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SENATE BILL 220

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

CARLOS R. CISNEROS

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH; CREATING THE HARM REDUCTION ACT TO REDUCE  
THE SPREAD OF BLOOD-BORNE DISEASES; AMENDING AND ENACTING  
CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 6 of this act may be cited as the "Harm Reduction Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the  
Harm Reduction Act is to:

A. prevent the transmission of the human  
immunodeficiency virus, the hepatitis B virus and other  
blood-borne diseases that occur when sterile needles are not  
used during intravenous drug use; and

B. require intravenous drug users to seek substance  
abuse treatment and ensure that participants receive individual

Underscored material = new  
[bracketed material] = delete

1 counseling and education to decrease the risk of transmission of  
2 blood-borne diseases.

3 Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the  
4 Harm Reduction Act:

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

6 B. "participant" or "client" means an intravenous  
7 drug user who exchanges a used hypodermic syringe, needle or  
8 other object used to inject controlled substances or controlled  
9 substance analogs into the human body for a sterile hypodermic  
10 syringe in compliance with the procedures of the program; and

11 C. "program" means the harm reduction pilot program  
12 for the purpose of sterile hypodermic syringe and needle  
13 exchange.

14 Section 4. [NEW MATERIAL] PROGRAM CREATED-- DEPARTMENT  
15 RESPONSIBILITIES. --

16 A. The department shall:

17 (1) establish and administer a harm reduction  
18 pilot program for the purpose of sterile hypodermic syringe and  
19 needle exchange;

20 (2) compile data to assist in planning and  
21 evaluating efforts to combat the spread of blood-borne diseases;  
22 and

23 (3) make an annual report to the legislative  
24 health and human services committee by October 1 each year.

25 B. The department may contract with private

Underscored material = new  
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1 providers to operate the program.

2 Section 5. [NEW MATERIAL] PROGRAM -- The program shall  
3 provide:

4 A. free sterile hypodermic syringes and needles in  
5 exchange for used hypodermic syringes, needles or other objects  
6 used to inject controlled substances or controlled substance  
7 analogs into the human body;

8 B. education to participants on the transmission of  
9 the human immunodeficiency virus and prevention measures; and

10 C. substance abuse treatment services for  
11 participants.

12 Section 6. [NEW MATERIAL] CRIMINAL LIABILITY. -- Exchange  
13 of sterile hypodermic syringes and needles under the program  
14 shall not constitute an offense under the Controlled Substances  
15 Act for a participant, employee of the department or its  
16 designee. A person shall not be provided immunity from  
17 prosecution if he violates a law prohibiting or regulating the  
18 use, possession, dispensing, distribution or promotion of drug  
19 paraphernalia if he is not participating in the program as a  
20 client or as an employee or designee of the department.

21 Section 7. Section 30-31-25.1 NMSA 1978 (being Laws 1981,  
22 Chapter 31, Section 2) is amended to read:

23 "30-31-25.1. POSSESSION, DELIVERY, MANUFACTURE OR DELIVERY  
24 TO A MINOR OF DRUG PARAPHERNALIA PROHIBITED. --

25 A. It is unlawful for any person to use or possess

. 114442. 2

Underscored material = new  
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1 with intent to use drug paraphernalia to plant, propagate,  
2 cultivate, grow, harvest, manufacture, compound, convert,  
3 produce, process, prepare, test, analyze, pack, repack, store,  
4 contain, conceal, inject, ingest, inhale or otherwise introduce  
5 into the human body a controlled substance in violation of the  
6 Controlled Substances Act. The provisions of this subsection do  
7 not apply to a person directly participating in the harm  
8 reduction pilot program, pursuant to the provisions of the Harm  
9 Reduction Act.

10 B. It is unlawful for any person to deliver, possess  
11 with intent to deliver or manufacture with the intent to deliver  
12 drug paraphernalia with knowledge, or under circumstances where  
13 one reasonably should know, that it will be used to plant,  
14 propagate, cultivate, grow, harvest, manufacture, compound,  
15 convert, produce, process, prepare, test, analyze, pack, repack,  
16 store, contain, conceal, inject, ingest, inhale or otherwise  
17 introduce into the human body a controlled substance in  
18 violation of the Controlled Substances Act. The provisions of  
19 this subsection do not apply to a person directly participating  
20 in the harm reduction pilot program, pursuant to the provisions  
21 of the Harm Reduction Act.

