

# STATE OF NEW YORK

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S. 240

A. 21

2019-2020 Regular Sessions

## SENATE - ASSEMBLY

(Prefiled)

January 9, 2019

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IN SENATE -- Introduced by Sens. KRUEGER, STEWART-COUSINS, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KAPLAN, KENNEDY, LIU, MARTINEZ, MAY, MAYER, METZGER, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Health

IN ASSEMBLY -- Introduced by M. of A. GLICK, GOTTFRIED, LUPARDO, HEASTIE, PEOPLES-STOKES, JAFFEE, TITUS, SIMOTAS, L. ROSENTHAL, O'DONNELL, CAHILL, SOLAGES, ABINANTI, ARROYO, BARRETT, BARRON, BICHOTTE, BLAKE, BRAUNSTEIN, BRONSON, BUCHWALD, CARROLL, COOK, CYMBROWITZ, DE LA ROSA, DenDEKKER, DILAN, DINOWITZ, D'URSO, ENGLEBRIGHT, FAHY, GALEF, GANTT, HEVESI, HUNTER, HYNDMAN, JEAN-PIERRE, JONES, KIM, LAVINE, LIFTON, MAGNARELLI, MOSLEY, NOLAN, OTIS, PAULIN, PERRY, PHEFFER AMATO, PICHARDO, PRETLOW, QUART, RODRIGUEZ, ROZIC, SEAWRIGHT, SIMON, STECK, STIRPE, THIELE, WALLACE, WEINSTEIN, WEPRIN, WILLIAMS, WOERNER, WRIGHT, NIOU, ORTIZ, FERNANDEZ, GRIFFIN -- Multi-Sponsored by -- M. of A. EPSTEIN -- read once and referred 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:

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

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LBD05658-02-9

Section 1. Legislative intent. The legislature finds that comprehensive reproductive health care, including contraception and abortion, is a fundamental component of a woman's health, privacy and equality. The New York Constitution and United States Constitution protect a woman's fundamental right to access safe, legal abortion, courts have repeatedly reaffirmed this right and further emphasized that states may not place undue burdens on women seeking to access such right.

Moreover, the legislature finds, as with other medical procedures, the safety of abortion is furthered by evidence-based practices developed and supported by medical professionals. Abortion is one of the safest medical procedures performed in the United States; the goal of medical regulation should be to improve the quality and availability of health care services.

Furthermore, the legislature declares that it is the public policy of New York State that every individual possesses a fundamental right of privacy and equality with respect to their personal reproductive decisions and should be able to safely effectuate those decisions, including by seeking and obtaining abortion care, free from discrimination in the provision of health care.

Therefore, it is the intent of the legislature to prevent the enforcement of laws or regulations that are not in furtherance of a legitimate state interest in protecting a woman's health that burden abortion access.

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

#### ARTICLE 25-A

#### REPRODUCTIVE HEALTH ACT

#### Section 2599-aa. Policy and purpose.

##### 2599-bb. Abortion.

§ 2599-aa. Policy and purpose. The legislature finds that comprehensive reproductive health care is a fundamental component of every individual's health, privacy and equality. Therefore, it is the policy of the state that:

1. Every individual has the fundamental right to choose or refuse contraception or sterilization.

2. Every individual who becomes pregnant has the fundamental right to choose to carry the pregnancy to term, to give birth to a child, or to have an abortion, pursuant to this article.

3. The state shall not discriminate against, deny, or interfere with the exercise of the rights set forth in this section in the regulation or provision of benefits, facilities, services or information.

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

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

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

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

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

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

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

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

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

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

The following [~~definitions are~~] definition is applicable to this article:

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

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

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

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

§ 10. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 189 of the laws of 2018, is amended to read as follows:

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, strangulation in the second degree as defined in section 121.12 of the penal law, strangulation in the first degree as defined in section 121.13 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, [~~abortion in the second degree as defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law,~~] rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, criminal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, labor trafficking as defined in section 135.35 of the penal law, aggravated labor trafficking as defined in section 135.37 of the penal law, custodial interference in the first

