



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
October 3, 2006

Honorable Members of the
Law and Legislation Committee

Title: Discussion Paper: An Ordinance to Authorize Needle Exchange Programs

Location/Council District: Citywide

Recommendation: This report is for the Committee's information and direction to staff on whether to draft an ordinance that would authorize needle exchange programs in the City.

Contact: Yvette Rincon, Legislative Analyst, (916) 808-5827

Presenters: Yvette Rincon, Legislative Analyst

Department: City Manager's Office

Division: Governmental Affairs

Organization No: 0310

Description/Analysis

Issue: Councilmember Sheedy requested staff bring forward for consideration for the Law & Legislation Committee the issue of an ordinance that would authorize needle exchange programs in the City. Consistent with the protocols established by the Committee and City Council, staff has submitted this report with information on the concept of an ordinance that would authorize needle exchange programs in the city and to receive direction from the Committee on whether to draft such an ordinance.

In 2005, AB 547 was enacted, which allows cities and counties to authorize needle exchange programs within their jurisdiction. In addition, the law requires the city consult with the State Department of Health Services before authorizing the program, which staff has already done. It also requires the health officer to report annually to the council on the status of needle exchange program including, but not limited to, relevant statistics on blood-borne infections associated with needle sharing activity. Finally, the law requires that, on an annual basis, local public health officials, law enforcement, and all stakeholders are given the opportunity to comment on needle exchange programs.

Policy Considerations: The primary policy consideration for the Committee is whether to direct staff to draft an ordinance that would authorize needle exchange programs within the city limits. If the full council decided to approve the ordinance, it would allow agencies that are interested in administering needle exchange programs to do so legally. The State experts that staff consulted with recommended the City adopt an ordinance that allows for the most flexibility by not having specific program language.

Attachment 1, page 4, of this report provides information on what other jurisdictions have done relative to needle exchange programs. The first critical step is authorizing needle exchange programs by ordinance. Authorization also provides needle exchange programs the status to pursue grant funds to support their operations.

Should the City Council wish to consider providing funding to support local needle exchange programs it would be an administrative action by Council and is not required to be incorporated into the proposed ordinance authorizing the program. Should the Committee direct staff to draft an ordinance the Committee could direct staff to report back on options for City support.

Environmental Considerations: None.

Rationale for Recommendation: There is no staff recommendation. This report is for the Committee's information and to provide staff with direction.

Financial Considerations: None.

Emerging Small Business Development (ESBD): None.

Approved by: 
Patti Bisharat
Director of Governmental Affairs

Recommendation Approved:

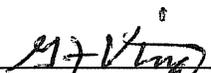

GUSTAVO F. VINA
Assistant City Manager

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ATTACHMENT 1**Background Information**

Needle exchange programs have been around for many years and studies indicate that needle exchange programs reduce the number of needles on the streets, reduce the number of needle sticks of public safety officers, and do not increase drug use in the community.

Staff has consulted with the State Department of Health Services Office of Aids and the Harm Reduction Coalition on the direction that the City should consider when implementing a needle exchange program. These experts have recommended that the City moved forward with the option to authorize needle exchange programs and allow for the most flexibility to service providers in administering these programs by adopting a broad ordinance with little or no specific program components.

What are other Jurisdictions Doing?

In July 2006, the City of San Diego re-authorized its needle exchange program under AB 547. The program was established November 2001. It is a one-for-one exchange with a 50 syringe limit per visit. The program is mobile and visits two different sites once a week. The City has a facilitation committee that is made up of city staff, police staff, treatment providers, and community members. This committee makes recommendations on guidelines for the operation of the program. The City may soon be considering an ordinance that would establish the process for choosing and approving exchange sites within the community.

Santa Barbara County began its needle exchange program in 2000. It does not provide funding for the program but does dispose of the used needles for the program providers. The non-profit that administers the program does so with private funds.

In Mendocino County a non-profit administers the needle exchange program with a budget of \$100,000 and 1.5 FTE and volunteers. The County of Mendocino does not provide funding to the program but does dispose of the used needles for the program. The program is primarily funded with grants.

Santa Clara County operates the needle exchange program itself with a budget of \$400,000 and four staff. The county administers the program via a mobile unit.

Contra Costa County provides partial funding (\$60,000) to a non-profit that provides needle exchange and other services in four locations throughout the county.

The City of Los Angeles provides supportive funding to seven different organizations that provide syringe exchange in outdoor locations throughout the city.

The City of Berkeley provides \$50,000/yr in funding to a local non-profit syringe exchange program.

Marin County's needle exchange program has been in operation since 1993, and was authorized by the county in 2001. The county does not provide funding for the program.

