

SB 234-FN - VERSION ADOPTED BY BOTH BODIES

03/16/2017 0789s
03/23/2017 1064s
4May2017... 1376h
05/18/2017 1888EBA

2017 SESSION

17-0123
01/04

SENATE BILL ***234-FN***

AN ACT relative to hypodermic syringes and needles containing residual amounts of controlled drugs and authorizing the operation of syringe service programs in New Hampshire.

SPONSORS: Sen. Gray, Dist 6; Sen. Watters, Dist 4

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill:

- I. Exempts residual amounts of controlled substances in hypodermic syringes and needles from the provisions of the controlled drug act.
- II. Authorizes persons other than pharmacists to dispense hypodermic syringes and needles and allows them to be sold in retail establishments other than pharmacies.
- III. Authorizes the operation of syringe service programs in New Hampshire.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT relative to hypodermic syringes and needles containing residual amounts of controlled drugs and authorizing the operation of syringe service programs in New Hampshire.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings.

I. The general court hereby finds that:

- (a) The primary route of human immunodeficiency virus (HIV) transmission among people who inject drugs, and the most common risk factor for Hepatitis C virus (HCV) is attributed to injection drug use, according to the Centers for Disease Control and Prevention (CDC).
- (b) Syringe service programs (SSPs) have been shown to reduce the transmission of HIV by more than 50 percent, and to significantly reduce HCV, which may be present in upwards of 60 percent of people who inject drugs.
- (c) People who inject drugs often share and reuse injection equipment, including syringes, because of legal barriers.
- (d) The CDC and the United States Department of Health and Human Services recommends that all people who inject drugs who continue to inject drugs use a new sterile syringe for each injection.
- (e) Existing laws, regulations, and pharmacy guidelines inhibit people who inject drugs from obtaining, possessing, and safely disposing of syringes.
- (f) The absence of syringe service programs and the negligently limited access to sterile syringes places New Hampshire at risk of serious public health outbreaks.
- (g) The future costs to the state and society for health care, lost productivity, public aid to treat and care for people affected by HIV/AIDS, HCV, and other diseases associated with unsafe injections are exorbitant.
- (h) These infectious diseases and their human and fiscal costs are preventable.
- (i) After the implementation of SSPs it has been shown to reduce needle stick injuries among police officers by up to 2/3.
- (j) The presence of SSPs in communities does not expand drug related networks or increase crime rates.
- (k) Syringe service programs do not result in increased use of illicit drugs or encourage first time drug use.
- (l) It has been shown that new participants in an SSP were 5 times more likely to enter a drug treatment program than non-participants.
- (m) Participation in SSPs is associated with improved access to health care and drug treatment.
- (n) People who inject drugs will use sterile syringes if they can obtain them.
- (o) Access to a legal syringe disposal program reduces circulation of needles in the community and reduces the prevalence of HIV and HCV in syringes.
- (p) Syringe service programs are a necessary part of our existing comprehensive strategy of prevention treatment and recovery and a component of the Opiate-Opioid Public Health Crisis NH Comprehensive Response.
- (q) The leading medical, pharmacy, public health and policy organizations including the American Medical Association, the American Pharmaceutical Association, the Association of State and Territorial Health Officials, the National Association of Boards of Pharmacy, the National Alliance of State and Territorial AIDS Directors, the American Bar Association, the American Psychiatric Association, the United States Conference of Mayors, the American Society of Addiction Medicine, the American Public Health Association, the Infectious Disease Society of America, the HIV Medicine Association, the American Public Health Association, the Centers for Disease Control and Prevention, the American Civil Liberties Union, the World Health Organization, the National Academy of Sciences, the American Academy of Pediatrics, the American Nurses Association, the Surgeon General of the United States and others have all supported syringe service programs and action to eliminate barriers to syringe access as a public health measure.

II. Therefore, the general court hereby establishes syringe service programs.

2 Sale of Hypodermic Syringes and Needles. RSA 318:52-c is repealed and reenacted to read as follows:

318:52-c Sale of Hypodermic Syringes and Needles.

