

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 334

FISCAL  
NOTE

BY SENATORS TARR AND GRADY

[Introduced February 18, 2021; referred  
to the Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §16-63-1, §16-63-2, §16-63-3, §16-63-4, §16-63-5, §16-63-6, §16-63-7, §16-  
 3 63-8, §16-63-9, and §16-63-10, all relating to harm reduction programs; creating  
 4 definitions; establishing licensure application process for harm reduction programs; setting  
 5 forth prohibition on the receipt of state funds; creating program requirements; establishing  
 6 revocation process; setting forth the reconsideration process; setting forth the  
 7 administrative due process provision; providing for administrative and judicial appeal;  
 8 establishing reporting requirements and renewal provisions; providing for immunity and  
 9 cost recoupment for businesses; and establishing civil penalties, criminal penalties, and  
 10 injunctive relief.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 63. HARM REDUCTION PROGRAMS.**

**§16-63-1. Definitions.**

1 As used in this article, the term:  
 2 “Bloodborne pathogens” means pathogenic microorganisms that are present in human  
 3 blood and can cause disease in humans. These pathogens include, but are not limited to hepatitis  
 4 B virus, hepatitis C virus, and human immunodeficiency virus (HIV).  
 5 “Core services” means the primary services an entity undertakes in order to service its  
 6 clients.  
 7 “Director” means the Director of the Office of Health Facility Licensure and Certification  
 8 “Fixed site” means a building or single location, not a mobile site, where harm reduction  
 9 services are provided.  
 10 “Harm reduction program” means a program that provides services intended to lessen the  
 11 adverse consequences of drug use and protect public health and safety, this may include but not  
 12 be limited to a syringe exchange program but expressly excludes what is sometimes referred to  
 13 as a “safe injection site” or similar offering.

14 “HIV” means the etiologic virus of AIDS or Human Immunodeficiency Virus.

15 “Injection drug user” means a person who uses a syringe to self-administer drugs.

16 “License” means the document issued by the Bureau authorizing the Harm Reduction  
17 Program (HRP) to operate.

18 “Local health department” means a health department operated by local boards of health,  
19 created, established, and maintained pursuant to §16-2-1 et seq. of this code.

20 “Local law enforcement officer” means the county sheriff or his or her designee where the  
21 proposed or existing harm reduction program is or will be located.

22 “Location” means a site within the service area of a local health department. A location is  
23 a fixed site.

24 “Needlestick injury” means a penetrating wound from a needle that may result in exposure  
25 to blood.

26 “Needlestick injury protocol” means policies and procedures to prevent needlestick injury  
27 to harm reduction staff, including volunteers, community members, and to harm reduction  
28 participants.

29 “Public comment period” means a 30 day public comment period commencing from the  
30 date the applicant posts information about an application in a newspaper of general circulation in  
31 the service area of the local health department.

32 “Service area” means the territorial jurisdiction of the local board of health.

33 “Sharps waste” means used needles, syringes, and lancets.

34 “Staff” means anyone who provides harm reduction services on behalf of a program.

35 “Syringe” means both the needle and syringe used to inject fluids into the body.

36 “Viral hepatitis” means any of the forms of hepatitis caused by the virus, including hepatitis  
37 B (HBV) virus and hepatitis C virus (HCV).

