

## **Sex Workers at Risk**

Condoms as Evidence of Prostitution in Four US Cities

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## Summary

If I took a lot of condoms, they would arrest me. If I took a few or only one, I would run out and not be able to protect myself. How many times have I had unprotected sex because I was afraid of carrying condoms? Many times.  
—Anastasia L., sex worker, New York City, March 22, 2012

Felicia C. is a sex worker in the Columbia Heights neighborhood of Washington, DC. When Human Rights Watch met Felicia, it was 2 a.m. on a cold and windy morning. Felicia ran over to an outreach van to get a warm cup of coffee from the volunteers. She took the “bad date” sheet that warns of recent attacks on sex workers, and was offered some condoms. She would not take more than two. When asked why, she said she was afraid to be harassed by the police. She said that a month earlier, she had been stopped and questioned by police and told to throw her condoms into the garbage. She said she’d held her ground and refused, but she didn’t want to be harassed again.

Felicia’s story is not unique. In four of the nation’s major cities—New York, Washington, DC, Los Angeles, and San Francisco—police stop, search, and arrest sex workers using condoms as evidence to support prostitution charges. For many sex workers, particularly transgender women, arrest means facing degrading treatment and abuse at the hands of the police. For immigrants, arrest for prostitution offenses can mean detention and removal from the United States. Some women told Human Rights Watch that they continued to carry condoms despite the harsh consequences. For others, fear of arrest overwhelmed their need to protect themselves from HIV, other sexually transmitted diseases and pregnancy.

Alexa L., a New York City sex worker, said, “I use condoms. I take a lot of care of myself. But I have not used them before because I was afraid of carrying them. I am very worried about my health.” Carol F., a sex worker in Los Angeles who had been arrested partly on the basis of carrying condoms, had a similar story: “After the arrest, I was always scared...There were times when I didn’t have a condom when I needed one, and I used a plastic bag.”

Prostitution—the exchange of sex for money or other consideration—is illegal in 49 states and in all of the cities addressed in this report. Law enforcement agencies in these jurisdictions are charged with enforcing laws, including those relating to prostitution. Enforcement, however, must be compatible with international human rights law and governments should ensure that police policies and practices do not conflict with equally important public health policy imperatives, including those designed to curb the HIV epidemic.

Police stops and searches for condoms are often a result of profiling, a practice of targeting individuals as suspected offenders for who they are, what they are wearing and where they are standing, rather than on the basis of any observed illegal activity. In New York, Washington, DC, and Los Angeles, many people, particularly members of the transgender community, told Human Rights Watch they were stopped and searched for condoms while walking home from school, going to the grocery store, and waiting for the bus. Vague loitering laws invite interference with the right to liberty and security of the person, permitting police to consider a wide range of behavior and other factors suspicious, including possession of condoms and being “known” as a sex worker. The anti-prostitution loitering laws in New York, California, and Washington, DC are inconsistent with human rights principles prohibiting detention or punishment based on identity or status and should be reformed or repealed.

Sex workers in New York, Washington, DC, and Los Angeles described abusive and unlawful police behavior ranging from verbal harassment to public humiliation to extortion for sex, both in and out of detention settings. Transgender women described being “defaced” by police who removed their wigs, threw them on the ground, and stepped on them. Police subjected transgender women to a constant barrage of vulgar insults, mockery, and disrespect. Most disturbing were reports in both New York and Los Angeles that some police regularly demanded sex in order to drop charges or coerced women into sex while in detention. Few of these women filed complaints, fearing further abuse and having lost faith in police to respond with fairness and integrity. Police officials in each of these cities should take action to increase accountability, restore community trust, and end an unacceptable cycle of impunity for human rights abuses against sex workers and transgender persons.

