

# STATE OF NEW YORK

109--B

2023-2024 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. L. ROSENTHAL, FORREST, SEAWRIGHT, AUBRY, BICHOTTE HERMELYN, CLARK, ZINERMAN, CARROLL, HEVESI, SIMON, JACKSON, MITAYNES, REYES, GONZALEZ-ROJAS, JEAN-PIERRE, BURGOS, CRUZ, EPSTEIN, OTIS, GALLAGHER, CUNNINGHAM, SOLAGES, RAGA -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the public health law, in relation to prohibiting drug, cannabis or alcohol testing and screening of pregnant or postpartum individuals and newborns

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

1 Section 1. The public health law is amended by adding a new section  
2 2509-b to read as follows:

3 § 2509-b. Drug, cannabis or alcohol testing and screening for pregnant  
4 or postpartum individuals; prohibited. 1. For purposes of this section:

5 (a) "drug" shall mean a controlled substance as that term is defined  
6 in section thirty-three hundred six of this chapter.

7 (b) "cannabis" shall mean cannabis or concentrated cannabis as those  
8 terms are defined in section 222.00 of the penal law.

9 (c) "drug, cannabis or alcohol test" shall mean a test using a biolog-  
10 ical sample, including, but not limited to, urine or hair, for the pres-  
11 ence of drugs, cannabis or alcohol.

12 (d) "drug, cannabis or alcohol screen" shall mean the use of a vali-  
13 dated verbal or written tool or questionnaire by a health care profes-  
14 sional licensed, certified, or authorized under title eight of the

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

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1 education law to determine use of drugs, cannabis or alcohol by a preg-  
2 nant or postpartum person.

3 2. No health care professional licensed, certified, or authorized  
4 under title eight of the education law shall:

5 (a) perform a drug, cannabis or alcohol test on a person who is preg-  
6 nant or up to one year postpartum unless:

7 (i) the pregnant or postpartum individual gives prior written and oral  
8 informed consent specific to the drug, cannabis or alcohol test; and

9 (ii) the performance of the drug, cannabis or alcohol test is within  
10 the scope of medical care being provided to the individual, cannabis.

11 (b) perform a drug, cannabis or alcohol screen in a hospital on a  
12 person who is pregnant or up to one year postpartum unless:

13 (i) the pregnant or postpartum individual gives prior written and  
14 oral informed consent specific to the drug, cannabis or alcohol screen;  
15 and

16 (ii) the performance of the drug, cannabis or alcohol screen is  
17 within the scope of medical care being provided to the individual.

18 (c) perform a drug, cannabis or alcohol screen outside a hospital on a  
19 person who is pregnant or up to one year postpartum unless:

20 (i) the pregnant or postpartum individual gives prior oral informed  
21 consent specific to the drug, cannabis or alcohol screen; and

22 (ii) the performance of the drug, cannabis or alcohol screen is  
23 within the scope of medical care being provided to the individual.

24 3. No health care professional licensed, certified or authorized under  
25 title eight of the education law shall:

26 (a) perform a drug, cannabis or alcohol test on a newborn unless:

27 (i) the individual authorized to consent for the newborn, as defined  
28 by subdivision two of section twenty-five hundred four of this title,  
29 gives prior written and oral informed consent specific to the drug,  
30 cannabis or alcohol test; and

31 (ii) the performance of the drug, cannabis or alcohol test is within  
32 the scope of medical care being provided to the newborn;

33 (b) perform a drug, cannabis or alcohol screen in a hospital on a  
34 newborn unless:

35 (i) the individual authorized to consent for the newborn, as  
36 defined by subdivision two of section twenty-five hundred four of this  
37 title, gives prior written and oral informed consent specific to the  
38 drug, cannabis or alcohol screen; and

39 (ii) the performance of the drug, cannabis or alcohol screen is  
40 within the scope of medical care being provided to the newborn;

41 (c) perform a drug, cannabis or alcohol screen outside a hospital on a  
42 newborn unless:

43 (i) the individual authorized to consent for the newborn, as  
44 defined by subdivision two of section twenty-five hundred four of this  
45 title, gives prior oral informed consent specific to the drug, cannabis  
46 or alcohol screen; and

47 (ii) the performance of the drug, cannabis or alcohol screen is  
48 within the scope of medical care being provided to the newborn.

49 4. Written and oral informed consent to a drug, cannabis or alcohol  
50 test or drug or alcohol screen shall occur at the time of testing, in  
51 language understandable to the pregnant or postpartum individual, or the  
52 individual authorized to consent for the newborn, under circumstances  
53 that provide such individual sufficient opportunity to consider whether  
54 or not to authorize the drug, cannabis or alcohol test or drug, cannabis  
55 or alcohol screen and minimize the possibility of coercion or undue

1 influence, and shall consist of oral authorization and written authori-  
2 zation that is dated, signed and includes the following:

3 (a) a statement explaining that consenting to a drug, cannabis or  
4 alcohol test or drug, cannabis or alcohol screen is voluntary and  
5 requires written and oral informed consent, except when conditions under  
6 subdivision five of this section are met;

7 (b) a statement that testing or screening positive for drugs, cannabis  
8 or alcohol could have legal consequences, including, but not limited to,  
9 a report to a local child protective services agency, and that the indi-  
10 vidual may want to consult with legal counsel prior to or after consent-  
11 ing to a drug, cannabis or alcohol test or drug, cannabis or alcohol  
12 screen;

13 (c) a statement explaining the extent of confidentiality of the test  
14 or screen results;

15 (d) a statement of the medical purpose of the test or screen; and

16 (e) a general description of the test or screen.

17 5. Drug, cannabis or alcohol testing or drug, cannabis or alcohol  
18 screening may be performed without consent of the patient or the indi-  
19 vidual authorized to consent for a newborn when, in the health care  
20 professional's judgment, an emergency exists and the patient or newborn  
21 is in immediate need of medical attention, and an attempt to secure  
22 consent would result in delay of treatment that could increase the risk  
23 to the patient's or newborn's life or health. In the case that drug,  
24 cannabis or alcohol testing or drug or alcohol screening is performed  
25 under these circumstances, the test or screen results shall be discussed  
26 with the patient or the individual authorized to consent for the  
27 newborn, in language understandable to the patient or individuals  
28 authorized to consent for the newborn and shall consist of oral notifi-  
29 cation and written notification that is dated, signed and includes the  
30 following:

31 (a) a statement that testing or screening positive for drugs, cannabis  
32 or alcohol could have legal consequences, including but not limited to a  
33 potential report to a local child protective services agency, and that  
34 the patient or individual authorized to consent for the newborn may want  
35 to consult with legal counsel;

36 (b) a statement in the medical record with a description of the emer-  
37 gency that necessitated unconsented drug, cannabis or alcohol testing or  
38 drug, cannabis or alcohol screening; and

39 (c) a statement explaining the extent of confidentiality of the test  
40 or screen results.

41 6. No health care professional licensed, certified, or authorized  
42 under title eight of the education law shall refuse to treat an individ-  
43 ual who is pregnant or up to one year postpartum or a newborn because of  
44 the patient or individuals authorized to consent for the newborn's  
45 refusal to submit to a drug, cannabis or alcohol test or drug, cannabis  
46 or alcohol screen.

47 7. Nothing in this section shall diminish any other requirement to  
48 obtain informed consent for a drug, cannabis or alcohol test or drug,  
49 cannabis or alcohol screen or any other procedure.

50 § 2. This act shall take effect immediately.