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*Syringe Exchange  
and AB 136:*  
The Dynamics of  
Local Consideration in  
Six California Communities

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# Executive Summary

More than one-third of all reported AIDS cases in the United States have occurred among injection drug users, their partners, and their children. Public health experts have identified access to sterile syringes as one component of a comprehensive HIV prevention strategy designed to reduce HIV transmission among injection drug users (IDUs). Yet debates about syringe access for injection drug users continue. Laws governing syringe access are generally the purview of state law, making state and local governments important arenas for policy making on this issue. The state and local policy role has been magnified by an ongoing ban on the use of federal funding for syringe exchange programs.

In recent years, states and localities have explored a variety of strategies designed to expand access to sterile syringes, including allowing the operation of syringe exchange programs (SEPs). Research has established that SEPs, as part of a comprehensive prevention approach, can reduce the number of new HIV and other infectious diseases without promoting drug use. Additional strategies include removing legal penalties for possession of syringes, allowing for the sale of sterile syringes in pharmacies without a prescription, and clarifying the legal status of physician prescription of syringes to IDUs.

In 1999, the State of California enacted legislation allowing local governments to legalize syringe exchange programs within their jurisdictions. Assembly Bill (AB) 136, which became law in January 2000, protects local jurisdictions from criminal prosecution for distributing hypodermic needles or syringes in SEPs authorized pursuant to “a declaration of a local emergency due to the existence of a critical local public health crisis.”

Approximately two-dozen syringe exchange programs operated in California prior to passage of AB 136, but their legal status was uncertain. Other jurisdictions, some with sizable numbers of IDUs, did

AB 136 protects local governments and their employees and authorized contractors that provide exchange services from criminal prosecution for distributing syringes and needles if there has been a declaration of a local emergency. The law reads, in part:

*“No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis.”*

not initiate or approve SEPs, at least in part because of the potential for State legal action.

The State of California provides an important window for assessing such an approach. With one of the largest AIDS caseloads in the nation, California has been particularly hard hit by the HIV/AIDS epidemic. Injection drug use is the second largest risk factor for HIV in the state, not including those cases indirectly related to injection drug use, such as those among sex partners and children of IDUs. With its enactment of AB 136, California became one of only a handful of states to have authorized the operation of syringe exchange programs and one of two states allowing for such operation *only after* a local authority has declared an emergency (the other is Massachusetts).\*

This study provides a qualitative assessment of the response to AB 136 in six California communities since it became law. The study is designed to provide federal, state, and local policymakers, health officials, and the public with a variety of perspectives on the dynamics of local consideration of AB 136, including

\*For a current listing of state policies regarding syringe exchange programs and other syringe access policies, see the Kaiser Family Foundation State Health Facts web page: [www.statehealthfacts.kff.org](http://www.statehealthfacts.kff.org)

its perceived benefits and limitations as an approach to expand access to sterile syringes among IDUs.

The study is based on interviews with key stakeholders in six California county and city jurisdictions: Alameda, Los Angeles, Sacramento, Santa Barbara, and Santa Clara Counties and the City of San Diego. Interviewees included public health officials, law enforcement officials, SEP staff, and advocates at the local level. Interviews were also conducted with national and state level stakeholders in an effort to obtain broader perspectives on AB 136.

The study explored several areas including:

- ▷ The status of SEPs before and after the passage of AB 136;
- ▷ The status of a local declaration of emergency – whether considered, passed, and/or sustained;
- ▷ The effect of AB 136 on views about syringe exchange among both those who supported and opposed SEPs;
- ▷ Perceived roles of various local stakeholders in debates about whether to declare a local emergency;
- ▷ Perspectives on the role of AB136 in facilitating or hindering discussions about and implementation of syringe exchange;
- ▷ Perceived benefits and limitations of AB 136 as an approach to sterile syringe access; and
- ▷ Perspectives on technical assistance and other needs of local communities in informing their response to AB 136.

In addition to interviews in the six sites, a statewide survey of local health officers was conducted in partnership with the California Conference of Local Health Officers (CCLHO). Local health officers play central roles in responding to disease threats in their communities, and they commonly provide epidemiological background and advice on public health policy to elected officials. In several

California communities, public health officers have been visible leaders in efforts to control HIV infection rates among the local IDU population.

The study is qualitative in nature and therefore does not necessarily represent the experiences of all California communities. In addition, the study was not designed to measure direct outcomes of AB 136 such as its impact on the number of needles distributed or HIV incidence. Due to concerns about the

legality of SEPs (some SEPs, for example, were operating before AB 136 and some SEPs continue to operate in jurisdictions where a local emergency has not been declared), it is not possible to accurately estimate the total number of syringe exchange programs in the six communities or throughout the State of California.

### Study Findings

AB 136 provided a new option for communities interested in expanding access to clean syringes among IDUs. The law also shifted much of the political burden for consideration of SEPs from state to local elected officials and communities. Specific limitations of AB 136, and continuing restrictions on

syringe access imposed by other State laws, indicate that AB 136 has played a limited, albeit important, role in responding to the HIV epidemic among IDUs.

Five of the six jurisdictions included in the study (Alameda, Los Angeles, Santa Barbara and Santa Clara Counties and the City of San Diego) had declared local emergencies utilizing AB 136, including two that did so during the course of this study (LA County and the City of San Diego). San Diego's City Council initially voted to approve an emergency declaration; several months later, the declaration failed a vote for renewal. In November, 2001, the City Council approved a pilot, privately-funded program for one year.

Survey informants were nearly unanimous in their assessment that AB 136 has facilitated local consideration of syringe exchange programs, though

**Specific limitations of AB 136, and continuing restrictions on syringe access imposed by other State laws, indicate that AB 136 has played a limited, albeit important, role in responding to the HIV epidemic among IDUs.**

the law did not settle ongoing debates in many communities. Passage of AB 136 did not appear to change fundamental attitudes of support or opposition to SEPs generally, but it did change the dynamics of community discussions regarding SEPs.

Respondents reported that AB 136:

- > generated new or renewed political support and advocacy to establish legal SEPs;
- > improved opportunities for SEP funding;
- > increased legitimacy of SEPs; and
- > expanded collaboration between public health, SEP and other service providers.

Some informants also perceived an increase in knowledge about and willingness to use SEPs among IDUs.

Different factors guided the consideration of an emergency declaration in each community, but jurisdictions that declared emergencies following the passage of AB 136 generally did so with strong support from a variety of key stakeholders, including law enforcement, elected officials, public health officials and community members. Key factors associated with failure to pass or sustain an emergency declaration included opposition from local and state law enforcement groups and local elected officials, lack of information or guidelines on how to declare a local emergency, and challenges in siting syringe exchange programs.

Interviewees frequently identified two major limitations of AB 136. First, the need to declare and the perceived need to renew a local emergency every 14 to 21 days was seen to limit the ability to use AB 136 even in communities where there is significant political support for SEPs. Second, many informants felt that the legislation was flawed in that it did not protect clients of AB 136-sanctioned SEPs from State laws prohibiting the possession of needles and syringes. Other concerns with AB 136 included the lack of expanded resources to meet increased service needs, and increased politicization of program design due to government involvement. In addition, some local stakeholders remained opposed to SEPs, resulting in continuing debates about syringe access despite the existence of AB 136 or a local jurisdiction's attempt to or success with passing an emergency declaration.

Even in communities that had passed an emergency declaration pursuant to AB 136, informants identified several challenges to implementing SEPs, including lack of sufficient funding for SEPs, difficulties with finding suitable locations for programs, and the difficulty of establishing referrals and ancillary services for SEP clients without additional funding.

Finally, a variety of technical assistance needs were identified, including the need for:

- > assistance with local consideration of an emergency declaration as authorized under AB 136;
- > public health research and data about syringe exchange more generally;
- > information about the status of SEPs in other communities in California, particularly after the passage of AB 136; and
- > information about syringe exchange program operations.

Informants cited the lack of information about syringe access and SEPs that was generally accepted as credible and objective and could therefore be used to inform those considering AB 136.

### **Policy Options Regarding AB 136**

Informants identified several legal and administrative modifications and technical assistance opportunities that could facilitate communities' consideration of AB 136. They include:

- ▷ Reconsidering the requirement to continually renew a local declaration of emergency by reducing or eliminating the emergency declaration renewal requirements.
- ▷ Allowing for the authorization of renewals of an emergency declaration by local public health officers rather than, or in conjunction with, the local elected body.
- ▷ Exempting clients of SEPs authorized through AB 136 from State drug paraphernalia laws that prohibit possession of needles and syringes.
- ▷ Improving public education efforts and technical assistance regarding research on SEPs and program implementation issues, and expanding opportunities for information

exchange among stakeholders, including those designed to bring together multiple players in HIV prevention for injection drug users. These proposals were widely supported by almost all informants, regardless of their views about SEPs or AB 136.

In addition, many informants pointed to other changes to California law that could address access to sterile syringes, including allowing physician prescription of syringes to IDUs, eliminating penalties for possession of needles and syringes, exempting clients of all SEPs (not just AB 136-authorized SEPs) from State drug paraphernalia laws, and permitting over-the-counter sale of sterile syringes in pharmacies without requiring a prescription.

### **Conclusion**

California's experience with AB 136 provides valuable information to other states seeking to address the impact of the HIV/AIDS epidemic among IDUs. In addition, the specific experiences of California counties and cities in responding to the legislation offer guidance to other California communities that may be considering syringe access programs.

Overall, this study indicates that AB 136 was both symbolically and practically significant. The

legislation provided new opportunities for local communities to initiate and increase their dialog about syringe access and to implement such programs. Indeed, the number of SEPs in the state increased after the passage of AB 136. Yet the law did not settle the ongoing debate over syringe exchange programs in many communities, indicating a need for continued dialog and information sharing. For example, this study's finding that objective information about SEPs and AB 136 was not readily available to communities to assist in their decision-making highlights an important gap and opportunity for the State and others.

In addition, specific limitations of AB 136 and continuing restrictions on syringe access imposed by other State laws reduced AB 136's role and demonstrate the complexity of the policy environment surrounding syringe access. States considering such an approach may want to examine the full complement of laws that govern syringe access and possession in deciding how best to address syringe access as a disease prevention intervention.

Taken together, the findings from this study offer important lessons to national, state, and local policymakers, public health officials, and communities considering options for reducing new HIV infections in their communities.

# Introduction

More than one-third of all reported AIDS cases in the United States have occurred among injection drug users, their partners, and their children. Public health experts have identified access to sterile syringes as one component of a comprehensive HIV prevention strategy designed to reduce HIV transmission among IDUs.<sup>1</sup> Yet debates about syringe access for injection drug users continue. Laws governing syringe access are generally the purview of state law, making state and local governments important arenas for policy making on this issue. The state and local policy role has been magnified by an ongoing ban on the use of federal funding for syringe exchange programs.

This report provides a qualitative assessment of one state's approach to syringe access, California's AB 136, which enables local jurisdictions to authorize syringe exchange programs (SEPs) pursuant to a declaration of a local emergency. The State of California serves as an important window for assessing such an approach because, with one of the largest AIDS caseloads in the nation, it has been particularly hard hit by the HIV/AIDS epidemic. Injection drug use is the second largest risk factor for HIV in California, accounting for 19% of all reported AIDS cases.<sup>2</sup> The link between injection drug use and HIV transmission is particularly strong for women and minorities.<sup>3</sup>

California is also one of only a handful of states that has authorized the operation of syringe exchange programs and one of two allowing for syringe exchange only after a local authority has declared an emergency (the other is Massachusetts).