I. No person shall sell, furnish, or give to any person, under 18 years of age, an instrument commonly known as a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of drugs by injection without the written or oral prescription of a licensed physician, physician assistant, dentist, veterinarian, podiatrist, or advanced practice registered nurse. Such prescription shall contain the name and address of the patient, the date of the prescription, the description of the instrument prescribed, and the number of instruments prescribed.

II. The following conditions shall apply to all purchases of hypodermic syringes or needles:

(a) Retailers and dispensers of hypodermic syringes, needles, or any instrument adapted for the administration of drugs by injection shall provide to each purchaser at the time of purchase information regarding the safe disposal of hypodermic syringes or needles, including local disposal locations or a telephone number to call for such information, if appropriate.

(b) Retailers and dispensers shall also provide purchasers with information on drug addiction treatment, including a local telephone number to get assistance, if appropriate.

3 New Paragraph; Controlled Drug Act; Definition Added. Amend RSA 318-B:1 by inserting after paragraph XXIX the following new paragraph:

XXIX-a. "Residual amount" means an unusable amount of a controlled substance in or on a hypodermic syringe or needle.

4 Controlled Drug Act; Disposal of Controlled Drugs in Possession of Practitioner. Amend RSA 318-B:17-a to read as follows:

318-B:17-a Disposal of Controlled Drugs in Possession of Practitioner. No person other than the pharmacy board, its officers, agents, and inspectors is authorized to destroy any out-dated, deteriorated, excessive or otherwise unwanted or confiscated controlled drugs which are in the possession of a practitioner, veterinarian, pharmacy, peace officer, nursing home, manufacturer, wholesaler, clinic, or laboratory or hospital. No payment shall be made to any person or institution for any drug surrendered for destruction. A record shall be maintained which indicates the name, strength, and quantity of all drugs destroyed; the place and manner of destruction; the date and time destroyed; the name of the practitioner or institution surrendering the drugs; and the signature and title of the person witnessing destruction. Such records shall conform to any federal requirements and shall be open to inspection by all federal or state officers charged with the enforcement of federal or state controlled drug laws. ***This section shall not apply to residual amounts in hypodermic syringes and needles.***

5 New Subparagraph; Controlled Drug Act; Penalties. Amend RSA 318-B:26, II by inserting after subparagraph (e) the following new subparagraph:

(f) In the case of a residual amount of a controlled substance, as defined in RSA 318-B:1, XXIX-a, a person shall be guilty of a misdemeanor if the person is not part of a service syringe program under RSA 318-B:43.

6 Repeal. RSA 318:52-d, relative to recording and filing of prescriptions for hypodermic syringes and needles, is repealed.

7 New Subdivision; Syringe Service Programs. Amend RSA 318-B by inserting after section 42 the following new subdivision:

Syringe Service Programs

318-B:43 Syringe Service Programs Authorized.

I.(a) The following entities, if self-funded, may operate a syringe service program in New Hampshire to prevent the transmission of disease and reduce morbidity and mortality among individuals who inject drugs, and those individuals' contacts:

- (1) Federally qualified health centers.
- (2) Community health centers.
- (3) Public health networks.
- (4) AIDS service organizations.
- (5) Substance misuse support or treatment organizations.
- (6) Community based organizations.

(b) The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, further defining the entities in subparagraph (a).

II. Any entity operating a syringe service program in New Hampshire shall:

(a) Provide referral and linkage to HIV, viral hepatitis, and substance use disorder prevention, care, and treatment services, as appropriate.

(b) Coordinate and collaborate with other local agencies, organizations, and providers involved in comprehensive prevention programs for people who inject drugs to minimize duplication of effort.

(c) Attempt to be a part of a comprehensive service program that may include, as appropriate:

(1) Providing sterile needles, syringes, and other drug preparation equipment and disposal services.

(2) Educating and counseling to reduce sexual, injection, and overdose risks.

(3) Providing condoms to reduce risk of sexual transmission of viral hepatitis, HIV, or other STDs.

(4) Screening for HIV, viral hepatitis, STDs, and tuberculosis.

(5) Providing naloxone to reverse opioid overdoses.

(6) Providing referral and linkage to HIV, viral hepatitis, STD and tuberculosis prevention, treatment, and care services, including antiretroviral therapy for hepatitis C virus (HCV) and HIV, pre-exposure prophylaxis (PrEP), post-exposure prophylaxis (PEP), prevention of mother-to-child transmission, and partner services.

