November 19, 2009

Memorandum in Support

S01289: introduced by Senator Montgomery

A03586: introduced by Assemblymember Clark

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.

A Statement in Support:

The Columbia Law School Sexuality & Gender Law Clinic (“Clinic”) supports the passage of S01289/A03856. This bill, if enacted, would prohibit the use of condoms as evidence of prostitution and prostitution-related offenses. The passage of the bill is critical to protecting the public health of New York State’s residents.

The Columbia Law School Sexuality & Gender Law Clinic, founded in 2007 as the first clinical law program in the nation focused on legal issues surrounding gender and sexuality, has actively contributed to various state legislative reforms to protect rights of women and sexual minorities. For example, just last year, the Clinic informed state legislators with a legislative report explaining the need to expand family and criminal courts’ “family offense” jurisdiction to include those who have been in an intimate relationship with their abusers. Soon after, the legislature extended vital legal protections to domestic violence victims by enacting this expansion into law.

The State law enforcement agencies’ practice of seizing and using condoms as evidence of prostitution-related offenses came to the Clinic’s attention during the course of our collaboration with community-based advocacy organizations in New York City. Clients of these organizations, often lesbian, gay, bisexual and transgender (LGBT) individuals and sex workers, have repeatedly reported that law enforcement agencies routinely confiscate condoms in the course of prostitution-related arrests and later use them as evidence in court. As a result, these individuals are afraid of carrying condoms, the only safeguard that protects them and others from AIDS and other serious sexually transmitted diseases. The Clinic, through its own investigative efforts, has identified multiple occasions where condoms were in fact used as evidence of a prostitution-related offense in a criminal proceeding. See attached arrest evidence voucher.
The practice of using condoms as evidence of prostitution poses a serious threat to public health in the State. In fact, the criminalization of condom possession directly conflicts with New York’s longstanding public policy of encouraging condom use. Recognizing the public health concerns raised by unprotected sex, New York City has promoted condom use by distributing free condoms since 1971. The City has placed renewed emphasis on this program in the past two years, launching the NYC Condom campaign in 2007 and distributing more than 36 million condoms throughout the five boroughs in that year alone. Seizing and admitting condoms as evidence of prostitution discourages condoms usage, thereby jeopardizing the successful operation of the City’s longstanding public health policy that has served as an example of many other cities and states.

The passage of S01289/A03856 will address these problems by putting a stop to the practice of criminalizing condom possession. The new law will benefit thousands of New Yorkers whose health is dependent on their ability to protect themselves by using condoms without fear. The new law will also have a deterrent effect on police officers’ potentially unconstitutional activities. For these reasons, the Clinic urges the State Legislature to encourage, not discourage, citizens’ condom use by making S01289/A03856 the law of this State.