

# STATE OF NEW YORK

2796

2017-2018 Regular Sessions

## IN SENATE

January 17, 2017

Introduced by Sens. KRUEGER, STEWART-COUSINS, BRESLIN, COMRIE, DILAN, GIANARIS, HOYLMAN, KAMINSKY, LATIMER, MONTGOMERY, PARKER, PERALTA, PERSAUD, RIVERA, SERRANO, SQUADRON, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to enacting the reproductive health act and revising existing provisions of law regarding abortion; to amend the penal law, the criminal procedure law, the county law and the judiciary law, in relation to abortion; to repeal certain provisions of the public health law relating to abortion; to repeal certain provisions of the education law relating to the sale of contraceptives; and to repeal certain provisions of the penal law relating to abortion

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The legislature finds that comprehen-  
2 sive reproductive health care, including contraception and abortion, is  
3 a fundamental component of a woman's health, privacy and equality. The  
4 New York Constitution and United States Constitution protect a woman's  
5 fundamental right to access safe, legal abortion, courts have repeatedly  
6 reaffirmed this right and further emphasized that states may not place  
7 undue burdens on women seeking to access such right.  
8 Moreover, the legislature finds, as with other medical procedures, the  
9 safety of abortion is furthered by evidence-based practices developed  
10 and supported by medical professionals; any regulation of medical care  
11 must have a legitimate purpose. Abortion is one of the safest medical  
12 procedures performed in the United States; the goal of medical regu-  
13 lation should be to improve the quality and availability of health care  
14 services.  
15 Furthermore, the legislature declares that it is the public policy of  
16 New York State that every individual possesses a fundamental right of  
17 privacy and equality with respect to their personal reproductive deci-

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

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1 sions and should be able to safely effectuate those decisions, including  
 2 by seeking and obtaining abortion care, free from discrimination in the  
 3 provision of health care.

4 Therefore, it is the intent of the legislature to prevent the enforce-  
 5 ment of laws or regulations that are not in furtherance of a legitimate  
 6 state interest in protecting a woman's health that burden abortion  
 7 access.

8 § 2. The public health law is amended by adding a new article 25-A to  
 9 read as follows:

10 ARTICLE 25-A  
 11 REPRODUCTIVE HEALTH ACT

12 Section 2599-aa. Abortion.

13 § 2599-aa. Abortion. 1. A health care practitioner licensed, certi-  
 14 fied, or authorized under title eight of the education law, acting with-  
 15 in his or her lawful scope of practice, may perform an abortion when,  
 16 according to the practitioner's reasonable and good faith professional  
 17 judgment based on the facts of the patient's case: the patient is within  
 18 twenty-four weeks from the commencement of pregnancy, or there is an  
 19 absence of fetal viability, or the abortion is necessary to protect the  
 20 patient's life or health.

21 2. This article shall be construed and applied consistent with and  
 22 subject to applicable laws and applicable and authorized regulations  
 23 governing health care procedures.

24 § 3. Section 4164 of the public health law is REPEALED.

25 § 4. Subdivision 8 of section 6811 of the education law is REPEALED.

26 § 5. Sections 125.40, 125.45, 125.50, 125.55 and 125.60 of the penal  
 27 law are REPEALED, and the article heading of article 125 of the penal  
 28 law is amended to read as follows:

29 HOMICIDE[~~, ABORTION~~] AND RELATED OFFENSES

30 § 6. Section 125.00 of the penal law is amended to read as follows:  
 31 § 125.00 Homicide defined.

32 Homicide means conduct which causes the death of a person [~~or an~~  
 33 ~~unborn child with which a female has been pregnant for more than twen-~~  
 34 ~~ty-four weeks~~] under circumstances constituting murder, manslaughter in  
 35 the first degree, manslaughter in the second degree, or criminally  
 36 negligent homicide[~~, abortion in the first degree or self-abortion in~~  
 37 ~~the first degree~~].

38 § 7. The section heading, opening paragraph and subdivision 1 of  
 39 section 125.05 of the penal law are amended to read as follows:

40 Homicide[~~, abortion~~] and related offenses; [~~definitions of terms~~  
 41 definition].

42 The following [~~definitions are~~] definition is applicable to this arti-  
 43 cle:

44 [~~1~~] "Person," when referring to the victim of a homicide, means a  
 45 human being who has been born and is alive.

46 § 7-a. Subdivisions 2 and 3 of section 125.05 of the penal law are  
 47 REPEALED.

48 § 8. Subdivision 2 of section 125.15 of the penal law is REPEALED.

