

# CALIFORNIA DRUG POLICY HEROES AND ZEROES

## A SURVEY OF CALIFORNIA LEGISLATORS ON DRUG POLICY REFORM

A REPORT BY THE DRUG POLICY ALLIANCE

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NOVEMBER 2005

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### EXECUTIVE SUMMARY

The core mission of the Drug Policy Alliance (DPA), the nation's leading drug policy reform organization, is to advance those policies and attitudes that best reduce the harms of both drug misuse and drug prohibition, and to promote the sovereignty of individuals over their minds and bodies.

DPA's vision for California includes cost-effective policies to protect public health, public safety, the public purse, and American values of liberty, equality and justice. Among DPA's specific legislative priorities are: defending patients' access to medical marijuana pursuant to Proposition 215; to protect and advance Proposition 36 treatment instead of incarceration; ending the racial disparity in cocaine sentencing; improved syringe access to stem the spread of HIV/AIDS; general drug sentencing reform; ending discrimination against ex-offenders; prevention of drug misuse among adolescents; protection against unwarranted searches and random drug testing of public school students; preservation of parental rights and family cohesion; prison and parole reform; and increased access to treatment for alcohol and other drugs, including narcotic replacement therapy.

Evaluation of members of the California Legislature is based on several criteria. Chief among them is whether a member has a consistent voting record for legislation that has a positively impact on drug policy in California. However, other factors were also considered, including significant signal of political courage in support of common-sense reforms. Conversely, some legislators with generally good voting records have undermined the progressive agenda by pushing expensive, punitive, ineffective and unconstitutional attempts to "win the drug war" with the weapons of incarceration and misinformation.

#### **Drug Policy Reform Heroes:**

- Assemblymember Mark Leno (D-San Francisco)
- Assemblymember Jackie Goldberg (D-Los Angeles)
- Assemblymember Patty Berg (D-Arcata)
- Assemblymember Mervyn Dymally (D-Compton)
- Assemblymember Gloria Negrete-McLeod (D-Chino)
- Assemblymember Keith Richman (R-Northridge)
- Assemblymember John Laird (D-Santa Cruz)

- Senator Gloria Romero (D-Los Angeles)
- Senator Martha Escutia (D-Whittier)
- Senator Wesley Chebro (D-Arcata)
- Senator Carole Migden (D-San Francisco)

**Drug Policy Reform Zeroes:**

- Assemblymember Jay LaSuer (D-La Mesa)
- Senator Denise Ducheny (D-San Diego)
- Senator George Runner and Assemblymember Sharon Runner (R-Lancaster)
- Assemblymember Kevin McCarthy (R-Bakersfield)
- Assemblymember Dave Cogdill (R-Modesto)
- Assemblymember Greg Aghazarian (R-Stockton)

**Governor Schwarzenegger: Neither “Hero” nor “Zero”**

Governor Arnold Schwarzenegger’s record is too mixed to fall into either category. He is a definite improvement over his immediate predecessors, Gray Davis and Pete Wilson. But his actions on bills submitted to him have demonstrated a lack of consistent commitment to reform. While he signed legislation last year that allowed the state to opt out of a federal ban on food stamps for those convicted of a drug possession, this year he vetoed legislation that would have allowed those same individuals to apply for federal cash assistance for needy families. This is especially puzzling given that seven Republican governors have allowed their states to partially or entirely opt-out of the federal ban.

Schwarzenegger has also been inconsistent on corrections policy. Though he trumpeted the reorganization of the California Department of Corrections and Rehabilitation (adding *rehabilitation* to the title), he has yet to follow through on recommendations made by the Corrections Independent Review Panel chaired by former Governor Deukmejian or other prison reform organizations, such as the Coalition for Effective Public Safety.

For his inconsistent efforts, Governor Schwarzenegger is neither a “hero” nor a “zero,” but receives a “gentleman’s C.” An immediately forthcoming test of Schwarzenegger’s reformist mettle will be whether he follows through with support for full funding of Proposition 36 mandated drug treatment in his January 2006 budget proposal, or whether he attempts to squeeze publicly funded treatment or, perhaps worse, decides to spend money sending people to jail who the voters have already said deserve a shot at less expensive, more effective drug treatment.

