

## [Sexuality and Gender Law Clinic Supports "No-Condoms-as-Evidence-of-Prostitution" Bill](#)

Posted on **November 20th, 2009** by **KATHERINE FRANKE**

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New York's police and prosecutors should not be permitted to introduce condoms as evidence of prostitution and prostitution-related offenses, according to the students who work in Columbia's Sexuality and Gender Law Clinic. The Clinic held a tabling day yesterday at Columbia Law School in support of a [New York State bill](#) that would enact this prohibition into law. Over 50 Columbia Law students signed postcards to legislators to support the bill, sending a strong message to legislators that sound public health policy militates against the use of condoms as evidence of prostitution.

Under current law, police and prosecutors can and do use condoms to prove prostitution and related offenses, such as patronizing a prostitute, promoting prostitution, and maintaining a premises for prostitution. The bill is critical to protecting public health in New York and deterring police officers from using condoms as pretextual justification for arbitrary search and seizure. Criminalization of condom possession directly conflicts with New York's longstanding public policy of encouraging condom use, a policy it has effected in part by distributing free condoms since 1971. The proposed bill, which is in committee in the Senate and on the floor of the Assembly, would prohibit the use of

 **New York State ASSEMBLY** Sheldon Silver - Speaker

Friday, November 20, 2009

**Text - A03856**

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STATE OF NEW YORK

3856

2009-2010 Regular Sessions

IN ASSEMBLY

January 28, 2009

Introduced by M. of A. CLARK -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules and the criminal procedure law, in relation to the use in evidence of the fact of possession of a condom

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The civil practice law and rules is amended by adding a new section 4519-a to read as follows:

§ 4519-a. POSSESSION OF CONDOMS; RECEIPT INTO EVIDENCE. POSSESSION OF A CONDOM MAY NOT BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING OR PROCEEDING PURSUANT TO SUBDIVISION ONE OF SECTION TWELVE AND ARTICLE TEN OF THE MULTIPLE DWELLING LAW, SECTIONS TWELVE-A, TWENTY-THREE HUNDRED TWO AND TWENTY-THREE HUNDRED TWENTY OF THE PUBLIC HEALTH LAW, SECTION TWO HUNDRED THIRTY-ONE OF THE REAL PROPERTY LAW OR SUBDIVISION FIVE OF SECTION SEVEN HUNDRED ELEVEN AND SECTION SEVEN HUNDRED FIFTEEN OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW AS EVIDENCE OF PROSTITUTION, PATRONIZING A PROSTITUTE, PROMOTING PROSTITUTION, PERMITTING PROSTITUTION, MAINTAINING A PREMISES FOR PROSTITUTION, LEWENESS OR ASSIGNATION, OR MAINTAINING A BAWDY HOUSE.

§ 2. The criminal procedure law is amended by adding a new section 60.47 to read as follows:

§ 60.47 POSSESSION OF CONDOMS; RECEIPT INTO EVIDENCE. POSSESSION OF A CONDOM MAY NOT BE RECEIVED IN EVIDENCE IN ANY TRIAL, HEARING OR PROCEEDING PURSUANT TO SECTION 60.42 OF THIS ARTICLE, ARTICLE TWO HUNDRED THIRTY AND SECTION 240.37 OF THE PENAL LAW AS EVIDENCE OF PROSTITUTION, PATRONIZING A PROSTITUTE, PROMOTING PROSTITUTION OR PERMITTING PROSTITUTION.

§ 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

EXPLANATION--Matter in ITALICS (underlined) is new; matter in brackets [ ] is old law to be omitted.

LBD01486-01-

those and other condoms in seven enumerated prostitution-related crimes. Law enforcement officials would still be able to use condoms as evidence in rape and sexual assault cases, as they would in any other type of case not named in the bill.

The Clinic became aware of law enforcement's use of condoms as evidence of prostitution during the course of its collaboration with community-based advocacy organizations in New York City, including the Sex Workers Project (SWP) at the Urban Justice Center. The SWP is spearheading the effort to pass the bill. The [Urban Justice Center](#) and the [Center for Constitutional Rights](#) have written legislative memos supporting the bill; the SWP has also organized an [online petition](#) to gather signatures to legislators.

Sarah Morris, SJ Lee, and Rena Stern, Sexuality & Gender Law Clinic students, are in charge of the project.

**26 comments**

[sexgenderbody](#), on [November 20th, 2009 at 3:22 pm](#) Said:  
Sexuality and Gender Law Clinic Supports "No-Condoms-as-Evidence-of-Prostitution" Bill <http://ff.im/-bLRIV>

[anonymus](#), on [November 24th, 2009 at 3:48 pm](#) Said:

Questions or comments, please contact the  
webmaster.

