

Public Health Crisis

The Impact of Using Condoms as Evidence of Prostitution in New York City



THE PROS
NETWORK

sexWORKERS
PROJECT

April 2012

About the Authors

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. Grounded in principles of social justice and human rights, the PROS Network embraces a non-judgmental, harm reduction approach.

Members of the PROS Network include: The Ali Forney Center; the Anti-Violence Project (AVP); Asian and Pacific Islander Coalition on HIV/AIDS (APICHA); Callen-Lorde Community Health Center; CitiWide Harm Reduction; the Drug Policy Alliance (DPA); the Foundation for Research on Sexually Transmitted Diseases (FROST'D); the Latino Commission on AIDS (LCA); the Lower East Side Harm Reduction Center; New York City AIDS Housing Network (NYCAHN); New York Harm Reduction Educators (NYHRE); Red Umbrella Project; Safe Horizon's Streetwork Project; Sex Workers Action New York (SWANK); Sex Workers Outreach Project (SWOP); Sex Workers Project (SWP) at the Urban Justice Center; The Space at Tompkins; Streetwise and Safe (SAS); and Washington Heights Corner Project (WHCP).

The methodology and survey questionnaires for this report were developed in collaboration with the Open Society Foundations (OSF).

Especially involved in the processes of data collection, writing and analysis of this report were the Ali Forney Center; FROST'D; the Latino Commission on AIDS; Safe Horizon's Streetwork Project; the Sex Workers Project at the Urban Justice Center; and Streetwise and Safe (SAS).

Leigh Tomppert is a research consultant with the Sex Workers Project at the Urban Justice Center. Ms. Tomppert specializes in research in the area of gender, human rights, migration, and development, and holds an MSc in Comparative and Cross-Cultural Research Methods from the University of Sussex and an MA in the Social Sciences from the University of Chicago. She has also worked with UN Women, UN-INSTRAW, the Inter-American Commission of Women, the International Gay and Lesbian Human Rights Commission, and Freedom House.

Acknowledgements

The PROS Network would especially like to thank all of the people who agreed to be interviewed for this report: people in the sex trade, harm reduction members and service users, and outreach workers who were so generous with their time and insights. We are inspired by people in the sex trade, particularly their creative resilience in the face of violence and human rights abuses, and their dedication to protecting themselves, their clients, and the general public. This report would not have been possible without them.

We are grateful to the Open Society Foundations and the Elton John Foundation for providing funding to the Sex Workers Project at the Urban Justice Center for this project. We are also grateful to our individual donors whose contributions made it possible to provide Metrocards to the survey respondents.

We would also like to thank the Brooklyn Defender Services, Kate Mogulescu of the Legal Aid Society, Human Rights Watch, Danielle Malangone at the Center for Court Innovation's Midtown Community Court, and the Open Society Foundations for providing additional data and materials included in this report.

We are also grateful to Paul Kobrak of the New York City Department of Health and Mental Hygiene (DOHMH) for his help in designing and administering the 2010 DOHMH study on the same issue. Finally, thank you to Maryse Mitchell-Brody for contributing to an early informal survey and to Amanda Allan for initial legal research.

Report design by the Sex Workers Project at the Urban Justice Center. Cover illustration by Bri Hermanson.

Table of Contents

About the Authors	2
Acknowledgments	3
Acronyms	5
Introduction	6
The Importance of Condoms to HIV Prevention in New York City	8
Policing of Prostitution	10
<i>Prostitution Statistics in New York City</i>	10
<i>How Prostitution-Related Arrests Occur</i>	11
<i>Condoms As Evidence</i>	12
<i>Best Practices: Putting Public Health First</i>	13
Methodology	14
Demographics of the Study Population	16
Survey Findings	19
<i>Condom Confiscation and the Impact on People in the Sex Trade</i>	19
<i>Condom Access and Behavior</i>	22
<i>Interactions with the Police</i>	24
<i>Harm Reduction Service Users Surveys</i>	27
<i>Outreach Workers Surveys</i>	28
Conclusions	29
Recommendations	31
Sources	32

Appendices

Appendix A: Survey for sex workers	35
Appendix B: Consent form for sex workers	42
Appendix C: Survey for outreach workers	44
Appendix D: Consent form for outreach workers	51
Appendix E: A Report to the New York City Commissioner of Health	53
Appendix F: Excerpts from Transcript of <i>People v. [name withheld]</i> , New York County	62
Appendix G: Sample Supporting Depositions from Prostitution-Related Cases in Kings County	68

Figures

1 Prostitution Arrests by Borough	11
2 Total Arrests for PL 230.00, Prostitution, in NYC in 2009	11
3 Total Arrests for PL 240.37, Loitering for the Purposes of Engaging in a Prostitution Offense, in NYC in 2009	11
4 Gender Identity of Sex Worker Participants	16
5 Race/Ethnicity of Sex Worker Participants	17
6 Age Ranges of Sex Worker Participants	17
7 Percentage of Sex Worker Participants Who Had Condoms Confiscated by the Police	19
8 Context in Which Condoms Were Confiscated by the Police	20
9 Percentage of Sex Worker Participants Who Engaged in Sex Work After Having their Condoms Confiscated	20
10 How Often Sex Worker Participants Carry Condoms	23
11 Percentage of Sex Worker Participants Who Have Not Carried Condoms Because of Fear of Police	23
12 Percentage of Respondents (by Gender Identity) Who Have Ever Not Carried Condoms Out of Fear of the Police	24
13 Percentage of Sex Worker Participants Who Have Been Stopped and Searched by a Police Officer	26

Acronyms

ACD	adjournment in contemplation of dismissal
AIDS	acquired immune deficiency syndrome
APICHA	Asian and Pacific Islander Coalition on HIV/AIDS
AVP	Anti-Violence Project
CDC	United States Centers for Disease Control and Prevention
CFPA	Sri Lankan Community Front for the Prevention of AIDS
DA	District Attorney
DOHMH	Department of Health and Mental Hygiene
DPA	Drug Policy Alliance
FROST'D	Foundation for Research on Sexually Transmitted Diseases
HIV	human immunodeficiency virus
IDU	injection drug user
LCA	Latino Commission on AIDS
MSM	men who have sex with men
NACP	Sri Lankan National AIDS Control Programme
NYC	New York City
NYCAHN	New York City AIDS Housing Network
NYHRE	New York Harm Reduction Educators
NYPD	New York City Police Department
NYPL	New York Penal Law
OSF	Open Society Foundations
PLWHA	people living with HIV/AIDS
PROS Network	Providers and Resources Offering Services to sex workers
SAS	Streetwise and Safe
SHARP	Open Society Foundations Sexual Health and Rights Project
STD	sexually transmitted disease
SWANK	Sex Workers Action New York
SWOP	Sex Workers Outreach Project
SWP	Sex Workers Project at the Urban Justice Center
TVPA	Trafficking Victims Protection Act
UN	United Nations
UNDP	United Nations Development Program
WHCP	Washington Heights Corner Project

Introduction

The confiscation of condoms by police and the use of condoms as evidence of prostitution-related offenses is a public health issue that has long been decried by human rights organizations and harm reduction service providers who interact with people in the sex trade¹ and other vulnerable populations on a daily basis. This practice has been documented in cities across the United States, as well as in countries around the world for over a decade (Alliance for a Safe & Diverse DC 2008; Amnesty International 2005; Human Rights Watch 2004, 2006; Thukral & Ditmore 2003).

PROS Network (Providers and Resources Offering Services to sex workers) members have been receiving reports from their clients and constituents for years that the police are confiscating their condoms during street encounters and arrests for prostitution-related crimes. In response to concerns about the impact of this practice on the health and safety of their clients and constituents, the PROS Network has participated in two studies to document this practice and its effects, and to strengthen the case for policy reform around the use of condoms as evidence of prostitution.

In the experience of PROS Network members, condom confiscation is primarily experienced by people who are—or are perceived to be—involved in the sex trades, as well as by lesbian, gay, bisexual, and transgender (LGBT) adults and youth of color, and street-based and lower income communities. Ironically, these are some of the same populations that have been targeted for increased HIV prevention programming and condom distribution. In addition to directly conflicting with state public health policies and initiatives to combat the HIV/AIDS epidemic, such as the distribution of free New York City condoms, the use of condom possession to prove evidence of intent to engage in prostitution-related offenses is dangerously undermining people's efforts to protect themselves and others, and discouraging people from carrying condoms.

Fortunately, legislative measures have been introduced in New York to stop this harmful practice. In 1999, New York State Assembly Bill S.1645 was sponsored and introduced by State Senator Velmanette Montgomery (D – 18th District), who was later joined by State Assemblywoman Barbara M. Clark (D – 33rd District), to amend the civil practice law, the criminal procedure law, and the executive law to prohibit the introduction of condoms as evidence of prostitution and prostitution-related offenses. At the time of this report's publication, the current version of this legislation, Bill A1008/S323 is still under consideration by the New York State Senate Rules Committee and the New York State Assembly Codes Committee.

Support for this bill is strong and growing, with a list of endorsers including: ACT UP New York; AIDS Care; the Ali Forney Center; Callen-Lorde Community Health Center; Community Healthcare Network; Center for Constitutional Rights; CitiWide Harm Reduction; Community Health Action of Staten Island; Desiree Alliance; Drug Policy Alliance; Family Planning Advocates; Gay Men's Health Crisis; Harlem United Community AIDS Center; Harm Reduction Coalition; HIV Health and Human Services Planning Council of New York; Human Rights Watch; Lambda Legal; The Lesbian, Gay, Bisexual and Transgender Community Center; Latino Commission on AIDS; the Legal Aid Society; New York City Anti-Violence Program; National Organization for Women – New York State; New York Civil Liberties Union; New York Harm Reduction Educators; New York Planned Parenthood; NY Anti-Trafficking Network; NYC HIV Prevention Planning Group; Prisoners' Legal Services; Public Health Association of New York; Safe Horizon; Sex Workers Outreach Project & Sex Workers Action New York; Streetwise and Safe (SAS); and the Women in Prison Project of the Correctional Association of New York.

¹ In this report, we will use the term "sex worker" and "person in the sex trade" to refer to a person who offers, agrees to, or exchanges sexual conduct for something of value. In some contexts, the term "sex worker" also includes persons engaged in legal work such as exotic dancing. The indoor sex trade includes work in brothels, hotels or in a home, or dates arranged for later meetings made in strip clubs, bars or other indoor venues. The street-based sex trade refers to commercial sexual exchanges that are arranged or occur on the street or other outdoor public spaces.

The New York City Department of Health and Mental Hygiene (NYC DOHMH) partnered with the PROS Network between August and October 2010 to conduct a study to examine the prevalence of the confiscation of condoms by the New York City Police Department (NYPD) and the use of such condoms as evidence of prostitution-related offenses in criminal cases (hereinafter referred to as “the DOHMH Study”). The survey was also designed to determine the extent to which this practice discouraged people from carrying condoms. One of the objectives of the DOHMH Study was to evaluate and highlight the public health impact of this practice in New York City. Target populations for the DOHMH Study included people in the sex trade and other populations accessing harm reduction services. Sixty-three people participated in the survey, and the qualitative and quantitative survey data were analyzed and presented in a report completed in December 2010. However, the DOHMH Study was not released to the public until February 2012, when a partially redacted version was disclosed in response to a Freedom of Information Law request filed by Human Rights Watch.

In the interim, the PROS Network decided in August 2011 to conduct additional research on the confiscation and use of condoms as evidence in New York City (hereinafter referred to as “the PROS Network Study”). The PROS Network Study was initiated with the aim of investigating and documenting the experiences of people in the sex trade and other communities with the policing of condoms. Another objective of the study was to raise awareness of the impacts that the New York City Police Department’s approach to enforcing prostitution laws has on the health, safety and human rights of people in the sex trade and other marginalized communities. Finally, the study was initiated with the objective of making recommendations to improve the treatment of people in the sex trade and other vulnerable populations by the NYPD; to improve the relations between these communities and the police; and to challenge police practices that actively hinder or obstruct access to HIV prevention resources.

The PROS Network Study was completed in partnership with the Open Society Foundations’ Sexual Health and Rights Project (SHARP), which simultaneously carried out an identical study on the policing of condoms in six countries. Also in 2011-2012, Human Rights Watch initiated and carried out an extensive human rights documentation project on the confiscation and use of condoms as evidence of prostitution-related offenses in four cities in the United States, including New York City. The SHARP and Human Rights Watch reports will be released in July 2012 in conjunction with the World Conference on AIDS to be held in Washington, D.C.

The data from the DOHMH Study on the practice and effects of condom confiscation substantially mirror the later findings of the PROS Network Study. The availability of both of these studies on the same issue, administered one year apart, provides a unique opportunity to compare and corroborate findings. Therefore, the DOHMH statistical data have been included in the PROS Network Study analysis, and the redacted version of the DOHMH Study has been attached as Appendix E.

The Importance of Condoms to HIV Prevention in New York City

According to the United States Centers for Disease Control and Prevention (CDC), consistent condom use is highly effective in preventing the transmission of HIV, the virus that causes AIDS, and reducing the risk of sexually transmitted diseases (STDs). Since the first recognized cases of AIDS in the 1980s, New York has been at the forefront of battling the disease and working to prevent its transmission. While New York City has been distributing condoms in clinics since 1971, in 2007, the New York City Department of Health and Mental Hygiene (DOHMH) started to make its own brand of NYC Condoms free and available to individuals, clinics, non-profit organizations and local businesses. New York was the first city in the country to have its own official condom brand, as part of a strategy by the Bloomberg administration to reduce rates of sexually transmitted diseases and HIV/AIDS. Female condoms, male condoms and lubricant are available free of charge, and can be requested in bulk quantities by non-profits and service agencies to distribute to their clients. In their first year, the NYC Health Department distributed an average of 3 million NYC condoms per month, and in 2009 over 40 million condoms were distributed (DOHMH 2008).

In spite of these efforts, the DOHMH reports that New York City continues to be an epicenter of the HIV/AIDS epidemic, with over 107,000 people living with the virus and many more unaware of their status. The rate of new HIV infections in New York City is three times the national average, and AIDS is the third leading cause of death for NYC residents aged 35 to 54 (ibid). Furthermore, the impact of HIV/AIDS in NYC has disproportionately affected the city's black and Hispanic residents, with 80 percent of new AIDS diagnoses and deaths occurring among these populations (DOHMH undated-a: 20)

The HIV Health and Human Services Planning Council of New York and the DOHMH (2008: 9) report in their "Comprehensive Strategic Plan for HIV/AIDS Services (2009-2012): New York Eligible Metropolitan Area" that the city's population of people living with HIV/AIDS (PLWHA) is disproportionately low-income, and that PLWHA are more likely than other New Yorkers to suffer from substance abuse problems, mental illness and/or housing instability. HIV infection rates are also much higher among people who have been through the correctional system, and rates are quickly rising among New York's foreign-born populations (ibid: 9, 20). Recently the DOHMH has detected alarming increases in infection rates among young men who have sex with men (MSM) of color, representing 77% of new HIV infections among MSM under 30 (ibid: 20).

While New York City's Strategic Plan mentions many disproportionately affected groups, including communities of color, MSM, homeless populations, formerly incarcerated people, injection drug users (IDUs) and economically disadvantaged populations, each of which may include people in the sex trade, it fails to explicitly mention people in the sex trade as a distinctly vulnerable group. The National HIV/AIDS Strategy for the United States (2010) also fails to consider the sex worker population in its strategy. Given that people in the sex trade have been excluded from city and national strategies, it is difficult to measure the HIV/AIDS prevalence rate among this population in the United States, as very little research has been funded to uncover this data. As a result, it is difficult to measure the effectiveness of existing programs targeting people in the sex trade or to scale up effective programs, and therefore difficult to stem the devastation of the epidemic on this population.

