SUBJECT: Disease control outreach programs and authorization of syringe exchange

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Naishtat, Coleman, J. Davis, Gonzales, S. King, Truitt, Zerwas

3 nays — Kolkhorst, Hopson, Laubenberg

1 absent — McReynolds

SENATE VOTE: On final passage, March 19 — 23-6 (Estes, Fraser, Huffman, Patrick, Shapiro, Williams)

WITNESSES: For — Miles Brandon; Michael Chalk, St. Mark's Episcopal Church; Henry Harrell, Bexar Area Harm Reduction Coalition; Neel Lane, St. Mark's Episcopal Church; William Martin, James A. Baker Institute for Public Policy, Rice University; Joseph Schneider, Texas Medical Association, Texas Pediatric Society, Texas Academy of Family Physicians; Susan Wilen, Bexar Area Harm Reduction Coalition; James Willborn; (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Randall Ellis, Legacy Community Health Services; Mark Evans, Trinity County; Marisa Finley, Scott & White Center for Healthcare Policy; Shirlen Hardeo; Harry Holmes, Harris County Healthcare Alliance; Heather King-Fazio; Carrie Kroll, Texas Pediatric Society; Robert Love; James Mason, Texas Impact; Nancy Neavel, League of Women Voters; Norma Paz, South Texas Substance Abuse Recovery Services; Vicki Perkins, CHRISTUS Santa Rosa Health Care; Randall Peterson; Heath Riddles, Texas Advocacy Project; Denise Rose, Texas Hospital Association; Jason Sabo, Houston Area Immunization Partnership; Cindy Segovia, Bexar County Commissioners Court; Darren Whitehurst, Texas Medical Association; James Willmann, Texas Nurses Association; Lynda Woolbert, Coalition for Nurses in Advanced Practice)

Against — MerryLynn Gerstenschlager, Texas Eagle Forum; Ann Hettinger, Concerned Women for America; (*Registered, but did not testify:* Ryan Paylor, Texas Conservative Coalition)

On — Jeff Hitt, Department of State Health Services; (*Registered, but did not testify:* Patrick Waldron, Department of State Health Services)

BACKGROUND:

The Texas Controlled Substances Act, chapter 481 of the Health and Safety Code, defines the types of drugs regulated in Texas and sets forth the limitations on their use. Section 481.125 prohibits the possession of drug paraphernalia, including syringes, for illegal use of a controlled substance or the distribution of such paraphernalia with the knowledge that the person receiving it will use it for illegal purposes.

Syringe exchange programs provide injection drug users with free, sterile syringes in exchange for used syringes, which are surrendered to the program and then discarded. During the 80th Legislature's consideration of SB 10 by Nelson, the omnibus Medicaid reform legislation, the House adopted an amendment by Rep. McClendon authorizing a syringe exchange pilot program in Bexar County. The amendment added Government Code, sec. 531.0972, which permitted a disease-control pilot program that could include an anonymous syringe exchange program.

The Bexar County syringe exchange pilot program was to be funded by the county and permissible as of September 1, 2007. The pilot program hired a director, but operations of the syringe exchange program were ceased when Atty. Gen. Opinion, No. GA-0622 determined that Government Code, sec. 531.0972 did not establish a defense to prosecution from drug paraphernalia offenses for syringe exchange volunteers or participants.

DIGEST:

CSSB 188 would authorize certain entities to establish disease control outreach programs that could provide for the anonymous exchange of used syringes for an equal number of new syringes.

In counties with populations of 300,000 or more, local health authorities or other local government entities charged with protecting the public health could establish a disease control outreach program that could:

- assist participants in obtaining health care and other physical and mental health-related services, including substance abuse treatment and blood-borne disease testing;
- offer education on the transmission and prevention of communicable diseases, including hepatitis C, hepatitis B, and HIV; and

- provide for the anonymous exchange of used syringes for an equal number of new syringes.

The disease control outreach program could charge a fee for each new syringe used in the program not to exceed 150 percent of the cost of the syringe. The program operator would store syringes in a secure manner and limit access to the syringes to authorized employees or volunteers of the program. The program would follow established syringe disposal procedures.

