

Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS

No. SJC-12224

BARNSTABLE COUNTY

AIDS SUPPORT GROUP OF CAPE COD, INC.,
PLAINTIFF-APPELLANT,

v.

TOWN OF BARNSTABLE, BOARD OF HEALTH OF
THE TOWN OF BARNSTABLE, AND THOMAS MCKEAN,
IN HIS OFFICIAL CAPACITY AS DIRECTOR OF PUBLIC HEALTH OF
THE TOWN OF BARNSTABLE,
DEFENDANTS-APPELLEES.

**BRIEF OF THE DEFENDANTS-APPELLEES,
TOWN OF BARNSTABLE, BOARD OF HEALTH OF
THE TOWN OF BARNSTABLE, AND THOMAS MCKEAN,
IN HIS OFFICIAL CAPACITY AS DIRECTOR OF PUBLIC HEALTH OF
THE TOWN OF BARNSTABLE**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE ISSUE AND STATEMENT OF FACTS.....	1
STATEMENT OF THE CASE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	7
I. ONLY TWO OUTLETS ARE AUTHORIZED BY THE 2006 LEGISLATION TO DISTRIBUTE AND POSSESS NEEDLES AND SYRINGES. THEY ARE FORMAL NEEDLE EXCHANGE PROGRAMS AND PHARMACIES.....	7
A. Needle Exchanges.....	7
1. The 2006 Legislation Revising c. 94C, § 27 Expressly Recognized Pilot Needle Exchange Programs under G.L. c. 111, § 215 as the Available Legal Outlet for Non-pharmacy Distribution of Needles and Syringes.....	7
B. ASGCC Has Operated an Approved Needle Exchange in Provincetown. ASGCC as an Organization Is, or Should Be, Intimately Familiar with the Registration Requirements of G.L. c. 111, § 215.....	9
C. The 2006 -Legislation Anointed Pharmacists as the Gatekeepers of Hypodermic Instrument Sales. The D.P.H. Regulations Under G.L. c. 94C, § 27 Make Clear the Pharmacists' Licensure Requirements to Sell Hypodermics.....	10

D.	The 2006 Legislation Amended G.L. c. 94C, § 32I to Create Consistency with the New § 27. It Continues to Impose Significant Criminal Penalties for Distribution of Drug Paraphernalia, Especially to Minors and Near Schools.....	13
E.	In <u>Holyoke City Council v. City of Holyoke</u> , Hampden County Superior Court Civil Action No. 12-0837, March 14, 2016 the Court rejected the Argument That Any Private Person or Entity Can Distribute Hypodermics Without Restriction.....	14
F.	Legislative Efforts to Remove the Requirements for Local and State Approval for the Non-Sale Distribution of Hypodermic Needles and Syringes have been Rejected.....	17
G.	Following <u>Holyoke</u> , The Failed Attempt of Legislators to Repeal G.L. c. 111, § 215 as Part of the 2017 Budget and the Substitution and Approval of More Modest Amendments to G.L. c. 111, § 215 Provide Persuasive Evidence of Legislative Intent That Affirms the Court's Statutory Analysis in <u>Holyoke</u>	19
II.	ANALYSIS.....	21
	CONCLUSION.....	35
	ADDENDUM	
	CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

CASES :

<u>Allen v. Bos. Redevelopment Auth.,</u> 450 Mass. 242 (2007).....	27-28
<u>Am. Lithuanian Naturalization Club v. Bd. of Health,</u> 446 Mass. 310, 844 N.E.2d 231 (2006).....	34
<u>Canton v. Commissioner of the Mass. Highway Dep't.,</u> 455 Mass. 783, 919 N.E.2d 1278 (2010).....	25, 29
<u>Charland v. Muzi Motors, Inc.,</u> 417 Mass. 580, 631 N.E.2d 555 (1994).....	24
<u>Commonwealth v. Russ R.,</u> 433 Mass. 515, 744 N.E.2d 39 (2001).....	20, 24
<u>Comm'rs of the Bristol Cty. Mosquito Control Dist. v.</u> <u>State Reclamation,</u> 466 Mass. 523, 997 N.E.2d 1188 (2013).....	25
<u>Dartt v. Browning-Ferris Indus.,</u> 427 Mass. 1, 691 N.E.2d 526 (1998).....	25
<u>FDA v. Brown & Williamson Tobacco Corp.,</u> 529 U.S. 120, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000).....	24
<u>Fernandes v. Attleboro Housing Authority,</u> 470 Mass. 117 (2014).....	26
<u>Flemings v. Contributory Ret. Appeal Bd.,</u> 431 Mass. 374 (2000).....	32
<u>Frye v. Sch. Comm. of Leicester,</u> 300 Mass. 537 (1938).....	32
<u>Holyoke City Council v. City of Holyoke,</u> Hampden County Superior Court Civil Action No. 12-0837, March 14, 2016.....	<i>passim</i>
<u>King v. Burwell,</u> 135 S. Ct. 2480, 192 L. Ed. 2d 483 (2015).....	24, 26

<u>King v. Viscoloid Co.,</u>	
219 Mass. 420, 106 N.E. 988 (1914).....	26
<u>LeClair v. Town of Norwell,</u>	
430 Mass. 328, 719 N.E.2d 464 (1999).....	25
<u>Morales v. TWA,</u>	
504 U.S. 374, 112 S. Ct. 2031,	
119 L. Ed. 2d 157 (1992).....	26
<u>Plourde v. Police Dep't of Lawrence,</u>	
85 Mass. App. Ct. 178 (2014).....	32
<u>Polaroid Corp. v. Comm'r of Revenue,</u>	
393 Mass. 490, 472 N.E.2d 259 (1984).....	24
<u>Stop & Shop Supermarket Co. v.</u>	
<u>Urstadt Biddle Props., Inc.,</u>	
433 Mass. , 740 N.E.2d 1286.....	24
<u>Worcester v. Quinn,</u>	
304 Mass. 276 (1939).....	32

STATUTES AND REGULATIONS:

G.L. c. 30, §§ 61 - 62H.....	28
G.L. c. 94C.....	12, 30, 35
G.L. c. 94C, § 27.....	<i>passim</i>
G.L. c. 94C, § 27A.....	26
G.L. c. 94C, § 32I.....	13, 14, 22, 26, 30, 36
G.L. c. 94C, § 32J.....	13, 26
G.L. c. 111, § 215.....	<i>passim</i>
105 C.M.R. 700.008.....	11, 12, 30, 31
105 C.M.R. 700.105.....	12, 30

ACTS AND RESOLVES:

St. 1993, c. 110, § 148.....	7
St. 2006, c. 172.....	3, 23
St. 2006, c. 172, §§ 3, 4 and 5.....	14
St. 2006, c. 172, § 15.....	4, 9, 22, 23, 26

OTHER AUTHORITIES:

Massachusetts 2017 Fiscal Year Budget, Outside Section § 65 (July 8, 2016).....	6, 20, 23
Uncorrected Proof of the Journal of the Senate June 1, 2005; Uncorrected Proof of Journal of Senate, June 7, 2006.....	6
1995 MA SB 554.....	18
1997 MA SB 517.....	18
1999 MA SB 537.....	18
MA 2003 SB 610.....	18

**STATEMENT OF THE ISSUE
AND
STATEMENT OF FACTS**

The Town of Barnstable ("Town") accepts the Statement of the Issue and the Statement of Facts as recited by the Aids Support Group of Cape Cod, Inc. ("ASGCC").

STATEMENT OF THE CASE

The Town accepts ASGCC's Statement of the Case. As ASGCC has observed,¹ the lower court's findings and decision are not reported. It is for this reason that the Statement of the Facts contains the recitation that, "... [T]hese are the only facts necessary for a determination of the case."²

However, as ASGCC has invited this Court's attention to portions of the lower court's decision, reference to the trial court's recitation of the severe health crisis which spawned the Town's response and this appeal may be helpful.

Pointing to discoveries of discarded hypodermic needles and syringes -- sometimes in significant numbers -- in public parks, comfort facilities, and areas occupied by numerous homeless persons, the Town has identified what it deems to be a "public health crisis." Several of these discoveries have included evidence tending to show that

¹ ASGCC's Brief, n.1, p. 3.

² ASGCC's Brief, pp. 3-4.

the source of the discarded materials was the ASGCC program.

Memorandum of Decision, Addendum 31.

Whether the Town exercised its authority appropriately under the circumstances here presented, however, is a question best left for a more thorough hearing of ASGCC's complaint and the Town's formal response thereto. In the meantime, this court accepts that the Town's attention to what it perceived to be a public health risk posed by the unprotected discard of used hypodermic needles and syringes was prudently grounded.

Memorandum of Decision; Addendum 39.

The Town's foremost concern from these unprotected discards is the risk of infection to members of the public from needle stick injuries. It is an understandable concern.

Memorandum of Decision; Addendum 40.

SUMMARY OF ARGUMENT

This case concerns the Town's response to a public health crisis caused by copious amounts of discarded, uncapped hypodermic needles and syringes being left in public places, exposing the public and especially unsuspecting children to the risk of accidental needle sticks and the grueling medical protocols and anxiety that would follow. The Town traced the source of these discards to the activities of ASGCC, a non-profit organization located in

Hyannis. As reflected in the agreed statement of facts, ASGCC does not have the benefit of either D.P.H. or local approvals that the Legislature requires for the establishment of a needle exchange program.³ (p. 29; RA 21-23).

This case is not about the good works that the ASGCC does. Nor is it about access to disposable needles that can be readily obtained with Mass Health cards at a pharmacy only two blocks from ASGCC's office or any one of six other nearby pharmacies, or at Cape Cod Hospital four blocks from ASGCC's office, or at any of a host of healthcare providers in the village of Hyannis, who serve the many needs of the disadvantaged and homeless.

When the Legislature decriminalized possession and distribution of syringes and needles, in the 2006 amendments to G.L. c. 94C, § 27⁴ it did not leave a regulatory vacuum allowing unfettered opportunity for groups such as ASGCC to fill. Rather than remaining silent as ASGCC argues, the Legislature spelled out in detail adjustments to the statutory scheme that would be followed henceforth to clearly define who would be

³ ASGCC Brief, Statement of Facts Number 9, p. 5.

⁴ St. 2006, c. 172 ("The 2006 Legislation").

allowed to distribute hypodermic instruments. Specifically, in the same piece of legislation where the General Court authorized pharmacists to sell hypodermic needles and syringes without a prescription to individuals at least eighteen (18) years old, it also left intact and acknowledged in an outside section, Section 15, the continued applicability of G.L. c. 111, § 215, which authorized pilot needle exchange programs. To qualify to be a needle exchange program, the program must be nominated by the Department of Public Health and approved by the local community. ASGCC's Hyannis facility is not an approved needle exchange and distribution program. (pp. 7-10; 21-27).

Following the November 2015 issuance of the Preliminary Injunction in this action, the Hampden County Superior Court ruled in March 2016 (Addendum 43 - 56) that approval of the Holyoke City Council, and not its Board of Health, was required in order to

implement a needle exchange program.⁵ In his thoughtful analysis, the Hampden Court also ruled that, "G.L. c. 94C, § 27, thus, never created a separate or independent authority for operating needle exchange programs as defendants argue." And, "None of the provisions set forth in G.L. c. 94C, §§ 27, 27A, permit non-sale distribution of hypodermic syringes and needles. Section 27 addresses the sale of hypodermic syringes and needles. Section 27A addresses their collection and disposal." And finally, "It (the decriminalization of possession of needles and syringes, *ed.*) does not, however, create legislative fiat for the non-sale distribution of hypodermic syringes and needles outside of the provisions of G.L. c. 111, § 215." This ruling is completely consistent with the position that the Town of Barnstable has taken throughout these proceedings and dashes ASGCC's arguments to the contrary. (pp. 14-17; 33).

⁵ ASGCC suggests that the Barnstable Superior Court's Memorandum of Decision is "presented for any guidance it may offer to this Court as the only judicial analysis of the statutory question here." The statement is incorrect. As noted above, the Holyoke case thoroughly examined the statutory scheme at the heart of this action and reached a conclusion that is the polar opposite of that reached in this matter.

Very shortly after the Holyoke decision, several legislators sought to repeal the needle exchange statute, G.L. c. 111, § 215, via an amendment to the pending 2017 state budget. Addendum 64. That amendment was rejected. Instead the Legislature once again affirmed the role of needle exchanges, removed the cap on their number, dropped the designation of "pilot" from the program authorization, and imbued local Boards of Health with the authority to approve such programs.⁶ (pp. 17-21; 27).

The inescapable conclusion based on this legislative history is that there are only two approved means of needle and syringe distribution in the Commonwealth.⁷ Distribution may be made by pharmacies and by approved needle distribution

⁶ Massachusetts 2017 Fiscal Year Budget, Outside Section § 65 (July 8, 2016).

⁷ While the legislative history supports the Town's argument that G.L. c. 94C, § 27 was limited to the sale of needles and syringes to individuals 18 or over by pharmacists and that G.L. c. 94C, § 27 was circumscribed by the requirements of G.L. c. 111, § 215 (See, e.g., Uncorrected Proof of the Journal of the Senate June 1, 2005; Uncorrected Proof of Journal of Senate, June 7, 2006 (Addendum 65 - 79) in contrast, the Town could find no reference whatsoever in the legislative history indicating that the repeal of the "old § 27" coupled with the passage of the 2006 legislation would allow the unfettered non-sale distribution of needles and syringes by any individual or entity.

programs. Consequently, non-sale distribution by any other person or agency is not authorized. (pp. 17-21; 27-33).

ARGUMENT

I. ONLY TWO OUTLETS ARE AUTHORIZED BY THE 2006 LEGISLATION TO DISTRIBUTE AND POSSESS NEEDLES AND SYRINGES. THEY ARE FORMAL NEEDLE EXCHANGE PROGRAMS AND PHARMACIES.

A. Needle Exchanges

- 1. The 2006 Legislation Revising c. 94C, § 27 Expressly Recognized Pilot Needle Exchange Programs under G.L. c. 111, § 215 as the Available Legal Outlet for Non-pharmacy Distribution of Needles and Syringes.**

Pilot needle exchange programs were originally authorized in 1993 by G.L. c. 111, § 215,⁸ subject to the following terms and conditions:

The department of public health is hereby authorized to promulgate rules and regulations for the implementation of not more than ten pilot programs for the exchange of needles in cities and towns within the commonwealth upon nomination by the department. Local approval shall be obtained prior to implementation of each pilot program in any city or town.

Not later than one year after the implementation of each pilot program said department shall report the results of said program and any recommendations by filing the same with the joint legislative committees on health care and public safety.

⁸ St. 1993, c. 110, § 148.

In the 2006 amendments to G.L. c. 94C, § 27, after much debate and following the override of the Governor's veto, the Legislature struck the entirety of G.L. c. 94C, § 27, thereby decriminalizing possession and distribution of hypodermic instruments. Included in the "old", now-stricken version of § 27, was § 27(f) dealing with needle exchange pilot programs which at the time read:

Notwithstanding any general or special law to the contrary, needles and syringes may be distributed or possessed as part of a pilot program approved by the department of public health in accordance with section two hundred and fifteen of chapter one hundred and eleven and any such distribution or exchange of said needles or syringes shall not be a crime.

As noted by the Court in the Holyoke case (Addendum 43 - 56) and contrary to the assertion made by ASGCC,⁹ § 27(f) was eliminated because it was a duplicative provision based on the fact that G.L. c. 111, § 215, already governed such programs.

Next, the 2006 legislation created the "new" § 27, as follows:

Hypodermic syringes or hypodermic needles for the administration of controlled substances by injection may be sold in the commonwealth, but only to persons who have attained the age of 18 years and only by a

⁹ ASGCC Brief, Argument, p. 22.

pharmacist or wholesale druggist licensed under the provisions of chapter 112, a manufacturer of or dealer in surgical supplies or a manufacturer of or dealer in embalming supplies. When selling hypodermic syringes or hypodermic needles without a prescription, a pharmacist or wholesale druggist must require proof of identification that validates the individual's age.

The 2006 bill, as passed, also included an outside section, Section 15, which recognized the continued applicability of G.L. c. 111, § 215 for the establishment of needle exchange programs:

Section 15. The department of public health shall perform a comprehensive study and review of the existing needle exchange programs established pursuant to Chapter 111, Section 215 of the General Laws. The study shall include, but not be limited to: a review and analysis of the relationship between the provisions of this act and the operation of the needle exchange programs; the success of existing needle exchange programs; whether existing needle exchange programs should be maintained without change, phased out, or expanded to other municipalities.

B. ASGCC Has Operated an Approved Needle Exchange in Provincetown. ASGCC as an Organization Is, or Should Be, Intimately Familiar with the Registration Requirements of G.L. c. 111, § 215.

ASGCC operates a locally approved needle exchange program in Provincetown pursuant to the authority

granted by G.L. c. 111, § 215.¹⁰ The Provincetown site does not require one-for-one exchange of needles in order for a participant to qualify to receive hypodermic needles and syringes.

The parties agree that ASGCC has not sought nor does their Hyannis program have the benefit of D.P.H. or local approvals.¹¹ Nevertheless, ASGCC distributes but does not sell hypodermic needles and syringes at its Hyannis site. ASGCC provides a collection receptacle in Hyannis for the return of used needles.¹² The needle/syringe distribution and collection activities at both ASGCC sites appear to be identical.

C. The 2006 -Legislation Anointed Pharmacists as the Gatekeepers of Hypodermic Instrument Sales. The D.P.H. Regulations Under G.L. c. 94C, § 27 Make Clear the Pharmacists' Licensure Requirements to Sell Hypodermics.

As noted above, the 2006 legislation repealed the prior version of § 27 and substituted the new, single paragraph noted on page 8, supra. The gatekeeper role of pharmacists with respect to the sale and distribution of hypodermic instruments was thus

¹⁰ See "Statement of Facts" Number 6, Record Appendix p. 22.

¹¹ "Statement of Facts" Number 9, Record Appendix, p. 23.

¹² "Statement of Facts" Numbers 3-5, Record Appendix, p. 22.

codified and remains in effect today, "When selling hypodermic syringes or hypodermic needles without a prescription, a pharmacist or wholesale druggist must require proof of identification that validates the individual's age." G.L. c. 94C, § 27, last sentence. The D.P.H. also promulgated regulations¹³ which describe licensure requirements imposed on pharmacists. The regulation is entitled, "Requirements Regarding Hypodermic Instruments". It is instructive and Section A reads as follows:

"(A) License "to Sell". No person except a registered physician, dentist, nurse, veterinarian, embalmer, pharmacist, wholesale druggist, or a registered podiatrist certified by the Board of Registration in Podiatry to be competent to use hypodermic needles, shall sell, offer for sale, deliver or have in possession with intent to sell hypodermic syringes, hypodermic needles or any instrument adapted for the administration of controlled substances by injection, unless licensed to do so by the Department."

By its terms, the required license "to sell"¹⁴ covers both the sale and delivery of needles and

¹³ See 105 C.M.R. 700.008. Neither research nor D.P.H. counsel were able to identify the original date of publication, although it is believed by D.P.H. to pre-date 2006.

¹⁴ Of the 194 entries in the Code of Massachusetts Regulations in which the term license to sell is used, only this section refers to license "to sell" in quotes.

limits those who may sell or deliver such needles to a list of specified professionals. Under 105 C.M.R. 700.008, a yearly license is mandated and the application for a license requires, inter alia, the name and address of the person applying for the license, the reason the license is being sought, and the applicant's drug enforcement identification number, if any. Under 105 C.M.R. 700.008, the listed professionals, who the Department of Health already otherwise licenses, are subject to additional yearly licensure in order to sell or deliver hypodermic needles.

And, pharmacists who violate "any provision of" G.L. c. 94C may have their licenses revoked, suspended, or not renewed.¹⁵

The fact that the Department imposes registration requirements on already licensed professionals who sell or deliver hypodermic needles and syringes, warns of license revocation, suspension, or failure to renew for a violation of G.L. c. 94C (which would include a sale to a minor and/or failure to establish that a buyer is at least age 18 in violation of § 27) but has absolutely no requirements for private individuals and

¹⁵ 105 C.M.R. 700.105(5).

entities who distribute needles outside of an approved needle exchange program, bespeaks either an utter failure by the Department of Public Health to protect the public health or a recognition of the limitations of § 27.

D. The 2006 Legislation Amended G.L. c. 94C, § 32I to Create Consistency with the New § 27. It Continues to Impose Significant Criminal Penalties for Distribution of Drug Paraphernalia, Especially to Minors and Near Schools.

Enacted in 1981, G.L. c. 94C, § 32I bans the sale, possession, purchase, or manufacture with the intent to sell drug paraphernalia. Enhanced penalties are provided for sale of paraphernalia to a person under age eighteen¹⁶ and § 32J punishes violations of § 32I that occur within three-hundred feet of a school even more severely.¹⁷

The 2006 legislation made three changes to § 32I. It added the words "or purchase" after "possess" in the first sentence. It struck the word "inject" from the sixth line of sub-section (a) of § 32 and it added the following sentence to sub-section (d) to § 32I.

(d) This section shall not apply to the sale of hypodermic syringes or hypodermic needles

¹⁶ G.L. 94C, § 32I(b) .

¹⁷ G.L. 94C, § 32J.

to persons over the age of 18 pursuant to section 27.¹⁸

Note that G.L. c. 94C, § 32I(d), by referencing § 27, exposes a pharmacist to criminal penalties for a sale to a person under eighteen years of age.

When read alongside § 27, these changes reinforce both the role that the legislature intended pharmacists to play in the distribution chain for needles and syringes and the legislature's strong intent to ban sales of needles and syringes to those under age eighteen.

E. In Holyoke City Council v. City of Holyoke, Hampden County Superior Court Civil Action No. 12-0837, March 14, 2016 the Court rejected the Argument That Any Private Person or Entity Can Distribute Hypodermics Without Restriction.

In Holyoke, the City Council sought a declaration that the City Council alone had the right to approve, or disapprove, establishing a G.L. c. 111, § 215 needle exchange program in the City. The Board of Health, supported by the mayor, had purported to approve the program application and asserted that the approval constituted the "local approval" required by § 215, to the exclusion of the City Council. The Mayor

¹⁸ See sections 3, 4, and 5 of c. 172 of the Acts of 2006.

and the Board of Health then so notified the Department of Public Health which issued a contract to the program provider. This action followed. Ultimately, the Court held that the authority under the "local approval" provision of the then-current iteration of § 215 rested, per the City charter, with the City's legislative body, i.e., the City Council, and not with the Board of Health. Addendum 43 - 56; a copy of the Docket is at Addendum 57 - 63.

The Trial Court examined G.L. c. 94C, § 27 and G.L. c. 111, § 215 extensively. The Court's analysis is excerpted, as follows:

The current version of Section 27, as amended in 2006, legislates only the sale of hypodermic syringes and needles, but not the sale and distribution of them.

Addendum 50.

... As amended, G.L. c. 94C, § 27, legalized the manner in which hypodermic needles and syringes may be lawfully "sold" by authorized entities to persons who have attained the age of eighteen.

Addendum 50.

... A plain reading of G.L. c. 111, § 215, and G.L. c. 94C, §§ 27, 27A, demonstrates that G.L. c. 94C, §§ 27, 27A did not supersede G.L. c. 111, § 215.

Addendum 51.

... The legislative history of needle exchange programs in Massachusetts demonstrates that G.L. c. 94C, § 27, was always circumscribed by the requirements of G.L. c. 111, § 215. General Laws c. 94C, § 27, thus, never created a separate or independent authority for operating needle exchange programs as defendants argue.

Addendum 52.

... The Legislature further ratified the validity of G.L. c. 111, § 215, in the language of St. 2006, c. 172, § 15.

Addendum 52.

None of the provisions set forth in G.L. c. 94C, §§ 27, 27A, permit non-sale distribution of hypodermic syringes and needles.

Addendum 52.

... Only G.L. c. 111, § 215, addresses needle exchange programs. The decriminalization of the possession of hypodermic syringes and needles as set forth in this statutory framework is consistent with the permissible sale of hypodermic syringes and needles. It does not, however, create legislative fiat for the non-sale distribution of hypodermic syringes and needles outside of the provisions of G.L. c. 111, § 215. The parties' controversy pertaining to free distribution of hypodermic needles and syringes is governed by G.L. c. 111, § 215, and not G.L. c. 94C, §§ 27, 27A.

Addendum 52 - 53.

The Superior Court's Holyoke analysis tracks precisely the Town's arguments made to the trial court in this action four months previously, but rejected by the Barnstable trial court in its Memorandum of Decision. It bears repeating that Holyoke rejected the argument that there is an unfettered right in persons and organizations to distribute needles and syringes without charge. Instead, Holyoke affirmed that the only two methods of legal distribution are via pharmacies and D.P.H. needle exchange programs.

Holyoke is thus a complete rejection of ASGCC's argument that, "[T]here is no restriction on the possession and distribution of free hypodermic needles by any private individual or entity."¹⁹

F. Legislative Efforts to Remove the Requirements for Local and State Approval for the Non-Sale Distribution of Hypodermic Needles and Syringes have been Rejected.

Prior to 2006, there were a series of unsuccessful legislative attempts to amend section 27 with language that would have allowed needle exchange programs, such as the one operated by ASGCC in Hyannis, to possess, distribute and exchange needles and syringes, without the requirement of obtaining DPH or local approval.

¹⁹ ASGCC Brief, p. 24, second paragraph.

(f) Notwithstanding any general or special law to the contrary, needles and syringes may be distributed, exchanged or possessed as part of a program designed to prevent the transmission of communicable diseases and any distribution, exchange or possession of said needles or syringes shall not be a crime. The Department of Public Health shall ensure that individuals participating in needle exchange programs have access to substance abuse treatment and health care.²⁰

These rejected provisions demonstrate that there was a clear way for the Legislature, if it chose to do so, to create independent authorization for organizations, such as ASGCC, to engage in the non-sale distribution of needles and syringes without the requirement of any state or local approval. The rejected provisions also serve to underscore the tortured and unsupportable nature of ASGCC's interpretation that the current language of Section 27 creates a "legislative fiat" to allow any individual or entity to distribute needles and syringes.

