

FOR THE RECORD

**Kenneth P. Thompson**  
District Attorney

In Support of Res. No. 121-2014 –  
Recognizing Every June as Gun Violence Awareness Month in NYC

New York City Council Hearing,  
Committee on Public Safety

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*June 9, 2014*

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The Kings County District Attorney's Office fully supports the proposed City Council Resolution to recognize every June as Gun Violence Awareness Month in New York City. Gun violence is perhaps the most virulent and devastating crime problem confronting Brooklyn today. Indeed, gun violence in Brooklyn accounts for over 40% of such violence in the entire City. It is imperative that we deploy all means available to address this real threat to our safety and security, and raising public awareness is a key step in effectuating positive change.

According to the New York Police Department's CompStat numbers, during this year's first five months alone, there have been 508 arrests in Brooklyn during which a gun was recovered. There have already been 221 shooting victims, a close-to-13% increase over the first five months of last year. Among those victims, were 23 fatalities. Over 43% of Brooklyn shooting incidents have occurred in just three precincts -- the 75th (encompassing East New York), 73rd (encompassing Brownsville/Ocean Hill), and 67th (encompassing East Flatbush). The law-abiding residents of these neighborhoods are understandably frightened of gunfire -- they are reluctant to leave their homes and wary of letting their children play outside lest they be cut down by a gang member's bullet.

Gun violence is taking a terrible toll on our youth. Over half of the Brooklyn shooting victims are 24 years old or younger. In the last two months, we have seen an unconscionable number of youngsters fall victim to gun violence. For example: Thirteen-year-old Gama Droiville was standing outside a pizzeria with his aunt on a Monday afternoon when a gunman started firing shots. One of those bullets, missing the intended target, struck Gama in the eye. Sixteen-year-

In addition to focusing on those offenders who are out on the street committing these shootings, the Brooklyn District Attorney's Office, in partnership with the NYPD, is actively engaged in investigating and shutting down the pipeline that floods our City with illegal firearms. For example, at the end of April this year, a Brooklyn grand jury handed up a 558-count indictment against six gun traffickers who conspired to sell large numbers of firearms obtained in Georgia and destined for the streets of Brooklyn. The firearms, many of which were loaded at the time of the sales, included an AR-15, a MAC-11, two TEC-9 automatic weapons, and 151 various pistols and revolvers. Our joint investigation with the NYPD put an end to major gun trafficking organization and spared our communities the havoc that these dangerous weapons would have wreaked in criminal hands.

These initiatives clearly evince my Office's determination to vigorously investigate and prosecute gun-related crime. But, I also recognize that a portion of our gun crime is being committed by young teenage offenders, and I believe that many of these youth, if provided with intensive monitoring and tailored social services, can avoid a destructive cycle of incarceration and recidivism. The Brooklyn District Attorney's Office runs several youth diversion programs, but I want to highlight two of them today: Project ReDirect and Youth and Congregations in Partnership (YCP). Both programs have a track record of success at reducing recidivism, and I intend to expand both programs.

Project ReDirect focuses on young gang members charged with gang-related offenses, including weapon possession. The offender pleads guilty to the charges, and sentencing is deferred while he participates in the program.

the District Attorney's Community Relations Bureau. Community relations specialists are proactively reaching out all across Brooklyn to all types of community groups, faith-based organizations, and schools to open new lines of communication. It is crucial that there be an active, two-way flow of information between the District Attorney's Office and the public whose safety the Office seeks to protect.

In that vein, in the coming months, I intend to hold a series of town hall meetings throughout Kings County. Our first town hall meeting is scheduled for June 18, 2014, in Brownsville, which, unfortunately, is a neighborhood that has been the site of many shootings and several homicides this year. Members of my executive team and senior staff will attend these meetings to discuss the various strategies and initiatives we are implementing to increase public safety and reduce gun violence. No less importantly, we want to hear the concerns of neighborhood residents first-hand, and answer their questions.

Which brings us back to how important it is to raise awareness about gun violence. By making every June, Gun Violence Awareness Month, the City will ensure that its residents will continue to press their elected officials, their law enforcement agencies, and their criminal justice system to work harder at figuring out how to stop the shootings that destroy our communities and that have ended too many innocent lives. I applaud the council members who have sponsored Resolution 121, and I urge its passage.

**TESTIMONY**

The Council of the City of New York  
Committee on Public Safety

**Hearing on Proposed Res. 264-2014**

June 9, 2014  
New York, New York

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probative value of condoms to demonstrate any elements of a prostitution crime, the simple fact is that those individuals believed to be engaging in prostitution are precisely the individuals who should be universally encouraged to use condoms as a way to prevent the spread of sexually transmitted diseases and unwanted pregnancies. Instead, many individuals engaging in prostitution become fearful to carry condoms as doing so might lead to their arrest and support their prosecution. Numerous studies have documented the life-threatening impact on those engaging in prostitution.<sup>4</sup>

New York City has taken significant steps to develop programs that improve public access to condoms.<sup>5</sup> Condoms are widely distributed as part of dedicated public health initiatives. Current arrest and prosecution practice regarding condoms taken from arrestees undermines the efforts of New York State, New York City and other localities and non-governmental harm reduction agencies to combat sexually transmitted infections (“STIs”) and disease and help reduce the health risk for the transmission of STIs and HIV. Against this backdrop, the use of condoms as evidence to support prostitution and prostitution related charges is extremely problematic, and should be prohibited.

## **2. Proposed Legislation Protects Trafficking Victims**

In addition, when considered in relation to victims of trafficking arrested for prostitution, the use of condoms as evidence in any criminal case only serves to further alienate, victimize, and render most vulnerable those we represent. The impact of this troubling practice is magnified when those arrested and prosecuted are victims of trafficking, a scenario which occurs

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<sup>4</sup> Human Rights Watch, *Sex Workers At Risk: Condoms as Evidence of Prostitution in Four U.S. Cities*, at 29, available at [http://www.hrw.org/sites/default/files/reports/us0712ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf) (2012). See also PROS Network and Urban Justice Center Sex Workers Project, *Public Health Crisis: the Impact of Using Condoms As Evidence in New York City*, available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf> (2012).

<sup>5</sup> See, e.g., Emily Gogolak, *New York's Condom Bait-and-Switch*, *The Village Voice*, March 6, 2013.

prostitution were required to sign a contract indicating that they would not carry condoms with them while working in prostitution.<sup>8</sup> The consequence of continuing to allow the possession of condoms to be used as evidence in any prostitution, or trafficking, related crimes only serves to further jeopardize the health and safety of trafficked individuals. Indeed, “[i]n reality, a condom may be the one protection a victim of trafficking has from a trafficker's assault on her or his human rights, autonomy, and body.”<sup>9</sup>

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

Though the NYPD and several District Attorneys have recently announced policy changes regarding condoms as evidence in certain cases, this is an issue that cannot be left to each local prosecutor and police force to decide. We should not prohibit life threatening practices in New York City but tolerate them in Albany or Buffalo. Rather, statewide legislative reform is necessary to ensure that this practice is prohibited throughout New York State and there is uniformity and consistency.

