

STUCK IN THE SYSTEM

Expanding Syringe Access by Reconciling
the Penal Code with the Public Health Law

EXECUTIVE SUMMARY



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Syringe access programs have been promoting safer syringe use and disposal practices in New York State and City for over two decades through public health exemptions. These programs, including syringe exchange programs (SEPs) and licensed pharmacies, health care facilities and health care practitioners authorized under the Expanded Syringe Access Program (ESAP) initiative, have been invaluable in preventing the transmission of blood-borne pathogens, reducing HIV and hepatitis C (HCV) rates and improving overall public health and safety. Despite the Public Health Law exemptions permitting syringe access programs to operate in New York, program participants are often targeted for police harassment, arrest and incarceration for possessing sterile or used syringes, significantly reducing program participation and effectiveness.

Voices of Community Advocates and Leaders (VOCAL), the nation's only membership organization led by people who are active and former drug users, with support from the Urban Justice Center's Community Development Project, wrote this report to document the experiences of SEP and ESAP participants. The following research findings were identified from analysis of surveys, interviews and secondary data.

RESEARCH FINDINGS:

New York State's Penal Code and law enforcement practices are inconsistent with the state's public health goals and the specific public health law authorizing syringe access programs.

71% of survey respondents had been charged with unlawful syringe possession (Of those arrested, 9 out of 10 were carrying white SEP cards when they were arrested).

- Police are arresting people for syringe possession, even when they participate in a lawful syringe access program and have documentation proving it.
- By disregarding the white SEP cards, police are violating NYS public health law and guidelines.
- People are being charged with drug possession when they carry used syringes that contain trace amounts of residue.
- Injection drug users and other syringe carriers report abusive practices when stopped by police, including after being arrested.

"[The SEP] gives you a card that that says, if I'm holding this card, I should not be arrested for the possession of a syringe, and numerous times I have been put through the system. And the police have been ignoring the fact that I practice harm reduction. I'm not happy about it...because I haven't committed any crime, I'm doing things to prevent myself from catching HIV or AIDS or hepatitis C." – interviewee #2

The New York State Penal Code and law enforcement practices create real and perceived barriers that reduce the benefits of syringe access programs.

1 out of 3 respondents who were arrested said they either stopped using syringe access programs or went less often because of their experience.

- Law enforcement appears to selectively target SEPs and other public health facilities where injection drug users access services, which discourages participation in these programs.
- The fear of arrest encourages unsafe injection and disposal practices.
- Additional public health interventions are being negatively impacted by police behavior.

"It's tougher. I don't want to get caught again, so I don't go as many times anymore [to the SEP]."
– survey respondent #66

Injection drug users understand New York’s public health law and are eager to adopt safer injection and disposal practices

- People remember what it was like before syringe access programs and don’t want to return to that type of environment.
- People take active steps to reduce risk to themselves and the community.

“I’m not trying to die, I’m not trying to get infected. I care about other people, I don’t want nobody to get hurt, not over getting stuck by a needle I threw in the garbage.” – interviewee #3

Punitive law enforcement practices that target injection drug users illustrate deeper problems with current drug control policies, policing methods and gentrification.

- Police harassment of injection drug users occurs within a broader context of policing strategies driven by racial profiling, the war on drugs and gentrification.
- Police target injection drug users in a misguided effort to collect information for anti-drug enforcement efforts.

“The people [the police] are targeting are...the lower class, the drug addicts, the homeless people, people that look like they do drugs, people that don’t look like they belong.” – Interviewee #8

RECOMMENDATIONS:

These findings suggest the current Penal Code and law enforcement practices discourage participation in syringe access programs, minimizing their effectiveness and jeopardizing public health and safety. To fully realize the benefits of these programs, VOCAL recommends the following to City and State officials:

Promote better utilization of syringe access and disposal programs by eliminating inconsistencies in state laws that create legal barriers for participation.

- The governor and legislature should pass legislation that fully removes syringe possession as a misdemeanor paraphernalia charge in the Penal Code.

Encourage greater participation in syringe disposal programs.

- The governor and legislature should pass legislation amending the Penal Code to clarify that possessing a syringe with a trace amount of residue does not constitute criminal possession of a controlled substance.

Law enforcement practices should be consistent with public health laws & objectives.

- The NYS Department of Criminal Justice Services (DCJS) and New York Police Department (NYPD) should educate law enforcement about the importance of syringe access programs by requiring trainings that are led by NYS Department of Health (DOH) and NYC Department of Health & Mental Hygiene (DOHMH) staff and participants.
- The NYSDCJS and NYPD should issue guidance instructing that (a) law enforcement should not target areas around SEPs and other venues where IDUs access health services for drug enforcement, (b) syringe possession is not probable cause for a search, and (c) harm reduction supplies and information (such as SEP cards) acquired through syringe access programs should not be confiscated.
- Governor Paterson should foster better cooperation between NYSDCJS and NYSDOH by establishing an interagency task force, which the NYC mayor should replicate on a city level.
- NYSDCJS and NYPD should also avoid using drug arrests to evaluate police performance.

Ensure ongoing monitoring of law enforcement practices around syringe access programs.

- The NYSDOH and NYCDOHMH should work with SEPs, ESAPs and participants to strengthen the procedure for incident reporting regarding negative encounters between SEP clients and law enforcement.
- Police should refer suspected drug users to public health programs.



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