

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 1344 (Arambula) – As Amended April 8, 2021

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

**SUMMARY:** Establishes an exemption from the California Environmental Quality Act (CEQA) for needle and syringe exchange services, as specified.

**EXISTING LAW:**

- 1) Establishes the Clean Needle and Syringe Exchange Program (program) within the Department of Public Health (DPH) to provide a wide range of services, including providing sterile syringes, collecting use ones, and serving as a point of access to health education and other services for people who inject drugs.
- 2) Authorizes a needle exchange program to operate when authorized by DPH or any city, county, or city and county, as specified.
- 3) Requires an entity operating a needle exchange program to demonstrate to DPH that it will comply with specified minimum standards, including providing for the safe recovery and disposal of used syringes and sharps waste from all of its participants.
- 4) CEQA requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines.)

**THIS BILL:**

- 1) Provides that needle exchange program application submissions, authorizations, and operations performed pursuant to the program are exempt from review under CEQA, and states that the exemption added to statute by the bill is intended to be declaratory of existing law.
- 2) Provides that the provisions of the program section amended by the bill are severable.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Background.** CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment. If the initial study shows that the project would not have a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect, the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures. CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines.

Needle and syringe exchange programs (SEPs) reduce the spread of HIV, acute hepatitis C virus (HCV), and other blood-borne pathogen infections and are an effective component of comprehensive community-based prevention and intervention programs that provide additional services. These include vaccination, testing, linkage to infectious disease and substance use treatment, and access to and disposal of syringes and injection equipment.

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. California SEPs provide a wide range of services in addition to syringe exchange and disposal, including HIV and HCV testing, overdose prevention training, and referrals to drug treatment, housing, and mental health services. They 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, and still others provide home delivery services.

AB 604 (Skinner, 2011) permitted DPH to authorize hypodermic needle and syringe services “in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes.” Prior to AB 604, only local governments had the authority to establish syringe services programs.

This authority was made permanent in the 2018 budget bill (AB 1810). That bill provided that “[i]n order to reduce the spread of HIV infection, viral hepatitis, and other potentially deadly blood-borne infections, the State Department of Public Health may, notwithstanding any other law, authorize entities that provide [needle and syringe exchange] services...to apply for authorization” for such services “after consultation with the local health officer and local law enforcement leadership, and after a period of public comment...”.

DPH has authorized syringe services programs in 19 counties since 2011. These include programs offered by clinics, health departments and community-based organizations in Alameda, San Diego, Kern, Riverside, Santa Cruz, Humboldt, Sacramento, Inyo, El Dorado, Kings, Mono, Lake, Merced, Plumas, San Joaquin, Siskiyou and Yuba/Sutter counties.

Lawsuits have been filed against programs in Orange County, Butte County, and Santa Cruz, including CEQA claims. In the Orange County case, the court interpreted syringe services programs as “projects” subject to the CEQA because the program could not demonstrate that it collected all the syringes that it distributed. Subsequently that program was forced to shut down. Another program in Butte County has been forced to rescind its DPH-approved application in the face of similar litigation. Additionally, a similar lawsuit has been filed against a syringe service program in Santa Cruz in early 2021.

2) **Author's statement:**

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, PPE 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 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. AB 1344 is needed to protect these SEP harm reduction programs and reduce community spread of communicable diseases.

- 3) **CEQA litigation against SEPs.** On December 8, 2020, four residents of Santa Cruz County, organized under the organization name "Grant Park Neighborhood Association Advocates," (plaintiffs) filed a lawsuit in Sacramento Superior Court against DPH and the Harm Reduction Coalition of Santa Cruz County (HRCSCC), seeking to nullify DPH's authorization of HRCSCC's syringe services program. An initial hearing date has been scheduled for September 24, 2021.

The plaintiffs allege that DPH was in violation of CEQA when acting to authorize HRCSCC's program and that HRCSCC is a public nuisance pursuant to California Civil Code sections 3479 and 3480. The plaintiffs also raise several other matters in the complaint and seek relief from the court.

The plaintiffs' CEQA claim is that DPH was incorrect in its determination that HRCSCC's application to establish the program did not constitute a "project" pursuant to CEQA, but instead that a full environmental review was required. Plaintiffs argue that because of this, DPH's authorization of the HRCSCC SSP was unlawful and should be set aside.

The Santa Cruz lawsuit follows two previous suits filed against DPH and state-authorized programs in Orange (filed August 2018) and Butte (filed April 2020) counties. In the Orange County case, the court ruled in its initial statement of decision that the CEQA and public nuisance aspects of the complaint could proceed at trial, while rejecting several other causes of action. Soon after, and before a trial took place, the court issued a writ of mandate that (1) set aside DPH's authorization to operate a mobile syringe exchange program in Orange County through August 6, 2020, and (2) requires DPH to undertake a CEQA-compliant environmental review prior to authorizing any future mobile syringe program in Orange County.

The Butte County case was settled by stipulated agreement in October 2020 by the SEP agreeing to withdraw its application to DPH and cease providing syringe services. DPH agreed to complete an environmental review prior to authorizing a future SEP application in the county.

- 4) **SEPs could be shielded from CEQA litigation without eliminating environmental review entirely.** The three existing lawsuits against SEPs have included multiple non-CEQA claims, including nuisance, that are not cured by this bill. A prior version of the bill declared

that authorized SEP services, and consequences including improperly discarded syringes and needles, could not be considered a public nuisance. However, this nuisance provision was removed from the bill in the April 8 amendments, leaving only the CEQA exemption.

To the extent the CEQA claims center on the impact of discarded needles, the bill could instead provide that if a DPH-approved program meets the statutory requirements, and DPH guidelines, for safe recovery and disposal of used syringes and sharps waste from all of its participants, discarded needles shall not be considered a significant effect on the environment. This approach could be coupled with more robust requirements on DPH and local programs for monitoring and recovery of discarded needles, as well as findings regarding the overriding considerations related to SEP public health objectives.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Access Support Network  
 Affordable Homeless Housing Alternatives  
 Alcohol Justice  
 American Addiction Institute of Mind and Medicine/Harm Reduction Institute  
 American Civil Liberties Union/Northern California/Southern California/San Diego  
 and Imperial Counties  
 Any Positive Change  
 APLA Health  
 Asian American Drug Abuse Program  
 Being Alive - Los Angeles  
 Berkeley Needle Exchange Emergency Distribution  
 CA Bridge  
 California Syringe Exchange Programs Coalition  
 Courage California  
 Desert Aids Project  
 Drug Policy Alliance  
 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  
 HIV Education and Prevention Project of Alameda County  
 Homeless Health Care Los Angeles  
 Homeless Persons Legal Assistance Project  
 Inland Empire Harm Reduction  
 Los Angeles LGBT Center  
 Mendocino County Aids/Viral Hepatitis Network  
 Next Harm Reduction  
 Northern Valley Harm Reduction Coalition  
 Safer Alternatives Thru Networking and Education (SANE)  
 SafeRX Santa Cruz County

San Francisco Aids Foundation  
Sierra Harm Reduction Coalition  
SLO Bangers Syringe Exchange and Overdose Prevention  
St. James Infirmary  
Stonewall Alliance of Chico  
The Los Angeles Trust for Children's Health  
The Sidewalk Project  
UCSF Alliance Health Project

**Opposition**

217 individuals  
City of Santa Cruz Mayor Donna Meyers  
Coastal Watershed Council  
County of Butte  
Valley Women's Club of San Lorenzo Valley

**Analysis Prepared by:** Lawrence Lingbloom / NAT. RES. /