However, there is a growing awareness of the need to include people in the sex trade in any comprehensive prevention plan for HIV/AIDS. For example, NYC DOHMH issued an Enhanced Comprehensive HIV Prevention Plan that defines people in the sex trade as a vulnerable population, and lists among its objectives the reduction of all legislative barriers to condom use as one of its primary HIV prevention goals within the category of "Efforts to change existing structures, policies, and regulations that are barriers to creating an environment for optimal HIV prevention, care, and treatment" (2011: 23). In fact, the DOHMH specifically argues: "Advocating for laws that decriminalize condom possession will decrease fear of carrying condoms among individuals who exchange sex for money and will consequently decrease HIV transmission within this vulnerable population" (ibid: 24).

Well-crafted and responsive laws have the potential to advance effective HIV responses around the world. In June 2010, the United Nations Development Program (UNDP) launched the Global Commission on HIV and the Law to examine the ways in which laws around the world are both helping to protect the human rights of those living with HIV/AIDS, or serving to discriminate and prevent access to life saving treatment. U.S. Congresswoman Barbara Lee of California, who is a Commissioner of the Global Commission on HIV and the Law and co-chairs the Bipartisan Congressional HIV/AIDS Caucus stated: “the effectiveness of the global HIV response will depend not just on the scale up of HIV prevention, treatment and care, but on whether the legal and social environment support or hinder programmes for those who are most vulnerable. This requires bold and effective legal and policy measures to reach out to vulnerable communities and individuals at risk” (Global Commission on HIV and the Law and UNDP 2011).

The confiscation of condoms and their use as evidence of prostitution-related offenses is one recognized example of a major legal barrier to HIV prevention. The Report of the UNAIDS Advisory Group on HIV and Sex Work called attention to the issue within the context of the application of criminal law to sex work, stating: “Confiscation of condoms is clearly counter-productive from a health perspective and disrespectful of the rights of sex workers to protect themselves from HIV” (2011: 7). Condoms are one of the only effective tools people have to prevent HIV transmission, and New York cannot afford to discourage their use, especially given that New York City has one of the highest HIV infection rates in the country.

Law and social policy can either promote HIV transmission or help to prevent it. Recent academic and public health research, including the work done by Shannon et al (2009) and Blankenship and Koester (2002), have noted the important environmental/structural factors that contribute to HIV-transmission risk. Shannon et al specifically examined the increased risks caused by policies that decrease ability to negotiate condom-use with clients (2009: 659). Shannon and Csete (2010) explain that the constant threat of violence, combined with the isolation and disempowerment experienced by sex workers who are forced to work in remote locations or to work alone, increase obstacles to negotiating safe sex practices and therefore increase the risk of the transmission of HIV and other STDs. They note that research has shown that sex workers are “forced to prioritize the immediate threat or fear of violence over attempts to insist on condom use with clients” (2010: 573-574). The practice of police confiscation of condoms, they point out, not only undermines the ability of people in the sex trade to carry condoms, but it adds to the fear that people in the sex trade have of police violence, contributes to their lack of trust in police, and further serves as an obstacle to their reporting of crimes. Shannon and Csete conclude that law enforcement practices that inhibit condom use, such as policing condom possession, must be eliminated, and that sex workers must be protected from violence in order to prevent HIV and STD transmission.

Policing of Prostitution

The confiscation and use of condoms as evidence of prostitution must be placed in the larger context of the policing of prostitution in New York City.

In New York State, people in the sex trade are most commonly arrested for “Prostitution,” NYPL 230.00, a misdemeanor; or “Loitering for the Purposes of Engaging in a Prostitution Offense,” NYPL 240.37, which can be a violation or misdemeanor.² In New York City, most cases are disposed of quickly, often at the first court date or arraignment, because the high volume of misdemeanor arrests has created a criminal court system focused on rapid disposition of minor charges. First-time defendants may be offered an adjournment in contemplation of dismissal (ACD), a plea to a lower charge like “Disorderly Conduct,” or a plea to the arrest charge of Prostitution or Loitering for the Purposes of Engaging in a Prostitution Offense, which often involve a sentence of community service or mandated counseling sessions with a service program. Defendants with multiple convictions on their record are more likely to be given a jail sentence of up to six months. Defendants who accept these pleas forgo their rights to have the charges proven by the state, to cross-examine witnesses, and to challenge the evidence against them. They may also suffer a host of collateral consequences of conviction, such as deportation, job discrimination, and difficulty accessing public housing, services and public benefits.

The following data on the frequency of arrests for these charges were collected in 2010 from New York Criminal Courts by the Center for Court Innovation, and include cases that took place in New York City from 2005 to 2009.

Prostitution Statistics in New York City

In 2009, there were 1,802 arrests for Prostitution and 927 arrests for Loitering for the Purposes of Engaging in a Prostitution Offense citywide (Figures 2 and 3). Arrests for Prostitution and Loitering for the Purposes of Engaging in a Prostitution Offense steadily declined citywide between 2005 and 2009. However, the Bronx saw a 33% increase in arrests in 2009 compared to the previous year (Figure 1).

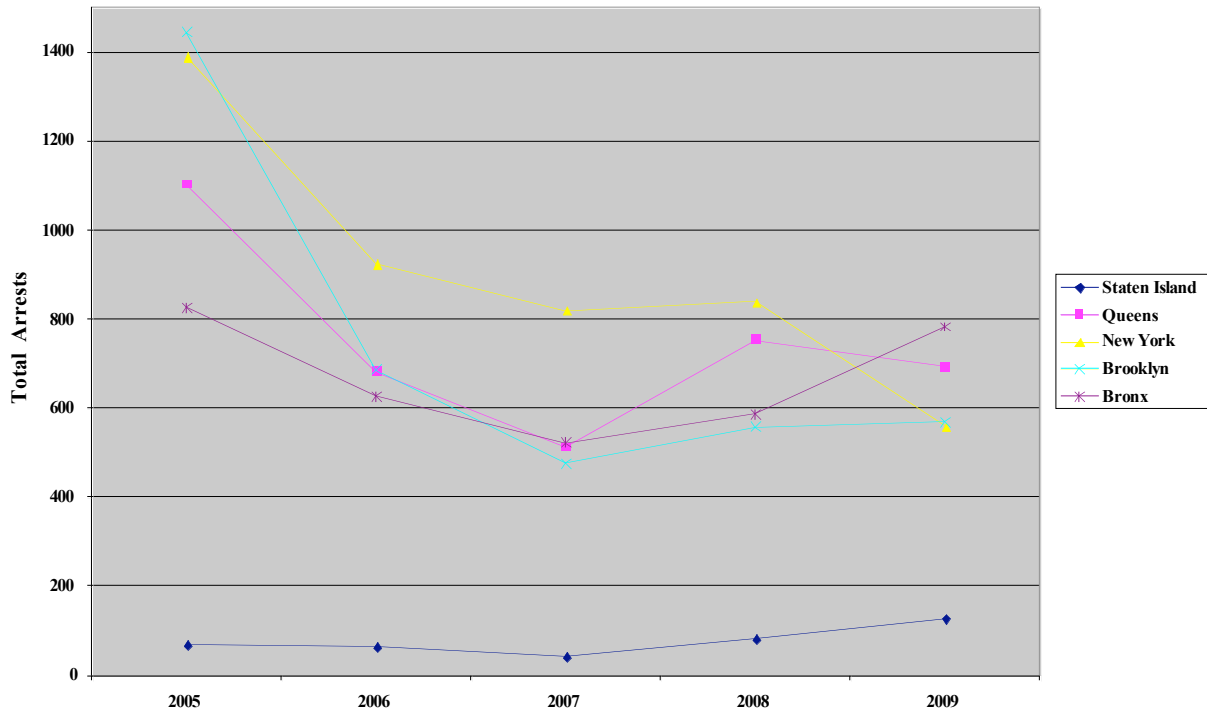
From 2005-2009, the majority of prostitution cases in New York City were disposed of by a conviction, likely because of the heavy emphasis on pleading at arraignment. In 2009, 70% of persons arrested for Prostitution were convicted, and 82% of persons arrested for Loitering for the Purposes of Engaging in a Prostitution Offense were convicted (Figures 2 and 3). The conviction rate for 16-17 year-olds remained steady despite the passage of the U.S. Trafficking Victims Protection Act of 2000 (TVPA) and the Safe Harbor Act in 2008, both of which deem individuals involved in commercial sex who are under the age of 18 to be victims of severe forms of trafficking.

Of those convicted of Prostitution or Loitering for the Purposes of Engaging in a Prostitution Offense and sentenced in 2009, half received a conditional discharge; 32% were sentenced to jail; and 16% received time served; sentencing trends varied by borough. More than half of individuals sentenced on Prostitution or Loitering for Prostitution convictions in Manhattan, Queens and the Bronx received a conditional discharge. In Brooklyn and Staten Island, however, roughly 80% of sentences consisted of jail or time served (Figures 2 and 3).

² New York State law defines Prostitution as when a “person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.” Loitering for the Purposes of Engaging in a Prostitution Offense is defined as when a person “remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons, for the purpose of prostitution...”

Figure 1*

Prostitution Arrests by Borough



* Total Arrests includes Prostitution and Loitering for the Purposes of Engaging in a Prostitution Offense.
Design and Source: Center for Court Innovation, 2010

Figure 2
Total Arrests for PL 230.00, Prostitution, in NYC in 2009

Total Arrests for PL 230.00		1,802
Open, No Disposition Reported		274
Convicted-Sentenced		1,252
Convicted-Sentence Pending		14
Covered by Another Case		2
Dismissed		229
Acquitted		2
DA Declined to Prosecute		29
Sentenced to:	Jail	325
	Time Served	174
	Fine	43
	Conditional Discharge	710

Source: Center for Court Innovation, 2010

Figure 3
Total Arrests for PL 240.37, Loitering for the Purposes of Engaging in a Prostitution Offense, in NYC in 2009

Total Arrests for PL 240.37		927
Open, No Disposition Reported		80
Convicted-Sentenced		754
Convicted-Sentence Pending		8
Covered by Another Case		3
Dismissed		48
Acquitted		1
DA Declined to Prosecute		33
Sentenced to:	Jail	307
	Time Served	146
	Fine	13
	Conditional Discharge	287
	Other	1

Source: Center for Court Innovation, 2010

How Prostitution-Related Arrests Occur

In order to enforce the laws prohibiting prostitution, the New York City Police Department (NYPD) relies on street sweeps, surveillance, undercover stings and arrests. The police are not required to obtain an arrest

warrant to make an arrest in public as long as the arresting officer has “probable cause” to believe that the suspect is committing or has committed an offense. To meet the probable cause requirement, the arresting officer must be able to reference facts that lead him or her to believe that the suspect is engaging in Prostitution or Loitering for the Purposes of Engaging in a Prostitution Offense. An arrest for prostitution should be based on a heard or observed “offer” or “agreement” to exchange sexual conduct for a fee. However, an arrest for Loitering for the Purposes of Engaging in a Prostitution Offense does not require officers to witness an offer or agreement in order to effect an arrest, and individuals’ intent or purpose is ascertained through circumstantial evidence. Many arrest reports reference the fact that the area in which the defendant is found is a known prostitution area; the fact that the suspect is known to the officer for engaging in prostitution or has been previously arrested by that officer; in addition to the officer’s observations of the suspect’s activity and perceived conversations with passersby. The NYPD’s Patrol Guide requires officers to document the length of time of their observations, as well as the suspect’s location, conversations, clothing, conduct, associates and status as a “known prostitute” (NYPD Patrol Guide Sections 208-44 and 208-45).

If a probable cause determination is challenged in court, the prosecution must provide to the court the objective observations, facts, and circumstances police acted upon, and sufficient evidence to allow the court to make its own independent determination of whether probable cause existed. The degree of evidence needed to establish probable cause to arrest is lower than that required to convict (beyond a reasonable doubt). However, the high numbers of dispositions at arraignment means that most people arrested for Prostitution or Loitering for the Purposes of Engaging in a Prostitution Offense never have a chance to challenge the probable cause determination, or have the charges against them proven beyond a reasonable doubt.

Condoms As Evidence

Possession of condoms is not a crime in New York. Additionally, there is no case law or statute that provides any basis upon which to conclude that possession of condoms is probative of the intent to exchange sexual conduct for a fee. However, it is clear that in New York City, one factor police consider in determining whether probable cause exists to arrest someone for Prostitution or Loitering for the Purposes of Prostitution is whether they have condoms in their possession. In at least one borough, supporting depositions signed by arresting officers require documentation of the number and location of condoms found on the defendant upon arrest (see Appendix G). In 2010, Brooklyn Defenders Services provided data to the PROS Network revealing that condoms had been treated as evidence in at least 39 prostitution-related cases in the borough of Brooklyn alone during 2008 and 2009. PROS Network members have reported viewing many arrest vouchers given to their clients or constituents listing confiscated condoms as evidence.

Most prostitution-related cases end in an agreement to plead to lesser charges and do not go to trial. As a result, condoms are rarely actually admitted as evidence in criminal court. However, the authors of this report are aware of several cases in recent years in which prosecutors have sought to introduce possession of condoms as evidence of intent to engage in prostitution at trial. In one Manhattan case in which the prosecution sought to introduce a single condom as evidence of prostitution, the defendant’s attorney moved to have that condom excluded from evidence on the grounds that it had no probative value. The judge, Richard M. Weinberg, found “no probative value at all in finding a condom,” stating that “in the age of AIDS and HIV, if people are sexually active at a certain age and they are not walking around with condoms, they are fools” (see Appendix F).

The NYPD nevertheless continues to confiscate and voucher condoms as evidence. Even more disturbingly, as the results of this study reveal, police also confiscate and/or destroy condoms from people they believe to be involved in the sex trade even when no arrest is made, a practice for which there can be no justification whatsoever.

In the Urban Justice Center's (2003: 7-8) study, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, 70% (21 of 30) of street-based sex workers reported near-daily police-initiated interactions with police, many of which were not related to criminal activity. Research participants described being routinely stopped and harassed by police while engaging in every-day tasks such as shopping and riding the subway, including verbal humiliation, threats, false arrests and sexual harassment, ranging from extortion of sex and inappropriate touching to rape. Many reported being stopped and searched, and one sex worker stated that police ask her to "open her condoms and drop them into the sewer, all the time" (ibid: 36).

Transgender women, women of color who are homeless or who live in lower-income neighborhoods, and LGBT youth are particularly targeted by the police for such practices. Anna North (2012) investigated the mistreatment of transgender women by the NYPD, noting the number of transgender people who have filed lawsuits against the NYPD for unconstitutional searches, false arrests, assault, battery, false imprisonment and other civil rights violations. For instance, North described the case of Ryhannah Combs, an African American transgender woman who was arrested outside a convenience store for Loitering for the Purposes of Engaging in a Prostitution Offense after she had made a purchase. Officers claimed that she was carrying nine condoms in order to bolster their false allegations against her. After being handcuffed to a wall for an extended period of time, all criminal charges against her were dropped.

