

STUCK IN THE SYSTEM

Expanding Syringe Access by Reconciling
the Penal Code with the Public Health Law



FOCAL-NY USERS UNION



ACKNOWLEDGEMENTS

This report is dedicated to the countless drug users who have fought for and provided syringe access despite myriad legal challenges and social stigma. Public funding and support for life-saving health interventions for drug users have often been unacceptably delayed or denied because of political controversies, although there has always been considerable self-organizing among users to provide health support to each other.

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ABOUT THE AUTHORS:

The NYC AIDS Housing Network (NYCAHN) is a citywide membership organization led by low-income people who are living with HIV/AIDS, former and active drug users, and formerly incarcerated. NYCAHN is dedicated to creating more just and healthy communities through base-building, direct action and leadership development among those who are directly affected by the issues we work on. VOCAL-NY Users Union specifically focuses on organizing people who are active and former drug users around ensuring a human rights and health-based approach to drug policies.

The Community Development Project (CDP) of the Urban Justice Center (UJC) provides legal, technical, research and policy assistance to grassroots community-groups working for positive social change in low-income communities. CDP's Research and Policy Initiative utilizes a participatory-action research model to provide assistance to community organizing groups working in low-income communities of color throughout New York City. Our work seeks to generate data and develop public policy solutions coming from the experience, perspective and leadership of low-income communities of color.



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EXECUTIVE SUMMARY

Syringe access programs have been promoting safer syringe use and disposal practices in New York State and City for over two decades through public health exemptions. These programs, including syringe exchange programs (SEPs) and licensed pharmacies, health care facilities and health care practitioners authorized under the Expanded Syringe Access Program (ESAP) initiative, have been invaluable in preventing the transmission of blood-borne pathogens, reducing HIV and Hepatitis C (HCV) rates and improving overall public health and safety. Despite the Public Health Law exemptions permitting syringe access programs to operate in New York, program participants are often targeted for police harassment, arrest and incarceration for possessing sterile or used syringes, significantly reducing program participation and effectiveness.

Voices of Community Advocates and Leaders (VOCAL), the nation's only membership organization led by people who are active and former drug users, with support from the Urban Justice Center's Community Development Project, wrote this report to document the experiences of SEP and ESAP participants. The following research findings were identified from analysis of surveys, interviews and secondary data.

RESEARCH FINDINGS:

New York State's Penal Code and law enforcement practices are inconsistent with the state's public health goals and the specific public health law authorizing syringe access programs.

71% of survey respondents had been charged with unlawful syringe possession (of those arrested, 9 out of 10 were carrying white SEP cards when they were arrested).

- Police are arresting people for syringe possession, even when they participate in a lawful syringe access program and have documentation proving it.
- By disregarding the white SEP cards, police are violating NYS public health law and guidelines.
- People are being charged with drug possession when they carry used syringes that contain trace amounts of residue.
- Injection drug users and other syringe carriers report abusive practices when stopped by police, including after being arrested.

"[The SEP] gives you a card that that says, if I'm holding this card, I should not be arrested for the possession of a syringe, and numerous times I have been put through the system. And the police have been ignoring the fact that I practice harm reduction. I'm not happy about it...because I haven't committed any crime, I'm doing things to prevent myself from catching HIV or AIDS or Hepatitis C." – Interviewee #2

The New York State Penal Code and law enforcement practices create real and perceived barriers that reduce the benefits of syringe access programs.

1 out of 3 respondents who were arrested said they either stopped using syringe access programs or went less often because of their experience.

- Law enforcement appears to selectively target SEPs and other public health facilities where injection drug users access services, which discourages participation in these programs.
- The fear of arrest encourages unsafe injection and disposal practices.
- Additional public health interventions are being negatively impacted by police behavior.

"It's tougher. I don't want to get caught again, so I don't go as many times anymore [to the SEP]." – Survey respondent #66

Injection drug users understand New York’s public health law and are eager to adopt safer injection and disposal practices.

- People remember what it was like before syringe access programs and don’t want to return to that type of environment.
- People take active steps to reduce risk to themselves and the community.

“I’m not trying to die, I’m not trying to get infected. I care about other people, I don’t want nobody to get hurt; not over getting stuck by a needle I threw in the garbage.” – Interviewee #3

Punitive law enforcement practices that target injection drug users illustrate deeper problems with current drug control policies, policing methods and gentrification.

- Police harassment of injection drug users occurs within a broader context of policing strategies driven by racial profiling, the war on drugs and gentrification.
- Police target injection drug users in a misguided effort to collect information for anti-drug enforcement efforts.

“The people [the police] are targeting are...the lower class, the drug addicts, the homeless people, people that look like they do drugs, people that don’t look like they belong.” – Interviewee #8

RECOMMENDATIONS:

These findings suggest the current Penal Code and law enforcement practices discourage participation in syringe access programs, minimizing their effectiveness and jeopardizing public health and safety. To fully realize the benefits of these programs, VOCAL recommends the following to City and State officials:

Promote better utilization of syringe access and disposal programs by eliminating inconsistencies in state laws that create legal barriers for participation.

- The governor and legislature should pass legislation that fully removes syringe possession as a misdemeanor paraphernalia charge in the Penal Code.

Encourage greater participation in syringe disposal programs.

- The governor and legislature should pass legislation amending the Penal Code to clarify that possessing a syringe with a trace amount of residue does not constitute criminal possession of a controlled substance.

Law enforcement practices should be consistent with public health laws and objectives.

- The NYS Department of Criminal Justice Services (DCJS) and New York Police Department (NYPD) should educate law enforcement about the importance of syringe access programs by requiring trainings that are led by NYS Department of Health (DOH) and NYC Department of Health & Mental Hygiene (DOHMH) staff and participants.
- The NYSDCJS and NYPD should issue guidance instructing that (a) law enforcement should not target areas around SEPs and other venues where IDUs access health services for drug enforcement, (b) syringe possession is not probable cause for a search, and (c) harm reduction supplies and information (such as SEP cards) acquired through syringe access programs should not be confiscated.
- Governor Paterson should foster better cooperation between NYSDCJS and NYSDOH by establishing an interagency task force, which the NYC mayor should replicate on a city level.
- NYSDCJS and NYPD should also avoid using drug arrests to evaluate police performance.

Ensure ongoing monitoring of law enforcement practices around syringe access programs.

- The NYSDOH and NYCDOHMH should work with SEPs, ESAPs and participants to strengthen the procedure for incident reporting regarding negative encounters between SEP clients and law enforcement.
- Police should refer suspected drug users to public health programs.

