STATE OF NEW YORK

5062--A

2017-2018 Regular Sessions

IN SENATE

March 6, 2017

Introduced by Sens. MONTGOMERY, BAILEY, COMRIE, HOYLMAN, PARKER, PERSAUD, RIVERA, SAVINO, SERRANO, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 paragraph (d) of subdivision 1 of section 160.10 of the criminal procedure law relating thereto

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

Section 1. This act shall be known and may be cited as the "End criminalization of condoms act".

§ 2. Legislative findings. The legislature hereby finds that promoting and protecting health and respecting and fulfilling human rights are necessarily linked, and that health-oriented and rights-based law enforcement efforts are central to the effective provision of government services for the benefit of the people of the State. Article 17, section 3 of the New York constitution requires that the legislature protect and promote the health of the inhabitants of this state as a matter of public concern. Despite these provisions, for purposes of prosecuting certain criminal, civil and administrative offenses, reproductive and sexual health tools, including condoms, are currently being destroyed, confiscated, or used as evidence by law enforcement officers. This legislation is intended to strengthen the public health of all New Yorkers, including the most vulnerable, while preserving the ability of law enforcement to prosecute other crimes such as felony sexual offenses. The purpose of this bill is to avoid the disparate impact of the practice 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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evidence upon survivors of trafficking and people who are or are profiled as being engaged in the sex trades.

§ 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.

§ 4. Section 60.47 of the criminal procedure law, as added by section 2 of part I of chapter 57 of the laws of 2015, is amended to read as follows:

§ 60.47 Possession of condoms **or other reproductive or sexual health device**; receipt into evidence.

1. Evidence that a person was in possession of one or more condoms **or other reproductive or sexual health device** may not be admitted at any trial, hearing, or other proceeding in a prosecution for [~~**section 230.00**~~] **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.

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

§ 5-a. Paragraph (c) of subdivision 1 of section 160.10 of the criminal procedure law, as amended by chapter 762 of the laws of 1971, is amended to read as follows:

(c) A misdemeanor defined outside the penal law which would constitute a felony if such person had a previous judgment of conviction for a crime[~~; or~~].

§ 6. The opening paragraph of subdivision 1, subdivision 2 and subdivision 3 of section 160.55 of the criminal procedure law, the opening paragraph of subdivision 1 as amended by chapter 169 of the laws of 1994, subdivision 2 as amended by chapter 476 of the laws of 2009 and subdivision 3 as amended by chapter 249 of the laws of 1981 and renumbered by chapter 142 of the laws of 1991, are amended to read as follows:

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

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

3. A person against whom a criminal action or proceeding was terminated by such person's conviction of a traffic infraction or violation other than [~~a violation of loitering as described in paragraph (d) or (e) of subdivision one of section 160.10 of this chapter or~~] the violation of operating a motor vehicle while ability impaired as described in subdivision one of section eleven hundred ninety-two of the vehicle and traffic law, prior to the effective date of this section,

may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

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

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

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

§ 49. Requirement with respect to bills amending certain laws which affect health and human rights. Whenever a committee favorably reports a bill to amend articles two hundred thirty or section 240.37 of the penal law, or, at the discretion of the voting majority of the committee, any bill which, if passed, would increase or decrease the number of arrestees or pretrial or sentenced population of correctional facilities in this state, a majority of the committee members voting may request that a health and human rights impact statement be prepared. The legislature shall by concurrent resolution of the senate and assembly prescribe rules requiring health and human rights impact statements to accompany, on a separate form, bills and amendments to bills after such bills have been reported from committee. Health and human rights impact statements shall be prepared before the bill is considered for final passage. The statement shall indicate whether the bill would have a disparate impact by race, ethnicity, religion, age, gender, gender identity or expression, sexual orientation, immigration status, disability, or housing status composition of the arrestee and correctional facility population and an explanation of that impact. Any impact statement printed with or prepared for a bill is solely for the purpose of information, summarization and explanation for members of the legislature and shall not be construed to represent the intent of the legislature or either chamber thereof for any purpose. Each impact statement shall bear the following disclaimer: "The following health and human rights impact statement is prepared for the benefit of the members of the legislature, solely for purposes of information, summarization and explanation and does not represent the intent of the legislature or either chamber thereof for any purpose."

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

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

legislative law. The division shall present to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly and the minority leader of the assembly an annual report containing the statistics and other information relevant to this subdivision.

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

§ 12. This act shall take effect on the first of March next succeeding the date on which it shall have become a law; provided, however that the amendments to article 5-A of the legislative law made by section nine of this act shall not affect the repeal of such article and shall be deemed repealed therewith.