## Study Overview

The Henry J. Kaiser Family Foundation commissioned a qualitative assessment of the local response to the enactment of AB 136 in six California communities in the first year after it became law. The study is designed to provide federal, state, and local policymakers, health officials, and the public with a variety of perspectives on the dynamics of local consideration of AB 136, including its

perceived benefits and limitations as an approach to expand access to sterile syringes among IDUs.

Findings are based on interviews with key stakeholders in six California county and city jurisdictions: Alameda, Los Angeles, Sacramento, Santa Barbara, and Santa Clara Counties and the City of San Diego. Interviewees included public health officials, law enforcement officials, SEP staff, and advocates at the local level. Interviews were also conducted with national and state level stakeholders in an effort to obtain broader perspectives on AB 136.

The study explored several areas including:

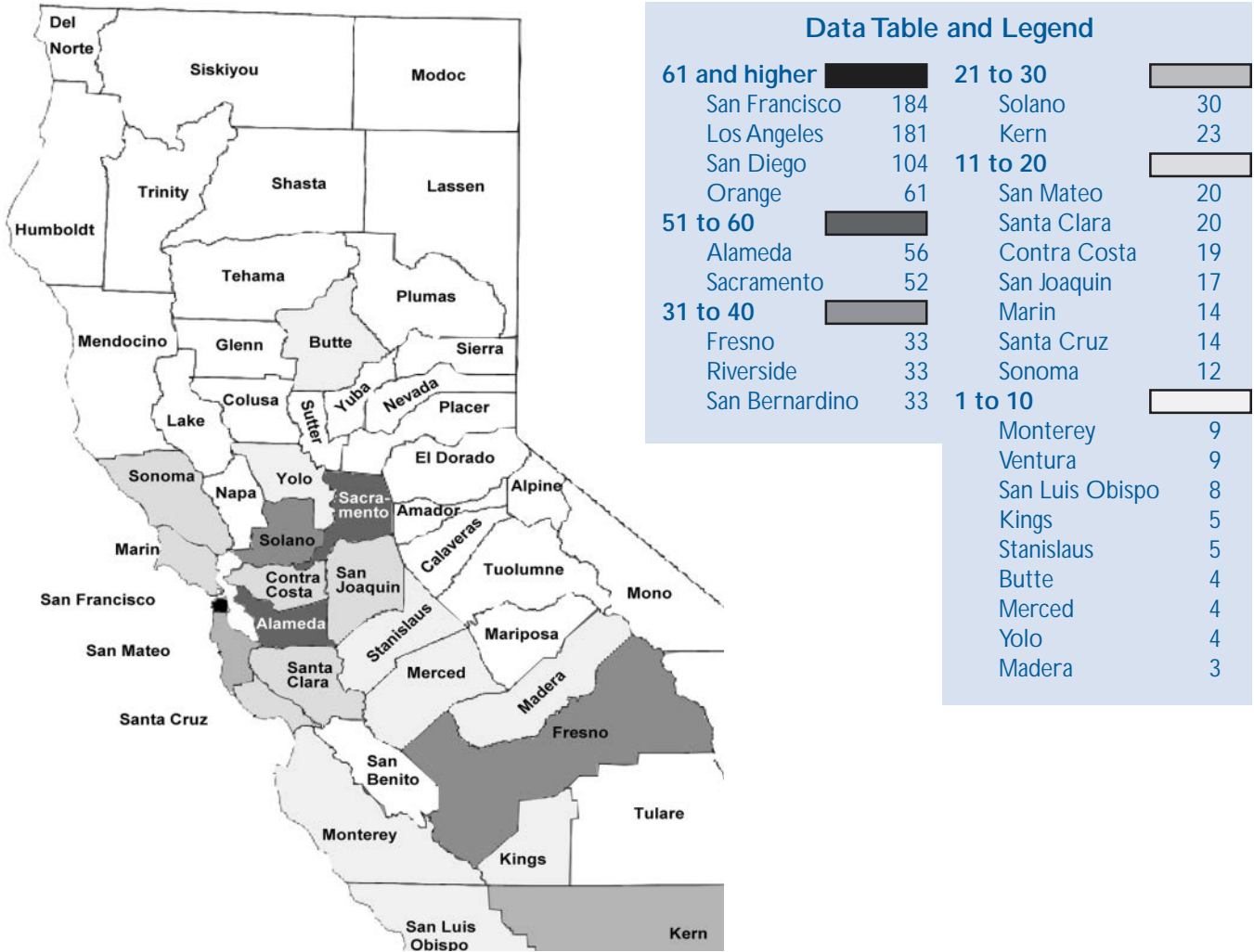
- ▷ The status of SEPs before and after the passage of AB 136;
- ▷ The status of a local declaration of emergency – whether considered, passed, and/or sustained across the six communities;
- ▷ The effect of AB 136 on views about syringe exchange among both those who supported and opposed SEPs;
- ▷ Perceived roles of various local stakeholders in debates about whether to declare a local emergency;
- ▷ Perspectives on the role of AB136 in facili-

**“...[T]here is conclusive scientific evidence that syringe exchange programs, as part of a comprehensive HIV prevention strategy, are an effective public health intervention that reduces transmission of HIV and does not encourage the illegal use of drugs.”**  
US Department of Health and Human Services<sup>11</sup>



**Figure 1: New AIDS cases diagnosed in 2000 where injection drug use was a risk factor**

Includes those who self-reported injection drug use as their only or one of their risk factors for becoming infected with HIV.



- tating or hindering discussions about and implementation of syringe exchange;
- ▷ Perceived benefits and limitations of AB 136 as an approach to syringe access; and
  - ▷ Perspectives on technical assistance and other needs of local communities in informing their response to AB 136.

The study is qualitative in nature and therefore does not necessarily represent the experiences of all California communities. In addition, the study was not designed to measure direct outcomes of AB 136 such as its impact on the number of needles distributed or HIV incidence. In addition, due to concerns about the legality of SEPs (some SEPs, for example, were operating before AB 136 and some SEPs continue to operate in some places even when a local emergency has not been declared), it is not possible to accurately estimate the total number of syringe exchange programs in the six communities or throughout the State of California.

## Methodology

In Summer 2000, the study research team conducted confidential phone interviews with ten key informants, including policymakers, state and local public health officials, and SEP advocates. These interviews helped the team identify key issues related to local consideration of SEPs. This information also informed design of a qualitative survey instrument and selection of jurisdictions to be included for analysis.

The interview protocol was designed to obtain qualitative information about the status and history of SEPs in selected jurisdictions, implementation issues associated with running local SEP programs, and the political dynamics surrounding local consideration of an emergency declaration pursuant to AB 136. It also sought to identify the roles played by various stakeholders in local consideration of AB 136, information or technical assistance needs related to AB 136, and benefits and limitations of AB 136. (See Appendix D for the protocol instrument.)

Six jurisdictions were selected for in-depth qualitative analysis, including five counties (Alameda, Los Angeles, Sacramento, Santa Barbara, and Santa Clara) and one city (San Diego). The jurisdictions were

chosen to reflect variation in geographic region, urbanicity, population, size of HIV epidemic, role of injection drug use in the local epidemic, and stage in consideration of a local declaration of emergency. (See Table 1.)

In Fall 2000, confidential, structured phone interviews were conducted with approximately three stakeholders in each of the six selected jurisdictions. Interviewees included local public health and law enforcement officials, SEP staff, SEP advocates, and funders. In December 2000, the Kaiser Family Foundation convened a Roundtable meeting to discuss the preliminary findings. Invited guests included policy-makers and public health officials from the state, representatives from several local jurisdictions not included in the interviews, as well as HIV policy advocates. Findings were also presented at a colloquium of the California Syringe Exchange Network (CaSEN) in order to solicit comment and additional input.

In addition, a statewide survey of local health officers was conducted in partnership with the California Conference of Local Health Officers (CCLHO). Local health officers play central roles in responding to disease threats in their communities, and they commonly provide epidemiological background and advice on public health policy to elected officials. Responses were received from 47 of the 61 local health jurisdictions in the state.

## Background: State Policy Concerning Syringe Access Across the Country

Regulations related to syringe access and possession are generally the purview of state law. In addition, the U.S. Congress has banned the use of federal funds for syringe exchange programs since 1988; the most recent ban is contained in the federal fiscal year 2001 Labor-Health and Human Services-Education appropriations law.<sup>4</sup> For these and other reasons, state and local governments have emerged as important centers of activity concerning policies to reduce the incidence of HIV infections associated with injection drug use.

State laws that limit access to syringes include drug paraphernalia laws, pharmacy regulations or practice guidelines, and syringe prescription laws.<sup>5</sup>

**Table 1: Characteristics of Jurisdictions Included in Study**

	Population (2000)	Cumulative AIDS Cases (Reported through 2000)	Proportion of State's AIDS Cases (through 2000)	AIDS Cases (Reported in 2000)	Percent IDU- Related AIDS Cases (2000) <sup>1</sup>	Location & Geographic Characteristics <sup>1</sup>
<b>Passed AB 136 Declaration; Renewed Declaration</b>						
Alameda County	1.4 million	6,053	5%	258	22%	Located on eastern side of San Francisco Bay; mix of urban and rural; Oakland is largest city
Los Angeles County	3.8 million	49,923	42%	1,660	11%	Located on Southern California coast; largest county in State (29% of state population); largely urban; Los Angeles County's biggest city
Santa Barbara County	400,000	667	1%	18	<1%	Located on Southern California Coast; mix of urban and rural; largest city is Santa Barbara
Santa Clara County	1.7 million	3,208	3%	116	17%	Located at Southern end of San Francisco Bay Area; mix of urban and rural
City of San Diego <sup>2</sup>	1.3 million	7,932	7%	301	23%	Located in southwest corner of the State; largest urban area in San Diego County
<b>Did Not Pass AB 136 Declaration</b>						
Sacramento County	1.2 million	3,050	3%	172	30%	Located in Central Valley; mix of urban and rural; Sacramento largest city and seat of State Capitol

<sup>1</sup> Includes reported risk as IDU and IDU/MSM

<sup>2</sup> San Diego's City Council passed a declaration, voted not to renew it, and then later reinstated it.

