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HOUSE BILL NO. 791

House Amendments in [ ] - February 7, 2020

A BILL to amend and reenact §§ 32.1-45.4 and 54.1-3466 of the Code of Virginia, and to repeal the third enactment of Chapter 183 of the Acts of Assembly of 2017, relating to comprehensive harm reduction programs.

Patron Prior to Engrossment—Delegate Plum

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-45.4 and 54.1-3466 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-45.4. (Expires July 1, 2020) Comprehensive harm reduction programs.

A. The Commissioner [*or his designee may authorize*] , *the director of a local department of health, or any other organization that promotes scientifically proven methods of mitigating health risks associated with drug use and other high-risk behaviors* [~~may~~ *to*] establish and operate local or regional comprehensive harm reduction programs ~~during~~ a ~~declared~~ ~~public~~ ~~health~~ ~~emergency~~ that include the provision of sterile hypodermic needles and syringes and disposal of used hypodermic needles and syringes. The objectives of such programs shall be to *(i)* reduce the spread of HIV, viral hepatitis, and other blood-borne diseases in ~~Virginia~~ *the Commonwealth*; *(ii)* reduce the transmission of blood-borne diseases through needlestick injuries to law-enforcement and other emergency personnel; ~~and~~ *(iii)* provide information to individuals who inject drugs regarding addiction recovery treatment services *and encourage such individuals to participate in evidence-based substance use treatment programs; (iv) prevent opioid overdose deaths through distribution of naloxone or other opioid antagonists; and (v) incentivize the safe return and disposal of hypodermic needles and syringes*. ~~Such~~ ~~programs~~ ~~shall~~ ~~be located~~ ~~in~~ ~~communities~~ ~~where~~ ~~data~~ ~~indicate,~~ ~~in~~ ~~accordance~~ ~~with~~ ~~criteria~~ ~~established~~ ~~pursuant~~ ~~to subsection B,~~ ~~a~~ ~~risk~~ ~~of~~ ~~transmission~~ ~~of,~~ ~~or~~ ~~increases~~ ~~in~~ ~~the~~ ~~transmission~~ ~~of,~~ ~~HIV,~~ ~~viral~~ ~~hepatitis,~~ ~~or~~ ~~other blood-borne~~ ~~disease~~ ~~as~~ ~~a~~ ~~result~~ ~~of~~ ~~injection~~ ~~drug~~ ~~use.~~ ~~Such~~ *Comprehensive harm reduction* programs *established by the Commissioner pursuant to this section* shall be operated by local health departments or affiliated organizations with which the Department contracts.

B. ~~The~~ ~~Department~~ ~~shall~~ ~~establish~~ ~~criteria~~ ~~to~~ ~~determine~~ ~~the~~ ~~level~~ ~~of~~ ~~risk~~ ~~and~~ ~~the~~ ~~level~~ ~~of~~ ~~readiness~~ ~~for comprehensive~~ ~~harm~~ ~~reduction~~ ~~of~~ ~~a~~ ~~community.~~ ~~Such~~ ~~criteria~~ ~~shall~~ ~~address~~ ~~the~~ ~~extent~~ ~~to~~ ~~which~~ ~~unsafe injection~~ ~~of~~ ~~drugs~~ ~~is~~ ~~occurring,~~ ~~socioeconomic~~ ~~factors,~~ ~~and~~ ~~readiness~~ ~~for~~ ~~comprehensive~~ ~~harm~~ ~~reduction and~~ ~~shall~~ ~~utilize~~ ~~data~~ ~~that~~ ~~address,~~ ~~at~~ ~~a~~ ~~minimum,~~ ~~(i)~~ ~~HIV~~ ~~and~~ ~~hepatitis~~ ~~disease~~ ~~morbidity,~~ ~~(ii)~~ ~~drug overdose~~ ~~deaths,~~ ~~(iii)~~ ~~poverty~~ ~~level,~~ ~~(iv)~~ ~~unemployment~~ ~~rate,~~ ~~(v)~~ ~~prescription~~ ~~opioid~~ ~~volume,~~ ~~(vi) potential~~ ~~to~~ ~~provide~~ ~~medication-assisted~~ ~~treatment,~~ ~~(vii)~~ ~~prevalence~~ ~~of~~ ~~treatment~~ ~~for~~ ~~drug~~ ~~overdose,~~ ~~(viii) emergency~~ ~~medical~~ ~~services~~ ~~utilization~~ ~~for~~ ~~drug~~ ~~overdose,~~ ~~(ix)~~ ~~administration~~ ~~of~~ ~~naloxone,~~ ~~(x) substance-use~~ ~~disorder~~ ~~admissions~~ ~~to~~ ~~behavioral~~ ~~health~~ ~~facilities,~~ ~~(xi)~~ ~~arrests~~ ~~for~~ ~~drug~~ ~~possession~~ ~~or~~ ~~sales or~~ ~~other~~ ~~drug~~ ~~related~~ ~~crime,~~ ~~(xii)~~ ~~the~~ ~~support~~ ~~of~~ ~~the~~ ~~local~~ ~~governing~~ ~~body,~~ ~~(xiii)~~ ~~the~~ ~~support~~ ~~of~~ ~~law enforcement,~~ ~~(xiv)~~ ~~the~~ ~~existence~~ ~~of~~ ~~a~~ ~~local~~ ~~entity~~ ~~with~~ ~~programmatic~~ ~~administrative~~ ~~capacity,~~ ~~and~~ ~~(xv) access~~ ~~to~~ ~~health~~ ~~care~~ ~~and~~ ~~behavioral~~ ~~health~~ ~~care~~ ~~services.~~

