



TEMPLE UNIVERSITY®
Beasley School of Law

Medically Supervised Injection in the U.S.

*Where There's a Political Will,
There's a Legal Way*

Scott Burris



JOHNS HOPKINS
BLOOMBERG
SCHOOL of PUBLIC HEALTH

Protecting Health, Saving Lives – *Millions at a Time*



The Law

US

1. Is there any law that authorizes you to operate a health intervention among IDUs?

ANSWER: Yes, generally at all levels of government.

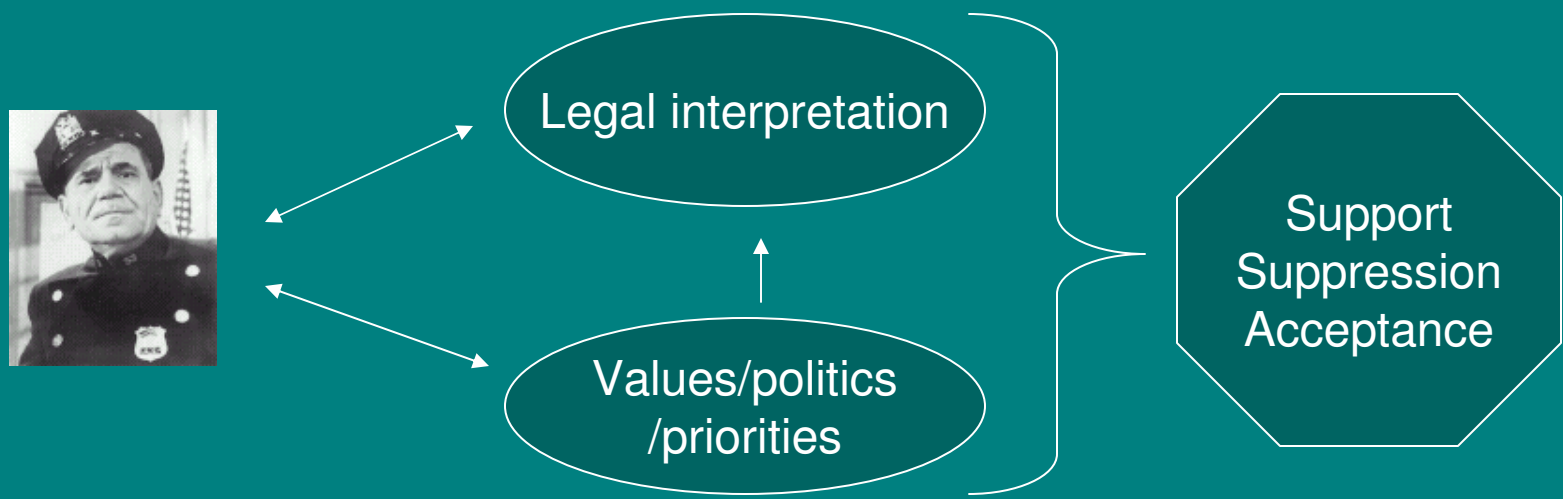
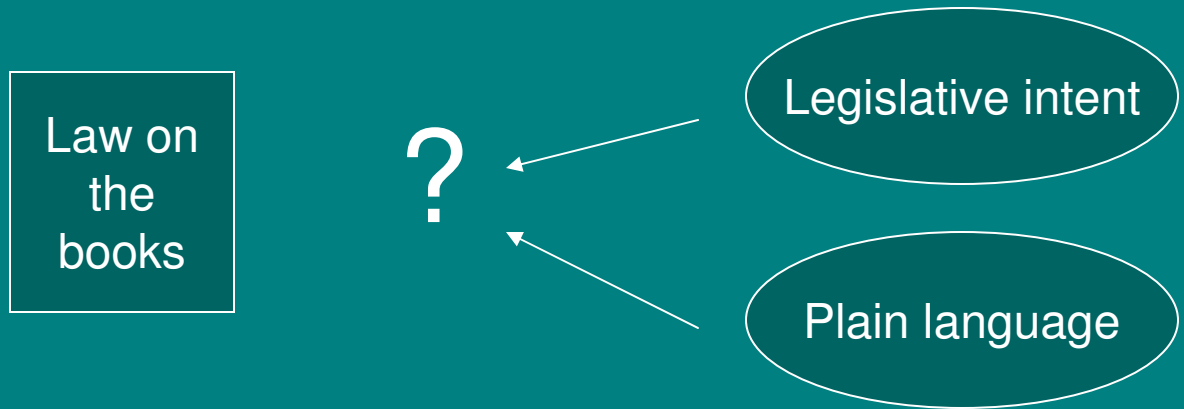
State

2. Is there any other law that trumps or limits that authority

Local

1. ANSWER: In some places, at state and federal level

The Law



The Maryland Attorney General on a Naloxone Distribution Program

- Distribution via non-licensed personnel violates state law, but
- “In the context of a proposed public health program ..., a criminal prosecutor or administrative agency could determine that it would not be in the public interest to prosecute possible violations that arose out of a program designed to provide life-saving assistance to a population otherwise difficult to reach. Such an approach may be particularly appropriate when the program is designed as a temporary pilot project to assess its efficacy, and when the results of the pilot program would be available to the Legislature to evaluate the merits of creating statutory authorization for such a program on a more permanent basis. Such determinations could be embodied in a memorandum of understanding among the relevant agencies that carefully defined the circumstances under which the agencies would forgo prosecution.”