A wholesale drug or device distributor could distribute syringes to a disease control outreach program. It would be a defense to prosecution to offenses related to possession or delivery of drug paraphernalia if a person:

- manufactured syringes to be used by a disease control program; or
- used, possessed, or delivered syringes for use by a disease control outreach program and presented evidence showing that the person was an employee, volunteer, or participant of the program.

The organization operating a disease control outreach program annually would provide the Department of State Health Services (DSHS) with information on:

- program effectiveness, including the number of clients served and the methods of distribution;
- the program's impact on reducing the spread of communicable diseases, including the number of syringes collected, the number of referrals for testing for communicable diseases, and a list of facilities to which clients were referred for testing; and
- the program's effect on injected drug use, including the number of referrals for substance abuse treatment, a list of facilities to which clients were referred for treatment services, and other information required by DSHS.

CSSB 188 would include a statement of legislative findings about the need for individuals addicted to drugs to receive education and treatment for addiction and the ability of community-based and faith-based organizations to create a network of support for families and to intervene in drug addiction. The bill would state that the local option for disease control outreach programs would reduce the transmission of blood-borne

diseases, provide clients with referrals to health and social services, provide access to primary health care, ensure safe and sterile disposal of used syringes, and protect the public health. Outreach program goals could include reduced rates of drug use and reduced injuries to innocent victims, first responders, and law enforcement due to syringe sticks from improperly disposed syringes.

The bill would state legislative intent that there would be increased access to drug treatment centers, likelihood of successful addiction treatment, and protection of public health and safety.

The bill would take effect September 1, 2009. The defense to prosecution for drug paraphernalia offenses established by this bill would apply to offenses committed on or after that date.

SUPPORTERS SAY:

CSSB 188 would provide communities the option to establish disease control outreach programs, including those that established anonymous syringe exchanges, to enhance the health and safety of community members. The programs would provide public education to reduce the spread of communicable diseases and assistance obtaining health services, including substance abuse treatment referrals. Syringe exchanges would make neighborhoods safer, because drug addicts would be less likely to leave used syringes in public or hide them in places where law enforcement or health care providers could be pricked because the addict feared prosecution for needle possession. The outreach programs also would be required to submit thorough reports to DSHS that could be reviewed for program effectiveness and would provide public transparency in their operations.

The programs authorized by this bill, including syringe exchange programs, would be limited to counties with populations of 300,000 or more, which face the most issues with drug abuse and addiction. More than two decades of research shows that syringe exchanges protect the health of injection drug users and those they could infect, while reducing medical costs to individuals and taxpayers. The programs provide these benefits without encouraging illicit drug use. They are an effective way to connect drug abusers with treatment programs and to provide medical assistance to a population often lacking basic, preventative health care.

Injection drug users not only infect themselves with contaminated syringes but can spread diseases to their sexual partners and children. Reducing the

spread of blood-borne diseases, such as HIV and hepatitis, among drug users also reduces the spread of disease to their innocent partners and children.

In 2002, the U.S. Centers for Disease Control (CDC) reported that injection drug use directly or indirectly accounted for more than 36 percent of AIDS cases, and the National Institutes of Health (NIH) reports that injection drug use is the primary cause of Hepatitis C. A 1997 NIH consensus panel on HIV and a 2002 panel on Hepatitis C recommended syringe exchange to reduce transmission of these diseases. Based on an array of studies, the HIV panel said the programs could lead to a 30 percent or greater reduction in HIV.

The bill would apply the recommendations of the NIH panels to provide local governments the option to establish disease control outreach programs, including anonymous syringe exchanges, to reduce transmission of blood-borne diseases and health care costs to individuals and the state. If a user is on public assistance or must shift to public assistance as illness prevents earning wages, the costs of treating HIV and hepatitis shift to the Texas taxpayer. The combined Medicaid cost to Texas for HIV/AIDS and Hepatitis C in 2005 was more than $110 million. The unreimbursed cost for indigent care borne by public hospitals ultimately is paid by local taxpayers.