²⁰ See, 1995 MA SB 554; 1997 MA SB 517; 1999 MA SB 537; see also, MA 2003 SB 610. (Addendum 80 - 87).

G. Following Holyoke, The Failed Attempt of Legislators to Repeal G.L. c. 111, § 215 as Part of the 2017 Budget and the Substitution and Approval of More Modest Amendments to G.L. c. 111, § 215 Provide Persuasive Evidence of Legislative Intent That Affirms the Court's Statutory Analysis in Holyoke.

In the early Summer of 2016, several legislators proposed an amendment to the 2017 State Budget that, if accepted and passed, would have repealed G.L. c. 111, § 215, the D.P.H. needles exchange program. Had they been successful in doing so, the only remaining obstacle to the unfettered distribution of hypodermic instruments would have been G.L. c. 94C, § 27. However, the attempt to repeal § 215 failed.

In its place, legislators proposed and passed an amendment to G.L. c. 111, § 215 that eliminated the cap on D.P.H. needle exchange programs. Addendum, 26 - 27. It also eliminated the description of such programs as "pilot" programs. Finally, the legislation granted to Boards of Health the local authority to approve of the creation of such programs in their communities. As amended, G.L. c. 111, § 215 now reads:

The Department of Public Health may implement needle exchange programs for the exchange of needles in cities and towns. Prior to implementation of the needle exchange program, approval shall be obtained

from the board of health in the hosting city or town. The city or town shall, in a manner determined by the department, provide notice of such approval to the department.

Not later than one year after the implementation of a needle exchange program, the department shall report the results of the program and any recommendations by filing the same with the senate and house chairs of the joint committee on healthcare financing and the house and senate chairs of the joint committee on public safety and homeland security.²¹

The Legislature is, as a matter of statutory construction, presumed to be fully aware of the content of the statute that it is amending, Commonwealth v. Russ R., 433 Mass. 515, 520, 744 N.E.2d 39 (2001). It can also be clearly inferred from the legislative language imbuing Boards of Health with the authority to approve such programs that the Legislature was well aware of the Holyoke decision where the ultimate authority to approve a needle exchange program was one of the central issues.

The Legislature's refusal to repeal § 215 is thus a very strong indication that the Legislature wished to continue making D.P.H and locally-approved needle exchange programs available throughout the state. The removal of both the cap and the "pilot" program

²¹ Outside Section 65 to the 2017 State Budget.

designation are strong indicators of the Legislature's satisfaction with the state and locally-approved needle exchange concept.

Additionally, since the Legislature expressly addressed one of the central issues in Holyoke, i.e., authority to act on behalf of the municipality, it is fair to infer that the Legislature was not only constructively, but actually, well aware of the counter-arguments offered in Holyoke, and voiced by ASGCC here, in support of unfettered right of possession and distribution outside the confines of pharmacies. If that is a fair inference, then the 2016 legislation expanding § 215 program availability is an express endorsement of that program and a direct, negative legislative response to the argument for unfettered rights of distribution.

II. ANALYSIS

In asserting that the operation of a needle exchange program lacking the approval of either the Department of Public Health or the Town of Barnstable is lawful, ASGCC ignores basic tenets of statutory construction and misstates what occurred legislatively

in 2006 when the current version of G.L. c. 94C, § 27 was enacted.

In the 2006 legislation, the Legislature could have, but did not repeal or amend § 215. In fact, to the contrary, the Legislature expressly recognized its continued applicability in outside section 15. It also carefully described what a pharmacy must do when someone presents with no prescription - i.e., the pharmacist must obtain proof that the customer is at least 18 years of age. G.L. c. 94C, § 27, last sentence. It also amended G.L. c. 94C, § 32I to exempt pharmacists in respect to distribution of needles and syringes as long as they complied with § 27. It also could have, but did not, identify other legal avenues for syringe and needle distribution, including language that would have reflected the right of agencies such as ASGCC to distribute needles and syringes without charge; instead, the legislature did not elect to add such language.

When combined with the limiting language of § 27, it is clear that the Legislature voted in 2006 to allow individuals over eighteen access to pharmacies to purchase hypodermic needles and syringes without a prescription. However, to legally operate a needle

exchange program, the program had to be nominated by the Department of Public Health and then obtain local approval. Under Section 15, the Department of Public Health was tasked with reviewing existing needle exchange programs and determining "... the success of existing needle exchange programs; whether existing needle exchange programs should be maintained without change, phased out, or expanded to other municipalities."

ASGCC's argument that, "An activity not permitted or restricted by law is lawful"²² focuses of necessity solely on the changes to G.L. c. 94C, § 27. By doing so, however, ASGCC's statutory myopia ignores the full detail of both the 2006²³ and 2016 legislation.²⁴ Doing so also ignores several failed legislative attempts to allow distribution of hypodermics by organizations like ASGCC²⁵ and to repeal the needles exchange program.²⁶

²² ASGCC Brief, p. 6, § 1, 11th line.

²³ St. 2006, c. 172.

²⁴ Massachusetts 2017 Fiscal Year Budget, Outside Section § 65 (July 8, 2016). See discussion at p. 6, supra. Addendum 26 - 27.

²⁵ See discussion at pp. 17-18, supra.

²⁶ See n.20, supra.

Words of a statute must be construed in association with other statutory language and the general statutory plan. Polaroid Corp. v. Comm'r of Revenue, 393 Mass. 490, 497, 472 N.E.2d 259, 264 (1984). As the United States Supreme Court recently held "... we must read the words [in a statute] 'in their context and with a view to their place in the overall statutory scheme.' id. at 133, 120 S. Ct. 1291 (internal quotation marks omitted).²⁷ Our duty, after all, is 'to construe statutes, not isolated provisions.'." King v. Burwell, 135 S. Ct. 2480, 2489, 192 L. Ed. 2d 483 (2015). (citations omitted). Courts presume that the Legislature is aware of existing statutes when it amends a statute or enacts a new one. See Commonwealth v. Russ R., 433 Mass. 515, 520, 744 N.E.2d 39 (2001); Charland v. Muzi Motors, Inc., 417 Mass. 580, 582-583, 631 N.E.2d 555 (1994).

"Although statutory language 'is to be construed as written, in keeping with its plain meaning,' Stop & Shop Supermarket Co. v. Urstadt Biddle Props., Inc., 433 Mass. at 289, 740 N.E.2d 1286, the language is not to be read in 'isolation,' but '[w]hen the meaning of

²⁷ For full citation: FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000).

a statute is brought into question, a court properly should read other sections and should construe them together.’ LeClair v. Town of Norwell, 430 Mass. 328, 333, 719 N.E.2d 464 (1999) ...” Comm’rs of the Bristol Cty. Mosquito Control Dist. v. State Reclamation, 466 Mass. 523, 528-529, 997 N.E.2d 1188, 1192-1193 (2013). See also, Canton v. Commissioner of the Mass. Highway Dep’t., 455 Mass. 783, 791-792, 919 N.E.2d 1278 (2010) (“We construe statutes that relate to the same subject matter as a harmonious whole and avoid absurd results.”)

By trying to interpret a statute that only permits the sale of needles without the need for a prescription by pharmacies to persons eighteen or older to also allow an individual or entity to purchase needles and then distribute them to anyone regardless of their age, impermissibly attempts to add words to the statute that are simply not there. See Dartt v. Browning-Ferris Indus., 427 Mass. 1, 9, 691 N.E.2d 526 (1998) (court will not add language to statute that Legislature could have, but did not, include). It is well established that courts do not “read into [a] statute a provision which the Legislature did not see fit to put there, whether the

omission came from inadvertence or of set purpose.”
Fernandes v. Attleboro Housing Authority, 470 Mass.
117, 129 (2014). ASGCC’s interpretation is
particularly unsupportable in light of the fact that
there is a specific statute which addresses needle
exchange and distribution programs. “[I]t is a
commonplace of statutory construction that the
specific governs the general.” Morales v. Trans World
Morales v. TWA, 504 U.S. 374, 384, 112 S. Ct. 2031,
119 L. Ed. 2d 157 (1992), quoting King v. Viscoloid
Co., 219 Mass. 420, 425, 106 N.E. 988 (1914).

In applying these principles of statutory
interpretation by reading to Section 15, G.L. c. 94C,
§§ 27, 27A, 32I, and 32J, as well as G.L. c. 111,
§ 215, “in their context and with a view to their
place in the overall statutory scheme,” Burwell,
supra, it is clear that the 2006 amendment to § 27
(the pharmacist provision) added an avenue in addition
to G.L. c. 111, § 215 to legally obtain hypodermic
needles and syringes without a prescription. It did
not authorize the unfettered distribution of needles
by any organization or individual who decided to
establish a needle exchange program, no matter how
well intentioned.

The legal and legislative events of 2016 have put an exclamation point on this analysis. The March 2016 Holyoke case, discussed above at pp. 14 - 17, was followed by the Legislature's rejection of an attempt to repeal G.L. c. 111, § 215. And the legislative changes to § 215 abolishing the cap on § 215 programs in July 2016 and abandoning their designation as "pilot" programs are a strong testament to the Legislature's desire to expand § 215 needle exchange availability to the entire Commonwealth. The legislation is also an unequivocal confirmation of the Legislature's intent that local approval play a pivotal role in the establishment and siting of needle exchange programs.

Indeed, having valuable local input into healthcare project approval and siting is hardly foreign to our statutory scheme. No matter how invaluable any given healthcare project is to the welfare of the local community, local input and oversight is vital and must be respected. See, for example, Allen v. Bos. Redevelopment Auth., 450 Mass.

242 (2007), where a State approval²⁸ of a level 4 biohazard lab in Boston's South End was successfully challenged by neighbors because the admittedly small risk of a catastrophic release of deadly pathogens had not been sufficiently studied as part of the permitting proceeding. See, also, a list of twenty healthcare projects across Cape Cod that have been subjected to the rigorous Development of Regional Impact process of the Cape Cod Commission.²⁹ Despite the obvious community benefit from such projects as four Cape Cod Hospital Expansions over 21 years, and many others as well, the Commission extensively vetted them before approval.³⁰ A legislative desire to require community review, driven not only by politics but by deference to local knowledge, albeit on a far less intense basis than exacted by the Commonwealth or the Cape Cod Commission, should come as a surprise to no one.

²⁸ The Secretary of the Executive Office of Environmental Affairs (now the Executive Office of Energy and Environmental Affairs) had certified a Final Environmental Impact Report under the Massachusetts Environmental Policy Act (MEPA), G.L. c. 30, §§ 61 - 62H.

²⁹ See a list of Cape Cod Commission D.R.I. projects, Addendum 88.

³⁰ www.capecodcommission.org. Project details are linked on the website by year.

Nevertheless, ASGCC, having full knowledge of this regulatory approval regimen precisely because its own Provincetown operation had been subject to that process, apparently chose to intentionally move forward in Hyannis without approval, taking the approach of asking for forgiveness rather than seeking permission, thereby flaunting the Legislature's modest but clear mandate in the process. Although not plead in the intensity of the T.R.O. and Preliminary Injunction proceedings, ASGCC certainly did not exhaust its administrative remedies before filing this action. ASGCC shortchanged itself, its clients, and the Town when it failed to explore local approval.

As noted above, the canons of statutory construction caution that an entire statutory scheme should, if possible, be read so as to avoid "absurd" results. See Canton v. Commissioner, supra. The ASGCC argument that "[T]here is no restriction on the possession and distribution of free hypodermic needles by any private individual or entity."³¹ does not survive that test.

Against that argument, compare the regimen that the Legislature has created and that the D.P.H. has

³¹ ASGCC Brief, p. 24.

implemented. A pharmacist cannot sell hypodermics to anyone under age 18 and, if presenting without a prescription, the pharmacist must affirmatively determine that the customer is indeed at least 18. (G.L. c. 94C, § 27). The D.P.H., the agency charged with licensure of pharmacists and with enforcement and implementation of Chapter 94C, must be afforded considerable deference in its interpretation of the statute's mandate. So, too, the D.P.H.'s regulations should be entitled to the same deference. 105 C.M.R. 700.008 speaks clearly to the licensure and competency requirements that must be met in order to dispense hypodermics. 105 C.M.R. 700.105A(5) reflects the D.P.H.'s intent that the role of pharmacists in protecting minors and the public generally is paramount and that a violation of Chapter 94C could well cost a pharmacist his or her career. And G.L. c. 94C, § 32I exempts pharmacists from prosecution for dispensing needles and syringes, but only if they comply with § 27. And finally, the 2016 amendments to the needle exchange program removing the cap, removing the pilot designation thereby mainstreaming the program, and placing approval authority with Boards of Health speaks volumes about the Legislature's

confidence in G.L. c. 111, § 215 needle exchange programs and the fact that § 27 continues to be circumscribed by this provision.

ASGCC asserts that, other than decriminalizing possession and distribution of hypodermics, the Legislature, by its silence, failed to proscribe other activities but the analysis of the broader statutory scheme clearly refutes that assertion. It does not make any logical sense that pharmacists must be certified annually to be competent to use hypodermic needles (105 C.M.R. 700.008) while a private individual or organization, with or without demonstrated "competence to use hypodermic needles", can distribute hypodermics on the street corner outside the pharmacy to any one, of any age, at any time, as a matter of right, without fear of prosecution or civil consequences. It defies common sense to assert that a pharmacist can lose his or her license for selling hypodermics to a minor, or for failing to check identification to assure that the buyer is at least age 18 and simultaneously argue for the street corner transaction.

The canons of statutory interpretation ring clearly, "If a sensible construction is available, [a

court] shall not construe a statute to make a nullity of pertinent provisions or to produce absurd results.” Plourde v. Police Dep’t of Lawrence, 85 Mass. App. Ct. 178, 186 (2014), quoting from Flemings v. Contributory Ret. Appeal Bd., 431 Mass. 374, 375-376 (2000). See also Frye v. Sch. Comm. of Leicester, 300 Mass. 537 (1938) and Worcester v. Quinn, 304 Mass. 276, 280 (1939). Frankly, if any private person or entity can distribute needles and syringes, as ASGCC argues, then § 215 exchanges would not only become superfluous and redundant, but would waste valuable taxpayer support distributed through D.P.H. contracts. There would be absolutely no need to keep the G.L. c. 94C, § 215 needle exchange program on the books.

Conversely, making sure that precious tax dollars are applied as efficiently as possible is a goal fostered by establishment of D.P.H.-funded contracts awarded to responsible, competent, and accountable organizations that can best achieve the goals of harm reduction. An unintended consequence of ASGCC’s argument would be to spawn more, not less, street-corner needle distribution to people of all ages by individuals with no credentials to do so.

Such a result cannot possibly be seen as in the best interests of public health or as a policy that promotes the most current expressions of legislative intent.

To read § 27, as ASGCC does, to exempt non-sale transactions from any controls whatsoever only spotlights the common sense underlying the Legislature's intent to provide only two types of approved distribution via pharmacies and via approved needle distribution programs. The Holyoke decision offers the most persuasive analysis and logic supporting the Legislature's thoughtful structure for responsible distribution of an inherently dangerous instrumentality. Further, the Hampden Court's considered logic is persuasive and should be adopted by this Court. With full respect to ASGCC's advocacy, the result urged by ASGCC flies in the face of logic, is unsupportable, ignores detailed legislative and D.P.H. protocols, and would produce an "absurd" result. ASGCC's argument cannot stand.

Obviously, this debate will continue in the broader context of addressing the "opiate" crisis, criminal justice reform, sentencing reform, healthcare reform, and insurance reform. Every one of those

debates and implementation of resulting consensus are purely prerogatives of the Legislature. That is where this debate and any changes to the current statutory scheme - if it is to continue - will, and must, be resolved.

"The focus of public health is to protect the health of every member of a community. See, e.g., Service v. Newburyport Hous. Auth., 63 Mass. App. Ct. 278, 283-284, 825 N.E.2d 567 (2005), quoting Black's Law Dictionary 737 (8th ed.2004) (public health is '[t]he health of the community at large ... [;] [t]he healthful or sanitary condition of the general body of people or the community en masse; esp[ecially] the methods of maintaining the health of the community ...')." Am. Lithuanian Naturalization Club v. Bd. of Health, 446 Mass. 310, 318, 844 N.E.2d 231, 238 (2006). The 2016 amendment to G.L. c. 111, § 215 designating the new role for Boards of Health regarding needle exchange programs reflects the unique role and qualifications of such boards to weigh the issues from a local perspective. The proliferation of uncapped discarded hypodermic needles and syringes in public areas of the Town raised serious concerns about the exposure of the unsuspecting and unprotected

public to grave health risks. There need to be protocols in place through a state-approved needle exchange program, and through regulation of pharmacists, to ensure that the unsuspecting public is not exposed to the ravages of the very diseases that the proponents of unfettered needle distributions are trying to ameliorate. It makes no sense to address one public health crisis by ignoring another. The Board of Health is in the best position to assess the issue locally. And that is where ASGCC's efforts should next take them.

CONCLUSION

This Court should declare that distribution of needles and syringes can only be made by licensed and certified pharmacists under G.L. c. 94C, or under the auspices of a D.P.H. approved needles exchange program pursuant G.L. c. 111, § 215.

This Court should also declare that such distribution by any other person or entity not described above is not permitted.

Finally, this Court should affirm that distribution of needles or syringes to anyone under 18

years of age without a doctor's prescription is
illegal and may be a violation of G.L. c. 94C, § 32I.

Any changes to the existing statutory scheme must
be left to the Legislature.

Respectfully submitted,
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Dated: January 17, 2017

ADDENDUM

ADDENDUM TABLE OF CONTENTS

G.L. c. 94C, § 27.....	1
G.L. c. 94C, § 27A.....	2
G.L. c. 94C, § 27.....	5
G.L. c. 94C, § 32I.....	8
G.L. c. 94C, § 32J.....	10
St. 2006, c. 172.....	13
St. 2006, c. 172, § 15.....	25
G.L. c. 111, § 215.....	26
105 C.M.R. 700.008.....	28
105 C.M.R. 700.105.....	29
Aids Support Group of Cape Cod, Inc. v. Town of Barnstable, et al., Memorandum of Decision and Order on Plaintiff's Motion for a Preliminary Injunction.....	30
Holyoke City Council & others v. City of Holyoke & others, Memorandum of Decision and Order on Cross-Motions for Summary Judgment.....	43
Trial Court Docket, Holyoke City Council & others v. City of Holyoke & others.....	57
Budget Amendment ID: FY2017-S4-368 "EHS 368".....	64
Uncorrected Proof of the Journal of the Senate June 1, 2005.....	65
Uncorrected Proof of Journal of Senate, June 7, 2006.....	73
1995 MA SB 554.....	80
1997 MA SB 517.....	82

1999 MA SB 537.....	84
MA 2003 SB 610.....	86
Cape Cod Commission DRI Decisions - Healthcare.....	88
Affidavit of Paul B. MacDonald.....	89
JDP Quarterly Report / 10-01/2016 - 12/31/2016.....	90
JPD Quarterly Narrative Report for 10/01- 2016 - 12/31/2016.....	92

Part I ADMINISTRATION OF THE GOVERNMENT

Title XV REGULATION OF TRADE

Chapter CONTROLLED SUBSTANCES ACT
94C

Section 27 SALE OF HYPODERMIC SYRINGES OR HYPODERMIC
NEEDLES

Section 27. Hypodermic syringes or hypodermic needles for the administration of controlled substances by injection may be sold in the commonwealth, but only to persons who have attained the age of 18 years and only by a pharmacist or wholesale druggist licensed under the provisions of chapter 112, a manufacturer of or dealer in surgical supplies or a manufacturer of or dealer in embalming supplies. When selling hypodermic syringes or hypodermic needles without a prescription, a pharmacist or wholesale druggist must require proof of identification that validates the individual's age.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XV REGULATION OF TRADE

Chapter CONTROLLED SUBSTANCES ACT
94C

Section 27A COLLECTION AND DISPOSAL OF SPENT NON-
COMMERCIALY GENERATED HYPODERMIC NEEDLES
AND LANCETS

Section 27A. (a) Notwithstanding any general or special law to the contrary, the department of environmental protection and the department of public health, in conjunction with other relevant state and local agencies and government departments, shall design, establish and implement, or cause to be implemented a program for the collection and disposal of spent non-commercially generated hypodermic needles and lancets. The program shall be designed to protect the public health and the environment by providing for the safe, secure and accessible collection and disposal of hypodermic needles and lancets. The departments may collaborate with private companies as well as not-for-profit agencies when designing, establishing and implementing this program.

(b) (1) Sharps disposal programs may include, but are not limited to the following:?

(i) a program for safe, secure home sharp disposal;

(ii) establishing sharps collection centers in medical facilities and pharmacies;

(iii) establishing sharps collection centers in municipal facilities, including, but not limited to, fire stations, police stations and public health offices; provided that sharps collection centers may be located at senior centers only for the purpose of disposing of medically necessary hypodermic needles; and

(iv) medical waste mail-back programs approved by the United States Postal Service.

(2) Medical facilities, pharmacies and participating municipal facilities may work with the department of public health and the department of environmental protection to determine the proper program for sharps disposal implementation within each community.

(c) For the purposes of this section, a "sharps collection center" shall be an identified site within a community which:

(1) uses only collection containers that meet the requirements of the federal Occupational Safety and Health Administration and the federal Department of Transportation and is marked with the international biohazard symbol;

(2) provides secure and accessible collection containers on site;

- (3) accepts sharps from sharps users that are in leak-proof, rigid, puncture-resistant and shatterproof containers;
 - (4) provides appropriate transfer containers for sharps users who fail to bring their sharps in suitable containers for placement in the collection container;
 - (5) has a written agreement with a medical waste transporter providing for regularly scheduled waste pickups; and
 - (6) stores, handles, transports and treats the collected waste in accordance with department of public health regulations.
- (d) The program shall be designed to protect the public health and the environment by providing for the safe, secure and accessible collection and disposal of hypodermic needles and lancets. The department of public health, in consultation with the department of environmental protection, shall adopt regulations to ensure the safe, secure and accessible collection and disposal of hypodermic needles and lancets, and shall provide recommendations for legislative action to the joint committee on public health, the senate and house committees on ways and means and the clerks of the senate and house of representatives. Included in the recommendations for legislative action shall be recommended punishments and fines for the inappropriate, unsafe or unlawful disposal of the hypodermic needles and lancets.

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Powers reserved to states: Validity of order form requirement under Federal Marihuana Tax Act. (1971) 5 Suffolk U.L.Rev. 696.

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32 Mass. Prac. Series § 465, Control of Drug Distribution.

§ 27. Instruments for administering controlled substances by injection; pilot needle exchange program

(a) No person, not being a physician, dentist, nurse or veterinarian registered under the laws of this commonwealth; or of the state where he resides, or a registered embalmer, manufacturer of or dealer in embalming supplies, pharmacist, wholesale druggist, manufacturing pharmacist, manufacturer of or dealer in surgical supplies, student engaged in an activity necessary to a course prescribed by a school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming approved under the provisions of chapter one hundred and twelve, official of any government having possession of the articles hereinafter mentioned by reason of his official duties, or a person authorized to administer a sentence of death imposed under the provisions of chapter two hundred and seventy-nine while in the performance of his lawful duties thereunder, nurse acting under the direction of a physician or dentist, employee of a hospital or other facility licensed by the department acting under the direction of its superintendent or officer in immediate charge, or a carrier or messenger engaged in the transportation of such articles, or a person who has received a prescription issued under subsection (c), or a podiatrist who has received a certificate from the board of registration in podiatry stating that upon examination by said board he has been determined to be competent to use hypodermic needles or a scientific investigator registered pursuant to the provisions of section seven, or a person licensed under subsection (e), shall have in his possession a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of controlled substances by injection.

(b) No such syringe, needle or instrument shall be delivered or sold to, or exchanged with, any person except a pharmacist, dentist, physician, veterinarian, registered embalmer, manufacturer of or dealer in embalming supplies, scientific investigator registered pursuant to the provisions of section seven, wholesale druggist, manufacturing pharmacist, manufacturer of or dealer in surgical supplies, a student enrolled in a course for which such possession is necessary and prescribed at an approved school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming, an official of any government agency requiring the use of such syringe, needle or instrument by reason of his

official duties, a person authorized to administer a sentence of death imposed under the provisions of chapter two hundred and seventy-nine while in the performance of his lawful duties thereunder, a nurse upon the written order of a physician or dentist, or a person who has received a written prescription issued under subsection (c), a podiatrist certified as aforesaid, or an employee of a hospital, clinic, nursing home, rest home or detoxification facility licensed by the department, or scientific institution upon the written order of its superintendent or officer in immediate charge of a person licensed under subsection (e).

(c) A physician may issue to a patient under his immediate charge a written prescription to purchase, or may issue an oral prescription to a pharmacist on behalf of said patient to purchase, from a pharmacist only, any of the instruments specified in subsection (a). Such prescription shall contain the name and address of the patient, the description of the instrument prescribed and the number of instruments prescribed. The pharmacist filling the prescription shall record upon the face of said prescription, over the signature of the pharmacist making the sale, the date of such sale. Such prescription may be renewed or refilled for one year unless the physician indicates otherwise on the prescription, and each refilling shall be noted upon the prescription. No prescription for such instruments shall be refilled after one year from date of issue. The pharmacist filling the prescription shall dispense any such instrument in a sanitary container which shall completely enclose such instrument, and shall affix to said container a label bearing (1) the name and address of the pharmacy, and if said pharmacy is in a hospital, the name and address of said hospital, (2) the name and address of the patient, (3) the file number of the prescription, and (4) the name of the physician prescribing the same. The person to whom the prescription is issued shall keep such instrument in said container at all times, except when such instrument is in actual use or is in the process of being cleaned.

