

4.40. Possession of Condoms; Receipt into Evidence (CPL 60.47)

Evidence that a person was in possession of one or more condoms may not be admitted at any trial, hearing, or other proceeding in a prosecution for section 230.00 [prostitution] of the Penal Law for the purpose of establishing probable cause for an arrest or proving any person's commission or attempted commission of such offense.

Note

This rule states verbatim (with the addition of the name of the offense in brackets) CPL 60.47.

The statute represents a policy determination that banning the use of condoms in prosecutions of prostitution will “obviate the public health risks attendant to the failure of a person engaged in prostitution to carry or use condoms out of fear that they would be seized and used as evidence” (William C. Donnino, Practice Commentaries, McKinney's Cons Laws of NY, CPL 60.47).