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HB 217 - Needle Exchange Program

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CRIMES AND OFFENSES

Controlled Substances: Amend Code Section 32 of Part 1 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, Relating to Transactions in Drug Related Objects, so as to Provide that Employees and Agents of Syringe Services Programs Are Not Subject to Certain Offenses Relating to Hypodermic Syringes and Needles; Authorize the Department of Public Health to Promulgate Rules and Regulations; Provide for a Definition; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

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| CODE SECTIONS: | O.C.G.A. § 16-13-32 (amended) |
| BILL NUMBER: | HB 217 |
| ACT NUMBER: | 25 |
| GEORGIA LAWS: | 2019 Ga. Laws 25 |
| SUMMARY: | The Act authorizes certain nonprofit organizations and hospitals to operate clean needle exchange programs. These programs allow individuals who inject drugs to exchange their needles for clean, unused needles. The purpose of these programs is to prevent the spread of HIV, Hepatitis C, and other infectious diseases associated with the repeated use and sharing of needles. The Act further authorizes the Department of Public Health to regulate the registration of organizations that will participate in these programs and protects employees of those organizations from being charged with crimes or offenses associated with selling, lending, giving, or exchanging needles. |
| EFFECTIVE DATE: | July 1, 2019 |

History

Fifty-three thousand Georgians currently live with Human Immunodeficiency Virus (HIV).¹ Nationwide, forty-eight counties account for over 50% of new HIV transmissions, and four of those are in the State of Georgia: Fulton, DeKalb, Cobb, and Gwinnett.² Per commentators, multiple counties in Georgia are on the verge of a catastrophic HIV outbreak.³ Moreover, since 2010, the total report of Hepatitis C in Georgia adults aged 30–40 increased by 430%.⁴

This danger affects more than just drug users and the drug dependent population of Georgia.⁵ HIV and Hepatitis C can linger for weeks in a used needle.⁶ With this in mind, Representative Mark Newton (R-123rd) expressed concern during official Health and Human Services Committee floor discussions over the dangers posed by used needles left in parks and on playgrounds.⁷ Moreover, children and other park-goers are not the only group of innocents exposed to the risk of being stuck by one of these needles; one in three Georgia police officers will be stuck by a used needle over the course of their career.⁸

In response to similarly dire circumstances, twenty-eight states created approximately 320 needle exchange programs.⁹ After 200 people tested positive for HIV in an Indiana county in 2015, nearly 100 needle exchange clinics opened over four years.¹⁰ On July 1, 2019, the Act became effective, making Georgia one of the many

1. Video Recording of House Proceedings at 2 hr., 7 min., 59 sec. (Feb. 25, 2019) (remarks by Rep. Houston Gaines (R-117th)), <http://www.gpb.org/lawmakers/2019/day-21> [hereinafter House Proceedings Video].

2. Video Recording of House Health and Human Services Committee at 1 hr., 20 min., 28 sec. (Feb. 19, 2019) (remarks by Rep. Houston Gaines (R-117th)), <https://www.youtube.com/watch?v=mnrSMxCnGpU> [hereinafter House Health and Human Services Committee Video].

3. *Id.*

4. House Proceedings Video, *supra* note 1, at 2 hr., 8 min., 7 sec. (remarks by Rep. Houston Gaines (R-117th)).

5. *Id.*

6. House Health and Human Services Committee Video, *supra* note 2, at 1 hr., 21 min., 34 sec.

7. *Id.* at 1 hr., 27 min. (remarks by Rep. Mark Newton (R-123rd)).

8. *Id.* at 1 hr., 22 min., 38 sec. (remarks by Rep. Houston Gaines (R-117th)).

9. *Georgia Becomes the Latest State to Legalize Needle Exchanges to Stop HIV*, WABE (Apr. 4, 2019), <https://www.wabe.org/georgia-becomes-the-latest-state-to-legalize-needle-exchanges-to-stop-hiv/> [https://perma.cc/Q9LR-FMXJ].

