

S. 5638

A. 7671

2015-2016 Regular Sessions

S E N A T E - A S S E M B L Y

May 21, 2015

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IN SENATE -- Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. WALKER -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, the criminal procedure law, the executive law, and the legislative law in relation to the use in evidence of the fact of possession or presence on the premises of condoms and other sexual and reproductive health devices; and repealing certain provisions of the criminal procedure law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. This act shall be known and may be cited as the "End crimi-  
2     nalization of condoms act".  
3     S 2. Legislative findings. The legislature hereby finds that promoting  
4     and protecting health and respecting and fulfilling human rights are  
5     necessarily linked, and that health-oriented and rights-based law  
6     enforcement efforts are central to the effective provision of government  
7     services for the benefit of the people of the State. Article 17, section  
8     3 of the New York constitution requires that the legislature protect and  
9     promote the health of the inhabitants of this state as a matter of  
10    public concern. Despite these provisions, for purposes of prosecuting  
11    certain criminal, civil and administrative offenses, reproductive and  
12    sexual health tools, including condoms, are currently being destroyed,  
13    confiscated, or used as evidence by law enforcement officers. This  
14    legislation is intended to strengthen the public health of all New York-  
15    ers, including the most vulnerable, while preserving the ability of law  
16    enforcement to prosecute other crimes such as felony sexual offenses.  
17    The purpose of this bill is to avoid the disparate impact of the prac-  
18    tice of citing condoms and other reproductive and sexual health tools as

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

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1 evidence upon survivors of trafficking and people who are or are  
2 profiled as being engaged in the sex trades.

3 S 3. The civil practice law and rules is amended by adding a new  
4 section 4519-a to read as follows:

5 S 4519-A. POSSESSION OF REPRODUCTIVE OR SEXUAL HEALTH DEVICES; RECEIPT  
6 INTO EVIDENCE. 1. THE FATE OF POSSESSION OF A CONDOM OR OTHER REPRODUC-  
7 TIVE OR SEXUAL HEALTH DEVICE MAY NOT BE RECEIVED IN EVIDENCE IN ANY  
8 TRIAL, HEARING OR PROCEEDING PURSUANT TO SUBDIVISION ONE OF SECTION  
9 TWELVE AND ARTICLE TEN OF THE MULTIPLE DWELLING LAW, SECTIONS TWELVE-A  
10 AND TWENTY-THREE HUNDRED TWENTY OF THE PUBLIC HEALTH LAW, SECTION TWO  
11 HUNDRED THIRTY-ONE OF THE REAL PROPERTY LAW OR SUBDIVISION FIVE OF  
12 SECTION SEVEN HUNDRED ELEVEN AND SECTION SEVEN HUNDRED FIFTEEN OF THE  
13 REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, OR BY ANY LAW, LOCAL LAW OR  
14 ORDINANCE OF A POLITICAL SUBDIVISION OF THIS STATE, OR BY ANY WORD, RULE  
15 OR REGULATION OF ANY GOVERNMENTAL INSTRUMENTALITY AUTHORIZED BY LAW TO  
16 ADOPT THE SAME AS EVIDENCE OF PROSTITUTION, PATRONIZING A PROSTITUTE,  
17 PROMOTING PROSTITUTION, PERMITTING PROSTITUTION, MAINTAINING A PREMISES  
18 FOR PROSTITUTION, LEWDNESS OR ASSIGNATION, MAINTAINING A BAWDY HOUSE,  
19 COMPELLING PROSTITUTION, OR SEX TRAFFICKING.

20 2. "REPRODUCTIVE OR SEXUAL HEALTH DEVICE" SHALL INCLUDE ANY CONTRACEP-  
21 TIVE OR OTHER TOOL USED TO PREVENT UNWANTED PREGNANCY OR THE TRANS-  
22 MISSION OF HIV OR OTHER SEXUALLY TRANSMITTED DISEASES, INCLUDING BUT NOT  
23 LIMITED TO MALE CONDOMS, FEMALE CONDOMS, LUBRICANTS, PRE-EXPOSURE  
24 PROPHYLAXIS ("PREP"), POST-EXPOSURE PROPHYLAXIS ("PEP"), HIV ANTI-RETRO-  
25 VIRAL MEDICATION, SPERMICIDE, HORMONAL METHODS, EMERGENCY CONTRACEPTION,  
26 DIAPHRAGM, CERVICAL CAP, OR SPONGE.

