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HARM REDUCTION AND OVERDOSE PREVENTION

Fact Sheet

Legality of Syringe Services Programs in Maryland

Background

Drug overdose is a nationwide epidemic that claimed the lives of over 107,000 people in the United States in 2023.[1] Alongside the surge in overdose deaths, infections related to lack of access to new syringes and subsequent syringe sharing among people who inject drugs (PWID) have increased dramatically. A number of states including Indiana,[2] Massachusetts,[3] Washington,[4] and West Virginia[5] have experienced recent injection-related HIV outbreaks. Hepatitis C infections, which overwhelmingly result from use of shared syringes, have increased every year for over a decade,[6] and tripled from 2009 to 2018.[7] Injection-related endocarditis, which often results in both long-term health problems for the individual as well as high costs to the health-care system,[8] has been increasing nationwide.[9]

Maryland reflects these nationwide trends. “In Maryland, there has continued to be increases in chronic [hepatitis C] reports” in recent years, for example, in part because “there are hard-to-reach populations impacted by [hepatitis C] that are not connected to care.”[10] As the Maryland Department of Health has found, PWID are “at higher risk for having hepatitis C because needle-sharing behaviors increase the risk of infection, there is a relatively low utilization of health services, and the stigma of substance use in the community . . . is seen as a barrier to seeking and obtaining appropriate care.”[11] Among people between ages 20-59 living with hepatitis C in Maryland, over half reported injection drug use as a potential risk factor for acquiring the infection.[12]

Injection drug use is not, in and of itself, a risk factor for HIV, hepatitis C, infective endocarditis, or other blood-borne illness. Rather, the increased risk of bloodborne disease infection associated with injection drug use comes largely from the sharing or reuse of injection equipment. Therefore, increasing access to sterile syringes is an extremely effective strategy for reducing the spread of bloodborne disease among PWID, their partners, and their families. Indeed, in 2000, then U.S. surgeon general David Satcher released an extensive report concluding that syringe services programs (SSPs) reduce HIV incidence without encouraging the use of illegal drugs,[13] a finding that numerous studies from the United States and other countries have since replicated.[14] As the Centers for Disease Control and Prevention notes, “Nearly thirty years of research shows that comprehensive SSPs are safe, effective, and cost-saving, do not increase illegal drug use or crime, and play an important role in reducing the transmission of viral hepatitis, HIV and other infections.”[15]

This brief factsheet discusses the legality of SSPs in Maryland. It concludes that Maryland law explicitly permits SSPs to operate in the state and provides immunity from criminal statutes that could apply to SSP-related activities for SSP workers and participants.

Summary of Relevant Maryland Law

In 2016, then-Governor Larry Hogan signed the Opioid-Associated Disease Prevention and Outreach Act into law. The legislation, also known as the Syringe Services Programs Bill, formally authorized SSPs in Maryland and created a statewide framework for their regulation.[16,17] The statute was enacted based on the findings of Governor Hogan's "Heroin and Opioid Emergency Task Force," which recommended implementation of statewide SSP legislation for "opioid-associated disease prevention" and to "provide outreach, education, and linkage to treatment services, including the exchange of sterile syringes to people who inject drugs."[18]

Under the framework created by this law, the authorization, regulation, and operation of SSPs is delegated to the Maryland Department of Health and local health departments.[19] Other governmental entities and external experts—such as law enforcement agencies and medical authorities—are represented on a Standing Advisory Committee charged with providing technical assistance to and making recommendations to authorized SSPs,[20] but otherwise have no legal role in the establishment or operation of SSPs.

