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**REPORT ON LEGISLATION BY THE COMMITTEE ON HIV/AIDS
AND THE COMMITTEE ON DRUGS AND THE LAW**

A.5471-A

S.4099-A

M. of A. Gottfried

Sen. Rivera

AN ACT to amend the penal law, in relation to criminal possession of a controlled substance in the seventh degree; to amend the general business law, in relation to drug-related paraphernalia; to amend the public health law, in relation to the sale and possession of hypodermic syringes and needles; and to repeal section 220.45 of the penal law relating to criminally possessing a hypodermic instrument.

THIS BILL IS APPROVED

The Committee on HIV/AIDS and the Committee on Drugs and the Law of the New York City Bar Association supports A.5471-A/S.4099-A which would (1) decriminalize the possession of any hypodermic syringe or needle that contains a residual amount of a controlled substance, (2) decriminalize possessing or selling a hypodermic needle or syringe, and (3) amend the general business law to remove all objects used for the purpose of injecting a controlled substance into the human body from the definition of drug related paraphernalia. We believe that these important modifications to New York's laws will help stop the spread of HIV and Hepatitis C.

The Committee on Drugs and the Law includes individuals with expertise in addiction treatment, public health, and the laws and policies related to the use of substances and their impact on society, while the Committee on HIV/AIDS includes experts with comprehensive knowledge of HIV-related law and policy issues. As such, we take a special interest in legislative and regulatory efforts that are designed to promote public health, as exemplified by this bill. Syringe programs have been proven effective in reducing HIV and Hepatitis C infection.¹ Expanding the sources from which an individual is legally permitted to obtain a hypodermic syringe and needle will decrease the number of injection drug users who do not obtain unused syringes for fear of criminal prosecution and who become at increased risk of HIV and Hepatitis C infection.

At present, the public health effectiveness of allowing individuals to possess a syringe

¹ Centers for Disease Control and Prevention (2005), Facts: Syringe Exchange Programs. Retrieved April 15, 2015, from http://www.cdc.gov/idu/facts/aed_idu_syr.pdf.

which contains a residual amount of a controlled substance is diminished by the narrow set of permissible methods through which individuals can acquire a sterile syringe. Under New York Penal Law Section 220.30, an individual cannot be prosecuted for having in his or her possession a used syringe containing a controlled substance residue. However, that individual is at risk for criminal liability if the syringe was not acquired pursuant to Public Health Law section 3381(2). The effectiveness of efforts to encourage the use of clean syringes is hampered by this remaining source of criminal liability. A.5471-A/S.4099-A would eliminate this unfortunate gap in legal protections for individuals wishing to access unused syringes on their own and would expand the effectiveness of Secondary Syringe Exchange.² Secondary Syringe Exchange programs are successful in expanding the number of unused syringes in circulation.

Under New York Penal Law Section 220.40, an individual cannot be prosecuted for having in his or her possession a hypodermic instrument if he or she is over 18 years of age and has obtained it through a licensed pharmacy or licensed healthcare practitioner. However, if the instrument was not obtained in that way, or if an individual sells the instrument to another, then there is criminal liability. Narrowly defining the methods through which an individual can acquire an unused hypodermic instrument or through which an unused hypodermic instrument can be distributed does not further the end of decreasing the risk of HIV and Hepatitis C infection.

Revising New York Law to remove restrictions on syringe access is a valuable step towards decreasing the risk of disease transmission. A nationwide survey of syringe exchange programs found that approximately 90% of such programs encourage secondary exchange and that the vast majority of people who inject drugs supply sterile syringes to each other.³ A significant number of injection drug users in New York City have been found not to have obtained any syringes from syringe exchange programs or from sterile sources such as medical providers or pharmacies.⁴ Removing the legal barriers to widespread Secondary Syringe Exchange will expand syringe access to the most vulnerable and marginalized injection drug users. Needs-based distribution can occur safely and participants can remain attentive to proper syringe disposal. A.5471-A/S.4099-A is an investment in making further progress towards safe syringe access in order to prevent the spread of HIV/AIDS and Hepatitis C.

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² Secondary Syringe Exchange refers to the practice whereby injection drug users obtain sterile syringes at Syringe Exchange Programs and re-distribute them among their friends, family, social networks, and communities.

³ Centers for Disease Control and Prevention (2010), MMWR weekly: Syringe Exchange Programs—United States, 2008. Retrieved February 2, 2011, from <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5945a4.htm>.

⁴ Harm Reduction Coalition (2012), User-to-User Peer Delivered Syringe Exchange in New York City. Retrieved April 3, 2015, from <http://harmreduction.org/wp-content/uploads/2011/12/user2user.pdf>.