27 3. "POSSESSION" MEANS TO HAVE PHYSICAL POSSESSION OR OTHERWISE TO  
28 EXERCISE DOMINION OR CONTROL OVER TANGIBLE PROPERTY.

29 4. THE FACT OF POSSESSION OR PRESENCE IN A PREMISES OF A REPRODUCTIVE  
30 OR SEXUAL HEALTH DEVICE SHALL NOT BE INTRODUCED AS EVIDENCE BY ANY MEANS  
31 FOR ANY OF THE AFOREMENTIONED PURPOSES, INCLUDING BY EITHER PHYSICAL OR  
32 TESTIMONIAL EVIDENCE.

33 S 4. The criminal procedure law is amended by adding a new section  
34 60.49 to read as follows:

35 S 60.49 POSSESSION OF REPRODUCTIVE OR SEXUAL HEALTH DEVICE; RECEIPT INTO  
36 EVIDENCE.

37 1. EVIDENCE THAT A PERSON WAS IN POSSESSION OF A CONDOM OR OTHER  
38 REPRODUCTIVE OR SEXUAL HEALTH DEVICE MAY NOT BE ADMITTED AT ANY TRIAL,  
39 HEARING OR OTHER PROCEEDING IN A PROSECUTION FOR ANY OFFENSE, OR AN  
40 ATTEMPT TO COMMIT ANY OFFENSE, DEFINED IN ARTICLE TWO HUNDRED THIRTY OR  
41 SECTION 240.37 OF THE PENAL LAW, OR SECTION 6512 OF THE EDUCATION LAW,  
42 OR ANY LAW, LOCAL LAW OR ORDINANCE OF A POLITICAL SUBDIVISION OF THIS  
43 STATE, OR ANY WORD, RULE OR REGULATION OF ANY GOVERNMENTAL INSTRUMENTAL-  
44 ITY AUTHORIZED BY LAW TO ADOPT THE SAME, FOR THE PURPOSE OF ESTABLISHING  
45 PROBABLE CAUSE FOR AN ARREST OR PROVING ANY PERSON'S COMMISSION OR  
46 ATTEMPTED COMMISSION OF SUCH OFFENSE, AS EVIDENCE OF PROSTITUTION OR  
47 TRAFFICKING-RELATED ACTIVITY.

48 2. "REPRODUCTIVE OR SEXUAL HEALTH DEVICE" SHALL INCLUDE ANY CONTRACEP-  
49 TIVE OR OTHER TOOL USED TO PREVENT UNWANTED PREGNANCY OR THE TRANS-  
50 MISSION OF HIV OR OTHER SEXUALLY TRANSMITTED DISEASES, INCLUDING BUT NOT  
51 LIMITED TO MALE CONDOMS, FEMALE CONDOMS, LUBRICANT, PRE-EXPOSURE PROPHY-  
52 LAXIS ("PREP"), POST-EXPOSURE PROPHYLAXIS ("PEP"), HIV ANTI-RETROVIRAL  
53 MEDICATION, SPERMICIDE, HORMONAL METHODS, EMERGENCY CONTRACEPTION,  
54 DIAPHRAGM, CERVICAL CAP, OR SPONGE.

55 3. "POSSESSION" MEANS TO HAVE PHYSICAL POSSESSION OR OTHERWISE TO  
56 EXERCISE DOMINION OR CONTROL OVER TANGIBLE PROPERTY.

1 4. THE FACT OF POSSESSION OR PRESENCE ON THE PREMISES OF A REPRODUC-  
2 TIVE OR SEXUAL HEALTH DEVICE SHALL NOT BE INTRODUCED AS EVIDENCE BY ANY  
3 MEANS FOR ANY OF THE AFOREMENTIONED PURPOSES, INCLUDING BY EITHER PHYS-  
4 ICAL OR TESTIMONIAL EVIDENCE.