49 § 9. Subdivision 3 of section 125.20 of the penal law is REPEALED.

50 § 10. Paragraph (b) of subdivision 8 of section 700.05 of the criminal  
 51 procedure law, as amended by chapter 368 of the laws of 2015, is amended  
 52 to read as follows:

53 (b) Any of the following felonies: assault in the second degree as  
 54 defined in section 120.05 of the penal law, assault in the first degree  
 55 as defined in section 120.10 of the penal law, reckless endangerment in  
 56 the first degree as defined in section 120.25 of the penal law, promot-

1 ing a suicide attempt as defined in section 120.30 of the penal law,  
2 strangulation in the second degree as defined in section 121.12 of the  
3 penal law, strangulation in the first degree as defined in section  
4 121.13 of the penal law, criminally negligent homicide as defined in  
5 section 125.10 of the penal law, manslaughter in the second degree as  
6 defined in section 125.15 of the penal law, manslaughter in the first  
7 degree as defined in section 125.20 of the penal law, murder in the  
8 second degree as defined in section 125.25 of the penal law, murder in  
9 the first degree as defined in section 125.27 of the penal law,  
10 ~~[abortion in the second degree as defined in section 125.40 of the penal~~  
11 ~~law, abortion in the first degree as defined in section 125.45 of the~~  
12 ~~penal law,~~] rape in the third degree as defined in section 130.25 of the  
13 penal law, rape in the second degree as defined in section 130.30 of the  
14 penal law, rape in the first degree as defined in section 130.35 of the  
15 penal law, criminal sexual act in the third degree as defined in section  
16 130.40 of the penal law, criminal sexual act in the second degree as  
17 defined in section 130.45 of the penal law, criminal sexual act in the  
18 first degree as defined in section 130.50 of the penal law, sexual abuse  
19 in the first degree as defined in section 130.65 of the penal law,  
20 unlawful imprisonment in the first degree as defined in section 135.10  
21 of the penal law, kidnapping in the second degree as defined in section  
22 135.20 of the penal law, kidnapping in the first degree as defined in  
23 section 135.25 of the penal law, labor trafficking as defined in section  
24 135.35 of the penal law, aggravated labor trafficking as defined in  
25 section 135.37 of the penal law, custodial interference in the first  
26 degree as defined in section 135.50 of the penal law, coercion in the  
27 first degree as defined in section 135.65 of the penal law, criminal  
28 trespass in the first degree as defined in section 140.17 of the penal  
29 law, burglary in the third degree as defined in section 140.20 of the  
30 penal law, burglary in the second degree as defined in section 140.25 of  
31 the penal law, burglary in the first degree as defined in section 140.30  
32 of the penal law, criminal mischief in the third degree as defined in  
33 section 145.05 of the penal law, criminal mischief in the second degree  
34 as defined in section 145.10 of the penal law, criminal mischief in the  
35 first degree as defined in section 145.12 of the penal law, criminal  
36 tampering in the first degree as defined in section 145.20 of the penal  
37 law, arson in the fourth degree as defined in section 150.05 of the  
38 penal law, arson in the third degree as defined in section 150.10 of the  
39 penal law, arson in the second degree as defined in section 150.15 of  
40 the penal law, arson in the first degree as defined in section 150.20 of  
41 the penal law, grand larceny in the fourth degree as defined in section  
42 155.30 of the penal law, grand larceny in the third degree as defined in  
43 section 155.35 of the penal law, grand larceny in the second degree as  
44 defined in section 155.40 of the penal law, grand larceny in the first  
45 degree as defined in section 155.42 of the penal law, health care fraud  
46 in the fourth degree as defined in section 177.10 of the penal law,  
47 health care fraud in the third degree as defined in section 177.15 of  
48 the penal law, health care fraud in the second degree as defined in  
49 section 177.20 of the penal law, health care fraud in the first degree  
50 as defined in section 177.25 of the penal law, robbery in the third  
51 degree as defined in section 160.05 of the penal law, robbery in the  
52 second degree as defined in section 160.10 of the penal law, robbery in  
53 the first degree as defined in section 160.15 of the penal law, unlawful  
54 use of secret scientific material as defined in section 165.07 of the  
55 penal law, criminal possession of stolen property in the fourth degree  
56 as defined in section 165.45 of the penal law, criminal possession of

