

Immunity Provisions for Drug Offenses: NC's Harm Reduction Laws

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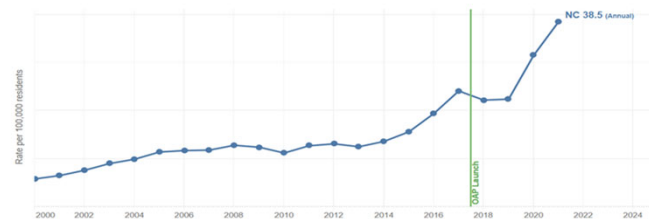
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Substance Use in North Carolina

- 11 people die every day
- Over 32,000 from 2000-2021
- 4,041 drug overdose deaths in 2021
- 22% increase in fatalities 2020-2021
- 72% increase since 2019
- Nearly 80% caused by illicit fentanyl

Deaths in NC

The rate of overdose deaths among residents of NC in 2021 (Annual) was **38.5**
(Rate per 100,000 residents. Number of deaths: 4,041)



Resources



Resources for Metrics & Local Actions

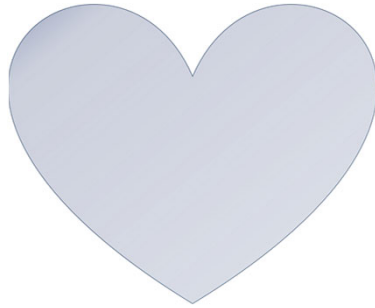
* A note on rank comparisons: While some metrics have a clear directionality to them (fewer overdose deaths is always better), some measures are more complicated. For example, higher emergency department visits may represent either / both increased total overdoses and positive reductions in overdose fatality. Use caution when making inferences.

Questions? Contact us at SubstanceUseData@dhhs.nc.gov
State of North Carolina • Department of Health and Human Services
Division of Public Health - Injury and Violence Prevention Branch
<https://www.dhhs.nc.gov> • <https://www.nc.gov> • <https://www.substanceuse.nc.gov>
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Story of a friend



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Continuum of Substance Use

Abstinence - the person does not use particular substances.

Experimental Use - the person tries a substance and may or may not use it again.

Social or Occasional Use - the person uses the substance in an amount or frequency that is not harmful (e.g., drinks on a social occasion; ceremonial use).

Medication (prescribed) - the person uses a medication as directed, under medical supervision. Risks are minimized.

Problematic Use - the person experiences negative consequences from using a substance (e.g., health, family, school, work, financial, legal).

Substance Use Disorders- chronic diseases characterized by a problematic pattern of use of a substance or substances leading to impairments in health, social function, and control over substance use. It is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite harmful consequences.

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Notes About The Substance Use Continuum

- People do not automatically move along the continuum.
- Some people may stay social users for their entire lives.
- Some people can move around the continuum over time.
- People can be at different points of the continuum for different substances.
- Where a person is on the continuum does not necessarily predict her/his ability to manage and minimize risks.
 - Someone that is “heavily addicted” may still use sterile equipment every time.
 - Anyone from a social user to a long-time user may overdose.
- The reason(s) people start to use drugs are not always the reason(s) they continue to use them.

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What is Harm Reduction?

Harm reduction is a set of practical strategies and ideas aimed at reducing negative consequences associated with a risky activity.

