

STATE OF NEW YORK

4834

2021-2022 Regular Sessions

IN SENATE

February 16, 2021

Introduced by Sen. BIAGGI -- 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 and the executive law, in relation to prohibiting possession of reproductive or sexual health devices from being permitted in specified criminal or civil proceedings as evidence of prostitution

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. Section 3 of article
8 17 of the New York state constitution requires that the legislature
9 protect and promote the health of the inhabitants of this state as a
10 matter of public concern. Despite these provisions, for purposes of
11 prosecuting certain criminal, civil and administrative offenses, reproductive
12 and sexual health tools, including condoms, are currently being
13 destroyed, confiscated, or used as evidence by law enforcement officers.
14 This legislation is intended to strengthen the public health of all New
15 Yorkers, including the most vulnerable, while preserving the ability of
16 law enforcement to prosecute other crimes such as felony sexual
17 offenses. The purpose of this act is to avoid the disparate impact of
18 the practice of citing condoms and other reproductive and sexual health
19 tools as evidence upon survivors of trafficking and people who are or
20 are profiled as being engaged in the sex trades.
21 § 3. The civil practice law and rules is amended by adding a new
22 section 4519-a to read as follows:

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

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1 § 4519-a. Possession of reproductive or sexual health devices; receipt
2 into evidence. 1. Evidence that a person was in possession of a condom
3 or other reproductive or sexual health device may not be received in
4 evidence in any trial, hearing or proceeding pursuant to subdivision one
5 of section twelve and article ten of the multiple dwelling law, sections
6 twelve-a and twenty-three hundred twenty of the public health law,
7 section two hundred thirty-one of the real property law or subdivision
8 five of section seven hundred eleven and section seven hundred fifteen
9 of the real property actions and proceedings law, or by any law, local
10 law or ordinance of a municipality or political subdivision of the
11 state, or any word, rule, or regulation of any governmental instrumen-
12 tality authorized by law to adopt the same as evidence of conduct which
13 would constitute an offense defined in article two hundred thirty or
14 section 240.37 of the penal law.

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

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

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

27 1. Evidence that a person was in possession of one or more condoms or
28 other reproductive or sexual health device may not be admitted at any
29 trial, hearing, or other proceeding in a prosecution for [~~section~~
30 ~~230-00~~] any offense, or an attempt to commit any offense, defined in
31 article two hundred thirty or section 240.37 of the penal law, or
32 section sixty-five hundred twelve of the education law, or any law,
33 local law or ordinance of a municipality or political subdivision of the
34 state, or any word, rule or regulation of any governmental instrumenta-
35 lity authorized by law to adopt the same, for the purpose of establishing
36 probable cause for an arrest or proving any person's commission or
37 attempted commission of such offense.

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

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

47 7-b. Take such steps as may be necessary to ensure that all police
48 officers and peace officers certified pursuant to subdivision three of
49 this section receive appropriate instruction regarding the evidentiary
50 prohibition set forth in section 60.47 of the criminal procedure law and
51 section forty-five hundred nineteen-a of the civil practice law and
52 rules relating to the use of condoms and other reproductive or sexual
53 health devices as evidence in certain trials, hearings or proceedings,
54 or as a basis for probable cause for arrest, including that unauthorized
55 seizure or confiscation of condoms and other reproductive or sexual
56 health devices as a breach of public policy;

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

7 § 7. This act shall take effect on the first of November next succeed-
8 ing the date on which it shall have become a law.