1 stolen property in the third degree as defined in section 165.50 of the  
2 penal law, criminal possession of stolen property in the second degree  
3 as defined by section 165.52 of the penal law, criminal possession of  
4 stolen property in the first degree as defined by section 165.54 of the  
5 penal law, trademark counterfeiting in the second degree as defined in  
6 section 165.72 of the penal law, trademark counterfeiting in the first  
7 degree as defined in section 165.73 of the penal law, forgery in the  
8 second degree as defined in section 170.10 of the penal law, forgery in  
9 the first degree as defined in section 170.15 of the penal law, criminal  
10 possession of a forged instrument in the second degree as defined in  
11 section 170.25 of the penal law, criminal possession of a forged instru-  
12 ment in the first degree as defined in section 170.30 of the penal law,  
13 criminal possession of forgery devices as defined in section 170.40 of  
14 the penal law, falsifying business records in the first degree as  
15 defined in section 175.10 of the penal law, tampering with public  
16 records in the first degree as defined in section 175.25 of the penal  
17 law, offering a false instrument for filing in the first degree as  
18 defined in section 175.35 of the penal law, issuing a false certificate  
19 as defined in section 175.40 of the penal law, criminal diversion of  
20 prescription medications and prescriptions in the second degree as  
21 defined in section 178.20 of the penal law, criminal diversion of  
22 prescription medications and prescriptions in the first degree as  
23 defined in section 178.25 of the penal law, residential mortgage fraud  
24 in the fourth degree as defined in section 187.10 of the penal law,  
25 residential mortgage fraud in the third degree as defined in section  
26 187.15 of the penal law, residential mortgage fraud in the second degree  
27 as defined in section 187.20 of the penal law, residential mortgage  
28 fraud in the first degree as defined in section 187.25 of the penal law,  
29 escape in the second degree as defined in section 205.10 of the penal  
30 law, escape in the first degree as defined in section 205.15 of the  
31 penal law, absconding from temporary release in the first degree as  
32 defined in section 205.17 of the penal law, promoting prison contraband  
33 in the first degree as defined in section 205.25 of the penal law,  
34 hindering prosecution in the second degree as defined in section 205.60  
35 of the penal law, hindering prosecution in the first degree as defined  
36 in section 205.65 of the penal law, sex trafficking as defined in  
37 section 230.34 of the penal law, criminal possession of a weapon in the  
38 third degree as defined in subdivisions two, three and five of section  
39 265.02 of the penal law, criminal possession of a weapon in the second  
40 degree as defined in section 265.03 of the penal law, criminal  
41 possession of a weapon in the first degree as defined in section 265.04  
42 of the penal law, manufacture, transport, disposition and defacement of  
43 weapons and dangerous instruments and appliances defined as felonies in  
44 subdivisions one, two, and three of section 265.10 of the penal law,  
45 sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use  
46 of weapons as defined in subdivision two of section 265.35 of the penal  
47 law, relating to firearms and other dangerous weapons, or failure to  
48 disclose the origin of a recording in the first degree as defined in  
49 section 275.40 of the penal law;

50 § 11. Subdivision 1 of section 673 of the county law, as added by  
51 chapter 545 of the laws of 1965, is amended to read as follows:

52 1. A coroner or medical examiner has jurisdiction and authority to  
53 investigate the death of every person dying within his county, or whose  
54 body is found within the county, which is or appears to be:

55 (a) A violent death, whether by criminal violence, suicide or casual-  
56 ty;

1 (b) A death caused by unlawful act or criminal neglect;

2 (c) A death occurring in a suspicious, unusual or unexplained manner;

3 (d) [~~A death caused by suspected criminal abortion;~~

4 ~~(e)]~~ (e) A death while unattended by a physician, so far as can be discov-  
5 ered, or where no physician able to certify the cause of death as  
6 provided in the public health law and in form as prescribed by the  
7 commissioner of health can be found;

8 [~~(f)]~~ (e) A death of a person confined in a public institution other  
9 than a hospital, infirmary or nursing home.

10 § 12. Section 4 of the judiciary law, as amended by chapter 264 of the  
11 laws of 2003, is amended to read as follows:

12 § 4. Sittings of courts to be public. The sittings of every court  
13 within this state shall be public, and every citizen may freely attend  
14 the same, except that in all proceedings and trials in cases for  
15 divorce, seduction, [~~abortion,~~] rape, assault with intent to commit  
16 rape, criminal sexual act, bastardy or filiation, the court may, in its  
17 discretion, exclude therefrom all persons who are not directly inter-  
18 ested therein, excepting jurors, witnesses, and officers of the court.

19 § 13. This act shall take effect immediately.