I. INTRODUCTION

New York has led the nation in reducing HIV transmission among injection drug users (IDUs) through various syringe access efforts, including syringe exchange programs (SEPs) and the Expanded Syringe Access Program (ESAP) initiative. These programs reduce the spread of HIV and other blood-borne illnesses by promoting consistent use of a new, sterile syringe for each injection and proper disposal of used syringes. Syringe access programs also link drug users to healthcare and social services, and notably do not increase crime or drug use. Despite a Public Health Law exemption allowing these programs to operate, the New York State Penal Code continues to define possession of syringes and trace amounts of residue as misdemeanor criminal offenses. Moreover, law enforcement practices appear to ignore existing guidance protecting drug users who lawfully possess syringes and participate in public health programs from arrest for drug paraphernalia.

Members of Voices of Community Advocates & Leaders (VOCAL) identified syringe access and safe disposal as a priority issue in early 2008 after many reported being harassed and sometimes arrested for lawful syringe possession when stopped and searched by the police. More than just an annoyance, VOCAL leaders suspected that the Penal Code and law enforcement practices increased the risk of HIV and HCV transmission because drug injectors may be afraid to use syringe access and disposal programs as a result. In order to thoroughly and accurately describe the impact of current policies and practices, VOCAL members decided that a formal research project led by users was needed.

This report documents research findings based on surveys and one-on-one interviews with participants in syringe access programs. Through this research, we sought to explore the impact of the Penal Code and law enforcement practices regarding syringe possession on public health and safety. We found that the harassment, arrest and incarceration of people carrying sterile and used syringes discourages participation in syringe access programs, which then increases the risk of HIV/AIDS and Hepatitis C transmission in low-income communities. It also increases the risk of needle-stick injuries for law enforcement and fails to reduce drug use or other illegal activities.

By implementing the recommendations in this report, the governor and legislature can align our state's criminal law with existing public health law while enhancing publicly-funded efforts to reduce injection-related disease transmission and facilitate proper disposal of used syringes.

VOCAL Users Union and the Harm Reduction Approach

VOCAL is the nation's only membership organization led by active and former users. Dedicated to ending the war on drugs, VOCAL achieves its mission through community organizing, leadership development and strategic advocacy, with a focus on harm reduction and public health approaches to drug use.

Harm reduction is a public health approach that seeks to "meet people where they're at" by empowering them with information and tools that can reduce or eliminate harms related to drug use. A harm reduction approach to addressing drug use and associated harms, such as disease transmission, also recognizes the influence of broader social factors, including laws and policies that make it more difficult to practice safer use. A syringe access program is based on a harm reduction approach because it acknowledges the existence of drug use, while seeking to minimize the potential harm that can result. The history of syringe access programs and the experience of VOCAL members indicate that users are eager to protect themselves, their families and their communities when empowered with the tools to do so.

II. RESEARCH METHODOLOGY

Over the last six months, VOCAL members developed this research project utilizing a participatory research approach. With the research support of the Urban Justice Center's Community Development Project, VOCAL members (all of who are current or former participants in syringe access programs) took part in all aspects of the research process, including design of research questions; survey and interview design and administration; and review and editing of the report. The research consisted of the following participatory methods:

- **Survey:** 76 surveys were completed with participants in SEP and ESAP programs using a participatory approach and were administered by participants at various SEP and ESAP programs around the city from June to August 2009. Survey results were analyzed using SPSS data analysis program. Survey design and analysis support was provided by the Urban Justice Center.

- *One on One Interviews:* We conducted 12 in-depth interviews with SEP and ESAP participants. Interviews utilized a participatory approach and both interviewers and interviewees were current or former ESAP/SEP participants. Interviewers were trained by researchers at the Urban Justice Center.
- *Secondary data analysis:* We also conducted literature reviews and reviewed additional data from government agencies to support findings from the survey and interviews.

The data that was collected is organized into findings. Each finding includes several quotes from the interviews and surveys. For confidentiality purposes the interview and survey participants have been assigned a number and each quote is cited using these numbers. There are some instances when a name was used at the interviewee's request.

While this research was conducted exclusively among participants of syringe access programs in New York City, the findings and conclusions also reflect concerns VOCAL has heard from upstate and Long Island SEPs, ESAPs and drug users.

III. BACKGROUND ON SYRINGE ACCESS PROGRAMS

1. *Syringe access programs are critical for public health and safety.*

- *Syringe exchange programs (SEPs) and other syringe access efforts are highly effective in preventing the transmission of blood-borne pathogens such as HIV and Hepatitis C (HCV).* Syringe sharing, which is driven by policies and laws that discourage safe injection practices, represents a major threat to public health that can result in transmission of HIV, HCV and other blood-borne pathogens.¹ A broad consensus exists, however, that syringe access programs are a highly successful and cost-effective method of preventing disease transmission.^{2,3,4,5,6} In New York City, HIV rates declined from 54% to 13% and HCV rates declined from 90% to 63% among injection drug users (IDUs) between 1990 and 2001, despite limited funding.⁷ Notably, the availability of syringe access is key to the relatively low levels of HCV infection among new and young IDUs.^{8,9}
- *Syringe access programs enhance police safety.* The risk of needle-stick injury is a significant source of anxiety for law enforcement officers, with one study finding that 27% of officers in a Rhode Island metropolitan area had experienced two or more needle-stick injuries.¹⁰ The availability of syringe access programs protect police by reducing this risk, however; another study found a 66% decline in needle-stick injuries among police officers after an expanded syringe access law was approved.¹¹
- *Syringe access programs promote community health and safety by encouraging proper disposal of used syringes.* By educating drug injectors about safe disposal and making disposal sites available, SEPs reduce the presence of improperly discarded syringes.^{12,13,14,15} ESAPs also educate consumers about safe disposal and likewise have not resulted in unsafe disposal.¹⁶
- *Syringe access programs do not increase crime or drug use.* According to an Institute of Medicine evidence review, "a common concern is that sterile needle and syringe access may produce unintended results, including more new drug users, expanded networks of high-risk users, more frequent injection, and more discarded needles in the community. However, studies do not find evidence of such outcomes."¹⁷
- *Syringe access programs provide a critical entry point to healthcare and social services, including drug treatment, for individuals and families who would otherwise not access those services.* Many SEPs provide a range of services in addition to syringe access and disposal, and connect a hard-to-reach population with services that would otherwise be difficult to engage.¹⁸
- *Other vulnerable populations utilize syringe access programs in addition to injection drug users.* Although syringe access programs primarily serve IDUs, most also serve other populations who inject substances for medical reasons, specifically people with chronic illnesses (e.g. HIV/AIDS, diabetes) who may be prescribed medicine requiring injection and transgender people undergoing hormone therapy.¹⁹

