

SAMPLE POLICY	<b>SYRINGE PROGRAMS AND HARM REDUCTION</b>	SECTION NO. <b>000.0</b>
DATE:		DISTRIBUTION:

## PURPOSE:

To provide awareness of various harm reduction programs authorized under New York State law and regulation which afford injection drug users with access to and lawful possession of sterile hypodermic instruments in the furtherance of public health.

To provide familiarization with opioid overdose prevention, the use of Naloxone/Narcan to counteract overdoses, and the circumstances under which persons, including injection drug users and others who are not users, may lawfully possess Narcan and hypodermic instruments in order to provide emergency treatment for a person apparently suffering an opioid overdose.

To provide an understanding of New York State's 911 Good Samaritan Law which exempts persons from arrest and charges under certain circumstances.

To establish guidelines for policing functions in and about syringe exchange program locations to ensure that clients of those programs are able to participate freely in such programs as designed and within the spirit and context of the law.

To establish procedures for handling hypodermic instruments and for safe disposal.

To designate positions within the department and external organizations for policy and operational management.

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## **I. POLICY:**

The Department recognizes that there are certain programs under New York State law and regulation which permit the lawful possession of hypodermic instruments by persons who are injection drug users in order to minimize the effects of dirty needles and to promote the public health, including public safety and officer safety.

It is noted that the programs, laws and regulations referred to in these guidelines provide for legal access to syringes by injection drug users and others.

The guidelines provided for herein are not intended to deter officers from performing narcotics investigations and other enforcement activities. Rather, these guidelines are intended to distinguish lawful conduct from that which was traditionally unlawful, and to permit syringe programs to function in accordance with law and regulation, without fear of unnecessary interference or surveillance by law enforcement. It is noted that syringe programs are not sanctuary for illicit activities.

This policy recognizes the intent of the State's syringe access laws in providing sterile injection materials for injection drug users to reduce the risk of transmission of bloodborne diseases. This policy further recognizes state law relating to authorized syringe possession, and the lawful possession of residual amounts of a controlled substance, paraphernalia and alcoholic beverages under certain circumstances which otherwise would be unlawful (see Good Samaritan 911 Law, herein).

Scientific evidence has borne out the benefits of syringe programs. Altogether, the provision of sterile syringes has been demonstrated to reduce the transmission of diseases such as hepatitis and HIV/AIDS, thus reducing risk not only to injecting drug users (IDUs), but to family members, children and intimate partners of IDUs, as well as first responders during street encounters, and booking procedures with IDUs.

This policy also recognizes that the manner in which local law enforcement interacts with syringe programs in the community can impact the success of such programs. For example, the location and proximity of syringe programs to police operations may deter persons from disposing of used syringes and obtaining sterile syringes. Unusual, frequent patrols and surveillance of syringe program sites can negatively impact the willingness of IDUs to dispose of used syringes and obtain sterile syringes.

Officers need to be considerate of the balance of protecting and patrolling areas within their beat/assignment against excessive patrols of syringe program locations. Persons operating, supervising or participating in syringe programs must also understand that such locations are not sanctuary from policing operations.

While it is difficult to forecast the variety of issues and situation that may arise from the perspective of police operations and syringe program operations, this policy uses a system of a dual liaisons. One point of contact is established for executive and policy level issues, and another point of contact for day-to-day operational concerns. Operational concerns will be addressed by the duty sergeant/officer in charge

(or insert other title here), with any unresolved matters to be brought to the (insert title) or to the Chief of Police.

