

## **Access to Sterile Syringes in California Exemptions to California's paraphernalia law**

California law criminalizes possession of syringes without a prescription; however, key exemptions have been made to California's paraphernalia law in order to stem the tide of HIV/AIDS, viral hepatitis and other diseases spread by the sharing of contaminated injection equipment. These laws are designed to allow possession of needles and syringes in order to encourage injection drug users (IDUs) to obtain sterile syringes sufficient for each injection, and return used syringes to syringe exchange programs or pharmacies for proper disposal.

Two key laws have been enacted that may have impact on how local law enforcement do their work: Senate Bill (SB) 1159 (Vasconcellos, Chapter 608, Statutes of 2004) and Assembly Bill (AB) 547 (Berg, Chapter 692, 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. [Health and Safety \(H&S\) Code Section 11364](#), and California [Business and Professions \(B&P\) Code Section 4140](#) allow any city or county to authorize pharmacies within their jurisdiction to sell or provide up to 10 syringes to an adult without a prescription. The authorization does not need to be renewed, and a county authorization encompasses the entire county, including the cities within the county boundaries. H&S Code Section 11364 and B&P Code Section 4140 also permit adults over the age of 18 to purchase, obtain and possess up to 10 syringes from an authorized source. As of June 1, 2011, twenty-three local governments have authorized over-the-counter pharmacy sale of syringes.

### **AB 547**

Counties and cities may also authorize syringe exchange programs, in addition to or separate from nonprescription pharmacy sale of syringes ([H&S Code Section 121349](#)). 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, twenty local governments have authorized syringe exchange programs.

### **Providers of Sterile Syringes**

[H&S Code Section 11364](#) 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 a DPDP, adults may obtain up to 10 syringes from a pharmacy or physician without a prescription. Individuals may also possess up to 10 syringes from an authorized source ([H&S Code Section 11364](#) and [B&P Code Section 4140](#).) 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 2018, unless the legislature and Governor pass subsequent legislation 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 minute amount of drugs in a used syringe? The California Supreme Court decided in *People v. Leal* (1966) 64 Cal. 2d. 504 that an individual cannot be convicted of drug possession unless they possess a “usable quantity” of a controlled substance. A used syringe cannot serve as 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. However, the intent of these laws is to *encourage* possession of syringes in order to reduce syringe sharing, disease transmission and syringe litter.

### **Risk of Needlestick Injury to Peace Officers**

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

### **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) completed an evaluation of the effects of limited deregulation of syringe sale and possession: it is available at [www.syringeaccess.com](http://www.syringeaccess.com). CDPH/Office of AIDS provides technical assistance to local governments researching authorization and implementation of syringe access programs. For more information call 916-449-5796 or email [Alessandra.Ross@cdph.ca.gov](mailto:Alessandra.Ross@cdph.ca.gov).

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

<sup>2</sup> 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