May 15, 2012

Re: Memorandum in Support of Bill S.323/A.1008
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

Dear Assembly Member Clark:

The Columbia Law School Sexuality & Gender Law Clinic (“Clinic”) supports the passage of S.323 (Montgomery)/A.1008 (Clark). This bill prohibits the use of condoms as evidence of prostitution and prostitution-related offenses. The bill’s passage is critical to protecting the public health of New York State’s residents.

The Clinic was founded in 2006 as the first clinical law program in the nation focused on legal issues surrounding gender and sexuality. The Clinic has contributed actively to various state legislative reforms to protect rights of women and sexual minorities and has been working on the condoms-as-evidence issue for several years. You can find the Clinic’s full legislative analysis of the bill at http://www.law.columbia.edu/sexuality-gender-law-clinic/issues/criminal-law.

New York 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, report that law enforcement agencies routinely confiscate condoms in the course of prostitution-related arrests and later use them as evidence in court. The Clinic, through its own investigative efforts, has also identified multiple occasions where condoms were used as evidence of a prostitution-related offense in a criminal proceeding.

The practice of using condoms as evidence of prostitution poses a serious threat to public health in the State. Because of this practice, sex workers and LGBT individuals are afraid to – and frequently do not – carry condoms due to the risk that condoms will be used as evidence against them. The criminalization of condom possession thus conflicts directly with New York’s longstanding public policy of encouraging condom use to prevent the spread of HIV/AIDS and other sexually transmitted diseases. Indeed, New York City has specifically promoted condom use by distributing free condoms since 1971 and, since launching the NYC Condom campaign in 2007, has distributed more than 36 million condoms per year throughout the five boroughs.
In short, policies that permit seizure and admission of condoms in criminal proceedings as evidence of prostitution defy New York’s well-established, evidence-based public health policy and practice. Condoms are the only safeguard that protects sex workers, LGBT individuals and others from HIV/AIDS and other serious sexually transmitted diseases. Continuing the criminalization of condom possession not only jeopardizes the successful operation of a flagship public health initiative that has served as an example for many other cities and states but also, most importantly, jeopardizes the lives of New Yorkers and all who visit our State.

The passage of S.323/A.1008 will address these problems by stopping the practice of criminalizing condom possession and, in doing so, protecting the health of many thousands of New Yorkers. For these reasons, the Clinic urges the State Legislature to encourage, not discourage, citizens’ condom use by making S.323/A.1008 the law of this State.

Sexuality and Gender Law Clinic
Columbia Law School