2. New York has been a leader in developing and supporting syringe access programs.

- *Syringe access programs have operated in New York State for over two decades, originally in response to the AIDS crisis.*²⁰ New York's first legal SEP began as a pilot program in 1988, although it only operated for two years before being closed due to political pressure. Following activism by drug users and legal battles, both New York City and State reversed course and adopted public health regulations permitting syringe exchange in the early 1990s, with bipartisan political support and participation from the law enforcement community. The legislature and Governor Pataki approved an additional reform in 2000 that established ESAP programs in order to allow drug users to obtain syringes without a prescription from pharmacies and other authorized sources. There are now 17 authorized SEPs and hundreds of ESAP providers throughout the state. In addition to legislative and regulatory changes authorizing syringe access programs, a 2002 court case in New York City found the police department was improperly confiscating syringes and ordered them to stop.²¹

New York's Public Health Law provides a legal exemption for syringe possession if they are obtained through certain public health programs. According to one summary of the Public Health Law, it states that "it is unlawful for a person to obtain a hypodermic needle or syringe, unless: (a) such possession is authorized by the Commissioner of Health; (b) possession is pursuant to a prescription; or (c) the hypodermic needle or syringe was dispensed by an authorized pharmacy, health care facility or health care practitioner in accordance with certain statutory criteria. As part of their participation in ESAP, and in accordance with Department of Health (DOH) regulations, the authorized pharmacies, health care facilities and health care practitioners must cooperate in the safe disposal of used needles and syringes." (A08396/S05620 of 2009, bill summary)

- *Law enforcement agencies incorporated Public Health Law changes into their guidance for police officers and SEPs educate program participants about their rights.* Although the state Penal Code section (PL220.45) defining syringe possession as a misdemeanor paraphernalia offense was never updated to reflect regulatory and legislative changes to the Public Health Law (Public Health Law S 3381) and judicial decisions, the New York Police Department (NYPD) did incorporate the changes into their Operations Orders.^{22, 23} Notably, the latest Operations Order does exempt used syringes containing trace amounts of drug residue, in accordance with the *Roe v. City of New York* decision regarding residue that is described later in this report. Numerous law enforcement agencies at the city and state level also participate in trainings conducted by the NYS Department of Health AIDS Institute (NYSDOH/AI) that educate police about the importance of syringe access programs for public health and safety.²⁴ SEPs issue white cards to participants that contain a reference to the Public Health Law, explain that the person lawfully possesses syringes and include phone numbers for both SEP and NYSDOH/AI staff.

3. New York is not realizing the full benefits of syringe access programs.

- *There is still a contradiction between the criminal and public health laws regarding syringe possession, and drug users report that law enforcement frequently ignore the Operations Order.* As stated above, the Penal Code section (PL220.45) regarding syringe possession was never updated to reflect the Public Health Law exemption. In addition, the Penal Code section (PL220.03) defining a misdemeanor charge for Criminal Possession of a Controlled Substance in the Seventh Degree was never updated to exempt residue contained on or in used syringes being returned to a public health facility, even though participants in syringe access programs are strongly encouraged to return used syringes. These inconsistencies in state law contribute to the continued police harassment and arrest of syringe access program participants who lawfully possess syringes.
- *Inconsistencies in the law and police behavior may minimize the benefits of syringe access programs.* Many participants are afraid to carry new syringes or return used syringes, while the broader 'chilling effect' deters people from enrolling in a program in the first place. Both the law on the books and police behavior on the street has an effect on whether drug users can practice harm reduction, including safer syringe use and disposal.²⁵

- *Syringe access programs are not reaching everyone in need.* There is a significant “syringe gap” among IDUs, with one study finding that over half of SEP clients surveyed in NYC do not consistently use sterile syringes.²⁶ Police harassment and arrest for syringe possession and/or residue undermines attempts to close this gap by discouraging participation in syringe access programs.
- *Communities of color are disproportionately affected by injection-related health problems.* The need to further improve syringe access is especially urgent in communities of color; for example, African Americans and Latinos now account for nearly 90% of new HIV cases among IDUs in NYC. Racial disparities in HIV incidence persist even though African Americans and Latinos do not have higher levels of sexual risk behaviors or drug use compared to other US populations, which strongly indicates that broader structural factors are driving the epidemic in communities of color.²⁷ According to the NYSDOH/AI, “One needs to pay particular attention to the central role of contaminated syringes in the ongoing HIV epidemic in New York State’s communities of color.”²⁸

The following excerpt from an opinion by Federal District Court Judge Robert W. Sweet in the New York City case outlines the problem of criminalizing used syringes:

The Legislature’s intent is made clear by its determination that the criminality of drug and needle possession is to be determined in accordance with the Public Health Law and thereby the regulations promulgated by the Commissioner. See N.Y. Penal Law P 220.00. Here there is no question raised by either party that the Commissioner has acted beyond the scope of his power in creating a needle exchange program that allows, requires, and expects participants to possess and return used needles. As established, those used needles will typically contain a drug residue. The very name, needle exchange, reveals the centrality of returning used needles and syringes to the program. It would be bizarre to conclude that the Legislative intent was to permit the creation of needle exchange programs in order to remove dirty needles, while at the same time frustrating that goal by making the essential steps of participation criminal... For the foregoing reasons, declaratory judgment will issue to the effect that in the course of authorized participation in a needle exchange program as envisioned in 10 N.Y.C.R.R. § 80.135, there is no criminal liability under Penal Law § 220.03 for possession of a controlled substance based upon the drug residue remaining in a used needle or syringe. (Roe v. City of New York. 232 F.Supp.2d: S.D. N.Y.)

IV. FINDINGS

Despite the proven effectiveness of syringe access programs and New York's historical leadership in this area of public health, program participants report continued police harassment and arrest. In response, VOCAL developed this project to document the experiences of SEP and ESAP participants. The following findings were identified through surveys, interviews and a review of secondary data.



Finding 1: New York State's Penal Code and law enforcement practices are inconsistent with the state's public health goals and the specific public health law authorizing syringe access programs.

A. Police are arresting people for syringe possession, even when they participate in a lawful syringe access program and have documentation proving it.

Participants in syringe access programs are permitted to lawfully possess syringes, although only SEPs issue cards to participants explaining this. Regardless of which program they use to obtain syringes, drug users stated that they are still being harassed and arrested by police for syringe possession.

- 71% of survey respondents had been charged with unlawful syringe possession (PL 220.45), including 33% of respondents who had been arrested for that charge multiple times.
- Of those arrested for syringe possession, approximately 9 out of every 10 people (87%) were carrying a white SEP card when they were arrested.

