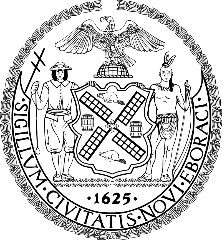
Committee on Civil and Human Rights:

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**THE COUNCIL OF THE CITY OF NEW YORK**

**BRIEFING PAPER OF THE GOVERNMENTAL AFFAIRS DIVISION**

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**COMMITTEE ON CIVIL AND HUMAN RIGHTS**

**Hon. Nantasha Williams, Chair**

**June 30, 2022**

**Oversight: Enforcement of the City's Access to Reproductive Health Care Facilities Law**

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| **INT. NO.: 474** | By Council Member Hanif, the Public Advocate (Mr. Williams), Council Members Williams, Hudson, Cabán, Avilés, Powers, Krishnan, Brannan, Joseph, Nurse, Dinowitz, Ung, Menin, Brooks-Powers, Schulman, Gutiérrez, Richardson Jordan, Abreu, Louis, Restler, Brewer, Won, Velázquez, Riley, and the Speaker (Council Member Adams) |
| **TITLE:** | A Local Law to amend the administrative code of the city of New York, in relation to a public information and outreach campaign regarding safe access to reproductive health care |
| **RES. NO.: 242-A** | By Council Members Menin, Bottcher, Hanif and Williams |
| **TITLE:** | Resolution calling upon the State Legislature to pass and the Governor to sign A.10468/S.8797B, proposing an amendment to Article 1 of the New York State Constitution, in relation to equality of rights and protection against discrimination. |

1. **INTRODUCTION**

On June 30, 2022, the Committee on Civil and Human Rights (the Committee), chaired by Council Member Nantasha Williams, will hold an oversight hearing on the enforcement of the City’s access to reproductive health care facilities law. This hearing presents an opportunity to discuss how the New York Police Department (NYPD) enforces protections in place for people attempting to access reproductive health care facilities in the City and how they will respond to an anticipated increase in harassment around such facilities.

The Committee will also consider Introduction Number 474 (Int. 474) which would require the City Commission on Human Rights (CCHR) to conduct an outreach campaign about the reproductive health care facilities access law and Resolution Number 242-A (Res. 242-A), a resolution calling upon the State Legislature to pass and the Governor to sign A.10468/S.8797B, proposing an amendment to Article 1 of the New York State Constitution, in relation to equality of rights and protection against discrimination. Those invited to testify include representatives from CCHR, NYPD, advocacy and community organizations, and members of the public.

1. **BACKGROUND**
   1. *Historic Federal Protections*

In the half century since the Supreme Court’s decision in *Roe v. Wade[[1]](#footnote-1)*, the issues of abortion and reproductive care have been contentious across the United States. Across the country, reports surfaced of over 1,000 violent acts against abortion providers and blockades at over 6,000 clinics between 1977 and early 1993.[[2]](#footnote-2) While protest is a fundamental component of the right to free speech guaranteed by the First Amendment,[[3]](#footnote-3) due to inadequate laws and enforcement of protections for people seeking reproductive care, such people were subject to physical and verbal attacks by protestors when accessing reproductive health care facilities.[[4]](#footnote-4) This harassment was not limited to patients but also extended to clinic workers.[[5]](#footnote-5) Congress responded to these attacks by enacting the Freedom of Access to Clinic Entrances (FACE) Act in 1994.[[6]](#footnote-6)

The FACE Act prohibits the use of force, threat of force, or physical obstruction to intentionally injure, intimidate, or interfere with a person seeking or providing reproductive health care services.[[7]](#footnote-7) The Act also prohibits causing or attempting to cause damage or destruction of a reproductive health care facility.[[8]](#footnote-8) People who violate this law are subject to a fine, imprisonment, or both.[[9]](#footnote-9) The law also allows a person to bring a civil action based on a violation of the FACE Act.[[10]](#footnote-10) Additionally, the U.S. Attorney General or a state attorney general can bring an action if there is reasonable cause to believe a person or group violated the FACE Act.[[11]](#footnote-11)