Human Rights Watch interviewed more than 300 persons for this report, which focuses on police use of condoms as evidence to enforce prostitution and sex trafficking laws, as part of an investigation into barriers to effective HIV prevention for sex workers in the four cities covered by this report. Those interviewed included nearly 200 sex workers and former sex workers as well as outreach workers, advocates, lawyers, police officers, district attorneys, and public health officials. In New York, Washington, DC, and Los Angeles our investigation focused on complaints of police using condoms as evidence while targeting sex workers on the street. In San Francisco, condoms were used as evidence for street enforcement to some extent, with police photographing rather than confiscating condoms, in what appeared to be a dubious nod to public health concerns. In San Francisco, much of the anti-prostitution enforcement using condoms as evidence targeted women working in businesses such as erotic dance clubs, massage businesses, and a nightclub with transgender clientele.

Police use of condoms as evidence of prostitution has the same effect everywhere: despite millions of dollars spent on promoting and distributing condoms as an effective method of HIV prevention, groups most at risk of infection—sex workers, transgender women, and lesbian, gay, bisexual, and transgender (LGBT) youth—are afraid to carry them and therefore engage in sex without protection as a result of police harassment. Outreach workers and businesses are unable to distribute condoms freely and without fear of harassment as well.

Sex workers and transgender women are highly vulnerable to HIV infection as a result of many factors including stigma, social and physical isolation, and economic deprivation. In San Francisco one of three transgender women has HIV; in Los Angeles the Department of Health has identified HIV prevention for transgender women as an “urgent” priority. It is not surprising that those on the front lines are confused about the message city governments are sending on condom use. Maria, a sex worker in Los Angeles asked, “Why is the city giving me condoms when I can’t carry them without going to jail?” Ironically, if Maria went to jail in Los Angeles or any of the cities addressed in this report she could get a condom, as condoms are available in detention settings for prevention of HIV and other sexually transmitted diseases.

Police and prosecutors defended the use of condoms as evidence necessary to enforce prostitution and sex trafficking laws. However, the use of any type of evidence must be

determined by weighing the potential harm that occurs from its use and the benefits provided. In legal systems everywhere, categories of potentially relevant evidence are excluded as a matter of public policy, with laws excluding testimony regarding a rape victim's sexual history providing but one of many examples. Law enforcement efforts should not interfere with the right of anyone, including sex workers, to protect their health. The value of condoms for HIV and disease prevention far outweighs any utility in enforcement of anti-prostitution laws.

In the summer of 2012, Washington, DC will be hosting the 19<sup>th</sup> International AIDS Conference. As more than 30,000 delegates from all over the world converge on the nation's capital, the US response to the epidemic will be in the spotlight. This is an extraordinary opportunity for the city of Washington, DC as well as the cities of New York, Los Angeles, and San Francisco to enact policies that protect those at risk of HIV and to eliminate those that undermine HIV prevention such as the use of condoms as evidence of prostitution.

Strong federal leadership is also needed. The US government provides millions of dollars of funding to each city addressed in this report to prevent HIV among groups at high risk of HIV infection. Condoms as evidence of prostitution should be identified as a barrier to implementing the National HIV/AIDS Strategy and federal, state, and municipal agencies should work together toward its elimination. Most importantly, the US recently pledged at the United Nations Human Rights Council to protect the human rights of sex workers, a commitment that should begin without delay. A critical step towards meeting this obligation would be to call for the end to the use of condoms as evidence of prostitution, a policy that endangers the health and lives of sex workers, transgender persons, LGBT youth, and all members of the community.

# Recommendations

## New York

### *To the New York State Legislature*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Reform or repeal New York Penal Law Section 240.37, the statute prohibiting loitering for the purposes of prostitution as incompatible with human rights and US constitutional standards.

## New York City

### *To the New York City Council*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Enact the Community Safety Act, legislation prohibiting and providing a remedy for profiling that disproportionately impacts individuals and communities based on race, sexual orientation, gender identity, and other prohibited grounds.

### *To the Mayor of New York City*

- Support legislation to prohibit the use of condoms as evidence of prostitution and related offenses.
- Issue an executive order prohibiting the use of condoms as evidence of prostitution and related offenses by the New York City Police Department.
- Provide the necessary policy, oversight, and disciplinary action to ensure that the New York City Police Department's interactions with sex workers, transgender persons, and LGBT youth in New York City comply with human rights and US constitutional standards and are conducted with respect and professionalism.

