

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

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June 9, 2014
Start: 10:23 a.m.
Recess: 12:33 p.m.

HELD AT: Council Chambers
250 Broadway
Hearing Room, 14th Fl

B E F O R E:
VANESSA L. GIBSON
Chairperson

COUNCIL MEMBERS:
Vincent J. Gentile
James Vacca
Julissa Ferreras
Jumaane D. Williams
Robert E. Cornegy, Jr.
Chaim M. Deutsch
Rafael L. Espinal, Jr.
Rory I. Lancman
Ritchie J. Torres
Steven Matteo

A P P E A R A N C E S (CONTINUED)

James Vogel, Representative
New York State Senator Velmanette Montgomery

Velmanette Montgomery
New York State Senator

Dan Master
Chief Assistant District Attorney
District Attorney's office
Staten Island

Dan Donovan
District Attorney
Staten Island

Madeline Singas
Chief Assistant District Attorney
District Attorney's Office, Nassau County

Kathleen Rice
District Attorney
Nassau County

Pastor Gilford Monroe
67th Precinct Clergy Council

Andrea Ritchie
Streetwise and Safe
Communities United for Police Reform
Access to Condoms Coalition

Abigail Swenstein
Legal Aid Society

Lynly Egyes
Urban Justice Center

Bianey Garcia
Make the Road New York

Trina Vuitton
Streetwise and Safe

Mitchell Mora
Streetwise and Safe

Shelby Chestnut
Anti-Violence Project (AVP)

Margaret Worth
Human Rights Watch

Hayley Gorenberg
Deputy Legal Director
Lambda Legal

Beatrix House
The Red Umbrella Project

Elizabeth Adams
Planned Parenthood of NYC

Erin Drinkwater
Executive Director
Brooklyn Community Pride Center
Brooklyn's LGBTQ Community Center

Anna Sani
Voices of Community Activists
and Leaders -New York

Jarad Ringer
Board Member
PROS Network

Demetrius Thomas
Attorney, Public Policy Department
Gay Men's Health Crisis

Ivan Espinoza-Madrigal
Legal Director
Center for HIV Law and Policy

2 CHAIRPERSON GIBSON: [gavel] Good
3 morning everyone. Happy Monday. I am Vanessa
4 Gibson, Council Member and Chair of the Committee on
5 Public Safety and I welcome each and every one of
6 you, my colleagues in government and each and every
7 one of you here. Today's hearing will be testimony
8 on two resolutions. The first resolution is Res
9 0121, which recognizes every June as Gun Violence
10 Awareness Month in the City of New York. As we all
11 know, gun violence unfortunately impacts the lives of
12 New Yorkers on a daily basis. Often times, the
13 average New Yorker is not aware of the fact that gun
14 violence takes place everyday across our city. This
15 is because much of the gun violence in the City of
16 New York happens in a pocket of neighborhoods
17 throughout the city. To make matters worse, gun
18 violence has tendency to increase during the summer
19 months.

20 In 2011, shootings rose by nearly 120%
21 during the months of July and August in comparison
22 with the rest of the year. By declaring every
23 summer, every June as Gun Violence Awareness Month as
24 a city, we will be able to concentrate annual
25 heightened priority attention to gun violence at a

1
2 time when it is most prevalent. And we will have the
3 opportunity to bring all New Yorkers, community
4 activists, tenant leaders, and members of our clergy
5 together in the months leading up to June to discuss
6 ways in which we can end the cycle of gun violence.

7 Next, we will hear testimony Reso No.
8 0264, which supports two bills currently in Albany
9 that would prohibit using possession of a condom as
10 evidence in certain civil and criminal trials,
11 hearings or proceedings. Advocacy groups have been
12 hard at work on this issue for the past several years
13 because there is a genuine concern that the practice
14 of admitting possession of a condom into evidence has
15 a chilling effect on the regular the use of condoms.
16 Therefore, creating public health concerns.

17 The NYPD heard the advocates, elected
18 official and many others, and recently announced its
19 updated policy whereby they will limit the
20 circumstances under which condoms will be secured as
21 arrest evidence. While we have not yet seen the
22 NYPD's Updated Patrol Guide sections on this issue,
23 it is our understanding that condoms confiscated in
24 arrests such as promoting prostitution an sex

1 trafficking cases will continue to be invoiced as
2 arrest evidence.
3

4 Today, we'll be discussion the bills in
5 Albany that would prohibit this type of evidence in
6 all prostitution related offenses, which includes the
7 offenses of promoting and permitting prostitution as
8 well as sex trafficking. It is also important to
9 note that the bills currently in Albany also prohibit
10 possession of condoms as evidence in certain civil
11 cases. On a procedural note, today we will be voting
12 on Resolution Number 121, but will not be voting on
13 Resolution 264 today. I want to thank everyone for
14 attending today, for your presence.

15 I look forward to hearing testimony on
16 both of these resolutions before us, and before turn
17 this hearing over to the prime sponsors of both
18 resolutions, for the sake of time and colleagues do
19 have to leave for other pressing committee hearings.
20 I'd like to ask our committee clerk to begin a roll
21 call so that we will be able to take a vote on
22 Resolution 121, which recognizes every June as Gun
23 Violence Awareness Month in the City of New York.
24 Thank you.

2 CLERK: William Martin, Community Clerk,
3 roll call vote, Committee on Public Safety,
4 Resolution 121. Council Member Gibson.

5 COUNCIL MEMBER GIBSON: I vote Aye.

6 CLERK: Torres.

7 COUNCIL MEMBER TORRES: I vote Aye.

8 CLERK: Williams.

9 COUNCIL MEMBER WILLIAMS: Aye.

10 CLERK: Cornegy.

11 COUNCIL MEMBER CORNEGY: Aye

12 CLERK: Deutsch

13 COUNCIL MEMBER DEUTSCH: Yes.

14 CLERK: Matteo.

15 COUNCIL MEMBER MATTEO: Yes.

16 CLERK: By a vote of six in the
17 affirmative, zero in the negative and no abstentions,
18 the item has been adopted. Members, please sign the
19 Committee Report.

20 CHAIRPERSON GIBSON: Thank you very much,
21 and thank you colleagues. I know some of you have to
22 step out. So I think you for being here so that we
23 could vote on this very important resolution. And
24 now I'd like to turn this hearing over to my
25

1
2 colleague and the prime sponsor of Res 0121, Council
3 Member Jumaane Williams.

4 COUNCIL MEMBER WILLIAMS: Thank you,
5 Madam Chair, and thank you very much for having this
6 hearing, and working hard to get it out in the month
7 of June. I just want to recognize Council Member
8 Zack Reed from Cleveland who's visiting us today, and
9 has been very much trying to see how New York City is
10 dealing with gun violence, as he's dealing with some
11 of the similar things over in Cleveland. I'm happy
12 that we can officially declare Gun -- June as Gun
13 Violence Awareness Month in New York City. A similar
14 legislation is being proposed by New York State
15 Assemblyman Carine Camara and State Senator Ruth
16 Hassell-Thompson to designate the month as a
17 statewide initiative.

18 The city cannot stand by and do nothing
19 when shootings are on the rise especially in specific
20 neighborhoods. And just because summer is fast
21 approaching, it does mean that an increase in
22 violence, gun violence, stabbings, and other forms of
23 violence must increase. In collaboration with Gun
24 Violence Awareness Month, Co-Chair Tomika Mallory of
25 the Task Force to Combat Gun Violence and other

1
2 elected officials, Gun Violence Awareness Month
3 focuses to concentrate an annual heightened attention
4 to the issue of gun violence and gun safety in our
5 communities, as typically June is the month each year
6 when gun violence rises.

7 This month consists of a series of events
8 and actions aimed at raising awareness about the need
9 to end gun violence. Between last week's Not in My
10 Hood March and Resource Fair in Brooklyn, which
11 included Comptroller Scott Stringer, Speaker Melissa
12 Mark-Viverito, various elected officials; Shandi Al
13 Fada of GMAC [sic], the NWACP, Hot 97, W.B. Less
14 [sic], were among event participants. As I have
15 consistently stated, the resources and multi-layered
16 response to gun violence and other forms of violence
17 will go a long way toward addressing the underlying
18 causes of violence. And ending the penchant to
19 engage in this type of violence. Designating June as
20 Gun Violence Awareness Month is a very big first
21 step.

22 I want to say just because this gun
23 violence increases every summer, it's not something
24 that we have to, or something we must accept. We
25 need to view this violence as a public health issue,

1 and we need to really re-think how we're addressing
2 this issue. We need all agencies to be included in
3 how we deal with this issue. The NYPD, of course, is
4 an important partner in getting this violence down,
5 but they cannot be the only partner. We need the
6 Department of Mental Health and Community -- Mental
7 and Community Health. We need the Division of Youth
8 and Community Development. We need all of these
9 agencies working together to like a scalpel on these
10 communities.
11

12 We know which communities are the issues.
13 The same communities that we send the Police
14 Department in to help with these issues are the same
15 communities we have to send the other agencies as
16 well. And I don't believe we will fix this problem
17 until we really wrap our head around this. Until we
18 start funding the groups on the ground like Biased
19 Arrests [sp?], like Man of Ink [sp?], I Love My Life,
20 GMAC [sp?] or doing violence interruption work. [sic]
21 Man Up in Eastern New York has dropped. The 75th
22 Precinct needs to be number one in gun violence.
23 They have made it now in the third or fourth. They
24 had a precipitous drop in gun violence although it's
25 a small spike coming up now.

1
2 It's important that other groups like
3 that get funded. I think all of these things in
4 collaboration with NYD who are working on new focus
5 deterrence models, and all, in fact, of the agencies
6 working together is the key. I'm excited. I'm
7 hoping that by the end of June, this city will have a
8 comprehensive rollout. We'll have a rollout of
9 comprehensive response to the gun violence. And we
10 just will not accept that a spike has to happen.
11 Everybody has a part to play including the community.
12 The community has to hold itself accountable.

13 The community has to work with the Police
14 Department. We have to redefine what's snitching is.
15 There's confusion about what it is. We have to make
16 sure everybody understands their part that they have
17 to play. So I want to say thank you again, Madam
18 Chair, and thank you from my colleagues who are
19 supporting this. In particular, the Chair and
20 Council Member Cornegy have really been helping push
21 many of these things forward. I'm looking forward to
22 working with all of my colleagues on this. And we
23 ask everybody to go to www.gunviolenceawareness
24 month.org. It's www.gunviolenceawarenessmonth.org,
25 and you can hash tag [gvamnyc](https://twitter.com/gvamnyc).

1
2 I'm not confused. This passage,
3 hopefully, of this resolution, and a marches are not
4 what is going to solve the problem. It's what
5 happens after the marches, what happens after the
6 resolution and the resources we put forward that is
7 going to address the problem. As well as -- I'm
8 sorry. I forgot to mention the legislation that we
9 have to help deal with the influx of guns from down
10 South, and believe it or not, from other places in
11 New York State. Thank you.

12 CHAIRPERSON GIBSON: Thank you very much
13 Council Member Williams, and, you know, obviously
14 this is an issue that's near and dear to my heart as
15 well representing the Bronx. As someone who served
16 as a former member of the Assembly working with State
17 colleagues to affirm June as Gun Violence Awareness
18 Month in the State of New York, this is an everyday
19 reality that too many New Yorkers live with each and
20 every day. And as my colleague has said, gun
21 violence now has taken on a new form. And we don't
22 be creative in adopting those approaches that really
23 take no not just the social factors, the health
24 factors.

1
2 The fact that this is truly, truly a
3 crisis that we live in, and we must have a holistic
4 approach. And that's where Cure Violence and calling
5 on the Department of Health and various other
6 agencies. Not forgetting about clergy, but everyone
7 really coming together. There have been too many
8 lives disrupted, too many families devastated. And I
9 know my colleagues and I, we're always at funerals,
10 and it's extremely sad to look at a mother and father
11 and mourn the loss of a child. And know that there's
12 nothing we can do to bring that child back. But
13 certainly, we can reaffirm and recommit ourselves to
14 prevent those tragedies from happening down the line.

15 And so, I'm really proud that today we
16 can officially cast our vote and support this
17 resolution. It's important for so many reasons, and
18 really moving forward making sure that while June
19 would be the official month, each and every day that
20 we are blessed with an opportunity to serve the
21 public, we should always strive to reduce those
22 numbers. And change those statistics into success
23 stories. So I want to thank Council Member Williams
24 for his leadership and my colleagues for supporting
25

1 this very important resolution. And let me quickly
2 acknowledge my colleagues who are here with us today.

3
4 Members of the Public Safety Committee
5 Council Member Williams, Council Member Torres,
6 Council Member Cornegy, Council Member Matteo,
7 Council Member Deutsch, and also have been joined by
8 Council Member Menchaca, and Council Member Lander.

9 And now we will hear from co-sponsors of our second
10 resolution, which is Res 0264, which supports the
11 bills in Albany that prohibit using possession of a
12 condom as evidence in certain civil and criminal
13 trials, hearings, or proceedings, and if Council
14 Member Williams is okay... Would you like me to --
15 Would you like to speak on that Reso?

16 COUNCIL MEMBER WILLIAMS: Sure.

17 CHAIRPERSON GIBSON: Okay, I'll turn it
18 over and start with Council Member Williams.

19 COUNCIL MEMBER WILLIAMS: I've never
20 heard an elected official so nice. The Resolution in
21 Support of A.2736 and S.1379, which would amend state
22 law by prohibiting using possession of a condom as
23 evidence in a trial, hearing, or proceeding for any
24 offense defined in Article 2030 of Section 240.37 of
25 the Penal Law. NYPD recent announcement from

1 Commissioner Bratton announced it would stop
2 confiscating condoms as arrest evidence in
3 prostitution, prostitution in school zones, and
4 loitering for the purposes of prostitution cases.
5 NYPD should be applauded for that. At the same time,
6 this ban does not go far enough to protect vulnerable
7 New Yorkers as it does not extend to trafficking,
8 promoting and permitting offenses. Continued use of
9 condoms as evidence in these cases will have
10 unintended consequences of leaving victims of
11 trafficking and young people without protection
12 creating an incentive for traffickers to withhold
13 access to condoms for the people the control.

