

**Testimony of**

**Michael Polenberg**

**Vice President, Government Affairs**

**Resolution 710-A – Support for A.2736/S.1370 to Prohibit the Use of  
Condoms as Evidence in Prostitution and Trafficking Prosecutions**

**Committee on Civil Rights**

**Hon. Debi Rose, Chair**

**Committee on Immigration**

**Hon. Daniel Dromm, Chair**

**New York City Council**

**June 18, 2013**

Thank you, Chairwoman Rose and Chairman Dromm and members of the Committees for the opportunity to testify before you today in support of City Council Resolution 710-A. My name is Michael Polenberg and I am the Vice President of Government Affairs for Safe Horizon, the nation's leading victim assistance organization and New York City's largest provider of services to victims of crime and abuse, their families and communities. Safe Horizon creates hope and opportunities for hundreds of thousands of New Yorkers each year whose lives are touched by violence.

Safe Horizon strongly supports proposed State legislation A.2736/S.1370 which would prohibit the use of condoms as evidence in prostitution and trafficking cases. We believe that this law can and will preserve the lives and the futures of thousands of young victims of sexual exploitation.

As one of the country's leading providers of services to survivors of human trafficking, Safe Horizon does not believe that this bill would have any negative impact on the lives of our current or future clients or the prosecutions of their traffickers. We have never been involved in a case where possession of condoms alone played a critical role in the prosecution of a trafficker. However, passing this bill may allow people who are currently being sex-trafficked to negotiate for their own sexual safety and the right to use condoms while they are in their trafficking

situations. We are concerned that if sex traffickers are aware that condoms are being used as evidence of sex trafficking, they will simply prevent their victims from using condoms. From our work serving victims of domestic violence for over three decades, we know that controlling someone's access to contraception is a form of manipulation and control in relationships.

Safe Horizon also operates outreach programs, drop-in centers, and shelters for homeless youth in New York City through our Streetwork Project, which the City Council supports. We regularly encourage the use of condoms and encourage youth to carry enough condoms to increase the likelihood that they engage in safer sex. This practice is supported by most health departments in our country, including the Centers for Disease Control. Becoming familiar with condoms is an important first step to engaging in safer sex for young adults and easy availability of condoms opens dialogues between sex partners about the need to prevent STI's. Condom distribution is an invaluable intervention that creates opportunities for sexually active youth to learn about sex, disease prevention, and ethical interpersonal behavior from peers, mentoring adults, outreach workers, and social workers. To that end, our outreach workers carry condoms with them to distribute to youth on the street; criminalizing the possession of condoms puts our outreach workers at risk of arrest as well.

Allowing condoms to be used as evidence in criminal prosecution is contrary to most current public health practice and may deter vulnerable young people, some of whom are trafficking victims, from taking necessary steps to protect their health. If young people are afraid

to carry condoms for fear of prosecution – or if individuals who exploit them discourage or prohibit them from carrying condoms for fear of prosecution – they will likely engage in unsafe sex. This could also deter young people from sharing condoms with their peers.

We thank you again for your support of A.2736/S.1370, and hope the full City Council can support this important State legislation. Thank you again for inviting us to testify today, and I would be happy to answer any questions at this time.



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## **Testimony of Andrea Ritchie**

before the

*Hearing of New York City Council Civil Rights Committee on Resolution 0710-2011, in  
support of AO2736/SB1379, New York State legislation that would  
prohibit the use of condoms as evidence of any prostitution-related offense*

**June 18, 2013**

Good morning. My name is Andrea Ritchie, and I am the Co-Coordinator of Streetwise and Safe, an organization focused on ending discriminatory policing of LGBTQ youth of color. We proudly serve on the Steering Committee of Communities United for Police Reform, and on the executive committee of the No Condoms as Evidence Coalition, made up of over 70 anti-trafficking, reproductive rights, public health, HIV/AIDS, human rights, LGBTQ, and civil liberties groups advocating for passage of the legislation that is the subject of the resolution we are discussing today.

On behalf of the Coalition, we want to extend our sincere appreciation to Council Member Lappin for introducing the resolution, and our gratitude to the Civil Rights Committee and the Immigration Committee for taking the time to hold this hearing this morning in the midst of a very busy legislative session.

As you will hear from a broad range of organizations and individuals directly affected by this practice, police and prosecutors' confiscation and introduction of possession of condoms as evidence of intent to engage in prostitution-related

area district attorney to take a stand by adopting a policy consistent with the state bill a year ago. DA Rice weighed the potential harm of continuing to use condoms as evidence of prostitution-related offenses and came down on the side of ensuring that **prosecutions don't get in the way of public health and protecting the rights of victims of violence. Indeed, all prosecutors we have spoken with agree that the presence of condoms is not essential** to making a case that prostitution, trafficking, exploitation or promoting of prostitution is taking place - they are **just one piece of evidence among many**. DA Rice trusts that he prosecutors have the skills and the evidence to make their trafficking cases without using condoms, without putting the health and reproductive rights of sex workers and trafficking victims at risk by creating additional deterrents to condom access.

Just a few weeks ago, 4 of 5 NYC area district attorneys were quoted in the New York times stating that they too do not support the use condoms as evidence in prostitution cases. Brooklyn District Attorney Charles Hynes was foremost among them, and has ordered the NYPD to stop collecting condoms as evidence in Brooklyn cases - ADA Marc Fliedner and Lance Ogiste are here from DA Hynes' office this morning.

This is not just a local issue - it's a national one: The President's Advisory Council on HIV/AIDS (PACHA) has called for elimination of "the use of condoms or other measure to prevent HIV transmission, as the basis for criminal prosecution or sentence enhancement."

Florrie Burke, founder of the Freedom Network, a national network of anti-trafficking service providers and advocates, who recently received the inaugural *Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons from President Obama*, has spoken out strongly in favor of this legislation, noting that the use of condoms as evidence in trafficking and promoting cases "effectively takes

away one of the only protections someone being exploited may have to protect themselves from HIV, STI's, unwanted pregnancies and forced abortions."

Continuing to use condoms as evidence in prostitution, promoting and trafficking cases harms the very people the law is intended to protect. Continuing to cite condoms in trafficking and promoting cases continues to put lives at risk because it creates an additional barrier to access to life saving protections for people who are trafficked and exploited. **The threat to the health and safety and interference with access to contraception and the reproductive rights of all New Yorkers, including victims of trafficking, far outweighs any benefit to the use of condoms as evidence in prosecutions.**

This practice extends beyond using condoms found on individuals as evidence against them. Currently, the presence of condoms on a person or in a business or other premises can be used as evidence that the person intended to engage in prostitution or that the premises are being used for prostitution. This creates a strong deterrent to making condoms available to people at a business or other locations, including locations where people are or may be being exploited. Legitimate businesses, including gay bars and establishments, have been reluctant to serve as distribution points for the New York City Condom program for fear that law enforcement will use the fact that there are condoms on the premises to try to prove that illicit sexual activities are taking place on the premises.

Even if illicit activities may be taking place at a particular premises, use of condoms as evidence against business owners puts lives at risk: Human Rights Watch found in San Francisco that where condoms are used as evidence that prostitution is taking place in a particular location, business owners then remove or hide condoms in unsafe locations, like used bleach containers, placing the health and safety of individuals who may be exploited in those locations at risk.

**This is why we are calling for a comprehensive ban against using**

**condoms as evidence in any prostitution-related cases, this is why we are calling for passage of a state law that protects the lives of all New Yorkers, this is why we are also calling for passage of Int. 1080, which would create a strong ban against police profiling in New York City.**

It is time for the police and prosecutors to stop taking life saving condoms distributed by the City of New York out of our hands, pockets and purses. It is time for policy makers to take a stand and affirm the right of all New Yorkers to protect themselves.





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### **Testimony of Trina Vuitton**

*Hearing of New York City Council Civil Rights Committee on Resolution 0710-2011, in support of  
A02736/SB1379, New York State legislation that would  
prohibit the use of condoms as evidence of any prostitution-related offense  
June 18, 2013*

My name is Trina Vuitton and I am a youth leader at Streetwise and Safe, also known as SAS, an organization focused on policing practices that affect LGBTQ youth of color.

The practice of using condoms in prostitution related offenses affects my community, LGBTQ young people, because we are often profiled as being engaged in the sex trades.

One time, I was going to a kiki ball on a Saturday night in the West Village. I was standing on the street talking with some friends and an officer approached me. She asked me for my ID. I gave it to her. At that time I didn't have my name legally changed. She not only would not call me by my real name, but she kept calling me a man and a faggot. She took a picture of my ID and sent it to the 6<sup>th</sup> precinct. The dispatcher told her that my record was clear but instead of letting me go, she said she wanted to see in my purse. I didn't know my rights then or I would have not consented to the search. I thought I had to show her the contents of my purse.

When she looked inside, she saw two condoms. She called the precinct back and asked for a police car to come. I asked her, "why are you locking me up? I can't carry condoms?" She replied, "you are getting locked up for prostitution." I was taken to the precinct and put in with the men. I

was 17 years old. This is my story but this is also the story of many of my friends who are Lesbian, Gay, Bisexual and Transgender, young and of color.

When the police take our condoms or lock us up for carrying condoms, they are putting our lives at risk. How am I supposed to protect myself from HIV and STI's when I am scared to leave my house with condoms in my purse? For my community it is not only being put at risk for HIV, STI's, and unwanted pregnancies but having to be harassed and assaulted by police officers for being transgender or queer.

**We thank you for holding this hearing today and listening to our voices and experiences. We ask you to help stop the kind of discrimination against LGBTQ youth I have experienced and my friends have experienced by passing this resolution and by passing a law against profiling LGBTQ youth of color.**

**NEW YORK  
CITY BAR**

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY THE COMMITTEE ON AIDS<sup>1</sup>**

**A.2736  
S.1379**

**M. of A. Clark  
Sen. Montgomery**

AN ACT to amend the civil practice law and rules, the criminal procedure law and the executive law, in relation to the use in evidence of the fact of possession of a condom

**THIS BILL IS APPROVED**

The New York City Bar Association respectfully submits this report in support of A.2736/S.1379, which would prohibit police and prosecutors from introducing condoms as evidence of prostitution-related offenses in criminal proceedings. Amendment of the existing law is essential to promoting both public health and human rights.

Since its founding in 1870, the City Bar has grown to over 24,000 members who work to promote the public good and advocate for legal reform when needed. The membership of the Committee on AIDS includes experts with comprehensive knowledge of HIV-related law and policy issues.

There is mounting evidence that the practice of police seizure of condoms as evidence of prostitution-related offenses, and introduction of condoms as evidence of prostitution-related offenses in criminal proceedings undermines New York's important efforts to fight HIV and AIDS, as documented by the New York City Department of Health and Mental Hygiene,<sup>2</sup> the PROS Network (a coalition of organizations engaged in outreach and services to people in the sex trades),<sup>3</sup> the Open Society Foundations,<sup>4</sup> and Human Rights Watch.<sup>5</sup> In New York City, an

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<sup>1</sup> This report has been reviewed and endorsed by the City Bar's Committee on Criminal Law, Committee on Lesbian, Gay, Bisexual and Transgender Rights, and Committee on Sex and Law.