(d) A record shall be kept by the person selling such syringes, needles or instruments, which shall give the date of the sale, the name and address of the purchaser and a description of the instrument. This record shall be open to inspection pursuant to a judicial warrant or to the provisions of section thirty.

(e) No person except a manufacturer of or dealer in surgical supplies, a manufacturer of or dealer in embalming supplies, a pharmacist or wholesale druggist, which pharmacist or wholesale druggist is licensed under the provisions of chapter one hundred and twelve, shall sell, offer for sale, deliver, or have in possession with intent to sell hypodermic syringes, hypodermic needles or any instrument adapted for the administration of controlled substances by injection, unless licensed so to do by the department. Such license shall be valid for a period of one year. The fee for such license shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. A license issued to a company or corporation which has more than one branch or department shall include any and all branches and departments or sections of said company or corporation.

No person except a person listed in subsections (b) or (c) shall obtain, receive or purchase a hypodermic syringe, hypodermic needle or any instrument adapted for the administration of controlled substances by injection, unless licensed so to do by the department, or by a local board of health. A license to obtain, receive or purchase any such instrument, which license shall be valid throughout the commonwealth, may be obtained from the department upon payment of a fee as determined annually by the commissioner of administration under the provision of section three B of chapter seven, and a license to obtain, receive or purchase any such instrument, which license shall be valid only in a particular city or town of the commonwealth, may be obtained from the local board of health upon payment of a fee of fifty cents. Said license shall be valid for one year.

(f) Notwithstanding any general or special law to the contrary, needles and syringes may be distributed or possessed as part of a pilot program approved by the department of public health in accordance with section two hundred and fifteen of chapter one hundred and eleven and any such distribution or exchange of said needles or syringes shall not be a crime.

The department of public health shall ensure that individuals participating in a pilot needle exchange program will be encouraged to seek and will be placed in contact with substance abuse treatment and health care.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 20; St.1973, c. 1190, §§ 15 to 17; St.1980, c. 572, §§ 83, 84; St.1982, c. 554, §§ 1, 2; St.1993, c. 110, § 142; St.1993, c. 224, § 2.

Historical and Statutory Notes

St.1972, c. 806, § 20, in subsec. (c), in the third sentence, substituted "face" for "fact".

St.1972, c. 806, was approved July 19, 1972. Emergency declaration by the Governor was filed July 20, 1972.

St.1973, c. 1190, § 15, approved Dec. 11, 1973, in subsec. (a), inserted ", student engaged in an activity necessary to a course prescribed by a school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming approved under the provisions of chapter one hundred and twelve" and "or other facility licensed by the department".

Section 16 of St.1973, c. 1190, in subsec. (b), inserted ", a student enrolled in a course for which such possession is necessary and prescribed at an approved school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming" and ", clinic, nursing home, rest home or detoxification facility licensed by the department".

Section 17 of St.1973, c. 1190, in subsec. (e), in the first paragraph, in the first sentence, substituted "manufacturer of or dealer in surgical supplies, a manufacturer of or dealer in embalming supplies, a pharmacist or wholesale druggist, which pharmacist or wholesale druggist is licensed under the provisions of chapter

one hundred and twelve" for "person registered under chapter one hundred and twelve and listed under subsection (a)".

St.1980, c. 572, § 83, in subsec. (e), in the first paragraph, in the third sentence, substituted "determined annually by the commissioner of administration under the provision of section three B of chapter seven" for "ten dollars".

Section 84 of St.1980, c. 572, in subsec. (e), in the second paragraph, in the second sentence, substituted "as determined annually by the commissioner of administration under the provision of section three B of chapter seven" for "of five dollars".

St.1980, c. 572, was approved July 16, 1980. Emergency declaration by the Governor was filed July 23, 1980.

St.1982, c. 554, § 1, approved Dec. 22, 1982, and by § 8 made effective Jan. 1, 1983, in subsec. (a), inserted ", or a person authorized to administer a sentence of death imposed under the provisions of chapter two hundred and seventy-nine while in the performance of his lawful duties thereunder".

Section 2 of St.1982, c. 554, in subsec. (b), inserted ", a person authorized to administer a sentence of death imposed under the provisions

Part I ADMINISTRATION OF THE GOVERNMENT

Title XV REGULATION OF TRADE

Chapter CONTROLLED SUBSTANCES ACT
94C

Section 32I DRUG PARAPHERNALIA; SALE, POSSESSION OR
 MANUFACTURE WITH INTENT TO SELL; PENALTY; SALE
 OF TOBACCO ROLLING PAPERS

Section 32I. (a) No person shall sell, possess or purchase with intent to sell, or manufacture with intent to sell drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Whoever violates any provision of this paragraph shall be punished by imprisonment in jail or house of correction for not less than one nor more than two years, or by a fine of not less than five hundred nor more than five thousand dollars, or both.

(b) Any person who violates the foregoing provision by selling drug paraphernalia to a person under eighteen years of age shall be imprisoned in the state prison for not less than three nor more than five years, or by a fine of not less than one thousand nor more than five thousand dollars, or both.

(c) On any premises where tobacco rolling papers are sold, the person in control of such premises shall cause to be displayed in a prominent place therein a printed warning that such papers shall not be used in conjunction with the possession of a controlled substance the possession of which is punishable by a fine or imprisonment. Whoever violates the provisions of this subsection shall be punished by a fine of not less than fifty nor more than two hundred dollars.

(d) This section shall not apply to the sale of hypodermic syringes or hypodermic needles to persons over the age of 18 pursuant to section 27.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XV REGULATION OF TRADE

Chapter CONTROLLED SUBSTANCES ACT
94C

Section 32J CONTROLLED SUBSTANCES VIOLATIONS IN, ON, OR
NEAR SCHOOL PROPERTY; ELIGIBILITY FOR PAROLE

Section 32J. Any person who violates the provisions of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I while in or on, or within 300 feet of the real property comprising a public or private accredited preschool, accredited headstart facility, elementary, vocational, or secondary school if the violation occurs between 5:00 a.m. and midnight, whether or not in session, or within one hundred feet of a public park or playground shall be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than fifteen years or by imprisonment in a jail or house of correction for not less than two nor more than two and one-half years. No sentence imposed under the provisions of this section shall be for less than a mandatory minimum term of

imprisonment of two years. A fine of not less than one thousand nor more than ten thousand dollars may be imposed but not in lieu of the mandatory minimum two year term of imprisonment as established herein. In accordance with the provisions of section eight A of chapter two hundred and seventy-nine such sentence shall begin from and after the expiration of the sentence for violation of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F or thirty-two I.

Lack of knowledge of school boundaries shall not be a defense to any person who violates the provisions of this section.

Any person serving a mandatory minimum sentence for violating this section shall be eligible for parole after serving one-half of the maximum term of the sentence if the sentence is to a house of correction, except that such person shall not be eligible for parole upon a finding of any 1 of the following aggravating circumstances:

- (i) the defendant used violence or threats of violence or possessed a firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of chapter 269, or induced another participant to do so, during the commission of the offense;
- (ii) the defendant engaged in a course of conduct whereby he directed the activities of another who committed any felony in violation of chapter 94C.

(iii) the offense was committed during the commission or attempted commission of the a violation of section 32F or section 32K of chapter 94C.

A condition of such parole may be enhanced supervision; provided, however, that such enhanced supervision may, at the discretion of the parole board, include, but shall not be limited to, the wearing of a global positioning satellite tracking device or any comparable device, which shall be administered by the board at all times for the length of the parole.

Acts (2006)

Chapter 172

AN ACT RELATIVE TO HIV AND HEPATITIS C PREVENTION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to compensate forthwith certain court employees, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 94C of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 68, the word “, injecting”.

SECTION 2. The definition of “Drug paraphernalia” in section 1 of said chapter 94C, as so appearing, is hereby amended by striking out clause (11).

SECTION 3. Said chapter 94C is hereby further amended by striking out section 27, as so appearing, and inserting in place thereof the following 2 sections:-

Section 27. Hypodermic syringes or hypodermic needles for the administration of controlled substances by injection may be sold in the commonwealth, but only to persons who have attained the age of 18 years and only by a pharmacist or wholesale druggist licensed under the provisions of chapter 112, a manufacturer of or dealer in surgical supplies or a manufacturer of or dealer in embalming supplies. When selling hypodermic syringes or hypodermic needles without a prescription, a pharmacist or wholesale druggist must require proof of identification that validates the individual's age.

Section 27A. (a) Notwithstanding any general or special law to the contrary, the department of environmental protection and the department of public health, in conjunction with other relevant state and local agencies and government departments, shall design, establish and implement, or cause to be implemented a program for the collection and disposal of spent non-commercially generated hypodermic needles and lancets. The program shall be designed to protect the public health and the environment by providing for the safe, secure and accessible collection and disposal of hypodermic needles and lancets. The departments may collaborate with private companies as well as not-for-profit agencies when designing,

establishing and implementing this program.

(b)(1) Sharps disposal programs may include, but are not limited to the following:-

- (i) a program for safe, secure home sharp disposal;
- (ii) establishing sharps collection centers in medical facilities and pharmacies;
- (iii) establishing sharps collection centers in municipal facilities, including, but not limited to, fire stations, police stations and public health offices; provided that sharps collection centers may be located at senior centers only for the purpose of disposing of medically necessary hypodermic needles; and
- (iv) medical waste mail-back programs approved by the United States Postal Service.

(2) Medical facilities, pharmacies and participating municipal facilities may work with the department of public health and the department of environmental protection to determine the proper program for sharps disposal implementation within each community.

(c) For the purposes of this section, a “sharps collection center” shall be an identified site within a community which:

-
- (1) uses only collection containers that meet the requirements of the federal Occupational Safety and Health Administration and the federal Department of Transportation and is marked with the international biohazard symbol;
 - (2) provides secure and accessible collection containers on site;
 - (3) accepts sharps from sharps users that are in leak-proof, rigid, puncture-resistant and shatterproof containers;
 - (4) provides appropriate transfer containers for sharps users who fail to bring their sharps in suitable containers for placement in the collection container;
 - (5) has a written agreement with a medical waste transporter providing for regularly scheduled waste pickups; and
 - (6) stores, handles, transports and treats the collected waste in accordance with department of public health regulations.
-

(d) The program shall be designed to protect the public health and the environment by providing for the safe, secure and accessible collection and disposal of hypodermic needles and lancets. The department of public health, in consultation with the department of environmental protection, shall adopt regulations to ensure the safe, secure and accessible collection and disposal of hypodermic needles and lancets, and shall

provide recommendations for legislative action to the joint committee on public health, the senate and house committees on ways and means and the clerks of the senate and house of representatives. Included in the recommendations for legislative action shall be recommended punishments and fines for the inappropriate, unsafe or unlawful disposal of the hypodermic needles and lancets.

SECTION 4. Section 32I of said chapter 94C, as so appearing, is hereby further amended by inserting after the word “possess”, in line 1, the following words:- or purchase.

SECTION 5. Said section 32I of said chapter 94C, as so appearing, is hereby further amended by striking out, in line 6, the word “, inject”.

SECTION 6. Said section 32I of said chapter 94C, as so appearing, is hereby further amended by adding the following paragraph:-

(d) This section shall not apply to the sale of hypodermic syringes or hypodermic needles to persons over the age of 18 pursuant to section 27.

SECTION 7. Chapter 111 of the General Laws, is hereby amended by inserting after section 25J, the following section:-
Section 25K. The department shall develop an educational insert to accompany the sale of hypodermic syringes and needles. This educational insert shall include, but not be limited to: (1) information on the proper use of hypodermic

syringes and needles; (2) the risk of blood-borne diseases that may result from the use of hypodermic syringes and needles and methods for preventing contracting or transmitting such diseases; (3) proper hypodermic syringe and needle disposal practices; and (4) the toll-free telephone numbers of the commonwealth's AIDS and Hepatitis C hotlines and the Massachusetts Substance Abuse Information and Education Helpline. This educational insert shall be provided to purchasers of hypodermic syringes or needles at the point of sale.

SECTION 8. Chapter 175 of the General Laws is hereby amended by inserting after section 47X the following section:

—
Section 47Y. (a) No individual policy of accident and sickness insurance issued or renewed pursuant to section 110 shall restrict or discontinue coverage for medically necessary hypodermic syringes or needles, notwithstanding section 27 of chapter 94C. The term “medical necessity” shall be construed in accordance with the guidelines set forth in subsection (b) of section 16 of chapter 176O. Nothing in this section shall prohibit applicable co-payments, deductibles, coinsurance or other cost sharing features.

(b) This section shall not apply to individual policies of accident and sickness insurance that are accident only, credit-only, limited scope dental benefits if offered separately, disability income insurance, coverage issued as a supplement

to liability insurance, insurance arising out of a workers' compensation law or similar law, automobile medical payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in a liability insurance policy or equivalent self insurance, long-term care if offered separately, coverage supplemental to the coverage provided under 10 U.S.C. chapter 55 if offered as a separate insurance policy, any policy subject to chapter 176K and hospital indemnity insurance policies if offered as independent, non-coordinated benefits. For the purposes of this section, "hospital indemnity insurance policies" shall mean policies issued pursuant to this chapter which provide a benefit not to exceed \$500 per day, as adjusted on an annual basis by the amount of increase in the average weekly wages in the commonwealth as defined in section 1 of chapter 152, to be paid to an insured or a dependent, including the spouse of an insured, on the basis of a hospitalization of the insured or a dependent.

SECTION 9. Chapter 176A of the General Laws is hereby amended by inserting after section 8Y, the following section:—
Section 8Z. No contract between a subscriber and the corporation under an individual or group hospital service plan which is delivered, issued or renewed in the commonwealth shall restrict or discontinue coverage for medically necessary hypodermic syringes or needles to any individual and group subscribers within the commonwealth and to any group

subscribers having a principal place of employment within the commonwealth, notwithstanding section 27 of chapter 94C. The term “medical necessity” shall be construed in accordance with the guidelines set forth in subsection (b) of section 16 of chapter 176O.

SECTION 10. Chapter 176B of the General Laws, is hereby amended by inserting after section 4Y, the following section:—
Section 4Z. No subscription certificate under an individual or group medical service agreement, delivered, issued or renewed in the commonwealth shall restrict or discontinue coverage for medically necessary hypodermic syringes or needles to any individual or group subscribers within the commonwealth or to any group subscribers having a principal place of employment within the commonwealth, notwithstanding section 27 of chapter 94C. The term “medical necessity” shall be construed in accordance with the guidelines set forth in subsection (b) of section 16 of chapter 176O.

SECTION 11. Chapter 176G of the General Laws is hereby amended by inserting after section 4Q, the following section:—
Section 4R. No individual or group health maintenance contract shall restrict or discontinue coverage for medically necessary hypodermic syringes or needles, notwithstanding section 27 of chapter 94C. The term “medical necessity” shall be construed in accordance with the guidelines set forth in subsection (b) of section 16 of chapter 176O.

SECTION 12. Chapter 265 of the General Laws is hereby amended by inserting after section 15B the following section:-
Section 15C. (a) Whoever commits an assault upon another, by means of a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of controlled or other substances by injection, shall be punished by imprisonment in the state prison for not more than 10 years or in the house of correction for not more than 2 1/2 years, or by a fine of not more than \$1,000, or by both such fine and imprisonment.
(b) Whoever commits an assault and battery upon another, by means of a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of controlled or other substances by injection, shall be punished by imprisonment in the state prison for not more than 15 years or in the house of correction for not more than 2 1/2 years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.

SECTION 13. The schedule of forms and pleadings in section 79 of chapter 277 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out the forms of complaint or indictment for: Possession of hypodermic instrument, at lines 464 to 465, inclusive, and Sale and delivery of hypodermic instrument, at lines 466 to 467, inclusive.

SECTION 14. The department of public health, in consultation with the department of environmental protection, shall adopt its initial regulations and provide its initial legislative

recommendations under section 27A of chapter 94C of the General Laws, not later than 90 days following the effective date of this act.

SECTION 15. The department of public health shall perform a comprehensive study and review of the existing needle exchange programs established pursuant to section 215 of chapter 111 of the General Laws. The study shall include, but not be limited to: a review and analysis of the relationship between the provisions of this act and the operation of the needle exchange programs; the success of existing needle exchange programs; whether existing needle exchange programs should be maintained without change, phased out or expanded to other municipalities.

SECTION 16. Not earlier than 24 months and not later than 36 months after the effective date of this act, the department of public health shall submit a report to the house and senate committees on ways and means and the joint committee on public health which shall include analysis of the impact of this act. The report shall include, but not be limited to: statistics on the methods hypodermic syringes and hypodermic needles are disposed; increases or decreases in the spread of hepatitis C and human immunodeficiency virus; and proposed changes to this act consistent with the public health and welfare.

SECTION 17. The department of public health shall provide a report to the general court on the program for the collection and disposal of non-commercially generated, spent hypodermic needles and lancets pursuant to section 27A of chapter 94C of the General Laws. The report shall be filed with the clerks of the senate and house of representatives by July 20, 2006. The report shall include the proposed location of sharps collection centers, and the department shall notify each city and town of the locations of proposed collection centers in that city or town. The department shall also make this list of proposed collection centers available online. Section 27 of said chapter 94C, as amended by this act, shall take effect on September 18, 2006.

House of Representatives, July 13, 2006.

This Bill having been returned by His Excellency the Governor with his objections thereto in writing (**see House 5124**) has been passed by the House of Representatives, notwithstanding said objections, two-thirds of the House (*115 yeas to 42 nays*) having agreed to pass the same.

Sent to the Senate for its action.

Salvatore F. DiMasi, *Speaker*.

Steven T. James, *Clerk*.

Senate, July 13, 2006.

Passed by the Senate, notwithstanding the objections of His Excellency the Governor, two-thirds of the members present (*25 yeas to 11 nays*) having approved the same.

Robert E. Travaglini, *President*.

William F. Welch, *Clerk*.

July 21, 2006.

SECTION 15. The department of public health shall perform a comprehensive study and review of the existing needle exchange programs established pursuant to section 215 of chapter 111 of the General Laws. The study shall include, but not be limited to: a review and analysis of the relationship between the provisions of this act and the operation of the needle exchange programs; the success of existing needle exchange programs; whether existing needle exchange programs should be maintained without change, phased out or expanded to other municipalities.

Part I ADMINISTRATION OF THE GOVERNMENT

Title XVI PUBLIC HEALTH

Chapter 111 PUBLIC HEALTH

Section 215 NEEDLE EXCHANGE PROGRAMS; APPROVAL; REPORT

[Text of section effective until July 1, 2016. For text effective July 1, 2016, see below.]

Section 215. The department of public health is hereby authorized to promulgate rules and regulations for the implementation of not more than ten pilot programs for the exchange of needles in cities and towns within the commonwealth upon nomination by the department. Local approval shall be obtained prior to implementation of each pilot program in any city or town.

Not later than one year after the implementation of each pilot program said department shall report the results of said program and any recommendations by filing the same with the joint legislative committees on health care and public safety.

Chapter 111: Section 215. Needle exchange programs;

approval; report

[Text of section as amended by 2016, 133, Sec. 65 effective July 1, 2016. See 2016, 133, Sec. 203. For text effective until July 1, 2016, see above.]

Section 215. The department of public health may implement needle exchange programs for the exchange of needles in cities and towns. Prior to implementation of a needle exchange program, approval shall be obtained from the board of health in the hosting city or town. The city or town shall, in a manner determined by the department, provide notice of such approval to the department.

Not later than 1 year after the implementation of a needle exchange program, the department shall report the results of the program and any recommendations by filing the same with the senate and house chairs of the joint committee on health care financing and the house and senate chairs of the joint committee on public safety and homeland security.

105 CMR: DEPARTMENT OF PUBLIC HEALTH

700.008: Requirements Regarding Hypodermic Instruments

(A) License "to Sell". No person except a registered physician, dentist, nurse, veterinarian, embalmer, pharmacist, wholesale druggist, or a registered podiatrist certified by the Board of Registration in Podiatry to be competent to use hypodermic needles, shall sell, offer for sale, deliver or have in possession with intent to sell hypodermic syringes, hypodermic needles or any instrument adapted for the administration of controlled substances by injection, unless licensed to do so by the Department. (1) A license "to sell" shall be: (a) Valid for one year, and (b) Required at only one location for a company or corporation. (2) The fee for a license "to sell" shall be \$10.00.

(B) Application for License. A person who wishes to obtain a license to sell hypodermic instruments shall apply to the Department in an application form supplied or approved by the Commissioner: (1) The application form shall indicate: (a) Whether the license is to sell, to purchase, or both, and (b) The: 1. name; 2. address; 3. business or profession of the applicant; 4. purpose for which the applicant wishes the license; and 5. applicant's Drug Enforcement Administration registration number, if any.

105 CMR: DEPARTMENT OF PUBLIC HEALTH

700.105: Grounds for Revocation, Suspension, or Refusal to Renew a Registration

(A) Grounds for revocation, suspension, or refusal to renew a registration include, but are not limited to, whether the registrant: (1) has furnished false or fraudulent material information in any application filed under the provisions of 105 CMR 700.000; (2) has been convicted under any state or federal law of any criminal violation relating to his fitness to be registered under 105 CMR 700.000;

700.105: continued

(3) has had his federal registration suspended or revoked to manufacture, distribute, dispense, administer or possess controlled substances; (4) is, upon good cause, found to be unfit or unqualified to manufacture, distribute, dispense, or possess any controlled substance; (5) has violated any provision of M.G.L. c. 94C; or (6) has used the online prescription monitoring program system, or prescription data derived therefrom, in a manner inconsistent with the terms and conditions for such use.

COMMONWEALTH OF MASSACHUSETTS
BARNSTABLE, SS. SUPERIOR COURT
CIVIL ACTION NO. BACV2015-00586

AIDS SUPPORT GROUP OF CAPE COD, INC.,
Plaintiff

vs.

TOWN OF BARNSTABLE, et al.,¹
Defendants

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

In 2006, our Legislature amended G.L. c. 94C, § 27 to provide that "[h]ypodermic syringes or hypodermic needles for the administration of controlled substances by injection" could only be "sold" in the Commonwealth by pharmacists or certain other licensed professionals.² The amendment also limited sale to persons who could prove that they had attained the age of eighteen years. The newly re-written statute, however, did more. It eliminated the remainder of the original statute and thereby lawfully permitted the previously proscribed acts of possessing and delivering hypodermic needles and syringes. Citing this amendment, the plaintiff, AIDS Support Group of Cape Cod, Inc. ("ASGCC"), asserts that it acts lawfully and appropriately when it delivers free needles and syringes to intravenous drug users regardless of age from its program site in a commercial district at 428 South Street, Hyannis, Massachusetts. With the explicit intent of reducing the spread on HIV and Hepatitis C ("HCV") infection among its client community, ASGCC dispenses these needles and syringes in numbers

¹ Board of Health of the Town of Barnstable, and Thomas McKean, in his official capacity as Director of Public Health of the Town of Barnstable

² Wholesale druggists licensed under G.L. c. 112, manufacturers of or dealers in surgical supplies, and manufacturers of and dealers in embalming supplies.

commensurate with its clients' reported habits and needs. Those needs have increased substantially of late as a result of what all concerned have described as "the present opioid crisis." According to the program's director of prevention and screening services, during its recently concluded fiscal year, ASGCC dispensed needles and syringes at a rate of approximately 10,000 per month.

The Town of Barnstable ("Town") views the matter differently. Pointing to discoveries of discarded hypodermic needles and syringes — sometimes in significant numbers — in public parks, comfort facilities, and areas occupied by numerous homeless persons, the Town has identified what it deems to be "a public health crisis." Several of these discoveries have included evidence tending to show that the source of the discarded materials was the ASGCC program. Consequently, the Town ordered in writing³ ASGCC to "cease and desist" from "the distribution of any needles/syringes within the Town of Barnstable." As its authority and rationale, the Town claimed in its notice that ASGCC was acting in violation of G.L. c. 94C, § 27 because neither it nor its staff were pharmacists or other licensed professionals statutorily designated. The Town further claimed that ASGCC was acting in violation of G.L. c. 111, § 215 because its program was not one of the ten pilot needle-exchanges which the Massachusetts Department of Public Health ("DPH") was authorized to implement and because ASGCC had not obtained local approval, as required of such programs under that statute.

In this setting, ASGCC filed a civil complaint pursuant to G.L. c. 231A, § 1, seeking, *inter alia*, a declaration by this court that the Town was without lawful authority to issue its cease and desist order. ASGCC also sought a temporary restraining order, under Mass.R.Civ.P.

³ Two written notices were served upon ASGCC. One, issued on September 21 or 22, 2015, was on a pre-printed form completed in handwriting. The other, issued on September 23, 2015, was in letter form.

65(a), enjoining the Town and its agents from enforcing the cease and desist order. After a hearing in which counsel for the plaintiff and all defendants appeared, the requested temporary order issued, and a hearing date was set for seven days later to consider whether ASGCC's motion for preliminary injunctive relief under Mass.R.Civ.P. 65(b) should be granted. The court thereupon received evidence, including the testimony of ten witnesses and various exhibits, as well as the parties' legal submissions on November 20 and 23, 2015.

A court may enter a preliminary injunction if, after an abbreviated presentation of the facts and the law, the plaintiff has demonstrated 1) a reasonable likelihood of success on the merits of the claims and 2) a substantial risk of irreparable harm if the injunction does not issue. *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). Additionally, where one of the parties is a public entity, "the risk of harm to the public interest also may be considered." *GTE Products Corp. v. Stewart*, 414 Mass. 721, 723 (1993). If the plaintiff meets its burden, then the court must balance the risk of harm to the plaintiff against any similar risk of irreparable harm that an order granting the injunction would create for the defendant. "What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue." *Id.* at 617.

