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(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ...
# PUBLIC HEARING - COMMITTEE RECORDS

## 1999-00

(session year)

## Assembly

(Assembly, Senate or Joint)

## Committee on ... Judiciary and Personal Privacy (AC-JPP)

## COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

## INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (May/2012)

# Assembly

## Record of Committee Proceedings

## Committee on Judiciary and Personal Privacy

**Assembly Bill 223**

Relating to: drug paraphernalia.

By Representatives Gundrum, Ladwig, Ryba, Stone, Sykora, Klusman, Grothman, Porter, Ainsworth, Kestell, Brandemuehl, Seratti, Albers, Spillner, Kelso, Powers, Montgomery, Skindrud, Freese, Plale, Staskunas, Kreibich and Pettis; cosponsored by Senators Drzewiecki, Roessler, Darling, Fitzgerald, Schultz, Farrow, Lazich, Huelsman, Welch and Panzer.

March 23, 1999 — Referred to committee on Judiciary and Personal Privacy.

May 11, 1999 — **PUBLIC HEARING HELD**

Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Absent: (0) None.

Appearances for

- Representative Mark Gundrum, 84th Assembly District
- Senator Gary Drzewiecki, 30th Senate District

Appearances against

- None.

Appearances for Information Only

- Stan Kocos, AIDS Resources Center

Registrations for

- Senator Robert Welch, 14th Senate District

Registrations against

- None.

September 14, 1999 — **EXECUTIVE SESSION**

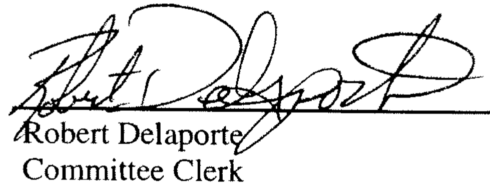
Present: (9) Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Colon, Hebl and Staskunas.

Absent: (0) None.

Moved by Representative Gundrum, seconded by Representative Staskunas, that **Assembly Bill 223** be recommended for passage.

| | | |
|---|---|---|
| Ayes: | (8) | Representatives Huebsch, Gundrum, Walker, Suder, Grothman, Sherman, Hebl and Staskunas. |
| Noes: | (1) | Representative Colon. |
| Absent: | (0) | None. |

PASSAGE RECOMMENDED, Ayes 8, Noes 1, Absent 0



Robert Delaporte
Committee Clerk

# Vote Record

## Assembly Committee on Judiciary and Personal Privacy

Date: 9-14-99
Moved by: Gundrum
Seconded by: Staskunas
AB: 223
AB:
SB:
Clearinghouse Rule:
Appointment:
AJR:
SJR:
Other:
A:
SR:

A/S Amdt:
A/S Amdt: to A/S Amdt:
A/S Sub Amdt:
A/S Amdt: to A/S Sub Amdt:
A/S Amdt: to A/S Amdt: to A/S Sub Amdt:

Be recommended for:

- [X] Passage
- [ ] Introduction
- [ ] Adoption
- [ ] Rejection
- [ ] Indefinite Postponement
- [ ] Tabling
- [ ] Concurrence
- [ ] Nonconcurrence
- [ ] Confirmation

| Committee Member | Aye | No | Absent | Not Voting |
|---|---|---|---|---|
| Rep. Michael Huebsch, Chair | ✓ | | | |
| Rep. Mark Gundrum | ✓ | | | |
| Rep. Scott Walker | ✓ | | | |
| Rep. Scott Suder | ✓ | | | |
| Rep. Glenn Grothman | ✓ | | | |
| Rep. Gary Sherman | ✓ | | | |
| Rep. Pedro Colon | | ✓ | | |
| Rep. Tom Hebl | ✓ | | | |
| Rep. Tony Staskunas | ✓ | | | |
| Totals: | 8 | 1 | — | — |

[X] Motion Carried [ ] Motion Failed

FORWARD
E PLURIBUS UNUM

ISTRICT ATTORNEY

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BOX 23600
EN BAY, WISCONSIN 54305-3600

NE (920) 448-4190
920) 448-4189

JOHN P. ZAKOWSKI
DISTRICT ATTORNEY

Victim Witness Coordinator
Karen H. Dorau
(920) 448-4194

istrict Attorney

ee
Mares

Assistant District Attorney
Dana J. Johnson
Wendy W. Lemkuil
John F. Luetscher
Kendall M. Kelley
Donsia R. Strong-Hill

March 29, 1999

enator Gary Drzewiecki
19 Martin Luther King, Jr. Blvd.
adison, WI 53703

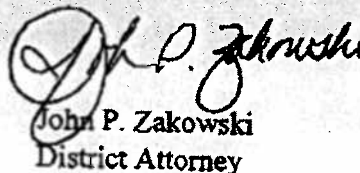
: 1999 Assembly Bill 223

ear Senator Drzewiecki:

I have reviewed 1999 Assembly Bill 223 which amends the statutes to allow ug paraphernalia" to include items such as a tobacco pipe which contains a controlled bstance or has on it any residue of a controlled substance. Our office supports this bill.

Drug use is drug use. Unfortunately, surveys indicate that local teenage drug use been increasing. The ability to use otherwise legitimate articles to engage in illegal vity and not be able to hold someone responsible for their action does not serve the lic. We have used the drug paraphernalia statute on a more regular basis. This mmon sense expansion of the definition to include items which are used for illicit drug e should be passed.

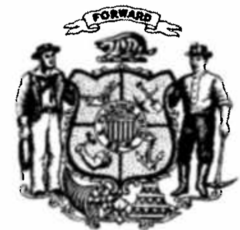
Sincerely,



John P. Zakowski
District Attorney

Z/hs

WISCONSIN STATE LEGISLATURE



# WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: April 27, 1999

TO: REPRESENTATIVE MARK GUNDRUM

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: Application of 1999 Assembly Bill 223 to Employes of and Volunteers for Needle Exchange or Disposal Programs

You ask whether 1999 Assembly Bill 223, relating to drug paraphernalia, might place employes of and volunteers for needle exchange or needle disposal programs at risk for violating state statutes prohibiting possession or delivery of drug paraphernalia.

For purposes of this memorandum, it is assumed that a needle exchange or disposal program is a lawful program that collects hypodermic syringes, needles and other objects that have been used to inject substances into the human body and disposes the needles or provides unused needles in exchange for the used needles.