FIGURE 1: Example of SEP participant card in New York City

<p>[SEP Name and Location]</p> <p>NYS Authorized Syringe Exchange Program Participant ID Card</p> <p>[Client's Unique Identifier]</p> <p>For verification that the individual is a participant in the Syringe Exchange program, call [program contact information].</p> <p>For verification that this organization has been authorized to operate a syringe exchange program, contact the NYS Department of Health at (212) 417-4770, Mon. – Fri. 9:00a.m. -5:00p.m.</p>	<p>This card was issued to a participant in a hypodermic syringe exchange program authorized by the New York State Department of Health under Sections 80.131(a) (2) and 80.135 of Title 10 New York Code of Rules & Regulations and Section 2281 of the Public Health Law. The participant can lawfully possess hypodermic needles and syringes furnished by the syringe exchange program or collected by the participant for exchange or disposal with the program in all parts of New York State.</p> <p>NYPD : See Police Department Operations Order No.19, Series 2007, Issued 3-23-07</p>
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Participants in syringe access programs who were interviewed for this report explain that they are being arrested for carrying syringes, even when they have documentation showing they are authorized to possess them.

"I've known about people getting arrested just for having syringes in their property. I've been arrested and as soon as the police have asked me, do you have anything in your pocket, and I say yes, syringes, before they even let me explain, they cuff me and later stated that they did it because they needed a body... I have everything in my pocket and everything in my wallet that say it's OK for me to carry syringes." – Interviewee #3

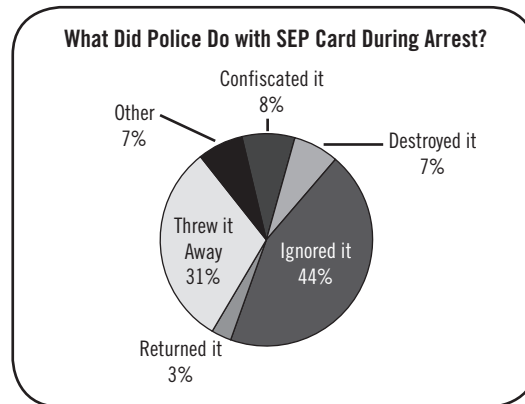
"They tell me I'm going to be searched [and ask] do I have anything on me that might injure them or stick them. I said yes, I have some syringes. They said, 'Oh! We got one, Joe. We got one.'" – Interviewee #2

"It made me less likely to go to an exchange – if I use used needles, I'm less likely to get arrested." – Survey respondent #67

B. By disregarding the white SEP cards, police are violating New York's public health law and guidelines.

Among survey respondents arrested while carrying a SEP card, almost all reported that the police took the card away and failed to take it into consideration. In fact, only 3% of the respondents had their card returned to them by the police. Not only does this suggest that existing guidance is too weak to prevent harassment and arrests for lawful syringe possession, confiscating a SEP card makes it more difficult for someone arrested for syringe possession to explain that they were not violating the law during their arraignment.

FIGURE 2: SEP CARDS AND ARRESTS



Participants recount police behavior when they are presented with these cards,

"[The SEP] gives you a card that says, if I'm holding this card, I should not be arrested for the possession of a syringe, and numerous times I have been put through the system. And the police have been ignoring the fact that I practice harm reduction. I'm not happy about it...because I haven't committed any crime, I'm doing things to prevent myself from catching HIV or AIDS or Hepatitis C." – Interviewee #2

"The card didn't mean nothing to them. I didn't want to go to jail again. I thought they understood it was about reducing the harm. I thought we were in this together. Less people getting Hepatitis C, less people getting HIV – I thought they understood." – Interviewee #7

"Police said 'We think you're full of shit, this [card] doesn't mean anything to us, we know you're a junkie.'" – Survey respondent #20

C. People are being charged with drug possession when they carry used syringes that contain residue.

The Public Health Law encourages syringe access program participants to carry used syringes in order to properly dispose of them, which the Operations Order acknowledges. However, used syringes are likely to contain trace amounts of drug residue, which is not specifically exempted from prosecution in either the Penal Code or Public Health Law. A federal court case (*Roe v. City of New York*) established that possessing used syringes with residue does not constitute unlawful possession of a controlled substance, which may have lessened but has not eliminated this issue as a problem in New York City.²⁹ However, upstate and Long Island syringe access program staff and participants have identified this as a more serious problem in their areas.

- Nearly one out of five people surveyed reported being charged with criminal possession of a controlled substance because their syringe had trace amounts of residue on them.

Participants explained their fear around returning used syringes and being arrested for residue,

"On the one hand I'm told this is legal, and I feel good about myself because I'm doing the right thing, and doing good for the community. Then they turn around and arrest me for residue. I was afraid to dispose of syringes for a long time. I have knapsacks at home, filled with used syringes that need to go back. What if I'm stopped at those tables down in the subway where the police search people? I know they need to be counted for, disposed of properly. But if they stop me, they make it personal. You can't even do the right thing." – Interviewee #11

Ray Ganoe, the Vice President of Prevention, Education & Training at *AIDS Community Services of Western NY*, which operates an SEP in upstate New York commented on the impact that arrests for residue have on participation in the program:

“Overall, we’ve worked really well and have a good relationship with the Buffalo Police Department. Our clients face more difficulties with police in outlying suburbs and with newer officers. We teach our clients to show police the SEP card and explain they have syringes on them. This not only protects our clients, it also protects police officers because we don’t want them to pat someone down and get stuck. But if our clients are arrested for residue on used syringes, they come back and say they want nothing to do with the program anymore. Then everyone’s at risk – the client, their partner and any police officers that come into contact with them in the future when they are afraid to disclose they have syringes on them. But police officers who have been around for a while see syringe exchange as a valid program and know we do good work.”

D. Injection drug users and other syringe carriers report abusive practices when stopped by police, including after being arrested.

- 13% of survey respondents reported being physically abused and 10% reported being verbally abused by police when stopped.
- Almost half (47%) of respondents reported being *both* strip and body cavity searched by the police when arrested for syringe possession.
- 68% of respondents reported being held 48 hours or more in jail, with 36% being held 72 hours or more.

Interviews also point to humiliating encounters and abusive practices by law enforcement.

“Anybody that uses a clinic, anybody with a substance abuse problem is beneath them and [the police] tend to treat you like that.” – Interviewee #3

“Being involved with needle exchange we’re saving lives...[the police] believe that saving lives is getting people that use syringes off the streets.” – Interviewee #9

“They start making jokes, this is a waste of time, all you’re doing is making more junkies out here, that you should be embarrassed... So they put me in handcuffs and they started taking the needles out and putting them all over and then they started asking me for the right IDs and everything. I had my volunteer ID for [a SEP] out there clearly. They said, ‘if he’s got syringes, he’s got to be using.’ They kept on with their smart remarks, that I should be ashamed of myself.” – Interviewee #5

Summary of Supporting Data

New York’s paraphernalia law criminalizing syringe possession leads to unlawful arrests that violate both the letter and intent of New York’s syringe access laws and regulations. According to the NYS Division of Criminal Justice Services (DCJS), there were 638 arrests where criminal possession of a hypodermic syringe (PL 220.45) in 2007 was the *primary charge*, with nearly 75% of arrests occurring in counties of New York City. Shockingly, 66% of arrests among NYC residents led to actual convictions and over 50% resulted in jail time – for lawful behavior that promotes public health and safety.³⁰ At the same time, even when a charge of unlawful syringe possession ultimately does not result in a conviction, it can serve as a basis for law enforcement to harass and arrest drug users. It is impossible to determine how many people charged with unlawful possession of a controlled substance (PL 220.03) were arrested for carrying used syringes with trace amounts of residue based on DCJS data.

