

NEEDLE AND HYPODERMIC SYRINGE ACCESS PROGRAM

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<http://www.house.mi.gov/hfa>

House Bill 5178 (H-1) as referred from subcommittee

Sponsor: Rep. Carrie A. Rheingans

Committee: Health Policy

Complete to 11-5-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5178 would amend the Public Health Code to expressly allow a person to establish a needle and hypodermic syringe access program if they are authorized to do so by the Department of Health and Human Services (DHHS), a local health officer, a local health department, or another governmental entity. The program would distribute sterile needles or hypodermic syringes to individuals or provide them with other services, items, or equipment to decrease the spread of communicable diseases. DHHS could develop and issue rules for these provisions, including requirements for getting authorized to create such a program.

Limited immunity

Under the bill, the possession, distribution, or delivery of any of the following by an individual who is served by, or who acts as an employee or volunteer for, a program described above would not be a violation of section 7401 or 7403 of the Public Health Code¹ or a local ordinance that substantially corresponds to those sections or that provides criminal penalties for the possession of drug paraphernalia:

- A needle or hypodermic syringe, including one that is empty or unused.
- Drug paraphernalia.
- A controlled substance in a trace or residual amount in a used needle, hypodermic syringe, or drug paraphernalia.
- Drug testing equipment, including a test strip or reagent.

Any otherwise admissible evidence could be used to establish that an individual is served by or acts as an employee or volunteer for a program, including a program card, a sign-in sheet, or testimony from a third party.

Drug paraphernalia

The bill would amend the prohibition against selling or offering for sale *drug paraphernalia* (as defined in section 7451 of the code) to provide that it does not apply to a health professional who is licensed, registered, or otherwise authorized under the Public Health Code and who, in their professional capacity, sells drug paraphernalia or offers it for sale.

In addition, the prohibition against selling drug paraphernalia currently does not apply to an object that is sold, offered for sale, or given away by a state or local governmental agency or by someone authorized by such an agency to prevent the transmission of infectious agents. The bill would instead exempt an object that is provided by a state or local governmental program or by a needle and hypodermic syringe access program created as described above.

MCL 333.7401 et seq. and proposed MCL 333.5137

¹ Those sections respectively address the manufacture/delivery and possession of controlled substances.

BRIEF DISCUSSION:

Often called syringe services programs (SSPs), needle and hypodermic syringe access programs are already allowed under Michigan law, which for decades has exempted from laws banning the sale of drug paraphernalia any objects provided by or under the authorization of a state or local governmental agency to prevent the transmission of infectious agents.²

These programs provide services to prevent unsafe drug use and reduce the incidence of HIV and viral hepatitis. In addition to providing sterile needles and syringes and facilitating the safe disposal of used syringes, the programs can offer overdose protection (e.g., naloxone), treatment services and referrals, onsite testing, vaccination, education and information services, care for abscesses and other wounds, other physician prescription and health care services, and other services generally intended to reduce the health and safety issues associated with drug use.³

The bill would clarify the exemption from drug paraphernalia restrictions and also expressly provide immunity from prosecution under other provisions of the code (e.g., those prohibiting manufacture, possession, delivery, or use of a controlled substance) for individuals who violate those provisions through their work or participation in such a program.

FISCAL IMPACT:

House Bill 5178 would have a likely minimal fiscal impact on state expenditures to the Department of Health and Human Services and local units of government. Any fiscal impact would be dependent on the cost of the administration of the needle and hypodermic syringe access program by the state or a local health department should they choose to authorize the program. Additional costs would be dependent on whether the state finds it necessary to promulgate rules and requirements of the program.

The bill also would have an indeterminate fiscal impact on the state and on local units of government. Individuals participating in programs or employed by or volunteering for programs would no longer be committing offenses. The bill could result in decreased costs to the state and to local court systems. A reduction in the number of felony charges would result in decreased costs related to the state correctional system. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$49,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. A reduction in the number of misdemeanor charges would result in decreased costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. Local court systems could experience a reduction in the number of cases. There could also be a decrease in penal fine revenues which would decrease funding for local libraries, which are the constitutionally designated recipients of those revenues.

² See https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/SSP/SSP-Directory_new---4-3-23.pdf

³ See <https://www.cdc.gov/syringe-services-programs/php/index.html> The DHHS site is here
<https://www.michigan.gov/mdhhs/keep-mi-healthy/mentalhealth/drugcontrol/syringe-service-programs>
For a history of SSPs in Michigan, see <https://opioidprinciples.jhsph.edu/wp-content/uploads/2023/02/JHU-027-Syringe-Services-Report-FINAL-v1.9.23-3-23.pdf>

POSITIONS:

Representatives of the following entities testified in support of the bill (10-26-23):

- Michigan Overdose Prevention Coalition
- Opioid Advisory Commission
- Families Against Narcotics

The following entities indicated support for the bill:

- ACCESS Community Health and Research Center (6-13-24)
- Collegiate Recovery Program (10-26-23)
- Community Health Awareness Group (10-26-23)
- Decriminalize Nature Michigan (10-26-23)
- Families Against Narcotics (6-13-24)
- Grand Rapids Red Project (10-26-23)
- Harm Reduction Michigan (10-26-23)
- HIV/AIDS Alliance of Michigan (10-26-23)
- Kiwanis Club of Ann Arbor (10-26-23)
- Lookout Project (10-26-23)
- Michigan Association for Local Public Health (10-26-23)
- Michigan Association of Substances Addiction Providers (6-13-24)
- Michigan Drug Users Health Alliance (10-26-23)
- Michigan Overdose Prevention Coalition (6-13-24)
- Mid-State Health Network (10-26-23)
- Oakland County Harm Reduction Program (10-26-23)
- Oakland County Health Division (10-26-23)
- Pet Pals Mutual Aid of Washtenaw County (10-26-23)
- Prosecuting Attorneys Association Legislative Committee (10-26-23)
- Sacred Heart Rehabilitation Center (10-26-23)
- A Servant's Heart (10-26-23)
- Shelter Association of Washtenaw County (10-26-23)
- Southeast Michigan Drug Users Union (10-26-23)
- Strategies to Overcome Obstacles and Avoid Recidivism (SOOAR) (10-26-23)
- Students for Sensible Drug Policy (10-26-23)
- Wayne County Health, Human, and Veteran Service Department (6-13-24)
- Wellness Services (10-26-23)
- WeRoc (10-26-23)
- Wolverine Street Medicine (10-26-23)
- Ypsi Bike Co-Op (10-26-23)
- Ypsilanti Peace House (10-26-23)

The Michigan Sheriffs' Association indicated opposition to the bill. (6-13-24)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.