## *1. Current Law*

Current law generally prohibits the possession, manufacture or delivery of drug paraphernalia. [See, generally, subch. VI of ch. 961, Stats.] "Drug paraphernalia" is given a lengthy definition in s. 961.571 (1) (a), Stats. Expressly ***excluded*** from the definition of "drug paraphernalia" are: (a) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body; and (b) any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products. [s. 961.571 (1) (b), Stats.]

The Wisconsin Court of Appeals has concluded that under the plain language of the exclusion to the definition of drug paraphernalia, a device otherwise excluded from the definition does not become drug paraphernalia even if it contains or has a residue of a controlled substance showing that it was used to ingest drugs. [*State v. Martinez*, 210 Wis. 2d 397, 563 N.W.2d 922 (Ct. App. 1997).] Thus, in *Martinez*, the court of appeals reversed a judgment of conviction for possession of drug paraphernalia where the conviction was based on a tobacco pipe that contained a residue of TCH (tetrahydrocannabinols).

## 2. *Assembly Bill 223*

Assembly Bill 223, in response to *Martinez*, provides that a device currently excluded from the definition of "drug paraphernalia" is included within the definition of "drug paraphernalia" if it contains a controlled substance or has on it any residue of a controlled substance. Consequently under the bill, a hypodermic syringe, needle or other similar object or an item designed or primarily intended for use with tobacco products is drug paraphernalia if it contains a controlled substance or contains any residue of a controlled substance.

## 3. *Discussion*

Apparently, the concern that has been conveyed to you is that, by revising the definition of "drug paraphernalia," Assembly Bill 223 places needle exchange program employes and volunteers at risk for violating prohibitions against possession or delivery of drug paraphernalia when needles collected or disposed of contain a controlled substance or controlled substance residue.

The prohibition against ***possession*** of drug paraphernalia prohibits the use, or possession with the primary intent to use, of drug paraphernalia 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 a controlled substance in violation of ch. 961, Stats., the Controlled Substances Act. [s. 961.573 (1), Stats.] Thus, the possession must be accompanied with the primary intent to use the drug paraphernalia for a violation to occur. (Under s. 961.572 (3), Stats., in determining whether an item is primarily intended for a particular use, the subjective intent of the defendant is to be considered.) An employe or volunteer of a needle exchange program who is acting within the scope of his or her duties as an employe or volunteer would not be in violation of the possession prohibition.

The prohibition against ***delivering or possessing with intent to deliver*** drug paraphernalia requires that the actor have knowledge that it will be primarily 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 a controlled substance in violation of ch. 961. [ss. 961.574 and 961.575, Stats.] If the needle exchange program supplies only new needles, as assumed in this memorandum, those needles are not drug paraphernalia under that term's current definition or as amended by Assembly Bill 223.

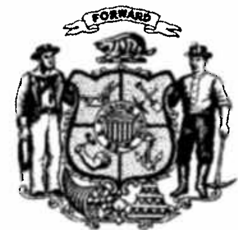
It appears that only if the needle exchange program reuses needles that have already been used with controlled substances would an employe or volunteer risk violation of the prohibition against possession with the intent to deliver drug paraphernalia. If needles are "recyclable," then at the point of collection and until the controlled substance or controlled substance residue is removed the volunteer or employe might be considered to be in possession of drug paraphernalia with intent to deliver. Presumably, at the point of delivery, the controlled substance or controlled substance residue has been removed and the needle is no longer drug paraphernalia. Again, however, if needles are not recycled, as assumed, the employe or volunteer would not appear to be in violation of the prohibition against possession with intent to deliver drug paraphernalia.

Thus, assuming needle exchange programs do not sterilize and recycle used needles, it does not appear that Assembly Bill 223 places program employes and volunteers at risk for violating state laws prohibiting the possession, or possession with intent to deliver, of drug paraphernalia.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:jal;ksm

WISCONSIN STATE LEGISLATURE



# WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: September 13, 1999

TO: REPRESENTATIVE MICHAEL HUEBSCH, CHAIRPERSON, ASSEMBLY COMMITTEE ON JUDICIARY

FROM: Don Dyke, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 223, Relating to Drug Paraphernalia

This memorandum, prepared at your request, describes the provisions of the above-captioned proposal, which is currently before the Assembly Committee on Judiciary. A public hearing on the proposal was held on May 11, 1999.

## *A. CURRENT LAW; STATE V. MARTINEZ*

Current law generally prohibits the use, manufacture, delivery and the advertisement of drug paraphernalia. [See, generally, subch.VI of ch. 961, Stats.] The prohibitions include:

1. Use, or possession with the primary intent to use, of drug paraphernalia in connection with specified activities relating to controlled substances [s. 961.573, Stats.];

2. Delivery, possession with intent to deliver, or manufacture with intent to deliver, of drug paraphernalia, knowing that it will be primarily used in specified activities relating to controlled substances [ss. 961.574 and 961.575, Stats.]; and

3. Advertisement of drug paraphernalia, knowing that the purpose of the advertisement is to promote the sale of objects designed for use or primarily intended for use as drug paraphernalia. [s. 961.576, Stats.]

"Drug paraphernalia" is given a lengthy definition in s. 961.571 (1) (a), Stats. Expressly ***excluded*** from the definition of "drug paraphernalia" are: (1) hypodermic syringes, needles and other objects used or intended for use in injecting substances into the human body; and (2) any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products. [s. 961.571 (1) (b), Stats.]

The Wisconsin Court of Appeals has concluded that under the plain language of the exclusion to the definition of drug paraphernalia, a device otherwise excluded from the definition does not become drug paraphernalia even if it contains or has a residue of a controlled substance showing that it was used to ingest drugs. [*State v. Martinez*, 210 Wis. 2d 397, 563 N.W.2d 922 (Ct. App. 1997).] Thus, in *Martinez*, the court of appeals reversed a judgment of conviction for possession of drug paraphernalia where the conviction was based on a tobacco pipe that contained a residue of THC (tetrahydrocannabinols).

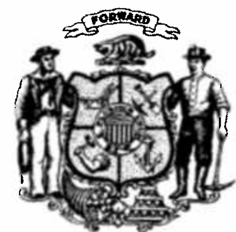
***B. ASSEMBLY BILL 223***

Assembly Bill 223, in response to *Martinez*, provides that a device currently excluded from the definition of "drug paraphernalia" is included within the definition of "drug paraphernalia" if it contains a controlled substance or has on it any residue of a controlled substance. Consequently, under the bill, a hypodermic syringe, needle or other similar object or an item designed or primarily intended for use with tobacco products is drug paraphernalia if it contains a controlled substance or contains any residue of a controlled substance.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:ksm:jal;wu

WISCONSIN STATE LEGISLATURE



ARCW

AIDS RESOURCE CENTER
OF WISCONSIN

LEADING WISCONSIN'S RESPONSE TO AIDS

Date?