### *To the New York City Police Department*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.
- Support legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that interactions with sex workers, transgender persons, and LGBT youth comply with human rights and US constitutional standards and are conducted with respect and professionalism.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that all stops, searches, and frisks of individuals comply with human rights and US constitutional standards.

### *To the District Attorneys for the City of New York*

- Immediately cease using the possession of condoms as evidence to prosecute prostitution and related offenses.
- Support legislation to prohibit the use of condoms as evidence of prostitution and related offenses.

### *To the New York Department of Health and Mental Hygiene*

- Support legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Call upon the New York City Police Department (NYPD) to immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Conduct trainings and engage in other collaborative efforts with the NYPD emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health.

## Washington, DC

### *To the Council of the District of Columbia*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Reform or repeal anti-prostitution statutes that are vague, overbroad, and that invite discrimination and arbitrary arrest as incompatible with human rights and US constitutional standards.

### *To the Mayor of Washington, DC*

- Support legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.
- Issue an executive order prohibiting the possession of condoms as evidence of prostitution and related offenses by the Metropolitan Police Department.
- Support reform or repeal of anti-prostitution statutes that are vague, overbroad and that invite discrimination and arbitrary arrest as incompatible with human rights and US Constitutional standards.
- Provide the necessary policy, oversight, and disciplinary action to ensure that the Metropolitan Police Department's interactions with sex workers and transgender persons in Washington, DC comply with human rights and US constitutional standards and are conducted with respect and professionalism.

### *To the Metropolitan Police Department*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that interactions with sex workers and transgender persons comply with human rights and US constitutional standards and are conducted with respect and professionalism. Ensure compliance with MPD guidelines for interaction with transgender individuals, including those that prohibit profiling transgender persons as sex workers.

- Adopt policies, guidelines, and enforcement mechanisms to ensure that all stops and searches of individuals comply with human rights and US constitutional standards.

*To the Department of Health of the District of Columbia*

- Support legislation prohibiting the use of condoms as evidence of prostitution and related offenses.
- Call upon the Metropolitan Police Department (MPD) to immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Conduct trainings and engage in other collaborative efforts with the MPD emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health.

## California

### *To the California State Legislature*

- Enact legislation to prohibit possession of condoms as evidence of prostitution and related offenses.
- Repeal California Penal Code Section 1202.6 mandating HIV testing for all persons convicted of prostitution and California Penal Code Section 647f providing for enhanced penalties for persons convicted of a second prostitution offense while HIV-positive as discriminatory, unnecessary, and incompatible with human rights and US constitutional standards.
- Reform or repeal California Penal Code Section 653.22, the statute prohibiting loitering with intent to commit prostitution, as incompatible with human rights and US constitutional standards.

### *To the California Alcoholic Beverage Control Board*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.

## Los Angeles

### *To the Los Angeles City Council*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.

### *To the Mayor of Los Angeles*

- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Issue an executive order prohibiting the possession of condoms as evidence of prostitution and related offenses by the Los Angeles Police Department.
- Provide the necessary policy, oversight, and disciplinary action to ensure that the Los Angeles Police Department's interactions with sex workers and transgender

persons in Los Angeles comply with human rights and US constitutional standards and are conducted with respect and professionalism.

#### *To the Los Angeles Police Department*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that interactions with sex workers and transgender persons comply with human rights and US constitutional standards and are conducted with respect and professionalism. Ensure compliance with LAPD guidelines for interaction with transgender individuals, including those that prohibit profiling transgender persons as sex workers.
- Adopt policies, guidelines, and enforcement mechanisms to ensure that all stops and searches of individuals comply with human rights and US constitutional standards.

#### *To the City Attorney of Los Angeles*

- Immediately cease using the possession of condoms as evidence to prosecute prostitution and related offenses.
- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Support repeal of California Penal Code Section 1202.6 mandating HIV testing for all persons convicted of prostitution and California Penal Code Section 647f providing for enhanced penalties for persons convicted of a second prostitution offense while HIV-positive as discriminatory, unnecessary, and incompatible with human rights and US Constitutional standards.
- Support reform or repeal of California Penal Code Section 653.22, the statute prohibiting loitering with intent to commit prostitution, as incompatible with human rights and US constitutional standards.

