

# **STANISLAUS COUNTY CIVIL GRAND JURY**

## **2007-2008**

**CASE # 08-27**

### **CONTAINING THE EMERGING THREAT OF HEPATITIS C THROUGH A SYRINGE EXCHANGE PROGRAM**

#### **SUMMARY**

The purpose of this investigation was to examine the adequacy of Stanislaus County's response to the most prevalent emerging public health threat, the blood-borne pathogen disease Hepatitis C, with a reservoir in the injection drug user population and the potential to spread among the general population without adequate intervention. Hepatitis C is the second most frequently transmitted infectious disease in the county and the "GIANT IN THE CLOSET," according to Stanislaus County Public Health Department's Community Health Report of 2006. The Stanislaus County Civil Grand Jury, as a public health measure, initiated this investigation for the people of Stanislaus County.

The Stanislaus County Civil Grand Jury's review determined, from examining the existing legislation, studies, hearing testimony of expert witnesses and other resources, that a syringe exchange program is the best of the prevention measures available against the spread of Hepatitis C and other blood-borne pathogens.

The Stanislaus County Civil Grand Jury recommends that the provisions of AB 547 (Berg) be adopted by the Board of Supervisors of Stanislaus County to allow the Public Health Department or a contractor to provide syringe exchange program services in the county.

A syringe exchange program would reduce the rate of new infections from Hepatitis C, human immunodeficiency virus, which causes acquired immune response deficiency syndrome, (HIV/AIDS) and other blood-borne pathogen diseases in Stanislaus County. Further, a syringe exchange program would provide a means to exchange dirty syringes for sterile syringes, enabling proper disposal of dirty syringes and allowing for the introduction of other social and health services to the community.

Safe community disposal of used syringes is a significant public health issue. A syringe exchange program would reduce the spread of Hepatitis C and other blood-borne pathogens among law enforcement officials, health care workers, sanitation workers, and others exposed to discarded syringes, including injection drug users, their sexual partners and their children in Stanislaus County. Further, it would reduce significantly the ongoing risk to all health care workers who serve all populations without regard to medical, financial or social history.

A study titled Science-based literature on Syringe Exchange Programs (SEPs) 1996-2007, dated October 2007, by Joanna Berton Martinez, revealed the following information about syringe exchange programs:

- SEPs do reduce HIV transmission, (and, by extension, Hepatitis C)
- SEPs do increase enrollment in drug treatment programs
- SEPs do reduce risky behaviors and injection drug use
- SEPs do not promote substance abuse

In other studies, it was found that syringe exchange programs themselves do not encourage the use of illegal drugs and do not increase criminal activity.

## **BACKGROUND**

The Mission Statement of the Board of Supervisors of Stanislaus County reads:

öStanislaus County serves the public interest by promoting public health, safety, welfare and the local economy in an efficient, cost-effective manner.ö

In 2002 the Stanislaus County Hepatitis C Task Force was convened within the Public Health Department to create the Stanislaus County Hepatitis C Strategic Plan with a goal,

öTo reduce the number of people newly infected with Hepatitis C in Stanislaus County.ö

The Stanislaus County Hepatitis C Strategic Plan was completed in July 2006, and states in part:

öStanislaus County has taken a lead in addressing Hepatitis C since 2002. In 2002 it was identified as one of the emerging health crisis (sic) of this county. The Stanislaus County rate exceeds the State of California rate as well as Healthy People 2010 target rate. Based on this data, Stanislaus County has taken a proactive role in reducing the number of infections in the county.ö

However, the projection for 2008 sees a rise in reported cases. In the first quarter of calendar year 2008, 155 cases of Hepatitis C have been identified, which could indicate an annualized number of 620 cases will be reported, which is up from the previous year. That calculates to 11.9 newly identified cases of Hepatitis C each week.