**§16-63-2. Application for license to offer Harm Reduction Programs, prohibition receipt of**  
**state funds.**

- 1           (a) All new and existing harm reduction programs shall require a license;
- 2           (b) To be eligible for a license, a harm reduction program shall:
- 3           (1) Submit an application to the Office for Health Facility Licensure and Certification on a  
4 form approved by the Director;
- 5           (2) Provide the name under which it will be operating;
- 6           (3) Provide a brief description of the services, including how each requirement for  
7 licensure will be met (i.e. behavioral health, birth control, etc);
- 8           (4) Provide the full name, title, email address, and telephone number of the individual  
9 designated by the applicant as the administrator of the harm reduction program;
- 10          (5) Provide the hours of operation in the location and staffing. The description of hours of  
11 operation must include the specific days the harm reduction program is open, opening, and  
12 closing times, and frequency of harm reduction services. The description of staffing must include  
13 number of staff, titles of positions, and descriptions of services;
- 14          (6) Provide a specific description of services related to the provision of education and  
15 materials for the reduction or absence of other harm reduction services in the proposed location;
- 16          (7) Provide a specific description of the proposed applicant's ability to provide referrals to  
17 facilitate entry into drug abuse treatment, including opioid substitution therapy;
- 18          (8) Provide a specific description of the proposed applicant's ability to encourage usage  
19 of medical care and mental health services as well as social welfare and health promotion;
- 20          (9) Provide a specific timeline for the program to achieve measurable health outcomes in  
21 a specific population;
- 22          (10) Pay an applicable application fee to be determined by the Director;
- 23          (11) Provide a written statement from the entire county commission for the county in which  
24 it is located or is proposing to locate that the harm reduction program:
- 25               (A) Is not prohibited by local ordinance; and
- 26               (B) That the entire county commission supports the program.

27 (12) Provide letters of support from:

28 (A) The local health officer or Board of Health; and

29 (B) The local Sherriff from the county in which the applicant is located or is proposing to  
30 locate the harm reduction program.

31 (13) Publish a notice beginning the 30-day public comment period, not to exceed 150  
32 words, in a newspaper of general circulation in the proposed service area and posted on the  
33 applicant’s website that provides a summary of the proposed application and includes the name  
34 of the applicant’s organization. The notice must state in all caps “PROPOSED NEEDLE  
35 EXCHANGE PROGRAM IN” the proposed county. The public may submit comments about an  
36 application during the 30-day public comment period;

37 (c) No harm reduction program, offering a syringe exchange program, is eligible to receive  
38 funds, from any source, within the State Treasury nor any grants administered by the use of public  
39 resources whether the resources be monetary, personnel, real estate, or technology  
40 infrastructure.

**§16-63-3 Program requirements.**

1 (a) In order to be approved for a license, a harm reduction program shall offer the following,  
2 which shall be documented in the application:

3 (1) A full array of harm reduction services including drug abuse treatment services, HIV  
4 and hepatitis screening and education, Hepatitis A and Hepatitis B Vaccination, screening for  
5 sexually transmitted diseases, the provision of long-term birth control, the provision of behavioral  
6 health services, overdose prevention supplies and education, syringe collection and sharps  
7 disposal plan, staff training plan, data collection and program evaluation plan, community relations  
8 plan, and educational services related to disease transmission. Treatment shall be offered at  
9 every visit by a qualified licensed health care provider. The applicant shall make services available  
10 24/7 for participants to be able to enter rehabilitation or detoxification;

11 (2) A clean syringe exchange program, including a dedicated staff member assigned to

12 recover discarded syringes from the program in the service area, with the clear objective of  
13 reducing the transmission of blood-borne diseases within a specific geographic area. This  
14 program shall include: proof of identification upon dispensing of the needles, exclusion of minors  
15 from participation in the program, and the ability to track each needle by unique serial number  
16 that associates that needle directly to the harm reduction program and the individual issued the  
17 needle. Needles are to be distributed with the 1:1 model only with an exchange required. A  
18 program or facility may not substitute weighing the volume of needles returned versus dispensed  
19 to measure if a 1:1 protocol has been met. Rather, accounting for every needle is required.  
20 Participants shall be advised of this requirement when enrolled in the program and they should  
21 sign a contract of understanding. Needles cannot be distributed by a secondary exchange or  
22 proxy;

23 (3) A staff training protocol that includes at a minimum: orientation to the applicant's  
24 services and eligibility requirements of the program, overview of the harm reduction philosophy  
25 and the harm reduction model used by the program; the applicant's policies and procedures that  
26 explain syringe exchange transactions, handling disposal of infectious waste, and needlestick  
27 prevention management; procedures for making referrals, including primary care, detoxification  
28 and drug treatment, HIV counseling and testing, prenatal care, tuberculosis, and Hepatitis A, B,  
29 and C screening and treatment, screening and treatment for sexually transmitted diseases;  
30 education that demonstrates Naloxone administration; cultural diversity and sensitivity to  
31 protected classes under state and federal law; and training logs for attendance at mandatory  
32 training;