10. *Id.*

states to implement a needle exchange program allowing drug users to exchange their used needles for clean ones at authorized clinics.¹¹

Prior Statute and Public Concern

Before the passage of House Bill (HB) 217, operating a needle exchange program was illegal under Georgia law. It was a criminal offense to sell, lend, give, exchange, or otherwise distribute to any person a needle or other drug related object.¹² According to Representative Houston Gaines (R-117th), however, Fulton County was not prosecuting those who participated in needle exchange programs for the drug dependent.¹³ While expressing gratitude for the community's support for these types of programs, Representative Gaines observed, "I generally don't like that [concept of saying] 'hey, we aren't [going to] enforce state law.' So, [Georgia was] already [establishing needle exchange programs], but it was not legal."¹⁴ The Act allows these programs to register and engage in harm reduction efforts in the open "instead of [doing it] behind the scenes."¹⁵

HB 217 went through the entire lawmaking process with little resistance. As Representative Gaines pointed out, "I don't know of any other bill that literally did not change a single word between introduction and final passage."¹⁶ Despite meeting little resistance from the General Assembly, there were some challenges with the public perception of HB 217 because addiction is such a complicated issue.¹⁷ Representative Gaines explained the difficulties of conveying the bill's importance and its life-saving and cost-saving benefits: "I think a lot of people don't understand this issue. They can put up a picture of someone doing drugs and say, 'Do you want needle exchanges in your neighborhood?' That's not helpful[.]"¹⁸

11. Georgia General Assembly, HB 217, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20192020/HB/217> [hereinafter HB 217, Bill Tracking].

12. See Telephone Interview with Rep. Houston Gaines (R-117th) (May 24, 2019) (on file with the Georgia State University Law Review) [hereinafter Gaines Interview].

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. Gaines Interview, *supra* note 12.

Nevertheless, many states are moving in the direction of supporting needle exchange programs, and the overwhelming majority of the Georgia General Assembly believes establishing these programs is a positive step.¹⁹ In March 2019, President Donald Trump's administration announced its support of needle exchange programs in the hopes of reaching its goal of ending HIV transmission within a decade.²⁰ Acceptance of needle exchange programs has been widespread enough that the Georgia General Assembly was even poised to pass this exact legislation during the 2018 session.²¹ It passed unanimously in the Senate, only for the session to end before it could be sent to the Governor for signing.²² It then successfully became law after being reintroduced in the 2019 session as HB 217.²³

Bill Tracking of HB 217

Consideration and Passage by the House

Representative Gaines introduced and cosponsored HB 217 in the House.²⁴ The House read the bill for the first time on February 11, 2019.²⁵ The House read the bill for a second time on February 12, 2019, and then committed the bill to the Health and Human Services Committee on February 19, 2019.²⁶ The Health and Human Services Committee did not recommend or discuss any changes to the proposed language of the bill and recommended the bill to the House without any objection.²⁷ The House read the bill for the third time on February 25, 2019, and subsequently passed and adopted it without

19. *Id.*

20. Kimberly Leonard, *Trump Backs Needle Exchange, Not Supervised Injections, in his HIV Strategy*, WASH. EXAMINER (Mar. 19, 2019, 11:25 AM), <https://www.washingtonexaminer.com/policy/healthcare/trump-backs-needle-exchange-not-supervised-injections-in-his-hiv-strategy> [<https://perma.cc/Q3X2-U6VT>].

21. Gaines Interview, *supra* note 12.

22. *Id.*

23. O.C.G.A. § 16-13-32 (Supp. 2019).

24. HB 217, Bill Tracking, *supra* note 11; HB 217 was cosponsored by Representatives Sharon Cooper (R-43rd), Mark Newton (R-123rd), Deborah Silcox (R-52nd), Katie Dempsey (R-13th), and Karla Drenner (D-85th). *Id.*

25. State of Georgia Final Composite Status Sheet, HB 217, May 15, 2019.

26. *Id.*

27. House Health and Human Services Committee Video, *supra* note 2, at 12 hr., 39 min., 35 sec.

making any changes to the initial language.²⁸ The vote count was 166 to 3, with 7 not voting and 4 excused.²⁹

Consideration and Passage by the Senate

The Senate read the bill for the first time on February 26, 2019, and referred it to the Senate Health and Human Services Committee that same day.³⁰ The Committee unanimously reported the bill favorably with its original language, and the Senate adopted and passed the bill by a vote of 45 to 4 on March 25, 2019.³¹

The House then sent the bill to Governor Brian Kemp (R) on March 29, 2019, and Governor Kemp signed the bill on April 2, 2019.³² HB 217 became effective on July 1, 2019.³³

The Act

The Act amends Code section 16-13-32 of the Official Code of Georgia Annotated by revising subsections (b) and (c) relating to transactions in drug related objects.³⁴ The overall purpose of the Act is to decriminalize certain offenses relating to hypodermic syringes and needles and to authorize the Department of Public Health to promulgate rules and regulations that will facilitate the creation of registered needle exchange programs in Georgia.³⁵

Section 1

Section 1 adds to subsections (b) and (c) of the Official Code of Georgia Annotated section 16-13-32. Subsection (b) describes unlawful acts relating to the exchange of hypodermic needles or syringes.³⁶ Until the passage of the bill, subsection (b) did not include

28. State of Georgia Final Composite Status Sheet, HB 217, May 15, 2019.

29. Georgia House of Representatives Voting Record, HB 217, #69 (Feb. 25, 2019).

30. State of Georgia Final Composite Status Sheet, HB 217, May 15, 2019.

31. *Id.*; Georgia Senate Voting Record, HB 217, #240 (Mar. 25, 2019).

