

# Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS

Sterile syringe programs



Canadian  
HIV/AIDS  
Legal  
Network

Réseau  
juridique  
canadien  
VIH/sida

# 3

This model law resource consists of eight modules, addressing the following issues:

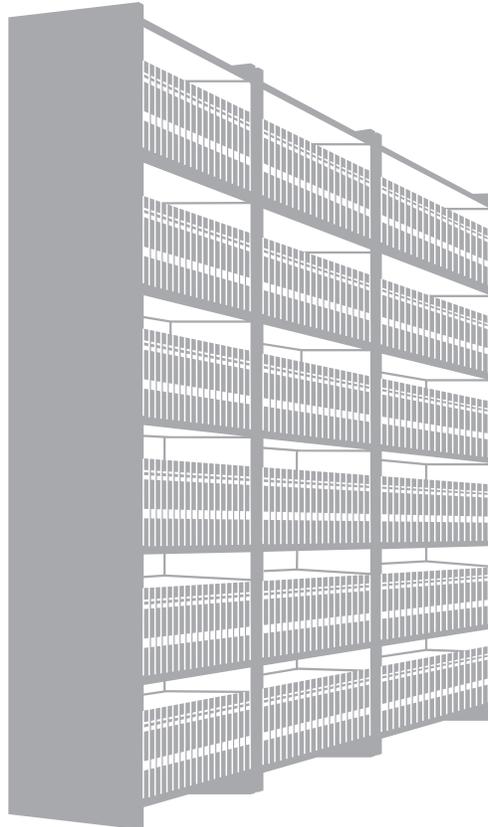
1. Criminal law issues
2. Treatment for drug dependence
3. Sterile syringe programs
4. Supervised drug consumption facilities
5. Prisons
6. Outreach and information
7. Stigma and discrimination
8. Heroin prescription programs

This module, and the other modules, are available in multiple languages on the website of the Canadian HIV/AIDS Legal Network at [www.aidslaw.ca/drugpolicy](http://www.aidslaw.ca/drugpolicy).



Canadian  
HIV/AIDS  
Legal  
Network

Réseau  
juridique  
canadien  
VIH/sida



# Legislating for Health and Human Rights: Model Law on Drug Use and HIV/AIDS

Sterile syringe programs



# **Legislating on Health and Human Rights: Model Law on Drug Use and HIV/AIDS Module 3: Sterile syringe programs**

© 2006 Canadian HIV/AIDS Legal Network

Further copies can be retrieved at [www.aidslaw.ca/drugpolicy](http://www.aidslaw.ca/drugpolicy)  
or obtained through the Canadian HIV/AIDS Information Centre  
([www.aidssida.cpha.ca](http://www.aidssida.cpha.ca))

## **Canadian cataloguing in publication data**

Module 3: ISBN 978-1-896735-67-2  
Complete series: ISBN 978-1-896735-64-1

## **Authorship and acknowledgements**

Richard Pearshouse is the primary author of this resource. Richard Elliott and Joanne Csete wrote text of legal provisions and prefatory notes, and reviewed the entire resource. Invaluable research assistance was provided by Tim Franklin, Sarom Bahk, Katie Gibson and Sara Kushner.

This resource was reviewed by a number of outside reviewers. Special thanks go to Scott Burris and Anya Sarang. Thanks also to the participants of the consultation meeting in Vilnius, Lithuania (7–8 November 2005) who provided feedback and advice on a draft version of this resource: Larisa Bashmakova, Holly Catania, Eszter Csernus, Rumen Donski, Joze Hren, Erik Iriskulbekov, Ainagul Isakova, Murtazokul Khidirov, Vlad Klisha, Tommaso Marilli, David Otiashvili, Ekaterina Paniklova, Alexandr Rumantsyev, Atanas Rusev, Vera Sergunina, Alex Shoshikelashvili, Raminta Stuikyte, Rusudan Tabatadze, Andrey Tolopilo and Thomas Zabransky. We also thank others who provided additional comments on the draft.

Thanks to Glenn Betteridge for his assistance. Lada Mirzalieva provided useful references to legislation from former Soviet Union countries. Thanks to David Garmaise for copyediting the English text, to Liana Ibragimova for translating the resource into Russian, and to Leah Utyasheva for editing the resource in Russian. Cover design was done by Oblik Communications, and layout by Vajdon Sohaili.

Funding for this project was provided by UNAIDS, the International Affairs Directorate of Health Canada, the John M. Lloyd Foundation, and the Open Society Institute. Funding for the consultation meeting in Vilnius, Lithuania was provided by the Conference Secretariat of the Canadian International Development Agency and the Open Society Institute. The opinions expressed in this publication are those of the authors and do not necessarily reflect the official views of Health Canada.

## **About the Canadian HIV/AIDS Legal Network**

The Canadian HIV/AIDS Legal Network ([www.aidslaw.ca](http://www.aidslaw.ca)) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS.

# Introduction

UNAIDS (the Joint United Nations Programme on HIV/AIDS) suggests that approximately 30 percent of new HIV infections outside sub-Saharan Africa are due to contaminated injection equipment.<sup>1</sup> In eastern Europe and Central Asia, the use of contaminated injection equipment accounts for more than 80 percent of all HIV cases.<sup>2</sup> Yet, globally, less than five percent of people who inject drugs are estimated to have access to HIV prevention services,<sup>3</sup> and even in regions where they account for the majority of HIV infections, people who use drugs are routinely excluded from HIV/AIDS care and treatment.

Many countries with injection-driven HIV/AIDS epidemics continue to emphasize criminal enforcement of drug laws over public health approaches, thereby missing or even hindering effective responses to HIV/AIDS. There is considerable evidence that numerous interventions to prevent HIV transmission and reduce other harms associated with injection drug use are feasible, effective as public health measures and cost-effective.<sup>4</sup> Despite such evidence, millions of people around the world who use drugs do not have access to such services because of legal and social barriers.

International human rights law establishes an obligation on states to respect, protect and fulfill the right to the highest attainable standard of health of all persons, including those who use drugs. Other human rights are equally relevant in the context of the HIV/AIDS epidemic. When human rights are not promoted and protected, it is harder to prevent HIV transmission, and the impact of the epidemic on individuals and communities is worse. Consequently, UN member states have committed to

enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups ....<sup>5</sup>

---

<sup>1</sup> UNAIDS, *2006 Report on the Global AIDS Epidemic*, May 2006, p. 114. At [www.unaids.org/en/HIV\\_data/2006GlobalReport/default.asp](http://www.unaids.org/en/HIV_data/2006GlobalReport/default.asp).

<sup>2</sup> UNAIDS, *2006 Report on the Global AIDS Epidemic*, p. 114.

<sup>3</sup> United States Agency for International Development et al, *Coverage of selected services for HIV/AIDS prevention, care and support in low and middle income countries in 2003*, June 2004. At [www.futuresgroup.com/Documents/CoverageSurveyReport.pdf](http://www.futuresgroup.com/Documents/CoverageSurveyReport.pdf).

<sup>4</sup> See, for example, N. Hunt, *A review of the evidence-base for harm reduction approaches to drug use*, Forward Thinking on Drugs, 2003. At [www.forward-thinking-on-drugs.org/review2-print.html](http://www.forward-thinking-on-drugs.org/review2-print.html).

<sup>5</sup> *Declaration of Commitment on HIV/AIDS*, UN General Assembly, Res/S-26/2, 27 June 2001, para. 58. At [www.un.org/ga/aids/docs/aress262.pdf](http://www.un.org/ga/aids/docs/aress262.pdf).

UN member states have also committed to ensuring that a wide range of HIV prevention programs is available, including the provision of sterile injecting equipment and harm reduction efforts related to drug use.<sup>6</sup>

The widespread legal, social and political ramifications of the HIV/AIDS epidemic make it necessary to review and reform a broad range of laws. Some countries have adopted national HIV/AIDS laws, but these laws often ignore crucial policy issues, as well as human rights abuses that perpetuate the HIV epidemic. This is particularly true with respect to illegal drug use. HIV prevention, care and treatment services operate best within a clear legal framework that specifically protects the human rights of people who use drugs and enables harm reduction measures to mitigate the impact of HIV. A legislative framework can provide clarity and sustainability for such services. This is particularly important, given the often dominant approach of criminalizing illegal drug use and people who use drugs, which creates additional barriers to delivering health services. Law reform is not a complete solution to effectively addressing the HIV epidemic among people who use illegal drugs, but it is a necessary and often neglected step.

