

Memorandum in Support

S1289 – introduced by Senator Montgomery

A10893 – introduced by Assembly Member 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.

We, the undersigned public health organizations, are writing to express our support for Bill **S1289/A10893**. If enacted, this bill would protect the right of many of our most marginalized clients to practice safer sex without fear that carrying condoms will have the consequence of an arrest or conviction of prostitution.

The undersigned organizations are concerned with the public health of New York residents. Our services and activities include the provision of condoms and harm reduction information to vulnerable New Yorkers, testing for sexually transmitted infections (STIs) and HIV/AIDS, providing necessary legal, social and medical services to people living with HIV/AIDS, and activism and advocacy around public health and HIV/AIDS. Some of the individuals we work with are involved in the sex trade, whether by choice, circumstance, or coercion. Many of our clients and members tell us that they have had condoms confiscated from them by police, either as a form of harassment or in the course of arrests for prostitution related offenses. Many of our clients and members are already marginalized on the basis of race, class, gender, immigration status, or involvement in sex work, and believe that it is a crime to carry a certain number of condoms, based on this common police practice. Transgender women in particular are afraid to carry condoms, as they are frequently profiled and arrested for prostitution even if they are not engaging in sex work.

By allowing the possession of condoms to be used as evidence of prostitution and related offenses, the current law undermines New York's efforts to combat sexually transmitted infections and diseases and to educate the public about safer sex. Since 1971, the City of New York has distributed free condoms in order to combat STIs. New York City bolstered these efforts in 2007 when it began the NYC Condom campaign, which dramatically increased free condom distribution and awareness throughout its five boroughs. These efforts, in conjunction with the efforts of non-governmental harm reduction and public health organizations like ours, have been effective in educating and protecting the public.

Even as New York City increases its efforts to encourage safer sex practices, those involved in the sex trade and those exposed to police harassment have become increasingly afraid of carrying condoms because they fear the legal consequences of doing so. This is exemplified by the statements of one transgender woman, who said "I like to do outreach for my girlfriends, so that's why I carry extra [condoms]. It's just that carrying nine to the club, I'm worried that the cops think that I'm prostituting...I don't think they are going to believe me but I like to help people out." We believe our state government should promote, not discourage, the use of condoms and other public health tools. As an effective tool for preventing unwanted pregnancy and the transmission of STIs and HIV, condoms should be widely accessible and acceptable to everyone. Carrying condoms should never be attached to a presumption that the carrier is intending to commit a crime.

This legislation is important to protect safer sex choices in general, and to prevent those in the sex trade in particular from being penalized for being prepared to use protection against STIs, pregnancy and HIV. For these reasons we respectfully request your support of this legislation.

Respectfully,

Signatory Organizations:

Housing Works
LGBT Community Center
Citiwide Harm Reduction
Foundation for Research on Sexually
Transmitted Diseases
Peter Cicchino Youth Project- Urban Justice
Center
Harm Reduction Coalition
Safe Space, NYC
Washington Heights CORNER Project
Positive Health Project, Inc.
NYC AIDS Housing Network
Voices of Community Advocates & Leaders
New York Harm Reduction Educators
ACT UP New York
PSI, Inc.
St. Ann's Corner of Harm Reduction
BAYSWAN, San Francisco
Sex Workers Outreach Project-USA
Desiree Alliance
Sex Workers Project- Urban Justice Center
Best Practices Policy Project

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