FACE has been challenged numerous times since its passage, primarily based on claims that it violates the First Amendment.[[12]](#footnote-12) However, courts have continued to uphold the law, reasoning that the Act is content-neutral or viewpoint-neutral. Some courts have found that FACE furthers substantial government interests by preventing violence while not unduly burdening more speech than necessary.[[13]](#footnote-13) Additionally, as recently as 2014, the U.S. Supreme Court reflected favorably on the FACE Act compared to other buffer zone laws passed at the state level.[[14]](#footnote-14)

* 1. *New York State Protections for Reproductive Access*

While many states have attempted to use buffer zones to balance a protestor’s right to express opposition to abortion with the government’s interest in protecting privacy rights, the results have been mixed based on the specific parameters of each law.[[15]](#footnote-15) In New York, judicial decisions extended a 15-foot fixed buffer zone around clinic doorways, driveways and driveway entrances necessary to ensure access while the State also criminalized interference with health services in its Clinic Access Act.[[16]](#footnote-16) Enacted in 1999, the Clinic Access and Anti-Stalking Act included the crime of “criminal interference with health care services. . .”[[17]](#footnote-17) The State law largely mimics the language of the FACE Act and was intended to supplement the federal law by empowering state and local officials to combat violence and vandalism at health care facilities among other institutions.[[18]](#footnote-18)

1. **ISSUES AND CONCERNS**
2. *Supreme Court and Roe v. Wade*

Prior to the decision in *Roe v. Wade*, the anti-abortion movement was significantly smaller as most states had laws in place on abortion. Accordingly, anti-abortion efforts focused predominantly on individual state legislatures.[[19]](#footnote-19) A post-*Roe* America brought this issue to a national level, and the strategy of the movement adjusted to follow suit.[[20]](#footnote-20) Anti-abortion activists pushed for the passage of the Hyde Amendment, a Congressional budget amendment which would prohibit federal funding of abortions through Medicaid,[[21]](#footnote-21) and in 1976 the amendment was passed,[[22]](#footnote-22) emboldening further efforts, including a push for a constitutional amendment to ban abortion in the United States.[[23]](#footnote-23) Though the movement’s original efforts to pass this amendment failed, its efforts to end abortion continued, largely targeting the court system as an alternative route to a legislative abortion ban.[[24]](#footnote-24)

On May 4, 2022, a leaked draft of a Supreme Court opinion showed that it was poised to overturn *Roe*.[[25]](#footnote-25) The Court confirmed the authenticity of the draft, and stated, “Although the document described in yesterday’s reports is authentic, it does not represent a decision by the Court or the final position of any member on the issues in the case.”[[26]](#footnote-26) On June 24, 2022, the Supreme Court ruled to overturn *Roe v. Wade* in a decision that was largely unchanged from the leaked draft.[[27]](#footnote-27) Now, clinics that provide reproductive health services in states where abortion has been banned are no longer providing the service while others in less restrictive states are bracing for protests by anti-abortion advocates.[[28]](#footnote-28)

1. *Current Events and Clinic Access*

A report released by the National Abortion Federation (NAF) shows an increase in intimidation tactics, vandalism, and other activities aimed at disrupting services such as harassing providers and blocking patients’ access to abortion care.[[29]](#footnote-29) The report also states:

Emboldened by the passage and enforcement of abortion restrictions in several states, anti-abortion individuals and groups continued to harass abortion providers this year. A January 2020 unclassified report from the FBI outlined an ongoing increase in anti-abortion threats, disruption, and violence, stating, “The FBI assesses the increase in abortion-related violent extremist threats and criminal activity, including violations of the Freedom of Access to Clinic Entrances (FACE) Act, against targets including reproductive healthcare facilities (RHCFs) likely is driven in part by the recent rise in state legislative activities related to abortion services and access.”[[30]](#footnote-30)

The report includes various categories of anti-abortion related disruptions that have shown an increase in frequency.[[31]](#footnote-31) The different categories include, hoax devices and suspicious packages, arson, assault and battery, death threats and/or threats of harm, stalking, attempted bombing or arson, vandalism, hate email and/or internet harassment, and hate mail and/or harassing calls.[[32]](#footnote-32) Assault and battery, and threats of harm or death showed the most significant increase, more than doubling between 2019 and 2020.[[33]](#footnote-33) The NAF reports that the majority of the assault and battery incidents involved anti-abortion protesters engaging in altercations with clinic escorts, patient companions, and patients.[[34]](#footnote-34) Pushing, tripping, and spitting on clinic escorts and staff were amongst the reported incidents.[[35]](#footnote-35) The latest 2021 report, shows a continued upward trend in incident numbers across all categories, with assault and battery incidents more than doubling yet again.[[36]](#footnote-36) The 2021 report found increases in pushing, shoving, slapping, kicking, physically fighting, and use of pepper spray against clinic escorts, staff, and others outside of clinics.[[37]](#footnote-37)

