

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 808

INTRODUCER: Health Policy Committee and Senator Margolis

SUBJECT: Needle and Syringe Exchange Program

DATE: April 11, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	Fav/CS
2.	Erickson	Cannon	CJ	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 808 requires the Department of Health (DOH) to establish a needle and syringe exchange pilot program in Miami-Dade County to prevent the transmission of HIV, AIDS, viral hepatitis and other blood-borne diseases. The bill specifies the duties of the pilot program. The pilot program must be funded through private grants and donations.

A pilot program staff member, volunteer, or participant is immune from criminal prosecution for authorized program activity involving possession, distribution, or exchange of needles or syringes, but is subject to prosecution for acting outside the pilot program (as specified in the bill).

The pilot program expires on July 1, 2018, and requires the Office of Program Policy Analysis and Government Accountability to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

This bill substantially amends section 381.0038 of the Florida Statutes.

II. Present Situation:

Florida Comprehensive Drug Abuse Prevention and Control Act

The term drug paraphernalia is defined in s. 893.145, F.S., as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.¹

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates this provision commits a first degree misdemeanor.²

This section of law also provides that it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act, or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this provision commits a third degree felony.³

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors (in addition to other logically relevant factors) in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.⁴

¹ Section 893.145, F.S.

² A first degree misdemeanor is punishable by up to one-year imprisonment in a county jail, a fine of up to \$1,000, or both. See Section 775.082, F.S., and Section 775.083, F.S.

³ A third degree felony is punishable by up to 5 years in state prison, a fine not to exceed \$5,000, or both. See ss. 775.082 and 775.083, F.S.

⁴ Section 893.146, F.S.

Intravenous Drug Use (IDU) in Florida

Geographically, the majority of Florida counties with high rates of persons living with HIV/AIDS (PLWHA) with an IDU-associated risk through 2011 are primarily in the southeast or central part of the state.⁵ Researchers from the University of Miami recently estimated that there are more than 10,000 IDUs in Miami and that one in five of these IDUs are HIV positive and one in three are Hepatitis C Virus positive.⁶ The chart below contains data from 2011 of eleven counties with the highest incidence of people living in Florida with HIV/AIDS with an IDU associated risk.⁷

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	25,381	2,608	10%
Broward	16,466	1,643	10%
Palm Beach	7,789	733	9%
Orange	7,012	1,027	15%
Hillsborough	5,889	828	14%
Duval	5,263	753	14%
Pinellas	3,529	584	17%
Lee	1,648	238	14%
St. Lucie	1,520	177	12%
Volusia	1,348	264	20%
Brevard	1,231	220	18%
STATE TOTAL*	97,174	13,037	13%

8

HIV/AIDS

HIV is a sexually transmitted infection. It can also be spread by contact with infected blood, or from mother to child during pregnancy, childbirth, or breast-feeding. It can take years before HIV weakens a person's immune system to the point that the person has AIDS. AIDS is a chronic, potentially life-threatening condition caused by the HIV. By damaging the body's immune system, HIV interferes with the body's ability to fight the organisms that cause disease. There is no cure for HIV/AIDS, but there are medications that can dramatically slow the progression of the disease.⁹

⁵ *HIV Infection among Those with an Injection Drug Use-Associated Risk, Florida, 2011* (PowerPoint slide), HIV/AIDS and Hepatitis Program, Florida Department of Health, revised 10/17/12, available at http://www.doh.state.fl.us/disease_ctrl/aids/updates/facts/11Facts/IDU_2011.ppt#370,17 (last visited on April 11, 2013). Injection Drug Use (IDU) data in this slide includes IDU and MSM/IDU case data as of June 31, 2012.

⁶ Tookes, HE, Kral, AH, Wenger, LD, Cardenas, GA, Martinez, AN, Sherman, RL, Pereyra, M, Forrest, DW, LalLota, M, Metsch, LR. "A comparison of syringe disposal practices among injection drug users in a city with versus a city without needle and syringe programs." *Drug and Alcohol Dependence*, June 2012, Vol. 123, Issue 1, pp 255-259. Retrieved 4/07/13 from [http://www.drugandalcoholdependence.com/article/S0376-8716\(11\)00522-9/fulltext](http://www.drugandalcoholdependence.com/article/S0376-8716(11)00522-9/fulltext).

⁷ *Supra fn. 6.*

⁸ *Supra fn.6.*

⁹ HIV/AIDS by the Mayo Clinic Staff, available at: <http://www.mayoclinic.com/health/hiv-aids/DS00005> (last visited April 11, 2013).

HIV can be transmitted through needles and syringes contaminated with infected blood. Sharing intravenous drug paraphernalia puts a person at high risk of HIV and other infectious diseases such as hepatitis. People who use intravenous drugs often share needles and syringes. This exposes them to droplets of other people's blood.¹⁰

Disposal of Sharps

According to the Food and Drug Administration (FDA), there are many people who use needles, syringes and lancets ("sharps") to manage their medical conditions at home. These conditions include: diabetes; allergies; infertility; arthritis; hepatitis; HIV; blood clotting disorders; migraines; and cancer. Sharps are also used to give medication to pets and farm animals. The haphazard disposal of these devices can put many other people, including waste-disposal workers, housekeepers, family members and children, at risk of injury and serious infections.

