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A SHOT IN THE ARM: LEGAL & SOCIAL OBSTACLES TO UNITED STATES NEEDLE EXCHANGE PROGRAMS

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AIDS is now one of the 10 leading causes of death among one to four-year-olds and among 15 to 24-year-olds in the United States. In New York, it is the leading cause of death among men and women 20 to 49 years old.

There is the expectation that parents will die before their children. Because of the HIV/AIDS epidemic, it is not working out that way for thousands of parents. They are watching their children die in the prime of life.¹

I. INTRODUCTION

AIDS is caused by the human immunodeficiency virus (HIV)² and has become the health care crisis of our generation. Based on the most current medical knowledge, every person who is HIV positive and develops AIDS will die.³ This epidemic⁴ has brought with it many legal

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¹ GERALD J. STINE, ACQUIRED IMMUNE DEFICIENCY SYNDROME: BIOLOGICAL, MEDICAL, SOCIAL, AND LEGAL ISSUES xxiv (1993).

² HIV is a viral agent which is transmitted from person to person through sexual contact, exchange of blood from blood products (including sharing needles containing contaminated blood), and from mother to child during pregnancy. Mark A.R. Kleiman, *AIDS, Vice and Public Policy*, 51 LAW & CONTEMP. PROBS., 315, 361 (1988); Linda M. Dorney, *Culpable Conduct with Impunity: The Blood Industry and the FDA's Responsibility for the Spread of AIDS Through Blood Products*, 13 J. PHARMACY & LAW, 129, 139 (1994); Larry Gostin, *The Interconnected Epidemics of Drug Dependency and AIDS*, 26 HARV. C.R.-C.L. L. REV. 113, 116-17 (1991).

³ STINE, *supra* note 1, at 35; H. William Goebert, Jr., *Acquired Immune Deficiency Syndrome (AIDS)*, in LEGAL MEDICINE LEGAL DYNAMICS OF MEDICAL ENCOUNTERS 369 (1988).

⁴ The Centers for Disease Control in 1996 produced a study in conjunction with the opening of the 11th International Conference on AIDS which estimated that from 650,000 to 900,000 Americans have been infected with the HIV virus as of 1992. Michael Lasalandra, *Study AIDS Spread Slowing in U.S.*, BOSTON HERALD, July 7, 1996, at 13. It was noted in 1992 that the number of AIDS cases reported in the United States (approximately 235,000) was only an indication of the larger pandemic of HIV infection. STINE, *supra* note 1, at xxii, xxiv-xxv. An estimated over one million people in the U.S. are HIV infected and only approximately 30% know it, leaving over 700,000 people in the U.S. who are HIV infected and do not even know it. *Id.*

and social dilemmas which have created distinct battlelines among races, religions and politics.⁵ As the AIDS epidemic continues to surge through the United States with no cure in the immediate future, one geographic area in which AIDS is spreading rapidly is within the inner cities.⁶ This is a result of the high level of intravenous drug use which takes place in many urban areas.⁷ The United States has the greatest rate of HIV infection through intravenous drug use among the more than fifty countries that have reported HIV and AIDS statistics.⁸

Many states, in an effort to curb the soaring rate of AIDS among intravenous drug users, have either enacted state programs or allowed for privately sponsored needle exchange programs within inner cities.⁹ These programs encourage drug users to come to facilities and trade dirty needles for clean needles.¹⁰ Studies have shown that by providing such drug users with clean needles, programs are reducing the spread of AIDS through intravenous drug use.¹¹ This can provide a bridge to the reduction and treatment of intravenous drug abuse and AIDS as a whole.¹²

Despite the apparent success in slowing down the rate of AIDS among intravenous drug users, needle exchange programs have had to confront many legal and social challenges.¹³ Needle exchange programs were established by AIDS activists who challenged various needle prescription laws.¹⁴ Due to the difficulty for drug addicts to legally

⁵ See *infra* part III (discussing the background of minority opposition); part IV (discussing political opposition to needle exchange programs).

⁶ David L. Kirp & Ronald Bayer, *The Politics*, in DIMENSIONS OF HIV PREVENTION: NEEDLE EXCHANGE 78 (Jeff Stryker & Mark D. Smith eds., 1993). HIV among drug users is disproportionately affecting the urban poor, blacks, and Hispanics. Gostin, *supra* note 2, at 116-17.

⁷ See Gostin, *supra* note 2, at 116-17; Kirp & Bayer, *supra* note 6, at 78.

⁸ Kirp & Bayer, *supra* note 6, at 63. Statistics now show that the number of intravenous drug users diagnosed with AIDS exceeds the number of gay and bisexual men diagnosed with the disease. Dolores Kong, *Mass AIDS Rate Triples That of '92 Cases Outstrip Projection*, BOSTON GLOBE, May 26, 1993, at 1.

⁹ See, e.g., CONN. GEN. STAT. ANN. ch. 417 § 21A-65 (West 1995); MASS. GEN. LAWS ANN. ch. 94C, § 27 (West 1995); Sandra D. Lane, *A Brief History*, in DIMENSIONS OF HIV PREVENTION: NEEDLE EXCHANGE 3-5 (Jeff Stryker & Mark D. Smith eds., 1993).

¹⁰ See Lane, *supra* note 9, at 3-5.

¹¹ Committee Report for 1995 California Assembly Bill No. 1407, California 1995-1996 Regular Session. A study in July 1996 reported that if needle exchange programs were available to injection drug users since 1987 there might have been 10,000 fewer AIDS transmissions in the United States. *What We Don't Know . . .*, PORTLAND OREGONIAN, July 11, 1996, at B6 [hereinafter *What We Don't Know*].

¹² Gostin, *supra* note 2, at 153.

¹³ See *infra* part III (discussing social opposition); part IV (discussing legal opposition to needle exchange programs).

¹⁴ Lane, *supra* note 9, at 3. Most states, prior to the implementation of needle exchange

obtain needles, many began sharing needles which were often contaminated and resulted in the spread of a variety of diseases including AIDS.¹⁵ As of 1995, all but eight states have abolished their needle prescription laws.¹⁶

Many needle exchange programs established in inner cities have been targeted at minorities who are being disproportionately infected with HIV.¹⁷ However, despite the fact that states and AIDS activists are taking action to assist intravenous drug users and in particular, minorities, opposition over the years to these programs has come from inner-city minority political and religious leaders.¹⁸ Despite statistics and success of needle exchange programs in cities such as Tacoma, Washington, and New Haven, Connecticut, many black leaders believe two things: first, that needle exchange programs encourage and will increase drug abuse within inner cities and second, that the specific impact of such programs upon blacks will be negative.¹⁹ Many view drug abuse as one of the main problems affecting the inner cities.²⁰ They believe that by implementing needle exchange programs, states are essentially conceding defeat on the war on drugs by condoning the distribution of needles to addicts.²¹ Furthermore, the opposition of many black leaders to needle exchange programs is based on the deep-rooted fear of AIDS and its impact upon the black population.²² These beliefs have created a strong barrier to the implementation of needle exchange programs and provide viable opposition as activists

programs, regularly enforced drug paraphernalia and drug prescription laws which prohibited the possession and sale of hypodermic needles or syringes without a prescription from physician and surgeon, dentist, veterinarian, or podiatrist. *See, e.g.*, CONN. GEN. STAT. ANN. ch. 417 § 21A-65 (West 1995); ILL. COMP. STAT. ANN. 38/22-50 (West 1995); N.J. STAT. ANN. § 24-21-51 (West 1995).

¹⁵ See Jeff Stryker & Mark D. Smith, *Executive Summary*, in DIMENSIONS OF HIV PREVENTION: NEEDLE EXCHANGE xiii (Jeff Stryker & Mark D. Smith eds., 1993); Gostin, *supra* note 2, at 122.

¹⁶ *The Needles & The Damage Done*, CAL. LAW., Mar. 15, 1995, at 21 [hereinafter *Needles*].

¹⁷ Gostin, *supra* note 2, at 117; Kong, *supra* note 8, at 1.

¹⁸ See Stephen B. Thomas & Sandra Crouse Quinn, *The Politics*, in DIMENSIONS OF HIV PREVENTION: NEEDLE EXCHANGE 110, 113-15 (Jeff Stryker & Mark D. Smith ed., 1993).

¹⁹ See *id.*; Harlon L. Dalton, *AIDS in Blackface*, 118 DAEDALUS 205, 209-11 (1989). Dalton identifies five overlapping factors for why the black community is reluctant to acknowledge AIDS and forms of treatment such as needle exchange programs. *Id.* The factors are: (1) reluctance to acknowledge AIDS so long as blacks continue to be blamed for its initial spread, (2) a deep distrust of whites demonstrating a sudden concern for black well-being, (3) black homophobia, (4) the unique relationship between the black community and drug abuse, and (5) the deep resentment within the black community at being dictated to once again. *Id.*

²⁰ Dalton, *supra* note 19, at 217; Thomas & Crouse Quinn, *supra* note 18, at 114-16.

²¹ Dalton, *supra* note 19, at 217; Thomas & Crouse Quinn, *supra* note 18, at 114-16.

²² See Dalton, *supra* note 19, at 209-11, Thomas & Crouse Quinn, *supra* note 18, at 116.

strive to change the legislation regarding needle prescriptions.²³ However, black political opposition to needle exchanges has decreased over the years to the point where many black mayors in many major cities now endorse such programs in their cities.²⁴ Furthermore, it appears that it may be political opposition by Republicans which hinders the funding and success of needle exchange programs more than minority opposition.²⁵

Part II of this note focuses on the necessity and the creation of needle exchange programs within the United States. Part III of the note focuses on the social roadblocks implemented by many black communities to prevent needle exchange programs from being established, and whether this opposition is still a viable threat to these programs or, if the only opposition is now drawn along political party lines.

Part IV of this note focuses on states that continue to have needle prescription laws and the legal challenges that continue to exist within the legislatures of these states.²⁶ Some states with needle prescription laws have made exceptions for needle exchange programs run by the state or have established programs through emergency police power.²⁷ Others, however, have had their legal challenges fought in the courtroom, usually by AIDS activists who purposefully get arrested in order to challenge the legislation.²⁸ Activists continue to work towards changing the needle prescription laws in the eight states where they remain stringent.²⁹ It is believed that clean needles are vital to reducing the

²³ See Dalton, *supra* note 19, at 209–11. An early 1990's study conducted by Stephen B. Thomas and Sandra Crouse Quinn of black church-goers found that only half of those surveyed trusts government reports on AIDS and that two-thirds entertain the possibility that AIDS is a form of genocide against the black race. David L. Kirp, *Blood, Sweat, and Tears: the Tuskegee Experiment and the Era of AIDS*, *TIKKUN*, May-June 1995, at 6.

²⁴ Kirp & Bayer, *supra* note 6, at 90. Support of needle exchange programs has come from black mayors in major cities such as New Haven, Philadelphia, Washington, D.C. and New York City. *Id.*

²⁵ See CONNECTICUT SENATE BILL NO. 547, 1995 Regular Session; Kirp & Bayer, *supra* note 6, at 79, 90–91; Thomas & Crouse Quinn, *supra* note 18, at 114–15. In 1990, Republican Senator Jesse Helms blocked federal funding of needle exchange programs. Thomas & Crouse Quinn, *supra* note 18, at 114–15.

²⁶ See *infra* part IV (discussing legal opposition to needle exchange programs).

²⁷ See, e.g., CONN. GEN. STAT. ANN. ch. 417, § 21A-65 (West 1995); MASS. GEN. LAWS ANN. ch. 94C, § 27 (West 1995); *Needles*, *supra* note 16, at 21.

²⁸ See *Commonwealth v. Leno*, 616 N.E.2d 453 (1993); *People v. Bordowitz*, 588 N.Y.S.2d 507 (1991).

²⁹ See Lane, *supra* note 9, at 3–4; Sean Murphy, *4 AIDS Activists Provoke Own Arrests; Group Gives Drug Addicts Clean Needles*, *BOSTON GLOBE*, Feb. 23, 1994, at 19; *Like Father, Like Son, In Chicago No Less; Battling the Spread of HIV, Abbie Hoffman's Son Stands Trial for Participating in an Illicit Needle Swap*, *NAT'L LAW JOURNAL*, Dec. 12, 1994, at 1.

spread of AIDS among the drug addicted population, and activists have successfully employed the legal defense of necessity in New York to defy needle prescription laws.³⁰ States, such as California, which still have prescription laws are controlled by Republican governors who oppose any changes in the statutes or funding for needle exchange programs.³¹ As states grapple with these laws and dilemmas, the federal government does as well.³² After twelve years of a Republican run White House, which continuously denounced and refused to fund needle exchange programs, AIDS activists grew hopeful with the Clinton Administration.³³ However, it appears as though President Clinton may be reluctant to support needle exchange programs due to fear of repercussions from a Republican backed Congress.³⁴ Finally, Part V of this note addresses the dilemma of whether needle exchange programs can survive without federal funding and the support of black religious leaders and ultimately whether drugs and AIDS can simultaneously be fought within inner cities.

