UNITED STATES

INJECTING REASON: HUMAN RIGHTS AND HIV PREVENTION FOR INJECTION DRUG USERS

California: A Case Study

DEFINITIONS OF AND NOTES ON KEY TERMS[1]

This report focuses on programs that facilitate access to sterile syringes and provide information and other tools associated with the safe injection of drugs. The following glossary explains many of the terms associated with sterile injection. It is meant neither to be exhaustive nor to act as a substitute for medical advice.

Alcohol pad: A small piece of fabric soaked with alcohol, used to swab the skin before injecting. (Washing with soap and water is thought to be more effective at reducing infection than rubbing with an alcohol pad. Cleaning hands and potential sites of injection also reduces the potential for infection.)

Biohazard containers: Puncture-resistant containers used for disposing of hazardous waste such as used syringes. The contents of biohazard containers are disposed of at a location specifically designed to negate the potential dangers of hazardous waste. The containers are ideally designed so that hazardous material cannot be removed once it is placed into the container.

Cooker: Any item used to heat injectable drugs in order to turn them from powder or other nonliquid form into a liquid suitable for injection. (According to some experts, injection drug users often reused metal spoons for cooking drugs until harm reduction service providers began promoting the one-time use of disposable items, such as bottle caps or similarly shaped objects, in order to reduce the risk of disease transmission.)

Cotton: Any item used to filter out particles of solids from injectable liquid drugs, in order to prevent them from clogging syringes. Tampons, cotton balls and Q-tips may be used for this purpose, though they require manipulation, which carries the risk that they will no longer be sterile. Cigarette filters are commonly used to filter drugs, but they have brittle fibers that can break off and become part of the injected preparation, sometimes ending up in the lungs. From the point of view of sterile injection, the ideal filter is a sterilized cotton pellet, made of natural cotton fibers and especially cut for this purpose.

Harm reduction: Refers to actions designed to diminish the individual and social harms associated with drug use, including the risk of HIV infection, without requiring the cessation of drug use. In practice, harm reduction programs include syringe exchange, replacement therapy using substances such as methadone, health and drug education, HIV and sexually transmitted disease screening, psychological counseling, and medical care.

Heroin: One of a group of opiates, or substances derived from opium poppy (*Papaver somniferum*). Other opiates include the pain relievers morphine and codeine. Base heroin, commonly marketed in Europe, is brown or beige in color and needs to be acidified with ascorbic acid (vitamin C) or another acid before it can be dissolved in water. Base heroin can be converted into salt form by the addition of ethyl alcohol, ether and hydrochloric acid, creating a powder that will readily dissolve in water. "Black tar" heroin is sticky and dark brown or black in color and also dissolves in water. Heroin can also be snorted or smoked.

Injection equipment: Items such as syringes, cottons, cookers, and water used in the process of preparing and injecting drugs. The broader term "drug paraphernalia" comprises injection equipment as well as items, such as crack pipes, associated with noninjection drug use.

Methamphetamines: A group of substances, most of them synthetic, that have a stimulating effect on the central nervous system. Methamphetamines can be injected, snorted, smoked, or ingested orally. The popular term "crystal meth" usually refers to the smokeable form of methamphetamine. Other amphetamine-type stimulants include anoretics (appetite suppressants) and non-hallucinogenic drugs such as "ecstasy."

[1] Information in this glossary is drawn from a number of sources, including United Nations Office of Drugs and Crime, "Glossary of Terms," [online] http://www.unodc.org/unodc/fr/report_1998-10-01_1_page027.html (retrieved July 16, 2003); Chicago Recovery Alliance, "Safer Injection, Better Vein Care," [online] http://www.anypositivechange.org/bvcsiALL.pdf (retrieved August 12, 2003); and Human Rights Watch interview with Marcia Bisgyer, Safety Works, Inc., May 13, 2003.

Syringes or needles: The main components of a syringe are a needle, a tubular syringe barrel, and a plastic plunger. Graduated markings on the barrel of a syringe are useful for measuring the water or saline solution used to dissolve a solid substance into liquid form. Syringes and needles vary in size and do not always come as one piece; a syringe with the needle attached is often referred to as an "insulin syringe." Colloquial terms for syringes and needles include "outfits," "points," "rigs," "works," and "sharps." (Public health authorities recommend a new sterile syringe for every injection.)

Ties or tourniquets: Items used to enlarge or "plump up" veins to facilitate injection. (Ties should be clean because blood on a tie can be a source of infection. Common ties include a piece of rope, a leather belt, a terry cloth belt, a rubber hose, and a piece of bicycle inner tube.)

Water: Water is used to dissolve solid substances (such as pills or powder) into a liquid form suitable for injection. Having a clean source of one's own water is important to prevent disease transmission. Harm reduction programs often distribute vials of distilled water, sterile water or sterile saline solution (all referred to as "waters") for this purpose.

Withdrawal: Clinical symptoms associated with ceasing or reducing use of a chemical agent that affects the mind or mental processes (i.e., a "psychoactive" substance). Withdrawal usually occurs when a psychoactive substance has been taken repeatedly and/or in high doses.

I. SUMMARY

More than twenty years into the epidemic of human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS), injection drug use remains a major risk factor for HIV transmission in the United States and in many parts of the world. Despite the well documented effectiveness of syringe exchange programs and other measures that encourage the use of sterile injection equipment, these interventions in the United States are scattered, lack support, and in the worst cases are forbidden by law. Injection drug users who are denied access to sterile syringes often share and reuse syringes, placing themselves, their sex partners and their children at significant risk of HIV infection. Since the beginning of the AIDS epidemic, injection drug use has accounted for over a third of all reported AIDS cases in the United States and, according to recent surveys, continues to account for up to half of new HIV infections.

While the proper and consistent use of sterile syringes would all but eliminate this problem, syringes remain heavily regulated by an intricate body of state law. The United States Public Health Service counsels injection drug users to use a sterile syringe for every injection, and the Centers for Disease Control and Prevention (CDC) state that "for injection drug users who cannot or will not stop injecting drugs, using sterile needles and syringes only once remains the safest, most effective approach for limiting HIV transmission." State laws, however, make unauthorized possession of sterile syringes a criminal offense. It is this discrepancy, and its impact on the prevention of a fatal and socially destructive disease, that this report seeks to address.

Programs that provide access to sterile syringes have been proven time and again to reduce HIV transmission without either encouraging drug use or increasing drug related crime. Syringe exchange, as well as similar measures such as nonprescription pharmacy sale of syringes, is an effective and life-saving health intervention. Yet syringe exchange is banned in much of the United States and, where it is allowed, is obstructed by laws forbidding the possession of drug paraphernalia. Other modes of syringe access, such as nonprescription pharmacy sale of syringes, are as of this writing forbidden in five states: California, Massachusetts, New Jersey, Delaware, and Pennsylvania. Almost all fifty states have enacted drug paraphernalia laws similar to model legislation written by the Drug Enforcement Agency in 1979 under President Jimmy Carter. Drug paraphernalia laws are encouraged by United Nations anti-drug conventions, which call on governments to take aggressive law enforcement measures against illicit drug use.

This report takes California as a case study of how the ideology of the "war on drugs" has trumped both reason and reality in the United States and violated the human right of injection drug users to take steps to protect their health. While syringe exchange services are legal in several California counties pursuant to the declaration of a local "state of emergency," the unauthorized possession and distribution of hypodermic syringes is illegal statewide. Accordingly, this report documents cases of drug users being arrested, harassed, searched, and otherwise penalized based on possession of sterile syringes and other items obtained at legal syringe exchange programs. It also examines the situation of localities that have banned syringe exchange outright, forcing drug users to find syringes in trash cans, dumpsters, and "shooting galleries." It documents cases of individuals who wish only to purchase sterile syringes at a pharmacy with their own money but are prevented from doing so by laws forbidding pharmacies from selling syringes without a prescription.

Syringe regulations in the United States reflect a gap between what is known about HIV prevention and what policy-makers choose to do about it. These regulations assume that deregulating syringes would encourage illegal drug use, even though this assumption has been refuted many times, including by government-funded studies. Over twenty years into the AIDS epidemic, it is not too late to deregulate syringes nationwide and stop consigning drug users to a preventable death. It is not too late to inject reason into the war on drugs.

II. RECOMMENDATIONS

To the government of the state of California

Human Rights Watch calls on all state governments to facilitate access to sterile syringes by legalizing statewide the possession and distribution of sterile syringes for the purpose of prevention of HIV, hepatitis C and other blood borne infections, and working with city and county officials, including law enforcement, to ensure the unimpeded implementation and use of sterile syringe programs. In California, these recommendations may be fulfilled as follows.

- Legalize statewide the possession and distribution of sterile syringes for the purpose of disease prevention. Amend both drug paraphernalia laws in the Health and Safety Code and pharmacy practice laws in the Business and Professions Code to protect providers and participants in sterile syringe programs from prosecution for possession or distribution of drug paraphernalia. Extend this protection not only to syringes, but also to other injection equipment.
- Enact specific legislation permitting individuals to purchase and possess syringes for the purpose of disease prevention without a medical prescription. Protect individuals who buy and sell syringes for this purpose from prosecution for possession or distribution of drug paraphernalia.
- Ensure statewide access to syringe exchange programs by eliminating any requirement that local jurisdictions declare a "local health emergency" in order to establish these programs. Instruct counties lacking syringe exchange programs to evaluate the magnitude of their injection drug use-driven AIDS epidemic and to implement sterile syringe programs accordingly. Follow the recommendations of county public health officials regarding the establishment of these programs.

To city and county governments in the state of California

Human Rights Watch calls on city and county governments to facilitate access to sterile syringes by implementing syringe access programs and sending a clear signal to law enforcement officials not to interfere with these programs. These recommendations may be fulfilled as follows.

- Work with police departments to ensure that individuals are not arrested, harassed, searched, detained, or otherwise punished based on their possession of sterile or used syringes obtained from legal syringe exchange programs.
- Where syringe exchange programs do not operate legally, immediately assess, through local boards of health, the magnitude of the injection drug use-driven AIDS epidemic and the extent to which sterile syringe programs would address this epidemic. Follow the recommendations of county public health officials regarding the establishment of state-sponsored syringe access interventions.
- Amend city planning codes to ensure that health facilities seeking to provide services to drug users are not discriminated against in planning and zoning decisions. Ensure that all ordinances pertaining to these facilities include a meaningful process of public consultation and debate.
- Establish a municipal plan of action for the safe disposal of used syringes. Ensure that this plan includes the installation of biohazard containers in public places, as well as a police protocol for the safe handling of syringes. As part of this plan, protect all individuals from prosecution for possession of drugs or drug paraphernalia on the basis of possession of a used syringe or other injection equipment.

To police departments in the state of California

Human Rights Watch calls on all police departments to refrain from interfering with the implementation or use of programs that provide access to sterile syringes. This recommendation may be fulfilled as follows.

- Cease all arrest, harassment, search, detention, and other punitive action against individuals for possession of sterile or used syringes obtained from sterile syringe programs. Instruct all officers patrolling relevant neighborhoods that participation in a sterile syringe program constitutes a bar to arrest or questioning for possession of syringes. Where sterile syringe programs issue cards identifying clients as participants in these programs, respect these cards as evidence of such participation.

- Establish a "safe zone" through which individuals may freely enter and leave legal syringe exchange sites. Regularly update police officers about safe zones, and work with syringe exchange providers to ensure continued respect for their existence and purpose.
- Develop training protocols for all narcotics, vice, and street officers on the basic principles of sterile syringe programs. Work with syringe exchange and other harm reduction service providers on the development of this protocol. Provide regular refresher training as well as mandatory training for new officers. Regularly update the protocol to reflect the emergence of new harm reduction services in the community.
- Develop and implement a protocol for the safe handling of syringes found in the course of investigative searches. Allow clients of sterile syringe programs to keep sterile syringes in their possession, and to keep used syringes in their possession for the purpose of returning them to syringe exchange sites. Refrain from arresting people for possession of controlled substances based on trace amounts of narcotic drugs contained in a used syringe.
- Take steps to ensure that private security agents who patrol Business Improvement Districts (BIDs) and other areas not interfere with the operation of legal syringe access interventions. Take immediate action against private security agents who are alleged to stop, "arrest," search, detain, or otherwise harass and intimidate individuals in violation of the law.
- Monitor the implementation of the foregoing recommendations by ensuring that police officers who do not comply with them are appropriately disciplined.

To the government of the United States

Human Rights Watch calls on the United States government to give official recognition to the importance of access to sterile syringes to stopping the spread of HIV/AIDS and other infectious diseases, and to encourage and support state and local efforts to implement syringe access interventions. Human Rights Watch also calls on the United States government to advance international recognition of the importance of public health and harm reduction-based approaches to addressing illicit drug use. These recommendations may be fulfilled as follows.

- Lift the ban on federal funding for syringe exchange program services. Reissue the government's earlier findings that syringe exchange decreases HIV and hepatitis C transmission without contributing to crime or drug use. Include funding for syringe exchange services in any appropriations pertaining to AIDS prevention among high-risk populations. Encourage and support research on the effectiveness of syringe exchange and other HIV prevention interventions for injection drug users and other high-risk populations.
- Amend the Americans with Disabilities Act of 1990 to guarantee explicitly the right of people with substance-related disabilities to protection from discrimination whether or not they are in recovery.
- As part of the reporting requirement under the International Covenant on Civil and Political Rights (ICCPR), report on state interference with access to sterile syringes and other HIV prevention programs for injection drug users as a form of discrimination against persons with substance-related disabilities. Ensure the broad participation of nongovernmental organizations in this reporting process.
- Ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR). Pursuant to the right to the highest attainable standard of health, issue amended model drug paraphernalia legislation encouraging state governments to legalize the distribution and possession of sterile syringes for the purpose of disease prevention. Provide impetus to state and local efforts to implement syringe access interventions.
- Work with the United Nations Commission on Narcotic Drugs, the United Nations Office of Drug Control and Crime Prevention and other multilateral organizations to amend international drug conventions to recommend the legalization and implementation of syringe exchange programs and other methods of sterile syringe access.

To the United Nations

Human Rights Watch calls on the United Nations system and member states to recognize access to syringe access interventions, without fear of arrest or punishment, as part of the right to the highest attainable standard of health. Human Rights Watch also calls on member states of the United Nations to support amendment of the international drug conventions to encourage states parties to adopt public health approaches to

drug use, including expanded access to sterile syringe interventions. These recommendations may be fulfilled as follows.

- The United Nations Commission on Narcotic Drugs (CND), in cooperation with the Office of Drug Control and Crime Prevention (ODCCP), should support the amendment of international drug conventions to call explicitly for the legalization and promotion of syringe exchange services and other methods of sterile syringe access. They should call on all states parties to the U.N. drug conventions to deregulate syringes and ensure that agents of the state do not in any way interfere with access to sterile syringes.
- The World Health Organization (WHO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) should work with the CND and the ODCCP to include guarantees of access to sterile syringes in international drug conventions. These organizations should, with active input from public health experts and nongovernmental organizations, issue specific recommendations on the deregulation of syringes, including the legalization of syringe exchange services, the legalization of nonprescription pharmacy sales of syringes, the repeal of drug paraphernalia laws, and the development of safe syringe disposal policies and protocols.
- The Office of the High Commissioner of Human Rights (OHCHR) should issue a fact sheet on the link between access to sterile syringes and respect for fundamental human rights under the ICCPR and the ICESCR. The OHCHR should work with UNAIDS to make explicit in the "International Guidelines on HIV/AIDS and Human Rights" the right not to be penalized for distributing, obtaining and possessing sterile syringes. This guideline should be expanded with the input of nongovernmental organizations and should include specific recommendations to law enforcement officials as well as local, state and national governments.
- The U.N. special rapporteur on the human right to health should gather information and issue findings on the value of sterile syringe programs and other harm reduction approaches to addressing HIV/AIDS and other health consequences of illicit drug use. The special rapporteur should encourage countries to adopt these programs as good practices, and encourage the United Nations General Assembly, the Commission on Human Rights, and United Nations treaty bodies to recognize access to these programs as part of the right to the highest attainable standard of health.
- As part of its monitoring of compliance with the ICESCR, the U.N. Economic, Social and Cultural Rights Committee should report on states' interference with access to sterile syringes.

III. METHODS

This report is based on a two-week field visit to California in January and February 2003 as well as prior and subsequent research. Human Rights Watch visited seven counties in California, each with a distinct approach to the regulation of syringes: San Francisco, Alameda, Sacramento, Lake, Mendocino, San Diego, and Los Angeles. We also conducted interviews with individuals from Santa Cruz and Marin counties. Our findings are based on the accounts of sixty-seven injection drug users as well as dozens of outreach workers, syringe exchange experts, governmental and nongovernmental experts on drug paraphernalia laws, and law enforcement officials.

While abuses similar to those documented here have been reported in other U.S. states, California was chosen because of its diverse policy environment, its national influence, and its relatively high population of injection drug users and people living with HIV/AIDS. Over one eighth of all reported AIDS cases in the United States have occurred in California. The state has been uniquely affected by HIV/AIDS since the first cases of AIDS-linked opportunistic infections appeared among gay men in Los Angeles in 1981. Since that time, injection drug use has become an important cause of HIV transmission in the state, yet California remains one of five states in the United States to forbid explicitly the nonprescription purchase and sale of sterile syringes.

Injection drug users interviewed for this report were identified with the assistance of local nongovernmental organizations, particularly syringe exchange programs. As such, they largely represent a portion of the drug-using community that is obtaining or has obtained HIV prevention services. The ability of the larger population of drug users to obtain sterile syringes may be more compromised than what is documented in this report. In all cases, the names of injection drug users have been changed to protect their privacy.

Before visiting California, Human Rights Watch sent written requests for interviews with the chief of police, sheriff, district attorney, or other law enforcement officials in all of the counties we visited (see Appendix A). Interviews were conducted, either in person or by telephone, with law enforcement representatives from San Francisco, Alameda, Lake, and Los Angeles counties, as well as with a representative of the Sacramento County District Attorney's office. In Sacramento, California's capital, Human Rights Watch interviewed public officials representing varying political views on recent legislative efforts to deregulate syringes. After completing its field research, Human Rights Watch conducted additional telephone interviews and sent written requests for interviews with sheriffs or chiefs of police in San Francisco, Los Angeles, Sacramento, and San Diego counties, as well as with Governor Gray Davis and the director of the State Office of AIDS (see Appendix A). It was not possible to schedule these interviews in time for publication of this report, but interviews are planned at the time of this writing with the Los Angeles county sheriff and with representatives from the governor's office and the Office of AIDS.

IV. BACKGROUND

HIV/AIDS and injection drug use in the United States

Over twenty years into the AIDS epidemic, injection drug use continues to be a major risk factor for HIV transmission in the United States. A 1996 review of HIV prevalence in ninety-six U.S. cities concluded that a majority of the 41,000 new HIV infections each year in the United States occur among injection drug users and their sex partners and children.[2] In 2002, the Centers for Disease Control and Prevention (CDC) reported that 28 percent of new AIDS cases in the United States could be traced to injection drug use, either through the sharing of injection equipment, sex with an HIV-infected injection drug user, or mother-to-child HIV transmission where the mother's HIV risk was linked to injection drug use.[3] Excluding cases in which the mode of HIV transmission is unreported or unidentified, that figure rises to approximately 35 percent.[4] Among women and people of color the figure is even higher: at least 49 percent of new AIDS cases among women, and 40 to 45 percent of new cases among African Americans, can be traced to injection drug use.[5] African American and Latina women accounted for over 75 percent of all women with injection-related AIDS in 2001.[6]

As the CDC has noted, untreated injection drug use can contribute to the spread of AIDS "far beyond the circle of those who inject."[7] People who have sex with an injection drug user, or children of injection drug users or their sex partners, may become infected with HIV. As of May 2002, injection drug use had accounted for 36 percent of all reported AIDS cases in the United States since the beginning of the epidemic.[8] This figure is disproportionately high for women and children: more than half of all reported AIDS cases among women, and over 90 percent of cases of mother-to-child transmission where the mother's HIV risk can be specified beyond "sex with an HIV infected person," can be attributed directly or indirectly to injection drug use.[9] Noninjection drugs may also contribute to the spread of HIV/AIDS, as when drug users trade sex for money or engage in risky sexual behaviors in which they might not engage when sober.

Despite the establishment of some syringe exchange services and other sterile syringe interventions in parts of the country, injection drug users in the United States still share syringes in disturbing numbers. The March 2003 National Household Survey on Drug Abuse (NHSDA) found that of approximately 338,000 persons who reported having used a needle to inject cocaine, heroin, or stimulants in the previous year, 14 percent had used a needle that they knew or suspected someone else had used before, and 16 percent said they used a needle that someone used after them.[10] Some 11 percent of past year injection drug users said they had bought their needles on the street, obtained them from a drug dealer, or obtained them at a shooting gallery. Injection drug use was reportedly more common among young adults aged eighteen to twenty-five compared to youths aged twelve to seventeen or adults aged twenty-six or older.

Treatment for drug addiction, which can eliminate the risk of HIV transmission from used syringes if it helps people stop injecting drugs, is notoriously scarce in the United States. In 2000, the national "treatment

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[2] Recent figures from the Centers for Disease Control and Prevention (CDC) suggest a more conservative estimate of approximately 28 percent; however, this does not include cases where the cause of infection is known to be through heterosexual contact but it is not known whether drug use is involved. S.D. Holmberg, "The estimated prevalence and incidence of HIV in 96 large U.S. metropolitan areas," *American Journal of Public Health*, vol. 86 (1996), pp. 642-654; U.S. Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report: U.S. HIV and AIDS cases reported through December 2001* (vol. 13, no. 2), Tables 5, 6, 9, 10.

[3] U.S. Centers for Disease Control and Prevention, "Drug-Associated HIV Transmission Continues in the United States," May 2002, p. 1

[4] This figure is based on Human Rights Watch's calculations using U.S. Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report... 2001*, Table 5.

[5] Ibid., Tables 5, 9, 11.

[6] Ibid., Table 23.

[7] U.S. Centers for Disease Control and Prevention, "Drug-Associated HIV Transmission...," p. 1.

[8] Ibid.

[9] Ibid.; U.S. Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report... 2001*, Table 15. The mother's HIV risk can be specified in approximately 62 percent of cases.

[10] National Household Survey on Drug Abuse, *The NHSDA Report*, March 14, 2003.

gap"—defined as persons who needed treatment for drug abuse in the previous year but did not receive that treatment—was estimated at 3.9 million people, or 83.4 percent of the population needing treatment.[11] This figure does not account for the large number of drug users who enter treatment and relapse. A 1999 review of 213,000 treatment admissions for injection drug abuse found that only 20 percent of those admitted for opiate use were entering treatment for the first time.[12] This figure was 31 percent for cocaine injectors and 42 percent for methamphetamine injectors. Almost a third (32 percent) of those admitted for opiate use had undergone five or more prior courses of treatment.