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## TABLE OF CONTENTS

Executive Summary.....	i
Statement of Principles.....	1
Drug Policy Reform Areas of Interest.....	1
Background on California Drug Policy.....	3
Who Are “California’s Drug Policy Reform Heroes and Zeros”?.....	5
<i>Enigmatic Arnold Schwarzenegger Defies Categorization.....</i>	6
<i>Drug Policy Reform Heroes.....</i>	7
<i>Drug Policy Reform Zeroes.....</i>	9
Appendices:	
<i>California Legislation of Interest Over the Past Three Years</i>	
Appendix A: 2003-2004 Legislative Session.....	11
Appendix B: 2004-2005 Legislative Session.....	13

FIRST EDITION

## STATEMENT OF PRINCIPLES

The core mission of the Drug Policy Alliance (DPA), the nation's leading drug policy reform organization, is to advance those policies and attitudes that best reduce the harms of both drug misuse and drug prohibition, and to promote the sovereignty of individuals over their minds and bodies.

In DPA's work with California policymakers, it advances policies consistent with its core principles, but with a realistic sense of what the body politic will bear after decades of dependence on punishment and moralistic posturing. Most of the legislation it has supported passed the state legislature by sizable margins. Many of these bills received bipartisan support in an increasingly partisan environment. This stands a testament to its common-sense approach to harm reduction policy and advocacy. DPA's track record of success and the relationships it has built in the state Capitol are invaluable in the pursuit of an overhaul of California's failed drug war policies.

DPA's larger vision of a balanced drug policy closely resembles the "four pillars" model used in Canada and some European nations. In order to control the damage caused by legal and illegal drugs, government should seek synergy between Prevention, Treatment, Harm Reduction and Public Safety. Under this rubric, the fourth pillar of public safety incorporates policies that lead to safer streets, control of borders, sane penology, and punishments that are proportional to the crime.

## DRUG POLICY REFORM AREAS OF INTEREST

Toward the above ends, political and principled, California drug policy reform addresses the following specified areas of concern:

***Medical Marijuana and Marijuana Sentencing Reform.*** California's voter-approved medical marijuana law must be vigorously defended. Cooperation between California law enforcement and the federal Drug Enforcement Agency (DEA) and other authority should be precluded to the extent that California's public servants are to enforce state laws. Non-medical use of marijuana by adults should be legalized. Marijuana prohibition is a senseless waste of public law enforcement and court resources. DPA supports taxation and regulation of marijuana akin to that pertaining to alcohol and tobacco, with strong penalties for selling or providing to minors.

***Moving Beyond Zero Tolerance and Primary Prevention of Drug Misuse Among Adolescents.*** DPA supports policies that have a strong basis in evidence, and that is why it has drafted and supported legislation to provide after-school programs for adolescents. It strongly opposes "Just Say No" sloganeering and non-science based prevention programs like Drug Abuse Resistance Education (D.A.R.E.) that simply do not work in deterring drug use or drug abuse among older adolescents. The growth of the random student drug testing industry and rise in the use of drug-sniffing dogs in schools undermine parental involvement in the education of their children. These draconian

policies teach servile obedience to and fear of government, and do nothing to engender the type of self-reliance that is needed to develop healthy citizens. Adolescent drug education must be honest, comprehensive and respectful of students' intelligence and experience, and also utilize a truly interactive learning process. Schools should implement policies that embrace restorative practices in lieu of expulsion or suspension, and coordinate student assistance with their drug education program. These developing paradigms, based on science and honesty, should be rigorously evaluated, not only in their ability to deter drug use, but their ability to deter drug harm and to engender life skills.

***Treatment.*** Drugs both legal and illegal have the capacity to addict users to the point where their own life, the lives of their loved ones, and the life of the community is harmed. DPA believes that anyone should be able to receive the best quality drug treatment, either through his or her own means, or through public or private insurance. DPA supports parity, research and recovery. The United States has yet to evaluate what positive outcomes might arise from massive expansion of drug treatment capacity.

***Treatment Instead of Incarceration.*** Proposition 36, the Substance Abuse and Crime Prevention Act of 2000, must be defended from politician's encroachments that would seek to limit the numbers of individuals that could benefit from treatment (as an alternative to incarceration and separation from their families) and to introduce jail days to punish non-crimes such as missed appointments. Continued funding of this voter-approved measure must not be made contingent upon the refutation of the electorate's express intent. Any proposed improvement, from whatever quarter, could be supported if it is evidence-based and consistent with the purposes of the Act—which is to save lives and save money by keeping people out of jails, with their families, on the job, and in recovery.