Five actions steps were outlined in the Stanislaus County Hepatitis C Strategic Plan for the first year of a two-year strategy. All of the action steps have been completed except the most effective one,

öSeek to obtain approval to develop a syringe exchange program with the Board of Supervisors, Drug Advisory Board, and other interested parties."ö

According to the Stanislaus County Hepatitis C Strategic Plan, it was an explicit objective of the Task Force to:

öDevelop and implement a Hepatitis C education and prevention program for the general public, identified high risk populations, health care providers, law enforcement personnel, and other affected populations.ö

Among other objectives, the plan reads:

öDuring year two the Public Health Department should: Develop and implement a syringe exchange program.ö

The 2006 Stanislaus County Community Health Report, named Strength in Unity, noted that:

öIn fact, **hepatitis C is the second most frequent communicable disease within Stanislaus County**, second only to Chlamydia, a sexually transmitted infection.ö

The report noted this about Hepatitis C:

öIt has been labeled the GIANT IN THE CLOSET because it is a chronic, insidious infection, which is not detected until severe liver damage has occurred.ö

On August 10, 2006, the Stanislaus County Police Chiefs& Sheriff&s and District Attorney&s Association sent a letter to the Board of Supervisors on the subject of Syringe Distribution, which in pertinent part states:

öWe do believe there may be merit in a needle exchange program, depending on the structure employed.ö

Thus, both the public health and law enforcement approaches can co-exist with the common goal of harm reduction in Stanislaus County, through reducing the spread of blood-borne pathogen diseases by providing new syringes to injection drug users in exchange for dirty syringes in a syringe exchange program.

## **METHOD OF INVESTIGATION**

The Stanislaus County Civil Grand Jury conducted interviews with Health Services Agency (HSA) management and staff, law enforcement management and harm reduction professionals. The Stanislaus County Civil Grand Jury reviewed science based literature, Stanislaus County statistical data, laws, worldwide statistics and harm reduction information.

## **FINDINGS AND RECOMMENDATIONS**

### **Medical/Health Considerations**

#### **FINDING 1**

Hepatitis C is the second most frequently transmitted communicable disease within Stanislaus County. Calendar year 2008 has started with 155 cases the first quarter, indicating that an annualized number of 620 cases could be reported, which is up from the previous year. New cases of Hepatitis C are projected to be identified at the rate of 11.9 per week for 2008.

#### **FINDING 2**

The most effective prevention strategy against Hepatitis C among injection drug users is the employment of a sterile syringe and needle for each injection.

#### **FINDING 3**

According to the Stanislaus County Health Services Agency, öTable 9. Mode of exposure 2007 Hepatitis C cases in Stanislaus,ö of the 519 cases identified, 69.4% did not know how they got the disease, 16.4% acquired it through injection drug use, and the remainder through other means.

#### **FINDING 4**

Currently there are no vaccines available against Hepatitis C or HIV.

#### **FINDING 5**

According to testimony, in a recent study in Stanislaus County, 25% of those tested at drug treatment programs tested positive for Hepatitis C.

#### **FINDING 6**

Further, 33.4% of reported HIV/AIDS cases in Stanislaus County were related to injection drug use.

#### **FINDING 7**

Injection drug users become infected by and transmit blood-borne pathogen disease viruses to others primarily through sharing contaminated syringes.

#### **FINDING 8**

The National Institutes of Health estimates that in the United States, at least seventy percent (70%) of injection drug users have Hepatitis C and between fifteen and twenty percent (15%-20%) have HIV.

## **Harm Reduction Factors**

### **FINDING 9**

According to the HIV Prevention Bulletin issued by the US Department of Health and Human Services, Centers for Disease Control, Health Resources and Services Administration (HRSA), National Institute on Drug Abuse, (NIDA), Substance Abuse and Mental Health Services Administration (SAMHSA), and the Morbidity and Mortality Weekly Report of the Center for Disease Control, November 9, 2007, persons who inject drugs should use sterile syringes to prevent the transmission of HIV.

### **FINDING 10**

Syringes and equipment are shared for many reasons, but primarily because legal barriers have limited the access to sterile syringes. Removing legal sanctions against syringe possession would encourage proper disposal of dirty syringes through a legal syringe exchange program

### **FINDING 11**

In a syringe exchange program, a used syringe is required in exchange for a new syringe, thereby enabling the proper disposal of dirty syringes and not increasing the number of syringes circulating in the county.

