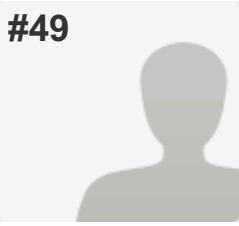


#49



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**Q2: Title of your recommendation**

Recommendations from the New York Civil Liberties Union Regarding Decriminalization of Vital Public Health Tools

**Q3: Please provide a description of your proposed recommendation**

The New York Civil Liberties Union (NYCLU) recommends Task Force endorsement of a legislative package that would detach criminal consequences and stigma from personal possession of two essential tools in the fight to end the spread of HIV: syringes and condoms.

A) Decriminalize syringe possession. Penal Law § 220.45 should be repealed to decriminalize personal possession of syringes. 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.

C) End the Practice of Confiscating and Using Condoms as Evidence of Prostitution-Related Offenses. Current law permits a person's possession of condoms to be offered as evidence of prostitution-related criminal and civil offenses. Police sometimes confiscate condoms as contraband, and the fact that a person is carrying condoms can be used as a basis for suspicion, arrest, prosecution, or even eviction. As a result, individuals are discouraged from carrying and using condoms, undermining state efforts to limit the spread of HIV and other STIs. Permitting this practice to continue criminalizes and stigmatizes condom possession, in direct opposition to promotion of condom use as a prevention tool essential to public health. We recommend common-sense reform to end the practice of confiscating and using condoms as evidence.

Most fundamentally, the Criminal Procedure Law and Civil Practice Law and Rules should be amended to prohibit evidentiary use of condoms as probable cause for arrest, or in legal proceedings related to prostitution. Most people who carry condoms are not sex workers, but ensuring that everyone is able to carry and use condoms - particularly if they engage in sex work - reduces harm to individual health and harm to the general public.

Public health advocates have been seeking this essential law reform since 1993 and have faced unwavering opposition year after year. NYCLU believes that twenty years is too long and we can no longer wait for the opposition to come around. We offer the following proposal as a compromise that we believe can bring both the opposition, and advocates for a complete ban on the practice, to the table. NYCLU recommends:

## Ending the Epidemic Task Force Recommendation Form

a. An immediate ban on the evidentiary use of condoms in all misdemeanor offenses related to prostitution, as well as all Class D and E felonies except §§ 230.05 and 230.06, which charge those who patronize persons under 14 years of age.

b. Allowing the use of evidence that a person possessed condoms only in cases brought under the remaining six felonies in Penal Law Article 230, subject to a very narrow exception, for a set period of two to five years before expiration. Under the exception, evidence of condom possession would be admissible only upon a judicial finding that the evidence a) makes out an element of the crime, and no other evidence exists to prove that element; and b) is so central to the prosecution of the crime that the need to admit it in the interest of justice outweighs the robust public health interest in promoting widespread possession and use of condoms as a prevention essential.

c. Adding provisions to New York Law which state that: a) in no case should police be permitted to confiscate condoms from anyone who is alleged to be or who is engaging in sex work, and b) police and other public servants who confiscate disease prevention tools do so in violation of public policy and may be subject to discipline.

d. Requiring a report to the legislature at the end of a two-year period from the date the reforms go into effect to assess the frequency and purpose of evidentiary use of condoms, and the impact of a graduated ban on such use and on the public health. The report would cover a period both before and after initial implementation of the ban, and contain statistics on law enforcement seizure and vouchering of condoms, and use of condoms as evidence at trial or other proceedings.

**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) Preventing transmission

## Ending the Epidemic Task Force Recommendation Form

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

Prevention Committee: Develop recommendations for ensuring the effective implementation of biomedical advances in the prevention of HIV, (such as the use of Truvada as pre-exposure prophylaxis (PrEP)); for ensuring access for those most in need to keep them negative; and for expansion of syringe exchange, expanded partner services, and streamlined HIV testing by further implementing the universal offer of HIV testing in primary care, among others. The Committee will focus on continuing innovative and comprehensive prevention and harm reduction services targeted at key high risk populations, as well as grant-funded services that engage in both secondary and primary prevention.

Data Committee: Develop recommendations for metrics and identify data sources to assess the comprehensive statewide HIV strategy. The Committee will determine metrics that will measure effective community engagement/ownership, political leadership, and supportive services. It will also determine metrics that will measure quality of care, impact of interventions and outcomes across all populations, particularly identified sub populations such as transgender men and women, women of color, men who have sex with men and youth. In addition, the Committee will evaluate to determine optimal strategies for using data to identify infected persons who have not achieved viral suppression and address their support service, behavioral health, and adherence needs.

**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,

Other (please specify)

Support for legislative reform of existing policies and programs

**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 ultimate benefit will be the prevention of HIV transmission (as well as the prevention of other blood-borne infections like Hepatitis C). In addition, 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.

**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.

**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 and reporting 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 gender-nonconforming 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. However, a key component of this recommendation is a report on the frequency and purpose of evidentiary seizure and introduction of condoms, both to gather the facts necessary to determine whether or not the condoms should ever be seized and used as evidence in a case related to prostitution or trafficking, and to monitor compliance with law reform.

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