Research into law enforcement attitudes suggests that while legal reforms are essential, they are not sufficient to change police practices regarding participants in syringe access programs.³¹ One researcher noted, “Even where [syringe access programs] are clearly legal, many law enforcement officers are unaware of the public health benefits and legal status of these programs and may continue to treat the possession of injection equipment as illegal and program participation as a marker of illegal behavior.”³²

The problem of police violence and abuse towards drug users has received less attention by researchers, although

one study did explore the impact of a crackdown on injection drug users in one New York City precinct. The study found that both drug users and non-users “reported police physical, psychological, and sexual violence and neglect; they often associated this abuse with crackdown-related tactics and perceived officer prejudice.”³³



Finding 2: The New York State Penal Code and law enforcement practices create real and perceived barriers that reduce the benefits of syringe access programs.

A. Law enforcement appears to selectively target SEPs and other public health facilities where injection drug users access services, which discourages participation in these programs.

- Of those arrested, 52% of the survey respondents said that they were arrested close to their SEP and 21.1% close to their methadone program.

Our research found these law enforcement practices create a “chilling effect” that act as a deterrent for the utilization of syringe access programs, including among drug injectors who have not previously been charged with unlawful syringe possession. Whether or not police systematically target public health facilities where drug users access services, there is a strong perception that users participating in these programs are more likely to be harassed and arrested. Participants in the program recalled,

“[My arrest] forced me to hide and to change my whole practice in harm reduction and the way I practice in the needle exchange.” – Interviewee #2

“No one really wants to be affiliated with needle exchange places because police make people scared and nervous to come even if you have a legitimate reason to be there. Police make it almost impossible for people who want to even be bothered, because everybody is being humiliated, inhumanely treated, so people have the tendency to not want to frequent these places. I stopped dealing with certain [syringe exchanges] because they were out of the line of fire so to speak – in more distant areas than what the police frequent.” – Interviewee #3

“Why am I being stopped? Because I’m being singled out? If [the police] go to a SEP or a methadone clinic, they know there are individuals carrying syringes, so if they want to make an arrest or make a quick bust, what are they going to do? Are they targeting people? Yes they are.” – Interviewee #1

“The only thing [the police] see is...that we should go somewhere else and go away. Every time I walk out the door -I pray every day please don’t let me run into a cop that doesn’t understand what I’m doing, ‘cause I know he’s not going to give me a chance to explain, ‘cause I know he’ll run me right in. Every day – every day I think about that.” – Interviewee #5

“They come here [a SEP], they watch this place, they watch people that come in this place and then they follow them down the road to see where they go. Absolutely they target SEPs. They know everybody that comes in and out of here. They run in here to try to get people.” – Interviewee #8

B. The fear of arrest encourages unsafe injection and disposal practices.

- Among survey respondents who were arrested, 1 out of 3 respondents who were arrested said they either stopped using syringe access programs or went less often because of their experience.

Because drug users who have been arrested for syringe possession are less likely to use syringe access programs, they are also more likely to engage in unsafe injection and disposal practices. This is unsafe for users, law enforcement and other community members. Several SEP participants described how they engaged in unsafe injection practices because of law enforcement practices.

“It’s tougher. I don’t want to get caught again, so I don’t go as many times anymore [to the SEP].” – Survey respondent #66

“I found that I don’t carry any syringes on me, I try not to any more. If I needed a fix, I would either have to take the chance of cleaning another pair out with bleach that belonged to somebody other than myself. I know that I can get them for free, but now I have a handicap because when I get them, I can’t use them – when I get them I’m being stripped of them. If the police are going to strip me of my clean syringes, and then throw them away, then now I’m back where I’m started – now I’m taking risks using the older ones, or I’m cleaning

someone else's old ones out. [Police harassment/fear of arrest] is having a horrific impact. It makes you take risks now...you have to go and get a syringe that may not be as clean, because of where you are you may be drug sick, you may need your fix – and it forces you to either share a needle or put yourself in a high risk situation.” – Interviewee #10

Others discussed how the fear of arrest led to the disposal of syringes in unsafe or unhealthy ways.

“I have had to dispose of syringes improperly quite a few times. I'd put it in a brown or a plastic bag and just throw it in the garbage – places where people could have got hurt with it. You don't have time to break off the point, you just got to get it away from you as quick as you can.” – Interviewee #3

“No one should be locked up for trying to protect themselves and the community. Who wants to do the right thing and keep getting the wrong results? Some people are not [returning used syringes] anymore due to the fact they are being arrested and/or harassed unjustly.”-Interviewee #1

C. Additional public health interventions are being negatively impacted by police behavior.

The Penal Code and police practices also threaten the success of other innovative public health interventions that rely on people to carry syringes. For example, SEPs also train participants in how to reverse drug overdoses by using a medicine called naloxone that is administered intravenously and kept in a kit with a syringe.^{34, 35} Similar to the white card, SEP participants trained to administer naloxone carry a prescription in their overdose reversal kit, but it does not always protect them from harassment or criminal charges. Police harassment for carrying syringes related to overdose reversal kits was also reported,

“Everything was taken from me and just laid out on the street. They thought [parts of the naloxone kit] used for a training [were cocaine and liquid heroin]. Not only did the 5 officers disregard everything I told them, I had to get in the back of detective's car and I was escorted to the [SEP] office and 2-3 of them came inside with me and asked one of the organizers here every question they asked me. They were certain I had been lying to them and they made no ifs ands or buts about it that they would have liked to have arrested me, even though I was properly documented.” – Interviewee #5

Summary of Supporting Data

These findings are supported by numerous studies focusing on syringe access and public health. Drug users who participate in syringe access programs are more likely to use sterile syringes, safely dispose of used ones, and be linked into healthcare.³⁶ However, the legal environment surrounding syringe access programs shape how well they work, and researchers have identified paraphernalia laws as a major barrier to their effectiveness. A comprehensive literature review of syringe access programs by the World Health Organization found that the “the simultaneous repeal of [syringe] prescription and [syringe] possession laws seems to have a greater effect than repeal of only one of these,” and concluded that “injecting paraphernalia legislation is a barrier to effective HIV control among IDUs.”³⁷ Another study similarly found that legalizing syringe access programs but maintaining criminal penalties for syringe possession increases the risk of arrest for program participants and reduces participation.³⁸ Paraphernalia laws also discourage drug users from properly disposing of used syringes, thereby undermining the public safety benefits of safe disposal programs.³⁹