Furthermore, even where prosecutors do not seek to introduce seized condoms as evidence in some cases, but condoms seized by the police may be used as evidence in others, there remains a continued risk to the health and safety of all New Yorkers, especially those trafficked into prostitution or unjustly profiled as being involved in prostitution. Amending the state criminal procedure law to prohibit the introduction of condoms as evidence in prosecutions would also eliminate the police practice of seizing condoms as arrest evidence. This would in turn prevent the harmful signal vouchering condoms as arrest evidence can send to those arrested and their respective communities.

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

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

**The New York City Council  
Committee on Public Safety**

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

**123 William Street, 16th Floor  
New York, New York 10038  
T: 646/602-5697  
[legyes@urbanjustice.org](mailto:legyes@urbanjustice.org)**

**Monday, June 9, 2013 at 10:00 a.m.**

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

Good morning, members of the Committee on Public Safety.

The Sex Workers Project at the Urban Justice Center very much appreciates the opportunity to offer comment on this proposed resolution. My name is Lynly Egyes and I am Senior Staff Attorney at the Sex Workers Project where I primarily represent survivors of trafficking. I'm here today to illustrate to you why this resolution could be a huge step to passing ground-breaking anti-trafficking legislation.

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

It is because of Allison and so many other victims of trafficking that I consider this resolution calling on the New York State Legislature to pass the Access to Condoms bill to be a groundbreaking moment in the anti-trafficking movement. This resolution is about trying to protect victims while they are being trafficked. It is about saying to victims, "We are not going to give a trafficker any excuse to deny you condoms."





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## **Testimony of Andrea Ritchie**

before the

*Hearing of New York City Council Civil Rights Committee on Resolution 0264-2014, in support of AO2736/SB1379, New York State legislation that would prohibit the use of condoms as evidence of any prostitution-related offense*

**June 9, 2014**

Good morning. My name is Andrea Ritchie, and I am the Coordinator of Streetwise and Safe, an organization focused on ending discriminatory policing of LGBTQ youth of color. We proudly serve on the Steering Committee of Communities United for Police Reform, and on the executive committee of the Access to Condoms Coalition, made up of over 70 anti-trafficking, women's reproductive rights, public health, HIV/AIDS, human rights, LGBTQ, and civil liberties groups advocating for passage of the legislation that is the subject of the resolution we are discussing today.

On behalf of the Coalition, we want to extend our sincere appreciation to Council Members Williams and Menchaca for introducing the resolution, and our gratitude to Chairperson Gibson and members of the Public Safety Committee for taking the time to hold this hearing this morning in the midst of a very busy legislative session.

As you will hear from a broad range of organizations and individuals directly affected by this practice, police and prosecutors' continued confiscation and introduction of possession of condoms as evidence of intent to engage in prostitution-related offenses is contributing to a public health crisis in New York. This practice directly undermines the public health efforts and the safety and reproductive rights of all New Yorkers, and particularly those of women of color and LGBTQ youth and adults, immigrants, and New

than 30 anti- trafficking organizations, I know that it is not uncommon for traffickers to restrict or deny their victims access to condoms and basic reproductive health services as a form of manipulation and control.

However, in New York and other parts of the United States, traffickers have an additional reason to deny their victims access to condoms. Condoms found at a location where people have been coerced into the sex trade may be used by prosecutors as evidence to support felony trafficking charges. This means that traffickers may have an especially strong incentive to forbid their victims from carrying condoms, to ban them from locations where exploitation is occurring, and to make it nearly impossible to use them. The consequences for those forced into the sex trade are severe--unwanted pregnancy often followed by forced abortion, and irreparable damage to their reproductive health from HIV and sexually transmitted infections.

Some may argue that prosecutors need every tool at their disposal to find traffickers and hold them accountable.

But allowing condoms to continue to be used as evidence in trafficking cases is detrimental to the health of the very people we are trying to help.

Much of the media spotlight on the bill has focused on the use of condoms as evidence for street-based prostitution and loitering charges. Clearly these practices fly in the face of common sense, turning an effective public health measure to prevent HIV into contraband, and leaving New Yorkers wondering if there is a "legal limit" to the number of condoms a person may carry.

But this bill would also protect the health and the lives of trafficking victims. In situations in which women and girls, as well as men and boys, are coerced into the sex trade, ending the use of condoms as evidence could give them some ability to negotiate for their own sexual safety. In reality, a condom may be the one protection a victim of trafficking has from a trafficker's assault on her or his human rights, autonomy, and body.

with promoting or trafficking offenses, which carry serious penalties. Community organizations and businesses, and particularly those run by or frequented by women of color, immigrants and LGBTQ communities who are routinely profiled as engaged in prostitution-related offenses will continue to be deterred from carrying or making them available as a result.

This is not just a local issue - it's a national one: The President's Advisory Council on HIV/AIDS (PACHA) has called for elimination of "the use of condoms or other measure to prevent HIV transmission, as the basis for criminal prosecution or sentence enhancement." Recently, SAS, along with the Center for American Progress, along with the Center for Gender and Sexuality Law at Columbia University and Center for HIV Law and Policy released *A Roadmap for Change*, a comprehensive set of federal policy recommendations to address the criminalization of LGBT people developed in collaboration with over 50 national and local racial justice, LGBT and civil rights organizations, which prominently featured a strong recommendation to put an end to the use of condoms as evidence in all prostitution-related cases.

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

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



## **Florrie Burke**

Chair Emeritus, Freedom Network

# **Forced Into Prostitution -- and Denied a Lifeline**

Posted: 05/15/2013 12:20 pm

[Human Trafficking](#), [Prostitution](#), [Sex Trade](#), [Sex Trafficking](#), [New York News](#)

I'm an advocate for victims of human trafficking, and I've witnessed a lot of pain and suffering. But I'll never forget the day I met two teenage girls at a District Attorney's office the day after they escaped a brothel. As the girls sat there clutching the teddy bears that are usually given to children, they told me they had been forced to have sex with multiple men without condoms. One of the girls described a painful, burning vaginal infection that became so severe that the trafficker took her to the clinic. While she was there, she and her friend made an escape plan. When they returned the following day for follow up they ran out of the building and asked for help from a passer-by, who took them to the police.

Thankfully, this girl had a treatable infection. But many sex trafficking victims are not so lucky.

That's why New York lawmakers should ban condoms as evidence of all prostitution-related crimes, including trafficking, in the 2013 legislative session.

As a founder and coordinator of the Freedom Network, a national network of more than 30 anti-trafficking organizations, I know that it is not uncommon for traffickers to restrict or deny their victims access to condoms and basic reproductive health services as a form of manipulation and control.

