

Assembly Bill No. 547

Passed the Assembly August 29, 2005

Chief Clerk of the Assembly

Passed the Senate August 23, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 11364.7 of, and to add Chapter 18 (commencing with Section 121349) to Part 4 of Division 105 of, the Health and Safety Code, relating to clean needle and syringe exchange.

LEGISLATIVE COUNSEL'S DIGEST

AB 547, Berg. Clean needle and syringe exchange projects.

Existing law authorizes pharmacists and physicians to furnish hypodermic needles and syringes without a prescription or permit for human use in the administration of insulin or adrenaline.

Existing law prohibits any public entity, its agents, or employees from being subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis.

This bill would instead authorize cities, counties, or cities and counties to have a clean needle and syringe exchange project that, in consultation with the State Department of Health Services, authorizes this exchange, as recommended by the United States Secretary of Health and Human Services and as part of a network of comprehensive services.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The rapidly spreading acquired immunodeficiency syndrome (AIDS) epidemic, and the more recent spread of blood-borne hepatitis, pose an unprecedented public health crisis in California, and threaten, in one way or another, the life and health of every Californian.

(b) Injection drug users are the second largest group at risk of becoming infected with the human immunodeficiency virus (HIV) and developing AIDS, and they are the primary source of heterosexual, female, and perinatal transmission in California, the United States, and Europe.

(c) According to the Office of AIDS, injection drug use has emerged as one of the most prevalent risk factors for new AIDS cases in California.

(d) Studies indicate that the lack of sterile needles available on the streets, and the existence of laws restricting needle availability promote needle sharing, and consequently the spread of HIV among injection drug users. The sharing of contaminated needles is the primary means of HIV transmission within the injection drug user population.

(e) Most injection drug users use a variety of drugs, mainly heroin, cocaine, and amphetamines. Because amphetamine- and cocaine-injecting drug users inject more frequently than heroin users, their risk for HIV infection is higher.

SEC. 2. Section 11364.7 of the Health and Safety Code is amended to read:

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

No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 18 (commencing with Section 121349) of Part 4 of Division 105.

(b) Except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished

by imprisonment in a county jail for not more than one year, or in the state prison.

(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years his or her junior, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

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

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

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

SEC. 3. Chapter 18 (commencing with Section 121349) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 18. CLEAN
NEEDLE AND SYRINGE EXCHANGE PROGRAM

121349. (a) The Legislature finds and declares that scientific data from needle exchange programs in the United States and in Europe have shown that the exchange of used hypodermic

needles and syringes for clean hypodermic needles and syringes does not increase drug use in the population, can serve as an important bridge to treatment and recovery from drug abuse, and can curtail the spread of human immunodeficiency virus (HIV) infection among the intravenous drug user population.

(b) In order to attempt to reduce the spread of HIV infection and blood-borne hepatitis among the intravenous drug user population within California, the Legislature hereby authorizes a clean needle and syringe exchange project pursuant to this chapter in any city and county, county, or city upon the action of a county board of supervisors and the local health officer or health commission of that county, or upon the action of the city council, the mayor, and the local health officer of a city with a health department, or upon the action of the city council and the mayor of a city without a health department.

(c) The authorization provided under this section shall only be for a clean needle and syringe exchange project as described in Section 121349.1

121349.1. A city and county, or a county, or a city with or without a health department, that acts to authorize a clean needle and syringe exchange project pursuant to this chapter shall, in consultation with the State Department of Health Services, authorize the exchange of clean hypodermic needles and syringes, as recommended by the United States Secretary of Health and Human Services, subject to the availability of funding, as part of a network of comprehensive services, including treatment services, to combat the spread of HIV and blood-borne hepatitis infection among injection drug users. Providers participating in an exchange project authorized by the county, city, or city and county pursuant to this chapter shall not be subject to criminal prosecution for possession of needles or syringes during participation in an exchange project.

121349.2. Local government, local public health officials, and law enforcement shall be given the opportunity to comment on syringe exchange programs on an annual basis. The public shall be given the opportunity to provide input to local leaders to ensure that any potential adverse impacts on the public welfare of syringe exchange programs are addressed and mitigated.

121349.3. The health officer of the participating jurisdiction shall present annually at an open meeting of the board of

supervisors or city council a report detailing the status of syringe exchange programs including, but not limited to, relevant statistics on blood-borne infections associated with needle sharing activity. Law enforcement, administrators of alcohol and drug treatment programs, other stakeholders, and the public shall be afforded ample opportunity to comment at this annual meeting. The notice to the public shall be sufficient to assure adequate participation in the meeting by the public. This meeting shall be noticed in accordance with all state and local open meeting laws and ordinances, and as local officials deem appropriate.

Approved _____, 2005

Governor