City of Sacramento Public Safety Positions

The City's Police and Fire Departments are both neutral on the City authorizing needle exchange programs. The City's Police Union is "less opposed" to the authorization of needle exchange programs. Finally, the Fire Union "supports in concept" the authorization of needle exchange programs. Both the Fire and Police Unions would like to see a traditional one-for-one exchange program.

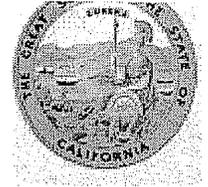


California
Department of
Health Services

SANDRA SHEWRY
Director

State of California—Health and Human Services Agency
Department of Health Services

ATTACHMENT 2



ARNOLD SCHWARZENEGGER
Governor

September 6, 2006

Ms. Yvette Rincon
City of Sacramento
City Hall
915 I Street, Fifth Floor
Sacramento, CA 95814

Dear Ms. Rincon:

AUTHORIZATION OF ASSEMBLY BILL AB 547 IN THE CITY OF SACRAMENTO

The purpose of this letter is to inform you of changes to the California Health and Safety (H&S) Code made by Assembly Bill (AB) 547 (Berg) and to update you on your city's fulfillment of one of the requirements of the new law, which became effective January 1, 2006.

AB 547 amends previous legislation (AB 136, Mazzoni) to allow counties and cities to authorize syringe exchange programs (SEPs) in their jurisdictions without the necessity to declare a state of local emergency. The purpose of AB 547 is to simplify the procedure for SEP authorization in order to encourage the integration of SEPs into HIV and viral hepatitis prevention efforts throughout the state of California.

Under the provisions of H&S Code Section 121349.1:

“A city and county, or a county, or a city with or without a health department, that acts to authorize a clean needle and syringe exchange project pursuant to this chapter shall, in consultation with the California Department of Health Services, (CDHS) authorize the exchange of clean hypodermic needles and syringes, as recommended by the United States Secretary of Health and Human Services, subject to the availability of funding, as part of a network of comprehensive services, to combat the spread of HIV and blood-borne hepatitis infection among injection drug users [emphasis added].”

According to our records, your city fulfilled the requirement to consult with CDHS on August 19, 2006. We request the following information be sent to us after the City Council authorizes SEPs within your jurisdiction:

1. Copies of any regulations your county or city has governing the operation of syringe exchange, or memorandums of understanding you have with your local exchange(s), including funding amount, if any;
2. Contact information for SEP(s);
3. The date City Council or Board of Supervisors originally authorized syringe exchange (or authorizes if the authorization has not been made before);
4. A copy of the ordinance or resolution, including the resolution or ordinance number; and
5. Any other supporting paperwork you think may be of interest to us, including copies of reports you have already made, or plan to make to City Council or Board of Supervisors.

After we receive this information, our office will send you a letter affirming your city's authorization of syringe exchange.

The new law also requires the local health officer to present annually at an open meeting of the City Council or Board of Supervisors "a report detailing the status of SEPs including, but not limited to, relevant statistics on blood-borne infections associated with needle sharing activity. Law enforcement, administrators of alcohol and drug treatment programs, other stakeholders, and the public shall be afforded ample opportunity to comment at this annual meeting" (H&S Code Section 121349.3). The public shall be given the opportunity to provide input to local leaders to ensure that potential adverse impacts on the public welfare are addressed and mitigated (H&S Code Section 121349.2).

CDHS, Office of AIDS (OA) will develop and issue guidance for the reports which health officers must make. However, each city or county is free to design a report that best suits its local needs. Once the report is presented, OA will request that a copy of the report be sent to our office in order to assist us in our collection of data on the effectiveness of SEPs statewide.

Although AB 547 does not require the annual meeting be a prerequisite to county or city authorization of SEPs, the meeting must:

Ms. Yvette Rincon
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- Take place on an annual basis (H&S Code Section 121349.2);
- Provide local government, local public health officials, law enforcement, and the public the opportunity to comment on SEPs (H&S Code Sections 121349.2 and 121349.3);
- Provide opportunity for local stakeholders to comment (H&S Code Section 121349.3);
- Take place after sufficient notice be given to the public to assure adequate public participation (H&S Code Section 121349.3); and
- Provide information from the local health officer on the status of SEPs (H&S Code Section 121349.3).

If you have any questions or would like additional copies of this letter sent to individuals or organizations within your city or county, please contact Alessandra Ross, Injection Drug Use Policy and Program Coordinator, HIV Prevention Policy and Program Development Section, OA, at (916) 449-5796 or e-mail: aross@dhs.ca.gov.