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EXAMPLES OF HARM REDUCTION

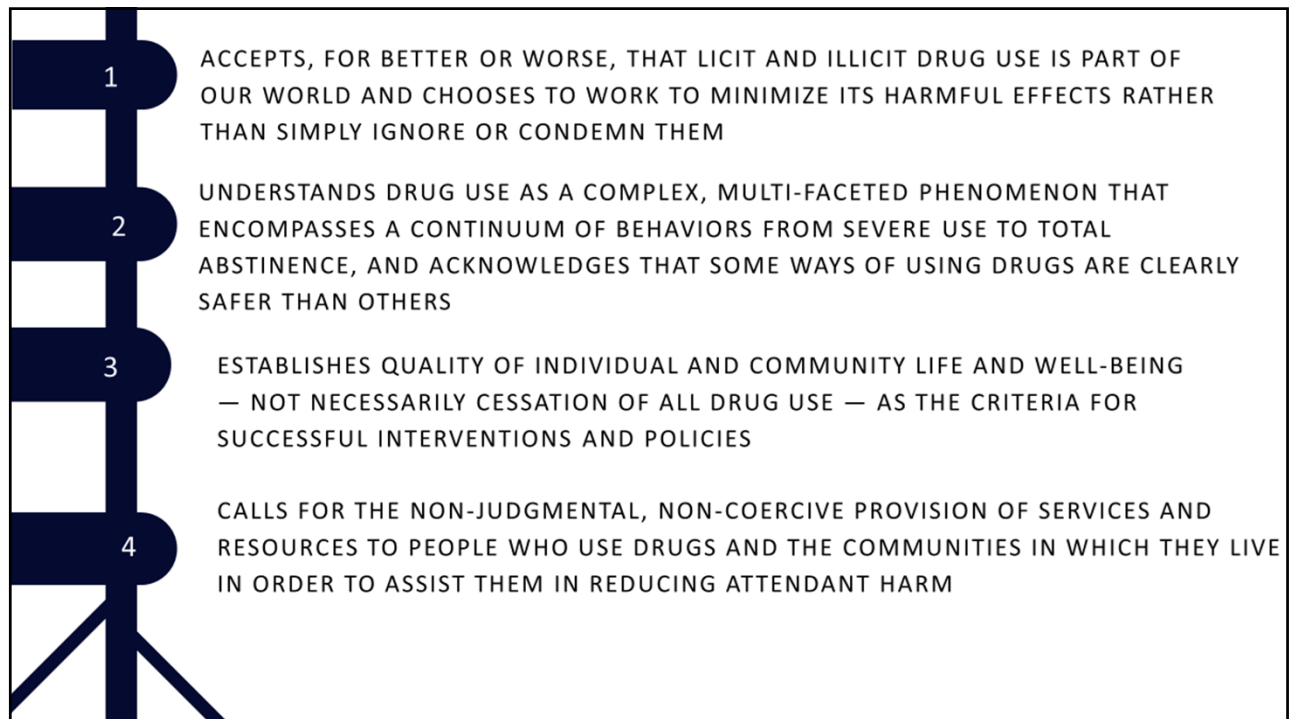


- SEATBELTS
- NUTRITION REGULATIONS AND LABELS
- CONDOMS

- HELMETS
- SUNSCREEN
- AIRBAGS

- CIGARETTE FILTERS
- MASKS
- DESIGNATED DRIVERS

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5 ENSURES THAT PEOPLE WHO USE DRUGS AND THOSE WITH A HISTORY OF DRUG USE ROUTINELY HAVE A REAL VOICE IN THE CREATION OF PROGRAMS AND POLICIES DESIGNED TO SERVE THEM

6 AFFIRMS PEOPLE WHO USE DRUGS (PWUD) THEMSELVES AS THE PRIMARY AGENTS OF REDUCING THE HARMS OF THEIR DRUG USE AND SEEKS TO EMPOWER PWUD TO SHARE INFORMATION AND SUPPORT EACH OTHER IN STRATEGIES WHICH MEET THEIR ACTUAL CONDITIONS OF USE

7 RECOGNIZES THAT THE REALITIES OF POVERTY, CLASS, RACISM, SOCIAL ISOLATION, PAST TRAUMA, SEX-BASED DISCRIMINATION, AND OTHER SOCIAL INEQUALITIES AFFECT BOTH PEOPLE'S VULNERABILITY TO AND CAPACITY FOR EFFECTIVELY DEALING WITH DRUG-RELATED HARM