ASGCC has demonstrated a reasonable likelihood of prevailing upon its claim. Both statutory prongs of the Town's position have their difficulties.

While G.L. c. 94C, § 27 sets forth various requisites by which hypodermic needles and syringes may be lawfully "sold," ASGCC points out that the section says nothing about possessing such items and dispensing them without sale. Accordingly, it asserts that its free distribution of needles and syringes was intended by the 2006 amendment to be permissible conduct. The court agrees. G.L. c. 94C, § 27 does not in any way prohibit the conduct of the ASGCC program as it has been described in the evidence. See *Director of the Division of Milk Control v. Haseotes*, 351 Mass. 372, 373 (1966). The court additionally observes that the statute's amendment, St. 2006, § 172, was enacted with the title, "An Act Relative to HIV and Hepatitis C Prevention," the very aim of the ASGCC program. See *Commonwealth v. Savage*, 31 Mass.App.Ct. 714, 716 n.4 (1991) ("The title of an act is relevant as a guide to legislative intent"). Moreover, the court notes the breadth of the proscriptions eliminated by the subject amendment, St. 2006, § 172, and the new statute's attention to programs facilitating the safe disposal of sharps (i.e. hypodermic needles and syringes) in communities throughout the Commonwealth. The amendment clearly marked a change in the Legislature's approach to intravenous drug users: a shift away from criminal enforcement and toward the promotion of health. This change appears to be entirely consistent with the stated goals and demonstrated activities of ASGCC's program.

The second statute cited in the Town's notice, G.L. c. 111, § 215, provides as follows:

The department of public health is hereby authorized to promulgate rules and regulations for the implementation of not more than ten pilot programs for the exchange of needles in cities and towns within the commonwealth upon nomination by the department. Local approval shall be obtained prior to implementation of each pilot program in any city and town.

Not later than one year after the implementation of each pilot program said department shall report the results of said program and any recommendations by filing the same with the joint legislative committees on health care and public safety.

Again, as pointed out by ASGCC, while the statute places limits upon the number of programs which the DPH may implement, it is silent as to whether others may initiate additional programs, which may or may not resemble those envisioned by the DPH. The statute certainly does not express a prohibition against such programs, and this court is disinclined to infer one. The court sees nothing in the language of G.L. c. 111, § 215 which would fairly support such a severe reading, particularly in light of the decriminalization of the possession and delivery of needles and syringes established by G.L. c. 94C, § 27. Accordingly, the court agrees with ASGCC's argument. Moreover, the description of the ASGCC program offered by the DPH's Director of the Bureau of Infectious Diseases, when he testified in this matter, has not been lost upon this court. Rejecting the characterization suggested by counsel for the Town that the program was unauthorized or unapproved, the witness instead described it as "not contracted." The witness also testified concerning the effect of the pilot-program initiative, noting that, though enacted in 1995, Section 215 has led to the implementation of only five DPH-sponsored programs. One of these is operated by ASGCC in Provincetown, Massachusetts.

Mere likelihood of success, however, does not win injunctive relief. The court must further engage in a suitable weighing of the equities, giving due consideration to any risks of harm to the public interest.

ASGCC states that it is one of the first AIDS organizations established in the United States. Founded in 1983 in Provincetown, it opened a second office in Hyannis in 2007. It describes its mission as fostering "health, independence and dignity for people living with HIV/AIDS and viral hepatitis by providing care, support and housing." Its services include "medical case management, peer support, housing, nutritional programs, testing for HIV, HCV

and sexually transmitted infections, and programs to reduce the spread of HIV and HCV.”

Because these infections are blood-borne, ASGCC has actively reached out to intravenous drug users to engage them in the agency’s services. It has done so since 1995 and these services are now provided throughout Barnstable County as well as Martha’s Vineyard and Nantucket.

ASGCC asserts without challenge that, in the nation, Massachusetts, and particularly Barnstable County, the “epidemics of HIV and HCV are a medical and public health crisis.” Experts in the area agree that intravenous drug users are particularly vulnerable to these infections. The shared use of injection equipment has been identified as “one of the primary sources of HIV, HCV, and HBV (Hepatitis B) transmission in the United States.” Recent surveys have shown, according to ASGCC, that approximately one-third of all intravenous drug users between the ages of 18 and 30 years are infected with HCV and that, among older users, the rate is at 70% to 90%. Barnstable County, it states, currently has the highest rate of HCV infection among 15-25 year-olds in Massachusetts. Among its clients generally, ASGCC found that in July, August and September of this year, 70% tested positive for HCV.

ASGCC began its present program at the Hyannis site in 2009. Its new registrations have increased in number over the years: 18 in 2010; 34 in 2011; 34 in 2012; 72 in 2013; and 183 in 2014.

The approach taken by ASGCC with respect to intravenous drug users is one which the agency and its witnesses assert is standard and effective. Known as “harm reduction,” the approach is described as “a set of strategies aimed at reducing the negative consequences of substance abuse, including disease transmission and overdose, while encouraging and facilitating entry into substance abuse treatment.” A phlebotomy-trained “harm reduction specialist” at the Hyannis facility testified as to how this approach is employed as part of the intake procedure and

regular care for intravenous drug users. The new client's name and date of birth are recorded upon a card which is coded to protect the person's privacy. The new client is then asked about health insurance. If the person is not insured, guidance is offered to assist the person in acquiring such insurance, most commonly MassHealth. Inquiry is then made of the new client concerning the nature and frequency of his or her intravenous drug ingestion. This information is useful in determining the number of needles and syringes to be issued to the client. This information is also maintained by the agency to keep track of consistent and inconsistent behaviors. Particular attention is paid to counselling all clients toward safe practices and away from shared use and reuse of injection equipment. The client is then tested for HIV and HCV. Additionally, clients are counseled in the areas of vein care, available drug-abuse treatment, and the risks of sexual transmission. Clients in need of acute medical care are brought to the nearby Duffy Community Health Center.

The ASGCC program is not a "needle exchange program." It is a "needle *access* program." It does not sell needles or syringes and never has. It issues them free of charge upon request. The issuance of new needles and syringes is not dependent upon the return of used needles and syringes. However, such return is actively encouraged by the program, and clients are continually counseled about the hazards of public discard. A kiosk for dropping off used injection materials stands in the lobby of the ASGCC office to accommodate safe client returns. Also, individualized sharps containers are issued to clients along with their needles. ASGCC reports that during its most recent fiscal year, it issued 112,604 syringes and received back 115,209, for a rate of return of 102%.

ASGCC also issues other supplies with the intent of helping its clients to protect their health while engaging in intravenous drug use. These supplemental supplies are likely to include

tourniquets, sterile water, alcohol wipes, clean cotton, and cookers which are color-coded to help avoid shared or repeated use. Additionally, Narcan (Naloxone), an opioid antagonist used to reverse overdoses, is provided to clients, along with instruction for its appropriate use.⁴ ASGCC states that it issued Narcan to 488 persons in its last fiscal year (i.e. July 1, 2014 to June 30, 2015) and that 216 overdose reversals were reported. The agency reports 66 overdose reversals in just the first three months of the current fiscal year.

ASGCC sees its mission as crucial in the context of "Massachusetts's growing opioid crisis." It points to studies showing that many younger drug users have transitioned to intravenous abuse from oral oxycodone abuse within the past 1½ years. Experts in the field have concluded that, as a consequence of this rapid transition has been that between 2012 and 2014, there has been a 57% rise in opioid overdose deaths in Massachusetts. In 2014 alone, 1,200 people in Massachusetts died from unintentional opioid overdoses. Fifty-one of those deaths occurred in Barnstable County.

ASGCC has demonstrated that its approach of "harm reduction" has considerable support among public health professionals, particularly those engaged in attempting to control the spread of infectious diseases such as HIV and HCV. Experts agree that the best way to avoid infection through intravenous drug use, of course, is to avoid abusing drugs. Short of that optimum, the goal of the DPH's Bureau of Infectious Diseases, in the words of Kevin Cranston, its director, is for intravenous drug users to use "a sterile syringe every time a person injects." Ease of access is key to achieving this goal in the opinion of Cranston. He further explained that DPH as a matter of policy does not insist that its pilot programs require that a client return a used needle and/or

⁴ Some of these materials, labelled with ASGCC's contact information, have been offered by the Town to demonstrate a connection between ASGCC and at least some of the publicly discarded needles and syringes discovered by the Town.

syringe in order to obtain a new one. DPH also does not insist that its programs require that clients prove their identity or age. "The more needles you distribute, the safer people are," testified Dr. Robert Heimer, Professor of Microbial Diseases at the Yale University School of Public Health and Professor of Pharmacology at the Yale University School of Medicine. He also testified that research has shown that programs providing their clients with "as many syringes as they need" tend to have greater participation and tend to have better rates of return of used equipment. He added that he favors "relaxed" programs with educational components as being more effective at promoting safe practices among the at-large community of intravenous drug users. He observed that, where needles are scarce, there is a greater likelihood of an outbreak of HIV and HCV infections. Dr. Camilla S. Graham of the Division of Infectious Disease at Boston's Beth Israel Deaconess Medical Center stated that there is "conclusive scientific evidence" that programs providing access to clean needles decrease new HIV infections, increase the numbers of injection drug users who are referred to and retained in substance abuse treatment, and uniquely reach and furnish medical care to disenfranchised populations who are at high risk of HIV infection. She also asserted that programs such as that of ASGCC, providing easy access to clean injection equipment, increase the rates of people seeking treatment *while not increasing substance abuse*.

The cease and desist order issued by the Town was in effect for approximately forty days,⁵ and ASGCC complied with the order. Previously, ASGCC had been visited by 20 to 30 intravenous drug users daily. After the order, the rate fell to 2 to 3 per day.

⁵ The Town of its own accord suspended its September 23, 2015 order on November 3, 2015 for one week for the stated purpose of determining whether the parties could resolve their differences. The instant complaint was filed on November 10, 2015.

ASGCC states that the availability of hypodermic needles and syringes provided by pharmacies was an inadequate alternative to its "harm reduction" model during the period of its ceased operation. In the evidence presented, the consensus of opinion supports this position. Limited supply has been cited as a serious issue for pharmacy-based distribution, with some outlets imposing strict restrictions upon availability. A survey conducted by ASGCC during the cessation revealed that several pharmacies were repeatedly out of stock while one pharmacy chain limited sales to ten needles per person in any one day. Also, traditional pharmacies have been historically viewed as not being "consumer friendly" to the intravenous-drug-using market. Affordability has been a further issue cited, though ASGCC grants that many of its clients are eligible for MassHealth. Of particular significance to the issues here at hand, though, is that none of the area's pharmacies provide receptacles for the safe discard of used needles and syringes and none provide free Narcan to assist their customers in countering overdoses.

Though, as earlier indicated, the court questions the precise statutory basis cited by the Town in its cease and desist notice, the Town is certainly within its historical authority to act promptly, through its board of health, to remove or otherwise interdict "all nuisances, sources of filth, and causes of sickness within its town...which may, in its opinion, be injurious to the public health." G.L. c. 111, § 122.. See *Baker v. Boston*, 29 Mass. 184, 12 Pick. 184, 192-193 (1831). And it may act with special dispatch in emergency situations. See G.L. c. 111, § 30; 310 CMR § 11.05. Whether the Town exercised its authority appropriately under the circumstances here presented, however, is a question best left for a more thorough hearing of ASGCC's complaint and the Town's formal response thereto. In the meantime, this court accepts that the Town's attention to what it perceived to be a public health risk posed by the unprotected discard of used hypodermic needles and syringes was prudently grounded.

The Town's foremost concern from these unprotected discards is the risk of infection to members of the public from needle stick injuries. It is an understandable concern. However, even the Director of its Board of Health granted that such risk is "very low." The aforementioned Dr. Heimer, with his experience specializing in infectious diseases and substance abuse, opined that the chances of such transmission was "miniscule." He estimated that the risk of a HCV infection from a needle stick is approximately 1 in 10,000 and that the corresponding risk of an HIV infection is approximately 1 in a million.⁶ Of course, infection is not the only consequence of needle stick injuries. This court received and credits testimony that police officers and other town employees are at increased risk of such injuries owing to the nature of their work. That risk is an ever-present stressor upon such employees and their families. Even if found not to be infected, such employees will have undergone arduous testing, suspension of regular activities, and worrisome waiting. Several needle sticks to police over a period of ten years and one recent near miss by a public works employee were reported; however, no evidence of a transmitted infection was presented.

Both sides have responded to this risk. The Town has installed sharps receptacles at four of its five fire stations. According to witnesses, such devices, if sturdy and designed to prevent tampering, have shown themselves to be effective in facilitating the safe disposal of injection materials. ASGCC, in addition to distributing individual sharps containers and maintaining its own disposal kiosk, has also conducted sweeps of its own neighborhood to locate and secure discarded materials. Both sides have also shown a willingness to expand these efforts and to

⁶ The Town offered into evidence a "fact sheet" published by the World Health Organization (updated November, 2015), concerning "waste generated by health-care activities." The document offered that a person experiencing a stick injury from a needle earlier used on an infected patient had a risk of infection of 30% for Hepatitis B, 1.8% for Hepatitis C, and 0.3% for HIV. No evidence was offered concerning the applicability of these figures to random public settings.

coordinate their resources in doing so (e.g. installing secure sharps receptacles in public comfort facilities, increasing public awareness and education). This willingness, to the court's view, shows the most promise, in both focus and scope, to address the Town's foremost concern.

Greater and more immediate are the risks posed by the ASGCC program ceasing its operation. No witness, no exhibit, and no report offered into evidence denied ASGCC's foundational claim that we today face a "crisis" from the combined epidemics of opiate overdose and HIV/HCV transmission. It is upon this foundation that the plaintiff asserts, "ASGCC's work saves lives."

The assertion is apt. Unquestionably, it is the free needles that draw people to ASGCC's door. These aren't just any people. They are extremely vulnerable people. They are men and women, young and old, people from all places and from all stations. They are our brothers and our sisters. They are driven by a disease that has taken away their choices and left them with a need. To fill this need they require needles and syringes. They can obtain these items under reasonably relaxed conditions from ASGCC --- free of charge, clean, and supplied in ample enough quantities to reduce the necessity to share or reuse. And they get some advice, some equipment, and some training to help keep themselves and others safe. And they get a substance to help keep themselves and others alive.

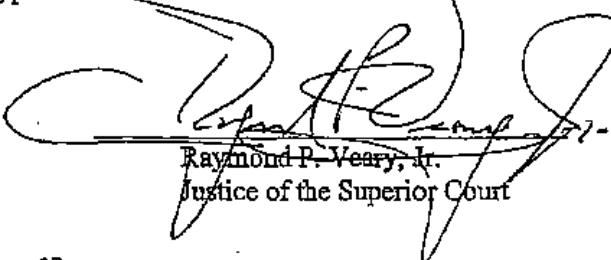
ASGCC's "harm reduction" approach may not be the perfect approach. No witness has claimed that it is. However, the evidence here presented has persuaded this court that, in this place and at this time, it is an effective approach. It "saves lives." Failing to grant ASGCC's requested injunctive relief would quite clearly place lives in jeopardy.

ORDER

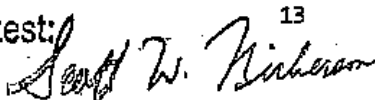
For the foregoing reasons, it is hereby ORDERED that the Plaintiff's Motion for a Preliminary Injunction be ALLOWED in that:

- 1.) The defendants, their agents, and employees are preliminarily enjoined and restrained from enforcing the Town of Barnstable's cease and desist orders, issued against the plaintiff and dated September 22, 2015 and September 23, 2015, and from otherwise prohibiting, restricting and interfering with the possession, distribution and exchange of hypodermic needles and syringes at the plaintiff's place of business at 428 South Street, Hyannis, Massachusetts;
- 2.) On at least one occasion every thirty (30) days, a representative of ASCGG and a representative of the Town shall have a face-to-face meeting to discuss issues of mutual concern relating to the ASCGG's possession, distribution and exchange of hypodermic needles and syringes within the town of Barnstable, the topics of said meetings to include at a minimum:
 - a. Ways in which the parties may combine or coordinate efforts to reduce instances of unprotected and public discard of used injection materials;
 - b. Ways in which the parties may coordinate efforts to reduce the risk of needle stick injury, including public education;
 - c. The feasibility of developing a set of metrics to measure the strengths and weaknesses of the working hypothesis known as "harm reduction."

Dated: December 1, 2015


Raymond P. Veary, Jr.
Justice of the Superior Court

A true copy, Attest:


13
Scott W. Nicholson
Clerk

Addendum 42

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
CIVIL ACTION
No. 12-0837

HOLYOKE CITY COUNCIL & others¹
Plaintiffs

v.

CITY OF HOLYOKE & others²
Defendants

MEMORANDUM OF DECISION AND ORDER ON
CROSS-MOTIONS FOR SUMMARY JUDGMENT

In August 2012, the City of Holyoke ("Holyoke") implemented a needle exchange program administered by Tapestry Health Systems, Inc. ("Tapestry"). The question before the court is whether Holyoke did so lawfully.

The plaintiffs comprise the Holyoke City Council (the "City Council") along with six of the fifteen City Council members, individually. Their amended complaint seeks injunctive relief against Holyoke, Alex B. Morse, in his official capacity as the Mayor of Holyoke, Robert S. Mausel, Katherine M. Liptak and Patricia A. Mertes, as Commissioners of the Holyoke Board of Health, and Tapestry (collectively referred to as the "defendants") (Count I); declaratory judgment pursuant to G. L. c. 231A (Count II); and an order in the nature of mandamus pursuant to G. L. c. 249, § 5 (Count III). Both defendants and plaintiffs now move for summary judgment on all counts of the amended complaint.

¹ Kevin Jourdain, Daniel Bresnahan, Todd McGee, Joseph McGilverin, James Leahy, and Linda Vacon.

² Alex B. Morse, in his official capacity as the Mayor of Holyoke, Robert S. Mausel, Katherine M. Liptak, and Patricia A. Mertes, as Commissioners of Holyoke Board of Health; and Tapestry Health Systems, Inc.

For the reasons set forth below, defendants' motion for summary judgment is **DENIED** and the plaintiffs' cross-motion for summary judgment is **ALLOWED**.

BACKGROUND

The undisputed facts are summarized below:

Tapestry is a non-profit business entity which promotes the health and well-being of its clients, including those in Holyoke. It maintains sites in Hampden, Hampshire, Franklin, and Berkshire Counties. Tapestry's promotional materials state that it offers family planning and reproductive health care to often marginalized individuals, such as young people, women living in poverty, recent immigrants, uninsured and underinsured persons, injection drug users, the homeless and men and women with HIV/AIDS, regardless of their ability to pay.

On July 9, 2012, Tapestry brought a proposal to operate a needle exchange program before the Holyoke Board of Health. The Holyoke Board of Health voted unanimously to approve Tapestry's proposed program (the "Tapestry program"). After receiving a complaint that the July 9, 2012, meeting violated the Open Meeting Law, the Holyoke Board of Health rescinded its July 9, 2012, vote and scheduled a second hearing for August 14, 2012, in order to consider the proposed needle exchange program.

On August 7, 2012, by a vote of thirteen to two, the City Council voted to:

contest the implementation of any needle exchange program within the City of Holyoke, when such implementation occurred without the approval of said city council; further, that the council authorize its president on its behalf to retain legal counsel and take such action as is reasonably necessary to contest any such implementation of a needle exchange program within the City of Holyoke.

Mayor Morse vetoed the City Council's August 7, 2012, order on grounds that "the city council president may not retain separate legal counsel on behalf of the City Council."

On August 14, 2012, the Board of Health once again approved the Tapestry program.

At the August 14, 2012, hearing, Holyoke Police Chief James M. Neiswanger stated that police officers are at high risk when dealing with intravenous drug users and potential needlesticks. Chief Neiswanger expressed his strong support for the needle exchange program to promote the health of the community. City Councilors and members of the public expressed their opinions both in favor of and against the proposed needle exchange program. Based upon data, research, and expertise of public health officials, Mayor Morse expressed his full support for the program as a safe and efficient way to save lives and protect the people in the City of Holyoke by decreasing incidents of HIV and Hepatitis C.

On August 14, 2012, Mayor Morse wrote to then Commonwealth of Massachusetts Department of Public Health Commissioner John Auerbach and informed him that Holyoke had approved the Tapestry program. On August 17, 2012, the Department of Public Health forwarded a proposed contract to Tapestry to fund a portion of its needle exchange program in Holyoke. Both Tapestry and the Commonwealth executed the Department of Public Health contract (the "DPH contract").

The August 17, 2012, Amendment to the DPH contract demonstrates that the scope of the Tapestry program extends beyond needle exchange alone. In particular, I note the following provisions:

This amendment is to support the recently approved Syringe Services Program (SSPs) for Holyoke, MA. This SSP is a public health integrated communicable disease and comprehensive medical and substance use treatment and prevention services program to decrease HIV, HCV and STI transmissions among injection drug users and their partners. In addition to access to sterile injection equipment and disposal services, this program will provide required and allowable program components.

The following required and allowable/approved program components will be delivered directly and through [sic] area provider collaborations: client recruitment/engagement, integrated HIV, HCV, STI screening, linkage to care, referral (with the exception of the three approved HIV partner services

providers) for HIV and STD partner services, prevention interventions serving HIV+ individuals interventions targeted to high-risk or persons with unknown HIV status.

Allowable/approved program components: syringe services programming, overdose education and/naloxone distribution, evidence-based HIV prevention interventions for individuals at highest risk for acquiring HIV, and referral/access to pre-exposure prophylaxis (PrEP) and non-occupational post exposure prophylaxis (nPEP) services.

The Department will require new or revised Memoranda of Understanding or equivalent documentation of agreement within 90 days of approval of this amendment between Tapestry Health Systems and care providers and social service providers in Holyoke and surrounding Communities that will be involved in mutual referral and service coordination relationships with the Holyoke Syringe Services Program.

DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate when the material facts are undisputed and “the moving party is entitled to judgment as a matter of law.” Mass. R. Civ. P. 56 (c); *Godfrey v. Globe Newspaper Co., Inc.*, 457 Mass. 113, 118-119 (2010). To be successful, the moving party must either submit affirmative evidence that negates one or more elements of the other party’s claim or demonstrates that the opposing party has no reasonable expectation of proving an essential element of its case. See *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991). The opposing party cannot defeat the motion simply by resting on the pleadings and mere assertions based on disputed facts. *LaLonde v. Eissner*, 405 Mass. 207, 209 (1989). “Any doubts as to the existence of a genuine issue of material fact are to be resolved against the party moving for summary judgment.” *Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 550 n.6 (2008). “[T]he judge must consider the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” but “may not consider the credibility of a

witness or the weight of the evidence." *McGuinness v. Cotter*, 412 Mass. 617, 620, 628 (1992). "[C]onclusory statements, general denials, and factual allegations not based on personal knowledge are insufficient to avoid summary judgment." *O'Rourke v. Hunter*, 446 Mass. 814, 821 (2006).

The parties present no genuine issues of material fact. Their controversy is ripe for summary judgment adjudication. At the core of the parties' cross-motions for summary judgment is a determination whether G. L. c. 111, § 215, and G. L. c. 4, § 4, govern the parties' actions, as plaintiffs maintain, or whether G. L. c. 94C, §§ 27, 27A, do so, as defendants maintain.

B. Standing

As a threshold matter, defendants challenge the plaintiffs' standing to bring this action. The plaintiffs have such standing. Standing is treated as an issue of subject matter jurisdiction. *Sullivan v. Chief Justice for Admin. & Mgmt. of the Trial Court*, 448 Mass.15, 21 (2006). To have standing in any capacity, a litigant must show that the challenged action has caused the litigant injury. *Slama v. Attorney Gen.*, 384 Mass. 20, 24 (1981). "Injuries that are speculative, remote, and indirect, are insufficient to confer standing." *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 322 (1998). The injury alleged must be a direct consequence of the complained of action. *Id.*

Plaintiffs have asserted a claim that Mayor Morse and the Holyoke Board of Health usurped their legislative authority in authorizing the Tapestry program. An encroachment on legislative authority, as such, constitutes the sort of "injury" which imparts standing to entities such as the City Council. The City Council acted within the lawful exercise of its authority in voting to file this lawsuit.

The fact that the plaintiffs do not challenge the merits of the Tapestry program does not alter plaintiffs' standing. It is the claim of encroachment on legislative authority which imputes standing to the plaintiffs. Contrary to defendants' assertion, plaintiffs need not allege or demonstrate that the City Council would have voted against implementation of the Tapestry program. The City Council's failure to interfere with the Tapestry program, similarly, does not bar the plaintiffs' standing.

C. General Laws c. 111, § 215; G. L. c. 4, § 4; and Holyoke City Charter

In 1993, the Legislature enacted G. L. c. 111, § 215, authorizing up to ten pilot needle exchange programs. General Laws c. 111, § 215, reads in part:

The department of public health is hereby authorized to promulgate rules and regulations for the implementation of not more than ten pilot programs for the exchange of needles in cities and towns within the commonwealth, upon nomination by the department. Local approval shall be obtained prior to implementation of each pilot program in any city or town.

While defendants maintain that G. L. c. 111, § 215, does not govern this action, the parties dispute the definition of the term "local approval." The defendants maintain that a vote of the municipal Board of Health, along with the Mayor's approval, constitutes "local approval." The plaintiffs maintain that "local approval" requires a vote of the City Council. The plaintiffs draw upon G. L. c. 4, § 4, in arguing that G. L. c. 111, § 215, mandates that a municipality's legislative body, such as the City Council, must approve such a needle exchange program.

General Laws c. 4, § 4, entitled "Acceptance of Statutes by City, Town, Municipality or District," reads:

Whenever a statute is to take effect upon its acceptance by a municipality or district, or is to be effective in municipalities or districts accepting its provisions, this acceptance shall be, except as otherwise provided in that statute, in a municipality, by a vote of the legislative body, subject to the charter of the municipality, or, in a district, by vote of the district at a district meeting.