Best Practices: Putting Public Health First

Recognizing the importance of prioritizing public health, other jurisdictions have taken steps to stop the use of condoms as evidence of prostitution. In 1994, the late Senator Milton Marks helped to pass a non-binding resolution in the city of San Francisco in which the District Attorney, Arlo Smith, agreed to request the police and prosecutors to stop confiscating condoms and using them as evidence; however, while the resolution was initially enforced, it is no longer being implemented.³

In March 2012, the Chinese government released an action plan to combat the spread of HIV/AIDS, which in addition to increasing condom availability in public places, proposed to tackle ignorance among local officials who use condoms as evidence by evaluating the officials' knowledge of AIDS and their ability to promote public education as part of their annual performance reviews (Leach 2012). Police were to stop using condoms as evidence in prostitution cases in 2007, as the secretary of the National Center for AIDS Control and Prevention announced: "Now police departments at all levels no longer take condoms as the proof of illegal sex activities in entertainment venues" (Xuequan 2007). In addition, in Sri Lanka, after advocacy by the Community Front for the Prevention of AIDS (CFPA) and the National AIDS Control Programme (NACP), the Department of Police agreed to refrain from arresting people in the sex trade for carrying condoms (Ganasinghe 2000).

³ San Francisco Board of Supervisors Resolution 548-94 (1994). Available at <http://www.bayswan.org/CondomsAsEvidenceSFTFP.pdf>.

Methodology

Members of the PROS Network (Providers and Resources Offering Services to sex workers) work with people of all genders who, by choice, circumstance, or coercion, engage in sexual activities in exchange for money, food, shelter, clothing, drugs or other survival needs. The research methodology for this study was grounded in the principles of the PROS Network, namely social justice, human rights and a non-judgmental, harm reduction approach and perspective.

Public health advocates and sex workers' rights organizations around the world have long expressed concern over the police practice of confiscating condoms and the use of such condoms as evidence of prostitution. In response to the absence of documentation of people's experiences with these practices and their consequences, a number of entities, including PROS, initiated studies of the impacts of policing condoms in New York and beyond.

The PROS Network Study used the qualitative research method of the semi-structured interview. Two questionnaires (see Appendices A and C) were created with the aim of collecting data from people in the sex trade, outreach workers and other populations that may be affected by the use of condoms as evidence. The questions were designed to not only examine people's experiences with the confiscation of condoms and its repercussions, but to evaluate the extent to which this practice—or knowledge of this practice—has influenced people's behaviors and attitudes towards carrying condoms.

Additional questions were created with the objective of gathering information on the broader relationship between people in the sex trade, the police, and the legal system, including attitudes towards law enforcement. Questions examine the nature of the interactions people in the sex trade have with police, asking whether or not they have experienced police harassment, violence, intimidation, extortion or bribery, or been stopped and searched, or arrested and/or sentenced for prostitution-related offenses.

This survey was also administered to people accessing harm reduction services who do not engage in sex work in order to better understand which populations are being targeted for condom confiscation and the frequency and reach of this practice. This population was also included to assess the degree to which knowledge of condom confiscation— either having witnessed it or heard about it— has discouraged people from carrying condoms regardless of actual involvement in the sex trade.

The questionnaire administered to outreach workers aimed to determine whether this population is also being targeted for condom confiscation, and whether this practice has affected their work, as it has in other countries. Both questionnaires included closed and open-ended questions in order to assess trends and patterns, as well as to gather more nuanced information. Questionnaires and consent forms were administered in both English and Spanish. The English versions are attached as Appendices A-D.

The process of developing the research methodology and questionnaires was a collaborative endeavor involving the Open Society Foundations' Sexual Health and Rights Project (SHARP) and members and representatives of the PROS Network, including the Urban Justice Center's Sex Workers Project, Streetwise and Safe (SAS), and the Latino Commission on AIDS. Other organizations in other countries where SHARP replicated this study also participated in the design of this methodology. This participatory approach was also applied during the implementation of the survey and during the writing and analysis of the study's results. Representatives of the PROS Network who conducted the interviews included staff, interns and peer youth educators from the New York Harm Reduction Educators (NYHRE), FROST'd, Streetwise and Safe (SAS) and the Urban Justice Center's Sex

Workers Project. All PROS Network representatives received training on conducting the surveys and explaining the consent forms to participants.

A total of 65 people participated in the survey: 35 individuals who reported that they had engaged in sex work; 20 harm reduction service users; and 10 outreach workers. Interviews were conducted in September and October 2011 and were administered in all five boroughs of New York City (5 in the Bronx; 19 in Brooklyn; 29 in Manhattan; 8 in Queens; 1 in Staten Island; and 3 were unspecified). Interviewers accessed participants either through street or peer outreach, in PROS Network drop-in centers or in mobile outreach/harm reduction service vans.

While a number of the questionnaires were administered in public settings, efforts were made to maintain the confidentiality of the participants' responses by moving to a quiet and secure location, in compliance with privacy standards. No information that would identify the participant was collected during the interview process. All participants signed confidentiality agreements that were explained to them in either English or Spanish. Participants had the option to stop the interview at any time, at which point it would be discarded. Compensation for survey participants consisted of a two-ride New York City MetroCard, which was made available to participants regardless of whether they decided to stop the interview. Participants were also informed that their participation in the survey would not affect their access to any of the available harm reduction services.

Both the quantitative and qualitative data from the surveys were reviewed and analyzed for emerging trends, correlational relationships and themes. In addition to interview data, secondary research sources used in the preparation of this study included: arrest and criminal justice statistics from government agencies; annual reports and research from international and U.S. public health and HIV/AIDS organizations; academic journal articles; newspaper articles; and studies conducted by sex workers' rights organizations. The data from the survey were also compared to the findings of the study administered by the DOHMH and the PROS Network in 2010, the redacted report from which is included as Appendix E.

Methodological challenges included the study's relatively small sample size. This limitation makes it difficult to generalize the research findings to other populations of people in the sex trade who work in different settings, particularly in indoor sex work and legal sex work venues. However, while the sample size is not large, it is diverse, and there are clear similarities and patterns in the responses of the survey participants, particularly on the topics of police harassment and condom confiscation.

Demographic information on the survey participants is presented in the next section. Due to the sample size, statistical analyses were not performed, but rather the data are presented as percentages. Furthermore, the presentation of the data and analysis in this report will mostly focus on the 35 people in the sex trade who participated in the study, as the results revealed that the practice of policing condoms and use of condoms as evidence disproportionately affects this population.

Demographics of the Study Population

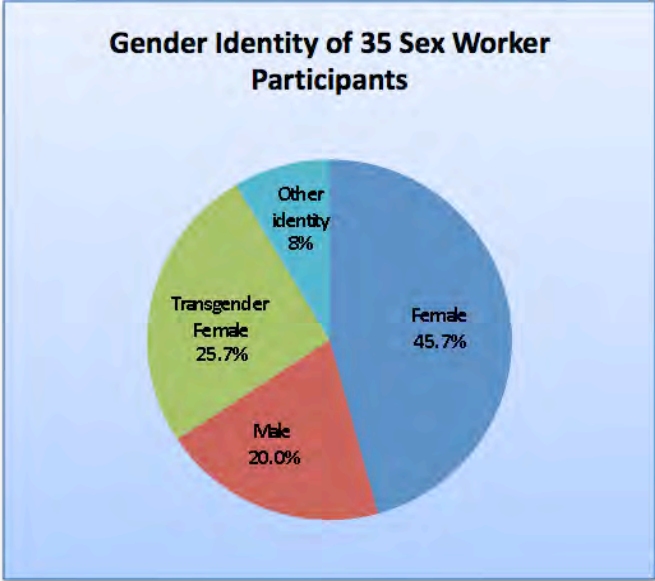
Despite the limitations of a small sample, the PROS Network representatives were able to access a diverse group of participants for the study. The data suggests that people who engage in sex work in New York City originate from a wide range of socioeconomic, racial, ethnic, gender and geographical backgrounds, and vary in age. Eligible survey participants included people who currently or formerly worked in the sex trade (indoor or outdoor), people accessing harm reduction outreach services, and outreach workers who provide street-based HIV prevention services, including but not limited to distributing condoms. All participants were required to be 18 years of age or older.

The main target population for the survey, however, was people who engaged in the street-based sex trade, as this population has the greatest contact with law enforcement, receives the majority of police attention and is therefore most likely to be affected by the police practice of condom confiscation. Of the 35 participants who responded affirmatively that they had engaged in sex work, 74.3% (26 of 35) had participated in street-based sex work; 17.1% had engaged in indoor sex work; and 8.6% did not specify.

Of the 35 respondents, 31.4% (11 of 35) reported that they had engaged in sex work within the previous 24 hours; while 17.1% had engaged in sex work within the past week; 11.4% within the past month; 11.4% within the past 3 months; 20% within the past year; and 8.6% did not respond to this question.

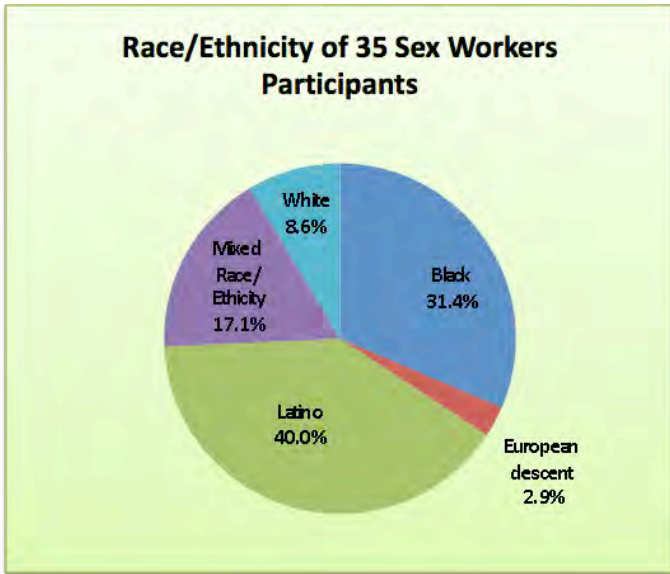
As for the diverse gender identities of the 35 respondents, 45.7% (16 of 35) identified as female; 25.7% as transgender female; 20% identified as male; and 8% listed other gender identities (Figure 4).

Figure 4



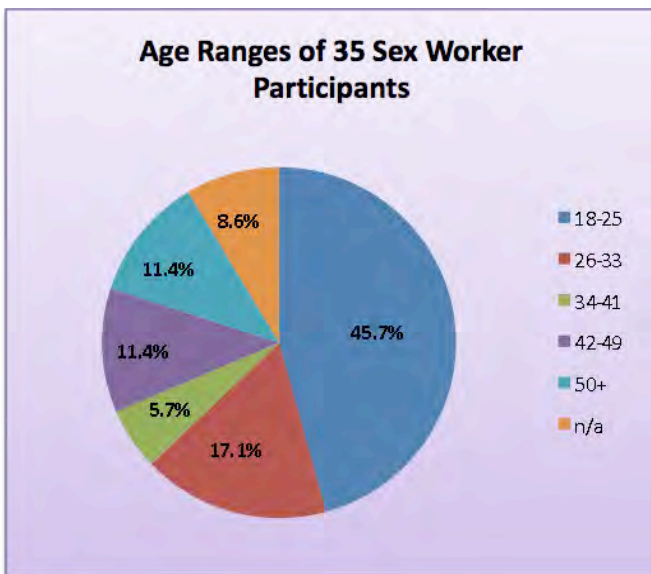
The racial and ethnic background of the 35 respondents was also diverse: 40% (14 of 35) of the participants identified as Latina or Latino; 31.4% identified as black (people of African descent or African American); 17.1% identified as mixed race/ethnicity; 8.6% identified as white and 2.9% identified as of European descent (Figure 5).

Figure 5



Of the respondents who reported having engaged in sex work, 45.7% (16 of 35) were between the ages of 18-25 years old; 17.1% were between the ages of 26-33 years old; 5.7% were between the ages of 34-41 years old; 11.4% were between 42-49 years old; 11.4% were 50 years old or older; and 3 participants did not provide their age (Figure 6). The prevalence of young people in this study is partially due to an emphasis on gathering information from this population by the PROS Network.

Figure 6



The twenty people who participated in the study who did not report having a history of sex work were mostly young; 70% (14 of 20) were between 18 and 25 years old. Fifty percent (10 of 20) identified as male; 45% identified as female; and 5% identified as a transgender female. Of this group, 65% (13 of 20) identified as black (people of African descent or African American); 15% identified as mixed race/ethnicity; 10% identified as white; while 5% identified as Latino; and 5% chose not to respond.

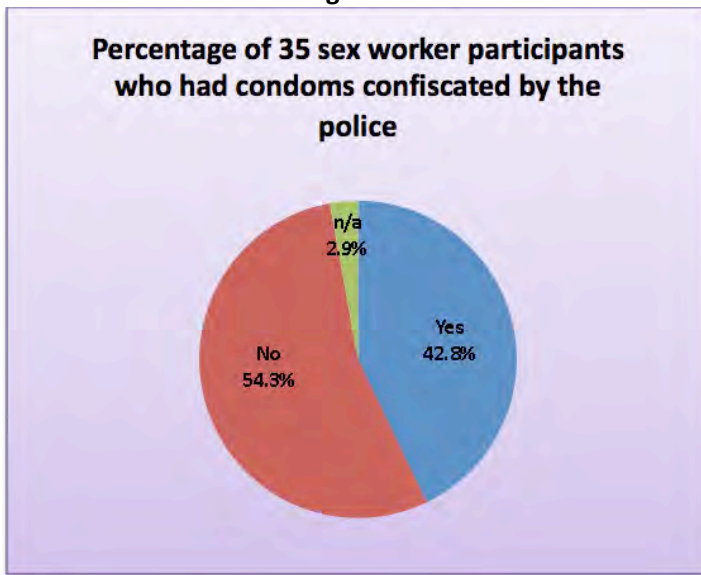
The ten outreach workers who elected to participate in the study conducted outreach for the Latino Commission on AIDS (LCA); the Washington Heights Corner Project (WHCP); and the Foundation for Research on Sexually Transmitted Diseases (FROST'D). Their ages ranged from 27-55 years old. Seventy percent (7 of 10) identified as Latino; 20% identified as black; and one person identified as white. Fifty percent (5 of 10) identified as male; 40% identified as female; and 10% identified as another gender identity.

Survey Findings

Condom Confiscation and the Impact on People in the Sex Trade

When asked whether police had ever taken condoms away from them or damaged or destroyed them, 42.8% (15 of 35) of the respondents who reported being involved in the sex trade said yes; 54.3% (19 of 35) of the respondents said this had never happened to them; and one person (2.9%) did not respond (Figure 7). These results were consistent with the 2010 DOHMH Study, in which participants reported even higher rates of condom confiscation, 57% (36 of 63). Of the 15 respondents to the PROS Network survey who had condoms confiscated or destroyed, 4 participants reported that they had had their condoms confiscated or destroyed 3 or more times in the last year; 9 respondents had condoms confiscated or destroyed 1-2 times in the previous year; and 2 of the 15 had had this happen more than 12 months prior to the survey.

Figure 7



Although the use of condoms as evidence in prostitution-related cases is ostensibly the justification for their confiscation by police, the majority of survey participants (66.7%; 10 of 15) who reported that police had confiscated or destroyed their condoms said that this did not take place in the context of an arrest (Figure 8). For example, a 43-year-old Latina female in Queens recounted that she was stopped by police who first asked her if she was carrying any condoms and then searched her: “They removed condoms from my bra and other places on my body,” and threw out the condoms, called her a prostitute and told her to go home. She was not arrested. Another 22-year-old respondent who identified as black, Puerto Rican and gender non-conforming told the interviewer: “I was going for a walk in Prospect Park; the cops frisked me and asked me to remove stuff from my pockets.” The cops took two condoms without arresting the respondent or explaining why they had taken the condoms. The respondent then reported: “I went about my business, luckily I had condoms in my Altoids box or I’d have to have raw sex. [...] I have to make money regardless.” This respondent reported that police had confiscated their condoms seven times in the last year. A 23-year-old in Long Island City who identified as a black female said that she was once in a car with someone and got searched by the police, who took all of her condoms except two. She said that the police didn’t explain why they

**LUCKILY I HAD CONDOMS IN MY
ALTOIDS BOX OR I’D HAVE TO
HAVE RAW SEX.**

*22-year-old gender non-conforming
black/Puerto Rican, Harlem*

confiscated her condoms, but just asked her why she had so many. She reported that she did later engage in sex work and used a condom: “The officer left me with two, so I had one more date and left.” She told the interviewer that she purchased more condoms the next day.

