



Access to Sterile Syringes in California Exemptions to California's Paraphernalia Law

In order to stem the tide of AIDS, hepatitis, and other diseases spread through contaminated syringes, two key laws have been recently enacted: Senate Bill (SB) 1159 (Vasconcellos, Statutes of 2004) and Assembly Bill (AB) 547 (Berg, Statutes of 2005).

SB 1159

This legislation went into effect January 1, 2005. It provides that any amount of syringes, if they are "containerized for safe disposal" will not be considered illegal drug paraphernalia. The legislation allows any city or county to authorize pharmacies within their jurisdiction to sell or provide up to ten syringes to an adult without a prescription. The authorization does not need to be renewed (Health and Safety [H&S] Code Section 11364), and a county authorization encompasses the entire county, including the cities within the county boundaries. As of January 31, 2007, 18 local governments have authorized over-the-counter pharmacy sale of syringes.

AB 547

Counties and cities may also authorize syringe exchange programs (SEPs), in addition to or separate from pharmacy sale of syringes. AB 547, which went into effect January 1, 2006, simplified the authorization process (H&S Code Sections 121349-121349.3) by eliminating the need for a declaration of local emergency. County authorization covers the entire county, including the cities within county boundaries, and authorization does not need to be renewed. However, the authorizing body must hold annual meetings to hear reports on the impact of the program on the community's health and safety. To date, 15 counties and four cities have authorized SEPs within their jurisdictions.

Providers of Sterile Syringes

H&S Code Section 11364.7 protects local government organizations, their employees, and authorized subcontractors in local health jurisdictions that have authorized clean needle and syringe projects. The law states, "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."

Individuals and Possession of Syringes

Pursuant to local authorization of the provisions of SB 1159, adults may *obtain* up to ten syringes from a pharmacy or physician without a prescription. Individuals may also *possess* up to ten syringes from an authorized source. Authorized sources include pharmacies, physicians, and/or needle exchange programs in counties or cities that have authorized syringe exchange. In some jurisdictions, individuals are encouraged to keep a receipt from the pharmacy, or proof of participation in a needle exchange program. This change in paraphernalia law will sunset on the last day of 2010, unless subsequent legislation is passed to extend or remove the sunset provision.

In order to promote safe disposal of syringes statewide, the drug paraphernalia law was amended to exclude syringes that have been containerized for safe disposal. The language is clear that if used syringes are in a sharps container, they are no longer illegal drug paraphernalia. This change went into effect January 1, 2005, statewide, and has no sunset.

A common question concerns drug residue in a used syringe—can an individual be arrested for a drug in a used syringe? Although police may make such an arrest, an individual cannot be convicted in California unless they possess a “usable amount” of a controlled substance. The State Supreme Court decided this in the early 1970s, and therefore most police should be aware that a used syringe is not evidence of drug possession.

SB 1159 and AB 547 both create exemptions to California’s paraphernalia law, but do not eliminate syringes from the list of prohibited drug paraphernalia. In most jurisdictions, possession of a syringe may be considered probable cause to search individuals or their possessions. However, the intent of these laws is to *encourage* possession of syringes in order to reduce syringe sharing and disease transmission.

Risk of Needlestick Injury to Peace Officers

Peace officers are at high risk of exposure to hepatitis C or HIV due to accidental needlestick injuries. A recent study found that 29.7 percent of San Diego Police officers surveyed had suffered a needlestick injury on-duty, usually during a pat-down or search incident to arrest.¹ In the six months following a similar change in Connecticut law, needlestick injuries to police officers *decreased by 66 percent.*²

Additional Changes to the Law

SB 1159 also made it unlawful to discard or dispose of a hypodermic needle or syringe upon the grounds of a playground, beach, park, or any public or private elementary, vocational, junior high, or high school. The law also specifies that a person who knowingly violates this provision is guilty of a misdemeanor, and is punishable by a fine of between \$200 and \$2,000, by imprisonment in a county jail for up to six months, or both.

The California Department of Public Health

The California Department of Public Health (CDPH) must complete an evaluation of the effects of limited deregulation of syringe sale and possession, and deliver that report to the Legislature by January 15, 2010. CDPH is required to convene a diverse body of professionals to aid in the evaluation of the statute, including representatives of law enforcement and public health. CDPH/Office of AIDS provides technical support to local governments researching authorization and implementation of SB 1159. For more information, contact Alessandra Ross at (916) 449-5796 or e-mail at:

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¹ Lorentz J, Hill L, Samimi, B. Occupational needlestick injuries in a metropolitan police force. *American J. of Preventive Medicine* 2000; 18(2).

² Groseclose SL, Weinstein B, Jones TS, et al. “Impact of Increased Legal Access to Needles and Syringes on Practices of Injecting Drug Users and Police Officers – Connecticut, 1992-93” *Journal of Acquired Immune Deficiency Syndrome and Human Retrovirology* 1995; 10:73-81.