33 (4) A syringe dispensing plan that includes at a minimum: an accounting for safe disposal  
34 of the syringes by participants for seven years, that prevents needlestick injuries, that tracks the  
35 exact number of syringes dispensed, that tracks the exact number of syringes collected on a 1:1  
36 basis to each program participant, that tracks the exact number of syringes returned, that tracks  
37 the number of syringes collected as a result of community reports of needle litter, that eliminates

38 direct handling of sharps waste, that includes a needlestick protocol and plan for ensuring staff  
39 and participant familiarity with the protocol, that includes sharps waste disposal education that  
40 ensures staff are familiar with state law regulating proper disposal of home-generated sharps  
41 waste, and that includes a plan and budget for sharps waste disposal or an explanation if no cost  
42 is associated with sharps waste disposal:

43 (b) If an applicant for a license does not submit all of the documentation required in §16-  
44 63-2 of this code, the application for a license shall be denied.

45 (c) If an applicant for a license fails to comply with the program requirements, then the  
46 application shall be denied.

47 (d) If the license is granted it shall be effective for one year, subject to random inspection  
48 by the Office of Health Facility Licensure and Certification and a request for renewal by the  
49 licensee.

**§16-63-4. Procedure for Revocation or limitation of the harm reduction program.**

1 (a) The Director may revoke or limit a harm reduction's ability to offer services for the  
2 following reasons:

3 (1) The harm reduction program provides false or misleading information to the Director  
4 at any time;

5 (2) Monitoring or inspection indicates the harm reduction program is in violation of the law;

6 (3) The harm reduction program fails to cooperate with the Director, during the  
7 investigation of any complaint;

8 (4) Community complaints indicate safety concerns, abuse, or other practices detrimental  
9 to the well-being of individuals being treated by the harm reduction program or the community at  
10 large;

11 (5) Recission of the letter of approval from any one county commissioner; or

12 (6) Recission of the letter of approval from the County Sherriff.

13 (b) The Director shall send written notice to the harm reduction program of revocation or

14 limitation of its operations. The written notice shall include the following:

15 (1) Effective date of the revocation or limitation;

16 (2) The basis for the revocation or limitation on the certificate;

17 (3) The location to which the revocation or limitation applies;

18 (4) The remedial measures the harm reduction program shall take, if any, to take to  
19 consider reinstatement of the program or removal of the limitation; and

20 (5) Steps to request reconsideration or appeal of the decision.

**§16-63-5. Reconsideration Procedure.**

1 (a) An owner or operator may request, in writing, reconsideration of a decision rendered  
2 by the Director on an action taken. If the request for reconsideration establishes good causes,  
3 then the Director shall grant the request. Upon request, the Director may grant a public hearing  
4 to consider the request for reconsideration.

5 (1) A request for reconsideration is considered to have shown good cause if, in a detailed  
6 statement, it:

7 (a) Presents significant, relevant information not previously considered by the Bureau, and  
8 demonstrates that with reasonable diligence that information could not have been presented  
9 before the board made its decision;

10 (b) Demonstrates that there have been significant changes in factors or circumstances  
11 relied upon by the Director in reaching its decision;

12 (c) Demonstrates that the board has materially failed to follow its adopted procedures in  
13 reaching its decision; or

14 (d) The Director shall receive a request for reconsideration within 30 days after the date  
15 of the Bureau's decision.

16 (d) The Director or his or her designee shall hold a hearing, if any, upon a request for  
17 reconsideration within 30 days of the Bureau's receipt of the request. The Director may extend  
18 this time for good cause.



19 (e) The Director shall issue its written decision which states the basis of its decision upon  
20 request for reconsideration within 45 days after the conclusion of the hearing.

**§16-63-6. Administrative Due Process.**

1 (a) An owner or operator of a harm reduction program who disagrees with the final  
2 administrative decision may, within 30 days after receiving notice of the decision, appeal the  
3 decision to the Department's Board of Review.

4 (b) The harm reduction program shall be required, at their cost, to be represented by legal  
5 counsel at the hearing.