The health risks of reusing and sharing syringes are not limited to HIV transmission. Sharing syringes is a major risk factor in the spread of hepatitis C virus (HCV), which leads to chronic liver disease in 70 percent of those infected.[13] An estimated 50 to 80 percent of injection drug users in the United States are infected with HCV within five years of beginning to inject.[14] While disinfecting syringes with chlorine bleach may provide effective protection against HIV,[15] bleach is not effective against HCV. Reusing one's own syringes is also dangerous: not only does the use of blunt needles lead to bruising and scarring, but reusing syringes contaminates other drug paraphernalia and shared drug solute.[16] In 1997, the U.S. Public Health Service recommended that health professionals "inform IDUs [injection drug users] that using sterile syringes is safer than reusing syringes, including syringes that have been disinfected with bleach."[17] In the March 2003 NHSDA survey cited above, 43 percent of past year injectors reported having reused a needle they had used before.

HIV and hepatitis C transmission among injection drug users, their sex partners and their children is preventable through the use of sterile injection equipment such as syringes, cookers, cotton, alcohol pads, antibiotic ointment, and water. Public health authorities have for years recommended using a new, sterile syringe for every injection; in a 1997 bulletin, the U.S. Public Health Service counseled injection drug users never to reuse or share syringes, water, or other drug preparation equipment; to use only syringes obtained from a reliable source; and to use a new, sterile syringe to prepare and inject drugs. The bulletin stressed that the ultimate health goals are "to prevent at-risk individuals from initiating injection drug use and to help drug injectors stop drug injection through substance abuse treatment and recovery from addiction."[18] The need for substance abuse treatment has, however, always exceeded the U.S.'s capacity to provide it. As a consequence, the CDC concluded in 2002 that "for injection drug users who cannot or will not stop injecting drugs, using sterile needles and syringes only once remains the safest, most effective approach for limiting HIV transmission."[19] As of 1998, this

[11] Of those, approximately 9.8 percent reported that they felt they needed treatment for their drug problem, and 3.3 percent said they had made an effort but were unable to get treatment. These are the most recent estimates of the national treatment gap, released in July 2002. The survey does not distinguish between injection and non-injection drug use; however, Lurie and Drucker estimate that "only about 15 percent of the estimated 1-1.5 million [injection drug users] in the USA are in drug treatment on any given day." Office of Applied Studies, *National and State Estimates of the Drug Abuse Treatment Gap: 2000 National Household Survey on Drug Abuse*, Rockville, MD: Substance Abuse and Mental Health Services Administration (SAMHSA), 2002; Peter Lurie and Ernest Drucker, "An opportunity lost: HIV infections associated with lack of a national syringe-exchange programme in the USA," *The Lancet*, vol. 349 (March 1, 1997), pp. 604-608.

[12] Drug and Alcohol Services Information System, "The DASIS Report," June 21, 2002.

[13] U.S. Centers for Disease Control and Prevention, "Hepatitis C Fact Sheet," [online] http://www.cdc.gov/ncidod/diseases/hepatitis/c/fact.htm (retrieved May 4, 2003). Hepatitis C is also the most important cause of conditions requiring liver transplantation in the United States.

[14] U.S. Centers for Disease Control, "Hepatitis C Virus and HIV Coinfection," September 2002, p. 1.

[15] N. Flynn et al., "In Vitro Activity of Readily Available Household Materials Against HIV-1: Is Bleach Enough?", *Journal of Acquired Immune Deficiency Syndromes*, vol. 7 (1994), pp. 747-753

[16] Stephen Koester, "Following the Blood: Syringe Reuse Leads to Blood-Borne Virus Transmission Among Injection Drug Users," *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology*, vol. 18, Suppl. 1, p. S139.

[17] "HIV Prevention Bulletin: Medical Advice for Persons Who Inject Illicit Drugs," May 9, 1997.

[18] Ibid., p. 2.

[19] U.S. Centers for Disease Control and Prevention, "Drug-Associated HIV Transmission...," p. 2.

would have required the distribution of up to 1.3 billion syringes each year to an estimated 1.5 million injection drug users in the United States.[20]

The availability of sterile syringes in the United States: an overview

Despite broad recognition among public health experts that sterile syringe programs are critical to HIV and hepatitis C prevention, recent estimates suggest that these programs remain inaccessible to the majority of injection drug users in the United States.[21] The main obstacle to syringe access in the United States is an intricate body of law and policy, animated largely by the nation's "war on drugs," restricting the possession, sale, distribution, and disposal of syringes.[22] Chief among these are criminal laws governing the possession and distribution of "drug paraphernalia." Most U.S. states have enacted drug paraphernalia laws in accordance with the Model Drug Paraphernalia Act (MDPA) written by the Drug Enforcement Agency in 1979.[23] These laws define drug paraphernalia to include all equipment, products, and materials of any kind which are used, intended for use, or designed for use to "manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance" in violation of the law.[24] Although there are exemptions to drug paraphernalia laws in some states (particularly those that have authorized syringe exchange), many jurisdictions that have legalized syringe exchange continue to enforce drug paraphernalia laws that, paradoxically, prohibit the possession of syringes. Laws prohibiting the possession of narcotics may also restrict syringe access programs, as when injectors returning used syringes to a syringe exchange are arrested for possessing trace amounts of drug residue left in a syringe.[25]

A second group of laws restricting syringe access in the United States are those governing the over-the-counter sale of syringes. While most states ostensibly allow injection drug users to purchase syringes without a prescription, pharmacies can still be prosecuted for distributing drug paraphernalia if they knowingly sell a syringe to someone who intends to inject a controlled substance. Some states have taken steps to decriminalize the sale of syringes in pharmacies, either by excluding syringes from the definition of drug paraphernalia or by allowing restricted or unrestricted retail sale of syringes without a prescription. Five states—California, Pennsylvania, New Jersey, Massachusetts, and Delaware—explicitly prohibit the nonprescription sale of syringes, posing a substantial barrier to syringe access. Such prescription laws have been associated with increased syringe sharing among injection drug users, higher incidence and prevalence of HIV infection, prosecution of syringe exchange personnel, and a black market in sterile syringes where buyers are charged a premium.[26]

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[20] P. Lurie, T.S. Jones, and J. Foley, "A Sterile Syringe For Every Drug User Injection: How Many Injections Take Place Annually, and How Might Pharmacists Contribute to Syringe Distribution?," *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology*, vol. 18, Suppl. 1 (1998), p. S45.

[21] David Purchase, director of the North American Syringe Exchange Network (NASEN), estimated in 2001 that only about 10 percent of injection drug users in the United States had access to syringe exchange programs. Many injection drug users have other ways of obtaining sterile syringes, but it is unlikely these alternatives would come close to providing the estimated 1.3 billion syringes needed each year (as of 1998) to ensure a sterile syringe for every injection. See J. Ruiz-Sierra, "Research Brief: Syringe Access," Lindesmith Center, March 2001.

[22] An exhaustive review of syringe access law in the United States is beyond the scope of this report. For a more comprehensive review, which was vital to the preparation of this report, see Scott Burris, Steffanie A. Strathdee and Jon S. Vernick, "Syringe Access Law in the United States: A State of the Art Assessment of Law and Policy" [online], www.publichealthlaw.net (retrieved November 5, 2002).

[23] Those states that have begun the process of deregulating syringes have for the most part modified their drug paraphernalia laws, although the interaction of syringe regulations and criminal law varies by jurisdiction.

[24] According to Burris et al., in recent years there have been anecdotal reports of syringe exchange workers being deterred by drug paraphernalia laws from offering sterile cookers and cottons, items that are technically intended to facilitate injection and are thus legally indistinguishable from syringes.

[25] See "Interference with safe syringe disposal," below. Participation in a legal syringe exchange was held to be a defense to such charges in *Roe v. City of New York*, 232 F.Supp.2d 240 (S.D.N.Y., 2002).

[26] Prescription laws are more stringent than drug paraphernalia laws in that they do not require specific knowledge on the part of the pharmacist that the syringe will be used to inject a controlled substance. Other prescription-law states either limit the prescription requirement to minors (Florida and Virginia), allow nonprescription sale of a limited number of syringes (Connecticut, New Hampshire, New York, and Maine), or take an otherwise favorable view toward syringe sales (Nevada).

Syringe regulations have taken a particular toll on syringe exchange, which has evolved as one of the most effective methods of ensuring access to sterile syringes and other services for injection drug users. Syringe exchange programs typically distribute sterile syringes in return for used ones, thus providing a mechanism for the safe disposal of syringes in addition to reducing HIV risk behaviors. The effect of syringe exchange programs is to reduce the length of time used syringes remain in circulation in a given community. Many studies have shown that syringe exchange programs also act as an important gateway into drug treatment, linking injection drug users to health professionals and providing referrals to treatment and counseling services.[27] This often ignored but crucial feature of syringe exchange programs was eloquently described in a 1998 memo from the U.S. Public Health Service to then Secretary of Health and Human Services, Donna Shalala.

> The data supports the unique role needle exchange programs can play in creating an access point into social services, drug treatment and medical care for the population most responsible for new HIV seroconversions. This role as a conduit into care is amplified in that needle exchange programs offer, at multiple points in time, repeated opportunities for prevention intervention as well as an ongoing opportunity to develop trusting relationships between professional staff and the injection drug-using population. This is often the most significant social connection in an active drug user's life and creates a foundation with which future interventions may depend.[28]

Other ancillary services provided by syringe exchange programs include information on sterile injection, testing and counseling for sexually transmitted diseases (STDs), and primary health care.[29] In numerous studies, syringe exchange programs have been associated with substantial reductions in the sharing of syringes, the referral of large numbers of injection drug users to drug-treatment facilities, and a six-fold and seven-fold reduction in the transmission of hepatitis B and C, respectively.[30]

Despite these remarkable benefits, the legal status of syringe exchange in at least nineteen U.S. states remains anywhere from questionable to outright illegal. Even among states where syringe exchange is permitted, its legality may depend on authorization by local jurisdictions.[31] In a 2000 survey of syringe exchange programs in North America, over 20 percent of 134 programs said they had "problems with their legal status," and over 30

See Burris et al., "Syringe Access Law…", pp. 16-17. Burris et al. also review "sub-prescription" limits on pharmacy sale of syringes, such as regulations contained in state pharmacy codes.

[27] See, e.g., Holly Hagan, James P. McGough, Hanne Thiede, Sharon Hopkins, Jeffrey Duchin, and E. Russell Alexander, "Reduced injection frequency and increased entry and retention in drug treatment associated with needle-exchange participation in Seattle drug injectors," *Journal of Substance Abuse Treatment*, vol. 19 (2000), pp. 247-252 (interviews with injection drug users in Seattle found that new users of the exchange were five times more likely to enter drug treatment than users who had never exchanged); R. Heimer and M. Lopes, "Needle exchange in New Haven reduces HIV risks, promotes entry into drug treatment, and does not create new drug injectors," *Journal of the American Medical Association*, vol. 271 (1994), pp. 1825-1826 (letter); R. Heimer, E.H. Kaplan, E. O'Keefe, K. Khoshnood, and F. Altice, "Three years of needle exchange in New Haven: what have we learned?", *AIDS and Public Policy Journal*, vol. 9 (1994), pp. 59-74; National Institutes of Health Consensus Panel, *Interventions to Prevent HIV Risk Behaviors* (Kensington, MD: NIH Consensus Program Information Center, February 1997), p. 6 ("individuals in areas with needle exchange programs have an increased likelihood of entering drug treatment programs").

[28] U.S. Public Health Service, "Memorandum to the Secretary: Review of Scientific Data on Needle Exchange Programs," April 20, 1998.

[29] See Don C. Des Jarlais, Courtney McKnight, Karen Eigo, and Patricia Friedman, "2000 United States Syringe Exchange Program Survey," Baron Edmond de Rothschild Chemical Dependency Institute, 2000, [online] http://www.opiateaddictionrx.info/survey2000/index.html (retrieved November 13, 2002).

[30] P. Lurie and E. Drucker, "An opportunity lost...", citing P. Lurie and A.L. Reingold, eds. *The public health impact of needle exchange programs in the United States and abroad, volume I* (University of California, 1993) and H. Hagan, D.C. Des Jarlais, S.R. Friedman, D. Purchase, and M.J. Alter, "Reduced risk of hepatitis B and hepatitis C among injection drug users in the Tacoma Syringe Exchange Program, *American Journal of Public Health*, vol. 85 (1995), pp. 1531-1537. Infection with hepatitis B virus (HBV) causes liver disease, as with HCV. Unlike the case of hepatitis C, however, there is an effective vaccine to prevent HBV infection.

[31] This is the case in California, Massachusetts, Illinois, Ohio, and Pennsylvania.

percent described "police harassment" as a problem they had encountered in the previous year.[32] Exchanges that operate illegally were found in a 1996 study to offer fewer ancillary services such as on-site HIV testing and counseling and formal referrals to drug treatment than those that were legally sanctioned.[33]

While no federal law prohibits syringe exchange outright, the U.S. Congress has since 1988 banned the use of federal funds for syringe exchange program services.[34] In 1990 and 1991, appropriations bills for the Department of Health and Human Services stipulated that this funding ban remain in place "unless the President of the United States certifies that such programs are effective in stopping the spread of HIV and do not encourage the use of illegal drugs."[35] From 1989 to 1991, however, administrative procedures at the National Institute on Drug Abuse prevented National Institutes of Health (NIH) investigators from evaluating syringe exchange projects, leaving researchers in "the quintessential Catch-22."[36]

The 1990s witnessed a steady growth in both the number of syringe exchange programs in the United States and in the volume of scientific evidence supporting their use.[37] In 1998, the U.S. Secretary of Health and Human Services, Donna Shalala, concluded that "a meticulous scientific review has now proven that needle exchange programs can reduce the transmission of HIV and save lives without losing ground in the battle against illegal drugs."[38] President Clinton was widely expected to lift the funding ban in response to this finding, but he

[32] Don C. Des Jarlais et al., "2000 Syringe Exchange Survey".

[33] D. Paone, J. Clark, Q. Shi, D. Purchase, and D.C. Des Jarlais, "Syringe Exchange in the United States, 1996: A National Profile," *American Journal of Public* Health, vol. 89, no. 43 (1999). See also, Ricky N. Bluthenthal, Alex H. Kral, Jennifer Lorvick and John K. Watter, "Impact of Law Enforcement on Syringe Exchange Programs: A Look at Oakland and San Francisco," *Medical Anthropology*, vol. 18 (1997), pp. 61-83; Robert Heimer, Ricky N. Bluthenthal, Merrill Singer, and Kaveh Khoshnood, "Structural Impediments to Operational Syringe-Exchange Programs," *AIDS and Public Policy Journal*, vol. 11, no. 4 (1996), pp. 169-184.

[34] Enacted November 4, 1988, the Health Omnibus Programs Extension of 1988, Pub L No 100-607, 102 Stat 3048 (sec. 256(b)), imposed a federal ban on funding of needle exchange program services "unless the SG of the US determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquiring immune deficiency syndrome." Even more stringent language was contained in the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, Pub L No 100-690 (Title II, Subtitle A), 102 Stat 3048 (sec. 2025(2)(A)), which stipulated that no funding could be spent "to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection," and the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Pub L No 101-381, 42 USC 300ff (sec. 422).

[35] Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990, Pub L No 101-166, 103 Stat 1159 (sec. 520), Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991, Pub L No 101-517, 104 Stat 2190 (sec. 513). The legislative ban on federal support for operating needle exchange programs was also discussed in the 1992 ADAMHA (Alcohol, Drug Abuse and Mental Health Administration) Reorganization Act, Pub L No 102-321, 106 Stat 323 (sec. 706(a)-(b)(5)).

[36] Burris et al., "Syringe Access Law…", p. 9; see also, "U.S. sending mixed signals on trade-ins of dirty needles," *New York Times*, March 15, 1989; David Vlahov, Don C. Des Jarlais, Eric Goosby, Paula C. Hollinger, Peter G. Lurie, Michael D. Shriver, and Stephanie A. Strathdee, "Needle Exchange Programs for the Prevention of Human Immunodeficiency Virus Infection: Epidemiology and Policy," *American Journal of Epidemiology*, vol. 154, no. 12, p. S72 (2001) ("The irony is that while legislation has called for a ban until such time that it could be determined that such programs were shown to be safe and effective, the administrative ban on federal funds for research [including within existing funded studies] blocked the ability to address these questions").

[37] The United States had one syringe exchange program in 1988, seventy-seven programs in 1995, and 130 programs by 1998. See Vlahov et al., "Needle Exchange Programs…", pp. S70-S77.

[38] Shalala, D.E., Secretary, Department of Health and Human Services, Press release from the Department of Health and Human Services (April 20, 1998), [online] http://www.os.dhhs.gov/news/press/1998pres/980420a.html (retrieved October 31, 2002). Shalala had reported to Congress in 1997 that a review of scientific studies indicated that syringe exchange programs "can be an effective component of a comprehensive strategy to prevent HIV and other blood borne infectious diseases in communities that choose to include them." Before Shalala made her annoucement, the U.S. Public Health Service and the U.S. Surgeon General had reviewed and analyzed the available literature on syringe exchange and concluded unanimously that "needle exchange programs, as part of a comprehensive HIV prevention strategy, are an effective public health intervention that reduces the transmission of HIV and does not encourage the use of illegal drugs." See U.S. Public Health Service, "Memorandum to the Secretary," April 20, 1998.

changed his mind the evening before his scheduled press briefing, reportedly having been convinced by the director of the Office of National Drug Control Policy that syringe exchange encouraged drug use.[39] Shalala subsequently told the press, "We had to make a choice. It was a decision. It was a decision to leave it to local communities."[40] In July 2002, before giving the closing address at the Fourteenth International AIDS Conference in Barcelona, Spain, President Clinton expressed regret about his decision. "I think I was wrong about that," Clinton said. "We were worried about drug use going up again in America."[41] As of 2001, the United States remained the only country in the world to explicitly ban the use of national government funds for syringe exchange services.[42]

Shalala's 1998 finding was based on at least seven government-funded reports, making syringe exchange "among the most thoroughly researched of all HIV interventions."[43] The first of these reports was a landmark study by the National Commission on AIDS (NCOA), "The Twin Epidemics of Substance Abuse and HIV," which recommended the removal of all barriers to possession and distribution of injection equipment, including the federal ban on funding syringe exchange services. The NCOA study was followed by federally funded evaluations of the existing science of syringe exchange programs by both the U.S. General Accounting Office (GAO), the research arm of the U.S. Congress, and the University of California – San Francisco. Both of these studies found that syringe exchange was likely to reduce HIV transmission among injection drug users without increasing drug abuse. The studies also suggested that syringe exchange provided referrals to drug treatment and did not increase crime.

The University of California report was then reviewed by the CDC, which endorsed both the report's findings and its recommendation that the ban on federal syringe exchange funding be lifted. Two studies conducted in 1995 reached similar conclusions: one by the National Academy of Sciences (NAS) and another by the Office of Technology Assessment (OTA). In March 1997, the NIH Consensus Panel published a "Consensus Development Statement on Interventions to Prevent HIV Risk Behaviors," which found a 30 percent or greater reduction of HIV associated with syringe exchange and concluded that "legislative restriction on needle exchange programs must be lifted."[44] The panel asked: "Can the opposition to needle exchange programs in the United States be justified on scientific grounds? Our answer is a simple and emphatic no."[45]

In total, seven government-funded reports between 1991 and 1997 found that syringe exchange reduced HIV transmission without increasing drug use. As of a 2001 review of syringe exchange research, no established medical, scientific or legal body to study the issue had concluded otherwise.[46] Of the five government-funded

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[39] J.F. Harris and A. Goldstein, "Puncturing an AIDS initiative; at last minute, White House political fears killed needle funding, *Washington Post*, April 23, 1998; Amy Goldstein, "Clinton Refuses Needle Exchange Funding," *Washington Post*, April 21, 1998.

[40] Lauran Neergaard, "U.S. Won't Fund Needle Exchanges," *The Associated Press*, April 20, 1998.

[41] Steve Sternberg, "Clinton 'wrong' on needle swaps," *USA Today*, July 11, 2002.

[42] Vlahov et al., "Needle Exchange Programs…", p. S72.

[43] Ibid.

[44] National Institutes of Health Consensus Panel, *Interventions to Prevent HIV Risk Behaviors*, p. 6.

[45] Ibid., pp. 7-8.

[46] J. Ruiz-Sierra, "Research Brief: Syringe Access" (The Lindesmith Center, 2001). In 1997, two observational studies from Vancouver and Montreal reported a higher incidence of HIV among syringe exchange clients than those injection drug users not using a syringe exchange service. These studies were subsequently erroneously cited, including by former ONDCP director Barry McCaffrey in testimony to the U.S. Congress, as having shown that syringe exchange *contributed* to this increased HIV risk, when in fact the studies concluded no such thing. In numerous statements, including an op-ed published in the *New York Times* in April 1998, the authors clarified that pre-existing risk factors, not syringe exchange programs, contributed to higher HIV rates among program clients. "Because these programs are in inner-city neighborhoods, they serve users who are at greatest risk of infection," the authors wrote. "Those who didn't accept free needles often didn't need them because they could afford to buy syringes in drug stores. They were also less likely to engage in the riskiest activities." In a 1999 letter to members of the California legislature, one of the authors of the Vancouver study, Steffanie Strathdee, wrote that "[i]n no way did needle exchange programs contribute to the spread of HIV among drug users in Vancouver. In our opinion, if needle exchange had not been in place, rates of HIV would have been much higher, much sooner." The 1997 NIH Consensus Panel, which recommended the removal of all legal barriers to syringe access, included a review of the Montreal

reports that made policy recommendations, all recommended revoking both the federal funding ban and state prescription and paraphernalia laws. In 2000, following an updated review of existing research on syringe exchange conducted at the request of U.S. Representative Nancy Pelosi from California, Surgeon General David Satcher concluded:

> After reviewing all the research to date, the senior scientists of the Department and I have unanimously agreed that there is conclusive scientific evidence that syringe exchange programs, as part of a comprehensive HIV/AIDS strategy, are an effective public health intervention that reduces the transmission of HIV and does not encourage the use of illegal drugs. . . . The scientific evidence accumulated to date provides a basis on which municipalities that are heavily affected by an HIV epidemic driven by injection drug use should consider using syringe exchange programs as a tool for the identification, referral and retention of active users of injection drugs into these services, as part of a comprehensive HIV prevention plan.[47]

A 2002 review of syringe access literature, which was not confined to syringe exchange but examined syringe access interventions more broadly, concluded that "the research consistently supports the conclusion that increased syringe access does not promote drug use, or increase crime or the volume of improperly discarded needles in the community."[48] Subsequent research at the local level has corroborated these findings. A 2002 community study of a San Jose, California syringe exchange program found that injection drug users who did not use syringe exchange were twice to six times as likely as syringe exchange clients to engage in high-risk injection practices, depending on whether they had access to other sources of syringes.[49]

Proponents of syringe exchange programs have struggled to get the efficacy of these programs recognized and their status legitimized in the United States since the first syringe exchange was established in Tacoma, Washington in 1988. As of this writing, approximately 178 syringe exchange programs operate in thirty-six states, the District of Columbia and Puerto Rico.[50] A 2000 survey of 127 syringe exchange programs estimated that 22.6 million syringes had been exchanged that year—a far cry from the total demand for sterile syringes.[51] The expansion of syringe exchange programs in the United States has recently been supplemented by "syringe deregulation" efforts, which consist of "the removal of legal barriers to over-the-counter sales and free distribution of syringes."[52] A January 2003 evaluation of an over-the-counter sales program in New York State concluded that, after less than two years of operation, the program had "great potential to prevent transmission of blood-borne diseases without any detrimental effects on syringe disposal, drug use or crime."[53] Deregulation of syringes encompasses not only syringe exchange and nonprescription pharmacy sales, but also initiatives such as physician prescription, vending machine sales, and free distribution of syringes.

