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## **NEW YORK STATE LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER DOMESTIC VIOLENCE NETWORK**

**S1289A  
A10389**

**Senator Montgomery  
M. of A. Clark**

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

### **THIS BILL IS APPROVED**

The New York City Gay and Lesbian Anti-Violence Project, Inc., which coordinates the New York State Lesbian, Gay, Bisexual, Transgender, Queer Domestic Violence Network, supports Senate Bill 1289 and Assembly Bill 3856. If enacted and implemented, the proposed legislation would eliminate the fear that carrying safer sex tools can be criminalized, ultimately promoting public health policy and practice for all New Yorkers and asserting every individual's right to health and safety. The New York State LGBTQ Domestic Violence Network urges New York State legislators to support this bill.

The New York State LGBTQ Domestic Violence Network is a network of 33 domestic violence (DV) service providers across New York that work in collaboration with a spectrum of victim assistance programs and local grassroots anti-violence groups to educate the public about violence within and against our communities and to reform government policies and practices affecting LGBTQ, HIV-affected, and other survivors of violence. As DV service providers, we understand and bear witness to the importance of being able to protect one's health and well-being. We know that one way in which DV aggressors can exert power and control over their partner is by attempting to limit their partner's access to safer sex tools. As such, New York State should support all people's right to carry condoms without fear of arrest, thus promoting DV survivors' access to safety resources. We believe that every individual has the right to be free from violence of all kinds.

Government authorities should promote, not discourage, safer sex practices. The Centers for Disease Control and Prevention (CDC) writes on their website 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>1</sup>.

The distribution of free condoms by City and State agencies has promoted the prevention of transmission of HIV/AIDS, and exemplifies the ways in which institutions can protect its communities from harm. However, New York State is promoting conflicting law and policy by encouraging both the

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<sup>1</sup> "Condoms and Sexually Transmitted Diseases," Centers for Disease Control and Prevention, <http://www.cdc.gov/condomeffectiveness/latex.htm> , accessed March 4, 2010

distribution of condoms and encouraging law enforcement to criminalize the possession of safer sex tools from individuals profiled as sex workers. This contradiction results in the waste of safer sex resources provided by New York State, and also the violation of individual human rights and sound public health policy.

New York State law has exacerbated the problems of health and safety in LGBTQ communities by profiling and criminalizing their activities. Transgender women, who are frequently profiled as sex workers by police regardless of whether or not they are actually engaged in sex work, 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 them from outreach workers.

The current law is not only criminalizing safer sex practices, it is also encouraging law enforcement to profile individuals carrying condoms as sex workers. Because the law results in the profiling of individuals who strive to engage in safer sex practices, all people, including sex workers, are being placed at greater risk. As a result of treating condoms as evidence of prostitution, people are hesitant to carry condoms to protect themselves, for fear that it will lead to arrest or be held against them in court. For the state to sanction this form of HIV-related violence is unacceptable, as it deters people from accessing safety.

Passage of this legislation is critical to protecting every individual's right to protect themselves, engage in safer sex, and promote sound health policy. We urge New York State legislators to take swift action to protect and promote the health and safety of all New Yorkers.