***Harm Reduction.*** Both licit and illicit drug use has the potential for severe harm, including death. But prohibitionist policies ignore reality and exacerbate the risks to drug users and the larger community. Instead, policies should be implemented that pursue practical ways to reduce the negative consequences of drug use, incorporating a spectrum of strategies from safer use, to managed use, to abstinence. Examples of proven harm reduction strategies include the provision of clean syringes, narcotic replacement therapy, and overdose prevention and response training.

***Sentencing Reform.*** Criminal sentences for simple possession of controlled substances for personal use should be reduced or eliminated. Penalties should be focused on those actions that have a direct connection with violence, involve large quantities, and/or involve minors in a transaction. The sentencing disparity between crack cocaine and powder cocaine should be eliminated. Regardless of the original intent of the sentencing disparity, it is abundantly clear that the increased penalty for possession of one form of cocaine falls almost exclusively on African-Americans.

***Corrections Reform.*** The Department of Corrections and Rehabilitation must work toward adopting a comprehensive risk and needs assessment for each person entering jail

or prison. Educational, vocational and health services (including drug treatment) should be offered according to the needs established by the assessment tool to facilitate re-integration. Print and electronic media should have increased access to correctional facilities and those incarcerated. Policies should also place more emphasis on family cohesion and post-incarceration rehabilitation. Ultimately, California needs to incarcerate far fewer people. Our experiment with mass incarceration has not made our state safer, but served to perpetuate poverty and crime, and to strangle the state budget for other priorities, such as education, infrastructure, job creation, and even law-enforcement.

## **BACKGROUND ON CALIFORNIA DRUG POLICY**

California's drug policy generally reflects the larger deficiencies that characterize the nation's failed war on drugs and the government's war on its citizens. However, government in the Golden State is moving incrementally in a direction that recognizes the values of science, compassion, health and human dignity.

For decades, California's drug policy has been almost exclusively moored in a punitive criminal justice approach that places a premium on increased penalties and mass incarceration. That approach is especially unwarranted when applied to those who have done no harm to others—whose only “crime” is their own personal drug use. A more appropriate balance needs to be struck between the public health imperatives of addressing substance abuse and addiction and the criminal justice interest in protecting public safety.

California voters have conspicuously embraced drug reform in the areas of medical marijuana and treatment instead of incarceration. In 1996, Proposition 215 (The Compassionate Use Act) authorized the use of medical marijuana by ensuring that, as a matter of state law, patients and their care providers would not be subject to criminal prosecution or sanction. In 2000, Proposition 36 (The Substance Abuse and Crime Prevention Act) offered community-based treatment instead of incarceration for those whose only offense is their possession of an illicit drug.

Despite the passage of the two voter initiative measures, the criminal justice approach is still the first—and in most cases the only—public response to the problems posed by substance abuse and addiction. Beyond the fiscal ramifications, this approach exacts a tangible human toll. For example, legal and regulatory obstacles that impair access to clean syringes ensure that many persons will become infected with HIV or the hepatitis C virus. To consign either an intermittent drug user or the severely addicted drug user to a fatal illness is wantonly inhumane.

What are the larger policy consequences of placing substance abusers into the criminal justice system? First, it creates an artificial and insatiable demand for taxpayer dollars that contributes to California's budgetary maladies. In terms of corrections management, resources are channeled away from those convicted of violent crimes. The current per capita cost of incarceration exceeds \$34,000 per year. Second, California's recidivism

rate is among the country's worst. Parole violations that send persons back to jail or prison for a failed drug test is a waste of fiscal, institutional and human resources.

Only recently did the principal governmental agency that administers corrections policy recognize that rehabilitation is a core function of California's criminal justice system. However, the newly named Department of Corrections and Rehabilitation has yet to enact reforms that are vital to reducing rates of recidivism—from a workable risk and needs assessment that appraises an individual's educational, occupational and health status, to the effective delivery of services within correctional facilities and as part of the parole system.

Families also suffer harm from government policies in pursuit of a chimerical "drug-free America." Low-income women of color are particularly hard hit. When these women are placed in correctional facilities, their children are placed in the foster care system. Family reunification is simply not a policy priority, especially when compared to increasing rates of correctional supervision.

Even those families who do not fall under the ambit of the criminal justice system are affected by the "war on drugs." The increased use of random student drug testing and drug-sniffing dogs in California's public schools seriously undermine parental authority and involvement in their child's education. These measures also treat students as potential criminal suspects. Discharging students from after-school activities through an unregulated drug testing regime increases the likelihood of drug use, criminal activity and pregnancy. The harm to students is compounded by the absence of science-based education and prevention programs. When students are told only to "just say no" and provide a urine sample to prove that they are "drug-free," they are afforded neither the information nor the decision-making skills necessary to fortify their physical and psychosocial health.