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and Vancouver studies. Subsequent, uncontradicted research in both Montreal and Vancouver has shown no causal association between HIV transmission and syringe exchange in those cities. See Julie Bruneau and Martin T. Schecter, "Opinion: The Politics of Needles and AIDS," *The New York Times*, April 9, 1998; letter from Steffanie A. Strathdee, Associate Professor, Johns Hopkins University School of Hygiene and Public Health, to members of the California legislature, August 19, 1999; National Institutes of Health Consensus Panel, *Interventions to Prevent HIV Risk Behaviors*; American Foundation For AIDS Research (amfAR), "The Facts About Montreal and Vancouver: New Studies Find No Evidence That Needle Exchange Programs Lead to HIV Transmission" (1999).

[47] "Evidence-Based Findings on the Efficacy of Syringe Exchange Programs: An Analysis from the Assistant Secretary for Health and Surgeon General of the Scientific Research Completed Since April 1998," October 6, 2000.

[48] Burris et al., "Syringe Access Law…", p. 61.

[49] D. R. Gibson, R. Brand, K. Anderson, J. G. Kahn, D. Perales, and J.Guydish, "Two- to Sixfold Decreased Odds of HIV Risk Behavior Associated with Use of Syringe Exchange," *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology*, vol. 31 (2002), pp. 237-242.

[50] Unpublished estimate from the North American Syringe Exchange Network, 2002.

[51] Don C. Des Jarlais et al., "2000 Syringe Exchange Survey". While one would not expect the full number of syringes to be provided through syringe exchanges, this report also documents legal and policy restrictions on alternative modes of syringe access such as pharmacy sale and physician prescription of syringes.

[52] Burris et al., "Syringe Access Law…", p. 12.

[53] The New York Academy of Medicine, "New York State Expanded Syringe Access Demonstration Program Evaluation: Evaluation Report to the Governor and the New York State Legislature," January 15, 2003.

It has been conservatively estimated that 4,400 to 10,000 HIV infections among injection drug users in the United States, as well as over $500 million in health care costs, could have been avoided between 1987 and 1995 had the federal government implemented syringe exchange nationally.[54] At the 2002 Barcelona AIDS conference, however, U.S. Secretary of Health and Human Services Tommy Thompson announced that the Bush administration would not lift the federal ban on syringe exchange funding. In April 2003, *The New York Times* reported that scientists who study AIDS were being warned that grant applications containing the term "needle exchange" might receive unfavorable treatment from the Department of Health and Human Services or members of the U.S. Congress.[55]

California: a case study

California is home to almost one eighth of the cumulative reported AIDS cases in the United States. With a total of 125,173 reported cases as of April 2002, HIV/AIDS represents one of the most serious public health threats facing the state.[56] The proportion of new AIDS cases accounted for by injection drug users and their sex partners in California continues to be significant. Men who have sex with men still account for 70 percent of the state's approximately 124,000 adult or adolescent AIDS cases and continue to represent the majority of newly reported cases each year. However, the percentage of new AIDS cases that can be attributed to injection drug use increased slightly from 2001 to 2002 and currently stands at about 25 percent. Among women, 36 percent of AIDS cases reported in 2002 were attributed to injection drug use, not including women who had heterosexual contact with male injection drug users or did not report their risk. Injection drug use is the primary risk factor for nearly half of the estimated 8,000 Californians who become infected with HIV annually, leading some medical professionals to suggest that drug use is increasing in importance as a cause of HIV transmission.[57]

As in most other U.S. states, the possession and distribution of drug paraphernalia, including syringes, are misdemeanors under state law in California.[58] California is also one of five states to ban the nonprescription pharmacy sale of syringes, whether or not the pharmacist knows the syringe is to be used to inject a controlled substance. Beginning in San Francisco in 1988, syringe exchange programs operated illegally in several of California's counties. Though some localities endorsed syringe exchange through the declaration of a "local emergency,"[59] at least six prosecutions of syringe exchange personnel occurred in California between 1991 and

[54] P. Lurie and E. Drucker, "An opportunity lost...". The authors used Australia's model of supporting and guiding syringe exchange through federal regional health authorities, estimating that 49.2 percent of injection drug users in the United States could have used syringe exchange at least once a year by 1994 had such a program been implemented in the United States. They then multiplied this figure by the percentage reduction in HIV transmission among injection drug users who take part in syringe exchange programs, a figure they estimated at anywhere from 15-33 percent. After adjusting this figure to account for injection drug use-related HIV transmission not resulting from syringe sharing, they multiplied the product by the estimated number of new HIV infections among injections drug users each year. They concluded that the implementation of a national syringe exchange program in the United States could have prevented anywhere from 4,394 to 9,666 injection drug use-related HIV infections between 1987 and 1995, corresponding to anywhere from $244 million to $538 million in health care costs. This savings, they estimated, could have supported between 161 and 354 syringe exchange sites.

[55] Erica Goode, "Certain Words Can Trip Up AIDS Grants, Scientists Say," *The New York Times*, April 18, 2003. The terms "sex workers," "men who sleep with men," and "anal sex" were also reported to attract negative scrutiny.

[56] California Department of Health Services, "California and the HIV/AIDS Epidemic," 2002, p. 1. The California Office of AIDS estimates that more than 72,000 Californians are HIV-infected not including people living with AIDS, but the state only approved a system to report HIV infection in May 2002.

[57] Letter from Gary Feldman, M.D., president of the California Conference of Local Health Officers (CCLHO) to local health officers, July 27, 2000; Human Rights Watch interview with Neil Flynn, M.D., Sacramento, California, January 29, 2003; Human Rights Watch interview with Jack McCarthy, M.D., Sacramento, California, January 31, 2003.

[58] Health and Safety Code Section 113647.7 makes it a misdemeanor to "furnish drug paraphernalia knowingly, or under circumstances where one should reasonably know that it will be used to inject a controlled substance." Business and Professions Code Section 4140 makes it a misdemeanor to "possess or have under his control any hypodermic needle or syringe" except where authorized by statute.

[59] It is unlikely that such declarations had the effect of legalizing syringe exchange, as superceding state law still banned the unauthorized possession and distribution of syringes. California Government Code section 8558(c) defines a "local emergency" as "the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and

2000.[60] Two defendants pled guilty in exchange for a fine, and in one case the district attorney dismissed the charges following an evidentiary hearing. All three cases that went to trial resulted in acquittals; in one case, the defendant was permitted to bring a defense of medical necessity. Not until 2001, after state law was amended to allow counties to legalize syringe exchange, was a syringe exchange volunteer in California actually tried and convicted for unauthorized distribution of syringes.[61]

In 1999, California passed Assembly Bill (AB 136), which created a regime for the legalization of syringe exchange by local authorities. It did so by exempting public entities and their agents from prosecution for distribution of syringes to clients of syringe exchange programs that are "authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis."[62] The protection afforded by AB 136 extends to any nonprofit organization that contracts with a city, county, or city and county to provide syringe exchange services. The declaration of local emergency, however, must be renewed every two or three weeks in order to maintain the legality of the syringe exchange. Though an earlier version of the bill would not have done so, AB 136 left intact state law that criminalizes the possession of sterile syringes and other drug paraphernalia.[63] California law thus sends a mixed message, whereby syringe exchange providers may legally distribute sterile syringes, but clients of syringe exchange programs may not possess them.

As of 2000, California had approximately 564,000 people needing but not receiving treatment for a drug use problem—more than any other state—and only twenty-eight syringe exchange programs.[64] Nine of these

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property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, food, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake..." In 1993, San Francisco Mayor Frank Jordan endorsed an existing syringe exchange program by declaring a "public emergency to exist in connection with the AIDS epidemic and the high rate of HIV infection among injection drug users and the corresponding high rate of transmission of the disease." Jordan's declaration did not have the effect of legalizing syringe exchange; however, it signaled law enforcement officials to avoid arresting syringe exchange personnel and cease disrupting their activities. Other municipalities followed suit, and by 2000 there were approximately fourteen "tolerated" syringe exchange programs in California. See L.O. Gostin, "The Legal Environment Impeding Access to Sterile Syringes and Needles: The Conflict Between Law Enforcement and Public Health," *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology*, vol. 18, Suppl. 1, p. S65; A.H. Kral, "California Syringe Exchange Programs (SEPs) in 2000: Operational characteristics, legal issues, and program needs," paper presented at the Fifth Annual Conference on AIDS Research in California, Sacramento, CA, February 2002.

[60] The district attorney diverted at least two additional cases. Reported syringe exchange prosecutions have also occurred in Massachusetts, New York and New Jersey. See *Commonwealth v. Harry Leno & Another*, 616 N.E.2d 453, 415 Mass. 835 (Mass. 1993), *People v. Bordowitz*, 588 N.Y.S.2d 507, 155 Misc. 2d 128 (1991), *State v. McCague*, 314 N.J.Super. 254, 714 A.2d 937 (N.J. Super. Ct. App. Div. 1998).

[61] See "Sacramento County: a lethal prosecution," below.

[62] An act to amend Section 11364.7 of the Health and Safety Code, relating to the distribution of needles and syringes, January 11, 1999.

[63] In 2002, State Senator John Vasconcellos from Santa Clara proposed a bill, SB 1734, that would have exempted authorized syringe exchange providers from prosecution for distribution sterile injection equipment in addition to syringes (e.g. cookers, cotton and alcohol swabs), and also allowed the declaration of a local emergency to be renewed annually. SB 1734 passed both the House and the Senate but was vetoed by Governor Gray Davis.

[64] Office of Applied Studies, *Drug Abuse Treatment Gap*, Table 7; Des Jarlais et al., "2000 Syringe Exchange Survey." The total number of drug users in California is not disaggregated according to injection and noninjection drug users. The Little Hoover Commission on California State Government Organization and Economy, an independent and bipartisan state oversight agency created by the California legislature in 1962, recently concluded that local communities in California lack the resources to satisfy the demand for publicly funded treatment. An estimated 2.3 million Californians were in need of substance abuse treatment in 2001, of whom approximately 1.3 million would have qualified for a publicly funded program (not including incarcerated people). A priority for treatment in California is people arrested of nonviolent drug offenses, especially since the passage of legislation (Proposition 36) aimed at rehabilitating rather than incarcerating nonviolent drug possession offenders. However, only 10 percent of the 1.3 million qualified people were enrolled in treatment programs, and 15 percent sought treatment but were turned away or placed on a waiting list. Those who did not seek treatment were deterred in part by a lack of programs, long waiting lists, lack of transportation, discrimination, inadequate screening and

programs remained unauthorized under AB 136, whereas twelve syringe exchange programs in California had been illegal before AB 136 was enacted. Since the enactment of AB 136, the CDC has funded a study of the impact of legality on the operation of syringe exchange, and in turn on high-risk injection behaviors among drug users.[65] Preliminary findings showed, not surprisingly, that legal syringe exchange programs were receiving more funding than illegal ones; facing fewer operational challenges such as police interference, political opposition, supply shortage, and syringe shortage; reporting more visits from clients; and providing greater access to ancillary services such as HIV and HCV testing, treatment referrals, and safer sex education. The initial data did not reveal any differences in HIV risk behavior by legal status of the exchange; they have shown that some clients of both legal and illegal syringe exchange programs continue to engage in high-risk injection practices.[66]

In recognition of the need for broader avenues of syringe access, State Senator John Vasconcellos from Santa Clara proposed in 2002 a law that would have allowed California pharmacists and other licensed healthcare professionals to provide up to thirty syringes without a prescription to persons eighteen years of age and older. The bill, Senate Bill (SB) 1785, also would have amended the state Health and Safety Code to legalize the possession of up to thirty nonprescription syringes, thereby eliminating the Catch-22 inherent in California's syringe exchange law.[67]

Although SB 1785 passed both houses in California, Governor Gray Davis vetoed it on September 30, 2002. Despite broad support from medical and health-care associations, as well as favorable editorials in eight major California newspapers, Davis expressed concern that SB 1785 would eliminate the standard practice of requiring a one-for-one exchange of syringes[68] and potentially increase the number of discarded syringes in public places.[69] Senator Vasconcellos reintroduced the legislation in 2003 as SB 774.

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linkage to services, and real or perceived social barriers such as losing custody of one's children. See Little Hoover Commission, *For Our Health & Safety: Joining Forces to Defeat Addiction* (March 2003), pp. vi, 16.

[65] The CDC-funded study is known as the California Syringes Exchange Program Study or CALSEP. As of December 2002, nine presentations of CALSEP data had been completed.

[66] Ricky N. Bluthenthal, Rachel Anderson, Neil Flynn, James G. Kahn, and Alex H. Kral, "Can Changes in Laws Improve Health Trends Among Drug Injectors: Preliminary Results from the California Syringe Exchange Program Study," paper presented in Atlanta, Georgia, June 18, 2002; Ricky N. Bluthenthal, Rachel Anderson, Neil M. Flynn, Lynell Clancy, Kathryn Anderson, James G. Kahn, and Alex H. Kral, "Legal status and syringe exchange program clients' HIV risk, knowledge, use of ancillary services, and satisfaction: Preliminary results from the California SEP Study," paper presented at the 130th American Public Health Association Annual Meeting, Philadelphia, Pennsylvania, November 9-13, 2002; Alex Kral, Rachel Anderson, Neil Flynn, Lynell Clancy, Kathryn Anderson, Andrea Scott-Hudson, Jim G. Kahn, and Ricky Bluthenthal, "HIV risk behaviors among IDUs at 23 California Syringe Exchange Programs," paper presented at the 4th National Harm Reduction Conference, Seattle, Washington, December 1-4, 2002.

[67] SB 1785 was modeled on similar legislation in Connecticut, New Hampshire, New York, and Maine; on July 25, 2003, similar legislation was signed into law in Illinois. See AIDS Foundation of Chicago, "Blagojevich Signs Syringe Bill," July 25, 2003.

[68] For an explanation of one-for-one exchanges, see "The need for alternatives to syringe exchange," below.

[69] Letter from Gov. Gray Davis to members of the California State Senate, September 30, 2002.

V. POLICE INTERFERENCE WITH LEGAL SYRINGE EXCHANGE PROGRAMS

Overview

Under California law, injection drug users wishing to obtain sterile syringes face a veritable Catch-22. In those counties in which syringe exchange has been legalized pursuant to a declaration of a local emergency, agents of the state may freely distribute syringes without fear of arrest under drug paraphernalia and prescription laws. However, these same laws make it illegal throughout California for anyone, including syringe exchange clients, to possess a hypodermic syringe without a prescription. Because of this contradiction, police in California can and do enforce syringe laws against clients of legal syringe exchange programs.

To assess the impact of police practices on syringe exchange operation and use, Human Rights Watch visited five California counties in which syringe exchange is either legal under state law or officially tolerated by local authorities: San Francisco, Alameda, Mendocino, Los Angeles, and San Diego. Each of these counties has either made the required declaration of a local emergency under AB 136, or has decided as a matter of policy not to prosecute syringe exchange providers.[70] In each of these counties, Human Rights Watch documented cases of injection drug users being harassed, arrested, and cited by the police for possessing syringes that they had obtained from legal syringe exchange programs. Injectors also reported having syringes, both sterile and used, confiscated by the police. In most cases, injectors were neither prosecuted for syringe possession nor cited for any other offense.

Many injectors interviewed by Human Rights Watch in these counties expressed reluctance to use syringe exchange services because they feared they would be stopped or harassed by the police; more commonly, injectors said they did exchanges for fellow injectors who were too apprehensive to use the exchange themselves. These satellite exchangers,[71] as they are known, also reported having been arrested or harassed by the police in some cases. In many cases where Human Rights Watch documented government interference with sterile syringe access, persons affected by this interference also reported resorting to high-risk injection practices such as sharing and reusing of syringes.

Police targeting syringe exchange clients

Human Rights Watch documented numerous cases of police stopping syringe exchange clients in the immediate vicinity of legal exchange sites, where clients were sure to have syringes on their person and face the likelihood of arrest. Given clear public policy in these jurisdictions in favor of syringe exchange, it could be reasonably expected that police would exercise their discretion to enforce drug paraphernalia laws elsewhere. By targeting syringe exchange sites, however, police have had the effect of discouraging the use of a public health intervention that local authorities have legalized and encouraged.

Stops and arrests of syringe exchange clients were particularly common where programs were operating out of tents, cars, or outdoor tables rather than fixed, enclosed buildings. In Oakland, Human Rights Watch interviewed five clients of Casa Segura, a legal syringe exchange facility that operated one of its sites out of a series of tents in the city's Fruitvale district. The tents were pitched in a parking lot underneath a freeway, just in front of the city's railroad tracks. A hole had been cut into the fence where syringe exchangers could come and go across the tracks, which they did to avoid being seen by the police.[72] The exchange consisted of a set of

[70] San Francisco, Alameda and Mendocino counties have each declared a local emergency as required under AB 136. Los Angeles declared a local emergency in 1994 but did not renew its declaration when AB 136 took effect in 1999. Syringe exchange is thus technically illegal in Los Angeles but is ostensibly tolerated by the police. In San Diego, a local emergency was recently declared, but the declaration only applies to a particular pilot program and thus does not legalize syringe exchange programs that existed since before the declaration. The authority to declare a local emergency is found in sections 8550-68 of the California Emergency Services Act, Cal Gov. Code. Declaring a local emergency requires a majority vote of the local governing body, and once adopted, the emergency declaration must be renewed every fourteen to twenty-one days, depending on the frequency of the meetings (Gov. Code section 8530). In San Francisco, this renewal process is done through the Board of Supervisors' consent calendar.

[71] For a more detained explanation of satellite syringe exchange, see "Interference with satellite syringe exchange," below.

[72] Human Rights Watch interview with Wesley A., Oakland, California, January 28, 2003.

folding tables with sterile syringes and other injection supplies, a mobile van for wound and abscess care, and a soup kitchen.

Clyde R., a forty-eight-year-old client of Casa Segura, told Human Rights Watch he drove to and from Casa Segura to exchange syringes. He said that in January 2003, he was stopped by police on his way home from the syringe exchange and told he was driving without license plates. The police ran a warrant check and discovered that there were no warrants for his arrest; still, they asked him if he had any drugs in his car. Clyde R. said that he admitted to having clean syringes in his car, whereupon the police searched the car, confiscated his syringes and took him to jail. He said he was cited for driving an unregistered car and for possession of hypodermic syringes.

During a similar incident two months earlier, Clyde R. said, he told the police officer that he had obtained his syringes from a legal syringe exchange. "The cop said I was faced with a Catch-22," Clyde R. said. "He said he understood the needles were from the needle exchange, but it was still against the law to have them."[73]

Vernon F., forty-five years old and homeless, said he drove to Casa Segura on Tuesdays and Thursdays to exchange syringes for himself and three others. He said that the "majority of the time" he saw police officers in the vicinity of the exchange site. "They don't come right past the place most of the time, but you'll see them maybe a couple blocks down."[74] Moments later, Vernon F. pointed to a police car and said that he feared leaving the exchange in his car because he did not then have a drivers' license. "I wouldn't leave here until he left," he said. "I'd be scared the man might pull me over, you know what I'm saying?"

About two months previously, police stopped Vernon F. on his way out of the exchange. He described the incident:

> They pulled me over... because I didn't make a right turn signal. I failed to make a right hand signal, is what they said. I thought I did, but I guess I didn't. So anyway, during the time they pulled me over, they ran a check on my name, and they said I had some tickets and stuff. Then for some reason they wanted to check my car. They said, "Is that alright?" I said, "Yes, you go ahead." And they checked my car, and they found that I had like 150 outfits [syringes].[75]

Vernon F. added that on that occasion, the police let him go and did not confiscate his syringes. The prospect of getting stopped, though, was enough to make him nervous about carrying syringes home from the exchange. "Naturally it's going to scare you," he said. "You don't want to take the chance, especially like you might have a warrant, they can use that if they want to take you to jail."

Wesley A., forty-six, also a client of Casa Segura, testified to the heavy police presence near Casa Segura's Fruitvale syringe exchange site. "They'll park around the corner," he said. "They get out, they hassle you." He went on:

> The police make it seem like it's a crime to come here . . . . That's why I don't park my car here. See I drive, [but] I don't park my car here for the simple fact that the police over there, they see me get in my car, I'm being pulled over. Just to run a warrant check, see if I have anything, see if I'm under the influence or anything. They're going to make some kind of scene, just for leaving here.[76]

[73] Human Rights Watch interview with Clyde R., Oakland, California, January 28, 2003.
[74] Human Rights Watch interview with Vernon F., Oakland, California, January 28, 2003.
[75] Ibid.
[76] Human Rights Watch interview with Wesley A., Oakland, California, January 28, 2003.

Wesley A. went on to describe a situation in which he witnessed a friend have his syringes confiscated on his way home from the syringe exchange. He recalled that he had been one of five people leaving the syringe exchange that evening, three walking in front and two behind. He described what he saw:

> They swooped the car right in front and cut them off. Stopped them, got out of the car. [They said,] "Well, I guess I know where you're coming from. Come over here, let me talk to you." Looked in his bag. "Oh, so you're a drug user, huh?" Next thing you know, flashlight in his eyes.

According to Wesley A., his friend was arrested and taken to the police station but not ultimately prosecuted for possession of drug paraphernalia. Nevertheless, the damage was done. "He got out in four hours, but it's the hassle he went through," Wesley A. said. "It's sad, because the people that come here, they come here to get clean needles, to help themselves from not getting AIDS." Minutes later, Human Rights Watch had to cut short its interview with Wesley A. because he noticed a police vehicle pulling into the parking lot. "Are you through with me, because . . . I don't want to go through the hassle," he asked. "He might get out."

At least one law enforcement official interviewed by Human Rights Watch viewed such police presence in the vicinity of syringe exchange programs as "happenstance." Lt. Ben Fairow, who supervises all narcotics enforcement in the City of Oakland, noted that "some of the areas where the exchanges are going on are high drug areas," so the police may "cross over lines" in the course of enforcing drug trafficking and possession laws. "But we don't actively pursue the people doing needle exchanges or the people receiving needles," Fairow said.[77] Later, Fairow noted that Oakland police may enforce drug paraphernalia laws as a "quality of life" offense, meaning that arresting people for syringe possession might contribute to a greater sense of safety and security in a neighborhood beset by petty crime. Asked whether police are trained or instructed not to interfere with syringe exchange programs, he said that "outreach groups come to the [police] academy to try to foster a more cooperative relationship with the police," but that over time, "people lose interest."