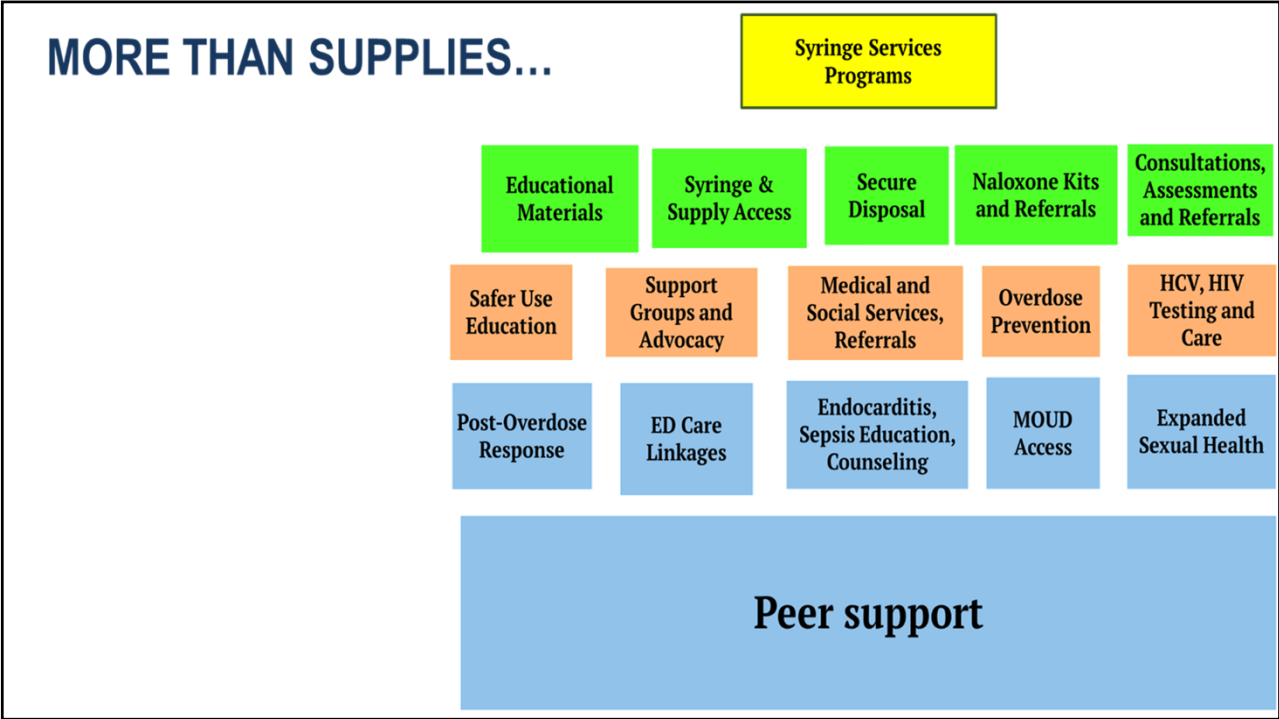
8 DOES NOT ATTEMPT TO MINIMIZE OR IGNORE THE REAL AND TRAGIC HARM AND DANGER THAT CAN BE ASSOCIATED WITH ILLICIT DRUG USE

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WHAT HARM REDUCTION IS NOT

-  About abstinence
-  A stepping-stone to abstinence
-  Anti-abstinence
-  Value based about drug use
-  The best response for everyone
-  Does not say that drugs are good

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NC Harm Reduction Statutes

- **Syringe Services Program Law** GS § 90-113.27
- **Good Samaritan Law(s)** GS § 90-96.2; § 18B-302.2
- **“Tell an Officer” Law** GS § 90-113.22(c)
- **Testing Equipment Exception to Paraphernalia Law** GS § 90-113.22(d)
- **Naloxone Law** GS § 90-12.7