6 (c) All pertinent provisions of §29A-5-1 et seq. and §69-1-1 et seq. apply to and govern  
7 any hearing authorized by this statute.

8 (d) The filing of a request for a hearing does not stay or supersede enforcement of the  
9 final decision of the Director. The Director may, upon good cause shown, stay such enforcement.

10 (e) If the Director does not rule in favor of the owner or operator of the harm reduction  
11 program, the owner or operator of the harm reduction program will be required to reimburse the  
12 Department for any expenses incurred by the Department that are directly related to the final  
13 appeal.

**§16-63-7. Administrative Appeals and Judicial Review.**

1 (a) An owner or operator of a harm reduction program who disagrees with the final  
2 administrative decision may, within 30 days after the date the appellant received notice of the  
3 decision of the Board of Review, appeal the decision to the Circuit Court of Kanawha County or  
4 in the county where the petitioner resides or does business.

5 (b) The filing of the petition for appeal does not stay or supersede enforcement of the final  
6 decision or order of the Director. An appellant may apply to the Circuit Court for a stay of or to  
7 supersede the final decision or order for good cause shown.

8 (c) No Circuit Court has jurisdiction to consider a decision of the board if the petitioner has  
9 failed to file a request for review with the Board of Review within the timeframe set forth in this

10 article.

**§16-63-8. Reporting Requirements; Renewal Requests.**

1 (a) A harm reduction program licensed pursuant to this statute shall file a quarterly report  
2 with the Director, by email, and file an annual request for renewal on the anniversary date of  
3 license approval each and every year of the program's operation under the Director's review. The  
4 report shall include:

5 (1) The total number of persons served;

6 (2) The total numbers and types of syringes and needles dispensed, collected, and  
7 disposed of; and

8 (3) The total numbers and types of referrals made to drug treatment and other services.

9 (b) A harm reduction program licensed pursuant to this statute shall within 45 days prior  
10 to the expiration of the license, or at any other time directed by the Director, submit a report  
11 verified, in writing, by the chief executive officer containing the following information:

12 (1) The current status of the project;

13 (2) The cause of causes of any delays encountered;

14 (3) Changes in the project; and

15 (4) The projected total cost.

16 (c) Upon good cause shown, and if the harm reduction program is in substantial  
17 compliance with the reporting requirements set forth in this section, the Director may grant a  
18 renewal for up to six months for the initial renewal period. Forty-five days prior to the expiration of  
19 the license, the harm reduction program shall submit a request for renewal addressing the criteria  
20 in subsection (b). In order to be considered for renewal, the harm reduction program must be in  
21 substantial compliance with the reporting requirements of this section. Any subsequent renewal  
22 may be granted for up to 12 months.

**§16-63-9. Immunity and cost recoupment.**

1 Any business, excluding the operator of a harm reduction program, that has needle litter

2 on their property and subsequently incurs a loss, is immune from civil or criminal liability in any  
 3 action relating to the needle on their property unless the business owner acted in reckless  
 4 disregard for the safety of others. Any business may seek to recover the costs of cleaning up their  
 5 property at three times the amount of the cost incurred from the operator of the harm reduction  
 6 program that is identified as the source of the needle constituting the litter.

**§16-63-10. Civil Penalties Criminal Penalties and Injunctive Relief.**

1 The Office of Health Facilities Licensure and Certification shall assess a civil penalty of  
 2 not less than \$5000 per day nor more than \$25,000 per year for a violation of this article. Any  
 3 person or entity offering harm reduction services or syringe exchange services without a license  
 4 is guilty of a misdemeanor and may be punishable by no more than one year in jail. The Office of  
 5 Health Facilities Licensure and Certification may seek injunctive relief to enforce the provisions of  
 6 this article.

NOTE: The purpose of this bill is to establish a license application process for harm reduction programs. The bill sets forth the requirements for the application and program criteria for approval. The bill states that harm reduction programs, operating syringe exchange programs, are not eligible for funding from the state treasury. The bill includes an appeal process, reporting requirements, immunity for businesses that have needle litter, and provides for civil penalties, criminal penalties, and injunctive relief.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.