### **FINDING 12**

Harm reduction strategies, such as allowing legal syringe exchange programs, reduce the spread of Hepatitis C and other blood-borne pathogens to law enforcement officials, health care providers, family members, newborn infants, and uninfected injection drug users.

### **FINDING 13**

Outreach projects associated with syringe exchange programs provide introductions to early medical treatment for other problems affecting injection drug users. Services offered include risk reduction behavior counseling, housing programs, recovery programs, job placement, and referrals to related services.

### **FINDING 14**

Safe community disposal of used syringes is a significant public health issue. A legal syringe exchange program would reduce the spread of Hepatitis C and HIV/AIDS among people, their sexual partners, their children, law enforcement officials, health care providers, sanitation workers and others exposed to discarded syringes in Stanislaus County.

## **Cost factors and related budget savings**

### **FINDING 15**

HIV/AIDS patients are among the most expensive patients in the public health system. The direct lifetime medical cost for an HIV/AIDS patient from the time of diagnosis until death is estimated to be between \$144,000 and \$600,000.

### **FINDING 16**

The direct lifetime medical cost of a Hepatitis C patient is estimated to be \$100,000. If a liver transplant is needed the additional cost would be at least \$300,000.

### **FINDING 17**

The estimated costs of treatment of Hepatitis C and HIV do not include the social implications of lost wages, disability benefits, unemployment or the fiscal impact of lost tax revenue and Social Security contributions.

### **FINDING 18**

A clean syringe costs pennies compared to the lifetime medical and social costs of caring for chronically ill patients.

### **FINDING 19**

The 2007 budget for the Fresno syringe exchange program, a private enterprise, was \$47,000. None of its budget was subsidized by Fresno County. It was funded by grants and donations.

### **FINDING 20**

A study titled Science-based literature on Syringe Exchange Programs (SEPs) 1996-2007, dated October 2007, by Joanna Berton Martinez, reveals the following information:

- SEPs reduce HIV transmission
- SEPs do increase enrollment in drug treatment programs
- SEPs do reduce risky behaviors and injection drug use
- SEPs do not promote substance abuse.

### **FINDING 21**

Syringe exchange programs do not encourage the use of injection drugs and do not increase criminal activity.

## **Enabling Legislation**

### **FINDING 22**

Assembly Bill 547, Berg, was signed by Governor Schwarzenegger and went into effect January 1, 2006. The bill amends previous legislation (AB 136, Mazzoni) to allow counties and cities to authorize syringe exchange programs in their jurisdictions without the necessity to declare a state of local emergency. The purpose of AB 547 is to simplify the procedure for syringe exchange program authorization in order to encourage the integration of syringe exchanges into Hepatitis C and HIV prevention efforts throughout the State of California.

### **FINDING 23**

Five years ago, AB 136 was signed into law, creating Health and Safety Code Section 11364.7(a). The law reads, in part:

“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 a declaration of a local emergency due to the existence of a critical local public health crisis.”

Health and Safety Code Section 11364.7(a) protected local government organizations, their employees, and authorized subcontractors in local health jurisdictions that declared a local health emergency from criminal prosecution for distribution of syringes.

The requirement to declare a local emergency has been rescinded by AB 547.

## **Support for Syringe Exchange Programs**

### **FINDING 24**

The Stanislaus County Civil Grand Jury finds that there is considerable support for syringe exchange programs and for AB 547. National organizations in support of syringe exchange programs include the following:

- American Bar Association
- American Medical Association
- American Academy of Pediatrics
- American Nurses Association
- American Public Health Association
- American Pharmaceutical Association
- American Psychological Association
- American Red Cross
- Council of State and Territorial Epidemiologists

National Black Caucus of State Legislators  
National Black Police Officers Association  
National Alliance of State and Territorial AIDS Directors  
National Association of State Alcohol and Drug Abuse Directors  
U.S. Conference of Mayors  
U.S. Government Accounting Office  
Health & Human Services  
National Institute on Drug Abuse