Local health departments or community based-organizations can apply to the state Department of Health for approval to establish an SSP.[21] An approved SSP must "[p]rovide for substance use outreach, education, and linkage to treatment services to participants, including distribution and collection of hypodermic needles and syringes," along with other injection supplies and safer sex supplies, while complying with state and local protocols and any guidance of the Standing Advisory Committee.[22] Program participants must be issued unique identification cards, with corresponding privacy protections, and be advised to carry their cards "at all times."[23] Because Maryland law generally criminalizes the distribution and possession of paraphernalia and the possession of even the small amounts of drugs that might be present in used injection supplies, the SSP law provides immunity from the relevant statutes for individuals engaged in authorized SSP activities.[24]

First, § 24-908 provides that SSP staff members, volunteers, and participants may not be arrested, charged, or prosecuted for violating criminal statutes related to: possession of controlled substances;[25] possession of controlled paraphernalia;[26] and distribution and possession of controlled substances and controlled paraphernalia by "authorized provider[s]."[27] The immunity applies when a staffer, volunteer, or participant of the SSP "possess[es] or distribut[es] controlled paraphernalia or drug paraphernalia" and that conduct "is a direct result" of "activities in connection with the work of" an authorized SSP, [28] so long as the conduct was authorized or approved by the program.[29]

An SSP participant's possession of syringes and other injection supplies obtained from an authorized SSP is "a direct result" of an SSP's approved activities, so participants are immune from all criminal liability for violation of the listed statutes, including possession of both paraphernalia and controlled substances. As a practical matter, the only way liability for *drug* possession could arise from "possessing . . . *paraphernalia*," while directly linked to the work of an SSP, is via the possession of used injection supplies carrying drug residue. Therefore, § 24-908 provides broad criminal immunity from arrest, charge, and prosecution for the distribution, possession, and collection of both clean and used injection supplies by SSP workers and participants.

Second, § 24-909 specifies that, "[e]xcept for violations of any laws that could arise from residue attached to or contained within hypodermic needles or syringes being returned or already returned to a Program," the SSP statute otherwise provides no immunity "from criminal prosecution" for violations of controlled substances laws.[30] In other words, § 24-909 makes expressly clear that the SSP statute provides no *further* immunity from the criminal laws barring possession and distribution of controlled substances, aside from the immunity § 24-908 provides from drug residue on injection supplies from an SSP, discussed above.

Together, these provisions make clear that SSP workers and participants are immune from arrest, charge, or prosecution for conduct that fulfills the SSP's public health functions: the distribution of injection supplies from authorized SSPs, the possession of those supplies by both the SSP and SSP participants, and the return of injection supplies—including any residual amounts of controlled substances they might contain—for proper disposal.

Statutes must be interpreted to fulfil the General Assembly's legislative purpose.[31] Here, the express legislative purpose of the Opioid-Associated Disease Prevention and Outreach Act was to implement the findings and recommendations of Governor Hogan's Heroin and Opioid Emergency Task Force.[32] The Task Force recommended statewide SSP authorization as "an evidence-based approach to the reduction of drug overdoses and drug-related health issues such as HIV and Hepatitis C virus."[33] The SSP statute could not fulfill its intended purpose of reducing incidence of disease linked to injection drug use if SSP workers and participants could face arrest or criminal prosecution for the activities necessary to an SSP's operation, including possessing residual amounts of drugs within syringes that will be or have been returned to an SSP.

Further, because the SSP statute makes the possession of supplies distributed by the SSP entirely legal, such lawful possession cannot, on its own, contribute to a finding of probable cause as to the offenses referenced in § 24-908.[34] It is possible that § 24-908 could be construed as placing the burden of proof on immunity—that the possession of paraphernalia or residual amounts of controlled substances contained therein was "a direct result of the employee's, volunteer's, or participant's activities in connection" with an SSP—on the individual in question. However, "a rule governing the evidentiary burden at trial has no bearing on the question of whether probable cause to arrest exists when a police officer receives evidence that a suspect is lawfully in possession of potential contraband" as an SSP participant.[35] Because § 24-908 expressly provides immunity from "arrest" and "charges" as well as prosecution, an officer who has reason to know that an individual's possession of new or used syringes is a direct result of their participation in an SSP would also know that such possession, without more, is not an indication of criminal activity taking place.[36]

