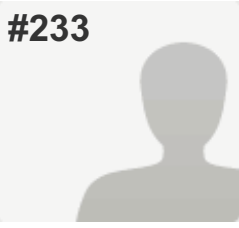


Ending the Epidemic Task Force Recommendation Form

#233



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Q1: OPTIONAL: This recommendation was submitted by (please provide your first and last name, affiliation, and email address)

First Name	Mike
Last Name	Selick
Affiliation	PROS Network
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Q2: Title of your recommendation

Ensuring Access to Condoms by Adopting a Comprehensive Ban on the Use of Condoms as Evidence in All Prostitution and Trafficking-Related Offenses

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Q3: Please provide a description of your proposed recommendation

The PROS Network recommends a comprehensive ban on the confiscation and citation of possession or presence of condoms as evidence of prostitution and trafficking-related offenses across New York State, in recognition of the vital role of condom access toward the goal of ending the AIDS epidemic in New York State by 2020.

Current law permits possession or presence of condoms as evidence of prostitution and trafficking-related offenses. Police can confiscate condoms at will, and the fact that a person is carrying condoms can be used as a basis for a stop and frisk, arrest, prosecution, and even eviction. As a result, individuals are discouraged from carrying condoms, undermining state efforts to prevent the spread of HIV, unwanted pregnancies and STIs.

It is critical that a statutory ban is “comprehensive:” specifically, that is categorically precludes the vouchering of condoms as evidence in all prostitution-related cases, and that it does not apply only to some offenses and not others. Network members are particularly committed to ensuring condom access for New Yorkers who are especially vulnerable to exploitation, such as those who are trafficked or forced into sex trading through other means. The use of condoms as evidence in cases of sex trafficking, pimping, promoting, and patronizing creates a perverse incentive for traffickers and pimps to deny condom access to those they are exploiting. Continuing to confiscate, cite and introduce condoms as evidence of intent to engage in trafficking offenses in effect dis-incentivizes exactly what we want to happen, which is that vulnerable people have one last line of defense in situations of exploitation.

Allowing condoms to be used as evidence of intent to engage in any prostitution-related offense undermines our efforts to promote safe sex practices in our communities. It is well settled that policing of prostitution disproportionately and negatively impacts low-income women and LGBTQ people and communities of color where New Yorkers are or are profiled as trading sex for economic survival. This fact makes the practice of vouchering condoms as evidence doubly harmful; the communities who are most in need of scaled-up access to condoms are precisely those who are being policed for carrying them.

The vouchering of condoms as evidence has a high cost for outreach workers, as well. Anything less than a comprehensive ban on condoms as evidence prevents outreach workers in our communities from being stopped and harassed by police for distributing condoms in “high-crime” areas most in need of condom distribution. The adoption of a ban that is anything less than comprehensive would also undermine the hard work of outreach and “know your rights” education. It would be an impossible task for an outreach worker to explain to a person they reach on the stroll that a condom cannot be used as evidence of a misdemeanor or violation, but can be used to prove they are promoting prostitution of trafficking a minor. The End AIDS Task Force must back the unequivocal promotion of condom possession as a public good. As long as condoms carry weight in criminal proceedings, people who engage in sex trading, either by force, for survival or by choice, will have questions about whether condoms can be used against them. This is especially true amongst people under the age of 18 whose involvement in the sex trade is deemed by law to constitute sex trafficking.

As such, we urge the Taskforce to move forward on a wholesale ban on the use of condoms as evidence in prostitution and trafficking-related offenses - especially offenses related to patronizing a minor, sex trafficking, pimping, promoting and all other forms of non-consensual sex trade – by amending the Criminal Procedure Law and Civil Practice Law and Rules to prohibit evidentiary use of condoms as probable cause for arrest, and in legal proceedings related to prostitution and trafficking offenses.

We know that there is no partway solution to this issue. There is no compromise on public health. For the purposes of public safety, we need a wholesale decriminalization of condoms that is consistent across the State and inclusive of all prostitution and trafficking-related offenses.