<sup>2</sup> New York City Department of Health and Mental Hygiene, *A Report to the New York City Commissioner of Health*, prepared by Paul Kobrak, December 8, 2010 (on file with Human Rights Watch).

<sup>3</sup> PROS Network and Urban Justice Center Sex Workers Project, *Public Health Crisis: the Impact of Using Condoms As Evidence in New York City*, April 2012, available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf> (last visited April 8, 2013).

<sup>4</sup> Open Society Foundations, *Criminalizing Condoms: How Policing Practices Put Sex Workers and HIV Services at Risk in Kenya, Namibia, Russia, South Africa, and the United States, and Zimbabwe*. New York: Open Society Foundations, July 2012, available at <http://www.opensocietyfoundations.org/reports/criminalizing-condoms> (last visited April 8, 2013).

epicenter of the AIDS epidemic, police officers routinely confiscate and enter condoms as evidence in prostitution-related cases, and prosecutors routinely cite seized condoms as evidence of a prostitution-related offense in criminal court complaints. In fact, the Kings County District Attorney's Office has created a form for supporting depositions in prostitution-related cases that asks officers to record how many and where condoms were found on individuals at the time of arrest.<sup>6</sup>

Public health and criminal justice officials nationwide have expressed concern about such law enforcement practices undermining efforts to address HIV/AIDS.<sup>7</sup> Indeed, some are calling for a public health approach to the criminalization of condoms. In October 2012, Nassau County District Attorney Kathleen Rice issued a policy directive to all prosecutors in her office prohibiting the use of condoms as evidence of prostitution.<sup>8</sup> And, the San Francisco Police Department and District Attorney recently announced that they will stop using condoms as evidence in prostitution cases for a trial period of ninety days, to be followed by an evaluation beginning in January 2013.<sup>9</sup>

People who are or are likely to be profiled as involved in the sex trades, including LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) youth, are aware of this practice and consequently fear carrying condoms, either for use with clients or with other sexual partners. Their fear leads them to carry fewer condoms, and to engage in sex work without the protection of condoms. LGBTQ youth and others who are involved in the sex trades are among populations targeted for HIV prevention efforts due to high infection rates. In the age of HIV, discouraging the use of condoms, particularly among high-risk and vulnerable groups, can have disastrous public health consequences. A 2011 study in New York City among people who exchange sex for money or other goods found that 14% of the men and 10% of the women were HIV-positive,<sup>10</sup> as compared to a 1.4% HIV prevalence in New York City generally and a 0.6% prevalence in the United States overall.<sup>11</sup> We must ensure that this vulnerable community is not deterred from using condoms.

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<sup>5</sup> Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities*. New York: Human Rights Watch, July 2012, available at <http://www.hrw.org/reports/2012/07/19/sex-workers-risk-0> (last visited April 8, 2013).

<sup>6</sup> *Ibid*, pp.91-100

<sup>7</sup> Office of National AIDS Policy, National HIV/AIDS Strategy for the United States, July 2010, p. 37, available at <http://www.whitehouse.gov/administration/eop/onap/nhas> (last visited April 8, 2013).

<sup>8</sup> Kathleen Rice, District Attorney, Nassau County, "A Prosecutors Long Game: When the Public's Health Becomes the Greater Good," *Huffington Post*, October 10, 2012, available at [http://www.huffingtonpost.com/kathleen-rice/a-prosecutors-long-game\\_b\\_1955572.html?utm\\_hp\\_ref=new-york](http://www.huffingtonpost.com/kathleen-rice/a-prosecutors-long-game_b_1955572.html?utm_hp_ref=new-york) (last visited April 8, 2013).

<sup>9</sup> George Gascón, District Attorney, City and County of San Francisco, Letter to Theresa Sparks, October 31, 2012. (On file with New York City Bar Association.)

<sup>10</sup> Samuel M. Jenness et al., "Patterns of Exchange Sex and HIV Infection in High-Risk Heterosexual Men and Women," *Journal of Urban Health*, vol. 88, no. 2 (2011), pp. 329-341.

<sup>11</sup> New York City HIV/AIDS Surveillance Slide Sets. New York: New York City Department of Health and Mental Hygiene, 2011, updated February 2013, available at <http://www.nyc.gov/html/doh/html/data/epi-surveillance.shtml> (last visited April 8, 2013).

Moreover, vouchering condoms as arrest evidence, listing the number of condoms found on individuals in criminal complaints against them, and introducing condoms as evidence of intent to engage in prostitution-related offenses at trial, deters a broad range of people from carrying condoms; anyone who is stopped and searched on suspicion of prostitution-related activities may be inhibited, including men who have sex with men, LGBTQ people, women of color, HIV/AIDS outreach workers and others who regularly fear harassment or arrest by the police.<sup>5</sup>

Transgender women in particular experience a high rate of profiling for prostitution-related offenses by the police, a practice so widespread in New York City that it was the subject of a 2005 campaign by Amnesty International.<sup>6</sup> Transgender women interviewed by Human Rights Watch routinely said that they have had condoms confiscated by the police. LGBTQ youth, and particularly homeless youth, and LGBTQ youth of color, report that police assume that they intend to engage in prostitution-related offenses or “lewd conduct” if they find condoms on them during stops, frisks, or consent searches.<sup>12</sup> According to these groups who are frequently targeted by the police, the seizure and use of condom possession as evidence deters them from carrying condoms.

The recent directives by the Nassau County and San Francisco District Attorneys demonstrate an effort by law enforcement officials to balance public health and criminal law obligations. However, state-wide legislation is necessary because District Attorneys’ policies and their implementation can change over time. San Francisco’s history demonstrates the importance of state legislation to comprehensively address the use of condoms as evidence. In 1994, the San Francisco District Attorney adopted a policy stating that condoms should not be used as evidence of prostitution. Unfortunately, that policy was not followed by subsequent District Attorneys and was only recently reinstated.<sup>13</sup> A state law is needed to promote an environment where no one is afraid to carry condoms over the long term.

We urge passage of legislation to prohibit the use of condoms as evidence of prostitution-related crimes. New York City has distributed millions of condoms to its citizens in an admirable campaign to protect the public health. Police and prosecution policies that deter people from using these condoms, particularly members of groups at high risk for sexually transmitted disease, undermine statewide HIV prevention efforts, waste tax dollars, and invite increased rates of HIV and other infections.

April 2013

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<sup>12</sup> PROS Network and Urban Justice Center Sex Workers Project, *Public Health Crisis: the Impact of Using Condoms As Evidence in New York City*, April 2012, available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf> (last visited April 8, 2013).

<sup>13</sup> At present, the San Francisco District Attorney’s office has implemented a moratorium on the use of condoms as evidence of prostitution.



## FOR THE RECORD

Testimony by Make the Road NY staff Bianey Garcia on City Council resolution no. A-710  
Before the Committee on Civil Rights and the Committee on Immigration

Good morning and thank you for letting me testify in front of this committee today. Thanks to Council Member Lappin and Dromm, and to all the council members present here today who are with us in this struggle.

My name is Bianey Garcia, and I'm an organizer for the LGBTQ Justice Project in New York. I am a Mexican transgender woman, 23 years of age. I immigrated to the United States 8 years ago. I currently live in Jackson Heights area of Queens.

About 3 years ago I experienced firsthand the practice of using condoms as evidence.. It was a night when my boyfriend and I went to a bar to dance in the Queens area. We then decided to walk. We walked arm in arm in Roosevelt Ave and when we were arrived at 86st, an undercover police car parked next to us, eight undercover policemen came out and threw me against the wall, took my bag, and emptied everything on the floor. They found 3 condoms and that's what they used as evidence to arrest me for a prostitution charge. Also 2 male officers searched me without asking my permission, they touched my private parts and made fun of not only myself but also my boyfriend- Because he said he and I were dating and I were not doing anything. One of the policemen who was Hispanic told my boyfriend to go or if not they would arrest him too. That night was the worst night of my life- I was taken to the precinct and then before the judge and said he I was arrested on prostitution charges.

As organizer for LGBTQ Justice Project I hear stories like mine daily. It is very frustrating to know that the combination of discriminatory practices such as stop and frisk and the use of condoms as evidence, are putting all of my community in danger. We risk getting infected with sexually transmitted diseases, and we stop trusting the police and wanting to report crimes to them. This is affecting our health and our safety.

I am here today to ask the city council to pass resolution no. 710-A, which urges the legislature and the governor of New York to pass A.2736/S.1379, also known as the no condoms as evidence bill. This bill would protect many people in my community from sexually transmitted diseases and other health hazards. It would also protect people who are being forced into prostitution, as I've had interactions with many members in our community who are being forced and coerced into prostitution and they tell me that they are not given condoms because their traffickers know that police will use them as evidence. I do not want to keep feeling afraid to carry condoms.

Keep in mind that condoms save lives!

Si se puede!

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## FOR THE RECORD

Testimony by Make the Road Member Perla Rivas on City Council resolution no. A-710  
Before the Committee on Civil Rights and the Committee on Immigration

Good morning and thank you to all the council members present for letting me testify today.

My name is Perla Rivas and I am 35 years of age. I'm Salvadoran and have been in this country for 10 years. A year ago I was at the corner of 94th and Roosevelt waiting for a friend to go get some drinks around midnight. Suddenly an NYPD car stopped in front of me. Three policemen in uniform came out of the car and asked me what I was doing. I told them I was waiting for my friend. One of them answered: "I'm not stupid, I know what you're doing here" ... he snatched my bag and took out three condoms I had. He then told me that he had "enough evidence to arrest me on prostitution charges" and told me I should choose between a charge of urinating in the street or a charge of prostitution. He confiscated my condoms and in the end only gave me a ticket for "urinating on the street" (which I was not doing) but I live in fear now of carrying condoms because I know that could be used against me. As a transgender woman I know that this is not an isolated case. Many women in my community are being stopped by the police for how they dress and / or how they express their gender identity. It makes me afraid to go outside or to carry condoms because I know that transgender women are stopping daily in my neighborhood, and the cops take away their condoms and falsely accuse them of prostitution charges.

I am here today to urge the council to pass resolution no. 710-A, which urges the legislature and the governor of New York to pass A.2736/S.1379 law, also known as the No Condoms as Evidence law. This law would help many people in my community to protect themselves from sexually transmitted diseases and other health hazards. It would also protect people who are being forced into prostitution, as many times these people are not given condoms because their traffickers know that police are using them as evidence. I do not want to keep feeling afraid to carry condoms. Condoms are to protect us, not criminalize us!

Thank you again and Si se Puede!

