

# The Needles and the Damage Done

## Sacramento tests the legality of needle exchanges

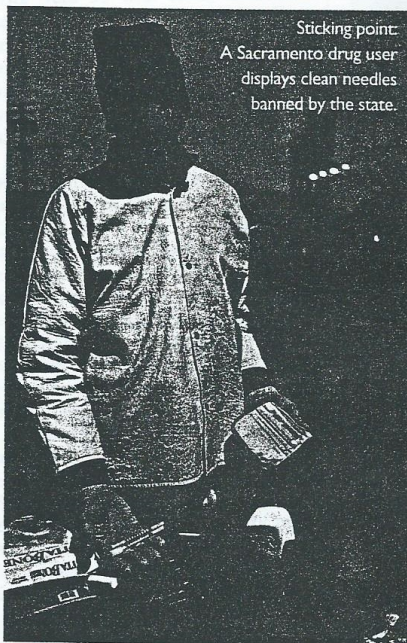
CALIFORNIA'S municipal governments, struggling to combat the rapid spread of HIV infection, are seeking ways to override the statutory prohibitions on hypodermic needle exchanges. The Sacramento County Board of Supervisors joined the vanguard of this movement in November 1994, when it approved, by just a one-vote margin, a needle exchange measure under the county's "police power" and the health officer's mandate to protect public health.

California is one of eight states that continue to have laws prohibiting the unregulated possession of needle paraphernalia. Governor Pete Wilson has vetoed three bills that would have established pilot exchange programs in the state, arguing that needle exchanges would help promote drug addiction.

In an effort to force a court ruling on the legality of its needle exchange plan, the Sacramento board directed County Clerk Cindy Hol-

loway, and the board has approved an allocation of \$25,000 to hire an outside attorney to defend her.

The cities of Los Angeles, San Francisco, and Oakland had previously endorsed needle exchanges by declaring local



Sticking point: A Sacramento drug user displays clean needles banned by the state.

states of emergency, which permitted them to sidestep the state law banning needle swaps. The Sacramento program simply affirms the right of municipalities to establish needle exchanges as a matter of public health. "We advised the board that there was a

legally defensible argument that could be made to support a needle exchange program," says Michele Bach, the supervising deputy counsel for Sacramento County. At the time it originally approved the plan, the board directed county counsel to file an action asking the Sacramento Superior Court for a finding "that the county's police powers and health officer's powers confer on the county the authority to implement needle exchange despite the statutory prohibition," Bach says.

However, by the time the board gets a legal ruling on either of the actions it has pending in court, needle exchanges could fall victim to another round of political battles. The original plan won endorsement only when a supervisor who had been counted as a no vote changed his mind. That supervisor, Toby Johnson, has since retired to his Sacramento ranch, and Supervisor Dave Cox, a leading opponent of needle exchanges, plans to reintroduce the measure to have the board vote it down.

Cox's strategy may not pan out; Johnson's successor and former aide, Don Nottoli, has not yet indicated his position on the issue. Sacramento County's district attorney, Jan Scully, elected in November with strong backing from prosecutors and law enforcement, opposes the program, as does Sheriff Glen Craig.

Los Angeles, meanwhile, is thrashing out other legal and jurisdictional questions relating to needle exchanges. After Mayor Richard Riordan declared a state of emergency to facilitate needle swaps, the county board of supervisors began debating whether to enact its own program. But L.A. County Counsel DeWitt Clinton had advised the board in October that such a program "would violate state laws regulating the distribution and use of drug paraphernalia" while rendering the county potentially "liable for damages to those harmed as a result of the program's operation."

Both the Los Angeles County Counsel's Office and Assemblywoman Barbara Alby (R-Sacramento) have filed separate requests for a legal opinion from Attorney General Dan Lungren. Lawyers with the attorney general's office have put the requests on hold as they await the ruling in an Oakland case, *People v. Halem*, which tests the legality of an exchange program approved by the Oakland City Council and the Alameda County Board of Supervisors.

The case concerns Scott Halem's Alameda County Exchange. Halem claims to have distributed more than 275,000 clean needles to drug addicts since 1992 and calls the prosecution "an incredible waste of taxpayers' money." Halem and four of his colleagues were scheduled to go on trial in Oakland's municipal court in February.

Halem has already gone through two trials stemming from a 1991 citation in Berkeley, one resulting in a hung jury, the other in an acquittal.

Oakland City Council members have recently embarked on their own civil disobedience campaign to draw attention to the need to overturn the state ban on needle swaps. In January four council members distributed clean needles among area drug users. Oakland police did not arrest the council members or offer any comment on their action.

Politics aside, the health benefits of needle exchanges are well documented. More than 55 U.S. cities now have exchange programs. In 1993 the Centers for Disease Control surveyed 37 programs in the United States, Canada, and Europe, and recommended needle swaps as part of a comprehensive campaign to prevent the spread of AIDS.

Last year the American Foundation for AIDS Research sponsored another study of 2,500 addicts in New York City and found that the rate of HIV infection among those in needle exchange programs was 2 percent, compared with 4 to 7 percent among drug users not provided with clean needles. Research also indicates that needle swaps do not increase drug addiction or entice nonusers into drug dependency by promulgating clean needles.

Nonetheless, politics still seems likely to determine the fate of municipal needle exchanges. In Sacramento County, Supervisor Roger Dickinson, one of the board's leading supporters of needle swaps, told the *Sacramento Bee* that public opinion "has been overwhelmingly in support of needle exchange." For her part, Scully claims she had encountered a "strong public response" opposing the board's program.

Meanwhile, the county counsel's office waits for the board to make up its mind. "We went with what the board directed us to do at the time," says Bach. "If the board were to change its mind, then obviously there would be no needle exchange program."

—SIGRID BATHEN