5 S 5. Paragraph (d) of subdivision 1 of section 160.10 of the criminal  
6 procedure law is REPEALED.

7 S 6. The opening paragraph of subdivision 1, subdivision 2 and subdi-  
8 vision 3 of section 160.55 of the criminal procedure law, the opening  
9 paragraph of subdivision 1 as amended by chapter 169 of the laws of  
10 1994, subdivision 2 as amended by chapter 476 of the laws of 2009 and  
11 subdivision 3 as amended by chapter 249 of the laws of 1981 and renum-  
12 bered by chapter 142 of the laws of 1991, are amended to read as  
13 follows:

14 Upon the termination of a criminal action or proceeding against a  
15 person by the conviction of such person of a traffic infraction or a  
16 violation, other than [a violation of loitering as described in para-  
17 graph (d) or (e) of subdivision one of section 160.10 of this chapter  
18 or] the violation of operating a motor vehicle while ability impaired as  
19 described in subdivision one of section eleven hundred ninety-two of the  
20 vehicle and traffic law, unless the district attorney upon motion with  
21 not less than five days notice to such person or his or her attorney  
22 demonstrates to the satisfaction of the court that the interests of  
23 justice require otherwise, or the court on its own motion with not less  
24 than five days notice to such person or his or her attorney determines  
25 that the interests of justice require otherwise and states the reasons  
26 for such determination on the record, the clerk of the court wherein  
27 such criminal action or proceeding was terminated shall immediately  
28 notify the commissioner of the division of criminal justice services and  
29 the heads of all appropriate police departments and other law enforce-  
30 ment agencies that the action has been terminated by such conviction.  
31 Upon receipt of notification of such termination:

32 2. A report of the termination of the action or proceeding by  
33 conviction of a traffic violation or a violation other than [a violation  
34 of loitering as described in paragraph (d) or (e) of subdivision one of  
35 section 160.10 of this title or] the violation of operating a motor  
36 vehicle while ability impaired as described in subdivision one of  
37 section eleven hundred ninety-two of the vehicle and traffic law, shall  
38 be sufficient notice of sealing to the commissioner of the division of  
39 criminal justice services unless the report also indicates that the  
40 court directed that the record not be sealed in the interests of  
41 justice. Where the court has determined pursuant to subdivision one of  
42 this section that sealing is not in the interests of justice, the clerk  
43 of the court shall include notification of that determination in any  
44 report to such division of the disposition of the action or proceeding.  
45 When the defendant has been found guilty of a violation of harassment in  
46 the second degree and it was determined pursuant to subdivision eight-a  
47 of section 170.10 of this title that such violation was committed  
48 against a member of the same family or household as the defendant, the  
49 clerk of the court shall include notification of that determination in  
50 any report to such division of the disposition of the action or proceed-  
51 ing for purposes of paragraph (a) and subparagraph (vi) of paragraph (d)  
52 of subdivision one of this section.

53 3. A person against whom a criminal action or proceeding was termi-  
54 nated by such person's conviction of a traffic infraction or violation  
55 other than [a violation of loitering as described in paragraph (d) or  
56 (e) of subdivision one of section 160.10 of this chapter or] the

1 violation of operating a motor vehicle while ability impaired as  
2 described in subdivision one of section eleven hundred ninety-two of the  
3 vehicle and traffic law, prior to the effective date of this section,  
4 may upon motion apply to the court in which such termination occurred,  
5 upon not less than twenty days notice to the district attorney, for an  
6 order granting to such person the relief set forth in subdivision one of  
7 this section, and such order shall be granted unless the district attor-  
8 ney demonstrates to the satisfaction of the court that the interests of  
9 justice require otherwise.

