

**TESTIMONY OF GAY & LESBIAN ADVOCATES & DEFENDERS IN
SUPPORT OF H 2655, H 2741, AND S 1312**

**LEGISLATION TO DECRIMINALIZE POSSESSION OF HYPODERMIC
NEEDLES AND SYRINGES AND PERMIT THEIR SALE WITHOUT
PRESCRIPTION IN PHARMACIES**

Gay & Lesbian Advocates & Defenders (GLAD) strongly supports H 2655, H 2741 and S 1312, bills that will bring Massachusetts law into line with that of 47 other states by permitting over the counter sales of hypodermic needles and syringes at pharmacies.

Injection drug use is now a primary factor fueling the epidemics of Human Immunodeficiency Virus (HIV), hepatitis C virus (HCV), and hepatitis B virus (HBV). These bills are based on a simple, but critical principle: HIV, HCV and HBV are preventable. In fact, there is a consensus in the scientific community that ensuring access to clean needles prevents disease transmission.

Unfortunately, however, Massachusetts is the only New England state and one of three remaining in the country that has not yet removed barriers to the purchase of syringes at pharmacies in order to prevent the loss of life and devastating social costs caused by the skyrocketing epidemics of HIV, HCV and HBV.

All of the stated fears about enacting this legislation have been soundly repudiated by the experience of other states as well as by scientific studies. There is no dispute in the scientific and medical communities that public health strategies to increase access to clean needles save lives, and do not increase substance abuse or crime.

Massachusetts has been a national leader in HIV prevention. It is time for the Legislature to correct a major gap in our public health strategies to eliminate HIV, HCV and HBV by passing H 2655, H 2741 and S 1312.

There Is A Scientific Consensus That Clean Needles Saves Lives.

The epidemics of HIV, HCV, and HBV are a medical and public health crisis in this country, causing “thousands of deaths and millions of dollars in preventable health care expenditures every year.”¹ It is estimated that 650,000 to 900,000 Americans are

¹ See American Bar Association AIDS Coordinating Committee, *Deregulation of Hypodermic Needles and Syringes As a Public Health Measure: A Report on Emerging Policy and Law in the United States* (Scott Burris, ed., 2001) at xiii.

now living with HIV and that 40,000 new infections occur every year.² Since 1981, 753,907 cases of AIDS have been reported nationally.³ There are currently 13,307 people living with HIV or AIDS in Massachusetts.⁴ Although the subject of less public awareness, the hepatitis epidemic equals HIV in its devastation. More than 2.7 million people in the United States have chronic HCV infection.⁵ Between 1 and 1 ¼ million Americans have active hepatitis b, with between 130,000 to 320,000 new infections occurring every year.⁶

Injection drug use is now a primary factor in the proliferation of the HIV, HCV and HBV epidemics.⁷ Half of new HIV infections nationally are caused by the sharing of contaminated injection equipment.⁸ An estimated three out of four AIDS cases among women are due to injection drug use or heterosexual contact with someone infected with HIV through injection drug use.⁹ More than three quarters of new HIV infections in children result from the consequences of injection drug use in a parent.¹⁰ Women of color and their children are disproportionately affected by HIV/AIDS due to injection drug

² See CDC, *New Attitudes & Strategies: A Comprehensive Approach to Preventing Blood-Borne Infections Among IDUS* (August 2001) at <http://www.cdc.gov/idu/idu.htm>.

³ *Id.*

⁴ See Massachusetts Department of Public Health, *Massachusetts HIV/AIDS Surveillance* (January 2002) at <http://www.state.ma.us/dph/cdc/aids/quarterly/county.pdf>.

⁵ See Wong, *supra*, note 3.

⁶ See CDC, *New Attitudes & Strategies*, *supra*, note 6.

⁷ See U.S. Department of Health and Human Services, *Evidence-Based Findings On the Efficacy of Syringe-Exchange Programs: An Analysis From the Assistant Secretary For Health And Surgeon General of the Scientific Research Completed Since April 1998* (2000) (hereinafter “Evidence-Based Findings”) at <http://www.harmreduction.org/issues/surgeon/genrev/surgreview.html> (statement of Surgeon General that “injection drug use continues to fuel the HIV epidemic”); Patricia Case et al., *Arrests and Incarceration of Injection Drug Users For Syringe Possession in Massachusetts: Implications For HIV Prevention*, 18 (Suppl. 1) *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology*, S71-S75 at S71 (1998) (“Multiperson use of syringes is a major risk behavior responsible for the spread of HIV, hepatitis B, and hepatitis C”).

⁸ See, *Evidence-Based Findings*, *supra*, note 11.