## II. DEFINITIONS

- A. **Department:** The \_\_\_\_\_ Police Department.
- B. **Executive liaison:** The (designate position, i.e. Chief of Police, Captain, etc.) is the Executive Liaison for matters of policy and protocols relating to interactions with any syringe exchange programs within the jurisdiction. This position will set policy and procedures and designate training relating to syringe programs and activities. In matters of dispute or controversy which cannot be adjusted by the Operational Liaison, the Executive Liaison will handle same. (The point of communication between the leadership of the Department and the leadership of the syringe program for matters of policy.) This may be the chief executive officer of each, or may be a managerial position dependent upon function and agency makeup. This position is responsible for directing agency policy, but not necessarily issues or complaints that arise on a daily basis.)
- C. **Expanded Syringe Access Program:** ESAP
- D. **Harm reduction:** Refers to policies, programs, strategies and practices aimed at reducing the negative effects of certain unsafe behaviors. In the context of this policy, it is associated with the mitigation of negative effects related to the use of illicit drugs and paraphernalia by focusing on the prevention of those effects rather than on the prevention of drug use.
- E. **Hypodermic instrument:** includes hypodermic syringes and hypodermic needles.
- F. **Injection Drug User:** IDU
- G. **New York State Department of Health:** NYSDOH
- H. **Operational liaison:** The (sergeant, Captain, etc.) is the Operational Liaison for handling any issues, concerns or complaints relating to interactions with any syringe exchange programs within the jurisdiction. This position is responsible for ensuring that policies and procedures are carried out as designated by policy and order. In the event that a controversy cannot be adjusted by the Operational Liaison, the matter will be referred to (designate next level for referral of such issues). (A point of communication for handling of daily operational concerns. This may be a sergeant, manager or duty position available as a point-of-contact for issues or complaints that arise on a daily basis.)
- I. **Opioids:** heroin, morphine, codeine, methadone, oxycodone (Oxycontin, Percodan, Percocet), hydrocodone (Vicodin), fentanyl (Duragesic) and hydromorphone (Dilaudid). (Source: Opioid Overdose Prevention Fact Sheet, NYSDOH).
- J. **Opioid Overdose Prevention Program:** OOPP
- K. **Penal Law:** PL
- L. **Public Health Law:** PHL
- M. **Regulation:** Regulations promulgated by the Commissioner of Health for the State of New York, which have the force and effect of law. Regulations are developed to execute the details of broader statements/programs authorized by statute.
- N. **Syringe Exchange Program:** SEP
- O. **Syringe program:** Includes SEP, ESAP, OOPP, defined herein. Also synonymous with needle program or needle exchange program.

### III. PROCEDURES

- A. Designation of liaisons:** For purposes of this policy, the Executive Liaison for the Department will be the Chief of Police. The Operational Liaison will be the (designate position, i.e. Lieutenant, Sergeant, Desk Officer in Charge, etc.)
- B. Description of programs authorized under state law:**
- 1. Syringe Exchange Program (SEP):** Authorized under §3381 PHL and regulations, permits injection drug users to exchange used syringes for new, sterile ones. Once a person is enrolled in SEP, they receive an identification card with a unique identifier and are instructed to return used syringes. This not only provides persons at risk with a formidable prevention tool for HIV/AIDS/Hepatitis B and Hepatitis C, but it also prevents the inappropriate disposal of used syringes. There is no minimum age for the SEP.
  - 2. Expanded Syringe Access Program (ESAP):** In 2000, the New York State Legislature changed the Public Health Law to authorize a demonstration program to expand access to sterile hypodermic needles and syringes. This is a public health measure to prevent blood borne diseases, most notably HIV/AIDS and hepatitis B and hepatitis C. ESAP became effective January 1, 2001 and as of the summer of 2009, became a permanent program. Licensed pharmacies, health care facilities, and health care practitioners who can otherwise prescribe hypodermic needles or syringes may register with the New York State Department of Health to sell or furnish up to 10 hypodermic needles or syringes to persons 18 years of age or older. Persons who are age 18 years or older may legally obtain and possess hypodermic needles and syringes through ESAP- without a medical prescription.
  - 3. Opioid Overdose Prevention Program (OOPP):** Most overdoses are not instantaneous and the majority of them are witnessed by others. Many overdose fatalities are preventable, especially if witnesses have had appropriate training and are prepared to respond in a safe and effective manner. Prevention measures include education on risk factors (such as polydrug use and recent abstinence), recognition of the overdose and an appropriate response. Response includes contacting emergency medical services (EMS) and providing resuscitation. Resuscitation consists of rescue breathing, and/or administration of an FDA-approved drug (i.e., naloxone) to immediately reverse the effects of heroin overdose. (Source: Opioid Overdose Prevention Fact Sheet, NYSDOH). Persons trained in the OOPP may receive vials of Naloxone (Narcan) and hypodermic instruments, or they may receive an intranasal spray. Persons who administer naloxone are protected by the law from civil liability and criminal prosecution for administering this overdose treatment so long as they do so in a good faith manner to a person experiencing a drug overdose. Naloxone is considered under the law as first aid or emergency treatment for the purpose of liability. (NYSDOH)
- C. Program models:** Syringe exchange programs may be found at a fixed location (hospital, clinic, community organization, etc.), mobile location (van, other vehicle) or peer delivery. Peer delivery syringe exchange refers to an SEP where hypodermic instruments and related supplies are taken to the client, or the client comes to the peer. This mode of delivery helps those who

