

Primary and Secondary Analysis of Local Elected Officials' Decisions to Support or Oppose Pharmacy Sale of Syringes in California

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ABSTRACT *Under California law, local governments may authorize pharmacies within their jurisdictions to sell ten or fewer syringes to an adult without prescription, proof of identity, or proof of medical need. Local governments may simultaneously exempt adults from prosecution for violation of state drug paraphernalia codes for possession of ten or fewer syringes for personal use. Both of these provisions are temporary and sunset on December 31, 2010, unless subsequent state legislation amends that date. The objective of our study was to ascertain how and why local policymakers made their decisions regarding non-prescription syringe sale (NPSS). We examined influences on their decisions, including specific messengers and the arguments that were most salient to their decision making. We selected jurisdictions that were geographically representative of California counties; those with and without syringe exchange programs, and those that had passed or rejected NPSS. We conducted nine semi-structured interviews in five jurisdictions. To enrich primary data collection, we analyzed secondary data by reviewing audio, video, and written transcripts of public hearings and newspaper coverage in five jurisdictions, including three jurisdictions without primary interview data. Among proponents of NPSS, we identified common themes, including: (1) public health research provided conclusive evidence for reduction in HIV and hepatitis transmission without problems of crime, drug use, or unsafe discard of syringes; (2) the local health officer was the key to influencing local policymakers; (3) recall of prior debates over syringe exchange served to inform their decision making; and (4) a lack of local opposition or controversy. Common concerns among opponents of NPSS included: (1) that there would be an increase in unsafe discard of syringes; (2) loss of an important law enforcement tool; (3) that drug users were incapable of desired behavior change; and (4) that research was inconclusive, or proved that syringe access would not work in reducing rates of disease. Themes held in common by proponents and opponents of NPSS were identified as well. Syringe access through NPSS is in fact supported by a robust body of public health research and is considered an important component of a comprehensive strategy to reduce HIV and hepatitis transmission. Our study highlights the importance of understanding the perspectives of elected officials in order to ameliorate their concerns without undermining the public health goal of reducing death, disease, and suffering in at-risk communities.*

KEYWORDS *Non-prescription syringe sales (NPSS), IDU, SB1159, Pharmacy, California, Public policy, Government, Harm reduction, HIV, Hepatitis C, Prevention*

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INTRODUCTION

Since January 1, 2005, municipal and county governments in California have had the power to authorize pharmacies within their borders to sell ten or fewer syringes to an adult without prescription and without proof of identify or medical need, pursuant to Section 4145 of State Business & Professions Codes.¹ Local governments also have the power to exempt adults who possess ten or fewer syringes for personal use from prosecution for possession of drug paraphernalia if the syringes were obtained from an authorized source, pursuant to Subsection (c) of Health & Human Services Code 11364.² California Governor Arnold Schwarzenegger signed these changes into law in September 2004 under Senate Bill 1159 (SB 1159).³

BACKGROUND

SB 1159 established several notable provisions. For example, possession and sales of syringes are limited to the territory of the authorizing government. Therefore, a person may be arrested and prosecuted for a syringe legally obtained in one jurisdiction if that person crosses into a jurisdiction that has not authorized a Disease Prevention Demonstration Project (DPDP).³ The provisions providing local governmental power to authorize non-prescription syringe sales (NPSS) by pharmacies and possession by adults are temporary, and sunset on December 31, 2010, unless the State Legislature passes legislation to amend or delete the sunset provision, and the Governor signs that legislation. Since 2010 will be Governor Schwarzenegger's last year in office, he plays a decisive role in the future of HIV and hepatitis prevention in the most populous state in the USA.