10 S 7. Section 841 of the executive law is amended by adding a new  
11 subdivision 7-b to read as follows:

12 7-B. TAKE SUCH STEPS AS MAY BE NECESSARY TO ENSURE THAT ALL POLICE  
13 OFFICERS AND PEACE OFFICERS CERTIFIED PURSUANT TO SUBDIVISION THREE OF  
14 THIS SECTION RECEIVE APPROPRIATE INSTRUCTION REGARDING THE EVIDENTIARY  
15 PROHIBITION SET FORTH IN SECTION 60.47 OF THE CRIMINAL PROCEDURE LAW AND  
16 SECTION FORTY-FIVE HUNDRED NINETEEN-A OF THE CIVIL PRACTICE LAW AND  
17 RULES RELATING TO THE USE OF CONDOMS AND OTHER REPRODUCTIVE OR SEXUAL  
18 HEALTH DEVICES AS EVIDENCE IN CERTAIN TRIALS, HEARINGS OR PROCEEDINGS,  
19 OR AS A BASIS FOR PROBABLE CAUSE FOR ARREST, INCLUDING THAT UNAUTHORIZED  
20 SEIZURE OR CONFISCATION OF CONDOMS AND OTHER REPRODUCTIVE OR SEXUAL  
21 HEALTH DEVICES IS A BREACH OF PUBLIC POLICY.

22 S 8. The legislative law is amended by adding a new section 49 to read  
23 as follows:

24 S 49. REQUIREMENT WITH RESPECT TO BILLS AMENDING CERTAIN LAWS WHICH  
25 AFFECT HEALTH AND HUMAN RIGHTS. WHENEVER A COMMITTEE FAVORABLY REPORTS A  
26 BILL TO AMEND ARTICLES TWO HUNDRED THIRTY OR SECTION 240.37 OF THE PENAL  
27 LAW, OR, AT THE DISCRETION OF THE VOTING MAJORITY OF THE COMMITTEE, ANY  
28 BILL WHICH, IF PASSED, WOULD INCREASE OR DECREASE THE NUMBER OF ARRES-  
29 TEES OR PRETRIAL OR SENTENCED POPULATION OF CORRECTIONAL FACILITIES IN  
30 THIS STATE, A MAJORITY OF THE COMMITTEE MEMBERS VOTING MAY REQUEST THAT  
31 A HEALTH AND HUMAN RIGHTS IMPACT STATEMENT BE PREPARED. THE LEGISLATURE  
32 SHALL BY CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY PRESCRIBE  
33 RULES REQUIRING HEALTH AND HUMAN RIGHTS IMPACT STATEMENTS TO ACCOMPANY,  
34 ON A SEPARATE FORM, BILLS AND AMENDMENTS TO BILLS AFTER SUCH BILLS HAVE  
35 BEEN REPORTED FROM COMMITTEE. HEALTH AND HUMAN RIGHTS IMPACT STATEMENTS  
36 SHALL BE PREPARED BEFORE THE BILL IS CONSIDERED FOR FINAL PASSAGE. THE  
37 STATEMENT SHALL INDICATE WHETHER THE BILL WOULD HAVE A DISPARATE IMPACT  
38 BY RACE, ETHNICITY, RELIGION, AGE, GENDER, GENDER IDENTITY OR  
39 EXPRESSION, SEXUAL ORIENTATION, IMMIGRATION STATUS, DISABILITY, OR HOUS-  
40 ING STATUS COMPOSITION OF THE ARRESTEE AND CORRECTIONAL FACILITY POPU-  
41 LATION AND AN EXPLANATION OF THAT IMPACT. ANY IMPACT STATEMENT PRINTED  
42 WITH OR PREPARED FOR A BILL IS SOLELY FOR THE PURPOSE OF INFORMATION,  
43 SUMMARIZATION AND EXPLANATION FOR MEMBERS OF THE LEGISLATURE AND SHALL  
44 NOT BE CONSTRUED TO REPRESENT THE INTENT OF THE LEGISLATURE OR EITHER  
45 CHAMBER THEREOF FOR ANY PURPOSE. EACH IMPACT STATEMENT SHALL BEAR THE  
46 FOLLOWING DISCLAIMER: "THE FOLLOWING HEALTH AND HUMAN RIGHTS IMPACT  
47 STATEMENT IS PREPARED FOR THE BENEFIT OF THE MEMBERS OF THE LEGISLATURE,  
48 SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND  
49 DOES NOT REPRESENT THE INTENT OF THE LEGISLATURE OR EITHER CHAMBER THER-  
50 EOF FOR ANY PURPOSE."