are unable or unwilling to appear at an SEP or ESAP location. Some programs may include other support services aimed at assisting persons in obtaining health services, nutrition, social networking, employment, counseling and other services. Providers in ESAP include licensed pharmacies, health care facilities, and health care practitioners who can otherwise prescribe hypodermic needles or syringes. While pharmacists are not licensed to prescribe syringes, through ESAP they are authorized to dispense them. All ESAP providers must register with the state to provide syringes without prescriptions.

- D. Jurisdiction of programs:** The law concerning the Syringe Exchange Program, the Expanded Syringe Access Program, and the Opioid Overdose Prevention Program are found within the New York State Public Health Law and is further governed by the rules and regulations of the Commissioner of the of Health. The application of the law governing these programs is statewide.
- E. Age threshold for programs:** There is no minimum age for persons to participate in the SEP or OOPP. Participants in the ESAP must be age 18 or older.
- F. What constitutes lawful possession –** Pursuant to §3381 of the New York State Public Health Law (PHL), hypodermic needles and syringes may be sold or furnished to persons pursuant to a written prescription of a health care practitioner, and to persons authorized by the New York State Commissioner of Health to obtain and possess such instruments. As of January 1, 2001, these provisions of the PHL also allow for persons eighteen years of age or older to obtain up to ten hypodermic needles/syringes without a prescription from a licensed pharmacy, health care provider, or health care facility. As the law does not contain a prohibition on the number of ten-syringe-transactions, there is no limit to the number of syringes a person may obtain or possess.
1. Participants in a SEP, ESAP or OOPP should not be charged with PL §220.45 (Criminally Possessing a Hypodermic Instrument) for the mere possession of a hypodermic instrument obtained and possessed in accordance with the PHL.
  2. Members must also note that possession of a residual amount of a controlled substance in or on a hypodermic instrument obtained/possessed from an SEP or ESAP does not amount to Criminal Possession of a Controlled Substance in the 7<sup>th</sup> degree:

§220.03 Criminal possession of a controlled substance in the seventh degree. A person is guilty of criminal possession of a controlled substance in the seventh degree when he or she knowingly and unlawfully possesses a controlled substance; provided, however, that it shall not be a violation of this section when a person possesses a residual amount of a controlled substance and that residual amount is in or on a hypodermic syringe or hypodermic needle obtained and possessed pursuant to section thirty-three hundred eighty-one of the public health law; nor shall it be a violation of this section when a person's unlawful possession of a controlled substance is discovered as a result of seeking immediate health care as defined in paragraph (b) of subdivision three of §220.78 of the penal law, for either another person or him or herself because such person is experiencing a drug or alcohol overdose or other life threatening medical emergency as defined in paragraph (a) of subdivision three of §220.78 of

the penal law. Criminal possession of a controlled substance in the seventh degree is a class A misdemeanor.

**G. Collection, packaging, disposition of syringes; Officer safety**

1. Syringes held as evidence (define your agency protocol for handling syringes/biohazard items which are held as evidence)
2. Syringes held as property (define your agency protocol for handling syringes/biohazard items which are held as property)
3. Officer safety notice – In addition to other protocols for personal protective equipment (PPE) and handling of various substances, to prevent injury when handling syringes, members are reminded to place such items in an authorized syringe/sharps container. Members must not attempt to remove or dislodge a needle from a syringe. Members must not attempt to recap an uncapped syringe. (Note: recapping of syringes is the most frequent method of accidental needle sticks by health care providers.)

