SENATE BILL 255

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE HARM REDUCTION ACT; EXPANDING THE HARM REDUCTION PROGRAM TO PROVIDE SUPPLIES FOR THE SAFE CONSUMPTION OF CONTROLLED SUBSTANCES; PROVIDING IMMUNITY FROM CRIMINAL LIABILITY FOR POSSESSION OF ITEMS NECESSARY FOR SAFE CONSUMPTION OF CONTROLLED SUBSTANCES; AMENDING THE CONTROLLED SUBSTANCES ACT TO EXCLUDE SUPPLIES USED FOR SAFE CONSUMPTION OF CONTROLLED SUBSTANCES FROM UNLAWFUL PARAPHERNALIA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-2C-2 NMSA 1978 (being Laws 1997, Chapter 256, Section 2) is amended to read:

"24-2C-2. PURPOSE.--The purpose of the Harm Reduction Act is to:

A. prevent the transmission of the human
immunodeficiency virus, hepatitis B and C viruses and other blood-borne diseases; [and]

B. encourage intravenous drug users to seek substance abuse treatment and ensure that participants receive individual counseling and education to decrease the risk of transmission of blood-borne diseases;

C. intervene in the course of non-intravenous drug use to reduce the development of intravenous drug use; and

D. prevent drug overdoses resulting from the presence of adulterants, including fentanyl or other potentially dangerous substances."

SECTION 2. Section 24-2C-3 NMSA 1978 (being Laws 1997, Chapter 256, Section 3) is amended to read:

"24-2C-3. DEFINITIONS.--As used in the Harm Reduction Act:

A. "department" means the department of health;

B. "participant" [or "client"] means [an intravenous] a drug user who exchanges a used hypodermic syringe, needle or other object used [to inject] for injection for a sterile hypodermic syringe and needle or a drug user who receives supplies for the safe preparation and consumption of controlled substances or controlled substance analogs into the human body [for a sterile hypodermic syringe and needle] or other supplies in compliance with the procedures of the program; and
C. "program" means a harm reduction program for the purpose of sterile hypodermic syringe and needle exchange and providing supplies for the safe injection, smoking and inhalation of controlled substances."

SECTION 3. Section 24-2C-4 NMSA 1978 (being Laws 1997, Chapter 256, Section 4) is amended to read:

"24-2C-4. PROGRAM CREATED--DEPARTMENT RESPONSIBILITIES.--

A. The department shall:

(1) establish and administer a [harm reduction] program for the purpose of:

(a) sterile hypodermic syringe and needle exchange; and

(b) providing supplies for the safe injection, smoking and inhalation of controlled substances, within funding constraints;

(2) compile data to assist in planning and evaluating efforts to combat the spread of blood-borne diseases; and

(3) make an annual report, including legislative recommendations, to the legislative health and human services committee by October 1 each year.

B. Within thirty days of [the effective date of the Harm Reduction Act] June 20, 1997, the department shall appoint an advisory committee to include representation from:

(1) the office of the attorney general;
(2) the New Mexico state police division of
the department of public safety;

(3) the human immunodeficiency virus sexually
transmitted disease infectious disease prevention and control
bureau of the department;

(4) the director of the epidemiology
surveillance and response division of the department or his
the director's designee;

(5) a medical officer of the public health
division of the department; and

(6) other persons or representatives as chosen
by the secretary of health to ensure a thorough and unbiased
evaluation of the program established under the Harm Reduction
Act.

C. The advisory committee shall:

(1) develop policies and procedures for
evaluation of the harm reduction program;

(2) develop criteria for data collection and
program evaluation; and

(3) meet as necessary to analyze data and
monitor and produce a report on the harm reduction program.

D. The department may contract with private
providers to operate the program.

SECTION 4. Section 24-2C-5 NMSA 1978 (being Laws 1997,
Chapter 256, Section 5) is amended to read:
"24-2C-5. PROGRAM.--The program shall provide:

A. sterile hypodermic syringes and needles in exchange for used hypodermic syringes, needles or other objects used [to inject] for the preparation or injection of controlled substances or controlled substance analogs into the human body;

B. devices for testing the presence of adulterants, including fentanyl or other potentially dangerous substances;

[C.] education to participants on the transmission of the human immunodeficiency virus, hepatitis B and C and prevention measures; and

[D.] referral to substance abuse treatment services for participants."

SECTION 5. Section 24-2C-6 NMSA 1978 (being Laws 1997, Chapter 256, Section 6) is amended to read:

"24-2C-6. IMMUNITY FROM CRIMINAL LIABILITY.--Exchange or possession of hypodermic syringes and needles or other items necessary for the safe consumption of controlled substances by injection, smoking or inhalation in compliance with the procedures of the program shall not constitute a violation of the Controlled Substances Act for a participant [in the program], an employee of the department administering the program or a private provider whom the department contracts with to operate the program."

SECTION 6. Section 30-31-25.1 NMSA 1978 (being Laws 1981, Chapter 31, Section 2, as amended) is amended to read:
"30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF DRUG PARAPHERNALIA PROHIBITED--EXCEPTIONS.--

A. It is unlawful for a person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles [at the time the person is directly and immediately engaged in a harm reduction program] or other supplies provided by the harm reduction program for the purpose of safe injection, ingestion or inhalation or for testing the contents of a controlled substance, as provided in the Harm Reduction Act.

B. It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act.
Act. The provisions of this subsection do not apply to:

(1) department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or

(2) the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act.

C. A person who violates the provisions of Subsection A of this section shall be issued a penalty assessment pursuant to Section [3 of this 2019 act] 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars ($50.00).

A person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

D. A person eighteen years of age or over who violates the provisions of Subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.