



Condoms as evidence: a discriminatory practice and contradictory policy in NYC

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Do you carry a condom with you? Is it in your pocket? Your purse? Your wallet?

If you answered yes, you are at risk of being arrested for prostitution in the State of New York. Sounds odd doesn't it?

While this is a bit of an oversimplification, it reflects what is at the heart of the policy that allows police to profile, target and arbitrarily arrest those who are suspected to be sex workers.



As New York state law is currently written, police and prosecutors can use the fact that someone is carrying a condom to prove that they are guilty of a prostitution-related crime.

This routine police and prosecutorial practice has significant negative implications in that it perpetuates discrimination against sex workers and contradicts public health efforts to prevent the spread of HIV/AIDS and other sexually-transmitted diseases.

A discriminatory practice

Clearly, condoms themselves are not illegal. However, profiling of sex workers based on their appearance, location, and behavior leaves them more susceptible to arrest.

That is, if someone looks a certain way, is dressed in a way that is deemed to be scantily-clad or risqué or is perhaps located in an area where prostitution is thought to be common, police may question and search them on no basis other than their appearance. If condoms are found on the suspects, police can use that as evidence to justify their arrest for prostitution-related activities.

There are many reports of false arrests of prostitution based on the presence of condoms, demonstrating the discrimination inherent in this practice. Transgendered women of color are particularly susceptible to being profiled and stopped. There have been cases of these women being targeted for “looking like” they are a prostitute when in fact they are going out to a club with friends or even just on a trip to the grocery store. Because of their outward appearance, they have been searched, arrested and charged with loitering with intent to prostitute.

Under the 14th amendment to the U.S. Constitution and Article 7 of the Universal Declaration of Human Rights, people have the right to equal protection under the law, and the right to be free from discrimination. As sex worker rights advocates point out, the current practice, where sex workers of color, non-conforming gender identities and low socioeconomic status are disproportionately targeted by police, is a violation of these basic human rights.

According to the Sex Workers Project at the Urban Justice Center of New York, sex workers report they are more likely to be arrested if they have condoms, which deters many from carrying condoms as they fear it will lead to arrest.

Check out the Sex Workers Project’s public service announcement regarding “No Condoms as Evidence” produced by Madonna Productions:

<http://www.vimeo.com/6724800>

A contradictory policy

The policy of using condoms as evidence undermines and contradicts the New York City free condom distribution program. The NYC Department of Health and Mental Hygiene established the program in 1971 as a public health effort to promote safe sex practices and, later, curb the spread of HIV/Aids. In 2007, the New York was the first city in the U.S. to distribute city-specific condoms. To date, over 70 million of these NYC-brand condoms have been distributed.

The very condoms that are freely distributed for the people of NYC can be used as criminal evidence of committing prostitution-related crimes.

The “No Condoms as Evidence Bill”

In March of 2011, NYC Councilwomen Jessica Lappin introduced a resolution in support of [New York State Bill A1008/S323](#), or the “No Condoms as Evidence Bill.” The bill seeks to prohibit the ability to use condoms as evidence of prostitution.

As the bill explains, the current practice:

“does not promote public health and welfare if the law discourages prostitutes from carrying condoms. If anything, (the) use (of condoms) by prostitutes should be encouraged by public policy as long as the sanction against prostitution are not affected. Also, the mere act of carrying or otherwise possessing condoms should not, in whole or in part, expose the individuals to the risk of being accused of prostitution or directly related offenses.”

This is not the first time a “No Condoms as Evidence Bill” has been on the legislative docket. In fact every year since 1999, a similar bill has been presented, only to die in committee each time.

On March 24, the NY Senate Codes committee passed the bill and sent it to the Judiciary committee for consideration. As of this fall the bill is sitting with the Judiciary Committee of the New York State Senate and the Codes Committee of the New York Assembly.

Currently, the Sex Workers Project is campaigning with a number of human rights and public health organizations to support the passage of the bill in the current legislative session. The bill is imperative to promoting sound human rights and public health policies. Your activism on the matter is very much needed.

What you can do to support the bill

To read more about the bill and get involved in supporting its passage visit the [Sex Workers Projects](#) “No Condoms as Evidence Bill” campaign page for information on how to contact your NYC council person, or NY State assembly member as well as tips for talking points and sample letters of support. You can also sign the [petition for no condoms as evidence](#) at change.org.