**H. Verification of participation in syringe programs (also see appendix for quick reference):**

1. Participation in the Syringe Exchange Program can be verified by:
  - a. Identification card (note that cards contain unique identifiers, not the participant's name, as programs are anonymous and confidential)
  - b. Officers: inquiries can be directed by telephone to the specific program office with which the participant is affiliated. Program providers can also be found on the NYSDOH website at: [health.ny.gov](http://health.ny.gov) (use search function for SYRINGE ACCESS AND DISPOSAL)
2. Participation in the Expanded Syringe Access Program:  
Note that there are no identification cards used in ESAP
3. Participation in the Opioid Overdose Prevention Program:  
Note that there are no identification cards used in OOPP. Participants/responders are not required to maintain nor carry proof of participation in or completion of training in the case of OOPP.

**I. The Good Samaritan 911 Law**

1. New York State's Good Samaritan 911 Law provides that, a person who in good faith seeks health care for himself or another, or is the subject of a good faith request, and who is experiencing a drug or alcohol overdose or other life threatening medical emergency, shall not be charged or prosecuted for a controlled substance or marijuana offense, or possession or alcohol or drug paraphernalia if the controlled substance, marijuana, alcohol or paraphernalia was discovered as a result of the person seeking or receiving health care. This law is intended to encourage people, who otherwise may refuse to do so for fear of criminal prosecution, to seek medical attention. [DCJS Legal Bulletin, Jan. 28, 2013]
2. The law is not intended to interfere with the protocols of law enforcement to secure the scene of an overdose and the law does not prevent the detention of a person while

police investigate the facts of the particular case to determine if the person should be charged and prosecuted. [DCJS Legal Bulletin, Jan. 28, 2013]

3. The law does not apply to drug sales for consideration/benefit/gain; does not apply to CPCS 1st (220.21), CSCS 1st (220.43), Operating as a Major Drug Trafficker (220.77); does not apply to outstanding warrants, probation or parole violations, or other non-drug crimes.
4. Specific enforcement questions should be referred to the District Attorney's Office. Questions about the law can be directed to DCJS Office of Legal Services 518-457-8413.
5. Members may also refer to the DCJS Legal Bulletin through eJusticeNY or see Appendix herein.

**J. General guidelines**

1. Officers who encounter participants in a syringe program will adhere to the following guidelines:
  - a. Do not target or conduct observation activity at Syringe Exchange program locations for the sole purpose of identifying, detaining or arresting persons for narcotics-related offenses.
  - b. Officers who receive a call for service related to the distribution activities at an authorized SEP location should request a supervisor to the scene/promptly advise a supervisor of the situation.
  - c. Supervisors will monitor calls for service related to the SEP and assist officers in mediating incidents that arise from calls involving program locations. All incidents shall be documented (form).

**K. Training:** The \_\_\_\_\_ (designate position/office responsible for training function) will be responsible for providing routine training in order to familiarize members with issues including but not limited to existing practices, policies and procedures, legislative or regulatory changes, court decisions governing the issues herein, and for changes in technologies and practices.

## IV. APPENDIX A

**SYRINGE LAW** - The New York State Penal Law provides that a person does **not** act unlawfully by possessing a hypodermic needle or syringe without a prescription **if** he or she participates in certain syringe programs authorized under the New York State Public Health Law. Effective October 28, 2010, the possession of a residual amount of a controlled substance in or on a needle or syringe does not constitute a criminal act if the individual is permitted to possess such needle or syringe under the Public Health Law. See §220.45 Criminally possessing a hypodermic instrument, and §220.03 Criminal possession of a controlled substance in the seventh degree.

