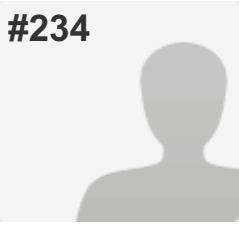


Ending the Epidemic Task Force Recommendation Form

#234



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Q1: OPTIONAL: This recommendation was submitted by (please provide your first and last name, affiliation, and email address)

First Name	Mike
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Affiliation	New York Harm Reduction Educators (NYHRE)
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Q2: Title of your recommendation Recommendations from New York Harm Reduction Educators (NYHRE) to Ensure Access to HIV/AIDS Prevention Tools

Q3: Please provide a description of your proposed recommendation

New York Harm Reduction Educators (NYHRE) recommends Task Force endorsement of a legislative package that would improve access to important public health tools to prevent the spread of HIV. By ensuring that access to syringes and condoms are protected and New Yorkers who are in possession of either condoms or syringes are not subjected to arrest or harassment by the police we can achieve the goal of ending AIDS by 2020 in New York State.

A) Decriminalize syringe possession. Penal Law § 220.45 should be repealed to decriminalize personal possession of syringes. Penal Law § 220.03 should be amended to state that it shall not be a violation of Penal Law § 220.03 when a person possess a residual amount of a controlled substance and that residual amount is in on a hypodermic syringe or hypodermic needle. By removing the section of Penal Law § 220.03 that requires a hypodermic syringe or hypodermic needle must be obtained and possessed pursuant to section thirty-three hundred eighty-one of the public health law it will ensure that no one who is in possession of a use syringe will have to fear arrest which encourages proper disposal of syringes through syringe exchange programs or other appropriate means.

Nearly 25 years after the first syringe access program was established in New York City (and 23 since syringe exchange was sanctioned by law and became part of New York's public health law) drug users who participate in state-authorized programs continue to face arrest and prosecution for syringe possession. This practice discourages both participation in syringe access programs and adherence to best practices by those who do participate - which reduces program effectiveness and undermines public health by contributing to the spread of infection.

B) Lift restrictions on the Expanded Syringe Access Program. Public Health Law § 3381 should be amended to allow providers registered with the state ESAP program to advertise their participation, and to remove the limit of 10 syringes per transaction. This will improve access and better align the service provided with actual participant needs.

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C) End the Practice of Confiscating and Using Condoms as Evidence of Prostitution-Related Offenses. Current law permits possession or presence of condoms as evidence of prostitution and trafficking-related offenses. Police can confiscate condoms at will, and the fact that a person is carrying condoms can be used as a basis for a stop and frisk, arrest, prosecution, and even eviction. As a result, individuals are discouraged from carrying condoms, undermining state efforts to prevent the spread of HIV, unwanted pregnancies and STIs.

It is critical that a statutory ban is “comprehensive:” specifically, that is categorically precludes the vouchering of condoms as evidence in all prostitution-related cases, and that it does not apply only to some offenses and not others. Coalition members are particularly committed to ensuring condom access for New Yorkers who are especially vulnerable to exploitation, such as those who are trafficked or forced into sex trading through other means. The use of condoms as evidence in cases of sex trafficking, pimping, promoting, and patronizing creates a perverse incentive for traffickers and pimps to deny condom access to those they are exploiting. Continuing to confiscate, cite and introduce condoms as evidence of intent to engage in trafficking offenses in effect dis-incentivizes exactly what we want to happen, which is that vulnerable people have one last line of defense in situations of exploitation.

Allowing condoms to be used as evidence of intent to engage in any prostitution-related offense undermines our efforts to promote safe sex practices in our communities. It is well settled that policing of prostitution disproportionately and negatively impacts low-income women and LGBTQ people and communities of color where New Yorkers are or are profiled as trading sex for economic survival. This fact makes the practice of vouchering condoms as evidence doubly harmful; the communities who are most in need of scaled-up access to condoms are precisely those who are being policed for carrying them.

The vouchering of condoms as evidence has a high cost for outreach workers, as well. Anything less than a comprehensive ban on condoms as evidence prevents outreach workers in our communities from being stopped and harassed by police for distributing condoms in “high-crime” areas most in need of condom distribution. The adoption of a ban that is anything less than comprehensive would also undermine the hard work of outreach and “know your rights” education. It would be an impossible task for an outreach worker to explain to a person they reach on the stroll that a condom cannot be used as evidence of a misdemeanor or violation, but can be used to prove they are promoting prostitution of trafficking a minor. The End AIDS Task Force must back the unequivocal promotion of condom possession as a public good. As long as condoms carry weight in criminal proceedings, people who engage in sex trading, either by force, for survival or by choice, will have questions about whether condoms can be used against them. This is especially true amongst people under the age of 18 whose involvement in the sex trade is deemed by law to constitute sex trafficking.

As such, we urge the Taskforce to move forward on a wholesale ban on the use of condoms as evidence in prostitution and trafficking-related offenses - especially offenses related to patronizing a minor, sex trafficking, pimping, promoting and all other forms of non-consensual sex trade – by amending the Criminal Procedure Law and Civil Practice Law and Rules to prohibit evidentiary use of condoms as probable cause for arrest, and in legal proceedings related to prostitution and trafficking offenses.