### **FINDING 25**

California supporters of AB 547 and syringe exchange programs include:

Health Officers Association of California  
California Chapter, National Association of Social Workers  
California Narcotic Officers Association  
California Medical Association  
California Peace Officers Association  
California State Association of Counties  
County Alcohol and Drug Program Administrators Association of California  
County Health Executives Association of California

### **FINDING 26**

Stanislaus County supporters of AB 547 and a syringe exchange program include:

Advisory Board for Substance Abuse Programs of Stanislaus County  
Hepatitis C Coalition of Stanislaus County  
Local Implementation Group of Stanislaus County

### **RECOMMENDATION 1**

The Stanislaus County Civil Grand Jury recommends that the Stanislaus County Board of Supervisors adopt a resolution enabling the provisions of AB 547, thus allowing the operation of a syringe exchange program within Stanislaus County.

### **RECOMMENDATION 2**

The Stanislaus County Civil Grand Jury recommends that the Stanislaus County Board of Supervisors direct the Public Health Department of the Health Services Agency to provide a syringe exchange program, or to seek a contractor, to provide syringe exchange program services within Stanislaus County.

### **RESPONSES REQUIRED**

Stanislaus County Board of Supervisors  
Stanislaus County Department of Public Health

## **APPENDIX**

Garrett, Laurie. 1994. THE COMING PLAGUE: NEWLY EMERGING DISEASES IN A WORLD OUT OF BALANCE. Penguin Books, New York. ISBN 0-374-12646-1 (hc.), ISBN 0 14 02.5091 3 (pbk.)

Martinez, Joanna Berton. October 9, 2007. SCIENCE-BASED LITERATURE ON SYRINGE EXCHANGE PROGRAMS (SEPs) 1996-2007. Retrieved April 20, 2008 from: <http://www.harmreduction.org/article.php?id=766>.

Moreno, Edward L. Director and Health Officer. December 2005. HEPATITIS C VIRUS AND HUMAN IMMUNODEFICIENCY VIRUS TRANSMISSION AMONG INJECTION DRUG USERS IN FRESNO COUNTY. A Health Status Report by the Fresno County Department of Community Health. Fresno, California.

The Board of Supervisors of the County of Stanislaus. January 25, 2005. Action Agenda Summary, Health Services Agency, Board Agenda B-7. APPROVAL OF THE STATE DEPARTMENT OF HEALTH AIDS MASTER AGREEMENT AND MEMORANDUM OF UNDERSTANDING FOR JULY 1, 2004 THROUGH JUNE 30, 2007.

Stanislaus County Health Services Agency. April 1, 2008. HEPATITIS C UPDATE.

Stanislaus County Health Services Agency. 2006. STRENGTH IN UNITY. Stanislaus County Community Health Report.

Stanislaus County Hepatitis C Task Force. July 2006. STANISLAUS COUNTY HEPATITIS C STRATEGIC PLAN. Stanislaus County Health Services Agency.

Stanislaus County Police Chiefs & Sheriff's and District Attorney's Association. August 10, 2006. Letter to the Stanislaus County Board of Supervisors in RE: Syringe Distribution.

California Department of Public Health. Office of AIDS, HIV/AIDS Case Registry Section. HIV/AIDS CASES BY COUNTY IN CALIFORNIA CUMULATIVE DATA AS OF FEBRUARY, 2008.

California Department of Public Health. Office of AIDS, HIV/AIDS Case Registry Section. CALIFORNIA HIV/AIDS MONTHLY SUMMARY REPORT CASES REPORTED AS OF FEBRUARY 29, 2008.

California Health and Safety Code 11364 to 11376. Retrieved June 9, 2008 from: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=11001-12000&file=11364-11376>.

Center for AIDS Prevention Studies. Revised December 1998. DOES HIV NEEDLE EXCHANGE WORK? University of California, San Francisco. Retrieved April 22, 2008, from: <http://www.caps.ucsf.edu/pubs/FS/NEPrev.php>.