The Holyoke's City Charter establishes that the City Council exercises all legislative powers for the municipality and creates a separation of powers. The Holyoke City Charter at Title I, § 2 provides:

The administration of all the fiscal, prudential and municipal affairs of said city, with the government thereof, shall, except the affairs of the public schools of said city, be vested in an executive department, which shall consist of one officer, to be called the mayor, and in a legislative department, which shall consist of a single body, to be called the city council, the members whereof shall be called councilors. The executive department shall never exercise any legislative power, and the legislative department shall never exercise any executive power, except as herein otherwise provided.

The defendants argue that the Mayor and the Board of Health acted within their powers when they implemented the program without the approval of the City Council because (1) G. L. c. 94C, §§ 27, 27A, govern this controversy, not G. L. c. 111, § 215, and G. L. c. 4, § 4; and, (2) because Section 46-33 of the Holyoke Code of Ordinances authorizes "the board of health . . . [to] make all regulations which it may deem necessary in regard to the removal and abatement of filth, rubbish, nuisances, and causes of disease," a vote by the Holyoke Board of Health constituted the requisite "local approval" under G. L. c. 111, § 215.

D. General Laws c. 94C, §§ 27, 27A

In 1993, the Legislature revised G. L. c. 94C, § 27, to decriminalize the distribution and possession of needles obtained through an approved pilot needle exchange program as set forth in G. L. c. 111, § 215. Specifically, from 1993 to 2006, Section 27(f) provided in relevant part:

Notwithstanding any general or special law to the contrary, needles and syringes may be distributed or possessed as part of a pilot program approved by the [DPH] in accordance with [G. L. c. 111, § 215] and any such distribution or exchange of said needles or syringes shall not be a crime.

Added by St.1993, c. 110, § 142 (July 19, 1993).

In 2006, the Legislature amended G. L. c. 94C, § 27, to remove the reference to legal possession and distribution of needles through a needle exchange program. The current version of Section 27, as amended in 2006, legislates only the sale of hypodermic syringes and needles, but not the possession or non-sale distribution of them.

Hypodermic syringes or hypodermic needles for the administration of controlled substances by injection may be sold in the commonwealth, but only to persons who have attained the age of 18 and only by a pharmacist or wholesale druggist licensed under the provisions of chapter 112, a manufacturer of or dealer in surgical supplies or a manufacturer of or dealer in embalming supplies. When selling hypodermic syringes or needles without a prescription, a pharmacist or wholesale druggist must require proof of identification that validates the individual's age.

Added by St.2006, c.172, § 3 (eff. Sept. 18, 2006) entitled "An Act relative to HIV and Hepatitis C prevention" (the "2006 Act").³ As amended, G. L. c. 94C, § 27, legalized the manner in which hypodermic needles and syringes may be lawfully "sold" by authorized entities to persons who have attained the age of eighteen. The statute eliminated a number of prohibitions relating to the purchase, distribution and possession of syringes without medical authorization. The amendment to G. L. c. 94C, § 27, did not include a "local approval" requirement similar to G. L. c. 111, § 215.

The 2006 Act also created G. L. c. 94C, § 27A(a), entitled "Collection and disposal of spent, non-commercially generated hypodermic needles and lancets," which provides that:

the department of public health, in conjunction with other relevant state and local agencies and government departments, shall design, establish and implement, or cause to

³ See also St.2006, c. 172, § 15, of the 2006 legislation enacted as a Special Law and providing that, "The department of public health shall perform a comprehensive study and review of the existing needle exchange programs established pursuant to section 215 of chapter 11 of the General Laws. The study shall include, but not be limited to: a review and analysis of the relationship between the provisions of this act and the operation of the needle exchange programs; the success of existing needle exchange programs; whether existing needle exchange programs should be maintained without change, phased out or expanded to other municipalities."

be implemented a program for the collection and disposal of spent non-commercially generated hypodermic needles and lancets

General Laws c. 94C, § 27A, further provides that "[t]he department may collaborate with private companies as well as not-for-profit agencies when designing, establishing and implementing this program." *Id.* General Laws c. 94C, § 27A(b), provides for the creation of "Sharps disposal programs."

The Code of Massachusetts Regulations implements the provisions of G. L. c. 94C, §§ 27, 27A. In order to effectuate the statutory mandate to collect and dispose of used syringes, 105 Code Mass. Regs. § 480.125(B) provides that "state and local agencies as well as businesses and non-profit organizations may establish sharps disposal programs." Likewise, the Code of Massachusetts Regulations authorizes municipal Boards of Health, such as the Holyoke Board of Health, to inspect and report on such disposal programs. 105 Code Mass. Regs. § 480.135(F), (G) provides, in pertinent part as follows, "In accordance with M. G. L. c. 94C, § 27A, federal, state and local agencies as well as businesses and non-profit organizations may establish sharps disposal programs"

E. Analysis

A plain reading of G. L. c. 111, § 215, and G. L. c. 94C, §§ 27, 27A, demonstrates that G. L. 94C, §§ 27, 27A, did not supersede G. L. c. 111, § 215. Courts interpret statutory language according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated. See *Boston Police Patrolmen's Ass'n, Inc. v. City of Boston*, 435 Mass. 718, 719-720 (2002); *Commonwealth v. George W.*

Prescott Publishing Co., LLC, 463 Mass. 258, 264 (2012)(statutory language should be given effect consistent with its plain meaning and in light of the legislative aim unless doing so would achieve illogical result). Rules of statutory construction create a presumption that statutes are to be interpreted in a manner which is harmonious. See *Town of Hadley v. Town of Amherst*, 372 Mass. 461, 51 (1977).

The legislative history of needle exchange programs in Massachusetts demonstrates that G. L. c. 94C, § 27, was always circumscribed by the requirements of G. L. c. 111, § 215. General Laws c. 94C § 27, thus, never created a separate or independent authority for operating needle exchange programs as defendants argue. The 1993-2006 provision in G. L. c. 94C § 27, for a needle exchange program, in fact, was duplicative whereas G. L. c. 111, § 215, already governed such programs. In 2006, hence, the Legislature revised Section 27 to delete the extraneous needle exchange provisions of that statute. The Legislature further ratified the validity of G. L. c. 111, § 215, in the language of St.2006, c. 172, § 15.

The plain reading of the statutes along with their legislative history demonstrate that G. L. c. 111, § 215, and G. L. c. 94C, §§ 27, 27A, reflect a legislative continuum started in 1993, ratified in 2006 and continuing to present. None of the provisions set forth in G. L. c. 94C, §§ 27, 27A, permit non-sale distribution of hypodermic syringes and needles. Section 27 addresses the sale of hypodermic syringes and needles. Section 27A addresses their collection and disposal. Only G. L. c. 111, § 215, addresses needle exchange programs. The decriminalization of the possession of hypodermic syringes and needles as set forth in this statutory framework is consistent with the permissible sale of hypodermic syringes and needles. It does not, however, create legislative fiat for the non-sale distribution of hypodermic syringes and needles outside of the provisions of G. L. c. 111, § 215.

The parties' controversy pertaining to free distribution of hypodermic needles and syringes is governed by G. L. c. 111, § 215, and not G. L. c. 94C, §§ 27, 27A. Importantly, those activities set forth in the DPH contract apart from the direct distribution of hypodermic needles and syringes are not subject to the requirements of G. L. c. 111, § 215. For example, the Tapestry program is free to provide needle collection and disposal services pursuant to G. L. c. 94C, § 27A. It requires no municipal approval to do so. Similarly, Tapestry is free to engage in other services pursuant to the DPH contract apart from the non-sale distribution of hypodermic needles and syringes.

The program's non-sale distribution of hypodermic needles and syringes requires my consideration of two issues which arise under G. L. c. 111, § 215: first, whether the Tapestry program was a pilot program at the time it was authorized in 2012; and second, whether lawful local approval was obtained prior to implementation of the Tapestry program.

A pilot program is commonly understood to be a test program, an experimental or short-term trial that is subject to amendment, termination, or replacement. See, e.g., *United States Jaycees v. M.C.A.D.*, 391 Mass. 594, 598 (1984) ("pilot program" to allow local chapters to accept women authorized, initiated, and later terminated). While never denominated a "pilot" program, the Tapestry program was one of five needle exchange programs in existence in the Commonwealth at the time of its creation. In his August 14, 2012 letter to Department of Public Health Commissioner Auerbach, indeed, Mayor Morse referenced the creation of the Tapestry program "in accordance with Massachusetts General Law c. 111, § 215." In light of the circumstances at the time of the Tapestry program's creation, I accept that the Tapestry program was a pilot program for the purposes of G. L. c. 111, § 215.

The second issue presented is whether lawful "local approval" was obtained prior to implementation of the Tapestry program. The provisions of G. L. c. 111, § 215, G. L. c. 4, § 4, the Holyoke City Charter and the Holyoke City Ordinances are guiding. General Laws c. 111 is entitled "Public Health." Notably, G. L. c. 111, § 122, authorizes municipal boards of health, such as the Holyoke Board of Health, to "examine into all nuisances, sources of filth and causes of sickness within its town . . . which may, in its opinion, be injurious to the public health [and] shall destroy, remove or prevent the same as the case may require . . ." *Id.*

Holyoke City Ordinance Sec. 46-33 echoes the provisions of G. L. c. 111, § 122. Section 46-33 provides as follows:

The board of health may make rules and regulations . . . which it may deem necessary in regard to the removal and abatement of filth, rubbish, nuisances and causes of disease.

(Code 1972, § 9-3). The Board of Health is an unelected body which the Mayor appoints. See Holyoke City Charter, Title VI, § 34.

While G. L. c. 111, § 215, is silent as to the definition or usage of the term "local approval," G. L. c. 4, § 4, squarely addresses the issue in mandating a procedure for statutes which require "acceptance by a municipality." The Legislature was clear – acceptance by a municipality, "except as otherwise provided, . . . [is] by a vote of the legislative body, subject to the charter of the municipality." *Id.*

I am mindful of the critically important public health policies which anchor the defendants' arguments. Nonetheless, the legislative mandates set forth in G. L. c. 111, § 215, and G. L. c. 4, § 4, ultimately govern the parties' actions. General Laws c. 111, § 215, makes no exception to the provisions of G. L. c. 4, § 4. The Holyoke City Charter does not provide that

the executive may exercise legislative power in local option or statutory local approval matters.

The separation of municipal powers compels my decision.

The significant public health policies supporting needle exchange programs are important to bear in mind in the execution of the within Order. All parties understand the depths of the opioid crisis in Holyoke as well as throughout the Commonwealth. All parties respect the importance of the needle exchange services the Tapestry program has provided over the past three and one-half (3 ½) years. Accordingly, I have stayed the within Order for one hundred twenty (120) days in order to give the City Council the opportunity to consider the merits of the non-sale distribution of hypodermic syringes and needles portion of the Tapestry program and either to approve of it or to terminate such service alone.

ORDER

For all the foregoing reasons, it is hereby ORDERED that the Defendants' Motion for Summary Judgment is DENIED, and that the Plaintiffs' Cross-Motion for Summary Judgment is ALLOWED as to Counts II and III of their Amended Complaint. To the extent Count I of the Amended Complaint sought only preliminary injunctive relief, and that by Order of this Court, dated November 28, 2012 (Carey, J.), such relief was denied, Count I is dismissed.


It is DECLARED that the non-sale distribution of hypodermic syringes and needles portion of the Tapestry program was not established or implemented with the requisite local approval of the Holyoke City Council.

It is further ORDERED that:

(1) the non-sale distribution of hypodermic syringes and needles portion of the Tapestry program must be discontinued unless and until it is authorized by vote of the Holyoke City Council; and

(2) this Order shall be STAYED for 120 days in order to give the Holyoke City Council the opportunity to consider the merits of the non-sale distribution of hypodermic syringes and needles portion of the Tapestry program and either to approve of it or to terminate such service alone.

March 14, 2016


Mark D Mason
Justice of the Superior Court

1279CV00837 Holyoke City Council et al vs. City of Holyoke et al

Case Type	Equitable Remedies	Initiating Action:	Declaratory Judgment G.L. c. 231A
Case Status	Open	Status Date:	10/12/2012
File Date	10/12/2012	Case Judge:	
DCM Track:	A - Average	Next Event:	

All Information	Party	Event	Tickler	Docket	Disposition
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Docket Information

Docket Date	Docket Text	File Ref Nbr.
10/12/2012	Complaint & civil action cover sheet filed	1
10/12/2012	Origin 1, Type D13, Track A.	
10/12/2012	Memorandum of law in support of application for injunctive relief	2
10/12/2012	Pliffs' MOTION for Short Order of Notice	3
10/12/2012	Motion (P#3) ALLOWED. Short order of notice to issue returnable on October 17, 2012 at 2:00 p.m. (Richard Carey, Justice)	
10/17/2012	Defendant Tapestry Health Systems Inc's emergency MOTION to continue hearing on pliffs.' application for injunctive relief scheduled for October 17, 2012 to October 24, 2012. - Assented to. - Hard copy to follow	5
10/17/2012	Motion (P#5) ALLOWED. Date to be determined. (Richard Carey, Justice) Notices fx: 10/17/2012	
10/17/2012	Atty Elizabeth Rodriguez-Ross's notice of appearance for defendants, City of Holyoke, Alex B. Morse, Robert S. Mausel, Katherine M. Liptak, and Patricia A. Mertes.	6
10/17/2012	Defendant Holyoke City Council, Alex B Morse, Robert S Mausel, Katherine M Liptak, Patricia A Mertes's MOTION to order the Plaintiffs to join the Department of Public Health as a Defendant to this action.	7
10/18/2012	Notice sent to appear on 10/25/2012 at 2:00 p.m. for a hearing on (#1).	8
10/18/2012	Opposition to plaintiff's application for injunctive relief filed by Tapestry Health Systems Inc	9
10/19/2012	Defendant City of Holyoke, Alex B Morse, Robert S Mausel, Katherine M. Liptak, Patricia A. Mertes's Emergency MOTION to join the "Department of Public Health" as a Defendant to this action in accordance with M.R.C.P. 19 and M.G.L. ch. 231A, S 8.	10
10/19/2012	Motion (P#10) ALLOWED (Richard Carey, Justice) Notices faxed 10/19/2012	
10/24/2012	Memorandum in opposition to plaintiffs.' request for injunctive relief filed by City of Holyoke, Alex B. Morse, Robert S. Mausel, Katherine M. Liptak, and Patricia A. Mertes.	11
10/25/2012	Supplemental documentation in Opposition to the motion for preliminary relief, filed by defendant Tapestry Health Systems Inc.	12
10/25/2012	Hearing on (P#1) preliminary injunction held, matter taken under advisement. (Richard Carey, Justice)	
10/25/2012	Atty Michael Aleo's notice of appearance for Tapestry Health Systems Inc	13
11/02/2012	ANSWER: City of Holyoke and Alex B. Morse and Robert S. Mausel and Katherine M. Liptak and Patricia A. Mertes(Defendant). T.O.	14

Addendum 57

Docket Date	Docket Text	File Ref Nbr.
11/07/2012	ANSWER: Tapestry Health Systems Inc(Defendant)TO	15
11/28/2012	(dated 11/21/12) MEMORANDUM OF DECISION AND ORDER on the plaintiffs' request for injunctive relief. (Richard J. Carey, Justice). Copies faxed 11/28/12	16
11/28/2012	(P#1)(dated 11/21/12) DENIED. See Memorandum of Decision and Order of the Court. (Richard J. Carey, Justice) Notices faxed 11/28/2012	
06/05/2013	MOTION of Attorney Lisa A. Ball, on behalf of the plaintiffs, to strike appearance of plaintiffs counsel and to be allowed to enter her appearance on their behalf. (IMPOUNDED/Affidavit of Kevin Jourdain in Civil Vault - See End. #18)	17
06/05/2013	MOTION of Attorney Lisa A. Ball, on behalf of the plaintiffs, to Impound and seal plaintiff Kevin Jourdain's affidavit in support of striking his counsel's appearance and Affidavit.	18
06/05/2013	Atty Lisa A Ball's notice of appearance for Plaintiffs.	16.1
06/06/2013	Defendants' emergency MOTION to order the plaintiffs to comply with the Court's order to join the Department of Public Health and to stay proceedings until the Department of Public Health has been joined.	19
06/06/2013	(filed 6/5/13) Opposition to defendants' emergency motion to order the plaintiffs to comply with the Court's order to join the Department of Public Health and to stay the proceedings until the Department of Health has been served filed by Attorney Lisa A. Ball on behalf of the plaintiffs.	20
06/10/2013	(P#17) ALLOWED (Richard J. Carey, Justice) Fx: 6/11/2013	
06/10/2013	Motion (P#18) ALLOWED until further order of the Court. (Richard J. Carey, Justice) fx: 6/11/2013	
06/10/2013	Motion (P#19) In light of Attorney Balls' representation, which the Court accepts, that she was unaware that the plaintiffs had been ordered to join the Commonwealth of Massachusetts Department of Public Health as a party to the lawsuit, and will therefore serve the allowed motion and a copy of the complaint upon the Department of Public Health on or about June 5, 2013, the Court takes no action on the defendants' motion to order the plaintiffs to comply with the Court's order to join the Department of Public Health, and the defendants' motion to stay proceedings is denied. (Richard J. Carey, Justice) fx: 6/11/2012)	
06/13/2013	Atty Shawn P Allyn's LIMITED appearance for Lisa A Ball, Esquire in respect #22	21
06/13/2013	Plaintiffs' emergency MOTION on behalf of Lisa A. Ball Esq. for leave to extend the 9A period in which to serve an opposition to defendants' motion to disqualify plaintiffs' counsel.	22
06/14/2013	(P#22) ALLOWED. (Richard J. Carey, Justice) fx: 6/14/2013	
06/17/2013	SERVICE RETURNED: Department of Public Health(Defendant) (on Original Complaint)	23
07/30/2013	Defendant Department of Public Health's Notice of intent to file motion to dismiss the plaintiff's complaint.	24
08/02/2013	Defendants City of Holyoke, Alex B Morse's MOTION to strike the notice of appearance of Lisa A. Ball, Esq.	25
08/05/2013	Plaintiffs' MOTION in opposition to Defts. motion to strike/and or disqualification of plaintiff's counsel. #25	26
08/12/2013	Request of Atty. Egan for deft., City of Holyoke for leave of Court for permission to reply to Plaintiff's opposition to Defendant's motion to strike the Appearance of Lisa A. Ball, Esq. #26 - Conflict Ref. to A session	27

Docket Date	Docket Text	File Ref Nbr.
08/12/2013	(P#25) Schedule for hearing. (Constance M. Sweeney, Justice) fx:8/13/2013	
08/14/2013	Motion (P#27) DENIED. Any response can be incorporated in to argument at the time of hearing. (Constance M. Sweeney, Justice) fx: 8/15/2013	
08/28/2013	Amended complaint.	28
08/29/2013	Defendant Department of Public Health's MOTION to Dismiss (MRCP 12b) Complaint of the plaintiffs.	29
09/16/2013	Plaintiffs' MOTION to dismiss party plaintiff Anthony Soto	30
09/18/2013	SERVICE RETURNED: (amended complaint) Department of Public Health(Defendant)	31
02/12/2014	Plaintiffs' Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, Brenna McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Anthony Soto Individually, Linda Vacon Individually's MOTION to dismiss party plaintiff Brenna McGee.	32
02/12/2014	Attorney, Lisa A Ball's MOTION to withdraw as counsel of record for plaintiffs' Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, Brenna McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Anthony Soto Individually, Linda Vacon Individually.	33
02/19/2014	(P#33) ALLOWED without opposition and because attorney Brunault has filed the attached appearance. (John Ferrara, Justice) Notices faxed/mailed 2/28/2014	
02/19/2014	Atty Harold F Brunault's notice of appearance for Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, Brenna McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Anthony Soto Individually, Linda Vacon Individually.	34
04/02/2014	(dated 3/18/2014)Motion (P#30) ALLOWED by agreement (Edward J McDonough, Justice) Notices faxed 4/2/2014	
04/02/2014	(Dated 3/18/2014)Motion (P#32) ALLOWED by agreement (Edward J McDonough, Justice) Notices faxed 4/2/2014	
04/15/2014	JUDGMENT: Anthony Soto is dismissed as a party-plaintiff (Tina Page, Justice). Copies faxed 4/15/2014	35
04/15/2014	JUDGMENT: Brenna McGee is dismissed as a party-plaintiff (Tina Page, Justice). Copies faxed 4/15/2014	36
04/15/2014	Party status: Plaintiff McGee Individually, Brenna: Dismissed;	
04/15/2014	Party status: Plaintiff Soto Individually, Anthony: Dismissed;	
03/05/2015	Notice sent to appear for pre-trial conference on 3/30/2015	37
03/19/2015	Pliffs' MOTION to continue pre-trial conference to 6/22/15 – assented to.	38
03/31/2015	(P#38) (dated 3/24/15) ALLOWED (John S. Ferrara, Justice) Notices faxed 3/24/2015	
05/15/2015	Pliffs'. MOTION to amend tracking order re Rule 56 filing until June 12, 2015	39
05/15/2015	Defts'. joint opposition to motion to amend tracking order.	40
05/15/2015	Affidavit of compliance with Superior Court Rule 9A. (re #39)	41
05/15/2015	Notice of filing (re #39)	42
05/15/2015	Rule 9A List of documents (re #39)	43

Addendum 59

Docket Date	Docket Text	File Ref Nbr.
05/20/2015	Request of Withdrawal of hearing on the motion to dismiss #29 scheduled for 5/27/15 filed by Attorney Bart Q. Hollander for the defendant Department of Public Health.	44
05/21/2015	(P#39)(dated 5/19/15) For the reasons articulated in the joint opposition, the motion is DENIED. (Bertha D. Josephson, Justice). Notices faxed 5/20/2015	
05/26/2015	Motion (P#44) Allowed. (Richard J. Carey, Justice) Fx: 5/26/2015	
05/29/2015	Notice sent to appear for pre-trial conference on 6/22/2015. fx:	45
06/22/2015	Event Result: The following event: Trial Assignment Conference scheduled for 06/22/2015 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date Appeared:	
08/28/2015	The following form was generated: A Notice to Appear for Final Pre-Trial Conference was generated and sent to: Plaintiff: Harold F Brunault, Esq. Plaintiff: Lisa Ann Ball, Esq. Plaintiff: John Joseph O'Neill, Esq. Plaintiff: Todd McGee Individually Defendant: Elizabeth Rodriguez-Ross, Esq. Defendant: Heather G. Egan, Esq. Defendant: Heather G. Egan, Esq. Defendant: William C Newman, Esq. Defendant: Michael E. Aleo, Esq.	46
09/04/2015	City of Holyoke's Motion for leave to allow the withdrawal of Counsel Elizabeth Rodriguez-Ross as attorney of record as she is no longer the City Solicitor of Holyoke and allow successor counsel, Kara Lamb Cunha to represent the defendants. Applies To: City of Holyoke (Defendant); Morse, Alex B (Defendant); Mausel, Robert S (Defendant); Liptak, Katherine M (Defendant); Mertes, Patricia A (Defendant)	47
09/08/2015	Endorsement on Motion to withdraw (#47.0): ALLOWED (9/10/15) Faxed 9/11/15	
09/08/2015	Appearance entered On this date Kara Lamb Cunha, Esq. added for Defendant City of Holyoke	48
09/08/2015	Appearance entered On this date Kara Lamb Cunha, Esq. added for Defendant Alex B Morse	48
09/08/2015	Appearance entered On this date Kara Lamb Cunha, Esq. added for Defendant Robert S Mausel	48
09/08/2015	Appearance entered On this date Kara Lamb Cunha, Esq. added for Defendant Katherine M Liptak	48
09/08/2015	Appearance entered On this date Kara Lamb Cunha, Esq. added for Defendant Patricia A Mertes	48
09/10/2015	Defendant Tapestry Health Systems Inc's EMERGENCY Motion to continue final pretrial conference scheduled for September 24, 2015 at 2:00 p.m. to a date thereafter convenient for the Court. - Partial assent of Department of Public Health and the City of Holyoke.	49
09/14/2015	Event Result: The following event: Trial Assignment Conference scheduled for 09/24/2015 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Request of Defendant	
09/22/2015	Endorsement on Motion to continue final pretrial conference (#49.0): ALLOWED (dated 9/14/15) PTC is continued to 10/29/15. (faxed 9/17/15)	

