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 estimated to perform as many as one billion injections of illicit drugs each year in the United

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1 Hospitals must meet laws, regulations, and standards from multiple sources including: US EPA, OSHA, State Environmental Protection, HCFA, State Departments of Health, JCAHO and others.
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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.\(^4\)

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.”\(^5\)

This Memorandum assesses how Louisiana’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 Louisiana if the syringe was used for drug injection. The possibility of being arrested or convicted for the possession of used syringes, or of trace amounts of drug left in used syringes, could deter IDUs 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 paraphernalia law makes unlawful "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." La. R.S. 40:1021. First-time offenders found guilty of the drug paraphernalia law are subject to a fine up to five hundred dollars, imprisonment of up to six months, or both. Id. § 40:1035. Second-time offenders are subject to a fine up to one thousand dollars, imprisonment of up to one year, or both. Third-time offenders are subject to a fine up to a five thousand dollars, or imprisonment, with or without hard labor, for not more than five years. Id.

The drug paraphernalia law provides the following defense:

... B. It shall be an affirmative defense that the person to whom the drug related object or advertisement or notice was distributed had a prescription from a licensed medical practitioner or psychiatrist for marijuana or the controlled substance for which the object is primarily intended to be used.
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B. Syringe Prescription Law

Louisiana has no specific syringe prescription law.

C. Syringe Exchange Legislation

Louisiana has no legislation specifically authorizing syringe exchange.

D. Drug Possession Laws


C. Possession. It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance classified in Schedule I unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner or as provided in R.S. 40:978, while acting in the course of his professional practice, or except as otherwise authorized by this Part.

Id.

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

A consideration of other reported cases involving the possession of trace amounts of controlled dangerous substances is instructive of the evidence necessary in such cases to show a defendant's guilty knowledge. However, we are careful to note the distinctions in each case. Ultimately, the determination of whether there is possession of a controlled dangerous substance sufficient to convict depends on the facts peculiar to each case. State v. Trahan, 425 So.2d 1222 (La.1983); State v. Chambers, supra.

In State v. Trahan, supra, the two defendants were convicted of possession of cocaine. A small vial containing a residue of cocaine had been found in a bedroom occupied by defendant Trahan in a trailer rented by defendant Leleaux. The amount of cocaine was too small to be measured or weighed, it was consumed during testing, and the vial in which it was contained was lost prior to trial. Also seized at the trailer was a material commonly used for cutting cocaine. Leleaux testified that he knew nothing about the vial or its contents and Trahan did not testify at trial. The Louisiana Supreme Court reversed the convictions, finding insufficient evidence of the defendants' guilty knowledge. Seemingly implicit in the Supreme Court’s opinion is a finding that, with two defendants, the state failed to sufficiently connect either or both of the defendants to the cocaine to allow an inference of guilty knowledge.

In State v. White, supra, the defendant had been convicted of possession
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Possession of Schedule 1 substance without a prescription or order is punishable by imprisonment and hard labor for up to ten years, and a fine of up to $5,000. Louisiana Rev. Stat. Ann. § 40:966(C)(1).

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 Louisiana could have an impact on the willingness of an IDU to retain a used syringe for proper disposal.

Drug possession law does not specify a minimum amount of drug necessary to ground a conviction. The law therefore could encompass the residue of drug in the barrel of a used syringe, although a conviction would depend upon the ability of the prosecution to show, in the totality of the circumstances, that the defendant was aware of what he or she possessed. A drug user returning syringes he or she knew to have been used for drug injection would clearly be subject to conviction under this standard, and so would reasonably be deterred from carrying used syringes for disposal purposes. 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 Louisiana 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
· amending the controlled drug act to require a minimum specified quantity to ground a possession conviction
· amending the controlled drug act to exclude trace amounts found in syringes
· developing standard operating procedures within law enforcement that avoid stops,
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- 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.