

A

TOWN OF BARNSTABLE  
Ordinance or Regulation

BAR-W

9157

~~WARNING NOTICE~~  
LEAVE AND DESIST

Name of Offender/Manager Joseph Carleo, Executive Director dob \_\_\_\_\_  
Address of Offender 428 South Street P.O. Box 1522 Provincetown MA MV/MB Reg.# \_\_\_\_\_  
Village/State/zip Hyannis MA 02601 02651 SS# \_\_\_\_\_  
Business Name Aids Support Group of Cape Cod 5:00 am (pm) on Sept 21, 2015  
Business Address 428 South St Hyannis MA Signature of Enforcing Officer [Signature]  
Village/State/zip Hyannis MA 02601  
Location of Offense 428 South Street Hyannis MA Public Health Enforcing Dept/Division  
Offense MGL 111 Sect 215 and Chapter 94C, Section 27  
Facts Syringes were being distributed to persons without local approval.

This will serve only as a warning. At this time no legal action has been taken. It is the goal of Town agencies to achieve voluntary compliance of Town Ordinances, Rules and Regulations. Education efforts and warning notices are attempts to gain voluntary compliance. Subsequent violations will result in appropriate legal action by the Town.

WHITE - OFFENDER    CANARY - ORD./REG.-PROG    PINK - ENFORCING OFFICER    GOLD - ENFORCING DEPT.



BARNSTABLE  
POLICE DEPARTMENT

MATTHEW K. SONNABEND  
DEPUTY CHIEF

(508) 778-3850  
sonnabendm@barnstablepolice.com

1200 Phinney's Lane  
Hyannis, MA 02601  
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Thomas A. McKean, RS, CHO  
Director of Public Health

Town of Barnstable  
Department of Regulatory Services

PUBLIC HEALTH DIVISION  
200 Main Street, Hyannis, MA 02601  
Tel: (508) 862-4644  
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**B**

## 2005 Bill Text MA H.B. 4176

Enacted - Veto Override, July 13, 2006

### Reporter

2005 Bill Text MA H.B. 4176

THE STATE OF MASSACHUSETTS BILL TEXT > MASSACHUSETTS 184TH GENERAL COURT -- 2006  
REGULAR SESSION > HOUSE BILL 4176 > CHAPTER 172

### Synopsis

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AN ACT RELATIVE TO HIV AND HEPATITIS C PREVENTION.

### Text

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Whereas, The deferred operation of this act would tend to defeat its purpose, which is in part to require prompt reports and preparations by the department of public health, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. *Section 1 of chapter 94C of the General Laws*, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 68, the word ", injecting".

SECTION 2. The definition of "Drug paraphernalia" in section 1 of said chapter 94C, as so appearing, is hereby amended by striking out clause (11).

SECTION 3. Said chapter 94C is hereby further amended by striking out section 27, as so appearing, and inserting in place thereof the following 2 sections: -

Section 27. Hypodermic syringes or hypodermic needles for the administration of controlled substances by injection may be sold in the commonwealth, but only to persons who have attained the age of 18 years and only by a pharmacist or wholesale druggist licensed under the provisions of chapter 112, a manufacturer of or dealer in surgical supplies or a manufacturer of or dealer in embalming supplies. When selling hypodermic syringes or hypodermic needles without a prescription, a pharmacist or wholesale druggists must require proof of identification that validates the individual's age.

Section 27A. (a) Notwithstanding any general or special law to the contrary, the department of environmental protection and the department of public health, in conjunction with other relevant state and local agencies and government departments, shall design, establish and implement or cause to be implemented a program for the collection and disposal of spent non-commercially generated, hypodermic needles and lancets. The program shall be designed to protect the public health and the environment by providing for the safe, secure and accessible collection and disposal of hypodermic needles and lancets. The departments may collaborate with private companies as well as not-for-profit agencies when designing, establishing and implementing this program.

(b)(1) Sharps disposal programs may include, but are not limited to the following:-

(i) a program for safe, secure home sharp disposal;

(ii) the establishing sharps collection centers in medical facilities and pharmacies;

BRIAN YEHL

## 2005 Bill Text MA H.B. 4176

(iii) establishing sharps collection centers in municipal facilities, including, but not limited to, fire stations, police stations, and public health offices; provided that sharps collection centers may be located at senior centers only for the purpose of disposing of medically necessary hypodermic needles; and

(iv) medical waste mail-back programs approved by the United States Postal Service.

(2) Medical facilities, pharmacies and participating municipal facilities may work with the department of public health and the department of environmental protection to determine the proper program for sharps disposal implementation within each community.

(c) For the purposes of this section, a "sharps collection center" shall be an identified site within a community which:

(1) uses only collection containers that meet the requirements of the federal Occupational Safety and Health Administration and the federal Department of Transportation and is marked with the international biohazard symbol;

(2) provides secure, accessible collection containers on site;

(3) accepts sharps from sharps users that are in leak-proof, rigid, puncture-resistant and shatterproof containers;

(4) provides appropriate transfer containers for sharps users who fail to bring their sharps in suitable containers for placement in the collection container;

(5) has a written agreement with a medical waste transporter providing for regularly scheduled waste pickups;

(6) stores, handles, transports and treats the collected waste in accordance with department of public health regulations.

(d) The program shall be designed to protect the public health and the environment by providing for the safe, secure and accessible collection and disposal of hypodermic needles and lancets. The department of public health, in consultation with the department of environmental protection, shall adopt regulations to ensure the safe, secure and accessible collection and disposal of hypodermic needles and lancets, and shall provide recommendations for legislative action to the joint committee on public health, the senate and house committees on ways and means and the clerks of the senate and house of representatives. Included in the recommendations for legislative action shall be recommended punishments and fines for the inappropriate, unsafe or unlawful disposal of the hypodermic needles and lancets.

SECTION 4. Section 32I of said chapter 94C, as so appearing, is hereby further amended by inserting after the word "possess", in line 1, the following words:- or purchase.

SECTION 5. Said section 32I of said chapter 94C, as so appearing, is hereby further amended by striking out, in line 6, the word ", inject".

SECTION 6. Said section 32I of said chapter 94C, as so appearing, is further amended by adding the following paragraph:-

(d) This section shall not apply to the sale of hypodermic syringes or hypodermic needles to persons over the age of 18 pursuant to section 27.