32. State of Georgia Final Composite Status Sheet, HB 217, May 15, 2019.

33. *Id.*

34. 2019 Ga. Laws 25.

35. *See id.*

36. 2019 Ga. Laws 25, § 1(b), at 40 (codified at O.C.G.A. § 16-13-32(b) (Supp. 2019)).

any language about whether there were any exceptions to these offenses.³⁷ The Act revises subsection (b) by adding “Except as otherwise authorized in subsection (c) of this Code section.”³⁸ The effect of adding this clause is to qualify the phrase “it shall be unlawful” so that the offensive acts listed in subsection (b) shall not be considered unlawful for the circumstances outlined in subsection (c).³⁹

Paragraph (c)(1) exposes “a person employed by or acting as an agent of a registered syringe service program” to liability for distributing needles to people in general.⁴⁰ Paragraph (c)(2), however, adds a limit to that liability exposure by explaining that such a person “shall be immune from civil and criminal liability arising from the possession, distribution, or exchange of hypodermic syringes or needles and related supplies as part of such syringe services program.”⁴¹ Paragraph (c)(3) provides authorization to the Department of Public Health to promulgate rules and regulations for governing syringe services programs.⁴² Lastly, paragraph (c)(4) defines the term “syringe services program”:

As used in this subsection, the term “syringe services program” means an organization which provides substance abuse and harm reduction counseling, education, and referral services for substance abuse disorder treatment; training and provision of naloxone to reverse opioid overdoses; screening for HIV, viral hepatitis, sexually transmitted diseases, and tuberculosis; referrals and linkage to HIV, viral hepatitis, sexually transmitted diseases, and tuberculosis prevention, treatment, and care services; safer injection supplies; and evidence based interventions to reduce negative consequences of drug related behaviors.⁴³

37. O.C.G.A. § 16-13-32(b) (2015).

38. 2019 Ga. Laws 25.

39. *Id.*

40. O.C.G.A. § 16-13-32(c)(1) (Supp. 2019).

41. *Id.* § 16-13-32(c)(2).

42. *Id.* § 16-13-32(c)(3).

43. *Id.* § 16-13-32(c)(4).

Analysis

Needle exchange programs are “an exhaustively studied, proven public health intervention in the fight against opioid addiction.”⁴⁴ These types of programs combat the spread of blood-borne diseases like HIV and Hepatitis C,⁴⁵ decrease the number of needles discarded in public spaces,⁴⁶ and connect more people to treatment.⁴⁷ In turn, the state saves a substantial amount of money in avoided health care costs.⁴⁸

The Act is an effort at harm reduction. It allows registered clean syringe programs to provide clean syringes without putting their employees at risk of civil or criminal liability.⁴⁹ As Representative Gaines observed, both lives and money will be saved by increasing access to clean syringes.⁵⁰ Although the Atlanta Harm Reduction Coalition was already operating a needle exchange program in Fulton County, the program was technically not legal.⁵¹ Representative Gaines hopes that by making these programs legal, other organizations, specifically religious nonprofits and hospitals, will feel

44. German Lopez, *Needle Exchanges Have Been Proved to Work Against Opioid Addiction. They're Banned in 15 States.*, VOX (June 22, 2018, 1:20 PM), <https://www.vox.com/science-and-health/2018/6/22/17493030/needle-exchanges-ban-state-map> [<https://perma.cc/QV38-HZLS>].

45. *Access to Clean Syringes*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/policy/hst/hi5/cleansyringes/index.html> [<https://perma.cc/782T-TNZ9>] (last visited July 19, 2019).

46. Lynn G. Wenger et al., *Syringe Disposal Among Injection Drug Users in San Francisco*, 101 AM. J. PUB. HEALTH 484, 486 (2011) (showing the number of improperly disposed syringes from needle exchange programs in San Francisco is low).

47. R. Brooner et al., *Drug Abuse Treatment Success Among Needle Exchange Participants*, 113 PUB. HEALTH REP. 129, 129–30 (1998). According to the CDC, individuals in these programs are five times as likely to enter treatment. *Syringe Service Programs (SSPs), FAQs*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/ssp/syringe-services-programs-faq.html> [<https://perma.cc/3PK5-T2R4>] (last visited Sept. 5, 2019).