**Statement on AB-223**

**Relating to Drug Paraphernalia**

**presented by**

**Stan Kocos**
**Director of Government Relations**
**AIDS Resource Center of Wisconsin**

222 STATE STREET MADISON, WI 53701-0728
608-258-9103 800-518-9910 FAX 608-258-9136 WWW.ARCW.ORG
APPLETON EAU CLAIRE GREEN BAY KENOSHA LA CROSSE MILWAUKEE MADISON SUPERIOR WAUSAU

Chairman Huebsch and members of the Committee, my name is Stan Kocos and I am the Director of Government Relations for the AIDS Resource Center of Wisconsin, Inc. (ARCW), a statewide provider of AIDS/HIV services.

I am here today to provide information about a significant public health concern, the proper collection and disposal of used syringes to protect the public from accidental infection by communicable diseases such as AIDS and Hepatitis. ARCW is concerned that AB-223, as introduced will result in the unintended consequence of discouraging the use of existing community based programs designed to properly dispose of used, possibly contaminated syringes. These programs serve the vital purpose of protecting the health of Wisconsin residents.

We recommend that the Committee delete any reference to syringes from the bill thereby addressing the tobacco product related issue that prompted the proposed legislation, while preserving the collection of potentially contaminated syringes.

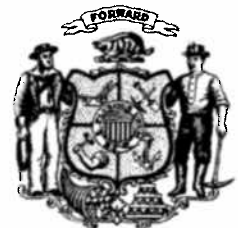
Wisconsin has reported more than 6,500 HIV cases and conservative estimates indicate that 10,000 additional state residents with HIV have not been tested. A recent Yale University research study found that the public health threat of HIV contaminated needles can remain for up to 28 days after HIV first enters the syringe. In addition, Hepatitis is also an increasing public health threat in Wisconsin.

In response to these concerns, programs based on sound public health strategies have been implemented in Wisconsin to reduce exposure from discarded syringes that may be contaminated with HIV and Hepatitis. Working strategies include syringe collection by local pharmacies, public health department collection and disposal projects and HIV prevention programs. ARCW participates in these strategies by collecting at least 400,000 used syringes each year, removing them from neighborhoods and communities and assuring their proper disposal so they pose no public health threat. By collecting and properly disposing of these syringes in accordance with federal law, the number of accidental needle sticks decrease. These programs are designed to protect the health of school children on playgrounds and in parks, law enforcement personal conducting searches, other public service workers and the general public.

As currently drafted, AB-223 will discourage syringe collection and disposal programs by exposing public and private agencies that implement these public health programs to prosecution under the drug paraphernalia statutes. It would also result in fewer individuals bringing syringes forward for safe disposal, again due to the threat of prosecution. Amending AB-223 to exempt public and private agency personnel from prosecution may appear to be a reasonable compromise, but in reality results in the same negative public health outcome of discouraging individuals to come forward with potentially tainted needles.

ARCW recommends deleting references to syringes from AB-223 to facilitate the continuation and expansion of organized syringe collection and disposal programs to protect the public health while still addressing the tobacco product related concerns that prompted this legislation. We believe that upon such action, the criminal justice and public health concerns can both be addressed by AB-223 and we urge your support of our recommendation.

# WISCONSIN STATE LEGISLATURE



State of Wisconsin
**Department of Health and Family Services**

Tommy G. Thompson, Governor
Joe Leean, Secretary

Date ?

**DHFS Commentary Regarding the Effect of AB 223 on HIV Prevention Efforts in Wisconsin**

- Syringe Exchange Programs (SEPs) are one component of a comprehensive strategy for preventing HIV infection among injection drug users.
- In Wisconsin, SEPs are legal and operate in three cities, Milwaukee, Racine and Madison. Milwaukee's program has been operating since 1994 and has exchanged more than one million used needles.
- Neither federal funding nor Wisconsin state funding are currently used in SEPs. The pros and cons for using public financing are still being debated but privately funded exchange programs as noted above claim significant success in reducing the spread of HIV and other infectious diseases.
- A large body of research supported by the medical community has demonstrated the efficacy of SEPs in decreasing the spread of HIV and other infectious diseases.
- Assembly Bill 223, if enacted as currently worded, would render SEPs illegal in Wisconsin. This could lead to a significant increase in HIV infection among injection drug users, their sexual partners, and offspring.
- The DHFS suggests that language be added to AB 223 seeking an exemption for SEPs and individuals participating in SEPs so that the bill would not adversely affect existing HIV and other infectious disease prevention efforts.

1 West Wilson Street• Post Office Box 7850• Madison, WI 53707-7850• Telephone (608) 266-9622

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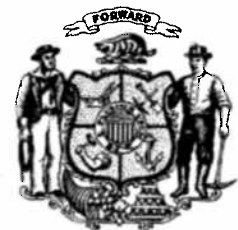

# ISSUE BRIEF

HEALTH POLICY TRACKING SERVICE

AB 223 folder

| Subject: HIV/AIDS<br>Title: Issue Brief: Needle Exchange- High-Profile Issue | Date: 01/01/98 |
|---|---|

*By: Lee Sanchez*
Excerpted from the December 8, 1997 issue of *State Health Notes*, the biweekly health policy newsletter of the National Conference of State Legislatures. For information about *State Health Notes*, call NCSL at 303-830-2200 and ask for the Publications Department.

**Needle Exchange: High-Profile Issue**

The issue of needle exchange assumed a higher profile this year, in part because of a finding at the federal level that it is a public health intervention that works in the fight against AIDS and in part because of the support of influential groups like the American Medical Association, American Bar Association and U.S. Conference of Mayors. Since the late 1980s, the Secretary of Health and Human Services has been prohibited from authorizing federal funds for needle exchange programs, unless it can be shown that they *do not* increase drug use and *do* reduce transmission of the AIDS virus. While Secretary Donna Shalala reported early this year that such programs do indeed slow the disease's spread, she has not yet made the determination that they do not encourage drug use. (The Labor-HHS appropriations bill signed by President Clinton on Nov.13 preserves the Secretary's discretion on the issue but freezes any federal spending on needle exchange until April 1, 1998. The new law also stipulates that federal funds cannot be used for needle distribution, only for needle exchange.) Chris Lanier with the **New York**-based National Coalition to Save Lives Now said the message is, 'We know needle exchange will save lives, but we still can't do anything about it.' [As a result], we're becoming more and more convinced that the major effort will have to come from the state level." As of February 1997, 113 needle exchange programs were in operation in 29 states, the District of Columbia and Puerto Rico, according to a survey by the North American Syringe Exchange Network in Tacoma, **Washington**. Of the 87 survey respondents, 47 programs are legal under state and local statutes. The survey broke down financing as follows: 39 programs received state funds, 29 got city/county funds, 13 had private foundation support and three received private donations. Legislative activity in 1997 is detailed below.