⁹ *Id.*

¹⁰ *Id.*

use.¹¹ In Massachusetts, injection drug use constitutes the single greatest cause of new HIV infections and accounts for more than a third of the total HIV/AIDS cases, as well as about half of the nearly 100,000 persons living with HCV.¹² Public health authorities agree that lack of access to clean syringes is a primary cause of these skyrocketing transmission rates.¹³

It is critical to have policies that keep injection drug users alive until they are ready to engage in a substance abuse treatment program. Stemming the tide of injection drug-related disease transmission poses a unique public health challenge. Preventing substance abuse and facilitating entry of those with addictions into treatment are critical goals.¹⁴ Indeed, addiction is a treatable biomedical and psychological disease.¹⁵ Public health officials and medical professionals, however, agree that curing addiction is a challenging societal problem. As the CDC has concluded, “[m]any drug users are not currently in substance abuse treatment programs because of multiple factors including the limited availability of these programs and the lack of readiness or willingness of some drug users to enter substance abuse treatment.”¹⁶ At the same time, injection drug users are a “population at extremely high risk that is not engaged in appropriate [disease prevention] interventions through traditional mechanisms of outreach and referral.”¹⁷

There is a consensus in the federal agencies, as well as the scientific and medical communities, that access to clean needles helps control the spread of HIV, HCV and HBV, and does not increase substance abuse. In an extensive review of the scientific literature, the United States Secretary for Health and Human Services and the Surgeon General declared that there is “conclusive scientific evidence” that access to clean syringes decreases new HIV infections. A 1995 study from the National Research Council and Institute of Medicine commissioned by Congress concluded that: “For

¹¹ *Id.*

¹² See Massachusetts Medical Society, *Syringe Prescriptions for Injection Drug Users – Vital Signs* (Jan 28, 2002) at <http://www2.mms.org/vitalsigns/feb02/ph1.html>.

¹³ See R. Broadhead et al., *Risk Associated With Closing A Needle Exchange Program*, 46 *Social Problems* 48-66 (1999).

¹⁴ See *Evidence-Based Findings*, *supra*, note 11.

¹⁵ See CDC, *New Attitudes & Strategies*, *supra*, note 6.

¹⁶ See CDC, *HIV Prevention Bulletin: Medical Advice For Persons Who Inject Illicit Drugs* (May 1997) at http://www.cdc.gov/idu/pubs/hiv_prev.htm. See also American Medical News, *Negating The Stigma Associated With Certain Diseases* (Nov. 5, 2001) at http://www.ama-assn.org/sci-pubs/amnews/pick_01/hlsb1105.htm (“[t]he shame of ... drug addiction ... means they have put off seeking treatment as long as possible.”)

¹⁷ See *Evidence-Based Findings*, *supra*, note 11.

injection drug users who cannot or will not stop injecting drugs, the once-only use of sterile needles and syringes remains the safest, most effective approach for limiting HIV transmission.”¹⁸ The CDC, the nation’s preeminent public health authority, recommends the “one-time only use of sterile syringes from a reliable source as a central risk reduction strategy for [intravenous drug users] who cannot or will not stop injecting.”¹⁹ Finally, as early as 1991, the National Commission on AIDS recommended the “removal of legal barriers to the purchase and possession of injection equipment” as part of a strategy for reducing the spread of HIV among IDUs.²⁰

Major medical and public health associations concur. The American Medical Association recommended in 1995 that physicians encourage patients to “have their own personal injection equipment that is never shared,” and characterized as “urgent” the need for the “extensive application of needle and syringe exchange programs.”²¹ In 1994, the American Academy of Pediatrics concluded that “programs that provide access to sterile injection equipment” and “a reassessment of laws regarding the possession of needles, syringes and bleach” were required to combat the spread of HIV infection to infants, children and adolescents.²² Major organizations of government officials have also recognized the public health imperative of needle exchange programs. In 1997, both the

¹⁸ See National Research Council and Institute of Medicine, *Preventing HIV Transmission: The Role of Sterile Needles and Bleach*, 2-4 (Jacques Normand et al., eds.1995).

¹⁹ See CDC, *New Attitudes & Strategies*, *supra*, note 6. See also CDC, *HIV Prevention Bulletin*, *supra*, note 21 (“persons who inject drugs should use sterile syringes to prevent transmission of HIV and other blood-borne infectious diseases.”).

²⁰ See National Commission on Acquired Immune Deficiency Syndrome, *The Twin Epidemics of Substance Use and HIV*, at 3 (1991), available at <http://www.dogwoodcenter.org/references/studies91F.html>.

²¹ See American Medical Association, *Resolution 435- Needle and Syringe Exchange Programs* (1997) at <http://www.sfaf.org/prevention/needleexchange/statements.html>.

²² See American Academy of Pediatrics, *Reducing the Risk of Human Immunodeficiency Virus Infection Associated With Illicit Drug Use*, 94(6) *Pediatrics* 945-947 (December 1994), available at <http://www.aap.org/policy/00509.html>. See also Association of State and Territorial Health Officials, *Policy Position Statement* (2000) at <http://www.astho.org/about/policy/policy.html> (recommending removal of barriers to distribution or possession of clean needles and syringes); American Public Health Association, *Resolution 9415, Syringe and Needle Exchange and HIV Disease* (1994) (urging federal, state and local governments to improve drug users’ access to clean injection equipment).

