STATE OF NEW YORK

4834--B

2021-2022 Regular Sessions

IN SENATE

February 16, 2021

Introduced by Sens. BIAGGI, HOYLMAN, KRUEGER, STAVISKY -- 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 -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- 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 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:

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. Section 3 of article 17 of the New York state 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 act is to avoid the disparate impact of the practice of citing condoms and other reproductive and sexual health

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

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tools as 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-b to read as follows:

§ 4519-b. Possession of reproductive or sexual health devices; receipt into evidence. 1. Evidence that a person was in 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 municipality or political subdivision of the state, or any word, rule, or regulation of any governmental instrumentality authorized by law to adopt the same as evidence of conduct which would constitute an offense defined in article two hundred thirty of the penal law.

2. "Reproductive or sexual health device" shall include, but shall not be limited to, 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 amended by chapter 23 of the laws of 2021, 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** of the penal law**, or section sixty-five hundred twelve of the education law, or any law, local law or ordinance of a municipality or political subdivision of the 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.

2. "Reproductive or sexual health device" shall include, but shall not be limited to, 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.

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

7-c. 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-b 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 as a breach of public policy;

§ 6. If any provision of this legislation 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 legislation or the application thereof to other political subdivisions of this state, persons, and circumstances.

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