### SYRINGE EXCHANGE PROGRAM

<b>INTENT</b>	PROVIDE NEW SYRINGES WITHOUT A PRESCRIPTION TO INJECTION DRUG USERS IN EXCHANGE FOR USED SYRINGES TO REDUCE HIV/AIDS AND HEPATITIS C
<b>APPEARANCE</b>	STOREFRONTS, STREET SIDE, MOBILE VANS, WALKING STREET TEAMS, PEER DELIVERY, ETC.
<b>LIMIT OF POSSESSION</b>	NO LIMITS
<b>ID CARDS?</b>	YES
<b>AGE LIMIT?</b>	NO MIN. AGE
<b>AUTHORITY</b>	3381 NYS PUBLIC HEALTH LAW & COMM. REGS

### EXPANDED SYRINGE ACCESS PROGRAM

<b>INTENT</b>	PROVIDE BETTER ACCESS TO SYRINGES WHERE SEPs MIGHT NOT EXIST; ALLOWS PHARMACIES, CERTAIN HEALTH CARE FACILITIES AND PRACTITIONERS TO PROVIDE SYRINGES
<b>APPEARANCE</b>	SYRINGES AVAILABLE WITHOUT RX AT PHARMACIES, ART. 28 HEALTH CARE FACILITIES, PHYSICIANS AND CERTAIN OTHERS
<b>LIMIT OF POSSESSION</b>	10 PER TRANSACTION (NOTE: NO LIMIT ON NUMBER OF TRANSACTIONS)
<b>ID CARDS?</b>	NO
<b>AGE LIMIT?</b>	18 OR OLDER
<b>AUTHORITY</b>	3381 NYS PUBLIC HEALTH LAW & COMM. REGS

### OPIOID OVERDOSE PREVENTION PROGRAM

<b>INTENT</b>	REDUCE FATAL OUTCOMES FOR HEROIN/OPIOID ODs BY TRAINING PERSONS TO ADMINISTER NALOXONE (NARCAN)
<b>APPEARANCE</b>	TRAINED RESPONDERS ARE ISSUED A KIT CONTAINING NALOXONE (NARCAN) AND SYRINGES
<b>LIMIT OF POSSESSION</b>	2 SYRINGES; 2 VIALS OF NALOXONE (NARCAN) ARE ISSUED, BUT NO LIMIT ON NUMBER POSSESSED. PRESCRIPTIONS ARE ISSUED FOR THE NARCAN AND SYRINGES, BUT PARTICIPANTS ARE NOT REQUIRED TO RETAIN THEM.
<b>ID CARDS?</b>	NO
<b>AGE LIMIT?</b>	NO MIN. AGE
<b>AUTHORITY</b>	3309 NYS PUBLIC HEALTH LAW & COMM. REGS

**PODCASTS, VIDEO AND DOWNLOADABLE REFERENCE SHEET AVAILABLE FROM NEW YORK STATE ASSOCIATION OF CHIEFS OF POLICE AT [WWW.NYCHIEFS.ORG](http://WWW.NYCHIEFS.ORG) – CLICK ON THE ‘RESOURCES’ AND ‘APB PODCAST’ PAGES**

SAMPLE POLICY PROVIDED TO ASSIST AGENCIES IN DEVELOPING THEIR OWN GUIDELINES FOR MATTERS INVOLVING SYRINGE PROGRAMS. REFERENCES TO LAW AND REGULATION WERE CURRENT AS OF DATE OF PUBLICATION (OCT. 22. 2013). CONSULT WITH YOUR OWN COMMAND AND LEGAL COUNSEL IN THE DEVELOPMENT AND IMPLEMENTATION OF YOUR OWN POLICY. DEVELOPED BY THE NEW YORK STATE ASSOCIATION OF CHIEFS OF POLICE, INC.



