

# New York Shield Law Fact Sheet

AUGUST 2024

For both reproductive and gender-affirming health care, New York’s shield laws provide protections against out-of-state investigations and prosecutions, professional discipline, and civil liability. New York’s shield laws also provide protections for health care providers’ professional liability insurance. Additionally, New York’s shield laws provide protections for medical information and other data related to reproductive and gender-affirming care.

## PROTECTION AGAINST OUT-OF-STATE INVESTIGATIONS AND PROSECUTIONS

### Protection Barring State Agency/Employee Assistance

State and local entities and people acting on their behalf may not cooperate with, provide information, or use resources in furtherance of an out-of-state investigation that seeks to impose liability or professional sanctions for any “legally protected reproductive health activity”—exercising a right to or aiding, encouraging, or providing insurance for another person exercising a right to reproductive health services lawfully performed by a provider in New York regardless of patient location.<sup>1</sup> State and local law enforcement agencies also may not cooperate with or provide information to any individual or out-of-state agency regarding the provision, seeking, or assistance in lawful gender-affirming care performed in New York.<sup>2</sup>

### Protection against Extradition and Arrests

Except as required by federal law, the Governor may not recognize any demand for extradition if criminal liability is based on provision, receipt, assistance, or material support for legally protected reproductive health activity.<sup>3</sup> The Governor also may not recognize any demand for extradition if

<sup>1</sup> SB S9077A (N.Y. 2022), S1066B (N.Y. 2023) (N.Y. Exec. Law § 837-x).

<sup>2</sup> SB 2475B (N.Y. 2023) (N.Y. Exec. Law § 837-x).

<sup>3</sup> SB S9077A (N.Y. 2022), SB S1351 (N.Y. 2023) (N.Y. Crim. Proc. Law § 570.17). An exception to this prohibition applies if the demanding

criminal liability is based on provision or support for gender-affirming care lawfully performed in New York.<sup>4</sup> Additionally, a police officer may not arrest any person for legally protected reproductive health activity, or for performing, aiding, or procuring gender-affirming care lawful in New York.<sup>5</sup>

### Protection against Issuance of Subpoenas and Witness Summons

Witnesses may not be compelled to appear and testify in connection with an out-of-state proceeding relating to any legally protected reproductive health activity or gender-affirming care that occurred in New York.<sup>6</sup> Courts and clerks may not issue subpoenas in connection with out-of-state proceedings related to any legally protected reproductive health activity or any gender-affirming care legally performed, sought, received, or supported in New York.<sup>7</sup>

## PROTECTION FROM PROFESSIONAL DISCIPLINE

### Protection against Adverse Actions related to Providers' Licenses and Other Board Discipline

A provider's license, certification, or authorization may not be revoked, suspended, annulled, or otherwise subject to penalty or discipline on the sole basis that the provider performed, recommended, or provided any reproductive health services or gender-affirming care for a patient residing in a state where such services are illegal.<sup>8</sup> An application for licensure, certification, or authorization may not be denied because of a disciplinary action in another state based on performing, recommending, or providing an abortion or gender-affirming care.<sup>9</sup>

## PROTECTION AGAINST CIVIL LIABILITY

### Protection against Application of Another State's Laws in New York State Court

New York courts may not apply the law of another state authorizing a child to be removed from their guardian based on the guardian allowing the child to receive gender-affirming care.<sup>10</sup>

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state alleges the person was physically present in its state at the time of the alleged offense and then fled. N.Y. Crim. Proc. Law § 570.17(2).

<sup>4</sup> SB 2475B (N.Y. 2023) (N.Y. Crim. Proc. Law § 570.19). An exception to this prohibition applies if the demanding state alleges the person was physically present in its state at the time of the alleged offense and then fled.

<sup>5</sup> SB S9077A (N.Y. 2022), SB 1066B (N.Y. 2023) (N.Y. Crim. Proc. Law § 140.10(3)); SB 2475B (N.Y. 2023) (N.Y. Crim. Proc. Law § 140.10(3)).

<sup>6</sup> SB S9077A (N.Y. 2022), SB 1066B (N.Y. 2023), SB 2475B (N.Y. 2023) (N.Y. C.P.L.R. § 3102(e)).

<sup>7</sup> SB S9077A (N.Y. 2022), SB 2475B (N.Y. 2023), SB 1066B (N.Y. 2023) (N.Y. C.P.L.R. 3119(g)-(h)).

<sup>8</sup> SB S9079B (N.Y. 2022), SB 1066B (N.Y. 2023), SB 2475B (N.Y. 2023) (N.Y. Educ. Law § 6531-b). Additionally, the board for professional misconduct may not charge a licensee with misconduct based solely on the performance, recommendation, or provision of any reproductive health services or gender-affirming care for a patient residing in a state where the services or care are illegal. SB 9709B (N.Y. 2022), SB 2475B (N.Y. 2023) (N.Y. Pub. Health Law § 230(9)).