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## FOR THE RECORD

Testimony by Make the Road Member Johanna Vasquez on City Council resolution no. A-710  
Before the Committee on Civil Rights and the Committee on Immigration

Hello everyone and thank you for letting me testify today.

My name is Johanna Vasquez and I am a member and leader of Make the Road New York. I am a proud transgender woman and a resident of Jackson Heights. I came to this country to escape the violence, discrimination and ill-treatment of people towards LGBTQ people in my country.

Because of circumstances of false discrimination and profiling in the hands of the police, I was arrested 2 years ago on charges of prostitution. It was a night when my friend invited me to go dancing. I didn't want to go out but she convinced me. I put on my makeup and a dress and went out. We were waiting for a taxi on the corner of 89th Street and Roosevelt Avenue when suddenly a copcar parks next to us, several cops come out and start searching us without telling us the reason why. They found condoms on my purse and I was arrested on charges of prostitution. I spent a year in jail fighting the charges and it affected my record and my chances for immigration relief.

I stand before you today to urge you to pass resolution no A-710, which urges the NY State legislature to pass A.2736/S.1379, also known as the no condoms as evidence bill. This bill would protect many people in my community from sexually transmitted diseases and other health hazards. It would also protect people who are being forced into prostitution, as I've had interactions with many members in our community who are being forced and coerced into prostitution and they tell me that they are not given condoms because their traffickers know that police will use them as evidence. It would also make sure that what happened to me never happens again to anyone! No one deserves to be criminalized for using condoms!

Thank you and Si se Puede!

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**The New York City Council  
Committee on Immigration and Committee on Civil Rights**

Hearing RE: Resolution calling on the New York State Legislature to pass and the Governor to sign A.2736/S.1379, which would prohibit possession of a condom from being used as evidence of prostitution and certain other offenses.

**Testimony of Lynly Egyes, Esq.  
Staff Attorney  
Sex Workers Project  
Urban Justice Center**

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**Tuesday, June 18, 2013 at 10:00 a.m.**

**250 Broadway, 16th FL, New York, NY 10007**

Good morning, members of the Committee on Immigration and Committee on Civil Rights.

The Sex Workers Project at the Urban Justice Center very much appreciates the opportunity to offer comment on this proposed resolution. My name is Lynly Egyes and I am an attorney at the Sex Workers Project where I primarily represent victims of trafficking. I'm here today to illustrate to you why this resolution is so important in the fight against human trafficking and more importantly why this resolution will protect victims of trafficking.

The best way to explain how important this resolution is to victims of trafficking is to tell you about Allison. Allison was brought into the United States by a large trafficking ring. On daily a basis, she was beaten, starved and humiliated by traffickers. In my office, she told me her trafficker gave her only five condoms a day, but she was forced to have sex with up to twenty five people a day. After her five condoms were used, she was forced to have sex without a condom. One of Allison's greatest fears was that she might have contracted a life-threatening disease while being trafficked. Even after her escape, she tells me that she is so scared for the other girls that she left behind - she knows they are being denied access to condoms just as she was. She asked me, "Do you think that I wasn't allowed to have condoms because they are used as evidence?" I didn't know what to tell her but to be honest, I was scared. I know the trafficking

ring that Allison was part of and I know they are still in existence. At that moment I thought to myself, these traffickers know that condoms are being used as evidence and that means more and more victims are going to be denied access to condoms.

My client Sarah met her trafficker here in the United States when she was fifteen years old. For nine years he forced her through physical violence and threats to work in prostitution. She was arrested many times. Sarah told me that she plead guilty every time because her trafficker would beat her more if she had to go back to court or if she was sent to jail. Sarah was lucky in the sense that she escaped her trafficker over ten years ago and while she was be trafficked she had access to condoms. But I wonder what would have happened if Sarah's trafficker knew that condoms could be used as evidence of prostitution and trafficking. Do you think fifteen year old Sarah would have been allowed to carry condoms?

It is because of Allison, Sarah and so many other victims of trafficking that I consider this resolution calling on the New York State Legislature to pass the No Condoms As Evidence bill to be a revolutionary moment in the anti-trafficking movement. This resolution is calling for passage of legislation that is about trying to protect victims while they are being trafficked. It is about saying to them while they are being forced into prostitution we might not be able to reach you now, but at least we are going arm you with condoms. We are not going to give a trafficker any excuse to deny you condoms because we believe you deserve to be safe and that you should have access to condoms. It's about reaching victims while they are being victimized and providing them with a little bit of safety while they are being forced into prostitution. It would also give them a fighting chance once they are able to escape.

Now, I have heard some say that we need to be able to use condoms as evidence to prosecute traffickers but I challenge that notion. Condoms are not evidence of trafficking. Successful trafficking prosecutions need evidence that a person was subject to coercion and force – often through victim statements. I am often asked by federal law enforcement officers, how can we make a victim feel more safe, how can we make a victim trust us more so that we can help find the people who hurt them. A victim that was denied condoms by their trafficker, contracted an STI, or had a forced abortion because of the lack of access to condoms will be much more traumatized and probably less likely to be able to contribute to an investigation. Now imagine that victim finds out that it is the policy of New York that led to them being denied access to condoms. How cooperative do you think that victim will be?

But if we pass this resolution and legislation, we can send a loud and clear message. The lawmakers and the law enforcers of New York care about the health and safety of sex workers and victims of trafficking. What a powerful statement that makes to victims, and to those who would exploit them.

Allison was given only five condoms a day, and she is only one of many victims but there are still other victims out there being made to risk their lives every day because their traffickers wont'allow them access to condoms. I am only here today because I care about trafficking victims, those who are my clients and those who have not yet escaped. I care about victims' safety because I know what happens when they are denied access to condoms. I am asking you to care about them too. Please don't leave victims of trafficking behind.



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### **Testimony of Mitchyll Mora**

*Hearing of New York City Council Civil Rights Committee on Resolution 0710-2011, in support of  
A02736/SB1379, New York State legislation that would  
prohibit the use of condoms as evidence of any prostitution-related offense  
June 18, 2013*

My name is Mitchyll Mora and I am a youth leader and researcher at Streetwise and Safe, also known as SAS, an organization focused on policing and criminalization of LGBTQ youth of color.

In addition to conducting “know your rights” trainings and engaging LGBTQ youth of color in policy advocacy around issues that affect their lives, Streetwise and Safe is currently partnering with the Urban Institute on a research project funded by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) to document the experiences of Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) youth, as well as young men who have sex with men (YMSM) and young women who have sex with women’s (YWSW), who are involved – or are profiled as being involved - in the sex trades.

Through this research, as well as our “know your rights” trainings and outreach throughout the city, Streetwise and Safe comes into contact with hundreds of LGBTQ youth in New York City every year. Many of the young people that we come into contact with have experienced homelessness or are currently homeless, and many of them have traded sex for the things they need to survive. Many more have been profiled as being involved in the sex trades – based on their gender and race, their sexual orientation, their gender identity and expression.

We know through our work at SAS that LGBTQ youth of color experience many kinds of discriminatory policing, including being profiled for offenses like “loitering for the purposes of

prostitution” and “lewd conduct” when we are just standing outside in our neighborhoods, walking down the street, or hanging out with our friends.

Often, police and prosecutors use the fact that young women of color or LGBTQ youth of color are carrying condoms as a tool of profiling. As is often the case with small amounts of marijuana, condoms are found by police during stop and frisk encounters, when we are told to empty our pockets and open up our bags and purses. While this practice affects all LGBTQ youth, it has particular effects on youth who are homeless or without a stable place to live, who may or may not be engaging in trading sex for the things they need to survive, who, in New York City, are subjected to aggressive profiling and policing by the NYPD every single day simply because so much of their time is spent in public spaces where they cannot escape stops, frisks, and other discriminatory policing practices.

When found on LGBTQ youth and people of color, condoms are often used to justify a ticket or arrest for prostitution-related offenses. They also become a tool of verbal and sexual harassment, and of questioning and ridicule around our sexualities and our sexual orientation or gender identity. Police often take condoms from us or destroy them. I have heard stories of youth being questioned, harassed, and charged with prostitution-related offenses based on their possession of condoms in all five boroughs, in subways, parks, outside their homes and shelters, going in and out of school, and at places where youth access services, demonstrating that this is a widespread practice not limited to a specific area or time of day.

Although it is not illegal to carry condoms, the practice of citing condoms as evidence in prostitution-related cases, including trafficking cases, has created a climate in which LGBTQ youth feel unsafe carrying condoms.

We feel unsafe carrying condoms, because we are.

Carrying condoms for us means risking being harassed by law enforcement and sometimes even being arrested.

Despite the risk of police violence and incarceration that LGBTQ youth, and youth with involvement in the sex trades, face when carrying condoms, many still do. Some hide them in bushes, their bras, shoes or hair while trading sex and doing what they need to do to survive.

However, all too often, LGBTQ youth don't carry condoms for fear of harassment and arrest, contributing to a public health crisis for LGBTQ youth, who are among those at greatest risk for acquiring HIV.

And not every young person is able to independently make a decision about whether and how many condoms to carry. I have spoken with youth who have been involved in the sex trades whose condom access, as well as their daily life, was controlled by an exploiter. For youth who are forced to trade sex, the practice of using condoms as evidence of trafficking offenses creates a strong incentive for people who are exploiting others to deny the people they are exploiting access to condoms, putting the people they are exploiting at even greater risk for STI's, HIV, unwanted pregnancies and forced abortions.

This is why we are calling on City Council to join LGBTQ youth of color in speaking out strongly in favor of state legislation that will ban the use of condoms as evidence of all prostitution-related offenses across all 5 boroughs and across all of New York state. This is also why we are calling on City Council to pass legislation that would include a strong ban on profiling based on sexual orientation, gender identity, age, and housing status in addition to race, religion and national origin.

**We urge you to help pass this resolution and send a strong message to legislators in Albany that we need to protect the right of LGBTQ youth to protect themselves. And we urge you to vote in favor of Intro. 1080, which would create a comprehensive ban on profiling LGBTQ youth of color, and create meaningful accountability for violating it.**

Because our lives and the lives of LGBTQ youth across the city and state depend on it.



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**Testimony of Sharon Stapel, Executive Director,  
New York City Gay and Lesbian Anti-Violence Project  
to the  
New York City Council  
Civil Rights Committee  
Hearing on Resolution 0710-2011  
June 18, 2013**

Good afternoon. My name is Sharon Stapel and I am the Executive Director at the New York City Gay and Lesbian Anti-Violence Project (AVP). I am here to testify about Resolution 0710-2011, pending before the New York City Council, that would support New York State legislation that would prohibit the use of condoms as evidence of prostitution-related crimes.

AVP empowers lesbian, gay, bisexual, transgender, queer (LGBTQ), and HIV-affected communities and allies to end all forms of violence through organizing and education, and support survivors through counseling and advocacy. We envision a world in which all LGBTQ and HIV-affected people are safe, respected, and live free from violence.