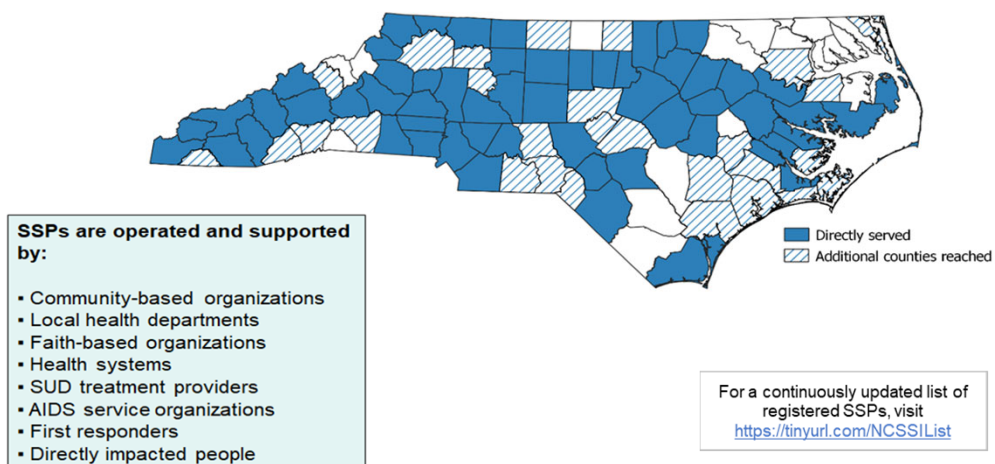
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Syringe Services Programs Law GS § 90-113.27

- Statute legalized “syringe exchange programs” (also known as syringe services programs or SSPs) effective July 2016
- Any governmental or nongovernmental organization “that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors” can start an SSP
- Programs must register with the NC Division of Public Health and provide annual reporting
- Programs are required by law to provide participants with injection supplies free of charge and in sufficient quantities to ensure supplies aren’t re-used

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NC Counties Served or Reached by Registered Syringe Services Programs, 2020-2021



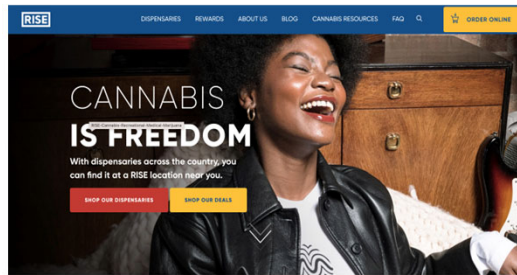
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Examples of injection supplies distributed by SSPs



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Do Syringe Services Programs Promote Drug Use?



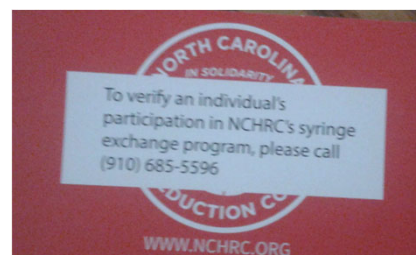
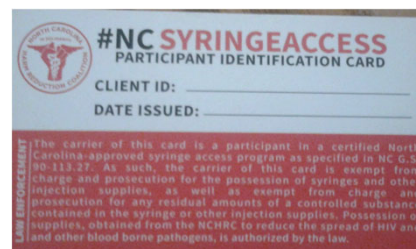
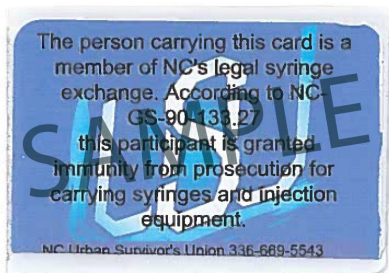
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Syringe Services Program Immunity

- No SSP employee, volunteer, or participant may be **charged** with possession of needles, syringes, or other injection supplies (or for residual amounts of controlled substances contained in them) if they are obtained from an SSP
- Person claiming immunity must provide written verification that needles, syringes, or injection supplies were obtained from a SSP
- This written verification is usually achieved by an identification card issued by an SSP to a participant
- SSP identification cards do not contain a person's name; SSP participation is anonymous
- SSP supplies are not labeled as coming from a particular SSP; that would be cost and time prohibitive for SSPs, which are run on shoestring budgets and often with volunteer labor

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Examples of Participant IDs



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Research Findings with Implications for Magistrates

- In a study of 414 SSP participants in 7 NC counties:
 - 27% reported that they have encountered law enforcement unfamiliar with the SSP law
 - 10% reported that law enforcement had doubted their SSP card's ownership
 - 8% reported that law enforcement had confiscated their SSP card
 - 13% reported they had been arrested due to having supplies from an SSP

Brandon Morrissey et al. "They don't go by the law around here': law enforcement interactions after the legalization of syringe services programs in North Carolina", *Harm Reduction Journal* (2022) 19:106.