As noted above, California voters have carved out two areas where health, compassion and human dignity take precedence over punishment: medical marijuana and treatment instead of incarceration for those charged with simple drug possession.

Those who use medical marijuana are still protected under state law. A Field Poll last year found that roughly three-quarters of the electorate favors medical marijuana, including a majority of self-described conservatives. Regrettably, that has not translated into support from Republicans in the Legislature—even though two of the state's top Republicans (Governor Arnold Schwarzenegger and state Senator Tom McClintock) support the use of medical marijuana.

Proposition 36 has made remarkable progress, with over 35,000 persons successfully completing treatment. Director of California Department of Alcohol and Drug Programs Kathryn Jett has labeled Proposition 36 "a lifesaver." Progress also includes those who continue to struggle to make their lives whole in larger society—an outcome that cannot be accomplished in prison or in a jail cell. Additionally, California's capacity to deliver

community-based treatment, which has increased by two-thirds in just five years, has proven to be the nation's largest and most successful demand reduction program.

In sum, California's drug policy landscape is far less treacherous than it was a decade ago. However, a long road remains ahead before medical practitioners become the "first responders" to problems associated with drug abuse and addiction. Unlike other stakeholders, the medical community has the requisite training and professional expertise to address the complex, multi-faceted issues raised by drug use, for both the affected individuals and for larger society.

## **WHO ARE "CALIFORNIA'S DRUG POLICY REFORM HEROES AND ZEROES"?**

There is no specific calculus that determines whether a public official is a "hero" or a "zero" when it comes to California drug policy reform. Rather, the use of either label represents an overall assessment of an officeholder's record, from specific votes and positions, to comments and questioning in policy committees, to other public pronouncements.

With a handful of notable exceptions, Democrats are generally more amiable to drug policy reform than Republicans. But for those who closely observe the machinations of the legislative process, many great moments happen unexpectedly. For example, Assemblymember Todd Spitzer's (R-Orange) feisty defense of individual liberty and parental authority in the context of student drug testing contributed a great deal to both the deliberative process and the spirit of reform.

Also, one must consider those who are no longer in Legislature and have made important contributions to the overall progress of drug policy reform. From introducing specific legislative items to engaging in the larger public discourse in a manner that promotes the underlying values of the reform movement—science, compassion, health, and human dignity—their contributions provide a strong foundation for their institutional successors to build upon.

The chief hero among former state legislators is former state Senator John Vasconcellos. More than any other legislator, his longstanding and steadfast commitment to reform—on subjects ranging from medical marijuana, syringe access, and expansion of drug treatment to adolescent drug education and student drug testing—provides an inspirational standard for other policymakers and reform advocates. More importantly, the policies he advanced promote the health and well-being for many who might have not otherwise been afforded the opportunity to do so. The policies advanced by John Vasconcellos have literally saved lives.

Other legislative alumni who took significant reform measures to their colleagues and the public are deserving of high praise. Before Mr. Vasconcellos fought for increased syringe access in the Legislature, former Assemblymember Dion Aroner brought the first bill to

authorize the pharmacy sale of syringes. Bruce McPherson, now the Secretary of State, had a consistently good voting record as a state Senator; he also authored an outstanding marijuana reform bill that would have made possession of less than an ounce an infraction and along with former Assemblymember Darryl Steinberg worked with DPA to win passage of bills authorizing increased funding for after-school activities for low income youth. Mr. Steinberg has an outstanding record on drug policy reform, and was the legislative force behind Proposition 63, the measure to expand mental health treatment for the chronically or severely mentally ill, many of whom would otherwise be housed in California jails or prisons.

Before the current membership of “California’s Drug Policy Reform Heroes and Zeroes” is specified, a swift assessment of Governor Arnold Schwarzenegger is in order. In short, Mr. Schwarzenegger’s record demonstrates that he has “heroic” tendencies to embrace reform—but overall these actions only serve to highlight how disappointing he has been at other times.

### ***Enigmatic Arnold Schwarzenegger Defies Categorization***

Governor Schwarzenegger cannot be appropriately classified as a “hero” or a “zero,” as his record on drug reform related legislation is decidedly mixed.