**State Needle Exchange Laws, 1997**

*ME H 287* - decriminalizes possession of ten or fewer hypodermic apparatuses and directs the Bureau of Health to certify hypodermic needle exchange programs that meet certain rules

*MD H 268/S 451* - repeals the 1997 termination date of the state's needle exchange pilot program

*MN S 1908* - permits pharmacies or licensed pharmacists to sell unused hypodermic needles and syringes in quantities of ten or less without a prescription

*MN S 1880* - stipulates that the term "drug paraphernalia" does not include the possession, manufacture, delivery or sale of hypodermic needles or syringes

*NH H 225* - directs the Commissioner of Health and Human Services to establish guidelines for and monitor, with the help of an advisory committee, a two-year needle exchange pilot program

*NM S 220* - directs the Health Department to establish and administer a "harm reduction" program for the purpose of sterile hypodermic syringe and needle exchange

*RI H 5892/S 376* - repeals statutory language stipulating that the state's needle exchange program is a pilot program

Home

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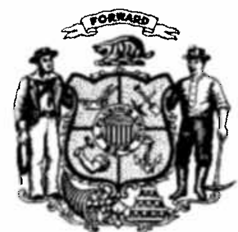

| Subject: HIV/AIDS<br>Title: Tracking Trends: Needle Exchange Programs | Date: 06/17/98 |
|---|---|

*By: Heather Sidwell*
*The following article appears in the June 8, 1998, edition of* State Health Notes *-- a publication of the Forum for State Health Policy Leadership.*

As the nation fights two of its deadliest epidemics -- AIDS and drug abuse -- the subject of needle exchange stands at the fore. In late April, the Clinton Administration sparked the ire of AIDS activists and the Congressional Black Caucus by refusing to back the authorization of federal funds for needle exchange, even though it finally had scientific evidence it sought that such programs stem the spread of AIDS without encouraging drug use. The Administration's decision -- which came just days before the U.S. House of Representatives voted to ban use of federal funds to support needle exchange -- leaves states and communities scrambling to find the money necessary to support existing initiatives. Today, 29 states, the District of Columbia and Puerto Rico operate needle exchange programs, according to the Centers for Disease Control and Prevention. Financed by a combination of state, local and private funds, most of the programs operate on the principle of a one-for-one exchange, and the vast majority also provide treatment and counseling referral services. Some are pilot projects initiated by state legislatures, some are ongoing state-financed initiatives and still others are unauthorized ventures operating under the banner of protecting the public health. Of the 13 states that considered bills related to needle exchange this year, two -- Maine (administrative rule changes) and Maryland (refinement and expansion of an existing program) -- enacted laws. In Connecticut, a bill bucking the trend by seeking to end the state's needle exchange program died in committee.

**Needle Exchange: A Tally of State-Sanctioned Programs**

**Authorizing statutes/ordinances:** 15 - AK, CT, DC, HI, IL*, ME, MD, MA, MN, NM, NY, OR, RI, WA

**Programs in Operation**:** 29 - AK, CA, CO, CT, DC, FL, HI, IL, IN, LA, ME, MD, MA, MI, MN, MO, NH, NJ, NM, NY, NC, OH, PA, RI, TN, TX, WA, WI, PR

**Legislation, 1998:** 13 - CA, CO, CT, DE, FL, IL, ME, MD, MA, NH, NJ, NY, RI

*No state statute, but the Chicago City Attorney has interpreted an exception in a state syringe prescription law for "research" uses as permitting the formation of needle exchange programs.

**Because their operation may not necessarily be authorized or sanctioned, it is difficult to account for an exact number of needle exchange programs operating across the country. No study has effectively collected data about all existing programs. The information used in this report was interpreted from current CDC data. The North American Syringe Exchange Network puts the number of states with programs at 34, but confidentiality guidelines preclude network officials from naming individual states.

*Sources: Centers for Disease Control and Prevention;* Emory Law Journal, *Vol. 46, No. 2 (Spring 1997).*

**Home**

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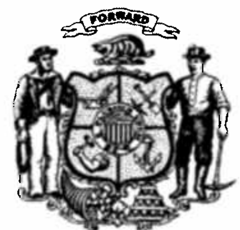
WISCONSIN STATE LEGISLATURE



# ISSUE BRIEF

HEALTH POLICY TRACKING SERVICE

AB 223 Folder

| Subject: HIV/AIDS<br>Title: Baseline: Needle Exchange | Date: 07/15/98 |
|---|---|

*By: Heather Sidwell*

**NEEDLE EXCHANGE**

Excerpted from a full Issue Brief on Needle Exchange, also available on the Stateserv site.

| STATE | Needle Exchange Authorized | Programs in Operation* | Comments (97-98 Legislation) |
|---|---|---|---|
| **ALABAMA** | -- | -- | -- |
| **ALASKA** | Yes | Yes | -- |
| **ARIZONA** | -- | -- | -- |
| **ARKANSAS** | -- | -- | -- |
| **CALIFORNIA** | -- | Yes | (1997 - 1998) considering legislation to authorize/establish a pilot program |
| **COLORADO** | -- | Yes | (1997) considered legislation to make exceptions in the drug paraphernalia laws - *did not pass;* (1998) considered legislation to authorize needle exchange programs that include intervention and education strategies - *did not pass* |
| **CONNECTICUT** | Yes | Yes | (1997) considered legislation to require local approval of needle exchange program locations - *did not pass;* (1998) considered legislation to repeal state funded needle exchange programs - *did not pass* |
| **DELAWARE** | -- | -- | (1998) considering |

| | | | |
|---|---|---|---|
| | | | legislation to establish an AIDS prevention sterile needle & syringe exchange pilot program |
| **DISTRICT OF COLUMBIA** | Yes | Yes | -- |
| **FLORIDA** | -- | Yes | (1998) considered legislation to authorize needle exchange program in one county -*died in committee* |
| **GEORGIA** | -- | -- | -- |
| **HAWAII** | Yes | Yes | -- |
| **IDAHO** | -- | -- | -- |
| **ILLINOIS** | Yes** | Yes | (1997 - 1998) considering numerous pieces of legislation relative to needle exchange pilot programs, exemptions from the drug paraphernalia laws, and modifications to the syringe possession laws |
| **INDIANA** | -- | Yes | -- |
| **IOWA** | -- | -- | -- |
| **KANSAS** | -- | -- | -- |
| **KENTUCKY** | -- | -- | -- |
| **LOUISIANA** | -- | Yes | -- |
| **MAINE** | Yes | Yes | (1997) enacted legislation relative to Bureau of Health certification of needle exchange programs; (1998) passed resolve to amend rules governing needle exchanges |
| **MARYLAND** | Yes | Yes | (1997) removed |