I thank the City Council for the opportunity to speak with you today and offer this testimony. **AVP supports the passage of Resolution 0710-2011 calling on the New York State Legislature to pass, and Governor to sign, legislation that would prohibit possession of a condom from being used as evidence of prostitution-related offenses.**

In working with survivors of violence, AVP often finds itself in a contradictory position. On the one hand, we are a state-funded distributor of condoms to encourage safer sex. On the other hand, we work with LGBT people, particularly transgender and gender non-conforming people, youth and people of color, who are regularly arrested for carrying condoms. As described below, this contradictory public policy causes a severe chilling effect in the regular use of condoms to reduce HIV transmission. Using condoms as evidence makes bad public policy, puts New York State agencies at odds with each other and jeopardizes safety. This policy should end immediately.

**THE PROBLEM WITH HIV IN NEW YORK CITY<sup>1</sup>**

HIV is an epidemic in New York City. AVP is funded by New York City and New York State to hand out condoms to reduce the risk of HIV transmission. This makes good, solid public health policy for good reason.

According to the New York City Department of Health and Mental Hygiene (DOHMH), as of 2008, 105,633 people were living with HIV in New York City. This figure represents the vast majority of cases in New York State. As of September 30, 2010, 108,886 people had been

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<sup>1</sup> The following data was compiled with a group of advocates, including the Hetrick Martin Institute, Streetwise and Safe, AVP and Lambda Legal in 2011.

diagnosed and reported in New York City and were presumed to be living with HIV/AIDS. This represents an increase of 3% from 2008, and 10% from 2005. According to the CDC, New York City has the second highest rate of AIDS cases in the U.S. This rate is three times higher than the national average, making New York City an epicenter for HIV.<sup>2</sup>

Barriers to effective prevention strategies disproportionately affect African Americans. According to DOHMH, in New York City, more than 80% of all new diagnoses occur among African Americans and Hispanics. African American men comprise 45% of all new diagnoses among men, and African American women comprise 67% of all new diagnoses among women in New York City. A 2006 study on the cost effectiveness of HIV prevention found that each case of HIV prevented could save \$303,100 in lifetime medical costs for HIV medical care by experienced HIV care providers.<sup>3</sup> The City's youth are at particularly high risk. According to the NYC Department of Health and Mental Hygiene, new HIV diagnoses among young men ages 13 to 19 who have sex with men (MSM) have doubled.

New York City and State have a strong and historical commitment to distributing condoms to prevent the spread of HIV. New York City has a series of safer sex public health campaigns linked to condom distribution programs.<sup>4</sup> As a result of these campaigns New York City distributed 37.3 million condoms in 2009. Additionally, the New York State Department of Health distributes approximately 10 million condoms annually. Indeed, government authorities should promote, not discourage, safer sex practices. The Centers for Disease Control and Prevention (CDC) found that latex condoms, when used consistently and correctly, are highly effective in preventing the sexual transmission of HIV, the virus that causes AIDS. Additionally, the correct usage of condoms reduces the risk of other sexually transmitted diseases (STDs).<sup>5</sup> Preventing the transmission of HIV and STDs makes good fiscal sense. A 2006 study on the cost effectiveness of HIV prevention found that each case of HIV prevented could save \$303,100 in lifetime medical costs for HIV medical care by experienced HIV care providers.<sup>6</sup>

AVP distributes more than ten thousand condoms each year, to survivors of violence and LGBTQ community members with the goal of encouraging safer sex practices, reducing the transmission of HIV and, ultimately, providing all people with free and easy access to condoms that will keep them and their partners safe. However, as discussed more below, we have seen a marked decrease in LGBT people being willing to carry condoms for fear of being arrested and accused of engaging in prostitution.

## **THE PROBLEM OF USING CONDOMS AS EVIDENCE IN NEW YORK CITY**

AVP annually reports on hate violence experienced by LGBTQ and HIV-affected people. In our latest report, released June 4, 2013, we found, across the nation that 73.1% of all anti-LGBTQ homicide victims in 2012 were people of color and 53.8% of anti-LGBTQ homicide victims in 2012 were transgender women. In New York City, in 2012, reports of hate violence increased

<sup>2</sup> Morbidity and Mortality Weekly Report, *HIV Prevalence, Unrecognized Infection, and HIV Testing Among Men Who Have Sex with Men - Five U.S. Cities, June 2004 - April 2005*, (<http://www.cdc.gov/mmwr/PDF/wk/mm5424.pdf>, last accessed 2/24/11).

<sup>3</sup> Schackman, B.R. et al., *The Lifetime Cost of Current Human Immunodeficiency Virus Care in the United States Medical Care* Volume 44, Number 11, November 2006(<http://www.rilin.state.ri.us/hiv/documents/lifetimecostofhiv.pdf>, accessed 2/24/11).

<sup>4</sup> <http://www.nyc.gov/html/doh/html/condoms/condoms-why.shtml>, accessed February 9, 2011.

<sup>5</sup> "Condoms and Sexually Transmitted Diseases," Centers for Disease Control and Prevention, <http://www.cdc.gov/condomeffectiveness/latex.htm>, accessed March 4, 2010

<sup>6</sup> Schackman, B.R. et al., *The Lifetime Cost of Current Human Immunodeficiency Virus Care in the United States Medical Care* Volume 44, Number 11, November 2006(<http://www.rilin.state.ri.us/hiv/documents/lifetimecostofhiv.pdf>, accessed 2/24/11).

4% for LGBTQ and HIV-affected New Yorkers, continuing a three-year trend (including a 11% increase from 2010 to 2011 and an 13% increase from 2009 to 2010), despite a national decrease in violence. We also found that: reports of hate violence motivated by anti-immigrant bias increased substantially; nearly 40% of survivors who engaged with the police reported misconduct in 2012; and survivor reports of hostile attitudes from police doubled in 2012.

AVP is keenly aware that certain groups – especially poor people, transgender people, African-American and other men of color – are far more likely to be arrested and prosecuted for crimes than are white non-transgender men or non-transgender women of any race. These traditionally marginalized communities are also among those most targeted for violence in the first place. Many LGBTQ community members, including transgender people, people of color, and youth, report that they are regularly profiled, stopped and frisked and arrested because they have condoms on them. AVP receives reports of this violence every day.

Where LGBTQ people are stopped and frisked, any condoms they have should not be used as “evidence” of prostitution or trafficking in criminal cases as current NYPD policy allows. This causes a serious and deadly chilling effect on the carrying and use of condoms in safer sex practices. We work with many LGBTQ people, particularly young people, report to AVP that they no longer carry condoms for fear of being arrested, which means that HIV transmission is much more likely to occur through unprotected sex.

By arresting individuals and vouchering condoms which are later offered into evidence as intent to solicit prostitution New York City and State sends a dangerous mixed message to anyone carrying condoms. Arresting individuals for carrying condoms has a chilling effect on all New Yorkers, who wish to use condoms to practice safer sex but fear arrest or prosecution. This contradiction wastes safer sex resources provided and paid for by New York State and violates individual human rights and sound public health policy.

Arresting someone for condom possession also creates grave safety risks for LGBTQ communities. The current law encourages law enforcement to profile individuals carrying condoms as sex workers and allows law enforcement to arrest individuals and use any condoms found on that person as evidence of “intent” to engage in prostitution. In other words, individuals are arrested for prostitution simply for carrying condoms. For example, if a police officer stops a transgender woman to search her bag and finds condoms she can be arrested on prostitution charges, even if there aren't any other indicators of that activity. AVP has observed this profiling based on gender identity and subsequent arrest for intent to engage in prostitution far too often.

The possession of condoms does not indicate intent to engage in prostitution. In fact, the possession of condoms only indicates intent to engage in safer sex practices. Transgender women are frequently profiled as sex workers by police regardless of whether or not they are actually engaged in sex work. Because of this, transgender women are especially fearful that any condoms in their possession will be used as evidence that they are engaging in prostitution-related offenses and are therefore reluctant to accept condoms from outreach workers.

LGBTQ youth are also at high risk. According to the NYC Department of Health and Mental Hygiene, new HIV diagnoses among young men ages 13 to 19 who have sex with men (MSM) have doubled. LGBTQ youth face great risk to their physical and emotional health if they are arrested for practicing safer sex. Reducing LGBTQ youth's access to safer sex in the midst of this violence further reduces their safety. AVP hears from youth that are afraid to carry condoms and are so aware of the use of condoms as evidence that they have rhymes related to



how many condoms are "safe" to carry. These examples demonstrate how current New York State law has decreased the health and safety of LGBTQ communities by profiling and arresting them for their perceived and alleged activities.

New York State risks the health and safety of all people by continuing to allow police officers and prosecutors to use condoms as evidence of prostitution. To prevent the stop, frisk and arrest of LGBTQ people, particularly transgender people of color, the New York State legislature must pass the No Condoms of Evidence legislation prohibiting the District Attorney's or NYPD's reliance on the use of condoms as evidence of prostitution or trafficking law violations. As well, state and local law enforcement agencies should immediately enact policies that prohibit the use of condoms as evidence of prostitution and trafficking law violations. Without this bill, the state will send a message that the government sanctions a practice that reduces public health and safety. This bill resolves the conflict between the Departments of Health and the police department and prosecutors office and makes clear New York State's commitment to encouraging all people to engage in safer sex to prevent HIV and STI transmission. It is critical to pass this legislation in order to promote sound public health policy and to protect every individual's right to engage in safer sex. We urge the New York City Council to take swift action to pass this Resolution to protect and promote the health and safety of all New Yorkers.

Thank you for your time and for your consideration of this important matter.

Very truly yours,



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**TESTIMONY**

The Council of the City of New York  
Committees on Civil Rights and Immigration

**Hearing on Proposed Res. No. 710-A**

June 18, 2013  
New York, New York

Prepared and Presented by  
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My name is Kate Mogulescu, and I am a Supervising Attorney in the Legal Aid Society's Criminal Defense Practice. I run a specialized unit within that practice called the Trafficking Victims Advocacy Project, dedicated to identifying and advocating for victims of human trafficking caught in the criminal justice system.

Annually, in all five boroughs of New York City, The Legal Aid Society provides legal assistance in more than 300,000 individual matters for low-income families and individuals with civil, criminal, and juvenile rights legal problems. Founded in 1876, The Legal Aid Society is the nation's oldest and largest provider of legal services to indigent clients. Since 1965, we have served as the primary defender in New York City. In addition to representing many thousands of people each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

The Legal Aid Society's Trafficking Victims Advocacy Project ("TVAP") is the first effort in the United States by a public defender office to meaningfully address the issue of human trafficking. TVAP focuses its work on the representation of individuals charged with prostitution offenses throughout New York City and represents many victims of sex trafficking who are arrested and prosecuted for engaging in prostitution. This marginalized and underserved population is criminalized, rather than supported, and punished, rather than assisted, as it is cycled through the criminal justice system. Despite increased awareness about the issue of human trafficking, the criminal justice system routinely fails to identify trafficking victims among those being prosecuted in the numbers in which they truly exist. Our clients include both citizens and non-citizens, many of whom experience extreme abuse, subjugation and exploitation.

