



Memorandum in SUPPORT
Bill number A1008-2011 (Clark)/S323-2011 (Montgomery):

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.

Streetwise & Safe (SAS) is a multi-strategy initiative to develop leadership and build skills, knowledge and community among lesbian, gay, bisexual, transgender, queer and questioning (LGBTQQ) youth of color who have experienced policing and criminalization, particularly in the context of the criminalization of poverty and involvement or perceived involvement in survival and street economies. We provide LGBTQQ youth with critical information about their rights, share strategies to increase their safety, and work to create opportunities for LGBTQQ youth of color to claim a seat at policy discussion tables as full participants, speak out on their own behalf, act collectively to protect and advance their rights, and demand choices that allow them to maximize their safety, self-sufficiency, and self-determination.

We urge New York State legislators to support this bill to STOP the use of possession of condoms as evidence of intent to engage in prostitution. SAS stands firm in our belief that condoms are essential tools for protecting our health and safety, not contraband. Therefore their possession should not be criminalized. According to the United States Centers for Disease Control and Prevention (CDC), latex condoms, when used consistently and correctly, are highly effective in preventing the sexual transmission of HIV, the virus that causes AIDS, and reduce the risk of other sexually transmitted diseases.

An informal survey conducted by members of SAS found that **50% of people surveyed have not carried condoms for fear of getting in trouble with the police. 60 % said they have been stopped or searched by a police officer and over 1/3 said a police officer had taken condoms away from them.**

"A friend was stopped and searched. When they were searched condoms were found and taken. [when they asked for the condoms back] The officer said 'no no these are for healthy people. I hope you go out and get killed tonight.'"

This practice impacts LGBTQ youth disproportionately because:

- 1 in 4 LGBTQ youth either runs away or is thrown out of their home at some point, and between **40 and 50% of teenagers living on the streets self-identify as LGBTQ.**¹
- Chronic, systemic failure to protect LGBTQ youth from abuse and provide them the resources they need to transition safely to adulthood means they are at extremely high risk for homelessness.
- Heightened enforcement of "quality of life" offenses, profiling of LGBTQ youth as being engaged in sexual offenses, and current approaches to youth involvement in survival economies place LGBTQ youth at high risk of violence, violations of their rights by the police, and ever diminishing opportunities as a result of involvement in the criminal legal system.
- **A disproportionate number of LGBTQ youth are stopped, frisked and intimidated by police officers;**²
- Additionally, according to the NYC Department of Health and Mental Hygiene, new HIV diagnoses among young men ages 13 to 19 who have sex with men (MSM) have doubled.

The practice of introducing possession of condoms as evidence of intent to engage in prostitution-related offenses compounds the multiple challenges already facing LGBTQ youth. It discourages LGBTQ youth from carrying condoms and reduces the likelihood that they will engage in safe sex practices. It also sends mixed messages to young people who are encouraged to use condoms at every turn. The State of New York began distributing free condoms in 1971 and in 2007 the city of New York started the NYC Condom campaign. **The New York State Department of Health now distributes approximately 10 million condoms annually and New York City distributed 37.3 million condoms in 2009.** Allowing police and prosecutors to use possession of these condoms against the very people the state targets for condom distribution is contrary to sound public health policy.

The following is testimony prepared by Tree, a SAS Youth Facilitator, for a forum on the issue held with Manhattan District Attorney Cy Vance in May 2011:

¹ National Gay and Lesbian Task Force, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* (2007), available at: http://www.thetaskforce.org/reports_and_research/homeless_youth

² Stoudt, B., M. Fine, M. Fox, *Growing Up Policed In The Age Of Aggressive Policing Policies*, New York University Law Review (forthcoming).



“This was created to help us, not harm us. My name is Tree Alexander and I am an HIV Positive AIDS advocate and a member of SAS. I was diagnosed HIV positive when I was 19 years old. Had I known what I do now, my situation would be a lot different. I now pass out condoms at health fairs and social events for people to protect themselves. I was appalled when I found out that the very same packet of condoms I gave someone can be used as evidence -or should I say was used as cause to arrest her for prostitution. How can we protect ourselves when we are afraid to carry the protection? And don’t get me started on the proper use of condoms... did you know one sexual encounter can involve several condoms? How can we address issues instead of dismantling the Department of Health’s policy? I am urging decision-makers to serve and protect the people by not confiscating condoms and using them as evidence of prostitution. Remember, it only takes one encounter with one person to continue to spread this illness.”

SAS members say that police officers take condoms from people during stops, frisks, and searches at the precinct. They also often talk about how many condoms you had on you when they arrest you or threaten to arrest you for loitering or prostitution. This also creates an opportunity for homophobic and transphobic verbal abuse and verbal harassment by police. Even if condoms are never actually used against you at a trial - because the charges against you are dismissed or you plead - people know this by word of mouth and are scared to carry condoms/more than a certain number of condoms as a result.

Ileana, another SAS Youth Facilitator testified:

“If you use condoms as evidence of prostitution it makes people afraid to carry condoms. I’ve met a lot of people that don’t carry condoms because they are afraid they will be used against them.

And that’s like saying get AIDS for fear of carrying condoms or go to jail because you did carry a condom.”

Jasmine, another SAS member asks:

“Ideally, our government is supposed to protect us from the good, the bad, the ugly. What protects us from laws that allow condoms to be used as evidence of prostitution?”

How do I as a peer educator help prevent STDs, STIs and youth pregnancy if, when I hand out a safety kit, I may be handing you a jail sentence?"

Peter, a high school student and SAS member shares:

*"The policy of using condoms as evidence of prostitution affects students because they are everywhere in NYC high schools, and they are also provided with condoms at clinics and given counseling to practice safe sex. Then, **once they step out of school they can be stopped and frisked at any time and if a condom is found, it is used as evidence that you were planning to do something criminal.**"*

Polly, who has collected dozens of signatures in her Long Island City neighborhood in support of this legislation, says:

"Every day on TV on my favorite channels I am being informed about HIV and STIs and they always mention using condoms to protect yourself.

*On top of that no matter where I go whether it's the gay parade, my barber shop and even church I see a container full of hundreds of condoms for my taking and for everyone else. **I believe that condoms should not be used as evidence of prostitution for the simple fact that condoms are made to prevent the passing of bodily fluids from one person to the next during sex, nothing more. People who engage in the sex trade aren't the only people that use condoms.***

Having condoms on you only proves that you intend to take care of yourself and the people you have sex with. It does not prove that you intended to take money or something of value for having sex with someone. And having a number of condoms on you just shows you just stocked up at your local health center, school, or drug store!

Bilal, SAS member says:

"This catch 22 always struck me as disingenuous in a city with one of the highest HIV infection rates, where almost every surface is plastered with AIDS prevention posters, where it's hard not to step on trademark NYC condoms that are as common as abandoned McDonald's cups.

How can something so commonplace and sponsored by the city health department to save lives, end up inadvertently destroying those lives?"

The use of condoms should be encouraged not criminalized. Our right to protect ourselves and our bodies must not be taken away.

SAS urges you to support this bill which would not only protect New York State's most marginalized residents, but every resident of the state.

<http://www.streetwiseandsafe.org>