary or involuntary
South Carolina	S.C. Code Ann. § 16-3-651(f) (1977)	“‘Mentally incapacitated’ means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.”	Voluntary or involuntary

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Jurisdiction	Statute	Language	Assigned Category and Notes
	S.C. Code Ann. § 16-3-652(1) (2010)	<p>"A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:</p> <p>...</p> <p>The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance."</p> <p>"A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:</p> <p>...</p> <p>The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery."</p> <p>"Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:</p> <p>...</p> <p>If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis . . ."</p> <p>"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent . . ."</p> <p>"A sexual assault under Subsection (a)(1) is without the consent of the other person if:</p> <p>...</p> <p>the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge . . ."</p> <p>"An act . . . is without consent of the victim under any of the following circumstances:</p> <p>...</p> <p>the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge . . ."</p>	
South Dakota	S.C. Code Ann. § 16-3-654(1) (1977)		
	S.D. Codified Laws § 22-22-1 (2012)		Voluntary or involuntary
Tennessee	Tenn. Code Ann. § 39-13-501(4) (2013)		Involuntary only
Texas	Tex. Penal Code § 22.011(b) (2021)		Involuntary only
Utah	Utah Code Ann. § 76-5-406(2) (2020)		Involuntary only

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Vermont	Vt. Stat. Ann. tit. 13, § 3252(b) (2021)	“(1) No person shall engage in a sexual act with another person and impair substantially the ability of the other person to appraise or control conduct by administering or employing drugs or intoxicants without the knowledge or against the will of the other person. (2) No person shall engage in a sexual act with another person when the other person is incapable of consenting to the sexual act due to substantial impairment by alcohol, drugs, or other intoxicants and that condition is known or reasonably should be known by the person.”	Voluntary or involuntary
Virginia	Va. Code Ann. § 18.2-67.10(3) (2004)	“‘Mental incapacity’ means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.”	Voluntary or involuntary
Washington	Rev. Code Wash. (ARCW) § 9A.44.010(7) (2022)	“‘Mental incapacity’ is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.”	Voluntary or involuntary
West Virginia	W. Va. Code § 61-8B-1(4) (2007)	“‘Mentally incapacitated’ means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.”	Involuntary only
Wisconsin	Wis. Stat. Ann. § 940.225(2) (2021)	“Second degree sexual assault. Whoever does any of the following is guilty of a Class C felony: ... Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.”	Voluntary or involuntary
Wyoming	Wyo. Stat. Ann. § 6-2-303(a) (2018)	“Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting sexual assault in the first degree: ... The actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim’s power to appraise or control his conduct”	Involuntary only

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APPENDIX B There is Direct Caselaw Stating That Voluntary or Involuntary Incapacity Can Render the Victim Incapable of Consenting or Caselaw Upholding Convictions in Which the Victim Was Voluntarily Intoxicated on Other Grounds in All States Wherein the Statutes Surrounding Sexual Offenses Either Do Not Define What Mental Incapacity Means or Do Not Address Incapacity to Consent at All

State	Incapacity Undefined or Unaddressed by Statute	Case Citation	Holding
Georgia	Unaddressed	Johnson v. State, 832 S.E.2d 676 (Ga. Ct. App. 2019)	“Although a majority of states do not criminalize conduct when a victim has become voluntarily intoxicated by drugs or alcohol, Georgia is not such a state.”
Massachusetts	Unaddressed	Commonwealth v. Blache, 880 N. E.2d 736, (Mass. 2008).	The victim-complainant was voluntarily intoxicated, conviction was upheld on other grounds related to the standard for intoxication of a victim
Montana	Undefined	State v. Gould, 902 P2d 532 (Mont. 1995)	“The definition of ‘mentally incapacitated’ is clear on its face. By its terms, it does not differentiate between voluntary and involuntary intoxication and is not limited to the latter.”
Nebraska	Undefined	State v. Gentry, 2013 Neb. App. LEXIS 184 (Neb. Ct. App. Oct. 22, 2013)	In this unpublished opinion, the victim-complainant was voluntarily intoxicated, the court held that the evidence supported a verdict of guilty of an aggravated sexual offense on either the theory that the victim was physically or mentally incapacitated.
Nevada	Undefined	Chavez-Hernandez v. State, 394 P.3d 209 (Nev. 2017)	Upholding a conviction in which the victims were voluntarily intoxicated to the “point of unconsciousness” under the theory that they were physically or mentally incapacitated. Challenged on grounds of sufficiency of evidence.
New Mexico	Unaddressed	State v. Sosa, 223 P.3d 348 (N.M. 2009)	The victim-complainant was voluntarily intoxicated. Conviction upheld on procedural grounds.