

Assembly Bill No. 604

CHAPTER 744

An act to amend, repeal, and add Sections 121349, 121349.1, 121349.2, and 121349.3 of the Health and Safety Code, relating to public health.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 604, Skinner. Needle exchange programs.

Existing law, with certain exceptions, makes it a misdemeanor for a person to deliver, furnish, or transfer, or possess with intent to deliver, furnish, or transfer drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to introduce into the human body a controlled substance. Existing law provides an exception to this general rule by authorizing a city, county, or city and county to conduct a clean needle and syringe exchange project authorized by the public entity to combat the spread of HIV and bloodborne hepatitis. Existing law exempts providers participating in an exchange project from criminal prosecution for possession of needles or syringes during participation in the project. Existing law also provides a specified annual comment and reporting process relating to the needle and syringe exchange projects.

This bill would, until January 1, 2019, authorize the State Department of Public Health to authorize, as specified, certain entities to provide hypodermic needle and syringe exchange 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. The bill would, until January 1, 2019, require the department to establish and maintain on its Internet Web site the address and contact information of these programs.

This bill would, until January 1, 2019, exempt staff and volunteers participating in an authorized exchange project from criminal prosecution for violation of any law related to the possession, furnishing, or transfer of hypodermic needles or syringes during participation in an exchange project and would exempt program participants from criminal prosecution for possession of needles and syringes acquired from an authorized exchange project entity. The bill would also, until January 1, 2019, make the comment and reporting process for the projects biennial.

This bill would make additional technical and nonsubstantive changes.

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

SECTION 1. Section 121349 of the Health and Safety Code is amended to read:

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 reduce the spread of HIV infection and bloodborne 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, county, or city and county 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) In order to reduce the spread of HIV infection, viral hepatitis, and other potentially deadly bloodborne infections, the State Department of Public Health may, notwithstanding any other law, authorize entities that provide services set forth in paragraph (1) of subdivision (d), and that have sufficient staff and capacity to provide the services described in Section 121349.1, as determined by the department, to apply for authorization under this chapter to provide hypodermic needle and syringe exchange services consistent with state standards 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. Authorization shall be made after consultation with the local health officer and local law enforcement leadership, and after a period of public comment, as described in subdivision (e). In making the determination, the department shall balance the concerns of law enforcement with the public health benefits. The authorization shall not be for more than two years. Before the end of the two-year period, the department may reauthorize the program in consultation with the local health officer and local law enforcement leadership.

(d) In order for an entity to be authorized to conduct a project pursuant to this chapter, its application to the department shall demonstrate that the entity complies with all of the following minimum standards:

(1) The entity provides, directly or through referral, all of the following services:

- (A) Drug abuse treatment services.
- (B) HIV or hepatitis screening.
- (C) Hepatitis A and hepatitis B vaccination.
- (D) Screening for sexually transmitted infections.

(E) Housing services for the homeless, for victims of domestic violence, or other similar housing services.

(F) Services related to provision of education and materials for the reduction of sexual risk behaviors, including, but not limited to, the distribution of condoms.

(2) The entity has the capacity to commence needle and syringe exchange services within three months of authorization.

(3) The entity has adequate funding to do all of the following at reasonably projected program participation levels:

(A) Provide needles and syringe exchange services for all of its participants.

(B) Provide HIV and viral hepatitis prevention education services for all of its participants.

(C) Provide for the safe recovery and disposal of used syringes and sharps waste from all of its participants.

(4) The entity has the capacity, and an established plan, to collect evaluative data in order to assess program impact, including, but not limited to, all of the following:

(A) The total number of persons served.

(B) The total number of syringes and needles distributed, recovered, and disposed of.

(C) The total numbers and types of referrals to drug treatment and other services.

(e) If the application is provisionally deemed appropriate by the department, the department shall, at least 90 days prior to approval of the application, provide for a period of public comment as follows:

(1) Post on the department's Internet Web site the name of the applicant, the nature of the services, and the location where the applying entity will provide the services.

(2) Send a written and an e-mail notice to the local health officer of the affected jurisdiction.

(3) Send a written and an e-mail notice to the chief of police, the sheriff, or both, as appropriate, of the jurisdictions in which the program will operate.

(f) The department shall establish and maintain on its Internet Web site the address and contact information of programs providing hypodermic needle and syringe exchange services pursuant to this chapter.

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

(h) This section shall become inoperative on January 1, 2019, and as of that date is repealed.

SEC. 1.5. Section 121349 is added to the Health and Safety Code, to read:

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 reduce the spread of HIV infection and bloodborne 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, county, or city and county 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.

(d) This section shall become operative on January 1, 2019.

SEC. 2. Section 121349.1 of the Health and Safety Code is amended to read:

121349.1. (a) The State Department of Public Health or a city, county, or a city and county 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 Public Health, 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 bloodborne hepatitis infection among injection drug users. Staff and volunteers participating in an exchange project authorized by the state, county, city, or city and county pursuant to this chapter shall not be subject to criminal prosecution for violation of any law related to the possession, furnishing, or transfer of hypodermic needles or syringes during participation in an exchange project. Program participants shall not be subject to criminal prosecution for possession of needles or syringes acquired from an authorized needle and syringe exchange project entity.

(b) This section shall become inoperative on January 1, 2019, and as of that date is repealed

SEC. 2.5. Section 121349.1 is added to the Health and Safety Code, to read:

121349.1. (a) A city, county, or a city and county, 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 Public Health, authorize the exchange of clean hypodermic needles and syringes, as recommended by the United States Public Health Service, subject to the availability of funding, as part of a network of comprehensive services, including treatment services, to combat the spread of HIV and bloodborne 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.

(b) This section shall become operative on January 1, 2019.

SEC. 3. Section 121349.2 of the Health and Safety Code is amended to read:

121349.2. (a) Local government, local health officials, and law enforcement shall be given the opportunity to comment on clean needle and syringe exchange programs on a biennial 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 clean needle and syringe exchange programs are addressed and mitigated.

(b) This section shall become inoperative on January 1, 2019, and as of that date is repealed.

SEC. 3.5. Section 121349.2 is added to the Health and Safety Code, to read:

121349.2. (a) Local government, local public health officials, and law enforcement shall be given the opportunity to comment on clean needle and 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 from clean needle and syringe exchange programs are addressed and mitigated.

(b) This section shall become operative on January 1, 2019.

SEC. 4. Section 121349.3 of the Health and Safety Code is amended to read:

121349.3. (a) The health officer of the participating jurisdiction shall present biennially at an open meeting of the board of supervisors or city council a report detailing the status of clean needle and syringe exchange programs, 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, administrators of alcohol and drug treatment programs, other stakeholders, and the public shall be afforded ample opportunity to comment at this biennial meeting. The notice to the public shall be sufficient to ensure 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. For hypodermic needle and syringe exchange services authorized by the State Department of Public Health, a biennial report shall be provided by the department to the local health officer based on the reports to the department from service providers within the jurisdiction of that local health officer.

(b) This section shall become inoperative on January 1, 2019, and as of that date is repealed.

SEC. 5. Section 121349.3 is added to the Health and Safety Code, to read:

121349.3. (a) 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 clean needle and syringe exchange programs, 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, 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 ensure 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.

(b) This section shall become operative on January 1, 2019.