Forty-nine states and the District of Columbia have drug paraphernalia laws that prohibit the manufacturing, distribution, and possession of equipment intended for the use of a controlled substance, although some states exclude syringes from these laws or allow for the possession of a limited number of syringes (California's law does not do either).<sup>5</sup> Twenty-three states have pharmacy regulations or guidelines that impose some restrictions on pharmacy sales to IDUs, such as restricting pharmacists from selling sterile syringes to IDUs or imposing additional requirements on individuals who purchase syringes.<sup>6,7</sup> Six states, including California, have syringe prescription laws – laws requiring a prescription to purchase a syringe – that restrict access to syringes for IDUs (seven other states have such laws but either apply them in only limited circumstances or allow for sales of a limited number of syringes without a prescription).<sup>5</sup>

States have taken a variety of steps to expand access to sterile syringes by IDUs. Several states, including Connecticut, Maine, Minnesota and New York, have amended their drug paraphernalia laws to remove penalties for possession of syringes or to allow for possession of a limited number of syringes. New York and other states have recently passed laws allowing over-the-counter sale of sterile syringes in pharmacies without requiring a prescription.<sup>4</sup>

States are also looking at clarifying the legal status of physician prescription of sterile syringes to IDUs. Researchers have determined that current law in most states, including California, authorizes physicians to prescribe hypodermic needles or syringes to injection drug users as a medical intervention to prevent the transmission of HIV or other blood borne diseases.<sup>8</sup> Such research has also determined that pharmacy sales of prescribed syringes are legal in California and many other states.<sup>8</sup> In Rhode Island, the Department of Health

notified all licensed physicians that syringe prescription is legal in the State. A subsequent study determined that, "physician syringe prescription is a feasible method for increasing injection drug users' access to sterile syringes for HIV prevention," and "provides IDUs with links to medical care, substance abuse treatment, and social services."<sup>9</sup>

Finally, several states have authorized the operation of syringe exchange programs, a public health intervention that communities have used to increase access to sterile syringes in order to stem the number of new HIV infections related to injection drug use. Injection drug users come to SEPs and exchange their used syringes for clean injection equipment.

SEPs also serve as opportunities to provide access to drug treatment programs and HIV prevention services.<sup>10</sup>

Federally-funded studies have consistently found that SEPs can reduce the number of new HIV infections and do not increase drug use. In a March 2000 report, the U.S. Department of Health and Human Services determined that, "there is conclusive scientific evidence that syringe exchange programs, as part of a comprehensive HIV prevention strategy, are an effective public health intervention that reduces transmission of HIV

and does not encourage the illegal use of drugs."<sup>11</sup> Other studies have found that SEPs are cost effective<sup>12</sup> and do not lead to increased rates of crime.<sup>13</sup> The Institute of Medicine has determined that, "For those who cannot or will not stop injecting drugs, the once-only use of sterile needles and syringes remains the safest, most effective approach for limiting HIV transmission."<sup>14</sup>

As of 1998, there were an estimated 131 syringe exchange programs operating in 33 states in the U.S.<sup>15,16,17</sup> Ten states have statutes that explicitly authorize their operation.<sup>5</sup> With the enactment of AB 136, California became one of these states, and the second state to authorize SEPs only after a local

**AB 136 protects local jurisdictions from criminal prosecution for distributing hypodermic needles or syringes in SEPs authorized pursuant to the declaration of a local emergency due to the existence of a "critical local public health crisis."**

declaration of emergency (the other is Massachusetts).<sup>5,18</sup>

### California's Approach: AB 136

On October 7, 1999, California Governor Gray Davis signed AB 136 into law. This legislation protects local jurisdictions from criminal prosecution for distributing hypodermic needles or syringes in SEPs authorized pursuant to the declaration of a local emergency due to the existence of a "critical local public health crisis."

The new law was based on compromise language proposed by the Governor. A previous bill, AB 518, introduced by California Assemblywoman Kerry Mazzoni (D-Novato), would have legally sanctioned SEPs if a local elected body authorized the program and it was part of a comprehensive network of local services. (See Appendix A for AB 518 text.) AB 518 also explicitly protected both providers and users of exchange services from criminal prosecution for possession of syringes during the exchange.

The compromise language offered by the Governor removed from AB 518 all program detail, providing instead a one-sentence amendment to the State's Health and Safety Code Section 11364.7(a). This section of the Health and Safety Code makes it a misdemeanor to furnish drug paraphernalia knowingly, or under circumstances where one should reasonably know that it would be used to inject a controlled substance. The compromise legislation of AB 136 added the following language to Section 11364.7(a):

*"No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis."*

This language protects local governments and their employees and authorized contractors that

provide syringe exchange services from criminal prosecution for distributing syringes and needles if there is a declaration of a local emergency. It does not explicitly provide protection against civil liability, and differences of opinion exist as to the actual legal risks involved in implementation of a SEP. The law also does not protect the users of SEPs from prosecution for possession of drug paraphernalia.

In requiring jurisdictions to declare a local emergency, AB 136 did not specifically reference any other California law. With one exception, however, local jurisdictions that have used AB 136 to authorize SEPs have cited the California Emergency Services Act in their emergency declarations. The California Emergency Services Act requires the renewal of a "local emergency" every 14 - 21 days, depending on how frequently the governing body meets. Whether or not AB 136 actually requires regular renewal of emergency declarations remains open to interpretation.

In January 2000, Assembly Bill 136 took effect. Prior to its passage, approximately two-dozen SEPs operated in California<sup>19</sup> but their legal status was uncertain. Many of these were operated under local declarations of emergency. Several jurisdictions, some with sizable numbers of IDUs, did not initiate or approve SEPs, at least in part because of the potential for State legal action.<sup>20</sup> (See Appendix B for AB 136 text and

Appendix C for a more complete history of legislative efforts to legalize syringe exchange in California.)

**As of 1998, there were an estimated 131 syringe exchange programs operating in 33 states in the U.S. Ten states have statutes that explicitly authorize their operation.**

For a current listing of state policies regarding syringe exchange programs and other syringe access policies, see Kaiser Family Foundation's State Health Facts web page at: [www.statehealthfacts.kff.org](http://www.statehealthfacts.kff.org)

# Study Findings

## Status of Syringe Exchange Programs in Six California Communities

As of February 2001, five of the six jurisdictions included in the study (Alameda, Los Angeles, Santa Barbara and Santa Clara Counties and the City of San Diego) had declared local emergencies utilizing AB 136, including two that did so during the course of this study (Los Angeles County and the City of San Diego).

The San Diego City Council voted not to renew its emergency declaration in December 2000, although an advisory group to the Council has proposed the implementation of a privately-funded one-year pilot SEP program.<sup>21</sup> The City Council voted in November 2001 to reinstate the local emergency declaration and to authorize a pilot SEP program. As of this writing, Sacramento County public health officials and advocates have not moved forward with an emergency declaration due to insufficient political support from the County Board of Supervisors. Unauthorized or “underground” exchanges currently operate in at least two of the jurisdictions included in the study. Two jurisdictions provide direct funding to SEPs.

Since passage of AB 136, at least three jurisdictions across the state (Alameda, Santa Cruz and Santa Clara) have joined San Francisco, Marin, the City of Los Angeles and Berkeley in contributing local funds for operation of SEPs.<sup>25</sup>

Different dynamics were observed in each jurisdiction studied:

▷ **Alameda County:** Public health officials, in partnership with community advocates, initiated a successful effort to pass a local emergency declaration pursuant to AB 136. The declaration allowed operators of an existing “underground” syringe ex-

change program to begin operating in partnership with public health officials, with the County now providing direct funding.

▷ **Los Angeles County:** There are multiple local public health jurisdictions in the County; the City of Los Angeles’ health department took a lead role in supporting an emergency declaration at the County level. The City of Los Angeles declared a state of emergency in 1994, however the declaration was not renewed regularly after 1995. The County declared an emergency pursuant to AB 136 in 2000.

▷ **Sacramento County:** The County Board of Supervisors passed an emergency declaration in support of SEPs in 1994, but the program was not implemented and the County has not passed a new declaration since AB 136 became law. While there is support for SEPs among public health professionals and community advocates, opposition remains strong among local law enforcement officials and a majority of members of the County Board of Supervisors reportedly oppose declaring a new state of emergency under AB 136.

▷ **Santa Barbara County:**

Public health leaders and community advocates were key in passage of a unanimous local emergency declaration by the County Board of Supervisors on June 6, 2000 without any vocal opposition.

▷ **Santa Clara County:** In 1994, the County passed a declaration of emergency to enable a local SEP and provided some funding. Two years later, County funding was discontinued amid legal concerns raised by then-Attorney General Dan Lungren. After passage of AB 136, law enforcement officials, public health leaders, and community members helped pass another emergency declaration consistent with the new legislation. County funding to

Individuals interviewed for the study were nearly unanimous in their assessment that the legislation has facilitated discussions about local consideration of syringe exchange programs.



**Table 2: Status of Emergency Declarations Pursuant to AB 136**

	Considered declaration of AB 136-authorized emergency	Passed declaration of emergency	Regular renewal of emergency declaration
Alameda County	Yes	Yes	Yes
Los Angeles County	Yes	Yes	Yes
Sacramento County	No	No	N/A
Santa Barbara County	Yes	Yes	Yes
Santa Clara County	Yes	Yes	Yes
City of San Diego	Yes	Yes	Yes <sup>1</sup>

<sup>1</sup> See text; San Diego's City Council passed a declaration, voted not to renew it, and then later reinstated it.

support the SEP is now provided.

▷ **City of San Diego:** A community-based foundation led a successful effort to pass an emergency declaration in the City in October 2000. However, renewal of the declaration subsequently failed, in part due to changes in City Council membership. At the request of the City Council, a community advisory group issued a report in October 2001 urging the adoption of a 1-year, privately-funded pilot syringe exchange program. In November 2001, the City Council voted 5-4 to renew the emergency declaration and implement the pilot program.

**Dynamics of Local Consideration of AB 136 Declaration**

Individuals interviewed for the study were nearly unanimous in their assessment that the legislation has facilitated discussions about local consideration of syringe exchange programs. This assessment was independent of geography, size of the jurisdiction, local political environment, and interviewees' personal opinions of SEPs. Passage of AB 136 did not appear to change fundamental attitudes of support or opposition to SEPs generally, but it did change the dynamics of community discussions regarding SEPs.

Different factors guided the consideration of an emergency declaration in each community, but jurisdictions that passed local emergency declarations (Alameda, Los Angeles, Santa Barbara, and Santa

Clara) received strong support from key community stakeholders. Political opposition, including, in some cases, from law enforcement leadership, was the most significant reason reported as to why some areas struggled with passage or renewal of an emergency declaration. This was the case in Sacramento County and in the City of San Diego.

Several themes emerged from informants regarding local consideration of an emergency declaration:

- ▷ Support or opposition from local and state law enforcement groups was a key element in local consideration of an AB 136-sanctioned emergency declaration. For example, a health official in one community noted that the united opposition to SEPs by the police department, sheriff, and the District Attorney was an important influence on the Board of Supervisors. A participant in the study's roundtable meeting noted the close connection between law enforcement and elected officials in his community and the need to convince police department leadership as an essential first step before approaching the Board of Supervisors regarding a declaration of emergency.
- ▷ The lack of explicit protection for governments from civil liability for operation of a SEP was an issue identified by several informants. A May 2000 letter from the Califor-

nia Narcotics Officers' Association to local elected officials suggested that the risk of civil liability was significant for jurisdictions approving SEPs using AB 136.<sup>22</sup> The CCLHO issued an opinion in July 2000 stating that the actual risk of civil liability is limited.<sup>23</sup> There has been no definitive legal ruling on this matter to date.

### Roles of Specific Stakeholders

Informants in the six jurisdictions were asked to discuss roles that different stakeholders had played in local consideration of an emergency declaration.