The Environmental Protection Agency estimates that 9 million people in the United States use sharps at home. This number equates to more than 3 billion disposable needles and syringes and 900 million lancets each year. Many sharps used outside of healthcare facilities are disposed of in household trashcans. This type of disposal is a hazard because a person who is accidentally pricked by a discarded sharp is at risk of exposure to blood-borne viruses such as hepatitis and HIV.¹¹

Needle-collection programs exist in many Florida counties, but differ county to county. These programs help with the disposing of needles, syringes with needles, and lancets that have been used to treat, in a home, an allergy, acute illness, or chronic disease such as diabetes.¹²

National Data and Survey Results

According to the Centers for Disease Control and Prevention (CDC), Needle Syringe Exchange Programs (NSEP) can help prevent blood-borne pathogen transmission by increasing access to sterile syringes among IDUs and enabling safe disposal of used syringes. Further, these programs will often provide other public health services, such as HIV-testing, risk-reduction education, and referrals for substance-abuse treatment.¹³

In 2002, staff from the Beth Israel Medical Center in New York City and the North American Syringe Exchange Network mailed surveys asking the directors of 148 NSEPs about syringes exchanged and returned, services provided, budgets, and funding. The survey identified the number of NSEPs and localities with NSEPs, found that that public funding for NSEPs

¹⁰ *Id.*

¹¹ *Improperly Discarded 'Sharps' Can Be Dangerous*, Food and Drug Administration, available at: <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm278763.htm> (last visited April 11, 2013).

¹² Information from the Florida Department of Health, Local Florida County Sharps and Needle-Collection Program, available at : <http://www.doh.state.fl.us/environment/community/biomedical/sharps.htm> (last visited on April 11, 2013).

¹³ *Update: Syringe Exchange Programs in US, 2002*, MMWR Weekly (July 15, 2005 / 54(27):673-676), Centers for Disease Control, available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5427a1.htm> (last visited April 11, 2013).

decreased nationwide; however, the number of syringes exchanged and total budgets across all programs continued to increase.¹⁴

The survey identified the largest NSEPs: Chicago Recovery Alliance, Chicago, Illinois (2.7 million syringes); San Francisco AIDS Foundation HIV Prevention Project, San Francisco, California (2.5 million); Seattle-King County Department of Public Health Needle Exchange Program, Seattle, Washington (1.0 million); Harm Reduction Institute, Indianapolis, Indiana (1.0 million); Point Defiance AIDS Project, Tacoma, Washington (0.9 million); San Diego Clean Needle Exchange Program, San Diego, California (0.9 million); Street Outreach Services, Seattle, Washington (0.8 million); Prevention Point Philadelphia, Pennsylvania (0.7 million); HIV Education and Prevention Project of Alameda, Oakland, California (0.6 million); Needle Exchange Emergency Distribution, Berkeley, California (0.5 million); and one NSEP that wanted program information kept confidential.¹⁵

III. Effect of Proposed Changes:

Section 1 adds a new subsection to s. 381.0038, F.S., which requires the DOH to establish a sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program is provided to prevent the transmission of the HIV, AIDS, and other blood-borne diseases by offering free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes in a one-for-one exchange. The pilot program must be administered by the DOH or DOH's designee. The bill identifies the entities that the DOH is authorized to designate to operate the program at a fixed location or through a mobile health unit:

- a licensed hospital;
- a licensed health care clinic;
- a substance abuse treatment program;
- an HIV or AIDS service organization; or
- another nonprofit entity designated by the DOH.

The pilot program must offer the free exchange of clean unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases among intravenous drug users and their sexual partners and offspring. The program must do all of the following:

- Provide for maximum security of exchange sites and equipment, including: an accounting of the number of needles and syringes in use and in storage; safe disposal of returned needles, and any other measure that may be required to control the use and dispersal of sterile needles and syringes.
- Strive for one-to-one exchange (one sterile needle and syringe unit for each used one).
- Make available the following: educational materials; HIV counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug use prevention and treatment.

¹⁴ *Id.*

¹⁵ *Id.*

The program must be funded through grants and donations from private resources and funds, without the use of state funds.

The possession, distribution, or exchange of needles or syringes as part of a pilot NSEP established by the DOH or the DOH's designee is not a violation of any part of chapter 893, F.S. or any other law. However, a NSEP staff member, volunteer, or participant is not immune from criminal prosecution for possessing needles or syringes that are not part of the exchange pilot program or for redistributing needles or syringes if acting outside the program.

The pilot program must collect data regarding the following: number of participants served; the number of needles and syringes exchanged and distributed; the number of participants entering drug counseling and treatment; the number of participants receiving HIV, AIDS, or viral hepatitis testing; and demographic profiles of participants served. However, no personal identifying information may be collected from a participant for any purpose.

The pilot program expires on July 1, 2018, and by January 1, 2018, the Office of Program Policy Analysis and Government Accountability (OPPAGA) must submit a report to the Legislature that includes the aforementioned data (and additional, specified data) and a recommendation on whether the pilot program should continue.

Section 2 adds a severability clause, which provides that if any provision of this act or its application to a person is invalid, the invalidity would not affect other provisions or applications of the act which can be given effect without the invalid provision, and the provisions of this act are severable.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private grants and donations will be needed to operate the pilot program.

C. Government Sector Impact:

The DOH has not completed an analysis of CS/SB 808. The bill specifies that state funds may not be used to *operate* the pilot program. The bill requires the DOH to administer the program. It is presently unknown if this administration would have any fiscal impact on the DOH, and if so, whether the DOH could absorb these costs within its existing budget.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Health Policy on April 9, 2013:**

The CS requires the DOH to establish a needle and syringe exchange pilot program in Miami-Dade County. The program is administered by the DOH or the DOH's designee and the DOH is authorized to designate any specified entity to operate the pilot program. Duties of the pilot program are specified. The pilot program expires on July 1, 2018, and the OPPAGA is directed to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue. The pilot program must be funded through private grants and donations.

B. Amendments:

None.