Addendum 60

Docket Date	Docket Text	File Ref Nbr.
10/29/2015	Event Result: The following event: Trial Assignment Conference scheduled for 10/29/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled	
10/29/2015	Joint Pre-Trial Memorandum filed:	50
10/29/2015	Stipulation of dismissal with prejudice, without costs as to Department of Public Health's as to defendant, Massachusetts Department of Public Health Only on plaintiffs' Amended Complaint.	51
01/27/2016	Plaintiff, Defendant Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Linda Vacon Individually, City of Holyoke, Alex B Morse, Robert S Mausel, Katherine M Liptak, Patricia A Mertes, Tapestry Health Systems Inc's EMERGENCY Joint Motion for leave to file cross motions for summary judgment at this time.	52
02/01/2016	Endorsement on Motion for leave to file cross motions for summary judgment at this time. (Emergency Motion) (#52.0): ALLOWED (dated 01/28/16) Mailed 02/01/16	
02/26/2016	Defendant City of Holyoke, Alex B Morse, Robert S Mausel, Katherine M Liptak, Patricia A Mertes, Tapestry Health Systems Inc, City of Holyoke's Motion for Summary Judgment.	53
02/26/2016	Tapestry Health Systems Inc's Memorandum in support of Defendants motion for summary judgment.	53.1
02/26/2016	List of exhibits	53.2
	Defendants list of Exhibits.	
02/26/2016	Plaintiff Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Linda Vacon Individually, Anthony Soto Individually's Response to defendants' statement of facts.	53.3
02/26/2016	Plaintiff Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Linda Vacon Individually, Brenna McGee Individually, Anthony Soto Individually's Motion in opposition to Defendants' motion for Summary Judgment and Plaintiffs' request for Judgment.	53.4
02/26/2016	Holyoke City Council, Kevin Jourdain Individually, Todd McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Linda Vacon Individually, Brenna McGee Individually, Anthony Soto Individually's Memorandum in support of their opposition to defendants' motion for Summary Judgment and Plaintiffs' request for Judgment.	53.5
02/26/2016	Opposition to paper #53.5 to plaintiffs Cross-Motion for Summary Judgment filed by	53.6
03/01/2016	Event Result: The following event: Non-Jury Trial scheduled for 03/08/2016 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date	
03/01/2016	The following form was generated:	54
	Notice to Appear for Motion hearing on 3/8/2016 at 2:00 p.m. Sent On: 03/01/2016 12:58:02	
03/08/2016	Matter taken under advisement The following event: Rule 56 Hearing scheduled for 03/08/2016 11:00 AM has been resulted as follows: Result: Held - Under advisement	
03/08/2016	Affidavit of Michael Aleo, Esquire	55
03/08/2016	Received from Defendant Tapestry Health Systems Inc: Answer to amended complaint;	55.1
03/09/2016	Received from Defendant City of Holyoke: Answer to amended complaint;	55.2
03/09/2016	Received from Defendant Morse, Alex B: Answer to amended complaint;	55.2

Addendum 61

Docket Date	Docket Text	File Ref Nbr.
03/09/2016	Received from Defendant Mausel, Robert S: Answer to amended complaint;	55.2
03/09/2016	Received from Defendant Liptak, Katherine M: Answer to amended complaint;	55.2
03/09/2016	Received from Defendant Mertes, Patricia A: Answer to amended complaint;	55.2
03/14/2016	Event Result: The following event: Conference to Review Status scheduled for 03/21/2016 02:00 AM has been resulted as follows: Result: Canceled Reason: Court Order	
03/14/2016	MEMORANDUM & ORDER: and DECISION on Cross-Motions for Summary Judgment. (E-Mailed to parties on 3-14-16).	56
03/14/2016	Endorsement on Motion for Summary Judgment (#53.0): DENIED See Memo & Order. (Mailed 03/18/16)	
03/14/2016	Endorsement on Motion for Request for Judgment of plaintiff (#53.4): ALLOWED See Memo & Order. (Mailed 03/18/16)	
03/24/2016	City of Holyoke, Alex B Morse, Robert S Mausel, Patricia A Mertes, Katherine M Liptak's MOTION for reconsideration of Court Order dated 03/18/2016 re: paper #53.0.	57
03/24/2016	City of Holyoke, Alex B Morse, Robert S Mausel, Katherine M Liptak, Patricia A Mertes's Memorandum in support of defendants' motion for reconsideration of the court's order on cross-motions for summary judgment.	57.1
03/24/2016	Defendant Tapestry Health Systems Inc's EMERGENCY Motion to reconsider the court's order on cross-motions for summary judgment (To be refiled as 9A pkg.) Ref. to Mason, J.	58
03/24/2016	Tapestry Health Systems Inc's Memorandum in support of emergency motion to reconsider the court's order on cross-motions for summary judgment.	58.1
03/25/2016	Plaintiff Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Linda Vacon Individually's EMERGENCY Motion to strike defendants' pleadings for motions for reconsideration . #58 - Ref. fx: to Mason J.	59
03/29/2016	Endorsement on Motion for reconsideration of the court's order on cross-motion for summary judgment (#57.0): No Action Taken motions pursuant to rule 9D must be filed and served pursuant to Rule 9A (emailed 3/29/16 Asst. Clerk Walsh)	
04/12/2016	Defendant Tapestry Health Systems Inc's Motion to Reconsider the Court's Order on Cross-Motions for Summary Judgment	60
04/12/2016	Tapestry Health Systems Inc's Memorandum in support of Tapestry Health Systems Inc's Motion to Reconsider the Court's Order on Cross-Motions for Summary Judgment	60.1
04/12/2016	Defendant City of Holyoke's Motion for Reconsideration of the Court's Order on Cross-Motions for Summary Judgment	60.2
04/12/2016	City of Holyoke's Memorandum in support of Defendants' Motion for Reconsideration of the Court's Order on Cross-Motions for Summary Judgment	60.3
	Applies To: Cunha, Esq., Kara Lamb (Attorney) on behalf of Liptak, Katherine M (Defendant)	
04/12/2016	Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Linda Vacon Individually's Memorandum in opposition to to Defendants' Motion for Reconsideration	60.4
04/12/2016		60.5

Addendum 62

Docket Date	Docket Text	File Ref Nbr.
	Defendant Tapestry Health Systems Inc's Reply to Plaintiffs' opposition to the Emergency Motion to Reconsider the Court's Order on Cross-Motions for summary Judgment	
04/20/2016	Endorsement on Motion to reconsider the Courts order on cross-motions for summary judgment (#60.0): DENIED See memorandum of order	
04/20/2016	ORDER: on defendants motions to reconsider order on cross-motions for summary judgment	61
04/21/2016	SUMMARY JUDGMENT for Plaintiff(s) Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, James M Leahy Individually, Linda Vacon Individually against Defendant(s) City of Holyoke, Alex B Morse, Robert S Mausel, Katherine M Liptak, Patricia A Mertes, Tapestry Health Systems Inc, without statutory costs. It is ORDERED and ADJUDGED: That the Defendants' Motion for Summary Judgment having been denied and the Plaintiffs' Motion for Summary Judgment having been allowed, Judgment is hereby entered for the Plaintiffs. (E-Mailed to parties on 04/21/16)	62
05/16/2016	Tapestry Health Systems Inc's MOTION to vacate judgment Rule 60 as moot, to revise said order and for reconsideration of the court's order on cross motions for summary judgment.	63
05/16/2016	Tapestry Health Systems Inc's Memorandum in support of Deft. Tapestry Health systems Inc's Rule 60 Motion to vacate the judgment as moot, to revise said order and for reconsideration of the court's order on cross-motions for summary judgment.	63.1
05/16/2016	List of exhibits of Defendant, Tapestry Health Systems Inc's. Rule 60 Motion to vacate the judgment as moot, to revise said order and for reconsideration of the court's order on cross-motions for summary judgment.	63.2
05/19/2016	Notice of appeal filed Applies To: Newman, Esq., William C (Attorney) on behalf of Tapestry Health Systems Inc (Defendant)	64
06/07/2016	CORRECTED SUMMARY JUDGMENT for Plaintiff(s), Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, James M Leahy Individually, Joseph McGiverin Individually against Defendant(s), City of Holyoke, Alex B Morse, Robert S Mausel, Katherine M Liptak, Patricia A Mertes, Tapestry Health Systems Inc, without statutory costs. It is ORDERED and ADJUDGED: That the Defendant's Motion for Summary Judgment having been denied and the Plaintiffs Motion for Summary Judgment having been allowed, Judgment is hereby entered for the Plaintiffs.	65
06/09/2016	CORRECTED SUMMARY JUDGMENT for Plaintiff(s), Holyoke City Council, Kevin Jourdain Individually, Daniel Bresnahan Individually, Todd McGee Individually, Joseph McGiverin Individually, James M Leahy Individually, Linda Vacon Individually against Defendant(s), City of Holyoke, Alex B Morse, Robert S Mausel, Katherine M Liptak, Patricia A Mertes, Tapestry Health Systems Inc, without statutory costs. It is ORDERED and ADJUDGED: That the Defendants' Motion for Summary Judgment having been denied and the Plaintiffs' Motion for Summary Judgment having been allowed, Judgment is hereby entered for the Plaintiffs.	66
06/15/2016	Court received letter from Attorney Michael Aleo on behalf of defendant Tapestry Health Systems, Inc. re: ordering transcript of hearing of 3/8/16 and motion to vacate the judgment that is the subject of appeal related to appeal	67
06/15/2016	ORDER: on defendant's motion to vacate the judgment as moot, to revise said order, and for reconsideration of the order on cross-motions for summary judgment (mailed 6/15/16)	68 <i>denied.</i>

Stephanie Roscoe

Addendum 63

Addicts health opportunity prevention and education programs

Messrs. Lewis and Brownsberger, Ms. L'Italien, Messrs. Ross, Moore and Humason, Ms. Creem and Mr. Welch moved that the proposed new text be amended by inserting, after section X, the following new section:- section X. Section 215 of chapter 111 of the General Laws is hereby repealed.

NOTICE: While reasonable efforts have been made to assure the accuracy of the data herein, this is **NOT** the official version of Senate Journal. It is published to provide information in a timely manner, but has **NOT** been proofread against the events of the session for this day. All information obtained from this source should be checked against a proofed copy of the Senate Journal.

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, June 1, 2005.

Met at four minutes past one o'clock A.M. (Mr. Brewer in the Chair).

The Senator from Worcester, Hampden, Hampshire and Franklin, Mr. Brewer, offered the following prayer:
Lord, help us to recognize and appreciate our assets and talents and to avoid becoming discouraged by our limitations.
Lord, please love us when we find it hard to love ourselves, help us to see ourselves as the unique precious individuals which we are.

Let us feel the joy of your loving care. Amen

The Chair (Mr. Brewer), members, guests and employees then recited the pledge of allegiance to the flag.

Distinguished Guests.

There being no objection, the President handed the gavel to Mr. O'Leary for the purpose of an introduction. Mr. O'Leary then introduced, in the rear of the Chamber, his students from the Massachusetts Maritime Academy.

There being no objection, the President handed the gavel to Mr. Brown for the purpose of an introduction. Mr. Brown then introduced, seated in the rear of the Chamber, Jeffrey Chin and William Small and their families. Jeffrey Chin and William Small are currently students at King Philip Regional High School and will be attending the United States Military Academy at West Point in September.

There being no objection, the Chair (Mr. Havern) handed the gavel to Mr. Panagiotakos for the purpose of an introduction. Mr. Panagiotakos then introduced thirty-eight English as a second language U.S. history students from Lowell High School. The students, seated in the Senate Galleries, were accompanied by their teachers, John Croes and Caroline Yunta.

Petitions.

Mr. Timilty presented a petition (accompanied by bill, Senate, No. 2568) of James E. Timilty, Philip Travis, Virginia J. Coppola and Elizabeth A. Poirier (by vote of the town) for legislation to exempt Craig Blake of Norton from the maximum age requirements for appointment as a firefighter in the town of Norton [Local approval received],— **and the same was referred, under Senate Rule 20, to the committee on Public Service.**
Sent to the House for concurrence.

Jehlen, Patricia D.	Tisei, Richard R.
Joyce, Brian A.	Tolman, Steven A.
Knapik, Michael R.	Tucker, Susan C.
Lees, Brian P.	Walsh, Marian — 34.
NAYS — 0.	
ABSENT OR NOT VOTING.	
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Rosenberg, Stanley C. — 4.
ANSWERED "PRESENT".	
Wilkerson, Dianne — 1.	

The yeas and nays having been completed at twenty-five minutes before two o'clock P.M., the bill was passed to be engrossed, in concurrence.

The House Bill further regulating municipal affordable housing trusts funds (House, No. 4793) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time and, after remarks, was passed to be engrossed, in concurrence.

The Senate Bill promoting school nutrition (Senate, No. 2373),— was considered; the main question being on passing the bill to be engrossed.

On motion of Mr. Moore, the further consideration thereof was postponed until Thursday, June 15.

The Senate Bill relative to the negotiation of taxes due under a tax increment financing (TIF) (Senate, No. 1701),— was considered; and, after remarks, it was ordered to a third reading.

The message from His Excellency the Governor, returning, with his disapproval of certain sections contained in the engrossed Bill promoting access to affordable, quality, accountable health care (see House, No. 4479, amended) (as relates to section 112), which, on Wednesday, April 5, 2006, had been laid before the Governor for his approbation,— having previously come from the House, in part, several sections having been passed by the House notwithstanding the reduction or disapproval of the Governor (for message, see House, No. 4857),— was considered; the main question being on passing section 112 notwithstanding the disapproval of His Excellency the Governor.

Pending the question on the motion to lay the matter on the table, and pending the main question on passing section 112, notwithstanding the disapproval of His Excellency the Governor, on motion of Mr. Lees, the further consideration thereof was postponed until Thursday, June 15.

The House Bill relative to HIV and Hepatitis C prevention (House, No. 4176, amended),— was considered; the main question being on ordering it to a third reading.

The pending motion, previously moved by Mr. Lees, to lay the matter on the table was considered; and, after debate, the question on laying the bill on the table was determined by a call of the yeas and nays, at eight minutes past two o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 11 — nays 24) [Yeas and Nays No. 283]:

YEAS.	
Baddour, Steven A.	Lees, Brian P.
Brewer, Stephen M.	Pacheco, Marc R.
Brown, Scott P.	Tarr, Bruce E.
Buoniconti, Stephen J.	Timilty, James E.
Hedlund, Robert L.	Tisei, Richard R. — 11.
Knapik, Michael R.	
NAYS.	
Antonioni, Robert A.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Chandler, Harriette L.	Murray, Therese
Creem, Cynthia Stone	O'Leary, Robert A.
Fargo, Susan C.	Pacheco, Marc R.
Hart, John A., Jr.	Panagiotakos, Steven C.

Havern, Robert A.	Resor, Pamela
Jehlen, Patricia D.	Spilka, Karen E.
Joyce, Brian A.	Tolman, Steven A.
McGee, Thomas M.	Tucker, Susan C.
Menard, Joan M.	Walsh, Marian
Montigny, Mark C.	Wilkerson, Dianne — 24.
ABSENT OR NOT VOTING.	
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Rosenberg, Stanley C. — 4.

The yeas and nays having been completed at twelve minutes past two o'clock P.M., the motion to lay the bill on the table was negatived.

The amendment previously recommended by the committee on Ways and Means striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2512, previously amended (Menard-Murray) in section 3, in subsection (d) of proposed section 27A, by adding the following sentence:—"Included in the recommendations for legislative action shall be punishments and fines associated with inappropriate, unsafe or unlawful disposal of the hypodermic needles and lancets."; and by striking out section 12,— **was considered.**

Ms. Menard moved that the amendment be amended in section 3, in the third sentence of subsection (a) of proposed section 27A, by inserting after the word "agencies" the following words:—"that choose to participate".

The amendment was adopted.

Mr. Hart moved that the amendment be amended by inserting after section 14 the following section:—

"Section 15. The department of public health shall perform a comprehensive study and review of the existing needle exchange programs established pursuant to section 215 of chapter 111 of the General Laws, as appearing in the 2004 Official Edition. The study shall include, but not be limited to: a review and analysis of the relationship between the provisions of this act and the operation of the needle exchange programs; the success of existing needle exchange programs; whether existing needle exchange programs should be maintained without change, phased out, or expanded to other municipalities."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at one minute before three o'clock P.M., on motion of Mr. Hedlund, as follows, to wit (yeas 35 — nays 0) [Yeas and Nays No. 284]:

YEAS.	
Antonioni, Robert A.	McGee, Thomas M.
Augustus, Edward M., Jr.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Brewer, Stephen M.	Morrissey, Michael W.
Brown, Scott P.	Murray, Therese
Buoniconti, Stephen J.	O'Leary, Robert A.
Chandler, Harriette L.	Pacheco, Marc R.
Creem, Cynthia Stone	Panagiotakos, Steven C.
Fargo, Susan C.	Resor, Pamela
Hart, John A., Jr.	Spilka, Karen E.
Havern, Robert A.	Tarr, Bruce E.
Hedlund, Robert L.	Timilty, James E.
Jehlen, Patricia D.	Tisei, Richard R.
Joyce, Brian A.	Tolman, Steven A.
Knapik, Michael R.	Tucker, Susan C.
Lees, Brian P.	Walsh, Marian — 35.
Wilkerson, Dianne	
NAYS — 0.	
ABSENT OR NOT VOTING.	
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Rosenberg, Stanley C. — 4.

Mr. Havern in the Chair, the yeas and nays having been completed at four minutes past three o'clock P.M., the amendment was adopted.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting after the words "embalming

supplies." the following:— "And provided further, that not more than 5 hypodermic syringes or hypodermic needles shall be sold to an individual per transaction, with no more than 2 transactions per week, without a prescription." The amendment was *rejected*.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting at the end the following new section:—

"SECTION 15. Section 321 of said Chapter 94C, as so appearing, is hereby further amended by adding, in line 1, after the word 'possess' the following:— 'or purchase'."

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at six minutes past three o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 34 — nays 1) [Yeas and Nays No. 285]:

YEAS.	
Antonioni, Robert A.	Chandler, Harriette L.
Augustus, Edward M., Jr.	Creem, Cynthia Stone
Baddour, Steven A.	Hart, John A., Jr.
Barrios, Jarrett T.	Havern, Robert A.
Brewer, Stephen M.	Hedlund, Robert L.
Brown, Scott P.	Iehlen, Patricia D.
Buoniconti, Stephen J.	Joyce, Brian A.
Knapik, Michael R.	Panagiotakos, Steven C.
Lees, Brian P.	Resor, Pamela
McGee, Thomas M.	Spilka, Karen E.
Menard, Joan M.	Tarr, Bruce E.
Montigny, Mark C.	Timilty, James E.
Moore, Richard T.	Tisei, Richard R.
Morrissey, Michael W.	Tolman, Steven A.
Murray, Therese	Tucker, Susan C.
O'Leary, Robert A.	Walsh, Marian
Pacheco, Marc R.	Wilkerson, Dianne — 34.
NAY.	
Fargo, Susan C. — 1.	
ABSENT OR NOT VOTING.	
Berry, Frederick E.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	Rosenberg, Stanley C. — 4.

The yeas and nays having been completed at ten minutes past three o'clock P.M., the amendment was **adopted**. Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended in section 3, by inserting after the words "embalming supplies." the following:— "When selling hypodermic syringes or hypodermic needles without a prescription, a pharmacist or wholesale druggist must require proof of identification that validates the individual's age," After remarks, the amendment was **adopted**.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting at the end thereof the following 2 new sections:

"SECTION 15. Two per cent of the cost of any hypodermic syringe or hypodermic needle sold in the commonwealth, other than those sold or distributed by prescription from a licensed physician, shall be deposited in the Drug Abuse Clean-Up and Recovery Fund, as established by section 2SSS of chapter 29.

SECTION 16. Section 2RRR of chapter 29 is hereby amended by inserting at the end thereof the following new section:—

Section 2SSS. (a) There is hereby established and set up on the books of the commonwealth a separate fund to be known as the Massachusetts Drug Abuse Clean-Up and Recovery Fund, hereinafter referred to as the clean-up fund, to which shall be credited any monies collected pursuant to section 15 of chapter ___ of the Acts of 2006.

(b) The public purpose of the clean-up fund shall be to provide resources to safely dispose of any hypodermic syringes or hypodermic needles that are discarded in public places. Any balance of remaining funds not so used at the end of the fiscal year shall be provided to the executive office of health and human services to supplement funds used to treat drug addictions.

(c) The executive office of public safety, in consultation with the executive office of health and human services, shall promulgate policies, rules and regulations consistent with this chapter to implement subsections (a) and (b)."
The amendment was *rejected*.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting at the end thereof a new section:
"SECTION 15. This act shall become effective upon the completion of reports by the Department of Public Health and the Executive Office of Public Safety. Said reports shall include analysis of the impact of the provisions of this act, should it become effective, and shall include statistics on the prevalence of intravenous drug use in the commonwealth, current expenditures to combat drug offenders, current expenditures to treat intravenous drug users, the ability of the commonwealth's resources to sustain the provisions of this act and any other information or statistics on the use of intravenous drugs that may impact the provisions of this act. Said reports shall be submitted to the legislature on or before July 1, 2008 and this act shall not become effective until said reports are submitted in accordance with this section."

Pending the question on adoption of the amendment, Ms. Chandler and Mr. Moore moved to amend the amendment (Lees) by striking the amendment and inserting in place thereof the following words:—

"SECTION 15. No earlier than 24 months and no later than 36 months after the effective date of this act, the department of public health shall submit a report to the house and senate committees on ways and means and the joint committee on public health which shall include analysis of the impact of this act. The report shall include, but not be limited to, statistics on the methods by which disposal of hypodermic syringes or hypodermic needles are conducted, increases or decreases in the spread of Hepatitis C and human immunodeficiency virus, and proposed changes to the act consistent with the public health and welfare."

The further amendment was *adopted*.

The pending amendment (Lees) was then considered; and it was *adopted*, as amended.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting at the end thereof a new section;
"SECTION 15. This act shall be submitted for acceptance to the registered voters of a city at a regular city election if the city council thereof so votes, and of a town at an annual town election upon petition of two hundred registered voters or of twenty per cent of the total number of registered voters, substantially in the form of the following question, which shall be placed on the official ballot used for the election of officers at such city or town election:
'Shall the city (or town) vote to accept the provisions of section 27 of chapter 94C of the General Laws, which authorizes pharmacies to sell hypodermic syringes or hypodermic needles to persons 18 or older without a prescription?'

YES.

NO.

If a majority of the votes in answer to said question is in the affirmative, then said act shall thereupon take full effect in such city or town, but not otherwise."

The amendment was *rejected*.

Messrs. Tarr, Lees, Hedlund and Brown moved that the bill be amended by inserting by inserting at the end thereof a new section:

"SECTION 15. This act shall expire on July 1, 2007."

The amendment was *rejected*.

Ms. Menard moved that the bill be amended in section 3, in subsection (b) of proposed section 27A, by striking out the words "and (3) the establishment of sharps collection centers located in municipal facilities including, but not limited to fire stations, police stations, senior centers and public health offices" and inserting in place thereof the following words:—

"(3) the establishment of sharps collection centers located in municipal facilities, including, but not limited to, fire stations, police stations, senior centers and public health offices; and

(4) medical waste mail-back programs approved by the United States Postal Service."

The amendment was *adopted*.

The Ways and Means amendment was then adopted, as amended. [For text of Senate amendments, see Senate, No. 2569.]

The bill (House, No. 4176, amended) was then ordered to a third reading.

The House Bill relative to streamlining and expediting the permitting process in the Commonwealth (House, No. 4968),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Ms. Chandler moved that the bill be amended by inserting after section 7 the following section:—

“SECTION 7A. Section 11 of said chapter 40A, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:—

Upon the granting of a special permit, or any extension, modification or renewal thereof, the permit granting authority or special permit granting authority shall issue to the owner and to the applicant, if other than the owner, a copy of its decision, certified by the permit granting authority or special permit granting authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of the permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the planning board and city or town clerk. A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that: (i) no appeal has been filed or such appeal has been filed within such time; or (ii), if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed whether or not an appeal has been filed within that time and that the grant of the application or petition resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant. During the pendency of an appeal, this paragraph shall not terminate or shorten the tolling of the 6 month periods provided under the second paragraph of section 6.”

The amendment was *rejected*.

Mr. O'Leary moved that the bill be amended in section 9, in proposed clause (1) of the third sentence of section 9 of chapter 43D of the General Laws, by inserting after the words “federal, state” the following word:— “, regional”.

The amendment was **adopted**.

Ms. Chandler moved that the bill be amended by adding the following section:—

“SECTION 16. Not later than 180 days after the effective date of this act, the chief justice for administration and management of the trial court, in consultation with the registers of deeds of Essex and Middlesex, the counties of Suffolk, Norfolk, Bristol, Plymouth, Barnstable, and Dukes and in the former counties of Hampden, Hampshire, Berkshire and Worcester, and the county of Franklin, shall submit a report to the house and senate committees on ways and means and the joint committee on the judiciary which report shall include the feasibility of developing 2 divisions of the land court, an eastern division, which shall hold its session in Boston, made up of the former counties of Essex and Middlesex, the counties of Suffolk, Norfolk, Bristol, Plymouth, Barnstable, and Dukes, and a western division, which shall hold its sessions in Worcester, including the former counties of Hampden, Hampshire, Berkshire and Worcester, and the county of Franklin. The report shall include estimated expenses of the eastern and western divisions of the land court as well as possible physical locations in the city of Boston and the city of Worcester.”

The amendment was **adopted**.

Ms. Chandler moved that the bill be amended by inserting after section 5 the following section:—

“SECTION 5A. Section 10 of chapter 30A of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:—

The right of intervention provided by this section shall not be available in or with respect to a proceeding concerning or arising out of a decision of the department of environmental protection under or pursuant to chapter 91 including, without limitation, licenses, license determinations, applicability determinations, and municipal harbor plan approvals.”

The amendment was *rejected*.

Mr. Hart moved that the bill be amended in section 8, in the first sentence, by inserting after the word “permitting”, the following words:— “pursuant to chapter 43D”.

The amendment was **adopted**.

Mr. Hart moved that the bill be amended in section 9, in proposed subsection (b) of section 3 of chapter 43D, by striking out the figure “\$100,000” and inserting in place thereof the following figure:— “\$200,000”.

The amendment was **adopted**.

The President in the Chair, Mr. Hart moved to amend the bill by inserting after section 10 the following section:

"SECTION 10A. Section 25C of chapter 152 of the General Laws, as so appearing, is hereby amended by adding the following subsection:—

(11) Where either the attorney general or a superior court decides that probable cause exists to show that an employer has not fully complied with this chapter, then any 10 persons may bring on behalf, and in the name, of the Workers' Compensation Trust Fund established by subsection (2) of section 65 a civil action to recover amounts which by law should have been paid by the employer pursuant to this chapter to cover the employer's employees who engaged in employment in the commonwealth. The 10 persons may petition in writing that the attorney general or a court hold a probable cause hearing to decide whether the probable cause exists, and shall serve a copy of the petition to the employer named within 5 days. The attorney general or the court in which the a petition was filed shall hold a hearing within 30 days, and after the conclusion of the hearing, shall render a decision within 30 additional days. The decision may be appealed when a cause of action filed under this section has been finally adjudicated, unless the petition is denied. At the hearing, it shall be prima facie evidence that probable cause exists if it is shown that:

- (i) an employee was paid any portion of wages in cash currency with no deductions or taxes withheld;
- (ii) no accompanying pay slip or check showing the wage payment and withholdings or deductions as required by section 148 of chapter 149 was provided;
- (iii) an individual was misclassified as an independent contractor where the individual was in fact an employee;
- (iv) wages were not timely paid;
- (v) the employer failed to withhold from the employee's wages all related state taxes; or
- (vi) employees have not been properly reported on payroll records required by section 27B of chapter 149.