Figure 8

Context in Which Condoms Were Confiscated by Police		
During an arrest	5	33.3%
Without an arrest	10	66.7%
TOTAL	15	100%

In the 2010 DOHMH Study, 74% (26 of 36) of the respondents who reported having condoms confiscated were subsequently arrested.

Of the 15 respondents who reported confiscation or destruction of condoms by the police, 40% (6 of 15) said that they engaged in sex work that day or night after the condoms were taken; 53.3% (8 of 15) of the participants said that they did not engage in sex work afterwards; and one participant (6.7%) did not respond (Figure 9). Half of the participants (3 of 6) who did engage in sex work afterwards used a condom, and half reported that they did not use a condom. One 21-year-old who identified as a Latina transgender female in the Bronx described being stopped by police who searched her purse and found a box of three Trojan condoms. The cops asked her what she was doing, what the condoms were for and why she had more than one. She was arrested and charged with Loitering for the Purposes of Prostitution and Disorderly Conduct. She reported that she later engaged in sex work without a condom.

Figure 9



The respondents whose condoms were confiscated and who did not engage in unprotected sex afterwards described either going home to get more condoms, purchasing more condoms, or getting more condoms from friends or other people in the sex trade. One 20-year-old who identified as a white Hispanic female who engages in indoor sex work described how she arranged a date online with an undercover cop. She said that the 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 reported that she and others then left because it was not safe; they were told to leave within two hours or they would be arrested. She said that she later engaged in sex work and got a condom from a girl with whom she was working.

“IF YOU DON’T HAVE THIS, YOU WON’T HAVE SEX.”

Police Officer, according to 20-year-old white Hispanic female

The majority of participants (62.9%; 22 of 35) reported that they had, at one point, been arrested on prostitution-related charges. While most of those arrested for prostitution-related charges were not sure whether or not condoms had been used as evidence against them, one respondent recalled: “I remember the DA saying I had condoms on me a lot.”

However, many more participants had seen or heard about the use of condoms as evidence. All survey respondents were asked whether or not they had ever witnessed police confiscating or destroying condoms held by other people in the sex trade or outreach workers, and 22.9% (8 of 35) responded that they had witnessed condom confiscation, while 42.9% said that they had heard about such incidents. One 56-year-old participant in Brooklyn who identified as African-American and white and did not specify their gender told interviewers that a friend had their condoms confiscated by the police during a stop and search and that the officer said: “no, these are for healthy people; hope you get killed tonight.” A 30-year-old who identified as a Latino male told interviewers: “I always hear stories about the cops using condoms as a way to get people in trouble.”

Respondents gave mixed answers about whether the police practice of confiscating and destroying condoms and harassing and arresting people in the sex trade has affected their ability to negotiate condom use with their clients. Many people in the sex trade demonstrated a commitment to safer sex no matter the risk. A 28-year-old Latina female in Manhattan responded: “I personally don’t care; the goal is to stay safe no matter what and I will keep carrying condoms.” A white female in Coney Island said that she would just buy another condom. Other

WHY DO THEY TAKE YOUR CONDOMS, DO THEY WANT US TO DIE, DO THEY WANT US TO GET SOMETHING?

22-year-old gender non-conforming black/Puerto Rican, Harlem

respondents said that if they don’t have condoms, they won’t work. Many participants, however, expressed concern and described changed practices. A 37-year old female from Coney Island admitted: “sometimes I stop coming to FROST’D to get condoms.” A 20-year-old woman from Manhattan reported: “I don’t feel safe. I feel more cautious. I feel scared to carry condoms.”

Participants’ answers also varied when asked how the criminalization of sex work affected their ability to negotiate condom use with clients. A woman from Queens said that she is not affected, as she uses condoms no matter what. However, 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?”

At least some people in the sex trade are under the impression that carrying condoms is itself a crime, although that is not the case. When asked what would help improve sex workers’ access to condoms and the ability to negotiate condom use, a 25-year-old in Queens who identified as a transsexual Latina responded: “Carrying condoms should not be a crime.” A number of respondents called for more free clinics and outreach services and more education on resources and diseases. A 52-year-old respondent in Harlem who identified as a black male suggested it would be better “if sex work was legal; if police didn’t harass me.” A 20-year-old woman in Manhattan called for: “more outreach, decriminalization of

CARRYING CONDOMS SHOULD NOT BE A CRIME.

25-year-old transsexual Latina

practice, less taboo, encouraged to carry condoms, more advocacy.”

Condom Access and Behavior

Given that the DOHMH has been distributing free condoms since the 1970s, and distributed more than 40 million condoms in NYC in 2009 to individuals, clinics, non-profit organizations and local businesses including bars and clubs, it is not surprising that 83% (29 of 35) of sex worker respondents to the PROS Network survey reported that accessing condoms is ‘always easy’. On the other hand, 14% of the participants responded that obtaining condoms is ‘sometimes difficult’; and one person found accessing condoms ‘always difficult’.

In addition to the free condoms made available through the city, a number of respondents mentioned that they get condoms from other people in the sex trade, their friends or outreach workers, or they purchase them in pharmacies or convenience stores. Those who found accessing condoms more difficult explained that clinics and stores may be far away or closed during the evening hours when they need condoms most. This is particularly challenging for people who work in establishments that are reluctant to make condoms available for fear that it will give rise to a presumption that they are harboring illicit sexual activity or trafficking.

Reflecting a refusal to compromise their right to protect themselves from diseases, the majority of participants (18 of 35) reported that they ‘always’ carry condoms with them; while 11.4% of respondents said that they carry condoms ‘more often than not’; 31.4% of participants said that they ‘sometimes’ carry condoms; and 5.7% claimed that they ‘never’ carry condoms (Figure 10). Participants in the DOHMH Study reported even higher rates of consistently carrying condoms; 75% of respondents (47 of 63) reported that they carry condoms “all the time.”

However, when participants in the PROS Network survey were asked how many condoms they usually carried with them, a number of respondents said they had decreased the number of condoms they carried or the frequency with which they carried them based on fear of police. For instance, one 21-year-old Latina woman interviewed in Coney Island reported that she always carries condoms, but reported that she “used to carry a whole bag, but now just carries one or two.” Another woman interviewed in Coney Island reported that she only sometimes carries condoms and that she “stopped because of the police.” A 22-year-old Latina transgender woman who was interviewed in Queens also reported that she used to carry a lot of condoms but tries to not carry any now.

Close to half of the participants (45.7%; 16 of 35) in the PROS Network Study reported not carrying condoms at some point out of fear of police repercussions (Figure 11). Responses given by participants in the DOHMH study as to why respondents feared that condoms could get them in trouble with police included their own or friends’ experiences of having condoms confiscated or used against them; hearing that condoms could get you marked as a prostitute; or the potential embarrassment of having condoms seized.

Figure 10



When asked where they carried condoms and why, many respondents reported carrying condoms in their pockets or purses. However a number described carrying condoms hidden on their body such as: “in my brassiere”; “in the bottom of my bag”; or “under my wig”. Others reported hiding condoms in their socks or shoes. One participant reported: “I sometimes have one in my mouth and two or three in my bag, that’s usually my limit.” When asked why they concealed their condoms, one transgender woman reported that she carries her condoms in her bra “in order to protect myself”.

Figure 11

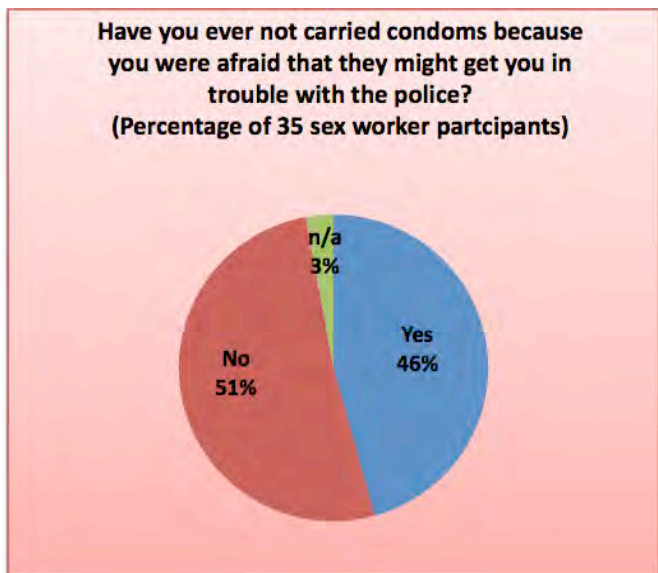


Figure 12 (below) illustrates results from the PROS Network study, which revealed a relationship between gender identity and fear of carrying condoms. Of the female participants, 37.5% (6 of 16) responded that they had at some point not carried condoms out of fear of the police. Participants who identified as either

transgender female or another gender identity other than male or female had the highest percentage of reports that fear of the police had influenced them not to carry condoms (75%; 9 of 12). While just 14.3% (1 of 7) males reported not having carried condoms out of fear of the police.

Figure 12

Percentage of respondents (by gender identity) who have ever not carried condoms out of fear of the police		
Female	6 of 16	37.5%
Transgender Female	9 of 12	75%
Male	1 of 7	14.3%

Respondents who expressed fear of carrying condoms mentioned previous experiences of being stopped and searched by the police, as well as being harassed and profiled by the police in racist, sexist, transphobic and derogatory manners. A 37-year-old woman in Coney Island responded: “Police know you. They lock you up. They assume if you have a condom, you’re a prostitute.” Another respondent in Queens, who identified as transsexual, said: “they stop me for any reason, they accuse me of prostitution.” Still another respondent interviewed in Harlem who identified as gender non-conforming reported: “Even if I’m not working they still check my pockets. So many of my friends get arrested.” Other respondents mentioned that they were fearful of carrying condoms because they had heard other people talking about experiences with condom confiscation. A 20-year-old woman interviewed in Manhattan who engages in indoor sex work reported being told by the NYPD “that if they find condoms, they can arrest you, and I was scared.”

Of the respondents in the sex trade, 22.9% (8 of 35) reported that they had in fact turned down free condoms from outreach workers out of fear of getting in trouble with the police. A 52-year-old male sex worker interviewed in Manhattan reported having not taken condoms from outreach workers “because I didn’t want to be caught with too many condoms.”

When asked about condom use when selling or trading sex, the majority of participants (54.3%; 19 of 35) reported that they use condoms ‘all of the time’; 22.9% responded that they use condoms ‘most of the time’ when selling sex; 5.7% reported using condoms ‘about half the time’; 14.3% said that they use them ‘some of the time’; and just one person (2.9%) said that they never use condoms when selling sex. Participants listed a number of factors that influenced decisions not to use a condom when selling sex. The reason most frequently given (11 respondents; 8 of which listed this as the sole contributing factor) was not carrying a condom out of fear of police harassment.

Interactions with the Police

When asked to describe their relationship with the police, close to half (48.6%; 17 of 35) of the participants reported having a ‘bad’ relationship with the NYPD. Twenty percent described their relationship with the police as ‘good’; while 28.6% felt ‘neutral’ about their relationship with the police; and one person (2.9%) did not respond.

**THEY ASSUME IF YOU HAVE A
CONDOM, YOU’RE A PROSTITUTE.**
37-year-old female, Manhattan

One of the questions that helped to explain some of the negative feelings sex worker respondents had towards police was whether or not police had ever harassed or intimidated them for being a sex worker or for engaging in prostitution. Sixty percent of respondents (21 of 35) replied affirmatively that they had experienced harassment or been intimidated by the police. Of those who replied that they had been harassed or intimidated

by police, responses as to how frequently they experienced this harassment in the previous 12 months ranged from once or twice to 80 times.

**THEY ASK IF I HAVE DRUGS,
SEARCH MY POCKETBOOK AND
SEE CONDOMS AND THROW
THEM IN THE GARBAGE.**

50-year-old black female, Coney Island

The forms of police harassment most frequently mentioned by participants included verbal abuse and insults, threats, frequent stops and searches or being physically abusive. A 35-year-old Latina transgender woman reported that police often yell at her to “go home faggot”. A 21-year old Latina woman in Coney Island told the interviewer that over the past year she had been harassed by the police 3-4 times a week: “I couldn’t go to a freaking store without being harassed. They’d stop and search me and talk shit.”

A 37-year-old white woman in Coney Island said that she gets a lot of harassment: “Police call me names. They shake you up. They grab you. Throw you around and stuff.” She 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 23-year-old woman who identified as black and Mexican was interviewed in Long Island City and said that she had been harassed around 80 times in the past year: “They ask me why I am dressed like that and where am I going, and tell me to get a real job.”

The issue of racial and ethnic profiling by the NYPD and the discriminatory and unlawful use of “stop and frisk” is increasingly cause for concern and activism in New York City. This practice has been proven to disproportionately target certain neighborhoods and racial and ethnic groups. Chang (2012) reported that data obtained from the NYPD by the New York City Council in 2011 revealed that 87% of people stopped were black, Latina or Latino. This pattern dramatically increases the likelihood that women and LGBTQ people of color will be stopped and searched, and that a search will reveal possession of condoms. Given this fact, and that police are encouraged to rely on circumstantial factors to make an arrest for Prostitution or Loitering for the Purposes of Engaging in a Prostitution Offense law, it is nearly inevitable that people who are—or are perceived to be—involved in the sex trades will be profiled based on race, as well as gender identity and expression, clothing, location, or history of arrest.

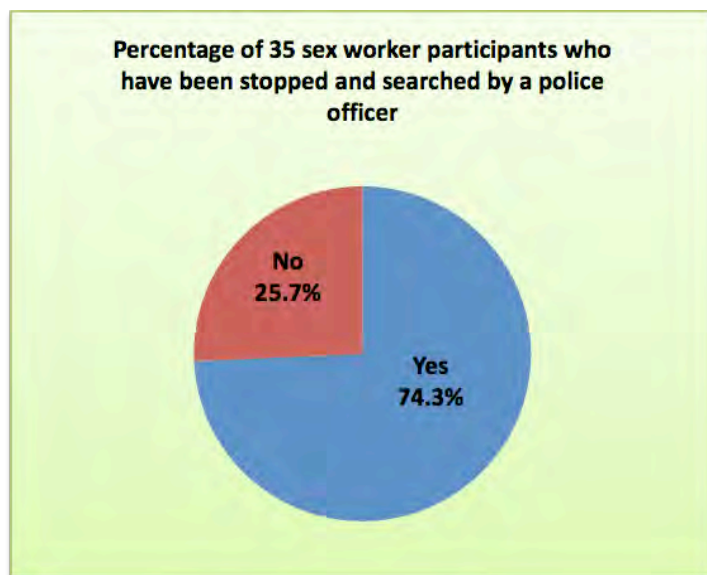
**I WAS LOCKED UP BECAUSE I
HAD THE CONDOM. I WASN’T
EVEN PROSTITUTING. THEY
TOOK THE CONDOM**

37-year-old white woman, Coney Island

An overwhelming majority of survey participants (74.3%; 26 of 35) reported that they had been stopped and searched by the police (Figure 13). These results were in line with those of the 2010 DOHMH Study, which found that 81% (51 of 63) of participants had been stopped and searched by an NYPD officer. Of the 21 participants in the PROS Network survey who responded to the question asking how many times they had been stopped and searched in the previous year, 66.7% responded that it had

occurred at least 3 times or more. When asked to describe their experiences with being stopped and searched by the police, a 21-year-old Latina woman in Coney Island said: “They hop out and throw me against the wall; nearly strip-search me on the street; pull down my pants and pull up my shirt.” A 50-year-old who identified as a black female in Coney Island described how she is commonly stopped and searched: “They ask if I have drugs, search my pocketbook and see condoms and throw them in the garbage.” A 52-year-old African American man in Manhattan described how “sometimes they take me for a ride, yell at me, call me a faggot, then let me back out of the car.”