| | | | |
|---|---|---|---|
| | | | repeal date of pilot program; (1998) expanded program to authorize a facility in Prince George's County; considered other pieces of legislation relative to needle exchange authorization |
| **MASSACHUSETTS** | Yes | Yes | (1997 - 1998) considering legislation to authorize the Department of Public Health to promulgate rules and regulations for the implementation of needle exchanges |
| **MICHIGAN** | -- | Yes | -- |
| **MINNESOTA** | Yes | Yes | (1997) enacted legislation to authorize pharmacies to voluntarily participate in syringe access initiative |
| **MISSISSIPPI** | -- | -- | -- |
| **MISSOURI** | -- | Yes | (1997) considered legislation to establish a needle exchange program - *did not pass* |
| **MONTANA** | -- | -- | -- |
| **NEBRASKA** | -- | -- | -- |
| **NEVADA** | -- | -- | -- |
| **NEW HAMPSHIRE** | Yes | Yes | (1997) authorized 2-year pilot program; also considered legislation regarding the sale of syringes - *did not pass;* (1998) considered legislation to repeal the pilot program - *failed to pass House* |
| **NEW JERSEY** | -- | Yes | (1998) considering legislation to establish pilot program |

| | | | |
|---|---|---|---|
| **NEW MEXICO** | Yes | Yes | (1997) enacted the Harm Reduction Act, establishing a needle exchange program |
| **NEW YORK** | Yes | Yes | (1997 - 1998) considered numerous pieces of legislation re: sale/ possession/ exchange of syringes - *did not pass* |
| **NORTH CAROLINA** | -- | Yes | (1997) considered legislation to establish a pilot program - *did not pass* |
| **NORTH DAKOTA** | -- | -- | -- |
| **OHIO** | -- | Yes | -- |
| **OKLAHOMA** | -- | -- | -- |
| **OREGON** | Yes | Yes | -- |
| **PENNSYLVANIA** | -- | Yes | -- |
| **PUERTO RICO** | -- | Yes | -- |
| **RHODE ISLAND** | Yes | Yes | (1997) repealed stipulation that program was "pilot"; (1998) considering legislation to decrease the penalty for illegally possessing hypodermic needles |
| **SOUTH CAROLINA** | -- | -- | -- |
| **SOUTH DAKOTA** | -- | -- | -- |
| **TENNESSEE** | -- | Yes | -- |
| **TEXAS** | _ | Yes | (1997) considered legislation to authorize "harm reduction services" - *did not pass* |
| **UTAH** | -- | -- | -- |
| **VERMONT** | -- | -- | -- |
| **VIRGINIA** | -- | -- | -- |
| **WASHINGTON** | Yes | Yes | -- |
| **WEST VIRGINIA** | -- | -- | -- |
| **WISCONSIN** | -- | Yes | -- |
| **WYOMING** | -- | -- | -- |

*"Programs in operation" includes both state-sanctioned needle exchange programs and non-sanctioned programs. Because their operation may not necessarily be authorized, it is difficult to account for an exact number of needle exchange programs operating across the country; therefore, the list may not be comprehensive. The information used in this report was interpreted from CDC data and current state activity. The North American Syringe Exchange Network (NASEN) puts the number of states with programs at 34, but confidentiality guidelines preclude network officials from naming individual states.

**There is no state statute, but the Chicago City Attorney has interpreted an exception in a state syringe prescription law for "research" uses as permitting the formation of needle exchange programs.

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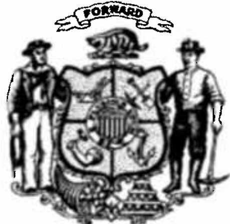
# WISCONSIN STATE LEGISLATURE



# ISSUE BRIEF

AB223 folder

Subject: HIV/AIDS
Title: Issue Brief: Needle Exchange and Access to Sterile Syringes

Date: 08/14/98

*By: Heather Sidwell*

As the nation fights two of its deadliest epidemics--HIV and drug abuse--the subject of needle exchange stands at the fore.

Researchers have long noted a link between the human immunodeficiency virus (HIV) pandemic and substance abuse, linchpinned by the high rate of HIV infection among injection drug users (IDUs). Many in the AIDS activist community view needle* exchange programs as a vital part of a comprehensive prevention plan that addresses both epidemics. However, not everyone subscribes to this strategy. Many in the policymaking community remain unconvinced that enough evidence exists to prove that distributing free needles sufficiently protects users from becoming infected with HIV. As a result, policymakers and public health advocates have locked horns--pitting ideology against science.

Since 1988, needle exchange programs (NEPs) have formed across the nation, from inner city neighborhoods to rural townships. The North American Syringe Exchange Network (NASEN) estimates the current number at 134 programs in 34 states, the District of Columbia, and Puerto Rico. However, the exact number is difficult to pinpoint, because not all operations are sanctioned by authorities, and therefore program personnel are hesitant to report their activity.

A combination of state, local and private funds finance most needle exchange programs, which typically operate on the principle of a one-for-one exchange. Some are pilot projects initiated by state legislatures, some are ongoing state-financed initiatives, and still others are unauthorized ventures. Most programs also provide HIV testing and counseling, substance abuse treatment referral services, education and instruction on the prevention of HIV and STD transmission.

**Background Information**

Needle exchange programs operate under the blanket of protecting the public health. Their goal is to reduce the transmission of HIV and other bloodborne infections associated with drug injection by providing sterile syringes in exchange for used, potentially contaminated syringes (MMWR, 6/20/97). With injection drug use as the second most frequently reported risk behavior for acquiring AIDS, needle exchange programs could prove useful in reaching this high-risk population (Journal of the American Medical Association, 1/1/97). According to the most recent HIV/AIDS Surveillance Report by the CDC, since the epidemic began, injection drug use has directly and indirectly accounted for more than one-third (36%) of AIDS cases in the United States. This disturbing trend appears to be continuing. Of the 60,634 new AIDS cases reported in 1997, 19,463 (32%) were IDU-associated (Geneva Abstract, CDC, 7/98).