Nothing contained above, however, shall be construed as limiting or prohibiting other information that might be used to establish the requisite probable cause that this chapter was not fully complied with, and any information produced need not be admissible at a trial. At the probable cause hearing, it shall not be grounds for objecting that the information produced will be inadmissible in a trial if the information appears reasonably sufficient that it might lead to the discovery of other information that could be admissible at a trial.

After the decision that probable cause exists has been made, the persons who brought the petition shall serve a copy of the decision on any insurer that was or is entitled to collect amounts not paid and the persons shall simultaneously state any intention to file suit under this section. At least 90 days after the service, the persons may file a civil action in accord with this section. Persons who prevail in an action filed pursuant to this section shall be entitled to recover 25 per cent of the amounts unlawfully not paid or \$25,000, whichever is less, together with costs and reasonable attorneys fees, as well as an additional amount from the defendant as liquidated damages equal to 25 per cent of the amount not paid or \$25,000, whichever is less. The liquidated damages are compensatory and not intended to be penal or punitive. After an action under this section is filed in a court, an insurer that failed to file a complaint or seek arbitration to recover or collect all the amounts which would have been due to the insurer from a defendant in the action shall be prohibited from attempting to recover or collect any amounts sought in the action which the insurer failed to seek to recover or collect, unless the insurer obtains the written and voluntary consent of the persons who have initiated the suit under this section. When the written consent is provided, a court may substitute the insurer as the plaintiff. When the insurer is substituted as the plaintiff, the case shall proceed without further regard to this section or the Workers' Compensation Trust Fund.

A settlement made between an insured and an insurer shall not be considered to prohibit or limit an action under this section to recover other amounts that should have been paid to cover employees under this chapter and which the insurer did not recover by such settlement or otherwise.

Except as provided herein and unless the insurer has been substituted in the action, any amounts recovered by the persons who filed the civil action under this section shall be deposited into the Workers' Compensation Trust Fund, except those amounts payable to those persons in accord with this section.

An insurer, however, who pays a claim may recover from the amounts that are deposited into the Workers' Compensation Trust Fund a premium that should have been paid to that insurer which would have provided coverage for that specific claimant and claim.

Nothing contained herein shall be considered as limiting or prohibiting any political subdivision, public entity or office, for example, any division, commission, commissioner, director, attorney general, and any law enforcement entity or office, presently entitled to bring any action, criminal or civil, against a defendant to an action under this section from proceeding against the defendant in any appropriate forum. The forum, court, or agency, however, may consider and offset the amounts recovered, or likely recoverable, by an action pursuant to this section in imposing a verdict or judgment, or against imposing a fine or other penalty.

The section shall not affect, or apply to, insurance contracts that were made before the effective date of this section. In addition to what is contained above, an action filed under this section may be filed only after 90 days following the expiration of the then present term of the workers' compensation policy effected by the action, if one existed." After remarks, the amendment was *rejected*.

Messrs. Barrios and Joyce moved that the bill be amended by inserting after section 10 the following section:

"SECTION 10A. Section 32 of chapter 184 of the General Laws, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:—

Conservation, preservation, agricultural preservation, watershed preservation and affordable housing restrictions are interests in land and may be acquired by any governmental body or charitable corporation or trust which has power to acquire interest in the land, in the same manner as it may acquire other interests in land. A restriction may be enforced by injunction or other proceeding, and shall entitle representatives of the holder to enter the land in a reasonable manner and at reasonable times to assure compliance. If the court in a judicial enforcement proceeding, or the decision maker in an arbitration or other alternative dispute resolution enforcement proceeding, finds there has been a violation of the restriction or of any other restriction described in subsection (c) of section 26, then in addition to any other relief ordered, the petitioner bringing the action or proceeding shall be awarded reasonable attorneys' fees and costs incurred in the action or proceeding. The a restriction may be released, in whole or in part, by the holder for consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in land, but only after a public hearing upon reasonable public notice, by the governmental body holding the restriction or if held by a charitable corporation or trust, by the mayor, or in cities having a city manager the city manager, the city council of the city or the selectmen of the town, whose approval shall be required, and in case of a restriction requiring approval by the secretary of environmental affairs, the Massachusetts historical commission, the director of the division of water supply protection of the department of conservation and recreation, the commissioner of food and agriculture, or the director of housing and community development, only with like approval of the release."; and by adding the following section:

"SECTION 19. Notwithstanding any general or special law to the contrary, section 10A shall apply to all enforcement actions commenced after its effective date relative to applicable restrictions granted before, on and after that date." The amendment was *adopted*.

Mr. O'Leary moved that bill be amended in section 8, in the first sentence, by inserting after the words "purpose of expediting permitting" the following words:— "and promoting sustainable development". The amendment was *adopted*.

Mr. Hart moved to amend the bill, in section 9, in proposed section 2 of chapter 43D, by striking out the definition of "Priority development site" and inserting in place thereof the following definition:—
"Priority development site", a privately or publicly owned property that is:
(1) commercially or industrially zoned; (2) eligible under applicable zoning provisions, including special permits or other discretionary permits, for the development or redevelopment of a building at least 50,000 square feet of gross floor area in new or existing buildings or structures; and (3) designated as a priority development site by the board. Several parcels or projects may be included within a single priority development site. Wherever possible, priority development sites shall be located adjacent to areas of existing development or in underutilized buildings or facilities, or close to appropriate transit services.
The amendment was *adopted*.

Mr. McGee moved that the bill be amended by inserting after section 3 the following 2 sections:

"SECTION 3A. Section 49 of chapter 7 of the General Laws, as so appearing, is hereby amended by adding the following subsection:—
(e) The retirement dispute resolution committee shall be comprised of the attorney general or his designee, the state auditor or his designee, and the chairman of the public employee retirement administration commission or his designee

SECTION 3B. Section 50 of said chapter 7, as so appearing, is hereby amended by adding the following 7 paragraphs: There shall be within the public employee retirement administration, but not subject to its control, an office of retirement dispute resolution under the supervision and control of a director who shall be appointed by the retirement dispute resolution committee provided for in section 49. The director shall be a person with professional experience in public retirement law, shall maintain complete impartiality with respect to the matters coming before the office and shall devote full time to the duties of his office.

The office of retirement dispute resolution may: (a) conduct hearings as provided for in subdivision (4) of section 16 of chapter 32; (b) conduct hearings as provided for in section 91A of said chapter 32; and (c) undertake any other

NOTICE: While reasonable efforts have been made to assure the accuracy of the data herein, this is **NOT** the official version of Senate Journal. It is published to provide information in a timely manner, but has **NOT** been proofread against the events of the session for this day. All information obtained from this source should be checked against a proofed copy of the Senate Journal.

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Wednesday, June 7, 2006.

Met according to adjournment at one o'clock P.M. (Mr. Havern in the Chair).

Petitions.

Mr. Nuciforo presented a petition (accompanied by bill, Senate, No. 2576) of Andrea F. Nuciforo, Jr., Christopher N. Speranzo, Daniel E. Bosley, Denis E. Guyer and other members of the General Court (with approval of the mayor and city council) for legislation to authorize the conservation commission of the city of Pittsfield to convey a certain parcel of conservation land for public purposes [Local approval received],— **and the same was referred, under Senate Rule 20, to the committee on Municipalities and Regional Government.**
Sent to the House for concurrence.

Petitions were presented and referred, as follows:

By Mr. Montigny, a petition (subject to Joint Rule 12) of Mark C. Montigny, Stephen R. Canessa, John F. Quinn and Antonio F. D. Cabral for legislation to require equal benefits for all new mothers; and
By the same Senator, a petition (subject to Joint Rule 12) of Mark C. Montigny and Antonio F. D. Cabral for legislation to establish a sick leave bank for a certain employee of the Department of Social Services;
Severally, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.

Reports of Committees.

By Ms. Murray, for the committee on Ways and Means, that the Senate Bill relative to oceans (Senate, No. 2308),— **ought to pass, with an amendment substituting a new draft with the same title (Senate, No. 2575);**
Referred, under Senate Rule 26, to the committee on Ethics and Rules.

Mr. Buoniconti, for the committee on Ethics and Rules, reported that the following matter be placed in the Orders of the Day for the next session:
The House Bill relative to special needs students (House, No. 4710).

Committee Discharged.

Ms. Murray, for the committee on Ways and Means, reported, asking to be discharged from further consideration of the House Bill relative to patient safety (House, No. 4988),— **and recommending that the same be referred to the Senate committee on Ethics and Rules.**
Under Senate Rule 36, the report was considered forthwith and accepted.

PAPERS FROM THE HOUSE.

A Bill allowing unsigned circulars (House, No. 126,— on petition),— **was read and, under Senate Rule 26, referred to the committee on Ethics and Rules.**

A Bill relative to sewer betterment assessments in the town of Richmond (House, No. 4753,— on petition) [Local approval received],— **was read and, under Senate Rule 26, placed in the Orders of the Day for the next session.**

There being no objection, at one minute past one o'clock P.M., the Chair (Mr. Havern) declared a recess subject to the call of the Chair; and, at seventeen minutes past one o'clock P.M., the Senate reassembled, the President in the Chair.

The President, members, guests and employees then recited the pledge of allegiance to the flag. The Senator from Worcester, Hampden, Hampshire and Franklin, Mr. Brewer, offered the following prayer: O God, we want this day of trust to be sacred. We want our work to be done well. So we pray for clarity of mind, "to think without confusion clearly",... for integrity of purpose, "to act from honest motives purely",... for compassionate hearts, to love our fellowmen sincerely",... for confident faith, "to trust in God and heaven securely." Amen.

Distinguished Guests.

There being no objection, the President introduced his guests, Messrs. Reginald Davis, Jeffrey Goldman, Zachary Hanoyan and Jack Minsky. The guests signed the guest book and withdrew from the Chamber.

Resolutions.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:—

Resolutions (filed by Mr. Joyce) "honoring Steven James Fradkin as the 'Democrat of the Decade' ";
Resolutions (filed by Mr. Pacheco) "congratulating Brandon Poli upon his elevation to rank of Eagle Scout"; and
Resolutions (filed by Mr. Pacheco) "congratulating Nicholas Poli upon his elevation to rank of Eagle Scout."

Orders of the Day.

The Orders of the Day were considered, as follows:

Relative to the maintenance and repairs of all city of Lynn owned buildings within the city of Lynn (Senate, No. 2562);
Relating to the bargainability of health insurance for part-time municipal employees (printed as House, No. 458);
Relative to the charter of the town of Westborough (House, No. 4392);
Authorizing the town of Needham to construct and maintain a common sewer through land acquired for conservation purposes (House, No. 4767); and
Establishing the Cohasset Library Trust, Inc. (House, No. 4840);
Were severally read a second time and ordered to a third reading.

The Senate Bill regulating certain musical performances and the protection of performing groups (Senate, No. 2530) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill relative to protecting against the displacement of current employees (printed as House, No. 457),— **was read a second time and, after remarks, was ordered to a third reading.**

The Senate Bill further regulating the Essex Regional Retirement System (Senate, No. 2263) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time.**

Pending the question on passing the bill to be engrossed, Mr. McGee moved that the bill be amended by striking out section 2.

After debate, the amendment was adopted.

The bill (Senate, No. 2263, amended) was then passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill establishing the Martha's Vineyard and Nantucket housing banks (Senate, No. 2555),— was considered; the main question being on passing it to be engrossed.

The pending motion, previously moved by Mr. Tisel, to lay the matter on the table was considered; and it was negatived.

Mr. O'Leary requested that when a vote is taken on the question on passing the bill to be engrossed, it be taken by a call of the yeas and the nays, and the motion prevailed.

Pending the main question on passing the bill to be engrossed, Mr. Joyce moved to lay the matter on the table and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.

The House Bill relative to HIV and Hepatitis C prevention (House, No. 4176, amended),— was read a third time. After debate, and pending the question on passing the bill to be engrossed, Messrs. Tarr, Lees and Brown moved that the bill be amended by adding the following section:—

"SECTION 17. Section 27 of chapter 94C of the General Laws, as amended by this act, shall not take effect until the department of public health approves a program for the collection and disposal of non-commercially generated, spent hypodermic needles and lancets pursuant to section 27A of said chapter 94C."

The amendment was rejected.

Messrs. Tarr, Lees and Brown moved that the bill be amended in section 3, in proposed section 27, by adding the following sentence:— "No licensed wholesaler druggist or pharmacist shall sell to an individual, and no person shall buy a hypodermic needle or syringe in a quantity greater than 10 without a prescription."

The amendment was rejected.

Mr. Lees moved to amend the bill by adding the following section:—

"SECTION 17. The department of public health shall provide a report to the general court on the program for the collection and disposal of non-commercially generated, spent hypodermic needles and lancets pursuant to section 27A of chapter 94C of the General Laws. The report shall be filed with the clerks of the senate and house of representatives by July 20, 2006. The report shall include the proposed location of sharps collection centers, and the department shall notify each city or town of the locations of proposed collection centers in that city or town. The department shall also make this list of proposed collection centers available online. Section 27 of said chapter 94C, as amended by this act, shall take effect on September 18, 2006."

The amendment was adopted.

Messrs. Lees, Tarr and Brown moved that the bill be amended by adding the following section:—

"SECTION 17. This act shall be submitted for acceptance to the registered voters of a city at a regular city election if the city council thereof so votes, and of a town at an annual town election upon petition of 200 registered voters or of 20 per cent of the total number of registered voters, substantially in the form of the following question, which shall be placed on the official ballot used for the election of officers at such city or town election:

'Shall the city (or town) vote to accept the provisions of section 27 of chapter 94C of the General Laws, which authorizes pharmacies to sell hypodermic syringes or hypodermic needles to persons 18 or older without a prescription?'

YES.

NO.

If a majority of the votes in answer to this question is in the affirmative, then this act shall thereupon take full effect in such city or town, but not otherwise."

The amendment was rejected.

Mr. Lees moved that the bill be amended in section 3, in proposed section 27A, in subsection (b), paragraph (1), clause (iii), by striking out the words "senior centers"; and further, in said clause (iii), by inserting after the words "health offices" the following words:— "provided that sharps collection centers may be located at senior centers only for the purpose of disposing of medically necessary hypodermic needles."

The amendment was adopted.

Messrs. Lees, Tarr and Brown moved that the bill be amended by adding the following section:—

"SECTION 17. This act shall expire on January 1, 2008."

The amendment was rejected.

The question on passing the bill, as amended, to be engrossed was determined by a call of the yeas and nays, at five minutes before three o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 26 — nays 8) [Yeas and Nays No. 287]:

YEAS.	
Augustus, Edward M., Jr.	Moore, Richard T.
Barrios, Jarrett T.	Morrissey, Michael W.
Berry, Frederick E.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Fargo, Susan C.	O'Leary, Robert A.
Hart, John A., Jr.	Resor, Pamela
Havern, Robert A.	Spilka, Karen E.
Jehlen, Patricia D.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
McGee, Thomas M.	Tucker, Susan C.
Menard, Joan M.	Walsh, Marian
Montigny, Mark C.	Wilkerson, Dianne — 26.
NAYS.	
Antonioni, Robert A.	Creedon, Robert S., Jr.
Baddour, Steven A.	Hedlund, Robert L.
Brewer, Stephen M.	Lees, Brian P.
Buoniconti, Stephen J.	Timilty, James E. — 8.
PAIRED.	
YEAS. NAYS.	
Cynthia Stone Creem	Marc R. Pacheco (present)
Stanley C. Rosenberg	Steven C. Panagiotakos (present) — 4.
ABSENT OR NOT VOTING.	
Brown, Scott P. — 1.	

The yeas and nays having been completed at three o'clock P.M., the bill was passed to be engrossed, in concurrence, with the amendments.
Sent to the House for concurrence.

Matter Taken Out of the Notice Section of the Calendar.

There being no objection, the following matters were taken out of the Notice Section of the Calendar and considered as follows:

The House Bill regulating reduction in rank for members of the fire department of the town of Swampscott (House, No. 4184) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time and passed to be engrossed, in concurrence.

The House Bill authorizing the town of Burlington to accept certain streets (House, No. 4486, amended),— was read a third time and passed to be engrossed, in concurrence.

Report of a Committee.

Mr. Buoniconti, for the committee on Ethics and Rules, reported that the following matter be placed in the Orders of the Day for the next session:

The Senate Bill designating certain bridges in the Commonwealth (Senate, No. 2559).

There being no objection, the rules were suspended, on motion of Ms. Menard, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act designating certain bridges."

PAPERS FROM THE HOUSE.

A Bill relative to the financial conditions in the Pentucket Regional School District (House, No. 4883, changed,— on petition).

There being no objection, the rules were suspended, on motion of Mr. Havern, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence, its title having been changed by the committee on Bills in the Third Reading to read as follows: "An Act regulating the financial conditions in the Pentucket Regional School District".

Bill Returned with Recommendation of Amendment.

A message from His Excellency the Governor, returning with recommendation of amendment the engrossed Bill further regulating the Cherry Valley and Rochdale Water District, (see House, No. 1290, amended) [for message, see House, No. 4928],— came from the House with amendment in the form approved by the committee on Bills in the Third Reading, as follows:— "By striking out all after the enacting clause and inserting in place thereof the following: Chapter 105 of the acts of 1996 is hereby amended by inserting after section 3 the following section:—

Section 3A. The district, acting by and through its board of water commissioners, may enter into agreements with any municipality, district, governmental unit or any other form of governmental body under section 4A of chapter 40 of the General Laws or utility company for any purpose that is consistent with the purposes for which the district was originally constituted, and which would further the interests of the inhabitants of the district. All agreements must be approved by a majority vote of the voters of the district present and voting at a district meeting; provided, that the division of local services within the department of revenue must approve any actions taken by the district according to this section."

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

The rules were suspended, on motion of Mr. Augustus and the Governor's amendment was considered forthwith and rejected, in concurrence.

Sent to the House for re-enactment.

Report of a Committee.

By Mr. Brewer, for the committee on Bills in the Third Reading, to whom was referred the amendment recommended by the Governor to the engrossed Bill relative to the Purple Heart highway in Worcester County (see Senate, No. 1930) [for message, see Senate, No. 2567],— reported, that the amendment recommended by the Governor be considered in the following form:

By striking out all after the enacting clause and inserting in place thereof the following text:—

"SECTION 1. Chapter 180 of the acts of 1961 is hereby amended by striking out all after the enacting clause and inserting in place thereof the following text:—

State highway route 146 shall be designated and known as the Purple Heart Highway in recognition and honor of the men and women wounded or killed in the line of their military duty. The department of highways shall erect and maintain suitable markers bearing this designation. In addition, that portion of state highway route 146 between interstate highway route 290 at Brosnihan square in the city of Worcester and state highway route 146 intersection with Boston road in the town of Sutton shall be named the Blackstone Valley Parkway. The department of highways shall erect and maintain suitable markers bearing this name.

SECTION 2. Item 6033-9917 of section 2B of chapter 235 of the acts of 2000 is hereby amended by striking out the words "provided further, that the section of state highway route 146 between interstate highway route 290 at Brosnihan square in Worcester and the state highway route 146 intersection with Boston road in Sutton shall be designated the Blackstone Valley parkway;"

The President stated that under the provisions of Article LVI of the Amendments to the Constitution, the bill was before the Senate subject to amendment and re-enactment.

After remarks, the report was accepted.

Mr. Moore moved that the Senate adopt the amendment in the form recommended by the committee on Bills in the Third Reading, and the motion prevailed.

After remarks, the question on adoption of the amendment, as recommended, was determined by a call of the yeas and nays at eight minutes past three o'clock P.M., on motion of Mr. Lees, as follows to wit (yeas 36 — nays 0) [Yeas and Nays No. 288]:

YEAS.	
Antonioni, Robert A.	Buoniconiti, Stephen J.
Augustus, Edward M., Jr.	Chandler, Harriette L.
Baddour, Steven A.	Creedon, Robert S., Jr.

Barrios, Jarrett T.	Fargo, Susan C.
Berry, Frederick E.	Hart, John A., Jr.
Brewer, Stephen M.	Havern, Robert A.
Hedlund, Robert L.	O'Leary, Robert A.
Jehlen, Patricia D.	Pacheco, Marc R.
Joyce, Brian A.	Panagiotakos, Steven C.
Knapik, Michael R.	Resor, Pamela
Lees, Brian P.	Spilka, Karen E.
McGee, Thomas M.	Tarr, Bruce E.
Menard, Joan M.	Timilty, James E.
Montigny, Mark C.	Tisei, Richard R.
Moore, Richard T.	Tolman, Steven A.
Morrissey, Michael W.	Tucker, Susan C.
Murray, Therese	Walsh, Marian
Nuciforo, Andrea F., Jr.	Wilkerson, Dianne — 36.
NAYS.	
Brown, Scott P.	Rosenberg, Stanley C. — 3.
Creem, Cynthia Stone	

The yeas and nays having been completed at thirteen minutes past two o'clock P.M., the amendment was adopted.

Sent to the House for its action.

Orders Adopted.

Mr. Montigny offered the following order, to wit:

Ordered, That notwithstanding the provisions of Joint Rule 10 the joint committee on Bonding, Capital Expenditures and State Assets be granted until Friday, June 30, 2006, within which time to make its final report on current Senate number 2508.

Under the rules referred to the committees on Rules of the two branches, acting concurrently.

Subsequently, Mr. Buoniconti, for the said committees, reported, that the order ought to be adopted.

The rules were suspended, on motion of Mr. Montigny, and the order was considered forthwith and adopted.

Sent to the House for concurrence.

Mr. McGee offered the following order, to wit:

Ordered, That notwithstanding the provisions of Joint Rule 10 the committees on Children and Families and Labor and Workforce Development, acting jointly, be granted until Wednesday, June 28, 2006, within which time to make its final report on current Senate number 2535.

Under the rules referred to the committees on Rules of the two branches, acting concurrently.

Subsequently, Mr. Buoniconti, for the said committees, reported, that the order ought to be adopted.

The rules were suspended, on motion of Ms. Spilka, and the order was considered forthwith and adopted.

Sent to the House for concurrence.

PAPERS FROM THE HOUSE.

Engrossed Bills.

The following engrossed bills (all of which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and laid before the Governor for his approbation, to wit:

Further regulating municipal affordable housing trusts funds (see House, No. 4793);

Validating certain orders passed by the Barnstable town council (see House, No. 4627);

Establishing a sick leave bank for Michael Abdow, an employee of the Trial Court (see House, No. 4834); and

Establishing a sick leave bank for Debra A. Flagg, an employee of the Department of Mental Retardation (see House, No. 4915).

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 5024) of Anthony Petrucci and others relative to the appointment of

officers for the supervision of elections in the cities and towns of the Commonwealth; and
Petition (accompanied by bill, House, No. 5025) of Anthony Petrucci and others for legislation to regulate the
sealing of ballots and voting lists in conducting elections;
Severally, under suspension of Joint Rule 12, to the committee on Election Laws.

Petition (accompanied by bill, House, No. 5026) of James M. Murphy and Robert L. Hedlund that the State Retirement
Board be directed to grant creditable service to Daniel Condon for certain employment in the Congress of the United
States;
Under suspension of Joint Rule 12, to the committee on Public Service.

Reports of Committees.

By Mr. Buoniconti, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be
suspended on the Senate petition of Stanley C. Rosenberg and Denis E. Guyer for legislation to establish appointed
positions of district clerk and district treasurer for the Bernardston fire and water district.
Senate Rule 36 was suspended, on motion of Mr. Tisei, and the report was considered forthwith. Joint Rule 12
was suspended; and the petition (accompanied by bill) was referred to the committee on Municipalities and
Regional Government.

By Mr. Buoniconti, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be
suspended on the Senate petition of Robert A. O'Leary, Edward M. Augustus, Jr., Mark C. Montigny, Kevin G. Honan
and other members of the General Court for legislation to require automatic external defibrillator devices in health
clubs.
Senate Rule 36 was suspended, on motion of Mr. Tisei, and the report was considered forthwith. Joint Rule 12
was suspended; and the petition (accompanied by bill) was referred to the committee on Public Health.
Severally sent to the House for concurrence.

Mr. Buoniconti, for the committee on Ethics and Rules, reported that the following matter be placed in the Orders of
the Day for the next session:
The House Bill providing for the annual observance of Massachusetts History Day (House, No. 3465).
There being no objection, the rules were suspended, on motion of Mr. Buoniconti, and the bill was read a second time.
Pending the question on ordering the bill to a third reading, Mr. Moore moved that the bill be amended by
striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered
2577; and by striking out the title and inserting in place thereof the following title: "An Act designating the
annual observance of Massachusetts History Day and establishing a special commission on civic engagement and
learning."
The amendment was adopted.
The bill, as amended, was then ordered to a third reading, read a third time and passed to be engrossed, in
concurrence, with the amendments.
Sent to the House for concurrence in the amendments.

Order Adopted.

On motion of Mr. Montigny,—
Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at eleven o'clock A.M., and that the
Clerk be directed to dispense with the printing of a calendar.

On further motion of Mr. Montigny, at twenty-three minutes past three o'clock P.M., the Senate adjourned to meet
again on the following day at eleven o'clock A.M.