However, in New York and other parts of the United States, traffickers have an additional reason to deny their victims access to condoms. Condoms found at a location where people have been coerced into the sex trade may be used by prosecutors as evidence to support felony trafficking charges. This means that traffickers may have an especially strong incentive to forbid their victims from carrying condoms, to ban them from locations where exploitation is occurring, and to make it nearly impossible to use them. The consequences for those forced into the sex trade are severe--unwanted pregnancy often followed by forced abortion, and irreparable damage to their reproductive health from HIV and sexually transmitted infections.

A bill in the New York legislature, S1379/A2736, could help change this situation. This bill should prohibit prosecutors from using possession of condoms as evidence to support prostitution-related charges, including trafficking.

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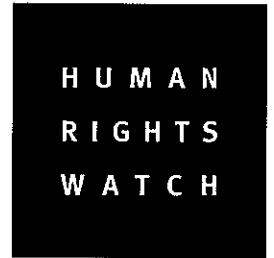
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HRW.org

New York City Council  
250 Broadway  
New York, NY 10007

June 9, 2014

To the City Council:

Human Rights Watch submits this testimony in support of City Council Resolution 264-2014. This resolution calls on the New York State Legislature to enact and the Governor to sign into law bill A2736/S1379, which would amend current law by explicitly prohibiting the introduction of condoms as evidence of prostitution and prostitution-related offenses in certain criminal and civil proceedings. Adoption of Resolution 264-2014 by the New York City Council would send a clear message to state legislators that amendment of the existing law is essential to promoting both public health and human rights.

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

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

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

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

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

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

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

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

New York State has distributed millions of condoms to its citizens in an admirable campaign to protect the public health. Law enforcement practices that deter people from using these condoms undermine this important effort, waste tax dollars, and threaten to increase rates of HIV and other infections. Recognizing the importance of condoms to public health, the District Attorney for Nassau County has instructed the more than 200 prosecutors in her employ to stop introducing condoms as evidence for all prostitution-related offenses including those related to trafficking, and the District Attorneys for Manhattan and Brooklyn have agreed to stop introducing condoms as evidence of misdemeanor prostitution cases. NYPD Commissioner Bratton recently announced that the NYPD will stop confiscating condoms for three prostitution-related offenses: prostitution, prostitution in a school zone, and



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### **Testimony of Trina Vuitton**

*Hearing of New York City Council Civil Rights Committee on Resolution 0264-2014, in support of  
A02736/SB1379, New York State legislation that would  
prohibit the use of condoms as evidence of any prostitution-related offense  
June 9, 2014*

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

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

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

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



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### **Testimony of Mitchyll Mora**

*Hearing of New York City Council Civil Rights Committee on Resolution 0264-2041, in support of  
A02736/SB1379, New York State legislation that would  
prohibit the use of condoms as evidence of any prostitution-related offense  
June 9, 2014*

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

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

Through this research, as well as our “know your rights” trainings and outreach throughout the city, Streetwise and Safe comes into contact with hundreds of young women of color and LGBTQ youth in New York City every year. Many of the young people that we come into contact with have experienced homelessness or are currently homeless, and many of them have traded sex for the things they need to survive. Many more have been profiled as being involved in the sex trades – based on their gender and race, their sexual orientation, their gender identity and expression. Many of them are under 18 – and therefore by law they are deemed to be trafficked regardless of their circumstances.



and open up our bags and purses. While this practice affects all LGBTQ youth, it has particular effects on youth who are homeless or without a stable place to live, who may or may not be engaging in trading sex for the things they need to survive, who, in New York City, are subjected to aggressive profiling and policing by the NYPD every single day simply because so much of their time is spent in public spaces where they cannot escape stops, frisks, and other discriminatory policing practices.

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

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

We feel unsafe carrying condoms, because we are.

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

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

**Testimony of Deputy Legal Director Hayley Gorenberg  
New York City Council, Public Safety Committee  
June 9, 2014**

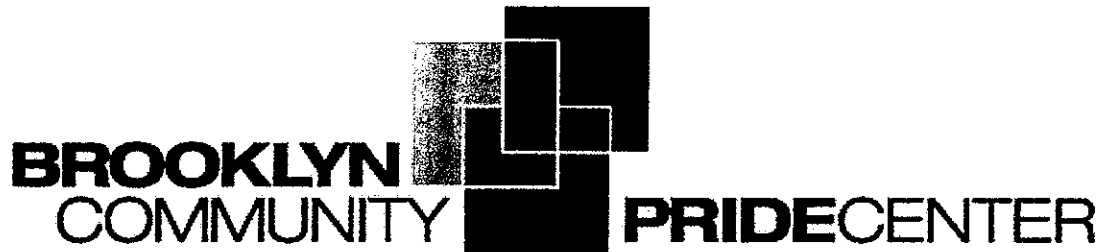
Condoms are evidence of interest in safer sex. Condoms are evidence of attempts to protect health. Condoms, millions of condoms every year, have been distributed by this city since early in the HIV epidemic, much of that epidemic centered in New York City, because of rock-solid scientific, medical evidence that condoms make us safer. But today, ~~condoms~~ 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 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.

It's time to take condoms as evidence of any prostitution-related crime off the table. That's what today's resolution (0264-2014, supporting state legislation A. 2736 / S. 1379 that would prohibit the confiscation and citation of possession or presence of condoms as evidence of all prostitution-related offenses across New York State) is about.

You'll be following the lead of Kathleen Rice, head of the District Attorneys Association of the State of New York, who has said if you're trying to use condoms to make your prostitution case, you don't have a case. You'll be following in the footsteps of San Francisco and Washington, D.C. And you'll be following the evidence presented by Human Rights Watch, whose report (<http://www.hrw.org/reports/2012/07/19/sex-workers-risk>) catalogues the damage wrought by the practice in New York and elsewhere as an offense to human rights.

Advocates in this room (including advocates for people who are or have been trafficked) and many others have talked with prosecutors and police for years about this problem, and while we've gained some ground, we have not fully succeeded in those limited discussions. Human trafficking, including but not limited to sex trafficking, has drawn lots of attention lately—as well it should. Unfortunately, sex traffickers may view the people they traffic as disposable, replaceable. But you, the officials elected to represent us—including those of us who have been used in this way—understand that people who



Monday, June 9, 2014

Good morning Chairwoman Gibson and members of the New York City Council. My name is Erin Drinkwater, Executive Director of the Brooklyn Community Pride Center, Brooklyn's LGBTQ Community Center and member of the Access to Condoms Coalition. Thank you for holding this important hearing in regards to the Resolution 0264-2014, which seeks to prohibit the possession of a condom as evidence in prostitution and prostitution related trials, hearings or proceedings. Multiple reports, which you can find at [accesstocondoms.org](http://accesstocondoms.org), have shown the negative effect the practice of using condoms as evidence for all prostitution related offenses has on public health, discouraging condom possession and use especially among LGBTQ youth and those who do sex work.