Likewise, our Juvenile Rights Practice has been a national leader in representing young trafficking victims and was the leading legal advocate for the enactment of New York's Safe Harbor Act to protect the children we represent from abuse and exploitation by traffickers. Our Civil Practice, which each year handles more civil legal matters than any civil legal services program in New York State, also provides legal assistance for victims of labor trafficking as well as survivors of domestic violence. Our perspective comes from our daily contacts with clients and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies, including the various District Attorney's Offices and the New York Police Department ("NYPD").

We appreciate the opportunity to provide testimony on the important issue of the use of condoms as evidence in criminal prosecutions in New York State. Through our work in Criminal Court, we have become too acutely aware how devastating the practice of seizing condoms as evidence can be for those who interact with the police throughout our City. Furthermore, we have seen firsthand how prosecutors attempt to use the fact of possession of condoms to demonstrate intent to engage in prostitution, and how these practices combined have severe consequences for those most vulnerable to exploitation, abuse and discrimination.

The Legal Aid Society encourages the New York City Council to adopt Proposed Resolution No. 710-A, calling on the New York State Legislature to pass and the Governor to sign A.2736/S.1379, which would prohibit possession of a condom from being used as evidence of prostitution and certain other offenses. The proposed resolution supports legislation that is a critical measure that would encourage public health and safety and eliminate the unjust fear that carrying condoms will be used as evidence leading to an arrest and conviction for prostitution.

## 1. Condoms Seized As Arrest Evidence in Prostitution Cases

In each of the last five years, there were an average of over 2,700 arrests for prostitution-related offenses<sup>1</sup> in New York City.<sup>2</sup> In our Criminal Defense and Juvenile Rights Practices, we frequently see the police seize condoms in the course of an arrest for prostitution. These condoms are taken as “arrest evidence,” and can be referred to in an accusatory instrument in order to justify a prostitution-related arrest. This occurs regardless of the number of condoms possessed, and is used to establish the arrestee’s criminal intent or to support the claim that they agreed to engage in sexual conduct for a fee.

As a preliminary matter, this particular arrest and prosecution practice raises tremendous public health concerns. Putting aside questions regarding the legality of police conduct or the probative value of condoms to demonstrate any elements of a prostitution crime, the simple fact is that those individuals believed to be engaging in prostitution are precisely the individuals who should be universally encouraged to use condoms as a way to prevent the spread of sexually transmitted diseases and unwanted pregnancies. Instead, many individuals engaging in prostitution become fearful to carry condoms as doing so might lead to their arrest and support their prosecution. Numerous studies have documented the life-threatening impact on those engaging in prostitution.<sup>3</sup>

New York City has taken significant steps to develop programs that improve public access to condoms.<sup>4</sup> Condoms are widely distributed as part of dedicated public health initiatives. Current arrest and prosecution practice regarding condoms taken from arrestees

<sup>1</sup> Penal Law § 230.00 (Prostitution) and § 240.37 (Loitering for the Purpose of Engaging in a Prostitution Offense).

<sup>2</sup> Division of Criminal Justice Services, Computerized Criminal History Oracle File (3/20/13).

<sup>3</sup> Human Rights Watch, *Sex Workers At Risk: Condoms as Evidence of Prostitution in Four U.S. Cities*, at 29, available at [http://www.hrw.org/sites/default/files/reports/us0712ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf) (2012). See also PROS Network and Urban Justice Center Sex Workers Project, *Public Health Crisis: the Impact of Using Condoms As Evidence in New York City*, available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf> (2012).

<sup>4</sup> See, e.g., Emily Gogolak, *New York’s Condom Bait-and-Switch*, The Village Voice, March 6, 2013.

undermines the efforts of New York State, New York City and other localities and non-governmental harm reduction agencies to combat sexually transmitted infections (“STIs”) and disease and help reduce the health risk for the transmission of STIs and HIV.

Second, our concern about the use of condoms as evidence is inextricably intertwined with our concerns about the validity of many prostitution-related arrests, and police conduct with respect to these arrests. In many places, the fact of possession of condoms is specifically offered as evidence that a person intended to engage in prostitution.

For example, police officers arresting individuals for Loitering for the Purpose of Engaging in a Prostitution Offense, Penal Law § 240.37, are allowed to draw on myriad observed behaviors, all of which may be entirely innocent and non-criminal standing alone, in order to establish that a person intended to engage in prostitution. This includes an individual’s mere presence in an area believed to be prostitution-prone and the fact that an individual was wearing clothing that the officer found indicative of commercial sexual activity. In addition, people can be arrested under this loitering statute if they have previously been arrested for engaging in a prostitution offense. Even more troubling is the fact that police officers may cite the possession of condoms to establish that an individual intended to engage in prostitution.

As a result, arrests made under this statute, based on one of these factors alone or in combination with others, rely solely on evidence that is circumstantial and, in many cases, arbitrary. The fact of possession of condoms is used to support, or justify, invalid and illegal arrests that unfairly target marginalized populations.

Throughout the City, we have seen unjust arrest and enforcement practices targeting LGBT populations, especially youth, as well as individuals profiled merely because of an arrest history for prostitution, often regardless of whether there is any evidence that the individual

actually engaged in prostitution.<sup>5</sup> Against this backdrop, the use of condoms as evidence to support loitering charges is extremely problematic, and should be prohibited.

## 2. Proposed Legislation Protects Trafficking Victims

In addition, when considered in relation to victims of trafficking arrested for prostitution, the use of condoms as evidence in criminal cases only serves to further alienate, victimize and render most vulnerable those we represent. The impact of this troubling practice is magnified when those arrested and prosecuted are victims of trafficking, a scenario which occurs all too often.<sup>6</sup> For many victims of trafficking, the arrest process alone, and the related interaction with the criminal justice system, has devastating personal consequences and serves to perpetuate their victimization. When condoms are taken as arrest evidence, or used to support criminal charges, the message to these individuals is clear – better not to have condoms in their possession, even while being forced to engage in prostitution. This is so even when, for those coerced and forced to engage in prostitution, the ability to use a condom may be the only protection against repeated exposure to disease and potential pregnancy.

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<sup>5</sup> See also Make the Road New York, *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights* (October 2012), at 11-13, available at [http://www.maketheroad.org/pix\\_reports/MRNY\\_Transgressive\\_Policing\\_Full\\_Report\\_10.23.12B.pdf](http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf)

<sup>6</sup> See, e.g., New York City Bar, *Report on Legislation by the Committee on Sex and Law* (Mar. 2010), at 3, available at <http://www.nycbar.org/pdf/report/uploads/20071848-CommentonLegislationreVictimsofSexTrafficking.pdf> (“In New York, as elsewhere, in addition to enduring unspoken abuses, victims of sex trafficking are often arrested and convicted of prostitution-related offences.”); Polaris Project, *Human Trafficking Legislative Issue Brief: Vacating Convictions Resulting from Sex Trafficking*, available at [http://www.polarisproject.org/storage/documents/policy\\_documents/Issue\\_Briefs/vacating\\_convictions\\_issue\\_brief\\_september\\_2012.pdf](http://www.polarisproject.org/storage/documents/policy_documents/Issue_Briefs/vacating_convictions_issue_brief_september_2012.pdf) (“Sex trafficking victims are compelled to engage in acts of prostitution by their trafficker, which sometimes results in victims being arrested, prosecuted, and convicted of prostitution-related offenses by law enforcement.”); Sex Workers Project, *Vacating Criminal Convictions for Trafficked Persons: A Legal Memorandum for Advocates and Legislators*, available at <http://sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (“Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and related offenses.”).

The message resonates not only with trafficked people, but also with their exploiters and traffickers, who control every aspect of their lives, behavior and conduct. Traffickers decide whether or not those they coerce into prostitution use birth control, and what medical or reproductive health treatment they are allowed to access.<sup>7</sup> Thus, if condoms are allowed to be used as evidence against traffickers in sex trafficking prosecutions, the foreseeable practical impact remains the same – many traffickers simply will not allow those they control to carry and use condoms if there is a chance those condoms may expose traffickers themselves to criminal liability.

In fact, in a recent Enterprise Corruption case prosecuted by the Kings County District Attorney's Office, in an organized prostitution business, women who were to engage in prostitution were required to sign a contract indicating that they would not carry condoms with them while working in prostitution.<sup>8</sup> The consequence of continuing to allow the possession of condoms to be used as evidence in any prostitution, or trafficking, related crimes only serves to further jeopardize the health and safety of trafficked individuals. Indeed, "[i]n reality, a condom may be the one protection a victim of trafficking has from a trafficker's assault on her or his human rights, autonomy, and body."<sup>9</sup>

### **3. Comprehensive & Uniform Statewide Action Necessary**

Although several District Attorneys have recently announced that they will no longer seek to introduce condoms as evidence in certain cases,<sup>10</sup> this is an issue that cannot be left to

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<sup>7</sup> See, e.g., Florrie Burke, *Forced into Prostitution – And Denied a Lifeline*, The Huffington Post, May 15, 2013, available at [http://www.huffingtonpost.com/florrie-burke/forced-into-prostitution-b\\_3279937.html](http://www.huffingtonpost.com/florrie-burke/forced-into-prostitution-b_3279937.html).

<sup>8</sup> Document on file with Kings County District Attorney's Office and LAS.

<sup>9</sup> Burke, *supra* note 7.

<sup>10</sup> See, e.g., J. David Goodman, *Police in Brooklyn Are Told Not to Seize Condoms of Prostitutes*, N.Y. Times, May 30, 2013, at A20 (Brooklyn District Attorney's Office announces that it will no longer seek to use condoms as evidence in prostitution or loitering for prostitution cases); Kathleen Rice, *A Prosecutor's Long Game: When the Public's Health Becomes the Greater Good*, The Huffington Post, October 10, 2012, available at [http://www.huffingtonpost.com/kathleen-rice/a-prosecutors-long-game-b\\_1955572.html](http://www.huffingtonpost.com/kathleen-rice/a-prosecutors-long-game-b_1955572.html).



each local prosecutor to decide. We should not prohibit life threatening practices in Brooklyn but tolerate them in Queens or the Bronx. Rather, statewide legislative reform is necessary to ensure that this practice is prohibited throughout New York City and New York State and there is uniformity and consistency.<sup>11</sup>

Furthermore, even where prosecutors do not seek to introduce seized condoms as evidence, where the condoms are seized by the police, and logged on vouchers that clearly label them “arrest evidence,” there remains a continued risk to the health and safety of all New Yorkers, especially those trafficked into prostitution or unjustly profiled as being involved in prostitution. Amending the state criminal procedure law to prohibit the introduction of condoms as evidence in prosecutions would also eliminate the police practice of seizing condoms as arrest evidence. This would in turn prevent the harmful signal vouchering condoms as arrest evidence can send to those arrested and their respective communities.

