

STATE OF NEW YORK

281

2023-2024 Regular Sessions

IN ASSEMBLY

January 4, 2023

Introduced by M. of A. WALKER -- Multi-Sponsored by -- M. of A. BRONSON, CRUZ, EPSTEIN, GLICK, GONZALEZ-ROJAS, LAVINE, REYES -- read once and referred to the Committee on Codes

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

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 § 2. Legislative findings. The legislature hereby finds that promoting
3 and protecting health and respecting and fulfilling human rights are
4 necessarily linked, and that health-oriented and rights-based law
5 enforcement efforts are central to the effective provision of government
6 services for the benefit of the people of the State. Article 17, section
7 3 of the New York constitution requires that the legislature protect and
8 promote the health of the inhabitants of this state as a matter of
9 public concern. Despite these provisions, for purposes of prosecuting
10 certain criminal, civil and administrative offenses, reproductive and
11 sexual health tools, including condoms, are currently being destroyed,
12 confiscated, or used as evidence by law enforcement officers. This
13 legislation is intended to strengthen the public health of all New York-
14 ers, including the most vulnerable, while preserving the ability of law
15 enforcement to prosecute other crimes such as felony sexual offenses.
16 The purpose of this bill is to avoid the disparate impact of the prac-
17 tice of citing condoms and other reproductive and sexual health tools as
18 evidence upon survivors of trafficking and people who are or are
19 profiled as being engaged in the sex trades.

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

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

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§ 4519-b. Possession of reproductive or sexual health devices; receipt into evidence. 1. The fact of 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 political subdivision of this state, or by any word, rule or regulation of any governmental instrumentality authorized by law to adopt the same as evidence of prostitution, patronizing a prostitute, promoting prostitution, permitting prostitution, maintaining a premises for prostitution, lewdness or assignation, maintaining a bawdy house, compelling prostitution, or sex trafficking.

2. "Reproductive or sexual health device" shall include 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 political subdivision of this 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, as evidence of prostitution or trafficking-related activity.

2. "Reproductive or sexual health device" shall include 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, lubricant, 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

1 seizure or confiscation of condoms and other reproductive or sexual
2 health devices is a breach of public policy.

3 § 6. The legislative law is amended by adding a new section 49 to read
4 as follows:

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

32 § 7. The legislative law is amended by adding a new section 83-o to
33 read as follows:

34 § 83-o. Legislative commission on health and human rights. 1. The
35 legislature hereby finds that promoting and protecting health and
36 respecting and fulfilling human rights are necessarily linked, and that
37 coordination between health and law enforcement efforts is central to
38 the effective provision of government services for the benefit of the
39 people of the state.

40 2. A legislative commission on health and human rights is hereby
41 established to examine, evaluate and make recommendations concerning
42 rights-based approaches to health and law enforcement interventions.
43 The commission shall act as a mechanism for ongoing and meaningful
44 involvement of those who are or potentially could be affected by this
45 law, including, but not limited to, survivors of trafficking, people who
46 are or are profiled as being involved in the sex trades, communities of
47 color, lesbian, gay, bisexual and transgender people, and people in
48 custodial settings. The commission shall provide monitoring and expert
49 perspective to the legislature, promoting awareness of problems in real
50 time as they emerge, increase cooperation and collaboration between the
51 individuals and communities directly impacted and their legislators, and
52 allow legislators to share responsibility for successes and failures of
53 these initiatives. The commission shall make such recommendations as it
54 may deem necessary as to regulations, policies, programs, and proposed
55 legislation to provide an equitable system of providing for the public
56 safety while also protecting public health, to encourage the most effec-

1 tive use of state and local resources, to preserve the fiscal integrity
2 of both state and local government health systems and otherwise to
3 strengthen the fundamental human right to health.

4 3. The commission shall consist of ten representatives from organiza-
5 tions that promote advocacy by and for directly impacted communities.
6 From among the members so appointed, a chairperson and vice chairperson
7 shall be designated by the joint action of the chairpersons of the
8 senate and assembly health committees. Any vacancy that occurs in the
9 commission or in the chairmanship or vice chairmanship shall be filled
10 in the same manner in which the original appointment or designation was
11 made.

12 4. The commission in addition to the above mentioned powers shall have
13 all the powers and privileges of a legislative committee pursuant to
14 this chapter.

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

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

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

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

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

32 (f) Accomplish all of the functions, powers, and duties set forth in
33 paragraphs (a), (b), (c) and (d) of this subdivision with respect to the
34 processing and disposition of cases involving violent felony offenses
35 specified in subdivision one of section 70.02 of the penal law[-]; and

36 (g) Accomplish all of the functions, powers, and duties set forth in
37 paragraphs (a), (b), (c) and (d) of this subdivision with respect to all
38 chapters of law resulting from legislative bills that have been subject
39 to the provisions of sections forty-nine and eighty-three-o of the
40 legislative law. The division shall present to the governor, the tempo-
41 rary president of the senate, the minority leader of the senate, the
42 speaker of the assembly and the minority leader of the assembly an annu-
43 al report containing the statistics and other information relevant to
44 this subdivision.

45 § 9. If any provision of this article or the application thereof to
46 any person, circumstances, or political subdivision of this state is
47 adjudged invalid by a court of competent jurisdiction such judgment
48 shall not affect or impair the validity of the other provisions of the
49 article or the application thereof to other political subdivisions of
50 this state, persons, and circumstances.

51 § 10. This act shall take effect on the first of March next succeeding
52 the date on which it shall have become a law; provided, however that the
53 amendments to article 5-A of the legislative law made by section seven
54 of this act shall not affect the repeal of such article and shall be
55 deemed repealed therewith.