15 In addition, the changes were not
16 codified into law meaning they can be changed back at
17 any time or any particular administration. A recent
18 study showed that up to 50% of people surveyed have
19 not carried condoms at some point for fear that they
20 would be used by police or prosecutors to prove they
21 intended to engage in prostitution. NYC has long
22 been a place that promotes safe sex education. So
23 for police officers to arrest someone for possessing
24 condoms is not only unacceptable, but completely
25 backtracks the progress our city has made in

1 combating sexually transmitted diseases, and
2 unplanned pregnancies. I believe New York City even
3 has its own brand of condoms they're handing out.
4 Which kind of flies in the face of what's going on
5 now.
6

7 As Co-Chair of last sessions Stop,
8 Question and Frisk hearings, which ultimately limits
9 New York City's policing tactics that were abusive,
10 this issue was extensively discussed from
11 representatives in other communities, who like people
12 of more color were often more targeted by police
13 whether they actually engaged in sex work or not.
14 For that, I am glad there is continued momentum to
15 resolve this issue. Passing this bill may allow
16 people who are currently being sex trafficked to
17 negotiate for their own sexual safety. And the right
18 to use condoms while they are in a trafficking
19 situation. If sex traffickers are aware that condoms
20 are being used as evidence of sex trafficking, they
21 will simply prevent their victim from using condoms.
22 New York State needs to further restrict the
23 possession of condoms from being used in evidence in
24 all prostitution related offenses.
25

1
2 Today, the City Department of Mental --
3 the City Department of Health and Mental Hygiene and
4 also the County D.A.'s Office and dozens of community
5 groups who will testify before the Council Committee
6 in favor of Resolution No. 264. I thank you for
7 being here. I thank my partner in this, Council
8 Member Carlos Menchaca, who has been leading the way
9 in pushing this forward. As mentioned, I learned
10 about this during the hearings that I co-chair with
11 Stop, Question, and Frisk. And I learned from
12 members of the LGBT community of the embarrassment
13 made in the face -- as they testified police officers
14 actually violated them on going to private areas to
15 look for condoms that they then used on a charge of
16 prostitution.

17 That's a huge problem obviously, and I
18 feel that if one group is being profiled, then we are
19 all being profiled. And I hope that everyone who was
20 part of the Stop, Question and Frisk Reform will be
21 part of this as well. It was very powerful that a
22 community that many people did not think would be
23 able to come together like the LGBT community, like
24 the Black and Brown community came together and said,
25 This is a problem. This is as much of a problem now

1 as what we are battling, and continue to battle. And
2 I'm very proud to be helping shepherd some of this --
3 shepherd this legislation along with my colleague,
4 Carlos Menchaca. Thank you, Madam Chair.

5
6 CHAIRPERSON GIBSON: Thank you very much,
7 Council Member Williams, and I, too, want to thank
8 you for your leadership, and certainly support this
9 effort. I applaud the NYPD and Commissioner Bratton
10 for realizing that is policy should be changed. And
11 as my colleague has indicated, certainly, we need to
12 go a step further, and that requires Albany
13 legislation so that we can change State law. So I'm
14 really proud to support this effort, and work with my
15 colleagues so that during this legislative session in
16 Albany right now there are two weeks left. But
17 hopefully, we can get some action and make sure that
18 these bills will pass. And now, I turn this hearing
19 over to the co-sponsor as well working with Council
20 Member Williams. Certainly an advocate and a leader.
21 They've done so much incredible work to get us to
22 this point. I want to recognize Council Member
23 Carlos Menchaca.

24 COUNCIL MEMBER MENCHACA: Thank you,
25 Chair Gibson, for that, and buenos dias, everyone.

1 So my name is Carlos Menchaca, Member of the City
2 Council, and I'm honored to serve also as the Chair
3 of Immigration. This morning this committee will
4 consider and discuss Resolution 264 in support of
5 A.2736 and the Senate 1379, which would amend state
6 law by prohibiting using possession of a condom as
7 evidence in prostitution and prostitution related
8 trial, hearings, or proceedings. I'm proud to be
9 championing this resolution with the Chair of the
10 Committee on Housing, Council Member Williams. Thank
11 you also to the Chair of Public Safe Council Member
12 Gibson for allowing this important resolution to
13 appear at this public hearing bringing much needed
14 attention to, and conversation around an incredibly
15 important issue. Thank you most especially to the
16 many advocates in this room who have on behalf of so
17 many New Yorkers are working fearlessly dedicated
18 their entire lives really to figure out how we can
19 solve this issue. And ensuring that our justice
20 system lives up to its fullest, fullest potential.

22 Almost everyday as I talk to my
23 colleagues in the City Council and to advocates about
24 this resolution, I'm reminded that this cause is one
25 that is multi-layered in some of the most significant

1 ways. We said earlier today that this is a kind of a
2 victim's rights bill, and a public health bill all
3 wrapped up in one. Of course, this is a public
4 safety issue because it has everything to do with the
5 way our communities. Many disenfranchised interact
6 with our public safety system. It is an issue of
7 public health because we continue to deal with the
8 realities of sexually transmitted diseases and
9 infections, and this proposed ban will encourage
10 everyone to think more holistically about their
11 behaviors. It is an issue that affects the LGBT
12 community, particularly those who are young, of
13 color, low income backgrounds and as they continue to
14 be burdened by the realities of the system that
15 unfortunately works against their very being in many
16 ways. And, of course, it is an immigrant issue
17 because the immigrant population in our city
18 continues to be one of the most vulnerable for
19 arrests and for prostitution.

21 In short, supporting this resolution --
22 in supporting the simple reality that the condoms are
23 safe for all to carry. And these are the same
24 condoms we're spending so much money every year
25 getting out into the community in bars and non-

1 profits. And so, we must send a clear message to the
2 State Legislature that in this city we care about
3 health, about safety, and about vibrant communities
4 that live here. It must be with resounding clarity
5 that we express our support for the type of
6 legislation, this legislative action that encourages
7 the behaviors that we so violently support in the
8 city.
9

10 And that discourages the type of
11 practices that continue to fracture our system.

12 Thank you again for your participation, for work on
13 advocates. And it just gives me so much pleasure to
14 be partnering up with our Chair of Housing Council
15 Member Williams. And as we continue to work together
16 as a team all our Council, City Council colleagues,
17 you're just going to see some very fierce and very
18 clear messages about our work here. So thank you,
19 Chair for your time.

20 CHAIRPERSON GIBSON: Thank you very much
21 Council Member Menchaca, and we have been joined by
22 two additional members of Public Safety, Council
23 Member Espinal and Council Member Vacca. And I'd
24 like to turn it over to our Committee Clerk for
25 further votes.

2 CLERK: Resolution 121, Council Member
3 Vacca.

4 COUNCIL MEMBER VACCA: I vote aye.

5 CLERK: Espinal.

6 COUNCIL MEMBER ESPINAL: Aye.

7 CLERK: The vote now currently stands at
8 eight in the affirmative.

9 CHAIRPERSON GIBSON: Thank you very much,
10 colleagues, and now I will call up the first panel.
11 James Vogel representing State Senator Velmanette
12 Montgomery; Dan Master from the Staten Island
13 District Attorney's Office; D.A. Dan Donovan;
14 Madeline Singas from Nassau County; Kathleen Rice,
15 District Attorney's Office.

16 [background discussion]

17 [Pause]

18 JAMES VOGEL: Good morning. I'm Jim
19 Vogel, and I'm speaking on behalf of my boss, Senator
20 Montgomery, who is stuck in Albany today. Okay.
21 This is Senator's Montgomery's statement:

22 I offer my deepest thanks to all the
23 advocates, to Council Members Gibson, Williams, and
24 Menchaca for binging this resolution before the
25 Committee, and to the Committee for your

1
2 consideration of what I feel is an urgent matter of
3 civil rights, public health, and common sense.

4 In New York State, it is currently
5 permissible practice for police and other law
6 enforcement officials to stop someone. And upon
7 finding during a search one or more condoms to arrest
8 and charge that person with multiple crimes using the
9 presence of condoms as evidence of prostitution,
10 patronizing a prostitute, promoting prostitution,
11 permitting prostitution, maintaining a premises for
12 prostitution, lewdness, or assignation, or
13 maintaining a body house.

14 People are astonished to find that this
15 is a current law. We are in the 30th year of an
16 ongoing health crisis, the scourge of AIDS. We
17 promote safe sex and public service announcements.
18 New York City wisely makes condoms available
19 throughout the City in ubiquitous bowls in bars,
20 restaurants, hotels, and just about everywhere. And
21 yet, we still have the contrary reality that carrying
22 condoms can get you arrested. We claim to promote
23 public health, but we penalize everyone, particularly
24 sex workers, for actively promoting personal and
25 public safety. I cannot believe this is the will of

1
2 the people. This is very hard to explain to people,
3 and when you finally convince them that you aren't
4 making a bad joke, they immediately grasp the
5 seriousness of the situation.

6 I would like to quote from a comment on
7 my legislation offered online by a constituent who
8 signed himself as Druid Lens [sp?]. Even as a
9 retired attorney, I had no idea that the mere
10 possession of condoms would be able to be used
11 against someone in a prostitution trial or a civil
12 proceeding. Who drafted that law, the Vatican? What
13 a crock. It demeans women and men who want to have
14 safe sex, encourages the spread of AIDS and is, as
15 they say in the law, stupid, stupid, stupid. Okay,
16 they don't say that in the law, which is why I am now
17 a tour guide.

18 While I am encouraged that New York City
19 Police are taking a modified approach to the
20 application of the power, I strongly feel we must
21 speak clearly and strongly in regards to the public
22 intent to maintain public health. The current
23 practice designed as it is to exploit loopholes that
24 unintentionally continue the suffering and deaths of
25 thousands cannot be remedied by modified practices.

1
2 We must speak with one voice through clear and
3 unequivocal legislation that this practice is
4 impermissible within the State of New York.

5 I would like to close by quoting another
6 constituent's comments. Bill Mian [sp?] wrote: Any
7 activity? Will it, the Bill, simply languish there,
8 die in committee and be re-introduced next session,
9 again? Perhaps the legislative history should also
10 reference the number of new reported HIV-AIDS cases,
11 and the number of HIV-AIDS deaths for that
12 legislative session. The numbers for new infections
13 and deaths will be reduced by passage of this bill.
14 Failure to pass guarantees an increase in both
15 infection and death of New York residents.

16 He was commenting on the bill that was
17 sent through the Judiciary on January 9th, of 2013.
18 His comment was mailed April 23rd, 2013. I hope we
19 do not keep Mr. Mian waiting any longer, nor any of
20 the hundreds of thousands who agree with him that
21 immediate action must be taken. It is my hope and my
22 believe that with the passage of this Resolution from
23 the Public Safe Committee of the New York City
24 Council that the wishes of the people of New York
25 City will be clearly heard and respected. And that

1 we can finally end this dangerous practice across New
2 York State once and for all.

3 I thank you for your consideration and
4 support of Senate 1379. Respectfully, Velmanette
5 Montgomery, Senator, 25th District.

6 CHAIRPERSON GIBSON: Thank you very much.
7 Thank you. You may begin.

8 DAN MASTER: Thank you, Madam Chair and
9 the members of the Committee for this opportunity to
10 appear before you today. My name is Dan Master. I'm
11 the Chief Assistant District Attorney of Staten
12 Island, and I'm here to testify for my boss Dan
13 Donovan, District Attorney for Staten Island. First,
14 let me say that for the ten years that Dan Donovan
15 has been District Attorney of Staten Island, our
16 office has never used the possession of condoms as
17 evidence of prostitution in the prosecution of
18 loitering for the purpose of prostitution cases under
19 Section 240.37 of the Penal Law.

20 That scenario seems to be the one most
21 often stated by the proponents of the legislation in
22 question today. It's important for New York to
23 encourage safe practices, and it is a laudable to
24 save lives by not discouraging individuals from
25

1 carrying condoms out of fear they'll be arrested and
2 charged with a prostitution offense. While we are in
3 widespread agreement with the goals and purposes of
4 this legislation, we feel that a blanket prohibition
5 on the use of condoms as evidence may be imprudent.
6 Let me be clear. The condom possession evidence
7 would be used by my office to prosecute traffickers
8 and those who patronize underage victims, not
9 prostitutes themselves. The legislation does not on
10 its face appear to distinguish between used and
11 unused condoms. While we agree the possession of
12 four or 40 or 400 condoms should be used as evidence
13 of admission that a person was in possession of one
14 or more condoms for any offenses defined in the
15 articles quoted.
16

17 This legislation prohibits the admission
18 of evidence that a person was in possession of one or
19 more quotes, quote "for any offense defined in
20 Article 230" of the Penal Law. Article 230 includes
21 Section 230-06 of the Penal Law, Patronizing a
22 Prostitute in the First Degree, in which a person
23 patronizes prostitution and the person patronized is
24 less than 11 years of age, which would be a D Felony.
25 If, for example, a man were to patronize a 10-year-

1
2 old male or female prostitute, and the man retained
3 the used condom, we as prosecutors would want that
4 condom with the man's and the 10-year-old's DNA as
5 evidence.

6 Pursuant to this legislation, it appears
7 that the condom would be inadmissible as evidence to
8 prove that the man committed the D Felony.
9 Similarly, we can envision sex trafficking cases also
10 included in 230. That would be bolstered by the use
11 of condoms as evidence to be used against the
12 trafficker. This being said, we do believe the goals
13 of this legislation to be laudable, and we hope the
14 legislation can be tweaked even further to protect
15 the rights and lives our citizens. Thank you very
16 much

17 CHAIRPERSON GIBSON: Thank you very much.
18 You may begin.

19 MADELINE SINGAS: Thank you. Good
20 morning.

21 COUNCIL MEMBER: Good morning.

22 MADELINE SINGAS: Is this working?
23 [Pause] I think I've got it now. It's working now.
24 Okay. Thank you. My name is Madeline Singas. I'm
25 the Chief Assistant District Attorney in the Nassau

1
2 District Attorney's Office. I'm here representing
3 our office, and specifically my boss Nassau County
4 District Attorney Kathleen Rice, who also serves as
5 the President of the New York State District
6 Attorney's Association.

7 Almost two years ago D.A. Rice and I
8 instituted a comprehensive policy of banning the use
9 of condoms as evidence in all prostitution related
10 cases including trafficking and promoting cases.
11 D.A. Rice and I got involved in this issue in the
12 wake of the Human Rights Watch Report painting the
13 stark picture of what was happening in city streets
14 across the country, including New York and Long
15 Island. And we were blown away by its conclusion.
16 Mounting evidence makes clear that police seizures
17 and trial prosecutions using condoms as evidence
18 makes sex workers significantly less likely to carry
19 and use condoms when working. Prosecutorial
20 discretion is wielded and balanced at the top of
21 scale that weighs our measurements of the non-
22 financial public loss and benefits of legal action.

