



**Office of the New York State
Attorney General**

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RE: New York's Shield Law protections Relevant to state and local law enforcement

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Seeking, providing, and helping others obtain or provide abortion or gender-affirming health care is legal and protected in New York. But increasingly, other states have criminalized these types of health care. In response, New York has enacted several statutes known collectively as the "Shield Law" intended to protect providers and patients offering or seeking such care in New York against efforts to impose criminal and civil liability originating from outside our state. The Shield Law broadly prohibits law enforcement and other state officials from cooperating with investigations into reproductive or gender-affirming health care ("protected health care") so long as the care was lawfully provided in New York. With respect to *reproductive* health care specifically, these protections apply even if the care was provided via telehealth to a patient located out-of-state, so long as the provider was physically present in New York. New York also has broad protections prohibiting warrantless searches of electronic health records.

This memorandum summarizes the Shield Law provisions most relevant to state and local law enforcement.

Substantive protections for reproductive and gender-affirming health care

- **Extradition and arrests:**¹ State and local law enforcement officers are generally prohibited from arresting (with or without a warrant) or extraditing anyone in connection with providing, facilitating, or receiving protected health care in New York.
 - Local or state law enforcement officers are prohibited from voluntarily executing a state or federal criminal warrant, or making an arrest under any state or federal court order, in connection with protected health care occurring in New York.
 - Extradition requests must be denied and related warrants should not be executed, unless the demanding state alleges *in writing* that the subject was physically present in that state at the time of the charged offense and fled from that state (this is known as the "fugitive from justice" exception). This protection applies to requests based upon theories of vicarious, joint, several, or conspiracy liability.
- **Information sharing and cooperation:**² State and local law enforcement employees and entities, including District Attorneys, sheriffs, and justice courts, are prohibited from cooperating with, providing information to, or using public resources in connection with investigations or proceedings relating to protected health care lawfully provided in New York.
 - Information protected includes all state and local databases, such as from license-plate readers or health data, as well as information collected or held by state agencies or facilities.
 - The law does not prohibit compliance with a valid out-of-state subpoena or warrant, so long as it is not related to an effort to penalize protected health care lawful in New York.
 - The law does not prohibit providing information to the subject of the investigation.
 - Even where the law's narrow exemptions allow for information sharing, any information shared must not reveal personally identifying information related to individuals' medical procedures without the patient's consent.
 - Such investigations or proceedings may originate with state or federal agencies or law enforcement entities or with private individuals under vigilante laws, like Texas SB8.

• **Subpoenas, testimony, and evidence:**³ The Shield Law limits when evidence related to protected health care lawfully provided in New York can be compelled by or admitted in state courts.⁴

- Courts and clerks are prohibited from issuing or domesticating subpoenas in connection with out-of-state proceedings related to efforts to penalize protected health care.
 - This applies to both criminal and civil proceedings and covers subpoenas for deposition testimony, production of evidence, and/or inspection of premises.
 - There is an exception for when the patient themselves is seeking the information in a tort or contract case that would be actionable under New York law.⁵
- Evidence related to reproductive health care is inadmissible in both civil and criminal proceedings when used to allege that the individual providing health care engaged in wrongdoing because the person receiving the care was not located in New York.⁶

Substantive protections for electronic health information⁷

- Unless they have a warrant, law enforcement agencies and officers are prohibited from purchasing or obtaining electronic data that would reveal information about a person's physical or mental health or disability, including their attempt information about an individual's attempt to obtain any form of health care, their health condition or treatment, the location information associated with a health care facility, or their payment for services. These protections extend beyond protected health care to all forms of health care.

Shield Law requirements and best practices for law enforcement:

- **Law enforcement officers, including DAs, state and local police, district attorneys, sheriffs, and court officials should determine whether a summons or warrant originating outside of New York is related to health care protected under the Shield Law before taking anyone into custody or proceeding with arraignment.**
 - Carefully review the warrant and supporting documents. Do not rely on the crime charged. Review the underlying facts, and if still unclear, request more information.
 - If the warrant or summons concerns protected health care, you may not proceed to arraignment on the warrant unless one of the narrow exceptions outlined above applies.
- **In Shield-Law-covered cases, no arrest should be made, no information shared with the requesting entity, and no public resources used to further the investigation or proceeding. If an arrest has already been made, no arraignment or prosecution should take place.**

1. N.Y. Crim. Proc. Law §§ 570.17, 570.19, 140.10(3-a), (3-b).

2. N.Y. Exec. Law § 837-x. Note that there are currently two sections of the Executive Law numbered 837-x, one relating to reproductive health care and the other relating to gender-affirming care.

3. N.Y. C.P.L.R. §§ 3102, 3119.

4. Some of these evidentiary rules may also apply in civil cases in federal courts depending on several factors, including whether the Shield Law is construed as embodying a substantive state policy, whether federal or state claims are at issue, and whether federal law provides an on-point rule of decision in those circumstances.

5. N.Y. C.P.L.R. §§ 3119(g)-(h); 3102; 4550.

6. N.Y. C.P.L.R. § 4550. Note that this provision does not expressly apply to gender-affirming care, but certain forms of gender-affirming care fall under the broad definition of reproductive health care.

7. N.Y. Gen. Bus. Law § 394-h. These protections do not cover information protected under HIPAA.