Transmission of HIV infection through injection drug use does have a domino effect--infections spread from IDUs to their sexual and needle-sharing partners and from HIV-infected mothers to their children. Each day, 33 people become infected with HIV as a direct or indirect result of intravenous drug use, according to the President's AIDS Council (3/98). In addition, the CDC estimates more than 70 percent of HIV infections among women of childbearing age are related either directly or indirectly to injection drug use, and more than 75 percent of babies diagnosed with HIV/AIDS are infected as a direct or indirect result of injection drug use by a parent (HIV/AIDS Surveillance Report).

**Pros and Cons**

Those who support NEPs cite the importance of the programs as gateways to counseling, education, and other referral services for addicts. This comprehensive approach, known as "harm reduction," accepts the behavior and attempts to minimize its effects with health services and education. Supporters further contend that NEPs

facilitate proper disposal of injection equipment and serve as outlets to supply addicts with materials that help to curb the spread of HIV (i.e. equipment needed for sterile injection, condoms, and information on safe sex practices).

Those who oppose NEPs object primarily on ideological grounds. They contend that such programs send mixed messages about America's war on drugs and that the programs undermine the force and efficacy of existing drug laws. Instead, they suggest that risky sexual behavior remains a key factor in curbing the spread of HIV, thereby necessitating the need for behavior modification. In lieu of a harm reduction approach, they prefer to channel resources toward substance abuse treatment as a way to control HIV infection in the IDU population.

**Research**

Conflicting research adds to the controversy surrounding needle exchange programs. Some of the studies point to the effectiveness of needle exchange programs. However, two large studies question their public health benefits.

In March 1997, the National Institutes of Health (NIH) published the *Consensus Development Statement on Interventions to Prevent HIV Risk Behaviors*. That report concluded that needle exchange programs "show a reduction in risk behaviors as high as 80 percent in injecting drug users, with estimates of a 30 percent or greater reduction of HIV." The panel also concluded that the preponderance of evidence shows either a decrease in injection drug use among participants or no changes in their current levels of drug use.

An October 1997 study of needle exchange programs in Baltimore, Maryland, (Brooner et al., Abstract presented to the American Public Health Association, 10/97) supported the NIH's conclusion. The results indicated that those who participated in needle exchange programs, which were closely linked to or integrated with drug treatment programs, had high levels of retention in drug treatment programs.

Other studies reveal the potential limitations of needle exchanges. A recent study in Vancouver, British Columbia, of injecting drug use (Steffanie A. Strathdee, et al., 1997) found that those addicts who participated in needle exchanges were two to three times more likely to become infected with HIV than nonparticipants. The study also showed that almost half (40 percent) of the participants continued to frequently share needles.

A similar study in Montreal, Quebec, (J. Franco E. Bruneau, et al., 1996) found that addicts who participated in needle exchanges were more than twice as likely to become infected with HIV as those who did not participate. The report, which was published in the *American Journal of Epidemiology*, also found that approximately three of four program clients continued to share needles, roughly the same rate as nonparticipants.

**Related Issues**

The cost to operate a needle exchange program varies according to the scope and population served. A 1995 study by the Chemical Dependency Institute at Beth Israel Medical Center in New York found that the average annual budget of a needle exchange program was $131,000. Other estimates average the annual operating budget of a NEP at $160,000. Baltimore's pilot program cost $300,000 to operate, using state and city funds, according to state estimates.

Nonetheless, NEP supporters maintain that needle exchanges are cost effective intervention measures. Assuming 35 people avoid contracting HIV as a result of participating in the program, the government will have saved $3.5 million in AIDS-related medical care, based on an estimate of $102,000 per person (AIDS Policy & Law, 2/21/97). This is particularly significant when considering that many needle exchange participants are uninsured or are Medicaid beneficiaries.

**Decriminalization of syringes**

NEP supporters say that current drug paraphernalia and syringe prescription laws, as well as pharmacy regulations, present major barriers to access to clean needles for drug users.

Lawrence O. Gostin, J.D., LL.D., in an article published in the *Emory Law Journal*, concluded that drug paraphernalia laws "prohibit the sale, distribution, and/or possession of syringes known to be used to introduce illicit drugs into the body" (Emory Law Journal, Spring 1997). These laws exist in 47 states and the District of Columbia. However, at least seven states--**Hawaii, Maine, Maryland, Massachusetts, New York, Rhode**

**Island** and **Washington**--and the **District of Columbia** provide exceptions in their drug paraphernalia laws for needle exchange programs.

In general, states have taken three approaches to the regulation of syringes: open purchase or possession of syringes, criminalization of possession, or criminalization of sale and possession.

Opponents of the decriminalization of syringes maintain that there would be a profound effect on law enforcement, particularly on drug enforcement. According to information from the Institute for Youth Development, "any liberalization of laws regarding their possession must be under strict supervision by responsible public health and substance abuse agencies." In response, various law enforcement groups across the country have testified in opposition to the loosening of syringe regulations on the state level.

Most syringe prescription statutes and ordinances require a valid medical prescription for the purchase of syringes. In these states, the very act of dispensing the syringe without a prescription constitutes a felony or misdemeanor, regardless of criminal intent. Only a handful of states specifically exempt NEP operators and participants from syringe prescription laws. Therefore, in many cases, state and local regulations have had to be modified to allow the programs to operate legally.

**Minnesota** provides a case in point. During the 1998 session, policymakers enacted two syringe-related laws. One act permits pharmacies to sell (without prescription) up to 10 hypodermic syringes at a time and permits individuals to legally possess up to 10 clean syringes. The new law also requires that a pharmacy that sells the equipment certify to the state health commissioner that proper measures are being used to dispose of used syringes. The other act redefines "drug paraphernalia" to no longer include the "possession, manufacture, delivery or sale of hypodermic needles or syringes."

In addition, pharmacy regulations or practice guidelines restrict access to syringes in many states. Pharmacy boards or other state governmental agencies establish pharmacy regulations, which legally require pharmacists to comply with the rules regulating the sale of syringes. Pharmacy boards typically also establish practice guidelines, which do not have the force of law. Even so, noncompliance could leave a pharmacist subject to professional sanctions. Nearly half of the states have pharmacy regulations or practice guidelines that restrict access to syringes. These rules require identification and proof of medical need, and some may impose record-keeping requirements.