1 degree as defined in section 135.50 of the penal law, coercion in the  
2 first degree as defined in section 135.65 of the penal law, criminal  
3 trespass in the first degree as defined in section 140.17 of the penal  
4 law, burglary in the third degree as defined in section 140.20 of the  
5 penal law, burglary in the second degree as defined in section 140.25 of  
6 the penal law, burglary in the first degree as defined in section 140.30  
7 of the penal law, criminal mischief in the third degree as defined in  
8 section 145.05 of the penal law, criminal mischief in the second degree  
9 as defined in section 145.10 of the penal law, criminal mischief in the  
10 first degree as defined in section 145.12 of the penal law, criminal  
11 tampering in the first degree as defined in section 145.20 of the penal  
12 law, arson in the fourth degree as defined in section 150.05 of the  
13 penal law, arson in the third degree as defined in section 150.10 of the  
14 penal law, arson in the second degree as defined in section 150.15 of  
15 the penal law, arson in the first degree as defined in section 150.20 of  
16 the penal law, grand larceny in the fourth degree as defined in section  
17 155.30 of the penal law, grand larceny in the third degree as defined in  
18 section 155.35 of the penal law, grand larceny in the second degree as  
19 defined in section 155.40 of the penal law, grand larceny in the first  
20 degree as defined in section 155.42 of the penal law, health care fraud  
21 in the fourth degree as defined in section 177.10 of the penal law,  
22 health care fraud in the third degree as defined in section 177.15 of  
23 the penal law, health care fraud in the second degree as defined in  
24 section 177.20 of the penal law, health care fraud in the first degree  
25 as defined in section 177.25 of the penal law, robbery in the third  
26 degree as defined in section 160.05 of the penal law, robbery in the  
27 second degree as defined in section 160.10 of the penal law, robbery in  
28 the first degree as defined in section 160.15 of the penal law, unlawful  
29 use of secret scientific material as defined in section 165.07 of the  
30 penal law, criminal possession of stolen property in the fourth degree  
31 as defined in section 165.45 of the penal law, criminal possession of  
32 stolen property in the third degree as defined in section 165.50 of the  
33 penal law, criminal possession of stolen property in the second degree  
34 as defined by section 165.52 of the penal law, criminal possession of  
35 stolen property in the first degree as defined by section 165.54 of the  
36 penal law, trademark counterfeiting in the second degree as defined in  
37 section 165.72 of the penal law, trademark counterfeiting in the first  
38 degree as defined in section 165.73 of the penal law, forgery in the  
39 second degree as defined in section 170.10 of the penal law, forgery in  
40 the first degree as defined in section 170.15 of the penal law, criminal  
41 possession of a forged instrument in the second degree as defined in  
42 section 170.25 of the penal law, criminal possession of a forged instru-  
43 ment in the first degree as defined in section 170.30 of the penal law,  
44 criminal possession of forgery devices as defined in section 170.40 of  
45 the penal law, falsifying business records in the first degree as  
46 defined in section 175.10 of the penal law, tampering with public  
47 records in the first degree as defined in section 175.25 of the penal  
48 law, offering a false instrument for filing in the first degree as  
49 defined in section 175.35 of the penal law, issuing a false certificate  
50 as defined in section 175.40 of the penal law, criminal diversion of  
51 prescription medications and prescriptions in the second degree as  
52 defined in section 178.20 of the penal law, criminal diversion of  
53 prescription medications and prescriptions in the first degree as  
54 defined in section 178.25 of the penal law, residential mortgage fraud  
55 in the fourth degree as defined in section 187.10 of the penal law,  
56 residential mortgage fraud in the third degree as defined in section

1 187.15 of the penal law, residential mortgage fraud in the second degree  
2 as defined in section 187.20 of the penal law, residential mortgage  
3 fraud in the first degree as defined in section 187.25 of the penal law,  
4 escape in the second degree as defined in section 205.10 of the penal  
5 law, escape in the first degree as defined in section 205.15 of the  
6 penal law, absconding from temporary release in the first degree as  
7 defined in section 205.17 of the penal law, promoting prison contraband  
8 in the first degree as defined in section 205.25 of the penal law,  
9 hindering prosecution in the second degree as defined in section 205.60  
10 of the penal law, hindering prosecution in the first degree as defined  
11 in section 205.65 of the penal law, sex trafficking as defined in  
12 section 230.34 of the penal law, sex trafficking of a child as defined  
13 in section 230.34-a of the penal law, criminal possession of a weapon in  
14 the third degree as defined in subdivisions two, three and five of  
15 section 265.02 of the penal law, criminal possession of a weapon in the  
16 second degree as defined in section 265.03 of the penal law, criminal  
17 possession of a weapon in the first degree as defined in section 265.04  
18 of the penal law, manufacture, transport, disposition and defacement of  
19 weapons and dangerous instruments and appliances defined as felonies in  
20 subdivisions one, two, and three of section 265.10 of the penal law,  
21 sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use  
22 of weapons as defined in subdivision two of section 265.35 of the penal  
23 law, relating to firearms and other dangerous weapons, or failure to  
24 disclose the origin of a recording in the first degree as defined in  
25 section 275.40 of the penal law;

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

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

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

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

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

35 (d) [~~A death caused by suspected criminal abortion,~~

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

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

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

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

51 § 13. Severability. If any provision of this act, or any application  
52 of any provision of this act, is held to be invalid, that shall not  
53 affect the validity or effectiveness of any other provision of this act,  
54 or of any other application of any provision of this act, which can be  
55 given effect without that provision or application; and to that end, the  
56 provisions and applications of this act are severable.

1     § 14. This act shall take effect immediately.