SUBJECT: Syringe exchange and disease-control pilot program for certain counties

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 5 ayes — Coleman, Farias, M. González, Hernandez Luna, Hunter

1 nay — Stickland

3 absent — Kolkhorst, Krause, Simpson

WITNESSES: For — Randall Ellis, Legacy Community Health Services; Daniel "Neel" Lane; (*Registered, but did not testify:* Velda Clinton; Marisa Finley, Scott & White Center for Healthcare Policy; Janse Maxwell; Joe McAdams, AIDS Services Of Austin; Seth Mitchell, Bexar County Commissioners Court; Diane Rodriguez; Andrew Smith, University Health System; Linda Townsend, CHRISTUS Health; James Willmann, Texas Nurses Association; Chris Yanas, Teaching Hospitals of Texas)

Against — None

BACKGROUND: The Texas Controlled Substances Act, (Health and Safety Code, ch. 481) defines the types of drugs regulated in Texas and sets forth the limitations on their use. Sec. 481.125 prohibits the possession of drug paraphernalia, including syringes, for illegal use of a controlled substance or the distribution of such paraphernalia with the knowledge that the person receiving it will use it for illegal purposes.

Syringe-exchange programs provide injection-drug users with free, sterile syringes in exchange for used syringes, which are surrendered to the program and then discarded. The 80th Legislature in 2007 authorized a syringe-exchange pilot program in Bexar County (Government Code, sec. 531.0972) as part of the enactment of SB 10 by Nelson. Ultimately, the program in Bexar County was halted and an opinion by the attorney general (GA-0622) maintained that participants of any such program could have been subject to prosecution under the Texas Controlled Substances Act and could have faced criminal charges under other Texas or federal statutes.

DIGEST: CSHB 3238 would authorize certain entities to establish disease-control

pilot programs that could provide for the anonymous exchange of used syringes for an equal number of new syringes. The bill also would create exceptions to prosecution for people working and participating in such programs.

**Disease-control pilot programs.** The bill would add Health and Safety Code, ch. 81, subch. J to allow disease-control programs in Bexar, Dallas, El Paso, Harris, Nueces, Travis, and Webb counties. A local county, hospital district or a contractor organization could establish a disease-control program that would:

- provide for the anonymous exchange of used syringes for an equal number of new syringes;
- assist participants (recipients of clean syringes) in obtaining health care and other physical and mental health-related services, including substance-abuse treatment and blood-borne disease testing; and
- offer education on the transmission and prevention of communicable diseases, including HIV, hepatitis B, and hepatitis C.

A wholesale drug or device distributor could distribute syringes to a disease-control pilot program. New syringes made available through the program could be part of a "safe kit," which also could include alcohol swabs, cotton swabs, a condom, and a tourniquet. The authority running the pilot program could charge participants a fee for each new syringe used in the program not to exceed 150 percent of the cost of the syringe. Only employees and volunteers could access and distribute new syringes and safe kits to participants. The program also would follow established syringe storage and disposal procedures.

An authority operating a disease-control pilot program annually would provide the Department of State Health Services (DSHS) with information on:

- the effectiveness of the program;
- the program's impact on reducing the spread of communicable diseases, including HIV, hepatitis B and hepatitis C; and
- the program's effect on injection-drug use in the area served by the county or hospital district.

A county or hospital district could use public money or solicit or accept gifts, grants, or donations to fund the pilot program. The statutory

authorization for the disease-control programs would expire September 1, 2023.

**Exceptions to prosecution.** The bill would create exceptions to prosecution for offenses related to possession or delivery of drug paraphernalia in Health and Safety Code, sec. 481.125 for a person who:

- manufactured syringes to be used by a disease-control pilot program;
- dispensed or delivered a syringe for a medical purpose, including the exchange of hypodermic needles under a disease-control pilot program; or
- used, possessed, or delivered a syringe as a participant in, or a volunteer or employee of, a disease-control pilot program.

The bill would take effect September 1, 2013. The exceptions to prosecution for drug paraphernalia offenses established by this bill would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 3238 would provide seven large counties across the state the option of creating disease-control programs that would help stem the transmission of HIV, hepatitis C, and other diseases, while lowering health costs to the state and providing a possible avenue to connect drug abusers with effective treatment programs.