II. AIDS, INTRAVENOUS DRUG USE AND THE GROWTH OF NEEDLE EXCHANGE PROGRAMS

A. *The Rise of AIDS Among Intravenous Drug Users Within the United States*

1. Statistics

It was reported as early as 1940 that intravenous drug users could spread infectious diseases to their needle-sharing partners and from these partners to women, men, and children.³⁵ Needle sharing among intravenous drug users has resulted in the spread of many transmitta-

³⁰ See *Bordowitz*, 588 N.Y.S.2d at 507.

³¹ Committee Report for 1995 California Assembly Bill No. 1407, 1995-1996 Regular Session; *Needles*, *supra* note 16, at 21.

³² 42 U.S.C.A. ch. 6A, subch. XXIII, 300ee-s (West 1995). "None of the funds provided under this Act or an amendment made by this Act shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome." *Id.*

³³ See Doug Podolsky, *A Lot of Talk and Also Some Action*, U.S. NEWS & WORLD REPORT, Dec. 18, 1995, at 1; *Aid for AIDS, Clinton's Promise to Maintain Funding for Medical Care is Good News for New York*, NEWSDAY, Dec. 9, 1995, at 1 [hereinafter *Aid for AIDS*].

³⁴ See Podolsky, *supra* note 33, at 1; *Aid for AIDS*, *supra* note 33, at 1.

³⁵ Gostin, *supra* note 2, at 115.

ble diseases such as bacterial endocarditis, syphilis, cellulitis, soft-tissue infection, and AIDS.³⁶ Of all nations in the world reporting, the United States has the greatest problem of AIDS spread through intravenous drug use (IDU).³⁷ It has been estimated in 1993 that approximately 1 million to 1.5 million people in the United States are intravenous drug users.³⁸ Furthermore, intravenous drug users account for approximately one-third of the 250,000–350,000 cases of AIDS.³⁹ HIV among intravenous drug users is the main way AIDS is spread to non-risk groups.⁴⁰

The rise in AIDS through IDU is disproportionately affecting the urban poor, black and Latino communities.⁴¹ It has been stated that, "AIDS in America is a needle-born epidemic centered in predominately African American and Latino ghettos that affects intravenous drug users, their sexual partners and their children."⁴² Of reported AIDS cases in the United States population, blacks are contracting the disease in far greater numbers than their relative percentage in the United States population.⁴³

Among women with AIDS, 52.5% are black and among children with AIDS, 53% are black.⁴⁴ AIDS has become the leading cause of death among black women in New York and New Jersey and approximately 55% of black women with AIDS have contracted the disease through IDU.⁴⁵ In 1992, within the state of Massachusetts, IDU became the primary mode of HIV transmission for all newly diagnosed AIDS cases, moving ahead of male homosexual sex.⁴⁶ Currently within the state, AIDS is the second leading cause of death for all blacks and Latinos.⁴⁷

³⁶ *Id.* at 117.

³⁷ Kirp & Bayer, *supra* note 6, at 63.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Gostin, *supra* note 2, at 117. Most cases of AIDS reported among prostitutes are a result of intravenous drug use. Kleiman, *supra* note 2, at 361.

⁴¹ Gostin, *supra* note 2, at 117; Kirp & Bayer, *supra* note 6, at 78.

⁴² Kirp & Bayer, *supra* note 6, at 78.

⁴³ Thomas & Crouse Quinn, *supra* note 18, at 101.

⁴⁴ *Id.* at 105.

⁴⁵ *Id.* In 1996, women make up 19% of all AIDS cases, approximately 50% were exposed through drug use and approximately 40% through heterosexual sex (half with intravenous drug users). *What We Don't Know*, *supra* note 11, at B6.

⁴⁶ Dolores Kong, *Needle Exchange Program Results Show Trend Toward Treatment*, BOSTON GLOBE, Dec. 1, 1994, at 35.

⁴⁷ *Id.*

2. Transmission of HIV through Intravenous Drug Use

Transmission of HIV through needles occurs through the following process.⁴⁸ Drug users inject themselves with heroine, cocaine, amphetamines, or other drugs into a vein under the skin or into a muscle.⁴⁹ If the drug user is HIV positive⁵⁰, and the needle they use may contain small amounts of HIV infected blood.⁵¹ The drug user will then, in order to insure they have fully injected the drug, draw their blood into the needle and then reinject it into their vein.⁵² The needle is later shared with another drug-dependent person who follows the same procedure.⁵³ This results in the mixture of the former user's blood with that of the latter.⁵⁴ The entire process, which results in the mixture of blood among IDU's, is a highly efficient manner of transmitting the HIV virus.⁵⁵

In the past, intravenous drug users have used various unsuccessful methods to clean needles including: heating the cooker⁵⁶ between shots to clean the needle of the HIV virus, and flushing the needle out with water, which is ineffective in decontaminating a needle of the virus.⁵⁷ Bleach is one method that can decontaminate a needle.⁵⁸ Many needle exchange programs distribute bleach and demonstrate to drug users how to properly clean a needle with bleach.⁵⁹

Sharing needles has been described as a process of social bonding, a sign of mutual trust among addicts.⁶⁰ It has been characterized as a ritual practiced between friends, lovers, and dealers.⁶¹ Studies have shown that new users average twenty injections before using their own

⁴⁸ Gostin, *supra* note 2, at 115–16.

⁴⁹ *Id.* This process is referred to as “skin popping.” *Id.*

⁵⁰ HIV positive is the medical term connoting the presence of human immunodeficiency in the body. STINE, *supra* note 1, at 441.

⁵¹ *Id.*

⁵² *Id.* This process is referred to as “booting.” *Id.*

⁵³ *Id.*

⁵⁴ STINE, *supra* note 1, at 441. This process is referred to as sharing the “works.” *Id.* at 182. The “works” is the syringe and needle used to inject the drugs. *Id.*

⁵⁵ Gostin, *supra* note 2, at 116.

⁵⁶ Drugs in powdered form are usually placed in a bottle cap, or ‘cooker’ an item often found on streets or in garbage cans. STINE, *supra* note 1, at 182.

⁵⁷ Stryker & Smith, *supra* note 15, at xiii.

⁵⁸ *Id.* at xiv.

⁵⁹ *Id.*

⁶⁰ *See id.* at xii.

⁶¹ *Id.*

equipment.⁶² However, the main reason for sharing is not social bonding but practical necessity.⁶³ Most sharing occurs in “shooting galleries”, places where drug users go to inject illicit drugs.⁶⁴ Often customers of the “shooting galleries” lease needles which are called the “house works.”⁶⁵ Needles are used continuously among strangers, often until they become dull or break.⁶⁶ The real crisis occurs within the “shooting galleries” where needles and often the HIV virus can be spread to users who have no knowledge of the medical backgrounds of the people who have used the needles before them.⁶⁷

B. *History of Needle Exchange Programs Within the United States*

The existence of needle exchange programs only dates back ten years within the United States.⁶⁸ As of March 1995, more than fifty-five United States cities have adopted needle exchange programs despite the fact that no federal funds have yet to be contributed.⁶⁹ The first programs established in the United States were mainly underground programs initiated by AIDS activists such as John Parker.⁷⁰ Parker is a former intravenous drug user who began distributing clean needles in New Haven and Boston while earning his Masters Degree in Public Health from Yale University.⁷¹ Parker, by distributing clean needles to addicts, challenged many state prescription laws through civil disobedience.⁷²

The first needle exchange program with community consensus was established in Tacoma, Washington in April 1988.⁷³ The program was initiated by AIDS activist Dave Purchase and was initially privately funded.⁷⁴ Purchase was a drug counselor who bought the supplies himself and within a year had traded out over 19,000 needle packs.⁷⁵

⁶² Stryker & Smith, *supra* note 15, at xii.

⁶³ Gostin, *supra* note 2, at 121–22.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 123.

⁶⁸ See Lane, *supra* note 9, at 3.

⁶⁹ *Aid for AIDS*, *supra* note 33, at 1; *Needles*, *supra* note 16, at 23.

⁷⁰ Lane, *supra* note 9, at 3–5. Examples besides Parker include Dave Purchase in Tacoma, Washington and George Clark in San Francisco, California. *Id.*

⁷¹ *Id.* at 3.

⁷² See *id.*

⁷³ Lane, *supra* note 9, at 4.

⁷⁴ *Id.*

⁷⁵ STINE, *supra* note 1, at 207.

The program started with the knowledge of the mayor and public health officials.⁷⁶ Since then, it has developed into the Point Defiance AIDS Project operating under contract with the local department of health.⁷⁷

In November of 1988, the program Prevention Point was established in San Francisco and run by volunteers who exchanged clean needles and bleach.⁷⁸ The program, despite being against California state law, is allowed under the city's police power and serves hundreds of clients each week.⁷⁹

New York attempted its first needle exchange program in November 1988.⁸⁰ Unlike the other programs initiated in the country, the New York program was a structured experimental program run by the health department.⁸¹ The program was located in health department headquarters, near a police department and court, rather than in the neighborhoods of its clients.⁸² Clients were required to obtain a photo ID and were required to enter into a drug treatment program when one became available.⁸³ They also could only exchange one needle at a time.⁸⁴ When Mayor David Dinkens took office in 1990, the program was abolished as a result of community opposition.⁸⁵ Despite the fact that the program was abolished, the New York pilot program was successful while in operation.⁸⁶ Two hundred and fifty people participated in the program (51% of whom were already infected with HIV).⁸⁷ The program provided a bridge to treatment (78% of people in the program accepted a referral to treatment).⁸⁸ The program also provided clients with a number of vital connections to social services such as housing, primary health care, treatment for sexually transmitted diseases, and help with physical problems from drug abuse.⁸⁹ Furthermore, upon entering the program, 82% of the clients reported sharing needles in a lifetime and 62% had shared needles within the past thirty

⁷⁶ Lane, *supra* note 9, at 4.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ CAL. BUS. & PROF. CODE § 4143 (West 1995); *Needles*, *supra* note 16, at 21.

⁸⁰ Lane, *supra* note 9, at 5.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Lane, *supra* note 9, at 5.

⁸⁶ Gostin, *supra* note 2, at 152.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 153.

days.⁹⁰ Only 5% of these clients who revisited the exchange program reported sharing since their last visit.⁹¹ Finally, the program was successful in exchanging needles; more than half of the 110 enrollees who returned for a second visit returned their needles.⁹²

In 1990, Hawaii became the first state to legalize a statewide syringe needle exchange program because of the alarming rate of AIDS among women and children.⁹³ The program consists of a drug user coming to the treatment center and dropping a dirty needle in a bucket in exchange for a clean one with no names given or questions asked.⁹⁴ Finally, the most successful and influential needle exchange program within the United States began on November 13, 1990 in New Haven, Connecticut by the Department of Health.⁹⁵ There city workers travel in vans and exchange clean needles for dirty ones.⁹⁶ They also distribute survival kits which consist of bottles of bleach, bottles of water, clean needles, and condoms.⁹⁷ The program has proven that needle exchange dramatically slows the rate of infection without causing increased intravenous drug use.⁹⁸ There are some indications that as a result of the program, referrals to drug treatment in New Haven have increased and crime has decreased by 20%.⁹⁹ This program, most importantly, was influential in changing much negative political opinion about needle exchange programs.¹⁰⁰ In New York City, for example, Mayor Dinkins tacitly approved of needle exchanges based upon the success of New Haven's programs despite having shut down New York's program in 1990.¹⁰¹

Some major cities are still in the early stages of or have yet to establish needle exchange programs despite rampant IDU within their

⁹⁰ *Id.*

⁹¹ Gostin, *supra* note 2, at 153.

⁹² *Id.*

⁹³ STINE, *supra* note 1, at 208.

⁹⁴ *Id.*

⁹⁵ Lane, *supra* note 9, at 7.

⁹⁶ Dick Thompson, *Getting The Point in New Haven (Needle Exchange Program)*, TIME, May 25, 1992, at 55.

⁹⁷ *Id.*

⁹⁸ *Id.* at 56.