Figure 13



Respondents gave many varied answers to the question of why they thought that the police stopped and searched them. Some said that the cops knew them from previous prostitution arrests: “They knew me from before; once they see you they know they’ll find a condom on you.” Other responses suggested that they were targeted or profiled based on their sexual orientation, their gender identity or expression, their race, the clothes they were wearing, the way they walk and carry themselves, because they are tall and stick out; or because they were in an area known for prostitution or in a park after dark. A 43-year-old Latina transgender female in Manhattan explained: “Cops usually go into parks to stop and frisk and harass the poor people.”

When asked whether they had ever been asked for a bribe by a police officer, 82.9% (29 of 35) responded that they had not, while 17.1% responded that they had been asked for a bribe. Significantly, some respondents interpreted the question about bribes to mean sexual extortion by police officers, and reported their experiences with such misconduct. It is not uncommon for people in the sex trade in New York to exchange sex for leniency from police. A 26-year-old who identified as an African-American transgender female in Manhattan reported: “I offered the police officer a blowjob in exchange for not arresting me; I gave it to him; he let me go.” A woman in Coney Island explained: “They say give me a blow job and I won’t lock you up; from two different cops; you have to obey them.” Undoubtedly more experiences of sexual exploitation might have been reported if the survey had asked this question more specifically.

Survey respondents were asked if they had ever filed a complaint with the police or another government agency about police behavior towards them, including police harassment, extortion or condom confiscation. Eighty percent (28 of 35) of the participants said that they had not; while 14.3% reported that they had filed a complaint; and 5.7% did not respond. When asked to explain why they have not taken such measures if they felt that they had reason to complain, a 27-year old participant who identified as a black woman from Staten Island responded: “I don’t believe it will ever stop.” A 22-year-old from Trinidad who identified as a transgender female said: “I’m scared of the police; well I don’t like them; the courts are not for a tranny. They’ll disrespect my name and gender.”

**THEY KNEW ME FROM BEFORE;
ONCE THEY SEE YOU THEY
KNOW THEY’LL FIND A CONDOM
ON YOU.**

37-year-old white woman, Coney Island

Harm Reduction Service Users Surveys

“WHY WOULD [YOU] GIVE A PROSTITUTE A CONDOM? I’M JUST GOING TO ARREST HER. YOU’RE GIVING ME MORE OF A REASON TO WRITE HER UP”

Police officer, according to 19-year-old harm reduction service user

In order to understand the prevalence and reach of the confiscation of condoms and the targets of this practice, 20 individuals were interviewed who did not report having participated in the sex trade. These interviews were conducted at the same locations as the other interviews and included people accessing harm reduction and social services, such as those offered by Streetwork, FROST’D and the Ali Forney Center. While this report will not provide a full analysis of these results, it is important to note that 10% (2 of 20) of respondents mentioned that they had at some point not carried condoms because they

were afraid that it might get them in trouble with the police. This compares to the 45.7% (16 of 35) of participants who engage in sex work who expressed fear and reservations about carrying condoms.

One of the two participants—a transgender female—who reported not having carried condoms out of fear of the police, explained: “I had heard that they can lock you up for a certain number of condoms.” Her perception is consistent with that of many clients and constituents of PROS member organizations that there is a maximum number of condoms individuals are allowed to carry. Another participant, a 19-year-old female, mentioned that she likes to pass out condoms to peers and usually carries about 20 condoms with her. However, she reported: “two months ago I started getting scared because I heard about cops bothering people, but now I have Streetwork ID,” implying that being a recognized outreach worker may protect her. She also reported that she has frequently been stopped and searched by the police while doing outreach. She described one incident in which: “I was stopped at the train station and a few condoms fell out of my pocket. They took the condoms and searched my backpack further.”

Several of the respondents from the service users group who do not do sex work recounted stories of being harassed or intimidated by the police. One participant, who identified as a 45-year-old white female, told the interviewer: “In Brooklyn, they harassed me because they thought I was doing sex work and selling drugs.” While the PROS Network Study mostly focuses on people involved in the sex trade, it is important to note that the overall survey results with 65 participants reaffirm the significant role of profiling in police harassment and arrests. Eighty percent (16 of 20) of the service users group had been stopped and searched by the police. For example, one participant who identified as a black 23-year-old male recounted that he was going to his LGBT shelter and police stopped him and searched his bag.

Only one participant (5%) in the service users group reported having had condoms confiscated by the police, compared to 40% of the respondents in the sex trade who had condoms confiscated. However, 30% of the service user participants had witnessed police confiscating or destroying condoms held by a sex worker or outreach worker; and 40% had heard of incidents of condom confiscation. One 19-year-old participant said that while she was doing outreach to people in the sex trade the previous week, cops approached her and asked: “why would [you] give a prostitute a condom? I’m just going to arrest her. You’re giving me more of a reason to write her up.”

THEY PUSHED [HER] AND BROKE EVERYTHING; SMASHED [HER] LIPSTICK; SQUASHED CONDOMS; JUST LEFT [HER].

Harm reduction service user, Bronx

Another respondent in the Bronx told the interviewer: “They pick on gay people; might have been a transgender with a wig; they pushed [her] and broke everything; smashed [her] lipstick; threw some stuff in an envelope; squashed condoms; just left [her].”

Outreach Workers Surveys

Interviews were held with ten outreach workers who conducted outreach for the Latino Commission on AIDS (LCA); the Washington Heights Corner Project (WHCP); and the Foundation for Research on Sexually Transmitted Diseases (FROST'D). In this survey, 2 of 10 (20%) participants reported being harassed or intimidated by police for being an outreach worker. While one peer educator who was surveyed as a harm reduction client described being searched by the police, none of these ten outreach workers said they had ever been stopped and searched as a result of their work or had condoms confiscated by the police. One participant who identified as a 48-year-old Latino male admitted that he was scared that the police would arrest him for carrying condoms even though he always carries official identification that identifies him as an outreach worker.

Conclusions

While the sample size for this study was small, the results demonstrated that people in the sex trade in all five boroughs have experienced, observed, or heard of the confiscation of condoms and the use of condoms as evidence, and that this has affected the number of condoms they carry and the frequency with which they carry them, as well as in some instances, their condom use. These findings are corroborated by the DOHMH Study, which found an even higher rate of confiscation of condoms by police.

While many survey participants expressed confusion about the number of condoms that they are legally allowed to carry, the results of this study revealed that people can be harassed or arrested for possessing even one condom. Despite the fact that most prostitution cases do not go to trial, condoms are frequently vouchered and cited in criminal court complaints and supporting depositions as arrest evidence in prostitution-related cases.

These policies and practices may have a dangerous impact on safer sex practices in general. Of the participants in the survey who are involved in the sex trade, 45.7% reported that they have not carried condoms out of fear that it may get them in trouble with the police or lead to their arrest. For all too many people in the sex trade, the importance of safe sex is outweighed by the importance of avoiding police harassment, humiliation, sexual and physical abuse, and arrest, as well as the potential indirect consequences of arrest (including vulnerability to HIV transmission and/or violence while in detention).

The fact that condom confiscation is occurring even outside of arrests demonstrates that police are using condom possession as grounds to harass and intimidate people in the sex trade and people they profile as sex workers. It is clear from the PROS Network Study that this practice is discriminatory, and involves police profiling based on sexual orientation, race, ethnicity and economic background. This harassment occurs even when people are not engaging in illegal activities. Transgender women and LGBT youth of color are particularly targeted for discriminatory and abusive police conduct based on actual or perceived involvement in the sex trade.

Despite the theory that the confiscation of condoms deters prostitution, this survey found that people in the sex trade whose condoms are confiscated by police, for the most part, continue to do sex work. While some may desist from doing sex work the same day, there is no evidence that the confiscation of condoms has deterred these individuals from doing sex work later.

More disturbing, some people in the sex trade are put into a position of engaging in commercial sex without a condom, because their condoms were confiscated. In spite of the high level of commitment to safe sex found among people in the sex trade, half of the people in the sex trade who went on to do sex work directly following condom confiscation had unsafe sex. Thus, police actions may be directly resulting in new transmissions of HIV.

The practice of confiscating condoms and using them as evidence in criminal prostitution-related cases directly contravenes the policies and activities of the NYC Department of Health to prevent the spread of HIV/AIDS and other STDs through the distribution of free condoms, and directly undermines the efforts of people in the sex trade to protect themselves, their clients and the community.

The findings of both the PROS Network Study and the 2010 NYC DOHMH Study reveal that the confiscation of condoms and their use as evidence only serves to:

- discourage condom use and increase vulnerabilities to HIV and other STDs;
- further marginalize already vulnerable populations;

- increase mistrust and resentment of law enforcement;
- violate sex workers' right to health;
- and impede the efforts of people in the sex trade to serve as safe sex educators for their peers and clients.

It is therefore imperative that police and prosecutors stop condom confiscation and the use of condoms as evidence, and synchronize their policies with those of the Department of Health to promote rather than discourage condom use among people in the sex trade.

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.
- The New York City Police Commissioner Raymond W. Kelly should issue a directive to the NYPD to stop confiscating condoms as evidence of prostitution-related offenses.
- 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 or other misconduct towards people in the sex trade.
- Community-based organizations and harm reduction services organizations should provide trainings for their sex worker clients 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.

Sources

Agustín, Laura María. 2007. *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*. London and New York: Zed Books.

Alliance for a Safe & Diverse DC. 2008. *Move Along: Policing Sex Work in Washington D.C.* Washington D.C.: Different Avenues.

Amnesty International. 2005. *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the United States*, AMR 51/122/2005.

Best Practices Policy Project, Desiree Alliance and the Sexual Rights Initiative. 2010. "Report on the United States of America 9th Round of the Universal Periodic Review – November 2010." Available at: <http://www.nswp.org/resource/report-the-united-states-america-9th-round-the-universal-periodic-review>.

Blankenship, Kim M. and Stephen Koester. 2002. "Criminal Law, Policing Policy, and HIV Risk in Female Street Sex Workers and Injection Drug Users," *Journal of Law, Medicine and Ethics*, 30: 548-559.

Brooklyn Defender Services. 2010. Unpublished database based on arrest evidence vouchers and criminal depositions provided by Brooklyn Defender Services to Sex Workers Project, Urban Justice Center.

Bureau of HIV/AIDS Prevention and Control, New York City Department of Health and Mental Hygiene (NYC DOHMH). 2011. "New York City Department of Health and Mental Hygiene Enhanced Comprehensive HIV Prevention Plan (PS 10-10181)." Available at: http://www.cdc.gov/hiv/strategy/echpp/pdf/nyc_echpp_plan_1.pdf

Centers for Disease Control and Prevention. (undated). "Condom Fact Sheet In Brief." Available at: <http://www.cdc.gov/condomeffectiveness/brief.html>.

Chang, Ailsa. 2012. "NYPD's Stop-and-Frisks Reach Record Highs." (February 14), Available at: www.wnyc.org.

Forbes, Anna and Sienna Baskin. 2011. "Sex Workers Project Statement to Global Commission on HIV and the Law: High Income Countries Dialogue 2011." Urban Justice Center. Available at: <http://www.sexworkersproject.org/downloads/2011/20110808-statement-to-global-commission-on-hiv-and-law.pdf>.

Ganasinghe, M. 2000 (June). "No Stray Dogs: An empowerment programme in Sri Lanka," in *Research for Sex Work* 3. Available at <http://www.nswp.org/resource/research-sex-work-3>.

Global Commission on HIV and the Law. 2011. Press Release: "Global Commission on HIV and the Law Reviews Legal Barriers Obstructing Progress on AIDS in High Income Countries." (September 16). Available at: http://www.hivlawcommission.org/images/stories/HIC_Press_Release.pdf

Global Commission on HIV and the Law. Undated website home page. Available at: <http://www.hivlawcommission.org/>.

HIV Health and Human Services Planning Council of New York and NYC DOHMH. 2008. "Comprehensive Strategic Plan for HIV/AIDS Services (2009-2012): New York Eligible Metropolitan Area." Available at: <http://www.nyhiv.org/pdfs/ny-ema-comp-plan-12-22-08.pdf>.

Human Rights Watch. 2006. *Still Making Their Own Rules: Ongoing Impunity for Police Beatings, Rape and Torture in Papua New Guinea*, Available at: <http://www.hrw.org/en/reports/2006/10/29/still-making-their-own-rules>.

Human Rights Watch. 2004. *Unprotected: Sex, Condoms and the Human Right to Health*. Available at: <http://www.hrw.org/reports/2004/philippines0504/>.

Leach, Anna. 2012 (March 2). "Chinese Announce Plan to Combat 'Serious' Problem of HIV and AIDS," in *Gaystarnews*. Available at: <http://www.gaystarnews.com/article/chinese-announce-plan-combat-'serious'-problem-hiv-and-aids>.

Lieberman, Amy. 2011. "U.S. Sex Workers Hail Nation's New Stance," (21 April) *Women's ENews*, Available at: www.womensenews.org.

Mai, Nick. 2009. *Migrant Workers in the UK Sex Industry: Final policy relevant report*, Institute for the Study of European Transformations, London Metropolitan University.

NYC DOHMH. 2008. Health Department Releases New NYC Condom Wrapper-Press release, (February 13). Available at: <http://www.nyc.gov/html/doh/html/pr2008/pr011-08.shtml>.

NYC DOHMH. (undated-a). *Agency Biennial Report 2007-2008*. Available at: <http://www.nyc.gov/html/doh/downloads/pdf/report/nycdohmh-biennial07-08.pdf>.

NYC DOHMH. (undated-b). "HIV/AIDS Information". Available at: <http://www.nyc.gov/html/doh/html/ah/ah.shtml>.

North, Anna. 2012. "In NYPD Custody, Trans People Get Chained to Fences and Poles," *Jezebel*, (February 2), Available at: <http://jezebel.com/5880990/in-nypd-custody-trans-people-get-chained-to-fences-and-poles>.

Rhodes, T. et al. 2008. "Police violence and sexual risk among female and transvestite sex workers in Serbia: qualitative study." *British Medical Journal*, 337(a811).

San Francisco Task Force on Prostitution. 1996. "Documents: Condoms as Evidence from Final Report March 1996"; Including letter from Arlo Smith, San Francisco District Attorney, to Sandra Hernandez, Director of Public Health (Sept 6, 1994). Available at: <http://bayswan.org/CondomsAsEvidenceSFTFP.pdf>.

Scott, Michael S. and Kelly Dedel. 2006. "Street Prostitution." 2nd ed., U.S. Department of Justice, Office of Community Oriented Policing Services (COPS), Problem-Oriented Guides for Police Problem-Specific Guides Series No. 2. Available at: http://www.popcenter.org/problems/pdfs/Street_Prostitution.pdf.

Sex Workers Action Network (SWAN). 2009. "Arrest the Violence: Human rights abuses against sex workers in Central and Eastern Europe and Central Asia." Open Society Institute. Available at: http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/human-rights-violations-20091217/arrest-violence-20091217.pdf.

Shannon, Kate and Joanne Csete. 2010. "Violence, Condom Negotiation, and HIV/STI Risk Among Sex Workers," *JAMA*, 304(5): 573-574.