## **The model law project**

In early 2005, the Legal Network established a project advisory committee and, in consultation with the committee, developed a plan to produce model law that would assist states in more effectively addressing the HIV epidemic (and other harms) among people who use drugs, based on evidence of proven health protection and promotion measures, and in accordance with states' human rights obligations.

Comprehensive consultations were conducted during the drafting of the model law. A draft version of the model law was reviewed by a group of legal experts, harm reduction advocates and government representatives from central and eastern Europe, and countries of the former Soviet Union, during a meeting in Vilnius, Lithuania (7–8 November 2005). The document was modified in line with this feedback and recommendations. In early 2006, the model law was circulated in electronic form to a large number of people and organizations, providing a further opportunity to modify and strengthen the resource. This final document has, therefore, benefited from the thinking of a wide range of experts in the fields of HIV/AIDS, human rights and drug policy.

## **About this resource**

This model law resource is a detailed framework of legal provisions and accompanying commentary. It makes reference to examples of law from those jurisdictions that have attempted to establish a clear legal framework for addressing HIV/AIDS issues among people who use drugs.<sup>7</sup> This resource also incorporates human rights principles and

---

<sup>6</sup> *Declaration of Commitment on HIV/AIDS*, para. 52.

<sup>7</sup> References to national legal instruments are included in order to demonstrate the feasibility of establishing progressive legal frameworks so that law reform in other jurisdictions can be informed by such examples.

obligations of states throughout the document. It is annotated in order to highlight critical issues and evidence that supports the measures proposed.

This model law resource is designed to inform and assist policy-makers and advocates as they approach the task of reforming or making laws to meet the legal challenges posed by the HIV epidemic among people who use drugs. The model law resource is not intended for any one country or set of countries. Rather, it is designed to be adaptable to the needs of any of a wide number of jurisdictions. In some instances, the model law presents different legislative options for implementing states' human rights obligations. It is hoped that this resource can be most useful for those countries where injection drug use is a significant factor driving the HIV epidemic, and particularly for developing countries and countries in transition where legislative drafting resources may be scarce.

The model law resource consists of eight modules, addressing the following issues:

- (1) Criminal law issues
- (2) Treatment for drug dependence
- (3) Sterile syringe programs
- (4) Supervised drug consumption facilities
- (5) Prisons
- (6) Outreach and information
- (7) Stigma and discrimination
- (8) Heroin prescription programs

Each of the eight modules in this series is a stand-alone document. Each module begins with the introduction that you are reading now; the text of the introduction is identical in all of the modules.

Following the introduction, each model provides a prefatory note, model statutory provisions and a list of selected resources. (Taken together, the model statutory provisions in all eight modules would form a model law addressing HIV/AIDS and drug use.)

The prefatory note presents a rationale for reforming laws and policies in the area covered by the module. This is followed by a discussion of the relevant UN conventions on drug control, and of states' human rights obligations in this area.

The section on model statutory provisions contains provisions that could be included in a model law on HIV/AIDS and drug use. The provisions are divided into chapters, articles, sections and subsections. The first chapter ("General Provisions") describes the purpose of that Part of the model law, and provides definitions for many of the terms included in the provisions.

---

These references do not imply that the actual practice in the jurisdictions cited represents "best practice." There is often a long way to go in ensuring that actual practice conforms to these legal undertakings.

Some of the provisions are accompanied by a commentary. The commentary provides additional information on, or rationale for, the provision in question. For some model statutory provisions, two options are presented; a note inserted into the text indicates either (a) that one or the other option should be selected, but not both; or (b) that one or the other option, or both options, can be selected. As well, some of the provisions have been labelled as “optional.” This means that these provisions may or may not be applicable, depending on the situation in the country.

The section on selected resources contains a short list of resources which the Legal Network considers to be particularly useful. There are two subsections: one on articles, reports and policy documents, and one on legal documents.

The model law resource is heavily footnoted. The notes provide additional information on the issues being addressed, as well as full references. If the same source is cited more than once in a module, the second and subsequent references to that source are somewhat abbreviated (usually just the name of the author, or organization, and the title of the article or report).

# Module 3: Sterile Syringe Programs

*Module 3 contains a prefatory note which outlines the rationale for and benefits of syringe exchange programs and which describes relevant international laws and policies, including human rights obligations. This is followed by a section on model statutory provisions. Module 3 concludes with a list of recommended resources.*

## Prefatory Note

### Rationale for Reform

Programs that furnish sterile syringes and other injection equipment to people who inject drugs are generally regarded as an essential part of preventing HIV/AIDS and other blood-borne diseases, and are an important approach in reducing risks associated with injection drug use.<sup>8</sup> Sterile syringe programs may exchange or sell sterile injection equipment or distribute it at no cost. This equipment may include syringes as well as cookers, alcohol swabs and other items. Needle exchange programs (whereby sterile syringes are exchanged for used syringes) and syringe distribution programs are common types of sterile syringe programs. Syringe dispensing machines, pharmacy-based distribution and physician-based distribution are other means of ensuring access to sterile injecting equipment.

Sterile syringe programs have been endorsed by a wide range of scientific and medical organizations, as well as by UNAIDS and the World Health Organization (WHO).<sup>9</sup> The 2001 General Assembly *Declaration of Commitment on HIV/AIDS* recognizes the importance of furnishing sterile injecting equipment to people who use drugs as a central element of HIV prevention.<sup>10</sup> Within the terms of *Revised*

---

<sup>8</sup> See A. Wodak and A. Cooney, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users*, WHO, 2004. At [www.who.int/hiv/pub/idu/pubidu/en/](http://www.who.int/hiv/pub/idu/pubidu/en/). For a review of the studies specifically evaluating the effectiveness of needle and syringe exchange programs, see D. Gibson et al, "Effectiveness of syringe exchange programs in reducing HIV risk behaviour and HIV seroconversion among injecting drug users," *AIDS* 15(11) (2001): 1329–1341.

<sup>9</sup> *Declaration of Commitment on HIV/AIDS*, UN General Assembly, adopted by General Assembly resolution S-26/2 of 27 June 2001; UNAIDS, *Policy Brief: Provision of Sterile Injecting Equipment to Reduce HIV Transmission*, 2004 (available via [www.wpro.who.int/sites/hsi/documents/](http://www.wpro.who.int/sites/hsi/documents/)); WHO, *Basic Principles for Effective Prevention of HIV Infection Among Injecting Drug Users*, 1998 (at [www.euro.who.int/document/E76650.pdf](http://www.euro.who.int/document/E76650.pdf)). See, also, International Harm Reduction Association, *Endorsement of needle exchange in the prevention of HIV infection*, 15 June 2005 (at [www.ihra.net/pdf/SupportforNeedleExchange.pdf](http://www.ihra.net/pdf/SupportforNeedleExchange.pdf)).

<sup>10</sup> *Declaration of Commitment on HIV/AIDS*. Paragraph 23 states that "... effective prevention, care and treatment strategies will require behavioural changes and increased availability of and non-discriminatory access to, inter alia, vaccines, condoms, microbicides, lubricants, sterile injecting equipment, drugs including anti-retroviral therapy, diagnostics and related technologies as well as increased research and

*Guideline 6* (on access to prevention, treatment, care and support) of the *International Guidelines on HIV/AIDS and Human Rights*, the Office of the High Commissioner for Human Rights (OHCHR) and UNAIDS recommend to states that:

Restrictions on the availability of preventative measures, such as condoms, bleach, clean needles and syringes, should be repealed. Widespread provision of these preventative measures through various means, including vending machines in appropriate locations, should be considered ....<sup>11</sup>

The United Nations Office on Drugs and Crime (UNODC) has stated that “[t]here is some evidence to suggest that the availability and regular use of clean injecting equipment can prevent, halt and perhaps even reverse HIV/AIDS epidemics among injecting drug users.”<sup>12</sup> In 2003, the Council of the European Union called for member States to “provide, where appropriate, access to distribution of condoms and injection materials, and also to programmes and points for their exchange.”<sup>13</sup>

In some countries, existing criminal legislation is a barrier to the effective operation of sterile syringe programs. The operation of sterile syringe programs can be apparently at odds with legal provisions that criminalize “facilitation” or “incitement” to drug use, and can cause confusion between law enforcement and health services. WHO has recognized that legislation that penalizes people who inject drugs for possession of sterile injecting equipment, as well as legislation that penalizes health workers who make such equipment available, “can be an important barrier to HIV control among injecting drug users.”<sup>14</sup> Guideline 4 (on criminal laws and correctional systems) of the *International Guidelines on HIV/AIDS and Human Rights* states that:

Criminal law should not be an impediment to measures taken by States to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. Criminal law should be reviewed to consider:

- The authorization or legalization and promotion of needles and syringe exchange programmes;

---

development ...” Paragraph 52 similarly calls for the accessibility of sterile injecting equipment as an important preventative measure in reducing the transmission of HIV/AIDS.