### *To the Los Angeles County Department of Public Health*

- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Call upon the Los Angeles Police Department (LAPD) to immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Conduct trainings and engage in other collaborative efforts with the LAPD emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health.

## **San Francisco**

### *To the Board of Supervisors of the City of San Francisco*

- Enact legislation to prohibit the possession of condoms as evidence of prostitution and related offenses.

### *To the Mayor of San Francisco*

- Support passage of legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Issue an executive order prohibiting the possession of condoms as evidence of prostitution and related offenses by the San Francisco Police Department.

### *To the San Francisco Police Department*

- Immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses, including photographing condoms for this purpose. Issue a directive to all officers emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health. Ensure that officers are regularly trained on this protocol and held accountable for any transgressions.

### *To the San Francisco District Attorney*

- Immediately cease using the possession of condoms as evidence to prosecute prostitution and related offenses.
- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Support repeal of California Penal Code Section 1202.6 mandating HIV testing for all persons convicted of prostitution and California Penal Code Section 647f providing for enhanced penalties for persons convicted of a second prostitution offense while HIV-positive as discriminatory, unnecessary, and incompatible with human rights and US constitutional standards.
- Support reform or repeal of California Penal Code Section 653.22, the statute prohibiting loitering with intent to commit prostitution, as incompatible with human rights and US constitutional standards.

### *To the San Francisco Department of Public Health*

- Support legislation prohibiting the possession of condoms as evidence of prostitution and related offenses.
- Call upon the San Francisco Police Department (SFPD) to immediately cease using the possession of condoms as evidence to arrest, question, or detain persons suspected of sex work, or to support prosecution of prostitution and related offenses. Conduct trainings and engage in other collaborative efforts with the SFPD emphasizing the public health importance of condoms for HIV prevention and sexual and reproductive health.
- Ensure that the work of the Environmental Health inspectors is coordinated with that of the HIV/STD Prevention unit on issues of HIV prevention and the importance of promoting access to condoms in business establishments in San Francisco, including massage parlors, erotic dance establishments, and other venues.
- Support the proposal of the HIV Prevention Planning Council for a city-wide ordinance mandating access to condoms and lubricant in all businesses that sell liquor in San Francisco.

## To the United States Government

- The Office of National AIDS Policy and the federal agencies charged with implementing the National AIDS Strategy should:
  - Recognize that human rights abuses are significant barriers to HIV prevention for sex workers, transgender women, LGBT youth, and other vulnerable groups and prioritize structural interventions to address those abuses;
  - Call upon states to prohibit the possession of condoms as evidence of prostitution and related offenses, and develop a plan to provide guidance, technical assistance, and model legislation to accomplish this objective;
  - Ensure the inclusion of sex workers and transgender women in the efforts of the Working Group on the Intersection of HIV/AIDS, Violence against Women and Girls, and Gender-related Health Disparities;
  - Ensure that HIV research and surveillance data adequately reflects the impact of HIV on sex workers and transgender women.
- The Department of Justice should investigate the treatment of sex workers and transgender persons by police in New York City, Washington, DC, and Los Angeles and provide ongoing review, enforcement, and oversight to ensure that policies and practices comply with human rights and US constitutional standards.

## To the United Nations

To the United Nations Committees on Human Rights, Economic, Social and Cultural Rights, and Racial Discrimination; the Working Group on Arbitrary Detention; the United Nations Special Rapporteurs on the Right to the Highest Attainable Standard of Health and Questions of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment; and the United Nations Human Rights Council:

- Call upon the United States to ensure that police and prosecutors cease using condoms as evidence of prostitution and related offenses.
- Call upon the United States to reform or repeal overly broad loitering statutes that invite discrimination and punishment based on identity or status rather than criminal behavior.
- Call upon the United States to protect the human rights of sex workers, transgender persons, and LGBT youth by police, both in and out of police custody.