

Research Protocol for Syringe Service Program Laws

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Syringe Service Program Laws

- I. **Date of Protocol:** August 2019

- II. **Scope:** Collect, code, and analyze state laws regulating syringe service programs (SSPs), as well as related laws regulating the possession and distribution of syringes. State controlled substance and drug paraphernalia laws generally govern the access to and distribution of syringes, while some states have enacted specific laws related to SSPs. This cross-sectional dataset captures the legal basis of state syringe service programs as of August 1, 2019 for 50 states and the District of Columbia.

- III. **Primary Data Collection**
 - a. **Project Dates:** July 2019 – November 2019.

 - b. **Dates Covered in the Dataset:** This is a cross-sectional dataset analyzing state SSP laws as of August 1, 2019.

The effective date listed for each jurisdiction is the date of the most recent version of the law or regulation within that state. If more than one law or regulation is included in the legal text for a state, the effective date reflects the date of the most recently amended or enacted law or regulation within the legal text.

 - c. **Data Collection Methods:** The research team (“Team”) consisted of three legal researchers (“Researchers”) and one supervisor (“Supervisor”). Westlaw Next and Lexis Advance were used to identify which states had a legal basis for SSPs in effect as of August 1, 2019. Two previous CPHLR datasets were used as starting points for the research, with additional key word searches and search strings supplementing and updating that research.

 - d. **Databases Used:** Research was conducted using Westlaw Next, Lexis Advance, and state-specific legislature websites.
 - i. Secondary sources referenced included amfAR Syringe Services Programs Map, NASEN SEP Locations Map, and Kaiser Family Foundation Sterile Syringe Exchange Programs Map.
 - ii. Full text versions of the laws collected were collected from each respective state legislature website.

 - e. **Search Terms:**
 - i. Keyword searches:
 1. “syringe”
 2. "needle"
 3. "hypodermic needle”

4. “exchange”
 5. “syringe exchange program”
 6. “direct exchange”
 7. “drug paraphernalia”
 8. “drug possession”
 9. “residue”
 10. “syringe distribution”
- ii. Search strings:
 1. (syringe or needle w/20 exchange or distrib!)
 2. (“syringe” or “needle” or “drug paraphernalia” or “hypodermic device” and (“deliver!” or “distribu!”) and not “bovine”) or (“controlled substance” or “drug paraphernalia” or drug!) w/25 possess! w/25 (prohibit!))
 3. (drug! w/25 residue)
 - iii. Key word searches were supplemented by reviewing the table of contents chapters of controlled substance, drug paraphernalia, and SSP laws.
 - iv. Once all the relevant statutes and regulations were identified for a jurisdiction, a Master Sheet was created for each jurisdiction. The Master Sheet for each jurisdiction includes the most recent statutory history for each statute and regulation. The most recent effective dates, or the date when a version of law or regulation becomes enforceable, are recorded for each relevant statute and regulation.
 - v. All 51 jurisdictions were 100% independently, redundantly researched to confirm that all relevant law was collected by the Researchers.
 - vi. Divergences, or differences between the original research and redundant research, were reviewed by the Supervisor and resolved by the Team.
- f. Initial Returns and Additional Inclusion or Exclusion Criteria:** Included laws pertaining to state-level drug/drug paraphernalia possession statutes and statutes pertaining to the use and/or possession of hypodermic needles/syringes.
- i. The following variables were included in the state Syringe Service Programs dataset:
 1. Syringe service program requirements
 2. Drug paraphernalia possession laws
 3. Drug paraphernalia distribution laws
 4. Definitions of drug paraphernalia
 5. Current operation of SSPs
 - ii. The following variables were excluded in the State Syringe Service Programs dataset:
 1. Syringe possession and distribution by medical professionals
 2. Syringe possession and distribution through pharmacies.