<sup>11</sup> OHCHR and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights: Revised Guideline 6 — Access to prevention, treatment, care and support*, 2002, at para. (m).

<sup>12</sup> UNODC, *World Drug Report: 2004*, s1.3.3 p. 52. At [www.unodc.org/pdf/WDR\\_2004/Chap1\\_injecting\\_drugs.pdf](http://www.unodc.org/pdf/WDR_2004/Chap1_injecting_drugs.pdf).

<sup>13</sup> Council of the European Union, Council recommendation of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence, 2003/488/EC, 2003, para. 2(10).

<sup>14</sup> WHO, *Policy Brief: Provision of Sterile Injecting Equipment to Reduce HIV Transmission*, p.2.

- The repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes.<sup>15</sup>

A WHO review of sterile syringe programs, including needle exchange programs, concluded that there is no evidence from the many rigorous studies of sterile syringe programs that these programs encourage initiation of drug use or in any way promote drug use.<sup>16</sup>

Countries have addressed these legal barriers to the implementation of sterile syringe programs in a number of ways. In some countries, sterile syringe programs operate without a specific national legal framework authorizing them, while other countries have developed clear legislative grounding for these programs.<sup>17</sup> In some countries, a clause in the law specifically exempts sterile syringe programs from legal provisions that criminalize “facilitation” or “incitement” to drug use.<sup>18</sup>

<sup>15</sup> OHCHR and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, 1998, para. 29(d).

<sup>16</sup> See A. Wodak and A. Cooney, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users*, p 16.

<sup>17</sup> See, for example, European Monitoring Centre for Drugs and Drug Addictions (EMCDDA), *Legal Framework of Needle and Syringe Programmes*, 2005. Available via <http://eldd.emcdda.eu.int/index.cfm?fuseaction=public.Content&nNodeID=13212&sLanguageISO=EN>. See, also, Law of Ukraine on prevention of Acquired Immunodeficiency Syndrome [AIDS] and social protection of the population (*Pro zapobigannia zakhvoriuvanniu na sindrom nabutogo imunodefitsitu (SNID) ta sotsial'niy zakhist naseleennia*), N 1972-XII of 12.12.1991, most recently amended on 15 November 2001, No 155/98-BP, art. 4. According to this law, the state guarantees that it will ensure “prevention of HIV infection among injecting drug users, in particular by creating conditions for needle exchange programs.” A framework for sterile syringe programs in New South Wales (Australia) is found in New South Wales, *Drug Misuse and Trafficking Regulation*, 2000. Section 4(1)(a) allows the Department of Health to authorize “the supply to intravenous drug users of sterile hypodermic syringes ... and any associated equipment, to prevent the spread of contagious disease and minimize health risks associated with intravenous drug use[.]” The framework for sterile syringe programs in Tasmania (Australia) is set out in the *HIV/AIDS Preventative Measures Act 1993* (Tasmania), No.25 of 1993, part 3. In Iran, an executive order from the head of the judiciary specifically calls for judicial tolerance of syringe programs and other HIV/AIDS harm reduction programs; see Seyed Mahmood Hashemi Sharoudi, Head of the Judiciary, Executive Order to all judicial authorities nationwide, 24 January 2005, Ref 1-83-14434 [Islamic Republic of Iran]. Vietnam’s *Law on the Prevention and Control of HIV/AIDS* (2006) calls for the implementation of harm reduction measures (art. 21) which, according to the definition (art. 2.15), include “promotion of the use of ... clean needles and syringes”.

<sup>18</sup> In Germany, the supply of sterile disposable syringes to people who use drugs is specifically excluded from the offence of providing an opportunity for use. The relevant law states “The supply of sterile disposable syringes to drug-addicted persons shall not constitute procurement of an opportunity for use within the meaning of No 10 of the first sentence [where s.29 (1)(10) imposes a criminal penalty on anyone who “communicates publicly or out of selfish motives an opportunity for illicit use, acquisition or illicit supply of narcotics, procures for or grants such opportunity to another or misleads him into the illicit use of narcotics.]” See *Act to regulate the traffic in narcotics* (Narcotics Act) 1994 (as amended) [Germany], s. 29(1). In Belgium, the law considers facilitation and incitement to drug use as offences, but the law specifically excludes medical personnel from this. See *Loi 24 février 1921 concernant le trafic des substances vénéneuses, soporifiques, stupéfiantes, psychotropes, désinfectantes ou antiseptiques et des substances pouvant servir à la fabrication illicite de substances stupéfiantes et psychotropes* (as amended) 1921 [Belgium], art. 3(2).

## International law and policy

### UN conventions on drug control

Support for programs designed to reduce the harm of drug use can be found in a number of international legal instruments. The UN 1961 *Single Convention on Narcotic Drugs* requires parties to the Convention to “give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved”.<sup>19</sup> The 1988 *United Nations Convention Against Illicit Traffic in Narcotic and Psychotropic Substances* requires parties to “adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic.”<sup>20</sup> A harm reduction approach to drug use has been acknowledged to be consistent with these treaties.<sup>21</sup> The UN system’s 2000 position paper on *Preventing the Transmission of HIV Among Drug Abusers*, recognized that “[d]rug abuse problems cannot be solved simply by criminal justice initiatives. A punitive approach may drive people most in need of prevention and care services underground.”<sup>22</sup> Sterile syringe programs constitute an effective and widely accepted part of such an approach by decreasing the sharing of syringes among people who use injection drugs and limiting the transmission of HIV/AIDS and other blood-borne illnesses. They therefore fall within the scope of providing treatment, education, care and rehabilitation to people who use drugs, and of facilitating their social reintegration. As such, they are permissible under the UN conventions on drug control.

In many countries, the effectiveness of sterile syringe programs is hindered by laws that prohibit the possession of drug-use paraphernalia including syringes. In addition, the law may also criminalize the personal use or consumption (as well as possession) of illegal drugs and the possession of trace amounts of illegal drugs that are often present as residue in used syringes that have been used to inject drugs. The criminalization of possession of trace amounts of illegal drugs is a concern for sterile syringe program

---

<sup>19</sup> *Single Convention on Narcotic Drugs*, 1961, UN, 520 UNTS 331, art. 38.1.

<sup>20</sup> *United Nations Convention Against Illicit Traffic in Narcotic and Psychotropic Substances*, 1988, UN Doc. E/CONF.82/15 (1988), 28 ILM 493 (1989), art. 14.4.

<sup>21</sup> For example, the UNDCP (located within the UN Office on Drugs and Crime) has presented legal justifications for harm reduction measures such as sterile syringe programs, demonstrating the compliance of these measures with the framework of the UN drug conventions. See UNDCP (Legal Affairs Section), Flexibility of treaty provisions as regards harm reduction approaches, Decision 74/10, UN Doc. E/INCB/2002/W.13/SS.5, 30 September 2002.

<sup>22</sup> UN, *Preventing the Transmission of HIV Among Drug Abusers: A Position Paper of the United Nations System*, (approved on behalf of the Administrative Committee on Coordination by the High-Level Committee of Programmes, 1<sup>st</sup> regular session of 2001, Vienna, 26-27 February 2001), p. 9. At <http://ceb.unsystem.org/documents/SCDC/acc-2000-17.pdf>.

clients, who may be reluctant to return or safely dispose of syringes that contain residue from injection, and are thus put in a position of having to reuse syringes. The possession of material distributed by sterile syringe programs, such as syringes and related materials, as well as paraphernalia related to other means of consumption including pipes, is not prohibited by international law.<sup>23</sup> Both the 1961 *Single Convention* and the 1971 *Convention on Psychotropic Substances* allow for the production, distribution or possession of controlled substances for “medical and scientific purposes.” States determine how they will interpret and implement these provisions in their domestic law. These provisions can be interpreted broadly so as to allow greater flexibility in domestic drug control laws. Therefore, in the context of sterile syringe programs, tolerating possession of trace amounts of controlled substances, whether legislated or achieved through other means such as police or prosecutorial directive, may be seen as consistent with international law. In fact, the UNAIDS *Handbook for Legislators on HIV/AIDS, Law and Human Rights* recommends exempting from criminal liability the possession of trace amounts of illegal drugs.<sup>24</sup>

## Human rights obligations

The implementation of sterile syringe programs may also assist in compliance with a number of international legal instruments. The *Universal Declaration of Human Rights* states that “everyone has the right to a standard of living adequate for the health and well-being of himself ...including ... medical care and necessary social services.”<sup>25</sup> Similarly, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognizes the “right of everyone to the highest attainable standard of physical and mental health.”<sup>26</sup> The *International Guidelines on HIV/AIDS and Human Rights* recommend that states ensure the “widespread availability of qualitative prevention measures and services, adequate HIV prevention and care information” in order to protect the human rights of people living with HIV/AIDS and to stem the spread of the virus.<sup>27</sup>

---

<sup>23</sup> Although the 1961 *Single Convention on Narcotic Drugs*, the 1971 *Convention on Psychotropic Substances* 1971, and the 1988 *United Nations Convention Against Illicit Traffic in Narcotic and Psychotropic Substances* specify punishable offences including possession, acquisition and distribution of controlled substances, the conventions do not specify “use” as an offence. The possession of drug use paraphernalia is not listed as an offence.