Q4: For which goal outlined in the Governor's plan to end the epidemic in New York State does this recommendation apply? (Select all that apply)

Other (please specify) prevention

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Q5: This recommendation should be considered by the following Ending the Epidemic Task Force Committee (Select all that apply)

Housing and Supportive Services Committee:
Develop recommendations that strengthen proven interventions enabling optimal engagement and linkage and retention in care for those most in need. This Committee will recommend interventions that effectively address complex and intersecting health and social conditions and reduce health disparities, particularly among New York's low-income and most vulnerable and marginalized residents. These interventions will diminish barriers to care and enhance access to care and treatment leaving no subpopulation behind.

Q6: Does this recommendation require a change to an existing policy or program, or the creation of a new policy or program?

Change to existing policy

Q7: Would implementation of this recommendation be permitted under current laws or would a statutory change be required?

Statutory change required

Q8: Is this recommendation something that could feasibly be implemented in the short-term (within the next year) or long-term (within the next three to six years)?

Within the next year

Q9: What are the perceived benefits of implementing this recommendation?

The benefits of this recommendation are the assurance that fears of police harassment and arrest will no longer be a barrier for individuals to prevent the spread of HIV/AIDS by carrying condoms as well as distributing condoms. It will empower sex workers to use condoms with all of their clients, encourage sex traffickers and pimps to provide condoms to victims of exploitation and allow outreach workers to unequivocally promote condom use amongst everyone they serve. Since condoms are the most fundamental public health tool in preventing sexual transmission of HIV, this policy will have broad implications in ending AIDS by 2020.

Affected populations will also benefit from lower risk of involvement with the criminal justice system and reduced exposure to the collateral consequences of those interactions. It is well established that state-involvement increases health harms, and especially risk of HIV transmission as a result of poor access to health care while incarcerated and the burden of a criminal conviction after release.

Q10: Are there any concerns with implementing this recommendation that should be considered?

PROS Network includes many different service providers and is part of the Access to Condoms Coalition, which includes anti-trafficking organizations and service providers working with the vast majority of survivors of trafficking in New York State, is extremely concerned that the adoption of any policy that excludes certain offenses rather than adopting a wholesale ban on condom as evidence would worsen rather than improve the situation of trafficking victims. The NYPD and several local District Attorneys have recently introduced policies that will stop the use of condoms as evidence in limited number of prostitution-related offenses, while continuing to allow the practice in over thirteen New York Penal Law offenses and civil proceedings. While these new policies show evolved thinking on this issue, they also further highlight the need for a comprehensive statewide solution. Limited bans on the use of condoms as evidence may have the opposite impact by incentivizing police to “charge up” in cases where condoms are confiscated in order to introduce them as evidence, and will do nothing to dispel the stigma and fear of prosecution associated with carrying condoms. Therefore, there is an urgent need for New York State to institute a complete ban on condom in criminal proceedings, with a special emphasis on protecting the most vulnerable populations.

Q11: What is the estimated cost of implementing this recommendation and how was this estimate calculated?

If approved, this recommendation will result in significant cost-savings since the current practice of confiscating condoms takes condoms off the street and out of commission, at the cost of New York State and municipal health agencies.

Q12: What is the estimated return on investment (ROI) for this recommendation and how was the ROI calculated?

It is anticipated that these measures will reduce public health costs due to increased prevention of HIV transmission and eliminating costs associated with the confiscation of condoms that are distributed by public health agencies with the use of public funds, and reduce costs to public safety, courts, and corrections due to reduction in the frequency and extent of law enforcement and criminal justice system interactions with at-risk individuals.

Q13: Who are the key individuals/stakeholders who would benefit from this recommendation?

Beyond the broad public benefits, the individuals who are most likely to benefit, and who are likely to benefit most significantly are members of vulnerable populations who are at highest risk for both HIV infection and criminalization including sex workers, people forced into the sex trade, as well as women of color, LGBTQ, gender non-conforming, low-income and/or street homeless people who are profiled by law enforcement because they are suspected of engaging in sex work.

Q14: Are there suggested measures to accompany this recommendation that would assist in monitoring its impact?

The number of people with charges relating to sex work would no longer include taking condoms and entering them as evidence. This data can be collected by DCJS or through court monitoring.

Q15: This recommendation was submitted by one of the following Advocate