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## Memorandum of Support for Bill: S1289-A/A10893

(AN Act to amend the civil practice law and rules, the criminal procedure law, and the executive law in relation to the use in evidence of the fact of possession of a condom.)

May 27, 2010

Human Rights Watch submits this memorandum in support of S1289-A/A10893, which would change the current law permitting prosecutors to introduce condoms as evidence of prostitution and prostitution-related offenses. Amendment of the existing law is essential to promoting both public health and human rights.

Permitting condoms to be used as evidence of prostitution in a criminal proceeding discourages sex workers from carrying condoms, and condoms are essential for HIV prevention. This simple truth has been documented by Human Rights Watch in countries throughout the world,<sup>1</sup> and by sex workers in the United States.<sup>2</sup> The World Health Organization has found that sex workers are one of the groups most likely to respond positively to efforts to increase condom use, and that such efforts should be strengthened and laws that discourage condom use should be reformed.<sup>3</sup>

Moreover, the association of condoms with criminal activity increases police harassment not only of sex workers but of men who have sex with men, HIV/AIDS outreach workers and others who regularly fear harassment or arrest by the police.<sup>4</sup> Transgendered women in particular experience a high rate of false targeting as sex workers by the police, a practice so widespread in New York City that it was the subject of a 2005 campaign by Amnesty International.<sup>5</sup> According to these groups who are frequently targeted by the police, the criminalization of condom possession deters them from carrying condoms.

Condoms are proven and effective tools in the fight against HIV/AIDS and other sexually transmitted diseases. Under international human rights law, governments are obligated to promote public health and ensure access to information and services for preventing the spread of HIV and sexually transmitted diseases without discrimination. Governments may not take actions that interfere with one's ability to protect their health.<sup>6</sup> To do so is not only inconsistent with human rights law but it is bad public policy. New York State has distributed millions of condoms to its citizens in an admirable campaign to protect the public health. Legislation that

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<sup>1</sup> Human Rights Watch, *Unprotected: Sex, Condoms and the Human Right to Health*, May 2004, <http://www.hrw.org/reports/2004/philippines0504/>; Human Rights Watch, *Still Making Their Own Rules: Ongoing Impunity for Police Beatings, Rape and Torture in Papua New Guinea*, October 2006, <http://www.hrw.org/en/reports/2006/10/29/still-making-their-own-rules>.

<sup>2</sup> See, e.g. United Justice Center, Memorandum in Support of S01289/A08356, May 2010.

<sup>3</sup> World Health Organization, *Sex work and HIV/AIDS*, Technical Update, Geneva 2002, p. 2.

<sup>4</sup> Human Rights Watch, *Hated to Death: Homophobia, Violence and Jamaica's HIV/AIDS Epidemic*, November 2004, <http://www.hrw.org/en/node/11894/section/1>; Human Rights Watch, *Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India*, July 2002, <http://www.hrw.org/en/reports/2002/07/01/epidemic-abuse>.

<sup>5</sup> Amnesty International, "Stonewalled: Still Demanding Respect," <http://www.amnestyusa.org/lgbt-human-rights/stonewalled/page.do?id=1106628> (accessed May 27, 2010.)

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI) 21 UN GAOR (no.16), UN Doc A/6316 (1966), 99 UNTS 3, art.11, entered into force January 3, 1976, signed by the US on October 5, 1977; UN Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health*, paras. 12, 18, 19, 30, 50, 54.

deters people from using these condoms, particularly members of groups at high risk for sexually transmitted disease, undermines the intent of this ongoing effort, wastes tax dollars, and invites increased rates of HIV and other infections.

In sum, the New York State legislature should expand and strengthen the promotion of condom use among sex workers as well as among the general public by passing S1289-A/A10893.

A handwritten signature in black ink, appearing to read "Megan M." followed by a long horizontal flourish.

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