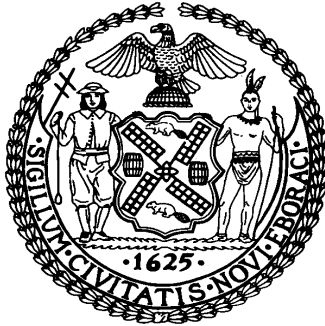


Staff: Committee on Public Safety  
Carmine J. Guiga, Counsel  
Salvador Arrona, Policy Analyst



## **THE COUNCIL**

**Report of the Governmental Affairs Division**  
Robert Newman, Legislative Director

**COMMITTEE ON PUBLIC SAFETY**  
Hon. Vanessa L. Gibson, Chair

**June 9, 2014**

**RES. NO. 121:**

By Council Members Williams, Chin, Constantinides, Dickens, Espinal, Gibson, Lander, Levine, Torres, Van Bramer, Rosenthal, Mendez and Koslowitz

**TITLE:**

Resolution recognizing every June as Gun Violence Awareness Month in New York City.

**RES. NO. 264**

By Council Members Williams, Menchaca, Weprin, Chin, Dickens, Dromm, Johnson, Levine, Rose and Wills

**TITLE:**

Resolution in support of A.2736/S.1379, which would amend state law by prohibiting using possession of a condom as evidence in prostitution and prostitution related trials, hearings or proceedings.

## ***I. INTRODUCTION***

On June 9, 2014, the Committee on Public Safety, chaired by Council Member Vanessa L. Gibson, will hold a public hearing to discuss and vote on Resolution No. 121, recognizing every June as Gun Violence Awareness Month in New York City. The Committee on Public Safety will also hear testimony on Resolution No. 264, supporting A.2736/S.1379, which would amend state law by prohibiting using possession of a condom as evidence in prostitution and prostitution related trials, hearings or proceedings.

## ***II. RESOLUTION NO. 121***

Recent horrific and tragic mass shootings have sparked nationwide conversations about the need for gun control measures and other necessary actions to curb gun violence. The problem of gun violence, however, is not limited to large scale and highly publicized incidents. Instead, gun violence tears apart families and communities on a daily basis throughout all American cities, including New York City.

For example, in New York City in 2012 there were nearly 1,375 shooting incidents, where a person was injured either fatally or non-fatally and 57% of all murders in 2012 were attributed to gun violence.<sup>1</sup> The gun violence epidemic disproportionately impacts certain communities within the city. For instance, approximately half of all shooting incidents in 2012 occurred in only 10 of the City's 76 police precincts.<sup>2</sup> It is clear, then, that nationwide conversations through which local, state, and federal officials work together to find solutions to the gun violence plague must be continued.

---

<sup>1</sup> NYPD Data, on file with the Committee on Public Safety

<sup>2</sup> New York City Council Task Force to Combat Gun Violence, December 2012 Report, *available at*: <http://council.nyc.gov/html/pr/gvtfreport.pdf>

The decision to recognize June as Gun Violence Awareness Month is timely because statistics show that gun violence and the resulting injuries and deaths increase substantially in the summer months. In 2011, for example, there was an almost 120% increase in shooting incidents in New York City when comparing the first quarter of that year to the third quarter of that year, which encompasses the months of July and August.

New York State Senator Ruth Hassell-Thompson and New York State Assembly Member Karim Camara introduced resolutions in the State legislature that declare the month of June as Gun Violence Awareness Month throughout the State. In 2013 the Senate and Assembly passed a similar resolution and several cities and counties throughout the State introduced and passed similar resolutions or proclamations to show their support for this awareness campaign. The Council recognizes that there is no one simple solution to the gun violence epidemic, but believes that in order to adequately address the problem all New Yorkers must be properly educated and informed. With the proper awareness, we can collectively work toward ensuring our loved-ones, friends, and neighbors are not the victims of gun violence.