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NC's Good Samaritan Law(s) GS § 90-96.2; § 18B-302.2

- Gives protection to people calling 911, law enforcement, or EMS to seek help "in good faith" for a person who has overdosed
 - Must have reasonable belief that first one calling for help
 - Must give own name to 911 or to law enforcement upon arrival
- Overdosed person receives protection as well
- Immunity against prosecution for:
 - Paraphernalia
 - Misdemeanor drug possession
 - Felony possession of <1 gram heroin or cocaine
- A person shall not be subject to arrest or revocation of pretrial release, probation, parole, or post-release if the arrest or revocation is based on an offense for which there is immunity under this law.
- Companion protection for underage alcohol use/possession in Chapter 18B.

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“Tell an Officer” Law GS § 90-113.22(c)

- Want to give people an incentive to admit they have sharp objects on their person or in their vehicle **before** a search in order to protect officers.
- If a person alerts an officer that s/he has a needle or other sharp object on her or his person, premises, or vehicle prior to a search, s/he **cannot be charged** with or prosecuted for possession of drug paraphernalia for that object or for residual amounts of controlled substances contained in that object.
- This exemption does not apply to other types of paraphernalia found during the search.

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Testing Equipment Exception to Paraphernalia Law GS § 90-113.22(d)

- The current drug supply is very tainted (for example, with fentanyl) and people may not know what is in the supply of drugs they plan to consume.
- This law de-criminalizes possession of drug testing equipment (for example, fentanyl test strips) by a person who plans to use the equipment to test the strength or purity of drugs the person will consume.
- Does not protect people who are using drug testing equipment in order to sell drugs.
- Allows organizations to possess and distribute testing equipment to people who use drugs.

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Naloxone Law GS § 90-12.7

- Naloxone reverses an opioid overdose by knocking opioids off of the brain's opioid receptors.
- Naloxone has no effect on someone who doesn't have opioids in their system.
- Naloxone is not a controlled substance.
- Naloxone is currently a prescription medication; efforts are underway at the federal level to make it an over-the-counter drug.
- NC's naloxone law allows pharmacists and community groups to dispense/distribute naloxone to people without an individual prescription who are at risk of overdose OR who are in a position to help someone at risk of overdose (thus, a person carrying naloxone may not be a person who uses drugs themselves).
- Naloxone is not drug paraphernalia; it should not be confiscated.
- See www.Naloxonesaves.com for more NC-based information.

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Probable cause for search considerations

- Person has naloxone on their person/in their car?
- Person has syringes and has "written certification" that they are a Syringe Services Program participant?

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Research Findings with Implications for Magistrates

- More than 1 in 9 adults with co-occurring mental health and substance use disorders are arrested annually (12 times the rate of people without such disorders).¹
- Jail deaths in NC have increased over the past decade. Mental illness and drug addiction are major drivers of jail deaths.²
- A NC study found that people were over 40 times more likely to die from an overdose in the 2 weeks after they leave incarceration and over 10 times more likely to die in the year after they leave incarceration.³

¹ Pew Charitable Trusts Issue Brief, February 6, 2023.

² Raleigh News & Observer, North Carolina jail deaths reach a record-high in 2021. Why are so many inmates dying?, July 20, 2022.

³ Shabbar I. Ranapurwala et al. "Opioid Overdose Mortality Among Former North Carolina Inmates: 2000–2015", *American Journal of Public Health* 108, no. 9 (September 1, 2018): pp. 1207-1213.

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Considerations for conditions for pretrial release

- § 15A-534(b): Determining whether a person "will pose a danger of injury to any person," such that they should be required to post secured bond
- § 15A-534(c): Determining "whether a person is intoxicated to such a degree that he would be endangered by being released without supervision"

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Questions?

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