#### *Elected Officials*

Elected officials charged with authority under AB 136 to declare a local emergency are obviously at the center of local deliberations over sanctioning of SEPs, and yet they were seldom identified as leaders in the effort to establish legalized SEPs. As one community-based SEP advocate said, elected officials “allowed themselves to be informed.” Several elected officials led efforts to oppose a declaration. Others readily supported efforts when the issue was brought to them. But even where declarations were passed, several SEP proponents voiced concerns about the tentative nature of support from local elected officials and cautioned that future events (or elections) could quickly end support from the majority of the Board of Supervisors or City Council.

#### *Law Enforcement*

Law enforcement officials played a crucial role in many communities as declarations of emergency were considered. Police were also important to the success of syringe exchange programs themselves, whether or not a declaration had been made. The majority of police officials interviewed

for the study expressed opposition to SEPs. Some law enforcement officials voiced concern that SEPs would increase crime by “facilitating drug trafficking” and “supporting drug use.” One public health officer remembered that, “the Sheriff said he didn’t care what the research said.”

Still, some law enforcement officials were comfortable allowing syringe exchanges to exist in the community. One law enforcement official noted a benefit of these programs in addition to addressing HIV infection rates. “I clearly see it [SEPs] as a public health issue,” he said. “We had numerous complaints about discarded syringes in parks and playgrounds here and once we opened a [SEP], the complaints went away. It has had a positive impact in reducing discarded syringes.”

An Assistant District Attorney said, “We are looking at the drug problem, getting the person into the drug treatment court, but prosecuting them for syringes isn’t going to accomplish anything. Getting them through drug treatment court is going to do something. It is much worse for an individual to have hepatitis C or HIV than to be an addict.”

Law enforcement officials and advocates alike acknowledged the competing perspectives driving much of the SEP debate. A police officer said that even though he appreciated the possibility that SEPs would contribute to public

health, his job was to enforce the law and he had a different goal than most SEP advocates. One SEP advocate from a community-based organization acknowledged this difference of perspective: “[The police...] have a very specific job to do, including preventing illegal drugs,” she said. “So I can see that it’s a challenge for them.”

Some of the communities included in the study have established formal or informal agreements with law enforcement that allow local exchanges to exist even when an emergency declaration is not in place. Yet some communities reported ongoing

**Political opposition, including, in some cases, from law enforcement leadership, was the most significant reason why some areas struggled with passage or renewal of an emergency declaration.**



hostile relationships with the police force. One staff member from a county health department said that, “The cops actually go up to the storefront of the harm reduction building to create a chill. They set up three or four cars outside the exchange to bust exchangers, and it threatens workers at the exchange.”

### *Local Public Health Officials*

As noted above, local health officers typically provide epidemiological information and advice on health policy to local lawmakers. Public health officials played important, though varied, roles in the local debates concerning an AB 136 emergency declaration. Many informants noted their local health department’s support for an emergency declaration. In one community, efforts to pass a declaration were driven by the public health officer. In another, health officials played no role; one community-based advocate reported that, “Our health department was effectively gagged several years ago,” by opponents to SEPs on the Board of Supervisors.

### *State Health Officials*

Many informants raised concerns about the lack of guidance or technical assistance from state public health officials. There was a widespread sense among interviewees that the state could have been more involved in providing technical assistance to local jurisdictions on several issues, including consideration of passage of a local declaration and implementation of their legally sanctioned SEPs. Still, one informant said that state officials had been helpful by “unofficially” passing on information. State Office of AIDS staff have noted that Governor Davis’ emphasis on syringe exchange remaining a local (rather than state) function led the Office to conclude that it should play a very limited role in AB 136 implementation (confidential personal communications).

**“There is a need for a neutral party, such as the State Health Department, to provide more information on what the legislation means.”**

*Local Health Official*

### *Community-Based Organizations*

The role of community-based groups also varied greatly across the six jurisdictions. In some, they led efforts for a local declaration. In others, they played a more limited role. The San Francisco AIDS Foundation often provided valuable information and technical assistance to local agencies. According to one informant from Los Angeles, community organizations in that area were less involved in efforts to pass a local declaration because syringe exchanges were already operating in that community.

### *Funders*

Private funders generally played a very limited role in supporting syringe exchange programs or in local consideration of an emergency declaration in the six jurisdictions included in this study. (It should be noted that several foundations have played important roles on SEPs programming nationally and in California). Several informants recalled conversations with foundation staff who cautioned that they were unable to provide support for illegal activity, such as syringe exchanges. One exception was San Diego, where a private foundation was the lead agency advocating for SEPs and passage of a declaration. As noted below, the legal legitimacy brought by passage of AB 136 resolutions was seen by many informants as a new opportunity to encourage foundations to fund SEPs.

### *Media*

The news media also played a variety of roles in communities considering emergency declarations, emerging as an important factor in some local debates. Informants suggested that where the media took sides, it was often perceived as supportive of local emergency declarations (though not in all jurisdictions). Other informants noted that media attention was quite limited and there were complaints about the quality and objectivity of news stories on SEPs. One community-based advocate claimed that the media was “clueless” on the issue. A local health

officer complained that, "Individual reporters engage in 'drive-by' reporting...If it is sensational, they cover it, but not in depth."

### Information and Technical Assistance Needs

Many of those interviewed identified the need for technical assistance related to local consideration of AB 136 declarations and the safe and efficient operation of syringe exchanges. Specifically, they cited the need for what was perceived to be objective information about SEPs, and for information about the status of SEPs in other communities across the State. A law enforcement official, for example, noted the need for objective information on the efficacy of SEPs and information regarding program implementation. In this official's jurisdiction, a local organization had made a wealth of information available to government staff and elected officials, but there was concern about the validity of this information since the organization was itself promoting SEPs.

An informant from a county health department said, "There is a need for a neutral party, such as the State Health Department, to provide more information on what the legislation means." Recalling preparations for local consideration of a declaration of emergency, a staff member at a community-based organization lamented that, "There is no single clearinghouse for information. We've spent a lot of time calling every city and county to get information on what they put in their declarations."

Several interviewees said a packet of information on SEP-related research and implementation issues distributed after the passage of AB 136 by the San Francisco AIDS Foundation was extremely useful. But others cautioned that there would be resistance in some areas of the state to accepting information from San Francisco, as that city is perceived to be unique. Informants also identified several other organizations that had provided useful information about SEPs, including the California Syringe Exchange Network (CASEN), the North American Syringe

Exchange Network (NASEN) and the CCLHO. The U.S. Centers for Disease Control and Prevention (CDC) was also identified as having high credibility; several interviewees noted that the CDC could play a constructive role by distributing objective, evidence-based information on SEPs to local communities.

Many informants said that once a local declaration is made and the health department is ready to move forward with setting up an exchange, officials need information on program operations, including acquisition and disposal of SEP-related supplies, program evaluation and policies, and other implementation issues. Said one health department staffer, "we need a framework for the operation of programs." Several informants said assistance with seeking funding and training staff would also be very helpful.

**"We are opposed to a SEP. However, we will do whatever is decided and we'll work towards the goal of having the best SEP we can have."**  
*Local Police Official*

### Identified Benefits of AB 136

There was a virtual consensus among interviewees that passage of AB 136 helped generate new or renewed political support and advocacy to establish legally sanctioned SEPs, as well as increased legitimacy. For example, in one jurisdiction a private organization had for several years been sponsoring an education campaign in favor of SEPs that targeted local elected officials and the public. Yet it was not until passage of AB 136 that the community was able to take the next step towards formal

consideration of a sanctioned program. An interviewee from another jurisdiction observed that AB 136 "made the conversation [about creation of a SEP] possible."

Another interviewee noted that local law enforcement officials had not been willing to engage in discussion about SEPs before passage of the law. After AB 136, law enforcement "came to the table" and began to work with other local government departments and community members on consideration and design of a program. One police officer remained opposed to SEPs after passage of AB 136, but he saw his role differently as the local elected officials neared legal sanctioning of exchange pro-

grams. Speaking for the police department, he said, "We are opposed to a SEP. However, we will do whatever is decided and we'll work towards the goal of having the best SEP we can have."

AB 136 also appears to have improved opportunities for public and private funding for SEPs. Since these programs very often struggle to identify adequate funding to maintain basic services, expanded opportunities for funding can have an important impact on the quality and quantity of services provided. The law helped leverage additional private funding, and in two of the counties studied, Santa Clara and Alameda, public funding has been awarded to operate SEPs. As noted above, private foundations often balk at funding perceived "illegal" activities. Though it was not clear whether any communities in the study received foundation funding subsequent to passage of an emergency declaration, the potential for legal legitimacy was seen by many informants as an opportunity to open up new sources of financial support.

Legal legitimacy also brought improved opportunities for collaboration between public health, SEP staff, and other service providers. According to informants in several jurisdictions, local public health officials were able to be involved with SEPs in more explicit ways. These closer ties with public health departments enhanced opportunities to link SEP users with the array of services available through the county, including STD testing, drug treatment, health care, and prevention interventions.

As more SEPs became legally sanctioned and more widely publicized there was also improved understanding and availability of linkages between SEPs and wrap-around health and social services. Several jurisdictions reported improved and more open information sharing between SEP staff and other public and community service providers.

Finally, according to informants, AB 136 had a positive impact on many SEP clients who exhibited improved knowledge of and willingness to use SEPs. In general, informants noted that legitimization of SEPs made clients more comfortable using services, largely because they had fewer concerns about being arrested or harassed by law enforcement officials. Said one SEP worker, "Clients are less fearful of showing up now." However, because SEP clients

were not interviewed, no information is available on their perspectives about the relative safety of using SEPs, particularly in light of AB 136.

### **Identified Limitations of AB 136**

Despite an enhanced sense of legitimacy and increased opportunities for discussion and consideration due to AB 136, several limitations were also identified. The two most common concerns raised were the perceived need for ongoing renewal of an emergency declaration, and the lack of legal protections for SEP clients.

Many respondents indicated that the requirement for local jurisdictions to declare an emergency, and perceived need to renew these declarations every 14 - 21 days, may limit the ability to use AB 136, even in communities where there is significant political support for SEPs. The perceived renewal requirement exacerbates political risks for local elected officials by forcing them to continually cast a difficult vote on SEPs. As one interviewee said, "the Board of Supervisors [in our community] is not willing to take those risks." In general, informants indicated that the ongoing need to renew an emergency declaration is administratively burdensome and creates an unnecessary barrier for local jurisdictions.

One person suggested that the state make a blanket declaration of emergency, thereby giving every community the option to approve SEPs. "This is a state public health emergency," she said, "and the programming should not depend on local politics."

According to some informants, the need for a declaration may also engender more visible opposition than was previously apparent in some communities. Law enforcement officials who are willing to "look the other way" while an underground SEP provided services may become mobilized against proposed legal changes that would sanction SEPs, particularly if a local declaration of emergency is repeatedly brought up for a vote. One interviewee noted that, "The Sheriff and the District Attorney said they would show up every two weeks to oppose the declaration."

Many interviewees voiced concern that AB 136 does not go far enough in protecting SEP clients. As noted above, several communities have established

informal agreements with their police departments assuring that officers will not pursue or prosecute individuals engaged in exchange services at specific hours in specific areas of the county. Still, such agreements were seen as inadequate to protect SEP clients or fully address their fears of coming for SEP services. As one interviewee said, the law, “should protect the exchanger... (and) create a radius of protection around exchanges.”