IV. Coding

- a. Development of Coding Scheme:** The Team worked off of the two existing CPHLR datasets on Syringe Distribution and Syringe Possession. The Team conceptualized updated coding questions that would focus on syringe service programs, and then circulated them to a subject matter expert's at an operating syringe service program and a local health department for review. When the questions were finalized, the Team entered them into MonQcle, a web-based software-coding platform. The team then used the collected law built on MonQcle to answer the developed question set.
- b. Coding Methods:** Researchers coded responses based on objective, measurable aspects of the law. Caution Notes were provided to explain any unique regulations and/or where the law was unclear.

Below is an explanation of the specific rules used when coding the questions in the syringe service program laws dataset. Note, that every dataset question is included in the section below; however, only responses that required an explanation of the legal text used to code are listed.

- **Question: “Does state law allow for the operation of syringe service programs (SSPs)?”**
 - “Yes” was coded if SSPs were explicitly authorized by state law or if state law did not include a legal barrier to the free distribution or simple possession of syringes.
- **Question: “How does the state remove legal barriers to the operation of SSPs?”**
 - States were coded as “Syringe exchange is explicitly authorized by state law” if SSPs were acknowledged and regulated through the state’s health department.
 - “State law does not prohibit the free distribution of drug paraphernalia” was coded where the law only prohibited the sale of drug paraphernalia.
 - “The definition of drug paraphernalia does not refer to objects used of injecting drugs” was coded where the definition of drug paraphernalia did not explicitly refer to “syringes” or “injecting.” This answer choice was not coded if the state enacted a separate law prohibiting the free distribution of objects used for injecting drugs.
 - “The definition of drug paraphernalia explicitly excludes objects used for injecting drugs” was coded where the definition of drug paraphernalia explicitly excluded “objects used for injecting drugs” or “syringes.”
 - “The drug paraphernalia law includes exemptions allowing the distribution of syringes by organizations that provide services to prevent blood-borne diseases” was coded where state law exempted certain employees or volunteers providing SSP-like services for the purposes of preventing and reducing the transmission of communicable diseases from drug paraphernalia laws.
 - “State has no drug paraphernalia law” was coded where there was no law regulating drug paraphernalia. Citations were made to the state’s controlled substances statute.

- **Question: “Is residue explicitly exempt from the ban on controlled substances?”**
 - “Yes” was coded where the law exempted residue from the ban on controlled substances only for SSP participants.
- **Question: “Does state law explicitly authorize SSPs?”**
 - “Yes” was coded where the law explicitly authorized the establishment of SSPs.
- **Question: “Is local government approval required prior to operation?”**
 - “No” was coded where only state-level approval was required prior to operation.
- **Question: “Must local law enforcement be consulted prior to operation?”**
 - “No” was coded where the law only required the inclusion of local law enforcement in a standing committee tasked with overseeing SSP operation.
- **Question: “Does the state require one for one exchanges?”**
 - “Yes” was coded where the law limited SSP participants to one new syringe for each one syringe they exchanged.
- **Question: “Does the law require direct exchange?”**
 - “Yes” was coded where the law required syringes to be given directly to the participants.
 - “Yes” was coded where the law included penalties for the redistribution of syringes.
- **Question: “What additional services are required to be provided at SSPs?”**
 - Responses were only coded if the law explicitly required the respective service. If the provision of the service was optional, or optional in conjunction with the optional use of referrals, the response was not coded.
 - “As appropriate” was not coded as analogous to “optional.”
 - Where the law required a SSP create a plan for offering a specific service, that service was coded as being required to be provided.
 - “Drug abuse treatment services” was not coded where the law only required consultation about drug treatment services.
 - “HIV Screening” was coded where the law referred to blood-borne illness screening.
 - “Hepatitis Screening” was coded where the law referred to blood-borne illness screening.
 - “Naloxone services” was coded where any opioid antagonist services were required to be provided at SSPs.
 - “Educational services” was coded where information was required to be given to SSP participants.
- **Question: “What additional services are required to be provided by referral?”**
 - Responses were coded if the law allowed for services to be provided either directly or through referral.
 - “HIV Screening” was coded where the law referred to blood-borne illness screening.
 - “Hepatitis Screening” was coded where the law referred to blood-borne illness screening.