At the Brooklyn Community Pride Center (BCPC), we are committed to affecting positive change within the borough of Brooklyn, and the community at large. We provide a comprehensive program of services and partner with many organizations in the room. There are a handful of ways that the lack of a comprehensive and or statewide policy negatively impacts our work. One of our many methods to affecting positive change is the promotion of public health protection. We regularly host workshops and discussion focused exclusively on health, including sexual and reproductive health. Our clients are offered and have access to condoms, which have been provided through New York City's free condom initiative. However, we are troubled knowing that while our city invests in the distribution of free condoms, which assists to promote safe sex and reduce unwanted pregnancies – that individuals who come to the center and leave with safer sex materials could be at risk. We work with clients and users of the Center, many of whom are youth of color, transgender who we know are often disproportionately targeted by the NYPD under the practice of stop, question and frisk. These individuals are profiled by police based on their looks, demeanor, or attire, that may be deemed as too provocative or revealing, strolling through certain streets or neighborhoods, or suspicious behavior are one of many reasons individuals are stopped.

These same folks who we are teaching safer sex practices in order to protect the health of the individuals and community at large are leaving the safe space of the center and have to ask themselves what's more important – their health and well-being or the use of condoms to justify an arrest. Using condoms as evidence for the prosecution of any crime presents an incredible deterrent for those engaged in practices of any prostitution related act in the act and promotion of safe sex. Simply, the practice of using condoms as evidence has untold public health implications.



**Testimony of The Center for HIV Law and Policy  
Before the New York City Council's Committee on Public Safety  
Regarding Condom Confiscation  
June 9, 2014**

My name is Ivan Espinoza-Madrigal, and I am the Legal Director of The Center for HIV Law and Policy (“CHLP”), a national legal and policy resource and strategy center for people with HIV and their advocates. CHLP coordinates the Positive Justice Project, a national coalition of people living with HIV, community advocates, health care providers, public health professionals, and others leading the fight to end the criminalization of HIV in the United States. CHLP supports Resolution No. 264-2014 – calling on the New York State Legislature to pass A.2736/S.1379, proposed legislation that would prohibit the use of condom possession as evidence in prostitution and prostitution-related trials, hearings or proceedings.

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

made for promoting prostitution and sex trafficking cases. New York State needs to further restrict condom possession from being used as evidence in all prostitution-related offenses.

We applaud the New York City Council for showing leadership and urge you to call for legislation that will end policing that undermines our investments in public health.

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



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**Testimony of Staten Island District Attorney Daniel M. Donovan, Jr.  
Committee on Public Safety of the New York City Council  
June 9, 2014**

Thank you Madame Chair and the Members of the Committee for this opportunity to appear before you today.

First let me say that for the 10 years I have been District Attorney, my office has not used the possession of condoms as evidence of prostitution in the prosecution of Loitering for the Purpose of Prostitution cases under Section 240.37 of the Penal Law. That scenario seems to be the most often stated target of the proponents of A02736 and S01379. It is important for New York to encourage safe sex practices and it is a laudable goal to save lives by not discouraging individuals from carrying condoms out of fear that they will be arrested and charged with a prostitution offense.

While we are in widespread agreement with the goals and purposes of this legislation, we feel that a blanket prohibition on the use of condoms as evidence of some prostitution-related crimes may be imprudent. Let me be clear. The condom possession evidence would be used by my office to prosecute traffickers and those who patronize underage victims. The legislation does not appear on its face to distinguish between used and unused condoms. While we agree that the possession of four or 40 condoms should not be used as evidence of prostitution — especially with regard to Section 240.37 cases — this legislation would prohibit the admission of evidence that a person was in possession of one or more condoms “for any offense...defined in Article Two Hundred Thirty” of the Penal Law. Article 230 includes Section 230.06 of the Penal law — Patronizing a Prostitute in the First Degree, in which a person patronizes a prostitute and the person patronized is “less than eleven years of age” (a D Felony). If, for example, a man was to patronize a 10-year-old male or female, and the man retained the used condom, we, as prosecutors, would want that condom with the man’s and the 10-year-old’s DNA as evidence. Pursuant to this legislation, it appears that the condom would be inadmissible as evidence to prove that the man committed the D Felony.

Similarly, we can envision sex trafficking cases — also included in Article 230 — that would be bolstered by the uses of condoms as evidence to be used against the trafficker.

This being said, we do believe the goal of this legislation to be laudable, and we hope the legislation can be tweaked to protect even further the rights and the lives of our citizens.

Thank you.

My name is Bianey Garcia. I'm a 24 year old Mexican transgender. I work as an LGBTQ organizer at Make The Road New York. Eight years ago, I migrated to the United States. Currently I reside at Jackson Heights Queens.

Three years ago, I experienced the usage of condoms as evidence.

It was one night when my boyfriend and I went to our local bar to spend quality time together. We took a couple of drinks and later on that night we decided to leave the bar and go home. As my boyfriend and I were walking by Roosevelt Ave, we were cuddling and having a great time together. The fun was over when undercover police men stopped me and my boyfriend. These undercover police men got out of the car and without my consent pushed me against the wall taking my purse away from me. During the search, they emptied my purse and found three condoms. With three condoms in their possession, they decided to arrest me because supposedly I was promoting prostitution. They were making fun of my boyfriend right after he admitted that he was dating me and we were not doing anything wrong. One of the police men who were Hispanic asked my boyfriend to leave or else they will arrest him too. That night had to be the worst of night of my life not because I was taken to the precinct and faced a judge but because it was the first time I ever experienced discrimination.

As an LGBTQ organizer of Make The Road New York, I relate to stories that I hear everyday coming from my community because they are being profiled by the same discriminatory act.

Although the police commissioner stated that he won't present the condoms found in my purse as evidence, as an LGBTQ organized I believe that this has not ended because my community is being profiled and arrested for reasons like color of skin and way of expression.



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**Testimony of Shelby Chestnut, Co-Director of Community Organizing and Public  
Advocacy,  
New York City Gay and Lesbian Anti-Violence Project  
to the  
Public Safety Committee  
New York City Council  
Hearing on Resolution 264  
June 9, 2014**

Good afternoon. My name is Shelby Chestnut I am the Co-Director of Community Organizing and Public Advocacy at the New York City Gay and Lesbian Anti-Violence Project (AVP). I am here to testify about Resolution 264 Introduced by Council Members Jumaane Williams and Carlos Menchaca which is pending before the New York City Council, which would support New York State legislation that would prohibit the use of condoms as evidence of all prostitution-related crimes.