The majority of law enforcement officials interviewed for the study did not share this concern about the lack of legal protection for SEP clients. But one police officer noted that this lack of explicit legal protection means that law enforcement officers who have agreed not to enforce drug paraphernalia laws during certain hours of SEP operation must refrain from monitoring the activities of SEP clients while they are at the exchange. This concerned the officer, who said that if the clients’ SEP-related activities became legally protected, law enforcement would have greater flexibility to monitor individuals for non-SEP related criminal behavior during the time SEPs were open.

Where AB 136 made SEPs legal, it also tended to increase program requirements for SEPs and intensify the demand for ancillary services without providing additional state resources. The lack of new commitments of funding through AB 136 was noted by many interviewed for the study. They cited increased funding needs for alcohol and drug treatment services, evaluation, planning, and legal costs in the wake of the emergency declaration. One interviewee said that local SEP clients are given priority for already scarce drug treatment services. This leads to “shuffling the waiting list” rather than creating new drug treatment slots.

Even though many interviewees identified the need for more assistance from the state, there were also numerous concerns raised that increased government involvement had complicated the work of underground exchanges and led to politicization of program design. Programs that had been operating

underground may have previously worried about legal prosecution or the difficulty of raising funds. Now, with a legal sanction, came increased involvement from the county health department and reduced autonomy for SEP personnel. One interviewee said that, “the County became bossy and told an underground program not to open any more sites without approval.” In one community, a SEP worker said the County did not acknowledge the legitimacy of the community organizations that had been operating a SEP before the local declaration.

A county health department official explained the complexity involved in local government administration of the SEP: “Non-public health based SEPs can make decisions about policy at a much more grassroots level while we have to go back to elected officials to get permission to do something as simple as buying cookers. We have to make our case to the Sheriff, District Attorney, Police Chief, and the Board of Supervisors.”

Some worried that with increased local government involvement, program and policy issues at SEPs were being decided based on what the Board of Supervisors would accept rather than what was best for SEP clients. In one county, health officials had to assure two elected officials that the SEP would not be located in their districts before they would support passage of a declaration.

Others said that legal sanction of SEPs led to changes in program guidelines that made the program less “user friendly” for clients.

One informant worried that AB 136 may actually give local law enforcement increased license to prosecute local SEP staff and clients in jurisdictions that have chosen not to enact an emergency declaration. The informant was concerned that, in these jurisdictions, law enforcement may believe it has implicit support for prosecuting clients and staff and making it more difficult for new underground exchanges to open. A recent legal ruling appears to bear out this concern. In June 2001 a Sacramento judge ruled the

**Identifying sufficient funding and an appropriate location for SEP programs emerged as primary implementation challenges facing local programs.**

“medical necessity” defense used by a SEP volunteer was invalid. The judge referenced the County’s decision not to legalize syringe exchange under AB 136 in the ruling.<sup>24</sup>

**Program Implementation Issues**

Even in communities with AB 136 emergency declarations and support for SEPs, informants identified several program implementation challenges. Identifying sufficient funding and an appropriate location for SEP programs emerged as primary implementation challenges facing local programs.

Although financing improved for several SEP sites after passage of a local declaration, the lack of sufficient funds remained an important problem for many programs and was the most frequently identified challenge to SEP implementation. One informant said her site relied on donated syringe disposal equipment because they could not afford to purchase biohazard containers for used syringes. At another site, adequate rental program space and basic supplies such as health information materials were beyond the program’s financial means.

Currently, no state funding is used to purchase sterile syringes for use by SEPs, although California state law does not prohibit the use of state funds for syringe exchange, and local health jurisdictions that receive state HIV prevention funding could request authorization to use existing state-only funds for these programs (though it is not clear that such a request would be approved).

Finding a suitable location for the SEP was also an important issue for many counties, even where there were long standing programs. In some communities, siting became a significant political concern.

For example, in one jurisdiction, an elected official was on record opposing the SEP because it was in his district and he believed it interfered with business development and economic revitalization efforts. Other jurisdictions reported the ongoing need to address concerns raised by local residents. One county health department employee said, “We want to maintain and grow the community support for the program so we are being very systematic and careful about choosing sites. And finding a storefront and an owner who would lease to this program is a tough sale.”

Staff at several sites noted a need for more resources in order to initiate appropriate program evaluation. Several informants also identified establishing and maintaining referral mechanisms with other service providers as an important challenge. The chronic shortage of drug treatment program slots also emerged as a theme in the interviews. At one SEP, almost half of the SEP clients reportedly sought drug treatment services, but staff said that almost no such services were available locally.

Informants were also asked whether there was a need for identifying staff and volunteers with expertise in SEP operation. Most informants said that, whether or not their jurisdiction had passed a declaration, SEPs that had been operating for some time provided ample staffing expertise to the newer local programs.

**Findings from CCLHO Statewide Survey of Local Health Officers**

The views of key informants in six communities were supplemented by a statewide survey of local

**Table 3: Results of CCLHO Survey of Local Health Officers:**  
 Their perception of support/opposition to syringe exchange programs from major community stakeholders.

	Support	Oppose	Neutral
General Community	16	10	14
Supervisors/City Council	15	16	5
Police/Sheriff	7	24	9
District Attorney	7	16	10*
Courts	3	12	12
Other key local groups**	10	3	2

\*DA officially neutral in one county but has stated he is poised to close the program if there are problems.  
 \*\*For example, medical societies, drug recovery organizations, HIV/AIDS providers, and community-based organizations.  
 NB: 3 respondents checked multiple boxes.



health officers conducted in conjunction with the CCLHO.

Across the state, data from the CCLHO survey of local health officers indicate that there are SEPs in at least 16 jurisdictions in the state, 11 of which were authorized using AB 136. The 16 jurisdictions with SEP sites represent 34 percent of the 47 local health jurisdictions responding to the survey.

In general, the CCLHO survey yielded similar findings to the qualitative interviews. In the CCLHO survey, “lack of political support” was the most commonly identified reason for not moving forward with efforts to legalize SEPs and was cited by more than one-third of local health officers (36%, or 17 of 47 health officers). Fifteen cited “opposition from law enforcement,” and eight named, “other priorities of local public health,” as reasons for not acting to legalize syringe exchange programs.

The views of local health officers concerning the roles of various community stakeholders were also similar to those expressed by many of those interviewed at the six sites. In the CCLHO survey, local health officers were more likely to say that police/sheriffs and District Attorneys were opposed to SEPs than supportive of them. Police/sheriffs were most

often cited as being in opposition to SEPs (24 opposed vs. 7 supportive and 9 neutral). Sixteen (16) informants said DAs were opposed. Local health officers were almost as likely to say that Board of Supervisors/City Councils were supportive (15) as opposed (16). CCLHO survey informants were mixed in their assessment of community support for SEPs. Sixteen (16) informants said their community was supportive, 10 said their community was opposed, and 14 identified the community as neutral. (See Table 3.)

The CCLHO survey also asked which stakeholders had initiated or were initiating local efforts to consider an AB 136 declaration. Twelve informants identified “public health officer/health department,” five identified “community organizations,” four identified “elected officials,” and two identified “current underground SEP providers.”

Local health officials responding to the CCLHO survey also reported that local health departments have technical assistance needs on the issue of syringe exchange. As one informant noted, “Public health staff would benefit from expert advice, science-based information, and best practices examples...”



# Policy Options

The findings of this study document a variety of perspectives on the role of syringe exchange programs and the impact of AB 136. Many informants identified legal and administrative modifications and technical assistance opportunities that could facilitate communities' consideration of AB 136. Several of these policy options are presented below, grouped into four main areas: potential modifications of AB 136 related to the emergency declaration, potential modifications of AB 136 to protect SEP clients, opportunities for technical assistance, and other opportunities for expanding access to sterile syringes.

## Potential Modifications of AB 136 Related to Emergency Declaration

Clarification or changes in the requirement for regular renewal of a local emergency declaration were most noted by informants:

- ▷ **County counsel clarification of legal requirements.** As noted earlier, AB 136 leaves to local interpretation the question of whether or not regular renewal of an emergency declaration is required. The California Emergency Services Act requires regular renewal of a local emergency. AB 136 did not specifically reference the California Emergency Services Act, but, with one exception, local jurisdictions that have used AB 136 to decriminalize SEP have cited the Emergency Services Act in their emergency declarations. Jurisdictions could seek clarification from their county counsels regarding the actual legal requirements for renewal of declarations of emergency under AB 136.
- ▷ **Modify or eliminate renewal requirement.** California law could be amended to modify the timeframe for renewal of an emergency declaration pursuant to AB 136 (key informants recommended anywhere from 6 months to 5 years), eliminate the need to renew the declaration altogether, or

clarify that frequent renewals are not required. Jurisdictions might be allowed to set the renewal period themselves, within certain parameters.

- ▷ **Authorize renewals by local public health officers.** In addition to authorizing the declaration of a local emergency by a governing body of a city or county, Government Code also authorizes "an official designated by ordinance adopted by that governing body" to declare a local emergency for a period not to exceed seven days, unless ratified by the governing body. California Health and Safety Code could be amended to authorize a governing body to vest authority for the ongoing renewal of a local emergency declaration with its senior public health officer, subsequent to an initial vote by the governing body. Interviewees indicated this policy option would reduce the administrative burden of renewing the emergency declaration while helping to depoliticize the renewal process.

## Potential Modifications of AB 136 to Protect SEP Clients

The second most common policy recommendation by informants was that AB 136 be modified to provide greater protection for SEP users:

- ▷ **Exempt individuals using SEPs authorized by AB 136, from syringe paraphernalia laws.** AB 136 exempts local entities, their employees and agents from criminal prosecution for distributing hypodermic needles or syringes to participants in an SEP authorized pursuant to AB 136. But individuals in possession of syringes obtained from an authorized syringe exchange program are not protected from criminal prosecution. The California Health and Safety Code could be amended to exempt



participants in a SEP authorized pursuant to AB 136, or clients of any SEP, from criminal prosecution for possession of sterile syringes. (AB 1292, currently being considered in the California Legislature, would provide limited protection for possession of hypodermic syringes and would authorize pharmacists to sell syringes without a prescription.)

### Potential Opportunities for Technical Assistance

Interviewees identified a number of ways the state and others could assist local communities as they debate emergency declarations and pursue implementation of exchange programs:

- ▷ **Improve public education efforts and technical assistance, and expand opportunities for information exchange among various stakeholders.** Since passage of AB 136, most interviewees have relied on information and technical assistance provided by individuals, organizations and local public health officials in communities that had previously declared an emergency. However, several study informants felt the need for more ongoing technical assistance (TA), either from the state or another objective source. To date, the California State Office of AIDS has played a minimal role in education, technical assistance and information regarding AB 136 and syringe exchange. The state could expand its role by directly or indirectly providing TA on issues related to consideration of an emergency declaration, interpretation of state law, and administration of exchange services and related support programs. One informant

suggested that the state identify key contact people within the Department of Health Services who could serve as a resource to county staff on SEP-related questions.

Another attendee of the study's roundtable session suggested the State provide a continually updated list of the status of emergency declarations in California communities.