### **Conclusion**

Passage of the proposed legislation to limit the admissibility of evidence of condoms possessed when arrested will save lives. New York State should not criminalize, or make evidence of a crime, that which is a lifesaving device for so many of the people The Legal Aid Society represents. The overriding public health policy goals of preventing or reducing the spread of sexually transmitted disease and infections make support for this legislation essential. Therefore, we strongly support passage of proposed legislation A.2736/S.1379, and by extension, Proposed Resolution 710-A.

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<sup>11</sup> New York City Bar, *Report on Legislation by the Committee on AIDS*, available at <http://www2.nycbar.org/pdf/report/uploads/20072412-LettercondemningCondomsasEvidenceofProstitution.pdf> (April 2013)(supporting A.2736/S.1379).

GMHC strongly supports New York City Council Proposed Res. No. 710-A and urges the passage of S.1379 (Montgomery)/A.2736 (Clark), an act to amend the New York State civil practice and criminal procedure laws in relation to the use in evidence of the possession of a condom.

Condoms are a vital tool for New Yorkers in practicing safer sex and protecting themselves from HIV. According to the U.S. Centers for Disease Control and Prevention (CDC), “a number of carefully conducted studies, employing rigorous methods and measures, have demonstrated that consistent condom use is highly effective in preventing HIV transmission.” Condoms should be promoted by all levels of government as a vital public health and HIV prevention method.

Unfortunately, we continually hear from GMHC clients who are afraid of arrest simply for being responsible and trying to protect their partners. We are constantly asked how many condoms a person is legally allowed to carry, and told of accusations of sex work due to a person’s race and real or perceived sexual orientation or gender identity. Clients have even disclosed their HIV status to police officers, a considerable sacrifice of confidentiality, in hopes of avoiding arrest for carrying condoms.

The threat of condoms being used as evidence of sex work endangers the public health of all New Yorkers. Proven prevention methods are a crucial component of sound public policy, responsible budgeting, and quality law enforcement procedures. We must do all that we can to promote safer sex and end the HIV epidemic. Possible use of condoms as evidence of sex work undermines the efforts of New York State, New York City, and countless non-governmental organizations in promoting safer sex tools and multi-level HIV prevention by providing a disincentive to regularly carry condoms.

New York City has made significant efforts to combat HIV and sexually transmitted infections, as well as to educate individuals on safer sex. Since 1971, the City of New York has distributed free condoms to promote public health. The City increased these efforts in 2007 by dramatically increasing free condom distribution and awareness throughout its five boroughs. A study published in the American Journal of Public Health showed that increasing availability of condoms, through centralized access in schools or distribution by outreach workers, raises the likelihood that sexually active youth will use condoms.

New Yorkers disproportionately impacted by HIV must be supported, not criminalized, in using and distributing condoms. For example, transgender women of color are at disproportionate risk for HIV. They are also disproportionately subjected to the confiscation of condoms and prosecution for sex work using condoms as evidence.

As our city and state governments continue to confront a deteriorating fiscal climate and contemplate further budget cuts, it is vitally important that we consider the value of scientifically proven HIV prevention methods. Making condoms more accessible is not only sound public health policy, but fiscally prudent and responsible. A November 2006 study, published in the journal Medical Care, estimated that investing in HIV prevention could save \$303,100 per case of HIV prevented.

Our public health and policy strategies fail when fear or lack of access results in a New Yorker not carrying or using condoms. The CDC released findings in August 2008 reporting that annual new HIV infections had been underestimated by up to 40%, and that an estimated 56,000 new cases of HIV occur each year nationally. The failure to prevent new infections has grave implications for New Yorkers disproportionately affected by HIV. We cannot afford to allow fear to put New Yorkers at risk for HIV.

GMHC strongly supports the passage of Proposed Res. No. 710-A as a sound public health measure.



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Visit the GMHC Center for HIV Prevention: 224 West 29 Street, New York, NY 10001-5204

Good morning, Madame Speaker, Members of the City Council, fellow members of the NYPD LGBT Advisory Panel and members of the public. My name is John Carollo and I am a member of the NYPD LGBT Advisory Panel. I am here today to express my support for a City Council resolution which supports the "No Condoms as Evidence" legislation now in committee, which was introduced by Senator Velmanette Montgomery and Assembly Member Barbara Clark last January.

Members of the Advisory Panel meet once a month to strategize and discuss talking points which will be raised at the next meeting with the Police Commissioner. I attended my first meeting with the Commissioner last October. It was then when I learned that, currently, the presence of condoms on a person or in a business or other premises can be used as evidence that the person intended to engage in prostitution or that the premises are being used for prostitution. I was deeply disturbed when I considered what a strong deterrent to carrying condoms AND to making them available to people at a business or other locations where people are or may be exploited. I had the terrible thought of the return of a even larger public health crisis ahead. Bigger and more serious than that in the 1980s of which I am a worried-well HIV negative survivor.

During this meeting, the Commissioner seemed genuinely surprised at this news. He asked for time to investigate the facts and he would get back to us. He also asked for specific arrest records to be submitted for review. At our next meeting, three months later, the Commissioner informed us that the Department was not making the condoms as evidence policy, it was coming from the District Attorneys' offices! But prosecutors agree that the presence of condoms is not essential to making a case that trafficking, exploitation or promoting of prostitution is taking place—they are just one piece of evidence among many.

The threat to the health and safety and interference with access to contraception and the reproductive rights of all New Yorkers, including victims of trafficking, far outweighs any benefit to the use of condoms as evidence in prosecution.

Legitimate businesses, including gay bars and establishments, have been reluctant to serve as distribution points for the New York City Condom program. They are afraid that police will use the fact that there are condoms on the premises to try to provide that unlawful sexual activities are taking place on the premises. Upon reflection, I recalled condom blitzes in the gay bars and clubs throughout the 1990's. A couple individuals would arrive to distribute information and condoms to the patrons in the City's gay bars and clubs. That doesn't happen anymore ... and even more telling, finding condoms in these same establishments, they are hidden or not present at all.

In one study, I read where up to 50% of the people surveyed have not carried condoms for fear that they would be used by police or prosecutors to prove that they intended to engage in prostitution. Allowing condoms to be used as evidence of trafficking offenses creates strong disincentives to condom access for the homeless LGBT youth population. A very vulnerable group when one considers that they resort to sex work just for a place to sleep! I know, because I am involved with the St. Luke in the Fields' youth outreach program, "The Church". I have stressed the importance to the clergy heading this group, to let these young men and women know about the importance of continuing to carry condoms, in spite of their fears. It is for their and all of our safety.

I am here to ask for a common sense response from the City Council that will encourage the passage of this bill intended to protect the health and safety of all New Yorkers. In particular, the health and safety of sex workers, people involved in the sex trades and survivors of trafficking. These bills would not jeopardize the ability of law enforcement or advocates to identify or assist trafficked persons and they will not impede the prosecution of traffickers.

These bills would prohibit the use mere possession of condoms as evidence of a person's intent to engage in prostitution-related offenses. These bills would ensure that law enforcement practices aimed at protecting New Yorkers do not have the unintended effect of undermining sound public health policy. Currently, the Department of Health distributes condoms to anyone who asks. But there are instances where police officers confiscate condoms to use as evidence, even though it is not official policy. The health risks involved are too great to ignore.

Thank you.

**Testimony by Hayley Gorenberg**  
**Deputy Legal Director**  
**June 18, 2013**

*In support of Proposed Resolution No. 710-A,  
calling on the New York State Legislature to pass  
and the Governor to sign A.2736/S.1379,  
which would prohibit possession of a condom from being used  
as evidence of prostitution and certain other offenses*

As a national LGBT rights organization, Lambda Legal is committed to fighting the HIV epidemic. We are keenly aware of how vulnerable our communities are to law enforcement practices gone wrong. We must end that now, and stop using condoms as evidence of prostitution and sex trafficking.

Early in the HIV epidemic, here in New York City, the epicenter, Lambda Legal won the first HIV discrimination case. We defended the rights of a New York City doctor threatened with eviction because he took care of people with HIV. He was a brave doctor. Three decades into the epidemic, we want him and his colleagues to have fewer patients with HIV, not more.

New York City knows one important way to help stem the epidemic. That's why the city's health programs have distributed millions of free condoms. Turning on a dime and using those condoms as evidence in prostitution and trafficking cases is a public health scandal. It's devastating to public health.

When I was a legal services attorney for low-income New Yorkers with HIV, I kept a basket of condoms out on my desk. My colleagues tell me their clients don't take them anymore, for fear condoms will be used against them if police challenge them on the street. It's a recipe for a public health disaster at the hands of the city's law enforcers.

Prostitution and sex trafficking cases are supposedly about public health. But right now New York punishes the people whose health is most at-risk. No district attorney has ever pointed me to a prostitution or sex trafficking case that hinged on condoms. If you're going to make these cases, don't make them at the expense of the health of the people who are most vulnerable, and don't make them at the expense of the whole public's health. And if trafficking cases are about saving people from victimization, don't re-victimize them and call it law enforcement.

We need to end the use of condoms as evidence in prostitution and trafficking cases, for everyone's sake. It's backwards, counterproductive, and dangerous. Despite every logical public health indicator; despite the pleas of those representing everyone from domestic violence survivors, to HIV prevention advocates, to at-risk youth, to victims of sex traffickers; despite statistics and health department reports and history and science and common sense, prosecutors and police in our city are still taking condoms as evidence of prostitution and sex trafficking, which endangers us all. Thank you for vigorously supporting 710-A.

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HUMAN  
RIGHTS  
WATCH

HRW.org

New York City Council  
250 Broadway  
New York, NY 10007

June 18, 2013

To the City Council:

Human Rights Watch submits this testimony in support of City Council Resolution 710-2011. This resolution calls on the New York State Legislature to enact and the Governor to sign into law bill A2736/S1379, which would amend current law by explicitly prohibiting the introduction of condoms as evidence of prostitution and prostitution-related offenses in certain criminal and civil proceedings. Adoption of Resolution 710-2011 by the New York City Council would send a clear message to state legislators that amendment of the existing law is essential to promoting both public health and human rights.

Human Rights Watch is an independent non-governmental organization that conducts monitoring, reporting, and advocacy on human rights issues in nearly 90 countries worldwide. Human Rights Watch has published numerous reports on barriers to effective HIV prevention in marginalized populations including prisoners, people who use drugs, sex workers, youth, and lesbian, bisexual, gay and transgender (LGBT) persons.

Between October 2011 and July 2012, Human Rights Watch conducted research in New York City on the prevalence and consequences of police seizure of condoms as evidence of prostitution-related offenses, and the introduction of condoms as evidence of prostitution-related offenses in criminal proceedings. In July 2012, Human Rights Watch released a 112-page report documenting the use of condoms as evidence of prostitution in New York and three other major US cities. Human Rights Watch's research in New York City included over 125 interviews with sex workers, outreach workers and sex worker advocates, as well as New York City public defenders, and law enforcement officials. The report also documented the experience of LGBT youth in relation to police confiscation of condoms as evidence of prostitution.