Finally, although the SSP statute does not address the issue expressly, it supports the conclusion that SSP participants are protected by the statute's immunity provisions statewide, not exclusively in the municipality where the SSP is authorized. Nothing in the plain text of the statute imposes a geographic restriction on its protections. As the Massachusetts Supreme Court put it when considering this issue as to a similar statute with a similar immunity provision:

> [Construing a geographic limitation on immunity] would clearly interfere with the purposes underlying the Legislature's creation of pilot needle exchange programs. In establishing these programs, the Legislature was attempting to combat a substantial public health threat: the transmission of blood-borne diseases by intravenous drug abusers. By encouraging users to obtain their needles from a program, rather than through unauthorized sources, the theory is that users will use the sterile needles supplied by the program. Such needles are 'possessed as part of a pilot program,' and do not cease to be possessed 'as part of' that pilot program merely because the participant takes them across a municipal boundary. An interpretation of [the immunity provision] that discourages program participation by effectively limiting where a participant may legally possess needles would certainly hinder, and might well defeat, the department's attempts to deal with the problem.[37]

The same reasoning applies to Maryland's statute, especially given the fundamental requirement that Maryland statutes be interpreted to implement the General Assembly's legislative purpose.[38] Injection supplies possessed as "a direct result of" participation in an authorized SSP do not cease to be "in connection with the work of" the SSP "merely because the participant takes them across a municipal boundary." A contrary interpretation "would certainly hinder" the statute's express purpose of reducing the incidence of drug-related disease transmission.

Conclusion

While the possession and distribution of drug paraphernalia, including needles, syringes, and other injection supplies, is generally prohibited by Maryland criminal law, the Maryland SSP statute provides a broad exception to that general prohibition. To fulfill its legislative purpose of creating SSPs that serve the public health, the statute grants immunity from drug possession and paraphernalia offenses when the possession or distribution activity at issue is the direct result of participation in an authorized SSP.

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This document was developed by Corey Davis, Director, and Michael Abrams, Senior Attorney, at the Network for Public Health Law Harm Reduction Legal Project (harmreduction@networkforphl.org). **The Network promotes public health and health equity through non-partisan educational resources and technical assistance. These materials provided are provided solely for educational purposes and do not constitute legal advice. The Network's provision of these materials does not create an attorney-client relationship with you or any other person and is subject to the Network's Disclaimer.**

SUPPORTERS

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[1] National Center for Health Statistics. Vital Statistics Rapid Release: Provisional Drug Overdose Death Counts. 2023; https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm. Accessed November 11, 2024.

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[10] Md. Dep't of Health, Maryland Hepatitis C Strategic Plan, at 3 (Jan. 2019), https://health.maryland.gov/phpa/OIDPCS/AVHPP/Documents/Maryland_Hepatitis_C_Strategic_Plan_FINAL_2019.pdf.

[11] *Id.* at 5.

[12] *Id.*

[13] Satcher D. Evidence-based findings on the efficacy of syringe exchange programs: an analysis of the scientific research completed since April 1998. 2000. Available at: https://harmreduction.org/wp-content/uploads/2012/01/EvidenceBasedFindingsOnEfficacyofSEPs.pdf.

[14] Aspinall EJ, Nambiar D, Goldberg DJ, et al. Are needle and syringe programmes associated with a reduction in HIV transmission among people who inject drugs: a systematic review and meta-analysis. Int J Epidemiol. 2014;43(1):235–248; Platt L, Minozzi S, Reed J, et al. Needle and syringe programmes and opioid substitution therapy for preventing HCV transmission among people who inject drugs: findings from a Cochrane Review and meta-analysis. Addiction. 2018;113(3):545–563.

[15] Centers for Disease Control and Prevention, Syringe Services Programs (SSPs). https://www.cdc.gov/ssp/index.html

[16] *See generally* Md. Code, Health Gen. § 24-901 *et seq.*; COMAR 10.52.01.01 *et seq*.