51 S 9. The legislative law is amended by adding a new section 83-n to  
52 read as follows:

53 S 83-N. LEGISLATIVE COMMISSION ON HEALTH AND HUMAN RIGHTS.

54 1. THE LEGISLATURE HEREBY FINDS THAT PROMOTING AND PROTECTING HEALTH  
55 AND RESPECTING AND FULFILLING HUMAN RIGHTS ARE NECESSARILY LINKED, AND  
56 THAT COORDINATION BETWEEN HEALTH AND LAW ENFORCEMENT EFFORTS IS CENTRAL

1 TO THE EFFECTIVE PROVISION OF GOVERNMENT SERVICES FOR THE BENEFIT OF THE  
2 PEOPLE OF THE STATE.

3 2. A LEGISLATIVE COMMISSION ON HEALTH AND HUMAN RIGHTS IS HEREBY  
4 ESTABLISHED TO EXAMINE, EVALUATE AND MAKE RECOMMENDATIONS CONCERNING  
5 RIGHTS-BASED APPROACHES TO HEALTH AND LAW ENFORCEMENT INTERVENTIONS.  
6 THE COMMISSION SHALL ACT AS A MECHANISM FOR ONGOING AND MEANINGFUL  
7 INVOLVEMENT OF THOSE WHO ARE OR POTENTIALLY COULD BE AFFECTED BY THIS  
8 LAW, INCLUDING, BUT NOT LIMITED TO, SURVIVORS OF TRAFFICKING, PEOPLE WHO  
9 ARE OR ARE PROFILED AS BEING INVOLVED IN THE SEX TRADES, COMMUNITIES OF  
10 COLOR, LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE, AND PEOPLE IN  
11 CUSTODIAL SETTINGS. THE COMMISSION SHALL PROVIDE MONITORING AND EXPERT  
12 PERSPECTIVE TO THE LEGISLATURE, PROMOTING AWARENESS OF PROBLEMS IN REAL  
13 TIME AS THEY EMERGE, INCREASE COOPERATION AND COLLABORATION BETWEEN THE  
14 INDIVIDUALS AND COMMUNITIES DIRECTLY IMPACTED AND THEIR LEGISLATORS, AND  
15 ALLOW LEGISLATORS TO SHARE RESPONSIBILITY FOR SUCCESSES AND FAILURES OF  
16 THESE INITIATIVES. THE COMMISSION SHALL MAKE SUCH RECOMMENDATIONS AS IT  
17 MAY DEEM NECESSARY AS TO REGULATIONS, POLICIES, PROGRAMS, AND PROPOSED  
18 LEGISLATION TO PROVIDE AN EQUITABLE SYSTEM OF PROVIDING FOR THE PUBLIC  
19 SAFETY WHILE ALSO PROTECTING PUBLIC HEALTH, TO ENCOURAGE THE MOST EFFEC-  
20 TIVE USE OF STATE AND LOCAL RESOURCES, TO PRESERVE THE FISCAL INTEGRITY  
21 OF BOTH STATE AND LOCAL GOVERNMENT HEALTH SYSTEMS AND OTHERWISE TO  
22 STRENGTHEN THE FUNDAMENTAL HUMAN RIGHT TO HEALTH.

23 3. THE COMMISSION SHALL CONSIST OF TEN REPRESENTATIVES FROM ORGANIZA-  
24 TIONS THAT PROMOTE ADVOCACY BY AND FOR DIRECTLY IMPACTED COMMUNITIES.  
25 FROM AMONG THE MEMBERS SO APPOINTED, A CHAIRPERSON AND VICE CHAIRPERSON  
26 SHALL BE DESIGNATED BY THE JOINT ACTION OF THE CHAIRPERSONS OF THE  
27 SENATE AND ASSEMBLY HEALTH COMMITTEES. ANY VACANCY THAT OCCURS IN THE  
28 COMMISSION OR IN THE CHAIRMANSHIP OR VICE CHAIRMANSHIP SHALL BE FILLED  
29 IN THE SAME MANNER IN WHICH THE ORIGINAL APPOINTMENT OR DESIGNATION WAS  
30 MADE.