SECTION 7. Chapter 111 of the General Laws, is hereby amended by inserting after section 25J, the following section:

Section 25K. The department shall develop an educational insert to accompany the sale of hypodermic syringes and needles. This educational insert shall include, but not be limited to: (1) information on the proper use of hypodermic syringes and needles; (2) the risk of blood-borne diseases that may result from the use of hypodermic syringes and needles and methods for preventing contracting or transmitting such diseases; (3) proper hypodermic syringe and needle disposal practices; and (4) the toll-free telephone numbers of the commonwealth's AIDS and Hepatitis C hotlines and

## 2005 Bill Text MA H.B. 4176

the Massachusetts Substance Abuse Information and Education Helpline. This educational insert shall be provided to purchasers of hypodermic syringes or needles at the point of sale.

SECTION 8. Chapter 175 of the General Laws is hereby amended by inserting after section 47X the following section:

Section 47Y. (a) No individual policy of accident and sickness insurance issued or renewed pursuant to section 110 shall restrict or discontinue coverage for medically necessary hypodermic syringes or needles, notwithstanding section 27 of chapter 94C. The term "medical necessity" shall be construed in accordance with the guidelines set forth in subsection (b) of section 16 of chapter 176O. Nothing in this section shall prohibit applicable co-payments, deductibles, coinsurance or other cost sharing features.

(b) This section shall not apply to individual policies of accident and sickness insurance that are accident only, credit-only, limited scope dental benefits if offered separately, disability income insurance, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation law or similar law, automobile medical payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in a liability insurance policy or equivalent self insurance, long-term care if offered separately, coverage supplemental to the coverage provided under 10 U.S.C. chapter 55 if offered as a separate insurance policy, any policy subject to chapter 176K and hospital indemnity insurance policies if offered as independent, non-coordinated benefits. For the purposes of this section, "hospital indemnity insurance policies" shall mean policies issued pursuant to this chapter which provide a benefit not to exceed \$ 500 per day, as adjusted on an annual basis by the amount of increase in the average weekly wages in the commonwealth as defined in section 1 of chapter 152, to be paid to an insured or a dependent, including the spouse of an insured, on the basis of a hospitalization of the insured or a dependent.

SECTION 9. Chapter 176A of the General Laws is hereby amended by inserting after section 8Y, the following section:

Section 8Z. No contract between a subscriber and the corporation under an individual or group hospital service plan which is delivered, issued or renewed in the commonwealth shall restrict or discontinue coverage for medically necessary hypodermic syringes or needles to any individual and group subscribers within the commonwealth and to any group subscribers having a principal place of employment within the commonwealth, notwithstanding section 27 of chapter 94C. The term "medical necessity" shall be construed in accordance with the guidelines set forth in subsection (b) of section 16 of chapter 176O.

SECTION 10. Chapter 176B of the General Laws, is hereby amended by inserting after section 4Y, the following section: -

Section 4Z. No subscription certificate under an individual or group medical service agreement, delivered, issued or renewed in the commonwealth shall restrict or discontinue coverage for medically necessary hypodermic syringes or needles to any individual or group subscribers within the commonwealth or to any group subscribers having a principal place of employment within the commonwealth, notwithstanding section 27 of chapter 94C. The term "medical necessity" shall be construed in accordance with the guidelines set forth in subsection (b) of section 16 of chapter 176O.

SECTION 11. Chapter 176G of the General Laws is hereby amended by inserting after section 4Q, the following section: -

Section 4R. No individual or group health maintenance contract shall restrict or discontinue coverage for medically necessary hypodermic syringes or needles, notwithstanding section 27 of chapter 94C. The term "medical necessity" shall be construed in accordance with the guidelines set forth in subsection (b) of section 16 of chapter 176O.

SECTION 12. Chapter 265 of the General Laws is hereby amended by inserting after section 15B the following section:-

BRIAN YEHL

Section 15C. (a) Whoever commits an assault upon another, by means of a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of controlled or other substances by injection, shall be punished by imprisonment in the state prison for not more than 10 years or in the house of correction for not more than 2 1/2 years, or by a fine of not more than \$ 1,000, or by both such fine and imprisonment.

(b) Whoever commits an assault and battery upon another, by means of a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of controlled or other substances by injection, shall be punished by imprisonment in the state prison for not more than 15 years or in the house of correction for not more than 2 1/2 years, or by a fine of not more than \$ 5,000, or by both such fine and imprisonment.

SECTION 13. The schedule of forms and pleadings in *section 79 of chapter 277 of the General Laws*, as appearing in the 2004 Official Edition, is hereby amended by striking out the forms of complaint or indictment for: Possession of hypodermic instrument, at lines 464 to 465, inclusive, and Sale and delivery of hypodermic instrument, at lines 466 to 467, inclusive.

SECTION 14. The department of public health, in consultation with the department of environmental protection, shall adopt its initial regulations and provide its initial legislative recommendations under *section 27A of chapter 94C of the General Laws*, not later than 90 days following the effective date of this act.

SECTION 15. The department of public health shall perform a comprehensive study and review of the existing needle exchange programs established pursuant to *section 215 of chapter 111 of the General Laws*. The study shall include, but not be limited to: a review and analysis of the relationship between the provisions of this act and the operation of the needle exchange programs; the success of existing needle exchange programs; whether existing needle exchange programs should be maintained without change, phased out, or expanded to other municipalities.

SECTION 16. Not earlier than 24 months and not later than 36 months after the effective date of this act, the department of public health shall submit a report to the house and senate committees on ways and means and the joint committee on public health which shall include analysis of the impact of this act. The report shall include, but not be limited to: statistics on the methods hypodermic syringes and hypodermic needles are disposed; increases or decreases in the spread of Hepatitis C and human immunodeficiency virus; and proposed changes to this act consistent with the public health and welfare.

SECTION 17. The department of public health shall provide a report to the general court on the program for the collection and disposal of non-commercially generated, spent hypodermic needles and lancets pursuant to *section 27A of chapter 94C of the General Laws*. The report shall be filed with the clerks of the senate and house of representatives by July 20, 2006. The report shall include the proposed location of sharps collection centers, and the department shall notify each city and town of the locations of proposed collection centers in that city or town. The department shall also make this list of proposed collection centers available online. Section 27 of said chapter 94C, as amended by this act, shall take effect on September 18, 2006.