- ▷ **Sponsor conferences or other opportunities designed to bring together the multiple players in HIV prevention for injection drug users.** Several interviewees noted that elected officials, law enforcement, public health workers, and advocates bring different perspectives to local debates around syringe exchange. In addition, people working in drug treatment and addiction programs are not always brought into local deliberations around syringe exchange, even though their services are an integral part of successful syringe exchange programs. The state or others could sponsor or fund conferences or trainings that bring together community stakeholders. These events would be an opportunity to share the latest science on the efficacy of syringe exchange, discuss program implementation issues, and facilitate discussions between key players.

### Other Policy Options

Many study informants also suggested broader changes to California law, outside the scope of AB 136, which could facilitate access to sterile syringes by IDUs, including removing penalties for possession of syringes, allowing physician prescription of syringes, exempting clients of all SEPs (not just AB 136-authorized SEPs) from State drug paraphernalia laws, and allowing over-the-counter sale of sterile syringes in pharmacies without requiring a prescription.

# Conclusion

AB 136 has played an important role in local consideration of syringe exchange programs in communities across the State of California. The new law has been a catalyst for local discussions and debates over whether to declare an emergency and sanction SEPs, and it has led to passage of declarations in several areas. With legal sanction came several benefits for these programs, including direct county government funding in some jurisdictions and increased collaboration between SEPs and other public service providers.

Yet the law did not settle the ongoing debate over syringe exchange in many communities. Many law enforcement officials, in particular, continue to have serious reservations about SEPs and their potential effect on the police department's ability to enforce other drug-related laws. In addition, those who support SEPs raised concerns about what they saw as limitations in AB 136, including the perceived requirement for frequent renewal of an

emergency declaration and lack of legal protection for SEP clients. For some SEP staff and advocates, the increased government role made possible by AB 136 was a mixed blessing, bringing additional resources but also creating increased government oversight and political scrutiny.

Policymakers have a variety of options as they consider future actions to reduce HIV infections among injection drug users and their sexual partners and children. Several study informants recommended specific changes to AB 136 and to other state law. Expanded technical

assistance to communities and increased dialogue between key stakeholders will both be important as cities, counties and the state continue to identify the best means to reduce new HIV infections in California. Policymakers in other states can apply lessons from California's early experiences with AB 136 implementation as they consider similar legislation to reduce new HIV infections in their communities.

**The law did not settle the ongoing debate over syringe exchange in many communities.**



# Appendix A: Text of AB 518

## **BILL NUMBER: AB 518 AMENDED BILL TEXT**

### **AMENDED IN ASSEMBLY APRIL 28, 1999**

INTRODUCED BY Assembly Member Mazzoni (Principal coauthor: Assembly Member Shelley) (Coauthors: Assembly Members Aroner, Hertzberg, Keeley, Kuehl, Lempert, Longville, Migden, Romero, and Washington) Steinberg, Washington, Wesson, and Wiggins) (Coauthor: Senator Solis)

FEBRUARY 18, 1999

An act to repeal and add Section 4145 of the Business and Professions Code, and to add and repeal Chapter 15 (commencing with Section 121340) of to Part 4 of Division 105 of the Health and Safety Code, relating to AIDS.

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 518, as amended, Mazzoni. AIDS: clean needle and syringe exchange projects. Existing law authorizes pharmacists and physicians to furnish hypodermic needles and syringes without a prescription or permit for human use in the administration of insulin or adrenaline. This bill would authorize clean needle and syringe exchange projects, and would authorize pharmacists, physicians, and certain persons authorized under those projects to furnish hypodermic needles and syringes without a prescription or permit.

This bill would state the findings and declarations of the Legislature regarding infection with the human immunodeficiency virus (HIV), and development of acquired immune deficiency syndrome (AIDS) among injection drug users. This bill would authorize counties, cities, or cities and counties to develop a clean needle and syringe exchange project upon the action of that county, city, or city and county and certain other local officers. This bill would enumerate the components of a clean needle and syringe exchange project, and would require that the project be part of a network of voluntary and confidential services where available. This bill would require that a participating county, city, or city and county assess the project using certain criteria, and submit a progress report that takes into consideration data from the assessment to the State Director of Health Services, the Governor, and the chairpersons of both health committees of the Legislature. Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

### **THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The rapidly spreading acquired immune deficiency syndrome (AIDS) epidemic, and the more recent spread of blood-borne hepatitis, pose an unprecedented

public health crisis in California, and threaten, in one way or another, the life and health of every Californian.

- (b) Injection drug users are the second largest group at risk of becoming infected with the human immunodeficiency virus (HIV) and developing AIDS, and they are the primary source of heterosexual, female, and perinatal transmission in California, the United States, and Europe.
- (c) According to the State Office of AIDS, injection drug use has emerged as one of the most prevalent risk factors for new AIDS cases in California.
- (d) Studies indicate that the lack of sterile needles available on the streets, and the existence of laws restricting needle availability promote needle sharing, and consequently the spread of HIV among injection drug users. The sharing of contaminated needles is the primary means of HIV transmission within the injection drug user population.
- (e) As of December 1996, 32 percent of the 573,800 reported cases of AIDS in the United States were associated with injection drug use. Of the 49,764 cases of AIDS presumed to be transmitted through heterosexual sex, 44 percent of the cases occurred among the sexual partners of injection drug users. Of the 6,891 pediatric AIDS cases related to a mother with or at risk for HIV infection, 59 percent were related to injection

drug use. The number of reported AIDS cases reflects only a fraction of the total number of persons infected with HIV.

- (f) An estimated 5.7 percent, 10.3 percent, and 7.1 percent of injection drug users entering methadone treatment programs between 1993 and 1994 in Contra Costa, San Francisco, and Alameda Counties, respectively, were infected with HIV. Public health officials generally consider the seroprevalence rates of those entering treatment to be significantly lower than the true rate of HIV infection among the injection drug user population as a whole.
- (g) Most injection drug users use a variety of drugs, mainly heroin, cocaine, and amphetamines. Because amphetamine- and cocaine-injecting drug users inject more frequently than heroin users, their risk for HIV infection is higher.
- (h) Studies of injection drug users in New York, New York; San Francisco, California; Tacoma, Washington; Boulder, Colorado; Portland, Oregon; and other cities in the United States indicate that injection drug users are concerned about AIDS and do change their behavior when offered, in a nonjudgmental setting, reasonable strategies to protect themselves. A UCLA study of prisoners in the county jail who injected drugs indicated a significant decrease in needle sharing after the inception of clean needle and syringe exchange in Los Angeles.
- (i) The United States Secretary of Health and Human Services announced findings on April 20, 1998, stating that "needle

exchange programs can be an effective part of a comprehensive strategy to reduce the incidence of HIV transmission and do not encourage the use of illegal drugs." Secretary Shalala further stated that "The science reveals that successful needle exchange programs refer participants to drug counseling and treatment as well as necessary medical services, and make needles available on a replacement basis only."

- (j) California is one of 10 states that criminalizes the furnishing, possession, or use of hypodermic needles or syringes without a prescription. Of these 10 states, four have either passed legislation or waived the prohibition through administrative action over the last several years to permit the development of needle exchange programs. California has the highest seroprevalence rate of HIV infection of any state that has not waived the prohibition or adopted a statute to permit needle exchange programs.

SEC. 2. Section 4145 of the Business and Professions Code is repealed.

SEC. 3. Section 4145 is added to the Business and Professions Code, to read: 4145.

- (a) Notwithstanding any other provision of law, the following persons may, without a prescription or permit, furnish a hypodermic needle or syringe if all the requirements in subdivision (c) are met:
  - (1) A pharmacist or physician may, without a prescription or a permit, furnish hypodermic

needles and syringes for human use in the administration of insulin or adrenaline.

(2) A pharmacist or veterinarian may, without a prescription or permit, furnish hypodermic needles and syringes for use on poultry or animals.

(3) A pharmacist, physician, or other person designated under the operating procedures developed pursuant to paragraph (1) of subdivision (a) (b) of Section 121341 of the Health and Safety Code may, without a prescription or permit, furnish hypodermic needles and syringes when operating a clean needle and syringe exchange and any person may, without a prescription or a permit, obtain hypodermic needles and syringes from a program established pursuant to Chapter 15 (commencing with Section 121340) of Part 4 of Division 105 of the Health and Safety Code.

- (b) Any person may, without a prescription or permit, obtain hypodermic needles and syringes from a pharmacist or physician for human use in the administration of insulin or adrenaline, or from a pharmacist, veterinarian, or permit holder for use on poultry or animals if all the requirements in subdivision (c) are met.
- (c) (1) No needle or syringe shall be furnished to a person who is unknown to the furnisher and unable to properly establish his or her identity.
  - (2) The furnisher, at the time the furnishing occurs, shall make a record of the furnishing in the manner required by Section 4146.

SEC. 4. Chapter 15 (commencing with Section 121340) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

**CHAPTER 15. CLEAN NEEDLE AND SYRINGE EXCHANGE**

121340. (a) The Legislature finds and declares that scientific data from needle exchange programs in the United States and in Europe have shown that the exchange of used hypodermic needles and syringes for clean hypodermic needles and syringes does not increase drug use in the population, can serve as an important bridge to treatment and recovery from drug abuse and can curtail the spread of human immunodeficiency virus (HIV) infection among the intravenous drug user population.

(b) In order to attempt to reduce the spread of HIV infection and blood-borne hepatitis among the intravenous drug user population within California, the Legislature hereby authorizes a clean needle and syringe exchange pursuant to this chapter in any city and county, county, or city upon the action of a county board of supervisors and the local health officer or health commission of that county, or upon the action of the city council, the mayor, and the local health officer of a city with a health department, or upon the action of the city council and the mayor of a city without a health department.

(c) The authorization provided under this section shall only be for a clean needle and syringe exchange project as described in Section 121341.

121341. (a) A city and county, or a county, or a city with or without a health department that acts to authorize a clean needle and syringe exchange project pursuant to this chapter shall, in consultation with the State Department of Health Services, authorize the exchange of clean hypodermic needles and syringes, as recommended by the United States Secretary of Health and Human Services, as part of a network of comprehensive services, including treatment services, to combat the spread of HIV and blood-borne hepatitis infection among injection drug users. Providers and users of an exchange project authorized by the county, city, or city and county shall not be subject to criminal prosecution for possession of syringes or needles obtained from an exchange project during participation in an exchange project.

(b) Each project shall include, but not be limited to, all of the following:

(1) The development of a set of operating procedures by the local health officer for the furnishing and exchange of hypodermic needles and syringes for injection drug users and the approval of the operating procedures by the county, city, or city and county.

(2) The development of a data base and collection of data relating to the furnishing and replacement of clean hypodermic needles and syringes to injection drug users by persons designated in the operating procedures developed pursuant to paragraph (1). The data collected pursuant to this paragraph shall be reported to the department

annually commencing two years after the inception of the project.

(3) The provision of community outreach and preventive education that is culturally sensitive and linguistically appropriate to reduce project participants' exposure to HIV infection and blood-borne hepatitis.

(4) A demonstrated effort to secure treatment for drug addiction for participants upon their request.

(5) The involvement of the community in the development of the program.

(6) The involvement of local public safety officials in the development of the program.