Police practices, and not just laws and regulations on the books, strongly influence the success of these programs.^{40, 41} Drug users participating in syringe access programs may be at higher risk for arrest due to targeted policing around SEPs and attitudes that syringe possession is a sign of illegal activity. According to one study, “legislative efforts to decriminalize the operation of SEPs without concurrent decriminalization of syringe possession may result in higher odds of arrest among SEP clients, with potentially deleterious implications for the health and well-being of IDUs...arrest of SEP volunteers and participants and concentrated arrest activities in areas where SEPs operate can significantly reduce SEP utilization among IDUs.”⁴²



Finding 3: Injection drug users understand New York's public health law and are eager to adopt safer injection and disposal practices.

A. People remember what it was like before SEPs and do not want to return to that type of environment.

Many IDUs can recall harrowing experiences during the height of the HIV epidemic in NYC, including the impact on their family and community. These experiences have shaped their attitudes today. Fortunately, legal reforms and public support for syringe access programs have resulted in a dramatic decline in HIV prevalence since the early 1990s. SEP participants that were interviewed explained,

"I'm old enough to remember the AIDS epidemic when it hit... So many friends of mine died and I watched them die slowly and hard. That was a rough thing. I was lucky. The guys who got me into it, they said to me, 'Kid, if you're going to do this, do it correctly, otherwise you're going to get the yellow.' They meant jaundice, or hepatitis. Nobody knew about AIDS back then. I was scared of getting hepatitis so I always had my own stuff."

– Interviewee #4

"Most of the people I'd used with are gone ...three or four people in a family passed with AIDS. I don't know how I survived through that. I remember the shooting galleries. I guess I was more cautious than most, or there really are guardian angels out there. I'm grateful to be able to go to needle exchange programs and access syringes, and dispose of them. I feel like I have a better chance of living in a community where I'm able to do that, and I can protect myself and the community in some of the work that I do."

– Interviewee #9

"I would go with other people up to the shooting galleries they had at that time. There would be a peanut butter jar full of water, a dozen syringes that 200 people had used. The water in it would be pink from blood. Somebody would go in there and pull that out and without even cleaning the damn thing out – maybe they'd flush it with water once – take that thing and jab it into their arm. There aren't shooting galleries like there used to be [since syringe access programs emerged]."

– Interviewee #4

"I've had family and friends who have died from those diseases. I think just about everybody has. I think they contracted it... from [using] needles that other people used... [Syringe access programs] did not come into play soon enough. Ten, fifteen years ago, when people were dropping dead and basically not knowing what was wrong with them. The needle exchange program and everything we know now about Hepatitis C didn't come into play soon enough. I can think of 10 people right off the top of my head, that were close to me or family members, that died when it could have been avoided if it had been a little bit sooner, if they had a little more time."

– Interviewee #3

B. People take active steps to reduce risk to themselves and the community.

Drug users that were interviewed discussed the types of risk-reducing activities they engage in, such as peer to peer counseling and participating in SEPs, despite the risk of arrest.

"I'm not trying to die, I'm not trying to get infected. I care about other people, I don't want nobody to get hurt, not over getting stuck by a needle I threw in the garbage."

– Interviewee #3

"Even though – knock on wood – I'm still clear of both hepatitis C and HIV, I wouldn't want [another person] going ahead and getting stuck and having to go through that period of uncertainty while they were getting tested...I wouldn't want to put anybody through that, so I'm careful."

– Interviewee #4

"We go out there and work and getting constantly harassed until someone explains to them that what we're doing is not creating junkies, we trying to prevent people from getting infections and we're trying to show them how to get rid of syringes the correct way."

– Interviewee #5

In Depth Profile of a SEP Participant

George Bethos, a 50 year old white male living in Brooklyn, first became involved with an underground syringe exchange in 1986 and became both a participant and outreach worker for legal SEPs once they emerged. He shared his experience being arrested for lawful syringe possession:

The last time I was arrested for syringe possession was 50 yards from a syringe exchange program in Manhattan. The police saw me putting up a poster on the corner for a public health conference and they pulled me over, threw me up against the glass of a Papaya King, and began instantly questioning me. They said they had seen me in the area going to the syringe exchange before. As they were going through pockets and pulling out stuff, they kept asking me, “Who is selling dope? Who is selling quills [crack cocaine]? Who is selling Xanax?” When the police found syringes on me, they acted like they hit pay dirt. Even though staff from the syringe exchange program came out and explained that I was a client in good standing, the cops still handcuffed me. I tried to explain I had syringes to help cut back on HIV and AIDS and that it was the most successful way to prevent the spread, but the cops just responded by saying, “Who are you to play the hero?”

The police refused to take me by my methadone program to get medicated and threw me in the van even though I have bad legs and have difficulty moving around. They drove me around for hours so they could pick up more people near the end of their shift and get overtime. They kept trying to provoke me, including threatening me with violence by saying things like “we could bounce you’re head off the roof of this van” if I didn’t give them names. I spent two days in central booking while withdrawing from methadone and with no access to my other medication. The judge offered me a disorderly conduct charge or ACD, but I said I wanted to take the case to trial and they released me. After two more visits to the courthouse they dismissed the case when the police lab tests on the used syringes didn’t show anything.

I now work as an outreach worker for an SEP and the number one reason people give for not returning used syringes is “fear of arrest.” I’ve noticed the number of people coming into syringe exchanges goes down when there are police crackdowns in the area too. Police harassment also means a lot of users only carry one syringe that they can easily conceal and reuse, or they start stashing them in public places where other people could come across them. Some users don’t carry syringes at all now and just share whatever someone else has. Especially if a user sees cops making searches on a block, they dump their syringes immediately no matter where they are. They wouldn’t do this if it wasn’t for police harassment.

Summary of Supporting Data

Research shows that IDUs readily use sterile syringes when they have access to them.⁴³ Moreover, there are many successful models of “peer-based” service delivery, including syringe access, provided by active and former users who express a desire to help other drug injectors.^{44, 45} Throughout the history of the HIV epidemic, IDUs have been involved in the creation and operation of NYS SEPs, including underground programs in the late 1980s, and vigorous political activism.⁴⁶ Early syringe access efforts in New York were often self-organized efforts among users before they were legally authorized, and many New York SEPs have been founded and staffed by active and former users.