House of Representatives, July 13, 2006.

This Bill having been returned by His Excellency the Governor with his objections thereto in writing (see House 5124) has been passed by the House of Representatives, notwithstanding said objections, two-thirds of the House (115 yeas to 42 nays) having agreed to pass the same.

Sent to the Senate for its action.

Passed by the Senate, notwithstanding the objections of His Excellency the Governor, two-thirds of the members (25 yeas to 11 nays) having approved the same.

OFFICE OF THE SECRETARY, Boston, Massachusetts, July 21, 2006.

BRIAN YEHL

This bill was returned by the Governor to the House of Representatives, the branch in which it originated, with his objections thereto, was passed by the House on July 13, 2006, and in concurrence by the Senate on July 13, 2006, the objections of the Governor notwithstanding, in the manner prescribed by the Constitution, and therefore has the force of law.

William Francis Galvin Secretary of the Commonwealth

## History

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SENATE NO. 2569

CHAPTER 172

THE COMMONWEALTH OF MASSACHUSETTS

IN THE YEAR TWO THOUSAND AND SIX.

## Sponsor(s)

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Joint Committee on Public Health

## Classification

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**Subject:** AIDS & HIV (90%); HEPATITIS (79%); SPECIALTY LINES INSURANCE (59%); DRUG POLICY (59%); HEALTH INSURANCE (59%); LEGISLATIVE BODIES (59%); INSURANCE POLICIES (59%); LIABILITY INSURANCE (59%); PUBLIC HEALTH ADMINISTRATION (59%); LEGISLATION (59%); PROPERTY & CASUALTY INSURANCE (59%); HEALTH DEPARTMENTS (59%); ACCIDENTAL DEATH & DISMEMBERMENT INSURANCE (59%); MEDICAL WASTE & BIOHAZARDS (59%); LEGISLATORS (59%); HEALTH CARE (59%); HEPATITIS C (59%); INDEMNITY AGREEMENTS (59%)

**Load-Date:** July 25, 2006

THE STATE OF MASSACHUSETTS BILL TEXT

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## Law Review and Journal Commentaries

Powers reserved to states: Validity of order form requirement under Federal Marihuana Tax Act. (1971) 5 Suffolk U.L.Rev. 696.

## Library References

Controlled Substances ⇌9, 10.  
Health ⇌303.  
Westlaw Topic Nos. 198H, 96H.

## Research References

## Treatises and Practice Aids

32 Mass. Prac. Series § 465, Control of Drug Distribution.

### § 27. Instruments for administering controlled substances by injection; pilot needle exchange program

(a) No person, not being a physician, dentist, nurse or veterinarian registered under the laws of this commonwealth, or of the state where he resides, or a registered embalmer, manufacturer of or dealer in embalming supplies, pharmacist, wholesale druggist, manufacturing pharmacist, manufacturer of or dealer in surgical supplies, student engaged in an activity necessary to a course prescribed by a school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming approved under the provisions of chapter one hundred and twelve, official of any government having possession of the articles herein-after mentioned by reason of his official duties, or a person authorized to administer a sentence of death imposed under the provisions of chapter two hundred and seventy-nine while in the performance of his lawful duties there-under, nurse acting under the direction of a physician or dentist, employee of a hospital or other facility licensed by the department acting under the direction of its superintendent or officer in immediate charge, or a carrier or messenger engaged in the transportation of such articles, or a person who has received a prescription issued under subsection (c), or a podiatrist who has received a certificate from the board of registration in podiatry stating that upon examination by said board he has been determined to be competent to use hypodermic needles or a scientific investigator registered pursuant to the provisions of section seven, or a person licensed under subsection (e), shall have in his possession a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of controlled substances by injection.

(b) No such syringe, needle or instrument shall be delivered or sold to, or exchanged with, any person except a pharmacist, dentist, physician, veterinarian, registered embalmer, manufacturer of or dealer in embalming supplies, scientific investigator registered pursuant to the provisions of section seven, wholesale druggist, manufacturing pharmacist, manufacturer of or dealer in surgical supplies, a student enrolled in a course for which such possession is necessary and prescribed at an approved school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming, an official of any government agency requiring the use of such syringe, needle or instrument by reason of his

official duties, a person authorized to administer a sentence of death imposed under the provisions of chapter two hundred and seventy-nine while in the performance of his lawful duties thereunder, a nurse upon the written order of a physician or dentist, or a person who has received a written prescription issued under subsection (c), a podiatrist certified as aforesaid, or an employee of a hospital, clinic, nursing home, rest home or detoxification facility licensed by the department, or scientific institution upon the written order of its superintendent or officer in immediate charge of a person licensed under subsection (e).

(c) A physician may issue to a patient under his immediate charge a written prescription to purchase, or may issue an oral prescription to a pharmacist on behalf of said patient to purchase, from a pharmacist only, any of the instruments specified in subsection (a). Such prescription shall contain the name and address of the patient, the description of the instrument prescribed and the number of instruments prescribed. The pharmacist filling the prescription shall record upon the face of said prescription, over the signature of the pharmacist making the sale, the date of such sale. Such prescription may be renewed or refilled for one year unless the physician indicates otherwise on the prescription, and each refilling shall be noted upon the prescription. No prescription for such instruments shall be refilled after one year from date of issue. The pharmacist filling the prescription shall dispense any such instrument in a sanitary container which shall completely enclose such instrument, and shall affix to said container a label bearing (1) the name and address of the pharmacy, and if said pharmacy is in a hospital, the name and address of said hospital, (2) the name and address of the patient, (3) the file number of the prescription, and (4) the name of the physician prescribing the same. The person to whom the prescription is issued shall keep such instrument in said container at all times, except when such instrument is in actual use or is in the process of being cleaned.

(d) A record shall be kept by the person selling such syringes, needles or instruments, which shall give the date of the sale, the name and address of the purchaser and a description of the instrument. This record shall be open to inspection pursuant to a judicial warrant or to the provisions of section thirty.