(7) Accessibility of the project to the target population while being sensitive to community concerns.

(8) Appropriate levels of staff expertise in working with injection drug users and adequate staff training in providing community referrals, needle hygiene, and safety precautions.

(9) Enhanced treatment capacity, insofar as possible, for injection drug users.

(10) Preferential acceptance, insofar as possible, of HIV-infected drug users into drug treatment programs.

(c) The projects authorized pursuant to this chapter shall be part of a network of voluntary and confidential HIV services, where available, including, but not limited to, all of the following:

(1) Anonymous HIV antibody testing and counseling.

(2) Hepatitis screening, counseling, and vaccination.

- (3) Notwithstanding Section 121015, voluntary, anonymous, or confidential partner notification.
- (4) Early intervention and ongoing primary medical care follow up for infected persons and their partners.
- (5) Social services to support families of HIV-infected drug users.
- (d) Components of the projects authorized pursuant to this chapter shall be assessed as to their effectiveness by the participating city and county, county, or city. Assessment shall include, but not be limited to, the following measures, where they are available:
  - (1) The incidence of HIV among the subject population.
  - (2) Needle exchange rates.
  - (3) Level of drug use.
  - (4) Level of needle sharing.
  - (5) Use of condoms.
  - (6) Availability of needle exchange programs in the jurisdiction.
  - (7) Program participation rates.
  - (8) The number of participants referred for treatment.
  - (9) The status of treatment and recovery of those entering substance abuse treatment programs.
  - (10) Referrals for HIV, sexually transmitted diseases, and hepatitis screening and treatment.
- (11) Referrals for, or provision of, primary medical care.
- (e) All components of the projects authorized pursuant to this chapter shall be voluntary. Where persons are provided services as a part of a project, including, but not limited to, antibody testing, counseling, or medical or social services, those provisions of law governing the confidentiality and anonymity of that information shall apply. All information obtained in the course of implementing a project that personally identifies any person to whom needle furnishing and exchange services are provided shall remain confidential and shall not be released to any person or agency not participating in the project without the person's written consent.
- (f) A city and county, county, or city with or without a health department initiating a clean needle and syringe exchange project, shall submit a progress report two years from the project's inception. The report shall take into consideration available data on factors listed in subdivision (d). The report shall be submitted to the director, the Governor, and the chairpersons of both health committees of the Legislature.



# Appendix B: Text of AB 136

## BILL NUMBER: AB 136 CHAPTERED

### BILL TEXT

CHAPTER 762 FILED WITH  
SECRETARY OF STATE  
OCTOBER 10, 1999  
APPROVED BY GOVERNOR  
OCTOBER 7, 1999  
PASSED THE SENATE  
SEPTEMBER 9, 1999  
PASSED THE ASSEMBLY  
SEPTEMBER 9, 1999  
AMENDED IN SENATE  
SEPTEMBER 3, 1999  
AMENDED IN ASSEMBLY  
APRIL 15, 1999

INTRODUCED BY Assembly  
Member Mazzoni (Principal coau-  
thors: Assembly Members Migden  
and Shelley) (Coauthors: Assembly  
Members Aroner, Hertzberg, Kee-  
ley, Knox, Kuehl, Lempert, Longville,  
Romero, Steinberg, Washington,  
Wesson, and Wiggins) (Coauthor:  
Senator Solis)

JANUARY 11, 1999  
An act to amend Section 11364.7  
of the Health and Safety Code,  
relating to distribution of needles  
and syringes.

### LEGISLATIVE COUNSEL'S DIGEST

AB 136, Mazzoni. Drug parapher-  
nalia: clean needle and syringe ex-  
change projects. Existing law  
makes it a misdemeanor to furnish  
drug paraphernalia, knowingly, or  
under circumstances when one

reasonably should know, that it will  
be used to inject or introduce into  
the human body a controlled sub-  
stance. This bill would exempt  
from criminal prosecution public  
entities and their agents and em-  
ployees who distribute hypodermic  
needles or syringes to participants  
in clean needle and syringe ex-  
change projects authorized by the  
public entity pursuant to a declara-  
tion of a local emergency due to  
the existence of a critical local pub-  
lic health crisis.

### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11364.7 of  
the Health and Safety Code is  
amended to read:

11364.7. (a) Except as authorized  
by law, any person who delivers,  
furnishes, or transfers, possesses  
with intent to deliver, furnish, or  
transfer, or manufactures with the  
intent to deliver, furnish, or transfer,  
drug paraphernalia, knowing, or un-  
der circumstances where one rea-  
sonably should know, that it will be  
used to plant, propagate, cultivate,  
grow, harvest, compound, convert,  
produce, process, prepare, test, ana-  
lyze, pack, repack, store, contain,  
conceal, inject, ingest, inhale, or  
otherwise introduce into the hu-  
man body a controlled substance,  
except as provided in subdivision  
(b), in violation of this division, is  
guilty of a misdemeanor. No public  
entity, its agents, or employees shall

be subject to criminal prosecution  
for distribution of hypodermic nee-  
dles or syringes to participants in  
clean needle and syringe exchange  
projects authorized by the public  
entity pursuant to a declaration of  
a local emergency due to the exist-  
ence of a critical local public health  
crisis.

(b) Except as authorized by law,  
any person who manufactures  
with intent to deliver, furnish,  
or transfer drug paraphernalia  
knowing, or under circum-  
stances where one reasonably  
should know, that it will be  
used to plant, propagate, culti-  
vate, grow, harvest, manufac-  
ture, compound, convert, pro-  
duce, process, prepare, test,  
analyze, pack, repack, store,  
contain, conceal, inject, ingest,  
inhale, or otherwise introduce  
into the human body cocaine,  
cocaine base, heroin, phencycli-  
dine, or methamphetamine in  
violation of this division shall  
be punished by imprisonment  
in a county jail for not more  
than one year, or in the state  
prison.

(c) Except as authorized by law,  
any person, 18 years of age or  
over, who violates subdivision  
(a) by delivering, furnishing, or  
transferring drug paraphernalia  
to a person under 18 years of  
age who is at least three years  
his or her junior, or who, upon  
the grounds of a public or pri-  
vate elementary, vocational,  
junior high, or high school, pos-  
sesses a hypodermic needle, as



defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or

liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee's business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471.

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this

# Appendix C: History of Syringe Exchange Legislation in California

In 1990, State Senator Diane Watson (D-Los Angeles) introduced Senate Bill (SB) 1829, the first legislative effort to legalize syringe exchange in California. SB 1829 would have authorized the City and County of San Francisco to participate in a pilot syringe exchange program and would have also allowed other cities or counties to participate in the same pilot program upon request. The bill failed to reach the Governor's desk for consideration.

Two years later, in, two identical bills were introduced: 2525 (later changed to AB 260) by then Speaker Willie L. Brown, Jr. (D-San Francisco) and SB 1418 by Senator Watson. This legislation attempted to address legal restrictions to the furnishing of hypodermic needles or syringes without a prescription or permit. The Business and Professions Code contains two exemptions to this prescription requirement—in the case of human use in the administration of insulin or adrenaline and for use on poultry and animals. AB 2525/SB 1418 would have created a third exemption to legalize the distribution of syringes as part of a "Clean Needle and Syringe Exchange Pilot Project."

The legislation would have established specific terms and conditions for participation in a Clean Needle and Syringe Exchange Pilot Project. Communities would have been required to show that syringe exchange services were part of a local network of comprehensive services, including drug treatment services, and programs also would have been required to collect various data to assess the effectiveness of services. AB 2525/SB 1418 also contained a sunshine clause, which would have repealed the law automatically after three years unless the Legislature passed new legislation to extend the program. The sunshine clause was included in the legislation to give state officials the opportunity to review initial assessment data, and to make the bill more politically palatable.

Former Governor Pete Wilson vetoed AB

2525/SB 1418. The major concern expressed by the Governor was that legalization of syringe exchanges would send a message to children that the state condoned drug use.<sup>26</sup>

## Local Emergencies Declared in Response to Veto

Following Governor Wilson's 1993 veto of these first bills, the City and County of San Francisco declared a local emergency. The California Emergency Services Act 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 an epidemic." A local jurisdiction of emergency may be used to temporarily exempt a jurisdiction from compliance with state law, in this instance law governing syringe distribution.

Shortly after San Francisco declared an emergency, a small number of other jurisdictions in California followed suit, including Marin County and the cities of Los Angeles, Berkeley, and Oakland. In the first two years following these actions, there was little, if any, organized opposition to these SEP programs. However, there were ongoing battles between supporters and opponents of syringe exchange in other communities over whether to pursue a similar course. In 1995, then state Attorney General Dan Lungren, who had for some time indicated his strong opposition to syringe exchange, issued an informal legal opinion stating that the Emergency Services Act could not be used to circumvent state law prohibiting the furnishing and distribution of syringes without a prescription. Although this informal opinion did not carry the force of law, the opinion had a chilling effect. According to press reports and interviews, the Lungren opinion led at least one county to end an existing SEP,<sup>27</sup> and another to abandon its consideration of establishing a SEP.<sup>28</sup>

## New Efforts to Pass Statewide Legislation Begun in 1999

Because of the uncertainty regarding the legal status of locally authorized exchange programs, many SEP supporters continued to pursue statewide legislation to legalize SEPs. The election of Gray Davis as Governor in 1998 led some SEP advocates to see a new opportunity between the earlier bills and AB 518. First, although AB 518 required that local elected bodies authorize syringe exchange, it did not establish a pilot program with a sunset date. Given the growing body of research showing the efficacy of syringe exchange, it was the sponsor's belief that a pilot program, which is generally used to study the efficacy of a new or unproven program, was no longer appropriate. Second, unlike all previous bills, AB 518 explicitly protected both providers and users of an exchange project from criminal prosecution for possession of syringes during the exchange.

After the bill had passed the Assembly and was being considered in the Senate, Governor Davis announced he would veto the legislation.<sup>30</sup> In the weeks immediately following Governor Davis' announcement, the bill's author and other HIV/AIDS and public health advocates launched a statewide campaign in support of AB 518. The campaign produced over 25,000 postcards that were sent to Governor Davis, and more than a dozen favorable editorials in all but one of the major newspapers across the state. Twenty members of the California Congressional delegation wrote a letter to Governor Davis urging him to support AB 518. In addition, an independent, statewide poll conducted in August 1999 by the Field Research Institute reported that 69 percent of Californians surveyed said they favor syringe exchange in order to stop the spread of AIDS and HIV infection. The survey showed support for

syringe exchange, regardless of geographic region, ethnicity, political ideology or party affiliation.<sup>31</sup>

Shortly after the release of the Field survey, Governor Davis offered compromise language. The compromise offered by the Governor removed from AB 518 all state reporting requirements and program detail. Under the Governor's proposal the new law would make a one-sentence amendment to Health and Safety Code Section 11364.7(a), which clarifies that emergency declarations can be used to decriminalize syringe exchange.

Health and Safety Code Section 11364.7 makes it a misdemeanor to furnish drug paraphernalia, knowingly, or under circumstances where one should reasonably know that it will be used to inject a controlled substance. The compromise legislation added the following language to Section 11364.7(a):

*"No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to a declaration of a local emergency due to the existence of a critical local public health crisis."*

This language protects local governments, their employees and authorized contractors that provide exchange services, from criminal prosecution for distributing syringes and needles, but it does not protect against civil liability, nor does it protect the providers or users from prosecution for possession of drug paraphernalia.