**Federal Activity**

In late April 1998, the Clinton administration sparked the ire of AIDS activists and the Congressional Black Caucus by refusing to authorize federal funds to support the operation of needle exchange programs. Despite acknowledging scientific evidence that such programs stem the spread of AIDS without encouraging drug use, the administration conceded the decisions of funding and implementation to local communities. The announcement came just days before the U.S. House of Representatives voted to permanently ban federal funding for the program. Following the lead of the House, the U.S. Senate expressed its opposition to federally funded NEPs in June. Members added an amendment to the comprehensive tobacco legislation to permanently ban the use of federal funds for needle exchange programs. However, the demise of the tobacco legislation in the Senate begs the question of further action. The next battleground for needle exchange prohibition appears to be the Labor, Health & Human Services, Education and Related Agencies appropriations bill. On July 14, the House Appropriations Committee approved the bill, which contained a provision to prohibit federal funding for needle exchange programs.

**State Activity**

As mentioned before, approximately 134 needle exchange programs exist across 34 states. However, the actual number of programs is probably higher, since many programs operate illegally and would not be likely to report their activity.

To date, 15 states--**Alaska, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire** (pilot project), **New Mexico, New York, Oregon, Rhode Island,** and **Washington**--and the **District of Columbia** authorize needle exchange programs. However, these states differ in their approach to sanctioning needle exchanges. Although most states have passed laws to authorize the operation of needle exchanges, a small number have elected to remove legal barriers to needle exchanges without formally authorizing programs (by amending drug laws to exempt needles and syringes, or by repealing needle prescription laws). In **New York**, for example, the health commissioner is given authority to waive needle

prescription laws. Alternately, some cities (e.g. Philadelphia, Cleveland, Los Angeles and San Francisco) have invoked emergency powers "to protect the public health" as a means of bypassing state laws prohibiting the distribution of sterile syringes without a prescription.

Other states, which do not statutorily authorize needle exchange programs, approach the issue variably. For instance, the city of Boulder, Colorado, operates a needle exchange openly, even though the Colorado state law allows no such provision for the program to operate. The program is known by the city's District Attorney and Sheriff's Department, who have opted to let the progam operate to protect the health of the public.

A typical state NEP authorization requires that the program be administered by the state department of health and operates on a one-for-one exchange of syringes to drug users 18 and older. The authorization generally includes the distribution of educational materials, HIV counseling and testing, and substance abuse treatment referrals. Most include an immunity provision for IDUs who possess injection equipment that is supplied by the programs, and some also require evaluation of the program's effect on both participants and communities.

Thirteen states--**California, Colorado, Connecticut, Delaware, Florida, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York** and **Rhode Island**--considered needle exchange legislation in 1998. Of the 13 states that considered bills, three--**Maine, Maryland,** and **Rhode Island**--have enacted laws to date.

**Maryland** legislators considered a number of needle exchange-related bills during the 1998 session, after its 1997 vote to allow Baltimore's pilot program to continue indefinitely. One of the bills debated, S 309, originally authorized all counties to operate NEPs. Although the bill was scaled back in committee to cover only three counties, the full Senate defeated the measure in March by a vote of 21-26. One month later, the legislature approved H 626 to sanction needle exchanges in Prince George's County, provided the council and the county executive lend approval. Under the legislation, the program must refer clients to drug counseling and treatment services, and educate users about the dangers of contracting HIV from unsafe needle-sharing and sex practices. H 626 also provides for a community advisory board to oversee the program. The Act was signed by the governor on April 28 and became effective July 1.

The **Maine** legislature authorized the state Bureau of Health to regulate NEPs in 1997. As enacted, H 287 (1997) decriminalized possession of 10 or fewer hypodermic apparatus and directed the Bureau of Health to certify needle exchange programs that meet certain requirements. The Act further directed the Bureau of Health to report to the legislature by January 15, 1999, and annually thereafter on certified needle exchange programs. In 1998, the legislature approved departmental rule amendments (H 1607) to facilitate program certification.

The most recent bill to become law in 1998 surfaced in **Rhode Island**. In early July, the House approved Senate legislation, S 2477, to reduce the penalty for illegal possession of hypodermic needles from a felony to a misdemeanor and eliminates provisions for imprisonment. The Act became law without the governor's signature on July 9.

In **Colorado**, the Senate passed a bill, S 99, to allow local governments to set up one-for-one exchanges, provided the programs also provide referrals for substance abuse treatment and other preventive health care services for participants in the program. The bill, which died in the House, also would have exempted registered participants and public health workers from arrest for possession of drug paraphernalia.

Bills bucking the trend were considered in **Connecticut** and **New Hampshire.** In these states, legislators introduced bills to end the existing needle exchange programs. **New Hampshire** State Representative Frances Riley (R) stated that H 1117 would have repealed the 1997 state pilot program authorization. She introduced the bill in response to police chiefs' concerns that needle exchanges would increase crime and make law enforcement more difficult. Sources in the New Hampshire Department of Health and Human Services confirmed that since last year's authorization went into effect, no New Hampshire community has officially applied to institute a needle exchange program, although one community is considering the option.

Of the other states that considered legislation this year, only **California, New Jersey,** and **Massachusetts** remain in session with legislation still awaiting consideration. Bills in **Delaware, Florida, Illinois,** and **New York** died when their sessions adjourned.

**NEEDLE EXCHANGE**

| STATE | Needle Exchange Authorized (via state statutes, regulations, or local ordinances prior to 1997) | Programs in Operation** | 1997-98 Activity |
|---|---|---|---|
| ALABAMA | -- | -- | -- |
| ALASKA | Yes | Yes | -- |
| ARIZONA | -- | -- | -- |
| ARKANSAS | -- | -- | -- |
| CALIFORNIA | -- | Yes | (1997 - 1998) considering legislation to authorize/establish a pilot program |
| COLORADO | -- | Yes | (1997) considered legislation to make exceptions in the drug paraphernalia laws - *did not pass;* (1998) considered legislation to authorize needle exchange programs that include intervention and education strategies - *did not pass* |
| CONNECTICUT | Yes | Yes | (1997) considered legislation to require local approval of needle exchange program locations - *did not pass;* (1998) considered legislation to repeal state funded needle exchange programs - *did not pass* |
| DELAWARE | -- | -- | (1998) considering legislation to establish an AIDS prevention sterile needle & syringe exchange pilot program |
| DISTRICT OF COLUMBIA | Yes | Yes | -- |
| FLORIDA | -- | Yes | (1998) considered |

