

# 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  
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 the sex trades.  
21 § 3. The civil practice law and rules is amended by adding a new  
22 section 4519-b 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-b. Possession of reproductive or sexual health devices; receipt  
 2 into evidence. 1. The fact of possession of a condom or other reproduc-  
 3 tive or sexual health device may not be received in evidence in any  
 4 trial, hearing or proceeding pursuant to subdivision one of section  
 5 twelve and article ten of the multiple dwelling law, sections twelve-a  
 6 and twenty-three hundred twenty of the public health law, section two  
 7 hundred thirty-one of the real property law or subdivision five of  
 8 section seven hundred eleven and section seven hundred fifteen of the  
 9 real property actions and proceedings law, or by any law, local law or  
 10 ordinance of a political subdivision of this state, or by any word, rule  
 11 or regulation of any governmental instrumentality authorized by law to  
 12 adopt the same as evidence of prostitution, patronizing a prostitute,  
 13 promoting prostitution, permitting prostitution, maintaining a premises  
 14 for prostitution, lewdness or assignation, maintaining a bawdy house,  
 15 compelling prostitution, or sex trafficking.

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

23 § 4. Section 60.47 of the criminal procedure law, as amended by chap-  
 24 ter 23 of the laws of 2021, is amended to read as 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 of the penal law, or section sixty-five  
 32 hundred twelve of the education law, or any law, local law or ordi-  
 33 nance of a political subdivision of this state, or any word, rule or  
 34 regulation of any governmental instrumentality authorized by law to  
 35 adopt the same, for the purpose of establishing probable cause for an  
 36 arrest or proving any person's commission or attempted commission of  
 37 such offense, as evidence of prostitution or trafficking-related activ-  
 38 ity.

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

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

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