For these reasons, this Resolution recognizes every June as Gun Violence Awareness Month in New York City. Such recognition by local and state officials will increase efforts to protect all New Yorkers, especially those who are disproportionately affected by such violence, by furthering the dialogue with our local, state and federal partners. This dialogue will help the continued efforts to examine the causes of gun violence and to create meaningful solutions.

### ***III. RESOLUTION NO. 264***

Under existing law state law, the possession of condoms may be introduced as evidence of prostitution and certain other sex offenses. This evidence may also be used in other certain civil proceedings. According to advocates, the policy has the impact of putting New Yorkers at greater risk of acquiring sexually-transmitted infections and diseases. Advocates allege that sex workers and other individuals who have been profiled by the police as being sex workers are less likely to carry condoms because they fear the possibility that the possession of condoms would be used against them as evidence of prostitution. Therefore, advocates are concerned that the current law has the effect of discouraging the carrying and use of condoms and accelerating the spread of sexually transmitted diseases, thus endangering the public health of all New Yorkers.

In 2013 former Kings County District Attorney Hynes implemented a policy of not using the possession of a condom as evidence in individual cases of prostitution and loitering for the purpose of prostitution. Nevertheless, the City's prosecutors and some advocates continue to believe that possession of a condom can be a useful tool in prosecuting certain subsets of prostitution cases, such as sex-trafficking.<sup>3</sup> With that in mind, on May 12, 2014 the New York City Police Department announced that it had reviewed its agency protocols with respect to invoicing condoms in prostitution-related offenses and that it will limit the circumstances under which condoms will be secured as arrest evidence.<sup>4</sup> However, under this forthcoming new policy condoms confiscated in arrests for promoting prostitution and sex trafficking will continue to be invoiced as arrest evidence.<sup>5</sup>

---

<sup>3</sup> See J. David Goodman, "Police in Brooklyn Are Told Not to Seize Condoms of Prostitutes," *New York Times*, May 29, 2013.

<sup>4</sup> See Allie Malloy, "NYPD ends policy of confiscating condoms in some prostitution cases," CNN, May 12, 2014, available at: <http://www.cnn.com/2014/05/12/us/nypd-ends-condom-confiscation/>

<sup>5</sup> See *id.*

In January of 2013, Assembly Member Barbara Clark and Senator Velmanette Montgomery introduced A.2736/S.1379, which would amend the New York State Civil Practice Law and Rules, the New York State Criminal Procedure Law, and the New York State Executive Law to prohibit possession of a condom from being received in evidence in certain trials, hearings or proceedings.

A.2736/S.1379 specifically would prohibit the possession of a condom from being used as evidence of prostitution, patronizing a prostitute, promoting prostitution, permitting prostitution, or maintaining a premise for prostitution in a **civil proceeding** brought pursuant to the following:

- **NYS Multiple Dwelling Law §12(1)**, which makes it unlawful to use any multiple dwelling for the purpose of prostitution.
- **NYS Multiple Dwelling Law Article 10**, which allows for the placing of a lien on a multiple dwelling if it is used as a house of prostitution.
- **NYS Public Health Law §2320**, which declares that any building used for the purpose of lewdness or prostitution is a nuisance.
- **NYS Real Property Law §231**, which allows for the voiding of a lease if property is used for an unlawful purpose (including prostitution).
- **NYS Real Property Actions and Proceedings §711(5)**, which allows a landlord to bring a special proceeding if the premises is used for purposes of prostitution.
- **NYS Real Property Actions and Proceedings §715**, which allows the owner or resident of a dwelling located within two hundred feet of a building being used for the purpose of prostitution to bring a removal proceeding against the owner and/or occupant of said building.