SB 1159 also included several statewide, permanent changes to California law that are not subject to the sunset provision. Prior to passage of SB 1159, all pharmacies were mandated to keep a registry of any NPSS. The registry recorded the purchaser's proof of identify, address, and signature. SB 1159 repealed this requirement. Another permanent, statewide change was the exemption of syringes containerized for safe disposal from the definition of illegal drug paraphernalia. Under SB 1159, any number of used syringes within a sharps disposal container can no longer be grounds for prosecution anywhere within the State.³

SB 1159 requires a vote of the local government to authorize a DPDP; therefore, elected County Supervisors and City Council members are central to implementation of this disease control strategy. The goal of our study was to ascertain not only *what* the local elected officials decided, but also *how* and *why* they made their decisions regarding NPSS. We wanted to know *who* influenced their decisions, *which* messages and messengers were credible, and *which* arguments were most salient in their decision-making process.

METHODS

Study Group Composition

Our study group consisted of a convenience sample of Municipal and County governments that represented a subset of the 12 local health jurisdictions included in the study of implementation of SB 1159.⁴ The County governments initially identified for inclusion were: Alameda, Contra Costa, Los Angeles, Riverside, Sacramento, and Shasta. Yolo County and the City of Sacramento were added to increase the richness and diversity of experiences we could describe, and because

each government body had recently authorized a DPDP, thus rendering fresh memories among these respondents (see Table 1). We also invited officials from the Southern California counties of Riverside and Los Angeles, and the rural Northern county of Shasta, who either declined to participate or failed to respond to numerous letters, emails, and calls.

Data Collection and Analysis

We conducted nine semi-structured interviews intended to elicit open-ended responses; seven with elected officials and two with staff members authorized by the official to be interviewed for the study, and whom we were assured represented the policymaker's views (see Table 2). The interviews ranged from 25 to 70 minutes in duration, providing a wealth of anecdotes and insight into the local legislative process. Among the questions asked were: "What was the nature of the debate?" "Which individuals or groups were most credible?" "Which arguments were most/least credible?" "Who were the most influential of the proponents and opponents of syringe sale?" "Was there a 'clincher,' an issue or set of issues that rose above the rest to solidify your decision?"

Due to the lack of response from Southern California policymakers, and because only one elected official in our sample had voted "No" to a DPDP, we elected to review audio, video, and written transcripts of public hearings to enrich our understanding of opponent and proponent concerns. We also read available newspaper coverage and editorials in order to further develop themes about arguments in support of or in opposition to NPSS.

Each of the primary interviews was transcribed from digital audio files and entered into text files that were subsequently merged to facilitate analysis across and within each interview. The text file was organized into groupings according to the primary interview question, then summarized into detailed notes which were used to hand code preliminary categories.⁵ Pertinent quotations were highlighted and retained within these categories. Each category was reviewed to identify repeating concepts and then used to formulate themes. Themes paralleled several of the interview questions (e.g., credible sources, relevant arguments, identification of proponents, and opponents) until further reading of the verbatim transcripts and discussion between the investigators solidified four major themes among proponents of NPSS. Analysis of written, video, and audio content was similar to analysis of interviews. Direct quotes from witnesses and elected officials and notes that described the rationale of opponents and proponents were taken using computers, often using software to slow, stop, or replay sections of public hearings. These notes were reviewed by both investigators, and thematic responses and specific quotations were highlighted. Materials were re-examined as necessary for clarification. Four themes from content analysis and analysis of the one "No" vote emerged.

TABLE 1 Counties and cities included in the study

Confidential interviews	Declined interviews	Public hearings studied
Alameda County	Los Angeles County	Los Angeles County
Contra Costa County	Riverside County	Riverside County
Sacramento County	Shasta County	Sacramento County
City of Sacramento		City of Elk Grove
Yolo County		City of Sacramento

TABLE 2 Description of interviewed participants

<i>N</i> =9 participants
8 Democrats, 7 of whom voted Yes on DPDP, 1 voted No
1 Republican, who voted Yes on DPDP
7 of the 9 participants were elected officials, 2 of 9 were staff members
7 of the 9 participants were either County Supervisors or staff to a Supervisor
2 of the 9 participants were either City Council members or staff to a Council member

RESULTS

Summary of Major Themes from Proponents

Although there were unique and idiosyncratic arguments put forth in favor of pharmacy sales of syringes, we focus here on the themes that supporters of DPDP repeated across jurisdictions. Among the common themes were: (1) a belief that public health research proved that improved syringe access would reduce the rate of transmission of HIV and hepatitis, without contributing to crime, drug use, or unsafe discard of syringes; (2) the centrality of the health officer and other important advocates and allies in influencing local policymakers; (3) recollection of prior debates over syringe exchange authorization; and (4) lack of opposition or controversy.