~~C.~~ ~~Comprehensive~~ *A comprehensive* harm reduction ~~programs~~ *program* established pursuant to this section shall ~~be~~ ~~administered~~ ~~pursuant~~ ~~to~~ ~~standards~~ ~~and~~ ~~protocols~~ ~~established~~ ~~by~~ ~~the~~ ~~Commissioner~~ ~~after~~ ~~the~~ ~~declaration~~ ~~of~~ ~~a~~ ~~public~~ ~~health~~ ~~emergency~~ ~~and~~ ~~approved~~ ~~by~~ ~~the~~ ~~Secretary~~ ~~of~~ ~~Health~~ ~~and~~ ~~Human Resources~~ ~~and~~ ~~the~~ ~~Secretary~~ ~~of~~ ~~Public~~ ~~Safety~~ ~~and~~ ~~Homeland~~ ~~Security.~~ ~~Such~~ ~~standards~~ ~~and~~ ~~protocols~~ ~~shall~~ ~~address~~ *include* (i) the disposal of used hypodermic needles and syringes; (ii) the provision of hypodermic needles and syringes and other injection supplies at no cost and in quantities sufficient to ensure that needles, hypodermic syringes, and other injection supplies are not shared or reused; (iii) reasonable and adequate security of program sites, equipment, and personnel; (iv) the provision of educational materials concerning *(a) substance use disorder prevention, (b) overdose* prevention, *(c) the prevention of transmission of HIV, viral hepatitis, and other blood-borne diseases, (d) available mental health treatment options, including referrals for mental health treatment,* and *(e) available substance use disorder* treatment *options, which shall include options for medication assisted treatment of substance use disorder, including referrals for treatment*; (v) access to overdose prevention kits *that contain naloxone or other opioid antagonist approved by the U.S. Food and Drug Administration for opioid overdose reversal*; (vi) individual harm reduction counseling, *including individual consultations regarding appropriate mental health or substance use disorder treatment*; and (vii) verification that a hypodermic needle or syringe or other injection supplies were obtained from a comprehensive harm reduction program established pursuant to this section.

C. The director of a local health department or representative of any other organization [~~*that wishes*~~ *authorized*] *to establish a comprehensive harm reduction program pursuant to this section shall notify the Department, in a manner and form specified by the Department, of his intent to establish a comprehensive harm reduction program. Such notice shall include (i) the name of the local health department or organization that will operate the comprehensive harm reduction program, (ii) a description of the geographic area and population to be served by the comprehensive harm reduction program, and (iii) a description of the methods by which the comprehensive harm reduction program will comply with the requirements of subsection B, including a written security plan that provides for the reasonable and adequate security of the comprehensive harm reduction program site, equipment, and personnel.*

D. ~~The Commissioner may authorize persons who are not otherwise authorized by law to dispense or distribute~~ *Written security plans required pursuant to clause (iii) of subsection C shall be filed annually with each local law-enforcement agency serving the jurisdiction in which the comprehensive harm reduction program is located* [*for their consideration*] .

E. The provisions of §§ 18.2-250, 18.2-265.3, and 54.1-3466 shall not apply to a person who dispenses or distributes hypodermic needles and syringes to dispense or distribute hypodermic needles and syringes as part of a comprehensive harm reduction program ~~during a declared public health emergency and in accordance with standards and protocols~~ established pursuant to ~~subsection C~~ *this section.*

F. The provisions of §§ 18.2-250, 18.2-265.3, and 54.1-3466 *relating to possession of a controlled substance, drug paraphernalia, and controlled paraphernalia* shall not apply to ~~such authorized persons who are acting in accordance with the standards and protocols of~~ *any person acting on behalf or for the benefit of* a comprehensive harm reduction program ~~for the duration of the declared public health emergency~~ *when such possession is incidental to the provision of services as part of a comprehensive harm reduction program established pursuant to this section.*

G. The provisions of §§ 18.2-250, 18.2-265.3, and 54.1-3466 relating to possession of a controlled substance, drug paraphernalia, and controlled paraphernalia shall not apply to any person receiving services from a comprehensive harm reduction program established pursuant to this section, when (i) such controlled substance is a residual amount contained in a used needle, used hypodermic syringe, or used injection supplies obtained from or returned to a comprehensive harm reduction program established pursuant to this section, or (ii) such paraphernalia is obtained from a comprehensive harm reduction program established pursuant to this section, as evidenced by the verification required pursuant to clause (vii) of subsection B.