Additionally*,* anti-abortion protesters increasingly rely on fetus-focused tools, such as graphic images of aborted fetuses in an attempt to make people view fetuses as babies,[[38]](#footnote-38) establishing the idea of “fetal personhood.”[[39]](#footnote-39) Notably, much of this imagery is inaccurate and is designed to intimidate or emotionally manipulate people seeking abortions.[[40]](#footnote-40)

In 2017, former Attorney General Eric Schneiderman filed a federal lawsuit seeking an injunction and civil penalties against a group of anti-abortion protesters.[[41]](#footnote-41) According to the lawsuit, these anti-abortion protesters were harassing and threatening staff and patients at the Choices Women’s Medical Center in Queens.[[42]](#footnote-42) The lawsuit named 14 men and women as the instigators of a “barrage of unwanted physical contact, as well as verbal abuse, threats of harm, and lies about the clinic’s hours and its services.”[[43]](#footnote-43) Other tactics included slow-walking in front of visitors and obstructing the building entrance with signs.[[44]](#footnote-44)

In 2018, a Brooklyn federal judge cleared the harassment charges and denied the injunction. During an appeals process, U.S. Circuit Judge Rosemary Pooler cited that the protestors’ tactics violated the FACE Act.[[45]](#footnote-45) In 2021, the Second U.S. Circuit Court of Appeals rejected the protesters’ claim that laws protecting abortion providers and patients from attacks and threats violated their constitutional right to freedom of speech and remanded the case back to the lower court for reexamination.[[46]](#footnote-46) Following the decision, Choices Women’s Medical Center Founder and CEO, Merle Hoffman, stated that they are bracing for an influx of out-of-state patients after the overturning of *Roe.[[47]](#footnote-47)* Melissa Fowlers, Chief Program Officer for the NAF, stated that, “we know from experience, it’s not like the people protesting clinics in banned states just pack up and go home,” highlighting the trend that protesters move on to states where abortion is legal. [[48]](#footnote-48)

1. *New York City Reproductive Health Access*

In 1994, the New York City Council passed a law known as the Access to Reproductive Health Services Act.[[49]](#footnote-49) The legislative findings at the time noted that some groups may exceed “the boundaries of lawful First Amendment expression” by physically preventing access to reproductive health care facilities or harassing people that are attempting to access those facilities.[[50]](#footnote-50) The 1994 Council found that the law at the time did not provide adequate protections and enact additional legislation to ensure that people could access necessary care and services.[[51]](#footnote-51)

In 2009, the 1994 law was amended to become the Access to Reproductive Health Care Facilities (ARHCF) Act.[[52]](#footnote-52) Part of this amendment included more specifically tailoring the protections for people accessing the premises of a reproductive health care facility, creating a 15-foot protected area around the facility, and specifying a standard of knowingly acting to obstruct access to a facility or interfering in its operation (or any attempt to do so) as violations of the Act.[[53]](#footnote-53) Notably, the 2009 amendments to the law did not require that protesters act knowingly when taking unlawful actions within 15-feet of a facility, striking a balance between preserving access to reproductive health care facilities and First Amendment activities. Violations of the 1994 law resulted in a misdemeanor and a civil cause of action; however, in explaining the more recent amendment, the 2009 Civil Rights Committee report noted that police may find it difficult to determine whether the prohibited conduct was illegal due to the intent component.[[54]](#footnote-54) The law was once again amended in 2018, although not substantively, as part of a greater restructuring of the Administrative Code to reorganize and clarify New York City’s Human Rights Law. As part of this reorganization, the ARHCF Act was moved to title 10 of the New York City Administrative Code, clarifying that the law would be enforced by the NYPD.[[55]](#footnote-55)Notably, the 2018 amendment maintained the civil cause of action and continued to hold that the penalties and remedies provided in the law are cumulative and not exclusive.[[56]](#footnote-56)