<sup>24</sup> UNAIDS, *Handbook for Legislators on HIV/AIDS, Law and Human Rights*, 1999, p.54.

<sup>25</sup> *Universal Declaration on Human Rights*, UN General Assembly, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

<sup>26</sup> *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 993 UNTS 3 (1966), art. 12. General Comment 14 (to Article 12) states that “every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments.” See United Nations Social and Economic Council, Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 (2000), para. 1.

<sup>27</sup> OHCHR and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights: Revised Guideline 6*.

By reducing transmission of HIV and other blood-borne diseases through injection drug use, sterile syringe programs help ensure respect for the right of people who inject drugs to the highest attainable standards of health, and help reduce the harms of injection drug use, including HIV transmission.

# Model Statutory Provisions

## Chapter I. General Provisions

### Article 1. Purpose of this Part

The purpose of this Part is to enable the use of sterile syringes and other related material for drug use among people who inject drugs, so as to reduce the intravenous transmission of infectious diseases among them. Specifically, this Part aims to:

- (a) ensure the availability and accessibility of sterile syringes by encouraging their distribution via a variety of means;
- (b) provide the legal structure for effective operation of sterile syringe programs, in ways to protect the human rights of people who use sterile syringe programs;
- (c) guarantee that sterile syringes and other drug-use equipment are not considered illegal; and
- (d) ensure that sterile syringe programs operate in harmony with law enforcement activities.

### Article 2. Definitions

For the purposes of this Part, the following definitions are used:

“Controlled substance” means a substance included in the Schedules of the [applicable drug legislation].

“Dispensing machine” means any machine or mechanical device used for selling or supplying sterile syringes without the personal attention of the seller or supplier at the time of the sale or supply.

“Health practitioner” means a person entitled under the [relevant health law] to provide health services. Health practitioners include accredited physicians, registered nurses and other trained medical staff.

“Pharmacist” means a pharmacist registered under the [relevant Act].

“Pharmacy employee” means a person employed in a registered pharmacy.

“Registered pharmacy” means a pharmacy within the meaning of, and registered under, the [relevant Act] and includes a pharmacy operated by a hospital or other health service.

“Staff” of the sterile syringe program, includes the following persons:

- (a) the operator or manager of the program;

- (b) a person engaged by the operator or manager of the program to provide services at the facility, whether under a contract of employment or otherwise; and
- (c) a person engaged by the operator or manager of the program to provide voluntary assistance at the facility.

“Sterile syringe program” means a program that provides access to sterile syringes and other related material, information on HIV transmission and other blood-borne pathogens, or referrals to substance abuse treatment services. It includes needle exchange programs, needle distribution programs and other forms of sterile syringe distribution.

“Trace amount” means any amount of a controlled substance that remains in a syringe or other related material for drug use in such a quantity as to be too small for the purpose of injecting or otherwise ingesting.

## Chapter II. Enabling Sterile Syringe Programs

### Article 3. Supply of sterile syringes and other related materials

Staff of the sterile syringe program may provide the following material:

- (a) sterile syringes and other related material for safer injection drug use, including sterile water ampoules, swabs, filters, safe acid preparations, spoons and bowls and other appropriate materials;<sup>28</sup>
- (b) material to enable safer smoking and inhalation of drugs, such as pipes, stems, metal screens, alcohol wipes and lip balm;<sup>29</sup>
- (c) condoms and other safer sex materials, such as water-based lubricants and dental dams, as well as information about reducing the risks of HIV and other sexually transmitted infections; and
- (d) first aid in emergency situations.

#### Commentary: Article 3

Sterile syringes may be provided through exchange programs or distribution programs. Syringe exchange programs involve the exchange of used syringes for sterile ones. Exchange programs may entail a one-for-one exchange or exchange of one-for-one plus extra syringes based on the needs of the client.<sup>30</sup> A syringe distribution program is distinguished from syringe exchange in that there are no limitations on the number of syringes distributed to clients. Though both types of programs provide sterile syringes to clients in order to prevent reuse of syringes for injecting drugs, research has suggested

<sup>28</sup> For example, U.K. regulations provide for sterile syringe programs to supply alcohol swabs, utensils for the preparation of a controlled drug, citric acid, a filter, and ampoules of water for injection; see the *Misuse of Drugs (Amendment) (No. 2) Regulations 2003*, Statutory Instrument 2003, No. 1653. Note that in the U.K. hypodermic syringes are explicitly exempted from the legal provision prohibiting the supply of articles used in administering or preparing drugs; see *Misuse of Drugs Act 1971*, s. 9a.

<sup>29</sup> For an example of legislative enablement of harm reduction programs distribution of material for the inhalation or smoking of cocaine, crack or heroin, see *Référentiel national de réduction des risques pour usagers de drogue mentionné à L'article D* [France], Décret No. 2005-347 du 15 Avril 2005, Annexe 31-2, art. III(1).

<sup>30</sup> A 1998 study of North American syringe exchange programs showed that 29 percent of exchange programs opted for one-for-one exchanges, while 71 percent opted for one-for-one plus extras based on need. See Centers for Disease Control and Prevention (CDC), “CDC update: syringe exchange programs: United States 1998,” in *Morbidity and Mortality Weekly Report* 50 (2001): 384–387. The applicable law for the State of São Paulo, Brazil, states in Article 2(1) that “the distribution . . . will be made, preferably, through the exchange of equipment potentially infected with the virus of AIDS, used by injection drug users, for sterile needles and syringes”; see *Law No. 9758* of 17 September 1997, State of São Paulo. “[S]trive for a one-to one exchange” is the language used in the model law of the Department of State Legislation, American Medical Association, *An Act Concerning Syringe Exchange Programs*, November 2004.

that people who use syringe distribution programs tend to reuse syringes less than clients of one-for-one syringe exchange programs.<sup>31</sup> Syringe distribution programs are thus preferable approach to reducing risk behaviour by people who use injection drugs.

Reused filters and non-sterile acid preparations carry the risk of exposing people who use injection drugs to viral and bacterial infection.<sup>32</sup> The provision of safe materials used in the preparation of drugs for injection ensures that risks associated with the acts of preparation and injection are minimized. Providing these materials in addition to sterile syringes may also encourage the use of sterile syringe programs in general, thus reinforcing their harm reduction benefits.

Safer materials for the consumption of drugs by means other than injection should also be available through sterile syringe programs. Studies have identified crack smoking as a possible risk factor for HIV, hepatitis C and tuberculosis transmission: infectious disease may be transmitted via the sharing of implements containing contaminated blood particles.<sup>33</sup> The provision of sterile smoking equipment such as pipes and ampoules reduces the likelihood of transmission via unclean equipment.

## Article 4. Information

Staff of sterile syringe programs may provide information including, but not limited to, the following:

- (a) drug dependence treatment services and other health services;
- (b) means of protection against transmissible diseases, including blood-borne diseases such as HIV;
- (c) the risks associated with the use of controlled substances;
- (d) harm reduction information specific to the drug being used, including safe injecting and inhaling practices;
- (e) legal aid services;
- (f) employment and vocational training services and centres; and
- (g) available support services for people with drug dependence and their families.<sup>34</sup>

<sup>31</sup> See A. Kral et al, "Injection risk behaviors among clients of syringe exchange programs with different syringe dispensation policies," *Journal of Acquired Immune Deficiency Syndromes* 37(2) (2004): 1307–1312.

<sup>32</sup> See Bureau of HIV/AIDS, STD and TB, Laboratory Centre for Disease Control, *Risk Behaviours Among Injection Drug Users in Canada*, Health Canada *HIV/AIDS Epi Update*, May 1999.