National Black Caucus of State Legislators and the U.S. Conference of Mayors issued resolutions supporting needle exchange.²³

Laws Providing Access To Clean Needles Do Not Increase Substance Or Crime.

The early qualms of some that programs providing access to clean syringes would increase drug use and crime have proven to be baseless fears. For example, a 1994 study in the *Journal of the American Medical Association* found that a San Francisco needle exchange program did not stimulate increased drug use among current users or recruit new or younger users.²⁴ The New Haven program similarly reports data showing that needle exchange does not create new drug injectors.²⁵ Indeed, a comprehensive literature review by the United States Surgeon General and the U.S. Department of Health and Human Services, reported that “there is conclusive scientific evidence that syringe exchange programs ... [do] not encourage the use of illegal drugs.”²⁶

In addition, access to clean needles has not increased crime. For example, a study of the syringe exchange program in Baltimore concluded that “needle exchange programs are not associated with an increase in crime rates.”²⁷ The experience of other states in New England bears this out. The members of the Joint Committee on Public Health are referred to letters provided to the Committee from police chiefs in Providence, Rhode

²³ See U.S. Conference of Mayors, *Resolution No. 26* (1997) and National Black Caucus of State Legislators, *Resolution No. 97-09* (1997), both available at <http://www.sfaf.org/prevention/needleexchange/statements.html>.

²⁴ See John K. Watters et al., *Syringe and Needle Exchange as HIV/AIDS Prevention for Injection Drug Users*, 271(2) *JAMA* 115-120 (1994).

²⁵ See Robert Heimer & Matthew Lopes, Letter, *Syringe and Needle Exchange to Prevent HIV Infection*, 271 *JAMA* 1825, 1826 (1994) (analysis of data in the New Haven needle exchange program demonstrates that “the program has not increased injection drug use.”).

²⁶ See U.S. Department of Health and Human Services, *Evidence-Based Findings On the Efficacy of Syringe-Exchange Programs: An Analysis From the Assistant Secretary for Health and Surgeon General of the Scientific Research Completed Since April 1998* (2000) (hereinafter, “Evidence-Based Findings”) at <http://www.hivdent.org/public/pppebotsr062000.htm> at 2. See also National Research Council and Institute of Medicine, *Preventing HIV Transmission: The Role of Sterile Needles and Bleach* (Jacques Normand et al., eds. 1995) at 4 (in study commissioned by U.S. Congress, concluding that “[t]here is no credible evidence to date that drug use is increased among participants as a result of programs that provide legal access to sterile equipment.”).

²⁷ See Melissa A. Marx et al., *Trends in Crime and the Introduction of a Needle Exchange Program*, 90 *Am. J. Pub. Health* 1933 (2000).

Island; New Haven, Connecticut; Portland, Maine; and Bangor, Maine; stating that the deregulation of the sale of syringes in their states has had no negative public safety consequences.

Decriminalization Of The Sale And Possession Of Syringes Will Actually Protect Public Safety Officers.

The legal possession of needles will actually increase safety for police and other law enforcement by eliminating the risk that an officer will be accidentally stuck with a dirty needle. When police stop and search a person, the presence of a dirty needle poses a potential risk to the police officer. It is simply common sense that an injection drug user is less likely to inform the arresting officer of the presence of a dirty needle (e.g., in a jacket, pocket, or purse), and more likely to attempt to hide it, if he or she can be arrested and prosecuted for illegal possession of the needle. As one study noted, “[intravenous drug users] are unlikely to save or transport used syringes if they risk arrest and criminal penalties for doing so.”²⁸ In fact, after restrictions on the possession of needles were loosened in Connecticut, needlestick injuries among Hartford police officers were lower.²⁹

These Bills Will Save Millions Of Dollars In Health Care Costs.

The reduction in the incidence of severe and incurable diseases that will result from these bills will save millions of dollars in future health care costs. One study on a national scale concluded that for each year without increased access to sterile syringes in the United States, “as many as 12,350 persons will become infected with HIV, leading to an estimated \$1.3 billion in future medical costs for these persons.”³⁰ In addition, reduction in the incidence of HCV will also result in substantial savings, as Hepatitis C is the leading cause of severe liver disease and cirrhosis and the leading indicator for liver transplants in the United States.

For all of these reasons, Gay & Lesbian Advocates & Defenders strongly urges that this Committee approve H 2655, H 2741 and S 1312.

²⁸ See Macalino et al., *supra*, note 43, at S118.

²⁹ See Groseclose et al., *supra*, note 49 at 82.

³⁰ See David R. Holtgrave et al., *Cost and Cost-Effectiveness of Increasing Access to Sterile Syringes and Needles as an HIV Prevention Intervention in the United States*, 18 (Suppl.1) *Journal of Acquired Immune Deficiency Syndromes and Human Retrovirology* S133-138 (1998).