A.2736/S.1379 would also prohibit evidence that a person was in possession of one or more condoms from being admitted at any **criminal proceeding** to prove probable cause for an arrest or to prove a person's commission or attempted commission of the following offenses:

- **NYS Penal Law §230.00** - Prostitution
- **NYS Penal Law §230.03** - Prostitution in a school zone.
- **NYS Penal Law §230.04** - Patronizing a prostitute in the third degree
- **NYS Penal Law §230.05** - Patronizing a prostitute in the second degree
- **NYS Penal Law §230.06** - Patronizing a prostitute in the first degree.
- **NYS Penal Law §230.19** - Promoting prostitution in a school zone.
- **NYS Penal Law §230.20** - Promoting prostitution in the fourth degree

- **NYS Penal Law §230.25** - Promoting prostitution in the third degree
- **NYS Penal Law §230.30** - Promoting prostitution in the second degree
- **NYS Penal Law §230.32** - Promoting prostitution in the first degree
- **NYS Penal Law §230.33** - Compelling prostitution
- **NYS Penal Law §230.34** - Sex trafficking
- **NYS Penal Law §230.35** – Accomplice to promoting or compelling prostitution
- **NYS Penal Law §230.36** – Accomplice to sex trafficking
- **NYS Penal Law §230.40** - Permitting prostitution
- **NYS Penal Law §240.37** - Loitering for the purpose of engaging in prostitution

A.2736/S.1379 also amends the New York State Executive Law to ensure that all police and peace officers throughout the State of New York receive proper training regarding the above-mentioned evidentiary prohibitions.

Resolution No. 264 supports A.2736/S.1379.

Res. No. 121

Resolution recognizing every June as Gun Violence Awareness Month in New York City.

By Council Members Williams, Chin, Constantinides, Dickens, Espinal, Gibson, Lander, Levine, Torres, Van Bramer, Rosenthal, Mendez and Koslowitz

Whereas, Gun violence is a national and local problem affecting many Americans and New Yorkers on a daily basis; and

Whereas, Numerous tragedies have occurred over the past few years demonstrating how serious of a problem gun violence can be; and

Whereas, Often national attention is drawn only to large scale tragedies, yet there are gun violence injuries occurring on a daily basis throughout many American cities; and

Whereas, In New York City in particular, 57% of all murders in 2012 were attributed to gun violence; and

Whereas, Moreover there were nearly 1,375 shooting incidents, where a person was injured either fatally or non-fatally, in New York City in 2012; and

Whereas, In New York City, gun violence is a problem that disproportionately impacts certain neighborhoods and populations; and

Whereas, For example, approximately half of all shooting incidents in 2012 occurred in only 10 of the City's 76 police precincts; and

Whereas, Additionally, 64 percent of the murder victims in New York City in 2012 were African American; and

Whereas, Of the African American males aged 16 to 21 who were murdered in 2012, 86% were killed by a gun; and

Whereas, It is therefore clear that gun violence is a plague on our communities which must be stopped;

Whereas, Furthermore, gun violence and the resulting injuries and murders typically increase substantially in the summer months; and

Whereas, In 2011, there was an almost 120% increase in shooting incidents when comparing the first quarter of that year to the third quarter of that year, which encompasses the months of July and August; and

Whereas, It is therefore necessary for the City of New York to join the efforts of New York State Senator Ruth Hassell-Thompson and New York State Assembly Member Karim Camara to continue to increase public awareness about guns and the severity of their impact on our communities by recognizing every June as Gun Violence Awareness Month; and

Whereas, Recognition of the month of June as Gun Violence Awareness Month by local and state officials will increase efforts to protect all New Yorkers, especially those who are disproportionately affected by such violence, by furthering the dialogue with our local, state and federal partners to help examine the causes of gun violence and create meaningful solutions in an effort to prevent the violence from peaking again in the summer; now, therefore, be it

Resolved, That the Council of the City of New York recognizes every June as Gun Violence Awareness Month in New York City.

SA  
Res. 1743/2013  
LS 456/2014  
3/4/14



Res. No. 264

Resolution in support of A.2736/S.1379, which would amend state law by prohibiting using possession of a condom as evidence in prostitution and prostitution related trials, hearings or proceedings.

