

MEMO OF SUPPORT – NO CONDOMS AS EVIDENCE OF PROSTITUTION

S323 - Introduced by Senator Montgomery

A1008 - Introduced by Assemblymember 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.

STATEMENT IN SUPPORT:

The New York Anti-Trafficking Network (NYATN) is a network of service providers and advocates in New York dedicated to ending human trafficking and coordinating resources for trafficked persons. Since 2002, NYATN has brought together the voices of those who have first-hand experience of the injustices of human trafficking, who work consistently to meet the needs of trafficked persons, and who advocate for a more humane and responsive policy towards trafficked persons. Our membership currently includes over 90 organizations and individuals advocating on behalf of survivors of trafficking and other forms of violence.

If enacted, this bill would prevent condoms from being used to prove acts of prostitution in criminal or civil court. This bill would have an enormous and positive impact on the lives of individuals who are involved in the sex trade, whether by choice, circumstance, or coercion. Specifically, it would protect the right of many marginalized people to engage in safer sex without fear that carrying condoms will have the consequence of an arrest or conviction for prostitution. Our clients, survivors of trafficking, are also commonly arrested and convicted of prostitution while they are being trafficked, and this bill would significantly increase their health and safety.

This bill would not jeopardize the ability of law enforcement or advocates to identify or assist trafficked persons, and it will not impede the prosecution of traffickers. As anti-trafficking advocates, we support this bill for the following reasons:

- It is crucial that public health policies support making condoms available and accessible to everyone, including people in coercive situations.
- Outreach workers who distribute condoms to people, on the street and elsewhere, engage in outreach to trafficked persons. Fear of arrest for carrying condoms prevents proper outreach to and identification of trafficked persons.
- Condoms are not probative of whether someone is being coerced into the commercial sex industry. Instead, they are an indicator of whether someone is prepared to engage in safer sex.
- In our experience, condoms are not used as evidence in state prosecutions against traffickers.
- Allowing condoms to be used as evidence of prostitution in some cases, but not in others, has the potential to encourage police to routinely confiscate condoms in the course of arrest of sex workers or trafficked persons. Such conduct will reduce condom use and have negative public health outcomes.

For all the above reasons, NYATN asks the Senate to pass **S323/A1008** and stand up for the rights of all persons to protect themselves and the public health.