1995 Bill Text MA S.B. 554

Introduced, February 17, 1995

Reporter
1995 Bill Text MA S.B. 554

THE STATE OF MASSACHUSETTS BILL TEXT > MASSACHUSETTS 179TH GENERAL COURT -- FIRST
ANNUAL SESSION > SENATE BILL 554

Synopsis

AN ACT TO PROVIDE FOR NEEDLE EXCHANGE.

Text

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The Department of Public Health is hereby authorized to promulgate rules and regulations for the implementation of programs for the exchange of needles within communities throughout the Commonwealth.

SECTION 2. Section 27 of Chapter 94C of the General Laws is hereby amended by inserting the following subsection: -

(f) Notwithstanding any general or special laws to the contrary, needles and syringes may be distributed, exchanged or possessed as part of a program designed to prevent the transmission of communicable diseases and any distribution, exchange or possession of said needles or syringes shall not be a crime.

SECTION 3. The Department of Public Health shall ensure that individuals participating in needle exchange programs have access to substance abuse treatment and health care.

SECTION 4. This act shall take effect immediately upon passage.

History

THE COMMONWEALTH OF MASSACHUSETTS

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-FIVE.

Sponsor(s)

Travaglini

Classification

Subject: LEGISLATIVE BODIES (91%); LEGISLATION (90%); HEALTH DEPARTMENTS (90%);
LEGISLATORS (90%)

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1995 Bill Text MA S.B. 554

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1997 Bill Text MA S.B. 517

Introduced, January 1, 1997

Reporter
1997 Bill Text MA S.B. 517

THE STATE OF MASSACHUSETTS BILL TEXT > MASSACHUSETTS 181ST GENERAL COURT – 1997
REGULAR SESSION > SENATE BILL 517

Synopsis

AN ACT RELATIVE TO INTRAVENOUS DRUG ABUSE IN THE COMMONWEALTH.

Text

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 5 of Chapter 111E of the General Laws is hereby amended by inserting after the first sentence the following sentences: -

This comprehensive system shall be extended to include the treatment for all drug users meeting appropriate eligibility criteria established by the division. Treatment shall include aggressive outreach, counseling and education on drug treatment options and the prevention of communicable diseases, detoxification services, short and long term rehabilitation, outpatient care, and specialized youth, AIDS, and women's services. The distribution of needles and syringes in accordance with Section 27 of Chapter 94C shall not be regarded as treatment or as an adequate substitute for treatment. In addition to programs of the Department, treatment shall be made available through correctional facilities, shelters, and all state agencies providing services to drug dependent persons. Implementation of this program shall begin on July 1, 1997 and be completed by June 30, 2000.

SECTION 2. The department of Public Health is hereby authorized to promulgate rules and regulations for the implementation of programs for the exchange of needles within communities throughout the Commonwealth.

Section 27 of Chapter 94C of the General Laws is hereby amended by inserting the following subsection: -

(f) Notwithstanding any general or special law to the contrary, needles and syringes may be distributed, exchanged or possessed as part of a program designed to prevent the transmission of communicable diseases and any distribution, exchange or possession of said needles or syringes shall not be a crime.

The Department of Public Health shall ensure that individuals participating in needle exchange programs have access to substance abuse treatment and health care.

SECTION 3. This act shall take effect immediately upon passage.

History

SENATE NO. 517

THE COMMONWEALTH OF MASSACHUSETTS

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-SEVEN.

1997 Bill Text MA S.B. 517

Sponsor(s)

Wilkerson

Classification

Subject: LEGISLATION (90%); LEGISLATORS (90%); LEGISLATIVE BODIES (90%); SUBSTANCE ABUSE (90%)

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1999 Bill Text MA S.B. 537

Introduced, January 6, 1999

Reporter
1999 Bill Text MA S.B. 537

THE STATE OF MASSACHUSETTS BILL TEXT > MASSACHUSETTS 181ST GENERAL COURT -- 1999
REGULAR SESSION > SENATE BILL 537

Synopsis

AN ACT RELATIVE TO INTRAVENOUS DRUG ABUSE IN THE COMMONWEALTH.

Text

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 27 of Chapter 94C of the General Laws is hereby amended by inserting the following subsection: -

(f) Notwithstanding any general or special law to the contrary, needles and syringes may be distributed, exchanged or possessed as part of a program designed to prevent the transmission of communicable diseases and any distribution, exchange or possession of said needles or syringes shall not be a crime. The Department of Public Health shall ensure that individuals participating in needle exchange programs have access to substance abuse treatment and health care.

SECTION 2. Section 5 of Chapter 111E of the General Laws is hereby amended by inserting after the first sentence the following sentences: - This comprehensive system shall be extended to include the treatment for all drug users meeting appropriate eligibility criteria established by the division. Treatment shall include aggressive outreach, counseling and education on drug treatment options and the prevention of communicable diseases, detoxification services, short and long term rehabilitation, outpatient care, and specialized youth, AIDS, and women's services. The distribution of needles and syringes in accordance with Section 27 of Chapter 94C shall not be regarded as treatment or as an adequate substitute for treatment. In addition to programs of the Department, treatment shall be made available through correctional facilities, shelters, and all state agencies providing services to drug dependent persons. Implementation of this program shall begin on July 1, 1999 and be completed by June 1, 2001.

SECTION 3. The Department of Public Health is hereby authorized to promulgate rules and regulations for the implementation of programs for the exchange of needles within communities throughout the Commonwealth.

SECTION 4. This act shall take effect immediately upon passage.

History

SENATE NO. 537

[SIMILAR MATTER FILED DURING PAST SESSION - SEE SENATE NO. 513 OF 1997-98.] BY MS. WILKERSON, A PETITION (ACCOMPANIED BY BILL, SENATE, NO. 537) OF DIANNE WILKERSON, JAMES P. JAJUGA, SUSAN C. FARGO AND OTHER MEMBERS OF THE GENERAL COURT FOR LEGISLATION RELATIVE TO INTRAVENOUS DRUG ABUSE IN THE COMMONWEALTH AND THE IMPLEMENTATION OF A NEEDLE EXCHANGE PROGRAM. HEALTH CARE.

1999 Bill Text MA S.B. 537

THE COMMONWEALTH OF MASSACHUSETTS

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-NINE.

Sponsor(s)

Wilkerson

Classification

Subject: LEGISLATION (90%); DRUG POLICY (90%); PETITIONS (90%); LEGISLATORS (90%); LEGISLATIVE BODIES (90%); SUBSTANCE ABUSE (90%)

Load-Date: February 23, 1999

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2003 Bill Text MA S.B. 610

Introduced, January 1, 2003

Reporter

2003 Bill Text MA S.B. 610

THE STATE OF MASSACHUSETTS BILL TEXT > MASSACHUSETTS 183RD GENERAL COURT -- 2003
REGULAR SESSION > SENATE BILL 610

Synopsis

AN ACT REDUCING THE TRANSMISSION OF HIV AND HEPATITIS C IN THE COMMONWEALTH OF MASSACHUSETTS.

Text

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 215 of chapter 111 of the General Laws, as most recently amended by section 128 of chapter 38 of the Acts of 1995, is hereby repealed. Section 2. Chapter 94C of the General Laws is hereby amended by striking out section 27(f), as most recently amended by section 142 of chapter 110 of the Acts of 1993, and by inserting in place thereof, the following section:-

Section 27(f). The department of public health is hereby authorized to promulgate rules and regulations for the implementation regarding the exchange of needles for the purpose of preventing the transmission of communicable diseases. Distribution or possession of needles and syringes in accordance with this section shall not be deemed in violation of this chapter.

Prior to implementing a needle exchange program in a municipality, the commissioner of public health shall create a community advisory committee. Said committee shall consist of seven (7) residents of the municipality. Five (5) shall be appointed by the chief executive officer of said municipality, and shall include one (1) representative of the board of health and one (1) representative of the police department. The commissioner of public health shall appoint the remaining two (2) members. The community advisory committee will have sixty (60) days to solicit community input relating to implementation of the needle exchange program, and shall report its findings to the commissioner of public health at the end of the sixty-day period. No final decision on the implementation of a needle exchange program shall be made before the end of this sixty-day period.

Section 3. Section 32I of chapter 94C of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by adding the following subsection:-

(d) The provisions of subsections (a) and (b) of this section shall not apply to persons possessing or distributing needles and syringes pursuant to chapter 94C, section 27(f) of the General Laws.

Section 4. The advisory committee shall remain organized as an ad hoc committee available to reconvene at the calling of the commissioner of public health. Any vacancy in the membership of the advisory committee shall be filled in accordance with section 2 of this act.

Section 5. The commissioner of public health, after 3 years of implementation of a needle exchange program, shall reconvene the community advisory committee. The commissioner of public health shall commission, in consultation with said community advisory committee an independent evaluation of the community's needle exchange program. The evaluation shall include, but shall not be limited to newly reported infections of HIV/Hepatitis C due to IV drug use, increase/decrease number of individuals in drug/alcohol treatment

2003 Bill Text MA S.B. 610

programs, increase/decrease in crime rates, increase/decrease in drug related arrests/crimes, increase/decrease of reported drug use, increase/decrease of discarded needles and drug paraphernalia surrounding the needle exchange program site. The independent evaluation shall include solicitation of community views and interviews with members of the community advisory committee.

Section 6. Evaluation results shall be made available to the community advisory committee and the public no later than 180 days after the commission of said independent evaluation. The commissioner of public health shall utilize the data of the independent evaluation to further modify and enhance the program's purpose of protecting the public health by reducing the transmission of HIV and hepatitis C. Copies of the independent evaluation shall be filed with the Speaker of the House, President of the Senate, Senate and House Committees on Ways and Means, the Joint Committee on Health Care and the Joint Committee on Public Safety.

History

SENATE NO. 610

BY MR. MOORE, A PETITION (ACCOMPANIED BY BILL, SENATE, NO. 610) OF RICHARD T. MOORE, MARK C. MONTIGNY, CHRISTINE E. CANAVAN, DIANNE WILKERSON AND OTHER MEMBERS OF THE GENERAL COURT FOR LEGISLATION TO REDUCE THE TRANSMISSION OF HIV AND HEPATITIS C IN THE COMMONWEALTH BY MEANS OF NEEDLE EXCHANGE PROGRAMS. HEALTH CARE.

THE COMMONWEALTH OF MASSACHUSETTS

IN THE YEAR TWO THOUSAND AND THREE.

Sponsor(s)

Moore

Classification

Subject: AIDS & HIV (91%); HEPATITIS (90%); LEGISLATION (90%); DRUG POLICY (90%); HEALTH DEPARTMENTS (90%); LEGISLATORS (90%); INFECTIOUS DISEASE (90%); LEGISLATIVE BODIES (90%); DISEASES & DISORDERS (90%); HEPATITIS C (90%)

Load-Date: January 24, 2003

THE STATE OF MASSACHUSETTS BILL TEXT
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Cape Cod Commission DRI Decisions -- Healthcare
1/6/2017

Decision Date	Project	Project Number	Town	Decision
7/11/1991	Cape Cod Hospital Expansion	TR91037	Barnstable	DRI Hardship Exemption
4/30/1992	JML Care Center	EX92027	Falmouth	DRI Exemption
1/6/1994	Falmouth Hospital Foundation Assisted Living	TR93021	Falmouth	DRI
3/17/1994	Rehabilitation Hospital of the Cape & Islands (aka Spaulding Rehabilitation Hospital)	TR93025	Sandwich	DRI
10/20/1994	Falmouth Hospital Addition for Outpatient Care & Maternity	TR94013	Falmouth	DRI
10/17/1995	Cape Cod Hospital Cancer Treatment Center & Ambulatory Day Surgery	MOD96018	Barnstable	DRI Hardship Exemption MOD
8/13/1998	Cape Cod Hospital Lobby Expansion	EX98023	Barnstable	DRI Exemption
3/20/2003	Cape Cod Healthcare, Inc.	DA02014	Barnstable	Development Agreement
10/23/2003	Falmouth Hospital Pavilion Addition	HDEX02032	Falmouth	DRI Hardship Exemption
1/23/2003	Independence Medical Arts (medical office space)	HDEX/CUC02028	Barnstable	DRI Hardship Exemption
1/22/2004	Long Pond (Fontaine) Medical Center Expansion	HDEX20073	Harwich	DRI Hardship Exemption
9/2/2004	Cape Cod Hospital Patient Bed Addition	TR04007	Barnstable	DRI
1/12/2006	Cape End Care Campus	HDEX05030	Provincetown	DRI Hardship Exemption
8/4/2011	Mashpee Community Health Center	HDEX11009	Mashpee	DRI Project of Community Benefit (POCB) Hardship Exemption
8/2/2012	MP Renaissance (residential & memory care)	TR12002	Brewster	DRI
10/11/2012	Cape Cod Hospital Addition	HDEX12031	Barnstable	DRI POCB Hardship Exemption
10/17/2013	Falmouth Hospital ER Expansion	HDEX13008	Falmouth	DRI POCB Hardship Exemption
3/28/2013	Mayflower Place Expansion (residential & memory care)	TR12035	Yarmouth	DRI
1/30/2014	Bridges at Mashpee (memory care & assisted living)	TR13015	Mashpee	DRI
3/31/2016	Northbridge Mashpee (memory care & assisted living)	TR15023	Mashpee	DRI

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

BARNSTABLE, ss

No. SJC-12224

AIDS SUPPORT GROUP OF CAPE COD, INC.,

PLAINTIFF – APPELLANT

V.

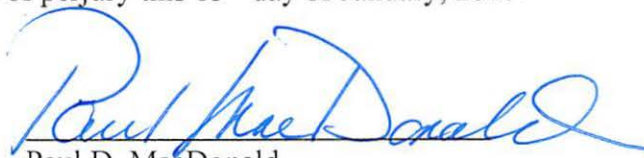
TOWN OF BARNSTABLE, BOARD OF HEALTH OF THE TOWN OF BARNSTABLE,
AND THOMAS MCKEAN, IN HIS OFFICIAL CAPACITY AS SIRECTOR OF PUBLIC
HEALTH OF THE TOWN OF BARNSTABLE,

DEFENDANTS – APPELLEES

AFFIDAVIT OF PAUL B. MacDONALD

1. My name is Paul B. MacDonald and I serve as the Chief of Police of the Town of Barnstable.
2. I have been intimately involved in crafting responses to the opiate crisis as it has gravely affected the Barnstable community.
3. I have reviewed the Town's "Response to the Brief of Amici Curiae" ("the Response") and the factual recitations therein.
4. I fully adopt as true the factual representations in the Response. They reflect both my extensive personal knowledge of the facts as well as the information provided to me by my staff based on their observations, which I believe to be true.

Signed at Barnstable under the pains and penalties of perjury this 13th day of January, 2017.



Paul D. MacDonald

JDP QUARTERLY REPORT
10/01/2016 – 12/31/2016
BARNSTABLE POLICE DEPARTMENT

July 1 st to Sept 30 th	Oct 1 st to Dec 31 st	Jan 1 st to March 31 st	April 1 st to June 30 th
FQ1 due by Oct 16 th	FQ2 due by Jan 16 th	FQ3 due by April 16 th	FQ4 due by July 16 th

Circle one:	<input checked="" type="checkbox"/> CCIT	Co-response	<input checked="" type="checkbox"/> Innovative	<input checked="" type="checkbox"/> MHFA
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1. 19 # of operations/partners/stakeholder meetings held this quarter. Specifically, 3 CCIT Meetings, 13 Street Outreach Team Meetings, 2 collaborative meeting with Barnstable Police, Cape Cod Hospital Emergency Room, and CCH Clinical Team.
2. 0 % of the Department's officers have completed 8 hours of MH training (circle specific type: MHFA, CIT, Overview, or other _____) this quarter.
3. 0 % of the Department's dispatch have completed 8 hours of MH training (circle specific type: MHFA, CIT, Overview, or other _____) this quarter.
4. 39% % Cumulative amount of police and dispatch staff have received either: CIT or MHFA, Overview, or Other (please circle) overall.
5. Agencies that make up regular membership for this JDP program include: (Please note any new partners)
 - ☒ Local ESP
 - ☒ Local Behavioral Health provider/s
 - ☒ Local DMH site staff
 - ☒ Court staff – Barnstable Police Prosecution
 - ☒ Court staff – Probation
 - ☒ Court staff – DA
 - ☐ Peers
 - ☐ DYS
 - ☒ Shelter staff
 - ☐ NAMI representative
 - ☒ CBFS
 - ☐ Veteran-Serving agency
 - ☒ Other/s: Vinfen, Housing Assistance Corp., Cape Cod Hospital, Baybridge Clubhouse (Vinfen), Department of Mental Health, Barnstable District Court Probation Department, Barnstable Police Prosecution Unit, BPD Community Impact Unit, Duffy Health Org. New members include Hyannis Fire Department, AIDS Support Group of CC & Islands, and Barnstable House of Correction.
6. How is your JDP's diversion data captured?
 - ☐ CIT officers complete data entry form and gives to person who enters data
 - ☐ All officers who respond to MH calls complete data entry form for person who enters data
 - ☒ One person reviews all police reports to identify calls & responses and enters data
 - ☐ Other: _____
7. Who completes data entry into the DMH statewide JDP database?
 - ☐ Officer within Department
 - ☐ Civilian within Department
 - ☐ Clinician from partner agency
 - ☐ Data isn't entered for this police department

JDP QUARTERLY REPORT
10/01/2016 – 12/31/2016
BARNSTABLE POLICE DEPARTMENT

X Other: Officer within Department who is Community Impact Team member/CIT Officer

8. Have written policies and procedures been developed for this JDP program within the police department?
☐ Yes, entitled: _____
X No
9. Have written policies and procedures been developed within partnering clinical agencies:
X Yes, entitled: Multi-Agency Release of Information Form signed by clients
☐ No
10. Does the program use any additional communication tools for the JDP membership (e.g., email distribution list, website, or newsletter)?
X Yes: e-mail and monthly agenda, cell phones, and case conference meetings between Street Outreach Team and other agency members as appropriate.
11. Please provide a program event (diversion or otherwise) that may be useful to share: The CIU again collaborated with the Behavioral Health Provider Coalition of Cape Cod & the Islands to teach a second MHFA class to Cape & Islands police officers on 11/04/2016.

Another significant event was a multi-agency meeting spearheaded by the Barnstable Police Department/CIU and Cape Cod Healthcare Behavioral Health Team to address concerns related to the treatment provided to mentally ill patients in the Cape Cod Hospital Emergency Room. Cape Cod Healthcare Chief of Psychiatry Daria Hanson, MD and Behavioral Health Executive Director Debra Ciavola organized the meeting and included emergency room doctors, social workers, emergency room behavioral health nurse practitioners, a DMH psychiatrist, and Vinfen.

During the workshop, Barnstable Police personnel provided handouts and training on the protective custody law as it pertains to intoxicated persons and, alternatively, persons incapacitated by drugs. Additionally, we discussed Section 12 applications by members of the police department, particularly the CIU.

Our relationship with CCH, through Dr. Hansen and Debra Ciavola, has greatly improved. At the workshop, it became clear that ER personnel have not been notifying the Behavioral Health team of those patients admitted to the ER pursuant to a police Section 12 application. As a result, the Behavioral Health team has not seen or treated many of these individuals.

This remains a fluid and evolving situation. However, the Behavioral Health team and the CIU agreed to try to meet monthly to review the most significant mental health cases brought by police to the emergency room to improve outcomes for all parties/agencies involved.

JPD QUARTERLY NARRATIVE REPORT FOR 10/01/2016 – 12/31/2016

BARNSTABLE POLICE DEPARTMENT

During the last quarter of the grant period the Barnstable Police Department Community Impact Unit (“CIU”) successfully achieved the following deliverables with respect to the DMH Innovative Jail Diversion grant:

Community Impact Unit

- Clinician Charlene Poliquin has continued working with CIU and Barnstable Police and has participated in the monthly CCIT meetings and several other multi-agency meetings.
- Officer Sturgis worked weekly with a recovery coach from Gosnold’s Opiate Overdose Program. Officer Sturgis and the recovery coach conducted outreach to individuals who recently overdosed on heroin or other opioids and offered them detox treatment and support services. Over 12 such visits were conducted during the last quarter.
- The CIU continued to coordinate and facilitate monthly CCIT meetings. Recent new members include the AIDS Support Group of Cape Cod & the Islands, the Hyannis Fire Department, and the Barnstable County House of Correction.
- Weekly Street Outreach Team meetings were held to identify and attempt to engage those most vulnerable individuals in crisis in the target population.

Outreach Efforts

The Street Outreach Team comprised of representatives from the CIU, Vinfen, Duffy Health Organization, Housing Assistance Corporation, and the AIDS Support Group of Cape Cod (Needle Exchange Program), continues to meet weekly. The team coordinates efforts on a daily basis to offer and provide services and support to those homeless persons in crisis.

Community Crisis Intervention Team

The Barnstable CCIT continues to meet monthly to discuss interagency issues and to triage those individuals in crisis having the most police interaction. The CCIT includes representatives from the Barnstable Police CIU and Prosecution Division, Barnstable District Court Probation Department, Department of Mental Health, Vinfen, Duffy Health Organization, Housing Assistance Corporation, Cape Cod Hospital, Baybridge Clubhouse, AIDS Support Group of CC & Islands, Hyannis Fire Department, and the Barnstable House of Correction.

The CCIT works diligently to provide appropriate services to individuals in crisis and has made a significant impact on the target population by coordinating housing, mental health services, substance abuse treatment, specific and appropriate terms of probation, case management, and jail diversion.

Jail Diversion Program

During the last quarter the CIU responded to approximately 330 calls for service involving the chronically homeless, individuals suffering from mental illness, and individuals battling substance abuse. The CIU was directly involved in jail diversion efforts including but not limited to:

- 13 criminal arrests
- 3 persons diverted from criminal arrest and placed into protective custody
- 3 Section 12 applications for involuntary committals for mental health evaluations
- 1 Section 35 applications for involuntary committal for substance abuse detox treatment
- 19 referrals to other state, social, and support agencies
- 19 meetings, including monthly CCIT and case conferences and Street Outreach Team Meetings
- 61 persons diverted from criminal arrest and advised on-scene and/or community outreach efforts by the CIU
- 18 people transported to the hospital
- 63 referrals to other agencies and/or follow-ups

These are estimated numbers based on a search of Barnstable Police in-house records and manual review of calls for service.

Mental Health First Aid

Between 10/01/2016 – 12/31/2016 the CIU collaborated with the Behavioral Health Provider Coalition of Cape Cod and the Islands (“BHPCC”) and conducted a second MHFA First Responder course to 14 police officers across the Cape.

On 10/11/2016 Lieutenant Governor Karen Polito visited with the Barnstable Town Manager, Town Council, and other local and state leaders regarding the large homeless population in downtown Hyannis. At this meeting, Sgt Jennifer Ellis of the Barnstable Police CIU presented an overview of the collaborative outreach efforts between local and state agencies and the efforts of the Community Crisis Intervention Team to engage, treat, and support these individuals.

On 11/16/2016 a multi-agency meeting including NAMI, the CIU and Barnstable Police, Cape Cod Hospital Emergency Room and Behavioral Health staff, Vinfen, and the Department of Mental Health met to discuss issues related to patients who are admitted into the Emergency Room for mental health evaluations pursuant to a Section 12 application by Barnstable Police.

During the workshop, the Barnstable Police presented handouts and discussed the Protective Custody Law as it pertains to intoxicated persons and, alternatively, as it pertains to persons incapacitated by drugs AND how the law impacts police response to persons in the Emergency Room who are intoxicated or incapacitated by drugs.

The Barnstable Police also presented handouts and discussed persons who are brought into the Emergency Room for a Section 12 application by Barnstable Police. Several cases with unsatisfactory outcomes were reviewed. However, ER physicians noted that in the big picture, the majority of those cases are successful.

It became clear that the ER is not always advising the CCH Behavioral Health staff of patients in need of a mental health evaluation. Chief of Psychiatry Dr. Daria Hanson and Behavioral Health Executive Director Debra Ciavola made it clear that they want to be advised of every patient in need of a mental health evaluation that comes into the Emergency Room.

Upcoming Events

NAMI of Cape Cod and Islands, in collaboration with the Taunton CCIT, is hosting Community Crisis Intervention Team training in Hyannis at the end of January. Through the DMH grant, the Barnstable Police Department will send 3 officers to this training. Additionally, Sgt Jennifer Ellis will assist in presenting several sections of the training.

The CIU has been asked to teach the MHFA First Responder Course to the Cape Cod Regional SWAT Team in February.

The CIU has posted a position within the Barnstable Police Department for an additional officer on the unit.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to, Mass. R.A.P. 16(e) (references to the record); Mass. R.A.P. 16(f) (reproduction of statutes, rules and regulations); Mass. R.A.P. 16(h) (length of briefs, Mass. R.A.P. 20 (form of briefs, appendices and other papers)).

/s/ *Charles S. McLaughlin, Jr.*

CHARLES S. McLAUGHLIN, JR.

No. SJC-12224

AIDS SUPPORT GROUP OF CAPE COD, INC.,
PLAINTIFF-APPELLANT,

v.

TOWN OF BARNSTABLE, BOARD OF HEALTH OF
THE TOWN OF BARNSTABLE, AND THOMAS MCKEAN,
IN HIS OFFICIAL CAPACITY AS DIRECTOR OF PUBLIC
HEALTH OF THE TOWN OF BARNSTABLE,
DEFENDANTS-APPELLEES.

**BRIEF OF THE DEFENDANTS-APPELLEES,
TOWN OF BARNSTABLE, BOARD OF HEALTH OF
THE TOWN OF BARNSTABLE, AND THOMAS MCKEAN,
IN HIS OFFICIAL CAPACITY AS DIRECTOR OF PUBLIC
HEALTH OF THE TOWN OF BARNSTABLE**

BARNSTABLE COUNTY