(7) Providing referral and linkage to hepatitis A virus (HAV) and hepatitis B virus (HBV) vaccination.

(8) Providing referral and linkage to and provision of substance use disorder treatment including medication assisted treatment for opioid use disorder which combines drug therapy such as methadone, buprenorphine, or naltrexone with counseling and behavioral therapy.

(9) Providing referral to medical care, mental health services, and other support services.

(d) Post its address, phone number, program contact information, if appropriate, hours of operation, and services offered on its Internet website.

(e) Register with the department of health and human services and confirm registration annually on or before November 1 of each subsequent year; provided however, the registration process shall be limited to notification to the department for data collection purposes only.

(f) Report quarterly to the department, which report shall include the following information regarding the program's activities:

(1) Number of needles/syringes distributed.

(2) Number of needles/syringes taken back.

(3) Number of HIV tests performed or delivered by the program.

(4) Number of HCV tests performed/delivered by program.

(5) Delivery of substance misuse treatment/care.

(6) Delivery of HIV care.

(7) Delivery of HCV care.

(8) Number of referrals to substance misuse treatment/services.

(9) Number of referrals to HIV testing.

(10) Number of referrals to HCV testing.

(11) Number of referrals to HIV care.

(12) Number of referrals to HCV care.

318-B:44 Syringe Service Programs; Affirmative Defense. It is an affirmative defense, as provided in RSA 626:7, to prosecution for possession of a hypodermic syringe or needle that the item was obtained through participation in a syringe service program. Nothing in this section shall be construed as an affirmative defense for any offense other than as set forth under RSA 318-B:26, II(f).

318-B:45 Syringe Service Programs in Drug-Free School Zones Prohibited. No syringe service program shall be located within a drug-free school zone as defined in RSA 193-B:1, II.

8 Effective Date. This act shall take effect upon its passage.

LBAO

17-0123

Amended 5/16/17

SB 234-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2017-1376h)

AN ACT relative to hypodermic syringes and needles containing residual amounts of controlled drugs and authorizing the operation of syringe service programs in New Hampshire.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General Other	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/>

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

METHODOLOGY:

This bill exempts residual amounts of controlled substances in hypodermic syringes and needles from certain provisions under RSA 318:B. This bill also authorizes persons, other than pharmacists, to dispense hypodermic syringes and needles by allowing them to be sold in certain retail establishments through identified self-funded entities to operate syringe service programs. The Department of Health and Human Services anticipates costs associated with program development and maintenance, database development and data storage, rulemaking, and for hiring one full-time Program Planner III to carry out program functions. Per the Department, there would be an indeterminable increase to expenditures overall, but estimates position costs to be \$82,000 (includes one-time equipment expenditures) in FY 2018, \$81,000 in FY 2019, \$85,000 in FY 2020, and \$89,000 in FY 2021. The Office of Professional Licensure and Certification states administratively attached boards do not regulate syringe dispensing; therefore, there would be no fiscal impact to the agency.

This bill removes certain penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2018	FY 2019
Class B Misdemeanor	\$49	\$50
Class A Misdemeanor	\$71	\$72
Routine Criminal Felony Case	\$451	\$456
Appeals	Varies	Varies

It should be noted average case cost estimates for FY 2018 and FY 2019 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$756/Case	\$756/Case
Contract Attorney – Misdemeanor	\$275/Case	\$275/Case*
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
<i>* The Council's budget request for the FY 2018-19 biennium includes an increase to \$300 per case for contract attorney misdemeanor cases.</i>		
Department of Corrections		
FY 2016 Average Cost of Incarcerating an Individual	\$35,832	\$35,832
FY 2016 Average Cost of Supervising an Individual on Parole/Probation	\$573	\$573
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$85 to \$110	\$85 to \$110

The Department of Justice typically does not prosecute cases involving unusable amounts of drugs therefore does not anticipate this bill will have a fiscal impact on the Department.

AGENCIES CONTACTED:

Department of Health and Human Services, Office of Professional Licensure and Certification, Judicial Council, Department of Justice, New Hampshire Association of Counties, and Judicial Branch