Empirical Evidence

All policymakers who supported DPDP expressed a belief that the public health and scientific research provided a strong basis for the policy decision to authorize syringe sales. Supporters were confident that the research had concluded that improved syringe access would result in less disease transmission in the community, without increased drug use, increased crime, or increased unsafe discard of syringes. A staff member to an elected official who voted in favor of a DPDP said, "*On an empirical or practical basis, it was beyond dispute. Of course on an emotional basis, it wasn't.*"

Central Role of Health Officer and other Important Allies

In response to the question, "*Who did you rely on for accurate information?*" six of eight respondents who voted in favor of a DPDP referred to the County Health Officer, a physician employed by the County to supervise public health programs, as the most influential advocate. HIV/AIDS service organizations, individual physicians, and associations that represent physicians were often mentioned as effective proponents for syringe access through pharmacies. In one jurisdiction, a local Democratic club representing gay, lesbian, transgender, and bisexual persons was considered influential in lobbying elected officials in advance of the vote. In two separate questions, policymakers were asked who were the most *vocal* and the most *effective* proponents of syringe access. Most "Yes" votes and the sole "No" vote identified the County Health Officer as both vocal and effective.

No Controversy and Recollection of Prior Syringe Exchange Debate

Several respondents indicated that there was "little organized opposition," "no controversy," or "little interest" in localities where a DPDP was authorized. An elected official who voted in favor of a DPDP said, "*[It] wasn't one of these issues where hundreds of people showed up in the board chamber.*" All respondents

recalled prior debates on syringe exchange authorization. “*We’d come a long way since 1999*” said an elected official from a mixed urban/suburban county recalling that year’s intense debate on syringe exchange.

Summary of Major Themes from Opponents

Opponents of pharmacy sales of syringes often said that they were concerned about the health of drug users, but that the policy responses should focus on prevention, drug treatment, and incarceration, in order to end cycles of abuse or addiction. Some opponents acknowledged that they did not have the wealth of published research that the proponents had presented, but appealed to “common sense,” or a “respect for law enforcement expertise” based on “years of experience.” Others expressed very strong feelings about the law, without speaking to any specific concerns. In a public hearing on March 1, 2005, Riverside County Supervisor John Tavaglione said, “*It’s a stupid, stupid, absolutely stupid, not well thought out law!*”

Several themes emerged across jurisdictions after review of the sole opponent interview and the recorded transcripts of public hearings. Among the most common arguments against NPSS were: (1) pharmacy sale of syringes would lead to an increase in unsafe discard of potentially infectious syringes in public settings; (2) an important law enforcement “tool” would be lost; (3) there was a lack of research evidence that NPSS would reduce rates of HIV or hepatitis infections; and (4) a belief that drug users are unable to act in their self-interest or the public interest despite legal access to syringes.

Unsafe Discard

Public testimony often focused on the potential risk to the general public from unsafe discard of used syringes, with concern about children a common theme. A Sacramento County resident testifying in opposition described what happened with her 18-month-old son. “*He bent down to pick up a dandelion, but instead came up with a used, dirty, hypodermic needle... I think that common sense only dictates that more needles in circulation means more needles that will show up in our parks and other public places.*” Although the available research strongly suggests that changes in syringe access policy do not lead to increases in unsafe discard of syringes,^{6–8} many witnesses and some policymakers expressed discomfort with allowing adults to purchase syringes without a requirement that they turn in used syringes.