23 In fact, much of what we do from granting
24 leniency to co-conspirators assisting the authorities
25 to deciding whether to hold the line on an offender

1 and take him or her to trial is an exercise of a very
2 precarious and subjective cost benefit analysis aimed
3 at maximizing the public good. Typically, finding
4 the public good leads prosecutors to evaluate
5 decisions squarely in the context of the public's
6 safety. But in this instance, that definition must
7 also include the public's health. Prosecutors must
8 play the long game when it comes to banning condoms
9 as evidence of crime. Thankfully, we have a long
10 history of making decisions based on the long game.
11 We cut deals for less violent co-conspirators to get
12 the killer, to low level drug dealers to get the
13 kingpin, and to small time crooks to get the
14 mastermind.

15
16 We've made a profession out of leveraging
17 short-term concessions. In this case a very small
18 evidentiary game is rarely used in court for long-
19 term public gains. That's what we should do here.
20 Under any reasonable analysis, the seismic public
21 health impact of using condoms as evidence of
22 prostitution dwarfs the extremely courtroom gain, and
23 the isolated number of cases that make it that far.
24 With this issue, the public good rests in the long
25 gain not the short one. The same is true not just in

1
2 those cases involving prostitution, but also those
3 involving trafficking and those against pimps and
4 Johns.

5 Since I instituted the policy in our
6 office, a few DAs have agreed to join us in banning
7 their prosecutors from using condoms as evidence
8 against prostitutes, but not against pimps and
9 traffickers. We understand their concerns, but we
10 don't agree with them. To us, it doesn't make
11 logical sense to exclude this group of people because
12 what will happen is traffickers and pimps won't only
13 refuse to supply condoms for their workers, they will
14 prohibit their use out of prosecution fear. That
15 would be a nightmare scenario, and it's one we can
16 easily avoid. Again, we looked at the cases in our
17 office as evidence of this. These condoms even
18 against these worthy defendants don't play much, if
19 any, role in their eventual trial prosecution. We
20 quite simply aren't giving up that much by agreeing
21 not to use them against pimps and traffickers.

22 So we've chosen to play the long game,
23 and side with the public health. And at the same
24 time figure out ways to make these cases stronger
25 with other evidence against traffickers and pimps

1 separate from condoms. It can be done. We are doing
2 it Nassau, and I'm confident not a single case
3 against the Johns or the pimps or the traffickers
4 will be affected by it. With condoms the evidence's
5 only power is in its enduring and fortunate ability
6 to deter safer sex in this industry. Put simply, we
7 trust that our ADAs have the skills and the evidence
8 to make their trafficking cases without putting the
9 health and reproductive rights of trafficking victims
10 at risk by creating additional deterrents to condom
11 access for our trafficking victims.
12

13 Because most state prosecutor's policy
14 when it comes to condom seizures and evidence don't
15 conform with the smart and long-term view of how to
16 promote the public safety and health, it is important
17 that Albany get involved and ban their statewide --
18 ban their use statewide like we've done in Nassau
19 County. Until we do, sex workers, many of whom are
20 children and trafficked and highly exploited, will
21 continue to be put at risk. When it comes to HIV,
22 it's not a hyperbole to say that this is very much a
23 life and death policy decision. Criminal justice
24 policy can fail when it is undermined by competing --
25 competing public policy from a separate unit of

1 government. In this instance public policy and
2 governments across the country, including New York's,
3 have embraced efforts to make condoms readily
4 available to sex workers.
5

6 None of these governments condone the sex
7 industry, yet they still wisely choose to play the
8 long game when faced with such a dangerous
9 alternative. It's time for prosecutorial policy to
10 stop offering a competing message to sex workers.
11 Prosecutorial discretion doesn't work best as an
12 absolutist win-at-all-costs paradigm. It works best
13 as a complex amalgam of human costs and public
14 benefit. In this instance, I believe our action is
15 evidence that prosecutors can do a better job
16 understanding and weighing both sides of this
17 important equation. And that we can confront
18 government when it's sending conflicting messages.
19 Thank you for having me here today. Unfortunately,
20 D.A. Rice could not attend because of a scheduling
21 conflict.

22 CHAIRPERSON GIBSON: Thank you very much.
23 I appreciate your presence here on behalf of you
24 bosses. I know them all very well, and so we send
25 our warmest regards and appreciate you being her

1
2 testifying on their behalf. I want to recognize the
3 presence of another colleague, Council Member Vinny
4 Gentile, and also I know we have a question and
5 comment for one of my colleagues. I guess my first
6 question is Nassau County has essentially just done
7 this change without State Law, right?

8 MADELINE SINGAS: Yes, that's correct.
9 That's an office policy.

10 CHAIRPERSON GIBSON: Do you know other
11 states that have changed their civil and criminal
12 law? That have reflected what we're trying to do in
13 Albany.

14 MADELINE SINGAS: I'm not aware of any.
15 I think probably he advocates have a better idea
16 about that.

17 CHAIRPERSON GIBSON: Okay. Just to throw
18 it out there. Thank you very much, and now we'll
19 hear from Council Member Manchaca.

20 COUNCIL MEMBER MENCHACA: Thank you,
21 Chair Gibson, and actually, I want to follow up on
22 that line of questioning, Ms. Madeline, about the
23 work post-decision, and any repercussions or effects
24 that it's had both positive or negative since this
25 change was made.

1
2 MADELINE SINGAS: You know, I think the
3 community at large is very thankful that D.A. Rice
4 took a public health stance, which coincided with
5 public safety. We haven't seen any ramifications
6 detrimental in our office when we decided to stop
7 using condoms. Again, cases are not made just on
8 evidence of condoms. You need testimony. You need
9 witnesses. All of that doesn't change just because
10 you do or do not have condoms. So we focus on that
11 evidence. We try to strengthen our cases. It is by
12 no means an indication that we are soft on these
13 crimes. We very vehemently oppose sex trafficking in
14 the state, in the city, in our county, and we train
15 our prosecutors to find other evidence and strengthen
16 our cases that way.

17 COUNCIL MEMBER MENCHACA: Thank you.

18 CHAIRPERSON GIBSON: Thank you Council
19 Member Menchaca. Now, we'll hear from Council Member
20 Williams.

21 COUNCIL MEMBER WILLIAMS: Thank you. I
22 had a question for -- I'm sorry, the D.A, an I.D.?

23 DAN MASTER: Dan Master.

24 COUNCIL MEMBER WILLIAMS: Dan Master.
25 So, I just want to hear your response to those who

1
2 are saying, and I heard your testimony. But saying
3 that the traffickers will essentially stop using the
4 condoms, stop allowing the people they're trafficking
5 to use condoms. And you were kind of saying the
6 opposite of that I guess. That you're only going to
7 charge traffickers. So I want to hear your response
8 to that.

9 DAN MASTER: First let me say that we on
10 Staten Island have probably the least amount of
11 experience with prostitution cases of anyone on this
12 panel. We share a vice squad with Brooklyn. We
13 don't have our own vice squad, and the time that they
14 spend on Staten Island is essentially to put police
15 decoys out in the street, and we arrest Johns, and
16 that's our prostitution caseload. So we don't know
17 what would happen in a trafficking case. We know
18 what we read, and we know what other people speculate
19 with respect to these matters. But we don't have the
20 experience in our borough, at least not yet. We
21 haven't done sex trafficking cases. Perhaps we could
22 be better informed by listening to what other
23 people's experiences have been.

24

25

2 COUNCIL MEMBER WILLIAMS: Did I hear
3 wrong? I thought I heard you say that you would
4 still use it in trafficking cases.

5 DAN MASTER: I said that we would in -- I
6 speculated --

7 COUNCIL MEMBER WILLIAMS: [interposing] I
8 see.

9 DAN MASTER: -- that if there were a
10 situation where we believed that the evidence of
11 holding the condoms would be -- would help our case
12 that we would like to seize those condoms. I think
13 this issue is going to be ironed out, or may be
14 ironed out in the Patrol Guide. We haven't seen the
15 Patrol Guide yet. Many of these cases, especially
16 trafficking cases, are done by special police units.
17 And when a special police unit does something, it's
18 often done quite differently than when a patrol unit
19 does something. And the special units go in knowing
20 what they're going to seize and for what reason.
21 Patrol might not be able to make those distinctions.
22 So I think we'd be very interested before we take a
23 final position on this to see what the Patrol Guide
24 is going to say about this.

2 COUNCIL MEMBER WILLIAMS: Do you have a
3 response to-- Even if you're saying that you would
4 still do the trafficking, do you have a response to
5 the criticism of what that might do? Or are you
6 saying you're not sure now, and you want to wait to
7 hear?

8 DAN MASTER: Well, I'm not sure, and I
9 would want to wait to hear, and I think it's
10 speculation as to what traffickers would do.

11 COUNCIL MEMBER WILLIAMS: I just want to
12 be clear. In your testimony you said that you would
13 use it still for trafficking.

14 DAN MASTER: I believe I said that we
15 could foresee instances--

16 COUNCIL MEMBER WILLIAMS: [interposing]
17 Okay.

18 DAN MASTER: -- in which we would like to
19 have that opportunity to use that as evidence. We as
20 prosecutors have to prove-- We have the burden of
21 proof--

22 COUNCIL MEMBER WILLIAMS: [interposing]
23 I'm sorry. Honestly, I understand what you're
24 saying. I'm just unclear because you're saying you
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COMMITTEE ON PUBLIC SAFETY

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could foresee using it, but you want to wait to hear what people are saying?

DAN MASTER: I would like to see how the speculation pans out, and where it has happened in other places before I would want to take a final position on whether we would want them seized or not.

COUNCIL MEMBER WILLIAMS: So you could foresee it, but it may change?

DAN MASTER: Yeah, I'd like to see what happens in the Patrol Guide. I don't want to-- this is not an intentional pun, but that's -- that's going to be where the rubber hits the road. Sorry for that. [laughter] And we'll see how the policy is translated into practice.

COUNCIL MEMBER WILLIAMS: Okay. Thank you.

CHAIRPERSON GIBSON: Thank you very much, Council Member Williams. Council Member Gentile.

COUNCIL MEMBER GENTILE: Thank you. Thank you, Madam Chair. Were the -- For Ms. Rice office. I'm sorry, I don't know your name.

MADELINE SINGAS: It's Madeline Singas.

COUNCIL MEMBER GENTILE: Ms. Singas, okay. I'm curious because the State Island D.A. did

1 mention patronizing prostitution in the first degree,
2 which involves the age of the person being patronized
3 being less than 11 years of age. In that case, D.A.
4 Donovan said if, in fact, if a condom was recovered
5 as part of that arrest, they might want to use that
6 condom with the -- with the person and the one
7 patronized, the one that's under 11 years old. The
8 DNA that could be found in that condom as evidence in
9 that case when prosecuting for someone who is being
10 patronized who is under 11 years old. I would like
11 your comment about that, and how your office handles
12 that 230.06 of the Penal Law.

14 MADELINE SINGAS: No, we handle that. We
15 prosecute using child witnesses. We have ADAs who
16 are specially trained to speaking with children. You
17 know, DNA evidence in condoms, I've been doing this
18 for 23 years. I have yet to find it on a condom
19 using the case with a child. The spermicide in
20 condoms lots of times just destroys DNA evidence
21 altogether. I think, you know, again I'm not saying
22 that there isn't an isolated case where a condom
23 might be helpful to us. I have yet to come across
24 that case realistically, practically in our office.
25 I'm not saying it doesn't exist. I'm not saying that

1
2 that evidence wouldn't be helpful. What we're saying
3 is that as a policy, we believe that public health
4 needs to take a higher importance in that case. In
5 all cases that a public policy where we're seizing
6 condoms for the rare case so we can get some DNA
7 evidence. We're supporting not using those condoms,
8 and working on other ways to prosecute those crimes.
9 Again, you know, working with our witnesses. Working
10 with our police officers using all sorts of other
11 evidence that are available to us. So again, we're
12 not saying that it's never a situation where it might
13 be helpful. We're just taking the long haul, and
14 looking at the long game, and saying that public
15 health demands us to allow people to carry condoms to
16 protect sex workers in general, and those same
17 children.

18 COUNCIL MEMBER GENTILE: Okay, and my
19 staff counsel just reminded us that the legislation
20 talks about just the mere possession of, not the use
21 of the condom. And that's the subject of the bill.
22 So thank you. Thank you very much.

23 CHAIRPERSON GIBSON: Thank you Council
24 Member Gentile. Next, Council Member Deutsch.

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COUNCIL MEMBER DEUTSCH: Thank you very much. I just want to reiterate something that my colleague just said that when, you know, when would they use a condom as evidence? And probably you cannot make an arrest by just finding a condom on someone. So I would assume that, um, that if services were offered by a prostitute that that would be enough evidence to make an arrest. So that should be enough. So you wouldn't need to go to vouch a condom, and use it for evidence. Now, you just mentioned that you might use it for DNA, but that would be like in a case that is actually a rape. And I should say that if it is a rape case that you would want to use every single piece of evidence with such a case. So, I still don't understand why would you use a condom and offer that as evidence in what type of case?

DAN MASTER: I was going to point out to help clarify Council Member Gentile's statement that this would be actually a situation where we could apply two statutes. The one would be patronizing the under aged prostitute, and the other would be a rape. And the rape would actually be a higher level felony, a D felony. And again, here's where the Patrol Guide

1 would be helpful. If the police are looking at that
2 as an underage victim case, they would probably not
3 collect the condom. If they're looking for it as a
4 rape case, they might collect the condom. Again, I
5 don't know because that's going to be ironed out in
6 the Patrol Guide. But even in the example that I
7 posited where an older person might retain the condom
8 after having sex with an underage victim, we would be
9 in the position to bring that as a rape case, not
10 just patronizing a prostitute in the first degree
11 case. We would have an option there.

12
13 COUNCIL MEMBER DEUTSCH: Yeah, I still
14 don't understand, an age case would be an arrest?
15 You said an underage, having sex with an underage
16 child, but that's an arrest. There's no need to
17 gather, to have the condom as evidence?

