

## *Questions and Answers Regarding AB 136 (Mazzoni) Compromise Legislation to Decriminalize Local Needle Exchange*

### *1. What is the proposed compromise?*

The proposed needle exchange compromise protects local entities, their agents and employees from criminal prosecution for distributing syringes as part of a needle exchange program authorized pursuant to the declaration of a local emergency. “Agents” would include a non-profit organization that contracts with a city, county, or city and county to provide such services.

The compromise language agreed to by Governor Davis and supporters of needle exchange amends Health and Safety Code Section 11364.7. This amended bill is now AB 136. As was the case with Mazzoni’s original bill (AB 518), AB 136 does not mandate nor provide funding for needle exchange programs. This remains a local option bill.

### *2. How is the compromise different than the original Mazzoni bill (AB 518)?*

The original Mazzoni bill proposed a comprehensive set of program parameters under which a needle exchange program could operate legally. These parameters included the requirement that exchange programs be part of a network of other health and social services in a given community. The new bill language does not contain any specific program guidelines, nor does it include a “findings and declarations” section, which explains the need for the bill but doesn’t have any legal implications. In addition, AB 518 also attempted to protect needle exchange participants from prosecution under state possession laws during the act of exchanging needles; AB 136 does not contain such language.

The two bills also differ substantially in terms of the mechanism a local community would need to use in order to provide exchange services without the threat of criminal prosecution. Although the original Mazzoni bill (AB 518) would have required a community to pass some type of local ordinance or law in order to provide needle exchange services, the new bill requires that the governing body declare a local emergency.

### *3. How does a city, county, or city and county declare a local emergency?*

California Emergency Services Act, Cal. Gov. Code Sections 8550-68, vests local governments with the authority to declare a “local emergency” in response to the “. . . existence of conditions of disaster or of extreme peril to the safety of persons or property within the state caused by such conditions as.. epidemic.” In some cases, other local laws or ordinances may apply. Declaring a local emergency requires a majority vote of the local governing body, and once adopted, the emergency declaration must be renewed periodically.

### *4. How is a declaration of local emergency renewed?*

Cal. Govt. Code Section 8630 provides that the local governing body shall review the need for continuing an emergency declaration at its regularly scheduled meeting and that this review must occur at least every 14-21 days, depending on the frequency of the meetings. In San Francisco, where support for needle exchange among elected officials and

the general public is very high, this renewal process is done through the Board of Supervisors’ consent calendar. However, in other areas of the state, a given local entity could end up engaging in prolonged debate every two weeks, though it is hoped that this would not be the case.

### *5. Does the fact that the new bill does not set forth detailed program parameters mean that local exchange programs will operate without oversight?*

Absolutely not. In most cases, although the governing entity would declare the local emergency, the city, county or city and county would contract with a non-profit organization to actually provide the exchange services. As with any other government contract, the city, county, or city and county would set forth specific contract and program requirements that the local provider would need to follow in order to be awarded the service contract. For example, in San Francisco, the Department of Public Health requires that, as a condition of funding, the local exchange program meet strict contract requirements related to fiscal management, volunteer training and supervision, safe bio-hazardous waste

disposal and many others. In short, although the compromise bill does not establish a single, statewide set of operating principles or program guidelines, such requirements would be established as part of local oversight.

*6. Who supports this compromise?*

The new bill, AB 136, is far less comprehensive and more cumbersome than advocates or the bill's author would have liked. Given the lives at stake, as well as the preponderance of scientific evidence in support of needle exchange, supporters of AB 518 would have preferred that the Governor sign the original bill, as proposed. Nevertheless, the compromise represents an important step forward on a critical issue that has remained stagnant for over eight years. It is hoped that AB 136 will result in more communities choosing to enact needle exchange programs, and will ultimately save lives.

In addition to the numerous public health, medical and HIV organizations that support AB 136, statewide law enforcement organizations have changed their position on the bill from "oppose" to "support" in light of these changes to the bill.

*7. How supportive of needle exchange is the general public in California?*

According to a recent independent survey conducted by the Field Research Institute during August 1999, a resounding 69% of Californians surveyed said they favor needle exchange in order to stop the spread of AIDS and HIV infection. The survey results show that, regardless of geographic region, ethnicity, political ideology or party affiliation, there is broad support for needle exchange among Californians.

Across Orange County, San Diego and the Inland Empire, 60% favor needle exchange, as did 65% of those in the Central Valley, 72% in Los Angeles, 68% in North Coast/Sierra and 83% in the Bay Area. In the same survey, individuals who identified as "moderately conservative" support needle exchange programs by 62%; "middle of the road" respondents favor needle exchange 75% of the time, while those who said they were either "moderately liberal" or "strongly liberal" favored needle exchange by more than 80%.

*For more information on AB 136, please contact Patti Habel in Assembly Member Kerry Mazzoni's office at (916) 319-2006.*

\*\*A survey of Californian's support for Needle Exchange Programs is available at the URL below:

<http://www.drugpolicy.org/docUploads/californiaAB518survey.pdf>