Finding 4: Punitive law enforcement practices that target injection drug users illustrate deeper problems with current drug control policies, policing methods and gentrification.

A. Police harassment of injection drug users occurs within a broader context of policing strategies driven by racial profiling, the war on drugs and gentrification.

Policing around SEPs has a disproportionate impact on communities of color given that approximately three-quarters of SEP participants in New York are African American or Hispanic.⁴⁷ Moreover, selective drug enforcement in low-income neighborhoods that primarily targets low-income people of color is now well documented.^{48, 49} The NYPD’s infamous “stop and frisk” campaign, which is one reason many users are being

stopped and arrested for syringe possession, also has a disproportionate impact on people of color, who made up nearly 90% of those who were stopped in 2006.⁵⁰

The “stop and frisk” tactic and harassment of suspected drug users are integral to the NYPD’s quality of life (QOL) policing strategy. Also known as the “broken windows” theory of crime prevention, QOL policing charges people with low-level violations and misdemeanors.⁵¹ Although the assumption that this is effective in reducing crime has been effectively debunked, it persists for a variety of reasons.^{52, 53} Historically, pressure from real estate developers and gentrification has been one of the driving factors behind aggressive policing of street-level drug users.⁵⁴

While not synonymous, the war on drugs and this type of policing are closely linked through practices like “stop and frisk,” which has driven the increase in low-level misdemeanor drug arrests during the past two decades. Although the war on drugs has been pursued under the veneer of promoting safer communities, the health and social consequences of it have been severe and counterproductive.^{55, 56} For example, high incarceration rates among people of color caused by the drug war fuels health and income disparities in a variety of ways, including disrupting social networks and creating barriers to stable housing, employment and healthcare.^{57, 58}

Neighborhoods that are experiencing gentrification are among those targeted for QOL policing -areas where housing prices are increasing, private development is proliferating and middle and upper class professionals are displacing low-income people of color.⁵⁹ Police generally target poor people of color who need access to the neighborhood’s public space in order to meet their needs. The types of charges brought against participants at syringe access programs and the geographic location where arrests are taking place suggest that they are targeted with these methods. Generally, the SEP participants are being arrested and charged with low-level violations such as syringe possession and QOL offenses such as loitering, and arrests are made near SEPs and methadone programs located in gentrifying neighborhoods.

Police are making quality of life arrests and are not charging those they arrest with a crime:

- Nearly 1 out of 6 survey respondents were charged with loitering, a quality of life offense.

Participants describe being the targets of quality of life policing,

“The people [the police] are targeting are...the lower class, the drug addicts, the homeless people, people that look like they do drugs, people that don’t look like they belong.” – Interviewee #8

“I stopped off and got some syringes on my way [to my public housing apartment]. Two [officers] in a van said they followed me all the way from the exchange program...They told me they followed me cause I slapped somebody five...I said, ‘well, I didn’t pass him nothing, he didn’t pass me anything, we slapped five cause we knew each other, we greeted each other’ and I kept going about my business. Right before I got to my house, that’s where they jumped out on me. I had my little baby with me and everything. I’m pushing the carriage and they said, ‘You, step away from the carriage.’” – Interviewee #2

“Syringe exchange participants are being arrested more on a quality of life basis while possessing syringes. Being that they possess a [SEP] card, they’re brought up on other charges too--loitering, trespassing, and possession of a narcotic. It prevents people from practicing harm reduction, because they can’t dispose of [syringes] properly.” – Interviewee #12

B. Police target injection drug users in a misguided effort to collect information for anti-drug enforcement efforts.

- 63% of survey respondents that were arrested report that police offered to release them if they shared information.

Another motivation for targeting suspected drug users for “stop and frisks” appears to be an effort to glean information about other users, which is often done by threatening someone with arrest for syringe possession if the person is unable or unwilling to share information, even if they are violating no laws. Survey and interview respondents recount their experiences with police offering to release them if they provide information,

“They told me if I had any information that could help them, then they would be able to help me and let me go, providing I gave them some information on someone who was dealing or something of that nature.”- Interviewee #2

“There were 8 cops around me at that point and one of took me aside and he said, ‘Whose slinging heroin around here?’ I said, I don’t know. He [kept asking me] and I said, ‘I don’t know. I can’t help you.’ He said, ‘Bullshit you can’t help me. We see you out here all the time, every day. If you can’t help us, we can’t help you.’ You shouldn’t have to help me; it’s like, I’m not doing anything.”- Interviewee #4

Summary of Supporting Data

The challenges facing drug users and syringe access programs related to legal policies, police behavior, racism and gentrification unfortunately reflect a national pattern. In a 2007 survey, 29% of SEPs nationwide reported police harassment of participants at or near the program site, 18% reported problems due to more general legal and policing-related barriers and 18% reported facing gentrification-related problems like displacement and neighborhood opposition.⁶⁰ One mapping study in New York City showed a strong relationship between SEP locations and high drug arrest rates.⁶¹

Policing public space can make it especially difficult for homeless drug injectors to practice harm reduction, increasing their health risks, with one study finding that “frequent police searches...discouraged participants from carrying the injection equipment they needed to ensure that they could inject with a sterile syringe” and that “constant monitoring of local public spaces made it difficult for homeless women and men to inject safely.”^{62, 63} Another study cited earlier in this report explored the perceptions of both IDUs and non-users around violence and harassment by so-called tactical narcotics teams (TNTs) in the 46th precinct of the Bronx.⁶⁴ The study’s analysis highlighted police drug crackdowns targeting lower-level users, as well as policing strategies that target public space. It found that 65% of drug users and 40% of non-users “reported directly experiencing or witnessing perceived excessive police physical violence,” including high rates of sexual violence, and that “approximately two thirds of injectors and nonusers reported stops for ‘no reason.’” Harassment included intrusive searches and verbal abuse similar to what was reported during our survey. The article identified profiling, pressure to make drug arrests and discrimination as three factors driving abuse and harassment of both users and non-users.

As researchers seek to account for racial disparities in HIV incidence that cannot be explained by differences in individual behavior, one study commented that “explanations for African Americans’ higher HIV rates probably lie in racial/ethnic oppression, such as discriminatory rate of arrest and incarceration, economic deprivation [and] inadequate access to medical and social care.”⁶⁵

V. CURRENT POLITICAL CONTEXT

Syringe access programs are now widely supported among political and scientific leaders as an effective public health intervention.^{66,67} For example, President Obama made support for SEPs a key part of his HIV/AIDS platform during the presidential campaign and recently signed an appropriations bill approved with bipartisan support in congress that lifts the 20-year old ban on federal funding for syringe exchange.⁶⁸ This was done with widespread support from the public health community and media.⁶⁹

At the same time, syringe access programs are not fully effective unless legal barriers, such as New York's paraphernalia law, are removed and better police practices are actively promoted. As a recent editorial in the Harm Reduction Journal noted: "We are long past the day when anyone doubts that drug laws and law enforcement policies can have a powerful, negative impact on the risks of infection, injury and death among drug users."⁷⁰

In New York, Governor Paterson and legislative leaders have been on the frontlines of a national effort to shift the focus of drug policies away from criminal justice strategies that result in mass incarceration and towards a public health and safety approach. Most notably, this includes reforming the notoriously unjust and ineffective Rockefeller Drug Laws, further underscoring a shift to public health-based approaches to drug use. In addition, the NYS Department of Health and NYC Department of Health & Mental Hygiene have greatly strengthened their efforts to expand syringe access and other drug user health initiatives.

