

Legislative Analysis



NEEDLE AND SYRINGE ACCESS PROGRAMS

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House Bills 5178 and 5179 as introduced
Sponsor: Rep. Carrie A. Rheingans
Committee: Health Policy
Complete to 10-26-23

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

SUMMARY:

House Bill 5178 would amend the Public Health Code to explicitly allow a person to establish a needle and hypodermic syringe access program¹ 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 purpose of a needle and hypodermic syringe access program would be defined as distributing sterile needles or hypodermic syringes to individuals or providing them with additional services, items, or equipment to decrease the spread of communicable diseases. DHHS could develop and issue rules to implement these provisions, including requirements for obtaining an authorization to establish and implement such a program.

Note that these programs are currently allowed under Michigan law, which for decades has exempted any objects provided by or under the authorization of a state or local governmental agency to prevent the transmission of infectious agents from laws banning the sale of drug paraphernalia.² The bill would clarify this exemption and 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. As written, the introduced bill would additionally provide a blanket immunity from prosecution under those provisions for program workers or participants, regardless of the scale of the violation or whether it was related to the program.

Limited immunity

Under the bill, the possession, use, distribution, or delivery of any of the following by an individual who participates in, is employed by, or volunteers for a needle and hypodermic syringe access program would not be a violation of section 7401, 7403, 7404, or 7453 of the

¹ Often called syringe services programs (SSPs), needle and hypodermic syringe access programs provide services to help prevent unsafe drug use and reduce incidence 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. See <https://www.cdc.gov/ssp/docs/SSP-FAQs.pdf> and <https://www.cdc.gov/ssp/docs/SSP-FactSheet.pdf> Also <https://nida.nih.gov/research-topics/syringe-services-programs> 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> For a state comparison, see <https://legislativeanalysis.org/wp-content/uploads/2023/09/Syringe-Services-Programs-Summary-of-State-Laws.pdf>

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

Public Health Code³ or a local ordinance that substantially corresponds to any of those sections or that provides criminal penalties for the possession of drug paraphernalia:

- A needle, a hypodermic syringe, or drug paraphernalia.
- A controlled substance in a used needle, hypodermic syringe, or drug paraphernalia in an amount sufficient only for personal use.
- Drug testing equipment, including a test strip or reagent.

To establish the above immunity, participation in a needle and hypodermic syringe access program could be established through any otherwise admissible evidence, such as a program card, sign-in sheet, or testimony from a third party regarding program participation.

General immunity

The bill also would amend sections 7401, 7403, 7404, and 7453 of the code to provide that an individual who participates in, is employed by, or volunteers for a needle and hypodermic syringe access program is immune, under any circumstances, from being considered in violation of the provisions of those sections. Under the bill:

- An individual who manufactures, creates, or delivers a controlled substance, or possesses a controlled substance with intent to manufacture, create, or deliver it, in apparent violation of section 7401 would not be in violation of that section if the individual participates in, is employed by, or volunteers for a needle and hypodermic syringe access program.⁴
- An individual who possesses a controlled substance in apparent violation of section 7403 would not be in violation of that section if the individual participates in, is employed by, or volunteers for a needle and hypodermic syringe access program.⁵
- An individual who uses a controlled substance in apparent violation of section 7404 would not be in violation of that section if the individual participates in, is employed by, or volunteers for a needle and hypodermic syringe access program.⁶
- An individual who sells or offers for sale drug paraphernalia in apparent violation of section 7453 would not be in violation of that section if the individual participates in, is employed by, or volunteers for a needle and hypodermic syringe access program.⁷

Drug paraphernalia exemption

Finally, provisions in the code that prohibit selling drug paraphernalia currently exempt an object sold, offered for sale, or given away by a state or local governmental agency, or someone authorized by such an agency, to prevent the transmission of infectious agents (e.g., a sterile needle or syringe). The bill would replace this exemption with language exempting an object that is provided by a state or local governmental program or by a needle and hypodermic syringe access program.

MCL 333.7401 et seq. and proposed MCL 333.5137

³ Those sections respectively address the manufacture/delivery, possession, or use of a controlled substance and the sale of drug paraphernalia.

⁴ Section 7401 is here: <http://legislature.mi.gov/doc.aspx?mcl-333-7401>

⁵ Section 7403 is here: <http://legislature.mi.gov/doc.aspx?mcl-333-7403>

⁶ Section 7404 is here: <http://legislature.mi.gov/doc.aspx?mcl-333-7404>

⁷ Section 7453 is here: <http://legislature.mi.gov/doc.aspx?mcl-333-7453>

House Bill 5179 would amend the definition of *drug paraphernalia* for purposes of Public Health Code provisions that prohibit selling drug paraphernalia or offering it for sale and that govern material subject to forfeiture. Under the bill, testing products that are used to determine whether a controlled substance contains chemicals, toxic substances, or hazardous compounds in quantities that can cause physical harm or death (such as fentanyl testing strips) would not be considered *drug paraphernalia* under the code.

MCL 333.7451

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 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 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.

House Bill 5179 is a companion bill and would not have a fiscal impact on the state or on local units of government.

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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.