<sup>33</sup> Studies have identified crack smoking as a possible risk factor for HIV, hepatitis C and tuberculosis; infectious disease may be transmitted via the sharing of implements through which contaminated blood particles are transmitted. See A.E. Weber et al, "Risk Factors associated with HIV infection among young gay and bisexual men in Canada," *Journal of Acquired Immune Deficiency* 28 (2001): S1-S8; J. McMahon and S. Tortu, "A potential hidden source of hepatitis C infection among noninjecting drug users," *Journal of Psychoactive Drugs* 35 (2003): 523–534; S. Tortu et al, "Sharing of noninjection drug-use implements as a risk factor for hepatitis C," *Substance Use and Misuse* 39 (2004): 211–224.

<sup>34</sup> This wording is derived from Portugal's *Decree-law No. 183/2001*, art. 31(1).

## Article 5. Forms of the sterile syringe program

Sterile syringe programs may be stationary or mobile.

### Commentary: Article 5

Locating sterile syringe programs so that they are convenient to large numbers of people who inject drugs is critical for their effectiveness. Offering several venue types to reach participants in a range of circumstances will improve utilization.<sup>35</sup> Outreach work is useful in identifying networks of people who use drugs, introducing them to the program's services, building trust between program staff and people who use drugs, and distributing sterile injection equipment and educational materials.<sup>36</sup>

## Article 6. Collection and disposal of used syringes

Sterile syringe programs shall establish and follow procedures for the safe collection and disposal of used syringes and other related material, based on prevailing public health guidelines.<sup>37</sup>

## Article 7. Confidentiality

- (1) The confidentiality of all health care information shall be respected. Records of any person which are created or obtained in the course of sterile syringe program operation:
  - (a) are confidential;<sup>38</sup>
  - (b) are not open to public inspection or disclosure;

---

<sup>35</sup> E. Riley et al, "Comparing new participants of a mobile versus a pharmacy-based needle exchange program," *Journal of Acquired Immune Deficiency Syndromes* 24 (2000): 57–61.

<sup>36</sup> British Institute of International and Comparative Law, *The Draft Fourth Framework on Risk Management*, October 2003. At [www.drug-policy.org/documents/BIICL\\_HR\\_Framework](http://www.drug-policy.org/documents/BIICL_HR_Framework).

<sup>37</sup> For example, legislation from the Australian state of Tasmania provides:  
"A person must dispose of a used syringe or needle –  
(a) by placing the syringe or needle in a container that –  
(i) has rigid walls; and  
(ii) is resistant to puncture; and  
(iii) is capable of being sealed or securely closed in such a way that its contents are not capable of causing injury; or  
(b) by such other method as the Secretary may determine."  
*HIV/AIDS Preventative Measures Act 1993*, No. 25 of 1993, Tasmania [Australia], s. 35.

<sup>38</sup> Some needle exchanges in New York [U.S.] use a form of enrollment card that does not record the full name of the program participant, but rather a unique identifier code formed from letters of their name and numbers from their birthday. No address or other contact information is required.

- (c) shall not be shared with other individuals or agencies without the consent of the person to whom the record relates; and
  - (d) shall not be discoverable or admissible during legal proceedings.
- (2) No record referred to in subsection (1) of this article may be used to:
- (a) initiate or substantiate any criminal charges against a person who uses program services; or
  - (b) act as grounds for conducting any investigation of a person who uses program services.
- (3) Sterile syringe program staff cannot be compelled under [relevant criminal procedure code] to provide evidence concerning the information that was entrusted to them or became known to them in this capacity.<sup>39</sup>
- (4) All use of personal information of people who use sterile syringe programs and program staff in research and evaluation shall be undertaken in conditions guaranteeing anonymity, and any such information shall also be governed by Section (2) of this article.

### **Commentary: Article 7**

Maintaining the confidentiality of health care information enables clients of sterile syringe programs to utilise the services provided without fear that private health information may be released. A lack of confidentiality may result in decreased utilisation of sterile syringe programs by clients fearing repercussions of their health information being shared, including discrimination, increased police attention and other social and institutional violations of their human rights.<sup>40</sup> Ensuring confidentiality enables sterile syringe programs to provide their services to vulnerable and marginalized populations of people who use injection drugs and who may otherwise engage in activities which carry a high risk of HIV transmission. Ensuring confidentiality also respects the right of sterile syringe program clients to privacy guaranteed in a number of international legal instruments and numerous national laws.<sup>41</sup>

---

<sup>39</sup> This wording is derived from Germany's *Code of Criminal Procedure*, s. 53, para. 1, no. 3b.

<sup>40</sup> Police interference has been identified as an important barrier to clients' use of sterile syringe programs. A study conducted in Togliatti City, Russian Federation found that fear of being stopped or detained by police was an important influence on the extent to which people who used injection drugs obtained sterile syringes from exchanges or pharmacies. See T. Rhodes et al, "Situation factors influencing drug injecting, risk reduction and syringe exchange in Togliatti City, Russian Federation: a qualitative study of micro risk environment," *Social Science and Medicine* 57, 1 (2003): 39–54.

<sup>41</sup> Article 17.1 of the *International Covenant on Civil and Political Rights (ICCPR)* and Article 12 of the *Universal Declaration of Human Rights* contain a prohibition on "unlawful" interference with a person's right to privacy.

## Article 8. Non-discrimination

- (1) No person shall be subject to any discrimination in the operation of the sterile syringe program on the basis of gender, race, religion, age, disability,<sup>42</sup> sexual orientation, nationality, political opinion or social or ethnic origin.
- (2) For greater clarity in Section (1),
  - (a) access to sterile syringe programs shall extend to whoever needs the services of sterile syringe programs, regardless of age, frequency of injection, controlled substance used or residence; and
  - (b) sterile syringe program staff may include people who currently use or have previously used controlled substances.

### Commentary: Article 8

As high-risk practices such as syringe sharing may occur across age groups and among people in many circumstances, sterile syringes should be provided without discrimination. No minimum age requirements should be set to exclude younger groups from using sterile syringe programs, because populations of young people who use injection drugs face high a very high risk of HIV infection.<sup>43</sup> People who inject drugs may do so occasionally or habitually, and consumption may or may not involve dependence. All of these persons face the risk of transmission of HIV and other blood-borne infections through injection drug use; therefore, access to sterile syringes should not be limited on the basis of the characteristics of the client.

Staff recruitment for sterile syringe programs should not discriminate based on the fact of current or past illegal drug use. Research and long experience have shown that in many circumstances peer counsellors — those who use or have used drugs — have greater credibility and can be more effective counsellors than non-users.<sup>44</sup> In particular, peer-run needle exchange programs may be effective at reaching people who do not have access to other sources of sterile syringes such as pharmacies.<sup>45</sup> Both the *Declaration of*

---

<sup>42</sup> In certain jurisdictions, dependence on alcohol or a controlled substance may be considered as a disability under anti-discrimination laws, and persons dependent on drugs may enjoy the corresponding protections from disability-based discrimination. See Module 7 of this model law resource (Stigma and Discrimination) for model provisions on this issue.

<sup>43</sup> See A. Wodak and A. Cooney, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users*, p.18. See also K. Dolan, P. Dillon, and E. Silins, *Needle and syringe programs: your questions answered*, Australian Government Department of Health and Ageing, 2005.

<sup>44</sup> A discussion of concerns and suggestions for managing staff who use or have used illicit drugs may be found in D. Burrows, *Starting and managing needle and syringe programs: a guide for Central and Eastern Europe and the newly independent states of the former Soviet Union*, International Harm Reduction Development, Open Society Institute, 2000, pp. 53–64.

<sup>45</sup> See E. Wood et al, “An external evaluation of a peer-run ‘unsanctioned’ syringe exchange program,” *Journal of Urban Health* 80(3) (2003): 455–464.

*Commitment on HIV/AIDS* and the *International Guidelines on HIV/AIDS and Human Rights* call for the consultation and representation of vulnerable and marginalized groups, such as people who use drugs, in the development of harm reduction policies and services.<sup>46</sup>

## **Article 9. Adequate coverage of sterile syringe programs**

- (1) The state shall ensure access to sterile syringes for people who require them. Where sterile syringes are not otherwise available and there is demand, the state shall establish a sterile syringe program out of public funds.
- (2) In meeting its obligations under Section (1), the state may distribute sterile syringes through public health facilities or provide funding to community organizations to provide sterile syringes.

## **Optional: Article 10. Program oversight committee**

- (1) A program oversight committee may be established to oversee the operation of the sterile syringe program.
- (2) The program oversight committee shall include representatives from among people who use the services of the program.