Shannon, Kate et al. 2009. "Structural and Environmental Barriers to Condom Use Negotiation with Clients Among Female Sex Workers: Implications for HIV-Prevention Strategies and Policy," *American Journal of Public Health*, 99(4): 659-665.

Shannon, K., et al. 2009a. "Prevalence and structural correlates of gender based violence among a prospective cohort of female sex workers." *BMJ*, 339 (b2939).

Streetwise and Safe. 2012. "Memorandum in Support of Bill Number A1008-2011 (Clark)/S323-2011 (Montgomery)." Available at: <http://www.streetwiseandsafe.org/wp-content/uploads/2011/04/SAS-legislative-memo-FINAL.pdf>.

Streetwise and Safe. 2009. "Transgender Community Demands for NYPD Accountability and Proposed Changes to NYPD Patrol Guide." Available at: <http://www.streetwiseandsafe.org/wp-content/uploads/2011/04/Final-two-page-handout-re-trans-policy1.pdf>.

Thukral, Juhu, Ditmore, Melissa and Alexandra Murphy. 2005. *Behind Closed Doors: An analysis of indoor sex work in New York City*. New York: Sex Workers Project at the Urban Justice Center.

Thukral, Juhu and Melissa Ditmore. 2003. *Revolving Door: An Analysis of Street-Based Prostitution in New York City*. New York: Sex Workers Project at the Urban Justice Center.

Trans Policy Advocates. 2009. "Transgender Community Demands for NYPD Accountability and Proposed Changes to NYPD Patrol Guide." 2009. Available at: <http://www.streetwiseandsafe.org/wp-content/uploads/2011/04/Final-two-page-handout-re-trans-policy1.pdf>.

UNAIDS Advisory Group on HIV and Sex Work. 2011. The Report of the UNAIDS Advisory Group on HIV and Sex Work. Available at: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/20111215_Report-UNAIDS-Advisory-group-HIV-Sex-Work_en.pdf.

United Nations General Assembly. 2010. Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf>.

United States Government. 2010. *National HIV/AIDS Strategy for the United States*. Available at: <http://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf>.

Ward, H. and S O Aral. 2006. "Globalisation, the Sex Industry, and Health," *Sexually Transmitted Infections*, (October), 82(5): 345–347.

White House Office of National AIDS Policy. 2010. Community Ideas for Improving the Response to the Domestic HIV Epidemic: A report on a national dialogue on HIV/AIDS.

Xuequan, Mu. 2007 (November 30). "Condoms No Longer Evidence of Prostitution in China," in *Xinhua News*. Available at: http://news.xinhuanet.com/english/2007-11/30/content_7177783.htm.

APPENDIX A: Survey on Condoms as Evidence for Sex Workers

Survey Number: _____

Location: _____

Interviewer's name: _____

Eligibility

Before we begin, as I described during the consent process, I can only ask questions to people who are 18 years of age or older. What is your age?

Age: _____ (*if 18 or older, proceed to next question*)

This is a brief survey about things police do that affect people who trade sex for money or other things of value.

Does this apply to you/have you ever traded sex/done sex work/done prostitution/ escorted/tricked (use language that participant responds to)?

- a) Yes
- b) No

If yes,

When was the last time you did this? _____

If within the past 6 months,

Did you do this while on the street/street-based/outdoors (use language that participant responds to)?

- a) Yes
- b) No

Demographics

What is your race/ethnicity? _____

What is your gender?

- a) Female
- b) Male
- c) Transgender Female
- d) Transgender Male
- e) Other: _____

Condom Access

1. How difficult is it for you to get condoms?

- a) Always difficult
- b) Sometimes difficult
- c) Always easy

If always or sometimes difficult (a or b),

1.1 What makes it hard for you to get condoms?

2. Where do you most often get condoms?

If NGO/Clinic/Outreach, please specify which one

Condom Possession/Use

3. How often do you carry condoms with you?

- a) Always
- b) More often than not
- c) Sometimes
- d) Never

If you carry condoms (response is a, b, or c),

3.1 When you carry condoms, how many condoms do you usually carry with you? _____

3.2 How do you usually carry condoms and why? (ex. purse, pocket, etc.)

4. Have you ever not carried condoms because you were afraid that they might get you in trouble with the police?

- a) Yes
- b) No

If yes,

4.1 Why exactly did you worry that condoms could get you into trouble with the police?

5. Have you ever refused to take condoms from an outreach worker because you were afraid that they might get you in trouble with the police?

- a) Yes
- b) No

If yes,

5.1 Please explain why

6. How often do or did you use condoms when selling or trading sex?

- a) All of the time
- b) Most of the time
- c) About half of the time
- d) Some of the time
- e) Never

7. What influences whether you will use a condom or not when you are selling or trading sex? (circle *all* that apply)

- a) Couldn't afford a condom
- b) Couldn't find a condom
- c) Afraid that if I am carrying a condom, police will harass me
- d) Partner does not want to use a condom
- e) I don't want to use a condom
- f) Other: _____

Police Interactions

8. How would you describe your relationship with police?
- a) Good
 - b) Bad
 - c) Neutral (neither good nor bad)
9. Have police harassed or intimidated you for being a sex worker or doing prostitution?
- a) Yes
 - b) No
 - c) Don't know/Unsure

If yes,

9.1 How many times has this happened to you in the past 12 months? _____

9.2 Please describe the ways in which police commonly harass or intimidate you.

9.3 Which police force or other law enforcement agency were the officers who harassed you from? _____

9.4 Please describe a recent incident in which you experienced police harassment or intimidation.

9.5 Which police force or other law enforcement agency were the officers who harassed you from? _____

10. Have you ever been stopped and searched by a police officer?
- a) Yes
 - b) No
 - c) Don't know/Unsure

If yes,

10.1 How many times has this happened to you in the past 12 months? _____

10.2 Which police force or other law enforcement agency were the officers who stopped and searched you from? _____

10.3 Please describe the ways this commonly happens.

10.4 Please describe a recent incident when this happened.

10.5 Which police force or other law enforcement agency were the officers who stopped and searched you from? _____

10.6 Why do you think the police stopped and searched you?

11. Have you ever been asked to give a police officer money directly (a bribe)?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

11.1 How many times in the past 12 months? _____

11.2 What are the reasons police typically give for asking you for money?

11.3 Please describe a recent incident when this happened.

11.4 Which police force or other law enforcement agency were the officers who asked for money/a bribe from? _____

12. Has a police officer ever taken condoms away from you?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

12.1 How many times has this happened to you in the past 12 months? _____

12.2 Which police force or other law enforcement agency were the officers who took your condoms from you from? _____

12.3 Please describe a recent incident when a police officer took condoms from you

12.4 Was it on the street? Yes ___ No ___

12.5 Did it happen during an arrest ___ or without an arrest ___?

12.6 How many condoms did the police take? _____

12.7 Do you know what the officer did with the condoms after taking them (please explain)?

12.8 How did the officer know you had condoms? (asked, searched, etc.)

12.9 What did the officer say about why he or she took the condoms?

12.10 Which police force or other law enforcement agency was the officer from?

12.11 Were the condoms ever returned to you? (Please explain)

12.12 What did you do after the condoms were taken away?

12.13 Did you do sex work that day or night after the officer took your condoms away? Yes ___
No ___

If yes,

12.14 Did you use a condom? Yes ___ No ___

If yes,

12.15 Where did you get condoms from after the officer took yours away?

If no,

12.16 Why not?

13. Has a police officer ever damaged or destroyed condoms you had?

a) Yes

b) No

c) Don't know/Unsure

If yes,

13.1 How many times has this happened to you in the past 12 months? _____

13.2 Which police force or other law enforcement agency were the officers who destroyed your condoms from? _____

13.3 Please describe a recent incident when this happened

13.4 Was it on the street? Yes ___ No ___

13.5 Did it happen during an arrest ___ or without an arrest ___?

13.6 How many condoms did the police destroy? _____

13.7 How did the officer know you had condoms? (asked, searched, etc.)

13.8 Did the officer say anything about why he or she damaged or destroyed the condoms? What?

13.9 Which police force or other law enforcement agency were the officers from?

13.10 What did you do after the condoms were destroyed?

13.11 Did you do sex work that day or night, after the officer destroyed your condoms? Yes ___
No ___

If yes,

13.12 Did you use a condom? Yes ___ No ___

If yes,

13.13 Where did you get condoms from after the officer took yours away?

If no,

13.14 Why not?

14. Have you ever filed a complaint with the police or another government agency about police behavior towards you, including police harassment, extortion or confiscation or damage of condoms you had?

a) Yes

b) No

If yes,

14.1 Please describe the complaint you made and what the outcome was

If no,

14.2 Why not?

15. Have you ever been arrested on charges related to sex work?

a) Yes

b) No

c) Not sure

If yes,

15.1 As far as you know, have condoms ever been used as evidence against you in court?

a) Yes

b) No

c) Not sure

If yes or not sure,

15.2 Please explain

15.3 What were the charges against you? _____

15.4 Were you convicted?

a) Yes, after trial

b) Yes, I took a plea agreement

c) No

If yes,

15.5 What was the sentence or fine against you? _____

16. Have you ever witnessed police confiscating or destroying condoms held by a sex worker or outreach worker?

a) Yes

b) No

c) Don't know/Unsure

If yes,

16.1 In which locations have you witnessed police doing this?

16.2 When did you first witness a police officer confiscating or destroying condoms held by a sex worker or outreach worker? _____

16.3 Please describe a recent incident when you witnessed this.

16.4 Which police force or other law enforcement agency were the officers from?

17. Have you ever heard about incidents when police confiscated or destroyed condoms held by other sex workers or by outreach workers?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

17.1 In which locations have you heard about police doing this?

17.2 When did you first hear about a police officer confiscating or destroying condoms held by a sex worker or outreach worker? _____

17.3 Please describe a recent incident you heard about.

17.4 Which police force or other law enforcement agency were the officers from?

18. How have police practices of confiscating and destroying condoms or harassing and arresting sex workers with condoms affected your ability to negotiate condom use with your clients?

19. How has the criminalization of sex work affected your ability to negotiate condom use with your clients?

20. What would help improve sex workers' access to condoms and ability to negotiate condom use?

21. Is there anything else you would like to tell us about your experiences with police?

Thank you for your time and courage and for sharing your experiences with us.

APPENDIX B:

CONSENT FORM – SEX WORKER Survey on Condoms as Evidence

Location: _____ Date: _____

PURPOSE

The survey is a joint project of the Sex Workers Project/Urban Justice Center and 8 organizations in 6 countries coordinated by the Sexual Health and Rights Project of the Open Society Institute (SHARP). The purpose of the survey is to learn from people who have traded sexual services for material goods how police actions affect their ability to protect themselves. If you agree to participate, I will ask you a series of questions about your life, including your access to and use of condoms, your experiences with police, whether you have ever been arrested, and how these experiences have affected you.

We are conducting this survey only with people who are 18 years of age or older. Does this describe you? [proceed only if the answer is yes]

If you have any questions about this research or your rights as a research participant, please contact Sienna Baskin, from Sex Workers Project/Urban Justice Center at (646) 602-5695.

PROCEDURES

- To preserve your privacy and your safety, all information you give will be anonymous. To protect your anonymity, you will be asked to give your consent to participate verbally and initial this form.
- You will get one \$4.50 Metrocard for participating.
- I will ask you questions from a short questionnaire that should take about 30 minutes.
- You are free not to answer any question you do not want to. If at some point you wish to stop for any reason, your wishes and privacy will be respected, and the partially completed questionnaire will be immediately destroyed. You can withdraw from participating at anytime without any negative consequences. You will still get the Metrocard.
- Choosing to participate or not to participate will have no effect upon your access to any physician/health care worker or any other services that you are now receiving. There is no pressure to participate.
- The information gathered from this interview may be published or disseminated in the media. When the interviews are done in all the different countries, you can

receive information on the results through the Sex Workers Project/Urban Justice Center your project member group.

If you wish to participate, you must say the following sentence out loud to the person giving the questionnaire:

Yes, I fully understand the consent form, I am 18 years of age or older, and I give my consent to participate in this study.

Initials

Date

Interviewer Name

Interviewer Signature

Date

Thank you so much for your courage and time in sharing your experiences with us.

APPENDIX C: Survey on Condoms as Evidence for Outreach Workers

Survey Number: _____
Location: _____
Interviewer's Name: _____

Demographics

What is your age? _____

What is your race/ethnicity? _____

What is your gender?

- a) Female
- b) Male
- c) Transgender Female
- d) Transgender Male
- e) Other: _____

Outreach work

1. What organization do you do outreach work for? _____

2. How long have you worked as an outreach worker? _____

3. What services do you provide in outreach?

4. When doing outreach, do you hold or wear anything that identifies you as an outreach worker?

5. When you do outreach, how do you usually carry condoms and why?

Interactions with Sex Workers

6. Has a sex worker ever declined to accept condoms or other materials from you for any reason?

- a) Yes
- b) No

If yes,

6.1 Please describe the 3 most common reasons sex workers give you for refusing to accept condoms or other materials

6.2 Would you say this has happened

- a) Very often (almost every time I do outreach)
- b) Often (At least half of the time)

- c) Sometimes (Less than half of the time)
- d) Only once or twice

Interactions with Police

7. How would you describe your relationship with police?

- a) Good
- b) Bad
- c) Neutral (neither good nor bad)

8. In your experience, have police harassed and intimidated you for being an outreach worker?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

8.1 How many times has this happened to you in the past 12 months? _____

8.2 Please describe the ways in which police commonly intimidate or harass you.

8.3 Which police force or other law enforcement agencies are the officers who harass you from?

8.4 Please describe a recent incident in which you experienced police harassment or intimidation

8.5 Which police force or other law enforcement agencies are the officers who harass you on this occasion from?

9. Have you ever been stopped and searched by a police officer while doing outreach work?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

9.1 How many times has this happened to you in the past 12 months? _____

9.2 Which police force or other law enforcement agency were the officers who stopped and searched you from? _____

9.3 Please describe a recent incident when police stopped and searched you.

9.4 Which police force or other law enforcement agency were the officers who stopped and searched you on this occasion from?

10. Has a police officer ever accused you of promoting or encouraging sex work while you were distributing condoms?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes or unsure,

10.1 What kinds of statements have police made to you about this?

11. Has a police officer ever taken condoms away from you?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

11.1 How many times have police taken condoms from you during the past 12 months? _____

11.2 What reasons do police commonly give for taking condoms from you?

11.3 Which police force or other law enforcement agency were the officers who took condoms from you from? _____

11.4 Please describe a recent incident when this happened

11.5 When did that incident happen? _____

11.6 Was it on the street? Yes ___ No ___

11.7 Did it happen during an arrest ___ or without an arrest ___?

11.8 How many condoms did the police take? _____

11.9 How did the officer know you had condoms? (asked, searched, etc.)

11.10 Did the officer say anything about why he or she took the condoms? What?

11.11 Which police force or other law enforcement agency were the officers who took condoms from you on this occasion from?

11.12 Were the condoms ever returned to you? Yes ___ No ___ Please explain.

12. Has a police officer ever damaged or destroyed condoms that you had?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

12.1 How many times have police damaged your condoms during the past 12 months? _____

12.2 What reasons do police commonly give for destroying condoms?

12.3 Which police force or other law enforcement agency were the officers who damaged the condoms from? _____

12.4 Please describe a recent incident when this happened

12.5 When did that incident happen? _____

12.6 Was it on the street? Yes ___ No ___

12.7 Did it happen during an arrest ___ or without an arrest ___?

12.8 How many condoms did the police damage or destroy? _____

12.9 How did the officer know you had condoms? (asked, searched, etc.)

12.10 Which police force or other law enforcement agency were the officers who damaged the condoms on this occasion from?