The accounts gathered by Human Rights Watch suggest that police interference with syringe exchange programs is both systematic and potentially lethal. Many injectors said that, out of fear of arrest, they stayed away from syringe exchange sites and resorted to reusing or sharing syringes. "A lot of people too scared to come down here," Wesley A. said. "And that's sad, giving them the excuse to say, 'Hey, damn the needle exchange,' that's taking their mind away from staying in the program. . . . all because they don't want to come down here and get hassled. They keep using the same ones [syringes] over and over." Accounts such as this are corroborated by a 1998 study of injection drug users in San Francisco's Bay Area showing that injectors who feared arrest for carrying drug paraphernalia were 1.74 times more likely to share syringes than other users, and 2.08 times more likely to share other injection supplies.[78]

In Los Angeles, Human Rights Watch visited four syringe exchange programs that had experienced various types of police interference. At a syringe exchange site run by Homeless Health Care Los Angeles (HHCLA), volunteers said that the police presence near the exchange was "pretty thick" and seemed "to go in spurts."[79] "That kind of gets people afraid to come in here," said one volunteer, a former heroin user who had been working at HHCLA for three years. "I just tell the clients, when you leave, be careful, and don't give them a reason to stop you. Just get your stuff and leave."[80]

In some cases documented by Human Rights Watch, police appeared to use syringe possession as a basis for investigating related drug infractions, without citing people under drug paraphernalia laws. At Clean Needles

[77] Human Rights Watch interview with Lt. Ben Fairow, Oakland, CA, January 28, 2003.

[78] Ricky N. Bluthenthal, Jennifer Lorvick, Alex H. Kral, Elizabeth A. Erringer, and James G. Kahn, "Collateral damage in the war on drugs: HIV risk behaviors among injection drug users," *International Journal of Drug Policy*, vol. 10 (1999), pp. 25-38.

[79] Human Rights Watch interviews with James Hundley, syringe exchange coordinator, and a volunteer, Homeless Healthcare Los Angeles, Los Angeles, California, February 6, 2003.

[80] Human Rights Watch interview with a volunteer for HHCLA, Los Angeles, California, February 6, 2003.

Now, a syringe exchange based in Hollywood, thirty-year-old Jeffrey T. said that drug users often got stopped in the vicinity of the exchange site because the police "know everybody out here gets high."[81] "It happens right around here, you know, I mean like walking in the parking lot of Rite-Aid over here is a good place to get jacked up,[82] or the restaurant across the street," Jeffrey T. said. He said he had been caught with syringes in the area "maybe thirty or forty times," and each time the police had let him keep the syringes but searched him for drugs. On one occasion, the police pulled him over for riding his bicycle at night without a light. When a subsequent search revealed that was not carrying drugs, the police left him alone. "[They] told me not to be carrying any clean needles, but they left them with me," Jeffrey T. said.

Forty-year-old Freddie Z., a client of HHCLA, told Human Rights Watch he was stopped by police in December 2002 just steps from the syringe exchange located at the corner of Fifth and Main. He said he was "standing there talking on the sidewalk at Sixth and Main" when the police approached him. "[The officer] said he observed me with something in my hand from a block away," Freddie Z. said.[83] When the police found one sterile syringe and one crack pipe on his person, they did not cite him for possession of drug paraphernalia, but they confiscated the paraphernalia and charged him with being under the influence of drugs. The same thing happened again in January 2003, he said, again right after he had picked up syringes from the exchange.

Some syringe exchange programs have sought to reduce police interference by lobbying their local police departments to permit clients to come and go freely from exchange sites. One example of successful police outreach is in San Francisco, where the San Francisco AIDS Foundation (SFAF) and the San Francisco Police Department have negotiated perimeters around SFAF's syringe exchange sites inside which police agree not to go unless they have to answer an emergency call. Volunteers for SFAF monitor police activity inside the negotiated perimeter and keep in regular contact with the police about incidents of harassment.[84] While such agreements facilitate the smooth operation of syringe exchange programs, they still leave clients vulnerable to arrest and harassment outside the immediate vicinity of the syringe exchange. "Out here, the police are pretty good," said one client of SFAF. "If you tell them that you're dealing with the needle exchange, they'll say, 'Make sure you get these back to them.' But out there [outside the perimeter], they take them."[85]

Sanctions for sterile syringe possession

Numerous clients of legal syringe exchange programs told Human Rights Watch that when police stopped them, they confiscated their syringes, whether sterile or used, and/or arrested them for possession of drug paraphernalia. Forty-six-year-old Lonnie K., a client of SFAF's syringe exchange in the Tenderloin district, told Human Rights Watch he had been returning home from the exchange when the police stopped him for jaywalking and confiscated his syringes.[86] "We got around the corner here, up on Market [St.], and they came up, cops on motorcycles," he said. "I had eighty [syringes], and [a police officer] threw them out. . . . the garbage truck came up from behind, and he just dumped them in there."[87] Lonnie K. said that he told the police he had "just come down from the needle exchange," but "they called me a dope head and a junkie. They didn't want to hear it."

Asked what he did to inject after police confiscated his syringes, Lonnie K. said he kept extras at his house or bought them from someone else. About six months earlier, though, he saw someone try to clean a borrowed syringe with water minutes after police had confiscated his sterile ones.[88] "He didn't get done fixing

[81] Human Rights Watch interview with Jeffrey T., Los Angeles, California, February 6, 2003.
[82] "Jacked up" is a common term referring to detention, often arbitrary, without formal arrest.
[83] Human Rights Watch interview with Freddie Z., Los Angeles, California, February 6, 2003.
[84] Human Rights Watch interview with Alicia Rigby, volunteer, HIV Prevention Project (San Francisco AIDS Foundation), San Francisco, California, January 27, 2003.
[85] Human Rights Watch interview with Carlene N., San Francisco, California, January 27, 2003.
[86] He added that he picked up syringes from SFAF once a week and that, as long as he remained within the exchange's negotiated perimeter, he did not have problems with the police.
[87] Human Rights Watch interview with Lonnie K., San Francisco, California, January 28, 2003.
[88] Cleaning syringes with water is not an effective method of preventing HIV or HCV through sharing of injection equipment.

[injecting], they [the police] cleaned him all out, right. He didn't have any bleach so he kept cleaning out, cleaning out, that was it. With water."

Alicia Rigby, a volunteer for SFAF, told Human Rights Watch her clients frequently complained police confiscated their syringes, both sterile and used, after they left the exchange. In part for this reason, SFAF stopped requiring that clients turn in one syringe for every syringe taken, instead guaranteeing clients at least twenty syringes per visit. "Literally every day someone will come in and say, 'The cops took my cart,' 'The cops took my bag,' 'The cops took my . . . '", she said. "And then they'll ask for twenty."[89] Similar cases of confiscation have been documented by Bridget Prince, a researcher with the University of California – San Francisco who interviewed and observed young injectors while volunteering at the San Francisco Needle Exchange (SFNE) in the city's Haight-Ashbury neighborhood. One young injector told Prince the police confiscated her syringes "every time they search me," which is "every other day."[90] Another said she had just been to the syringe exchange when the police took all twenty-eight of her clean syringes from her. "Today she had to trade half a pack of cigarettes . . . to get just three needles," Prince reports.[91]

In Hayward, a suburb of Oakland, Human Rights Watch met an injector who had recently been arrested and charged with possession of a syringe he had obtained from a legal syringe exchange program. Hugh S., forty-eight, said that he had been standing outside a liquor store with three or four other people when the police "just zoomed in there, because . . . they wanted to check everyone out for warrants."[92] He said he had just been to the syringe exchange that day or the day before and had one syringe in his pocket. "They told me they wanted to check my pocket for drugs," he continued, "and then found that point [syringe] in my pocket and got all ticked off over that because I didn't pull it out for them." Hugh S. said that he was taken to the city jail where he spent four hours waiting for a court date. At the public defender's suggestion, he pled guilty to possession of a hypodermic syringe and received a year's probation.

Hugh S. told Human Rights Watch that by continuing to use the syringe exchange, he was violating the conditions of his probation and faced a felony charge. "I'm just going to take the risk," he said, noting that he would rather go to jail than risk HIV infection. "You're damned if you do, and you're damned if you don't."[93]

Thirty-five-year-old Jamie D., who exchanged approximately 200 syringes per week at SFNE, said he had been charged approximately ten times with "sale of hypodermics"—a charge that police sometimes lay when injectors are found with more than twenty syringes in their possession. Researcher Bridget Prince cited the similar case of a SFNE client who said she had an upcoming court date for a charge of "possession and sales of controlled paraphernalia." Even where such paraphernalia charges are not prosecuted in court, Prince notes, the arrests themselves interfere with the operation of the syringe exchange and compromise injectors' health.

> Although a needle sales charge is rarely prosecuted in court, the police still use it as an arrestable offense to get people off the streets and as temporary punishment. Addicts often experience painful heroin withdrawal symptoms while in custody prior to being released by the judge. Even though the vast majority of these arrests are dismissed, the effect of them has been to increase the reluctance of injectors to carry large numbers of needles around with them. It further discourages people from coming to needle exchange and from using the services most effectively when they do come.[94]

Because syringe exchange programs are often located in high prevalence drug areas, arrests for syringe possession may result in orders to stay out of the neighborhood in which the program is located. Mary O., thirty-

[89] Human Rights Watch interview with Alicia Rigby, January 27, 2003.
[90] Ibid.
[91] Ibid.
[92] Human Rights Watch interview with Hugh S., Hayward, California, January 25, 2003.
[93] Ibid.
[94] B. Prince, "Law Enforcement and Risky Injection Behavior: Preliminary Ethnographic Findings and Fieldnotes" (ed. P. Bourgois), p. 1.

three, told Human Rights Watch she had been convicted of selling marijuana approximately one year earlier, for which she received an order to stay away from the area of the sale. The area included the house occupied by SFNE, which is a fixed-site syringe exchange.[95] When Mary O. re-entered the area to use the exchange, she said, the police stopped her, found her syringes, and gave her thirty days in jail for violating her probation. Mary O. said she was "afraid to bring needles to the exchange or to carry them at all," because she was "afraid of the cops."[96] On a recent trip to the syringe exchange, she said, she saw police parked near the site and threw her syringes away instead of bringing them in.[97]

Stay-away orders such as Mary O.'s result in what Prince describes as "the geographic displacement of . . . injectors away from the neighborhoods where [syringe exchange] services are provided."[98] Prince documented one case of a couple who, after using neighborhood health services for many years, moved to an isolated part of San Francisco to avoid encounters with the police. "I always carry my own needles and will keep one and use it over and over again now that I can't exchange so easily," one member of the couple said.[99]

Disregard for syringe exchange identity cards

As just noted, participation in a legal syringe exchange program does not protect injectors from arrest for possession of drug paraphernalia. However, some syringe exchange programs in California have begun to issue cards to their clients identifying them as participants in a sanctioned syringe exchange, with the hope that such cards will deter police and prosecutors from conducting arrests or filing charges.[100] Syringe exchange clients in Berkeley (Alameda County) told Human Rights Watch that being identified on the card as a "volunteer" of the local syringe exchange program provided them some additional protection. However, other clients spoke of having been arrested despite presentation of identity cards. Thirty-nine-year-old Austin W., a client of HHCLA's syringe exchange in Los Angeles, said the police "take my outfits and the card and throw it away, and go, 'This means nothing to us.'"[101] HHCLA's cards used to include a printed endorsement of syringe exchange by former Los Angeles mayor Richard Riordan, but according to Austin W., the police still confiscated them. About a year and a half ago, he was exiting his apartment building on Fifth Street when the police stopped him and asked him for identification.

> They said, "Well here, give me your wallet," and when they found my needle card and they looked on the back, they made a comment about, "Well Richard Riordan says it's OK." I go, "Yeah," and then they searched my person and they found the outfit and some cottons and cookers inside, and they took it and took the card.

An HHCLA volunteer told Human Rights Watch that he had heard stories like this from other clients as well. "They tell me, 'Well you know, [the police] stopped me and took my needles.' And I say, 'You show them your card, your needle exchange card?' And they say, 'Yeah, but they don't give a fuck about that'."[102] Malcolm T., thirty-six, a client of Clean Needles Now's Hollywood site, stressed that once an injector had been stopped with drug paraphernalia, a card would do nothing more than enable him or her to negotiate a lighter sentence. "By that time you're already in jail," he said. And because "most people that are in jail do not want to stay in

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[95] A fixed-site as opposed to a mobile syringe exchange is one located in a permanent space where clients pick up and drop off their syringes. Mobile syringe exchanges deliver syringes directly to clients by appointment, often using a pager system. Some syringe exchanges provide both fixed-site and mobile services.

[96] Human Rights Watch interview with Mary O., San Francisco, California, January 27, 2003.

[97] The way in which law enforcement may interfere with safe disposal of syringes is discussed further in "Interference with safe syringe disposal," below.

[98] B. Prince, "Law Enforcement and Risky Injection Behavior," p. 2.

[99] Ibid.

[100] As of this writing, this strategy was being considered in Oakland and San Francisco. Berkeley-based Needle Exchange Emergency Distribution (N.E.E.D.) uses a system of identification cards and identifies all of its participants as "volunteers" of the syringe exchange. Because it is legal to operate and volunteer for a syringe exchange in Alameda County, this strategy attempts to immunize all of N.E.E.D.'s clients from arrest.

[101] Human Rights Watch interview with Austin W., Los Angeles, California, February 6, 2003.

[102] Human Rights Watch interview with HHCLA volunteer, February 6, 2003.

jail" according to Malcolm T., they would accept an offer of probation or less jail time.[103] In his experience, cards did not provide an effective bar to arrest or prosecution for syringe possession.

Intimidating searches and seizures

As suggested by some of the accounts above, police officers often ask suspected drug users to empty their pockets of syringes or other sharp objects before conducting "pat down" or other searches. A number of injectors told Human Rights Watch that, if stopped by police, they would voluntarily hand over their syringes or freely admit to having syringes on their person. While this practice may be a reasonable precaution against needle-stick injuries, police officers must obtain consent to conduct even a pat down search absent reasonable suspicion that an individual has committed a criminal offense and is presently armed and dangerous.[104]

Some injectors told Human Rights Watch that police officers would often react with hostility and even violence if they found a syringe during a search. This raises the concern that injectors who would not otherwise consent to an unauthorized search might feel threatened into handing over their syringes out of fear of retaliatory action. Thirty-five-year-old Saundra O., who said she had been stopped with syringes about three times in the last year, said the police "got pretty pissed off" when she denied having any sharp objects in her pocket and the police subsequently found one. "The [officer] said, 'You told me you didn't have anything sharp . . . . You're going to jail."[105] As a result of this incident, she said, she empties her pockets or her purse whenever officers ask her to.[106]

Thirty-six-year-old Lewis L., a veteran of the 1991 Gulf War, said that a police officer reacted violently when he unexpectedly found a syringe in Lewis's pocket. "I got socked in the mouth," Lewis L. said. He continued:

> I didn't know I had one in my pocket, and I told the cop, "I don't know, you know, if there's anything in there or not," because I didn't. And he found one, and socked me right in the mouth. . . . He just put his hands in my pocket, and I told him I didn't know what I had, and he found an outfit, and socked me. . . . They took me down to jail, kept me there for about five hours and let me go.[107]

If a police officer's only authorization to search is an individual's consent and that consent is obtained by threats of force, the search is invalid.[108] To avoid such illegal searches, police officers should ensure in all cases that individuals are not being threatened into handing over evidence for which police have no independent authority to search.

Particularly vulnerable populations

Syringe exchange clients come from all walks of life, and all face the risk of arrest for possession of drug paraphernalia. However, Human Rights Watch's research suggests that the risk of being stopped by police while using legal syringe exchange services may be particularly acute for certain populations, including homeless people, sex workers, probationers and parolees, and other populations who come in frequent contact with the police. Injectors living in less populated, rural areas may also face a heightened risk of arrest due to their having earned reputations with local police and sheriffs.

Homeless injectors

For homeless injectors, daily encounters with sometimes hostile police, combined with not having a safe place to store injection equipment, make it extremely difficult to benefit from legal syringe exchange programs. Carlene N., forty-four, a homeless woman and longtime client of SFAF's syringe exchange, told Human Rights

[103] Human Rights Watch interview with Malcolm T., Los Angeles, California, February 6, 2003.
[104] See *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).
[105] Human Rights Watch interview with Saundra O., San Francisco, California, January 27, 2003.
[106] See also, the testimony of Hugh S., above.
[107] Human Rights Watch interview with Lewis L., San Francisco, California, January 28, 2003.
[108] *Schneckloth v. Bustamonte* 412 U.S. 218 at 233, 93 S.Ct. 2041 at 2051 (U.S. Cal. 1973)

Watch: "Getting needles is no problem. Keeping them is the problem."[109] Carlene N. said that she had frequently had syringes confiscated in the course of being stopped for trespassing, panhandling, or other infractions associated with living and sleeping in public places. "Any chance they get, they will make you get rid of your needles," she said. She went on to observe the relationship between the difficulty of keeping sterile syringes and high-risk behavior among injectors she knows.

> Sharing is too common. More common than I like to think. It surprises me how many people are like, "I ran out of needles, just give me a clean one," even if it's a used one. And you know, HIV's not gone. More people do it [share syringes] than I would ever imagine. I think the main reason is that they have no choice. They're in a position where they have no supplies with them.

Homeless people said they were especially vulnerable to paraphernalia charges when police were conducting "sweeps" of their encampments. Lonnie K. told Human Rights Watch that approximately three years earlier, when he was homeless, the police "busted up our camps and took our outfits."[110] He recalled being camped in an alley underneath a bridge when "the cop cars came through, and they had a dump truck, and they came and got all our stuff. They took all our outfits, you know our cookers and paraphernalia and shit, and threw it all away, and gave me two citation tickets for having paraphernalia." Asked how he paid the tickets, Lonnie K. said, "I don't. Nobody does." Failure to pay such tickets typically results in a bench warrant for arrest, which subjects the violator to stops and searches and being detained.[111]

For homeless people, such sweeps represent not only a violation of their due process rights, but also a violation of their right to privacy and a threat to their health.[112] As long as the police conduct sweeps of places where homeless people live, homeless injectors will have no safe place to keep sterile syringes, and therefore will be forced to carry them on their person at tremendous risk of arrest. The foreseeable result of this fear is that injectors will choose not to carry sterile syringes with them for when they have an opportunity to inject, and will engage in life-threatening syringe sharing or reuse.

In Los Angeles, an additional barrier to syringe exchange services for homeless people interviewed by Human Rights Watch was the existence of private security agents hired by state-sponsored Business Improvement Districts (BIDs) to keep the homeless out of certain areas.[113] Some of the security agents associated with BIDs were known as "Green Shirts," "Red Shirts" or "Purple Shirts," depending on the neighborhood in which they operated. Injectors interviewed by Human Rights Watch understood these agents to be acting under the law, and therefore took their actions seriously. Elnora D., a thirty-year-old injector who exchanged syringes at Clean Needles Now in Hollywood, told Human Rights Watch that she and her boyfriend were stopped by two Green Shirts in a Hollywood parking lot and ordered never to return to the neighborhood. "Two Green Shirts asked to search my stuff," she said. "One said, 'This is a huge crack area, I want to search your stuff to see if you're doing crack'." When Elnora D. admitted that she had syringes in her possession, the Green Shirts confiscated the syringes and agreed not to do anything further if she agreed never to return to Hollywood. Accounts of private

[109] Human Rights Watch interview with Carlene N., San Francisco, California, January 27, 2003.

[110] Human Rights Watch interview with Lonnie K., San Francisco, California, January 28, 2003.

[111] One police lieutenant interviewed by Human Rights Watch suggested that police intentionally issued citations that they suspected would not be paid, allowing them subsequently to arrest the person and take him or her into custody. Human Rights Watch interview with Lt. Ben Fairow, Oakland, California, January 28, 2003.

[112] See also, the testimony of Hugh S., above. Indiscriminate sweeps of urban areas, ostensibly intended to identify parole and probation violators, violate individuals' constitutional right to due process unless conducted with reasonable suspicion of a parole violation. On April 3, 2003, the American Civil Liberties Union of Southern California and the National Lawyers Guild won a restraining order against the Los Angeles Police Department proscribing such sweeps in the city's Skid Row. See "In a Victory for ACLU/SC, National Lawyers Guild, Federal Judge Grants Temporary Restraining Order Against Police Sweeps in Skid Row Area," [online], http://www.aclu-sc.org/news/releases/press.html (retrieved May 15, 2003).

[113] A BID is a geographical area in which property owners agree to tax themselves to finance various services and improvements to their neighborhood.

security agents harassing syringe exchange clients were corroborated by outreach workers in both the Skid Row and Hollywood districts of Los Angeles.[114]

Sex workers

Men and women who both inject drugs and work in the sex trade face a high risk of both contracting HIV and transmitting it to their clients. Ironically, these groups also face a heightened risk of arrest for trying to protect themselves from HIV by using syringe exchange programs. Saundra O., a sex worker and a client of SFAF's syringe exchange, told Human Rights Watch that she had on numerous occasions had her syringes confiscated by the police, including in the course of being arrested on prostitution charges. "I was prostituting," she said, referring to an incident about a month earlier. "They stopped me . . . . I gave them my name, and they said, 'Oh, you have a warrant'. . . and they arrested me."[115]

After finding syringes in her possession, Saundra O. said, the police charged her with possession of drug paraphernalia, took her to the police station, and later agreed to drop the paraphernalia charges. Saundra O. expressed her frustration at not being able to keep syringes she had obtained at a legal syringe exchange program.

> If you guys distribute these things out free and legally, why do we get arrested for having them illegally? . . . What are we to do, come here, and they distribute them, and then leave them here? What is the purpose of you guys distributing them and we're not allowed to have them?[116]

Human Rights Watch met Selena C. at an AIDS volunteer network in Mendocino County. Although she had spent much of her life in Sacramento, where syringe exchange is illegal, Selena C.'s story illustrates the extreme challenges facing any sex worker who seeks to use sterile syringes for drug injection. Forty-seven years old and HIV-positive, Selena C. said that "the cops were on top of you all the time" when she was working in prostitution.[117] "I tried really hard not to ever carry needles on me because I didn't want to get busted," she said. "You had to go to a place where you knew there was going to be needles when you wanted to use." Selena C. said that sometimes the heroin withdrawal was so painful, she was indifferent as to whose syringe she was using. "Heroin withdrawal is so horrible I can't explain it in words," she said. "If I saw a rig [syringe] and had dope and knew [the syringe] had HIV and it was either shoot up or get sick [from withdrawal], I would shoot up because I was so afraid of getting sick."