United States Centers for Disease Control and Prevention. STATE AND LOCAL POLICIES REGARDING INTRAVENOUS DRUG USERSØACCESS TO STERILE SYRINGES. December 2005. Retrieved April 22, 2008 from:  
<http://www.thebody.com/content.whatis/art17226.html>.

United States Centers for Disease Control and Prevention. SYRINGE EXCHANGE PROGRAMS---UNITED STATES 2005. Morbidity and Mortality Weekly Report, November 9, 2007 / 56(44); 1164-1167. Retrieved April 22, 2008 from:  
[http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5644a4.htm?s\\_cid=mm5644a4\\_e](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5644a4.htm?s_cid=mm5644a4_e).

Temple University of the Commonwealth System of Higher Education, Beasley School of Law. June 24, 2002, Revised June 2, 2005. IMPACT OF CRIMINAL LAW ON THE SAFE DISPOSAL OF USED SYRINGES. Memorandum.

**STATE LEGISLATION:**

BILL NUMBER: AB 547      CHAPTERED  
BILL TEXT

CHAPTER 692  
FILED WITH SECRETARY OF STATE OCTOBER 7, 2005  
APPROVED BY GOVERNOR OCTOBER 7, 2005  
PASSED THE ASSEMBLY AUGUST 29, 2005  
PASSED THE SENATE AUGUST 23, 2005  
AMENDED IN SENATE JULY 11, 2005

INTRODUCED BY Assembly Members Berg and Richman  
(Coauthors: Assembly Members Bass, Calderon, Chan, Chu, Cohn, De La Torre, Dymally, Evans, Goldberg, Hancock, Jones, Koretz, Laird, Leno, Levine, Lieber, Montanez, Mullin, Oropeza, Pavley, Ridley-Thomas, Saldana, Salinas, and Vargas)  
(Coauthors: Senators Alquist, Chesbro, Kehoe, Kuehl, Lowenthal, Migden, and Romero)

FEBRUARY 16, 2005

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.

**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.

California Health and Safety Code, Division 105, Part 4, Chapter 18,  
**HEALTH AND SAFETY CODE SECTION 121349-121349.3**

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 clean needle and 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 clean needle and 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 clean needle and syringe exchange programs including, but not limited to, relevant statistics on blood-borne infections associated with needle sharing activity and the use of public funds for these programs. 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.

**BILL NUMBER: SB 1159 CHAPTERED  
BILL TEXT**

CHAPTER 608  
FILED WITH SECRETARY OF STATE SEPTEMBER 20, 2004  
APPROVED BY GOVERNOR SEPTEMBER 20, 2004  
PASSED THE SENATE AUGUST 26, 2004  
PASSED THE ASSEMBLY AUGUST 24, 2004  
AMENDED IN ASSEMBLY AUGUST 17, 2004  
AMENDED IN ASSEMBLY JULY 2, 2004  
AMENDED IN ASSEMBLY JUNE 21, 2004  
AMENDED IN SENATE MAY 11, 2004  
AMENDED IN SENATE MARCH 16, 2004

INTRODUCED BY Senator Vasconcellos

(Principal coauthors: Assembly Members Berg and Nation)  
(Coauthors: Assembly Members Goldberg, Hancock, Jerome Horton, Koretz, Laird, Levine, and Vargas)

FEBRUARY 2, 2004

An act to amend Sections 4145 and 4147 of, and to repeal Section 4146 of, the Business and Professions Code, to amend Section 11364 of, and to add Chapter 13.5 (commencing with Section 121285) to Part 4 of Division 105 of, the Health and Safety Code, relating to hypodermic needles and syringes.

**LEGISLATIVE COUNSEL'S DIGEST**

**SB 1159, Vasconcellos. Hypodermic needles and syringes.**

(1) Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes. Under existing law, a prescription is required to purchase a hypodermic needle or syringe for human use, except to administer adrenaline or insulin.