(e) No person except a manufacturer of or dealer in surgical supplies, a manufacturer of or dealer in embalming supplies, a pharmacist or wholesale druggist, which pharmacist or wholesale druggist is licensed under the provisions of chapter one hundred and twelve, shall sell, offer for sale, deliver, or have in possession with intent to sell hypodermic syringes, hypodermic needles or any instrument adapted for the administration of controlled substances by injection, unless licensed so to do by the department. Such license shall be valid for a period of one year. The fee for such license shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. A license issued to a company or corporation which has more than one branch or department shall include any and all branches and departments or sections of said company or corporation.

No person except a person listed in subsections (b) or (c) shall obtain, receive or purchase a hypodermic syringe, hypodermic needle or any instrument adapted for the administration of controlled substances by injection, unless licensed so to do by the department, or by a local board of health. A license to obtain, receive or purchase any such instrument, which license shall be valid throughout the commonwealth, may be obtained from the department upon payment of a fee as determined annually by the commissioner of administration under the provision of section three B of chapter seven, and a license to obtain, receive or purchase any such instrument, which license shall be valid only in a particular city or town of the commonwealth, may be obtained from the local board of health upon payment of a fee of fifty cents. Said license shall be valid for one year.

(f) Notwithstanding any general or special law to the contrary, needles and syringes may be distributed or possessed as part of a pilot program approved by the department of public health in accordance with section two hundred and fifteen of chapter one hundred and eleven and any such distribution or exchange of said needles or syringes shall not be a crime.

The department of public health shall ensure that individuals participating in a pilot needle exchange program will be encouraged to seek and will be placed in contact with substance abuse treatment and health care.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 20; St.1973, c. 1190, §§ 15 to 17; St.1980, c. 572, §§ 83, 84; St.1982, c. 554, §§ 1, 2; St.1993, c. 110, § 142; St.1993, c. 224, § 2.

#### Historical and Statutory Notes

St.1972, c. 806, § 20, in subsec. (c), in the third sentence, substituted "face" for "fact".

St.1972, c. 806, was approved July 19, 1972. Emergency declaration by the Governor was filed July 20, 1972.

St.1973, c. 1190, § 15, approved Dec. 11, 1973, in subsec. (a), inserted ", student engaged in an activity necessary to a course prescribed by a school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming approved under the provisions of chapter one hundred and twelve" and "or other facility licensed by the department".

Section 16 of St.1973, c. 1190, in subsec. (b), inserted ", a student enrolled in a course for which such possession is necessary and prescribed at an approved school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming" and ", clinic, nursing home, rest home or detoxification facility licensed by the department,".

Section 17 of St.1973, c. 1190, in subsec. (e), in the first paragraph, in the first sentence, substituted "manufacturer of or dealer in surgical supplies, a manufacturer of or dealer in embalming supplies, a pharmacist or wholesale druggist, which pharmacist or wholesale druggist is licensed under the provisions of chapter

one hundred and twelve" for "person registered under chapter one hundred and twelve and listed under subsection (a)".

St.1980, c. 572, § 83, in subsec. (e), in the first paragraph, in the third sentence, substituted "determined annually by the commissioner of administration under the provision of section three B of chapter seven" for "ten dollars".

Section 84 of St.1980, c. 572, in subsec. (e), in the second paragraph, in the second sentence, substituted "as determined annually by the commissioner of administration under the provision of section three B of chapter seven" for "of five dollars".

St.1980, c. 572, was approved July 16, 1980. Emergency declaration by the Governor was filed July 23, 1980.

St.1982, c. 554, § 1, approved Dec. 22, 1982, and by § 8 made effective Jan. 1, 1983, in subsec. (a), inserted ", or a person authorized to administer a sentence of death imposed under the provisions of chapter two hundred and seventy-nine while in the performance of his lawful duties thereunder".

Section 2 of St.1982, c. 554, in subsec. (b), inserted ", a person authorized to administer a sentence of death imposed under the provisions



## CONTROLLED SUBSTANCES

94C § 27

Note 3

of chapter two hundred and seventy-nine while in the performance of his lawful duties thereunder".

Section 7 of St.1982, c. 554, provides:

"If any of the provisions of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared severable."

St.1993, c. 110, § 142, approved July 19, 1993, and by § 390 made effective as of July 1, 1993, added subsec. (f).

St.1993, c. 224, § 2, approved Nov. 8, 1993, in subsec. (a), deleted "written" preceding "prescription issued under subsection (c)"; and, in subsec. (c), in the first sentence, inserted ", or

may issue an oral prescription to a pharmacist on behalf of said patient to purchase".

### Prior Laws:

- St.1917, c. 275, § 15.
- St.1919, c. 350, § 96.
- St.1922, c. 535, § 1.
- St.1924, c. 239, §§ 1, 2.
- G.L.1932 (Ter.Ed.) c. 94, §§ 209, 209A.
- St.1945, c. 509.
- St.1954, c. 226, §§ 1, 2.
- G.L. c. 94, § 211, as added by St.1957, c. 660, § 1.
- St.1958, c. 276.
- St.1959, c. 248.
- St.1961, c. 345, §§ 4 to 6.
- St.1970, c. 443, §§ 12 to 14.

### Cross References

Penalties for violation of this section, see c. 94C, § 38.

### Library References

- Controlled Substances ⇨9, 10.
- Health ⇨303.
- Westlaw Topic Nos. 198H, 96H.

### Research References

#### Treatises and Practice Aids

- 32 Mass. Prac. Series § 470, Unlawful Possession and Sale of Instruments.
- 14A Mass. Prac. Series § 9.318, Possession or Sale of Hypodermic Instruments.

17B Mass. Prac. Series § 53.31, Drugs -- Possession, Distribution, Manufacture.

30A Mass. Prac. Series § 1443, Statutory Burden If Relying on License.