⁹⁹ *Id.*

¹⁰⁰ See Lane, *supra* note 9, at 7; Thomas & Crouse Quinn, *supra* note 18, at 115.

¹⁰¹ See Lane, *supra* note 9, at 7. Similarly in 1991, Representative Charles Rangel of New York, formerly a vocal opponent of the New York program, sought a General Accounting Office study on the efficacy of needle exchange programs based on Connecticut's success. Thomas & Crouse Quinn, *supra* note 18, at 115.

urban areas.¹⁰² For example, in Washington, D.C. the spread of AIDS is growing even faster than in most large United States cities.¹⁰³ During the first nine months of 1994, AIDS was diagnosed in 226 heterosexual intravenous drug users within the District of Columbia alone.¹⁰⁴ Washington, D.C. began a small experimental needle exchange program in 1992.¹⁰⁵ The program, which attracted less than 60 addicts, was widely considered ineffective.¹⁰⁶ Sacramento, California is also in the early stages of developing a viable needle exchange program.¹⁰⁷ In November 1994, the Sacramento County Board of Supervisors approved by a one-vote margin, a needle exchange program under the county's police power to protect public health which is similar to how other California cities such as Los Angeles, San Francisco, and Oakland enacted their programs.¹⁰⁸

III. CHANGES IN THE OPPOSITION TO NEEDLE EXCHANGE PROGRAMS WITHIN THE UNITED STATES

A. *Origins of Minority Opposition to Needle Exchange Programs Within Inner Cities*

Harlon L. Dalton, a black Associate Law Professor at Yale University and a member of the National Commission on AIDS believes that minority opposition is not merely directed to needle exchange programs.¹⁰⁹ He states that minority opposition begins with the refusal to acknowledge that AIDS is a problem for the black race and, this refusal extends to a rejection of programs designed to treat and prevent AIDS.¹¹⁰ Thus, opposition to programs such as needle exchange by minorities is based on larger social concerns.¹¹¹

¹⁰² Amy Goldstein, *Most New Cases of AIDS in DC Hit Drug Users*, WASH. POST, Dec. 1, 1994, at A1; *Needles*, *supra* note 16, at 21.

¹⁰³ Goldstein, *supra* note 102, at A1.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at A2.

¹⁰⁶ *Id.*

¹⁰⁷ *Needles*, *supra* note 16, at 21.

¹⁰⁸ *Id.*

¹⁰⁹ See Dalton, *supra* note 19, at 205, 209.

¹¹⁰ *Id.*

¹¹¹ *See id.* at 211.

1. Difficulty Denying AIDS—Effects Upon the Black Community

As AIDS continues to ravage our country, it is increasingly more difficult for black communities to claim AIDS is an epidemic that does not effect minority populations.¹¹² As of January 1995, approximately 84,568 young blacks were claimed victims of AIDS.¹¹³ Dalton, responding to statistics stated, “[U]nquestionably, AIDS has hit the black community hard. We are losing our sons and daughters at an alarming rate.”¹¹⁴ Dalton cited statistics which show that within many Eastern cities, blacks and Latinos make up the majority of AIDS cases.¹¹⁵ In New York City, AIDS is the primary cause of death for black and Latino women between the ages of twenty-five and thirty-four and accounts for 84% of adult female cases.¹¹⁶ AIDS is also affecting the very young in minority communities; nine out of ten children with AIDS in New York City are black or Latino.¹¹⁷ These statistics regarding AIDS among blacks and Latinos have forced minority communities to at least acknowledge that AIDS is a real threat which must be dealt with in some capacity.¹¹⁸ However, despite this realization, many minority communities initially voiced strong opposition to the establishment of needle exchange programs aimed at treating this epidemic.¹¹⁹

2. Minority Opposition Encountered by Needle Exchange Programs

When New York City introduced its pilot needle exchange program minority groups articulated their opposition to such programs.¹²⁰ For example, religious opposition came in the form of Reverend Calvin O. Butts of the Abyssinian Baptist Church who came forward and

¹¹² *Id.* at 209; Thomas & Crouse Quinn, *supra* note 18, at 106. “In an unprecedented event, the Harvard AIDS Institute, the National Minority AIDS Council and Harvard’s W.E.B. DuBois Institute for Afro-American Research have scheduled what they call an emergency leadership summit on AIDS at Harvard. The Oct. 22 summit would mark the first time that elite African-Americans have met over AIDS. Among the organizations represented on the steering committee are the National Urban League, the Children’s Defense Fund, the NAACP, the National Basketball Players Association and the National Clergy Advisory Committee.” Derrick Z. Jackson, *Black Indifference on AIDS*, BOSTON GLOBE, Oct. 9, 1996, at A7.

¹¹³ Hanna Rosin, *The Homecoming Paranoia and Plague in Black America*, NEW REPUBLIC, June 5, 1995, at 5.

¹¹⁴ Dalton, *supra* note 19, at 208.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See Dalton, *supra* note 19, at 209; Thomas & Crouse Quinn, *supra* note 18, at 105–06.

¹¹⁹ See Thomas & Crouse Quinn, *supra* note 18, at 113–15.

¹²⁰ Kirp & Bayer, *supra* note 6, at 80–81, 87; Rosin, *supra* note 113, at 6.

declared he was “not in favor of cooperating with evil.”¹²¹ This is insinuating the belief that giving clean needles would perpetuate drug addiction.¹²² Another opponent to the New York program was the city’s police commissioner Benjamin Ward.¹²³ He stated that as a black person, he had “a particular sensitivity to doctors conducting experiments, and they too frequently seem to be conducted against blacks.”¹²⁴ The New York program was originally designed to be established in the inner city where it could reach minority clients but, due to pressure from black and Latino community leaders, the program was placed in a government building downtown and away from the targeted population.¹²⁵

Along with protesting its placement, the New York City Council, backed by support of black and Latino members, urged the cancellation of the pilot program altogether.¹²⁶ Then-mayor David Dinkins acquiesced to minority community pressure and closed the program within a year.¹²⁷ The caucus voted 31–0 to end the program.¹²⁸ Caucus chair, Enoch Williams stated, “the city is sending the wrong message when it distributes free needles to drug addicts while we are trying to convince our children to say no to drugs.”¹²⁹

Similar opposition from minority leaders was met in other cities as they established their respective needle exchange programs.¹³⁰ Reverend Cleveland B. Sparrow vocalized his concern regarding Washington, D.C.’s program by saying, “[G]iving a needle to an addict is actually helping that person to kill [himself].”¹³¹ Sparrow charged the work of needle exchange advocates as committing genocide upon the black race.¹³² Dwight Clark who is director of Spectrum, an AIDS service organization, responded to the District of Columbia’s needle exchange program by stating: “[W]e are just putting another Band-Aid on the problem through needle exchange. Get them off drugs—that’s the way to lower the cases of infection among intravenous drug us-

¹²¹ Thomas & Crouse Quinn, *supra* note 18, at 115.

¹²² *See id.*

¹²³ Kirp & Bayer, *supra* note 6, at 80.

¹²⁴ *Id.*

¹²⁵ Dalton, *supra* note 19, at 209.

¹²⁶ *Id.*

¹²⁷ *Id.*; Lane, *supra* note 9, at 5.

¹²⁸ Dalton, *supra* note 19, at 209.

¹²⁹ *Id.*

¹³⁰ *See* Thomas & Crouse Quinn, *supra* note 18, at 113.

¹³¹ *Id.* at 113–14.

¹³² *See id.*

ers."¹³³ In Seattle, Washington, black minority leaders expressed their opposition to a needle exchange program which was honored by the city which waited three years before gaining the approval to establish a program in a predominantly black area.¹³⁴

Unlike Seattle, where the concerns of minority leaders were listened to and considered, Dalton believes many programs ignore legitimate concerns that minorities have about such programs.¹³⁵ Dalton states that the concerns of minorities regarding AIDS, drugs, and needle exchange programs, if addressed and taken into account by state agencies, can be handled without the destruction of needle exchange programs in the process.¹³⁶ He commented that New York City's Health Commissioner knew there was a concern that free needles could increase drug abuse.¹³⁷ Dalton believes the Commissioner decided to proceed ignoring the concerns of the black community.¹³⁸ This resulted in the appearance of indifference or disrespect towards the needs of minorities.¹³⁹

3. Difficulty Denying AIDS—Fear of Needle Exchange Programs

Opposition to needle exchange programs arose due to some minorities' belief that AIDS/needle exchange programs were part of a genocide campaign by white America.¹⁴⁰ Another major fear was that minority supporters of such programs would be ostracized by their religious and social communities.¹⁴¹ This exclusion from the church could occur due to its opposition to needle exchange programs on the grounds that the underlying behavior which causes transmission of the HIV virus is in conflict with the teachings of many religions.¹⁴² Also, many minority groups have strong religious beliefs and, some religious organization target their congregation to promote their political agenda regarding issues such as AIDS.¹⁴³

¹³³ *Id.* at 114.

¹³⁴ Kirp & Bayer, *supra* note 6, at 91.

¹³⁵ See Dalton, *supra* note 19, at 222. Dalton notes that New York City's health commissioner did not disregard the concerns regarding needle exchange programs but concluded these concerns were minimal. *Id.*

¹³⁶ See *id.* at 207.

¹³⁷ *Id.* at 222.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Dalton, *supra* note 19, at 220; Thomas & Crouse Quinn, *supra* note 18, at 108.

¹⁴¹ See Thomas & Crouse Quinn, *supra* note 18, at 177; Rosin, *supra* note 113, at 6-7.

¹⁴² See Thomas & Crouse Quinn, *supra* note 18, at 117; Rosin, *supra* note 113, at 6-7.

¹⁴³ See Thomas & Crouse Quinn, *supra* note 18, at 108; Rosin, *supra* note 113, at 4.

B. *Genocide Theory*

Much has been written regarding minority opposition to AIDS and the term "genocide" is often used more for its incendiary effect.¹⁴⁴ Professor Dalton argues that the use of the term genocide conjures thoughts of historical injustices against blacks such as slavery.¹⁴⁵ However, there is much less literature addressing why black people use the term in relation to AIDS.¹⁴⁶

The term genocide is based on urban black resentment towards white AIDS activists who they believe have decided AIDS is a problem that must be addressed before drug abuse, illiteracy, homelessness and many other social and medical crises which plague inner city communities.¹⁴⁷ Dalton expresses the frustration of black America in the inner cities by stating:

[W]hen we want your help, white America is nowhere to be found. When, however, *you* decide that we need help, you are there in a flash, solution in hand. You then seek to impose that solution on us, without seeking our views, hearing our experiences, or taking account of our needs and desires. We tell you that we fear genocide, and you quarrel with our use of the term.¹⁴⁸

The genocide theory is also based on the Tuskegee Study.¹⁴⁹ A portion of the black population equate the Tuskegee Study with Nazi science, thus developing a deep mistrust in the American government and its public health policies.¹⁵⁰ The Tuskegee Study began in 1932 as a progressive study to combat syphilis in rural black men.¹⁵¹ The United States Public Health Service established a syphilis clinic in Macon County, Alabama which was one of the poorest areas in the nation.¹⁵² The rate of syphilis among black males in Macon County, Alabama was an extremely high 36%.¹⁵³ Due to a serious threat in funding, re-

¹⁴⁴ See Dalton, *supra* note 19, at 220.

¹⁴⁵ Dalton, *supra* note 19, at 220; Thomas & Crouse Quinn, *supra* note 18, at 107.

¹⁴⁶ See Dalton, *supra* note 19, at 21.

¹⁴⁷ Dalton, *supra* note 19, at 219; Kirp, *supra* note 23, at 6.

¹⁴⁸ Dalton, *supra* note 19, at 218.

¹⁴⁹ See Kirp, *supra* note 23, at 2; Rosin, *supra* note 113, at 5; David Whitman, *Working Magic in the Inner City*, U.S. NEWS & WORLD REP., Nov. 18, 1991, at 84.

¹⁵⁰ Kirp, *supra* note 23, at 2.

¹⁵¹ *Id.* at 4.

¹⁵² *Id.* at 2.

