

AMENDED IN SENATE AUGUST 27, 2003

AMENDED IN SENATE JULY 10, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 946

Introduced by Assembly Member Berg

(Coauthors: Assembly Members Bermudez, Calderon, Chan, Chu, Cohn, Firebaugh, Goldberg, Hancock, Kehoe, Koretz, Laird, Leno, Levine, Lieber, Longville, Lowenthal, Montanez, Mullin, Nation, Negrete McLeod, Nunez, Oropeza, Ridley-Thomas, Salinas, Steinberg, Vargas, Wiggins, and Yee)

(Coauthor: Senator Vasconcellos)

February 20, 2003

An act to amend Section 11364.7 of, and to add Chapter ~~46~~ (~~commencing with Section 121345~~)-17 (*commencing with Section 121347*) to Part 4 of Division 105 of, the Health and Safety Code, relating to AIDS.

LEGISLATIVE COUNSEL'S DIGEST

AB 946, as amended, Berg. AIDS: clean needle and syringe exchange.

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 if certain conditions are met.

Existing law prohibits any public entity, and 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 authorize cities, counties, or cities and counties to develop clean needle and syringe exchange projects, and would make related changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The rapidly spreading acquired immune deficiency
- 4 syndrome (AIDS) epidemic, and the more recent spread of
- 5 blood-borne hepatitis, pose an unprecedented public health crisis
- 6 in California, and threaten, in one way or another, the life and
- 7 health of every Californian.
- 8 (b) Injection drug users are the second largest group at risk of
- 9 becoming infected with the human immunodeficiency virus (HIV)
- 10 and developing AIDS, and they are the primary source of
- 11 heterosexual, female, and perinatal transmission in California, the
- 12 United States, and Europe.
- 13 (c) According to the Office of AIDS, injection drug use has
- 14 emerged as one of the most prevalent risk factors for new AIDS
- 15 cases in California.
- 16 (d) Studies indicate that the lack of sterile needles available on
- 17 the streets, and the existence of laws restricting needle availability
- 18 promote needle sharing, and consequently the spread of HIV
- 19 among injection drug users. The sharing of contaminated needles
- 20 is the primary means of HIV transmission within the injection drug
- 21 user population.
- 22 (e) Most injection drug users use a variety of drugs, mainly
- 23 heroin, cocaine, and amphetamines. Because amphetamine- and
- 24 cocaine-injecting drug users inject more frequently than heroin
- 25 users, their risk for HIV infection is higher.
- 26 SEC. 2. Section 11364.7 of the Health and Safety Code is
- 27 amended to read:



1 11364.7. (a) Except as authorized by law, any person who
2 delivers, furnishes, or transfers, possesses with intent to deliver,
3 furnish, or transfer, or manufactures with the intent to deliver,
4 furnish, or transfer, drug paraphernalia, knowing, or under
5 circumstances where one reasonably should know, that it will be
6 used to plant, propagate, cultivate, grow, harvest, compound,
7 convert, produce, process, prepare, test, analyze, pack, repack,
8 store, contain, conceal, inject, ingest, inhale, or otherwise
9 introduce into the human body a controlled substance, except as
10 provided in subdivision (b), in violation of this division, is guilty
11 of a misdemeanor.

12 No public entity, its agents, or employees shall be subject to
13 criminal prosecution for distribution of hypodermic needles or
14 syringes to participants in clean needle and syringe exchange
15 projects authorized by the public entity pursuant to Chapter ~~16~~
16 ~~(commencing with Section 121345)~~ 17 *(commencing with Section*
17 *121347)* of Part 4 of Division 105.

18 (b) Except as authorized by law, any person who manufactures
19 with intent to deliver, furnish, or transfer drug paraphernalia
20 knowing, or under circumstances where one reasonably should
21 know, that it will be used to plant, propagate, cultivate, grow,
22 harvest, manufacture, compound, convert, produce, process,
23 prepare, test, analyze, pack, repack, store, contain, conceal, inject,
24 ingest, inhale, or otherwise introduce into the human body
25 cocaine, cocaine base, heroin, phencyclidine, or
26 methamphetamine in violation of this division shall be punished
27 by imprisonment in a county jail for not more than one year, or in
28 the state prison.