Selena C. found out she was HIV-positive while in Yolo County jail in July 1995. She had been tested for HIV before and released into a residential drug treatment program, but she neither completed the program nor got her HIV test results. She said she contracted HIV either from sharing syringes or from having sex with an HIV-positive client. Approximately fifteen to twenty sex workers with whom she worked and shared syringes tested positive for HIV around the same time. Sometimes, Selena C. said, she would discover that an individual from whom she had just borrowed a syringe had full-blown AIDS. "The cops made it difficult to carry new needles or any needles," she said. "I was known to them."

Parolees and probationers

The fear of violating probation or parole by utilizing syringe exchange was a recurrent theme in Human Rights Watch's interviews with injection drug users. Probationers and parolees often said they were ordered, as a condition of their staying out of prison, not to break the law and to submit to a search at any time. This increased the chance both that police would find syringes on their person if they were carrying them, and that being caught with syringes would lead to time behind bars. The scarcity of treatment for drug offenders added to the likelihood that they would continue to use and possess syringes once released on probation or parole.

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[114] Human Rights Watch interviews with Elnora D., Los Angeles, California, February 6, 2003; HHCLA volunteer, February 6, 2003; Peggy Roman-Jacobson, Clean Needles Now, Los Angeles, California, February 6, 2003.
[115] Human Rights Watch interview with Saundra O., San Francisco, California, January 27, 2003.
[116] Ibid.
[117] Human Rights Watch interview with Selena C., Ukiah, California, February 3, 2003.

Julio L., a forty-four-year-old resident of Oakland, told Human Rights Watch that he used to buy syringes on the street but for the past three months had been using Casa Segura's syringe exchange program. An ex-offender on parole, Julio L. said he walked to and from the exchange because that was "the safest way to get there."[118] One evening in September 2002, Julio L. was stopped by two police officers while walking home from the syringe exchange. When the officers found a package of new syringes in his bag and discovered he was on parole, they searched his house and took him to the police station for questioning. Julio L. said that he sat in the police car in handcuffs while his aunt, brother, and brother-in-law witnessed the search. Afterwards, he said, his aunt kicked him out of the house and he stayed with friends.

Even if the district attorney does not prosecute them on new charges of possession of drug paraphernalia, probationers or parolees may still spend time in jail for having violated the terms of their probation or parole. "It's just a big old trap," said Clayton M., forty-nine, who was charged with possession of drug paraphernalia while on probation in San Francisco. "I looked at the charge, and I laughed, I said I know they're going to drop this, but they're going to violate my probation anyway."[119] The charge was dropped, but Clayton M. said he spent thirty days in jail because the possession was deemed a violation of his probation. Kurt C., a volunteer for a legal syringe exchange program in Mendocino County, told Human Rights Watch he spent nine months in county jail for possessing drug paraphernalia while on probation.

Injectors in rural areas

The interconnected epidemics of injection drug use and HIV/AIDS are not restricted to urban centers. They also affect rural areas, where they pose unique challenges to both law enforcement and public health. Mendocino County, for example, which is a mountainous region with a population density of only twenty-five persons per square mile, had as of 2001 the fourteenth highest rate of HIV transmission in all fifty-eight of California's counties.[120] The county's per-capita rate of injection drug use is thought to be equal to or greater than that in urban areas such as Los Angeles and San Francisco. An estimated 2,500 injection drug users live in Mendocino, many of them difficult to reach with services because of rural isolation, poverty, and cultural barriers. Both Mendocino County and its neighbor to the south, Sonoma County, have reported a surge in numbers of HIV and HCV cases in recent years.

In such sparsely populated areas, where police may know injection drug users by sight if not by name, the risk of arrest for syringe possession can be heightened. "Ukiah is a small town," said fifty-one-year-old Jose F., a client of Mendocino County's only legal syringe exchange, Project H.O.P.E.[121] "Police recognize me, stop me, and take me to jail. When I was using, I was afraid to carry needles because I was afraid to be caught by police."[122] Maurice T., a fifty-eight-year-old client of Project H.O.P.E., told Human Rights Watch of an incident in which the police recognized him as someone who had a suspended license. After leaving the H.O.P.E. syringe exchange one day, he said, he went back to a Walmart parking lot where his truck was parked. "The police saw me behind the wheel of the truck. . . . They stopped me, impounded the truck, and took my syringes."[123] Maurice T. added that the police handcuffed him and told him that he was going to jail for possession of drug paraphernalia. He spent three hours in jail, and after two months and three court appearances, his case was dismissed.

Asked what injectors did when their syringes were confiscated, Project H.O.P.E.'s lead syringe exchange volunteer, Scott Turner, said, "They use used ones."[124] He suspected this whenever syringes were returned by

[118] Human Rights Watch interview with Julio L., Oakland, California, January 28, 2003.
[119] Human Rights Watch interview with Clayton M., San Francisco, California, January 28, 2003.
[120] The rate was 205 per 100,000 people. See Mendocino County AIDS Volunteer Network (MCAVN), "Application for Federal Assistance: Rural Health Outreach Grant Program," September 26, 2001.
[121] H.O.P.E. stands for Health Outreach Prevention Education. H.O.P.E. is a project of the Mendocino County AIDS Volunteer Network (MCAVN).
[122] Human Rights Watch interview with Jose F., Ukiah, California, February 3, 2003.
[123] Human Rights Watch interview with Maurice T., Ukiah, California, February 3, 2003.
[124] Human Rights Watch interview with Scott Turner, Project H.O.P.E., Ukiah, California, February 3, 2003.

injectors who had not picked them up in the first place, especially when the syringes were dulled beyond recognition.

> I get syringes back that are occasionally through somebody else who doesn't use the exchange, and they've been using them for a year, there's no numbers on them, they've been cut shorter, the gasket's been glued in, you know, they've been sharpened over and over and over. And when I get those, it's from somebody who won't use the exchange. . . . I was talking to somebody last night . . . and he was saying this other guy that I met through him, he said, is passing around dirty needles saying they're clean. . . . He actually sells like a dirty needle for a buck.

Some injectors in Mendocino County said they drove to a syringe exchange program in neighboring Sonoma County to avoid harassment by the police. Forty-five-year-old Dean N., a Ukiah resident who claimed he had violated his probation eighteen times for carrying syringes, said he drove forty-five minutes to Sonoma County's syringe exchange because he didn't want to be "associated with needles" in Ukiah. "I don't want a reputation," Dean N. told Human Rights Watch.[125] He even feared that police were conspiring with the syringe exchange program to entrap drug users, a fear that H.O.P.E. outreach workers said was common among their clients: "I was afraid that my program up here would be affiliated with law enforcement, because there are a lot of [syringe exchange] volunteers that work in the county department, and their brothers and sisters work in law enforcement."

Scott Turner elaborated on the "small-town mentality" underlying these injectors' fear of syringe exchange:

> Up here, you arrive in this town and start using, you're known that day. They see you with so-and-so walking down State Street, they stop you and roust you. If you're homeless, you can get rousted all the time. If you live on the railroad tracks, you can get rousted all the time. . . . [The police] don't need cause. Being homeless is cause. And in this town, being a known addict is cause.[126]

Turner added that fear and distrust of the police, and by extension syringe exchange, was strongest on Native American reservations or "rancherias":

> I would do regular exchanges there, and after about a year I can remember two girls who asked me to give them a ride. They just asked me, and it was honest, they said, "How much does the sheriff pay you for the names?" And in their heart of hearts, ten years from now, they will believe that. That I'm actually there to get names and pass them on to law enforcement. And there's nothing you can say to undo that.

Turner suggested that it was not only police harassment but also historical oppression of Native Americans and sometimes drug-induced paranoia that contributed to this instinctive distrust of syringe exchange programs. He said current police practice contributed considerably to the distrust: "It interferes with people's mindsets as to even considering using the exchange. If they can [get syringes] any other way, they will. They don't want to physically go on the street, because they know if you go outside, you're going to get rousted, you're going to get stopped. If they see your car, they will stop you."

In Fort Bragg, a town on the Mendocino Coast, volunteers for the H.O.P.E. syringe exchange program said that although their program had been legal since 2000, they still had to use a system of "pager and delivery"—having clients page the exchange to request syringes and arrange a rendezvous point with a volunteer—in order to avoid police harassment. "If they see a needle here, they're going to pull you over and tear

[125] Human Rights Watch interview with Dean N., Ukiah, California, February 2, 2003.
[126] Human Rights Watch interview with Scott Turner, H.O.P.E., Ukiah, California, February 3, 2003.

you apart," said Gordon H., fifty-two, a regular client of the syringe exchange.[127] Lorrie H., forty, who has been injecting heroin since 1986, said she was especially vulnerable to arrest because she was a known parolee.

> Here, the problem is, once you're known you don't stand a chance. They're going to get you every time they can. If they see you on the street, they will turn around and come after you . . . and you better hope to god you have nothing with you, because you're going [to jail].[128]

Lorrie H. told Human Rights Watch she had been on parole for heroin possession charges since September 2000. In August 2002, a parole agent came to her house to do a "general parole search" and found a supply of used syringes that she had been planning to return to the syringe exchange. "He just came knocking on my door with the police department, and came in, pulled me out of bed, made me sit in the front room, tore my room up, found them, and took me to jail," she said. She added that by the time she went to the parole board for a hearing, she had spent seven months in jail for parole violations.

Human Rights Watch researchers asked Lorrie H. why she continued to store syringes in her home if she was subject to general parole searches. "If you're a heroin addict, you need them," she said. "It's not whether you want them there, you just hope no one finds them there."[129]

Interference with satellite syringe exchange

While California law protects only licensed syringe exchange providers from prosecution under state drug paraphernalia and prescription laws, it is standard practice among most syringe exchange programs to rely on clients who are not licensed to distribute many of their syringes. These "satellite exchangers" allow programs to maximize their geographic reach as designated clients obtain large volumes of syringes from the program and then exchange them with a network of fellow injectors. Satellite exchangers are essential to the successful functioning of syringe exchange programs; one veteran syringe exchange volunteer in Sacramento estimated that the county has anywhere from 200 to 400 active satellite exchangers at any given time, all with designated back-ups.[130] However, because they are not protected by law from arrest for syringe possession, satellite syringe exchangers must assume a significant legal risk to perform a function that complements and increases the effectiveness of activities performed legally by licensed syringe exchange staff.

Kurt C., a forty-eight-year-old native of Ukiah, became inspired to do satellite syringe exchange after contracting HIV from injecting drugs. He explained that because Ukiah's syringe exchange operated on restricted hours, he kept extra syringes to give to other injectors when the syringe exchange was closed:

> I let them know it doesn't matter what time of day or night, if they need a clean one, come and see me, and they know where I'm at. And I'll give them a clean needle and cooker and alcohol swab, and all that. I let them know they can wake me up, it doesn't matter to me what time of night. . . because for god's sake, I don't want anybody to get this disease anymore. It's a drag, man, you're sick all the time. You break out in sores all the time.[131]

While the distribution of syringes is legal for licensed syringe exchange personnel in Ukiah, satellite exchangers like Kurt C. operate outside the law. "I take a big chance by having a small supply of clean syringes around for the after hours people," Kurt C. said. A few months earlier, Kurt C. was distributing sterile syringes to a group of injectors and educating them about the syringe exchange when the police intervened and arrested him. "The police swoop on me, and take all my new rigs [syringes] and the old ones, and take me to jail, and cited me a

[127] Human Rights Watch interview with Gordon H., Fort Bragg, California, February 3, 2003.
[128] Human Rights Watch interview with Lorrie H., Fort Bragg, California, February 3, 2003.
[129] Ibid.
[130] Human Rights Watch interview with Jim Britten, Sacramento, California, January 31, 2003. Britten added that in many cases, satellite exchangers exchanged more syringes overall than the syringe exchange's "primary" volunteers. Though often referred to as "secondary exchangers," Britten said he refers to his program's satellite exchangers as the "primaries."
[131] Human Rights Watch interview with Kurt C., Ukiah, California, February 3, 2003.

ticket, and release me, and told me, 'Damn drug addict, all you damn drug addicts need to be taken out and shot'," he said. He said it was 2:00 a.m. at the time, and the police recognized him by the light in his car.

Kurt C. said that "the only thing [he] was angry about" was that his clients would be compelled to reuse and share old syringes. "Because of what the police were doing," he said, "people were going to take the chance of using dirty needles. And that bothers me, it bothers me a lot." He recounted an incident in which someone was so desperate to inject that he physically attacked Kurt C. for not sharing a used syringe. "He just wanted to use mine and use Clorox and I said absolutely not," he said. "And he threatened me, grabbed me, pushed me around a little bit, slammed me into the wall, and I said, 'No, I just can't do it.' I said, 'I am your friend, don't think I'm trying to be mean to you, I'm just afraid for you to catch AIDS, and if you don't understand that I'm sorry, beat me up, but I'm not going to give you one of my needles'."

A significant number of the injectors cited elsewhere in this report—injectors who told stories of being stopped, harassed, and arrested for carrying syringes—were also satellite exchangers in addition to being clients of syringe exchange themselves. Vernon F., who told of being stopped on his way out of Casa Segura in Oakland, said he exchanged syringes for himself and three other persons—one of whom was bed-ridden, and another elderly and unable to travel easily to and from the exchange. Carlene N., who testified to the difficulty of holding on to syringes as a homeless woman, said she distributed approximately 200 syringes each week to almost thirty people in San Francisco's Bayshore neighborhood. She said she wished she could carry a supply of sterile syringes with her in case her friends needed them, but she was too scared to do so. "I don't carry them on me anymore, and I stay out of sight," she said. "Because of the police. Because they're going to get taken."[132]

Interference with safe syringe disposal

Used syringes pose a danger not just to injection drug users, but also to individuals who may be accidentally pricked by an improperly discarded syringe. One of the benefits of syringe exchange is to reduce the likelihood of such needle-stick injuries by encouraging, and in some cases requiring, participants to return used syringes to the exchange for safe disposal. Programs that allow nonprescription pharmacy sale of syringes also provide added impetus to establish mechanisms for the safe disposal of syringes. In many cases, however, injectors told Human Rights Watch that the potential for arrest deterred them from carrying their syringes back to exchange sites. While some U.S. jurisdictions have attempted to rectify this situation by placing biohazard containers in public places, this strategy has not yet been adopted in California. Even where it has been adopted, injectors may still discard their syringes carelessly if they think that arrest for possession of drug paraphernalia is the alternative.

Lorrie H. of Fort Bragg told Human Rights Watch that when the police raided her home on a parole search, she had been storing syringes to return to the exchange. "I was arrested for needles that I had ready to go to the exchange," she said.[133] Stories like this were common among homeless people, who had frequently had their syringes confiscated during police sweeps of their encampments, making it harder for them to obtain new syringes. Carlene N. remarked on the police's misperceptions of homeless people who store large numbers of syringes among their possessions:

> . . . When [the police] clear out the camps under the freeway, which is where the highway patrol comes in, they find hundreds of needles. They don't understand that [people] save these needles because they bring them back here. They [the police] don't understand that. They see the needles, and so they assume that, "Wow, there's a hundred needles here, this person must really be a junkie, a really freaked-out junkie." And that's not the case. They're being very responsible by keeping them in one place, not throwing them in the garbage and holding them. And they're condemning you for that.[134]

[132] Human Rights Watch interview with Carlene N., January 27, 2003.
[133] Human Rights Watch interview with Lorrie H., February 3, 2003.
[134] Human Rights Watch interview with Carlene N., January 27, 2003.

In Los Angeles, Human Rights Watch met numerous injectors who said they were too afraid to carry their used syringes back to the syringe exchange. At the Bienestar syringe exchange, which is located in a predominantly Hispanic area of Los Angeles, injectors said they would not carry syringes back to the exchange because they were "afraid the police would find them," "could be arrested" or "because it's paraphernalia."[135] Unsafe disposal may also occur during times when syringe exchange programs are closed. "The hardest thing is, sometimes I bring them and he's not here, and I just throw them away," said fifty-four-year-old Wendell R. of Los Angeles. "I don't want to do any riding with them. I put them in a trash can."[136] Fifty-five-year-old Tyrone H., who uses the syringe exchange program on the city's Skid Row, said he disguised his syringes in a bag full of recyclables to avoid being searched. "That's why I carry all this recycling stuff," he said. "Because cops are less likely to look through my stuff if it's disguised."[137]

The presence of trace amounts of drug residue in used syringes or other injection equipment may heighten the risk of returning syringes to an exchange site.[138] In Oakland, Human Rights Watch spoke to someone who said he had witnessed an injector being stopped by the police on his way back to a syringe exchange and arrested for possessing a trace amount of heroin on a used cotton ball. Though it was not possible to corroborate this account with the police or the person in question, the eyewitness described what he saw as follows:

> I saw that happen. A lot of us saw that happen, because like I said, he was coming to the [syringe exchange]. Before he got to the [syringe exchange], like I said, the police pulled over . . . opened up his box, saw that cooker, threw him into the back of the car, took him down, and the next thing we heard that he got charged. Well, he got out that next day, but he still got charged for that little cotton. . . . He went to court, now he's on probation behind something like that. He's on probation, man, all behind a dried up cotton. I'm serious. . . . He's on three years probation right now for a dried up cotton that was in the box with his old outfits [syringes] that he was coming down here to exchange.[139]

The foreseeable result of arresting someone for possession of used injection equipment is not only that injectors will dispose of syringes unsafely, but also that they will resort to syringe sharing, reuse, and other unsafe injection practices, potentially leading to an increase in HIV and hepatitis C infection and other health complications. Asked what they did when police confiscated their syringes or otherwise deterred them from using syringe exchange, injectors interviewed by Human Rights Watch said they bought new or used syringes on the street, attempted to clean syringes with water, reused syringes until they were dulled beyond recognition, and/or shared with other injectors. These accounts are corroborated by extensive research data indicating that fear of arrest leads to high-risk injection behavior and increased HIV and hepatitis C infection among injection drug users.[140]

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[135] Human Rights Watch interviews with Otis S., Alicia R. and Marco S., Los Angeles, California, February 7, 2003.

[136] Human Rights Watch interview with Wendell R., Los Angeles, California, February 7, 2003.

[137] Human Rights Watch interview with Tyrone H., Los Angeles, California, February 6, 2003.

[138] In *Roe v. City of New York*, 232 F.Supp.2d 240 (S.D.N.Y., 2002), a federal judge in Manhattan ruled that the police department may not arrest individuals who are carrying syringes containing drug residue if they are clients of a syringe exchange program.

[139] Human Rights Watch interview with Wesley A., Oakland, California, January 28, 2003.

[140] See, e.g., B. Prince, "Law enforcement and risky injection behavior"; R.N. Bluthenthal, "Collateral damage..."; Lisa Maher and David Dixon, "Policing and Public Health: Law Enforcement and Harm Minimization in a Street-level Drug Market," *British Journal of Criminology*, vol. 30, no. 4 (Autumn 1999), pp. 488-512.

VI. PROHIBITION OF SYRINGE EXCHANGE

Overview

As noted above, California state law permits cities or counties to legalize syringe exchange programs by declaring a local emergency due to a critical health crisis. Human Rights Watch visited two counties in California, Lake and Sacramento counties, where this declaration had not been made and syringe exchange remained illegal.[141] As a result, law enforcement officials targeted not only clients of the syringe exchange who were in possession of drug paraphernalia, but syringe exchange personnel as well. Injection drug users in Sacramento and Lake Counties described going to extreme measures to obtain any syringes, often settling for ones already used, at enormous risk to individual and public health. A senior public health officer in Sacramento told Human Rights Watch that when it comes to legalizing syringe exchange in that county, "It's good to have facts and data, but that doesn't convince decision makers."[142]

Even in counties that have legalized syringe exchange programs by declaring a local health emergency, syringe exchange may still face restrictions in the form of zoning and other municipal bylaws. In Oakland (Alameda County), Human Rights Watch interviewed syringe exchange personnel, clients, and local authorities about restrictions placed on Casa Segura, the city's only syringe exchange program. These restrictions exemplified the way in which political decisions about the appropriate placement of syringe exchange programs, like syringe regulations themselves, can be guided by arbitrary and discriminatory factors rather than sound health policy.

Sacramento County: A lethal prosecution

Although syringe exchange was illegal in Sacramento County as of this writing, a successful syringe exchange program had operated there since the mid-1990s. Known as the Sacramento Area Needle Exchange (S.A.N.E.), this program had developed a system of pager and delivery[143] instead of establishing a fixed site that would be vulnerable to a police raid. Its executive director, Rachel Anderson, told Human Rights Watch that the program had grown to distributing up to 450,000 syringes per year by 2000 despite failed efforts to legalize syringe exchange in the county.[144]

In June 2001, S.A.N.E. suffered a serious setback as a result of the arrest and conviction of one of its most high-volume syringe distributors, Lynell Clancy. Clancy, forty-seven, began volunteering for S.A.N.E. in 1996; at the time, she told Human Rights Watch, she had been doing HIV and hepatitis C outreach and noticed that "the big missing piece was access to sterile syringes."[145] Injectors were sharing and reusing syringes "until they were just beyond recognition of what they were. Sharpening them on matchbook covers and sidewalks. It was not uncommon to talk to somebody who reused a syringe twenty or thirty times."

Within a few years, and under constant risk of arrest, Clancy became one of Sacramento's most relied upon syringe exchange volunteers. Clancy developed a system of delivering large numbers of syringes to satellite exchangers and having them distribute to their network. "When I was banging on all burners, it wasn't uncommon to do 1600 to 2000 [syringes] in a four- to five-hour period," she said. Rachel Anderson said that between 1996 and 2000, the number of new clients contacting the exchange more than tripled every year.

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[141] We also interviewed clients of a syringe exchange in San Diego that, because of the parameters of that county's emergency declaration, was not legal.

[142] Human Rights Watch interview with Dr. Glennah Trochet, Sacramento County Health Officer, Sacramento, California, January 30, 2003.

[143] As noted above, this is a system whereby clients page the syringe exchange program to request syringes and arrange a rendezvous point with a volunteer.

[144] Human Rights Watch interview with Rachel Anderson, executive director, Sacramento Area Needle Exchange (S.A.N.E.), Sacramento, California, January 29, 2003.

[145] Human Rights Watch interview with Lynell Clancy, Sacramento, California, January 30, 2003.

Attracting this many new clients greatly decreased the number of people exposed to HIV through syringe sharing, preventing any increase in HIV prevalence in that community according to the county public health officer.[146]

On September 19, 2000, Clancy was arrested while delivering sterile syringes to a methamphetamine injector in north Sacramento. In a detailed account of her arrest, she told Human Rights Watch that, unbeknownst to her, officers of the Sacramento Police Department had been investigating the client's residence as the site of a methamphetamine manufacturing operation. When she approached the client's door with a brown paper grocery bag, an officer opened the door and began questioning her. "I kind of acted like I didn't hear him," she said. "And then he was like, 'What's in the bag?'"[147] Clancy said she "was in such a panic" that she let the officer look in the bag without realizing she could have withheld her consent to search. The officer looked inside and said, "'Well, what are all these syringes for?'"