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

I thank the City Council for the opportunity to speak with you today and offer this testimony. **AVP supports the passage of Resolution 264 calling on the New York State Legislature to pass, and Governor to sign, legislation that would prohibit possession of a condom from being used as evidence of all prostitution-related offenses.**

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 people, particularly transgender and gender non-conforming people, youth and people of color, who are regularly arrested for carrying condoms. As described below, this contradictory public policy causes a severe chilling effect in the regular use of condoms to reduce HIV transmission. Using condoms as evidence makes bad public policy, puts New York State agencies at odds with each other and jeopardizes safety. This policy should end immediately.

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

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

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



According to the New York City Department of Health and Mental Hygiene (DOHMH), as of 2012, 114,926 people were living with HIV in New York City. This figure represents the vast majority of cases in New York State. According to the CDC, New York City has the second highest rate of AIDS cases in the U.S. This rate is three times higher than the national average, making New York City an epicenter for HIV.<sup>2</sup>

Barriers to effective prevention strategies disproportionately affect African Americans. According to DOHMH, in New York City, more than 75% of all new diagnoses occur among African Americans and Hispanics. The City's youth are at particularly high risk. According to the DOHMH, new HIV diagnoses among young men ages 13 to 19 who have sex with men (MSM) have doubled.

New York City and State have a strong and historical commitment to distributing condoms to prevent the spread of HIV. New York City has a series of safer sex public health campaigns linked to condom distribution programs.<sup>3</sup> As a result of these campaigns New York City distributed 38 million condoms per year at 3,500 locations. Additionally, the New York State Department of Health distributes approximately 10 million condoms annually. Indeed, government authorities should promote, not discourage, safer sex practices. The Centers for Disease Control and Prevention (CDC) found that latex condoms, when used consistently and correctly, are highly effective in preventing the sexual transmission of HIV, the virus that causes AIDS. Additionally, the correct usage of condoms reduces the risk of other sexually transmitted diseases (STDs)<sup>4</sup>. Preventing the transmission of HIV and STDs makes good fiscal sense. A 2006 study on the cost effectiveness of HIV prevention found that each case of HIV prevented could save \$303,100 in lifetime medical costs for HIV medical care by experienced HIV care providers.<sup>5</sup>

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

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

AVP annually reports on hate violence experienced by LGBTQ and HIV-affected people. In our latest report, released May 27, 2014, we found, across the nation that almost 90% of all anti-LGBTQ homicide victims in 2013 were people of color and 72% of anti-LGBTQ homicide victims in 2013 were transgender women. In New York City, in 2013, reports of hate violence increased by almost 27% for LGBTQ and HIV-affected New Yorkers, continuing a three-year trend (including a 4% increase from 2011-2012 and 11% increase from 2010 to 2011), despite a national decrease in violence. 74% of survivors reporting identified as people of color and

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

<sup>3</sup> <http://www.nyc.gov/html/doh/html/condoms/condoms-why.shtml>, accessed February 9, 2011.

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

<sup>5</sup> Schackman, B.R. et al., *The Lifetime Cost of Current Human Immunodeficiency Virus Care in the United States* *Medical Care* Volume 44, Number 11, November 2006(<http://www.rilin.state.ri.us/hiv/documents/lifetimecostofhiv.pdf>, accessed 2/24/11).

reports from transgender and gender non-conforming people increased by 21%. Additionally reports of police misconduct remained high for the second year in a row with 68 instances reported.

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

The NYPD recently announced a policy to stop collecting condoms as evidence in some sex-related offenses. However, the NYPD will continue to collect condoms in cases involving trafficking and promoting prostitution. When the police have the discretion to decide which offense to charge someone with – and therefore whether to seize condoms as evidence – New Yorkers cannot be sure that they will be safe in all circumstances when carrying condoms. When people are uncertain, they often err on the side of not carrying condoms at all.

AVP works with many LGBTQ people, particularly young people, who report to AVP that they no longer carry condoms for fear of being arrested, which means that HIV transmission is much more likely to occur through unprotected sex. Transgender women are frequently profiled as sex workers by police regardless of whether or not they are actually engaged in sex work. Because of this, transgender women are especially fearful that any condoms in their possession will be used as evidence that they are engaging in prostitution-related offenses and are therefore reluctant to accept condoms from outreach workers. LGBTQ youth are also at high risk. According to the NYC Department of Health and Mental Hygiene, new HIV diagnoses among young men ages 13 to 19 who have sex with men (MSM) have doubled. LGBTQ youth face great risk to their physical and emotional health if they are arrested for practicing safer sex. Reducing LGBTQ youth's access to safer sex in the midst of this violence further reduces their safety. AVP hears from youth that are afraid to carry condoms and are so aware of the use of condoms as evidence that they have created rhymes to describe how many condoms are "safe" to carry. These examples demonstrate how current New York State law has decreased the health and safety of LGBTQ communities by profiling and arresting them for their perceived and alleged activities.

Arresting individuals and vouchering condoms which are later offered into evidence in any prostitution related offenses, while at the same time encouraging the distribution and use of condoms, means that New York City and New York State sends a dangerous mixed message to anyone carrying condoms. Arresting individuals for carrying condoms has a chilling effect on all New Yorkers, who wish to use condoms to practice safer sex but fear arrest or prosecution. This contradiction wastes safer sex resources provided and paid for by New York State and violates individual human rights and sound public health policy.

New York State risks the health and safety of all people by continuing to allow police officers and prosecutors to use condoms as evidence of prostitution. To prevent the profiling, stop, frisk and arrest of LGBTQ and HIV-affected people, particularly transgender people of color, the New York State legislature must pass the Access to Condoms legislation prohibiting law enforcement from relying on the use of condoms as evidence of any sex-related offense, including promoting

prostitution or trafficking. This resolution, in support of state legislation A. 2736/S. 1379, would clarify and simplify the law across the state to prohibit the use of condoms as evidence in any prostitution or trafficking related case. This resolution resolves the conflict between the New York City Departments of Health and Mental Hygiene and law enforcement and makes clear New York State's commitment to encouraging all people to engage in safer sex to prevent HIV and STI transmission. The resolution, and the state legislation, is common sense and creates a consistent and safe practice that New Yorkers can rely upon.

We urge the New York City Council to take swift action to pass this Resolution to protect and promote the health and safety of all New Yorkers.

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

Very truly yours,

Shelby Chestnut  
Co-Director of Community Organizing and Public Advocacy  
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Good morning. My name is Beatrix House and I am a member of Red Umbrella Project, a peer-led organization that amplifies the voices of people in the sex trades through media, storytelling, and advocacy programs. Our members are mostly low income women, including both cis and trans women, who are currently or formerly involved in the sex trades. We have been working with a growing coalition of organizations on the issue of condoms being used as evidence of prostitution related offenses since 2009, and I'm here today to offer testimony in support of Resolution 264.