12.11 Did the officer say anything about why he or she damaged or destroyed the condoms? What?

13. Have you been arrested while doing outreach work?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

13.1 How many times during the past 12 months? _____

13.2 Please describe a recent incident in which you were arrested while doing outreach work.

13.3 Which police force or other law enforcement agency was the arresting officer from?

13.4 As far as you know, have condoms ever been used as evidence against you in court after you were arrested during outreach work? Yes _____ No _____ Not sure _____.

If yes,

13.5 Please explain.

13.5 What were the charges against you? _____

13.6 Were you convicted?

- a) Yes, after trial
- b) Yes, I took a plea agreement
- c) No

If yes,

13.7 What was the sentence or fine against you?

14. Have you ever received a fine or a ticket from police while doing outreach work?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

14.1 How many times during the past 12 months? _____

14.2 Please describe a recent incident when this happened

14.3 Which police force or other law enforcement agency were the officers who fined/ticketed you from? _____

15. Have you ever been asked to give a police officer money directly (a bribe) while doing outreach work?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

15.1 How many times during the past 12 months? _____

15.2 What are the reasons police typically give for asking you for money/a bribe?

15.3 Please describe a recent incident when a police officer asked you for money/a bribe

15.4 Which police force or other law enforcement agency were the officers who bribed you from? _____

16. Have you ever witnessed police confiscating or destroying condoms held by a sex worker or outreach worker?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

16.1 In which locations have you witnessed police doing this?

16.2 When was the first time you saw this happen? _____

16.3 Please describe a recent incident when you witnessed this.

16.4 Which police force or other law enforcement agency were the officers from?

17. Have you ever heard about incidents when police confiscated or destroyed condoms held by sex workers or outreach workers?

- a) Yes
- b) No
- c) Don't know/Unsure

If yes,

17.1 Please describe what you've heard about such police practices

17.2 When did you first hear about such police practices? _____

17.3 In which locations have you heard of police engaging in such practices?

17.4 Which police force or other law enforcement agency were the officers from?

18. Have you ever filed a complaint with the police or another government agency about police behavior towards you, such as harassment, extortion or confiscation or damage of condoms you had?

- a) Yes
- b) No

If yes,

18.1 Please describe the complaint you made and what the outcome was.

If no,

18.2 Why not?

Effect of Police Interactions

19. How do your interactions with the police affect your ability to conduct your outreach work?

20. Have your interactions with the police made you any less likely to carry condoms during your outreach work or made you change the way that you carry them?

- a) Yes
- b) No

20.1 Please explain.

21. Have your interactions with the police made you any less likely to distribute condoms to sex workers?

- a) Yes
- b) No

21.1 Please explain

22. Based on your experience, do you think sex workers are less likely to accept free condoms or to carry condoms because of their experiences with police?

- a) Yes
- b) No

22.1 Please explain

23. What would help improve sex workers' access to condoms and ability to negotiate condom use?

24. Is there anything else you would like to tell us about your experiences with police?

Thank you for your time and courage and for sharing your experiences with us.

APPENDIX D:

CONSENT FORM – OUTREACH WORKER Survey on Condoms as Evidence

Location: _____ Date: _____

PURPOSE

The survey is a joint project of Sex Workers Project/Urban Justice Center and 8 organizations in 6 countries coordinated by the Sexual Health and Rights Project of the Open Society Institute (SHARP). The purpose of the survey is to learn from people who provide HIV prevention outreach services to sex workers about how police actions affect their ability to provide services. If you agree to participate, I will ask you a series of questions about your life, including your work as an outreach worker, your experiences with police, whether you have ever been arrested, and how these experiences have affected you.

We are conducting this survey only with people who provide street-based HIV prevention outreach services, including distributing condoms. Does this describe you? [proceed only if the answer is yes]

If you have any questions about this research or your rights as a research participant, please contact Sienna Baskin, from Sex Workers Project/Urban Justice Center at (646) 602-5695.

PROCEDURES

- To preserve your privacy and your safety, all information you give will be anonymous. To protect your anonymity, you will be asked to give your consent to participate verbally and initial this form.
- I will ask you questions from a short questionnaire that should take about 30 minutes.
- You are free not to answer any question you do not want to. If at some point you wish to stop for any reason, your wishes and privacy will be respected, and the partially completed questionnaire will be immediately destroyed. You can withdraw from participating at anytime without any negative consequences.
- Choosing to participate or not to participate will have no effect upon your access to any physician/health care worker or any other services that you are now receiving. There is no pressure to participate.
- There is no compensation, financial or otherwise, for participating.
- The information gathered from this interview may be published or disseminated in the media. When the interviews are done in all the different countries, you can

receive information on the results through Sex Workers Project/Urban Justice Center, your project member group.

If you wish to participate, you must say the following sentence out loud to the person giving the questionnaire:

Yes, I fully understand the consent form, I am 18 years of age or older, and I give my consent to participate in this study.

Initials

Date

Interviewer Name

Interviewer Signature

Date

Thank you so much for your courage and time in sharing your experiences with us.



A Report to the New York City Commissioner of Health

(b) (6)

Prepared by Paul Kobrak

Director of Risk Reduction in Vulnerable Populations
Bureau of HIV/AIDS Prevention and Control
New York City Department of Health and Mental Hygiene

December 8, 2010

Draft: Please do not cite without permission of the author.

Background

Correct and consistent use of condoms greatly reduces the sexual transmission of HIV and other infections.¹ New York City and its Department of Health and Mental Hygiene have distributed free condoms since the 1970s, and in 2007 created the branded NYC Condom. In 2009, the City distributed more than 40 million free condoms through this program.

[REDACTED] Brooklyn Defender Services, a group which provides criminal defense to indigent populations, found that condoms were collected as criminal evidence in at least 39 of their clients' prostitution-related cases in New York City in 2008 and 2009.² [REDACTED]

In response, in summer 2010 the Department of Health and Mental Hygiene undertook a street survey to study the following: how often and in what contexts the police in New York City confiscate condoms; whether such condoms are used as criminal evidence; and whether this practice may discourage sex workers and other street-based populations from carrying condoms.

Methodology

[REDACTED] a survey questionnaire was designed by staff from the Bureau of HIV/AIDS Prevention and Control with the assistance of the Bureau of Epidemiology Services. Surveys were administered by this report's author and trained personnel from harm reduction agencies that engage in community outreach in areas known for street-based sex work (Frost'd-Harlem United, Streetwise and Safe

¹ SC Weller and K Davis-Beatty. 2002. Condom effectiveness in reducing heterosexual HIV transmission. *Cochrane Database of Systematic Reviews*. Issue 1. Art. No.: CD003255.

² Unpublished database based on arrest evidence vouchers and criminal depositions provided by Brooklyn Defender Services to Sex Workers Project, Urban Justice Center, 2010.

program of the Peter Cicchino Youth Project, Safe Horizon-Streetwork, New York Harm Reduction Educators and CitiWide Harm Reduction).

Using convenience sampling methods, 63 individuals were interviewed between August and October 2010: 11 were interviewed in the offices of the above agencies while receiving services; and 52 were encountered in 9 areas known for street-based prostitution in Brooklyn, the Bronx, Manhattan and Queens. Each respondent was informed that the survey was anonymous and confidential, that all questions were voluntary, and that they would be compensated with a round-trip MetroCard for their time. Participants were often known to agency and outreach staff to have sex for money, though at least four respondents said that they did not do sex work or were no longer involved. Some persons approached on the street expressed reluctance to take the survey because they were waiting to meet a client; in other cases, participants encouraged others to take the survey because they felt the issue was important to their community.

The questionnaire (see appendix) was administered in English or in Spanish translation. To avoid having questions about condom policing influence responses about one's willingness to carry condoms, the survey first asked participants how often they carry condoms and if they have ever not carried condoms because they were afraid of trouble with the police. Subsequent questions involve whether they have ever had condoms confiscated by the police and if condom possession had been used as evidence against them in a criminal matter. This question order is reversed in the results section.

Results

(1) [REDACTED]

- 51 of 63 (81 percent) had ever been stopped and searched by a New York City police officer
- 36 of 63 (57 percent) had ever had condoms taken away from them by a New York City police officer.

[REDACTED] As shown in Table 1, condom confiscation has been experienced by a majority of both transgender and non-transgender women,⁴ and by majorities of respondents who identified as either Latino, black or white.⁵ A difference by age was observed: participants 30 and above

⁴ Note that four persons who identified as female were apparently assigned a male sex at birth but prefer a female identity to a male or transgender female identity.

⁵ Multiple ethnic or racial identities were accepted, thus respondents can belong to more than one category.

were more to have had condoms confiscated (75 percent) than those under 30 (39 percent).

Table 1: Participant demographics and experience with condom confiscation

	Participants	Have had condoms taken by police	Row Percentage
Age			
18 to 20	13	5	38%
21 to 29	18	7	39%
30 to 39	15	9	60%
40 to 52	17	15	88%
(Under 30)	31	12	39%
(30 and above)	32	24	75%
Gender identity			
Female	43	27	63%
Transgender female	15	8	53%
Male	5	1	20%
Race or ethnicity			
Latino or Hispanic	38	20	53%
Black or African-American	23	15	65%
White	7	6	86%
Borough of interview			
Brooklyn	15	13	87%
Bronx	18	11	61%
Manhattan	20	7	35%
Queens	10	5	50%
Total	63	36	57%

We asked the 36 respondents who reported having condoms taken by the police a series of follow-up questions about the last time this had happened to them. [REDACTED]

- **Was it on the street?:** In 32 cases (89 percent) the police seized the condoms on the street, and once on a subway platform, once in car during an undercover police sting operation and twice in an apartment raided by the police.
- **Did it happen during an arrest?:** In 26 cases (74 percent) participants were arrested after condoms were found on their person, while nine were not (one survey did not specify the outcome).
- In all nine cases in which participants were not arrested, the police kept the condoms or threw them in the trash or on the ground. [REDACTED]

- [REDACTED]
- [REDACTED]
- **Did the officer say anything about why he or she took the condoms?**
[REDACTED]
- **How many condoms did they take?:**
[REDACTED]
- [REDACTED] Among the 36 documented cases of condom seizure, 16 respondents (44 percent) reported having 4 or fewer condoms seized, of whom 12 were then arrested.
- **When did it last happen?:** This question was added to the survey during the study, and was asked of 26 respondents: 18 had had condoms seized within the last 6 months, and 22 with the last year, [REDACTED]
- **Were condoms used in against you in a criminal matter?:** Among these 36 respondents, 8 believed condoms had been used against them in a criminal matter, 2 were unsure, and 26 did not believe condoms had been used against them (including 14 who said condoms had been confiscated by the police during arrest). [REDACTED]

(2)

Most participants reported consistently carrying condoms. However, a sizeable minority said that condom policing had at some point discouraged them from possessing safer sex materials (Table 2).

- 47 of 63 respondents (75 percent) report that they carry condoms “all the time” when they go out
- 18 of 63 (29 percent) said they had ever not carried condoms because they were afraid of trouble with the police.

Table 2: Patterns of condom possession

	Participants	Percentage
How often do you carry condoms		
All of the time	47	75%
Most of the time	7	11%
Some of the time	2	3%
Rarely	1	2%
Never	6	10%
Total	63	100%
Ever not carry condoms because of fear of police trouble		
Yes	45	71%
No	18	29%
Total	63	100%

This survey found that, as presented in Table 3:

- Of the 27 respondents who have never had condoms taken by the police, 33 percent report that they carry condoms less than all of the time, while 19 percent of the 36 who had had condoms confiscated do not always carry condoms.
- Of those who have had condoms seized, 33 percent said they had ever not carried condoms because of fear of trouble with the police, versus 22 percent of those who have never had condoms taken away by the police.

Table 3: The association between condom confiscation and condom possession

	Condoms ever taken by the police	
	Yes	No
How often do you carry condoms		
All of the time (percent)	29 (71%)	18 (67%)
Less than all of the time (percent)	7 (19%)	9 (33%)
Ever not carry condoms due to fear of police		
Yes (percent)	12 (33%)	6 (22%)
No (percent)	24 (67%)	21 (78%)

The survey asked those whose fear of the police had caused them to not carry condoms, "Why exactly did you worry that condoms could get you into trouble with the police?" Open-ended responses noted their own experience with arrest, that of acquaintances, or of hearing that condoms could get you marked as a prostitute, while some referred to the potential embarrassment of having condoms seized.

• [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Appendix: Condoms as evidence survey

Interviewer _____

Introduction: Do you have a few minutes to do a survey on condoms and the police? It is being conducted by the New York City Department of Health and its community partners to find out if people are comfortable carrying condoms in the street. You don't have to give your name and you can skip any question you don't want to answer. It will take about three minutes and at the end of the survey you'll get a round-trip MetroCard for your time. Shall we do the survey?

1. When you go out, how often do you carry condoms? (read options except refused)

- a) All of the time _____
- b) Most of the time _____
- c) Some of the time _____
- d) Rarely _____
- e) Never _____
- f) (Refused to answer) _____

2. Have you ever not carried condoms because you were afraid that they might get you in trouble with the police?

- a) Yes _____
- b) No _____
- c) Refused to answer _____

(If 2 = yes) **2a. Why exactly did you worry that condoms could get you into trouble with the police?**

3. Have you ever been stopped and searched by a New York City police officer?

- a) Yes _____
- b) No _____
- c) Refused to answer _____

4. Has a New York City police officer ever taken condoms away from you?

- a) Yes _____
- b) No _____
- c) Refused to answer _____

(If 4 = yes) 4a. The last time an officer took away your condoms, can you tell me what happened?

(Prompt as needed)

- When did it last happen? _____
- Was it on the street? Yes ___ No ___
- Did it happen during an arrest ___ or without an arrest ___?
- How many condoms did they take? _____
- How did the officer know you had condoms? (asked, searched, etc.)

-- Did the officer say anything about why he or she took the condoms? What?

5. As far as you know, have condoms ever been used as evidence against you in a criminal matter?

- a) Yes _____
- b) No _____
- c) Not sure _____
- d) Refused to answer _____

Finally, a couple of questions about yourself.

6. How old are you?

- a) Age _____
- b) Refused to answer _____

7. Do you identify as female, male or transgender?

- a) female _____
- b) male _____
- c) transgender _____
- d) other/refused _____

7a. If transgender, do you identify as a...

- a) trans woman (male to female) _____
- b) trans man (female to male) _____

8. What racial or ethnic group do you consider yourself to be in? You may choose more than one. (Read if needed.)

- a) Latino _____
- b) Black or African-American _____
- c) White _____
- d) Asian _____
- e) Other _____
- f) (Refused to answer) _____

Location of interview (do not ask): _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART AR 6 NY

-----X

THE PEOPLE OF THE STATE OF NEW YORK, :

: Docket #

--against--

: [REDACTED]

:

:

Defendant. :

[REDACTED]

-----X

314 West 54th Street
New York, New York
January 11, 2011

B E F O R E:

THE HONORABLE RICHARD M. WEINBERG,
Judge.

A P P E A R A N C E S:

FOR THE PEOPLE:

CYRUS VANCE JR., ESQ.
District Attorney -- New York County
One Hogan Place
New York, New York 10013

BY: Mr. Matthew McKenzie, Esq.
Assistant District Attorney

FOR THE DEFENDANT:

Legal Aid Society
49 Thomas Street
New York, New York 10013
BY: Ms. Kate Mogulescu, Esq.

