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HOUSE BILL 52

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

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AN ACT

RELATING TO HEALTH; AMENDING THE HARM REDUCTION ACT TO EXPAND  
SUPPLIES OR DEVICES PROVIDED TO HARM REDUCTION PROGRAM  
PARTICIPANTS; PROVIDING THAT POSSESSION OF CERTAIN SUPPLIES OR  
DEVICES IS NOT A VIOLATION OF THE CONTROLLED SUBSTANCES ACT;  
ADJUSTING THE DEPARTMENT OF HEALTH AND ADVISORY COMMITTEE  
DUTIES PERTAINING TO THE HARM REDUCTION PROGRAM; ADJUSTING  
ADVISORY COMMITTEE MEMBERSHIP; REPEALING SECTIONS 24-2C-2 AND  
24-2C-6 NMSA 1978 (BEING LAWS 1997, CHAPTER 256, SECTIONS 2 AND  
6).

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

SECTION 1. 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:

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1           A. "department" means the department of health; and

2           B. "participant" [~~or "client"~~] means [~~an~~  
3 ~~intravenous drug user who exchanges a used hypodermic syringe,~~  
4 ~~needle or other object used to inject controlled substances or~~  
5 ~~controlled substance analogs into the human body for a sterile~~  
6 ~~hypodermic syringe and needle in compliance with the procedures~~  
7 ~~of the program; and~~

8           C. ~~"program" means a harm reduction program for the~~  
9 ~~purpose of sterile hypodermic syringe and needle exchange] a~~  
10 person who receives supplies or devices or services provided by  
11 the harm reduction program."

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

14           "24-2C-4. HARM REDUCTION PROGRAM CREATED--DEPARTMENT  
15 RESPONSIBILITIES.--

16           A. The department shall:

17                   (1) establish and administer a [~~harm~~  
18 ~~reduction]~~ program [~~for the purpose of sterile hypodermic~~  
19 ~~syringe and needle exchange]~~ that shall be known as the "harm  
20 reduction program" to reduce overdose mortality and other  
21 negative health outcomes associated with drug use;

22                   (2) pursuant to rules established by the  
23 department, qualify persons as harm reduction program  
24 participants, issue a document that identifies the bearer of  
25 the document as a participant and provide the bearer of the

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1 document with access to supplies, devices or services provided  
2 by the program;

3 [~~(2)~~] (3) compile data to assist in planning  
4 and evaluating efforts to combat [~~the spread of blood borne~~  
5 ~~diseases~~] overdose mortality and other negative health outcomes  
6 associated with drug use; and

7 [~~(3)~~] (4) make an annual report, including  
8 legislative recommendations, to the legislative health and  
9 human services committee by October 1 each year.

10 B. [~~Within thirty days of the effective date of the~~  
11 ~~Harm Reduction Act~~] The department shall appoint an advisory  
12 committee to include representation from:

13 (1) the office of the attorney general;

14 (2) the New Mexico state police division of  
15 the department of public safety;

16 (3) the [~~human immunodeficiency virus sexually~~  
17 ~~transmitted disease~~] infectious disease prevention and control  
18 bureau of the department;

19 (4) the director of the epidemiology and  
20 response division of the department or [~~his~~] the director's  
21 designee;

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

24 (6) other persons or representatives as chosen  
25 by the secretary of health to ensure a thorough and unbiased

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1 evaluation of the program established under the Harm Reduction  
2 Act.

3 C. The advisory committee shall:

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

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

8 (3) meet as necessary to monitor and analyze  
9 data [~~and monitor~~] and produce a report on the harm reduction  
10 [~~program~~] program's impact on overdose mortality and other  
11 negative health outcomes associated with drug use.

12 D. The department may contract with private  
13 providers to operate the harm reduction program.

14 E. The department shall promulgate rules as  
15 necessary for the administration of the Harm Reduction Act,  
16 including developing criteria for the types of supplies or  
17 devices provided pursuant to the harm reduction program and  
18 standards for distribution of those supplies or devices through  
19 that program. The criteria and standards shall be developed to  
20 provide supplies and devices in order to reduce:

21 (1) cases of negative health outcomes  
22 associated with drug use, such as overdoses or the spread of  
23 infectious disease; and

24 (2) harm by promoting reduced use of non-  
25 sterile items and improving participant engagement in harm

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1 reduction services and prevention education."

2 SECTION 3. Section 24-2C-5 NMSA 1978 (being Laws 1997,  
3 Chapter 256, Section 5) is amended to read:

4 "24-2C-5. PROGRAM.--The harm reduction program shall  
5 provide participants with:

6 A. sterile hypodermic syringes and needles in  
7 exchange for used hypodermic syringes, needles or other objects  
8 used to inject controlled substances or controlled substance  
9 analogs into the human body;

10 B. other objects used to prepare or consume  
11 controlled substances or controlled substance analogs;

12 C. supplies or devices used for testing controlled  
13 substances or controlled substance analogs for potentially  
14 dangerous adulterants;

15 D. supplies or devices approved by the department  
16 for distribution in accordance with rules established pursuant  
17 to Subsection E of Section 24-2C-4 NMSA 1978;

18 ~~[B.]~~ E. education ~~[to participants]~~ on the  
19 prevention of:

20 (1) the transmission of the human  
21 immunodeficiency virus and hepatitis B and C ~~[and prevention~~  
22 ~~measures]~~; and

23 (2) drug overdose mortality and other negative  
24 health outcomes; and

25 ~~[G.]~~ F. referral to substance abuse treatment

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1 services [~~for participants~~]."

2 SECTION 4. Section 30-31-25.1 NMSA 1978 (being Laws 1981,  
3 Chapter 31, Section 2, as amended) is amended to read:

4 "30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF DRUG  
5 PARAPHERNALIA PROHIBITED--EXCEPTIONS.--

6 A. It is unlawful for a person to use or possess  
7 with intent to use drug paraphernalia to plant, propagate,  
8 cultivate, grow, harvest, manufacture, compound, convert,  
9 produce, process, prepare, test, analyze, pack, repack, store,  
10 contain, conceal, inject, ingest, inhale or otherwise introduce  
11 into the human body a controlled substance in violation of the  
12 Controlled Substances Act. The provisions of this subsection  
13 do not apply to a person who is in possession of:

14 (1) hypodermic syringes or needles [~~at the~~  
15 ~~time the person is directly and immediately engaged in a harm~~  
16 ~~reduction program, as provided in the]~~ for the purpose of  
17 participation in or administration of the Harm Reduction Act;

18 (2) supplies or devices obtained pursuant to  
19 the Harm Reduction Act in accordance with rules established by  
20 the department of health for the harm reduction program; or

21 (3) supplies or devices used for the testing  
22 of controlled substances or controlled substance analogs for  
23 dangerous adulterants.

24 B. It is unlawful for a person to deliver, possess  
25 with intent to deliver or manufacture with the intent to

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

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

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

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

22 D. A person eighteen years of age or over who  
23 violates the provisions of Subsection B of this section by  
24 delivering drug paraphernalia to a person under eighteen years  
25 of age and who is at least three years the person's junior is

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1 guilty of a fourth degree felony and shall be sentenced  
2 pursuant to the provisions of Section 31-18-15 NMSA 1978."

3 SECTION 5. REPEAL.--Sections 24-2C-2 and 24-2C-6 NMSA  
4 1978 (being Laws 1997, Chapter 256, Sections 2 and 6) are  
5 repealed.