H. Every local health department or other organization operating a comprehensive harm reduction program pursuant to this section shall report annually by July 1 to the Department regarding, for the previous calendar year, (i) the number of individuals served by the comprehensive harm reduction program; (ii) the number of needles, hypodermic syringes, and other injection supplies distributed by the comprehensive harm reduction program; (iii) the number of overdose prevention kits described in clause (v) of subsection B distributed by the comprehensive harm reduction program; and (iv) the number and type of referrals to mental health or substance use disorder treatment services provided to individuals served by the comprehensive harm reduction program, including the number of individuals referred to programs that provide naloxone or other opioid antagonists approved by the U.S. Food and Drug Administration for opioid overdose reversal.

I. Except in the case of a comprehensive harm reduction program established by the Commissioner, no state funds shall be used to purchase needles or hypodermic syringes distributed by a comprehensive harm reduction program established pursuant to this section.

§ 54.1-3466. Possession or distribution of controlled paraphernalia; definition of controlled paraphernalia; evidence; exceptions.

A. For purposes of this chapter, "controlled paraphernalia" means (i) a hypodermic syringe, needle, or other instrument or implement or combination thereof adapted for the administration of controlled dangerous substances by hypodermic injections under circumstances that reasonably indicate an intention to use such controlled paraphernalia for purposes of illegally administering any controlled drug or (ii) gelatin capsules, glassine envelopes, or any other container suitable for the packaging of individual quantities of controlled drugs in sufficient quantity to and under circumstances that reasonably indicate an intention to use any such item for the illegal manufacture, distribution, or dispensing of any such controlled drug. Evidence of such circumstances shall include, but not be limited to, close proximity of any such controlled paraphernalia to any adulterants or equipment commonly used in the illegal manufacture and distribution of controlled drugs including, but not limited to, scales, sieves, strainers, measuring spoons, staples and staplers, or procaine hydrochloride, mannitol, lactose, quinine, or any controlled drug, or any machine, equipment, instrument, implement, device, or combination thereof that is adapted for the production of controlled drugs under circumstances that reasonably indicate an intention to use such item or combination thereof to produce, sell, or dispense any controlled drug in

violation of the provisions of this chapter. "Controlled paraphernalia" does not include narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.

B. Except as authorized in this chapter, it is unlawful for any person to possess controlled paraphernalia.

C. Except as authorized in this chapter, it is unlawful for any person to distribute controlled paraphernalia.

D. A violation of this section is a Class 1 misdemeanor.

E. The provisions of this section shall not apply to persons who have acquired possession and control of controlled paraphernalia in accordance with the provisions of this article or to any person who owns or is engaged in breeding or raising livestock, poultry, or other animals to which hypodermic injections are customarily given in the interest of health, safety, or good husbandry; or to hospitals, physicians, pharmacists, dentists, podiatrists, veterinarians, funeral directors and embalmers, persons to whom a permit has been issued, manufacturers, wholesalers, or their authorized agents or employees when in the usual course of their business, if the controlled paraphernalia lawfully obtained continue to be used for the legitimate purposes for which they were obtained.

F. The provisions of this section and of § 18.2-265.3 shall not apply to (i) a person who dispenses naloxone in accordance with the provisions of subsection Y of § 54.1-3408 and who, in conjunction with such dispensing of naloxone, dispenses or distributes hypodermic needles and syringes for injecting such naloxone or (ii) a person who possesses naloxone that has been dispensed in accordance with the provisions of subsection Y of § 54.1-3408 and possesses hypodermic needles and syringes for injecting such naloxone in conjunction with such possession of naloxone.

G. The provisions of this section and of § 18.2-265.3 shall not apply to (i) a person who possesses or distributes controlled paraphernalia on behalf of or for the benefit of a comprehensive harm reduction program established pursuant to § 32.1-45.4 or (ii) a person who possesses controlled paraphernalia obtained from a comprehensive harm reduction program established pursuant to § 32.1-45.4.

2. That the third enactment of Chapter 183 of the Acts of Assembly of 2017 is repealed.

[~~3. That an emergency exists and this act is in force from its passage.~~]