

Transfer of hypodermic needles to drug users

Number: INFORMAL

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The Honorable Anthony "Tony" Suarez
Representative, District 35
6586 University Boulevard, Suite 7
Winter Park, Florida 32792-7495

Dear Representative Suarez:

You have asked whether the transfer of hypodermic needles to known drug users constitutes a violation of Florida law. According to your letter, a community based organization is interested in beginning a needle exchange program among the drug addicts of Central Florida in order to reduce the instance of needle transferred HIV infection.

The term "drug paraphernalia" is specifically defined in section 893.145, Florida Statutes, to include "[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body." [1] Subsection (2) of section 893.147, Florida Statutes, makes it a felony of the third degree for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to, among other things, "inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act." [2]

While such a determination presents a mixed question of law and fact, section 893.146, Florida Statutes, sets forth the factors which a trial court, a jury, or other authority will consider in determining whether an object is drug paraphernalia. [3]

The provisions of section 893.147(2), Florida Statutes, making it unlawful to deliver or possess with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject into the human body a controlled substance in violation of Chapter 893, Florida Statutes, would appear to be implicated by a program distributing needles to known illegal drug users.

Since section 893.147, Florida Statutes, imposes criminal penalties, the organization may wish to contact the local state attorney on this matter since that office would be responsible for prosecuting any criminal violations of the statute. In addition, the Legislature may wish to consider whether the need for such a program merits amendatory legislation.

I trust that the above informal advisory comments may be of some assistance.

Sincerely,

Robert A. Butterworth

[1] Section 893.145(11), Fla. Stat. Section 893.145, Fla. Stat., generally defines the term as "all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter."

[2] Section 893.147(2)(b), Fla. Stat. *And see* s. 893.147(3), Fla. Stat., relating to the delivery of drug paraphernalia to minors, specifically (3)(b) which provides:

"It is unlawful for any person to sell or otherwise deliver hypodermic syringes, needles, or other objects which may be used, are intended for use, or are designed for use in parenterally injecting substances into the human body to any person under 18 years of age, except that hypodermic syringes, needles, or other such objects may be lawfully dispensed to a person under 18 years of age by a licensed practitioner, parent, or legal guardian or by a pharmacist pursuant to a valid prescription for same. Any person who violates the provisions of this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083."

[3] These factors are as follows:

- "(1) Statements by an owner or by anyone in control of the object concerning its use.
- (2) The proximity of the object, in time and space, to a direct violation of this act.
- (3) The proximity of the object to controlled substances.
- (4) The existence of any residue of controlled substances on the object.
- (5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- (6) Instructions, oral or written, provided with the object concerning its use.
- (7) Descriptive materials accompanying the object which explain or depict its use.
- (8) Any advertising concerning its use.
- (9) The manner in which the object is displayed for sale.
- (10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
- (11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- (12) The existence and scope of legitimate uses for the object in the community.
- (13) Expert testimony concerning its use."