## **Optional: Article 11. Working group on law enforcement practices**

- (1) The [relevant public health agency] shall be responsible for convening a working group to establish a protocol for law enforcement practices that are compatible with the effective operation of the program. Such a protocol shall include the issue of law enforcement practices in the vicinity of the program.<sup>47</sup>
- (2) The working group shall include representatives of
  - (a) the [relevant public health agency];
  - (b) staff of the program;
  - (c) clients of the program;
  - (d) law enforcement agencies; and
  - (e) local community representation.

---

<sup>46</sup> *Declaration of Commitment on HIV/AIDS*, para. 37; OHCHR and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, para. 24(a).

<sup>47</sup> Law enforcement agencies need to be aware that searches and seizures conducted near or in the sterile syringe program for the purpose of enforcing drug related offences may dissuade clients from using such services. Law enforcement protocols regarding searches and seizures for drug related offences in such locations should be modified accordingly.

## Chapter III. Issues of Criminal and Civil Liability

### Article 12. Decriminalization of possession of syringes and other related material

- (1) A person who is in possession of a syringe or other related material is not, by the mere fact of that possession, taken to have committed an offence under the [relevant drug legislation].<sup>48</sup>
- (2) Possession of a syringe or other related material is not to be considered a legally sufficient reason for any of the following:
  - (a) a search by law enforcement officials;
  - (b) the presumption that a person uses a controlled substance;
  - (c) arrest by law enforcement officials; or
  - (d) testing for use of a controlled substance or other medical evaluation.
- (3) Where criminal procedure laws govern admissibility of evidence in court,<sup>49</sup> syringes, together with other related material, shall not be admissible as evidence in court for the purposes of establishing criminal or other liability for use, possession or trafficking of a controlled substance or other related offence.

#### Commentary: Article 12

The effectiveness of sterile syringe programs depends on their being utilized by people who use injection drugs. Criminal prohibition of the possession of syringes, and the possibility of prosecution for this and related offences, act as deterrents to accessing sterile syringe programs. Studies have shown that laws criminalizing syringe possession act as a disincentive for people to possess sterile injecting equipment, result in an increase in high-risk activities, such as syringe sharing and reuse, and may also lead people who inject drugs to dispose of syringes unsafely.<sup>50</sup> Decriminalizing the

<sup>48</sup> For examples of alternative wording decriminalizing syringes, see Health (Needles and Syringes) Regulations 1998, New Zealand, Regulation 10; Controlled Substances (Exemptions) Regulations 2004, South Australia, Regulation 4. As a fall-back position, legislation could provide for the decriminalization of those syringes and other material distributed by sterile syringe programs, rather than for all needles and syringes.

<sup>49</sup> For instance, Article 75.1 of The Russian Federation *Code of Criminal Procedure*, of 18.12.01 # 174-FZ (last amended 03.07.06) states that “[e]vidence obtained in violation of the requirements of this Code is inadmissible. Inadmissible evidence has no legal effect and may not be used as the basis for criminal charges or as a proof ...” of a person’s culpability in the commission of that crime, the form of guilt and the motives. Similar provisions on inadmissible evidence are found in Article 81 of the *Code of Criminal Procedure* of the Kyrgyz Republic as of 30 June, 1999, no 62. (last amended 22. 07.05 N 112)

<sup>50</sup> R. Bluthenthal et al, “Drug paraphernalia laws and injection-related infectious disease risk among drug injectors,” *Journal of Drug Issues* 29(1) (1999): 1–16; E. Wood et al, “Displacement of Canada’s largest public illicit drug market in response to a police crackdown,” *Canadian Medical Association Journal* 170(10) (2004): 1551–1556; W. Small et al, “Impacts of intensified police activity on injection drug users: evidence from an ethnographic investigation.” *International Journal of Drug Policy* 17 (2006): 89–95.

possession of syringes allows people to participate in syringe programs without fear of arrest or prosecution, resulting in safer drug consumption practices and syringe disposal. High-risk activities such as syringe sharing have been shown to decline in jurisdictions where syringe purchase and possession are not illegal.<sup>51</sup> UNAIDS has recommended that immunity be granted against charges relating to syringe possession in order to ensure the safe use and disposal of syringes proved by sterile syringe programs.<sup>52</sup>

### **Article 13. Decriminalization of possession of trace amounts of controlled substances**

- (1) A person who is in possession of any trace amount of a controlled substance that is contained in a syringe or other related material is not, by the mere fact of that possession, taken to have committed an offence under the [relevant drug legislation].<sup>53</sup>
- (2) Where criminal procedure laws govern admissibility of evidence in court, any trace amount of a controlled substance that is contained in a syringe or other related material, shall not be admissible as evidence in court for the purposes of establishing criminal or other liability for use, possession or trafficking of a controlled substance or other related offence.

#### **Commentary: Article 13**

Used syringes may contain tiny amounts of the injected drug. Possession of trace amounts inside a syringe may be grounds for criminal liability in certain jurisdictions. Decriminalizing possession of trace amounts of drugs helps people who inject drugs to dispose of used needles safely without fear of arrest or prosecution, and helps minimize syringe sharing and reuse.<sup>54</sup>

The 1961 *Single Convention on Narcotic Drugs* and the 1971 *Convention on Psychotropic Substances* allow for the production, distribution or possession of

---

<sup>51</sup> See D.A. Calsyn et al., “Needle use practices among intravenous drug users in an area where needle purchase is legal,” *AIDS* 5(2) (1991): 187–193.

<sup>52</sup> UNAIDS, *Handbook for Legislators on HIV/AIDS, Law and Human Rights*. See, also, Department of Health, Housing and Community Services [Australia], *Final Report of the Intergovernmental Committee on AIDS*, 1992, which recommends that offences relating to syringe possession be repealed.

<sup>53</sup> This wording is derived from *HIV/AIDS Preventative Measures Act 1993*, No. 25 of 1993, Tasmania, Australia, s. 38. In the U.S. case of *Doe v Bridgeport*, it was found that people who use injection drugs in Connecticut could carry up to 30 syringes including trace amounts, regardless of whether they were registered with a syringe exchange program: see *Doe v Bridgeport*, 198 FRD 325 (2001), p. 349.

<sup>54</sup> Police interference has been cited as a significant barrier to the use of syringe programs and has been associated in some settings with activities such as syringe sharing. See, for instance, R. Bluthenthal et al., “Collateral damage in the war on drugs: HIV risk behaviours among injecting drug users,” *International Journal of Drug Policy* 10 (1999): 25–38.

controlled substances for “medical and scientific purposes.” States can interpret these provisions broadly so as to allow flexibility in domestic drug control laws where it is needed to allow the effective implementation of harm reduction measures. Possession of trace amounts of controlled substances in the context of a sterile syringe program, where syringes intended for exchange or safe disposal may contain trace amounts of controlled substances, may be viewed as a medical or health-related measure for reducing the harm associated with injection drug use.

## Article 14. Exemption from criminal liability for sterile syringe programs

The [relevant drug legislation] does not prevent the sale or supply of syringes and other related material or the giving of advice, information or instruction on the safe use of syringes and other related material by staff of a sterile syringe program.

### Commentary: Article 14

This Article exempts sterile syringe programs from prosecution for syringe possession and related offences. The provision of sterile syringes and related materials may constitute an offence in national jurisdictions where the provision or possession of syringes is specifically prohibited, or where offences relating to the facilitation or incitement of drug use exist.<sup>55</sup> Sterile syringe programs have been permitted through legislation in a number of jurisdictions.<sup>56</sup> In others, tolerance of sterile syringe programs has been achieved through police or prosecutorial guidelines, or through agreements with

---

<sup>55</sup> For a summary of legal frameworks surrounding needle exchanges and their relationships with criminal laws in European countries, see EMCDDA, *Legal Framework of Needle and Syringe Programmes*.

<sup>56</sup> For instance, Portugal’s *Law 183/2001* requires the implementation and regulation of syringe exchange programs. See, also, Vietnam’s *Law on the Prevention and Control of HIV/AIDS* (2006), art. 21, and Tasmania’s *HIV/AIDS Preventative Measures Act 1993*, No.25 of 1993, part 3. See, also, S. M. Hashemi Sharoudi, Head of the Judiciary, Executive Order to all judicial authorities nationwide, 24 January 2005, Ref 1-83-14434 [Islamic Republic of Iran]. The Executive Order states:

This is to remind judges at all courts of justice and prosecutors’ offices throughout the country that since a major element of accompaniment in crime needs to be verification of malicious intent, the said interventions [methadone maintenance programs and syringe distribution] are clearly void of such malicious intent but rather motivated by the will to fulfill the mission of protecting society from the spread of deadly contagious diseases such as AIDS and hepatitis. Therefore all judicial authorities must consider the lack of malicious intent in the interventions ... and not accuse the service providers with unfair characterization of accompaniment in the criminal abuse of narcotics and not impede the implementation of such needed and fruitful programs.