¹⁵³ *Id.*

searchers proposed a study of untreated syphilis in the black male population hoping that the dramatic adverse effects of withholding treatment would result in more funding for the program.¹⁵⁴ Many believe, despite there being no defense to the study, that the experiment was based more in motives of science and money rather than on the notion of race or genocide.¹⁵⁵ One of the most shocking aspects of the experiment was that researchers during World War II persuaded draft boards to exclude the men suffering from syphilis from service as medically unfit, as opposed to providing treatment for these men.¹⁵⁶ The Tuskegee Study resulted in the death of at least 100 black men from complications resulting from syphilis.¹⁵⁷

The Tuskegee Study, especially amongst some black Americans, represented genocide conducted by a U.S. Government in an effort to fulfill their ultimate plan of eliminating the black race.¹⁵⁸ Similarly, some blacks view AIDS as a plot to eliminate the black race.¹⁵⁹ A portion of the black population believes AIDS is a disease created in laboratories and is being tested out on white homosexuals before being administered to its intended victims—the black race.¹⁶⁰ Many of these theories, which began as a result of Tuskegee, are reinforced through religious leaders echoing such sentiments.¹⁶¹ In a survey of black churchgoers, nearly half believed the United States Government was not revealing all the facts about AIDS and two-thirds were uncertain if the United States Government was responsible for performing genocide upon the black race.¹⁶²

This mistrust regarding AIDS and the United States Government has led to intense suspicion by the black population of any treatment of AIDS as well.¹⁶³ Many view drugs such as AZT as poison, condoms as population control measures, and needle exchange programs as encouraging minority drug abuse.¹⁶⁴ Tuskegee has thus taken on a far greater meaning than just an isolated experiment which exploited

¹⁵⁴ Kirp, *supra* note 23, at 2.

¹⁵⁵ See *id.*

¹⁵⁶ Kirp, *supra* note 23, at 4.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 2.

¹⁵⁹ *Id.*

¹⁶⁰ Karen Grigsby Bates, *Is it Genocide? (Conspiracy Theory About AIDS and The Afro-American Community)*, ESSENCE, Sept. 1990, at 3; Kirp, *supra* note 23, at 2.

¹⁶¹ Rosin, *supra* note 113, at 6.

¹⁶² Kirp, *supra* note 23, at 7.

¹⁶³ *Id.* at 6.

¹⁶⁴ *Id.*

human life and resulted in tragedy.¹⁶⁵ It is perhaps best summarized by Stephen Thomas, a professor at Emory University and conductor of the religious study: "Tuskegee has taken on a life of its own as a disaster myth. . . . It has transcended being a historical event and turned into an urban legend, a personification of medical abuses and racism."¹⁶⁶

C. *Religious Perpetuation of the Genocide Theory*

A great force in perpetuating the genocide theory has been the Nation of Islam, led by Louis Farrakhan.¹⁶⁷ Farrakhan spreads his belief that the white race was created by accident, Jewish people are to blame for the majority of the world's problems, and that AIDS and drugs are being used by the government to eliminate the black race.¹⁶⁸ In 1988, the Nation of Islam voiced their position on AIDS and drew clear racial lines by distributing literature claiming AIDS was an attempt by white America to destroy black America.¹⁶⁹ Besides being backed by the strong vocal leader Farrakhan, the Nation of Islam also has power within AIDS clinics throughout the country.¹⁷⁰ One example is Dr. Abdul Alim Muhammed who runs the Abundant Life Clinic and is health minister for the Nation of Islam.¹⁷¹ Mayor Marion Barry appointed Muhammed co-director of the AIDS transition team and the unofficial AIDS Czar of Washington, D.C.¹⁷² Muhammed has used his powerful position to preach that AIDS is a perfect genocidal weapon of whites against blacks and encourages the use of the experimental drug Kemron.¹⁷³

The Nation of Islam is not the only religious organization to spread the genocide theory among minorities.¹⁷⁴ Some black church leaders assume the role of political activist within their congregation.¹⁷⁵ Since religious minority leaders are viewed as spokesmen within the inner cities, their promotion of genocide theories regarding AIDS and drugs preys on the fears among minorities and perpetuates paranoia

¹⁶⁵ See Rosin, *supra* note 113, at 5.

¹⁶⁶ *Id.*

¹⁶⁷ See Brigitte Dusseau, *Louis Farrakhan—Powerful Message; Controversial Messenger*, AGENCE FRANCE-PRESSE, Oct. 16, 1995, at 2.

¹⁶⁸ *Id.*

¹⁶⁹ Thomas & Crouse Quinn, *supra* note 18, at 108.

¹⁷⁰ Rosin, *supra* note 113, at 3.

¹⁷¹ *Id.* at 3-4.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Thomas & Crouse Quinn, *supra* note 18, at 117.

¹⁷⁵ *Id.*

against the government, the white population as a whole, and any form of AIDS treatment.¹⁷⁶ Despite vehement opposition from religious leaders regarding needle exchange programs, many have faced the grave reality of AIDS and have quieted their preaching of genocide within the inner cities.¹⁷⁷

D. *Decline in Minority Opposition to Needle Exchange Programs*

As inner cities continue to sustain the impact of AIDS, many religious and political leaders have been forced to reevaluate their initial positions of vehemently opposing needle exchange programs.¹⁷⁸ Many minority leaders view needle exchange programs as a necessary evil which must exist to combat AIDS.¹⁷⁹ Reverend Calvin O. Butts, III of the Abyssinian Church in Harlem condemned the experimental New York City program in 1989, but by 1991 had quieted his opposition and stated he would not oppose the distribution of clean needles.¹⁸⁰ Similarly in Washington, D.C., Plymouth Congregational Church leader Ellis-Hagler who previously spoke to his congregation on the perpetuation of addiction has relented in opposing needle exchange programs due to the lessening of community sentiment towards this theory.¹⁸¹ He does, however, still view needle exchange programs as "a pitiful last resort, and racist."¹⁸²

The attitude within most religions regarding AIDS as a whole has changed from ten years ago when ministers refused to preside over funerals of AIDS victims and funeral homes would refuse to bury them.¹⁸³ Today, as the number of victims within the inner cities increases so does the understanding of church leaders that AIDS has no bias and spares no race or gender.¹⁸⁴

Political opposition from minority leaders that was based on race has changed as well.¹⁸⁵ As New York City has become one of the hardest

¹⁷⁶ Rosin, *supra* note 113, at 6. Reverend Graylon Ellis-Hagler of the Plymouth Congregational Church in Washington once stated, "First, the white establishment pushes drugs into the community. . . . They cripple the community politically and economically with drugs. They send the males to jail. Then someone hands out needles to maintain the dependency." *Id.*

¹⁷⁷ *See id.*; Thomas & Crouse Quinn, *supra* note 18, at 115.

¹⁷⁸ Thomas & Crouse Quinn, *supra* note 18, at 115; Rosin, *supra* note 113, at 6.

¹⁷⁹ *See* Thomas & Crouse Quinn, *supra* note 18, at 115.

¹⁸⁰ *Id.*

¹⁸¹ Rosin, *supra* note 113, at 6.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *See id.*; Thomas & Crouse Quinn, *supra* note 18, at 115.

¹⁸⁵ *See* Kirp & Bayer, *supra* note 6, at 90.

hit cities in terms of minorities with AIDS, the political sentiment has experienced a turnabout since its pilot program in 1989.¹⁸⁶ Such changes culminated to the point where then Mayor David Dinkins changed his opposition to needle exchange programs.¹⁸⁷ Also, New York Democratic Representative Charles Rangel, who is Chairman of the House Narcotics Committee, relented in his opposition to needle exchange programs by seeking a study in 1991 on the efficacy of such programs.¹⁸⁸ Similarly, the endorsement of needle exchange programs over the years by black mayors in major urban cities such as New Haven, Philadelphia, Washington and New York has helped to relay the message to the black community that needle exchange programs are not genocidal.¹⁸⁹

IV. LEGAL OPPOSITION TO NEEDLE EXCHANGE PROGRAMS WITHIN THE UNITED STATES

A. *Drug Paraphernalia Laws*

As of 1996, at least forty-five states and the District of Columbia have drug paraphernalia laws in existence, many of which are based on the Model Drug Paraphernalia Act created by the Drug Enforcement Agency in 1979.¹⁹⁰ Drug paraphernalia laws ban the manufacture, sale, distribution, or possession of any equipment intended for the injection of illegally controlled substances.¹⁹¹ These laws include hypodermic needles and syringes.¹⁹² Drug paraphernalia laws require the element of criminal intent to supply or use the equipment for an unlawful purpose.¹⁹³ For example, it would not be illegal for a pharmacist to sell hypodermic needles for a lawful purpose such as treating diabetes.¹⁹⁴ Although these laws broadly cover manufacture, delivery, and possession, they are actually more narrowly tailored than earlier drug paraphernalia laws which did not require criminal intent and

¹⁸⁶ Lane, *supra* note 9, at 5.

¹⁸⁷ Kirp & Bayer, *supra* note 6, at 88.

¹⁸⁸ Thomas & Crouse Quinn, *supra* note 18, at 115.

¹⁸⁹ Thomas & Crouse Quinn, *supra* note 18, at 90.

¹⁹⁰ Lawrence Gostin, *Law and Policy*, in DIMENSIONS OF HIV PREVENTION: NEEDLE EXCHANGE 38 (Jeff Stryker & Mark D. Smith eds., 1993); *Needle Exchange: Bad Medicine*, DETROIT NEWS, Aug. 8, 1996, at A14.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Gostin, *supra* note 2, at 135.

¹⁹⁴ *Id.*

even made acts such as distribution of needles to a diabetic for legitimate purposes illegal.¹⁹⁵

Despite the fact that drug paraphernalia laws were broadened by the early 1980's to require criminal intent, the federal government in 1984 passed narrowing legislation which essentially made distribution and possession of drug paraphernalia a federal crime as well as a state crime.¹⁹⁶ In July 1984, Congress passed the Mail Order Drug Paraphernalia Control Act with the purpose to prevent drug equipment for injection from being sent through various states via the mail.¹⁹⁷ Similar to state statutes, the federal legislation had a broad definition of drug paraphernalia including, "any offer for sale and transportation in interstate or foreign commerce."¹⁹⁸

1. Impact of Drug Paraphernalia Laws

Having both state and federal legislation against drug addicts possessing their own needles has deterred drug addicts' use of clean needles.¹⁹⁹ Many states will not enforce drug paraphernalia laws but a drug addict could still be arrested and prosecuted under the federal statute.²⁰⁰ This creates a disincentive to possess needles for many addicts who would rather go to a shooting gallery and lease a dirty needle than be caught possessing their own needle.²⁰¹ This further perpetuates the risk of shooting galleries for the transmittal of the HIV virus.²⁰²

2. Proposals for Restructuring Drug Paraphernalia Laws

One proposal to restructure drug paraphernalia laws seek to make possession of drug injection equipment legal, but the illicit sale or distribution illegal.²⁰³ This revision would serve a number of useful purposes.²⁰⁴ This proposal would allow drug addicts to participate in needle exchange programs and possess their own needles without fear

¹⁹⁵ *Id.* at 134.

¹⁹⁶ Gostin, *supra* note 190, at 39.

¹⁹⁷ *Id.*

¹⁹⁸ 21 U.S.C. § 857(a)(1984); Gostin, *supra* note 190, at 38.

¹⁹⁹ Gostin, *supra* note 190, at 40.

²⁰⁰ *Id.*

²⁰¹ *See id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Gostin, *supra* note 190, at 40. Gostin's proposal of focusing on illicit distribution would affect drug dealers or the proprietors of shooting galleries but not health care workers who distribute clean needles. *Id.*

of prosecution.²⁰⁵ It would also allow statutes regarding illegal drug use and needle exchange programs to peacefully coexist.²⁰⁶ Finally, it would limit the statutes so that they are directed at the real problem, the existence of shooting galleries and the illicit sale of needles on the streets.²⁰⁷ By limiting the language of the statutes to sale and distribution outside needle exchange programs, states, through legislation, can attack the places where most contamination of needles occurs.²⁰⁸

B. Needle Prescription Laws

Needle prescription laws are more of an obstacle than drug paraphernalia laws to needle exchange programs because they do not have the prerequisite of criminal intent.²⁰⁹ Such laws date back to the New York Boylan Act of 1914.²¹⁰ Only eight states currently have needle prescription laws in existence.²¹¹ Ironically, within these eight states there have been a variety of methods taken to avoid the effects of needle prescription laws so that the question arises as to why these states continue to have such laws.

The answer is two-fold: first, these laws have historically been utilized by states to implement the war on drugs.²¹² Secondly, and quite sadly, this has become within both federal and state legislatures an issue where politics have taken over.²¹³ Consequently, states, such as California, which have Republican control of government, much as within the federal government, face great opposition in reforming the laws and providing funding for needle exchange programs.²¹⁴

²⁰⁵ See *id.* at 41.

