

SENATE BILL No. 207

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-41-7.5; IC 16-42-19-18; IC 35-31.5-2-239.5; IC 35-48-4.5.

Synopsis: Syringe exchange program. Requires a qualified entity to establish and maintain a syringe exchange program registry. Provides a defense to prosecution of certain offenses related to controlled substances if: (1) a person is currently registered under a syringe exchange program; (2) the person obtained the hypodermic syringe or needle under a syringe exchange program; and (3) there is no more than a residual amount of a controlled substance located in the hypodermic syringe or needle. Removes the requirement that a public health emergency be declared as a prerequisite for the approval of a syringe exchange program. Repeals the expiration date of the syringe exchange program. (Under current law, the expiration date is July 1, 2021.)

Effective: July 1, 2020.

Merritt

January 6, 2020, read first time and referred to Committee on Health and Provider Services.



Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE BILL No. 207

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-41-7.5-4, AS AMENDED BY P.L.198-2017,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 4. (a) A qualified entity may operate a program
4 only in a county or municipality where
5 (1) a ~~public health emergency has been declared~~; or
6 (2) a program has been approved
7 under section 5 of this chapter. However, a qualified entity may not
8 operate a program outside of the jurisdictional area of the governmental
9 body that approved the qualified entity.
10 (b) A qualified entity that meets the requirements in subsection (a)
11 and complies with the requirements of this chapter may operate a
12 program.

13 SECTION 2. IC 16-41-7.5-5, AS AMENDED BY P.L.198-2017,
14 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2020]: Sec. 5. Before a qualified entity may operate a program
16 in a county, the following shall occur:
17 (1) The local health officer or the executive director must ~~declare~~



1 ~~to inform~~ the executive body of the county or the legislative body
 2 of the municipality ~~the following:~~

3 ~~(A) There is an epidemic of hepatitis C or HIV.~~

4 ~~(B) That the primary mode of transmission of hepatitis C or~~
 5 ~~HIV in the county is through intravenous drug use.~~

6 ~~(C) that a syringe exchange program is medically appropriate~~
 7 ~~as part of a comprehensive public health ~~response:~~ **initiative.**~~

8 (2) The legislative body of the municipality or the executive body
 9 of the county must do the following:

10 (A) Conduct a public hearing that allows for public testimony.

11 (B) Take official action adopting the ~~declarations~~ **initiatives**
 12 under subdivision (1) by the local health officer or the
 13 executive director in consideration of the public health for the
 14 area and, if the program complies with section 6 of this chapter
 15 and is within the jurisdictional limits of the county or
 16 municipality that the body represents, either:

17 (i) approve the operation of the program; or

18 (ii) submit a request under subdivision (3) to the state health
 19 commissioner.

20 (3) The legislative body of the municipality or the executive body
 21 of the county that took official action under subdivision (2) either:

22 (A) notifies the state health commissioner of the body's actions
 23 under subdivision (2), including:

24 (i) the period of time considered medically appropriate for
 25 the program;

26 (ii) whether a renewal or an extension of the program can
 27 occur; and

28 (iii) other measures taken concerning the epidemic that have
 29 proven ineffective; or

30 (B) if the body does not approve the operation of a program
 31 under subdivision (2)(B)(i) and submits a request under
 32 subdivision (2)(B)(ii), request that the state health
 33 commissioner ~~declare a public health emergency and~~
 34 **determine whether to** approve the operation of a program.

35 (4) If subdivision (3)(B) applies, the state health commissioner
 36 has ~~declared a public health emergency for the county or~~
 37 ~~municipality and approved the operation of a program:~~
 38 **determined whether to approve the operation of a program**
 39 **for the county or municipality.**

40 SECTION 3. IC 16-41-7.5-6, AS AMENDED BY P.L.198-2017,
 41 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2020]: Sec. 6. A qualified entity that operates a program under



- 1 this chapter must do the following:
- 2 (1) Annually register the program in a manner prescribed by the
- 3 state department with the:
- 4 (A) state department; and
- 5 (B) local health department in the county or municipality
- 6 where services will be provided by the qualified entity if the
- 7 qualified entity is not the local health department.
- 8 (2) Have one (1) of the following licensed in Indiana provide
- 9 oversight to the qualified entity's programs:
- 10 (A) A physician.
- 11 (B) A registered nurse.
- 12 (C) A physician assistant.
- 13 (3) Store and dispose of all syringes and needles collected in a
- 14 safe and legal manner.
- 15 (4) Provide education and training on drug overdose response and
- 16 treatment, including the administration of an overdose
- 17 intervention drug.
- 18 (5) Provide drug addiction treatment information and referrals to
- 19 drug treatment programs, including programs in the local area and
- 20 programs that offer medication assisted treatment that includes a
- 21 federal Food and Drug Administration approved long acting,
- 22 nonaddictive medication for the treatment of opioid or alcohol
- 23 dependence.
- 24 (6) Provide syringe and needle distribution and collection. ~~without~~
- 25 ~~collecting or recording personally identifiable information.~~
- 26 (7) Operate in a manner consistent with public health and safety.
- 27 (8) Ensure the program is medically appropriate and part of a
- 28 comprehensive public health ~~response.~~ **initiative.**
- 29 (9) Keep sufficient quantities of an overdose intervention drug (as
- 30 defined in IC 16-18-2-263.9) in stock and to administer in
- 31 accordance with IC 16-42-27.
- 32 **(10) Establish and maintain a registry as described in section**
- 33 **9.5 of this chapter for purposes of IC 35-48-4.5-1.**
- 34 SECTION 4. IC 16-41-7.5-9.5 IS ADDED TO THE INDIANA
- 35 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 36 [EFFECTIVE JULY 1, 2020]: **Sec. 9.5. (a) A qualified entity that**
- 37 **operates a program under this chapter shall establish and maintain**
- 38 **a registry of individuals participating in the syringe exchange**
- 39 **program.**
- 40 **(b) The registry must contain:**
- 41 **(1) the individual's full name;**
- 42 **(2) the individual's date of birth;**



1 (3) the last four (4) digits of the individual's Social Security
2 number; and

3 (4) any other identifying information, as determined by the
4 qualified entity.