Ultimately, the California state legislature pulled back AB 518 from the Governor's desk in order to avoid a veto, and a new bill reflecting the compromised language, AB 136 (Appendix B), was then sent in its place. On October 7, 1999, Governor Davis signed AB 136 into law.

# Appendix D: Key Informant Interview Questionnaire

*This questionnaire was used to structure telephone interviews with key informants to this study.*

## A Survey of Local Consideration of AB 136

**Explanation of Background:** On January 1, 2000, a new statewide law (Assembly Bill 136) that allows local governments to legalize syringe exchange programs in their jurisdictions took effect. As passed, AB 136 protects local cities and counties, their employees, and organizations that operate as their agents from any criminal prosecution for distributing syringes as part of a syringe exchange program. In order to secure this legal protection, AB 136, requires a local city or county to authorize or “legalize” a local SEP by passing a local declaration of emergency due to the existence of a critical public health crisis. The following questions are intended to gain important feedback on AB 136 and what impact its passage may or may not have had in your community from your perspective.

### 1. Explain briefly the current status of needle exchange in your County or City?

**Prompts:** Did it begin prior to the passage of AB 136 or subsequent to the passage of AB 136?  
Can you please describe how the program is run?

### 2. If your community does have a needle exchange program, what are the top program implementation issues it has faced?

**From your perspective, to what degree are the following an issue:**

- Securing sufficient funding to cover program expenses.
- Establishing and maintaining referral mechanisms and relationships with other service providers.
- Obtaining SEP expertise with staffing and volunteer management.
- Incorporating program evaluation.
- Locating sites for syringe exchange services.

### 3. Has your County/City attempted to pass an emergency declaration following the passage of AB 136? If so, can you please describe the process and what it has entailed? If your city/county has not attempted to pass an emergency declaration, why not?

**From your perspective, describe your experience with the following issues:**

#### General Issues

- The political environment surrounding efforts to pass a local emergency.
- Jurisdictional issues including the role of the County vs. City in declaring a local declaration.
- Determining who will oversee and operate SEP (public health or designated “agent”)?

#### Specific Issues

- Requirement of a 14-day renewal of the emergency declaration.
- Understanding who is granted legal protections by AB 136 (those who operate SEP vs. clients of SEPs).
- The use of specific data to substantiate a “local emergency”.

4. From your perspective, describe the attitudes of the following stakeholders and what role, if any, they played in your community regarding efforts to pass a local emergency declaration as outlined in AB 136? What role do you think they should play?

- Elected officials
- Public health officials
- State public health
- Local public health
- Law enforcement/City-or District Attorney
- Community groups
- Private funders, including foundations
- Media?
- Others?

5. From your perspective, what are the key information and technical assistance needs related to the consideration and/or implementation of AB 136?

How about in these specific areas?

- Applying for public or private funding
- Technical assistance with the development and operation of the SEP itself
- Informal or formal information sharing networks
- The declaration
- Legal interpretations of the bill
- Roles or issues around law enforcement, local prosecutors, public health officials, SEP staff, and clients

6. This is a two-part question:

- A. From your perspective, what, if any, successes or benefits have you seen with the passage of this legislation (AB 136)?
- B. From your perspective, what, if any, detriments or drawbacks have you seen with the passage of this legislation (AB 136)?

7. From your perspective, what are the most important technical changes that could be made to AB 136 to improve efforts to decriminalize needle exchange in CA?

From your perspective, are changes needed to:

- Modify the need for local declaration?
- Amend the 14-day renewal period?
- Clarify the legal protections covering SEP users?
- Identify a role for State in providing technical assistance or funding to local SEPs?
- Clarify or modify laws relating to protection of SEPs from civil liability?

8. From your perspective, what are the most important legal or policy changes beyond the scope of AB 136 that could improve access to clean syringes in California?

From your perspective, are changes needed to:

- Decriminalize syringe possession by amending current State law?
- Address current restrictions on State and/or Federal funding to SEPs?
- Allow physicians to prescribe syringes to IDUs in order to prevent disease?
- Encourage the federal government to disseminate information from scientific studies of needle exchange?

9. Are there additional comments or concern that we haven't discussed that you think are relevant to this issue?

# Appendix E: References

- <sup>1</sup>U.S. Department of Health and Human Services (HHS). Evidence-Based Findings on the Efficacy of Syringe Exchange Programs: An Analysis for the Assistant Secretary for Health and Surgeon General of the Scientific Research Completed Since April 1998. Washington, D.C. March 17, 2000.
- <sup>2</sup>These figures include heterosexual IDUs and men who have sex with men who are also IDUs. Source: Office of AIDS, California Department of Health Services. HIV/AIDS Reporting System Surveillance Report for California, December 31, 2000. Available at: [www.dhs.ca.gov/ps/ooa/Statistics/AIDSCaseArchive.htm](http://www.dhs.ca.gov/ps/ooa/Statistics/AIDSCaseArchive.htm).
- <sup>3</sup>Office of AIDS, California Department of Health Services. HIV/AIDS Among Racial/Ethnic Groups in California: 1999 Edition. Available at: [www.dhs.ca.gov/ps/ooa/Reports/race/pdf/race99a.pdf](http://www.dhs.ca.gov/ps/ooa/Reports/race/pdf/race99a.pdf). Accessed October 2001.
- <sup>4</sup>Centers for Disease Control and Prevention (CDC). Policy Efforts to Increase IDUs Access to Sterile Syringes, June 2000. Atlanta, GA 2000.
- <sup>5</sup>American Bar Association, *Deregulation of Hypodermic Needles and Syringes as a Public Health Measure: A Report on Emerging Policy and Law in the United States*, Burriss, S, ed., 2001.
- <sup>6</sup>CDC. Pharmacy Sales of Sterile Syringes, June 2000. Atlanta, GA 2000.
- <sup>7</sup>In November 1999, the National Association of Boards of Pharmacy, the American Medical Association, the American Pharmaceutical Association, the Association of State and Territorial Health Officials and the National Alliance of State and Territorial AIDS Directors urged changes in state drug paraphernalia laws to permit non-prescription sale of sterile syringes by pharmacies. Source: The Henry J. Kaiser Family Foundation. Kaiser Daily HIV/AIDS Report. December 10, 1999.
- <sup>8</sup>Burriss S, Lurie P, Abrahamson D, Rich JD. Physician prescribing of sterile injection equipment to prevent HIV infection: time for action. *Ann Intern Med.* Aug 1 2000; 133(3): 218-226.
- <sup>9</sup>Rich JD, Macalino GE, McKenzie M, Taylor LE, Burriss S. Syringe prescription to prevent HIV infection in Rhode Island: a case study. *Am J Public Health.* May 2001; 91(5): 699-700.
- <sup>10</sup>In April 1998, the U.S. Department of Health and Human Services (H.H.S.) reported that, "syringe exchange programs play a unique role in facilitating the engagement of [IDUs] in meaningful prevention interventions and treatment opportunities when implemented as part of a comprehensive HIV prevention and substance abuse strategy." Source: HHS. Evidence-Based Findings on the Efficacy of Syringe Exchange Programs: An Analysis for the Assistant Secretary for Health and Surgeon General of the Scientific Research Completed Since April 1998. Washington, DC March 17, 2000.
- <sup>11</sup>HHS. Evidence-Based Findings on the Efficacy of Syringe Exchange Programs: An Analysis for the Assistant Secretary for Health and Surgeon General of the Scientific Research Completed Since April 1998. Washington, DC March 17 2000. Available at: [www.harmreduction.org/issues/surgeongenrev/surgreview.html](http://www.harmreduction.org/issues/surgeongenrev/surgreview.html).
- <sup>12</sup>Lurie P, Reingold A, et al. The Public Health Impact of Needle Exchange Programs in the United States and Abroad. Atlanta, GA: CDC; October 1993.
- <sup>13</sup>Marx MA, Crape B, Brookmeyer RS, et al. Trends in crime and the introduction of a needle exchange program. *Am J Public Health.* Dec 2000; 90(12): 1933-1936.

- <sup>14</sup> Ruiz MS, Institute of Medicine (U.S.). Committee on HIV Prevention Strategies in the United States. No time to lose: getting more from HIV prevention. Washington, D.C.: National Academy Press; 2001.
- <sup>15</sup> Paone D, Clark J, Shi Q, Purchase D, Des Jarlais DC. Syringe exchange in the United States, 1996: a national profile. *Am J Public Health*. Jan 1999; 89(1): 43-46.
- <sup>16</sup> Update: syringe exchange programs—United States, 1998. *MMWR Morb Mortal Wkly Rep*. May 18 2001; 50(19): 384-387.
- <sup>17</sup> Including the District of Columbia and Puerto Rico.
- <sup>18</sup> Personal communication with Dr. Scott Burris, Temple University, July 2001.
- <sup>19</sup> California Syringe Exchange Network (CaSEN) Coordinating Committee. Report from the First California Syringe Exchange Network (CaSEN) Summit, June 12-13, 1999, Sacramento, California. 1999.
- <sup>20</sup> See discussion in Appendix C. Prior to passage of AB 136, the legality of SEPs was unclear. For example, San Francisco asserted its legal right to implement SEPs using an emergency declaration under then-current law. However, then Attorney General Dan Lungren issued an informal legal opinion stating that the Emergency Services Act could not be used to circumvent state law prohibiting the furnishing and distribution of syringes without a prescription.
- <sup>21</sup> Clean Syringe Exchange Program Task Force, City of San Diego. City of San Diego Clean Syringe Exchange Program Task Force Final Report. June 12, 2001.
- <sup>22</sup> Personal communication (letter) from Walt Allen, III, President of the California Narcotics Officers' Association, to members of Boards of Supervisors, May 8, 2000.
- <sup>23</sup> Personal communication (letter) from Gary Feldman, M.D., President, California Conference of Local Health Officers, July 27, 2000.
- <sup>24</sup> *People v. Clancy*. Vol. No. 00M12182: Superior Court of California, County of Sacramento; 2001.
- <sup>25</sup> Personal communications between study team and local health officials.
- <sup>26</sup> Veto message of Governor Pete Wilson to Members of the California Assembly, October 8, 1993.
- <sup>27</sup> This was Santa Clara County. Source: Sullivan K. Lawyer: City's Needle Swap OK. *San Francisco Examiner*. May 24, 1996.
- <sup>28</sup> This was Long Beach. Source: Helin K. Legal Issue Ends City's Needle Exchange Idea. *Business Journal (Long Beach)*. December 6, 1995.
- <sup>29</sup> Survey of candidates. Source: San Francisco AIDS Foundation. Vote to End AIDS. San Francisco, CA released October 14, 1998.
- <sup>30</sup> Personal communications between the Governor's office, the bill's author, and San Francisco AIDS Foundation's policy staff.
- <sup>31</sup> Results available through the San Francisco AIDS Foundation on the web at: [www.sfaf.org/prevention/needleexchange/field\\_survey\\_results.html](http://www.sfaf.org/prevention/needleexchange/field_survey_results.html).





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