Adria J. Abbate
Official Court Reporter

1 COURT CLERK: From the audience docket
2 ending 551, [REDACTED] Case is on for trial.

3 MS. MOGULESCU: Legal Aid Society by Kate
4 Mogulescu, M-O-G-U-L-E-S-C-U.

5 THE COURT: We are all here for hearing and
6 trial. I had previously granted a Huntley/Dunaway/
7 Mapp hearing. We will consolidate the hearing and
8 trial. Got it?

9 MS. MOGULESCU: Actually, let's talk about
10 that first.

11 THE COURT: Let's talk about it.

12 MS. MOGULESCU: How about we do the hearing,
13 we have a ruling on the suppression issues, then we can
14 figure out what evidence from the hearing may, in fact,
15 be most relevant to the trial. There are suppression
16 issues, Judge. I don't want that to get lost in the
17 shuffle and there are some issues that depend on the
18 outcome of the suppression hearing. For example, one
19 of the pieces of physical property I believe that the
20 People are seeking to produce as evidence is one condom
21 that was recovered from my client's purse.

22 THE COURT: Let me make your life easier.
23 Just because somebody has a condom as far as I am
24 concerned in the age of hepatitis C, HIV and Aids are
25 dispositive of the fact that they had a condom. They

1 can advance whatever they want. I can care less. You
2 don't need to separate the hearing and trial on that
3 issue. Next, is there anything else?

4 MS. MOGULESCU: No.

5 THE COURT: Want to talk about the three
6 hundred dollar bills? They are going to try and put it
7 in and trust me when I tell you I will give you all the
8 value. Next.

9 MS. MOGULESCU: I am asking for the ruling.

10 THE COURT: The ruling, let's be clear, I am
11 going to take the hearing and trial and we will
12 consolidate it together. I am perfectly capable of
13 separating out three one-hundred-dollar bills and
14 everything else. I am capable of giving all the value
15 to a young person walking around with a condom, being
16 the father of two daughters. Got it? Next, anything
17 else?

18 MS. MOGULESCU: So we are clear, the ruling
19 as I am hearing it, Judge, is, to belabor the point, is
20 that you are granting my motion in limine to grant any
21 testimony about a condom being uncovered.

22 THE COURT: They can put it in. I will take
23 it for what it is worth.

24 MS. MOGULESCU: Well, I am objecting to
25 that.

1 when he arrived at the Waldorf on that day, that he
2 went to the security office, he saw [REDACTED] and
3 the defendant. She was dressed in a mini skirt. She
4 had a low-cut top and high heels. He will tell you
5 that he went up to [REDACTED]'s hotel room, that he
6 saw a disturbed bed in that the sheets and blankets
7 were messed up. It was an otherwise orderly hotel room
8 and that he found approximately \$2,000 in the hotel
9 room, most of it in hundreds.

10 He went back down, had a brief conversation
11 with the defendant at which time she said that she was
12 a prostitute. She was a working girl in that the
13 defendant paid her for sex. They went back to the
14 precinct, Midtown North, right next door, Your Honor,
15 at which point Officer Farrell you will hear went
16 through her purse. He found three one hundred dollar
17 bills. The same denominations that he found back at
18 the hotel room. He found one unused condom and then he
19 went and he spoke to the defendant.

20 He read her her Miranda rights. She said
21 that she understood her Miranda rights and she made
22 this written statement which I will read, Your Honor,
23 saying that she was there, in substance that she was
24 there as a prostitute and that they agreed on a price
25 of \$300 and then they had sex, Your Honor, and all of

1 hundred-dollar bill, one one-dollar bill, one ten-cent
2 coin, one five-cent coin, a black purse --

3 MS. MOGULESCU: And, Judge, I don't mean to
4 interrupt you, but if the People are seeking to
5 introduce any specific property it will --

6 THE COURT: I think you know what I'll say
7 about all of this, so what. I don't need this. I
8 don't need this. It is excluded, next.

9 MR. MCKENZIE: It is not in evidence, Your
10 Honor?

11 THE COURT: No. What do I need it for?

12 Q. What if anything did you find while you were
13 looking through the defendant's purse?

14 A. Other than the cash and her personal items,
15 there was a wrapped condom in her bag.

16 MS. MOGULESCU: Your Honor, this is the
17 point where I am going to object strenuously and I want
18 the record to reflect that. One condom is probative.

19 THE COURT: The testimony is that you went
20 through the pocketbook, you did your inventory pursuant
21 to the Patrol Guide, you followed all procedure and you
22 found a condom?

23 OFFICER FARRELL: Yes, Judge.

24 THE COURT: I find nothing wrong. I find no
25 probative value at all in finding a condom. Do you

1 want anything else on that?

2 MS. MOGULESCU: No.

3 THE COURT: You heard my views on this with
4 people walking around the 21st Century with condoms, so
5 what. Next.

6 MR. MCKENZIE: Just to be clear, Your Honor,
7 no more testimony about a condom?

8 THE COURT: What do you have, 40 condoms?

9 MR. MCKENZIE: Just one, Your Honor.

10 THE COURT: I'll tell you again in the age
11 of AIDS and HIV if people are sexually active at a
12 certain age and they are not walking around with
13 condoms, they are fools. I don't need anything else on
14 condoms.

15 Q. Officer, you mentioned that you recovered money.
16 Did there come a time that you recovered any hundred
17 dollar bills?

18 A. Yes.

19 Q. What did you do with those hundred dollar bills?

20 A. Three one-hundred-dollar bills were vouchered as
21 arrest evidence.

22 MR. MCKENZIE: Your Honor, may I have this
23 marked as People's 4 for identification? Showing
24 defense counsel what's been marked as People's 4 for
25 identification.

Special
Criminal Court of the City of New York
Part APAR County of Kings

THE PEOPLE OF THE STATE OF NEW YORK
V.
THOMAS

State of New York
County of Kings

Defendant

Police Officer John Dennis, shield number 16919, says that on or about [REDACTED] 2011 at approximately [REDACTED] at [REDACTED], County of Kings, State of New York, the defendant committed the offense of:

PL 240.37(2) LOITERING FOR THE PURPOSE OF ENGAGING IN A PROSTITUTION OFFENSE

in that the defendant did:

REMAIN OR WANDER ABOUT IN A PUBLIC PLACE AND REPEATEDLY BECKON TO, OR REPEATEDLY STOP, OR REPEATEDLY ATTEMPT TO STOP, OR REPEATEDLY ATTEMPT TO ENGAGE PASSERS-BY IN CONVERSATION, OR REPEATEDLY STOP OR ATTEMPT TO STOP MOTOR VEHICLES, OR REPEATEDLY INTERFERE WITH THE FREE PASSAGE OF OTHER PERSONS, FOR THE PURPOSE OF PROSTITUTION, OR OF PATRONIZING A PROSTITUTE AS THOSE TERMS ARE DEFINED IN ARTICLE TWO HUNDRED THIRTY OF THE PENAL LAW.

The source of deponent's information and the ground for deponent's belief are as follows:

The deponent is informed by the sworn statement of Police Officer Thomas V. Hill, shield number 15783 that, at the above time and place, the informant observed the defendant remain in or wander about a public place for a period of thirty minutes, during which defendant repeatedly beckoned to passers-by and stopped one passers-by, engaging in conversation with said passers-by; stop only male passers-by and defendant did not beckon to or converse with female passers-by who passed by during the same period, thus stopping only passers-by of one gender; dressed in provocative or revealing clothing, specifically Long black wig, tight short jean shorts, tight red shirt.

The deponent is informed by the sworn statement of informant that the above location is not a bus stop, nor an open commercial establishment, nor a house of worship or other place where people ordinarily congregate; the above area is a commercial location; informant is aware that the New York City Police Department has made numerous arrest for violations of Penal Law 240.37, 230.00 and/or 230.03 at the above location, informant is aware that the location is frequented by people engaging in promoting prostitution, patronizing a prostitute or loitering for the purpose of prostitution, informant is aware that defendant has previously been arrested for violating Penal Law 240.37, 230.00 and/or 230.03, informant recovered from defendant's person currency in the following denominations: \$1.25. Sexual paraphernalia, namely, One condom.

The deponent is informed by the sworn statement of informant that, based on the foregoing, and based on informant's training and experience as a police officer, informant believes that defendant was loitering for the purpose of prostitution and not engaging in other activity, such as panhandling or squeegeeing

False statement made in this document are punishable as a class a misdemeanor pursuant to section 210.45 of the Penal Law.

[REDACTED] 2011

John Dennis
[Signature]

2011KNO [REDACTED]



Printed: [REDACTED]

Arrested: [REDACTED]

SUPPORTING DEPOSITION - LOITERING FOR PROSTITUTION (PL 240.37.2) - Page 3 of 3

DEFENDANT Thomas ARREST NO. [REDACTED]
(LAST NAME, FIRST NAME)

4. BASIS OF CONCLUSION THAT DEFENDANT WAS LOITERING FOR THE PURPOSE OF PROSTITUTION:

I: (check all that apply)

have had professional training as a police officer in the detection of individuals loitering for the purpose of prostitution,

have previously made arrests for loitering for the purpose of prostitution,

Based upon the foregoing, in my opinion, the defendant in this case was loitering for the purpose of prostitution, and not engaging in other activity, such as panhandling or squeegeeing.

5. RESISTING ARREST: (if applicable)

The defendant intentionally attempted to prevent me from arresting him/her by: (check all that apply)

- flailing defendant's arms
- going limp
- holding defendant's arms against defendant's body
- punching at me
- kicking at me
- struggling with me
- refusing to be handcuffed
- other (describe) _____

6. PROPERTY: (if applicable)

I recovered (describe property) 1 Black K. Pocket book, 1 Samsung Cell phone, Black address book, black ID holder, 2 keys, 1 condom
from (describe location from which property recovered) hand
and vouchered it under number(s) [REDACTED]

False statements made herein are punishable as a class A Misdemeanor pursuant to section 210.45 of the penal law.

[REDACTED] / 11 PO Hill
Date Signature of Police Officer

Reviewed by: [Signature]
Signature

Print name of reviewing officer: [Signature]

CRIMINAL COURT OF THE CITY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK

against

[Redacted] Hilda
(Defendant)

Arrest No. _____

Criminal Court of the City of New York

Part APAR County of Kings

2011KNO [Redacted]

THE PEOPLE OF THE STATE OF NEW YORK

V.

HILDA [Redacted]

Defendant



Police Officer Ryan Hayes, shield number 21873 says that on or about [Redacted], 2011 at approximately 3:13 PM at [Redacted], County of Kings, State of New York, the defendant committed the offense of:

PL 240.37(2) LOITERING FOR THE PURPOSE OF ENGAGING IN A PROSTITUTION OFFENSE

in that the defendant did:
REMAIN OR WANDER ABOUT IN A PUBLIC PLACE AND REPEATEDLY BECKON TO, OR REPEATEDLY STOP, OR REPEATEDLY ATTEMPT TO STOP, OR REPEATEDLY ATTEMPT TO ENGAGE PASSERS-BY IN CONVERSATION, OR REPEATEDLY STOP OR ATTEMPT TO STOP MOTOR VEHICLES, OR REPEATEDLY INTERFERE WITH THE FREE PASSAGE OF OTHER PERSONS, FOR THE PURPOSE OF PROSTITUTION, OR OF PATRONIZING A PROSTITUTE AS THOSE TERMS ARE DEFINED IN ARTICLE TWO HUNDRED THIRTY OF THE PENAL LAW.

The source of deponent's information and the ground for deponent's belief are as follows:

The deponent is informed by the sworn statement of Police Officer [Diego E. Dotres, shield number 12213] that, at the above time and place the informant observed the defendant remain in or wander about a public place for a period of thirty minutes, during which defendant repeatedly beckoned to passers-by and stopped two passers-by, engaging in conversation with said passers-by, stop only male passers by and defendant did not beckon to or converse with female passers-by who passed by during the same period, thus stopping only passers-by of one gender; standing with other individuals whom informant is aware have previously been arrested for prostitution-related activities.

The deponent is informed by the sworn statement of informant that the above location is not a bus stop, nor an open commercial establishment, nor a house of worship or other place where people ordinarily congregate the above area is an industrial location, informant is aware that the New York City Police Department has made numerous arrest for violations of Penal Law 240.37, 230.00 and/or 230.03 at the above location; informant is aware that the location is frequented by people engaging in promoting prostitution, patronizing a prostitute or loitering for the purpose of prostitution; informant is aware that defendant has previously been arrested for violating Penal Law 240.37, 230.00 and/or 230.03; informant recovered from defendant's person condoms in quantity of seventeen.

The deponent is informed by the sworn statement of informant that, based on the foregoing, and based on informant's training and experience as a police officer, informant believes that defendant was loitering for the purpose of prostitution and not engaging in other activity, such as panhandling or squeegeeing.

False statement made in this document are punishable as a class a misdemeanor pursuant to section 210.45 of the Penal Law

[Redacted] 2011

[Signature]
[Redacted]

DEFENDANT Hilda ARREST NO.
(Last name, first name)

2. ADDITIONAL INDICATIONS OF PROSTITUTION:

Additionally,

the above location is not a bus stop, nor an open commercial establishment, nor a house of worship or other place where people ordinarily congregate,

the above area is:

a commercial location, an industrial location,

there was sexual-type debris, namely:

condom wrappers used condoms

other (describe debris) _____

scattered at or near the above location,

I am aware that the New York City Police Department has made numerous arrests for violations of Penal Law Sections 240.37, 230.00 and/or 230.03 at the above location,

I am aware that the location is frequented by people engaging in promoting prostitution, patronizing a prostitute and/or loitering for the purpose of prostitution,

I am aware that defendant has previously been:

arrested for convicted of arrested for and convicted of

violating Penal Law Sections 240.37, 230.00 and/or 230.03,

I recovered, from defendant's person:

currency in the following denominations: (fill in denominations) _____

sexual paraphernalia, namely: (describe paraphernalia) Four Liquid
Personal Lubricant

(fill in number) (17) condoms.

3. STATEMENTS BY THE DEFENDANT: (if applicable; this constitutes notice pursuant to 710.30(1)(a) of the CPL)

On _____ (date), at _____ (time) at _____ (location), the defendant stated the following in my presence: (fill in substance of statement) _____

N/A

False statements made herein are punishable as a class A Misdemeanor pursuant to section 210.45 of the penal law.

Date

Signature of Police Officer

DEFENDANT Hilda ARREST NO.
(LAST NAME, FIRST NAME)

4. BASIS OF CONCLUSION THAT DEFENDANT WAS LOITERING FOR THE PURPOSE OF PROSTITUTION:

I: (check all that apply)

- have had professional training as a police officer in the detection of individuals loitering for the purpose of prostitution,
- have previously made arrests for loitering for the purpose of prostitution,

Based upon the foregoing, in my opinion, the defendant in this case was loitering for the purpose of prostitution, and not engaging in other activity, such as panhandling or squeezeeasing.

5. RESISTING ARREST: (if applicable)

- The defendant intentionally attempted to prevent me from arresting him/her by: (check all that apply)
- flailing defendant's arms
 - going limp
 - holding defendant's arms against defendant's body
 - punching at me
 - kicking at me
 - struggling with me
 - refusing to be handcuffed
 - other (describe) _____

N A

6. PROPERTY: (if applicable)

- I recovered (describe property) (17) Condoms and (4) Liquid Personal Lubricants
from (describe location from which property recovered) Deff's Purse
and vouchered it under number(s) Voucher # [redacted]

False statements made herein are punishable as a class A Misdemeanor pursuant to section 210.45 of the penal law.

 1/11 Date PO DSD Signature of Police Officer

Reviewed by: S.E.M.
Signature

Print name of reviewing officer: S.E.M.

Rev. 12/1/02