Sincerely,



Kevin Farrell, L.C.S.W., Chief
HIV Education and Prevention
Services Branch
Office of AIDS

cc: Ms. Alessandra Ross
HIV Prevention Policy and Program
Development Section
Office of AIDS
California Department of Health Services
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P.O. Box 997426
Sacramento, CA 95899-7426

Assembly Bill No. 547

CHAPTER 692

An act to amend Section 11364.7 of, and to add Chapter 18 (commencing with Section 121349) to Part 4 of Division 105 of, the Health and Safety Code, relating to clean needle and syringe exchange.

[Approved by Governor October 7, 2005. Filed with Secretary of State October 7, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 547, Berg. Clean needle and syringe exchange projects.

Existing law authorizes pharmacists and physicians to furnish hypodermic needles and syringes without a prescription or permit for human use in the administration of insulin or adrenaline.

Existing law prohibits any public entity, its agents, or employees from being subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis.

This bill would instead authorize cities, counties, or cities and counties to have a clean needle and syringe exchange project that, in consultation with the State Department of Health Services, authorizes this exchange, as recommended by the United States Secretary of Health and Human Services and as part of a network of comprehensive services.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The rapidly spreading acquired immunodeficiency syndrome (AIDS) epidemic, and the more recent spread of blood-borne hepatitis, pose an unprecedented public health crisis in California, and threaten, in one way or another, the life and health of every Californian.

(b) Injection drug users are the second largest group at risk of becoming infected with the human immunodeficiency virus (HIV) and developing AIDS, and they are the primary source of heterosexual, female, and perinatal transmission in California, the United States, and Europe.

(c) According to the Office of AIDS, injection drug use has emerged as one of the most prevalent risk factors for new AIDS cases in California.

(d) Studies indicate that the lack of sterile needles available on the streets, and the existence of laws restricting needle availability promote needle sharing, and consequently the spread of HIV among injection drug users. The sharing of contaminated needles is the primary means of HIV transmission within the injection drug user population.

(e) Most injection drug users use a variety of drugs, mainly heroin, cocaine, and amphetamines. Because amphetamine- and cocaine-injecting drug users inject more frequently than heroin users, their risk for HIV infection is higher.

SEC. 2. Section 11364.7 of the Health and Safety Code is amended to read:

11364.7. (a) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 18 (commencing with Section 121349) of Part 4 of Division 105.

(b) Except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished by imprisonment in a county jail for not more than one year, or in the state prison.

(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years his or her junior, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in

the course of the licensee's business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471.

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

SEC. 3. Chapter 18 (commencing with Section 121349) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 18. CLEAN NEEDLE AND SYRINGE EXCHANGE PROGRAM

121349. (a) The Legislature finds and declares that scientific data from needle exchange programs in the United States and in Europe have shown that the exchange of used hypodermic needles and syringes for clean hypodermic needles and syringes does not increase drug use in the population, can serve as an important bridge to treatment and recovery from drug abuse, and can curtail the spread of human immunodeficiency virus (HIV) infection among the intravenous drug user population.

(b) In order to attempt to reduce the spread of HIV infection and blood-borne hepatitis among the intravenous drug user population within California, the Legislature hereby authorizes a clean needle and syringe exchange project pursuant to this chapter in any city and county, county, or city upon the action of a county board of supervisors and the local health officer or health commission of that county, or upon the action of the city council, the mayor, and the local health officer of a city with a health department, or upon the action of the city council and the mayor of a city without a health department.

(c) The authorization provided under this section shall only be for a clean needle and syringe exchange project as described in Section 121349.1

121349.1. A city and county, or a county, or a city with or without a health department, that acts to authorize a clean needle and syringe exchange project pursuant to this chapter shall, in consultation with the State Department of Health Services, authorize the exchange of clean hypodermic needles and syringes, as recommended by the United States Secretary of Health and Human Services, subject to the availability of funding, as part of a network of comprehensive services, including treatment services, to combat the spread of HIV and blood-borne hepatitis infection among injection drug users. Providers participating in an exchange project authorized by the county, city, or city and county pursuant to this chapter shall not be subject to criminal prosecution for

possession of needles or syringes during participation in an exchange project.

121349.2. Local government, local public health officials, and law enforcement shall be given the opportunity to comment on syringe exchange programs on an annual basis. The public shall be given the opportunity to provide input to local leaders to ensure that any potential adverse impacts on the public welfare of syringe exchange programs are addressed and mitigated.

121349.3. The health officer of the participating jurisdiction shall present annually at an open meeting of the board of supervisors or city council a report detailing the status of syringe exchange programs including, but not limited to, relevant statistics on blood-borne infections associated with needle sharing activity. Law enforcement, administrators of alcohol and drug treatment programs, other stakeholders, and the public shall be afforded ample opportunity to comment at this annual meeting. The notice to the public shall be sufficient to assure adequate participation in the meeting by the public. This meeting shall be noticed in accordance with all state and local open meeting laws and ordinances, and as local officials deem appropriate.

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