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REPORT ON LEGISLATION BY THE AIDS COMMITTEE AND THE DRUGS AND THE LAW COMMITTEE¹

A.8396-A M. of A. Gottfried S.5620-A Sen. Duane

AN ACT to amend the penal law, in relation to hypodermic syringes.

THIS BILL IS APPROVED

The New York City Bar Association supports A.8396-A/S.5620-A, which would amend New York's penal law to de-criminalize possession of a hypodermic syringe or needle that is lawfully possessed under New York's public health laws but contains a residual amount of a controlled substance. We believe this is an important addition to New York's laws allowing for syringe exchange programs to help stop the spread of HIV.

The AIDS Committee and the Drugs and the Law Committee strongly support legislation that promotes public health. This bill does so. Syringe exchange programs have proven to be effective in reducing HIV infection. It is well established that such programs correlate with significant declines in HIV transmission among intravenous drug users, while not increasing drug use.² New York State's laws allowing for syringe exchange programs serve a vital public health role by helping to decrease the spread of HIV.³

At present, however, the effectiveness of New York's syringe exchange programs is diminished by the fact that individuals possessing syringes in connection with such programs are at risk of prosecution for criminal possession of a controlled substance. Under the provisions of New York Public Health Law section 3381(2), an individual cannot be prosecuted for having in his or her possession a syringe that he or she has obtained through an authorized state program or from an authorized facility. However, that individual *is* at risk for criminal liability due to the presence of controlled substance residue within a used syringe that the programs *encourage* the individual to return. The effectiveness of efforts to encourage use of clean legal syringes and safe disposal of used syringes is hampered by this remaining source of criminal liability. A.8396-A/S.5620-A would eliminate this unfortunate gap in legal protections for participation in syringe exchange programs.

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¹ This report has been revised and reissued to reflect amendments made amendments made to the bill since its original release in November 2009.

² See generally National Institute on Drug Abuse, *Principles of HIV Prevention In Drug-Using Populations* (2002), available at http://www.nida.nih.gov/pohp/faq_1.html; see also Don C. Des Jarlais et al., *HIV Incidence Among Injection Drug Users in New York City, 1990 To 2002: Use of Serologic Test Algorithm to Assess Expansion of HIV Prevention Services*, 95 Am. J. Pub. Health 1439-1444 (2005) (finding correlation between expansion of syringe exchange programs in NYC and significant decline in reported HIV infections among intravenous drug users).

³ See N.Y. Pub. Health Law § 3381; 10 NYCRR §§ 80.135, 80.137.