Syringe exchanges do not condone drug use but offer an alternative to using contaminated syringes and a way to counsel drug users on quitting. This is the best way to address the difficult reality that a user battling addiction will not abstain from injecting illicit drugs simply because a sterile syringe is not available. The message this bill would send to Texas children would not encourage them to use drugs but rather would encourage them to look with compassion on and render aid to their fellow Texans.

The National Institutes of Health has stated people in areas with syringe exchange programs are more likely to enter drug treatment. The syringe exchanges authorized in this bill would provide volunteers a chance to build trust with drug users and to encourage them to seek treatment. These programs would reach people who would be inaccessible through other forms of outreach.

Reports from the U.S. General Accountability Office, National Academy of Sciences, and the CDC have said there is no evidence that syringe exchange programs increase illegal drug use. Another CDC study showed no evidence that U.S. programs increase the total number of discarded syringes in cities where they are located. A study published in the American Journal of Public Health concluded that Baltimore arrest rates in program and non-program areas show syringe exchange programs do not appear to be associated with increased crime rates.

The author of a Vancouver study that often is cited by opponents as demonstrating issues with syringe exchanges has made public a statement that her research was misused and the results of her study were influenced by the higher risk nature of the study participants and the coinciding emergence of use of a specific drug that required more frequent injection. The author of a Montreal study often cited by opponents has indicated that the results of her study demonstrate the need for more syringe exchanges because they typically drive down HIV rates.

OPPONENTS SAY:

CSSB 188 should not authorize syringe exchange programs in conjunction with disease control outreach programs. Any health benefits provided by syringe exchange programs would be overshadowed by the harmful message they send that illegal drug use is condoned. Texas could not send a clear message to adolescents that they should not use illegal drugs if the state authorized community programs to provide an instrument for drug use to an addict.

Statistics on dirty syringes as vehicles for spreading blood-borne illnesses show that the only message that should be sent to youth is that illicit drug use is dangerous and not acceptable. The premise that drug abusers will risk an overdose for a short-term high, yet consistently use clean syringes to protect their long-term health, is questionable, and syringe-sharing often persists among participants in syringe exchange programs. The best way to squelch the spread of disease from injection drug use is for people to abstain from using illegal drugs. By authorizing syringe exchanges for known drug users, CSSB 188 would facilitate an illegal drug user's addiction.

Many studies touted by advocates of syringe exchange involve questionable experimental design, including small sample sizes, problems with the accuracy of self-reporting, and questionably drawn causal relationships. For example, findings of decreased disease transmission

rates could be independently attributable to the outreach and education efforts associated with the syringe exchange programs, rather than with the exchange efforts themselves. In addition, not all studies show syringe exchange programs in a positive light. A 1995 Montreal study showed that injection drug users who used the local syringe exchange program were more than twice as likely to become infected with HIV as those who did not use the syringe exchange. A Vancouver study showed AIDS prevalence rose significantly in the first ten years the program was in operation.

CSSB 188 would attract drug users to the areas in which syringe exchanges operated. Many neighborhood residents living near locations of syringe exchange programs have reported witnessing increases in the number of discarded syringes in their neighborhoods after a program began operating. This has caused many families near the programs to keep their children from playing outside for fear they will be stuck by an improperly discarded syringe. While supporters cite studies that indicate an overall decrease in the discarding of syringes in particular cities, some local residents still have concerns about higher concentrations of improperly discarded syringes in immediate proximity to local programs. It is not fair to ask that certain neighborhoods suffer safety risks and restrict their daily routines so that a syringe exchange program can operate in a particular area.

Residents of neighborhoods where syringe exchange programs would be located should not have to face the threat of increased crime from attracting known drug users to these areas. Areas with high concentrations of drug users are linked with higher crime rates, and drug dealers could be attracted to areas that established syringe exchange programs because they provided a ready supply of clientele from the surrounding neighborhoods. More local dealers also could increase the exposure of local youth to drugs, potentially starting them down the path to drug use when they otherwise might not have been exposed to this activity.

NOTES:

As passed by the Senate, SB 188 would not have limited the program to counties with populations of 300,000 or more, did not include as many reporting requirements for local health authorities or other organizations operating a disease control outreach program, and was not preceded by the statement of legislative findings.