Compared to his predecessors, Gray Davis and Pete Wilson in particular, Governor Schwarzenegger’s record is fairly good. He signed bills that will lead to increased access to clean syringes and narcotic replacement therapy. He also signed a measure that allows those previously convicted of felony drug possession offenses to be eligible for aid under the federal food stamp program.

However, Mr. Schwarzenegger’s record leaves much to be desired. While Governor Schwarzenegger is far from a failure on the drug reform front, he has at times fiddled and fumbled.

On the issue of corrections reform, the Governor trumpeted the reorganization and renaming of the California Department of Corrections and Rehabilitation (to add *Rehabilitation*)—throwing a press conference to display the Department’s new logo. But he has actually cut funding for rehabilitation and failed to implement the modest reforms recommended by the Corrections Independent Review Panel, chaired by former Governor Deukmejian.

To his credit, he allows the parole board to “do its job,” as he said. He hasn’t vetoed recommendations for release from a board already stacked with get-tough ex-cops and victim’s rights advocates, as did his predecessor Gray Davis.

But rather than allow a new parole model to roll out—one that promised drug treatment and other services to reduce parole violations and revocations back to the crowded, costly

prisons—the Governor shrank after just two weeks of attack ads from victims’ groups largely funded by the prison guard union.

Another negative mark in Mr. Schwarzenegger’s record includes his veto denying federal cash assistance to needy families where a parent was convicted of any felony drug offense, including simple possession. His veto is especially perplexing when one considers the fact that no less than *seven* Republican governors acted to modify or completely opt out of the federal ban—George Pataki of New York, John Engler of Michigan, George Voinovich of Ohio, Frank Keating of Oklahoma, Dirk Kempthorne of Idaho, Mike Leavitt of Utah, and Gary Johnson of New Mexico.

A bona fide test of Governor Schwarzenegger’s reformist mettle will be his administration’s positioning when it comes to re-authorization of funding for Proposition 36. Throughout his official political career, he has openly expressed a vigorous deference to the judgment of the electorate at the ballot box. Should he collude with prosecutors, narcotics officers other special interests to reverse the voter mandate by adding new jail penalties to the “treatment instead of incarceration” initiative, it can honestly be said that all his professed deference to the will of the voters applies only to measures that advance his political career or campaign coffers.

Instead of categorization as a “hero” or “zero,” Governor Schwarzenegger thus far deserves the much-invoked “gentleman’s C.” Some days he appears to have the potential of becoming a reform-minded action hero; on other days he looks like a diminutive action figure being posed by playful political advisors who savor the failed status quo.

### ***Drug Policy Reform Heroes***

#### **Assemblymember Mark Leno (D-San Francisco)**

Since his days as a member of the San Francisco County Board of Supervisors, Mr. Leno continues to be a principal public proponent of medical marijuana. As the Chair of the Assembly Public Safety Committee, he has been a vocal supporter of treatment instead of incarceration. In 2004, he authored AB 1796, allowing those convicted of felony drug possession offenses to receive federal food stamps. This year, he introduced a bill that would have authorized the in-state production of industrial hemp—the prohibition of which is an unfortunate consequence of marijuana prohibition.

#### **Assemblymember Jackie Goldberg (D-Los Angeles)**

Ms. Goldberg is the Legislature’s leading advocate for the expansion of narcotic replacement therapy in California. As chair of the Assembly Education Committee, she co-authored legislation with former Senator John Vasconcellos to place limits on random student drug testing. She is also a staunch advocate for the expansion of drug treatment generally, including Proposition 36. As she put it plainly in a committee hearing last year: “If I were an enemy of the United States, I would have purposefully designed the drug war to weaken it. It’s a complete travesty!”

**Assemblymember Patty Berg (D-Eureka)**

Ms. Berg authored important legislation in support of local syringe exchange programs. Specifically, this year's AB 547 streamlined the process whereby local government agencies authorize syringe exchange programs—allowing annual authorizations instead of the ridiculous and cumbersome requirement that they be reauthorized every 14 to 21 days. Along with a great voting record, she has also brought the important issue of compassionate end-of-life choices into the legislative process that addresses the core issue of individual sovereignty over mind and body.