### Notes of Decisions

v. Colon-Cruz (1984) 470 N.E.2d 116, 393 Mass. 150. Jury ⇨ 31.3(1); Statutes ⇨ 64(6); Witnesses ⇨ 297(1)

#### 2. In general

Defendant was entitled to possess hypodermic needles in municipality that did not have needle-exchange program for drug users, where she was a participant in another municipality's needle-exchange program. Com. v. Landry (2002) 779 N.E.2d 638, 438 Mass. 206. Controlled Substances ⇨ 49

#### 3. Search and seizure

Suspect's possession of hypodermic needles did not furnish probable cause for arrest, where suspect carried facially valid card identifying her as a participant in Commonwealth needle-exchange program for drug users. Com. v. Landry (2002) 779 N.E.2d 638, 438 Mass. 206. Arrest ⇨ 63.4(16)

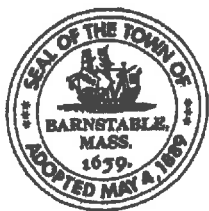
Motion to suppress heroin and drug paraphernalia, which were in plain view during per-

- In general 2
- Admissibility of evidence 5
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- Search and seizure 3
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- Validity 1

#### 1. Validity

Provisions of death penalty statute (St.1982, c. 554, § 1 et seq., amending this section and c. 265, § 2, c. 279, § 4, and enacting c. 279, § 57 et seq.), impermissibly burden state constitutional rights against self-incrimination and right to jury trial, in that the death penalty may be imposed, if at all, only after trial by jury and thus, defendants are discouraged from asserting their right not to plead guilty and their right to demand trial by jury; however, provisions of the statute which do not relate to the death penalty are severable and are not invalid. Com.

D



**Town of Barnstable**  
**Regulatory Services**  
**Richard Scali, Director**  
**Public Health Division**  
**Thomas McKean, Director**  
200 Main Street, Hyannis, MA 02601

Office: 508-862-4644

Fax: 508-790-6304

September 23, 2015

Mr. Joseph Carleo  
Executive Director  
AIDS Support Group of Cape Cod  
336 Commercial Street  
P.O. Box 1522  
Provincetown, MA 02657

and Ms. Donna Mello  
AIDS Support Group of Cape Cod  
428 South Street  
Hyannis, MA 02601

**ORDER TO CEASE AND DESIST DISTRIBUTION OF NEEDLES/ SYRINGES**

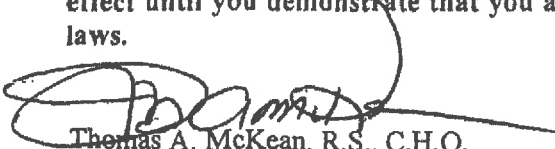
At 5:00 p.m. on September 21, 2015, needles/syringes were distributed to a person from the property managed by you or your staff, located at 428 South Street Hyannis Massachusetts.

Pursuant to M.G.L. 111, Section 215, the Massachusetts Department of Public Health is authorized to promulgate rules for the implementation of not more than ten pilot programs for the exchange of needles in cities and towns within Massachusetts upon nomination by the Department. This Section of the Massachusetts General Law specifically reads as follows: "local approval shall be obtained prior to implementation of each pilot program in any city or town." You failed to receive approval of the Barnstable Town Council to distribute needles/syringes within the Town of Barnstable.

In addition, in accordance with M.G.L.A. 94C Section 27, hypodermic syringes or hypodermic needles may be sold in Massachusetts only by a pharmacist or wholesale druggist licensed under the provisions of Chapter 112, a manufacturer of or dealer in surgical supplies or manufacturer of or dealer in embalming supplies.

On September 22, 2015 at 10:20 a.m., Deputy Chief Matthew Sonnabend was accompanied by Thomas McKean, Director of Public Health for the Town of Barnstable, who handed Donna Mello a handwritten cease and desist order at 428 South Street Hyannis, Massachusetts, where syringes were being distributed.

You, your employees, volunteers and agents are hereby ordered to immediately cease and desist the distribution of any needles/syringes within the Town of Barnstable. This cease and desist order shall remain in effect until you demonstrate that you and your organization are operating in compliance with the above cited laws.

  
Thomas A. McKean, R.S., C.H.O.  
Director of Public Health  
Town of Barnstable

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October 19, 2015

BY FEDERAL EXPRESS

Thomas A. McKean, R.S., C.H.O.  
Director of Public Health  
Richard Scali  
Director of Regulatory Services  
Town of Barnstable  
200 Main Street  
Hyannis, MA 02601

Dear Mr. McKean and Mr. Scali:

We represent AIDS Support Group of Cape Cod with respect to an Order to Cease and Desist Distribution of Needles/Syringes issued by the Town of Barnstable dated September 23, 2015 (the "Order").

The Order contravenes Massachusetts law. We therefore request that the Town reconsider the issuance of the Order and immediately lift it.

First, the Order misapprehends M.G.L. c. 111, § 215 and M.G.L. c. 94C, § 27. Under Massachusetts law there is no prohibition on any person or entity possessing or distributing hypodermic syringes or needles.

M.G.L. c. 111, § 215, passed in 1993, authorizes the Department of Public Health to implement "not more than ten pilot programs for the exchange of needles ... upon nomination by the Department." While the Department of Public Health may nominate cities and towns for one of its own pilot programs, Massachusetts law does not otherwise restrict the possession or distribution of needles by any other person or entity. This is made clear beyond peradventure by the Legislature's removal of all such restrictions in c. 94C, § 27 when it passed St. 2006, c. 172.

We recommend that you examine the text of § 27 prior to and after the passage of the 2006 Act. The 2006 Act, for example, repealed the then-existing provision in § 27 (a) prohibiting anyone who is not a health care provider from possessing a "hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of controlled substances by injection." Similarly, it removed the then-existing provision in § 27 (b) that "no such syringe, needle or instrument shall be delivered or sold to, or exchanged with, any person except" the listed health care providers. In place of those provisions, and others, the Legislature adopted the current § 27 which provides that syringes may only be sold by a pharmacist, but contains no other restrictions

on the possession or exchange of syringes in Massachusetts. Thus, while DPH is free to "nominate" cities or towns for implementation of its own pilot projects under c. 111, § 215, there is nothing in that statute which applies to entities other than the Department of Public Health. In light of St. 2006, c. 172, there is no bar anywhere in Massachusetts law to the possession or exchange of syringes by a private entity such as AIDS Support Group of Cape Cod.

Second, the Town, its Board of Health, and its agents, have no lawful authority to issue the Order. We request that you immediately provide us with the constitutional, statutory, or regulatory authority for issuance of the Order.

