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SENATE BILL 255

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE HARM REDUCTION ACT; EXPANDING THE HARM REDUCTION PROGRAM TO PROVIDE SUPPLIES FOR THE SAFE CONSUMPTION OF CONTROLLED SUBSTANCES; PROVIDING IMMUNITY FROM CRIMINAL LIABILITY FOR POSSESSION OF ITEMS NECESSARY FOR SAFE CONSUMPTION OF CONTROLLED SUBSTANCES; AMENDING THE CONTROLLED SUBSTANCES ACT TO EXCLUDE SUPPLIES USED FOR SAFE CONSUMPTION OF CONTROLLED SUBSTANCES FROM UNLAWFUL PARAPHERNALIA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-2C-2 NMSA 1978 (being Laws 1997, Chapter 256, Section 2) is amended to read:

"24-2C-2. PURPOSE.--The purpose of the Harm Reduction Act is to:

- A. prevent the transmission of the human

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1 immunodeficiency virus, hepatitis B and C viruses and other  
2 blood-borne diseases; ~~and~~

3 B. encourage intravenous drug users to seek  
4 substance abuse treatment and ensure that participants receive  
5 individual counseling and education to decrease the risk of  
6 transmission of blood-borne diseases;

7 C. intervene in the course of non-intravenous drug  
8 use to reduce the development of intravenous drug use; and

9 D. prevent drug overdoses resulting from the  
10 presence of adulterants, including fentanyl or other  
11 potentially dangerous substances."

12 SECTION 2. Section 24-2C-3 NMSA 1978 (being Laws 1997,  
13 Chapter 256, Section 3) is amended to read:

14 "24-2C-3. DEFINITIONS.--As used in the Harm Reduction  
15 Act:

16 A. "department" means the department of health;

17 B. "participant" ~~[or "client"]~~ means ~~[an~~  
18 ~~intravenous]~~ a drug user who exchanges a used hypodermic  
19 syringe, needle or other object used ~~[to inject]~~ for injection  
20 for a sterile hypodermic syringe and needle or a drug user who  
21 receives supplies for the safe preparation and consumption of  
22 controlled substances or controlled substance analogs into the  
23 human body ~~[for a sterile hypodermic syringe and needle]~~ or  
24 other supplies in compliance with the procedures of the  
25 program; and

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1 C. "program" means a harm reduction program for the  
2 purpose of sterile hypodermic syringe and needle exchange and  
3 providing supplies for the safe injection, smoking and  
4 inhalation of controlled substances."

5 SECTION 3. Section 24-2C-4 NMSA 1978 (being Laws 1997,  
6 Chapter 256, Section 4) is amended to read:

7 "24-2C-4. PROGRAM CREATED--DEPARTMENT RESPONSIBILITIES.--

8 A. The department shall:

9 (1) establish and administer a [~~harm~~  
10 ~~reduction~~] program for the purpose of:

11 (a) sterile hypodermic syringe and  
12 needle exchange; and

13 (b) providing supplies for the safe  
14 injection, smoking and inhalation of controlled substances,  
15 within funding constraints;

16 (2) compile data to assist in planning and  
17 evaluating efforts to combat the spread of blood-borne  
18 diseases; and

19 (3) make an annual report, including  
20 legislative recommendations, to the legislative health and  
21 human services committee by October 1 each year.

22 B. Within thirty days of [~~the effective date of the~~  
23 ~~Harm Reduction Act~~] June 20, 1997, the department shall appoint  
24 an advisory committee to include representation from:

25 (1) the office of the attorney general;

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1 (2) the New Mexico state police division of  
2 the department of public safety;

3 (3) the [~~human immunodeficiency virus sexually~~  
4 ~~transmitted disease~~] infectious disease prevention and control  
5 bureau of the department;

6 (4) the director of the [~~epidemiology~~]  
7 surveillance and response division of the department or [~~his~~]  
8 the director's designee;

9 (5) a medical officer of the public health  
10 division of the department; and

11 (6) other persons or representatives as chosen  
12 by the secretary of health to ensure a thorough and unbiased  
13 evaluation of the program established under the Harm Reduction  
14 Act.

15 C. The advisory committee shall:

16 (1) develop policies and procedures for  
17 evaluation of the [~~harm reduction~~] program;

18 (2) develop criteria for data collection and  
19 program evaluation; and

20 (3) meet as necessary to analyze data and  
21 monitor and produce a report on the [~~harm reduction~~] program.