22 C. Any person who violates this section with respect  
23 to [(1)] Subsection A of this section is guilty of a misdemeanor  
24 and upon conviction shall be punished by a fine of not less than  
25 fifty dollars (\$50.00) nor more than one hundred dollars (\$100)

. 114442. 2

Underscored material = new  
[bracketed material] = delete

1 or by imprisonment for a definite term less than one year, or  
2 both. [~~(2)~~] Any person who violates this section with respect  
3 to Subsection B of this section is guilty of a misdemeanor.

4 D. Any person eighteen years of age or over who  
5 violates the provisions of Subsection B of this section by  
6 delivering drug paraphernalia to a person under eighteen years  
7 of age and who is at least three years his junior is guilty of a  
8 fourth degree felony and shall be sentenced pursuant to the  
9 provisions of Section 31-18-15 NMSA 1978. "

1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997

3  
4  
5 February 14, 1997

6  
7 Mr. President:

8  
9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been  
10 referred

11  
12 SENATE BILL 220

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO NOT PASS, but that

16  
17 SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE  
18 FOR SENATE BILL 220

19  
20 is reported WITHOUT RECOMMENDATION, and further recommends  
21 that it now be referred to the JUDICIARY COMMITTEE.

22  
23 Respectfully submitted,  
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\_\_\_\_\_  
Shannon Robinson, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 1 Against

Yes: 7  
No: Vernon  
Excused: Ingle  
Absent: None

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~~[bracketed material] = delete~~

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 220

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO HEALTH; CREATING THE HARM REDUCTION ACT TO REDUCE  
THE SPREAD OF BLOOD-BORNE DISEASES; AMENDING AND ENACTING  
CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1 through  
6 of this act may be cited as the "Harm Reduction Act".

Section 2. [NEW MATERIAL] PURPOSE. --The purpose of the  
Harm Reduction Act is to:

A. prevent the transmission of the human  
immunodeficiency virus, hepatitis B and C viruses and other  
blood-borne diseases; and

B. encourage intravenous drug users to seek substance  
abuse treatment and ensure that participants receive individual  
counseling and education to decrease the risk of transmission of

blood-borne diseases.

Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the Harm Reduction Act:

- 1           A. "department" means the department of health;
- 2           B. "participant" or "client" means an intravenous drug  
3 user who exchanges a used hypodermic syringe, needle or other  
4 object used to inject controlled substances or controlled  
5 substance analogs into the human body for a sterile hypodermic  
6 syringe and needle in compliance with the procedures of the  
7 program; and
- 8           C. "program" means a harm reduction program for the  
9 purpose of sterile hypodermic syringe and needle exchange.

10           Section 4. [NEW MATERIAL] PROGRAM CREATED-- DEPARTMENT  
11 RESPONSIBILITIES. --

- 12           A. The department shall:
  - 13               (1) establish and administer a harm reduction  
14 program for the purpose of sterile hypodermic syringe and needle  
15 exchange;
  - 16               (2) compile data to assist in planning and  
17 evaluating efforts to combat the spread of blood-borne diseases;  
18 and
  - 19               (3) make an annual report, including legislative  
20 recommendations, to the legislative health and human services  
21 committee by October 1 each year.
- 22           B. Within ten days of the effective date of the Harm  
23 Reduction Act, the department shall appoint an advisory  
24 committee, to include representation from:
  - 25               (1) the office of the attorney general;

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

3 (3) the human immunodeficiency virus sexually  
4 transmitted disease bureau of the department;

5 (4) the director of the epidemiology division of the  
6 department or his designee;

7 (5) a medical officer of the public health division  
8 of the department; and

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

12 C. The advisory committee shall:

13 (1) develop policies and procedures for evaluation  
14 of the harm reduction program;

15 (2) develop criteria for data collection and program  
16 evaluation; and

17 (3) meet as necessary to analyze data and monitor  
18 and produce a report on the harm reduction program.

19 D. The department may contract with private providers to  
20 operate the program.

21 Section 5. [NEW MATERIAL] PROGRAM --The program shall  
22 provide:

23 A. sterile hypodermic syringes and needles in exchange  
24 for used hypodermic syringes, needles or other objects used to  
25 inject controlled substances or controlled substance analogs into

1 the human body;

2 B. education to participants on the transmission of the  
3 human immunodeficiency virus, hepatitis B and C and prevention  
4 measures; and

5 C. referral to substance abuse treatment services for  
6 participants.

7 Section 6. [NEW MATERIAL] CRIMINAL LIABILITY. --Exchange of  
8 sterile hypodermic syringes and needles under the program shall not  
9 constitute an offense under the Controlled Substances Act for a  
10 participant, employee of the department or its designee. A person  
11 shall not be provided immunity from prosecution if he violates a  
12 law prohibiting or regulating the use, possession, dispensing,  
13 distribution or promotion of drug paraphernalia if he is not  
14 participating in the program as a client or as an employee or  
15 designee of the department.