Clancy told the officer that she was a volunteer for S.A.N.E. and that she had been distributing sterile syringes for the syringe exchange program in order to prevent the spread of disease. The officer patted her down, confiscated her syringes, and then confiscated an additional 600 syringes found in her car. Clancy was cited under section 4140 of California's Business and Professions Code, which prohibits the unauthorized possession or control of hypodermic syringes or needles.[148]

Clancy said that her encounter with the police that day was not an isolated incident. "On more than half a dozen occasions," she said, "I walked up to somebody's house . . . and knocked on the door and [was] greeted by either a sheriff or a policeman." She was arrested on only one other occasion, but she successfully fought that conviction on the grounds that the police had illegally seized her syringes. Eventually, she had no choice but to refuse certain clients because of the likelihood of a police presence on their property. Some of these clients, whose drug use Clancy described as "out of control," were the ones at highest risk of HIV infection from the reuse and sharing of syringes.

In her legal defense, Clancy sought to introduce evidence that her illegal possession of sterile syringes "was justified by the necessity to combat the transmission of HIV and other blood-borne diseases within the population of injection drug users."[149] Clancy argued that while California law provided a regime for the legalization of syringe exchange through the declaration of a local emergency, that emergency had not been declared despite extensive political lobbying; thus, she had no choice but to exchange syringes illegally. The judge rejected the necessity defense and on June 20, 2001, Clancy was convicted of unlawful possession of syringes and needles. Clancy was placed on informal probation for three years, the conditions of which require her to obey all laws and not engage in the distribution of hypodermic syringes or needles. Clancy's probation permits her to conduct HIV and hepatitis C prevention that does not involve the possession or distribution of syringes.[150]

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[146] Memorandum from Dr. Glennah Trochet, county health officer, to Jim Hunt, director, Sacramento County Department of Health and Human Services, September 10, 2001.

[147] Human Rights Watch interview with Lynell Clancy, Sacramento, California, January 30, 2003.

[148] As noted above, violation of this statute is a misdemeanor punishable by a fine of not less than U.S.$200 or more than U.S.$2000, or by imprisonment of not less than thirty days nor more than six months, or both by fine and imprisonment. See Business and Professions Code, sec. 4321.

[149] Under California law, Clancy was permitted to introduce this evidence if it could demonstrate that (1) the act charged as criminal was done to prevent a significant and imminent evil (in this case, the spread of infectious disease through injection drug use); (2) there was no reasonable legal alternative to the commission of the act; (3) the reasonably foreseeable harm likely to be caused by the act was not disproportionate to the harm avoided; (4) she entertained a good-faith belief that her act was necessary to prevent the greater harm; (5) that belief was objectively reasonable under all circumstances; and (6) she did not substantially contribute to the creation of the emergency. See California Jury Instructions-Criminal (CALJIC) 4.43; see also, *In re Eichorn*, 69 Cal.App.4th 382, 389, 81 Cal.Rptr.2d 535, 539 (1998); *People v. Trippet*, 56 Cal.App.4th 1532, 1538, 66 Cal.Rptr.2d 559, 563 (1997); *People v. Pepper*, 41 Cal.App.4th 1029, 1035, 48 Cal.Rptr.2d 877, 880 (1996); *People v. Pena*, 149 Cal.App.3d Supp. 14, 25-26, 197 Cal.Rptr. 264, 271 (1983).

[150] Letter from Judge Richard H. Gilmour, Judge of the Superior Court of California, County of Sacramento, to Diana K. Butler, Warden, Folsom State Prison, August 2, 2001.

Though Clancy chose to fight her conviction, other syringe exchangers in Sacramento said they had pleaded guilty to charges of syringe possession. Dedra S., a forty-seven-year-old woman originally from North Carolina, said that on one occasion the police caught her with syringes while they were conducting a routine parole check on her roommate.

> I had two boxes and they went into my room and they asked me was I diabetic, and why did I have needles. And I told him, "No, sir, I'm on the needle exchange program, I exchange needles." And he said, "Well, you know it's against the law." And he arrested me. It was a misdemeanor. Possession of hypodermic syringes. Nothing else. New syringes. . . . And I had two years probation.[151]

This conviction did not deter Dedra S., who regarded herself as performing a necessary, life-saving service. She said that she had been convicted of syringe possession "four or five times" and that she continued to exchange syringes while on probation.

> I felt like I needed to do it. I took my chances . . . because they need them. Because I have got so many friends who can't find needles, and they swell up, they swell up a lot. And they hurt, and they break, and then the HIV starts, you know. Because I know a few people with it. There are people that have got HIV and will not use anything but a new needle, and those are the kind of people I like to have some for. Because I know they've got it, and they know they've got it, and they don't want to pass it. But when they can't get them, what are they to do?

Lynell Clancy told Human Rights Watch she had appointments with syringe exchange clients lined up until the day of her conviction, at which point she finally had to stop. "I had to call them and tell them, 'Can't do it. I have to see if I can find somebody else to do it'," she said. "I hate it. I feel like I've bailed on them."

Impact of the conviction

According to S.A.N.E. personnel and public health experts interviewed by Human Rights Watch, Lynell Clancy's conviction had a uniquely devastating impact on AIDS prevention among Sacramento's injection drug users. In 2002, S.A.N.E. distributed 29 percent fewer syringes than it had distributed in 2000, the year before Clancy was arrested.[152] The amount of time clients have to wait for new syringes increased from a maximum of seventy-two hours before Clancy's arrest to nearly two months. "I've got calls from people saying they've been calling for two months and haven't even got a call back yet," Rachel Anderson said. "We just don't have the capacity to pick up new people. And that's been the most difficult thing."[153]

The recent scarcity of sterile syringes in Sacramento has led many injection drug users to reuse and share syringes, potentially infecting themselves and others with HIV or hepatitis C. Thirty-two-year-old Maricela C., who had been injecting heroin and methamphetamines for nine years, told Human Rights Watch she was using the same syringes "over and over" because "there are no new ones out there."[154] Maricela C. lived in an area of Sacramento's Oak Park known for its significant drug activity; her home was described to Human Rights Watch by harm reduction outreach workers as "a pit stop for hookers, cranksters[155] and heroin users." Maricela C. said that she gave used syringes "to whoever needs one," and that she frequently saw people sharing syringes without cleaning them. Two days earlier, she said, she gave all of her used syringes away. "I reuse and share because I can't get new needles," she said. "I haven't gotten needles from the needle exchange for a while."

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[151] Human Rights Watch interview with Dedra S., Sacramento, California, February 4, 2003.

[152] According to Rachel Anderson, S.A.N.E. distributed approximately 450,000 syringes in 2000 compared to 320,000 syringes in 2002. It is estimated that 3,000,000 syringes distributed annually would saturate the population of injection drug users in the county. Human Rights Watch interview with Rachel Anderson, January 29, 2003; Human Rights Watch interview with Neil Flynn, M.D., January 29, 2003.

[153] Human Rights Watch interview with Rachel Anderson, January 29, 2003.

[154] Human Rights Watch interview with Maricela C., Sacramento, California, January 30, 2003.

[155] "Crankster" is a colloquial term that refers to people who inject methamphatamines.

Human Rights Watch met Lenore T., fifty-eight, in a trailer park off of Stockton Boulevard in south Sacramento. The park where Lenore T. lived was filled with dilapidated, singlewide trailers set very close to one another and was known for its concentration of sex workers. She said that two days earlier she witnessed a woman she knew, a sex worker, digging a used syringe out of a dumpster.

> I saw two people I know, two of the hookers, who'll dig them out of the trash, dirty, and use them. As a matter of fact I saw it two days ago, because I was down at my niece's house.... And she was out there digging, looking for them. She was looking for something to shoot up with... and she knows there are a lot of drug addicts out there, so she dug and she found her an outfit [syringe] . . . she told me that's what she was looking for . . . . And she came up and asked me if I had one. I told her, "no." And she said, "Damn, I didn't want to have to do this," and she started looking.[156]

Lenore T. herself had recently had difficulty finding new syringes, she said, because she couldn't make contact with the syringe exchange program. "Before I took a hundred, used them once, broke them and threw them away," she said. "That's why you don't see any railroad tracks on me."[157] Lately, she said, "I can't find them. Matter of fact I've been checking here for about a month. . . . I get them other places, but not that often, and then I have to use them again."

Lynell Clancy told Human Rights Watch that about twenty-five of her former clients had told her they were sharing syringes since she stopped doing exchange. She also noticed that in doing outreach with drug users after her arrest, she saw and more people with track marks and abscesses—signs that they were reusing and sharing syringes. "They have to use them over and over and over again, like hammering a nail into their arm," she said. "It's like, I see them and I see the abscesses, and I see the huge line of track marks that weren't there before because they were able to use, they had access to syringes."[158] The day before, Clancy witnessed somebody assembling the parts of others people's used syringes into a makeshift syringe. "It's a crapshoot as to whose she's getting," Clancy said.

Satellite exchangers interviewed by Human Rights Watch after Clancy's conviction said that they could no longer deliver syringes to their networks because there simply weren't any available. Fifty-five-year-old Sam P., who had previously distributed sterile syringes in the trailer park referred to above, said that he had not seen the syringe exchange in six months. He had previously developed a weekly routine of picking up syringes from S.A.N.E. and distributing them to a network of about thirty people. The exchange "needs to get over here," he said, "because we cover a lot of people."[159]

Earl B., fifty, also a satellite exchanger, said that he had received regular supplies of new syringes from S.A.N.E. until about two years previously. "Then someone got busted over here. . . . a lady," he said. "She gave me needles, is all. Just exchanging needles, keeping people alive if you ask me."[160] Earl B., who had hepatitis C, said that he continued to exchange sterile syringes whenever he could obtain some from a diabetic friend. "I take a high risk of going to jail," he said. "You know, you get caught with a needle, you're going to do ninety days at least. For saving somebody's life." Even though he had a criminal record and "would probably go to prison" if he were caught, Earl B. said the risk was worth it.

> I see too many people sharing, that's why I give them out. A lot. Just the other day... they were at the house, and I turned around and they were sharing. Some friends, I'm not mentioning any names. About three. People gamble too much with their lives. That's why they need a place to access [sterile syringes]. I'll take the risk until they legalize it. They will eventually legalize it,

[156] Human Rights Watch interview with Lenore T., Sacramento, California, January 30, 2003.
[157] The reuse or sharing of blunted syringes can leave visible track-shaped marks on the surface of the skin, often referred to as "tracks," "track marks" or "railroad tracks."
[158] Human Rights Watch interview with Lynell Clancy, January 30, 2003.
[159] Human Rights Watch interview with Sam P., Sacramento, California, January 30, 2003.
[160] Human Rights Watch interview with Earl B., Sacramento, California, January 30, 2003.

because too many people are dying. . . . All it takes is one person to have AIDS and sharing, and it's all over everywhere.

Injectors who succeeded in obtaining sterile syringes in Sacramento said that they were too scared to carry syringes around, leaving them without a sterile syringe in case they needed one. "I am more afraid of carrying a needle than sharing one," said Cody F., who had been arrested for syringe possession four times. "I'm afraid of getting stopped by police."[161] Cody F. said he had shared syringes "at least fifty times," because he "didn't have needles" with him. "I stopped carrying because I was paranoid of getting busted," he said.

On September 10, 2001, approximately nine months before Lynell Clancy's conviction, Sacramento's County Health Officer, Dr. Glennah Trochet, issued a memorandum titled "Consequences to the Health of Sacramento if the Current Underground Syringe Exchange Program Ends." In it, Trochet warned that HIV prevalence among injection drug users in Sacramento could increase by 5.9 percent per year if the county lost its syringe exchange program. Within five years, HIV prevalence in this population would reach approximately 20 percent, whereas at the time it stood at 4.2 percent. The fact that HIV prevalence had not increased in recent years was a testament to the efforts of the county's illegal syringe exchange program. "There is no question," Trochet wrote, "that well run syringe exchange programs decrease the incidence and prevalence of blood borne pathogens such as HIV, Hepatitis B and Hepatitis C. They do not increase injection drug use, and they do increase the number of people seeking treatment for addiction."[162]

Trochet submitted her memorandum to Jim Hunt, the director of public health for the Sacramento County Department of Health and Human Services, who then forwarded it to the head of the department and the county board of supervisors. She received no response. She told Human Rights Watch that had Clancy been permitted to put forth a defense of necessity, she would have testified at the trial. Sacramento's district attorney, Jan Scully, "did not need to prosecute, but she chose to prosecute," Trochet said.[163] She recalled an earlier meeting with Scully in which she presented research data on the benefits of syringe exchange. "The district attorney didn't even want to talk about it," Trochet said. "She took my information and said, 'Well, Doctor, I guess we're going to have to agree to disagree on this one'."

S.A.N.E. volunteers told Human Rights Watch that following Clancy's conviction, they had tremendous difficulty reaching injection drug users and had to decline some requests for new syringes.[164] They also had difficulty recruiting additional volunteers, one said, because "people don't want to take the chance of getting arrested for doing syringe exchange."[165] Rachel Anderson estimated that S.A.N.E. needed twenty-five volunteers to meet the demand for sterile syringes in Sacramento County; as of this writing, the exchange had only two volunteers. Former drug users who might make good volunteers because of their rapport with current users often had to be disqualified, Anderson said, because existing criminal records would put them at risk of lengthy incarceration. Clients with a criminal history also had to be reconsidered, because, as Clancy's arrest illustrated, volunteers could not afford to be greeted by a police officer on making a delivery of sterile syringes.

In reflecting on her arrest, Clancy expressed her frustration at being prohibited from performing a service whose benefits she had witnessed first-hand. "It's having access to something that I know can help them and not being able to get it to them," she said. "Not being able to hook them up with a service that they have every right in the world to have. . . . You know that they're using like old, rusty nails."

Lake County: An underground exchange

In Lake County, an hour's drive north of Sacramento, police efforts to suppress illegal drug use had as of this writing driven the county's one syringe exchange program completely underground. Unlike in Sacramento,

[161] Human Rights Watch interview with Cody F., Sacramento, California, February 4, 2003.
[162] Memorandum from Dr. Glennah Trochet to Jim Hunt, September 10, 2001.
[163] Human Rights Watch interview with Dr. Glennah Trochet, Sacramento, California, January 30, 2003.
[164] Human Rights Watch interview with Gail Wally, Sacramento, California, January 30, 2003; Human Rights Watch interview with Jim Britten, Sacramento, California, January 31, 2003.
[165] Human Rights Watch interview with Lynell Clancy, Sacramento, California, January 30, 2003.

syringe exchange personnel in Lake County had not openly lobbied for the legalization of syringe exchange and, for fear of arrest, would not identify themselves by name. Drug users in Clearlake, most of them methamphetamine injectors, told Human Rights Watch that constant surveillance by the police, as well as total enforcement of drug paraphernalia laws, made it prohibitively risky to carry sterile syringes to and from their homes. As an alternative, although far from ideal, some users said they would congregate at the homes of satellite exchangers, who received clandestine deliveries from a central syringe exchange coordinator.[166] These homes often became sites of dense drug activity, increasing the likelihood of police surveillance.[167] Injectors said that, while the availability of sterile syringes had greatly increased since the establishment of the underground syringe exchange program, the fear of being arrested for storing or carrying drug paraphernalia still led to significant reusing and sharing of syringes.

Numerous injection drug users interviewed by Human Rights Watch expressed fear of being caught by Lake County police with a sterile syringe. "I've never felt a fear like that before," said twenty-nine-year-old Tanya L., a client of the syringe exchange program.[168] She said she never carried syringes on her, not only because "I don't want to get busted with it," but also because "they treat you like real dirt if they find you with it." Tanya L.'s friend, thirty-one-year-old Melisa S., a satellite exchanger, said that injectors rarely took as many syringes as they needed, "because they're afraid to walk across town with them, or drive across town."[169]

Injectors in Lake County also expressed the view that in enforcing drug paraphernalia laws, local police seemed not to be motivated by genuine law enforcement concerns, but instead by a general disdain for drug users. "They look at you like you're lesser than dirt," Melisa S. said.[170] She recounted an incident in which a police officer pulled over her and a friend, a known drug user, and started insulting them. "He . . . tells him, you know, 'You're nothing but a criminal. You'll never be anything but a criminal. . . . We're going to get you if you break any law, you know . . . . If you spit on the sidewalk I'll arrest you, if you fart on the sidewalk I'll try to find a code [violation] to get you'."

Melisa S. added that "especially with a syringe," if the police find someone with drug paraphernalia "they treat you like real dirt. More so with syringes than even over drugs." One illustration of this phenomenon was provided by fifty-three-year-old Lorraine L., who said that she witnessed an incident in which a Lake County police officer confiscated a drug user's sterile syringes but, spitefully in her view, left him with his drugs.[171] "They'll leave the dope with you, but they'll take the syringes," she said, adding:

> Does that make sense to you? . . . Some people had gotten stopped in a car, and they had product and paraphernalia on them. . . . [The police] found the stuff on them, and snickering about it, and went about and gave it back to them, and said you can have that back but you can't have these, we're taking these. A couple packages[172] each. It hadn't been long since we had just gotten back from the needle exchange across town. You had to go scrounge up more or use one of the old ones you had at home, leftover.[173]

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[166] Human Rights Watch interview with Melisa S., Lake County, California, February 1, 2003; Human Rights Watch interview with Dustin P., Lake County, California, February 1, 2003.

[167] Human Rights Watch interview with Dustin P. February 1, 2003. Human Rights Watch researchers also observed this taking place at the home of a satellite exchanger in Lake County.

[168] Human Rights Watch interview with Tanya L., Lake County, California, February 1, 2003.

[169] Human Rights Watch interview with Melisa S., February 1, 2003.

[170] Human Rights Watch interview with Melisa S., Lake County, California, February 1, 2003.

[171] A similar incident was recounted by the coordinator of Lake County's syringe exchange program, who said that on one occasion Lake County police confiscated a supply of sterile syringes during a drug raid but left alone a visible supply of used syringes. Both of these incidents suggest an indifference to or ignorance of the health consequences of leaving drug users to inject with used injection equipment.

[172] New syringes often come in packages of ten, as in this case. Some syringe exchanges also band together individually wrapped syringes into packages for their clients to take with them.

[173] Human Rights Watch interview with Loraine L., Lake County, California, February 1, 2003.

Catherine D., thirty, whose husband was an injection drug user, said "you wouldn't believe some of the things" injectors did when they couldn't obtain sterile syringes. "People who use the same ones over and over and over and just beat themselves up because of that. Oh god, it's awful," she said.[174] She recalled having recently witnessed a friend trying to inject with a syringe she estimated was "a good couple of weeks" old.

> It looks like they are just physically hurting themselves, because they stay with the same one, because they don't have anywhere to turn it in, or exchange it, or get a new one. Today . . . a girlfriend of mine . . . her arms were just so bruised, and oh . . . I can't even describe it . . . and I was sitting there talking to her . . . but it was so hard for her to push the needle in, and, you know, I just wanted to cry. It was awful.

Thirty-six-year-old Rick V., who had been on parole until January 20, 2003, said that he risked going back to jail if Lake County police caught him with a sterile syringe. "I'm still nervous as hell," he said.[175] Because injectors often exchanged sterile syringes in places deemed by the police to be "high drug areas," Rick V. risked violating the conditions of his parole every time he went to obtain sterile syringes. "I don't want them to hunt me down, don't want to be around that area," he said. "Anywhere that's near a known syringe exchange. That's automatic grounds for a parole violation." Determined nevertheless to protect himself from HIV, Rick V. gave an account of sneaking through bushes and back roads to get to the syringe exchange program.

> Through trails . . . you got bush trails all over Clearlake. Cops are aware of them, too, you hide at the exits and entrances. You've got pathways through, like, the orchards and through cross-streets. Little hideaways all the way around town. . . . You're stopping at every bush. . . . I would hide in every bush, every time you see headlights, dive.

Asked where he felt safest obtaining syringes, Rick V. said, "my dresser drawer. Walking anywhere to get them, I'm nervous as hell. . . . It's still a misdemeanor, you can still go to jail for it."

The coordinator of Lake County's underground syringe exchange program, who insisted on anonymity, said the program relied on satellite exchangers to reach people like Rick V. who were scared to obtain new syringes. But program clients said that some satellite exchangers in Lake County were prevented by fear of police from delivering their syringes reliably. "They get spooked, and they hide stuff until you can't get to it, because they're worried of being raided," said Dustin P., fifty-nine, who had been injecting off and on for thirty-three years.[176] "It's not going to be a sure process every time, and there's a whole lot of people who are hesitant to talk about it, because they don't want anyone knowing they're doing it." Melisa S. added that when the syringe exchange was first established about three years earlier, "I was a little bit cautious of it at first, just like everybody else . . . of it being a set-up for the police, just another set-up. And a lot of people are still kind of scared. You know, they work with me, but they're scared to go any further than that with it, because any kind of authority figure here is looked at as the enemy."[177]

In January 2003 one of Lake County's satellite syringe exchangers, Rebecca Rosencrans,[178] was arrested and charged with possession of drug paraphernalia. Rosencrans, who is thirty-nine and is awaiting trial as of this writing, told Human Rights Watch that before her arrest she had exchanged approximately 600 syringes per month to several different people. On the day of her arrest, she said, police found a supply of new syringes in her motor home while investigating an unrelated offense.

> I had parked my motor home at a house on Cobb Mountain. There were all kinds of people staying out there who had problems with the law. The cops were looking for "Buzz" and refused

[174] Human Rights Watch interview with Catherine D., Lake County, California, February 1, 2003.
[175] Human Rights Watch interview with Rick V., Lake County, California, February 1, 2003.
[176] Human Rights Watch interview with Dustin P., February 1, 2003.
[177] Human Rights Watch interview with Melisa S., February 1, 2003.
[178] This is her real name.

> to believe I wasn't associated with him. They did their bully routine, said they had the right to search and that they would bring out their drug dogs.[179]

Rosencrans told the police she was a volunteer for Lake County's underground syringe exchange. "They acted like jerks about the needle exchange," she said. "I said I had needles and did needle exchange, and the guy said, 'So you help people break the law?' And I said, 'No, hep C is wild in this town. My friend just died of AIDS and I wanted to do a charitable act'." Rosencrans said that the police then confiscated her new syringes and arrested her on one count of possessing hypodermic needles without a prescription, and one count of distributing hypodermic needles without a license, both under California's Business and Professions Code. She spent three days in jail and was released with a trial date.

Human Rights Watch interviewed Sgt. Todd Miller, an officer with the Clearlake Police Department, about the attitude of local law enforcement toward syringe exchange programs and drug paraphernalia laws. Miller said that he was not aware that California law authorized syringe exchange in some circumstances. He viewed drug paraphernalia laws as assisting law enforcement officers in their efforts to control drug use, as a syringe is "a lot easier to find" on someone than a small amount of methamphetamine.[180] He described syringes as "a warning sign, saying this person is using drugs." Miller added that an "unbelievable hazard" in Clearlake was the disposal of used syringes in places where people could step on them and experience a needle-stick injury. Asked whether the legalization of syringe exchange might contribute to the safe disposal of syringes, Miller questioned whether people "spun on drugs" could dispose of syringes safely. He also suggested that people bleach their syringes as an alternative to legalizing syringe exchange, even though he confessed he did not know if bleach was effective at reducing the risk of HIV and HCV infection.