48. Gaines Interview, *supra* note 12; *see also* Keren Landman, *Injectable Drugs Can Kill, but Clean Syringes Can Save Lives*, GA. HEALTH NEWS (Jan. 24, 2017), <http://www.georgiahealthnews.com/2017/01/injectable-drugs-kill-clean-syringes-save-lives/> [<https://perma.cc/N9PP-E9SU>].

49. O.C.G.A. § 16-13-32(c) (Supp. 2019).

50. *See* Gaines Interview, *supra* note 12.

51. *Id.*; *see also* Maggie Lee, *Needle-Exchange Bill Moving Through Georgia Legislature*, SAPORTA REP. (Mar. 18, 2019, 4:45 PM), <https://saportareport.com/needle-exchange-bill-moving-through-georgia-legislature/> [<https://perma.cc/9NGD-954B>]. The Atlanta Harm Reduction Coalition allows people to “plug in” to a range of services, including treatment resources, HIV/AIDS prevention, and needle exchange programs. *Id.* They operate primarily in the city of Atlanta, particularly in the English Avenue and Little Five Points communities. *Id.*

more comfortable opening their own programs. He explained, “The reality is that there are other nonprofits [like] churches, which I think is a group that [is] really interesting that [has] gotten involved. Now they can register and do it the right way instead of behind the scenes.”⁵²

The effect of passing this legislation is primarily one of perception, as the Atlanta Harm Reduction Coalition has operated for over two decades and continues to operate without much pushback from law enforcement.⁵³ Fulton County previously expressed approval for needle exchange programs “via a 2016 county commission resolution urging that the state change the law for such programs.”⁵⁴ But, the hope is that nonprofits in other counties will now open their own programs without fear of legal consequences. More programs will result in more addicts having access to the programs, which in turn will result in more people getting treatment for their substance abuse.

The driving concept behind a needle exchange program is the recognition that some people are going to do drugs no matter what, so “it’s better to provide them somewhere to pick up new, sterile syringes (without the risk of spreading, say, HIV or [H]epatitis C infection) than to turn them away from potential public health services and force them to reuse needles despite the hazards.”⁵⁵ But, not everyone thinks that way. Representative Gaines reported that the main argument against the bill was based on the presumption that increasing access to clean syringes encourages drug use.⁵⁶ Public health studies definitively refute this idea, but the idea remains prevalent.⁵⁷

Senator Brandon Beach (R-21st), one of four senators who opposed the bill, raised additional concerns about spending tax dollars on initiatives like this:

52. Gaines Interview, *supra* note 12.

53. Lee, *supra* note 51.

54. *Id.*

55. Lopez, *supra* note 44.

56. Gaines Interview, *supra* note 12. (Q: “So, I guess the biggest argument against this bill would be that giving out clean needles encourages drug use. Is that a – what was your understanding of the few opponents’ argument for voting against [the bill]?” A: “Just exactly what you just said.”).

57. *Id.*

I didn't think [that] government should be involved in giving out syringes. . . . I think that's the role of the faith-based community. . . . I don't think the government should want to encourage drug use at all with taxpayer dollars. . . . They wanted government entities, cities, and counties, and [the] state to [be able to] give syringes out, and I wasn't going to vote for that.⁵⁸

At the same time, Senator Beach recognized that the opioid epidemic is a crisis: “We have an epidemic on our hands . . . these are . . . kids that die.”⁵⁹ He believes resources should be spent on treatment and prevention education—not harm reduction.⁶⁰ Senator Kay Kirkpatrick (R-32nd), a Republican from Marietta who sponsored the bill in the Senate, acknowledged that solving the opioid epidemic and the spread of infectious diseases is complicated: “Although getting control of this epidemic is going to need more than one solution, this is a fiscally conservative step towards improving the public health of our state.”⁶¹

HB 217 was intentionally drafted narrowly. According to Representative Gaines, the exchange ratio will be determined by the Department of Public Health, but it is likely to be one-to-one.⁶² A one-to-one ratio requirement means an individual can only acquire one clean syringe for each dirty one he brings to exchange, which may have a perverse consequence of encouraging addicts to keep dirty needles instead of disposing them.⁶³ Some addicts inject themselves multiple times a day, which also may make the exchange program seem unreasonably tedious.

58. Telephone Interview with Sen. Brandon Beach (R-21st) (June 17, 2019) (on file with the Georgia State University Law Review) [hereinafter Beach Interview]. Once the needle exchange programs are legal, they become eligible for public funding. *See Lee, supra* note 51.