18 DAN MASTER: It might bolster the case if
19 it was a used condom and there was DNA evidence.

20 COUNCIL MEMBER DEUTSCH: Yes.

21 DAN MASTER: If I might. There is
22 nothing in the legislation that precludes the use of
23 condoms as collection devices for evidence. This
24 legislation is all about not using as evidence the
25 mere presence of unopened condoms or even opened

1
2 ones. There's nothing that precludes using a condom
3 as evidence, but using it as the excuse for an
4 arrest, that's what this is for. If you have reason
5 for an arrest, you have every right to use all the
6 evidentiary tools that are at your disposal, which
7 include used condoms. But you cannot under this
8 legislation use the presence of someone carrying a
9 closed condom or even an open condom that has not
10 been used, or in which there has been no evidence
11 that there has been a crime. You cannot use that as
12 a reason to arrest someone. I just want to be clear
13 about that. This does not say you can't use them.

14 COUNCIL MEMBER DEUTSCH: [interposing] So
15 is that going to be used as evidence, a used condom
16 or a closed condom?

17 DAN MASTER: The presence of a used
18 condom is not the target of this particular
19 legislation, and as D.A. Rice's testimony has given,
20 it is a matter of balancing. It's a matter of
21 closing a loophole, which is being used, which is
22 having the unfortunate result of having a chilling
23 effect on the use of condoms on sex workers. Which
24 is leading to huge, huge suffering in this community.
25 Now, whether or not there are other evidentiary uses

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for condoms, there well may be, but this does not preclude using them.

MADELINE SINGAS: So I can be clear, D.A. Rice's policy, our office doesn't use them in patronizing promoting. But we use condom evidence in rape cases, which the example of the 11-year-old would be. So ours is a strictly promoting, patronizing, trafficking ban, not a rape ban.

COUNCIL MEMBER DEUTSCH: So again--

MADELINE SINGAS: Do you understand that?

COUNCIL MEMBER DEUTSCH: I understand it, but again unused condoms or closed condoms was never used as evidence because it cannot be used as evidence because that's not a crime, but the crime --

MADELINE SINGAS: [interposing] Well, apparently in the streets it has been as cause for arrest whether or not it has risen to the level--

COUNCIL MEMBER DEUTSCH: [interposing] So that should be -- that should be considered a false arrest if you're arresting someone for an unused condom.

MADELINE SINGAS: Well, they're saying that if they arrest someone for prostitution, and the basis is their observations and the fact that they

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have five condoms on them, those arrests come to the attention of our offices, what each particular office decides to do. I think what we're saying is just the mere presence or people carrying condoms shouldn't be used against them in our courts of law.

COUNCIL MEMBER DEUTSCH: So the question is do we know how many cases in New York City that people were arrested by just carrying condoms? I don't know if we have those numbers. I would love to see those numbers. Observation would mean -- observation might not be enough to make an arrest. It would have to be some type of offer of sexual acts to make an arrest, and there had to be also probably reported. So, I'm just still trying to figure out, you know, someone would be-- Why you would use evidence of someone who is carrying an unused, or closed condom?

DAN MASTER: We wouldn't and we haven't.

CHAIRPERSON GIBSON: Council Member, we'll get that information to you.

COUNCIL MEMBER DEUTSCH: Okay, thank you.

CHAIRPERSON GIBSON: Committee Clerk.

CLERK: Resolution 121, Council Member Gentile.

2 COUNCIL MEMBER GENTILE: I vote aye.

3 CLERK: The vote now stands at nine.

4 CHAIRPERSON GIBSON: All right, we're
5 getting there. Thank you. Council Member Menchaca.

6 COUNCIL MEMBER MENCHACA: Thank you Chair
7 Gibson. I just want to come back to a point that was
8 made earlier about the Patrol Guide, and having some
9 experience with a lot of advocates actually in the
10 same room when there was a recent change in the NYPD
11 Patrol Guide that allowed for the definition of
12 gender. That's another case, but what I want to say
13 is that the Patrol Guide doesn't get at the issue
14 itself that we're discussing here today. And so, the
15 gapping the holes that the current movement in the
16 NYPD, which we're very thankful that if the changes
17 were made, it doesn't get at the entire scope of what
18 the legislation that Senator Montgomery and
19 Assemblywoman Clark are proposing. So we really
20 don't -- We're not going to see much difference in
21 the culture of what's happening on the ground right
22 now. And so, if they can be picked up, and they do
23 and we're going to hear from the testimony today of
24 how people are just picked up because they have
25 condoms on them. That's going to continue,

1
2 unfortunately, in this post-NYPD change. And so I
3 just want to make sure that everyone is aware of
4 that. That we don't get to a solution. Thank you.

5 CHAIRPERSON GIBSON: Thank you very much,
6 Council Member Menchaca. And we'd like to thank each
7 of you for being here. We have Senator Montgomery,
8 D.A. Donovan, and D.A. Rice. Thank you very much for
9 your presence today. And our next panelist is Pastor
10 Gilford Monroe from the 67th Precinct Clergy Council
11 here to speak on behalf of Res 0121.

12 [Pause]

13 PASTOR MONROSE: Good morning, and good
14 morning to my esteemed Council Member Jumaane
15 Williams, and the rest of the Council Members and
16 Madam Chair. Following the protocol, I'm here to
17 represent my boss, which is God the Almighty. I'm
18 also here representing members of the Clergy and
19 contents of the 67th Precinct. I just really want to
20 lend my voice in support. Normally, every Friday we
21 see a report from the NYPD, and I just really want to
22 read some of these stats that come to us every
23 Friday. It says that the communities of Brownville,
24 that's in the 33rd Precinct and East Side [sic]of the
25 67th Precinct have each experienced the greatest

1
2 amount of murders in 2014, and this holds true for
3 the past 30 years.

4 And now they show that 100% of the
5 victims are males with 85% being African-American,
6 and 23% of them being between the age of 18 and 24.
7 Notably, 92% of the victims have some degree of
8 criminal background. Saturday, Sunday, and Monday
9 continue to be the most dangerous days of the week,
10 accounting for 38% of the murders. The murders have
11 predominantly occurred during the evening or early
12 morning hours. In terms of motives, job-related
13 murder account for 22% of all murders while 15% are
14 related to the streets. So what we have seen is
15 presently 83% of the murder victims are African-
16 American. So this report shows us three things.
17 Number one, we know who's been killed. Number two,
18 we know where they're being killed, and number three,
19 we know how is actually doing the shootings.

20 So I think our discussion, and even as
21 members of the clergy, we talk about interrupted.
22 And we have a good non-profit organization who
23 continue to do this work. But I think that the house
24 of worship and members of the clergy do have a moral
25 responsibility. And also an obligation to do more

1 when it comes to gun violence in our communities.

2 One of the things that we have done in the Council of
3 the 67th is that we have offered our services, our
4 churches to anyone who suffers, who is murdered.

5 Unfortunately, we provide counseling. We provide the
6 funeral service for free of charge. We offer our
7 services to our churches, and also, too, we have
8 members of our community also have all the parents
9 who -- of murdered sons.

10 We formed a support group to help them
11 navigate the complexities of the government. But
12 also try to help and navigate through -- helping them
13 either number one move out of the neighborhood. And
14 number two, work with the community to resolve this
15 grief that happens in our communities. So, I came to
16 number one support the need that we need to
17 highlight, the fact that we need to look at
18 definitely that June should be the Gun Violence
19 Awareness Month. But the second piece is that we
20 know where the shooting happens. If we know exactly
21 the areas that it happens, I think that our response
22 should be in turn. That we should definitely give
23 the funding to the organizations who are in those
24 areas.

1
2 I just want to say one last thing.
3 Historically speaking, members of the clergy who
4 number one are especially from the Caribbean and
5 Council Member Jumaane Williams, who served what we
6 call Little Caribbean. Most shootings and highlights
7 in Harlem, in East New York and Brownsville in
8 Bedford Stuyvesant historically out of this arise
9 era [sic], you would have those voices coming from
10 the African-American churches who are well
11 established to talk about gun violence. And I think
12 that we can see that if you look in the context of
13 the 67th or Central Brooklyn, who have predominantly
14 Caribbean Americans who are now living in those
15 areas. You can see that we have no funding and no
16 resources simply because of the underbelly of the cry
17 have been coming from African-American clergy.

18 I think it's a new day Central Brooklyn
19 again being the number one hot spot for shootings in
20 New York City. I think the Council should respond in
21 kind because we know where the shooting happens. We
22 know who is doing the shooting, and I thin, that we
23 now need to be able to respond to where the shootings
24 occur. So I just want to thank you again Pastor
25 Gilford Monroe representing the 67th Clergy Council.

CHAIRPERSON GIBSON: Thank you very much, Pastor, for being here, and I echo your sentiments and certainly applaud the work that you and the clergy are doing in the 67th Precinct. Now, we'll hear from Council Member Jumaane Williams.

COUNCIL MEMBER WILLIAMS: Thank you, Madam Chair. First, I apologize. I have to leave after this to Land Use to do some voting. I want to thank Pastor Monroe for coming out today and the work that he's doing in the 67th Precinct. It's a model [sic] and that Clergy Council is very active. Many people remember a year or so ago when Kimani Gray was shot and killed on Church Avenue. Young people got very anxious and started making their voice known. That night I made one phone call. It was to Pastor Monroe, and we ran up and down Church Avenue trying to make sure things -- dodging some bottles and what have you trying to make sure things stayed as calm as possible while making sure the message was out.

I think you for highlighting the issues particularly about we know who it is and where it is. During the start of the question, first hand people were making remarks as if we did not know that both

1 the victims and the shooters were Black and Brown,
2 which we know. Their issue was the abuses of that
3 question first [sic] weren't really helping the
4 situation. Now, there's a spike. There have been
5 spikes up and down in shootings for the past 12 to 20
6 years irrespective of how many stops are being made.
7 We want to make sure that we have the right solution
8 and right set of responses to what's going on, and
9 that includes funding. So I thank the former speaker
10 for creating the task force, and making me the Co-
11 Chair. And I thank this speaker for continuing the
12 support of the task force and priority of the task
13 force.
14

15 Again, lastly, I'll say the violence is
16 not new, and I've said that before. The people who
17 are committing the violence in New York back in the
18 day, the complexion of the people committing the
19 violence was different. They had a lighter hue. The
20 response at that time was that those folks need upper
21 mobility. They needed jobs. They needed education,
22 and so those communities were given access to jobs
23 and access to education. The complexion got darker
24 of the crime, and the response to it became harsher.
25 If anything at all, the only thing that was sent

1
2 there were police. We want to make sure we have the
3 same resources because we actually know it works.
4 And also, depending on who is shooting, we call it an
5 issue of mental health or not. And believe all of
6 this is also a part of a mental health discussion,
7 and if it's good for one community we have to make
8 sure it's good for all of the communities. So thank
9 you again.

10 PASTOR MONROSE: Thank you.

11 CHAIRPERSON GIBSON: Thank you very much,
12 Pastor, for being here.

13 [background discussion]

14 CHAIRPERSON GIBSON: And now we're
15 calling up the next panel to speak on Res 0264,
16 Andrea Ritchie from the Condom Access Coalition;
17 Abigail Swenstein from Legal Aid Society; Lynly Egyes
18 from Urban Justice Center; and Bianey Garcia, from
19 Make the Road New York. If you could please come
20 forward.

21 [background discussion]

22 [Pause]

23 CHAIRPERSON GIBSON: And I'd also like to
24 advise everyone that for the record, we've received
25 testimony from the District Attorney of Kings County

1
2 Kenneth Thompson in support of Res 0121 recognizing
3 June as Gun Violence Awareness Month in New York
4 City, for the record. Thank you for being here, and
5 I'd like to just share that we have a number of
6 panels behind you. We are on a time limit. There's
7 another committee coming after us. So each of you
8 has three minutes just for your testimony, and please
9 state your name for the record, and then you may
10 being. Thank you.

11 ANDREA RITCHIE: Thank you and good
12 morning. My name is Andrea Ritchie. I'm the
13 Coordinator Streetwise and Safe. We proudly serve on
14 the Steering Committee of Communities United for
15 Police Reform and of the Access to Condoms Coalition,
16 which is made up of over 70 Anti-Trafficking Women's
17 Reproductive Rights, Public Health, HIV-AIDs, Human
18 Rights, LGBTQ, and Civil and Human Rights groups who
19 are all advocating for the passage of the
20 legislation, which is the subject of today's
21 resolution. We'd like to extend our sincere
22 appreciation to Council Members Williams and Menchaca
23 for introducing the resolution and to you,
24 Chairperson Gibson and members of the Public Safety
25 Committee for taking the time to hear it today in the

1
2 midst of what we know is a very busy legislative
3 season.

4 As you'll hear from a broad range of
5 organizations and individuals directly affected by
6 this practice, police and prosecutors continued
7 confiscation of condoms as evidence is contributing
8 to a public health crisis in New York City. The
9 NYPD's recent announcement that it will no longer
10 collect condoms as evidence is welcome, and an
11 important step in the right direction. But as many
12 folks have already spoken to, the policy,
13 unfortunately, does not go far enough to protect
14 vulnerable New Yorkers. And continuing to use
15 condoms as evidence, and we're talking here -- I just
16 want to clarify -- about a mere possession of
17 condoms. I just read the legislation again. It's
18 about mere possession of condoms. The bill does not
19 bar use of DNA evidence in any case, and it does not
20 bar use of condoms in rape cases.

21 Clearly, those that are patronizing and
22 promoting trafficking, permitting and prostitution.
23 Continuing to confiscate and voucher condoms as
24 evidence in promoting and trafficking cases will
25 severely limit the impact of the NYPD policy change

1 in reality. It will have the effect of harming the
2 very individuals promoting and trafficking laws are
3 intended to protect. And will continue to send a
4 very confusing message to New Yorkers that carrying,
5 sharing, and distributing condoms could get you
6 charged with a crime. The State legislation will
7 eliminate this exception by extending the ban on the
8 use of condoms as evidence to all prostitution
9 related offenses, including trafficking and
10 promoting, and thereby ensure access to condoms to
11 trafficking victims and youth who are or are profiled
12 as being involved in the sex trades.