| | | | |
|---|---|---|---|
| | | | legislation to authorize needle exchange program in one county *-died in committee* |
| **GEORGIA** | -- | -- | -- |
| **HAWAII** | Yes | Yes | -- |
| **IDAHO** | -- | -- | -- |
| **ILLINOIS** | Yes*** | Yes | (1997 - 1998) considering numerous pieces of legislation relative to needle exchange pilot programs, exemptions from the drug paraphernalia laws, and modifications to the syringe possession laws |
| **INDIANA** | -- | Yes | -- |
| **IOWA** | -- | -- | -- |
| **KANSAS** | -- | -- | -- |
| **KENTUCKY** | -- | -- | -- |
| **LOUISIANA** | -- | Yes | -- |
| **MAINE** | Yes | Yes | (1997) enacted legislation relative to Bureau of Health certification of needle exchange programs; (1998) passed resolve to amend rules governing needle exchanges |
| **MARYLAND** | Yes | Yes | (1997) removed repeal date of pilot program; (1998) expanded program to authorize a facility in Prince George's County; considered other pieces of legislation relative to needle exchange authorization |
| **MASSACHUSETTS** | Yes | Yes | (1997 - 1998) |

| | | | |
|---|---|---|---|
| | | | considering legislation to authorize the Department of Public Health to promulgate rules and regulations for the implementation of needle exchanges |
| **MICHIGAN** | -- | Yes | -- |
| **MINNESOTA** | Yes | Yes | (1997) enacted legislation to authorize pharmacies to voluntarily participate in syringe access initiative |
| **MISSISSIPPI** | -- | -- | -- |
| **MISSOURI** | -- | Yes | (1997) considered legislation to establish a needle exchange program - *did not pass* |
| **MONTANA** | -- | -- | -- |
| **NEBRASKA** | -- | -- | -- |
| **NEVADA** | -- | -- | -- |
| **NEW HAMPSHIRE** | -- | Yes | (1997) authorized 2-year pilot program; also considered legislation regarding the sale of syringes - *did not pass;* (1998) considered legislation to repeal the pilot program - *failed to pass House* |
| **NEW JERSEY** | -- | Yes | (1998) considering legislation to establish pilot program |
| **NEW MEXICO** | Yes | Yes | (1997) enacted the Harm Reduction Act, establishing a needle exchange program |
| **NEW YORK** | Yes | Yes | (1997 - 1998) considered numerous pieces of legislation re: sale/ possession/ exchange of syringes - *did not pass* |

| | | | |
|---|---|---|---|
| **NORTH CAROLINA** | -- | Yes | (1997) considered legislation to establish a pilot program - *did not pass* |
| **NORTH DAKOTA** | -- | -- | -- |
| **OHIO** | -- | Yes | -- |
| **OKLAHOMA** | -- | -- | -- |
| **OREGON** | Yes | Yes | -- |
| **PENNSYLVANIA** | -- | Yes | -- |
| **PUERTO RICO** | -- | Yes | -- |
| **RHODE ISLAND** | Yes | Yes | (1997) repealed stipulation that program was "pilot"; (1998) enacted legislation to decrease the penalty for illegally possessing hypodermic needles |
| **SOUTH CAROLINA** | -- | -- | -- |
| **SOUTH DAKOTA** | -- | -- | -- |
| **TENNESSEE** | -- | Yes | -- |
| **TEXAS** | _ | Yes | (1997) considered legislation to authorize "harm reduction services" - *did not pass* |
| **UTAH** | -- | -- | -- |
| **VERMONT** | -- | -- | -- |
| **VIRGINIA** | -- | -- | -- |
| **WASHINGTON** | Yes | Yes | -- |
| **WEST VIRGINIA** | -- | -- | -- |
| **WISCONSIN** | -- | Yes | -- |
| **WYOMING** | -- | -- | -- |

The above chart was compiled from data contained in Emory Law Journal (46:2, Spring 1997) and information collected by the Health Policy Tracking Service.

*Throughout this issue brief, the terms "needle" and "syringe" are used interchangeably.

**"Programs in operation" includes both state-sanctioned needle exchange programs and non-sanctioned programs. Because their operation may not necessarily be authorized, it is difficult to account for an exact number of needle exchange programs operating across the country; therefore, the list may not be comprehensive. The information used in this report was interpreted from CDC data and current state activity. The North American Syringe Exchange Network (NASEN) puts the number of states with programs at 34, but confidentiality guidelines preclude network officials from naming individual states where programs operate illegally.

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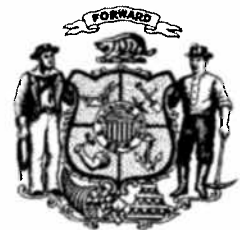
WISCONSIN STATE LEGISLATURE



New York Times 11-16-99

AT RISK

# In Heated Heroin, a Dangerous Dragon

Heroin users trying to avoid infected needles have turned in increasing numbers in recent years to "chasing the dragon": heating the drug and inhaling its fumes. But that method can cause a rare brain disorder that can in turn cause paralysis and even death, according to Columbia University neurologists.

The doctors, writing in the journal Neurology, reported the case of a 21-year-old Manhattan woman who was brought to Columbia-Presbyterian "nearly at death's door, unable to talk or move," Dr. Arnold Kriegstein, a neurologist who treated her, said in an interview. When her sister said the woman had been "chasing the dragon" every day for two weeks, Dr. Kriegstein and his colleagues were reminded of an outbreak of the brain disorder, spongiform leukoencephalopathy, that had killed 11 heroin users in Amsterdam years before.

The disease produces a spongelike pattern of fluid-filled holes in the deep layers of the brain tissue known as white matter.

Because the condition can be caused by a variety of toxins, and because in the Amsterdam outbreak people who injected or sniffed heroin from the same batches were unaffected, researchers speculate that the culprit is a contaminant that adds its vapor to the heroin plume when heated.

After the woman was admitted, her boyfriend came in for treatment, suffering from severe difficulties speaking and talking. Another man who had shared a small amount of their apparently tainted heroin agreed to be examined, and was found to have subtle movement dysfunction.

There is no known treatment for spongiform leukoencephalopathy, Dr. Kriegstein said, and those patients who survive have usually suffered permanent brain damage. But because her doctors found high levels of lactic acid in the woman's white matter — a sign of metabolic disruption — they gave her large doses of vitamin E, vitamin C and coenzyme Q, antioxidants that can help restore cellular function.

She gradually improved, and left the hospital after two months. Now, three years later, she is nearly normal, said Dr. Kriegstein. "She walks, runs, rides a bicycle."

Dr. Kriegstein is a long way, however, from calling the treatment a cure. The boyfriend received similar treatment, but had to be hospitalized again after he returned to heroin use. He was left with some permanent motor difficulties. The third man never returned for treatment.

AB 223 folder