> What's wrong with getting a little bleach and water and bleaching out your needles? . . . I don't know if it's effective or not, but I think it is. Even then, what are you doing sharing your needles? There are no excuses. I'll buy them the damn peroxide, but I can't see someone walking by a school with a syringe, saying, "You can't arrest me, because it's legal." What kind of message is that sending to kids? With a hundred bucks I could buy enough hydrogen peroxide to clean every dirty needle in Clearlake.[181]

Despite legal obstacles and local opposition to syringe access programs, Lake County's underground syringe exchange program had made tremendous progress in reducing high-risk injection practices among the county's drug users. "A lot of people I know now only use them one time and dispose of them," said Melisa S., who distributed "at least 1000 syringes a month" to other injectors. At the same time, Melisa S. speculated that local authorities would continue to obstruct the syringe exchange program as long as they saw no value in protecting the lives of drug users. "That's the general attitude of the police force here," she said. "That's why they're not too concerned with the syringe exchange, because it's like, 'Why save a bunch of drug addicts?' And that's really sad, because it's not just drug addicts it saves."[182]

Alameda County: "A lesson in NIMBYism"[183]

In jurisdictions where syringe exchange is legal, finding an appropriate location for syringe exchange programs can ignite a political controversy involving community groups, planning commissions and local politicians. Such groups may have genuine fears about the impact of syringe exchange on public order, for example whether syringe exchange contributes to an increase in improperly discarded syringes in the street. As

[179] Human Rights Watch telephone interview with Rebecca Rosencrans, February 2, 2003.
[180] Human Rights Watch interview with Sgt. Todd Miller, Clearlake Police Department, February 1, 2003.
[181] Ibid. As noted above, chlorine bleach is effective at disinfecting syringes of HIV but not HCV. According to a 1994 study, hydrogen peroxide is not an effective alternative to bleach compared to liquid dish detergent or rubbing alcohol. N. Flynn et al., "In Vitro Activity…", Table 1.
[182] Human Rights Watch interview with Melisa S. February 1, 2003.
[183] "NIMBY" is an acronym for the popular phrase "Not In My Back Yard," referring to the attitude of community members who may support certain social services in theory but object to their being established in their neighborhoods.

discussed below, however, these fears are not supported by available public health research.[184] It is important that the process of implementing legal syringe exchange programs not privilege misplaced fears and misinformation over the health needs of injection drug users and other members of the community.

The story of Casa Segura, which in April 2003 obtained approval to use a new building from the Oakland city council, illustrates this dilemma.[185] Casa Segura is, as of this writing, Oakland's only syringe exchange program; it has traditionally operated syringe exchange sites in the neighborhoods of East Oakland, Fruitvale and West Oakland. Following its legalization in 1999, Casa Segura's drop-in center in Fruitvale began encountering significant opposition from community groups and political representatives of District 5, home to a Business Improvement District (BID) along the city's International Boulevard. This opposition culminated in 2001 in the burning down of the drop-in center in a case of suspected arson. Since that time, Casa Segura has operated a mobile syringe exchange while struggling to open a building that complies with rigid zoning ordinances set out by the Oakland city council and planning commission.

On February 1, 2002, after Casa Segura had purchased a new building in the city's District 6, city councilor Moses Mayne introduced a ninety-day "emergency ordinance" requiring organizations to obtain a major conditional-use permit if they intended to serve predominantly drug users. The ordinance required that programs targeting drug users notify surrounding residents and businesses, participate in a public hearing, and submit to any conditions imposed by the city council. Its enactment followed a period of organized opposition against the syringe exchange program, culminating in a meeting of the district's Neighborhood Crime Prevention Council in which syringe exchange supporters were booed loudly. An official of the Alameda County health department described Mayne's ordinance as "the most onerous ordinance ever adopted on organizations working with active injection drug users."[186]

In contrast to the city's response to its injection-driven AIDS epidemic, Mayne's ordinance proceeded with great speed. The ordinance was approved in February 5, two business days after it was introduced, and was extended for an additional ninety days on April 25. It subsequently went to the planning commission for permanent addition to the planning code. In April 2003, more than a year after the ordinance was first approved, Casa Segura obtained a conditional-use permit from the planning commission and received approval from the city council to operate.

Although Casa Segura eventually satisfied the requirements of the major conditional use permit, individuals interviewed by Human Rights Watch expressed concern that the substance of the emergency ordinance, as well as the process by which it was adopted, allowed community opposition to trump public health needs. While not insurmountable on their face, the ordinance's requirements did not apply to comparable health services that targeted populations other than drug users. As an assistant to an Alameda County supervisor put it, "People aren't looking at [services for drug users] as a health care service that's important to the community. They're looking at it as another liquor store . . . another prostitute on the corner."[187] Even where the requirements of the major conditional-use permit could be satisfied, activists said, the ordinance imposed an administrative

[184] See "Arguments Against Sterile Syringe Programs," below.

[185] The following account is based on Human Rights Watch interviews with the following individuals: Joy Rucker, director, Casa Segura, on January 16, 2003 (by telephone); Dan Abrahamson and Alexandra Cox, Drug Policy Alliance, on January 28, 2003; Susan Black, Alameda County Public Health Department, on January 29, 2003; Maria Chavez, Harm Reduction Coalition, on March 12, 2003 (by telephone); and Joe DeVries, assistant to county supervisor Nate Miley, on April 10, 2003 (by telephone). It is also based on numerous press accounts, including: Laura Counts, "HIV cause on hold till Segura gets permit," *Oakland Tribune*, February 7, 2002, [online] http://www.millsmontnews.com/SeguraGetsPermit-7feb02.htm (retrieved May 3, 2003); "City extends ban on home for drug program," *Oakland Tribune*, April 25, 2002, [online] http://www.millsmontnews.com/casasegura-tribune-25april02.htm (retrieved May 3, 2003); and Tali Woodward, "NIMBYs against sunshine: Oakland creates obstacles for drug-treatment centers," *San Francisco Bay Guardian*, May 3, 2002, [online] http://www.sfbg.com/36/22/news_drug_treat.html (retrieved May 3, 2003).

[186] Human Rights Watch interview with Susan Black, Alameda County Public Health Department, January 29, 2003.

[187] Human Rights Watch telephone interview with Joe DeVries, assistant to county supervisor Nate Miley, April 4, 2003.

burden on service providers that could cut into the services provided by syringe exchange programs and drug treatment centers.

Procedurally, the ordinance requiring the conditional-use permit was passed under a provision in Oakland's Sunshine Ordinance Act allowing the requirements of public notification and consultation to be waived in cases of "emergency." The stated basis for the emergency, however—that services for injection drug users "will pose a direct threat to the health or safety of the surrounding community, including children who may be seriously harmed by contact with a discarded needle"—not only lacked evidentiary support, but was withheld from the city council until after the ordinance was introduced. The only council member who voted against the ordinance, Nancy Nadel, described this justification as "a manufactured emergency."[188] One civil liberties attorney argued that the only exceptions to the public's "fundamental right to notice and to participate in government" existed where "failing to act immediately will result in dire consequences to the public health and well being," a standard that clearly had not been met in this case.[189]

One observer interviewed by Human Rights Watch, referring to the fact that local opposition had overshadowed the health needs of injection drug users, described the emergency ordinance process as "a lesson in NIMBYism."[190] Moses Mayne provided support for this view when he told the press, "I support Casa Segura, but I don't support them in this location."[191] The city council remedied the procedural defect when it voted on April 25, 2002 to extend the ordinance, at which point the Oakland office of the Drug Policy Alliance dropped a lawsuit it had threatened to file.

Oakland is not the only city in which legal syringe exchange programs are challenged through the municipal zoning process. In Los Angeles, Human Rights Watch interviewed volunteers and clients of Clean Needles Now, a syringe exchange program in Hollywood that had attracted opposition from community groups, including the Hollywood secession movement.[192] At the time of Human Rights Watch's visit, Clean Needles Now was operating out of a car near Santa Monica Boulevard, having just vacated a fixed site nearby. The move followed a complaint by a nearby resident that syringe exchange clients had been responsible for the burglary of his building.[193] As in Oakland, the result of having to move outside had been an increased police presence near the syringe exchange, as well as greater difficulty attracting clients. "Once they lost their building a couple times, I had trouble finding which street [the syringe exchange was on]," said forty-one-year-old Wade R., a client of Clean Needles Now.[194] He said that not long before, he had to share a syringe with his boyfriend because they could not find the syringe exchange. "I bleached it of course," Wade said. "I love him, but I'm not insane."

[188] The likely explanation for the emergency, activists said, was that councilor Mayne had been seeking reelection and introduced the ordinance, his first in a year, in response to a period of organized community opposition to the proposed syringe exchange. Mayne subsequently lost the election to Desley Brooks, who represents District 6 as of this writing.

[189] Tali Woodward, "NIMBYs against sunshine...", quoting attorney Thomas Burke. Even if the possibility of a child coming into contact with a discarded syringe met the standard of an "emergency" required by the sunshine law, there is no evidence that health services for drug users, including syringe exchange, increase the number of discarded syringes on the street. In fact, the opposite is more likely the case. See "Opposition to Syringe Access Programs," below.

[190] Human Rights Watch interview with Susan Black, January 29, 2003.

[191] Laura Counts, "HIV cause on hold...".

[192] Human Rights Watch interview with Shoshanna Scholar, Clean Needles Now, Los Angeles, California, February 6, 2003. See also, Judith Lewis, "Hollywood's Clean Needle Program Drawn Into Secession Politics," *LA Weekly*, November 1, 2002. The Hollywood secession movement is a coalition of residents, business leaders, community activists, educators, and neighborhood organizations dedicated to the creation of a City of Hollywood independent and separate from Los Angeles.

[193] Human Rights Watch interview with Shoshanna Scholar, February 6, 2003. The allegation that syringe exchange programs cause drug users to congregate in certain areas, thus increasing property theft and other crimes, is also examined in "Opposition to Syringe Access Programs," below.

[194] Human Rights Watch interview with Wade R., Los Angeles, California, February 6, 2003.

VII. INTERFERENCE WITH OTHER MODES OF SYRINGE ACCESS

Public health experts and injection drug users in California consistently stated that syringe exchange programs are a necessary but insufficient component of a comprehensive HIV prevention strategy for injection drug users, their sex partners and their children. Just as important as syringe exchange, witnesses said, is having a legal system that does not prohibit drug users from purchasing syringes in a pharmacy without a medical prescription. As of this writing, California is one of five states in the United States that requires a prescription to purchase a hypodermic syringe; the others are New Jersey, Pennsylvania, Massachusetts, and Delaware.

It is technically possible for some injection drug users to obtain a medical prescription to purchase sterile syringes, thus complying with existing pharmacy laws. Indeed, experts have argued that prescribing and dispensing injection equipment to prevent HIV infection are "ethical, clinically appropriate, and fully consistent with current public health guidelines on disease prevention."[195] In June 2002, the American Medical Association adopted a resolution that supported "the ability of physicians to prescribe syringes and needles to patients with injection drug addiction and in conjunction with addiction counseling in order to help prevent the transmission of contagious diseases."[196] However, for individuals who either cannot obtain a medical prescription or do not have access to syringe exchange programs, nonprescription pharmacy sale of syringes is a life-saving alternative.

The need for alternatives to syringe exchange

As Human Rights Watch's research in California indicates, there are numerous reasons why syringe exchange programs will never be a sufficient source of sterile syringes for injection drug users, even if they become legal in all fifty states. Some injectors, such as thirty-four-year-old Ted T. in Oakland, would be deterred from associating with a health service known to cater to users of illegal drugs. "I didn't go to needle exchanges for a long time, because I thought there was a stigma attached to it," Ted T. told Human Rights Watch. "Or somebody was going to see me in a big line out the door or something and go, 'Okay, well there's a drug user'."[197] Other injectors said that they did not want to be publicly identified with an HIV prevention program. "'AIDS? That's not me. I don't have sex with men'," said former user and outreach worker Hector Barrera, describing the attitude of many of his clients towards HIV prevention programs.[198] The syringe exchange program coordinator in Lake County spoke of an affluent friend who "can't somehow bring herself" to use syringe exchange.

> There are injectors in very affluent places in this county. I know one, and she won't come and exchange. We are friends, we work together, and . . . she says, "I can't." She shares. She told me, and I live around the corner from her, and she could come to my house day or night, and I would always. I think [she shares] every time she injects, because she doesn't inject herself. She shares with her ex-partner and she shares with his family.[199]

Susan Black, a public health officer in Alameda County, sympathized with injection drug users who felt reluctant to use a service they found inconvenient and stigmatizing. "You don't expect to go to a van on the street for a pap smear," Black said. "Syringe access has to become like the rest of health care."[200]

While it is not certain that injectors who resist syringe exchange programs would buy syringes in the pharmacy if that were a possibility, the convenience of pharmacy sales would make a difference to some. One man interviewed by Human Rights Watch said he drove three and a half hours to a syringe exchange in San

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[195] S. Burris, P. Lurie, D. Abrahamson, and J. Rich, "Physician Prescribing of Sterile Injection Equipment To Prevent HIV Infection: Time for Action," *Annals of Internal Medicine*, vol. 133 (2000), pp. 218-226.
[196] C. Marwick, "Prescribing Sterile Needles Is Not Only Beneficial but (Mostly) Legal," *Journal of the American Medical Association*, vol. 284, no. 10 (2000).
[197] Human Rights Watch interview with Ted T., Hayward, California, January 25, 2003.
[198] Human Rights Watch interview with Hector Barrera, Sacramento, California, February 4, 2003.
[199] Human Rights Watch interview with coordinator of Lake County syringe exchange, Clearlake, California, February 1, 2003.
[200] Human Rights Watch interview with Susan Black, January 29, 2003.

Francisco in order to pick up sterile syringes for his wife. Numerous satellite exchangers said that they picked up syringes for friends or family members who did not find the syringe exchange accessible. And some injectors told Human Rights Watch that they had in the past bought syringes in pharmacies, either in states other than California or in local pharmacies that allowed over-the-counter sale of syringes.

Another advantage of nonprescription pharmacy sale of syringes is that they provide added impetus to expand options for the safe disposal of syringes[201] without holding injection drug users to strict protocols that may jeopardize their health. Such protocols include "one-for-one" exchange (requiring injectors to turn in as many syringes as they receive) and "ten and under" caps (limiting the number of syringes that may be distributed) which, in the view of experts, "reflect political rather than public health imperatives."[202] At a syringe exchange program in Los Angeles, outreach worker Dyhan Cardona told Human Rights Watch of the difficulty of serving clients effectively under such rules. "If you get a new person with no syringes, are you going to tell them, 'No'?," she asked. "If I say, 'Only one', and it stops up,[203] they're still going to use somebody else's."[204] Many syringe exchange programs visited by Human Rights Watch offered new clients a "starter pack" of more than one syringe, but those that did sometimes placed caps on the total number of syringes that could be exchanged. In such cases, Cardona said, clients had no incentive to return more than the maximum number of number of syringes that could be distributed.

Cardona's concerns are corroborated by Burris and colleagues, who concluded that one-for-one policies and caps "may have in some instances a significant impact on the effectiveness of official [syringe exchange programs], and may explain why illegal or unofficial [syringe exchange programs] may continue to operate in states that have authorized legal programs."[205] Cardona added that policies limiting syringe distribution were dictated in part by fiscal considerations, which in turn may be linked to the federal government's continued ban on syringe exchange funding.[206] This demand for additional avenues of syringe access may be met at no cost to the state by allowing nonprescription pharmacy sale of syringes.

Opposition to nonprescription pharmacy sales in California

To date, proponents of expanded syringe access have not been able to secure legislation in California that would authorize the nonprescription pharmacy sale of sterile syringes. Opponents of nonprescription pharmacy sales have continued to argue that such legislation is not needed because of the existence of syringe exchange programs. In a letter to Governor Gray Davis urging a veto of SB 1785, legislative counsel John Lovell summarized these concerns on behalf of the California Police Chiefs' Association and the 4,000-member California Peace Officers' Association:

> The best that can be said about this bill is that it is unnecessary. California already has a statutory scheme for needle distribution programs. Those statutory provisions were enacted as Assembly Bill 136 in 1999 and had the support of both the law enforcement and public health communities.[207]

Sacramento county health officer Glennah Trochet described this as "the hidden agenda of supporting AB 136 globally so that you can go jurisdiction by jurisdiction and oppose it locally." Indeed, in a letter sent to all county boards of supervisors on May 8, 2000, the president of the California Narcotic Officers' Association, Walt

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[201] See, e.g., Susan J. Klein, George R. Estel, Alma R. Candelas, and Hope A. Plavin, "Promoting Safe Syringe Disposal Goes "Hand in Hand" with Expanded Syringe Access in New York State," *Journal of the American Pharmaceutical Association*, vol. 42, no. 6, Suppl. 2 (2002), pp. S105-S107.

[202] Burris et al., "Syringe Access Law...", pp. 33-34.

[203] "Stops up" means the syringe gets clogged by solid matter or impurities in the injected preparation.

[204] Human Rights Watch interview with Dyhan Cardona, Bienestar syringe exchange, Los Angeles, California, February 7, 2003.

[205] Burris et al., "Syringe Access Law...", p. 34.

[206] See "IV. Background," above.

[207] Letter from John Lovell, Government Relations Manager for the California Peace Officers' Association and the California Police Chiefs' Association, to Governor Gray Davis, September 3, 2002.

Allen III, cautioned against any declaration of a local emergency that would authorize syringe exchange. "I need to be clear with you," Allen wrote. "[T]he California Narcotic Officers' Association strongly opposes needle exchange programs."[208] The major law enforcement associations in California also opposed AB 136's earlier version, AB 518, which would have protected both providers and users of syringe exchange from prosecution for possession and distribution of drug paraphernalia.[209]

[208] Letter from Walt Allen III, president of the California Narcotic Officers' Association, to members of the board of supervisors of Sacramento County, May 8, 2000.

[209] Letter from California State Sheriffs' Association, California Police Chiefs' Association, California Peace Officers' Association, California Narcotics Officers' Association, and Association for Los Angeles Deputy Sheriffs to Assembly Member Kerry Mazzoni, September 3, 1999.

VIII. ARGUMENTS AGAINST STERILE SYRINGE PROGRAMS

Arguments by U.S. government officials

In spite of overwhelming scientific evidence to the contrary, many police officers and public officials in the United States, including some interviewed by Human Rights Watch, maintain that syringe access programs are not an effective or appropriate method of HIV prevention. These officials frequently cite concerns either about the impact of syringe access programs on public order, or about the symbolic message sent by allowing injection drug users unimpeded access to syringes. All of these arguments rely on erroneous factual premises or moral prejudices against injection drug users. None justifies putting injection drug users at risk of premature and preventable death as a result of the reuse and sharing of syringes.

Concerns related to public order

Some opponents of syringe deregulation cite concerns regarding drug-related crime and public order. The first of these concerns, cited most notably by Governor Gray Davis in his veto of SB 1785, is that deregulation of sterile syringes will increase the number of improperly discarded syringes in public places. In fact, the available evidence suggests the opposite. Studies in Portland, Oregon in 1993 and Baltimore, Maryland in 1997 found similar or decreased numbers of improperly discarded syringes with increased access to sterile syringes.[210] A two-year follow-up study in Baltimore found that the mean number of needles per 100 "trash items" per block had decreased from 2.42 before the syringe exchange program opened to 1.30 two years later.[211] Accounts from Human Rights Watch's witnesses suggest that criminal penalties for syringe possession increase the likelihood of improper syringe disposal because they discourage drug users from carrying syringes to a safe disposal location.[212] Syringe exchange and pharmacy sale programs, when combined with the decriminalization of syringe possession, provide drug users with a safe and nonpunitive method of syringe disposal.[213]

A second issue related to public order is that syringe access initiatives will increase crime by encouraging drug users to congregate in neighborhoods where syringes are distributed and exchanged. This argument has been studied at least three times (once in a review of sixteen syringe exchange programs and the other times in Baltimore and New York), and no relationship between syringe access and increased crime, drug-related or otherwise, has been found.[214] In the Baltimore study, arrest data from before and after the opening of a syringe exchange program were compared and analyzed according to proximity to the program. The data found no change in crime levels within a half-mile radius of the syringe exchange program compared to other areas of the city. In fact, break-ins and burglaries, which are considered to be economically motivated crimes related to drug use, fell by 11 percent in syringe exchange areas but increased by 8 percent in non-syringe exchange areas.[215]

Police officials in California nevertheless told Human Rights Watch that drug paraphernalia laws provided an important tool of narcotics enforcement and street policing. Finding individuals with sterile syringes, they said, might allow officers to establish probable cause to search for possession of narcotics, or to "get them

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[210] See P. Lurie and A.L. Reingold, eds. *The public health impact of needle exchange programs...*, p. 388, and M.C. Doherty, R.S. Garfein, D. Vlahov, et al., "Discarded needles do not increase soon after the opening of a needle exchange program," *American Journal of Epidemiology*, vol. 145, no. 8 (1997), pp. 730-737, cited in J. Ruiz-Sierra, "Research Brief: Syringe Access."

[211] See M.C. Doherty, B. Junge, P. Rathouz, R.S. Garfein, E. Riley, and D. Vlahov, "The Effect of a Needle Exchange Program on Numbers of Discarded Needles: A 2-Year Follow-Up," *American Journal of Public Health*, vol. 90 (2000), p. 936, cited in Burris et al., "Syringe Access Law...", p. 60.

[212] See "Interference with safe syringe disposal," above. See also, Scott Burris, Joseph Welsh, Mitzi Ng, Mei Li, and Alyssa Ditzler, "State Syringe and Drug Possession Laws Potentially Influencing Safe Syringe Disposal by Injection Drug Users," *Journal of the American Pharmaceutical Association*, vol. 42, no. 6, Suppl. 2 (2002), pp. S94-S98.

[213] See S. Burris et al., "Syringe Access Law...", pp. 60-61.

[214] Ibid., pp. 59-60.

[215] Steffanie A. Strathdee, "No evidence that needle exchange increases crime or encourages drug use among youth," press briefing, March 29, 1999.

off the street" by citing them with a misdemeanor.[216] If a neighborhood started experiencing a rash of burglaries, the police might attempt to restore a sense of order through lower tolerance for minor infractions; as Lt. Ben Fairow put it, police sergeants might "do a low tolerance of what they call quality-of-life crimes. They'll start citing people for needles and stuff like that."[217] Testimony from Human Rights Watch's witnesses also suggested that police were using syringe possession to clear the streets of homeless people, a policy that would be unconstitutional were it not for the existence of drug paraphernalia laws.[218] Lt. Fairow admitted that these were at best temporary solutions. "It is essentially a stopgap measure," he said. "Arresting somebody for having a crack pipe does not solve their problem or our problem, because they get back out . . . . But you know there is no long-term solution so far, no coordinated long-term solution."