Third, while the exhaustion of any administrative remedy is not necessary before seeking judicial relief from the Order, and the Town did not identify any administrative process in the Order, please consider this letter as a request to invoke any administrative remedies that the Town believes are required.

The Town's unlawful actions have placed individuals at grave risk of contracting devastating and life-threatening diseases, including HIV, hepatitis C, and hepatitis B, for which it can be held responsible. Unnecessary transmission of these diseases will cause profound human suffering and hundreds of thousands of dollars in health care costs to the commonwealth. Furthermore, the Town's actions have eliminated a vital access point at which those at the highest risk of overdose could easily obtain naloxone. Removing this population's access to life saving medication will lead to an increase in fatal overdoses. AIDS Support Group of Cape Cod has always been willing to work with Town officials as a good neighbor, but a political desire to rid the Town of people it deems undesirable cannot justify the infringement of our client's right to engage in lawful activities.

We would be happy to speak with you or Town counsel. However, if the Order is not lifted within ten days of receipt of this letter, we intend to file suit and seek relief from the Order as well as attorneys' fees and costs, including for violation of M.G.L. c. 12, § 11I which prohibits interference with rights secured under the statutes of the commonwealth.

Sincerely,



Bennett H. Klein  
Senior Attorney and  
AIDS Law Project Director  
Gay & Lesbian Advocates & Defenders  
30 Winter Street, Suite 800  
Boston, MA 02108  
(617) 426-1350



Andrew Musgrave  
Legal Director  
AIDS Action Committee of Massachusetts  
75 Amory Street  
Boston, MA 02119  
(617) 437-6200

**F**



**Town of Barnstable**  
**Regulatory Services**  
**Richard Scali, Director**  
**Public Health Division**  
**Thomas McKean, Director**  
200 Main Street, Hyannis, MA 02601

Office: 508-862-4644

Fax: 508-790-6304

September 23, 2015

Mr. Joseph Carleo  
Executive Director  
AIDS Support Group of Cape Cod  
336 Commercial Street  
P.O. Box 1522  
Provincetown, MA 02657

and Ms. Donna Mello  
AIDS Support Group of Cape Cod  
428 South Street  
Hyannis, MA 02601

**ORDER TO CEASE AND DESIST DISTRIBUTION OF NEEDLES/ SYRINGES**

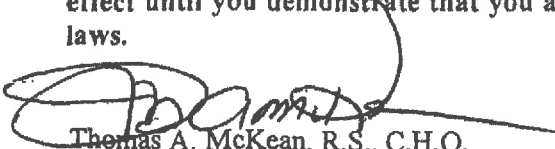
At 5:00 p.m. on September 21, 2015, needles/syringes were distributed to a person from the property managed by you or your staff, located at 428 South Street Hyannis Massachusetts.

Pursuant to M.G.L. 111, Section 215, the Massachusetts Department of Public Health is authorized to promulgate rules for the implementation of not more than ten pilot programs for the exchange of needles in cities and towns within Massachusetts upon nomination by the Department. This Section of the Massachusetts General Law specifically reads as follows: "local approval shall be obtained prior to implementation of each pilot program in any city or town." You failed to receive approval of the Barnstable Town Council to distribute needles/syringes within the Town of Barnstable.

In addition, in accordance with M.G.L.A. 94C Section 27, hypodermic syringes or hypodermic needles may be sold in Massachusetts only by a pharmacist or wholesale druggist licensed under the provisions of Chapter 112, a manufacturer of or dealer in surgical supplies or manufacturer of or dealer in embalming supplies.

On September 22, 2015 at 10:20 a.m., Deputy Chief Matthew Sonnabend was accompanied by Thomas McKean, Director of Public Health for the Town of Barnstable, who handed Donna Mello a handwritten cease and desist order at 428 South Street Hyannis, Massachusetts, where syringes were being distributed.

You, your employees, volunteers and agents are hereby ordered to immediately cease and desist the distribution of any needles/syringes within the Town of Barnstable. This cease and desist order shall remain in effect until you demonstrate that you and your organization are operating in compliance with the above cited laws.

  
Thomas A. McKean, R.S., C.H.O.  
Director of Public Health  
Town of Barnstable

G

of Motor Vehicles. John Shaffer, 28 New Eng. L.Rev. 1071 (1994).

Personal search incident to custodial arrests for traffic violations: Supreme Court, 1973 term. (1974) 88 Harv.L.Rev. 181.

White investment in black bondage. Geiza Vargas-Vargas, 27 W. New Eng. L. Rev. 41 (2005).

#### United States Supreme Court

Motor vehicles, searches and seizures, vehicle stops at highway checkpoints, drug interdiction

programs, see *City of Indianapolis v. Edmond*, 2000, 121 S.Ct. 447.

### § 1. Definitions

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Administer", the direct application of a controlled substance whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by—

- (a) a practitioner, or
- (b) a nurse at the direction of a practitioner in the course of his professional practice, or
- (c) an ultimate user or research subject at the direction of a practitioner in the course of his professional practice.

"Agent", an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

"Bureau", the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

"Class", the lists of controlled substances for the purpose of determining the severity of criminal offenses under this chapter.

"Commissioner", the commissioner of public health.

"Controlled substance", a drug, substance, or immediate precursor in any schedule or class referred to in this chapter.

"Counterfeit substance", a substance which is represented to be a particular controlled drug or substance, but which is in fact not that drug or substance.

"Deliver", to transfer, whether by actual or constructive transfer, a controlled substance from one person to another, whether or not there is an agency relationship.

"Department", the department of public health.

"Depressant or stimulant substance",

- (a) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or any derivative of barbituric acid which the United States Secretary of Health, Education, and Welfare has by regulation designated as habit forming; or

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(b) a drug which contains any quantity of amphetamine or any of its optical isomers; any salt of amphetamine or any salt of an optical isomer of amphetamine; or any substance which the United States Attorney General has by regulation designated as habit forming because of its stimulant effect on the central nervous system; or

(c) lysergic acid diethylamide; or

(d) any drug except marihuana which contains any quantity of a substance which the United States Attorney General has by regulation designated as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

"Dispense", to deliver a controlled substance to an ultimate user or research subject or to the agent of an ultimate user or research subject by a practitioner or pursuant to the order of a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary for such delivery.