This bill, subject to authorization by a county or city, would authorize a licensed pharmacist, until December 31, 2010, to sell or furnish 10 or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project, which would be created by the bill to evaluate the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.

The bill would require a pharmacy that participates in the Disease and Demonstration Project pursuant to county or city authorization to comply with specified requirements, including registering with the local health department. The bill would require the State Department of Health Services, in conjunction with an advisory panel, to evaluate the effects of allowing the sale of hypodermic needles or syringes without prescription, and

would require a report to be submitted to the Governor and the Legislature by January 15, 2010. The bill would encourage the State Department of Health Services to seek funding from private and federal sources to pay for the evaluation. The bill would impose various other duties on local health departments, thereby imposing a state-mandated local program. The demonstration program would terminate on December 31, 2010.

Alternatively, the bill would also authorize the sale or furnishing of hypodermic needles or syringes to a person for human use without a prescription if the person is known to the furnisher and has previously provided the furnisher with a prescription or other proof of a legitimate medical need.

The bill would make 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 bill would make a knowing violation of this prohibition a crime, thereby imposing a state-mandated local program.

(2) Existing law requires a pharmacist to keep detailed records of nonprescription sales of hypodermic needles and syringes. This bill would delete that requirement.

(3) Existing law prohibits the possession and sale of drug paraphernalia. This bill, until December 31, 2010, subject to authorization by a county or city, would allow a person to possess 10 or fewer hypodermic needles or syringes if acquired through an authorized source.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(5) This bill would make the operation of its provisions contingent upon the enactment of SB 1362.

#### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4145 of the Business and Professions Code is amended to read:

4145. (a) Notwithstanding any other provision of law, a pharmacist or physician may, without a prescription or a permit, furnish hypodermic needles and syringes for human use, and a person may, without a prescription or license, obtain hypodermic needles and syringes from a pharmacist or physician for human use, if one of the following requirements is met:

(1) The person is known to the furnisher and the furnisher has previously been provided a prescription or other proof of a legitimate medical need requiring a hypodermic needle or syringe to administer a medicine or treatment.

(2) Pursuant to authorization by a county, with respect to all of the territory within the county, or a city, with respect to the territory within the city, for the period commencing January 1, 2005, and ending December 31, 2010, a pharmacist may furnish or sell 10 or fewer hypodermic needles or syringes at any one time to a person 18 years of age or older if the pharmacist works for a pharmacy that is registered for the Disease Prevention Demonstration Project pursuant to Chapter 13.5 (commencing with Section 121285) of Part 4 of Division 105 of the Health and Safety Code and the pharmacy complies with the provisions of that chapter.

(b) Notwithstanding any other provision of law, a pharmacist, veterinarian, or person licensed pursuant to Section 4141 may, without a prescription or license, furnish hypodermic needles and syringes for use on animals, and a person may, without a prescription or license, obtain hypodermic needles and syringes from a pharmacist, veterinarian, or person licensed pursuant to Section 4141 for use on animals, providing that no needle or syringe shall be furnished to a person who is unknown to the furnisher and unable to properly establish his or her identity.

SEC. 2. Section 4146 of the Business and Professions Code is repealed.

SEC. 3. Section 4147 of the Business and Professions Code is amended to read:

4147. (a) For the purposes of this section, "playground" means any park or outdoor recreational area specifically designed to be used by children that has play equipment installed or any similar facility located on public or private school grounds or county parks.

(b) Any hypodermic needle or syringe that is to be disposed of, shall be contained, treated, and disposed of, pursuant to Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code.

(c) It is 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.

(d) A person who knowingly violates subdivision (c) is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200) and not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for up to six months, or by both that fine and imprisonment.

(e) Subdivision (c) does not apply to the containment, treatment, and disposal of medical sharps waste from medical care or first aid services rendered on school grounds, nor to the containment, treatment, and disposal of hypodermic needles or syringes used for instructional or educational purposes on school grounds.

**SEC. 4.** Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in

subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in

subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a container that meets state and federal standards for disposal of sharps waste.

