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Memorandum in Support -----

S01289 - introduced by Senator Montgomery

A03856 - 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.

A Statement in Support:

The Sex Workers Project of the Urban Justice Center urges New York State legislators to support this bill. If enacted, this legislation would promote sound public health policy by protecting individuals' rights to protect themselves, without fear that their possession of safer sex tools could be used against them in criminal proceedings.

Since 2001, the Sex Workers Project has provided legal and social services to hundreds of sex workers, people profiled as sex workers, and victims of human trafficking. Our clients routinely report that police confiscate condoms in their possession in the course of arrests for prostitution-related offenses to use as evidence in criminal proceedings. As a result, many sex workers are reluctant to carry condoms for fear that they will be used as evidence that they were engaged in criminalized activity. Similarly, adult businesses have declined to become providers of New York City-sponsored free condoms for fear that the presence of condoms will be used as evidence that illicit sexual activity is taking place on the premises. 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.

Police confiscation of condoms for use as evidence of criminal activity runs directly contrary to both individual rights and sound public health practice. Indeed, in a 2008 report Human Rights Watch roundly criticized this practice as a human rights violation in other countries. *See Human Rights Watch, Unprotected: Sex, Condoms And The Human Right To Health*, 2008 (available at:

<http://www.hrw.org/en/reports/2004/05/04/unprotected>)

Government authorities should promote, not discourage, safer sex practices. As proven and effective tools for preventing unwanted pregnancy and the transmission of STI's and HIV, condoms should be widely accessible to everyone, and the possession of condoms should never give rise to a presumption of intent to commit a crime.

It is also practically and fiscally irresponsible for City and State agencies to expend considerable resources to distribute free condoms and promote their use in the interests of preventing the transmission of HIV/AIDS and other sexually transmitted diseases on the one hand, only to have the very same condoms confiscated by police in an effort to prove that the person in possession engaged in criminalized conduct.

Passage of this legislation is critical to protecting every individual's right to protect themselves and engage in safer sex, and to promoting 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 by enacting these bills.