

**Ending the Epidemic Task Force  
Committee Recommendation  
CR36**

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

- 1. For which goal outlined in the Governor's plan to end the epidemic in New York State does this recommendation apply? 1, 2 and 3**
  
- 2. Proposed Recommendation:** Current law permits presence of condoms as evidence of prostitution and trafficking-related offenses. Police can confiscate condoms at will and use this to stop and frisk, arrest, prosecute and convict a person of prostitution and trafficking-related offenses. As a result, individuals most in need (low-income women and Lesbian, Gay, Bisexual, Transgender, or Questioning (LGBTQ) people) are discouraged and deterred from carrying and using condoms as a last resource to avoid being placed at risk for HIV, even in cases of exploitation.

It is critical that a “comprehensive” statutory ban be implemented that would affect not only those carrying condoms but also outreach workers who work with these communities at risk, who are also being charged criminally for promoting prostitution. A request to amend 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 that are consistent throughout the state. The vulnerability of sex workers and transgender women to HIV infection is a result of many factors including stigma, social and physical isolation, economic deprivation and legal and policy environments that criminalize their behavior.

**List of key individuals, stakeholders, or populations who would benefit from this recommendation**

- People (women, gay, bisexual, men who have sex with men and transgender individuals) from low-income communities and communities of color
- Vulnerable populations at highest risk for HIV and criminalization including sex workers
- Evidence, although based on studies from a small number of projects and countries, shows that community empowerment holds great promise as an effective approach for reducing HIV risk in sex workers and that scale up of these initiatives contributes to curbing the epidemic in sex workers and the general population

**List of measures that would assist in monitoring impact**

- 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
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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.

- Other measures have been established by US Agency for International Development.

### Footnotes or References

www.thelancet.com Published online July 22, 2014 [https://dx.doi.org/10.11016/50140-6736\(14\)60973-9](https://dx.doi.org/10.11016/50140-6736(14)60973-9).

Wurth MH et al. Journal of the International AIDS Society 2013, 16:18626  
<http://www.jiasociety.org/index.php/jias/article/view/18626> |  
<http://dx.doi.org/10.7448/IAS.16.1.18626>.

Operational Guidelines for Monitoring and Evaluation of HIV Programmes for Sex Workers, Men who have Sex with Men, and Transgender People.

U.S. Agency for International Development (USAID) through MEASURE Evaluation cooperative agreement GHA-A-00-08-00003-00.

- 3. Would implementation of this recommendation be permitted under current laws or would a statutory change be required?** Statutory change required.
- 4. 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.
- 5. Please list the TF numbers of the original recommendations that contributed to this current version:** TF219, TF227, TF233, TF235, TF286.