Loss of Probable Cause to Search a Suspect

In a few jurisdictions, law enforcement officials stated that they would lose “an important tool” if the local government authorized a DPDP. Among law enforcement officials making this argument, Sheriff-Elect John McGuinness of Sacramento County said, “*If counties authorize possession of ten or fewer syringes, then law enforcement officials would not be able to use a syringe, even a syringe in plain sight on a car seat, or in a purse, as grounds to search for drugs or other evidence of illegal activity.*” This concern and a general sense of respect for law enforcement, was specifically referenced in statements by policymakers who voted against NPSS.

Research Proves that Syringe Access Doesn’t Work

Witnesses speaking against NPSS sometimes referenced studies of syringe exchange programs (SEPs) in Vancouver and Montreal, which found higher rates of HIV among those who attended SEPs than IDUs who obtained syringes elsewhere. A

lobbyist for a statewide association of narcotics officers said in public testimony that there was “*absolutely no evidence that these needle ‘sell-always’ have any public health benefit*” and that in the legislature no such evidence was ever proffered.* Another witness referenced a study by a physician-researcher that suggested the primary mode of HIV transmission among IDUs was not through syringe sharing but through sexual contact.

Addicts Don’t Care

Assertions that “drug users” and “addicts” lack the capacity to change their behavior were extremely common among opposition witnesses but uncommon in public statements by policymakers. Law enforcement officials and a witness who identified herself as an emergency room physician said that drug users share syringes as part of a social bonding ritual, and that access to sterile syringes would not change that practice. Furthermore, law enforcement and other opponents discussed what they saw as flaws in harm reduction arguments. Opponents argued that “reducing harm” or “reducing risk of harm” was a mistake, because without risks and consequences, drug users would continue to behave in ways that are dangerous to themselves and detrimental to the community.

Shared Issues among Proponents and Opponents

There were certain themes shared by “Yes” and “No” votes. Among these shared issues were respect for law enforcement perspectives, respect for the health officer’s expertise, concern about inadequate budgeting of drug treatment, and concern about hepatitis infection. Hepatitis was not mentioned in our questionnaire or correspondences, yet all nine respondents volunteered a concern about hepatitis in the interviews.

LIMITATIONS

The results of our study should be considered in light of several limitations. Nine interviews from among over 100 individuals who voted in favor of or against NPSS cannot represent the breadth of considerations for each vote. As of this writing, NPSS has been voted upon in 22 jurisdictions and our sample represents only eight of these jurisdictions.⁹ Furthermore, four of the nine interviews took place more than 12 months after the debate and vote; thus, recall bias or lack of clear recall is highly likely. However, our review of public records validated much of the primary data we gathered. We conducted no interviews with lawmakers from Southern California, where the majority of the state’s population resides; therefore, the themes we identified may not reflect the perceptions of policymakers in this area of the state. We interviewed only one policymaker who voted “No” to approving a DPDP. Other “No” votes could have illuminated additional motives for opposing a DPDP that were not stated in public hearings. Despite these limitations, we believe the results of our study are important for health departments and policymakers in

*The narcotics officers’ lobbyist was incorrect. An example of expert analysis provided to all California State Senate Health Committee members can be found at http://info.sen.ca.gov/pub/03-04/bill/sen/sb_1151-1200/sb_1159_cfa_20040308_162038_sen_comm.html

California to consider during deliberations about the acceptance of NPSS in their jurisdictions.

DISCUSSION

In our research, we listened to the voices of local officials charged with making political and public health decisions. Under California law, these local officials are responsible for these decisions, and must balance public health and public safety perspectives with political and social consequences. We also listened closely to the public testimony of both opponents and proponents of pharmacy sales of syringes. We discovered that the County Health Officer was the most trusted source of information for local policymakers. Proponents of NPSS in California or other states considering these programs can help health officials collect evidence to support the establishment of syringe access programs, as well as help them prepare for opposition arguments. For local policymakers willing to vote in favor of NPSS—even in the face of influential opposition—the most salient arguments were based on a robust body of research that finds that allowing adults to purchase and possess syringes reduces the rate of HIV transmission without contributing to increases in drug use, crime, or unsafe discard of syringes.^{7,8}

One of the most effective arguments against syringe sale and possession appeared to be the concern that unsafe discard of syringes, especially those sold by pharmacies, would potentially endanger the general public, with an common emphasis on the potential risk to children. Although the available research suggests no change in the rate of unsafe discard of syringes when syringes have been made legally available through pharmacy sales,^{9–11} additional research into the relationship between legality of syringe sale and possession, and safe or unsafe discard could address the concerns of communities and policymakers.