²⁰⁶ See *id.* Restructuring laws to focus on illicit drug equipment distribution would further the trend toward institutionalization of needle exchange programs. See Gostin, *supra* note 190, at 41–2; Lane, *supra* note 9, at 8.

²⁰⁷ Gostin, *supra* note 190, at 41.

²⁰⁸ *Id.* The New York court in *People v. A.T.* dismissed the charge of illegally carrying a hypodermic needle against a 58 year old drug addict stating, "Sentencing the defendant for possessing a clean hypodermic needle would discourage the flow of clean hypodermic needles. This would encourage needle-sharing among those addicted to intravenous drugs and increase the spread of the HIV virus." 589 N.Y.S.2d 980, 983 (1992).

²⁰⁹ Gostin, *supra* note 190, at 42.

²¹⁰ See *id.* at 41.

²¹¹ *Needles*, *supra* note 16, at 21.

²¹² Gostin, *supra* note 190, at 35; Thomas & Crouse Quinn, *supra* note 18, at 80.

²¹³ *Aid for AIDS*, *supra* note 33, at 1; Sabin Russell, *CDC Endorses Needle Swaps*, SAN FRANCISCO CHRON., March 8, 1995, at 1.

²¹⁴ *Aid for AIDS*, *supra* note 33, at 1; Russell, *supra* note 213, at 1; see Committee Report for 1995 California Assembly Bill No. 1407, 1995–1996 Regular Session; New Jersey Republican Governor Christie Whitman continues to oppose needle exchange programs despite the fact that

C. *Status of the Law in States that Maintain Their Needle Prescription Laws*

Within states that still have laws which hinder the existence of needle exchange programs, there have been a number of innovative tactics taken by cities, local counties, legislatures, and the courts for the establishment of such programs to bypass laws whose only existence appears politically motivated. Some states such as Connecticut have fought the battle within their legislature to allow for exceptions to state needle exchange programs, while counties within California have chosen to enforce their police power and declare state of emergencies due to the AIDS epidemic.²¹⁵ Meanwhile, states such as New York and Massachusetts have seen this political battle regarding needle exchange programs unfold within their court systems with vastly different results.²¹⁶ Regardless of the method, the eight remaining states have bypassed their laws and have established needle exchange programs leaving the issue of why such laws continue to exist within their respective states.

1. Connecticut

In 1990, the Connecticut General Assembly enacted legislation authorizing a demonstration needle exchange program in New Haven.²¹⁷ Since that period, New Haven's effort has become a nationwide example of a successful needle exchange program.²¹⁸ Changing the legislation to allow for the New Haven needle exchange program has not yet resulted in the abolition of needle prescription laws, but rather an exception to the law.²¹⁹ However, recently proposed amendments to the legislation by Republicans in the Connecticut Congress could seriously jeopardize the vitality of the program.²²⁰

her own Advisory Council on AIDS recommended such a program. Kitta MacPherson, *Statistics Suggest Needle Exchanges Could Prevent Many HIV Infections*, STAR-LEDGER, July 10, 1996, at 1.

²¹⁵ See *infra* text accompanying notes 218–256 (discussing tactics taken within the states of Connecticut and California).

²¹⁶ See *Commonwealth v. Leno*, 616 N.E.2d 453 (1993); *People v. Bordowitz*, 588 N.Y.S.2d 507 (1991).

²¹⁷ CONN. GEN. STAT. ANN. ch. 368A § 19A-124 (West 1995); CONN. GEN. STAT. ANN. ch. 417 § 21A-65 (West 1995); Gostin, *supra* note 190, at 49.

²¹⁸ Lane, *supra* note 9, at 7.

²¹⁹ CONN. GEN. STAT. ANN. ch. 417 § 21A-65 (West 1995).

²²⁰ See CONNECTICUT SENATE BILL NO. 547, 1995 Regular Session.

Despite Connecticut's needle prescription law, in 1990, the city of New Haven was a perfect location to conduct the experimental needle exchange program.²²¹ The city had a population of 130,000 and was the seventh poorest in the United States.²²² The community was 45% black, 15% Hispanic, and 40% white.²²³ The city had approximately 2,000 heroin addicts which, taking into account the population differences, was roughly proportionate to that of New York City.²²⁴

It was through the efforts of a group of public healthcare workers that Connecticut carved out an exception to the statute.²²⁵ The workers went into the community and spoke about the value of needle exchange programs at civic meetings, in classrooms, and in churches.²²⁶ After garnering support from the community, politicians were forced to address this issue.²²⁷

In 1990, the Connecticut General Assembly amended that statute regarding the sale of hypodermic needles and syringe restrictions.²²⁸ The amendment allowed for hypodermic syringes in a quantity of ten or less to be sold without a prescription in certain instances, including a state needle exchange program in accord with Section 19a-124 of Connecticut General Laws.²²⁹

In addition, the support of the New Haven police department was crucial to the success of the needle exchange program.²³⁰ Police Chief Nicholas Pastore created an environment which helped to ease the fears of drug addicts participating in the program.²³¹ This tolerance by the police allowed for the enormous success of the New Haven Program.²³² Despite this success, Connecticut has yet to abolish its needle prescription law and in fact seems to be tightening its control over needle exchange programs.²³³

²²¹ Thomas & Crouse Quinn, *supra* note 18, at 56.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Thomas & Crouse Quinn, *supra* note 18, at 56.

²²⁷ *Id.*

²²⁸ See CONN. GEN. STAT. ANN. ch. 368A § 19A-124 (West 1995); CONN. GEN. STAT. ANN. ch. 417 § 21A-65 (West 1995).

²²⁹ CONN. GEN. STAT. ANN. § 21A-65 (West 1995). Other exceptions under the amendment include the distribution of needles under the direct supervision of a pharmacist and for use by patients under the care of a health care facility or licensed health care practitioner. *Id.*

²³⁰ See Thomas & Crouse Quinn, *supra* note 18, at 57.

²³¹ *Id.*

²³² *Id.*

²³³ See CONNECTICUT SENATE BILL NO. 547, 1995 Regular Session.

On January 19, 1995, Republican State Senator John R. Kissel, a member of the Committee for Public Health, introduced a bill which attempted to restrict Connecticut's existing needle exchange programs.²³⁴ The purpose of the bill was "[t]o require anyone under age twenty-one to be in a drug rehabilitation program in order to participate in the needle exchange program."²³⁵ This was similar to the restriction placed on the 1988 New York experimental program which was shut down in 1990 by similar strict requirements.²³⁶ Moreover, it is at least one commentator's belief that drug treatment restrictions hinder needle exchange programs and that addicts would feel more free to use a program if it came with no strings attached, such as forced treatment.²³⁷ The Connecticut amendment would significantly restrict the number and age group of addicts allowed in the needle exchange programs, which would prove a huge obstacle to the future success of such programs.²³⁸

2. California

California's needle prescription law states "no hypodermic needle or syringe shall be sold at retail except upon the prescription of a physician and surgeon, dentist, veterinarian or podiatrist."²³⁹ Unlike Connecticut, which created an exception to the statute itself, a number of California counties have established their needle exchange programs under county police powers.²⁴⁰ In November 1994, the Sacramento County Board of Supervisors, by a one-vote margin, approved a needle exchange program under the county's police power and the health officer's mandate to protect public health.²⁴¹ Cities such as San Francisco, Los Angeles, and Oakland have already enforced their county's police powers to avoid state needle prescription laws.²⁴² In Sacramento, the program is already in jeopardy of being abolished due to political opposition from the District Attorney Jan Scully and Sheriff

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ See Lane, *supra* note 9, at 5.

²³⁷ See Gostin, *supra* note 2, at 160.

²³⁸ See CONNECTICUT SENATE BILL NO. 547, 1995 Regular Session; Gostin, *supra* note 2, at 160.

²³⁹ CAL. BUS. & PROF. CODE § 4143 (West 1995). The only exemption to the California law consist of "[p]ersons engaged in the breeding or raising of livestock, poultry, or other animals[.]" *Id.*

²⁴⁰ *Needles*, *supra* note 16, at 21.

²⁴¹ *Id.*

²⁴² *Id.*

Glen Craig who are strongly backed by prosecutors and law enforcement agents with similar negative sentiments towards needle exchange programs.²⁴³

In 1995, Los Angeles encountered problems with its needle exchange program after Mayor Richard Riordan declared a state of emergency.²⁴⁴ The County Board of Supervisors in Los Angeles began debates on whether to enact its own program but Los Angeles County Counsel, DeWitt Clinton, advised the Board in October that such a program “would violate state laws regulating the distribution and use of drug paraphernalia” and could potentially make the county “liable for damages to those harmed as a result of the program’s operation.”²⁴⁵

Despite the number of counties exercising their police powers, Republican Governor Pete Wilson on three occasions has vetoed state legislation which would have abolished needle prescription laws within California.²⁴⁶ Democrat Kerri Mazzone introduced the bill which would, among other things, give permission to localities to establish needle exchange programs while requiring the needle exchanges to be on a one-to-one basis, be part of a network of HIV anonymous testing and early intervention, and attempt to obtain drug treatment for the participants in the program upon their request.²⁴⁷

The purpose of the bill is to slow the spread of HIV by permitting the development of needle exchange programs.²⁴⁸ In his veto of the bills brought before him, Governor Wilson stated:

AB 260 is a bill inspired by the most humane concern about what is conceded to be a grave public health hazard. But the inherent contradiction of all other efforts to prevent drug use—by formal sanction of a project which facilitates drug use—just poses an unacceptably high risk. Ironically, this bill poses a choice that is essentially an exercise in triage. I have not made lightly the decision to withhold my signature. I have

²⁴³ *Id.* at 22.

²⁴⁴ *Id.*

²⁴⁵ *Needles, supra* note 16, at 22.

²⁴⁶ 2/15/94 Inside Report on AIDS, 1994 WL 3169449 (Page Unavailable On-line); Committee Report for 1995 California Assembly Bill No. 1407, 1995–1996 Regular Session.

²⁴⁷ Committee Report for 1995 California Assembly Bill No. 1407, 1995–1996 Regular Session. The bill also proposed that the local health office develop operating procedures for the program which are subject to approval by the Department of Health and Human Services, develop community outreach programs which are culturally sensitive and linguistically appropriate, and most importantly, require the local health official to terminate a program if he or she determines that it increases drug use and spread of AIDS. *Id.*

²⁴⁸ *Id.*

done so fully mindful that by some estimates there are as many as 400,000 active intravenous drug users in California are exposing themselves, their sexual partners and future children to HIV.

Withholding my signature from this well-intended legislation is not an easy choice. But the choice I am compelled to make is for prevention of tomorrow's addicts, and the avoidance of all the waste, heartbreak and tragedy that flow from drug-use.

[O]f today's addicts, my choice is not to sanction illicit drug use through legalized needle exchange programs, but by expanded education, preventions and treatment activities. My administration has committed itself to expanded treatment for drug abusers as well as to expanded education and prevention activities to populations at highest risk for HIV/AIDS, including IV drug users.²⁴⁹

Mazzoni cited statistics that within California injection drug users are also one of the fastest growing groups of AIDS cases.²⁵⁰ In 1992, the largest increase in reported AIDS cases in California was among injection drug users which rose 19% compared to an overall 4.3% in reported cases.²⁵¹

In her bill proposed in February 1995, Mazzoni cited a landmark 1994 study commissioned by the United States Congress.²⁵² From this study, the Institute of Medicine of the National Academy of Sciences concluded that needle exchange programs are effective and proposed that the ban on federal funding for programs and research be lifted.²⁵³ She also noted that in 1995, the Center for Disease Control and Prevention concluded that needle exchange programs are efficacious, cost-effective, feasible in many urban areas, and easy to incorporate as one component in an overall drug use prevention and treatment program operated by local governments.²⁵⁴

Despite the statistics and success of programs within California and the country nationwide, Governor Wilson has been a formidable

²⁴⁹ *Id.*

²⁵⁰ Committee Report for 1995 California Assembly Bill No. 1407, California 1995-1996 Regular Session.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

opponent to any change in needle prescription laws and to needle exchange programs within the state of California.²⁵⁵ Despite Governor Wilson's political protest, as of July 1, 1996, counties within the state of California will be able to disperse part of the 17 million dollars in new state grant money to needle exchange programs with the condition that the funds are not used to directly purchase syringes.²⁵⁶

3. Massachusetts

The leading case which challenged needle prescription laws within the state of Massachusetts was *Commonwealth v. Harry W. Leno*.²⁵⁷ In June 1991, the defendants, Harry W. Leno and Robert E. Ingalls were arrested and charged with 65 counts of unauthorized possession of hypodermic needles and 52 counts of unauthorized possession of syringes.²⁵⁸ The defendant Leno told police, when arrested, that he was distributing clean needles for contaminated ones in order to prevent the spread of AIDS.²⁵⁹ In addition to the needles, police confiscated bleach and information regarding drug treatment centers and the hazards of sharing needles.²⁶⁰

The defendant Leno was a fifty-five year-old grandfather and former drug addict who has been in recovery for ten years.²⁶¹ Leno learned of needle exchange programs through the National AIDS Brigade in 1990 and began his own needle exchange program in Lynn, MA.²⁶² The other defendant, Robert Ingalls, assisted Leno in the program due to his concern over the number of people dying of AIDS.²⁶³ The defendants would legally purchase clean needles over the counter.²⁶⁴ They were arrested for distributing these needles on June 19, 1991.²⁶⁵

²⁵⁵ See Committee Report for 1995 California Assembly Bill No. 1407, California 1995-1996 Regular Session; 2/15/94 Inside Report on AIDS, 1994 WL 3169449 (Page Unavailable On-Line).

