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MEMO

To: Wayne County Commissioners
From: Michael W. Shipman, MWS.
Wayne County Prosecutor

Re: Syringe Exchange Program (SEP)

I understand that the Syringe Exchange Program (SEP) has been extended by the Wayne County Commissioners at your meeting on Wednesday, May 9, 2018. I want to apologize for not attending the meeting. I was unaware that the meeting was scheduled. Perhaps it was announced in the local media and I simply missed it. I wanted to bring some information and questions to your attention for consideration. Since the Commissioners voted and approved it last week, it is unclear to me whether extending the program can be revisited. I would like to list a few concerns that I have about the program in this memo.

1. Proponents of the SEP indicate it is necessary as a "harm reduction" measure to prevent the spread of communicable diseases. My initial question is whether that specific harm has been reduced by the program? What data exists to show that the program has reduced the harm since its inception? If there has been a reduction in the number of communicable diseases, how have the Commissioners determined that the decrease is a direct result of the program? Is it possible that other factors could be attributable to the decline in the transmission of communicable diseases (assuming there has been a decline) such as the general trend of drug abusers moving from heroin to methamphetamine?

Attached hereto is a summary of the number of cases our office has filed for Possession of Methamphetamine and Possession of Heroin. As you can see in 2015, we filed 95 Possession of Heroin cases and 18 Possession of Methamphetamine cases. In 2016 and 2017, the percentage of methamphetamine to heroin cases changed. We began to see more methamphetamine cases being filed. In 2018, Possession of Methamphetamine cases has now surpassed Possession of Heroin cases in Wayne County.

I bring these numbers to your attention because I think it should be considered when evaluating whether the SEP can be credited for "reducing harm" or whether it is a product of drug abusers moving to a different drug and utilizing less needles

while consuming methamphetamine.

Prior to extending the program, I would want to be certain that the claimed benefit of the program of "harm reduction" is actually occurring and is in a direct relationship to the program itself.

2. I think another matter for the Commissioners to consider is weighing the "harm reduction" of less communicable diseases being spread versus the harm of bringing new people into the criminal justice system who end up with felony convictions. Our office continues to follow state law which makes it a Level 6 Felony to possess a syringe for the purpose of injecting heroin or other unlawful drugs. If a drug user who otherwise has no criminal record is caught unlawfully possessing a syringe from the SEP, that person will now have a criminal conviction on his or her record. I think it is worth discussing whether the harm of a criminal conviction and the accompanying negative consequences outweighs the benefit of less communicable diseases being spread within the community.
3. What procedures are in place with the SEP to prevent the syringes from being sold or delivered to third parties outside of the program? Prosecutors within my office and the judges have all heard defendants testify in court about receiving syringes from the program even though those people were not participants in it. Attached hereto is a transcript from a hearing that was recently conducted in Wayne Superior Court I. The defendant, Jacob Lowery, pled guilty to Possession of Syringe and Heroin. During the hearing I asked him about whether he had obtained any syringes from the SEP. You will find his response transcribed. In my opinion, I do not believe that there are procedures in place to prevent the syringes from being sold or exchanged to third parties. If so, I again question the "harm reduction" that exists if the syringes are being distributed outside of the program guidelines.

During most of the operation of the program, the syringes that were distributed were not uniquely labeled or marked. Therefore, it was impossible for law enforcement officers to determine whether a person who possessed the syringe had obtained it from the SEP. At my request, the SEP began delivering uniquely colored syringes to program participants. The syringes were gray in color. Once that was done, I began receiving some feedback from officers that they were in fact finding the gray in color syringes while making arrests.

However, I had recently noticed that the information about those colored syringes was not coming in as often as it once was from officers. I initiated contact with Lisa Suttle and Mary Anne Butters about whether something had changed. Commissioner Butters responded that officials with the SEP had changed the syringes to now include a red dot on the plunger as well as to include a different type of retractable needle. She also sent me one of the new syringes for me to view. I passed along photos of the new syringes to officers.

It should be noted that law enforcement was not made aware of this change until I had taken the step to find out the information. If I was a Commissioner, I would

want to know whether law enforcement is being notified proactively by the SEP when changes are made to the syringes to identify them. If I had not asked the question, information about the change in the syringes would not have been relayed to local law enforcement. I think some mechanism needs to be in place to make sure that law enforcement has the information about the syringes should they be changed in the future.

4. Have people died using SEP syringes outside of the program? Are officials with the SEP working with the Coroner's Office or local law enforcement to try to determine whether people have overdosed and died as a result of utilizing SEP syringes.

I have attached hereto Richmond Police Department Case No. 2018-00491. As you can read in the report, James Massey overdosed and was found dead on March 2, 2018. A syringe was located next to him. I asked Officer Aaron Stevens of the Richmond Police Department to determine whether it came from the SEP. He met with officials at Centerstone and confirmed that the needle used by James Massey, which ultimately led to his death, was provided by the SEP. I also do not believe that Mr. Massey was a participant in the program.

I think it is a fair question to ask whether other individuals have overdosed and died using syringes from the SEP.

5. As I understand the program, participants are to maintain some type of identifying card indicating that the person is in the program to show to law enforcement. In addition, I also understood that program participants are to maintain the syringes in a kit or container. Almost all of the officers I have spoken with were not even aware that program participants were suppose to have these items. Very few officers have ever seen the cards while interacting with drug abusers.

I asked Capt. William Shake of the Richmond Police Department to survey officers about their interactions with people in the SEP. While I certainly acknowledge the survey is not scientific, it does give an indication that officers from the Richmond Police Department were not even aware that program participants were required to do specific things. Attached hereto you will find an email from Capt. Shake regarding officers interactions with drug abusers.

Attached hereto you will find a report from the Richmond Police Department Case No. 2018-00497 where Brittany Davis was arrested for various offenses. She had approximately twenty gray cap syringes that came from the SEP. As you can see in the police report, she provided no documentation to officers regarding the fact that she claimed to be a participant in the program. Even if she was a participant in the program, she was not following the rules of the program and notifying the police with the proper program documentation.

If I was a Commissioner and was going to extend the SEP, I would like to know whether program participants are complying with the requirements of the program to show local law enforcement officers the proper documentation when they

encounter law enforcement.

6. Proponents also cite that there is an educational value when literature is passed out about rehabilitation programs available in the community. If I am a Commissioner and going to extend the program, I would like to know how many program participants are in treatment and how many have successfully completed the program? Are program participants required to participate in counseling before being given new syringes? I think that giving them literature or simply educating them about rehabilitation programs is not enough. It seems that participants should be actively seeking to overcome their addictions through treatment. As I understand the program, there is no requirement that participants are actively involved in treatment.