59. Beach Interview, *supra* note 58.

60. *Id.*

61. Patrick Saunders, *Georgia Legislature Passes Needle Exchange Bill to Combat HIV*, PROJECT Q ATLANTA MAG. (Mar. 25, 2019, 4:09 PM), https://www.projectq.us/atlanta/Georgia_legislature_passes_needle_exchange_bill_to_combat_HIV?gid=19710 [<https://perma.cc/C7WK-NMNS>].

62. Gaines Interview, *supra* note 12. Notably, the language in the Act itself does not require a one-to-one exchange ratio, and the Department of Health has the authority to promulgate a rule or regulation changing the exchange rate if the original exchange rate has unintended consequences. O.C.G.A. § 16-13-32(1)(c)(3) (Supp. 2019).

63. *See* Gaines Interview, *supra* note 12.

The reason the Act is so narrow is precisely because legislators do not want Georgia to end up like California: “Other states are doing safe injection sites and that’s not what this bill does. I think this is where we need to be. [We’re] not trying to be California.”⁶⁴ During the House floor discussion for HB 217, Representative Mark Newton (R-123rd) asked about the disposal of the syringes and was told there would be a biohazard box for collections.⁶⁵ His concern appears to be justified. In San Francisco, “the visible proliferation of needles on the streets and in parks has become a growing political and public relations problem for City Hall.”⁶⁶ Yet, while the number of needles discarded in public has increased, the spread of disease in San Francisco continues to decrease, indicating there is a public health benefit to dispensing clean syringes.⁶⁷ And, in contrast with the Act’s one-to-one exchange ratio, California has not closely monitored the return of the dispensed syringes.⁶⁸ Notably, there are no known cases of disease from needle pricks in San Francisco.⁶⁹

One final potential problem with the Act is the construction of the last sentence defining syringe exchange programs. The use of the conjunction “and” implies that a syringe services program must provide *all* of the listed components:

substance abuse and harm reduction counseling, education, and referral services for substance abuse disorder treatment; training and provision of naloxone to reverse opioid overdoses; screening for HIV, viral hepatitis, and

64. *Id.* California law allows needle exchange programs and supports access to clean syringes by permitting nonprescription sales. *See* CAL. BUS. & PROF. CODE § 4145.5(b) (West 2015); CAL. HEALTH & SAFETY CODE § 11364 (West 2015).

65. *Gold Dome Report*, NELSON MULLINS RILEY & SCARBOROUGH LLP (Feb. 19, 2019), https://www.nelsonmullins.com/idea_exchange/alerts/gold_dome/all/gold-dome-report-february-19-2019 [<https://perma.cc/GQF7-4TGX>].

66. Phil Matier & Andy Ross, *Those Needles Littering the Streets? The City Gave Them Out*, S.F. CHRON. (May 9, 2018, 6:00 AM), <https://www.sfchronicle.com/bayarea/matier-ross/article/Those-needles-littering-the-streets-The-city-12898656.php> [<https://perma.cc/8S5B-T989>]. Some studies maintain needle exchanges programs actually decrease needle litter. *See, e.g.*, Hansel E. Tookes et al., *A Comparison of Syringe Disposal Practices Among Injection Drug Users in a City with Versus a City Without Needle and Syringe Programs*, 123 DRUG AND ALCOHOL DEPENDENCE 255, 258 (2012). One study maintains the rate of improper needle disposal in San Francisco is very low. Wenger et al., *supra* note 46, at 486.

67. Matier & Ross, *supra* note 66.

68. *Id.*

69. *Id.*

sexually transmitted diseases, and tuberculosis prevention, treatment, and care services; safer injection supplies; and evidence based interventions to reduce negative consequences of drug related behavior.⁷⁰

An organization providing substance abuse and harm reduction counseling but not providing screening for HIV, for example, may not qualify as a syringe services program according to a strict construction of the Act's language. Such an interpretation would severely limit the number of organizations qualifying for civil and criminal immunity under the Act.

Ultimately, subsection (c)(3) of the Act allows the Department of Public Health to "promulgate rules and regulations for the purpose of supervising the activities of the syringe services programs."⁷¹ If the Act has unintended consequences, the Department of Public Health has the flexibility to alter the rules to remedy those consequences. Representative Gaines is hopeful: "After a couple of years then we may realize we need to make some changes, but I do not foresee that. So much is dependent on the rules and regulations that the Department of Health writes. But they fully understand this issue. I'm pretty excited and confident in where this is [going to] take us. I think we are [going to] see some good results."⁷²

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70. O.C.G.A. § 16-13-32(c)(4) (Supp. 2019).

71. *Id.* § 16-13-32(c)(3).

72. Gaines Interview, *supra* note 12.