14 It would also extend the ban on the use
15 of condoms across the New York State. So the rules
16 don't change when you go from county to county, and
17 it would stop the ongoing confusion among New Yorkers
18 about whether or not having condoms on your person or
19 on your premises would place you at risk of criminal
20 prosecution. And it will ensure lasting legislative
21 change that will bind future administrations,
22 district attorneys, and commissioners in New York
23 City and across the state. The Resolution has the
24 full support of the organizations that provide legal
25 and support services to the vast majority of

1 trafficking victims in the United States, New York
2 State and New York City including Safe Horizon, the
3 New York Anti-Trafficking Network, and the Freedom
4 Network, a national coalition anti-trafficking
5 organization.
6

7 And to Florrie Burke who was the founder
8 of the Freedom Network and the Safe Horizon Anti-
9 Trafficking Program, and the recipient of the
10 Inaugural Presidential Award for extraordinary
11 efforts to combat trafficking persons, which she
12 received from President Obama in 2013. Florrie, who
13 unfortunately could not be here with us today, wrote
14 last year in support of the legislation as a Founder
15 and Coordinator of the Freedom Network: I know that
16 it is not uncommon for traffickers to restrict or
17 deny their victims access to condoms and basic
18 reproductive health services as a form of
19 manipulation and control. However, in New York
20 State, traffickers have an additional reason to deny
21 their victims condoms. Condoms found in a location
22 where people have been coerced into the sex trade may
23 be used by prosecutors as evidence to support felony
24 trafficking charges.
25

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2 This means that traffickers may have an
3 especially incentive to forbid their victims from
4 carrying condoms, to band them from locations where
5 exploitation is occurring, and to make it nearly
6 impossible to use them. The consequences for those
7 forced into the sex trade is severe: Unwanted
8 pregnancy often followed by forced abortion, and
9 irreparable damage to their reproductive health.
10 Some may argue that prosecutors need every tool at
11 their disposal to find traffickers and hold them
12 accountable. But allowing condoms to continue to be
13 used in trafficking cases is detrimental to the very
14 people we are trying to help. Florrie says, This
15 will would also protect the health and lives of
16 trafficking victims.

17 In situations in which women and girls,
18 as well as men and boys are coerced into sex trade,
19 ending the use of condoms is evidence to give them
20 some ability to negotiate for their own sexual
21 safety. In reality, a condom may be the one
22 protection a victim of trafficking has from the
23 trafficker's assault on his or her human rights,
24 autonomy, and body. Florrie closes by saying, As an
25 outspoken anti-trafficking advocate for nearly two

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decades, I support the toughest prosecution of traffickers. But prosecutors can and should make their cases by using condoms as evidence. And policymakers should lead trafficking victims out of the solution. Their lives depend on it. There is simply no question about where those with expertise and experience of working with trafficking victims and young people in the sex trades stand on this bill. And there should be no question about where legislators who care about victims of violence, public health, women's rights, LGBT rights, and reproductive rights stand. Thank you.

CHAIRPERSON GIBSON: Thank you so much. I appreciate your-- I'm sorry. I hate to cut anyone off, but I do want to be mindful of everyone's time, and we do have your testimony. So all of it will go into the record. Thank you so much. You may begin.

ABIGAIL SWENSTEIN: Good morning. My name is Abigail Swenstein, and I'm a staff attorney in the Legal Aid Society's Criminal Defense Practice. I work in 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

1
2 system. Throughout our work in criminal court, we
3 have become too acutely aware of how devastating the
4 practice of seizing condoms as evidence can be for
5 those who interact with the police throughout our
6 city. These practices have severe consequences for
7 the most vulnerable to exploitation, abuse and
8 discrimination. The Legal Aid Society strongly
9 encourages the New York City Council to adopt the
10 resolution.

11 As stated by this committee, we also
12 applaud the recent policy change announced on May
13 12th by NYPD Commissioner Bratton, which would limit
14 the NYDP's practice of confiscating condoms in three
15 prostitution related offenses: Prostitution;
16 loitering for the purposes of prostitution; and
17 prostitution in a school zone. This represents a
18 step in the right direction, and will greatly improve
19 the health and safety of all residents of New York
20 City. In addition, several district attorneys have
21 announced that the possession of condoms will no
22 longer be used in these prosecutions. While these
23 policy changes should be commended, they do not go
24 far enough. Condoms will still be seized as evidence
25 for arrests made for promoting prostitution and sex

1 trafficking. Current state law notwithstanding
2
3 NYPD's updated policy puts any person who carries,
4 possesses or has condoms at risk of being suspected
5 of criminal activity and endangers the health of all
6 New Yorkers.

7 I'd like to respond to some points raised
8 by the Staten Island District Attorney's Office.
9 When considered in relation to victims of trafficking
10 arrests and for prostitution, the impact of the use
11 of condoms as evidence in any criminal case is
12 magnified, and only serves to further alienate,
13 victimize, and render most vulnerable those we
14 represent. For many victims of trafficking, the
15 arrest process alone, and the related interaction
16 with the criminal justice system have devastating
17 personal consequences, and serve to perpetuate their
18 victimization. When condoms are taken as arrest
19 evidence or used to support criminal charges, the
20 message to these individuals is clear: Better not
21 have condoms in their possession even while being
22 forced to engage in prostitution. Yet, for those
23 coerced and forced to engage in prostitution, the
24 ability to use a condom may be the only protection
25 against repeated exposure to disease and potential

1 pregnancy. The message not only resonates with
2 trafficked people, but also with their exploiters and
3 traffickers who control every aspect of their lives,
4 behavior, and conduct. Traffickers decide whether or
5 not those they coerce into prostitution use birth
6 control and what medical or reproductive health
7 treatment they are allowed to access. This we have
8 learned from clients. Thus, if condoms are allowed
9 to be used as evidence against traffickers in sex
10 trafficking prosecutions, the foreseeable practical
11 impact remains the same. Many traffickers simply
12 will not allow those they control to carry and use
13 condoms if there's a chance those condoms may expose
14 traffickers themselves to criminal liability.

15
16 This is not an issue that can be left to
17 each local prosecutor and police force to decide. We
18 should not prohibit life threatening practices in New
19 York City, but tolerate them in Albany or Buffalo.
20 Statewide legislative reform is necessary to ensure
21 that this practice is prohibited throughout New York
22 State, and that there is uniformity and consistency.

23 Passage of the proposed legislation to
24 limit the admissibility of evidence of condoms
25 possessed when arrested will save lives. New York

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State should not criminalize or make evidence a crime, that which is a life saving device for so many people. Thank you.

CHAIRPERSON GIBSON: Thank you very much. You may begin.

LYNLY EGYES: Good morning members of the Committee on Public Safety. The Sex Workers Project at the Urban Justice Center very much appreciates the opportunity to comment on the proposed resolution. My name Lynly Egyes, and I'm a Senior Staff Attorney at the Urban Justice Center where I primarily represent survivors of trafficking. I'm here today to illustrate to you why this resolution is a huge step to passing groundbreaking anti-trafficking legislation. The best way to explain how important this resolution is to victims of trafficking is to tell you about my client Allison.

Allison was brought into the United States by a group of traffickers. On a daily basis she was beaten, staved, and humiliated. Every morning she was given five condoms even though she was forced to have sex to up to 25 people everyday. One of Allison's greatest fears while she was being trafficked is that she might contract a life-

1 threatening illness. Even after her escape she still
2 tells me that she's scared for the other girls she
3 left behind. She knows they're being denied access
4 to condoms just as she was. She asked me, Do you
5 think I wasn't allowed to have condoms because
6 they're used as evidence? I didn't know what to tell
7 her, but to be honest, I can't think of another
8 reason why her trafficker wouldn't let her have
9 condoms. And I know this trafficking ring is still
10 in operation here in New York, and is likely putting
11 more and more victims at risk everyday.

12
13 It's because of Allison and so many other
14 victims of trafficking that I consider this
15 Resolution calling on the New York State Legislature
16 to pass the Access to Condoms Bill to be a
17 groundbreaking moment in anti-trafficking history.
18 This Resolution is trying to protect victims while
19 they're being trafficked. It's about saying to
20 victims, You're not going to give a trafficker any
21 reason to allow you access to condoms. Now, I've
22 heard some people say that we need to condoms as
23 evidence for trafficking prosecutors. But I
24 challenge that notion. Condoms are not evidence of
25 trafficking. In fact, as far as I know, condoms have

1 never actually been introduced at trial against a
2 trafficker.
3

4 Successful trafficking prosecutions
5 require to prove that a person was forced or coerced
6 into prostitution or other forms of labor often
7 through victim's statements. A victim that was
8 denied access to condoms by a trafficker ended up
9 with and STI or forced abortion, which I've seen both
10 of, is going to be less likely to cooperate and help
11 prosecute the trafficker. Now, imagine that victim
12 finds out that the reason they were denied access is
13 because of the New York State policy. How likely do
14 you think it is that they're going to cooperate. I
15 wanted Allison to be here today. But unfortunately,
16 her traffickers are still trying to control her by
17 threatening her and her family. And we're working as
18 hard as we can to try to find them, but it still
19 hasn't been done.

20 When I tried to explain to Allison about
21 the new policy, she looked at me in confusion. She
22 said to me, But that policy wouldn't have helped me,
23 and it won't help the girls that are still being
24 forced into prostitution. Why doesn't the NYPD want
25 to protect us? Why doesn't the NYPD want to protect

1 trafficking victims? Now, I'm going to ask all of
2 you in the room to close your eyes for a moment. And
3 I'm going to ask you to think about the fact that
4 you're currently being trafficked. You're in a small
5 room. Your trafficker unlocks the door from the
6 outside. A moment later he brings a man into the
7 room. He hands you five condoms. What do you do?
8 Do you use a condom with someone else? Do you try to
9 reuse a condom? This is what you think about
10 everyday.
11

12 Imagine having to make that calculation
13 everyday while you're being trafficked for years
14 until you can escape. Now open your eyes and take a
15 moment to think. If you were in Allison's situation
16 or you child was, or you sister was, or you father
17 was. Wouldn't you want her to have, or him to have
18 as many condoms as they needed? Wouldn't you remove
19 every obstacle from this life saving tool? Wouldn't
20 you rather that person have 25 condoms, or would you
21 rather them have five, even though condoms have never
22 been introduced in a trafficking case? Right now
23 we're in a moment where we can change things and send
24 a loud and clear message to victims and traffickers.
25 That the law makers and law enforcers of New York

1
2 care about the health and safety of sex workers and
3 victims of trafficking.

4 What a powerful message that would make
5 to victims and to those that exploit them. I'm only
6 here today because I care about trafficking victims
7 because I see this everyday in my office. I hear
8 these stories everyday when I'm working with the
9 federal government to prosecute traffickers. I care
10 about the safety and welfare of victims of
11 trafficking. I want them to have every single
12 protection they can. I'm asking you to care about
13 them, too. Please don't leave trafficking victims
14 out of this bill. Thank you.

15 CHAIRPERSON GIBSON: Thank you very, very
16 much and before we get to our next panelist, I just
17 want to recognize the presence of my colleague,
18 Council Member Julissa Ferreras and turn it over to
19 my clerk.

20 CLERK: Resolution 121, Council Member
21 Ferreras.

22 COUNCIL MEMBER FERRERAS: I vote aye.

23 CHAIRPERSON GIBSON: Thank you very much,
24 and now you may begin. Thank you for being here.

1
2 BIANEY GARCIA: Thank you very much. I'm
3 Bianey Garcia. I'm the LGBTQ Organizer of Make the
4 Road, and she's Natalia De Salvo. I want to say my
5 testimony in Spanish and she's going to translate.

6 BIANEY GARCIA: [Testifies in Spanish]

7 TRANSLATOR: So, I will be -- My name is
8 Natalia, the Organizer of Make the Road New York. I
9 will be interpreting. So, hi, my name is Bianey
10 Garcia. I'm 24 years old. I'm Mexican transgender.
11 I work as an LGBTQ organizer.

12 MALE SPEAKER: [off mic]

13 TRANSLATOR: On May 20th?

14 MALE SPEAKER: [off mic]

15 [Pause]

16 TRANSLATOR: Okay, I work as an LGBTQ
17 Organizer of Make the Road New York. Eight years ago
18 I migrated to the United States, and I currently
19 reside in Jackson Heights, Queens. Three years ago I
20 experienced the usage of condoms as evidenced. It
21 was one night when my boyfriend and I went out to our
22 local bar to spend quality time together. We took a
23 couple of drinks and later on that night, we decided
24 to leave the bar and go home. As my boyfriend and I
25 were walking on Roosevelt Avenue, we were cuddling

1 and having a great time together. The fun was over
2 when an undercover policeman stopped me and my
3 boyfriend. The undercover policeman went out of the
4 car without my consent, and pushed me against the
5 wall taking my purse away from me. During the
6 search, they emptied my purse and found three
7 condoms.
8

9 With three condoms in their possession,
10 they decided to arrest me because supposedly, I was
11 promoting prostitution. They were making fun of my
12 boyfriend, but after they admitted that he was dating
13 me and we were not doing anything wrong. One of the
14 policeman told him -- who was Hispanic asked my
15 boyfriend to leave or else they will arrest him, too.
16 And that night had to be the worst night of my life,
17 not because I was taken to the station, and faced a
18 judge, but because it was the first I ever
19 experienced discrimination. As an LGBTQ Organizer in
20 New York of Make the Road New York, I relate to the
21 stories that I hear everyday coming from community --
22 from my community because they are being profiled by
23 the same discriminatory act.

24 Although the Police Commissioner stated
25 that he won't present the condoms found in my purse

1
2 as evidence, as an LGBTQ Organizer I believe that
3 this has not ended because my community is being
4 profiled and arrested for the reasons of like color
5 of their skin or the way of expression.

6 Additionally, I'm going to ask our Council Member
7 Julissa Ferreras if it was possible to do a training
8 every three months as a possible suggestion of how
9 policemen in Queens specifically down Roosevelt
10 Avenue can interact with transgender community and
11 the LGBTQ community. Because we not only identify
12 this as stop and frisk but also as transphobia and
13 homophobia. And believe that they just did not know
14 how to interact with the community.

15 And as long as carrying a condom can be a
16 possible reason for an arrest, then they will still
17 pursue the LGBTQ community out of homophobia or
18 transphobia. Even if one is arrested and our lawyers
19 come to the rescue, and they found that there was
20 nothing wrong, people still go through this
21 traumatizing experience. Lastly, Bianey mentioned
22 that, you know, a person, an LGBT person in the State
23 of New York in the not because we've done some
24 working around this, but in the State of New York, if
25 you're ever a victim of this and up in prison, you

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COMMITTEE ON PUBLIC SAFETY

could be deportable, and end up in deportation. So definitely need to stop this.

CHAIRPERSON GIBSON: Thank you very much to all of you, and than you especially Bianey. Gracias and thank you for being here sharing your story and the work you do. Certainly, we recognize this is a growing problem. And as someone who has now decided to take human trafficking as a priority, I'm working with my colleagues who will make sure that we continue to work together. Because we know that there is so many stores like that that are not told. So many victims that are victims in private, and we want them to take their stories and turn those stories into a plan and a purpose. Because there are so many women and men out there that don't recognize that this is a problem. And many are facing the same situation. So I appreciate the work you do, and want to turn this over to Council Member Julissa Ferreras.

