

STATE OF NEW YORK

5062

2017-2018 Regular Sessions

IN SENATE

March 6, 2017

Introduced by Sens. MONTGOMERY, BAILEY, COMRIE, HOYLMAN, PARKER, PERSAUD, RIVERA, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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 to repeal 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 criminalization of condoms act".

2
3 § 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
19 evidence upon survivors of trafficking and people who are or are
20 profiled as being engaged in the sex trades.

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

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

§ 4519-a. Possession of reproductive or sexual health devices; receipt into evidence. 1. The fact of possession of a condom or other reproductive or sexual health device may not be received in evidence in any trial, hearing or proceeding pursuant to subdivision one of section twelve and article ten of the multiple dwelling law, sections twelve-a and twenty-three hundred twenty of the public health law, section two hundred thirty-one of the real property law or subdivision five of section seven hundred eleven and section seven hundred fifteen of the real property actions and proceedings law, or by any law, local law or ordinance of a political subdivision of this state, or by any word, rule or regulation of any governmental instrumentality authorized by law to adopt the same as evidence of prostitution, patronizing a prostitute, promoting prostitution, permitting prostitution, maintaining a premises for prostitution, lewdness or assignation, maintaining a bawdy house, compelling prostitution, or sex trafficking.

2. "Reproductive or sexual health device" shall include any contraceptive or other tool used to prevent unwanted pregnancy or the transmission of HIV or other sexually transmitted diseases, including but not limited to male condoms, female condoms, lubricants, pre-exposure prophylaxis ("PrEP"), post-exposure prophylaxis ("PEP"), HIV anti-retroviral medication, spermicide, hormonal methods, emergency contraception, diaphragm, cervical cap, or sponge.

3. "Possession" means to have physical possession or otherwise to exercise dominion or control over tangible property.

4. The fact of possession or presence in a premises of a reproductive or sexual health device shall not be introduced as evidence by any means for any of the aforementioned purposes, including by either physical or testimonial evidence.

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

§ 60.49 Possession of reproductive or sexual health device; receipt into evidence.

1. Evidence that a person was in possession of a condom or other reproductive or sexual health device may not be admitted at any trial, hearing or other proceeding in a prosecution for any offense, or an attempt to commit any offense, defined in article two hundred thirty or section 240.37 of the penal law, or section sixty-five hundred twelve of the education law, or any law, local law or ordinance of a political subdivision of this state, or any word, rule or regulation of any governmental instrumentality authorized by law to adopt the same, for the purpose of establishing probable cause for an arrest or proving any person's commission or attempted commission of such offense, as evidence of prostitution or trafficking-related activity.

2. "Reproductive or sexual health device" shall include any contraceptive or other tool used to prevent unwanted pregnancy or the transmission of HIV or other sexually transmitted diseases, including but not limited to male condoms, female condoms, lubricant, pre-exposure prophylaxis ("PrEP"), post-exposure prophylaxis ("PEP"), HIV anti-retroviral medication, spermicide, hormonal methods, emergency contraception, diaphragm, cervical cap, or sponge.

3. "Possession" means to have physical possession or otherwise to exercise dominion or control over tangible property.

4. The fact of possession or presence on the premises of a reproductive or sexual health device shall not be introduced as evidence by any

1 means for any of the aforementioned purposes, including by either phys-
2 ical or testimonial evidence.

3 § 5. Paragraph (d) of subdivision 1 of section 160.10 of the criminal
4 procedure law is REPEALED.

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

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

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

51 3. A person against whom a criminal action or proceeding was termi-
52 nated by such person's conviction of a traffic infraction or violation
53 other than [~~a violation of loitering as described in paragraph (d) or~~
54 ~~(e) of subdivision one of section 160.10 of this chapter or~~] the
55 violation of operating a motor vehicle while ability impaired as
56 described in subdivision one of section eleven hundred ninety-two of the

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

8 § 7. Section 841 of the executive law is amended by adding a new
9 subdivision 7-b to read as follows:

10 7-b. Take such steps as may be necessary to ensure that all police
11 officers and peace officers certified pursuant to subdivision three of
12 this section receive appropriate instruction regarding the evidentiary
13 prohibition set forth in section 60.47 of the criminal procedure law and
14 section forty-five hundred nineteen-a of the civil practice law and
15 rules relating to the use of condoms and other reproductive or sexual
16 health devices as evidence in certain trials, hearings or proceedings,
17 or as a basis for probable cause for arrest, including that unauthorized
18 seizure or confiscation of condoms and other reproductive or sexual
19 health devices is a breach of public policy.

