

# STATE OF NEW YORK

8773

## IN SENATE

July 15, 2020

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

1 Section 1. This act shall be known and may be cited as the "Decrimi-  
2 nalize condoms act".

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 sex work.

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

23 § 4519-a. Possession of reproductive or sexual health devices; receipt  
24 into evidence. 1. The fact of possession of a condom or other reproduc-

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

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1 tive or sexual health device may not be received in evidence in any  
2 trial, hearing or proceeding pursuant to subdivision one of section  
3 twelve and article ten of the multiple dwelling law, sections twelve-a  
4 and twenty-three hundred twenty of the public health law, section two  
5 hundred thirty-one of the real property law or subdivision five of  
6 section seven hundred eleven and section seven hundred fifteen of the  
7 real property actions and proceedings law, or by any law, local law or  
8 ordinance of a political subdivision of this state, or by any word, rule  
9 or regulation of any governmental instrumentality authorized by law to  
10 adopt the same as evidence of prostitution, patronizing a prostitute,  
11 promoting prostitution, permitting prostitution, maintaining a premises  
12 for prostitution, lewdness or assignation, maintaining a bawdy house,  
13 compelling prostitution, or sex trafficking.

14 2. "Reproductive or sexual health device" shall include any contracep-  
15 tive or other tool used to prevent unwanted pregnancy or the trans-  
16 mission of HIV or other sexually transmitted diseases and infections,  
17 including but not limited to male condoms, female condoms, lubricants,  
18 pre-exposure prophylaxis ("PrEP"), post-exposure prophylaxis ("PEP"),  
19 HIV anti-retroviral medication, spermicide, hormonal methods, emergency  
20 contraception, diaphragm, cervical cap, or sponge.

21 § 4. Section 60.47 of the criminal procedure law, as added by section  
22 2 of part I of chapter 57 of the laws of 2015, is amended to read as  
23 follows:

24 § 60.47 Possession of condoms or other reproductive or sexual health  
25 device; receipt into evidence.

26 1. Evidence that a person was in possession of one or more condoms or  
27 other reproductive or sexual health device may not be admitted at any  
28 trial, hearing, or other proceeding in a prosecution for [section  
29 230.00] any offense, or an attempt to commit any offense, defined in  
30 article two hundred thirty or section 240.37 of the penal law, or  
31 section sixty-five hundred twelve of the education law, or any law,  
32 local law or ordinance of a political subdivision of this state, or any  
33 word, rule or regulation of any governmental instrumentality authorized  
34 by law to adopt the same, for the purpose of establishing probable cause  
35 for an arrest or proving any person's commission or attempted commission  
36 of such offense, as evidence of prostitution or trafficking-related  
37 activity.

38 2. "Reproductive or sexual health device" shall include any contracep-  
39 tive or other tool used to prevent unwanted pregnancy or the trans-  
40 mission of HIV or other sexually transmitted diseases and infections,  
41 including but not limited to male condoms, female condoms, lubricant,  
42 pre-exposure prophylaxis ("PrEP"), post-exposure prophylaxis ("PEP"),  
43 HIV anti-retroviral medication, spermicide, hormonal methods, emergency  
44 contraception, diaphragm, cervical cap, or sponge.

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

47 § 5-a. Paragraph (c) of subdivision 1 of section 160.10 of the crimi-  
48 nal procedure law, as amended by chapter 762 of the laws of 1971, is  
49 amended to read as follows:

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

53 § 6. The opening paragraph of subdivision 1, subdivision 2 and subdivi-  
54 sion 3 of section 160.55 of the criminal procedure law, the opening  
55 paragraph of subdivision 1 as amended by chapter 359 of the laws of  
56 2019, 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:

Regardless of the class of offense for which a person is initially charged, 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) of subdivision one of section 160.10 of this article 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.

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

3     7-b. Take such steps as may be necessary to ensure that all police  
4 officers and peace officers certified pursuant to subdivision three of  
5 this section receive appropriate instruction regarding the evidentiary  
6 prohibition set forth in section 60.47 of the criminal procedure law and  
7 section forty-five hundred nineteen-a of the civil practice law and  
8 rules relating to the use of condoms and other reproductive or sexual  
9 health devices as evidence in certain trials, hearings or proceedings,  
10 or as a basis for probable cause for arrest, including that unauthorized  
11 seizure or confiscation of condoms and other reproductive or sexual  
12 health devices is a breach of public policy.

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

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

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

44     § 83-n. Legislative commission on health and human rights. 1. The  
45 legislature hereby finds that promoting and protecting health and  
46 respecting and fulfilling human rights are necessarily linked, and that  
47 coordination between health and law enforcement efforts is central to  
48 the effective provision of government services for the benefit of the  
49 people of the state.

50     2. A legislative commission on health and human rights is hereby  
51 established to examine, evaluate and make recommendations concerning  
52 rights-based approaches to health and law enforcement interventions.  
53 The commission shall act as a mechanism for ongoing and meaningful  
54 involvement of those who are or potentially could be affected by this  
55 law, including, but not limited to, survivors of trafficking, people who  
56 are or are profiled as being involved in sex work, communities of color,

1 lesbian, gay, bisexual and transgender people, and people in custodial  
2 settings. The commission shall provide monitoring and expert perspective  
3 to the legislature, promoting awareness of problems in real time as they  
4 emerge, increase cooperation and collaboration between the individuals  
5 and communities directly impacted and their legislators, and allow  
6 legislators to share responsibility for successes and failures of these  
7 initiatives. The commission shall make such recommendations as it may  
8 deem necessary as to regulations, policies, programs, and proposed  
9 legislation to provide an equitable system of providing for the public  
10 safety while also protecting public health, to encourage the most effec-  
11 tive use of state and local resources, to preserve the fiscal integrity  
12 of both state and local government health systems and otherwise to  
13 strengthen the fundamental human right to health.

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

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

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

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

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

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

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

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

46 (g) Accomplish all of the functions, powers, and duties set forth in  
47 paragraphs (a), (b), (c) and (d) of this subdivision with respect to all  
48 chapters of law resulting from legislative bills that have been subject  
49 to the provisions of sections forty-nine and eighty-three-n of the  
50 legislative law. The division shall present to the governor, the tempo-  
51 rary president of the senate, the minority leader of the senate, the  
52 speaker of the assembly and the minority leader of the assembly an annu-  
53 al report containing the statistics and other information relevant to  
54 this subdivision.

55 § 11. If any provision of this article or the application thereof to  
56 any person, circumstances, or political subdivision of this state is

1 adjudged invalid by a court of competent jurisdiction such judgment  
2 shall not affect or impair the validity of the other provisions of the  
3 article or the application thereof to other political subdivisions of  
4 this state, persons, and circumstances.

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