²⁵⁶ Barry Witt, *Needle Exchange Programs May Try To Use State Funds*, L.A. DAILY NEWS, May 26, 1996, at N24.

²⁵⁷ See *Commonwealth v. Leno*, 616 N.E.2d 453 (1993).

²⁵⁸ *Id.* at 454. On February 23, 1996, Democratic Senator Diane E. Watson proposed legislation which would amend Section 4146 of the Business & Professions Code and to allow for pilot needle exchange programs within California. California Senate Bill No. 1976, California 1995-1996 Regular Session.

²⁵⁹ *Leno*, 616 N.E.2d at 454.

²⁶⁰ *Id.* at 454 n.4.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Leno*, 616 N.E.2d at 454.

²⁶⁵ *Id.*

Prior to their arrest, defendants could be found in the same location every Wednesday distributing clean needles and information packets regarding AIDS and drug treatment for addicts.²⁶⁶ They exchanged between 150 to 200 needles each night, for fifty to sixty people.²⁶⁷

In their defense of necessity,²⁶⁸ the defendants offered expert testimony at the trial.²⁶⁹ Dr. Ernest Drucker, an authority on the relationship between treatment of drug users and the transmittal of AIDS testified that “[s]tudies of needle exchange programs revealed no evidence that such programs cause people who are not drug addicts to become addicts, but that evidence indicates that needle exchange programs bring some addicts into drug and AIDS treatment programs who would not otherwise be there. . . .”²⁷⁰ The defendants also presented other experts.²⁷¹ Elaine O’Keefe, director of the AIDS Division of the New Haven, Connecticut Health Department testified to similar findings regarding needle exchange programs and AIDS.²⁷² Kathleen Gallagher, director of the AIDS surveillance program of the Massachusetts Department of Public Health, testified to the severity of the AIDS epidemic in Massachusetts and elsewhere.²⁷³ The Supreme Judicial Court’s decision affirmed the Superior Court’s denial of the defendants’ request for the jury instruction of necessity.²⁷⁴ The court stated, “[T]he defendants do not deny that they violated the provisions of the statutes restricting the possession and distribution of hypodermic needles; rather, they contend that the judge’s refusal to instruct the jury on the defense of necessity was error. We disagree.”²⁷⁵ The court stated that it has emphasized that a person asserting the necessity defense must, “demonstrate that the danger motivating his or her unlawful conduct is imminent and that he or she acted out of necessity at all times that he or she engaged in the unlawful conduct.”²⁷⁶

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 454–55.

²⁶⁸ The necessity defense evolved under common law and varies among jurisdictions. Gostin, *supra* note 190, at 53. It is founded on the theory that conduct that would otherwise constitute a criminal offense is justified in extraordinary circumstances such as conduct necessary to avoid an imminent harm to a person or to the public. *Id.* Other circumstances include incidents where the defendant entertained a good-faith belief that the act was necessary to prevent a greater harm. *Id.*

²⁶⁹ *Leno*, 616 N.E.2d at 455.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Leno*, 616 N.E.2d at 455.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 456.

The court decided that any changes in the necessity defense must be made by the legislature and not the courts.²⁷⁷ The court concluded that “the defendants did not show that the danger they sought to avoid was clear and imminent, rather than debatable or speculative,” and that whether the current needle prescription law was wise or effective is to be decided by the legislature and not the courts.²⁷⁸ Citing the case of *Commonwealth v. Lammi*,²⁷⁹ the court stated, “Our deference to legislative judgments reflects neither an abdication of nor unwillingness to perform the judicial role; but rather a recognition of the separation of powers and the undesirability of the judiciary substituting its notion of correct policy for that of a popularly elected Legislature.”²⁸⁰

Since the court’s decision, the Massachusetts Legislature passed an exception to the needle prescription law by adding to section 27:

(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.²⁸¹

Also similar to the proposed Republican bill in the Connecticut Legislature, the Massachusetts statute already contains a clause stating, “[T]he 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.”²⁸²

The first results of the Massachusetts needle exchange pilot program indicated that 13% of 1,200 intravenous drug users taking part started treatment for their addiction.²⁸³ David Mulligan, who is the public health commissioner for Massachusetts, has been encouraged by the results of the pilot program and has stated that there will be future proposals sent to the Massachusetts Legislature regarding either

²⁷⁷ *Id.*

²⁷⁸ *Id.* at 456–57.

²⁷⁹ *Lammi*, 435 N.E.2d 360 (1992). While deciding that an ordinance for possessing an exposed bottle of whiskey on a public street was not facially unconstitutional, the Supreme Judicial Court of Massachusetts stated that whether an ordinance is wise or effective is not within the province of the Supreme Judicial Court. *Id.*

²⁸⁰ *Id.*

²⁸¹ MASS. GEN. LAWS. ANN. ch. 94C, § 27 (West 1995).

²⁸² *Id.*; see CONNECTICUT SENATE BILL NO. 547, 1995 Regular Session.

²⁸³ Kong, *supra* note 46, at 35.

the expansion of supervised needle exchange programs or the elimination of needle sales throughout the state.²⁸⁴ However, despite the pilot program, AIDS activists still lobby for the allowance of private needle exchange programs such as the National AIDS Brigade led by famous AIDS activist John Stuen-Parker.²⁸⁵ In February of 1994, approximately 30 AIDS activists lobbied outside Boston Mayor Thomas Menino's office in an attempt to have the mayor adopt a "no arrest policy" toward activists who conduct unsanctioned needle exchange programs in Boston's neighborhoods.²⁸⁶ The mayor refused to meet with the activists.²⁸⁷ Stuen-Parker has not been deterred by court decisions and the legislature's refusal to change and has vowed to organize needle exchanges every Friday morning at the same location.²⁸⁸ Stuen-Parker believes the Brigade sponsored program should be allowed to operate alongside the official one and has vowed, "We're not going to stop until the law changes."²⁸⁹

4. New York

In New York, unlike Massachusetts, AIDS activists have achieved success in using the court system to bypass the state's needle prescription laws in *People v. Bordowitz*.²⁹⁰ The defendants, including AIDS activists Greg Bordowitz and John Stuen-Parker, were arrested March 6, 1990 after police learned from a Newsday article where defendants planned to distribute needles.²⁹¹ The defendants claimed their actions were justified, due to the exigency created by the AIDS epidemic, and therefore would satisfy the defense of necessity.²⁹² The criminal court in New York stated that the New York statute provides that the necessity

²⁸⁴ *Id.* at 36.

²⁸⁵ Murphy, *supra* note 29, at 19.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.* In the New Jersey case *State v. Sorge* (including defendant Stuen-Parker), the Superior Court concluded, "Defendants, albeit for the highest motives, were engaged in facilitating illegal drug use. Whatever social benefits may have attended defendants' plan in terms of minimizing the transmission of HIV in the community, defendants were exacerbating the social costs associated with the illegal drug trade." 591 A.2d 1382, 1385 (1991). On June 5, 1996, Stuen-Parker and Daniel Sundquist were found guilty of illegally possessing hypodermic needles and received suspended sentences in the state of New Hampshire where it is against the law to possess a syringe without a prescription. *2 Convicted For Needle Programs*, BOSTON GLOBE, June 7, 1996 at 36.

²⁹⁰ See *People v. Bordowitz*, 588 N.Y.S.2d 507, 512 (1991).

²⁹¹ *Id.* at 508.

²⁹² *Id.*

defense cannot rest only upon moral considerations and advisability of the statute.²⁹³ However, its application to preserve the physical well-being of an individual or group of individuals has long since been recognized.²⁹⁴

The court stated that based on defendants' expert testimony, "[t]his court finds it was reasonable for the defendants to believe their action was necessary as an emergency measure to avert an imminent public injury."²⁹⁵ The court took judicial notice that there are differing political views, however they focused on whether the defendants' actions in this case were reasonable.²⁹⁶ The court stated that "[w]hile the defendants' actions alone would not end the epidemic, it is reasonable to believe their actions served to avert further risks of infection for some individuals. This court is satisfied that the nature of the crisis facing this City, coupled with the medical evidence offered, warranted defendants' action."²⁹⁷

In contrast to Massachusetts, which left the issue to the legislature, the New York court stated:

No legislative or executive action precludes the necessity defense in this case. The hypodermic possession statute and the related public health law provision were enacted to fight drug usage well before the onset of the AIDS crisis. The state legislature has yet to consider whether to revise the hypodermic possession statute in the wake of the epidemic. Although efforts to repeal or amend the law have not been successful, without a specific vote based on consideration of the AIDS epidemic, this court cannot find legislative action to have precluded the defense in this case.²⁹⁸

The court went on to conclude that defendants' defense of necessity would be allowed.²⁹⁹ The court reasoned "by violating the substantive crime of criminally possessing a hypodermic needle, the defendants directly advanced their purpose of providing clean needles to addicts to help avert further HIV infections. This court is satisfied that

²⁹³ *Id.* at 510.

²⁹⁴ *Id.* at 509.

²⁹⁵ *Bordowitz*, 588 N.Y.S.2d at 511.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.* at 512.

²⁹⁹ *Id.* at 513.

defendants' conduct was not one of mere protest against a statute but was intended to help avert a very real emergency."³⁰⁰

D. *Status of Needle Exchange Programs at the Federal Level*

Needle exchange programs have perhaps faced their greatest obstacle to funding and acceptance in the executive and legislative branches of our federal government.³⁰¹ Under the Reagan and Bush Administrations, needle exchange programs were rejected.³⁰² It was viewed that tolerance of such programs would undercut the zero tolerance drug campaign which was put forth by both presidents.³⁰³ In 1992, White House Drug Czar Robert Martinez reiterated the sentiments within the executive branch that needle exchange programs encourage drug use.³⁰⁴ Furthermore, Martinez stated that needle exchange programs send society the wrong message by condoning drug use rather than depicting drugs as illegal and morally wrong.³⁰⁵

Congress also expressed opposition during this period, led by the charge of Republican Senator Jesse Helms.³⁰⁶ Since 1988, Congress has successfully passed a series of statutes which restrict funding to needle exchange programs.³⁰⁷ Congress passed section 300ee-s of the Public Health and Welfare Act which states:

None of the funds provided under this Act or an amendment made by this Act shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome.³⁰⁸

³⁰⁰ *Bordowitz*, 588 N.Y.S.2d. at 513.

³⁰¹ See 42 U.S.C.A. Ch. 6A, subch. XXIII, § 300ee-s (West 1995); Kirp & Bayer, *supra* note 6, at 79.

³⁰² Kirp & Bayer, *supra* note 6, at 79.

³⁰³ *Id.*

³⁰⁴ *Id.* at 79-80.

³⁰⁵ *Id.*

³⁰⁶ See Kirp & Bayer, *supra* note 6, at 80; *Newsweek*, PANTAGRAPH, Sept. 20, 1995, at 2; Julie Rovner, *Appropriations: Senate Resists Adding Money to Popular Social Programs*, CONG. QUARTERLY WKLY. REP., Sept. 19, 1992, at 3.

³⁰⁷ *Victor Hall, Panel Supports Needle Exchanges to Curb AIDS*, COM. APPEAL Sept. 20, 1995, at 1.

³⁰⁸ 42 U.S.C.A. ch. 6A, subch. XXIII, § 300ee-s (West 1995).

