Ensure access to condoms for all New Yorkers!

May 29, 2014 - New York City Council Members Introduce Resolution Calling for Comprehensive State Legislation to Ban Use of Condoms as Evidence of All Prostitution-Related Offenses

**New York City Council Members Jumaane D. Williams and Carlos Menchaca,** with the support of the Access to Condoms Coalition—a coalition of public health, anti-trafficking, reproductive rights, LGBT and civil and human rights organizations —introduced a resolution today calling for passage of 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.

This proposed resolution builds on the recent NYPD directive partially banning the use of condoms as evidence in certain prostitution offenses, urging passage of legislation that would extend protections to victims of trafficking by expanding the ban to include all prostitution-related offenses and apply across the state.

The New York City Police Department’s welcome announcement that it will end the confiscation of condoms as arrest evidence in prostitution, prostitution in a school zone, and loitering for the purposes of prostitution cases in New York City demonstrates that the seizure and use of condoms as evidence of prostitution by the police is unnecessary to the administration of justice, inconsistent with promoting public health, and further marginalizes already vulnerable New Yorkers engaging in or suspected of providing sex for money.

**The pending state legislation would close a critical loophole left open by the NYPD’s recently announced policy change**: police can still continue to confiscate and cite the possession or presence of condoms as evidence in cases where promoting or trafficking is suspected. Continued use of condoms as evidence in these cases will have the unintended consequence of leaving victims of trafficking and young people without protection, creating a strong incentive for traffickers and exploiters to withhold or deny access to condoms to the people they control. It can also have the effect of discouraging businesses and other establishments from participating in New York City sponsored condom distribution programs. In the words of the Nassau County District Attorney Kathleen Rice, who has implemented a policy banning the citation of condoms as evidence in all prostitution-related cases, including promoting and trafficking cases, “condom evidence was rarely of any value to a prosecution. If you need that condom so badly in the case against a trafficker, then you don’t have a good case.”

The resolution introduced today urges passage of state legislation that would expand full protection to all New Yorkers, and ensure lasting change that will be binding across New York State.

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**May 12, 2014 – NYPD Bans Use of Condoms as Evidence of Prostitution & Loitering Offenses**

The policy announced by Commissioner Bratton today barring confiscation of condoms as arrest evidence in prostitution, prostitution in a school zone, and loitering for the purposes of prostitution cases represents a welcome and important step in the direction of protecting the public health and reproductive rights of New Yorkers. Unfortunately, it does not go far enough, and creates a loophole big enough to drive a truck through:  police can still continue to use the possession of condoms to justify an arrest, confiscate condoms from sex workers and survivors as “investigatory evidence” where promoting or trafficking is suspected, and confiscate condoms as evidence in promoting and trafficking cases.

As long as possession or presence of condoms on the premises of a business can be used as evidence of intent to engage in any prostitution-related offense, including over thirteen more serious New York Penal Law offenses and civil proceedings not covered by this policy, we are concerned that cops will continue to take them out of the hands of people who are the most vulnerable to exploitation – youth and trafficking victims. We are also concerned that the people who are exploiting them will deny access to condoms in the hopes of avoiding prosecution, and that businesses and individuals will be discouraged from carrying and distributing them. Also, we are concerned that under this policy, police can still use the fact that a sex worker has condoms in their possession as a basis for arrest for prostitution, even if they don’t physically voucher them as evidence. This continues to send a message that it is unsafe to carry condoms.

We hope that the NYPD will continue to move in the direction of a comprehensive ban on the use of condoms as evidence of all prostitution-related offenses, and protect the rights of all New Yorkers, including victims of trafficking and young people in the sex trades, to protect themselves and the health and safety of their communities.

We will be monitoring implementation of this policy closely, and are looking forward to working with the NYPD to expand the policy.

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Police in New York will stop and frisk a person who is carrying condoms to prove that they are engaging in prostitution-related offenses. The people most often targeted for these stops are those who are or are profiled as involved in the sex trades. LGBTQ youth of color and trans women of color are disproportionately affected by this practice, leading many to be afraid to carry, or even not use, condoms. NYPD officers regularly confiscate condoms from people they allege are engaged in prostitution to justify arrests or to use as evidence against them at trial. District Attorneys in several New York counties routinely refer to the number of condoms a person had on them in criminal court complaints accusing them of engaging in prostitution-related offenses such as “loitering for the purposes of prostitution” (NYPL 240.37)

As a result people are hesitant to carry condoms to protect themselves and others, for fear that it will lead to arrest or be held against them in court. Sound public health policy would encourage condom use by eliminating the fear that carrying a condom will be used against you or anyone else by police or in a court of law.