Sexuality and Gender Law Clinic Supports "No Condoms-as-Evidence-of-Prostitution" Bill  
Otherwise, when reading this heading it sounds like NOT having condoms would be considered evidence.

[Tristan Phillips](#), on [November 30th, 2009 at 2:51 pm](#) Said:

Um....

You say that NYS law says they can use condoms to convict people of prostitution, but you don't provide ANY cites of the relevant NYS Criminal Procedure Law or Penal Law.

Pony up the citations, because at this point I call BS. If it's so common, where's the URLs to the law?

[The Petulant Pooner](#) » [Blog Archive](#) » [It's a New York State of Mind](#), on [November 30th, 2009 at 7:44 pm](#) Said:

[...] One never has to work very hard to find evidence of our government's abject stupidity. Today's example comes to us from the State of New York, where sex worker advocates are working hard to decriminalize the possession of condoms. [...]

[Elena Jeffreys](#), on [December 1st, 2009 at 2:20 am](#) Said:

RT @sexgenderbody: Sexuality and Gender Law Clinic Supports "No-Condoms-as-Evidence-of-Prostitution" Bill <http://ff.im/-bLRIV>

[Aaron Boyden](#), on [December 1st, 2009 at 7:43 am](#) Said:

Tristan, I would read the above as saying that current law doesn't rule out use of condoms as evidence, and so police and prosecutors are frequently using condoms as evidence. Like you, I would be surprised if current law endorsed use of condoms as evidence explicitly, but it wouldn't need to as long as it also didn't prohibit it, and I don't see why you think the post implied anything stronger.

It might be nice to have a citation of cases of such use by police and prosecutors, I suppose, though I'm not remotely skeptical (I've read of such things elsewhere, though I haven't researched New York specifically).

[Pauline](#), on [December 2nd, 2009 at 4:20 pm](#) Said:

GODSFUCK, NEW YORK, DON'T BE CHINA. <http://bit.ly/4UktG4> #GODDAMNEVERYTHING

[Jadxia Lauron](#), on [December 4th, 2009 at 7:11 pm](#) Said:

Carry too many condoms in NY, you could be arrested as a prostitute. <http://ff.im/-bLRIV>

[RLD Info](#), on [December 8th, 2009 at 12:27 am](#) Said:

It's absolutely asinine that people can be put in jail because they are carrying a bag of condoms. This is just another example of the absurdity that arises when the state attempts to legislate morality.

[RLD Info](#), on [December 8th, 2009 at 12:35 am](#) Said:

"You say that NYS law says they can use condoms to convict people of prostitution, but you don't provide ANY cites of the relevant NYS Criminal Procedure Law or Penal Law."

You are absolutely naive if you think condoms are not used as evidence in sex offense cases. A sex offender in Florida named "Bill Kamal" — a once-popular local weatherman — was charged with trying to have sex with a minor. As evidence against him in trial a condom found in his glove compartment was used.

So it is a fact that carrying a condom is used by police as evidence for an alleged sex offense, or as grounds for further searching. It is not far-fetched to assume that this would extend from alleged sex offenders like Bill Kamal to New York prostitutes.

[Cid](#), on [January 12th, 2010 at 2:43 am](#) Said:

Gender & Sexuality Law Blog » [Blog Archive](#) » [Sexuality and Gender Law Clinic Supports](#) <http://ff.im/-bLRIV>

[blogger](#), on [January 12th, 2010 at 8:07 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

[This is a violation of womens rights](#) « [brianlidgardz](#), on [January 12th, 2010 at 8:08 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

[This must stop! | cspelzman](#), on [January 12th, 2010 at 8:10 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

[www.flyjinx.com Blogs — Blog — Worst law ever](#), on [January 12th, 2010 at 8:11 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

[The Blog Tree — Blog — This must stop!](#), on [January 12th, 2010 at 8:12 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

[Industry Ace — Blog — Worst law ever](#), on [January 12th, 2010 at 8:12 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

[Worst law ever](#) « [talldankhalil](#), on [January 12th, 2010 at 8:14 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

[Tell D.C., San Francisco and New York: Condoms Aren't a Crime!](#), on [January 12th, 2010 at 8:16 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

» [This must stop! Barry Goodknight](#), on [January 12th, 2010 at 8:16 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

[Feminists need to do something about this!](#), on [January 12th, 2010 at 8:18 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]

[Worst law ever - brianlidgardz](#), on [January 12th, 2010 at 8:21 pm](#) Said:

[...] and was shocked to discover that safe-sex devices have been used as evidence in my own hometown, New York — which is particularly ridiculous given that New York City has been distributing free [...]