In addition to the existing ARHCF, the New York City Human Rights Law (NYCHRL) continues to provide protections from discriminatory harassment or violence.[[57]](#footnote-57) The NYCHRL specifically provides that the corporation counsel, at the request of the CCHR commissioner or at their own initiative, may bring a civil action to protect the rights guaranteed by federal, state, or local laws, including protections based on gender, and sexual or reproductive health decisions.[[58]](#footnote-58)

1. **LEGISLATIVE ANALYSIS**
   1. *Int. 474 – A Local Law to amend the administrative code of the city of New York, in relation a public information and outreach campaign regarding safe access to reproductive health care.*

Section one of this bill would require the City Commission on Human Rights to conduct an information and outreach campaign about the City’s Access to Reproductive Health Care Facilities Act. The outreach campaign would include materials posted on CCHR’s website and would be available in the designated citywide languages. It would include information about the protections in the New York City Administrative Code § 10-1001 *et. seq*.

The bill would require the Commission to provide information about the legal protections for people seeking services at reproductive health care facilities or those who are employed at those facilities. It would also require the Commission to share information about the protections from discrimination and harassment in the City Human Rights Law related to sexual and reproductive health decisions.

The proposed legislation would require the outreach campaign to provide information about the remedies available under the City Human Rights Law and the Access to Reproductive Health Care Facilities Law, including the right to bring a civil action to stop discriminatory harassment or for actual damages, respectively.

* 1. *Res. 242-A – Resolution calling upon the State Legislature to pass and the Governor to sign A.10468/S.8787B, proposing an amendment to Article 1 of the New York State Constitution, in relation to equality of rights and protection against discrimination.*

The proposed resolution would support A.10468/S.8797B, sponsored by Assemblymember Rebecca Seawright and Senator Liz Kreuger, respectively, which seeks to amend Article 1 of the New York State Constitution, in relation to equality of rights and protection against discrimination. The amendment would add an equal rights provision that would expand the list of protected classes to include ethnicity, national origin, disability or sex including pregnancy and pregnancy outcomes, sexual orientation, gender identity, and gender expression. It would also prohibit discriminatory impacts that result from the actions of government, employers, and places of public accommodation. The amendment would not alter or diminish existing protections for religion set forth in articles three and eleven of the Constitution.

1. **CONCLUSION**

Since the passage of the 2018 amendments to the ARHCF, the Council has not conducted oversight of the enforcement efforts that the NYPD may have undertaken, nor has any feedback been solicited from health care facility operators, employees and patients about their experiences accessing such health care facilities. With the recent Supreme Court decision impacting access to abortion care around this country, an increase in protest activity outside New York City reproductive health care facilities is expected. This hearing would provide an opportunity to garner information on how the ARHCF is current enforced and to anticipate challenges that providers and patients may face in the future.

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Int. No. 474

By Council Member Hanif, the Public Advocate (Mr. Williams) and Council Members Williams, Hudson, Cabán, Avilés, Powers, Krishnan, Brannan, Joseph, Nurse, Dinowitz, Ung, Menin, Brooks-Powers, Schulman, Gutiérrez, Richardson Jordan, Abreu, Louis, Restler, Brewer, Won, Velázquez, Riley and The Speaker (Council Member Adams)

..Title

A Local Law to amend the administrative code of the city of New York, in relation to a public information and outreach campaign regarding safe access to reproductive health care

..Body

Be it enacted by the Council as follows:

Section 1. Title 8 of the administrative code of the city of New York is amended by adding a new section 8-135 to read as follows:

§ 8-135. Outreach and Education on Safe Access to Reproductive Health Care. a. The commission shall develop materials and conduct a public outreach campaign on safe access to reproductive health care in the city, including information related to the access to reproductive healthcare facilities law. For purposes of this section the access to reproductive healthcare facilities law means the provisions contained in chapter 10 of title 10 of this code. Such materials shall be posted on the commission’s website, made available in the designated citywide languages as defined in section 23-1101 and shall include the following:

(1) Information related to protections for those seeking services at or employed by a reproductive healthcare facility as defined in section 10-1002 under the reproductive health care facilities law and;

(2) Information related to title 8 protections related to sexual and reproductive health decisions, including protections from discrimination and harassment;

(2) The remedies available under title 8, including the right to bring a civil action to enjoin discriminatory harassment; and

(3) The right to bring a civil action for violations of the access to reproductive health care facilities law and for actual damages based on such law.