16 Section 7. Section 30-31-25.1 NMSA 1978 (being Laws 1981,  
17 Chapter 31, Section 2) is amended to read:

18 "30-31-25.1. POSSESSION, DELIVERY, MANUFACTURE OR DELIVERY TO  
19 A MINOR OF DRUG PARAPHERNALIA PROHIBITED. --

20 A. It is unlawful for any person to use or possess  
21 with intent to use drug paraphernalia to plant, propagate,  
22 cultivate, grow, harvest, manufacture, compound, convert, produce,  
23 process, prepare, test, analyze, pack, repack, store, contain,  
24 conceal, inject, ingest, inhale or otherwise introduce into the  
25 human body a controlled substance in violation of the Controlled

Underscored material = new  
[bracketed material] = delete

1 Substances Act. The provisions of this subsection do not apply to  
2 a person at the time he is coming to or returning from an actual  
3 syringe or needle exchange operated pursuant to the provisions of  
4 the Harm Reduction Act.

5 B. It is unlawful for any person to deliver, possess with  
6 intent to deliver or manufacture with the intent to deliver drug  
7 paraphernalia with knowledge, or under circumstances where one  
8 reasonably should know, that it will be used to plant, propagate,  
9 cultivate, grow, harvest, manufacture, compound, convert, produce,  
10 process, prepare, test, analyze, pack, repack, store, contain,  
11 conceal, inject, ingest, inhale or otherwise introduce into the  
12 human body a controlled substance in violation of the Controlled  
13 Substances Act. The provisions of this subsection do not apply to  
14 department of health employees or their designees while they are  
15 directly and immediately engaged in activities related to the harm  
16 reduction program authorized by the Harm Reduction Act.

17 C. Any person who violates this section with respect to  
18 [~~(1)~~] Subsection A of this section is guilty of a misdemeanor and  
19 upon conviction shall be punished by a fine of not less than fifty  
20 dollars (\$50.00) nor more than one hundred dollars (\$100) or by  
21 imprisonment for a definite term less than one year, or both.  
22 [~~(2)~~] Any person who violates this section with respect to  
23 Subsection B of this section is guilty of a misdemeanor.

24 D. Any person eighteen years of age or over who violates  
25 the provisions of Subsection B of this section by delivering drug

1 paraphernalia to a person under eighteen years of age and who is at  
2 least three years his junior is guilty of a fourth degree felony  
3 and shall be sentenced pursuant to the provisions of Section 31-18-  
4 15 NMSA 1978. "

5 Section 8. EMERGENCY.--It is necessary for the public peace,  
6 health and safety that this act take effect immediately.

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SPAC/SB 220

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FORTY-THIRD LEGISLATURE SPAC/SB 220/a  
FIRST SESSION, 1997

March 3, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 220

has had it under consideration and reports same with recommendation  
that it DO PASS, amended as follows:

1. On page 2, line 25, strike "ten" and insert in lieu thereof

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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SJC/SB 220

Page 15

"thirty".

2. On page 4, strike lines 10 through 18 in their entirety and insert in lieu thereof the following new section:

"Section 6. IMMUNITY FROM CRIMINAL LIABILITY. -- Exchange or possession of hypodermic syringes and needles in compliance with the procedures of the program shall not constitute a violation of the Controlled Substances Act for a participant in the program, an employee of the department administering the program or a private provider whom the department contracts with to operate the program."

3. On page 5, line 5, after "person" strike the remainder of the line in its entirety, strike lines 6 and 7 in their entirety and insert in lieu thereof "who is in possession of hypodermic syringes or needles at the time he is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act."

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SPAC/SB 220

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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SJC/SB 220

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Respectfully submitted,

\_\_\_\_\_  
Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

No: 0

Excused: None

Absent: 0

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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SJC/SB 220

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**State of New Mexico**  
**House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 21, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred  
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR SENATE  
BILL 220, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

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Thomas P. Foy, Chairman

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 2 Against

Yes: 7

No: M P. Garcia, Pederson

Excused: Alwin, Foy, Rios, Sanchez

Absent: None

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Underscored material = new  
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