Our research found that police in New York City stop, search, and arrest people involved, or believed to be involved, in the sex trade

using possession of condoms as evidence of intent to engage in prostitution-related offenses. Though few prostitution or loitering cases proceed to trial, prosecutors in New York have introduced condoms as evidence of prostitution-related offenses in criminal court.

Human Rights Watch found that sex workers, LGBT persons, and members of their communities are aware of this practice and fear carrying condoms, either for use with clients or with other sexual partners, as a result. Mona M., a peer outreach worker, sits in a neighborhood restaurant at a regular time so that she can provide condoms to women who are afraid to carry them when they are working. She told Human Rights Watch:

The majority have fear, they don't carry condoms.... I'm an outreach worker. They know Mona will be in the cafe. They will only come when they have a client, get one condom, then leave with the client. For me it's a risk to have the condoms in my purse. But I've worked as an outreach worker, and I feel obligated to carry condoms because if someone comes up and asks me, and I don't have one, what are they going to do?

While some women told Human Rights Watch that they continued to carry and use condoms despite the possible consequences, others said that the fear of arrest overwhelms their need to protect themselves from HIV and they therefore engage in unprotected sex while working. As Anastasia L., a transgender woman from Mexico who did sex work in Queens until 2007, said:

If I took a lot of condoms, they would arrest me. If I took few or only one, I would run out and not be able to protect myself. How many times have I had unprotected sex because I was afraid of carrying condoms? Many times.

Permitting police to use condoms as evidence for prostitution undermines human rights, including the right to health. For the same reasons, permitting prosecutors to use condoms found at a location where people have been coerced into the sex trade as evidence to support charges of trafficking or promoting prostitution is counterproductive, and risks more harm to victims of trafficking. Although the intent to secure a successful prosecution of traffickers is commendable, and consistent with government obligations to combat trafficking, using condoms as evidence in trafficking cases provides a perverse incentive to traffickers to prohibit victims from carrying or using condoms or to restrict victims' access to condoms, including by refusing to make them available at locations where they are being exploited.

In San Francisco, our research found that trafficking enforcement efforts that were likely to involve confiscation of condoms made business owners reluctant to keep

condoms on the premises and that those who continued to accept condoms concealed them in ways that made them useless or dangerous. For example, one outreach worker in San Francisco reported seeing unwrapped condoms hidden in an empty bleach container at a massage parlor, making them both unsanitary and likely to have deteriorated. Legislation to prohibit prosecutors from using possession of condoms as evidence to support prostitution-related charges, including trafficking, could give trafficking victims greater ability to negotiate for their own sexual safety.

New York City is the epicenter of the AIDS epidemic in the United States, with more than 110,000 people living with HIV and an AIDS case rate that is nearly three times the national average. A recent study in New York City among people who exchange sex for money or other goods (a category broader than those who self-identify as sex workers) found that 14 percent of the men and 10 percent of the women were HIV-positive. This is dramatically higher than the 1.4 percent HIV prevalence in New York City generally and the 0.6 percent prevalence in the United States overall.

New York State and City have devoted enormous resources to curbing the HIV epidemic, targeting prevention efforts to many vulnerable populations. A cornerstone of these prevention efforts is promoting universal access to condoms. New York City currently distributes nearly 40 million free condoms annually.

Permitting condoms to be used as evidence of prostitution-related offenses undermines these efforts and discourages vulnerable populations from carrying condoms that are essential for HIV prevention. Law enforcement officials can, and should, partner with public health officials to ensure that enforcement of the criminal law does not undermine the health and safety of all New Yorkers.

Under international human rights law, governments are obligated to promote public health and ensure access to information and services for preventing the spread of HIV and sexually transmitted diseases without discrimination. Governments should not take actions that interfere with anyone's ability to protect their own health. To do so is not only inconsistent with human rights law. It is also bad public policy.

New York State has distributed millions of condoms to its citizens in an admirable campaign to protect the public health. Law enforcement practices that deter people from using these condoms, undermine this important effort, waste tax dollars, and threaten to increase rates of HIV and other infections. Recognizing the importance of condoms to public health, the District Attorney for Nassau County has instructed the more than 200 prosecutors in her employ to stop introducing condoms as evidence for all prostitution-related offenses including those related to trafficking, and the District Attorneys for Manhattan and Brooklyn have agreed to stop introducing condoms as evidence of misdemeanor prostitution cases. These are important steps. But a statewide bill is necessary because all New Yorkers should be protected from HIV transmission wherever they might reside.

In sum, the New York City Council should expand and strengthen the promotion of condom use among New York's most vulnerable residents—trafficking victims, sex workers, and LGBT youth—as well as among the general public by adopting Resolution 710-2011 without delay .

Respectfully submitted,

Rebecca Schleifer, Advocacy Director

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**Testimony Prepared for New York City Council's Committees on Civil Rights and Immigration**

**Presented by:**

**Lillian Rivera, MPH, Director of Advocacy and Capacity Building**

**On Behalf of Hetrick-Martin Institute**

**Tuesday, June 18, 2013**

Hetrick-Martin Institute (HMI) is the nation's largest and oldest lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth serving organization focusing on the creation of a safe and supportive environment in which youth can thrive. HMI serves over 2,000 LGBTQ youth within its NYC program space and over 6,000 through various outreach and homeless youth programs annually.

At Hetrick-Martin we prioritize the health and well-being of all young people we work with and ensure that we create an environment that fosters their physical, mental and emotional growth. A large part of our programming is aimed at addressing health disparities. Our youth are disproportionately impacted by depression, anxiety, STI and HIV infections. We work on addressing the social determinates of health such as poverty, lack of access to education and marginalization. These factors drive up disparities as do legal practices that limit the possibilities of youth maintaining their health such as using condoms as evidence.

LGBTQ youth have various challenges in their lives that their heterosexual peers do not face. They experience rejection from families of birth, violence within the educational system and are over represented within the juvenile justice system; not

because they are bad or defective but because they live within a world that can be hostile to who and what they are. LGBTQ youth often have huge holes in the safety net that should be there to catch them when they stumble and fall along their path of development. Often, following federal mandates such as the distribution of condoms as a preventative measure against contracting HIV, the virus that causes AIDS, flies counter to messages they're receiving on a local level where the practice of carrying condoms on their persons becomes a reason for suspecting them of prostituting or other unlawful acts. Youth are left mistrusting the very service providers and law enforcement that is charged with the responsibility of caring for them. Thus using condoms as evidence creates another hole in the safety net; a hole which can lead to involvement in the juvenile justice system for attempting to take care of their health; a hole which can lead to an STI or HIV. As adults concerned for the well-being of LGBTQ youth it is imperative that we ensure that this net is in place. HIV infections among YMSM of color are on the rise and we must step up and ensure that we remove all barriers to decreasing these rates - especially the ones we are responsible for creating.

HMI applauds the City Council's efforts in ensuring that our state moves towards eliminating the use of condoms as evidence because it just makes sense. It makes sense that we encourage our youth, our future to take care of their health, to make healthy choices and to transition into adulthood without the fear of being criminalized for health seeking behaviors. It makes sense that we work with our public health colleagues to eliminate health disparities. It makes sense that our policies and practices reflect what we know to be true and is simply common sense: condoms and their distribution save lives and any practice that jeopardizes this practice - such as

using condoms as evidence - or the perception of this practice - must be adamantly halted. Young lives are at stake.

Thank you.



**Testimony of The Center for HIV Law & Policy  
Before the New York City Council's Committees on Civil Rights and Immigration  
Regarding Condom Confiscation  
June 18, 2013**

My name is Rashida Richardson, and I am a staff attorney with The Center for HIV Law and Policy ("CHLP"), the first national legal and policy resource and strategy center for people with HIV and their advocates. I also coordinate the Positive Justice Project, a national coalition of people living with HIV and their advocates, health care providers, public health professionals, and others working to end criminalization of HIV in the United States. CHLP supports the resolution calling for legislation to end the reliance on health protection measures, such as condoms, to support criminal charges against individuals at risk of HIV and other serious sexually transmitted infections ("STIs").

Condom confiscation and reliance on health protection measures as evidence of wrongdoing is a matter of great public concern. CHLP works with communities disproportionately affected by this practice, including women of color, transgender individuals, and immigrants in Jackson Heights, Queens, and with attorneys representing individuals who have been targeted for prosecution. Our support for the City Council resolution is based on this experience, and the fact that condoms remain the best protection against not only HIV, but STIs such as treatment-resistant gonorrhea. Condom confiscation creates serious obstacles for public health campaigns to address these health threats because it makes people afraid of accessing, carrying, and using condoms.

Over 100,000 people are living with HIV in New York City. To help curb the HIV epidemic, New York City distributes millions of condoms. This is an important public health intervention: It encourages safe sex, prevents unwanted pregnancies, and protects individuals from STIs. To employ the resources of one government agency created to protect the public to undermine the public health initiatives of another is, at the very least, wastefully counterproductive.

Yet recent discussions with community members confirm an alarming trend: Women of color – especially immigrant and transgender women – are being stopped and searched for condoms. Police officers are confiscating and destroying condoms on the street, and leaving immigrant and transgender women – who are already at high risk for STIs and HIV – even more vulnerable to having unprotected sex.

Police officers also are using condom possession as grounds for arrest, and as evidence of criminal activity. These law enforcement practices are producing a chilling effect: In neighborhoods like Jackson Heights, transgender Latina women are refusing to carry condoms because they increase the likelihood of arrest and prosecution. Using the criminal system to penalize possession not only places these women at risk, it also contributes to the overcriminalization of people of color, immigrants, and transgender individuals.

Condom criminalization can have devastating collateral consequences, including barriers to housing, employment, and voting. Often, following arrest, HIV status is used improperly as an aggravating factor in criminal charges, which in turn can trigger serious immigration consequences, including deportation.

The County's proposed resolution supports a national trend to end this misinformed practice evidenced by the recent agreement between prosecutors and public defenders in San Francisco, brokered by the San Francisco Human Rights Commission. More locally, Brooklyn

District Attorney Charles J. Hynes, and Nassau County District Attorney Kathleen Rice, also issued policy directives prohibiting the use of condoms as evidence of criminal activity. Since these policies and their implementation can change over time, we urgently need legislation. We applaud the New York City Council for showing leadership and calling for legislation that will end policing that undermines our investments in public health.