COUNCIL MEMBER FERRERAS: Thank you, Madam Chair and, of course, you know, we've been partners and advocates in many perspectives. This is something that's very important to me and the Council. Not just for -- Clearly, we have an issue that needs to be addressed, and I think your

1 suggestion is a valid one, and I'll circle back.. You
2 have my commitment to reach out to the local
3 precincts, both because we have two precincts on
4 Roosevelt Avenue. But also kind of having a broader
5 conversation reaching out to Commissioner Bratton and
6 Chief Banks, and trying to get the narrative. And
7 for them to have a better understanding because we
8 don't want to make it, or improve it on Roosevelt
9 Avenue, if we're not improving for the entire City of
10 New York. And that's what this -- this is why we're
11 here. It's because of the City of New York.

12
13 TRANSLATOR: [Speaking Spanish]

14 BIANEY GARCIA: Bueno.

15 COUNCIL MEMBER FERRERAS: But also, I
16 want to say as the former Chair of the Women's Issues
17 Committee, I see many of the amazing faces of the
18 women and men that are doing amazing things, fighting
19 against trafficking. And too often we call it
20 prostitution, but once you peel the layers of the
21 onions back, you see that it's often times victims.
22 And there's very few opportunities that we have to be
23 able to protect women, and protect men that fall prey
24 to this horrible victimization. This is the one
25 opportunity where government really is doing the

1
2 wrong thing, and we have to ensure that we give them
3 at least the one opportunity to protect their health
4 and their lives. And that's why I'm very supportive
5 of this resolution. I just want to thank all of you
6 for coming out. It's pouring out there, but you're
7 here, and it's important. Thank you, Madam Chair,
8 for this leadership, and for all that co-sponsored
9 this legislation. This is really the right way to
10 go, and the right direction for government to be
11 moving in. Gracias.

12 BIANEY GARCIA: Thank you.

13 CHAIRPERSON GIBSON: Thank you Council
14 Member Ferreras, and with that I want to thank all of
15 you for being here, and we're going to call up the
16 next panel. Thank you so much.

17 [Pause]

18 CHAIRPERSON GIBSON: Our next panel is
19 Trina Vuitton from Streetwise and Safe; Shelby
20 Chestnut from AVP; Margaret Worth from the Human
21 Rights Watch; and Mitchell Mora from Streetwise and
22 Safe.

23 [background discussion]

24 [Pause]

CHAIRPERSON GIBSON: Thank you. You may begin.

SHELBY CHESTNUT: Thank you. Good morning. My name is Shelby Chestnut and I'm one of the Co-Directors of Community Organizing and Public Advocacy at the New York City Anti-Violence Project. I'm here to testify on -- about Resolution 264 introduced by Council Member Jumaane Williams and Carlos Menchaca, which is pending before the New York City Council, which would support the New York State Legislation to Prohibit the Use of Condoms in all prostitution related crimes. AVP empowers lesbian, gay, bisexual, transgender, queer and affected communities and allies to end all forms of violence through organizing and education, and support services through counseling and advocacy.

And we envision a world in which all LGBTQ and HIV affected people are safe, respected and are free from violence. In working with survivors of violence, AVP often finds itself in a contradictory position created by a conflict of state and city policies. On the one hand we are a state funded distributor of condoms to encourage safer sex. On the other hand, we work with LGBTQ and HIV affected

1
2 people, particularly transgender and gender non-
3 conforming people, youth, and people of color who are
4 regularly arrested for carrying condoms. As
5 described below, this contradictory public policy
6 causes a severe chilling effect, and the regular use
7 of condoms to reduce HIV transmission. Using condoms
8 as evidence makes bad public policy, puts New York
9 State agencies at odds with each other, and
10 jeopardizes safety.

11 This policy would end -- this policy
12 should end immediately. HIV is an epidemic in New
13 York City. AVP is funded by the New York City and
14 the New York State to hand out condoms to reduce the
15 risk of HIV transmission, and this make good solid
16 public health policy for good reason. I'm going to
17 skip ahead because I know we're limited for time to
18 the more important stuff. AVP distributes more than
19 10,000 condoms each year to survivors of violence and
20 to LGBTQ community members with the goal of
21 encouraging safer sex practices reducing the
22 transmission of HIV and ultimately providing all
23 people with free and easy access to condoms that will
24 keep them and their partners safe. However, as
25 discussed more below, we've seen a marked decrease in

1
2 LGBT people living -- being willing to carry condoms
3 for fear of being arrested and engaging in
4 prostitution.

5 AVP annually reports on hate violence
6 experience by LGBTQ affected people. In our latest
7 report released May 27, 2014, we found across the
8 nation that almost 90% of all anti-LGBT homicides
9 were victims in 2013 were people of color, and 72% of
10 anti-LGBT homicides in 2013 were transgender women.
11 In New York City in 2013, reports of police --
12 reports of hate violence increased by almost 27% for
13 LGBTQ and HIV affected New Yorkers continuing a
14 three-year trend. Despite a national decrease in
15 violence, 74% of survivors reporting identified as
16 people of color and reports [bell] of transgender and
17 gender non-conforming people increased by 21%.

18 AVP is keenly aware that certain groups,
19 especially poor people, transgender people, African-
20 American and other men of color are far more likely
21 to be arrested and prosecuted for crimes than white
22 non-transgender men and non-transgender women of any
23 race. These traditionally marginalized communities
24 are also among those most targeted for violence in
25 the first place. The NYPD recently announced a

1 policy to call -- to stop collecting condoms as
2 evidence in sex-related offenses. However, the NYPD
3 policy -- or the NYPD will continue to collect
4 condoms in cases involved trafficking and promoting
5 prostitution. When the police have discretion to
6 decide what offenses to charge someone with and,
7 therefore, whether to seize condoms as evidence.

9 New Yorkers cannot be sure that they will
10 be safe in all circumstances when carrying condoms.
11 When certain -- when people are uncertain, they often
12 err on the side of not carrying condoms at all. AVP
13 works with many LGBT people particularly young people
14 who report to AVP that they no longer carry condoms
15 for fear of being arrested, which means that HIV
16 transmission is much more likely to occur through
17 unprotected sex. Transgender women are frequently
18 profiled as sex workers by police regardless of
19 whether they are or are not actually engaged in sex
20 work. Because of this, transgender women are
21 especially fearful that any condoms in their
22 possession will be used as evidence that they are
23 engaging in prostitution related offenses.

24 And are, therefore, reluctant to accept
25 condoms from outreach workers. LGBT youth are also

1 at high risk. According to the New York City
2 Department of Mental Health and Hygiene, new HIV
3 diagnosis among young men ages 13 to 19 who have sex
4 with men have doubled. LGBT youth face great risk to
5 their physical and emotional health if they are
6 arrested for practicing public sex. Reducing LGBT's
7 access to safer sex in the midst of this violence
8 further reduces their safety. AVP hears from youth
9 that are afraid to carry condoms, and are so aware
10 that the use of condoms as evidence that they have
11 created this -- I apologize, I'm going to finish.

12 CHAIRPERSON FERRERAS: That's okay. I
13 just need you to wrap up.

14 SHELBY CHESTNUT: Yeah. So in closing,
15 we urge the New York City Council to take swift
16 action to pass this resolution to protect and promote
17 the health of all New Yorkers. And I thank you for
18 your time and consideration. You can read the
19 report.

20 CHAIRPERSON GIBSON: Thank you very much.
21 We will. Thank you. You may begin.

22 MARGARET WORTH: Okay. Thank you for
23 your time. It's an honor to be speaking with you
24 today. My name is Margaret Worth. I work for the
25

1
2 International Research and Advocacy Organization,
3 Human Rights Watch. We submit this testimony in
4 support of City Council Resolution 264. The use of
5 condoms as evidence of prostitution related offenses
6 must end. It is essential to protecting the rights
7 and the health of all New Yorkers. Adoption of this
8 resolution will send a clear message to State
9 legislators that the access to condoms, though, is
10 essential to promoting public health and human right.

11 Between October of 2011 and July of 2012,
12 Human Rights Watch conducted research in New York
13 City on the existence and effects of police seizing
14 condoms as evidence of prostitution related offenses.
15 In July 2012, Human Rights Watch released a report
16 documenting the use of condoms as evidence of
17 prostitution in New York and three other major U.S.
18 based on 125 interviews in New York City. Among some
19 of the people we interviewed, the practice of condoms
20 being seized as evidence caused them to fear carrying
21 condoms to the point where they carried only a few or
22 none at all. The health consequences of failure to
23 use condoms for sex workers can be dire. New York
24 City is at the heart of the AIDS epidemic in the
25 Unite States with an AIDS case rate three times the

1 national average. A study in New York City among
2 people who exchange sex for money or other goods,
3 found that 14% of the men and 10% of the women were
4 HIV positive. New York State and City have devoted
5 enormous resources to curbing the HIV epidemic,
6 including through common distribution. But these
7 efforts will continue to be frustrated if vulnerable
8 populations are discouraged from protecting
9 themselves because their condoms may be used against
10 them by the police and by prosecutors.

12 Human Rights Watch believes the State,
13 though, is particularly important to protect the
14 lives of victims of trafficking. For the same
15 reasons that permitting condoms to be used as
16 evidence for prostitution undermines human rights,
17 including the right to health, permitting condoms
18 found at a location where people have been coerced
19 into the sex trade to be used by prosecutors as
20 evidence to support charges of trafficking or
21 promoting prostitution is in practice counter-
22 productive and risks more harm to victims of
23 trafficking. Although the intent is to secure a
24 successful prosecution of traffickers is commendable
25 and consistent with government obligations to combat

1 trafficking, using condoms as evidence in trafficking
2 cases provides a perverse incentive to traffickers to
3 prohibit victims from carrying or using condoms. Or
4 to restrict their access to condoms including by
5 refusing to make them available at locations where
6 they're being exploited.
7

8 Human Rights Watch urges the New York
9 City Council to adopt Resolution 264 without delay to
10 encourage the New York State Legislature to enact
11 Senate Bill 1379 and Assembly Bill 2736 before the
12 end of the legislative session in order to expand and
13 strengthen the promotion of condom use among New
14 York's most vulnerable residents; trafficking
15 victims, sex workers, and LGBT youth as among the
16 general public. Thank you for your time.

17 CHAIRPERSON GIBSON: Thank you very much.

18 MITCHELL MORA: My name is Mitchell Mora,
19 and I'm a youth leader and researcher at Streetwise
20 and Safe also known as SAS, an organization focused
21 on policing and criminalization of LGBTQ youth of
22 color. [sic] In addition to conducting Know Your
23 Rights trainings and engaging LGBTQ youth of color
24 and policy advocacy around issues that affect their
25 lives, Streetwise and Safe is currently partnering

1
2 with the Urban Institute on a research project funded
3 by the Federal Office of Juvenile Justice and
4 Delinquency Prevention to document the experiences of
5 lesbian, gay, bisexual, transgender, and queer youth,
6 as well as young men who have sex with men, and young
7 women who have sex with women who are involved or
8 perceived to be involved with the sex trades.

9 Through this research as well as Know
10 Your Rights trainings and outreach throughout the
11 city, Streetwise and Safe comes into contact with
12 hundreds of young women of color and LGBT youth in
13 New York City every year. Many of the young people
14 that we come into contact with have experienced
15 homelessness or are currently homeless, and many of
16 them have traded sex for the things they need to
17 survive. Many more have been profiled as being
18 involved in the sex traded based on their gender,
19 race, sexual orientation, gender identity or
20 expression. Many of them are under 18 and,
21 therefore, by law are deemed to be trafficked
22 regardless of their circumstances.

23 As a result, the recent change in NYPD
24 policy does not go far enough because it does not
25 protect young people who are or profiled as trading

1 sex. From the perspective of young people under the
2 age of 18, nothing at all has changed as a result of
3 the NYPD's policy in terms of the consequences of
4 carrying condoms or in their access to condoms.
5 Police will still be able to take condoms out of the
6 hands of young people they believe to be engaging in
7 prostitution as part of trafficking investigations.
8 Young people will still be afraid to carry or share
9 condoms for fear that their concession or presence
10 will be used to prove that are someone they know is
11 committing a serious crime that carries serious time.
12

13 Young people will continue to get the
14 message that possession of condoms can be
15 criminalized even if they won't be used to prove some
16 offenses. And not every young person is able to
17 independently make the decision about whether or how
18 many condoms to carry. I have spoken with youth who
19 have been involved in the sex trades whose condoms
20 access as well as their daily life was controlled by
21 an exploiter. For youth who are forced to trade sex,
22 the practice of using condoms as evidence of
23 trafficking offenses creates a strong incentive for
24 people who are exploiting others to deny the people
25 they are exploiting access to condoms. Putting

1
2 people they are exploiting at even greater risk of
3 HIV, STIs, unwanted pregnancies, and forced
4 abortions.

5 We know through our work at SAS that
6 women of color and LGBTQ youth of color experience
7 many kinds of discriminatory policing. Including
8 being profiled for offenses like loitering for the
9 purposes of prostitution and lewd conduct when we are
10 just standing outside in our neighborhoods, walking
11 down the street, or hanging out with our friends. We
12 also know that sometimes we are profiled for
13 promoting, committing, and patronizing offenses.
14 Often police and policies also produces the fact that
15 young women of color and LGBT youth of color are
16 carrying condoms as a tool of profiling. As is often
17 the case with small amounts of marijuana, [bell]
18 condoms are found by police during stop and frisk,
19 and we are told to empty our pockets and empty our
20 bags or purses. I'm going to skip. Okay, I got that
21 you don't have time. [sic]

22 Although it is not illegal to carry
23 condoms, the practice of continuing to cite condoms
24 as evidence in prosecution related to cases,
25 including trafficking cases has created a climate in

1 which LGBTQ youth feel unsafe carrying condoms. And
2 we feel unsafe carrying condoms because we are.
3 Despite the risk of police violence and incarceration
4 the LGBT youth and youth with involvement in the sex
5 trades face when carrying condoms, many still do,
6 hiding them in bushes, in shoes, bras while trading
7 sex, and doing what we need to do to survive. Yeah,
8 so I'm just going to the last thing. We urge you to
9 pass this resolution and send a strong message to the
10 legislators in Albany that we need to protect the
11 right of young women and LGBT youths to protect
12 ourselves. Thank you.