I support the passage of state bill A2736/S1379 because for sex workers condoms, which are a safer sex tool that the Department of Health gives away by the millions every year, are being confiscated, destroyed, and used as evidence of prostitution. Many community organizations make use of the free NYC condom program, but increasingly the people in the communities we serve are not taking advantage of the free condoms because of the fear that they will be stopped and frisked, and that the condoms will be used against them. The people who work in the sex trades, whether we are there by choice, circumstance, or coercion, are human beings who deserve access to condoms, so that we can protect ourselves from unwanted pregnancy and sexually transmitted infections including HIV. The mere fact of access to condoms does not condone coercion or trafficking; access to condoms is a harm reduction strategy.

For people who enter the sex trade by coercion, it is important that this bill is a comprehensive one that includes a ban on condoms as evidence in trafficking cases. Traffickers exert a lot of control over their victims, and if condoms can be used as evidence against them, they will restrict or deny access to condoms for their victims. This creates an unacceptable situation in which people are being victimized twice: forced to exchange sexual labor and prevented from protecting themselves from pregnancy and disease.

Red Umbrella Project recently saw a case involving a woman accused of trafficking that presents another problem with using condoms as evidence of trafficking. The defendant, whom I'll refer to as Ms. Zheng to protect her confidentiality, was continually pressed by the District Attorney's office to accept a plea that included a forfeiture of \$8000 even after the evidence against Zheng was insufficient to prosecute her for trafficking and her charge was dropped to operating a massage parlor without a license and moved to the Human Trafficking Intervention Courts. Why did it get moved there? Because Zheng is what is referred to as a straw owner, a person who may even be trafficked themselves who is written as the owner of property to protect the person actually committing the trafficking. In Zheng's case, condoms were used as evidence to make the case that she was a trafficker. Not receipts in her name, not proof that she made money from the massage parlor that she supposedly owned, but condoms. And even after it was moved the DA's office continued to push for their original plea. Luckily the judge immediately saw through this paltry rubbish the DA's office had the audacity to call evidence and gave the woman an adjournment for contemplation of dismissal the next week.

Condoms are part of the lifeline that people in the sex trades have to maintain some control of their lives. The only way to preserve this lifeline is to ban the use of condoms as evidence absolutely, by a state law not at the mercy of the whims of whichever police commissioner currently occupies the position. Thank you.

Planned Parenthood of New York City

\*\*\*OFFICIAL STATEMENT\*\*\*

**Planned Parenthood of New York City Supports  
Ending the Use of Condoms as Evidence of Prostitution in New York State**  
*Urges the NYC Council to Pass Res 0264-2014 in support of A.2736/S.1379*

Planned Parenthood of New York City urges the New York City Council to pass Res 0264-2014 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.

For several years, we have worked alongside fellow advocates to support comprehensive legislation to prevent the use of condoms as evidence of charges related to sex work. As a leading reproductive health care provider in New York City, we strongly believe that no New Yorker should fear carrying condoms because they risk those condoms being introduced as evidence of prostitution. We are proud to provide services in a city that, due in large part to the leadership and innovation of our Department of Health and Mental Hygiene, has one of the largest and most successful condom distribution programs in the country. We know that a combination of access, education and service provision will ensure a safer, healthier city.

We applaud the recent announcement by the NYPD that they will stop confiscating condoms for certain charges related to sex work. However, we urge the New York City Council to strongly advocate for the passage of statewide legislation to ensure that no one anywhere in the state of New York has to fear arrest or harassment for carrying condoms. For too long our policies have made many New Yorkers afraid to protect themselves. Carrying condoms should never be used as evidence for a crime.

As a leading healthcare provider in New York City serving all individuals regardless of their ability to pay, we recognize the intersection of public safety and public health. We applaud Council Members Menchaca and Williams for their leadership on this issue and thank members of the New York City Council for continuing to stand up with Planned Parenthood.

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Since 1916, Planned Parenthood of New York City (PPNYC) has been an advocate for and provider of reproductive health services and education for New Yorkers. Serving more than 50,000 clients annually, PPNYC's health care centers in Manhattan, Brooklyn, the Bronx and Staten Island offer reproductive health services, including gynecological care, life-saving cancer screenings, male reproductive health services, contraception, pregnancy testing, abortion, testing and treatment for sexually transmitted infections, and HIV testing and counseling. Through a threefold mission of clinical services, education, and advocacy, PPNYC is bringing better health and more fulfilling lives to each new generation of New Yorkers. As a voice for sexual and reproductive health equity, PPNYC supports legislation and policies to ensure that all New Yorkers—and, in fact, people around the world—will have access to the full range of reproductive health care services and information.

# THE PROS NETWORK

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Good morning everyone, my name is Jarad Ringer, board member at the PROS Network of New York, a network of organizations that provide services and resources for people who engage in sex work. I am also the Director of Education and Training at Center for HIV Educational Studies & Training (CHEST) 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 NYC Department of Health to produce research that shows the impact of the use of Condoms as Evidence on 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, 40% 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's statement does not go far enough, we need comprehensive statewide legislation to ensure that no one anywhere in New York State has to fear arrest or harassment for carrying condoms.

As far as I am aware, this is the only city in the world that has its own branded condoms. Our health department has invested in advertisement to promote condom use on billboards, bus stops, and the subway all over the city. Condoms are available through non-profit organizations, HIV research centers, schools, doctor's offices, restaurants, bars, and even in some police precincts! There is a disconnect when one institution is investing heavily in distributing condoms and promoting their use and another is confiscating condoms and arresting or harassing those who are taking the sound advice of our health professionals.

There are no laws in this city or state that make condoms illegal, however our research has shown that the practice of confiscating condoms has in effect criminalized condom possession. During today's Public Safety Committee hearing there will be testimony from health experts and people directly impacted by policing practices. They will make a strong case for why we need this legislation, but I will try to make the case here simple and easy. Condoms are a cheap and effective way of protecting people from pregnancy, HIV/AIDS, Hepatitis, and many STIs. Whether you are a person engaging in sex work, a transgender or gender non-conforming person, gay or bisexual, a young person of a color, or any one else in New York State you have the right to protect yourself and the person you are with. Our Health Department has realized this, it is time for our elected officials to back the message of the Access to Condoms Coalition and pass this bill because condoms are a human right and taking away condoms flies in the face of what makes the most sense.

Public Safety Committee Hearing  
Res 0264-2014

Prohibiting using possession of a condom as evidence in prostitution and prostitution related trials  
(A.2736/S.1379)  
Monday June 9<sup>th</sup>, 2014

Thank you for this opportunity to testify on this resolution in support of a statewide, comprehensive bill that bans condoms as evidence in all prostitution and prostitution court proceedings. My name is anna saini and I'm a Statewide Community Organizer with Voices of Community Activists and Leaders – New York (VOCAL-NY). VOCAL-NY is a statewide grassroots membership organization building power among low-income people affected by HIV/AIDS, the drug war and mass incarceration to create healthy and just communities.