We know that there is no partway solution to this issue. There is no compromise on public health. For the purposes of public safety, we need a wholesale decriminalization of condoms that is consistent across the State and inclusive of all prostitution and trafficking-related offenses.

Q4: For which goal outlined in the Governor's plan to end the epidemic in New York State does this recommendation apply? (Select all that apply)

Other (please specify) Harm Reduction

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Q5: This recommendation should be considered by the following Ending the Epidemic Task Force Committee (Select all that apply)

Housing and Supportive Services Committee:
Develop recommendations that strengthen proven interventions enabling optimal engagement and linkage and retention in care for those most in need. This Committee will recommend interventions that effectively address complex and intersecting health and social conditions and reduce health disparities, particularly among New York's low-income and most vulnerable and marginalized residents. These interventions will diminish barriers to care and enhance access to care and treatment leaving no subpopulation behind.

Q6: Does this recommendation require a change to an existing policy or program, or the creation of a new policy or program?

Change to existing policy

Q7: Would implementation of this recommendation be permitted under current laws or would a statutory change be required?

Statutory change required

Q8: Is this recommendation something that could feasibly be implemented in the short-term (within the next year) or long-term (within the next three to six years)?

Within the next year

Q9: What are the perceived benefits of implementing this recommendation?

The benefits of this recommendation are the assurance that fears of police harassment and arrest will no longer be a barrier for individuals to prevent the spread of HIV/AIDS by carrying condoms/syringes as well as distributing condoms/syringes. It will empower sex workers to use condoms with all of their clients, encourage sex traffickers and pimps to provide condoms to victims of exploitation and allow outreach workers to unequivocally promote condom use amongst everyone they serve. It will also empower people who inject drugs to use a new sterile syringe for every injection, as well as return their used syringes to a syringe exchange program. Since condoms and syringes are two the most fundamental public health tools in preventing transmission of HIV, this policy will have broad implications in ending AIDS by 2020.

Affected populations will also benefit from lower risk of involvement with the criminal justice system and reduced exposure to the collateral consequences of those interactions. It is well established that state-involvement increases health harms, and especially risk of HIV transmission as a result of poor access to health care while incarcerated and the burden of a criminal conviction after release.

Q10: Are there any concerns with implementing this recommendation that should be considered?

Implementation of this recommendation would involve Task Force endorsement of a legislative package aimed at improved prevention by way of decriminalizing critical public health tools—syringes and condoms—consistent with evidence-based public health policy. No concerns relevant to Task Force endorsement have been identified at this time for the recommendations related to expanding access to syringes.

There are some concerns identified with our recommendation about ending the use of condoms as evidence. This recommendation was developed by the Access to Condoms Coalition, of which New York Harm Reduction Educators (NYHRE) is an Executive Committee Member. This Coalition, which includes anti-trafficking organizations and service providers working with the vast majority of survivors of trafficking in New York State, is extremely concerned that the adoption of any policy that excludes certain offenses rather than adopting a wholesale ban on condom as evidence would worsen rather than improve the situation of trafficking victims. The NYPD and several local District Attorneys have recently introduced policies that will stop the use of condoms as evidence in limited number of prostitution-related offenses, while continuing to allow the practice in over thirteen New York Penal Law offenses and civil proceedings. While these new policies show evolved thinking on this issue, they also further highlight the need for a comprehensive statewide solution. Limited bans on the use of condoms as evidence may have the opposite impact by incentivizing police to “charge up” in cases where condoms are confiscated in order to introduce them as evidence, and will do nothing to dispel the stigma and fear of prosecution associated with carrying condoms. Therefore, there is an urgent need for New York State to institute a complete ban on condom in criminal proceedings, with a special emphasis on protecting the most vulnerable populations.

Q11: What is the estimated cost of implementing this recommendation and how was this estimate calculated?

If approved, the cost of implementation of the recommended legislation is unknown but estimated to be minimal. The primary measures reflect adjustments to existing law, policy and practice, so the expense of implementation should largely be limited to training costs.

Q12: What is the estimated return on investment (ROI) for this recommendation and how was the ROI calculated?

The estimated ROI is unknown; however, it is anticipated that these measures will reduce public health costs due to increased prevention of HIV transmission, and reduce costs to public safety, courts, and corrections due to reduction in the frequency and extent of law enforcement and criminal justice system interactions with at-risk individuals.

Q13: Who are the key individuals/stakeholders who would benefit from this recommendation?

Beyond the broad public benefits, the individuals who are most likely to benefit, and who are likely to benefit most quickly, are members of vulnerable populations who are at highest risk for both HIV infection and criminalization - injection drug users, sex workers, those targeted by law enforcement because they are suspected of engaging in sex work (primarily those who live in urban poverty, women of color, transgender and GNC individuals), and the families and communities of those New Yorkers.

Q14: Are there suggested measures to accompany this recommendation that would assist in monitoring its impact?

The impact of improved syringe access on transmission prevention, usually expressed as measurable reductions in the rate of infection among injection drug users, is well-established and monitoring is ongoing. In contrast, it may be difficult to isolate, and therefore monitor, the impact of an intervention with broad public reach such as decriminalizing possession of condoms.

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Q15: This recommendation was submitted by one of the following Advocate