(c) Pursuant to authorization by a county, with respect to all of the territory within the county, or a city, with respect to the territory within in the city, for the period commencing January 1, 2005, and ending December 31, 2010, subdivision (a) shall not apply to the possession solely for personal use of 10 or fewer hypodermic needles or syringes if acquired from an authorized source.

**SEC. 5.** Chapter 13.5 (commencing with Section 121285) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

#### **CHAPTER 13.5. DISEASE PREVENTION DEMONSTRATION PROJECT**

121285. (a) The Disease Prevention Demonstration Project, a collaboration between pharmacies and local and state health officials, is hereby authorized for the purpose of evaluating the long-term desirability of allowing licensed pharmacists to furnish or sell nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.

(b) The State Department of Health Services shall evaluate the effects of allowing pharmacists to furnish or sell a limited number of hypodermic needles or syringes without prescription, and provide a report to the Governor and the Legislature on or before January 15, 2010. The State Department of Health Services is encouraged to seek funding from private and federal sources to pay for the evaluation. The report shall include, but need not be limited to, the effect of nonprescription hypodermic needle or syringe sale on all of the following:

- (1) Hypodermic needle or syringe sharing practice among those who inject illegal drugs.
- (2) Rates of disease infection caused by hypodermic needle or syringe sharing.
- (3) Needlestick injuries to law enforcement officers and waste management employees.
- (4) Drug crime or other crime in the vicinity of pharmacies.
- (5) Safe or unsafe discard of used hypodermic needles or syringes.

(6) Rates of injection of illegal drugs.

(c) The State Department of Health Services shall convene an uncompensated evaluation advisory panel comprised of all of the following: two or more specialists in the control of infectious diseases; one or more representatives of the California State Board of Pharmacy; one or more representatives of independent pharmacies; one or more representatives of chain pharmacy owners; one or more representatives of law enforcement executives, such as police chiefs and sheriffs; one or more representatives of rank and file law enforcement officers; a specialist in hazardous waste management from the State Department of Health Services; one or more representatives of the waste management industry; and one or more representatives of local health officers.

(d) In order to furnish or sell nonprescription hypodermic needles or syringes as part of the Disease Prevention Demonstration Project in a county or city that has provided authorization pursuant to Section 4145 of the Business and Professions Code, a pharmacy shall do all of the following:

(1) Register with the local health department by providing a contact name and related information, and certify that it will provide, at the time of furnishing or sale of hypodermic needles or syringes, written information or verbal counseling on all of the following:

- (A) How to access drug treatment.
- (B) How to access testing and treatment for HIV and hepatitis C.
- (C) How to safely dispose of sharps waste.

(2) Store hypodermic needles and syringes so that they are available only to authorized personnel, and not openly available to customers.

(3) In order to provide for the safe disposal of hypodermic needles and syringes, a registered pharmacy shall provide one or more of the following options:

- (A) An onsite safe hypodermic needle and syringe collection and disposal program.
- (B) Furnish or make available for purchase mail-back sharps disposal containers authorized by the United States Postal Service that meet applicable state and federal requirements, and provide tracking forms to verify destruction at a certified disposal facility.
- (C) Furnish or make available for purchase personal sharps disposal containers that meet state and federal standards for disposal of medical waste.

(e) Local health departments shall be responsible for all of the following:

(1) Maintaining a list of all pharmacies within the local health department's jurisdiction that have registered under the Disease Prevention Demonstration Project.

(2) Making available to pharmacies written information that may be provided or reproduced to be provided in writing or orally by the pharmacy at the time of furnishing or the sale of nonprescription hypodermic needles or syringes, including all of the following:

- (A) How to access drug treatment.
  - (B) How to access testing and treatment for HIV and hepatitis C.
  - (C) How to safely dispose of sharps waste.
- (f) As used in this chapter, "sharps waste" means hypodermic needles, syringes, and lancets.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. This act shall become operative only if Senate Bill 1362 of the 2003-04 Regular Session is enacted and becomes effective on or before January 1, 2005.