In an attempt to address the persistent legal barriers to syringe access and in response to VOCAL's campaign, Governor Paterson submitted a program bill to the legislature in 2009 that would amend the penal code to "to make it explicit that a person is not criminally liable for possessing syringes and drug residue in or on syringes that the person has a right to possess based on his or her participation in the Public Health Law's Syringe Exchange Program (SEP) or Expanded Syringe Access Program (ESAP)."⁷¹ The legislation (S05620/A08396 of 2009) was introduced by Senators Thomas Duane and Eric Schneiderman, and Assembly Members Richard Gottfried and Joseph Lentol. The bill passed the full Assembly on June 22nd, 2009 and passed the Senate Code Committee on May 22nd, 2009.

Summary of 2009 Legislation

Governor Paterson's program bill (S05620/A08396 of 2009), introduced by Senators Thomas Duane and Eric Schneiderman and Assembly Members Richard Gottfried and Joseph Lentol, represents an important step towards removing legal barriers to syringe access in New York.

Nonetheless, it is impractical and unnecessary to determine in every instance whether syringes were lawfully obtained through a public health program, which this legislation relies on. The most efficient and effective solution is to fully remove syringe possession and residue on or in used syringes as criminal offenses in the Penal Code.

In summary, the bill contains three significant provisions:

Section I: Amends 220.03 of the Penal Code to state that a person does not violate the controlled substance law if they are in possession of a used syringe containing a residual amount of a drug if the syringes were obtained lawfully through a public health program.

Section II: Amends 220.45 of the Penal Code to state that a person does not violate the drug paraphernalia law if they possess syringes that were obtained lawfully through a public health program.

Section III: Directs the Commissioner of DCJS to regularly instruct law enforcement agencies and prosecutors on the right to possess new and used syringes when obtained lawfully through a public health program.

VI. RECOMMENDATIONS

New York State and City governments have made important steps in promoting safe syringe practices and reducing the risk of HIV and Hepatitis C transmission. However, as the research findings included in this report indicate, SEP and ESAP participants are experiencing police harassment and arrest, which deters them from accessing syringe access programs and compromises the overall public health of New York City and State. There are several key ways in which state and city officials can improve current policies to promote syringe access program participation and continue the shift to a public health based approach to drug policy.



Promote better utilization of syringe access programs by eliminating inconsistencies in state laws that create legal barriers for participation.

The research findings reveal that participants in syringe access and disposal programs are being convicted of paraphernalia and drug possession misdemeanors, even though public health law and regulations should protect participants in these programs. This is because the Penal Code is inconsistent with the language and intent of the Public Health Law governing syringe access and disposal.

- The governor and legislature should pass legislation that fully removes syringe possession as a misdemeanor paraphernalia charge in the Penal Code. Although the current legislation is an encouraging step because it would amend Penal Code section 220.45 by referencing the public health exemption for syringe possession, it is impossible for law enforcement to determine in every case whether someone in possession of syringes participates in a program authorized by the Public Health Law (only SEPs issue identification cards to participants; ESAPs do not). Instead, there should be an assumption that anyone in possession of syringes is participating in a lawful program. The most efficient way to achieve this and minimize confusion among police is to remove syringe possession as a criminal offense in the Penal Code.
- The NYC mayor, including the Department of Health & Mental Hygiene (DOHMH) and New York Police Department (NYPD), should endorse legislation removing syringe possession as a criminal offense in the Penal Code.



Encourage proper disposal of used syringes by removing trace amounts of residue as a criminal offense in the Penal Code.

Our findings found that police harassment and the possibility of being charged with possessing a controlled substance, as well as unlawful syringe possession, was a deterrent to returning used syringes to proper disposal sites.

- The governor and legislature should pass legislation amending the Penal Code to clarify that possessing a syringe with a trace amount of residue does not constitute criminal possession of a controlled substance. There should be an assumption that an individual possessing a used syringe that contains residue participates in a lawful public health program.
- The NYC mayor, including the Department of Health & Mental Hygiene (DOHMH) and New York Police Department (NYPD), should endorse legislation that exempts residue in syringes as a criminal offense in the Penal Code, which is consistent with judicial interpretations of the Public Health Law.



Law enforcement practices should be consistent with public health laws and objectives.

Many police in New York are either unaware of or disregard current law and guidance around syringe access programs; harassing and arresting program participants and confiscating their syringes undermines public health programs.

- The NYSDCJS and NYPD should educate law enforcement about the importance of syringe access programs by requiring trainings that are led by NYS Department of Health (DOH) and NYCDOHMH staff and participants. In particular, the NYSDCJS and NYSDOH should focus on the ten counties with the highest rate of arrest for criminal possession of syringes. Training for law enforcement should include these key components:
 - o Occupational safety, including how to promote communication with IDUs to reduce needle-stick injuries;
 - o Current and future changes to the law related to syringe possession;
 - o Departmental policy related towards syringes (Operations Order 19 for the NYPD);
 - o SEP operations and the range of services offered, including drug treatment referral.
- The NYSDCJS and NYPD should issue guidance instructing that (a) law enforcement should not target areas around SEPs and other venues where IDUs access health services for drug enforcement, (b) syringe possession is not probable cause for a search, and (c) harm reduction supplies and information (such as SEP cards) acquired through syringe access programs should not be confiscated.
- The governor should foster better cooperation between NYSDCJS and NYSDOH by establishing an interagency task force that includes community representation to align criminal justice policies with the administration's public health goals. The NYC mayor should replicate this model by convening a similar task force between NYCDOHMH and NYPD.
- The NYSDCJS and NYPD should also avoid using drug arrests to evaluate police performance, which may be one factor driving aggressive policing of low-level drug users.



Ensure ongoing monitoring of law enforcement practices around syringe access programs.

- The NYSDOH and NYCDOHMH should work with SEPs, ESAPs and participants to strengthen the procedure for incident reporting regarding negative encounters between SEP clients and law enforcement.
- Police should refer suspected drug users to public health programs, which can be facilitated by the available technology and support they have.

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