

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 1344 (Arambula) – As Amended March 16, 2021

SUBJECT: State Department of Public Health: needle and syringe exchange services.

SUMMARY: Exempts needle and syringe exchange services application submission, authorizations, and operations performed under the existing clean needle and syringe exchange program from review under the California Environmental Quality Act (CEQA), as specified. States that the services performed by an entity authorized to provide hypodermic needle and syringe exchange services, and any foreseeable and reasonable consequence of providing these services, including discarded syringes or needles do not constitute a public nuisance, when done or maintained under the express authority of a statute, and shall not be considered a public nuisance, as specified. States that these provisions are intended to be declaratory of existing law and are severable.

EXISTING LAW:

- 1) Establishes the hypodermic needle and syringe exchange program (SEP) within the Department of Public Health (DPH) to provide a wide range of services, including providing sterile syringes, collecting use ones, serving as a point of access to health education and help for people who inject drugs.
- 2) Authorizes a SEP to operate when authorized by the DPH or any city, county, or city and county, as specified.
- 3) Establishes CEQA, to among various provisions, disclose to the public the significant environmental effects of a proposed discretionary project, through the preparation of an Initial Study, Negative Declaration, or Environmental Impact Report.
- 4) Defines nuisance as anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance. Defines a public nuisance as one which affects, at the same time, an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
- 5) States that nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

FISCAL EFFECT: Unknown. This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, SEPs are a cost effective strategy instituted to slow the spread of deadly and disabling conditions. They have a proven track

record of reducing the transmission of many deadly diseases, including HIV and hepatitis C. Due to the pandemic, SEPs have expanded their services in the form of providing COVID education, personal protective equipment distribution, sharing information on access to housing and health services, and other vitally needed services. After consultation with local health and law enforcement agencies, and a period of public comment, these programs can be authorized by DPH. Unfortunately, in an effort to thwart sound public health policy, some attorneys have inappropriately weaponized the CEQA against public health programs. This abuse of the intent of CEQA pits public health and environmental concerns inappropriately against each other and constitutes a very real threat to public health. This bill is needed to protect these SEP harm reduction programs and reduce community spread of communicable diseases.

2) BACKGROUND.

- a) **SEPs.** According to the federal Centers for Disease Control and Prevention, Syringe Services Programs (SSPs), known as SEPs in California, are community-based prevention programs that provide a range of health services, and provide a lifeline to those struggling with substance abuse. Comprehensive SSPs offer patients vaccinations and testing for diseases, referrals to treatment for substance use disorder and other diseases (such as viral hepatitis and HIV), and sterile injection equipment to prevent the transmission of infectious diseases.

According to the Office of Aids within DPH, SEPs have been operating in California since the late 1980s, providing sterile syringes, collecting used ones, and acting as a point of access to health education and help for people who inject drugs. In addition to syringe exchange and disposal, California SEPs provide a wide range of services, including HIV and hepatitis C testing, overdose prevention training, and referrals to drug treatment, housing, and mental health services. Most SEPs also provide first aid and basic supplies, such as clean socks and bottled water, to meet the needs of homeless clients. California SEPs operate in a variety of settings, including in health clinics, mobile vans, storefronts and churches. Some offer street-based services in multiple locations; others offer services daily during standard business hours; still others provide home delivery services.

Research on the impact of SEPs reveals that often times for many SEP clients, contact with SEPs was the only contact they had with health care or social services of any kind. Worldwide data also reveal that HIV infection rates drop when there are SEPs available and researchers studying a San Francisco SEP found that that program did not encourage drug use. There is also documented economic advantages to SEP. According to the Office of Aids (OA) website, economic studies have predicted that SEPs could prevent HIV infections among clients, their sex partners, and offspring at a cost of about \$13,000 per infection averted. This is significantly less than the lifetime cost of treating an HIV-infected person, which is estimated to be \$385,200. Currently, there are 60 authorized SEPs in the state though two of those (in Merced and the Yuba-Sutter region) are not currently operating.

- b) **Authorization to operate a SEP.** AB 604, (Skinner), Chapter 744, Statutes of 2011, also granted authority to the OA to permit organizations to apply directly to DPH for authorization to provide syringe exchange services. Prior to the passage of AB 604, the law only authorized a city, county, or city and county to conduct a clean needle and

syringe exchange project. If DPH authorizes a SEP, it must consult with the local health officer and local law enforcement leadership, and allow opportunity for public comments. The authorization is for two years and before the end of the two-year period, DPH may reauthorize the program in consultation with the local health officer and local law enforcement leadership.

To be authorized to conduct an SEP, the entity must comply with all of the following minimum services:

- i) The entity provides, directly or through a referral, drug abuse service, HIV or hepatitis screening, Hepatitis A and B vaccination, screening for sexually transmitted infections, housing services, and other education services, as specified;
 - ii) The entity has the capacity to commence needle and syringe services within three months of authorization;
 - iii) The entity has adequate funding to do all of the following:
 - (1) Provide needles and syringe exchange services for all participants;
 - (2) Provide HIV and viral hepatitis prevention education services for all participants; and;
 - (3) Provide for the safe recovery and disposal of used syringes and sharps waste from all of its participants.
 - iv) The entity has the capacity, and an established plan to collect evaluative data to assess program impact, as specified.
- c) **Public Comments.** Existing law also requires DPH, if the SEP application is provisionally deemed appropriate, to conduct a public comment period at least 45 days prior to the approval of the application as follows:
- i) Post on DPH's internet website the name of the applicant, the nature of the services, and the location where the applying entity will provide the services;
 - ii) Send a written and an email notice to the local health officer of the affected jurisdiction; and,
 - iii) Send a written and an email notice to the chief of police, the sheriff, or both, as appropriate, of the jurisdictions in which the program will operate.

