

1 SENATE BILL 255

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Bill B. O'Neill

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10 AN ACT

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

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

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

23 "24-2C-2. PURPOSE.--The purpose of the Harm Reduction Act
24 is to:

25 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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