**Assemblymember Mervyn Dymally (D-Compton)**

Mr. Dymally has a distinguished track record in California politics: Assemblymember, 1963-1967; Senator, 1967-1975; Lieutenant Governor, 1975-1979 (first African-American elected to a statewide office); Congressman, 1981-1992. Since his return to the California legislature in 2002, Mr. Dymally has led the legislative fight to eliminate the senseless sentencing disparity between crack cocaine and powder cocaine in California's sentencing law. A civil rights pioneer, Mr. Dymally is a consistent supporter of prison reform, drug policy reform, and civil liberties.

**Assemblymember Gloria Negrete-McLeod (D-Chino)**

Ms. Negrete-McLeod is the Legislature's foremost advocate on hepatitis C education and prevention, and a consistent supporter of reform.

**Assemblymember Keith Richman (R-Northridge)**

Dr. Richman is the most vocal Republican proponent of increased access to clean syringes. He supports limitations on student drug testing that respect parental involvement and voted to drop the ban on food stamps for former drug offenders. He follows his medical training, even when it means bucking his party caucus.

**Assemblymember John Laird (D-Santa Cruz)**

Mr. Laird deserved commendation for his role in defending Proposition 36 and his leadership on disease prevention among injection drug users, their families and communities.

**Senator Gloria Romero (D-Los Angeles)**

Along with state Senator Jackie Speier, Ms. Romero is a leading legislative voice for corrections oversight and reform, including increased media access to correctional facilities. For the past two sessions, she has authored legislation that would rescind an arcane provision of California law that precludes reimbursement to a medical provider who treats injuries sustained under the influence of alcohol or other drugs.

**Senator Martha Escutia (D-Whittier)**

Chair of the Legislative Latino Caucus and one of the most respected legal minds in the Legislature, Sen. Escutia authored the state's first bills to battle the rapid increase in fatal

drug overdose. Her first effort in 2001 garnered bipartisan support but was vetoed by Gray Davis. A second effort was signed by Davis in 2002.

**Senator Wesley Chebro (D-Arcata)**

Mr. Chesbro has worked to end discrimination against persons suffering from the disease of addiction. He has created a comprehensive response to alcoholism and drug addiction by mandating that private insurers provide for treatment of persons enrolled in their programs.

**Senator Carole Migden (D-San Francisco)**

Ms. Migden has a generally outstanding record, especially her role in defending Proposition 36 from efforts to reverse its mandate of drug treatment rather than incarceration for nonviolent drug possession offenders.

***Drug Policy Reform Zeroes***

**Senator Denise Ducheny (D-San Diego)**

Despite a generally stellar record on drug reform bills, Ms. Ducheny is the principal author of pending legislation (SB 803) that would reverse the vote of 2000, rewriting Proposition 36 to limit the number of individuals and families that would benefit from drug treatment (sending them to prison instead) and would add jail penalties of two to 30 days for various minor violations of probation, including missed appointments.

**Assemblymember Jay La Suer (R-La Mesa)**

As vice-chair of the Assembly Public Safety Committee, and through his statements on the Assembly Floor, Mr. La Suer has been a vocal opponent of even the most modest sentencing reform and harm reduction measures. His berating of the wife of a terminally-ill incarcerated person who testified in favor of a compassionate release bill (AB 1946) deserves special condemnation.

**Assemblymember Greg Aghazarian (R-Stockton)**

This year, Mr. Aghazarian introduced AB 253, which became known as the “smoke a joint, lose your kid” bill. The bill was later amended to specifically exclude marijuana, but it still mandated lengthy prison terms for any parent or guardian who consumes or ingests controlled substances in a home where a child resides. Such measures always mean disparate punishment for women, who are more likely to be the at-home parent.

These “get tough on mom” measures mean that women are less likely to get prenatal care or seek assistance from drug treatment or domestic violence programs. Mr. Aghazarian also demonstrated a callous disregard for the deliberative element of the legislative process when he sought to lower taxes on “alco-pops,” sweet mixed drinks marketed at teens and young adults, through the “gut-and-amend” parliamentary maneuver without input from health professionals, parents or other concerned citizens.

**Assemblymember Dave Cogdill (R-Modesto)**

Throughout his legislative career, Mr. Cogdill has introduced bills that offer one overarching approach to California drug policy: increased criminal penalties. This year, he introduced AB 1063—which amounted to a “greatest hits” collection of his oldies but not-so-goodies.