§ 2. This local law takes effect 60 days after it becomes law.

JG/RC

LS #6795/9109

5/27/22 3:50 PM

Res. No. 242-A

..Title

Resolution calling upon the State Legislature to pass and the Governor to sign A.10468/S.8797B, proposing an amendment to Article 1 of the New York State Constitution, in relation to equality of rights and protection against discrimination.

..Body

By Council Members Menin, Bottcher and Hanif

Whereas, The New York State Constitution (the Constitution) does not currently include an equal rights provision; and

Whereas, An amendment to the Constitution is necessary to ensure legal equality for all New Yorkers;

Whereas, S.8797B/A.10468, sponsored by Senator Liz Krueger and Assembly Member Rebecca Seawright, respectively, propose an amendment (the amendment) to Article 1 of the Constitution; and

Whereas, In its current state, Article 1, Section 11 of the Constitution states that, “No person shall, because of race, color, creed or religion be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state”, and

Whereas, This list of protected classes is limited and does not offer protection to all New Yorkers; and

Whereas, If passed, A.10468/S.8797B would amend the Constitution by adding an equal rights provision that would expand the list of protected classes to include ethnicity, national origin, disability or sex including pregnancy and pregnancy outcomes, sexual orientation, gender identity, and gender expression; and

Whereas, The amendment would prohibit discriminatory impacts that result from the actions of government, employers, and places of public accommodation; and

Whereas, The Constitution was last amended to address the topic of equal rights in 1938, which predates the Civil Rights Movement, as well as major advancements toward equality, including steps towards gender and LGBTQ equality, and therefore does not address the protection of equal rights with respect to individuals who belong to these, and other, historically marginalized groups; and

Whereas, On June 1, 2022, New York Senate Majority Leader Andrea Stewart-Cousins held a press conference at which she stated religious concerns caused negotiations on an earlier similar amendment to reach an impasse in the State Legislature; and

Whereas, S.8797B/A.10468, were introduced to address these concerns; and

Whereas, The new bills state that the intention of the amendment is not to alter or diminish existing protections for religion set forth in articles three and eleven of the Constitution; and

Whereas, The Council of the City of New York urges state lawmakers to resume efforts to pass the amendment as soon as possible; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the State Legislature to pass and the Governor to sign A.10468/S.8797B, proposing an amendment to Article 1 of the New York State Constitution, in relation to equality of rights and protection against discrimination.