What Does the Law See?



What Does the Law See?



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Sarah Evans: "It functions like a needle exchange within four walls."

What Does the Law See?

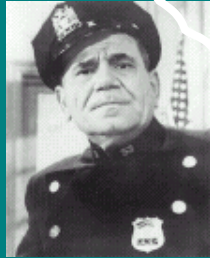


Picture: Steve Koester

The Legal Wildcard

- Federal and state “crack house” laws:
 - “it shall be unlawful to knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of ... using any controlled substance.”





Law on the books

Drug and Alcohol Review, (March 2005), 24, 173-184



The impact of the Sydney Medically Supervised Injecting Centre (MSIC) on crime

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Changes in injecting practices associated with the use of a medically supervised safer injection facility

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ABSTRACT



Impact of a medically supervised safer injection facility on community drug use patterns: a before and after study

Thomas Kerr, Jo-Anne Stoltz, Mark Tyndall, Kathy Li, Ruth Zhang, Julio Montaner and Evan Wood

BMJ 2006;332:220-222
doi:10.1136/bmj.332.7535.220

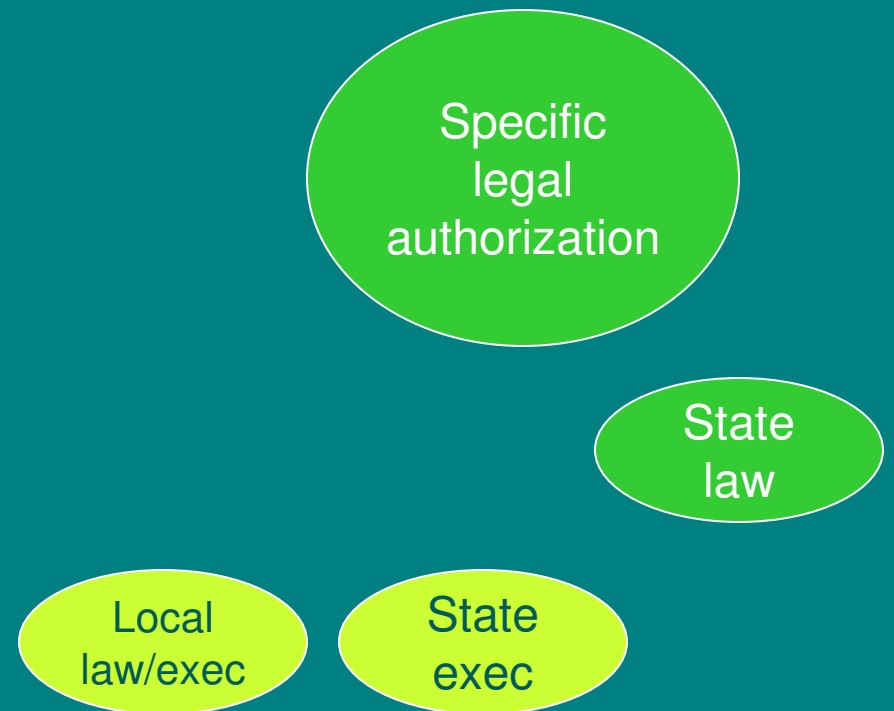
REVIEW

Summary of findings from the evaluation of a pilot medically supervised safer injecting facility

Evan Wood, Mark W. Tyndall, Julio S. Montaner, Thomas Kerr

** See related article page 1205

Risk Preferences and Options 1: Low legal risk, hard political fights



The Federal Dimension



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Specific
legal
authorization

State
law

Local
law/exec

State
exec



- States can authorize SIFs
- And if the feds want to, they can shut them down just like the shut down cannabis clubs and medical home growers
- Some Constitutional arguments, but don't bet the farm



But will the
feds want to?
See “Death
with Dignity”



Risk Preferences and Options 2: High legal risk, good political record



*Except maybe the necessity defense

Risk Preferences and Options

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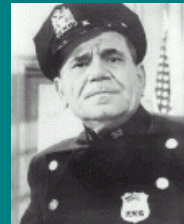


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Claim
legality
under
current law



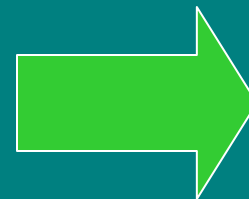
Local
law/exec



What Does the Law See?



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Community amenity
Overdose prevention

It CAN Happen Here

?



!

No legal claim.*

Claim legality under current law

Specific legal authorization

State law

Local law/exec

State exec

*Except maybe the necessity defense

Based on

- Leo Beletsky, Corey Davis, Evan Anderson and Scott Burris. *Safe Injection Facilities in the United States: Policy, Politics, and Law*, American Journal of Public Health (In press).