

Written Testimony
Vermont Senate Committee on Health and Welfare
H. 72 (An act relating to a harm-reduction criminal justice response to drug use)
submitted April 10, 2024
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Vermonters for Criminal Justice Reform (VCJR) strongly supports H.72, an act relating to a harm-reduction criminal justice response to drug use.

VCJR currently operates a recovery center in downtown Burlington that provides on-site drug treatment, harm reduction services and recovery supports. VCJR also partners with the Johnson Health Center to provide co-located medical services including wound care, medical assessment, MOUD treatment and more. VCJR intends to apply to operate an overdose prevention center (OPC) in Burlington if and when that becomes an option. We are concerned that under the current draft of H.72, VCJR may not be eligible to apply to operate an overdose prevention center because we are not currently a syringe services provider. We ask the Committee to please consider including a provision that states that any organization may apply to operate an overdose prevention center and that an organization approved to operate an overdose prevention center is deemed eligible to provide syringe services (as a necessary element of operating an overdose prevention center) provided the organization is in compliance with all OPC operating guidelines.

VCJR staff are well-qualified to implement an OPC, and VCJR should be allowed to apply to operate an OPC. VCJR staff are also well-qualified to implement syringe services. I am an attorney, licensed alcohol and drug counselor and former Director of HIV Services Programs at the Vermont Department of Health (where I helped write the initial version of the Operating Guidelines for syringe services programs). I founded the Howard Center Safe Recovery program (Vermont's oldest and largest harm reduction and syringe services program) and supervised the program for 17 years. VCJR Director of Client Services Jess Kirby has 7 years of experience implementing syringe services including as supervisor of Safe Recovery's syringe services program prior to transitioning to employment at VCJR. In addition to being a professional social worker who is highly skilled at client engagement, Jess is a person with lived experience and a certified recovery coach.

VCJR submitted an application for approval to provide syringe services to the Vermont Department of Health on May 31, 2021. The Department has declined to approve or deny our application even though the Department's operating guidelines state, "A completed application for the operation of a syringe exchange program shall be acted upon by the Commissioner of Health within 45 days of receiving the application." The guidelines go on to say, "If an application is not approved, the Commissioner will issue a written decision stating the reasons for the disapproval. Following disapproval an applicant may resubmit a plan with necessary revisions for reconsideration." To date, the Commissioner has declined to issue a formal written decision and VCJR has been unable to provide syringe services to our program participants. VCJR is well-positioned to operate an OPC in Burlington and should be eligible to apply. We do not want the Department's refusal to act on and approve VCJR's application to provide syringe services to prevent VCJR from applying to operate an OPC in Burlington.

For context, 82% of our participants reported current injection drug use at the time of intake, 60% reported an overdose in the prior 6 months and 29% had current wounds or infections related to drug use. Most said they were not accessing drug treatment or recovery services at the time of intake. All of those who reported current injection drug use said that they would like to be able to access sterile syringes and other safer injection supplies at VCJR and would access them at VCJR if they were available. It is important for people to have

access to harm reduction supplies at the moment of need. VCJR case managers who are meeting with a client who is struggling with injection drug use would like to be able to reach in a drawer and offer them sterile syringes --just like we can already reach into a drawer and offer them Narcan and fentanyl or xylazine test strips --but we can't. VCJR is already reaching a large numbers of people who inject and we would like to be able to provide our participants with syringe services, including used syringe take-back and disposal services. It is likely that no Vermont organization has ever had this level of expertise and experience upon initial application for approval to provide syringe services, yet the Department has refused to act on our application for nearly 3 years.

For additional context, anyone can purchase syringes over the counter at a Vermont pharmacy if they have the money. And syringe exchange participants are permitted to provide syringes to their peers with no special approval. Commissioner Levine has spoken of implementing syringe access via vending machines. While we support pharmacy access to syringes, secondary exchange among peers and other innovative efforts to ensure broad access to harm reduction supplies to people who need them, we think it makes sense to allow professional service providers who are working with people who inject to also provide access to sterile syringes (along with health education, motivational interviewing, drug treatment options counseling and other services) --especially after the professional service provider obtains special approval from the Vermont Department of Health. This approval should not be unreasonably withheld.

VCJR supports the proposed provision in H. 72 removing existing statutory language that restricts the types of entities eligible to provide syringe services. A similar provision contained in H.728 passed the House and Senate in 2022 but that bill was later vetoed by the Governor (likely on other grounds). The proposed change has been listed as a policy priority by the City of Burlington and the Vermont Overdose Prevention Network. Removal of this restrictive language is very important to encourage organizations serving special populations experiencing health disparities (BIPOC, justice-involved, LGBTQ+ and others), and organizations working in underserved parts of Vermont to apply to provide syringe services. Since this provision is so important, and since some have expressed a concern that H. 72 may be the subject of a veto, we ask the Committee to consider looking for an opportunity to also include this provision in another bill that is likely to be signed into law to avoid another delay in syringe services expansion in Vermont.

Although the Vermont Department of Health has declined to approve VCJR's application to provide syringe services or issue a written decision stating the reasons for disapproval as required by the Department's guidelines, the Department has indicated in email correspondence that the Department may not recognize VCJR as a "substance abuse treatment provider" (one of the approved types of entities currently potentially eligible to provide syringe services) even though VCJR clearly qualifies under the plain language and meaning of that statutory term. VCJR has pro-actively addressed this issue with the Department and several legal experts have reached out to the Department in support of VCJR's eligibility as a drug treatment provider, including a Vermont Law School professor, an attorney with the Drug Policy Alliance and a legal/medical expert from California. The Department has not responded.

Multiple legal experts agree that VCJR qualifies as a drug treatment provider because VCJR's executive director is a Vermont licensed alcohol and drug counselor implementing an evidence-based drug treatment program developed in consultation with contingency management expert Dr. Rick Rawson and funded in part by the University of Vermont Medical Center. In any event, an otherwise qualified organization like VCJR should not be prohibited from providing syringe services. Removing the restrictive language under current statute should be a legislative priority.