22 D. The department may contract with private  
23 providers to operate the program."

24 SECTION 4. Section 24-2C-5 NMSA 1978 (being Laws 1997,  
25 Chapter 256, Section 5) is amended to read:

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1 "24-2C-5. PROGRAM.--The program shall provide:

2 A. sterile hypodermic syringes and needles in  
3 exchange for used hypodermic syringes, needles or other objects  
4 used ~~[to inject]~~ for the preparation or injection of controlled  
5 substances or controlled substance analogs into the human body;

6 B. devices for testing the presence of adulterants,  
7 including fentanyl or other potentially dangerous substances;

8 ~~[B.]~~ C. education to participants on the  
9 transmission of the human immunodeficiency virus, hepatitis B  
10 and C and prevention measures; and

11 ~~[C.]~~ D. referral to substance abuse treatment  
12 services for participants."

13 SECTION 5. Section 24-2C-6 NMSA 1978 (being Laws 1997,  
14 Chapter 256, Section 6) is amended to read:

15 "24-2C-6. IMMUNITY FROM CRIMINAL LIABILITY.--Exchange or  
16 possession of hypodermic syringes and needles or other items  
17 necessary for the safe consumption of controlled substances by  
18 injection, smoking or inhalation in compliance with the  
19 procedures of the program shall not constitute a violation of  
20 the Controlled Substances Act for a participant ~~[in the~~  
21 ~~program]~~, an employee of the department administering the  
22 program or a private provider whom the department contracts  
23 with to operate the program."

24 SECTION 6. Section 30-31-25.1 NMSA 1978 (being Laws 1981,  
25 Chapter 31, Section 2, as amended) is amended to read:

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1 "30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF DRUG  
2 PARAPHERNALIA PROHIBITED--EXCEPTIONS.--

3 A. It is unlawful for a person to use or possess  
4 with intent to use drug paraphernalia to plant, propagate,  
5 cultivate, grow, harvest, manufacture, compound, convert,  
6 produce, process, prepare, test, analyze, pack, repack, store,  
7 contain, conceal, inject, ingest, inhale or otherwise introduce  
8 into the human body a controlled substance in violation of the  
9 Controlled Substances Act. The provisions of this subsection  
10 do not apply to a person who is in possession of hypodermic  
11 syringes or needles [~~at the time the person is directly and~~  
12 ~~immediately engaged in a harm reduction program~~] or other  
13 supplies provided by the harm reduction program for the purpose  
14 of safe injection, ingestion or inhalation or for testing the  
15 contents of a controlled substance, as provided in the Harm  
16 Reduction Act.

17 B. It is unlawful for a person to deliver, possess  
18 with intent to deliver or manufacture with the intent to  
19 deliver drug paraphernalia with knowledge, or under  
20 circumstances where one reasonably should know, that it will be  
21 used to plant, propagate, cultivate, grow, harvest,  
22 manufacture, compound, convert, produce, process, prepare,  
23 test, analyze, pack, repack, store, contain, conceal, inject,  
24 ingest, inhale or otherwise introduce into the human body a  
25 controlled substance in violation of the Controlled Substances

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1 Act. The provisions of this subsection do not apply to:

2 (1) department of health employees or their  
3 designees while they are directly and immediately engaged in  
4 activities related to the harm reduction program authorized by  
5 the Harm Reduction Act; or

6 (2) the sale or distribution of hypodermic  
7 syringes and needles by pharmacists licensed pursuant to the  
8 Pharmacy Act.

9 C. A person who violates the provisions of  
10 Subsection A of this section shall be issued a penalty  
11 assessment pursuant to Section [~~3 of this 2019 act~~] 31-19A-1  
12 NMSA 1978 and is subject to a fine of fifty dollars (\$50.00).  
13 A person who violates the provisions of Subsection B of this  
14 section is guilty of a misdemeanor.

15 D. A person eighteen years of age or over who  
16 violates the provisions of Subsection B of this section by  
17 delivering drug paraphernalia to a person under eighteen years  
18 of age and who is at least three years the person's junior is  
19 guilty of a fourth degree felony and shall be sentenced  
20 pursuant to the provisions of Section 31-18-15 NMSA 1978."

21 SECTION 7. EFFECTIVE DATE.--The effective date of the  
22 provisions of this act is July 1, 2021.

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