29 (c) Except as authorized by law, any person, 18 years of age or
30 over, who violates subdivision (a) by delivering, furnishing, or
31 transferring drug paraphernalia to a person under 18 years of age
32 who is at least three years his or her junior, or who, upon the
33 grounds of a public or private elementary, vocational, junior high,
34 or high school, possesses a hypodermic needle, as defined in
35 paragraph (7) of subdivision (a) of Section 11014.5, with the intent
36 to deliver, furnish, or transfer the hypodermic needle, knowing, or
37 under circumstances where one reasonably should know, that it
38 will be used by a person under 18 years of age to inject into the
39 human body a controlled substance, is guilty of a misdemeanor and
40 shall be punished by imprisonment in a county jail for not more



1 than one year, by a fine of not more than one thousand dollars
2 (\$1,000), or by both that imprisonment and fine.

3 (d) The violation, or the causing or the permitting of a
4 violation, of subdivision (a), (b), or (c) by a holder of a business
5 or liquor license issued by a city, county, or city and county, or by
6 the State of California, and in the course of the licensee’s business
7 shall be grounds for the revocation of that license.

8 (e) All drug paraphernalia defined in Section 11014.5 is subject
9 to forfeiture and may be seized by any peace officer pursuant to
10 Section 11471.

11 (f) If any provision of this section or the application thereof to
12 any person or circumstance is held invalid, it is the intent of the
13 Legislature that the invalidity shall not affect other provisions or
14 applications of this section which can be given effect without the
15 invalid provision or application and to this end the provisions of
16 this section are severable.

17 SEC. 3. Chapter ~~16 (commencing with Section 121345)~~ 17
18 (*commencing with Section 121347*) is added to Part 4 of Division
19 105 of the Health and Safety Code, to read:

20
21 ~~CHAPTER 16.—~~

22
23 *CHAPTER 17. CLEAN NEEDLE AND SYRINGE EXCHANGE*
24 *PROGRAM*

25
26 ~~121345.—~~

27 *121347.* (a) The Legislature finds and declares that scientific
28 data from needle exchange programs in the United States and in
29 Europe have shown that the exchange of used hypodermic needles
30 and syringes for clean hypodermic needles and syringes does not
31 increase drug use in the population, can serve as an important
32 bridge to treatment and recovery from drug abuse, and can curtail
33 the spread of human immunodeficiency virus (HIV) infection
34 among the intravenous drug user population.

35 (b) In order to attempt to reduce the spread of HIV infection
36 and blood-borne hepatitis among the intravenous drug user
37 population within California, the Legislature hereby authorizes a
38 clean needle and syringe exchange program pursuant to this
39 chapter in any city and county, county, or city upon the action of
40 a county board of supervisors and the local health officer or health



1 commission of that county, or upon the action of the city council,
2 the mayor, and the local health officer of a city with a health
3 department, or upon the action of the city council and the mayor
4 of a city without a health department.

5 (c) The authorization provided under this section shall only be
6 for a clean needle and syringe exchange project as described in
7 Section ~~121346~~ 121347.5.

8 ~~121346.~~—

9 121347.5. A city and county, or a county, or a city with or
10 without a health department, that acts to authorize a clean needle
11 and syringe exchange project pursuant to this chapter shall, ~~in~~
12 ~~consultation with the State Department of Health Services,~~
13 authorize the *one-for-one* exchange of clean hypodermic needles
14 and syringes, as recommended by the United States Secretary of
15 Health and Human Services, subject to the availability of funding,
16 as part of a network of comprehensive services, including
17 treatment services, to combat the spread of HIV and blood-borne
18 hepatitis infection among injection drug users. Providers and users
19 of an exchange project authorized by the county, city, or city and
20 county shall not be subject to criminal prosecution for possession
21 of syringes or needles during participation in an exchange project.