[17] Prior to this legislation, since 1994, Baltimore City operated the state's only SSP under a separate statute, which continues to govern the Baltimore City program alone. Md. Code, Health Gen. § 24-801 *et seq.*; Md. Code, Health Gen. § 24-902(a)(3).

[18] Md. Dep't of Legis. Servs., Md. Fisc. & Pol'y Note, 2016 Sess., S.B. 97 (Jan. 27, 2016).

[19] Md. Code, Health Gen. §§ 24-902, 24-903(d), 24-905; COMAR 10.52.01.01, 10.52.01.03.

[20] Md. Code, Health Gen. § 24-904.

[21] Md. Code, Health Gen. § 24-902; COMAR 10.52.01.03; *see also* COMAR 10.52.01.04 (laying out application requirements and steps in the application process).

[22] Md. Code, Health Gen. § 24-902(c), 24-903, 24-905; COMAR 10.52.01.05 (listing regulatory requirements for the "program design and operation" of SSPs and the protocols that local health departments must adopt to operate an SSP).

[23] Md. Code, Health Gen. § 24-906; COMAR 10.52.01.05(B)(2).

[24] *See* Md. Code, Health Gen. § 24-908(a); Md. Code, Crim. L. §§ 5-601, 5-619, 5-620, 5-902.

[25] Md. Code, Crim. L. § 5-601.

[26] Md. Code, Crim. L. §§ 5-619, 5-620.

[27] Md. Code, Crim. L. §§ 5-902(c) and (d).

[28] Md. Code, Health Gen. § 24-908(a).

[29] Md. Code, Health Gen. § 24-908(b).

[30] Md. Code, Health Gen. § 24-909.

[31] *In re Md. Bio Energy LLC*, 263 Md. App. 215, 239 (2024) ("In interpreting a statute, the cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature.") (quotation omitted).

[32] Md. Dep't of Legis. Servs., Md. Fisc. & Pol'y Note, 2016 Sess., S.B. 97 (Jan. 27, 2016).

[33] Md. Heroin & Opioid Emergency Task Force, Final Report, at 11 (Dec. 2015), https://harfordcountyhealth.com/wp-content/uploads/2015/12/Heroin-Opioid-Emergency-Task-Force-Final-Report.pdf.

[34] *See, e.g.*, *Commonwealth v. Landry*, 438 Mass. 206, 210–11 (2002) (holding, in case involving police search of card-carrying participant in authorized SSP, under similar statutory immunity provision, that "[t]he mere possession of an item that has many lawful applications but may be contraband in other circumstances does not, by itself, constitute probable cause to believe that the possession is illegal"); *see also Pacheco v. State*, 465 Md. 311, 331–33 (2019) (holding—post-decriminalization of possession of small amounts of cannabis—that "suspicious" vehicle and odor of "fresh burnt" cannabis, "without more," could not support probable cause for arrest and search incident to arrest because such non-criminal conduct could not support that the subject "was committing, had committed, or was about to commit a crime"); *Bailey v. State*, 412 Md. 349, 375–87 (2010) (agreeing that subject's smelling of ether while "in a high drug crime area" could not support probable cause finding because "[p]ossession of ether is not a criminal act" and "the odor of a lawful substance, on its own, does not constitute probable cause for a belief that contraband is present or a crime has been committed, even if the lawful substance is allegedly associated with contraband"); *Crosby v. State*, 408 Md. 490, 512, 515 (2009) ("As several courts have observed, 'it is impossible for a combination of wholly innocent factors to combine into a suspicious conglomeration unless there are concrete reasons for such an interpretation.") (quoting *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997)).

[35] *Landry*, 438 Mass. at 211.

[36] *See supra* note 34.

[37] *Landry*, 438 Mass. at 209.

[38] *In re Md. Bio Energy LLC*, 263 Md. App. at 239.