In 1992, Congress tried to reorganize the Alcohol, Drug Abuse, Mental Health Administration (ADAMHA).³⁰⁹ Martinez once again lobbied within both the Senate and House preventing this because it included a provision which would lift the four-year ban on federal funding for needle exchange programs.³¹⁰ Speaking before the House Subcommittee on Human Resources and Intergovernmental Relations of the Committee on Governmental Regulations regarding AIDS and the black Community, Ronald Johnson, a Citywide Coordinator for AIDS Policy for the city of New York, expressed frustration from the lack of federal assistance by stating:

Our people and our communities have paid the price of 13 years of virtual neglect from the national leadership that has trickled down to state and local governments. We cannot afford any further neglect. All levels of government must be involved rather than on the sidelines. African American elected officials, including legislators must be engaged fully in providing leadership to and involvement in the fight against AIDS.³¹¹

Two events occurred which indicated that the federal government would join the fight for needle exchange programs: first, the 1992 election of Democratic President Bill Clinton who declared his commitment to fighting AIDS; secondly was two monumental studies within a year of each other by the University of California and the Center for Disease Control (CDC).³¹²

When President Clinton entered office it was the first sign of the White House opening its doors to the needs of AIDS activists.³¹³ Praised for what former Presidents Reagan and Bush would never do, President Clinton hosted the first White House Conference on AIDS and HIV.³¹⁴ President Clinton declared to over 300 AIDS activists that the United States can conquer AIDS; however, President Clinton never

³⁰⁹ *ADAMHA Bill Stated Again*, HEALTH LEGIS. & REG. WRLY., June 3, 1992 [hereinafter *ADAMHA*].

³¹⁰ *Id.*

³¹¹ Ronald Johnson, *AIDS and HIV Infection in The African American Community*, 1994 WL 510330 (F.D.C.H.), at 6.

³¹² See Committee Report for 1995 California Assembly Bill No. 1407, 1995-1996 Regular Session; Representative Jay H.S. Coburn, *Preventing HIV Infection and Preventing AIDS*, 1994 WL 361733 (F.D.C.H.), at 7; Podolski, *supra* note 33, at 1.

³¹³ See Podolski, *supra* note 33, at 1.

³¹⁴ *Id.*

committed himself to a national needle exchange program or to federal funding for the state programs in existence.³¹⁵

The fact that President Clinton never directly committed himself to supporting needle exchange can be attributed to the forthcoming opposition from a Republican Congress and in particular Jesse Helms.³¹⁶ However, Congress' prohibitions on funding appeared conditional, and if needle exchange programs could be proven to both reduce the spread of AIDS and cause no increase in drug abuse, it appeared, based on the wording of the statute, that Congress would lift the ban.³¹⁷ In 1993, the Institute for Health Policy Studies at the University of California at San Francisco produced a study, conducted by Dr. Peter Lurie, which found that needle exchange programs reduced needle sharing among addicts.³¹⁸ The study went on to conclude that there was no evidence that needle exchange programs increased drug use.³¹⁹ Representative Coburn, in presenting the study, stated that needle exchange programs were a valuable first link to drug treatment for many addicts.³²⁰ The study recommended that federal restrictions on funding for needle exchange programs be lifted.³²¹

In addition to this study, the Center for Disease Control (CDC) issued a report which advocated federal funding of such programs.³²² Despite the backing by the CDC, the Clinton administration continues to claim the evidence is not strong enough to support needle exchange programs.³²³ Dr. Lurie believes the Clinton administration is ignoring the results of the studies and backing down in fear of a Republican dominated Congress.³²⁴ Dr. Lurie perhaps best describes Congress' and the President's refusal to acknowledge and accept the finding of the studies by stating, "I cannot think of another example where the federal government denied people at great risk of HIV a potentially life-saving intervention. This outstrips all previous government misconduct on this issue. This has nothing to do with science. It's politics, pure and simple."³²⁵

³¹⁵ See *id.*; Russell, *supra* note 213, at 1; *Aid for AIDS*, *supra* note 33, at 1.

³¹⁶ Russell, *supra* note 213, at 2; *Aid for AIDS*, *supra* note 33, at 1.

³¹⁷ See 42 U.S.C.A. Ch. 6A, subch. XXIII, § 300ee-s (West 1995); Russell, *supra* note 213, at 2.

³¹⁸ Coburn, *supra* note 312, at 7.

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ Russell, *supra* note 213, at 2.

³²² Coburn, *supra* note 312, at 6; Russell, *supra* note 213, at 1.

³²³ Coburn, *supra* note 312, at 6; Russell, *supra* note 213, at 1.

³²⁴ Coburn, *supra* note 312, at 6.

³²⁵ *Id.*

V. THE FUTURE DIRECTION OF NEEDLE EXCHANGE PROGRAMS AT THE STATE AND FEDERAL LEVELS

A. State Level: Legislatures v. Courts

At the state level, in the states that continue to have needle prescription laws, the legislatures and the courts continue to shift responsibility in addressing necessary components of such programs.³²⁶ Overall, it appears that the courts may be where needle exchange programs can find their greatest ally;³²⁷ while on the other hand, it appears that the state legislatures continue to be a formidable obstacle which needle exchange programs are forced to hurdle.³²⁸

1. Legislative Tendencies

The future of needle exchange programs appears uncertain particularly in the eight state legislatures that continue to have needle prescription laws.³²⁹ This is due to tight legislative control over the structure and funding of state needle exchange programs.³³⁰ Due to the inability within states to abolish needle prescription laws, it appears the battle may be better waged in the courts than in the state legislatures.³³¹ Also, within the remaining states, Republican Governors have proven to be formidable obstacles in the abolition of needle prescription laws.³³² For example, Republican Governor Pete Wilson has three times vetoed legislation allowing for needle exchange programs in California.³³³ In states where the legislature does allow for such programs, Republican legislators have moved to tighten control over such programs.³³⁴ For example, the tendencies of the legislatures, as evidenced by Massachusetts and Connecticut, is to create narrowly tailored exceptions to needle prescription laws.³³⁵ By creating exceptions

³²⁶ See *Commonwealth v. Leno*, 616 N.E.2d 453 (1993); *Needles*, *supra* note 16, at 21.

³²⁷ See *People v. Bordowitz*, 588 N.Y.S.2d 507 (1991).

³²⁸ See CONNECTICUT SENATE BILL NO. 547, 1995 Regular Session; Committee Report for 1995 California Assembly Bill No. 1407, 1995–1996 Regular Session.

³²⁹ See *supra* part IV, C (discussing the current status of needle exchange programs within states that continue to have needle prescription laws).

³³⁰ See, e.g., CA. BUS. & PROF. CODE § 4143 (West 1995); CONN. GEN. STAT. ANN. § 21A-65 (West 1995); MASS. GEN. LAWS ANN. ch. 94C, § 27 (West 1995); *Needles*, *supra* note 16, at 21.

³³¹ See *Bordowitz*, 588 N.Y.S.2d at 507; *Needles*, *supra* note 15, at 21.

³³² 2/15/94 Inside Report on AIDS, 1994 WL 3169449; Committee Report for 1995 California Assembly Bill No. 1407, 1995–1996 Regular Session; MacPherson, *supra* note 214, at 1.

³³³ Committee Report for 1995 California Assembly Bill No. 1407, 1995–1996 Regular Session.

³³⁴ See CONNECTICUT SENATE BILL NO. 547, 1995 Regular Session.

³³⁵ *Id.*; MASS. GEN. LAWS ANN. ch. 94C, § 27 (West 1995).

rather than abolishing the laws, legislatures are able to maintain control over what type of program is allowed (public, private or both).³³⁶ They are also able to control other aspects of the programs such as the number of needles exchanged, the age group, and the treatment plan of the participants.³³⁷

Senator Kissel of Connecticut attempted to maintain strict control over the exception in Connecticut legislation allowing for publicly state sponsored programs.³³⁸ He proposed to limit the age group of those participants and demanded that clients of the program be enrolled in drug treatment—two aspects which were attempted in the failed 1989 New York pilot program.³³⁹ However, despite valuable lessons to be learned from the New York program, it appears that legislatures, such as Connecticut's, are opting for exceptions rather than abolition to needle prescription laws.³⁴⁰ If Republicans are successful in continuing to structure needle exchange programs, the number of participants excluded will most likely increase and hurt successful programs such as New Haven.³⁴¹

However, a positive result of legislators placing restrictions on exceptions to needle exchange programs is that it may force more states to attempt to use their police power.³⁴² Furthermore, it may also have the effect of forcing more AIDS activists into courts to debilitate the effect of needle prescription laws via the use of the necessity defense.³⁴³

If state legislatures refuse to abolish needle prescription laws and further restrict the structure of state needle exchange programs as has been the recent movement in states such as Massachusetts and Connecticut, counties within these states may opt for programs such as those in California.³⁴⁴ Due to the inability to create viable needle

³³⁶ See CONNECTICUT SENATE BILL No. 547, 1995 Regular Session; MASS. GEN. LAWS ANN. ch. 94C, § 21-65 (West 1995).

³³⁷ See CONN. GEN. STAT. ANN. ch. 417 § 21A-65 (West 1995); CONNECTICUT SENATE BILL No. 547, 1995 Regular Session.

³³⁸ See *supra* text accompanying note 234-238 (discussing Senator Kissell's proposal to the Connecticut statute).

³³⁹ *Id.*; see *supra* text accompanying notes 80-92 (discussing of New York's experimental needle exchange program).

³⁴⁰ See CONN. GEN. STAT. ANN. ch. 417 § 21A-65 (West 1995); MASS. GEN. LAWS ANN. ch. 94C § 27 (West 1995).

³⁴¹ See CONNECTICUT SENATE BILL No. 547, 1995 Regular Session; Gostin, *supra* note 2, at 153, 160.

³⁴² See *Needles*, *supra* note 16, at 21.

³⁴³ See *Commonwealth v. Leno*, 616 N.E.2d 457 (1993); *People v. Bordowitz*, 588 N.Y.S.2d 507, 513 (1991).

³⁴⁴ See MASS. GEN. LAWS ANN. ch. 94C § 27 (West 1995); CONN. GEN. STAT. ANN. ch. 417

exchange programs through legislation, California counties created their own programs free from legislative structure through their police power.³⁴⁵ By identifying AIDS as a health care crisis and declaring states of emergency, counties such as Sacramento, Los Angeles, and San Francisco have successfully bypassed state law prohibiting needle exchange programs altogether.³⁴⁶

However, should states such as Massachusetts and Connecticut follow the lead of California, it may force the courts to make a decision on whether the use of police power for the purpose of establishing needle exchange programs is in fact justifiable.³⁴⁷ So far, California courts have yet to endorse or condemn the use of such power.³⁴⁸ However, if other states follow suit, this may push the issue back into the courts where decisions in other states regarding needle exchange programs have been mixed.³⁴⁹

2. Judicial Tendencies

The judicial level appears to be the best hope for needle exchange advocates in gaining approval for such programs through the use of the necessity defense.³⁵⁰ This allows for another option at the state level namely for AIDS activists to operate their own programs independent from legislative structure and continue to challenge their validity under the defense of necessity.³⁵¹ How the courts will view this defense is uncertain because it is presently mixed among the states.³⁵² Activists in New York have been successful in arguing that distributing clean needles is a warranted action in response to the AIDS crisis.³⁵³

The defense as exemplified in the Massachusetts case *Commonwealth v. Leno*, is not always accepted.³⁵⁴ In fact, the court in *Leno* viewed the defendants' claim of fighting AIDS as debatable and speculative.³⁵⁵ Since the *Leno* decision, however, studies by the University of California

§ 21A-65 (West 1995); CONN. GEN. STAT. ANN. ch. 368A § 19A-124 (West 1995); *Needles*, *supra* note 16, at 21.

³⁴⁵ *Needles*, *supra* note 16, at 21.

³⁴⁶ *See id.*

³⁴⁷ *Id.* at 22.

³⁴⁸ *Id.*

³⁴⁹ *See id.*; *Commonwealth v. Leno*, 616 N.E.2d 453 (1993); *People v. Bordowitz*, 588 N.Y.S.2d 507 (1991).

³⁵⁰ *See Bordowitz*, 588 N.Y.S.2d at 507.

³⁵¹ *See Leno*, 616 N.E.2d at 453; *Bordowitz*, 588 N.Y.S.2d at 507.

³⁵² *See Leno*, 616 N.E.2d at 453; *Bordowitz*, 588 N.Y.S.2d at 507.

³⁵³ *Bordowitz*, 588 N.Y.S.2d at 511.

³⁵⁴ *See Leno*, 616 N.E.2d at 456.