14 CHAIRPERSON GIBSON: Thank you. Thank
15 you very much.

16 TRINA VUITTON: Good morning. My name is
17 Trina Vuitton, and I'm a Youth Leader and Streetwise
18 and Safe, also known as SAS, an organization focused
19 on policing practices that affect LGBT youth color.
20 The practices of using condoms in prostitution
21 related offenses affect my community. LGBT youth
22 people because we are often profiled s being engaged
23 in sex trades. One time I was going to a Kiki Ball on
24 a Saturday night in the West Village. I was standing
25 on the street talking with some friends and an

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officer approached me. She asked for my ID. I gave it to her. At the time, I didn't have my name legally changed. She only would not call me by my real name, but she kept calling me man and a faggot. She took me -- she took a picture of my I.D. and sent it to the Sixth 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 consented to the search. 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 policeman 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're getting locked up for prostitution. I was taken to the precinct and put in with men. I was 17 years old when this happened, which means that the new NYPD policy would have -- would not have stopped this because the condoms still would have been taken away from me as evidence of trafficking.

This is my story, but this is also the story of many of my friends who are lesbians, gays,

1 bisexuals, transgenders, and youth of color. When
2 the police take our condoms, or lock us up for
3 carrying condoms, they're putting our lives at risk.
4 How am I supposed to protect myself from HIV and STIs
5 when I'm scared to leave my house with condoms in my
6 purse? For my community is not only being put at
7 risk for HIV, STIs, and unwanted pregnancies, they're
8 having to be harassed and assaulted by police
9 officers for being transgender or queer. We thank
10 you for holding this hearing today and listening to
11 our voices and experiences. We ask you to help stop
12 this kind of discrimination against women of color
13 and LGBT youth. I have experienced and my friends --
14 I have experience by passing this resolution and
15 passing a law that will stop the condoms we carry of
16 being used as evidence of intent to engage in
17 prostitution and related offenses anywhere any time.
18 Thank you very much.

20 CHAIRPERSON GIBSON: Thank you. Thank
21 you very much. I appreciate all of you being here,
22 and we have your testimony. We'll make sure it's all
23 recorded into our record, and certainly thank you for
24 your advocacy in the work that you do. Thank you.
25 Our next panel is Beatrice House from the Red

1 Umbrella Project; Hayley Gorenberg from Lambda
2 Legal; Elizabeth Adams, Planned Parenthood of NYC;
3 and Erin Drinkwater from Brooklyn Community Pride
4 Center.
5

6 [Pause]

7 [background conversation]

8 CHAIRPERSON GIBSON: Thank you all. You
9 may begin.

10 BEATRIX HOUSE: Good morning. My name is
11 Beatix House, and I'm a member of Red Umbrella
12 Project, a peer-led organization that amplifies the
13 voices of people in the sectors through media,
14 storytelling, and advocacy programs. Our members are
15 mostly low income women including both assist [sic]
16 and trans who are currently informally involved in
17 the sex trades. We have been working with the whole
18 coalition of organizations on the issue of condoms
19 being used as evidence of prostitution related
20 offenses since 2009. And I'm here today to offer
21 testimony and support of Resolution 264.

22 I support the passage of State Bill A2736
23 and 1379 because for sex workers condoms, which are a
24 safer sex tool, that the Department of Health gives
25 away by the millions every year are being

1 confiscated, destroyed, and used as evidence of
2 prostitution. Many community organizations make use
3 of free NYC condom programs. But increasingly the
4 people in the communities we serve are not taking
5 advantage of the free condoms because of the fear
6 that they will be stopped and searched, and the cops
7 will use it as evidence against them. The people who
8 work in the sex trades whether they are there by
9 choice, circumstances, or coercion are human beings
10 who deserve access to condoms so that we can protect
11 ourselves from unwanted pregnancies, and sexually
12 transmitted infections including HIV.

14 The mere fact of access to condoms is not
15 condoned coercion or trafficking. Access to condoms
16 is a harm reduction strategy. For people who enter
17 the sex trades by coercion, it is important that this
18 bill is a comprehensive one that includes a ban on
19 condoms as evidence in trafficking cases.

20 Traffickers exert a lot of control over their
21 victims, and if condoms can be used as evidence
22 against them, they will restrict or deny access to
23 condoms to their victims.

24 This creates an unacceptable situation in
25 which people have been victimized twice, force to

1 exchange sexually labor, and prevented from
2 protecting themselves from pregnancy and disease.
3 Red Umbrella Project recently saw a case involving a
4 woman accused of trafficking that presented another
5 problem with using condoms as evidence. The
6 defendant, who I will refer to as Ms. Zing to
7 protect her confidentiality, was continually
8 pressured by the D.A.'s office to accept a plead that
9 included forfeiture of \$8,000 even after the evidence
10 against Ms. Zing was insufficient to prosecute her
11 for trafficking.
12

13 And, her charge was dropped to operating
14 a massage parlor without a license, and moved to the
15 human trafficking intervenion courts. It was there
16 because Ms. Zing was referred to as a straw owner, or
17 as a person who may be trafficked themselves, but who
18 is written as the owner of a business to protect the
19 person who is really doing trafficking. In Zing's
20 case, condoms were used as evidence that she was
21 trafficker. There were no receipts in her name, and
22 no proof that she made money from this business that
23 she allegedly owned. Just the condoms. Even after
24 it was moved to the D.A.s office--
25

1
2 After it was moved -- excuse me -- the
3 D.A.'s office continued to push for the original
4 plea. Luckily, the judge immediately saw through
5 this, all this rubbish. And the D.A.'s office had
6 the audacity to call it evidence and gave the woman
7 Adjournment of Contemplation of Dismissal the next
8 week. Condoms are a part of the lifeline that people
9 in the sex trades have to maintain control of their
10 lives. The only way to preserve this lifeline is to
11 ban the use of condoms unless it is absolutely not in
12 certain cases, but absolutely by the state law, and
13 not at the mercy of the whims of which the Police
14 Commissioner currently occupies that position. Thank
15 you.

16 HAYLEY GORENBERG: Good afternoon and
17 thank you. My name is Hayley Gorenberg and I'm
18 Deputy Legal Director of Lambda Legal. I have great
19 respect for the District Attorneys, which is why I've
20 participated in so many meetings with them over the
21 past couple of years about condoms. But, as they say,
22 when you're a hammer, everything is a nail. And some
23 district attorneys cannot bring themselves to take
24 off the table this potential theoretical piece of
25 evidence. They are not public health officials, but

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your job is to take a broader view, and you have it in your power to help the people we're here talking about today.

Condoms are evidence of interest in safer sex. Condoms are evidence of attempts to protect your health. Condoms, millions of condoms every year have been distributed by the city since early in the HIV epidemic. Much of that epidemic focused in New York City because of rock solid, scientific medical evidence that condoms make us safer. But today, many young people, transgender women, and many other people profiled by police avoid condoms because New York has insisted on collecting them as evidence of prostitution related crimes. My colleagues and I at Lambda Legal, the oldest and largest legal organization litigating and advocating for the rights of lesbians, gay men, bisexuals, transgender people and people affected by and living with HIV, consider this problem outrageously dangerous and stunningly retrograde given what we know has been scientifically proven, the medical truth about HIV, condoms, and public health.

By passing this resolution, you'll be following the lead of Kathleen Rice, head of the

1
2 District Attorney's Association of the State of New
3 York who has said, if you're trying to use condoms to
4 make your prostitution case, you don't have a case.
5 You'll be following in the footsteps of San Francisco
6 and Washington, D.C., and you'll be following the
7 evidence presented by Human Rights Watch whose report
8 catalogs the damage wrought by this practice in New
9 York and elsewhere as an offense to human rights.
10 And please remember the indicators that 40% of our
11 homeless youth are lesbian, gay, bisexual, and
12 transgender, and that many either are or profiled as
13 engaging in survival sex or prostitution related
14 offenses.

15 When they're under 18, the law deems them
16 to be trafficked. That means the recent NYPD policy
17 change does not eliminate the risk that condoms in
18 the possession of youth under 18 will be used as
19 evidence in promoting and trafficking investigations
20 against them. And that means people will be deterred
21 from carrying, sharing, or making condoms available
22 to LGBT young people and others who may be involved
23 or profiled as involved in the sex trades. And that
24 critically undermines condom acts [sic] as to this
25 population at such high risk of HIV infection. And

1 that is exactly what's happened in New York. We
2 held a forum for district attorneys a couple of
3 summers ago so that young people could speak out.
4 And they made it crystal clear that using condoms as
5 evidence quite predictably keeps them from carrying
6 condoms.
7

8 In my work as a legal services attorney
9 for years before I even got to Lambda Legal's HIV
10 Project, I kept a basket of condoms on my desk for
11 people to take freely. Now, people who do these jobs
12 with baskets of condoms handy report their clients
13 don't take them any more, or they worry if they take
14 more than one maybe they'll hit the magic number,
15 some magic number where the property to protect their
16 health just became evidence of a crime. And that's a
17 public health disaster. In our years of advocating,
18 no one has ever contradicted that statement. It is a
19 public health disaster. So in conclusion, we need
20 clear unambiguous law that condoms cannot be used to
21 prosecute you for any prostitution related crime. It
22 is as simple as that, and it needs to be as simple as
23 that to send the clear message that will make a
24 difference in what people understand on the
25 grassroots level in the streets of New York, the city

1 that you serve. Thank you very much for supporting
2 Resolution 264.
3

4 CHAIRPERSON GIBSON: Thank you very much.
5 You may begin.

6 ELIZABETH ADAMS: Good afternoon. My
7 name is Elizabeth Adams. I'm with Planned Parenthood
8 New York City. Planned Parenthood of New York City
9 urges the City Council to pass Resolution 264 in
10 support of this statewide legislation, which would
11 amend the State law. Planned Parenthood of New York
12 City currently serves over 50,000 New Yorkers every
13 year, and reaches an additional 25,000 through our
14 education programs which focus on healthy
15 relationships and how to best care for one's own
16 sexual health and one's own wellbeing. Of course,
17 including contraception. Our HIV Prevention and Care
18 Program is one of the oldest in the country providing
19 services directly in the communities where these
20 services are needed the most.

21 For several years, we have worked
22 alongside the fellow advocates to support
23 comprehensive legislation to prevent the use of
24 condoms as evidence of charges related to sex work.
25 As a leading reproductive healthcare provider in New

1 York City, we strongly believe that no New Yorker
2 should fear carrying condoms because they risk those
3 condoms be introduced as evidence of prostitution.
4 We are proud to provide services in a city that due
5 in large part to the leadership and innovation of our
6 Department of Health and Mental Hygiene has one of
7 the largest and most successful distribution programs
8 in the country. We know that a combination access,
9 education, and service provision ensures a safer,
10 healthier New York City.

12 We applaud the recent announcement by the
13 New York City NYPD that they will stop confiscating
14 condoms for certain charges related to sex work.
15 However, we urge the New York City Council to
16 strongly advocate for the passage of a statewide
17 comprehensive legislation to ensure that no one
18 anywhere in the State of New York has to fear arrest
19 or harassment for carrying condoms. For too long,
20 our policies have made many New Yorkers afraid to
21 protect themselves. Carrying condoms should never be
22 used as evidence for a crime. As a leading
23 healthcare provider in New York City serving all
24 individuals regardless of their ability to pay, we
25 recognize the intersection of public safety and

1 public health. Our continuing commitment to serving
2 patients on a sliding scale goes beyond just offering
3 healthcare, but ensuring that that healthcare is
4 accessible to all New Yorkers. We applaud Council
5 Member Menchaca, and Council Member Williams and
6 Council Member Gibson for their leadership on this
7 issue. And thank the members of the New York City
8 Council for continuing to stand up. Thank you very
9 much.
10

11 CHAIRPERSON GIBSON: Thank you very much.

12 ERIN DRINKWATER: Good afternoon. My
13 name is Erin Drinkwater. I'm the Executive Director
14 of the Brooklyn Community Pride Center of Brooklyn's
15 LGBTQ Community Center. We are also a member of the
16 Communities United for Police Reform, as well as the
17 NYPD Advisory Council along with many others in the
18 room, and a member of the Access to Condoms
19 Coalition. At the Brooklyn Community Pride Center,
20 we're committed to affecting positive change within
21 the Borough of Brooklyn and in the community at
22 large. We provide a comprehensive program of
23 services in partner with many organizations in the
24 room.
25

1
2 There are a handful of ways that the lack
3 of a comprehensive or statewide policy negatively
4 impacts our work. One of our many methods of
5 affecting positive change is the promotion of public
6 health. We regularly host workshops and discussions
7 focused exclusively on health including sexual and
8 reproductive health. Our clients are offered and
9 have access to condoms, which have been provided
10 through the mention of the New York City's Free
11 Condom Initiative. However, we're troubled in
12 knowing that while our city invests in the free
13 distribution of condoms, which assists in the
14 promotion of safe sex, and reduced unwanted
15 pregnancies, that individuals who come to the Center
16 and leave with safer sex materials could be at risk.
17 We work with clients and users of the center, many of
18 whom are youth of color and transgender individuals
19 who we know are often disproportionately targeted by
20 the NYPD under the practice of Stop, Question and
21 Frisk.

22 These individuals are profiled by police
23 based on look, demeanor, or attire. They may be
24 deemed as too provocative or revealing, strolling
25 through certain streets or certain neighborhoods, or

1 suspicious behavior, one of the many reasons that
2 individuals are stopped. These same folks who are
3 teaching safer sex practices in order to protect
4 their health and the community at large, are leaving
5 the safe space of the Center. And have to ask
6 themselves what's more important, their health and
7 wellbeing or the use of condoms to justify an arrest.
8 Using condoms as evidence for the prosecution of any
9 crime presents and incredible deterrent for those
10 engaged in practices of any prostitution related
11 offense. Sorry, any prostitution related act, and in
12 the promotion of safe sex. Simply, the practice of
13 using condoms as evidence has an untold public health
14 implication.
15

16 At the Brooklyn Community Pride Center,
17 we welcome the recent changes to the NYPD's policy
18 concerning the use of condoms. However, while I'm
19 encouraged, this progress -- in this progress, and in
20 taking steps in the right direction to ensure that
21 civil liberties and rights are equally protected for
22 all people, I must state that further steps must be
23 taken to protect all individuals from being
24 criminalized for possession of condoms. We are
25 disappointed that the policy change does not go far

1 enough. Police can still continue to use the
2 possession of condoms to justify an arrest,
3 confiscate condoms from sex workers and survivors as
4 investigatory evidence when promoting or trafficking
5 is suspected, and confiscate condoms as evidence in
6 promoting and trafficking cases. It becomes
7 incredibly difficult and challenging to emphasize the
8 importance of using condoms considering the
9 ramifications for possession of condoms when we know
10 that individuals leaving the Center do engage in
11 survival sex or they themselves are sex workers or
12 survivors.