The problem with using syringe regulations as a tool of quality of life policing is that, in many cities, such a policy conflicts with an established public health policy favoring the implementation of syringe exchange. Even where syringe exchange has not been legalized, the fact that drug paraphernalia laws are being used to achieve otherwise unconstitutional ends—that is, the arrest of persons based on their status of being homeless—erodes any justification in their support. In all cases, the marginal value of this additional tool of street policing must be weighed against the potentially life-threatening consequences of penalizing people for carrying sterile syringes. "We have a vehicle code that's literally that [about two inches] thick," Lt. Fairow told Human Rights Watch, referring to the countless infractions police may enforce to improve a neighborhood's quality of life. "We use all kinds of other things—jaywalking, speeding, unlicensed vehicle, every tool at our disposal—to try and have a positive impact out there." Making the possession of sterile syringes a misdemeanor, in addition to the hundreds of other misdemeanors police officers have at their disposal, therefore adds little to public safety and interferes with life-saving public health practice.

Concerns related to the symbolism of syringe access

Dave Cox, Republican Party leader in the California State Assembly (the lower house of the state legislature), expressed a widely held view when he wrote to Governor Davis in September 2002 that "[p]ermitting a pharmacist to sell a needle or syringe to any person eighteen years of age or older without a prescription would send the wrong message about illegal drug use. We should not give up on the need for treatment for drug addicts."[219] Cox's sentiments echoed those of the former U.S. Office of National Drug Control Policy director, Barry McCaffrey, whose views on syringe access influenced President Clinton's decision not to allow federal money to be used for syringe exchange services. "We have a responsibility to protect our children from ever falling victim to the false allure of drugs," McCaffrey said in 1998. "We do this, first and foremost, by making sure that we send them one clear, straightforward message about drugs: they are wrong and they can kill you."[220] Other opponents of syringe access programs have characterized the programs as "part of the intolerable message to our nation's children . . . that illegal drug use is an acceptable way of life," and as "an endorsement by the government of the insidious and false notion that injectable drug use can be done 'safely'."[221]

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[216] Human Rights Watch interview with Capt. Ron Roth, San Francisco, California, January 28, 2003; Human Rights Watch interview with Lt. Ben Fairow, Oakland, California, January 28, 2003.

[217] Human Rights Watch interview with Lt. Ben Fairow, Oakland, California, January 28, 2003.

[218] In *Papachristou v. City of Jacksonville*, 92 S. Ct. 839, the U.S. Supreme Court declared a statute criminalizing "vagrancy" as void for vagueness. A California anti-camping ordinance that had the effect of punishing homeless people based on their status was struck down in *Tobe v. City of Santa Ana*, 27 Cal. Rptr. 2d 386 (Cal. Ct. App. 1994).

[219] Letter from Dave Cox, Assembly Republican Leader, to Gov. Gray Davis, September 11, 2002.

[220] "Drug Czar Statement on Administration Decision to Continue Ban on Use of Federal Funds for Needle Exchange Programs," Office of National Drug Control Policy press release, Washington, D.C., April 20, 1998. McCaffrey's statements, in turn, echoed those of Robert Martinez, director of the ONDCP under President George H.W. Bush. "Distributing needles undercuts the credibility of society's message that drug use is illegal and morally wrong," Martinez said in 1994. He added that HIV/AIDS "should not undermine our determination to win the war on drugs." In an early controversy over syringe exchange in Boston, Catholic Archbishop Bernard F. Law was quoted in *The New York Times* as saying: "The answer to drugs must be an unequivocal no. It is difficult to say that convincingly while passing out clean needles." See "Can Clean Needles Slow the AIDS Epidemic?," *Consumer Reports*, vol. 59 (1994), p. 466; Allan R. Gold, "Bostonians Split on Mayor's Idea of Needle Swap," *The New York Times*, March 24, 1988.

[221] See Sean Scully, "House bans funds for free needles," *Washington Times*, April 30, 1998, quoting Rep. Gerald Solomon (New York); Peter Verniero, "Preserving New Jersey's Drug Possession and Paraphernalia laws: A Law Enforcement

The argument that syringe access programs "send the wrong message about illegal drug use" is difficult to comprehend given that numerous studies have shown that syringe access programs do not result in increased drug use and in fact provide users with referrals into treatment for drug addiction. The limited evidence on the symbolic impact of syringe exchange programs suggests that these programs deter, rather than promote drug use. A 1999 survey of high school students in Baltimore, Maryland found that the majority of students did not perceive that seeing drug users utilize syringe exchange promoted illegal drug use. Almost half of the survey respondents perceived seeing drug users utilize syringe exchange as deterring illegal drug use, leading the authors of the study to conclude that "the effect of [syringe exchange programs] on adolescent's attitudes appears to be more similar to factors related to drug prevention rather than drug promotion."[222]

Moreover, there are ample ways to discourage illegal drug use without consigning drug users to a preventable death from the reuse and sharing of syringes. Evidence-based educational programs, as well as some mass media campaigns, can be effective (and nonfatal) methods of deterring illegal drug use. Supplementing these programs with restrictions on sterile syringes is tantamount to discouraging prostitution by regulating condom use, or sending an antismoking message by banning low-nicotine cigarettes. Each of these devices, like sterile syringes, helps people to mitigate the health risks of actions that governments have a policy of deterring. Restricting their use does not effectively deter the underlying act, but simply renders the act more dangerous and potentially lethal.

In some cases, objections to syringe programs stem more from stereotypical attitudes toward injection drug users than from legitimate fears about increasing drug use. Art Croney, executive director of the Committee on Moral Concerns, expressed this attitude in a letter urging Governor Davis to veto SB 1785.

> The idea [of SB 1785] is to slow the spread of AIDS. It doesn't work. Drug addicts are not clear-thinking, responsible citizens. They don't brush their teeth and gargle twice a day. They don't wash their hands before every meal. And they don't mind sharing needles with their friends, even if clean needles are available.[223]

A different story emerges from the testimony of drug users who told Human Rights Watch of the daily risks they take to protect their health and well-being. Individuals who risk a jail sentence to use a sterile syringe, as dozens of injectors testified to doing, are clearly trying to act responsibly. To the extent that restrictions on syringe access are predicated on stereotypes about the respectability and moral responsibility of drug users, they are discriminatory and unsustainable.

United Nations anti-drug conventions

Multilateral agreements on the control of illicit drug use also fail to recognize the importance of syringe access programs in preventing the spread of infectious disease. These agreements generally contain weak language on the treatment and prevention of drug use while obliging states to adopt strict law enforcement measures. The three U.N. conventions related to drug policy are the Single Convention on Narcotic Drugs of 1961 and its additional protocol of 1972; the Convention on Psychotropic Substances of 1971; and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.[224] Between them, the three conventions define both "dangerous" narcotic drugs and "drugs of abuse" and urge states parties to "adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed

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Response to the Legislative Proposals to Decriminalize the Possession of Hypodermic Syringes Intended for use to Inject Illicit Drugs" (Trenton, N.J.: Department of Law and Safety, 1998), p. 2, cited in Robert L. Maginnis, "1999 Update: Needle Giveaway Debate," Family Research Council, [online] http://www.frc.org/insight/is99b2dr.html (retrieved June 8, 2000).

[222] Steffanie A. Strathdee, "No evidence that needle exchange increases...".

[223] Letter from Art Croney, Executive Director/Lobbyist of the Committee on Moral Concerns, to Governor Gray Davis, September 4, 2002.

[224] Single Convention on Narcotic Drugs, 1961, as amended by the 1972 protocol amending the Single Convention on Narcotic Drugs (entered into force December 13, 1964, protocol entered into force August 8, 1975); Convention on Psychotropic Substances of 1971 (entered into force August 16, 1976); United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (entered into force November 11, 1990).

intentionally,"[225] the possession of illicit drugs. The conventions also oblige states parties to establish rehabilitation and social integration services for drug users, and to take appropriate measures to reduce demand for illicit drugs.

The three international drug conventions contain no language on harm reduction or disease prevention. As the International Harm Reduction Development (IHRD) program of the Open Society Institute has noted, these agreements "were developed decades before HIV/AIDS was identified, and do not appropriately address the realities of today's growing pandemic." As a result, IHRD notes, the conventions "directly undermine HIV prevention efforts by discouraging countries from implementing effective, realistic and compassionate public health measures."[226]

[225] Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, E/CONF.82/15, (December 20, 1988), art. 3.

[226] "UN Drug Control Efforts Contribute to HIV Explosion: Russia and Ukraine see 1800% increase in infections through injection drug use," International Harm Reduction Development press release, April 14, 2003. See also, International Harm Reduction Development, "Unintended Consequences: Drug Policies Fuel the HIV Epidemic in Russia and Ukraine" (2003), pp. 5-6.

IX. PROTECTING ONE'S HEALTH: A HUMAN RIGHT

Individuals have a human right to obtain life-saving health services without fear of punishment or discrimination. This report documents three broad forms of state interference with proven and effective health services: interference with legal syringe exchange programs by way of police action or zoning regulations; prohibition of syringe exchange programs; and restrictions on alternative modes of syringe access such as nonprescription pharmacy sale of syringes. These actions all directly obstruct injection drug users' ability to protect themselves from infectious disease and other health complications associated with drug use. For drug users with substance-related disabilities, whom international human rights law protects from disability-based discrimination, syringe access regulations pose a barrier to a wide range of essential health services and thus compromise their right of equal access to health care.

The right to obtain health services without fear of punishment

The International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been signed but not ratified by the United States, recognizes in article 12 "the right of everyone to the enjoyment of the highest attainable standard of health."[227] The ICESCR requires all the steps necessary for "the prevention, treatment and control of epidemic . . . diseases," which include "the establishment of prevention and education programmes for behaviour-related health concerns such as sexually-transmitted diseases, in particular HIV/AIDS."[228] Realization of the highest attainable standard of health not only requires access to a system of health care; it also, according to the U.N. Committee on Economic, Social and Cultural Rights, requires states to take affirmative steps to promote health and to refrain from conduct that limits people's abilities to safeguard their health.[229] Laws and policies that "are likely to result in . . . unnecessary morbidity and preventable mortality" constitute specific breaches of the obligation to respect the right to health.[230]

The government's penalizing people for attempting to protect themselves from a deadly epidemic is blatant interference with the right to the highest attainable standard of health. There is no dispute as to the effectiveness of sterile syringes at preventing HIV, hepatitis C and other blood-borne infections. Public health experts are unanimous in the view that providing access to sterile syringes neither encourages drug use nor dissuades current users from entering drug treatment programs. The available evidence suggests that syringe access interventions may lead to abstinence by providing a gateway into drug treatment through referral by syringe exchange providers. In reality, the scarcity of treatment programs and the very nature of drug use guarantee that there will always be people who either cannot or will not stop using drugs. Penalizing this population for using sterile syringes amounts to prescribing death as a punishment for illicit drug use.

Multilateral organizations such as the World Health Organization (WHO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) have issued numerous non-binding guidelines and declarations on combating the spread of HIV through public health approaches to drug use. A WHO Fact Sheet on HIV prevention lists syringe exchange and pharmacy sale of syringes as "the two strategies that have proven effective" at reducing HIV transmission among injection drug users.[231] At the June 2001 United Nations General Assembly Special Session (UNGASS) on HIV/AIDS, member states included in their final declaration of commitment a pledge to make available by 2005 "a wide range of prevention programs" including "sterile injecting equipment" and "harm-reduction efforts related to drug use."[232] The U.N. Commission on Narcotic Drugs (CND) has failed

[227] ICESCR, art. 12(2)(c).
[228] Committee on Economic, Social and Cultural Rights, "General Comment No. 14: The right to the highest attainable standard of health," November 8, 2000, para. 16. The Committee on Economic, Social and Cultural Rights is the U.N. body responsible for monitoring compliance with the International Covenant on Economic, Social and Cultural Rights.
[229] Ibid., para. 8.
[230] Ibid., paras. 33, 50.
[231] World Health Organization, "Fact Sheet 12: Strategies for Prevention of HIV," [online] http://www3.who.int/whosis/factsheets_hiv_nurses/fact-sheet-12/ (retrieved June 12, 2003). A more detailed WHO endorsement of harm reduction strategies, including syringe access interventions, can be found at http://www.who.int/hiv/topics/harm/reduction/en/ (retrieved June 12, 2003).
[232] United Nations General Assembly, "Declaration of Commitment on HIV/AIDS," June 27, 2001.

to support such efforts, but in March 2002 it adopted a resolution on HIV and drug use that "encourages Member States to implement and strengthen efforts to raise awareness about the links between drug use and the spread of HIV, hepatitis C and other blood borne viruses" and "further encourages [them] to consider the potential impact on the spread [of these diseases] when developing, implementing and evaluating policies and programs for the reduction of illicit drug demand and supply."[233]

The 1998 UNAIDS/Office of the High Commissioner for Human Rights (OHCHR) International Guidelines on HIV/AIDS and Human Rights, which represent the consensus of governmental and nongovernmental experts as well as networks of people living with HIV/AIDS, recommend that national public health laws "fund and empower public health authorities to provide a comprehensive range of services for the prevention and treatment of HIV/AIDS, including . . . clean injection materials."[234] The Guidelines further urge that domestic criminal laws not impede efforts to reduce HIV transmission among injection drug users; specifically, the authorization of syringe exchange programs and the repeal of prohibitions on syringe possession should be considered.[235] These nonbinding recommendations, however, are not reflected in the multilateral antidrug conventions discussed above.

The right of equal access to health care for people with disabilities

In General Comment no. 14 on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights repeatedly stresses the importance of equality of access to health care without discrimination.[236] According to the committee, "health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds." The prohibited grounds include both "physical or mental disability," "health status," and any "other status" that has "the intention or effect of nullifying or impairing the equal enjoyment or exercise of the enjoyment or exercise of the right to health."[237] General Comment no. 14 echoes the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, which require states to ensure that persons with disabilities "are provided with the same level of medical care within the same system as other members of society."[238]

[233] Commission on Narcotic Drugs, "Human immunodeficiency virus/acquired immune deficiency syndrome in the context of drug abuse," Resolution 45/1, March 15, 2002.
[234] OHCHR/UNAIDS, HIV/AIDS and Human Rights: International Guidelines (1996), Guideline 3, para. 28(a).
[235] Ibid., Guideline 4, para. 29(d).
[236] Committee on Economic, Social and Cultural Rights, "General Comment No. 14," paras. 12(b), 18, 26.
[237] This strengthens the guarantee of nondiscrimination in Article 2(2) of the ICESCR, which states that "States Parties… undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." In its General Comment No. 5 on Persons with disabilities, the Committee on Economic, Social and Cultural Rights notes that "other status" in article 2(2) "clearly applies to discrimination on the grounds of disability" (para. 5). Although the United States has not ratified the ICESCR, discrimination on the basis of disability is prohibited by domestic law and may also be prohibited under international conventions to which the United States is party. Article 26 of the ICCPR requires states parties to prohibit discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status." While disability is not specifically enumerated in article 26, its mention in other international treaties and in human rights jurisprudence suggests it is properly considered an "other status" for the purpose of the ICCPR. The Human Rights Committee, in its Concluding Observations for Australia in 2000, used the antidiscrimination provisions of the ICCPR to emphasize states parties' duty to protect the disabled. Discrimination on the basis of disability has also been recognized and condemned by the Committee on the Elimination of Discrimination Against Women, particularly in relation to the obstacles faced by disabled women and girls in establishing their reproductive and sexual rights. See Committee on the Elimination of Discrimination Against Women, "General Recommendation 18: Disabled Women" (10th Sess., 1991).
[238] Standard Rules on the Equalization of Opportunities for Persons with Disabilities, A/RES/48/96, 85th Plenary Meeting 20 December 1993, rule 2, para. 3.

Many, though not all, injection drug users suffer from amphetamine dependence, opioid dependence, and other substance-related disabilities.[239] These conditions, like alcoholism, are characterized as diseases by the American Medical Association.[240] The Americans with Disabilities Act (ADA), which restricts disability-based discrimination in employment, government services, and public accommodations, includes drug and alcohol addictions as disabilities. However, the ADA only covers people with drug addiction who are in recovery, not current users of illegal drugs.[241] U.S. courts have recognized addiction as a "chronic and relapsing disease with prolonged effects on the brain."[242] Addiction is a defining personal characteristic that for many is unchangeable. Like people distinguished by their gender, race, or sexual orientation, people with substance-related disabilities have historically encountered many forms of stigma, hatred, and discrimination in their daily lives.

In its General Comment no. 5 on persons with disabilities, the Committee on Economic, Social and Cultural Rights sets forth a broad definition of disability-based discrimination:

> For the purposes of the Covenant, "disability-based discrimination" may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights. Through neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities.[243]

The Committee on Economic, Social and Cultural Rights recognizes that people with disabilities may be prevented from realizing their right to the highest attainable standard of health by laws that neglect, ignore, or disparage their condition. For example, a law that prohibited certain kinds of prenatal care (such as the use of midwives) might, because it neglected the health needs of pregnant women, be considered a form of disability-based discrimination. Similarly, if drug paraphernalia laws had the effect of denying insulin-dependant diabetics access to sterile injection equipment, few would doubt that they discriminated on the basis of physical disability. This would be particularly true if the law stemmed from "neglect, ignorance, prejudice and false assumptions" about the health needs of the affected population.

Injection drug users with substance-related disabilities are a population with distinct yet often neglected health needs. Their condition requires specific kinds of primary health care such as treatment for wounds and abscesses, as well as special emergency care in the case of potentially fatal overdose. Substitution therapy, including methadone, is another form of health care that is uniquely suited to people with substance-related disabilities. Certain kinds of disease prevention, such as vaccinations for hepatitis A and B, testing and counseling for sexually transmitted diseases, and programs that provide access to sterile syringes, are also recommended and effective health interventions for this population.

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[239] According to the American Psychiatric Association, amphetamine and opioid dependence are characterized by a destructive pattern of amphetamine or opioid use, leading to significant social, occupational or medical impairment. Other diagnostic criteria include amphetamine or opioid tolerance; withdrawal; greater use than intended; unsuccessful efforts to cut down or control use; great deal of time spent using or recovering from hangovers; reduction in social, recreational or occupational activities; and continued use despite knowledge of significant problems. See *Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition* (DSM-IV) (American Psychiatric Association, 1994), [online] http://www.psychologynet.org/dsm.html (retrieved May 22, 2003).

[240] The history and acceptance of the disease model for addictions is described in Gregory E. Skipper, M.D., "The Addicted Attorney: The Counselor Needs a Counselor," 62 Ala. Law. 130, 130-32 (2001).

[241] 42 U.S.C. section 12114; see also, *Hoffman v. MCI Worldcom Communications, Inc.*, 178 F. Supp. 2d 152, 155 (D. Conn. 2001), stating that "drug and alcohol addiction satisfies the disability prong" of the ADA, but rejecting an ADA claim because the plaintiff was a drug user at the time of dismissal from employment.

[242] See, e.g., *Robinson v. California*, 370 U.S. 660 (1962).

[243] Committee on Economic, Social and Cultural Rights, "General Comment No. 5," para. 15.

Whatever the intent of syringe access laws, their precise impact is to interfere with these health services.[244] Denied access to sterile syringe programs, many people with substance-related disabilities find themselves unable to obtain sterile syringes and protect themselves from fatal diseases. They live with untreated wounds, poor access to health information, and sporadic testing and counseling for sexually transmitted diseases. Lacking the support and ancillary services provided by sterile syringe programs, they might be less likely to obtain treatment for their addiction. "Programs like this give me hope," one syringe exchange client in San Diego told Human Rights Watch. "I went from being a suicidal, paranoid scumbag to someone who felt better about himself."[245]

Syringe access laws also promote the idea that injection drug users do not care about their health, thus contributing to the stigmatization of a vulnerable and marginalized population. The principal justification for banning sterile syringe programs—that they encourage drug use—ignores both the purpose and effect of these programs and the health needs of those who use them. Far from sending a "zero tolerance" message about drug use, syringe access laws imply that injection drug users are a population that is unworthy of basic health care and disease prevention.

[244] The fact that certain addictive substances may be illegal, or that many drug users are not in recovery, does not change the discriminatory impact of denying injectors equal access to HIV prevention services and other forms of health care. The illegality of controlled substances justifies sanctions against the possession and distribution of those substances; it does not provide a rational basis for restricting access to health programs that in no way contribute to drug use or drug-related crime.

[245] Human Rights Watch interview, San Diego, California, February 5, 2003.

X. CONCLUSION

In vetoing legislation that would have authorized the nonprescription pharmacy sale of sterile syringes, California Governor Gray Davis stated that he was "committed to the underlying goal of the bill which is to reduce the transmission of HIV and hepatitis C among injection drug users, and . . . proud of the progress we have made in combating these two diseases."[246] Davis made special mention of AB 136, which, he said, brought together law enforcement and public health officials to decriminalize supervised syringe exchange programs. He also noted the financial commitment his government had made to HIV and hepatitis C prevention and treatment.

It is difficult to reconcile these pronouncements with California's continued hostility to syringe access interventions. For many injectors in California, syringe regulations still present an unacceptable choice between breaking the law and engaging in high-risk, potentially fatal behavior. "I'd rather go to jail than get AIDS," said Elnora D., asked why she assumes the risk of taking syringes to and from syringe exchange programs.[247] Others, like Cody F., will make the more fatal choice: "I'm more afraid of carrying syringes than sharing them," he says.[248] As long as the authorities systematically undermine syringe exchange programs and oppose further syringe access measures, California's financial investment in HIV and hepatitis C prevention will be jeopardized.

Syringe access law in California is characterized by contradiction and political compromise, not by reason and respect for human rights. Local jurisdictions are forbidden from authorizing syringe exchange, a proven form of HIV prevention, until the disease has already reached emergency proportions. Agents of the state are permitted to distribute syringes in certain jurisdictions, but the individuals to whom they distribute the syringes are forbidden from possessing them. Outreach workers all over California freely provide information on safe injection, but only in selected jurisdictions may they give drug users the tools to put that information to use. Drug users are ordered to return used syringes for safe disposal, but they can be arrested for possession of drug paraphernalia on their way to the biohazard disposal container.

Such hypocrisy not only offends common sense; it may prove fatal to people who inject drugs, their sex partners, their children, and others whose HIV infection is linked to injection drug use. It has been estimated that thousands of HIV infections, and indeed millions of dollars in health care costs, could have been avoided in the United States had the federal government implemented syringe exchange nationally in the 1980s. California, with its patchwork of legal, illegal, and quasi-legal syringe exchanges and its contradictory laws and policies, is a microcosm of this national picture. Its leadership on this issue of critical importance, guided by a respect for the human rights of those most at risk of HIV infection, could reaffirm that life is more precious than ideology.

[246] Letter from Gov. Gray Davis to members of the California State Senate, September 30, 2002.
[247] Human Rights Watch interview with Elnora D., Los Angeles, California, February 6, 2003.
[248] Human Rights Watch interview with Cody F., Sacramento, California, February 4, 2003.

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