We know that condoms are an important public health tool and that criminalizing them undermines our efforts to promote safe sex practices in our communities. When this criminalization is connected to prostitution, we know that this disproportionately and negatively impacts low-income, LGBTQ, communities of color where folks are commonly sex trading and sex working as well as more commonly profiled as sex workers by law enforcement. We know that there is no part-way solution to this issue; for the purposes of public safety, we need a wholesale decriminalization of condoms that is consistent across the State and inclusive of all prostitution related offenses.

When we maintain condoms as evidence in promoting and trafficking offenses, as the NYPD policy has, we create a powerful deterrent for pimps and traffickers to provide condoms to the people they are exploiting. Once it becomes clear that condoms are a potential element in a case against them, any minimally intelligent and self preserving trafficker or pimp will eliminate their large-scale availability. We are in effect disincentivizing exactly what we want to happen, which is that if people are forcing sexual labor then they in the very least provide some means for the vulnerable people they are exploiting to protect themselves.

Anything less than a comprehensive ban on condoms as evidence prevents harm reduction workers in our communities from the unequivocal promotion of condom possession as a public and individual good. As long as condoms carry weight in criminal proceedings people who engage in sex trading, either by force or by choice, will have questions about whether condoms can be used against them. This is especially true amongst young people whose involvement is deemed by law to constitute sex trafficking and fear the use of condoms as evidence in promotion or trafficking each other.

It is vitally important that New York City legislators seek an expanded ban against the use of condoms as evidence beyond the newly adopted NYPD policy that prohibits the practice in only a fraction of prostitution related offenses. While we appreciate the NYPD policy as a first step in recognizing the importance of this issue we are also clear that it does not go nearly far enough. We urge you to pass this resolution in support of A.2736/S.1379 a Statewide bill to prohibit the use of condoms as evidence in prostitution and prostitution related trials.





**FIGHT AIDS. LOVE LIFE.**

**Gay Men's Health Crisis' Testimony Before the New York City Council**  
**Regarding Resolution 0264-2014**

I am Demetrius Thomas, an attorney with the Gay Men's Health Crisis (GMHC) Public Policy Department. I testify on behalf of GMHC and the 25 organizational members of the Access to Condoms Coalition in support of Resolution 0264-2014, which calls for the passage of state legislation (A.2736/S.1379), a bill that prohibits the confiscation and use of condoms as evidence in all prostitution-related offenses.

I first would like to thank Council Members Jumaane Williams and Carlos Menchaca for introducing this resolution in support of a comprehensive, statewide bill that ensures that marginalized communities disproportionately affected by the HIV/AIDS epidemic have access to condoms. Condoms are our most basic and inexpensive HIV prevention tool, and all New Yorkers should be able to carry them, free from fear of police harassment, arrest, and prosecution. This policy will ensure that, as well as protect the public health of all New Yorkers.

GMHC has led the fight against HIV/AIDS in New York City and across the nation for over three decades. We provide comprehensive care, public policy advocacy, legal services, meals and nutrition programs, HIV testing and prevention services, and workforce development to over 9,000 New York City residents per year throughout the five boroughs. GMHC's mission is to fight to end the AIDS epidemic and uplift the lives of all affected.

Condoms are one of the most reliable, accessible, and inexpensive HIV prevention tools. Yet, this vital life-saving tool is being stripped away from those who need them the most. HIV/AIDS disproportionately impacts low income New Yorkers, communities of color, youth ages 13-29, and LGBT people. These groups also are most affected by the New York City Police Department's (NYPD) discriminatory stop and frisk policies. A recent analysis done by GMHC shows that:

**Low-income communities with the highest HIV/AIDS rates are also those most affected by the NYPD's discriminatory stop and frisk policies:**

- o Bed Stuy/Crown Heights has the sixth highest HIV diagnosis with an infection rate of 59.6 per 100,00 people. It also has the third highest stop and frisk rate in the city of 21.8 per 100 people;
- o East Harlem has the fourth highest HIV infection rate of 68.2 per 100,000 people. South and North East Harlem have the second and fifth highest

stop and frisk rates in the city of 23.9 per 100 people and 20.9 per 100 people, respectively.

GMHC's analysis also reveals that:

**The demographic breakdown of new HIV infections and those most affected by NYPD's discriminatory stop and frisk are strikingly similar:**

- o 55% of Blacks are stopped and frisked and 59% account for new HIV diagnoses;
- o 35% of Latinos are stopped and frisked and 34% account for new HIV infections;
- o 50% of 13-24 year olds are stopped and frisked and 26% of 13-24 year olds account for new HIV diagnoses;
- o 25% of 25-34 year olds are stopped and frisked and 31% of 25-34 year olds account for new HIV diagnoses;
- o 93% of males are stopped and frisked and 80% of males account for new HIV diagnoses; and
- o 70% of females are stopped and frisked and 20% account for new HIV diagnoses.

Thus, while the NYPD's new policy, under the direction of Commissioner Bratton, is a step in the right direction, and we applaud his efforts, it is not enough to protect the public health of those marginalized groups most affected by HIV. The only way to properly address these issues is through statewide legislation that is comprehensive, universal, and prohibits the confiscation and use of condoms as evidence in all prostitution-related offenses.

New York City Council Resolution 0264-2014, which calls for the passage of state legislation (A.2736/S.1379), sends a clear message to the New York State legislature and Governor Cuomo that now is the time to provide all New Yorkers, especially those most vulnerable to HIV infections, with the right to possess and use condoms free from fear and prosecution.



## State Senator Velmanette Montgomery

*25th New York Senatorial District*

Ranking Democratic Conference Member, Children & Families

# RE: NYC Council Public Safety Committee of City Council on Resolution 264 calling for a statewide law banning the confiscation and introduction of condoms as evidence of prostitution-related offenses

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I offer my deepest thanks to all the advocates, to Councilmembers Gibson, Williams, and Menchaca for bringing this resolution before the Committee, and to the Committee for your consideration of what I feel is an urgent matter of civil rights, public health and common sense.

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

People are astonished to find that this is the current state of the law! We are in the 30<sup>th</sup> year of an ongoing health crisis: the scourge of AIDS. We promote safe sex in public service announcements. New York City wisely makes condoms available throughout the city in ubiquitous bowls, in bars, restaurants, hotels, just about everywhere. And yet we still have the contrary reality that carrying condoms can get you arrested. We claim to promote public health but penalize everyone, particularly sex workers, for actively promoting personal and public safety. I cannot believe this is the will of the people.

