HB 610-FN - AS INTRODUCED

2017 SESSION

17-0002
01/04

HOUSE BILL ***610-FN***

AN ACT implementing needle exchange programs in New Hampshire.

SPONSORS: Rep. Avellani, Carr. 5; Rep. Crawford, Carr. 4; Rep. Goley, Hills. 8; Sen. Bradley, Dist 3; Sen. Gray, Dist 6; Rep. W. Marsh, Carr. 8

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill requires the commissioner of the department of health and human services to establish guidelines for the operation of needle exchange programs in New Hampshire. The bill grants rulemaking authority to the commissioner of the department of health and human services for the purposes of the bill.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

17-0002
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT implementing needle exchange programs in New Hampshire.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court hereby finds that:

I. Scientific data from needle exchange programs in the United States show that providing clean hypodermic needles and syringes to intravenous drug users does not increase drug use, but rather creates an important bridge to drug treatment and is effective in curtailing the spread of human immunodeficiency virus (HIV) among intravenous drug users since sharing comtaminated needles is the primary method of transmitting HIV infection within the drug user population.

II. Injection drug users are the second largest group at risk of becoming infected with HIV and developing AIDS. This group is also the primary source of heterosexual, female, and perinatal transmission of HIV and AIDS in the United States.

III. Studies show that the lack of sterile needles on the street and the existence of laws that restrict providing clean needles work together to increase the spread of HIV by promoting needle sharing among injection drug users.

2 Controlled Drug Act; Definition; Drug Paraphernalia. Amend RSA 318-B:1, X-a to read as follows:

X-a.***(a)*** "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use or customarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

[~~(a)~~] ***(1)*** Kits used or intended for use or customarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.

[~~(b)~~] ***(2)*** Kits including but not limited to cocaine kits, used or intended for use or customarily intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

[~~(c)~~] ***(3)*** Isomerization devices used or intended for use or customarily intended for use in increasing the potency of any species of plant which is a controlled substance.

[~~(d)~~] ***(4)*** Testing equipment used or intended for use or customarily intended for use in identifying, or analyzing the strength, effectiveness or purity of controlled substances.

[~~(e)~~] ***(5)*** Scales and balances used or intended for use or customarily intended for use in

weighing or measuring controlled substances.

[~~(f)~~] ***(6)*** Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use or customarily intended for use in cutting controlled substances.

[~~(g)~~] ***(7)*** Separation gins and sifters used or intended for use or customarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

[~~(h)~~] ***(8)*** Blenders, bowls, containers, spoons and mixing devices used or intended for use or customarily intended for use in compounding controlled substances.

[~~(i)~~] ***(9)*** Capsules, balloons, envelopes and other containers used or intended for use or customarily intended for use in packaging small quantities of controlled substances.

[~~(j)~~] ***(10)*** Containers and other objects used or intended for use or customarily intended for use in storing or concealing controlled substances.

[~~(k)~~] ***(11)*** Objects used or intended for use or customarily intended for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

[~~(1)~~] ***(A)*** Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.

[~~(2)~~] ***(B)*** Water pipes.

[~~(3)~~] ***(C)*** Carburetion tubes and devices.

[(4)] ***(D)*** Smoking and carburetion masks.

[~~(5)~~] ***(E)*** Chamber pipes.

[~~(6)~~] ***(F)*** Carburetor pipes.

[~~(7)~~] ***(G)*** Electric pipes.

[~~(8)~~] ***(H)*** Air-driven pipes.

[~~(9)~~] ***(I)*** Chillums.

[~~(10)~~] ***(J)*** Bongs.

[~~(11)~~] ***(K)*** Ice pipes or chillers.

(b) "Drug paraphernalia" shall not include needles and syringes distributed or possessed as part of a community-based needle exchange program operating pursuant to RSA 318-B:43.

3 New Paragraph; Controlled Drug Act; Definition Added. Amend RSA 318-B:1 by inserting after paragraph V-a the following new paragraph:

V-b. "Community-based needle exchange program" means a program approved by the commissioner under RSA 318-B:43 which provides access to clean needles and syringes, and which is operated by an AIDS service organization, substance abuse treatment provider, or a licensed health care provider or facility.

4 Controlled Drug Act; Unlawful Acts; Drug Paraphernalia. Amend RSA 318-B:2, II to read as follows:

II. It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used or is customarily intended to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the human body a controlled substance. ***This paragraph shall not apply to the distribution and possession of needles and syringes as part of a community-based needle exchange program in accordance with RSA 318-B:43.***

5 New Paragraph; Controlled Drug Act; Drug Paraphernalia; Minors. Amend RSA 318-B:26 by inserting after paragraph III-a the following new paragraph:

III-b. Except as provided under RSA 318-B:43, a person shall be guilty of a class A misdemeanor if he or she manufactures with the intent to deliver, delivers or possesses with the intent to deliver any drug paraphernalia when such paraphernalia is knowingly manufactured, delivered or possessed for one or more of the uses set forth in RSA 318-B:2, II to any person under 18 years of age.

6 New Subdivision; Needle Exchange Programs. Amend RSA 318-B by inserting after section 42 the following new subdivision:

Needle Exchange Programs

318-B:43 Needle Exchange Programs; Operating Guidelines.

I. The commissioner shall develop operating guidelines, in accordance with rules adopted under RSA 541-A, for needle exchange programs. The rules shall include an application process, a procedure for exchanging needles, and form and content for an annual reporting requirement to the commissioner for programs which are approved by the commissioner.

II. No later than November 1, 2018, and every year thereafter, the commissioner shall report to the oversight committee on health and human services, established in RSA 126-A:13, relative to the activities and outcomes of approved needle exchange programs operating in this state.

7 Effective Date. This act shall take effect January 1, 2018.

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HB 610-FN- FISCAL NOTE
AS INTRODUCED

AN ACT implementing needle exchange programs in New Hampshire.

FISCAL IMPACT: [X] State [X] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill authorizes community-based needle exchange programs, requires the Department of Health and Human Services to develop operating guidelines through administrative rules for such programs, and further requires the Department to report annually to the Oversight Committee on Health and Human Services on the activities and outcomes of the programs. The Department projects that in order to meet the requirements of the bill, it will need to hire one full-time Program Planner III at an initial cost of $43,419 for the first six months of FY 2018, increasing to $80,044 in FY 2019, $84,040 in FY 2020, and $88,168 in FY 2021. These costs include salary and benefits, as well as supplies, telecommunications costs, and other related expenses. With respect to implementation of the exchange programs themselves, the Department states that federal law prohibits the use of federal funds for the purchase of syringes, and that the conclusion of the study commission on needle exchange programs was that participating entities would fund their own programs, including syringes. The bill states that needle exchange programs may be operated only by AIDS service organizations, substance abuse treatment providers, or licensed healthcare providers or facilities.

This bill contains a penalty that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures.

However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2018	FY 2019
Class A Misdemeanor	$71	$72
It should be noted average case cost estimates for FY 2018 and FY 2019 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Contract Attorney – Misdemeanor	$275/Case	$275/Case*
Assigned Counsel – Misdemeanor	$60/Hour up to $1,400	$60/Hour up to $1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). * *The Council's budget request for the FY 2018-19 biennium includes an increase to $300 per case for contract attorney misdemeanor cases.*		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	$85 to $110	$85 to $110

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

AGENCIES CONTACTED:

Departments of Health and Human Services, Safety, Justice, and Corrections, Judicial Council, Judicial Branch, and New Hampshire Association of Counties