5 (c) Before registering an individual, the qualified entity shall
6 inform the individual of:

7 (1) the ability to raise a defense under IC 35-48-4.5-1; and

8 (2) who may access the individual's information;

9 when registered under this program.

10 (d) Information that could be used to identify an individual
11 participating in a syringe exchange program that is:

12 (1) contained in; or

13 (2) provided to the qualified entity and related to;

14 the registry is confidential.

15 (e) Any information collected under subsection (d) may be used
16 or accessed only by a:

17 (1) court;

18 (2) law enforcement officer; or

19 (3) court clerk.

20 (f) An individual may opt out and is not required to be included
21 on the registry.

22 (g) An individual shall waive any requirements set forth in the
23 Health Insurance Portability and Accountability Act (HIPAA) of
24 1996 as part of registering with a syringe exchange program if the
25 person chooses to remain on the registry.

26 (h) An individual who is:

27 (1) participating in; and

28 (2) currently registered with;

29 a syringe exchange program may raise a defense under
30 IC 35-48-4.5-1.

31 (i) In addition to the other requirements of this chapter, an
32 individual shall, at least one (1) time every three hundred sixty-five
33 (365) days:

34 (1) report in person; and

35 (2) register;

36 at the qualified entity where the individual previously registered in
37 order to raise a defense under IC 35-48-4.5-1.

38 SECTION 5. IC 16-41-7.5-11, AS AMENDED BY P.L.198-2017,
39 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2020]: Sec. 11. (a) If the state health commissioner receives
41 a request to declare a public health emergency ~~determine~~ **determine**
42 the ~~approval of the operation of a program~~ **approval of the operation of a program** under this chapter, the state



1 health commissioner shall approve, deny, or request additional
 2 information concerning the request under section 5 of this chapter not
 3 later than ten (10) calendar days from the date the request is submitted
 4 to the state health commissioner. If additional information is:

5 (1) requested by the state health commissioner; and

6 (2) provided by the entity seeking the ~~declaration~~; **approval**;
 7 the state health commissioner shall approve or deny the request not
 8 later than ten (10) calendar days from the submission date of the
 9 additional information.

10 (b) A program established under this chapter may remain in effect
 11 for not more than two (2) years from the date approved under this
 12 chapter. However:

13 (1) the state health commissioner may:

14 (A) upon the request of the executive body of the county or the
 15 legislative body of the municipality that requested the initial
 16 ~~declaration~~ **determination** and approval, renew the
 17 ~~declaration of a public health emergency~~ and operation of the
 18 program for not more than two (2) years; or

19 (B) terminate a program; or

20 (2) the legislative body of the municipality or the executive body
 21 of the county that initially approved the program may, through
 22 official action:

23 (A) renew the program for not more than two (2) years; or

24 (B) terminate a program;

25 when warranted.

26 (c) The legislative body of the municipality or the executive body
 27 of the county shall notify the state health commissioner in writing
 28 immediately of any of the following:

29 (1) A renewal of a program under subsection (b) and the period
 30 of time of the renewal.

31 (2) The expiration or termination of a program.

32 (3) A change in the qualified entity administering the program.

33 SECTION 6. IC 16-41-7.5-14 IS REPEALED [EFFECTIVE JULY
 34 1, 2020]. ~~Sec. 14. This chapter expires July 1, 2021.~~

35 SECTION 7. IC 16-42-19-18, AS AMENDED BY P.L.187-2015,
 36 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2020]: Sec. 18. (a) A person may not possess with intent to:

38 (1) violate this chapter; or

39 (2) commit an offense described in IC 35-48-4;

40 a hypodermic syringe or needle or an instrument adapted for the use of
 41 a controlled substance or legend drug by injection in a human being.

42 (b) A person who violates subsection (a) commits a Level 6 felony.



1 (c) It is a defense to a prosecution under this section if:

2 (1) the person is currently registered with a syringe exchange
3 program (as described in IC 16-41-7.5); and

4 (2) the person obtained the hypodermic syringe or needle
5 described in subsection (a) under a syringe exchange program
6 (as described in IC 16-41-7.5).

7 SECTION 8. IC 35-31.5-2-239.5 IS ADDED TO THE INDIANA
8 CODE AS A NEW SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2020]: **Sec. 239.5. "Possession offense", for**
10 **purposes of IC 35-48-4.5, has the meaning set forth in**
11 **IC 35-48-4.5-1.**

12 SECTION 9. IC 35-48-4.5 IS ADDED TO THE INDIANA CODE
13 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2020]:

15 **Chapter 4.5. Defenses Relating to Controlled Substances**

16 **Sec. 1. (a) As used in this chapter, "possession offense" means**
17 **any of the following:**

18 (1) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

19 (2) Possession of methamphetamine (IC 35-48-4-6.1).

20 (3) Possession of a controlled substance (IC 35-48-4-7).

21 (b) It is a defense to a prosecution under IC 35-48-4-8.3
22 (possession of paraphernalia) or a possession offense described in
23 IC 35-48-4 that:

24 (1) the person is currently registered with a syringe exchange
25 program (as described in IC 16-41-7.5);

26 (2) the person obtained the hypodermic syringe or needle
27 under a syringe exchange program (as described in
28 IC 16-41-7.5); and

29 (3) there is no more than a residual amount of a controlled
30 substance located in the hypodermic syringe or needle.