This is very hard to explain to people, and when you finally convince them you aren't making a bad joke, they immediately grasp the seriousness of the situation. I would like to quote from a comment on my legislation offered online by a constituent who signed himself as "druidlens":

---

**Committees:** Children & Families (Ranking Member,) Crime Victims, Crime & Correction, Agriculture, Education, Finance, Health, Rules  
**District Office:** 30 Third Avenue, Room 207, Brooklyn, NY 11217  
Tel (718) 643-6140, Fax (718) 237-4137  
**Albany Office:** Legislative Office Building, Room 903, Albany, NY 12247  
Tel (518) 455-3451, Fax (518) 426-6854  
**Website:** [www.nysenate25.com](http://www.nysenate25.com)  
**Email:** [montgome@nysenate.gov](mailto:montgome@nysenate.gov)



**“Even as a retired attorney I had no idea that the mere possession of condoms would be able to be used against someone in a prostitution trial or civil proceeding. Who drafted that law, the Vatican? What a crock. It demeans women ( AND men ) who want to have safe sex, encourages the spread of AIDS, and is as they say in the law, stupid stupid stupid. OK, they don't say that in the law, which is why I am now a tour guide.”**

---

While I am encouraged that NYC Police are taking a modified approach to the application of this power, I strongly feel we must speak clearly and strongly in regards to the public intent to maintain public health. The current practice, designed as it is to exploit loopholes that unintentionally continue the suffering and deaths of thousands, cannot be remedied by modified practices. We must speak with one voice, through clear and unequivocal legislation, that this practice is impermissible within the State of New York.

I would like to close by quoting another constituent's comments. Bill Meehan wrote:

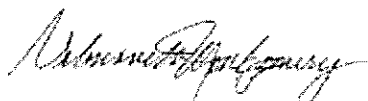
**“Any activity? Will it [the bill] simply languish there, die in committee and be reintroduced next session? Again? Perhaps, the Legislative History should also reference the number of new reported HIV/AIDS cases and the number of HIV/AIDS deaths for that legislative session.**

**The numbers for new infections and deaths will be reduced by passage of this Bill; failure to pass guarantees an increase in both infection and death of New York residents.” Bill sent to Judiciary 1/9/13 , Comment emailed 4/23/13---**

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I hope we do not keep Mr. Meehan waiting any longer, nor any of the hundreds of thousands who agree with him that immediate action must be taken. It is my hope and my belief that with the passage of this Resolution from the Public Safety Committee of the New York City Council that the wishes of the people of New York City will be clearly heard and respected, and that we can finally end this dangerous practice across New York State once and for all. I thank you for your consideration. *+ support of S1379.*

Respectfully,



Senator Velmanette Montgomery  
25<sup>th</sup> NYS District

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

in favor  in opposition

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

(PLEASE PRINT)

Name: Prima Nutter

Address: 269 West 154th

I represent: SAS Statute of 1892

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

in favor  in opposition

Date: 9/9/14

(PLEASE PRINT)

Name: PASTOR GILFORD MONROE

Address: 203 E 37th ST

I represent: 67th Precinct Clergy Council

Address: SAME AS ABOVE

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 0264-204

in favor  in opposition

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

(PLEASE PRINT)

Name: ANANT SAINI

Address: 47 MALDONALD ST BK, NY 10016

I represent: VOCAL-NY-

Address: 80A FOURTH AVE BK, NY 10017

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264

in favor  in opposition

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

(PLEASE PRINT)

Name: Beatrix House

Address: 1878 7<sup>th</sup> Avenue #20 NY, NY 10026

I represent: Red Umbrella Project

Address: 147 Prince Street Brooklyn, NY 11201

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264

in favor  in opposition

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

(PLEASE PRINT)

Name: Rosemary Garcia

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

I represent: Make the Road NY

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264/4/14

in favor  in opposition

Date: 06/14/14

(PLEASE PRINT)

Name: Waldemar P. ...

Address: 465 ... Brooklyn NY 11222

I represent: (Hudson River ...)

Address: 350 ... New York, NY 10118

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

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

(PLEASE PRINT)

Name: DAN MASTER

Address: Staten Island DA'S Office

I represent: D.A. DANIEL DONOVAN

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264  
 in favor  in opposition

Date: 6/9/14

(PLEASE PRINT)

Name: Hayley Gorenberg

Address: 120 Wall Street, 19<sup>th</sup> Fl. NYC

I represent: Lambda Legal

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

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

(PLEASE PRINT)

Name: Madeline Singas

Address: Nassau County District Attorney

I represent: \_\_\_\_\_

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

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264-2014

in favor  in opposition

Date: JUNE 9, 2014

(PLEASE PRINT)

Name: Abigail Swensten  
Address: 199 Water Street NYC, NY 10038  
I represent: The Legal Aid Society  
Address: same as above

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264-2014

in favor  in opposition

Date: 06/04/14

(PLEASE PRINT)

Name: Ivan Espinoza-Madriz  
Address: 65 Broadway, NY, NY 10006  
I represent: Center for HIV Law & Policy  
Address: 65 Broadway, NY, NY 10006

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

in favor  in opposition

Date: 6/9/14

(PLEASE PRINT)

Name: Lynly S. Eaves  
Address: 123 William St. 16 NY  
I represent: Urban Justice Center  
Address: \_\_\_\_\_



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

in favor  in opposition

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

(PLEASE PRINT)

Name: Bianey Garcia

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

I represent: Make the Road NY

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 254 Res. No. 254

in favor  in opposition

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

(PLEASE PRINT)

Name: Shelby W. Stuart / AVP

Address: 240 West 35th

I represent: AVP

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264

in favor  in opposition

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

(PLEASE PRINT)

Name: Erin Drinkwater

Address: 4 Merrick

I represent: Brooklyn Community Pride Center

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

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264

in favor  in opposition

Date: 08/09/14

(PLEASE PRINT)

Name: ANDREA PITCHIE

Address: 990 President St

I represent: \_\_\_\_\_

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264

in favor  in opposition

Date: 6/9/14

(PLEASE PRINT)

Name: Jarad Ringo

Address: 147 West 36th St, 9th Floor

I represent: PKIS NETWORK + CHEST

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

in favor  in opposition

Date: 06/10/2014

(PLEASE PRINT)

Name: Mitchell Mera

Address: 147 W 24th St 4th Floor

I represent: Streetuse & Sale

Address: 147 W 24th St 4th Floor

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. 264

in favor  in opposition

Date: 6/9/14

(PLEASE PRINT)

Name: ELIZABETH ADAMS

Address: 627 CLASSON AVE, BROOKLYN NY 11238

I represent: PLANNED PARENTHOOD OF NEW YORK CITY

Address: 26 BLEECKER ST., NY, NY 10012

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

0264-2014

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

in favor  in opposition

Date: 6/9/14

(PLEASE PRINT)

Name: Demetrius T. Thomas

Address: 56 E. 131<sup>st</sup> Street, Apt. 3G, NY, NY 10037

I represent: GAY MEN'S HEALTH CRISIS (GMHC)

Address: 30<sup>th</sup> Street 413 34<sup>th</sup> Street, NY, NY

10001  
Please complete this card and return to the Sergeant-at-Arms