31 4. THE COMMISSION IN ADDITION TO THE ABOVE MENTIONED POWERS SHALL HAVE  
32 ALL THE POWERS AND PRIVILEGES OF A LEGISLATIVE COMMITTEE PURSUANT TO  
33 THIS CHAPTER.

34 5. FOR THE ACCOMPLISHMENT OF ITS PURPOSE, THE COMMISSION SHALL BE  
35 AUTHORIZED AND EMPOWERED TO UNDERTAKE ANY STUDY, INQUIRY, SURVEY, OR  
36 ANALYSIS IT MAY DEEM RELEVANT THROUGH ITS OWN PERSONNEL IN COOPERATION  
37 WITH OR BY AGREEMENT WITH ANY OTHER PUBLIC OR PRIVATE AGENCY.

38 6. THE COMMISSION MAY REQUIRE AND SHALL RECEIVE FROM ANY DEPARTMENT,  
39 BOARD, BUREAU, COMMISSION, AUTHORITY, OFFICE, OR OTHER INSTRUMENTALITY  
40 OF THE STATE, AND FROM ANY COUNTY, CITY, TOWN OR VILLAGE OF THIS STATE,  
41 SUCH FACILITIES, ASSISTANCE, AND DATA, AS IT DEEMS NECESSARY OR DESIRA-  
42 BLE FOR PROPER EXECUTION OF ITS POWERS AND DUTIES.

43 7. THE COMMISSION MAY HOLD PUBLIC OR PRIVATE HEARINGS AND SHALL HAVE  
44 FULL POWERS TO SUBPOENA WITNESSES AND ALL RECORDS OR DATA IT SHALL DEEM  
45 NECESSARY OR DESIRABLE PURSUANT TO THIS CHAPTER.

46 8. THE MEMBERS OF THE COMMISSION SHALL SERVE ON A VOLUNTARY BASIS AND  
47 RECEIVE NO COMPENSATION FOR THEIR SERVICES.

48 S 10. Paragraph (f) of subdivision 4 of section 837 of the executive  
49 law, as amended by chapter 169 of the laws of 1994, is amended and a new  
50 paragraph (g) is added to read as follows:

51 (f) Accomplish all of the functions, powers, and duties set forth in  
52 paragraphs (a), (b), (c) and (d) of this subdivision with respect to the  
53 processing and disposition of cases involving violent felony offenses  
54 specified in subdivision one of section 70.02 of the penal law; AND

55 (G) ACCOMPLISH ALL OF THE FUNCTIONS, POWERS, AND DUTIES SET FORTH IN  
56 PARAGRAPHS (A), (B), (C) AND (D) OF THIS SUBDIVISION WITH RESPECT TO ALL

1 CHAPTERS OF LAW RESULTING FROM LEGISLATIVE BILLS THAT HAVE BEEN SUBJECT  
2 TO THE PROVISIONS OF SECTIONS FORTY-NINE AND EIGHTY-THREE-N OF THE  
3 LEGISLATIVE LAW. THE DIVISION SHALL PRESENT TO THE GOVERNOR, THE TEMPO-  
4 RARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, THE  
5 SPEAKER OF THE ASSEMBLY AND THE MINORITY LEADER OF THE ASSEMBLY AN ANNU-  
6 AL REPORT CONTAINING THE STATISTICS AND OTHER INFORMATION RELEVANT TO  
7 THIS SUBDIVISION.

8 S 11. If any provision of this article or the application thereof to  
9 any person, circumstances, or political subdivision of this state is  
10 adjudged invalid by a court of competent jurisdiction such judgment  
11 shall not affect or impair the validity of the other provisions of the  
12 article or the application thereof to other political subdivisions of  
13 this state, persons, and circumstances.

14 S 12. This act shall take effect on the first of March next succeeding  
15 the date on which it shall have become a law.