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Impact of Criminal Law on the Safe Disposal of Used Syringes

Memorandum

Date: February 27, 2002
Subject: Criminal Law and Syringe Disposal in Missouri

INTRODUCTION

Disposal of contaminated medical waste has become an important issue in public health policy. Waste generated in the health care system is highly regulated at the state and federal level. Special handling, documentation and chain of custody procedures are required by health facilities to meet these regulations, which impact on their ability to retain their licenses for operation. With the advent of AIDS, hospitals and other health facilities instituted significant safeguards to protect health care workers, housekeeping staff, sanitation workers and waste haulers from needle sticks due to the risk of contracting HIV/AIDS, hepatitis B & C and other blood borne infections. Hospitals implemented strict standard precautions for handling blood-contaminated needles that included destruction and disposal methods and systems.

Over 3 billion syringes are used each year outside health care facilities and deposited in the general waste stream in the United States. While they pose little risk to the general public, they are a source of injury and anxiety to workers in trash disposal, recycling and related activities. Most of these syringe come from people administering medications for conditions such as diabetes, but some are attributable to injection drug users (IDUs). IDUs have been

1 Hospitals must meet laws, regulations, and standards from multiple sources including: US EPA, OSHA, State Environmental Protection, HCFA, State Departments of Health, JCAHÔ and others.
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estimated to perform as many as one billion injections of illicit drugs each year in the United States. IDUs are thus an important part of the syringe disposal picture, and may become more important as efforts proceed to promote the health goal of a new sterile syringe for every drug injection. Unfortunately, IDUs have tended to be simultaneously given too much blame for the problem of improperly discarded syringes and neglected by community sharps disposal programs. There are only a few systems, most notably syringe exchange programs, that provide for safe disposal of syringes from IDUs, and fear of arrest may be a substantial barrier to IDU participation in safe disposal systems.

A recent qualitative study of IDU and community attitudes toward syringe disposal elicited these comments from IDUs:

“They’d [the police] catch you with a dirty syringe and you’d go to jail for possession, so people ain’t hardly gonna keep ‘em laying around, keep ‘em in a container or whatever.”

“They know they can stop you, and if you come and dispose of them, they got a case there.”

“Chance of going to jail, I’m not going to risk that. That’s me. I got a probation, so I can’t take the chance at all. I’m so scared now. Then I’d have to go back and do all that time.”

This Memorandum assesses how Missouri’s criminal laws relating to drug possession and syringe access could influence the syringe disposal behavior of IDUs. It is part of a larger analysis of community syringe disposal law being conducted by the Academy for Educational Development.

We conclude that possession of syringes is a crime in Missouri if the syringe was used for drug injection. The possibility of being arrested or convicted for the possession of trace amounts of drug left in used syringes could deter from optimally participating in effective community syringe disposal programs.

The conclusions are based purely on the law as written. Ethnographic research among IDUs has repeatedly found that fear of arrest is a factor in the syringe possession behavior of


IDUs. However, an analysis of law “on the books” cannot fully address how law is actually enforced by police and prosecutors, or the perceptions of what the law is among IDUs. Our conclusions about a possible effect are therefore based on the assumption that law is enforced in a way that is consistent with its terms, and that IDUs are aware of the law.

I. The Regulatory Scheme

This Memorandum addresses four domains of law that could influence the syringe disposal behavior of IDUs: drug paraphernalia laws, syringe prescription or other syringe-specific laws or regulations, laws and regulations governing syringe exchange programs and drug possession laws.

A. Drug Paraphernalia Law

The Narcotic Drug Act includes a drug paraphernalia provision based on the Justice Department’s model act, reprinted in Annotation, Validity, under Federal Constitution, of So-called “Head Shop” Ordinances or Statutes, Prohibiting Manufacture and Sale of Drug Use Related Paraphernalia, 69 A.L.R. FED. 15 (1984 & Supp. 1998). The statute defines drug paraphernalia generally as “all equipment, products and materials of any kind which are used, intended for use, or designed for use, in . . . injecting . . . or otherwise introducing into the human body a controlled substance,” in violation of the act, Mo. Ann. Stat. §195.010(17), and makes it unlawful for any person “to use, or to possess with intent to use, drug paraphernalia to ... inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or an imitation controlled substance...” Mo. Stat. Ann. § 195.233. Hypodermic syringes and needles are included in the coverage of the paraphernalia law. Mo. Stat. Ann. § 195.010(17)(k). Violation of the paraphernalia provision is a Class A misdemeanor, subject to imprisonment for up to one year, Id. § 558.011, and a fine of up to $1,000. Id. § 560.016.