**Senator George Runner & Assemblymember Sharon Runner (R-Lancaster)**

With the succession of Mrs. Runner to her husband’s Assembly seat and the election of Mr. Runner to the Senate, the Runners are the “penalty pair extraordinaire” of Sacramento. Mr. Runner has historically been a defender of the fiscal largesse of California’s corrections system and an expressed advocate for increased criminal penalties. Mrs. Runner has already evinced that she will build upon the Runner legacy of penal indulgence—one example being AB 684, which would have expanded California’s drug paraphernalia law to include everyday items, such as razor blades and mirrors.

**Assemblymember Kevin McCarthy (R-Bakersfield)**

Assembly Minority Leader McCarthy has not been unusually vocal on drug reform issues, though he has been a consistently bad vote. He falls into the “zero” category on the basis of two draconian throw-back bills he has introduced: AB 1025 and AB 2699, which would have penalized those found guilty of having the intent to manufacture methamphetamine with a prison term of 16, 18 or 20 years.

## APPENDIX

### CALIFORNIA LEGISLATION OF INTEREST OVER THE PAST THREE YEARS

#### *2003-2004 Legislative Session*

##### **AJR 13 (Leno)—Medical Marijuana Resolution**

The Legislature adopted a resolution urging President Bush and the Congress to (1) enact legislation securing a state's right to regulate medical cannabis regarding possession, consumption, cultivation and distribution; (2) amend federal law to allow for a medical necessity defense; and (3) review DEA policies "related to the prosecution and harassment of Californians who are acting in compliance with the provisions of Proposition 215." No action required by the Governor.

##### **AB 946 (Berg)—Local Syringe Exchange Programs**

Would have authorized cities or counties to develop clean needle and syringe exchange projects without the onerous requirement that the authorization be revisited every 14 to 21 days. Vetoed by Governor Davis.

**AB 1308 (Goldberg)—Narcotic Replacement Therapy**

Would have required the State Department of Alcohol and Drug Programs to publish a model protocol for the treatment of in-custody addiction withdrawal to alcohol or controlled substances. The bill would also have required that a court consult with a patient's treatment provider before discontinuing a patient's narcotic replacement therapy. Vetoed by Governor Davis.

**SB 131 (Sher)—Marijuana Possession Penalties**

The 2003 version of this bill would have changed the classification of the conviction for an ounce or less of marijuana from a misdemeanor to an infraction, leaving the penalty at the current fine not to exceed \$100. DPA did not support the bill after it was amended in 2004 to increase the fine to \$250. SB 131 failed to clear the Assembly, even after amendment.

**SB 295 (Vasconcellos)—California Marijuana Research Program**

Lifted the sunset on the California Marijuana Research Program, undertaken by the University of California allowing it to continue to develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana. Signed into law by Governor Davis.

**SB 420 (Vasconcellos)—Medical Marijuana Administration**

Requires the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and establishes procedures, under which a qualified patient with an identification card may use marijuana for medical purposes. Set statewide minimum plant and weight guidelines for patients and caregivers who volunteer for the card program. Signed into law by Governor Davis.

**SB 774 (Vasconcellos)—Pharmacy Sales of Syringes**

Would have authorized a licensed pharmacist to sell or furnish 30 or fewer hypodermic needles or syringes to a person without a prescription in order to fight the spread of HIV/AIDS, hepatitis and other diseases. Vetoed by Governor Davis.

**AB 1796 (Leno)—Food Stamp Eligibility for Drug Felons**

Allows for persons previously convicted of felony drug possession offenses to be eligible for aid under the federal Food Stamp Program. Signed into law by Governor Schwarzenegger.

**AB 2136 (Goldberg)—Narcotic Replacement Therapy**

The bill would have required that a court consult with a patient's treatment provider before discontinuing a patient's narcotic replacement therapy, such as methadone. The bill also provided for a sliding-scale fee schedule for treatment providers. Vetoed by Governor Schwarzenegger.

**AB 2871 (Berg)—Local Syringe Exchange Programs**

Would have authorized cities or counties to develop clean needle and syringe exchange projects without the onerous requirement that the authorization be revisited every 14 to 21 days. Vetoed by Governor Schwarzenegger.

**SB 519 (Vasconcellos)—Treatment for Youth Drug Offenders**

Would have extended Proposition 36-style treatment to young parolees convicted of non-violent drug possession offenses, also providing that any drug testing be in furtherance of treatment. Vetoed by Governor Schwarzenegger.

**SB 1159 (Vasconcellos)—Pharmacy Sale of Syringes**

Authorizes local governments to authorize pharmacies to sell up to ten syringes to an adult without prescription in order to fight the spread of HIV/AIDS, and allows adults to possess up to ten syringes from an authorized source, including pharmacy, physician or needle exchange program. Signed into law by Governor Schwarzenegger.