Oregon’s [U.S.] *Drug Paraphernalia Law* (1987) states that “drug paraphernalia does not include hypodermic syringes or needles”: Oregon Revised Statute § 475.525 (3). See, also, L.N. Wright and K.M. Gebbie, “Oregon’s exclusion of syringes from its 1987 drug paraphernalia law was an HIV prevention measure,” *Journal of Acquired Immune Deficiency Syndromes* 18(Supp. 1) (1998): S144.

police without specific guidance.<sup>57</sup> However, explicit statutory exemption of this kind is preferable to issuing guidelines of tolerance or informal agreements with police as it provides a clear and stable legal framework in which sterile syringe programs may operate.

## **Article 15. Exemption from civil liability for sterile syringe programs**

A civil proceeding cannot be brought against any person (including the state or facility staff) in relation to any act or omission in connection with the operation of a sterile syringe program, if the act or omission was in good faith for the purpose of executing this Part and was not a reckless or negligent act or omission.<sup>58</sup>

### **Commentary: Article 15**

Exemption from civil liability in connection with operation of sterile syringe programs is relevant because of the concern that operators or staff could be held civilly responsible for injuries resulting from the distribution of needles, such as needle-stick injuries. Governments should implement a legal framework that encourages the establishment of sterile syringe programs and protects operators and staff from being vulnerable to civil liability for injuries incurred by distributed syringes. Civil liability issues associated with the operation of sterile syringe programs are not in any way unique or complex, and may be viewed as similar to other health services. Issues of civil liability should therefore not act as a barrier to the establishment of sterile syringe programs.

## **Optional: Article 16. Working group on law enforcement practices**

(1) The [relevant public health agency] shall be responsible for convening a working group to establish a protocol for law enforcement practices in the vicinity of program(s), with the goal of ensuring effective operation of the sterile syringe program(s).

---

<sup>57</sup> For example, in Belgium, the Ministerial Directive Pertaining to the Legal Proceedings Policy in Matters of Possession and Sale of Illicit Drugs, 16 May 2003, states: “On public health grounds, unused syringes and/or needles will not be subjected to seizure by police services and, if need be, will immediately be returned. It is sufficient to indicate the discovery of these objects, and to provide a succinct description in the minutes” (para. IV.6). A Circular of the French Ministry of Justice states that “arraignments — based solely on drug use — conducted near ‘low-threshold’ structures or syringe-exchange locations must be banned, because they should be determined by health authorities after consulting with legal and police services. To this effect, the mere possession of a syringe must not be considered as sufficient proof of infraction, and likely to justify an arraignment”: Circular of the Ministry of Justice (France) of 17 June 1999 with Regard to Judicial Responses to Drug Addicts, para. 1.2. (“Low-threshold” structures, as the term is used in this section, refers to measures that make harm reduction services, such as sterile syringe programs, readily accessible — for instance, allowing clients to remain anonymous or not requiring clients to register prior to using the program.) Note that in both of these countries (Belgium and France), sterile syringe programs are also permitted by legislation.

<sup>58</sup> See also District of Columbia (USA) Code § 48-1103.1 (e-1).

The working group shall include representatives of

- (a) the [relevant public health agency];
- (b) sterile syringe program staff;
- (c) sterile syringe program participants; and
- (d) law enforcement agencies.

### **Commentary: Article 16**

The effective operation of sterile syringe programs often depends on cooperation between law enforcement agencies and the health authorities, staff and clients involved in the program, especially in jurisdictions where possession of trace amounts of drugs or syringes remain prohibited. Numerous studies and reports have identified police interaction with people who use injection drugs as limiting the efficacy of sterile syringe programs and as creating an additional risk factor for HIV transmission.<sup>59</sup> Law enforcement agencies and syringe program providers should coordinate efforts to ensure that policing practices do not inhibit the operation of sterile syringe programs. Often, such coordination will include training for police officers on the law as it applies to needle exchanges,<sup>60</sup> and agreements between law enforcement officials and syringe program providers on policing practices in areas surrounding sterile syringe program sites.<sup>61</sup> Alternatively, protocols of law enforcement agencies can prohibit searches and seizures for the purpose of drug-related offences conducted near sterile syringe program locations.<sup>62</sup>

---

<sup>59</sup> S.R. Friedman et al., “Relationships of deterrence and law enforcement to drug related harms among drug injectors in US metropolitan areas,” *AIDS* 20(1) (2006): 93–99; R. Bluthenthal, et al., “Collateral damage in the war on drugs: HIV risk behaviours among injection drug users.” See, also, L. Maher and D. Dixon, “Policing & public health: law enforcement in a street-level drug market,” *British Journal of Criminology* 39(4) (1999): 488–512; L. Maher and D. Dixon, “The cost of crackdowns: Policing Cabramatta’s Heroin Market,” *Current Issues in Criminal Justice* 13(1) (2001): 5-22; T. Rhodes, L. Mikhailova, and A. Sarang, “Situational factors influencing drug injecting, risk reduction, and syringe exchange in Togliatti City, Russian Federation: a qualitative study of micro risk environment,” *Social Science and Medicine* 57 (2003): 39–54; Human Rights Watch, *Abusing the User: Police Misconduct, Harm Reduction and HIV/AIDS in Vancouver*, 2003; Human Rights Watch, *Injecting Reason: Human Rights and HIV Prevention for Injection Drug Users (California)*, 2005; International Harm Reduction Development Program, *Unintended Consequences: Drug Policies Fuel the HIV Epidemic in Russia and Ukraine*, 2003.

<sup>60</sup> Ensuring that police are aware of the state of the law concerning syringe programs is often important in limiting unnecessary contact between police and people who use drugs. Studies have demonstrated that in the case of changes in legislation regarding syringe programs, police officers are often unaware of the significance or even the fact of the change. See L. Beletzky, G.E. Macalino, and S. Burris, “Attitudes of police officers toward syringe access, occupational needle-sticks and druge use: a qualitative study of one city police department in the United States,” *International Journal of Drug Policy* 16 (2005): 267.

<sup>61</sup> Appropriate police liaisons and training are recommended by the UNAIDS, *Handbook on HIV/AIDS, Law and Human Rights*, p. 54. See, also, Department of Health, Housing and Community Services (Australia), *The final report of the legal working party of the intergovernmental committee on AIDS*, 1992, Recommendation 8.4.

<sup>62</sup> See, for example, NSW [Australia] Police, *The Needle & Syringe Program Guidelines for Police*, September 2005. Available via [www.police.nsw.gov.au](http://www.police.nsw.gov.au).

## Chapter IV. Other Measures to Promote the Availability of Sterile Syringes

### Optional: Article 17. Syringe dispensing machines

A person or organization may supply syringes by way of a dispensing machine.<sup>63</sup>

#### Commentary: Article 17

Inadequate access to sterile needles has been associated with syringe-sharing and an increased risk of transmission of HIV and other blood-borne diseases.<sup>64</sup> Dispensing machines provide people who inject drugs with access to sterile syringes during hours when other sources of sterile syringes, such as pharmacies and health centres, may be closed. Access to dispensing machines may also encourage people who inject drugs to use sterile syringes by providing an anonymous means of acquiring them. Studies have demonstrated that dispensing machines are a common source of sterile syringes for people who use injection drugs where they are available.<sup>65</sup> While syringe dispensing machines make sterile syringes more accessible to people who use injection drugs, there is no evidence to indicate that syringe dispensing machines encourage an increase in drug use among people currently using injection drugs, nor is there evidence they are associated with an increase in first-time injection drug use.<sup>66</sup>

### Optional: Article 18. Unrestricted pharmacy sales

- (1) A pharmacist or pharmacy employee acting in the ordinary course of his or her employment may:
  - (a) supply sterile syringes and other related material; and
  - (b) give out information concerning hygienic practices in the use of syringes and other related material.

---

<sup>63</sup> For examples of legislation enabling dispensing machines, see *Drugs of Dependence Act*, 1989, s.94.1, art. 94B [Australian Capital Territory, Australia]; *Decree-Law No. 183/2001*, 21 June 2001, art. 55(3) [Portugal]; *Grand Ducal Decree* of 23 December 2003, art. 2 [Luxembourg].