Reducing the spread of blood-borne diseases with one-for-one needle exchanges would benefit public health and safety in many of Texas' communities. Drug users can infect themselves with contaminated needles and spread diseases to family members, including their sexual partners and children. Law enforcement officers and health care workers also can be infected by contaminated needles hidden by drug abusers who fear prosecution.

Needle exchanges limit the instances in which people are exposed to dirty needles, which is key to reducing the transmission of HIV and other diseases. Nearly 70,000 people in Texas are known to have HIV, and it is estimated that about 17,000 more have the disease but are not aware of their status, according to a report by the DSHS HIV/STD program, which also found that about 7 percent of new HIV diagnoses are due to injection-drug use. The program in CSHB 3238 would be valuable in the fight against these devastating, communicable diseases in Texas, where the sharing of contaminated needles is the primary means of transmission of

hepatitis C.

Needle exchanges do not encourage the use of illegal drugs. In fact, they often extend the reach of treatment programs and provide brief but important counseling to drug abusers. This outreach is critical in addressing the difficult reality that a user grappling with addiction will not abstain from injecting illicit drugs simply because a sterile needle is not available. The programs authorized under the bill would offer compassion to drug abusers without sanctioning their illegal activities or soft-selling to the public the harmful effects of addiction. Nor would such programs tacitly condone or promote drug use among children as some critics contend.

No community authorized under the bill would be required to establish a disease-control pilot. The bill simply would allow the seven counties to establish harm-reduction programs to address the needs of community members. Because the programs would work with local governments, communities would be properly involved and informed about how and where the exchanges would operate.

CSHB 3238 also would serve an important responsibility to taxpayers by reducing health-care costs to the state. The health costs for users who contract illnesses, such as HIV and hepatitis, and cannot work shift to the Texas taxpayer. The combined Medicaid cost to Texas for HIV/AIDS was more than $183 million in fiscal 2009, according to a study by the Kaiser Family Foundation. Taxpayers pay the unreimbursed health costs for indigent care incurred by public hospitals.

Finally, the bill would provide program workers, volunteers, and participants much-needed exceptions to prosecution under the state's drug paraphernalia laws, which would be key to allowing the needle-exchange, disease-prevention, and outreach efforts to succeed this time. The pilot programs would be staffed by paid employees and volunteers from churches and nonprofits who wanted to be help improve their communities. People who choose work that improves public safety while lifting up their neighbors who are battling drug addiction should not have to worry about being pursued by law enforcement. These exceptions would not create new legal standards or burdens for prosecutors, and providing them would be vital to the success of the new pilot programs.

OPPONENTS

Needle-exchange programs are ineffective in stopping the spread of

SAY:

disease, do not address the root issue of drug addiction, send a dangerous signal to adolescents that using illegal drugs is acceptable, and siphon public money away from more effective public health and drug rehabilitation programs.

Despite the good intentions behind them, programs such as those in CSHB 3238 are not supported by the federal government because they do not yield the kind of success that compensates for the harmful message they send in tolerating, or even condoning, drug use. The state should not in any way support or encourage illegal behavior, let alone contribute to the supply of equipment required for substance abuse, including needles, cotton swabs, and even tourniquets. Instead, the state should focus its efforts on supporting programs that help people abstain from drugs altogether.

Neighborhoods in which exchanges operate could experience an increase in the number of dirty, discarded needles on their streets. This could pose a problem, especially for children playing in public spaces. It would be unfair to impose this added risk upon some neighborhoods in which an exchange was located to host a program that is not proven to work. Additionally, the ready supply of needles in locations near exchanges could attract local drug dealers to those areas and increase rates of crime.

OTHER OPPONENTS SAY:

The provisions in CSHB 3238 that would give exceptions to prosecution to workers and participants in needle exchange programs are flawed. Possessing a hypodermic syringe can represent an initial phase of breaking drug paraphernalia laws. There should be a better mechanism for distinguishing whether someone who had a needle was simply part of the pilot program or whether they should face criminal charges for abusing or distributing drugs.

The bill would create an unintentional but harmful consequence for the state’s criminal courts system. It would force upon courts an additional mechanism that prosecutors in all drug paraphernalia cases would have to allege in their charging instruments and disprove beyond a reasonable doubt. This would abruptly and unfairly add an onerous new legal burden for court officers tasked with prosecuting people who commit drug offenses.