## APPENDIX B



### MEMORANDUM

**TO:** New York State Law Enforcement Agencies

**FROM:** Gina L. Bianchi *Gina L. Bianchi*  
Deputy Commissioner and Counsel

**DATE:** January 28, 2013

**SUBJECT:** Good Samaritan 911 Law

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As you know, pursuant to Chapter 154 of the Laws of 2011, a person who in good faith seeks health care for himself or another, or is the subject of a good faith request, and who is experiencing a drug or alcohol overdose or other life threatening medical emergency, shall not be charged or prosecuted for a controlled substance or marijuana offense, or possession of alcohol or drug paraphernalia if the controlled substance, marijuana, alcohol or paraphernalia was obtained as a result of the person seeking or receiving health care. In his approval message, Governor Cuomo directed that the Division of Criminal Justice Services work with law enforcement to ensure that appropriate training and guidance is provided to law enforcement personnel who may be expected to determine whether someone was suffering from an overdose and whether the person who sought aid acted in good faith since failure to promptly seek medical care or assistance for overdoses can result in avoidable loss of life. The intent of this law is to encourage people, who otherwise may refuse to do so for fear of criminal prosecution, to seek medical attention.

It should be noted that the immunity from being charged and prosecuted does not apply to drug offenses involving sales for consideration or other benefit or gain,<sup>1</sup> or class A-I drug felonies, such as Penal Law §220.21, criminal possession of a controlled substance in the first degree; Penal Law §220.43, criminal sale of a controlled substance in the first degree; and Penal Law §220.77, operating as a major trafficker.<sup>2</sup> Additionally, the protections do not extend to outstanding warrants, probation or parole violations, or other non-drug crimes. The law also makes it clear that evidence recovered in a situation involving seeking health care for an overdose victim may be admitted into evidence against a person who does not qualify for the exemption and, for the person who does qualify, evidence may be admitted in the prosecution of a non-covered crime. Finally, the law established an affirmative defense to a criminal sale of a controlled substance or marijuana offense when the defendant, in good faith, seeks health care for someone, or for him or herself, who is experiencing a drug or alcohol overdose or other life

<sup>1</sup> For instance, criminal sale of a controlled substance offense or criminal sale of marijuana offense.

<sup>2</sup> There are A-I felonies in Penal Law Article 220, which pertains to controlled substances offenses, but there are no class A-I felonies in Penal Law Article 221, which pertains to offenses involving marijuana.

threatening medical emergency; and the defendant has no prior conviction for the commission or attempted commission of a class A-I, A-II or B felony.<sup>3</sup> However, the affirmative defense cannot be used for class A-I or A-II felonies.

The law is not intended to interfere with the protocols of law enforcement to secure the scene of an overdose and the law does not prevent the detention of a person while police investigate the facts of the particular case to determine if the person should be charged and prosecuted.<sup>4</sup> Although the statute does not provide how long a person may be detained, the United States Supreme Court has held that where an agent diligently pursued his investigation and no delay unnecessary to the investigation was involved, a 20-minute detention of a suspect met the Fourth Amendment's standard of reasonableness (U.S. v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568 [1985]). As noted, the law requires that medical attention be sought "in good faith." As such, criminals who attempt to use this law to manipulate the exemptions to avoid prosecution when such prosecution is warranted can be charged and prosecuted.

In sum, if an overdose or life threatening emergency exists, and health care for this condition is sought in good faith, then the "Good Samaritan" or victim shall not be charged or prosecuted for a controlled substance or marijuana offense, or possession of alcohol or drug paraphernalia. However, because this law was recently enacted, there has been no judicial interpretation of its provisions. Thus, application of this law may raise questions and create challenges for the law enforcement community which must be determined on a case-by-case basis and will depend on the unique facts of each particular case. Therefore, law enforcement agencies should consult their local prosecutors with respect to specific enforcement questions.

If you require additional information, please contact the Division of Criminal Justice Services' Office of Legal Services at (518) 457-8413.

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<sup>3</sup> This pertains to Penal Law Article 220; there are no class A-I, A-II, or B felonies in Penal Law Article 221.

<sup>4</sup> As Governor Cuomo stated in his approval memo, "removal of the word 'arrest' from an earlier version of this bill was meant to give these responding officers the ability to detain individuals who may or may not be entitled to the statutory exemption from prosecution conferred by this bill in order to investigate all the facts and circumstances of any criminal conduct and seek guidance from the appropriate officials."