

2 State of Arkansas  
3 91st General Assembly  
4 Regular Session, 2017

# A Bill

DRAFT JMB/JMB  
HOUSE BILL

5  
6 By: Representative D. Whitaker

7 Filed with: House Committee on Judiciary  
8 pursuant to A.C.A. §10-3-217.

## 9 For An Act To Be Entitled

10 AN ACT TO AUTHORIZE THE CREATION OF NEEDLE AND  
11 HYPODERMIC SYRINGE EXCHANGE PROGRAMS; TO PROVIDE  
12 LIMITED IMMUNITY FOR EMPLOYEES AND AGENTS OF NEEDLE  
13 AND HYPODERMIC SYRINGE EXCHANGE PROGRAMS; TO AMEND  
14 CERTAIN CRIMINAL OFFENSES; AND FOR OTHER PURPOSES.

## 16 Subtitle

17 TO AUTHORIZE THE CREATION OF NEEDLE AND  
18 HYPODERMIC SYRINGE EXCHANGE PROGRAMS; TO  
19 PROVIDE LIMITED IMMUNITY FOR EMPLOYEES  
20 AND AGENTS OF NEEDLE AND HYPODERMIC  
21 SYRINGE EXCHANGE PROGRAMS; AND TO AMEND  
22 CERTAIN CRIMINAL OFFENSES.  
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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28 SECTION 1. Arkansas Code § 5-64-101(12), concerning the definition of  
29 "drug paraphernalia" within the Uniform Controlled Substances Act, is amended  
30 to add an additional subdivision to read as follows:

31 (D) "Drug paraphernalia" does not include a hypodermic needle or  
32 syringe lawfully possessed under § 20-7-140.

33  
34 SECTION 2. Arkansas Code § 5-73-101(8), concerning the definition of  
35 "instrument of crime", is amended to read as follows:

1           (8)(A) "Instrument of crime" means anything manifestly designed,  
2 made, adapted, or commonly used for a criminal purpose.

3           (B) "Instrument of crime" does not include a hypodermic  
4 needle or syringe lawfully possessed under § 20-7-140;

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6           SECTION 3. Arkansas Code Title 20, Chapter 7, Subchapter 1, is amended  
7 to add an additional section to read as follows:

8           20-7-140. Needle and hypodermic syringe exchange programs authorized –  
9 Limited immunity.

10          (a) A governmental or nongovernmental organization, including a local  
11 or district health department or an organization that promotes scientifically  
12 proven ways of mitigating health risks associated with drug use and other  
13 high-risk behaviors, may establish and operate a needle and hypodermic  
14 syringe exchange program with the purpose to:

15           (1) Reduce the spread of human immunodeficiency virus which is  
16 also known as HIV, acquired immunodeficiency syndrome which is also known as  
17 AIDS, viral hepatitis, and other blood-borne diseases in the State of  
18 Arkansas;

19           (2) Reduce needle stick injuries to law enforcement officers and  
20 other emergency personnel; and

21           (3) Encourage individuals who inject drugs to enroll in  
22 evidence-based treatment.

23          (b) A program established under this section shall offer:

24           (1) Disposal of used needles and hypodermic syringes;

25           (2)(A) Needles, hypodermic syringes, and other injection  
26 supplies at no cost and in quantities sufficient to ensure that needles,  
27 hypodermic syringes, and other injection supplies are not shared or reused.

28           (B) Public funds shall not be used to purchase needles,  
29 hypodermic syringes, or other injection supplies;

30           (3)(A) Reasonable and adequate security of program sites,  
31 equipment, and personnel.

32           (B) Written plans for security shall be:

33           (i) Provided to the police and sheriff's offices  
34 with jurisdiction in the program location; and

35           (ii) Updated annually;

36           (4) Educational materials on:

- 1                   (A) Overdose prevention;
- 2                   (B) The prevention of human immunodeficiency virus which
- 3 is also known as HIV, acquired immunodeficiency syndrome which is also known
- 4 as AIDS, and viral hepatitis transmission;
- 5                   (C) Drug abuse prevention;
- 6                   (D) Treatment for mental illness, including treatment
- 7 referrals; and
- 8                   (E) Treatment for substance abuse, including referrals for
- 9 medication-assisted treatment;

- 10                   (5) Either:
- 11                   (A) Access to naloxone kits that contain naloxone
- 12 hydrochloride that is approved by the United States Food and Drug
- 13 Administration for the treatment of a drug overdose; or
- 14                   (B) A referral to programs that provide access to naloxone
- 15 hydrochloride that is approved by the United States Food and Drug
- 16 Administration for the treatment of a drug overdose; and
- 17                   (6) Personal consultations for each individual requesting
- 18 services from a program employee or volunteer concerning mental health or
- 19 addiction treatment as appropriate.

20                   (c)(1) Notwithstanding any provision of any other state law, an

21 employee, volunteer, or participant of a program established under this

22 section shall not be charged with or prosecuted for possession of any of the

23 following:

- 24                   (A) Needles, hypodermic syringes, or other injection
- 25 supplies obtained from or returned to a program established under this
- 26 section;
- 27                   (B) Residual amounts of a controlled substance contained
- 28 in a used needle, used hypodermic syringe, or used injection supplies
- 29 obtained from or returned to a program established under this section.

30                   (2) This subdivision (c)(1) applies only if the person claiming

31 immunity provides written verification that a needle, syringe, or other

32 injection supplies were obtained from a needle and hypodermic syringe

33 exchange program established pursuant to this section.

34                   (3) In addition to any other applicable immunity or limitation

35 on civil liability, a law enforcement officer who, acting on good faith,

36 arrests or charges a person who is determined to be entitled to immunity from

1 prosecution under this section shall not be subject to civil liability for  
2 the arrest or filing of charges.

3 (d) Prior to commencing operations of a program established under this  
4 section, the governmental or nongovernmental organization shall report to the  
5 Department of Health the following information:

6 (1) The legal name of the organization or agency operating the  
7 program;

8 (2) The areas and populations to be served by the program; and

9 (3) The methods by which the program will meet the requirements  
10 of subsection (b) of this section.

11 (e)(1) Annually, an organization operating a program established under  
12 this section shall report to the Department of Health the following  
13 information:

14 (A) The number of individuals served by the program;

15 (B) The number of needles, hypodermic syringes, and needle  
16 injection supplies dispensed by the program and returned to the program;

17 (C) The number of naloxone kits distributed by the  
18 program; and

19 (D) The number and type of treatment referrals provided to  
20 individuals served by the program, including a separate report of the number  
21 of individuals referred to programs that provide access to naloxone  
22 hydrochloride that is approved by the United States Food and Drug  
23 Administration for the treatment of a drug overdose.

24 (2) On and before July 1 each year, the Department of Health  
25 shall report to the Legislative Council regarding the statistics of all  
26 programs established under this section.

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29 Referral requested by: Representative David Whitaker

30 Prepared by: JMB

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