³⁵⁵ *Id.* at 456-57.

and Centers for Disease Control have produced findings that needle exchange programs are effective.³⁵⁶ This may have a positive impact on how courts decide cases that invoke the defense of necessity.³⁵⁷ These studies may cause courts to abandon previously held suspicions.³⁵⁸

However, even if courts do take these studies into account, they may still refuse to accept the defense of necessity.³⁵⁹ Another reason the court in *Leno* refused the defense is that they believed it did not provide for use when the danger is not imminent.³⁶⁰ They believed any restructuring of the defense was the responsibility of the legislature and not the courts.³⁶¹ Therefore, courts in other states may follow the logic of the *Leno* court and again defer decisions until the legislatures can restructure the defense of necessity.³⁶² Hopefully, courts that review the studies' findings will follow the decision in *Bordowitz*, which viewed AIDS as a real and imminent threat to the public and allowed the defense of necessity regardless of the legislative action.³⁶³ This would allow activists to conduct private programs free from legislative control.³⁶⁴

B. *How Minorities Will Impact the Future of Needle Exchange Programs*

Although the recent studies may have an impact upon state legislatures and courts when addressing needle exchange programs, they could also have a similar effect upon minority leaders and citizens within the inner city.³⁶⁵ The current movement within inner city communities has been to tentatively accept needle exchange programs.³⁶⁶ Furthermore, studies' results illustrating needle exchange programs' success in lowering the spread of HIV while not increasing drug abuse, may help solidify this acceptance.³⁶⁷ Tentative acceptance is based on

³⁵⁶ Coburn, *supra* note 312, at 7; Russell, *supra* note 213, at 1.

³⁵⁷ See Coburn, *supra* note 312, at 7; Russell, *supra* note 213, at 1.

³⁵⁸ See *Leno*, 616 N.E.2d at 456-57; *Bordowitz*, 588 N.Y.S.2d at 512; Coburn, *supra* note 312, at 7; Russell, *supra* note 213, at 1.

³⁵⁹ See *Leno*, 616 N.E.2d at 453.

³⁶⁰ *Id.* at 456.

³⁶¹ *Id.* at 456-57.

³⁶² See *id.* Chief Justice Liacos in concurrence stated that he wished the expert evidence presented would, "indicate to the Legislature the importance of joining the vast majority of jurisdictions that have decriminalized possession and distribution of hypodermic syringes. *Id.* at 457.

³⁶³ See *Bordowitz*, 588 N.Y.S.2d at 512.

³⁶⁴ See *id.*

³⁶⁵ See Kirp & Bayer, *supra* note 6, at 88; Thomas & Crouse Quinn, *supra* note 18, at 122.

³⁶⁶ See Kirp & Bayer, *supra* note 6, at 88, 90; Thomas & Crouse Quinn, *supra* note 18, at 155.

³⁶⁷ See Kirp & Bayer, *supra* note 6, at 89; Thomas & Crouse Quinn, *supra* note 18, at 115; Russell, *supra* note 213, at 1.

public approval of such programs by black mayors and a decrease in opposition from religious and community leaders.³⁶⁸ Proponents of needle exchange programs, however, need to understand the concerns of black Americans and garner the support of minority politicians and citizens.³⁶⁹ The fears of minorities regarding drugs and AIDS must be acknowledged and addressed.³⁷⁰ Overall, it appears that in many urban areas, minority leaders such as Reverend Ellis-Hagler have become less adamant in their opposition to such programs.³⁷¹

Opposition from the minority community comes largely from the Nation of Islam and its charismatic leader Louis Farrakhan.³⁷² Due to the success of the Million Man March and its publicity, Farrakhan must be recognized as a possible threat to needle exchange programs.³⁷³ If Farrakhan and other leaders in the Nation of Islam continue to spread the message to blacks that AIDS is genocide and needle exchanges exist to perpetuate drug dependency within the inner cities, it could lead to a minority backlash.³⁷⁴ This could produce similar results to 1990, where in New York, the needle exchange program was abolished as a result of minority opposition within the community in which the program is placed.³⁷⁵ It has been suggested that sponsors of the needle exchange programs communicate with both the black community and civil rights leaders in order to dispel myths regarding AIDS, drugs, and needle exchange.³⁷⁶ While this action is necessary, it is questionable whether Farrakhan would be willing to cooperate with needle exchange programs to send such a message.³⁷⁷ Programs will likely have greater success by communicating with black leaders, such as Magic Johnson, as well as prominent black mayors, and having them act as spokesmen within the inner cities to help continue the trend toward acceptance of such programs.³⁷⁸ The influence of prominent black

³⁶⁸ Kirp & Bayer, *supra* note 6, at 89; Thomas & Crouse Quinn, *supra* note 18, at 115.

³⁶⁹ See Dalton, *supra* note 19, at 222, 224; Johnson, *supra* note 311, at 7.

³⁷⁰ See Dalton, *supra* note 19, at 222, 224; Johnson, *supra* note 311, at 7.

³⁷¹ See Thomas & Crouse Quinn, *supra* note 18, at 115; Rosin, *supra* note 113, at 6.

³⁷² See Dusseau, *supra* note 167, at 2; Rosin, *supra* note 113, at 3.

³⁷³ See Dusseau, *supra* note 167, at 2; Rosin, *supra* note 113, at 3.

³⁷⁴ See Dusseau, *supra* note 167, at 2; Rosin, *supra* note 113, at 3.

³⁷⁵ See Dalton, *supra* note 19, at 209; Lane, *supra* note 9, at 4.

³⁷⁶ See Thomas & Crouse Quinn, *supra* note 18, at 122; *5 Tips For Running Program That Exchanges Needles: Advocates Usually Can Gain Legal Exemption*, AIDS ALERT, Dec. 1, 1995 at 149 [hereinafter *5 Tips*].

³⁷⁷ See Thomas & Crouse Quinn, *supra* note 18, at 122; *5 Tips*, *supra* note 376, at 149.

³⁷⁸ Dalton, *supra* note 19, at 224; Whitman, *supra* note 149, at 1.

leaders on the inner city could also help combat any negative effect Farrakhan's message could have upon such programs.³⁷⁹

C. Federal Level: AIDS Activists v. Republican Congress and Democrat Bill Clinton

Unfortunately, the least progress in acceptance of needle exchange programs has apparently been at the federal level of our government.³⁸⁰ After twelve years of a Republican White House, AIDS activists may have put too much hope in the election of Bill Clinton.³⁸¹ Although President Clinton addresses AIDS more openly than Presidents Reagan and Bush did, he appears reluctant to propose necessary federal funding for needle exchange programs for fear of a Republican backlash.³⁸² Although programs over the last ten years have been able to survive without such funding, it is necessary for the President and other national leaders to acknowledge the success of such programs in order to strengthen their legitimacy at the state level.³⁸³ Despite recent studies, the Clinton administration has treated needle exchange programs as a political hot potato.³⁸⁴

In the legislative branch, needle exchange programs have been neglected by a Republican Congress.³⁸⁵ The statute Congress passed in 1988 regarding the funding of needle exchange programs was conditional.³⁸⁶ The statute stated that no federal funds would be designated, unless the Surgeon General of the Public Health Service determined the efficacy of such programs in reducing drug abuse and the risk of contracting AIDS.³⁸⁷ The results of studies by the University of California at San Francisco and The Centers for Disease Control have proven that needle exchange programs do not increase drug abuse, are an effective link to treatment, and reduce the risk of contracting AIDS.³⁸⁸ Despite these findings, Congress, led by the charge of Republican

³⁷⁹ See Dalton, *supra* note 19, at 224; Whitman, *supra* note 149, at 1.

³⁸⁰ See Russell, *supra* note 213, at 1; ADAMHA, *supra* note 309, at 1; *Aid for AIDS*, *supra* note 33, at 1.

³⁸¹ See Podolski, *supra* note 33, at 1.

³⁸² See *id.*; *Aid for AIDS*, *supra* note 33, at 1; Russell, *supra* note 213, at 2.

³⁸³ See Coburn, *supra* note 312, at 5; Johnson, *supra* note 311, at 6-7.

³⁸⁴ See *Aid for AIDS*, *supra* note 33, at 1; Podolski, *supra* note 33, at 1.

³⁸⁵ See Coburn, *supra* note 312, at 7; Russell, *supra* note 213, at 1.

³⁸⁶ See 42 U.S.C.A. ch. 6A, subch. XXIII, § 300ee-s (West 1995).

³⁸⁷ See 42 U.S.C.A. ch. 6A, subch. XXIII, § 300ee-s (West 1995).

³⁸⁸ Kirp & Bayer, *supra* note 6, at 80; Coburn, *supra* note 312, at 7.

Senator Jesse Helms, has refused to give any funding to needle exchange programs.³⁸⁹ It is possible studies will never be able to conclusively prove that needle exchange programs help to combat drugs, however, that is not their main goal.³⁹⁰ They achieve their goal of seeking to reduce the spread of HIV among IDUs. As a result they deserve recognition and funding.³⁹¹

With the presidential election approaching, it appears that this issue will be neglected again by the Clinton Administration for fear of Republican retaliation during the campaign.³⁹² Based on President Clinton's past reticence, federal funding seems doubtful for at least the next year.³⁹³ The next four years could prove to be equally disappointing if we maintain a Republican Congress and a Democratic President willing to acquiesce to Congress' wishes regarding needle exchange programs.³⁹⁴ Without federal funding in the upcoming years, needle exchange programs could be in jeopardy as a result of legislative and judicial challenges.³⁹⁵ Overall, apathy on the part of both Congress and the Clinton Administration have evidenced that needle exchange program dispute has become nothing more than a political football game with no winners.³⁹⁶

VI. CONCLUSION

The best chance needle exchange programs have for survival is an interaction between various community groups and branches of government that will reinforce the vitality and acceptance of the programs.³⁹⁷ If state legislatures are unwilling to abolish needle prescription laws, they need to allow public needle exchange programs to exist without interference.³⁹⁸ Legislators must rely on the expertise of health care workers and AIDS activists for program structure rather than placing detrimental restrictions on the programs themselves.

³⁸⁹ Kirp & Bayer, *supra* note 6, at 80; Coburn, *supra* note 312, at 7.

³⁹⁰ See Coburn, *supra* note 312, at 6; Russell, *supra* note 213, at 1.

³⁹¹ See Coburn, *supra* note 312, at 6; Russell, *supra* note 213, at 1.

³⁹² See *Aid for AIDS*, *supra* note 33, at 1.

³⁹³ See *supra* part IV, D (discussing the conflict at the federal level regarding needle exchange programs).

³⁹⁴ See *id.*

³⁹⁵ See *Commonwealth v. Leno*, 616 N.E.2d 453 (1993); Johnson, *supra* note 311, at 6; *Needles*, *supra* note 16, at 21.

³⁹⁶ See Coburn, *supra* note 312, at 6.

³⁹⁷ See *supra* part V (regarding needle exchange programs).

³⁹⁸ See CONNECTICUT SENATE BILL NO. 547, 1995 Regular Session.

AIDS activists must not demand separate private needle exchange programs in addition to with public needle exchange programs.³⁹⁹ If such cooperation could take place at the state level, the court system would not be required to decide if the necessity defense is applicable.⁴⁰⁰ Ideally, all programs would be sanctioned by state legislatures.⁴⁰¹

State needle exchange programs require full support from both AIDS activists and minority leaders.⁴⁰² Minority leaders must continue to challenge community distrust of government programs, so that state needle exchange programs can affect those who need them most—inner city minority citizens.⁴⁰³

Finally, if state needle exchange programs are to survive they need more than support from legislatures, AIDS activists, and minority leaders—they need the endorsement of the federal government.⁴⁰⁴ It is vital that the federal government fulfill its promise to provide federal funding to needle exchange programs if they are proven successful.⁴⁰⁵ Interaction among these players will result in the stability and uniformity of needle exchange programs. This is necessary in order for the programs to be productive and successful.

³⁹⁹ See Murphy, *supra* note 29, at 1.

⁴⁰⁰ See *Leno*, 616 N.E.2d at 453; *People v. Bordowitz*, 588 N.Y.S.2d 507 (1991).

⁴⁰¹ See *Leno*, 616 N.E.2d at 453; *Bordowitz*, 588 N.Y.S.2d at 507.

⁴⁰² See *supra* part V, B (discussing the need of minority input for needle exchange programs).

⁴⁰³ *Id.*

⁴⁰⁴ See *supra* part IV, C (discussing the need for federal funding to needle exchange programs).

⁴⁰⁵ See 42 U.S.C.A. ch. 6A, subch. XXIII, § 300ee-s (West 1995).