# # #

*The Center for HIV Law and Policy is a national resource and strategy center for people with HIV and their advocates. The organization works to reduce the impact of HIV on vulnerable and marginalized communities and to secure the human rights of people affected by HIV.*

## **TESTIMONY OF STEVE ASHKINAZY, LCSW on the Condoms as Evidence Bill**

**Madame Speaker and Members of the City Council. My name is Steve Ashkinazy. As a Social Worker I have worked with NYC Youth for nearly 40 years. At least a few of you know me from my work at organizations such as: The Hetrick Martin Institute, The Harvey Milk H.S., The Ali Forney Center, Madrigal House, The LGBT Community Center, Eshel, and Manhattan Community Bd. 2. For nearly 30 years that work has included: encouraging those who are sexual active or considering becoming sexually active, to USE CONDOMS.**

**So when I first heard, several months ago, that young people were afraid to carry condoms for fear of being arrested for prostitution, I first thought it was a joke. When the rumors persisted, I was convinced it was a new Urban Myth. I even urged kids to ignore these rumors, because I believed that such a dumb idea could not possibly be real policy.**

**You can imagine my Shock and my Horror when I discovered that this policy is real and is threatening to undo all of the important Safe Sex Education that is going on in Schools and Youth Programs around the City, because it is making Young People afraid to carry condoms.**

**Why is Condoms as Evidence of Prostitution a Dumb idea? Well the obvious answer is that Carrying Condoms is NOT evidence of intent to commit prostitution. But if that were the only reason, it would be nothing more than a colossal inconvenience. Wasting the time of Police Officers and detaining innocent people. But that is not the main reason why this is a Dumb Idea. It is also dumb, because it is a dangerous policy, which deters people from carrying and using condoms, and therefore exposing them to life threatening situations.**

**Let me tell you something. As anybody who has ever worked in AIDS and HIV prevention can tell you, It's not easy getting people to use condoms. That is especially true of young people, Who are convinced that they are invincible, indestructible, and just basically immune from consequences. So since the mid 80's counselors and youth workers have racked their brains trying to figure out ways to make condoms seem cool, fun and familiar. We've talked about them, played with them, made them in bright colors, and yes, we've even shoved them onto cucumbers to demonstrate how to put them on.**

**But most of all, we've made them ubiquitous, giving them out in droves. Of course we know that most of them don't get used for their intended purpose. Kids make water balloons from them, play practical jokes with them, make obscene gestures with them. They lose them, waste them, and throw them away.**

**But the truth is, we don't care. We just want them to be comfortable enough with them, and to have them close enough at hand, so that should they find themselves in a sexual situation. Just Maybe, Just Maybe, they will remember to use a condom for protection.**

**So why would a young person carry a whole bunch of condoms on their person? Probably to prevent their snoop parents or sneaky little sister from finding them, were they to leave them at home. And I can assure you that if a young person has recently come from an appointment with a guidance counselor or meeting up with friends at a drop-in-center, there is a very good possibility that they are carrying a bunch of condoms.**

**I am very delighted to hear that two of our DA's have already agreed to end the use of Condoms as evidence. And although I am disappointed, I can understand why the Police Commissioner will continue to collect Condom evidence, so long as some of the DA's continue to want him to.**

**But this problem must be fixed, and it is up to you, the Members of the City Council to fix it. As long as some of our DA's are more interested in racking up Convictions than in meting out Justice. And more interested in promoting their own careers than in saving the lives of young people, then I urge you to step in and fix this problem, by voting on this Bill opposing the use of Condoms as Evidence of Prostitution.**

**It not only makes sense. It's the right thing to do.**



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BROOKLYN, N.Y. 11201

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FAX: (718) 254-0897

Brooklyn Defender Services is in full support of Proposed Res. No. 710-A

Brooklyn Defender Services represents approximately half of the people arrested in Brooklyn and almost all people facing loss of their children in the child welfare system. As you can imagine, we represent many people who are facing allegations of prostitution in Family or Criminal Court.

Day after day, mostly young, poor people of color are brought to court and accused of prostitution. Many, if not most, are victims themselves. Many have been trafficked to this country or to NYC from other parts of the country. Even if not technically trafficking victims, many are under the domination of another person, usually a pimp. Many have suffered in their family of origin. Many continue to be subject to domestic violence and are living in constant fear of abuse. Many prostitutes have young children, serious drug dependency or mental illness.

Until fairly recently, prostitutes were offered a short jail sentence if they plead guilty. Most people facing the choice of overnight in jail would accept this plea rather than have to return to court and fight the charges. This has always been true even though the evidence to support many of these prosecutions is weak. As the public defender in Brooklyn, we would prefer to require the police to prove these charges rather than see our clients face the collateral consequences of a criminal conviction, most particularly immigration consequences. It is also difficult for individuals to leave a life of prostitution behind them when they have a criminal record haunting them. However, the rules that have been established regarding the introduction of condoms at trial make it even harder for us to recommend trial for our clients.

On a positive note, however, many programs are now available to our clients to help them better their lives as opposed to receiving a criminal conviction. Of course, we have cooperated in the formulation and implementation of these programs in our borough.

And, Brooklyn Defender Services consistently offers wrap around services to our clients suffering with drug or alcohol abuse or struggling with mental illness. We have specialized attorneys and social workers for adolescents and veterans. And, in part due to the support of the City Council, we have one of the largest immigration practices in Brooklyn. We are privileged to be able to assist anyone who wants to leave the hard life of prostitution and we have been remarkably successful in obtaining special visas for trafficking victims.

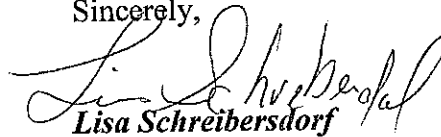
Several years ago a court-based program was developed where individuals charged with prostitution (*women, men and transgender alike*) were offered the opportunity to enter a program and make significant changes in their lives. Brooklyn Defender Services was proudly involved in the implementation of this program in Brooklyn. Now, virtually every person charged with prostitution in Kings County is offered the opportunity to enter a program that focuses on their individual needs and which results in dismissal of the charges against them.

Until sex workers are ready and able to change their lives, we certainly want to keep them safe. We also want to keep their customers safe along with people with whom they have intimate contact.

This bill promotes safety and the health of both sex workers and their patrons and is a further step toward a progressive approach to the issue of prostitution. It is a fact that some people will have to resort to selling their bodies in order to survive. However, as long as prostitution is illegal, it is humane to encourage good health and avoid unwanted pregnancies. By promoting safe sex and the use of condoms we have the chance to prevent devastating effects on their lives, the lives of their families and those who come into contact with them.

To persist in a system that discourages the use of condoms or allows a negative inference to be drawn from their possession is taking a step backward. This bill that is the subject of this resolution is a step forward in encouraging safety and keeping people healthy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Schreibersdorf', written in a cursive style.

**Lisa Schreibersdorf**

Executive Director

Brooklyn Defender Services

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 6/17/13

(PLEASE PRINT)

Name: Diane Barrera

Address: 92-10 Roosevelt Ave

I represent: Make the Road NY

Address: 92-10 Roosevelt Ave

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 6/17/13

(PLEASE PRINT)

Name: Pela Rivas

Address: 92-10 Roosevelt Ave

I represent: Make the Road NY

Address: 92-10 Roosevelt Ave

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 710-A

☒ in favor ☐ in opposition

Date: 6/18/13

(PLEASE PRINT)

Name: LAURA SAFT

Address: 177 Livingston Street Bklyn

I represent: Brooklyn Defender Services NY

Address: 177 Livingston St Brooklyn NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. A-710 Res. No. ✓

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Karina Claudio

Address: 301 Grove St

I represent: Make the Road NY

Address: 301 Grove St

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 710-2 Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Sharon Stapel

Address: 240 W 35th St Ste 200 NY NY 10001

I represent: New York City Gay and Lesbian

Address: Anti-Violence Project

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Michael Polenberg

Address: \_\_\_\_\_

I represent: Safe Horizon

Address: \_\_\_\_\_

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. A-710

☒ in favor ☐ in opposition

Date: 6/18/13

(PLEASE PRINT)

Name: Hayley Gorenberg

Address: 216 E 120 Wall St, 19th floor

I represent: Lambda Legal

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 710-A

☒ in favor ☐ in opposition

Date: 6/18/13

(PLEASE PRINT)

Name: Elizabeth Lvinger

Address: 446 W. 33rd St.

I represent: GMHC

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 6/18/13

(PLEASE PRINT)

Name: SOCHERITA MENG

Address: \_\_\_\_\_

I represent: NEW YORK CIVIL LIBERTIES UNION

Address: 125 BROAD STREET, NY NY 1004

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 710-A

☒ in favor ☐ in opposition

Date: 6-18-13

(PLEASE PRINT)

Name: Kate Mogulescu

Address: 49 Thomas St, NY, NY 10013

I represent: Legal Aid Society

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 710-A

☒ in favor ☐ in opposition

Date: 6/18/13

(PLEASE PRINT)

Name: Avdacia Ray

Address: 140 E 2nd St, Bklyn 11218

I represent: Red Umbrella Project

Address: 147 Prince St, Bklyn 11201

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 710-A

☒ in favor ☐ in opposition

Date: 6/18/13

(PLEASE PRINT)

Name: Roshido Richardson

Address: 65 Broadway, Suite 832

I represent: The Center for HIV Loward Policy

Address: 65 Broadway, Suite 832

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 0710-2011

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)  
Name: Steve Ashkinazy

Address: 391 10<sup>th</sup> Street Bklyn NY 11215

I represent: The Stonewall Democratic Club

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 6/18/13

(PLEASE PRINT)  
Name: LILLIAN RIVERA

Address: 2 ASTOR PL

I represent: HETRICK-MARTIN INSTITUTE

Address: 2 ASTOR PLACE NY, NY 10003

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 0710-2011

☒ in favor ☐ in opposition

Date: 06/18/2013

(PLEASE PRINT)  
Name: ANDREA RITCHIE

Address: 995 President St. Brooklyn, NY 11225

I represent: No Caudrus as Evidence Coalition

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 710 2011

☒ in favor ☐ in opposition

Date: 6/18/13

(PLEASE PRINT)

Name: JOHN CAROLLO

Address: 530 F GRAND STREET, #6D

I represent: NYPD LGBT ADVISORY PANEL

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 070-2011

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Hitchell Flara

Address: 147 W 24th St, Apt 1

I represent: Streetwise and Safe

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 710

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Jennifer Pierre 35th West 118th Street, Apt 3

Address: 305th Avenue, 3rd Floor, NY 10118 NY 10118

I represent: HUMAN RIGHTS WATCH

Address: 305th Avenue, 3rd Floor, NY 10118

Please complete this card and return to the Sergeant-at-Arms



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 0910-2011

☒ in favor ☐ in opposition

Date: 06/18/13

(PLEASE PRINT)

Name: Tina Vithn

Address: 147 W. 24th Ave

I represent: Streetwise and Safe

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 710

☒ in favor ☐ in opposition

Date: 06/18/13

(PLEASE PRINT)

Name: Lynly S. Egges

Address: 123 William St

I represent: Urban Justice Center Sex workers

Address: 123 William St Project

Please complete this card and return to the Sergeant-at-Arms