"Distribute", to deliver other than by administering or dispensing a controlled substance.

"Drug",

(a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) substances, other than food, intended to affect the structure, or any function of the body of man and animals; or

(d) substances intended for use as a component of any article specified in clauses (a), (b) or (c), exclusive of devices or their components, parts or accessories.

"Drug paraphernalia", all equipment, products, devices and materials of any kind which are primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

(1) kits used, primarily intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used, primarily intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) isomerization devices used, primarily intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) testing equipment used, primarily intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used, primarily intended for use or designed for use in weighing or measuring controlled substances;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, primarily intended for use or designed for use in cutting controlled substances;

(7) separation gins and sifters used, primarily intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(8) blenders, bowls, containers, spoons and mixing devices used, primarily intended for use or designed for use in compounding controlled substances;

(9) capsules, balloons, envelopes and other containers used, primarily intended for use or designed for use in packaging small quantities of controlled substances;

(10) containers and other objects used, primarily intended for use or designed for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used, primarily intended for use or designed for use in parenterally injected controlled substances into the human body;

(12) objects used, primarily intended for use or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, which pipes may or may not have screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips; meaning objects used to hold burning material, such as a marihuana cigarette that has become too small or too short to be held in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;



- (k) chillums;
- (l) bongs;
- (m) ice pipes or chillers;
- (n) wired cigarette papers;
- (o) cocaine freebase kits.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (a) the proximity of the object, in time and space, to a direct violation of this chapter;
- (b) the proximity of the object to controlled substances;
- (c) the existence of any residue of controlled substances on the object;
- (d) instructions, oral or written, provided with the object concerning its use;
- (e) descriptive materials accompanying the object which explain or depict its use;
- (f) national and local advertising concerning its use;
- (g) the manner in which the object is displayed for sale;
- (h) whether the owner, or anyone in control of the object, is a supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (i) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- (j) the existence and scope of legitimate uses for the object in the community;
- (k) expert testimony concerning its use.

For purposes of this definition, the phrase "primarily intended for use" shall mean the likely use which may be ascribed to an item by a reasonable person. For purposes of this definition, the phrase "designed for use" shall mean the use a reasonable person would ascribe to an item based on the design and features of said item.

"Immediate precursor", a substance which the commissioner has found to be and by rule designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

"Isomer", the optical isomer, except that wherever appropriate it shall mean the optical, position or geometric isomer.

"Manufacture", the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, including any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include the

preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(a) by a practitioner as an incident to his administering a controlled substance in the course of his professional practice, or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale, or

(c) by a pharmacist in the course of his professional practice.

"Marihuana", all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

"Narcotic drug", any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (a), but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

"Nuclear pharmacy", a facility under the direction or supervision of a registered pharmacist which is authorized by the board of registration in pharmacy to dispense radiopharmaceutical drugs.

"Nurse", a nurse registered or licensed pursuant to the provisions of section seventy-four or seventy-four A of chapter one hundred and twelve, a graduate nurse as specified in section eighty-one of said chapter one hundred and twelve or a student nurse enrolled in a school approved by the board of registration in nursing.

"Nurse practitioner", a nurse with advanced training who is authorized to practice by the board of registration in nursing as a nurse practitioner, as provided for in section eighty B of chapter one hundred and twelve.

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"Opiate", any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section two, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts, dextromethorphan. It does include its racemic and levorotatory forms.

"Opium poppy", the plant of the species *Papaver somniferum* L., except its seeds.

"Oral prescription", an oral order for medication which is dispensed to or for an ultimate user, but not including an order for medication which is dispensed for immediate administration to the ultimate user by a practitioner, registered nurse, or practical nurse.

"Person", individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Pharmacist", any pharmacist registered in the commonwealth to dispense controlled substances, and including any other person authorized to dispense controlled substances under the supervision of a pharmacist registered in the commonwealth.

"Pharmacy", a facility under the direction or supervision of a registered pharmacist which is authorized to dispense controlled substances, including but not limited to "retail drug business" as defined below.

"Physician assistant", a person who is a graduate of an approved program for the training of physician assistants who is supervised by a registered physician in accordance with sections nine C to nine H, inclusive, of chapter one hundred and twelve.

"Poppy straw", all parts, except the seeds of the opium poppy, after mowing.

"Practitioner",

(a) A physician, dentist, veterinarian, podiatrist, scientific investigator, or other person registered to distribute, dispense, conduct research with respect to, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research in the commonwealth;

(b) A pharmacy, hospital, or other institution registered to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in the commonwealth.

(c) An optometrist authorized by sections 66 and 66B of chapter 112 and registered pursuant to paragraph (h) of section 7 to utilize and prescribe therapeutic pharmaceutical agents in the course of professional practice in the commonwealth.

"Prescription drug", any and all drugs upon which the manufacturer or distributor has, in compliance with federal law and regulations, placed the following: "Caution, Federal law prohibits dispensing without prescription".

"Production", includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

"Radiopharmaceutical drug", any drug which is radioactive as defined in the Federal Food, Drug and Cosmetic Act.

"Registrant", a person who is registered pursuant to any provision of this chapter.

"Registration", unless the context specifically indicates otherwise, such registration as is required and permitted only pursuant to the provisions of this chapter.

"Registration number", such registration number or numbers, either federal or state, that are required with respect to practitioners by appropriate administrative agencies.

"Retail drug business", a store for the transaction of "drug business" as defined in section thirty-seven of chapter one hundred and twelve.

"Schedule", the list of controlled substances established by the commissioner pursuant to the provisions of section two for purposes of administration and regulation.

"State", when applied to a part of the United States other than Massachusetts includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

"Tetrahydrocannabinol", tetrahydrocannabinol or preparations containing tetrahydrocannabinol excluding marihuana except when it has been established that the concentration of delta-9 tetrahydrocannabinol in said marihuana exceeds two and one-half per cent.

"Ultimate user", a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for the use of a patient in a facility licensed by the department or for administering to an animal owned by him or by a member of his household.