DPH must also establish and maintain on its internet website the address and contact information of programs providing hypodermic needle and syringe exchange services. Additionally, local government, local health officials, and law enforcement are given the opportunity to comment on the SEP on a biennial basis. The public are also given an opportunity to provide input to local leaders to ensure any potential adverse impacts on the public welfare of clean needle and exchange syringe programs are addressed and mitigated. The health officer of a participating jurisdiction is also required to present at an open meeting biennially a report on the status of SEPs, including, but not limited to,

relevant statistics on bloodborne infections associated with needle sharing activity and the use of public funds for these programs. Law enforcement, stakeholders and members of the public are accorded the opportunity to also comment at this biennial meeting.

- 3) **SUPPORT.** The Drug Policy Alliance, the National Harm Reduction Coalition, the San Francisco AIDS Foundation, cosponsors of this bill, and the numerous SEPs write in support that this bill ensures access to syringe services programs at the current and hopefully expanding level for people throughout California. This bill prevents anti-harm reduction litigants from placing public health and environmental protection goals of the legislature at odds with one another and subverting the intent of the legislature in enacting the law in 2011. It will also protect the public health of all Californians, and is particularly important at this time, in light of the twin pandemics of COVID-19 and opioid overdose. The supporters also state that SEPs provide lifesaving harm reduction services and supplies, overdose prevention supplies and are critical to addressing the overdose crisis in California.
- 4) **OPPOSITION.** The Rural County Representatives of California states that while it believes this bill is aimed at NIMBY (not in my backyard) lawsuits brought by private organizations and individuals, its reach is far broader and eliminates important tools that local governments use to protect residents. This bill prohibits local governments from bringing legal actions to prevent or require abatement of public nuisances that may arise from needle exchange programs, including the cleanup and abatement of illegally disposed needles. The County of Butte states that this bill is unwise and contrary to putting environmental protection at the forefront of wise public policy.
- 5) **PREVIOUS LEGISLATION.** AB 2077 (Ting), Chapter 274, Statutes of 2020, extends the sunset on existing law, until January 1, 2026, which permits pharmacists to furnish hypodermic needles and syringes without a prescription or a permit, for human use to a person 18 years of age or older and which permits a person 18 years of age or older, without a prescription or license, to obtain hypodermic needles and syringes solely for personal use from a physician or pharmacist.
- 6) **DOUBLE-REFERRAL.** This bill is double referred. Should this bill pass out of this committee, it will be referred to the Assembly Committee on Natural Resources.
- 7) **SUGGESTED AMENDMENTS.** This bill states that needle and exchange services provided by an authorized entity and any foreseeable and reasonable consequences of providing those services, including improperly discarded syringes or needles shall not constitute a public nuisance, consistent with Section 3482 of the Civil Code. Civil Code Section 3482 states that nothing which is done or maintained under the express authority of a statute can be deemed a nuisance. Thus, to reconcile this bill with the requirements of Civil Code Section 3482, the Assembly Judiciary Committee recommends and this Committee agrees that this bill should be amended as follows:

(h) (1) Needle and syringe exchange services application submissions, authorizations, and operations performed pursuant to this chapter shall be exempt from review under the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The services set forth in subdivision (d) provided by an authorized entity, ~~and any foreseeable and reasonable consequences of providing those services, including improperly discarded syringes or needles,~~ ***in compliance with the minimum standards set forth in subdivision (d)*** shall not constitute a public nuisance,

consistent with Section 3482 of the Civil Code, and shall not be considered a public nuisance for purposes of Section 3479, 3480, or 3481 of the Civil Code and Section 731 of the Code of Civil Procedure.

REGISTERED SUPPORT / OPPOSITION:

Support

Drug Policy Alliance (cosponsor)
National Harm Reduction Coalition (cosponsor)
San Francisco AIDS Foundation (cosponsor)
Access Support Network
American Addiction Institute of Mind and Medicine/ Harm Reduction Institute
Any Positive Change INC.
APLA Health
Being Alive - Los Angeles
Berkeley Needle Exchange Emergency Distribution
CA Bridge
Courage California
Desert Aids Project
End Hep C SF
Face to Face
Fresno Needle Exchange Program
Glide
Harm Reduction Coalition
Harm Reduction Coalition of Santa Cruz County
Harm Reduction Services
Inland Empire Harm Reduction
Mendocino County Aids/viral Hepatitis Network
Next Harm Reduction
Northern Valley Harm Reduction Coalition
Saferx Santa Cruz County
Sierra Harm Reduction Coalition
SLO Bangers Syringe Exchange and Overdose Prevention
Stonewall Alliance of Chico
The Los Angeles Trust for Children's Health
The Sidewalk Project

Opposition

Butte County
Rural County Representatives of California

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