- “Naloxone services” was coded where any opioid antagonist services were required to be provided by referral.
- **Question: “Does state law allow possession of syringes by SSP participants?”**
 - “Yes” was coded where the law allows for the possession of drug paraphernalia.
 - “Yes” was coded where SSP participants were exempt from drug paraphernalia laws because of a court ruling holding that laws authorizing that the operation of SSPs therefore exempt participants from drug paraphernalia offenses. These responses included an explanatory Caution Note.
- **Question: “How does state allow possession of syringes by SSP participants?”**
 - “Law exempts SSP participants” was coded if SSP participants were explicitly exempted from state drug paraphernalia possession laws.
 - “Law exempts SSP participants” was coded where a court rules that the explicit authorization of SSPs within the state meant that SSP participants were exempt from drug paraphernalia possession laws. These responses included an explanatory Caution Note.
 - “Law exempts SSP participants” was coded where law allowed for the possession of syringes for the purposes of reducing blood-borne diseases. If an age requirement was applied, such requirement was noted in an explanatory Caution Note.
 - “It is an affirmative defense that syringes were obtained from an SSP” was coded where the law stated that acquiring syringes from an SSP is an affirmative defense to laws prohibiting the possession of drug paraphernalia.
 - “State does not prohibit simple possession” was coded where the drug paraphernalia law did not prohibit simple possession. Citations were made to laws that prohibited other types of non-simple possession, such as “possession with the intent to sell,” or to prohibitions against the distribution of drug paraphernalia. This answer choice was not selected if the state enacted a separate law prohibiting the simple possession of objects used for injecting drugs.
 - “Law explicitly excludes objects used for injecting drugs” was coded where objects used for injecting drugs were explicitly excluded from the definition of drug paraphernalia.
 - “Law provides immunity for individuals who disclose possession of syringes to police officers prior to search” was coded where such immunity was specifically granted, even if it was only applicable to SSP participants.
 - “The definition of drug paraphernalia does not refer to objects used for injecting drugs” was coded where the definition of drug paraphernalia did not explicitly refer to “syringes” or “injecting.”
 - “State has no law regarding possession of syringes” was coded where the state had no law regulating drug paraphernalia.
- **Question: “Does the state have a drug paraphernalia law?”**
 - “Yes” was coded where the state had a law defining drug paraphernalia.

- **Question: “What is included in the definition of drug paraphernalia?”**
 - Responses were coded based on language used in the definition of drug paraphernalia, and were not coded based on exceptions or exemptions in the law.
 - “Syringes” were coded where “syringes” or “hypodermic needles” were explicitly included in the definition of drug paraphernalia.
 - “Injecting” was coded where “injecting” was explicitly included in the definition of drug paraphernalia.
 - “Injecting” was not coded where “injecting” was included in the definition of drug paraphernalia, but it was only applicable to the administration of drugs to a patient or research subject. “Injecting” was not coded if language was included in the paraphernalia definition that explicitly excluded syringes or hypodermic needles.
 - For example, Wisconsin and Oregon left “injecting” in their drug paraphernalia definition even after explicitly excluding syringes from the definition of drug paraphernalia. Nevada removed “injecting” from the definition of drug paraphernalia while simultaneously adding language that explicitly excluded syringes.
 - “Objects used for injecting drugs are explicitly excluded from the definition of drug paraphernalia” was coded where the definition of drug paraphernalia explicitly excluded “syringes,” “hypodermic needles,” or “objects used for injecting drugs.”
 - “Objects used for injecting drugs are explicitly excluded from the definition of drug paraphernalia” was coded where the exclusion had general applicability, and was not only for SSP participants.
 - “Objects used for injecting drugs are not included in the definition of drug paraphernalia” was coded where the definition of drug paraphernalia made no mention of syringes or injecting.
 - “State has a separate law involving objects used for injecting drugs” was coded where an additional statute existed in the law regulating the possession of objects used for injecting drugs, including “hypodermic instruments,” “needles,” and “syringes,” beyond the state’s drug paraphernalia law.
 - The response was coded even if the drug paraphernalia law existed separately. If needed, a Caution Note was added describing the statutory relation between the state’s drug paraphernalia statute and the state’s specific syringe statute.
- **Question: “Are SSPs operating in the jurisdiction?”**
 - Information on the operation of SSPs within a state was gathered using three secondary sources. These sources were amfAR, NASEN, and Kaiser. The findings from these websites were confirmed using Google searches to identify SSPs in operation in each state. Searches were conducted with the intent of identifying state government websites that confirmed the operation of SSPs in the state and SSP websites that confirmed the operation of SSPs in the state. The following searches were conducted for each state:

[State Name] syringe services program
[State Name] syringe services program .gov
[State Name] syringe exchange sites
[State Name] syringe exchange sites .gov
[State Name] needle exchange sites
[State Name] needle exchange sites .gov

States were coded “Yes” if at least one secondary source identified an operating SSP in the state, and at least one state government or SSP website was identified to confirm this. States were coded “No” if none of the secondary sources identified an operating SSP in the state, and no state government or SSP website could be found. In the few cases where a secondary source identified an operating SSP, but this SSP could not be confirmed through a government or SSP website, the question was coded “No” with a caution note. States coded “No” were cited to affirmatively show that there were no SSPs in operation in the state.

V. **Quality Control**

a. **Quality Control – Background Research:** All 51 jurisdictions were 100% redundantly researched to confirm that all relevant laws were collected by the Researchers. The Researchers also consulted subject matter experts and the existing CPHLR syringe datasets to verify whether states had a legal basis for syringe service program laws within the scope of the dataset.

b. **Quality Control – Coding**

- i. **Original Coding:** Quality control of the original coding consisted of the Supervisor exporting the data into a Microsoft Excel document each day the Researchers completed coding to examine the data for any missing entries, citations, and caution notes.
- ii. **Redundant Coding:** The redundant coding process is 100% independent, redundant coding by two Researchers of each jurisdiction. Redundant coding means that each jurisdiction (a record) is assigned and coded independently by the two Researchers. Divergences, or differences between the original coding and redundant coding, are resolved through consultation and discussion with subject matter experts and the Team.

Quality control of the redundant coding consisted of the Supervisor exporting the data into a Microsoft Excel document each day the Researchers completed redundant coding to calculate divergence rates. 100% of the records were redundantly coded throughout the life of the project.

After coding the first 21 jurisdictions (Batch 1), the rate of divergence was 12.7% on August 1, 2019. A coding review meeting was held and all divergences were

resolved. Questions that were causing confusion were edited for clarity and then checked across the dataset to make sure coding was consistent. The Supervisor assigned the next 30 jurisdictions (Batch 2) for redundant coding and the rate of divergence was 17.67% on August 27, 2019. Divergences were again resolved through consultation and discussion with the Team.

Once all jurisdictions were originally and redundantly coded, quality control was also conducted by comparing results to the two existing CPHLR datasets, and through consultation with a subject matter expert.

- iii. **Post-production Statistical Quality Control:** To ensure reliability of the data, a statistical quality control procedure (SQC) is run once all of the original and redundant coding is finished. To conduct SQC, the Supervisor takes a random sample of variables from the dataset for the Researchers to independently code. SQC occurs until divergences are below 5%. The Supervisor ran SQC after the dataset was completed on November 13, 2019. At that time, the divergence rate was 3.3%. Each divergence was then reviewed and resolved.
- iv. **Final Data Check:** Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted and all necessary Caution Notes were edited for publication.