Date: August 19, 2002
Subject: Criminal Law and Syringe Disposal in the Republic of Palau

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

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.
Criminal Law and Syringe Disposal in Republic of Palau

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 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 the Territory of Palau’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 the possibility of being arrested or convicted for the possession of trace amounts of illegal drug in a used syringe could deter IDUs from optimally participating in effective community syringe disposal programs.

This conclusion is 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 possession laws, syringe prescription or other syringe-specific laws or regulations, drug paraphernalia laws, and laws and regulations governing syringe exchange programs.

A. Drug Paraphernalia Law

We could find no legislation regarding drug paraphernalia for the Palau. This finding is consistent with the findings of the work published by Gostin and Lazzarini in 1997.

B. Syringe Prescription Law

We could find no legislation regarding syringe prescription law for Palau. This finding is consistent with the findings of the work published by Gostin and Lazzarini in 1997.


7 Supra at 6.
C. Syringe Exchange Legislation

We could find no legislation authorizing syringe exchange programs for Palau. This finding is consistent with the findings of the work published by Gostin and Lazzarini in 1997.\(^8\)

D. Drug Possession Laws

The Public Health and Safety Code at Section 3302 defines the crime of possession of controlled substance and states:

(a) It is unlawful for any person knowingly or intentionally to possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(b) Any person who violates subsection (a) of this section with respect to any controlled substances except marijuana shall be sentenced to a term of imprisonment of not more than one year and a fine of not more than $1,000 or both...

(d) Notwithstanding any other provision of law, any person who violates subsection (a) on with respects to methamphetaminehydrochloride, as defined in 34 PNC 3106(c)(2), heroin, cocaine, as defined in 34 PNC 3106(a)(4), lysergic acid diethlyamide (“LSD”), or morphine shall be penalized as follows:

(1) Any person who possesses one gram or less shall be sentence on first conviction to a term of imprisonment of one year and fined not more than $3,000; provided, that nine months of the sentence shall be suspended on condition that, immediately upon release from prison, the person enroll in a drug counseling program approved by the court and undergo regular drug testing at least four times per year for a period of three years as directed by the court, at his or her own expense or, if a minor, at the expense of his or her parents or legal guardian(s). If the mandatory drug testing reveals the illegal use of a controlled substance at any time during the three year testing period, or if the person does not complete the drug counseling program, the suspension shall be automatically revoked and the person shall be immediately imprisoned for the remainder of the sentence and shall not be eligible for parole. On subsequent conviction, the person shall

\(^8\) Supra at 6.
be sentenced to a term of imprisonment of not more than two years, a fine of not more than $5,000, or both.

(2) Any person possession more than one gram shall be sentenced on first conviction to a term of imprisonment of not less than 3 years nor more than 7 years and may be fined not less than $2,500 nor more than $10,000. On subsequent convictions, the person shall be sentenced to a term of imprisonment of not less than 7 years nor more than 14 years and may be fined not less than $10,000 nor more than $50,000.

(3) Any person imprisoned under this subsection shall receive drug counseling, the cost of which shall be borne by the national government. Such counseling shall begin immediately upon imprisonment and shall continue for a reasonable period of time as ordered by the court....

Territorial law does not specify a minimum amount of controlled substance required to convict someone of drug possession and there have been no published court decision addressing the question of whether a trace amount of drug, detectable by chemical analysis, would be sufficient to constitute the crime of possession. The majority of states with similar laws interpret them to cover any identifiable amount, which includes traced amounts which are not usable or salable. See, e.g., State v. Rhode, 133 Idaho 459, 988 P.2d 685 (1999).

II. Analysis

Drug possession law does not specify the minimum amount of drug required to constitute possession. Given the interpretation of possession laws in other states, an IDU could reasonably assume that the possession of residue of drug in the barrel of a used syringe may is a crime. In that case, fear of arrest for drug possession could deter IDUs from retaining syringes for proper disposal.

III. How Might the Law of the Territory of Guam Be Changed or Clarified to Remove Disincentives for Proper Syringe Disposal by IDUs?

Drug possession laws could be a disincentive for the proper disposal of syringes by IDUs. Given the lack of other regulations on syringe possession, the legislature or law enforcement officials in the territory may wish to take steps to ensure that IDUs are not subject
Criminal Law and Syringe Disposal in Republic of Palau

to arrest or prosecution for possession of the residue of drugs left in the barrel of a used syringe. This could be accomplished in a number of ways, including

1. amending the controlled drug act to require a minimum specified quantity to ground a possession conviction
2. amending the controlled drug act to exclude trace amounts found in syringes
3. eliminate syringes from the list of evidence showing intent to commit a drug offense.
4. developing standard operating procedures within law enforcement that avoid stops, arrests or prosecutions based on drug residues in syringes
5. 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 and attitudes towards the syringe possession rules will be helpful in implementing effective disposal policies.