WD

LS #6957/9097

6/28/2022

1. The Supreme Court ruled in *Roe v. Wade* 93. S.Ct. 705(1973), that a person has a right to privacy primarily pursuant to the Due Process Clause of the Fourteenth Amendment, but the roots of this right could also be found in previous decisions concerning the First Amendment, Fourth and Fifth Amendments, and the Ninth Amendment. The *Roe* court held that this right encompassed a person’s decision to terminate a pregnancy, but was subject to some state regulation based on a compelling interest. The decision in *Roe* and the trimester regulatory scheme it recognized was subsequently revisited in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S.Ct. 2791 (1992). The Court in *Casey* reexamined the trimester schedule proposed by *Roe* and while acknowledging the right to privacy, created an undue burden test to examine restrictions on abortion before the point of fetal viability. Viability means the ability to live outside the womb, which usually happens between 24 and 28 weeks after conception. In the ensuing fifty years, numerous parties have litigated the meaning of “undue burden” and have had a measure of success in restricting abortion access until the Court’s decision in *Dobbs v. Jackson Women’s Health Org.,* 19-1392, 2022 WL 2276808 (US June 24, 2022). [↑](#footnote-ref-1)
2. 134 A.L.R. Fed. 507 (Originally published in 1996). [↑](#footnote-ref-2)
3. US Const amend. I. [↑](#footnote-ref-3)
4. Bennet, James. *Council Considers Penalties for Abortion Clinic Violence*, N. Y. Times (Apr. 22, 1993) at B8. *Available at* https://www.nytimes.com/1993/04/22/nyregion/council-considers-penalties-for-abortion-clinic-violence.html. [↑](#footnote-ref-4)
5. Bennet, James. *Council Considers Penalties for Abortion Clinic Violence*, N. Y. Times (Apr. 22, 1993) at B8. *Available at* https://www.nytimes.com/1993/04/22/nyregion/council-considers-penalties-for-abortion-clinic-violence.html. [↑](#footnote-ref-5)
6. 18 U.S.C.A. § 248 (2003). [↑](#footnote-ref-6)
7. 18 U.S.C.A. § 248 (2003). [↑](#footnote-ref-7)
8. 18 U.S.C.A. § 248 (2003). [↑](#footnote-ref-8)
9. 18 U.S.C.A. § 248 (2003). [↑](#footnote-ref-9)
10. 18 U.S.C. § 248(c)(1)(A). [↑](#footnote-ref-10)
11. 18 U.S.C. § 248(c)(2), (3). [↑](#footnote-ref-11)
12. *Compare* *United States v. Gregg*, 226 F.3d 253 (3d Cir. 2000) (Upholding FACE based on Congress' Commerce Clause power and First Amendment), *cert. denied*, 532 U.S. 971 (2001), *and* *Am. Life League, Inc. v. Reno*, 47 F.3d 642, 648 (4th Cir. 1995) (Upholding FACE against challenges based on First Amendment, Tenth Amendment, and Religious Freedom Restoration Act), *with* *Hoffman v. Hunt*, 923 F. Supp. 791, 822 (W.D.N.C. 1996) (Finding FACE invalidate according to First Amendment and Tenth Amendment (relying on *United States v. Lopez*, 514 U.S. 549 (1995) (Holding that Gun-Free School Zones Act exceeded congressional power under Commerce Clause))) *rev'd*, 126 F.3d 575, 587-88 (4th Cir. 1997) (Pursuant to the Commerce Clause Congress had the power to enact FACE because it had “a direct and profound effect on the interstate commercial market in reproductive health services” (relying on *Am. Life League, Inc. v. Reno*, 47 F.3d 642)). [↑](#footnote-ref-12)
13. See *Gregg*, 226 F.3d at 267 (“FACE is not viewpoint-based.”), *cert. denied*, 532 U.S. 971 (2001); *Dinwiddie*, 76 F.3d at 921-22 (“[T]here is not disparate-impact theory in First Amendment law. The fact that a statute, whether through a motive requirement or some other mechanism, disproportionately punishes those who hold a certain viewpoint does not ‘itself render the [statute] content or viewpoint based.”’ (quoting *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 763 (1994))). See also, *Terry v. Reno*, 101 F.3d 1412, 1419 (D.C. Cir. 1996) (sustained FACE); *Am. Life League, Inc.*, 47 F.3d at 651 (sustained FACE); see also *United States v. Weslin*, 156 F.3d 292, 297 (2d Cir. 1998) (per curiam) (upheld FACE). [↑](#footnote-ref-13)
14. *McCullen v Coakley*, 573 U.S. 464, 491, 134 S.Ct 2518, 2537, 189 L.Ed. 2d 502 (2014). [↑](#footnote-ref-14)
15. *Compare Hill v. Colorado*, 530 U.S. 703 (2000) and *McGuire v. Reilly*, 260 F.3d 36, 38 (1st Cir 2001), *affirmed* 386 F3d 45, 48 [1st Cir 2004] *cert. denied*, 125 S.Ct. 1827 (2005) with *McCullen v Coakley*, 573 U.S. 464 (2014). [↑](#footnote-ref-15)
16. *Schenck v. Pro-Choice Network of W. New York*, 519 U.S. 357, 380, 117 S.Ct. 855, 868, 137 L.Ed.2d 1 (1997); Clinic Access Act, N.Y. Penal Law §§ 240.70-240.71. [↑](#footnote-ref-16)
17. Clinic Access Act, N.Y. Penal Law §§ 240.70-240.71 [↑](#footnote-ref-17)
18. Clinic Access Act, N.Y. Penal Law §§ 240.70; L.1999, c. 635, § 2. [↑](#footnote-ref-18)
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