14 As our clients leave our community
15 center, we're often left wondering about their safety
16 and wellbeing. Our clients are left with a difficult
17 decision of choosing between protecting their health
18 or potentially being the subject of prosecution. You
19 saw the nuance back and forth earlier today with the
20 D.A.'s office and Council Member Williams. Now
21 imagine being a young person who's dealing with all
22 sorts of things, and trying to navigate the [bell]
23 simple question of whether or not to take condoms
24 from the Community Center to protect their own
25 safety.

1 It's necessary for us to pass
2
3 comprehensive and statewide legislation. This cannot
4 be understated. The expansion of NYPD's most recent
5 adopted practice concerning the treatment of condoms
6 must be comprehensively expanded to include all
7 prostitution related offenses, and all NYPD
8 enforcement practices. Finally, New York City must
9 serve as an example for the rest of the state through
10 our policy and push to move our legislators in Albany
11 for a statewide solution when one is long overdue.
12 As long as condoms be confiscated and used as
13 evidence on sex workers and members of the LGBTQ
14 community subject to having to make a tragic choice
15 regarding their own safety and health. I thank you
16 fore the opportunity to testify here today, and
17 looking forward to the testimony of my colleagues.

18 CHAIRPERSON GIBSON: Thank you very much.
19 Thank you all for being here, for your advocacy and
20 the work you do, and please know that you have
21 tremendous supporters in the City Council who will
22 continue to have these conversations and work with
23 you. So thank you again for your testimony.

24 [Pause]

25

1
2 CHAIRPERSON GIBSON: Our next panel is
3 Anna Sani[sp?] from Brooklyn, New York; Jarad Ringer
4 from PROS Network; Ivan Espinoza-Madrigal, The Center
5 for HIV Law and Policy; as well as Demetrius Thomas
6 from the Gay Men's Health Crisis. And if there's
7 anyone here that still wishes to testify, please make
8 sure that you up at the front. This is our last
9 panel for the panel for the afternoon if you have not
10 signed up already. Thank you.

11 ANNA SANI: Thanks so much for this
12 opportunity to testify on this resolution in support
13 of a statewide comprehensive bill that bans condoms
14 as evidence in all prostitution and prostitution
15 related court proceeding. My name is Anna Sani. I'm
16 a statewide community organizer with Voices of
17 Community Activists and Leaders New York. New York
18 is a statewide grassroots membership organization
19 building power among low-income people affected by
20 HIV-AIDS, the drug war, and mass incarceration to
21 create healthy and just communities. We know that
22 condoms are an important public health tool, and that
23 criminalize it -- criminalizing them undermines our
24 efforts to promote safe sex practices in our
25 communities.

1 When this criminalization is connected to
2 prostitution, we know that this disproportionately
3 and negatively impacts low-income LGBTQ communities
4 of color where folks are commonly sex trading. And
5 sex working as well as more commonly profiled as sex
6 workers by law enforcement. We know that there is no
7 part way solution to this issue. For the purposes of
8 public safety, we need a wholesale decriminalization
9 of condoms that is consistent across the state, and
10 inclusive of all prostitution related offenses. When
11 we maintain condoms as evidence in promoting and
12 trafficking offenses, as the NYPD policy has, we
13 create a powerful deterrent for pimps and traffickers
14 to provide condoms to the people they are exploiting.
15 Once it becomes clear that condoms are a potential
16 element in a case against them, any minimally
17 intelligent and self-preserving trafficker or pimp
18 will eliminate their large-scale availability.

19 We are in effect disincentivizing exactly
20 what we want to happen, which is that if people are
21 forcing sexual labor, then they in the very least
22 provide some means for the vulnerable people they are
23 exploiting to protect themselves. Anything less than
24 a comprehensive ban on condoms as evidence prevents
25

1
2 harm reduction workers in our communities from the
3 unequivocal promotion of condoms possession as a
4 public individual good. As long as condoms carry
5 weight in criminal proceedings, people who engage in
6 sex trading either by force or by choice, will have
7 questions about whether condoms can be used against
8 them. This is especially true amongst young people
9 whose involvement is deemed by law to constitute sex
10 trafficking, and fear the use of condoms as evidence
11 in promoting or trafficking each other.

12 It is vitally important that New York
13 City legislators seek and expanded ban against the
14 use of condoms as evidence beyond the newly adopted
15 NYPD policy that prohibits the practice in only a
16 fraction of prostitution related offenses. While we
17 appreciate the NYPD policy as a first step in
18 recognizing the vital importance of this issue, we
19 are also clear that it does not nearly go far enough.
20 We urge you to pass this resolution in support of a
21 statewide bill to prohibit the use of condoms as
22 evidence in prostitution and prostitution related
23 trials. Thank you.

24 CHAIRPERSON GIBSON: Thank you very much.
25

JARAD RINGER: Good afternoon everyone.

My name is Jarad Ringer, Board Member at the PROS Network New York, a network of organizations that provides services and resources for people who engage in sex work. I'm also the Director of Educational and Training at the Center for HIV Educational Studies and Training at CUNY Hunter College. Thank you to New York City Council Members Menchaca and Williams for their leadership on this important issue. The PROS Network worked with the New York City Department of Health to produce research that shows the impact of the use of condoms as evidence and the health and safety of sex workers. Almost half of the sex workers we interviewed reported that they have had their condoms confiscated or destroyed by the NYPD. This practice is not some small inconvenience. Fort percent of the sex workers interviewed went on to engage in sex work without a condom due to the actions of our City's police force.

The PROS Network is encouraged to see that the NYPD is taking steps to stop the practice of using condoms as evidence for certain charges related to sex work. Admitting there is a problem is the first step towards making changes. The NYPD

1 statement does not go far enough. We need
2 comprehensive statewide legislation to ensure that no
3 one anywhere in New York State has to fear harassment
4 for carrying condoms. As far as I'm aware, this is
5 the only city in the world that has its own branded
6 condoms. Our Health Department has invested in
7 advertisement to promote condoms -- to promote condom
8 use on billboards, bus stops and the subway all over
9 the city. Condoms are available through non-profit
10 organizations, HIV research centers, schools,
11 doctor's offices, restaurants, bars, and even in some
12 police precincts.
13

14 There is a disconnect when one
15 institution is investing heavily in distributing
16 condoms and promoting their use, and another is
17 confiscating condoms and arresting and harassing
18 those who are taking the sound advice of our health
19 professionals. There are no laws in this city or
20 state that make condoms illegal. However, our
21 research has shown that the practice of confiscating
22 condoms has in effect criminalized condom possession.
23 Condoms are a cheap and effective way of protecting
24 people from pregnancy, HIV-AIDS, Hepatitis and many
25 STIs. Whether you're person engaging in sex work, a

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2 transgender or gender non-conforming person, gay, or
3 bisexual, a young person of color, or anyone else in
4 New York State, you have the right to protect
5 yourself and the person you are with.

6 Our Health Department has realized this.
7 It is time for our elected officials to back the
8 message of the Access to Condoms Coalition, and pass
9 this bill because condoms are a human right and
10 taking away condoms flies in the face of what makes
11 the most sense.

12 CHAIRPERSON GIBSON: Thank you.

13 DEMETRIUS THOMAS: Good afternoon. I
14 thank the Council for this opportunity. I'm
15 Demetrius Thomas, an attorney with Gay Men's Health
16 Crisis, GMHC's Public Policy Department. I testify
17 on behalf of GMHC and the 25 organizational members
18 of the Access to Condoms Coalition in support of
19 Resolution 0264, which calls for the passage of State
20 Legislation A.2736, S.1379. GMHC has led the fight
21 against HIV-AIDS in New York City and across the
22 nation for over three decades. GMHC's mission is to
23 fight the end of the HIV-AIDS epidemic, and uplift
24 the lives of everyone affected. Condoms are one of
25 the most reliable, accessible, and inexpensive HIV

1 prevention tools. Yet, this vital life saving tool
2 is being stripped away from the very communities that
3 need them the most. HIV-AIDS, as you all know, HIV-
4 AIDS disproportionately impacts low-income
5 communities, communities of color, youth between the
6 ages of 13 and 29, women, LGBT people. We also know
7 that these groups are also most affected by the New
8 York City Police Department's discriminatory stop-
9 and-frisk policies.

11 A recent analysis done by GMHC shows that
12 low income communities with the highest HIV-AIDS
13 rates are also those most affected by the New York
14 City Police Department's discriminatory stop-and-
15 frisk policies. For example, Bed-Stuy and Crown
16 Heights has the sixth highest HIV diagnosis with an
17 infection rate of 59.6 per 100,000 people. It also
18 has the third highest stop-and-frisk rate in the city
19 of 21.8 per 100 people. GMHC's analysis also reveals
20 that the demographic breakdown of new HIV infections
21 and those most affected by New York Police
22 Department's discriminatory stop-and-frisk are
23 strikingly similar. Just to highlight a few
24 examples. Fifty-five percent of blacks are stopped
25 and frisked, and 59 account for new HIV infections

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2 yearly. Fifty percent of 13 to 24 year-olds are
3 stopped and frisked, and 26% of 13 to 23 year-olds
4 account for new HIV infections, and that's just to
5 highlight a few examples. Thus, while the New York
6 Police Department's new policy under the direction of
7 Commissioner Bratton is a step in the right
8 direction, and we applaud his efforts, it is not
9 enough to protect those marginalized communities most
10 impacted by HIV and discriminatory stop and frisk
11 policies. The only way to properly address these
12 issues is through statewide legislation that is
13 comprehensive, universal, and prohibits the
14 confiscation and use of condoms as evidence in all
15 prostitution related cases.

16 New York City Council Resolution 0264,
17 which calls for the passage of State Legislation
18 A.2736 and S.1379. It sends a clear message to New
19 York State Legislators and the Governor that now is
20 the time to provide all New Yorkers, especially those
21 most vulnerable [bell] infections with the right to
22 possess and use condoms free from fear of police
23 harassment, arrests, and/or prosecution. Thank you.

24 CHAIRPERSON GIBSON: Thank you.
25

IVAN ESPINOZA-MADRIGAL: Good afternoon.

My name is Ivan Espinoza-Madrigal, and I am the Legal Director of the Center for HIV Law and Policy, a national resource and strategy center based here in New York. We coordinate the Positive Justice Project, a national campaign leading the fight to end criminalization of HIV across the United States. Our support for the resolution is based on the fact that condoms remain the best protection against not only HIV but also against other STDs, including treatment resistant Gonorrhea.

Condom confiscation creates serious obstacles for public health campaigns to address health threats because it makes people afraid of accessing, carrying, and using condoms. New York City is the epicenter of the HIV epidemic. Over 100,000 people are living with HIV here in the city, and to help curb the epidemic, the City distributes millions of condoms. It is an important public health intervention. It encourages safe sex, prevents unwanted pregnancies, and protects individuals from STDs. Nevertheless, police officers are confiscating and destroying condoms on the street, particularly from women of color, transgender

1 women and immigrant women. These leaves a strong
2 impression that police officers are targeting people
3 based on race, sex, sexual orientation, gender
4 identity, and immigration status. This renders
5 vulnerable individuals who are already at high risk
6 for STDs and HIV even more vulnerable to having
7 unprotected sex. Using the criminal justice system
8 to penalize condom possession not only places women
9 at risk, it also contributes to the over-
10 criminalization of people of color, immigrants, and
11 transgender individuals. It creates a pipeline for
12 arrests, imprisonment, and deportation.

14 The Police Commissioner announced a
15 policy change limiting the practice of confiscating
16 condoms in certain cases. However, condoms will
17 still be invoiced as evidence for arrests made for
18 promoting prostitution and for sex trafficking cases.
19 New York States need to promote and protect condom
20 possession and use. We urge you to call for
21 legislation that will end discriminatory policing
22 that undermines our important investment in public
23 health. Thank you.

24 CHAIRPERSON GIBSON: Thank you very much
25 to all of you for your presence, your testimony, and

1
2 all of the incredible work you do. Thank you very
3 much for being here.

4 [Pause]

5 CHAIRPERSON GIBSON: So, as we close, I
6 just want to thank and acknowledge all of the
7 advocates and the district attorney representatives
8 that have come forth today on Res 0264, as well as
9 the pastor who came to testify in support of Res
10 0121. This Council and this committee certainly
11 understand the challenges that we face. And as
12 someone who represents Bronx County, someone who is a
13 former State Legislator, I certainly know how
14 challenging it is to get bills passed in both houses
15 in Albany as well as get the support of our Governor.
16 So with two weeks remaining of the legislative
17 session for this year, if we are not successful, I
18 always want to make sure that the public knows that
19 the Council will remain a strong advocate in fighting
20 against this policy.

21 To me, that undermines public health. It
22 certainly doesn't send the proper message that using
23 condoms is a life saving measure and tool. So I want
24 to thank all the advocates for coming because I
25 recognize that this affects every New Yorker, whether

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2 you're in immigrant communities, LGBT, whether you
3 are in minority communities, poor communities. It
4 affects each and every one of us in some way. And so
5 I want to thank the advocates for the work they do
6 each and every day. I know the challenges ahead, but
7 I certainly remain optimistic. And in the future,
8 I'm looking forward to working with Council Members
9 Williams as well as Menchaca to have a hearing
10 hopefully in the fall, post-budget, of course.

11 We need to get through our budget season.
12 With the New York Police Department, with our five
13 district attorneys because we need to have much more
14 conversations. These cases are going on each and
15 every day. There are people that are being arrested
16 for possessing condoms, and so we know that the time
17 is now. This is our crossroad. We must continue to
18 do this work. So you have my commitment that we will
19 have a hearing very soon, and bring the Police
20 Department as well as the relevant advocacy groups so
21 that we can continue to talk about this. Because
22 again, Albany is Albany, and we still have work to do
23 here in the City of New York. So again, I thank you
24 all for being here. And with that, this public
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COMMITTEE ON PUBLIC SAFETY

hearing on the Committee on Public Safety is hereby
adjourned. [gavel]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date June 12, 2014