20 § 8. The legislative law is amended by adding a new section 49 to read
21 as follows:

22 § 49. Requirement with respect to bills amending certain laws which
23 affect health and human rights. Whenever a committee favorably reports a
24 bill to amend articles two hundred thirty or section 240.37 of the penal
25 law, or, at the discretion of the voting majority of the committee, any
26 bill which, if passed, would increase or decrease the number of arres-
27 tees or pretrial or sentenced population of correctional facilities in
28 this state, a majority of the committee members voting may request that
29 a health and human rights impact statement be prepared. The legislature
30 shall by concurrent resolution of the senate and assembly prescribe
31 rules requiring health and human rights impact statements to accompany,
32 on a separate form, bills and amendments to bills after such bills have
33 been reported from committee. Health and human rights impact statements
34 shall be prepared before the bill is considered for final passage. The
35 statement shall indicate whether the bill would have a disparate impact
36 by race, ethnicity, religion, age, gender, gender identity or
37 expression, sexual orientation, immigration status, disability, or hous-
38 ing status composition of the arrestee and correctional facility popu-
39 lation and an explanation of that impact. Any impact statement printed
40 with or prepared for a bill is solely for the purpose of information,
41 summarization and explanation for members of the legislature and shall
42 not be construed to represent the intent of the legislature or either
43 chamber thereof for any purpose. Each impact statement shall bear the
44 following disclaimer: "The following health and human rights impact
45 statement is prepared for the benefit of the members of the legislature,
46 solely for purposes of information, summarization and explanation and
47 does not represent the intent of the legislature or either chamber ther-
48 eof for any purpose."

49 § 9. The legislative law is amended by adding a new section 83-n to
50 read as follows:

51 § 83-n. Legislative commission on health and human rights. 1. The
52 legislature hereby finds that promoting and protecting health and
53 respecting and fulfilling human rights are necessarily linked, and that
54 coordination between health and law enforcement efforts is central to
55 the effective provision of government services for the benefit of the
56 people of the state.

2. A legislative commission on health and human rights is hereby established to examine, evaluate and make recommendations concerning rights-based approaches to health and law enforcement interventions. The commission shall act as a mechanism for ongoing and meaningful involvement of those who are or potentially could be affected by this law, including, but not limited to, survivors of trafficking, people who are or are profiled as being involved in the sex trades, communities of color, lesbian, gay, bisexual and transgender people, and people in custodial settings. The commission shall provide monitoring and expert perspective to the legislature, promoting awareness of problems in real time as they emerge, increase cooperation and collaboration between the individuals and communities directly impacted and their legislators, and allow legislators to share responsibility for successes and failures of these initiatives. The commission shall make such recommendations as it may deem necessary as to regulations, policies, programs, and proposed legislation to provide an equitable system of providing for the public safety while also protecting public health, to encourage the most effective use of state and local resources, to preserve the fiscal integrity of both state and local government health systems and otherwise to strengthen the fundamental human right to health.

3. The commission shall consist of ten representatives from organizations that promote advocacy by and for directly impacted communities. From among the members so appointed, a chairperson and vice chairperson shall be designated by the joint action of the chairpersons of the senate and assembly health committees. Any vacancy that occurs in the commission or in the chairmanship or vice chairmanship shall be filled in the same manner in which the original appointment or designation was made.

4. The commission in addition to the above mentioned powers shall have all the powers and privileges of a legislative committee pursuant to this chapter.

5. For the accomplishment of its purpose, the commission shall be authorized and empowered to undertake any study, inquiry, survey, or analysis it may deem relevant through its own personnel in cooperation with or by agreement with any other public or private agency.

6. The commission may require and shall receive from any department, board, bureau, commission, authority, office, or other instrumentality of the state, and from any county, city, town or village of this state, such facilities, assistance, and data, as it deems necessary or desirable for proper execution of its powers and duties.

7. The commission may hold public or private hearings and shall have full powers to subpoena witnesses and all records or data it shall deem necessary or desirable pursuant to this chapter.

8. The members of the commission shall serve on a voluntary basis and receive no compensation for their services.

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

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

(g) Accomplish all of the functions, powers, and duties set forth in paragraphs (a), (b), (c) and (d) of this subdivision with respect to all chapters of law resulting from legislative bills that have been subject to the provisions of sections forty-nine and eighty-three-n of the

1 legislative law. The division shall present to the governor, the tempo-
2 rary president of the senate, the minority leader of the senate, the
3 speaker of the assembly and the minority leader of the assembly an annu-
4 al report containing the statistics and other information relevant to
5 this subdivision.

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

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