"Written prescription", a lawful order from a practitioner for a drug or device for a specific patient that is communicated directly to a pharmacist in a licensed pharmacy; provided, however, that "written prescription" shall not include an order for medication which is dispensed for immediate administration to the ultimate user by a practitioner, registered nurse or licensed practical nurse.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, §§ 1 to 6; St.1973, c. 1190, §§ 1 to 6; St.1981, c. 669, § 1; St.1983, c. 565, §§ 1, 2; St.1986, c. 97, §§ 1, 2; St.1997, c. 55, § 1; St.1998, c. 50, § 1; St.1998, c. 104, § 1.

#### Historical and Statutory Notes

St.1971, c. 1071, § 1, adding this chapter, consisting of this section and §§ 2 to 48, was approved Nov. 11, 1971.

St.1972, c. 806, § 1, in the definition of Class, substituted "lists" for list "

Section 2 of St.1972, c. 806, deleted the definition of clinical research, which read:

"'Clinical research', any systematic investigation or study carried out in connection with the good faith professional practice of medicine, dentistry, or podiatry for the alleviation of pain

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**Annie Sloan**

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**From:** InstaTrac Email from New England Law Library <noreply@instatrac.com>  
**Sent:** Tuesday, October 27, 2015 2:54 PM  
**To:** Annie Sloan  
**Subject:** SB1312 - Sen. O'Leary, R. (D) - Relating to AIDS and hepatitis C prevention.

From 2005-2006 session

**SB1312 - Sen. O'Leary, R. (D) - Relating to AIDS and hepatitis C prevention.**

## **SENATE, No. 1312**

By Mr. O'Leary, a petition (accompanied by bill, Senate, No. 1312) of Robert A. O'Leary, Mark C. Montigny, Richard T. Moore, Patricia D. Jehlen and other members of the General Court for legislation relative to HIV and hepatitis C prevention. Public Health

### **The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Five.**

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#### **AN ACT RELATIVE T HIV AND HEPATITIS C PREVENTION**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

##### **SECTION 1.**

Section 1 of chapter 94C of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out in line 68 the word “injecting”.

**SECTION 2.** Section 1 of chapter 94C of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out subsection (11), lines 100 to 102 inclusive.

SECTION 3. Chapter 94 C of the General Laws is hereby amended by striking out section 27 and inserting in place thereof the following section:-

Section 27. Hypodermic syringes, hypodermic needles and any other instrument adapted for the administration of controlled substances by injection may be sold in the commonwealth only to persons who have attained the age of 18 years and only by a pharmacist or wholesale druggist, who is licensed under the provisions of chapter 112, a manufacturer of or dealer in surgical supplies, or a manufacturer of or dealer in embalming supplies. No more than 10 such syringes, needles or instruments may be purchased by one person at one time.

SECTION 4. Chapter 111 of the General Laws, as most recently amended by Chapter 66 of the Acts of 2002, is hereby amended by adding the following section:-

Section 25K. The department will develop an educational insert to accompany the sale of hypodermic syringes and needles. Such educational insert shall include, but not be limited to, (1) information on the proper use of hypodermic syringes and needles, (2) the risk of blood borne diseases that may result from the use of hypodermic syringes and needles and methods for preventing the contraction or transmission of such diseases, (3) proper hypodermic syringe and needle disposal practices, (4) the toll-free telephone number of the Commonwealths AIDS hotline, and (5) the toll-free number of the Massachusetts Substance Abuse Information and Education Helpline. Such educational insert shall be provided to purchasers of hypodermic syringes and needles at the point of sale.

SECTION 5. Section 32I of Chapter 94C of the General Laws is hereby amended by striking out in line 6 the word "inject".

SECTION 6. Section 32I of Chapter 94C of the General Laws is hereby amended by adding at the end thereof the following paragraph:--

(d) The provisions of this section shall not apply to the sale of hypodermic syringes, hypodermic needles or any other instrument adapted for the administration of controlled substances by injection to persons over the age of 18 pursuant to section 27.

SECTION 7.Â Chapter 175 of the General Laws, as most recently amended by Chapter 355 of the Acts of 2000, is hereby amended by inserting after section 47V, the following section:-

Section 47W.Â No individual policy of accident and sickness insurance issued or renewed pursuant to section 110, shall restrict or discontinue coverage for medically necessary hypodermic syringes and needles, notwithstanding any changes made to section 27 of Chapter 94C of the General Laws.

SECTION 8.Â Chapter 176A of the General Laws, as most recently amended by Chapter 355 of the Acts of 2000, is hereby amended by inserting after section 8V, the following section:--

Section 8W.Â No contract between a subscriber and the corporation under an individual or group hospital service plan which is delivered, issued, or renewed in the commonwealth shall restrict or discontinue coverage for medically necessary hypodermic syringes and needles to any individual subscribers and members within the commonwealth and to any group members having a principal place of employment within the commonwealth, notwithstanding any changes made to section 27 of Chapter 94C of the General Laws.

SECTION 9.Â Chapter 176B of the General Laws, as most recently amended by Chapter 355 of the Acts of 2000, is hereby amended by inserting after section 4V, the following section:--

Section 4W.Â No subscription certificate, under an individual or group medical service agreement, delivered, issued or renewed in the commonwealth shall restrict or discontinue coverage for medically necessary hypodermic syringes and needles to any individual subscribers and members within the commonwealth and to any group members having a principal place of employment within the commonwealth, notwithstanding any changes made to section 27 of Chapter 94C of the General Laws.



SECTION 10.Â Chapter 176G of the General Laws, as most recently amended by Chapter 141 of the Acts of 2000, is hereby amended by inserting after section 4M, the following section:--

Section 4N.Â No individual or group health maintenance contract shall restrict or discontinue coverage for medically necessary hypodermic syringes and needles, notwithstanding any changes made to section 27 of Chapter 94C of the General Laws.

SECTION 11.Â Section 79 of chapter 277 of the General Laws, as appearing in the 1998 Official Edition, is hereby amended by striking out, in lines 463 to 466, inclusive, the words:--

Possession of hypodermic instrument. That A.B. did have in his possession unlawfully a hypodermic syringe and needle. Sale and delivery of hypodermic instrument.Â That A.B. did unlawfully sell (or deliver) a hypodermic syringe (or needle).