By Council Members Williams, Menchaca, Weprin, Chin, Dickens, Dromm, Johnson, Levine, Rose and Wills

Whereas, New York City is arguably the epicenter of the HIV/AIDS epidemic, and according to the New York City Department of Health and Mental Hygiene ("DOHMH"), in 2012, there were 114,926 New Yorkers living with HIV/AIDS and thousands more are unaware of their status; and

Whereas, According to DOHMH, of those who are newly infected by HIV in New York City, 77 percent are black and Hispanic men; and

Whereas, According to the to the Centers for Disease Control and Prevention ("CDC"), latex condoms, when used consistently and correctly, are a highly effective method of preventing the sexual transmission of HIV and reducing the risk of other sexually-transmitted diseases; and

Whereas, Since 1971, New York City has distributed free condoms to the public in order to combat the transmission of sexually-transmitted infections and diseases as well as to promote safer sex practices; and

Whereas, DOHMH distributes more than 38 million condoms per year at approximately 3,500 locations throughout New York City including, but not limited to: bars, nightclubs, restaurants, hospitals, clinics and community based organizations; and

Whereas, A 2006 study conducted by experienced HIV care providers found that each case of HIV prevented could save \$303,100 in lifetime medical costs; and

Whereas, Condom distribution is a recognized public health intervention which protects individuals from HIV/AIDS and other sexually-transmitted diseases and the CDC has cited barriers to condom access as one of the contributing factors to continuing HIV infections; and

Whereas, Nevertheless, under existing law, the possession of condoms may be introduced as evidence of prostitution and prostitution related offenses; and

Whereas, Despite the noted public health benefit of condom use, according to research conducted by DOHMH and the PROS Network, a coalition of public health organizations and service providers, the admissibility of condoms as evidence of prostitution leads to frequent confiscation of condoms by New York City Police (NYPD) officers, which discourages certain groups from possessing and thereby using condoms, all of which deeply undermines public health efforts to encourage safe sex; and

Whereas, On May 12, 2014, NYPD Commissioner Bratton announced a policy change, which would limit the NYPD's practice of confiscating condoms in three prostitution-related offenses: prostitution, prostitution in a school zone, and loitering for the purposes of prostitution; and

Whereas, However, condoms will still be invoiced as evidence for arrests made for promoting prostitution and sex trafficking cases; and

Whereas, The policy of using possession of a condom as evidence in more serious prostitution-related offenses detrimentally affects vulnerable sex workers and individuals who have been profiled by police as being sex workers, as they will remain reluctant of carrying any form of contraception or sexually-transmitted infection prevention tool because they will still fear the legal ramifications of doing so; and

Whereas, Current state law, notwithstanding NYPD's updated policy, puts any person who carries, possesses, or has condoms on a premises at risk of being suspected of criminal activity and endangers the public health of all New Yorkers; and

Whereas, Although the NYPD's recent policy change should be praised, New York State needs to further restrict the possession of a condom from being used in evidence in all prostitution related offenses; and

Whereas, A.2736, introduced by Assembly Member Barbara Clark and pending in the New York State Assembly, and S.1379 introduced by Senator Velmanette Montgomery and pending in the New York State Senate, seek to take the NYPD's new policy a step further by prohibiting possession of a condom from being received in evidence in any trial, hearing or proceeding as evidence of prostitution-related offenses; and

Whereas, Over 70 public health, anti-trafficking, reproductive justice, women's, LGBT, sex workers', civil and human rights advocates and organizations have expressed support for passage of legislation that would prohibit the citation of condoms as evidence of intent to engage in prostitution-related offenses; and

Whereas, The passage of A.2736/S.1379 would ensure that all New Yorkers are not deterred from continuing to use condoms to protect against the threat of sexually transmitted diseases; now, therefore, be it

Resolved, That the Council of the City of New York supports A.2736/S.1379, which would amend state law by prohibiting using possession of a condom as evidence in prostitution and prostitution related trials, hearings or proceedings.

SA  
5/22/14  
LS# 4846 &1800