<sup>9</sup> SB 9709B (N.Y. 2022), SB 8508 (N.Y. 2024) (N.Y. Educ. Law § 6505-d).

<sup>10</sup> SB 2475B (N.Y. 2023) (N.Y. Fam. Ct. Act § 659).

## Provision of a “Clawback Lawsuit” to Recover Damages from Litigation related to Protected Care

A person may bring a claim to recover damages if litigation or criminal charges were brought against them for exercising or facilitating a right to obtain or provide reproductive health care lawful in New York.<sup>11</sup>

## PROTECTION OF PROFESSIONAL LIABILITY INSURANCE AND PROTECTION RELATED TO HEALTH PLANS

### Protection against an Insurer’s Refusal to Issue Insurance, Increase in Premiums, or Denial of Coverage Based Solely on Providing Protected Care

Medical malpractice insurance companies may not take adverse action—including refusing to renew or execute a contract with a provider, reporting the practices of the provider to the agencies of a state where they may be in violation of an abortion law, or increasing any charge or otherwise unfavorably changing the terms of coverage or amount for insurance—against a provider solely on the basis that the provider engages in legally protected reproductive health activity or gender-affirming care legal in New York with someone from out of the state.<sup>12</sup>

## PRIVACY OF MEDICAL INFORMATION AND OTHER DATA RELATED TO ABORTION AND GENDER-AFFIRMING CARE

### Protection Against Disclosure of Medical Information

Law enforcement may not purchase or obtain individually identifiable electronic health information without a warrant.<sup>13</sup>

### Protection Against Disclosure of Data by Businesses Providing Electronic Communications

Any entity incorporated or headquartered in New York that provides electronic communication services may not comply with an out-of-state warrant to produce records revealing customers’ identities, customers’ data, the recipient of their communications, or the content of their communications if the entity knows the warrant relates to an investigation into or enforcement of another state’s law creating liability for providing, facilitating, or obtaining reproductive health care services lawful in New York.<sup>14</sup>

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<sup>11</sup> SB S9039A (N.Y. 2022) (N.Y. Civ. Rights Law § 70-b).

<sup>12</sup> SB S9080B (N.Y. 2022), SB1066B (N.Y. 2023), SB 2475B (N.Y. 2023) (N.Y. Ins. Law § 3436-a). This protection extends to providers who prescribe abortion medication to out-of-state patients by telehealth. N.Y. Ins. Law § 3436-a

<sup>13</sup> SB 4007-C (N.Y. 2023) (N.Y. Gen. Bus. Law § 394-h).

<sup>14</sup> SB 4007-C (N.Y. 2023) (N.Y. Gen. Bus. Law § 394-f). The entity may comply with the warrant if it is accompanied by a sworn statement that the evidence sought does not relate to an investigation into or enforcement of another state’s law creating liability for providing, facilitating, or obtaining reproductive health care services lawful in New York.

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## Protection of Location Data

It is unlawful to establish a geofence around any health care facility for the purpose of delivering an advertisement, building consumer profiles, or inferring health status of a person within the health care facility, and it is unlawful to deliver advertisements to users at a health care facility by using geofencing.<sup>15</sup>

## Protection Against Disclosure of Providers' and Patients' Personal Information

Reproductive health care service providers, employees, volunteers, patients, and the immediate family members of reproductive health care service providers may apply to participate in the state's address confidentiality program, through which they may use a substitute mailing address and prevent public disclosure of their actual address.<sup>16</sup>

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<sup>15</sup> SB 4007-C (N.Y. 2023) (N.Y. Gen. Bus. Law § 394-g).

<sup>16</sup> SB S9384A (N.Y. 2022) (N.Y. Exec. Law § 108).

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## ABOUT THE CENTER ON REPRODUCTIVE HEALTH, LAW, AND POLICY (CRHLP)

CRHLP is a nationwide think tank and research center created to meet the current national crisis in access to abortion while working towards long-term solutions to advance reproductive justice. CRHLP conducts analysis and research for legal, policy, and narrative change and serves as a trusted hub for convening and engaging academics, advocates, health care providers, policy makers, and community members to reimagine the landscape of reproductive health law and policy. CRHLP also trains the reproductive law and policy leaders of tomorrow. CRHLP is committed to the highest standards of independent inquiry, academic excellence, and rigor. Research findings and conclusions are never altered to accommodate other interests, including those of funders, other organizations, or government bodies and officials.

### For more information

[law.ucla.edu/academics/centers/center-reproductive-health-law-and-policy](http://law.ucla.edu/academics/centers/center-reproductive-health-law-and-policy)

[crhlp@law.ucla.edu](mailto:crhlp@law.ucla.edu)

To receive pro bono legal assistance on questions related to the shield laws or other reproductive rights or justice issues, email: [larj@law.ucla.edu](mailto:larj@law.ucla.edu)