



Public Health Crisis: The Impact of Using Condoms as Evidence of Prostitution in New York City

Executive Summary

April 2012

The Problem

The confiscation of condoms by police and the use of condoms as evidence of prostitution-related offenses presents a serious public health issue in New York City. The possession of condoms is one factor that officers of the New York Police Department (NYPD) consider when determining whether probable cause exists to arrest someone for Prostitution (NYPL 230.00) or Loitering for the Purposes of Prostitution (NYPL 240.37). Police are also confiscating and/or destroying condoms possessed by people they believe to be involved in the sex trade even when no arrest is made in an ill-advised effort to punish or deter people whom they believe to be trading sex. The practice of confiscating condoms and introducing them as evidence of intent to engage in prostitution-related offenses is serving to discourage people from carrying condoms, thereby undermining New York City public health initiatives to prevent the transmission of HIV/AIDS and other sexually transmitted diseases.

The Research

This report summarizes the results of two studies documenting the impact of the confiscation of condoms by police and the use of condoms as evidence of prostitution-related offenses. From August to October 2010, members of the PROS Network (Providers and Resources Offering Services to sex workers) collaborated with the New York City Department of Health and Mental Hygiene (DOHMH) to survey 63 people who either accessed services of PROS Network members or were reached through regular outreach activities (DOHMH study). In September and October 2011, the PROS Network conducted a second survey (the PROS Network study) of an additional 65 people: 35 individuals who reported that they had traded sex; 20 users of harm reduction services; and 10 outreach workers. Surveys were administered in all five boroughs of New York City through street or peer outreach, in PROS Network drop-in centers or near mobile outreach/harm reduction service vans.

The Findings

- **Approximately half of respondents involved in the sex trade reported that police had confiscated, damaged or destroyed their condoms.** In the 2010 DOHMH study, 57% of respondents reported condoms confiscation, while nearly 43% of respondents in the 2011 PROS Network study had had condoms confiscated.
- In the 2011 PROS Network study, 40% of the people who had condoms confiscated went on to engage in sex work that same day or night; of these, **half were forced to engage in sex work without a condom as a result of condom confiscation.**

- Close to half of the respondents (nearly 46%) involved in the sex trade in the 2011 PROS Network study **reported that they did not carry condoms at some point out of fear of police repercussions.**
- **The most common reason given by respondents in the sex trade in the PROS Network study for *not* carrying condoms was fear of police.** Close to 23% also reported having turned down free condoms from outreach workers out of fear of getting in trouble with the police.
- In the PROS Network study, **seventy-five percent of transgender women and people who identified with a gender identity other than female or male reported that fear of the police had caused them not to carry condoms.**
- Many survey participants expressed confusion about the number of condoms that they are legally allowed to carry, even though carrying condoms is itself not a crime; both studies revealed that **people believed, based either on their own experiences or those of people they knew, that they could be harassed or arrested for possessing even one condom, and that they were aware that condoms were being introduced as evidence against them by district attorneys.**
- Eighty-one percent of the respondents in the 2010 DOHMH study, and 75% of the respondents involved in the sex trade in the 2011 PROS Network study, reported that they had been stopped and searched by the police. These results show the **significant role of profiling in police harassment and arrests.**

The Stories

A 22-year-old black Puerto Rican who identified as gender non-conforming said: “I’m damned if I do, I’m damned if I don’t. I don’t want to get any disease but I do want to make my money.... Why do they take your condoms, do they want us to die, do they want us to get something?”

A 50-year-old black woman in Coney Island described how she is commonly stopped and searched by police: “They ask if I have drugs, search my pocketbook and see condoms and throw them in the garbage.”

A 37-year-old white woman in Coney Island described one incident in which: “they locked me up. I was locked up because I had the condom. I wasn’t even prostituting. They took the condom.”

One 20-year-old white Hispanic woman who engages in indoor sex work, said that an undercover cop, upon finding a condom on the dresser, opened the wrapper, threw it on the floor and destroyed it. She said that the officer told her “if you don’t have this, you won’t have sex” and then called her derogatory names. She said that she later engaged in sex work with a condom from a friend.

Our Recommendations

- The New York State Legislature should pass Bill A1008/S323 to prohibit prosecutors from introducing the possession of condoms as evidence of prostitution and prostitution-related offenses, and require training for law enforcement on this policy.
- All New York District Attorneys should implement office-wide policies that prohibit prosecutors from collecting or introducing evidence of condom possession to prove a prostitution-related offense. The NYC DOHMH should implement its Enhanced Comprehensive HIV Prevention Plan, and specifically implement the objectives to work with

the NYPD to reduce all legislative barriers to condom use. All New York Departments of Health should prioritize effective HIV prevention, treatment and health for people in the sex trade with the understanding that people in the sex trade are partners in combating the HIV epidemic.

- The NYC DOHMH and the NYPD should work collaboratively to synchronize their policies and practices particularly on issues involving the safety and health of people in the sex trade and HIV/AIDS prevention and outreach.
- Police should stop arresting individuals for prostitution where no probable cause exists. These false arrests violate the due process rights of individuals who are not known to be engaging in illegal activity, and further discrimination against former sex workers and persons based on their age, race/ethnicity, gender and gender identity.
- New York State District Attorneys offices should aggressively investigate and prosecute police officers who engage in sexual harassment and abuse or other misconduct towards people who are or are perceived to be in the sex trade.
- Community-based organizations and harm reduction services organizations should provide trainings for clients who are or are perceived to be in the sex trades on their rights in the criminal justice process, including their right to possess condoms without fear of arrest or confiscation of the condoms.
- The NYPD should adopt the “Proposed Policy for the Treatment of Transgender People in NYPD Custody” and the suggested changes to the NYPD Patrol Guide which were submitted to the NYPD in April 2009 by a coalition of New York City’s transgender communities, community organizations, advocates, and allies.

This report was investigated and written by the [PROS Network](#) and Leigh Tomppert of the [Sex Workers Project](#) at the Urban Justice Center. The PROS Network (Providers and Resources Offering Services to sex workers) is a coalition of sex workers, organizers, direct service providers, advocates, and media makers that collaborate on programs and campaigns around sex work-related issues in the New York metropolitan area. The PROS Network works with people of all genders who, by choice, circumstance, or coercion, engage in sexual activities for money, food, shelter, clothing, drugs, or other survival needs.

The full report is available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf>.