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B. Syringe Prescription Law
Missouri has no specific syringe prescription law.

C. Syringe Exchange Legislation
Missouri has no legislation specifically authorizing syringe exchange.

D. Drug Possession Laws

Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Id. § 195.202(1)

In a decision quoted in part below, the state Appellate Court interpreted this provision to prohibit the possession of any identifiable amount:

Defendant also claims that the amounts of controlled substances were so infinitesimal as to be non-criminal. The State was not required to prove that the quantities of controlled substances found in exhibits 3, 9 and 12 (two cocaine and one methamphetamine) were sufficient to have an exciting effect on the central nervous system. State v. Jefferson, 391 S.W.2d 885, 890 (Mo. 1965).

[T]he possession of any amount, even a modicum, of amphetamine is within the prohibition of the statute. This can be the only reasonable interpretation in view of evil which the general assembly seeks to abate.

State v. Jefferson, supra, at 890. The gravamen of the offenses here charged is possession of the controlled substances, and the State did not have to prove that defendant intended to make some other use of the drugs. State v. Virdure, 371 S.W.2d 196, 202 (Mo. 1963). The State did not have the burden of proving that the quantity of controlled substances was sufficient to have an exciting effect on defendant or some other person. State v. Young, 427 S.W.2d 510, 513 (Mo. 1968). The chemist testified, without objection or contradiction, that there were sufficient quantities of the materials in or on exhibits 3, 9 and 12 to determine that the substances were cocaine and methamphetamine. That is all that is required for the State to meet its burden of proof. State v. Kuhrts, supra at 715.
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Possession of a controlled substance in violation of § 195.202 is a Class C felony, Mo. Stat. Ann. § 195.202(2), subject to up to seven years’ imprisonment, Id. § 558.011, and a fine of up to $5,000. Id. § 560.011.

II. Analysis

The drug paraphernalia law makes it a crime to use a syringe for drug injection. Under this law, the used syringe would be evidence of a past crime. By exposing an IDU to arrest, the paraphernalia law in Missouri could have an impact on the willingness of an IDU to retain a used syringe for proper disposal.

Drug possession law makes it a crime to possess any amount of controlled drug that may be identified through laboratory testing. This would encompass the residue of drug on the barrel of a used syringe. The existence of this crime also would probably provide an officer with the required “probable cause” to stop and frisk a suspected IDU, and to seize and test a used syringe. Such activities have been reported elsewhere. Doe v. Bridgeport Police Department, 198 F.R.D. 325 (D. Conn. 2001). Fear of arrest for drug possession could deter IDUs from retaining syringes for proper disposal.

III. How Might Missouri Law Be Changed or Clarified to Remove Disincentives for Proper Syringe Disposal by IDUs?

The legislature or law enforcement officials may wish to take steps to ensure that IDUs are not subject to arrest or prosecution for possession of the residue of drugs left in the barrel of used syringe. This could be accomplished in a number of ways, including

• amending the drug paraphernalia law to exclude syringes and references to injecting
• amending the Narcotic Drug Act to require a minimum specified quantity to ground a possession conviction
• amending the Narcotic Drug Act to exclude trace amounts found in syringes
• developing standard operating procedures within law enforcement that avoid stops, arrests or prosecutions based on drug residues in syringes
• educating IDUs and law enforcement to appreciate the importance of appropriate syringe disposal and the legality of possessing syringes in the course of disposal activities.

Research among IDUs and law enforcement personnel on their knowledge of and attitudes towards the syringe possession rules will be helpful in implementing effective disposal policies.