**SB 1386 (Vasconcellos)—Random Student Drug Testing**

Would have regulated student drug testing for the first time in the U.S. Would have provided for the drug or alcohol testing of a pupil only upon a reasonable suspicion that the pupil has unlawfully used a controlled substance or alcohol. The bill would have also authorized school districts to conduct voluntary random drug testing programs that would only provide results to the parents and pupil. Participation in scholastic or extracurricular activities could not be conditioned on submitting to random drug testing. Vetoed by Governor Schwarzenegger.

**SB 1494 (Vasconcellos)—Medical Marijuana Administration**

Clarified a few provisions of SB 420, signed into law the year before by Governor Davis. Stipulated that persons could possess quantities of marijuana consistent with their medical need. The bill further provided that a person would not be subject to arrest for possessing or maintaining certain amounts of marijuana, if in possession of a card identifying them as a patient or caregiver. Vetoed by Governor Schwarzenegger.

*2005-2006 Legislative Session*

**AB 296 (Negrete-McLeod)—Hepatitis C Screening and Education in Prisons**

This bill requires the state Department of Corrections and Rehabilitation to make voluntary hepatitis C screening available to all incarcerated people, and also allows designated sources to distribute education and prevention materials. Signed into law by Governor Schwarzenegger.

**AB 547 (Berg)—Syringe Exchange Regulation**

This bill streamlines the process whereby local government agencies authorize syringe exchange programs, allowing annual authorizations instead of ongoing declarations of a state of emergency. The bill also makes a specific legislative finding that clean needle and syringe programs do not increase drug use, does not increase drug use, may serve as

an important bridge to treatment and recovery, and can curtail the spread of HIV infection. Signed into law by Governor Schwarzenegger.

**AB 561 (Montanez)—Inmate Educational Assessment**

This bill requires the California Department of Corrections and Rehabilitation to perform initial and subsequently annual educational assessments on each incarcerated person. Effective prison education helps reduce recidivism rates. Vetoed by Governor Schwarzenegger.

**AB 698 (Haynes) & SB 239 (Romero)—Media Access to Prisoners**

These bills would have lifted the ban unilaterally imposed by the California Department of Corrections and Rehabilitation in 1996 on media interviews of incarcerated persons. Media coverage serves the public interest by bringing attention to problems in the administration of these massive publicly funded facilities. Both vetoed by Governor Schwarzenegger.

**AB 760 (Nava)—Arrestee Parent Support**

This bill provides that custodial parents may make two additional phone calls for the purpose of arranging for the care of their children during the booking process. Signed into law by Governor Schwarzenegger.

**AB 855 (Bass)—Drug Denial of Assistance to Needy Families**

This bill would have ended discrimination against those once convicted of nonviolent possession drug offenses, allowing them to apply for federal Temporary Assistance for Needy Families (TANF) funds via the California Work Opportunity and Responsibility to Kids (CalWORKs) program, conditioned upon completion of or participation in a treatment program. Vetoed by Governor Schwarzenegger.

**AB 1349 (Goldberg)—Narcotic Replacement Therapy**

This bill provides that narcotic treatment providers may establish a sliding indigency scale for low-income persons who are not eligible to participate in the Medi-Cal Drug Treatment Program. The availability of narcotic replacement therapy for those addicted to heroin and other opioids will be increased. Signed into law by Governor Schwarzenegger.

**AB 1542 (Parra)—Sentencing Alternatives for Veterans**

This bill would have allowed veterans who are suffering from post traumatic stress disorder (PTSD), substance abuse, or psychological problems as a result of their service to petition a court for commitment to a treatment program in lieu of incarceration in jail or prison. Vetoed by Governor Schwarzenegger.

**AB 1597 (Laird)—Syringe Purchase and Exchange Funding**

This bill would have allowed HIV prevention and education funds to be used to support syringe exchange projects authorized by local government entities. Vetoed by Governor Schwarzenegger.

**SB 573 (Romero)—Emergency Room Medical Screening of Alcohol and Drugs**

This bill would have repealed an arcane provision of California’s Uniform Accident and Sickness Policy Provision Law (UPPL) that precludes reimbursement to a medical provider who treats injuries sustained under the influence of alcohol or other drugs. As such, practitioners are officially discouraged from addressing underlying substance abuse issues. Vetoed by Governor Schwarzenegger.