<sup>64</sup> A. Wodak and A. Cooney, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users*.

<sup>65</sup> See Y. Obadia et al, “Syringe vending machines for injection drug users: an experiment in Marseille, France,” *American Journal of Public Health* 89(12) (1999): 1852–1854. The study found that 21 percent of people who use injection drugs used syringe dispensing machines as their primary source of sterile needles. A study conducted in Berlin found that 77 percent of people who use injection drugs used syringe vending machines more than four times a week; see K. Stark, A. Leicht, and R. Muller, “Characteristics of users of syringe vending machines in Berlin,” *Sozial und Praventivmedizin* 39(4) (1994): 209–216.

<sup>66</sup> A. Wodak and A. Cooney, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users*, p.21.

(2) A prescription shall not be required to obtain syringes and other related material from a pharmacy.

### **Commentary: Article 18**

Pharmacies often distribute syringes, whether through their commercial sale or in connection with a sterile syringe program. Research indicates that different methods of syringe distribution reach different populations of people who use injection drugs. Pharmacy-based distribution is an important means of increasing the availability of sterile syringes to populations of injection drug users and optimizing sterile syringe exchange as a harm-reduction strategy.<sup>67</sup> This Article ensures that those pharmacists involved in syringe sales or distribution are acting within the law. The provision of syringes on the basis of the client's perceived need (rather than on the basis of a one-for-one or one-for-several exchange) has been demonstrated to be the most effective form of syringe distribution in terms of reducing syringe sharing.<sup>68</sup> Thus, no legal limits on the sale or distribution of syringes in pharmacies are recommended.

### **Optional: Article 19. Provision by health practitioner**

A health practitioner may supply sterile syringes or other related material from any place to any person.

### **Commentary: Article 19**

Sterile syringe programs may wish to employ health practitioners such as doctors and registered nurses at their facilities. Similarly, health care practitioners may wish to distribute or exchange syringes within regulations to clients during the regular discharge of their duties. Consistent with the principle of increasing the capacity of sterile syringe programs to reach people who use drugs by making sterile syringes available through a variety of sources, this Article ensures that health care practitioners may legally distribute sterile syringes in the course of their duties, whether acting independently or as part of an established sterile syringe program. Medical practitioners are specifically authorized to provide syringes in a number of jurisdictions.<sup>69</sup>

---

<sup>67</sup> E.D. Riley et al, "Comparing new participants of a mobile versus a pharmacy-based needle exchange program," *Journal of Acquired Immune Deficiency Syndromes* 24 (2000): 57–61.

<sup>68</sup> A.H. Kral et al, "Injection risk behaviour among clients of syringe exchange programs with different syringe dispensation policies," *Journal of AIDS* 37(2) (2004): 1307–1312.

<sup>69</sup> See, for example, Royal Decree of 5 June 2000, Belgium, art. 2; Health (Needles and Syringes) Regulations 1998, New Zealand, Regulation 4.

## Selected Resources

*This section provides a list of resources that the Legal Network considers to be particularly relevant.*

### Articles, reports and policy documents

Bluthenthal, R.N. et al. “Collateral damage in the war on drugs: HIV risk behaviours among injecting drug users.” *International Journal of Drug Policy* 10 (1999): 25–38

British Institute of International and Comparative Law. *Draft fourth framework convention on risk management*. 2003. At [www.senliscouncil.net/documents/BIICL\\_HR\\_Framework#search=%22Draft%20fourth%20framework%20convention%22](http://www.senliscouncil.net/documents/BIICL_HR_Framework#search=%22Draft%20fourth%20framework%20convention%22).

Burrows, D. *Starting and managing needle and syringe programs — A guide for central and eastern Europe and the newly independent states of the former Soviet Union*. Open Society Institute, 2000. Available via [www.soros.org/initiatives/health/focus/ihrd](http://www.soros.org/initiatives/health/focus/ihrd).

Council of the European Union. *Recommendation on the prevention and reduction of health-related harm associated with drug dependence* of 18 June 2003. 2003/488/EC.

Department of State Legislation, American Medical Association, *An Act Concerning Syringe Exchange Programs*, November 2004.

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). *Legal Framework of Needle and Syringe Programmes*, 2005. Available via <http://eldd.emcdda.europa.eu/>.

Kral A.H. et al. “Injection risk behaviour among clients of syringe exchange programs with different syringe dispensation policies.” *Journal of AIDS* 37(2) (2004): 1307–1312.

OHCHR and UNAIDS. *International Guidelines on HIV/AIDS and Human Rights*, 1998.

OHCHR and UNAIDS. *International Guidelines on HIV/AIDS and Human Rights: Revised Guideline 6 — Access to Prevention, Treatment, Care and Support*, 2002. At [www.ohchr.org/english/about/publications/docs/g6.pdf](http://www.ohchr.org/english/about/publications/docs/g6.pdf).

UNAIDS. *Handbook for Legislators on HIV/AIDS, Law and Human Rights*, 1999. Available at [www.ipu.org/PDF/publications/aids\\_en.pdf](http://www.ipu.org/PDF/publications/aids_en.pdf).

Wodak, A. and A. Cooney. *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users*. Evidence for action technical papers. WHO, 2004. At [www.who.int/hiv/pub/idu/pubidu/en](http://www.who.int/hiv/pub/idu/pubidu/en).

WHO/UNAIDS/UNODC. *Policy Brief: Provision of Sterile Injecting Equipment to Reduce HIV Transmission*, 2004. Available via [www.wpro.who.int/sites/hsi](http://www.wpro.who.int/sites/hsi).

## Legal documents

*Act to regulate the traffic in narcotics* (Narcotics Act) 1994 (as amended), s. 29(1) [Germany].

*Decree-Law No. 183/2001* of 21 June 2001 [Portugal].

*Drug Misuse and Trafficking Regulation 2000* (2000-519) [New South Wales, Australia]. Available via [www.austlii.edu.au/au/legis/nsw/consol\\_reg](http://www.austlii.edu.au/au/legis/nsw/consol_reg).

*Drugs of Dependence Act (Syringe Vending Machines) Amendment Act 2004*. [Australian Capital Territory, Australia].

*HIV/AIDS Preventative Measures Act 1993* No.25 of 1993. [Tasmania, Australia]. Available via [www.dhhs.tas.gov.au](http://www.dhhs.tas.gov.au).

*Law on the Prevention and Control of HIV/AIDS* (2006) No. 2006/QH11 [Vietnam].

*Law 11063*, 28 December 1998. [Santa Catarina, Brazil].

Ministerial Directive Pertaining to the Legal Proceedings Policy in Matters of Possession and Sale of Illicit Drugs, 16 May 2003 [Belgium].

Ministry of Justice. Circular of the Ministry of Justice of 17 June 1999 with Regard to Judicial Responses to Drug Addicts [France].

*Misuse of Drugs Act 1971*, s. 9a [U.K.].

*Misuse of Drugs (Amendment) (No. 2) Regulations 2003*, Statutory Instrument 2003 No. 1653 [U.K.].

NSW Police. *The Needle & Syringe Program Guidelines for Police*, September 2005. Available via [www.police.nsw.gov.au](http://www.police.nsw.gov.au) [Australia].

Law of Ukraine on prevention of Acquired Immunodeficiency Syndrome [AIDS] and social protection of the population (*Pro zapobigannia zakhvoriuvanniu na sindrom nabutogo imunodefitsitu (SNID) ta sotsial'niy zakhist naseleattia*), N 1972-XII of 12.12.1991, amended 03.03.1998 No 155/98-BP [Ukraine].

*Référentiel national de réduction des risques pour usagers de drogue mentionné à l'article D. 3121-33*. Décret No. 2005-347 du 15 Avril 2005. [France].

Seyed Mahmood Hashemi Sharoudi, Head of the Judiciary. *Executive Order to All Judicial Authorities Nationwide*, 24 January 2005. Ref 1-83-14434. [Islamic Republic of Iran].

*State Law on Harm Reduction 9758* of 17 September 1997. [São Paulo, Brazil].





Canadian  
HIV/AIDS  
Legal  
Network | Réseau  
juridique  
canadien  
VIH/sida

**Canadian HIV/AIDS Legal Network**  
**1240 Bay Street, Suite 600**  
**Toronto, Ontario**  
**Canada M5R 2A7**  
**Telephone: +1 416 595-1666**  
**Fax: +1 416 595-0094**  
**E-mail: [info@aidslaw.ca](mailto:info@aidslaw.ca)**  
**[www.aidslaw.ca](http://www.aidslaw.ca)**