Another effective argument was the loss of a “tool” that law enforcement might use to protect the public from drug trafficking and other crimes. Further research, including legal research, is needed to evaluate the validity of this concern.

Surprising, perhaps, is that the idea of “sending the wrong message” about drug use did not emerge as a common theme among elected officials or witnesses. Stigmatizing users as incompetent or uncaring was common in opposition testimony, but uncommon in public or private comments made by elected officials.

CONCLUSION

Syringe access through NPSS or syringe exchange programs is a proven public health strategy to slow the spread of potentially deadly infections. While there is little or no scientific controversy about the validity of improved syringe access as disease prevention,^{7,8} there remains political controversy within the context of efforts to eradicate illegal drug use.^{10–13} Public health proponents are well advised to understand why elected officials might resist establishing these particular disease control policies, and seek to ameliorate their concerns whenever possible, without undermining the public health goal of reducing death, disease, and suffering in communities.

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REFERENCES

1. Legislative Counsel Office of the California State Legislature. Business and Professions Code, Section 4140–4149. Available at: <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=53519425183+0+0+0&WAIAction=retrieve>. Accessed on: December 26, 2008.
2. Legislative Counsel Office of the California State Legislature. Health and Safety Code, Section 11364–11376. Available at: <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=53537126350+0+0+0&WAIAction=retrieve>. Accessed on: December 26, 2008.
3. California State Senate website. Available at: http://info.sen.ca.gov/pub/03-04/bill/sen/sb_1151-1200/sb_1159_bill_20040920_chaptered.html. Accessed on: December 28, 2008.
4. Rose V, Backes G, Martinez AN, McFarland W. Non-prescription syringe sales in California: a qualitative examination of practices among 12 local health jurisdictions. *J Urban Health*. 2010. doi:10.1007/s11524-010-9445-5.
5. Patton MQ. *Qualitative research and evaluation methods*. 3rd ed. Thousand Oaks: Sage; 2002.
6. Fuller CM, Ahern J, Vadnai L, et al. Impact of increased syringe access: preliminary findings on injection drug user syringe source, disposal, and pharmacy sales in Harlem, New York. *J Am Pharm Assoc*. 2002;42(Suppl 2):S77-S82.
7. Fuller CM, Galea S, Caceres W, Blaney S, Sisco S, Vlahov D. Multilevel community-based intervention to increase access to sterile syringes among injection drug users through pharmacy sales in New York City. *Am J Public Health*. 2007;97(1):117-24.
8. Raboud JM, Boily MC, Rajeswaran J, O'Shaughnessy MV, Schechter MT. The impact of needle-exchange programs on the spread of HIV among injection drug users: a simulation study. *J Urban Health*. 2003;80(2):302-320.
9. California Syringe Access. SB 1159 Resource Library. Available at: <http://www.syringeaccess.com>. Accessed on: May 22, 2009.
10. World Health Organization. *Policy brief: provision of sterile injecting equipment to reduce HIV transmission*. Geneva: WHO; 2004.
11. Centers for Disease Control & Prevention. Fact Sheet Series: State and Local Policies Regarding IDUs' Access to Sterile Syringes; December, 2005. Available at: http://www.cdc.gov/idu/facts/aed_idu_Pol.htm. Accessed on: February 26, 2010.
12. Center for Health Improvement. Policy Brief: Syringe Exchange in California: Policies, Programs and Progress. Sacramento; August 2007.
13. State Senate Health Committee Analysis of AB 518 (Mazzoni) Needle Exchange Programs. 1999. Available at: http://info.sen.ca.gov/pub/99-00/bill/asm/ab_0501-0550/ab_518_cfa_19990614_151229_sen_comm.html. Accessed on: December 26, 2008.