SENATE COMMITTEE ON HEALTH
Senator Dr. Richard Pan, Chair

BILL NO: SB 57
AUTHOR: Wiener
VERSION: March 1, 2021
HEARING DATE: March 10, 2021
CONSULTANT: Reyes Diaz

SUBJECT: Controlled substances: overdose prevention program

SUMMARY: Permits the City and County of San Francisco, the County of Los Angeles, and the City of Oakland to approve entities to establish and operate overdose prevention programs (OPPs) until January 1, 2027. Requires OPPs to provide specified services, including supervision by trained staff and referrals for treatment.

Existing law:
1) Prohibits the prescription, administration, or dispensing of a controlled substance to an addicted person, except under certain circumstances. [HSC §11154]

2) Permits a licensed health care provider who is authorized by law to prescribe and issue standing orders for an opioid antagonist (to prevent fatal opioid overdose) to a person at risk of an opioid-related overdose or to a family member, friend, or other person if they receive training, as specified. [CIV §1714.22]

3) Permits, until January 1, 2026, a pharmacist or physician, without a prescription or a permit, to furnish hypodermic needles and syringes for human use to a person 18 years of age or older, and permits a person 18 years of age or older, without a prescription or license, to obtain hypodermic needles and syringes solely for personal use. [BPC §4145.5]

4) Permits the state California Department of Public Health (CDPH) to purchase sterile hypodermic needles and syringes, and other supplies, for distribution to syringe exchange projects, as specified. [HSC §121349.1]

5) Authorizes a clean needle and syringe exchange project in any city, county, or city and county, as specified. Prohibits staff, volunteers, and participants of an exchange project from being subject to criminal prosecution for violation of any laws related to possession, furnishing, or transfer of hypodermic needles or syringes, as specified. [HSC §121349.1]

This bill:
1) Permits the City and County of San Francisco (SF), the County of Los Angeles (LAC), and the City of Oakland to approve entities within their jurisdictions to establish and operate OPPs that satisfy specified requirements. Requires SF, LAC, and Oakland, prior to approving OPPs, to provide local law enforcement and public health officials and the public with an opportunity to comment in a public meeting, as specified.

2) Requires an entity, in order to operate OPPs, to demonstrate that it will at a minimum:

    a) Provide a hygienic space supervised by trained staff, as specified, where people can consume controlled substances; provide sterile consumption supplies and collect used equipment; and provide secure hypodermic needle and syringe disposal services;

b) Monitor participants for potential overdose, and provide treatment as necessary to prevent fatal overdose;
c) Provide access or referrals to substance use disorder (SUD) and mental health treatment services, primary medical care, and social services;
d) Provide access or referrals to HIV and viral hepatitis prevention, education, testing, and treatment;
e) Provide overdose prevention education and access to or referrals to obtain naloxone hydrochloride or other federally approved overdose reversal medication;
f) Educate participants regarding proper disposal of hypodermic needles and syringes, and provide participants with approved biohazard containers for syringe disposal;
g) Provide reasonable security of the OPP site;
h) Establish operating procedures for the OPP, including hours of operation, training standards for staff, a minimum number of personnel required to be onsite, a maximum number of participants to be served at one time, eligibility criteria for program participants, and an established relationship with the nearest emergency department (ED) of a general acute care hospital; and,
i) Establish and make public a good neighbor policy that facilitates communication from and to local businesses and residences, to the extent they exist, to address any neighborhood concerns and complaints.

3) Requires an approved entity to provide an annual report to the authorizing jurisdiction that includes information about the number of program participants, aggregate information regarding the characteristics of participants, the number of overdoses experienced and overdoses reversed onsite, and the number of persons referred to SUD treatment, primary medical care, and other services.

4) Prohibits a person or entity, including, but not limited to, property owners, managers, employees, volunteers, clients or participants, and city and county employees from being arrested, charged, or prosecuted pursuant to drug-related crimes, as specified; or otherwise penalized solely for actions, conduct, or omissions related to the operation of and on the site of an OPP; or for conduct relating to the approval of an entity to operate an OPP; or the inspection, licensing, or other regulation of an OPP.

5) Prohibits limiting the Medical Board of California or Osteopathic Medical Board of California from taking administrative or disciplinary action against a licensee for any action, conduct, or omission related to the operation of an OPP that violates the Medical Practice Act pursuant to each board's authority, as specified.

6) Sunsets the provisions in this bill on January 1, 2027.

7) Makes findings and declarations related to the urgent public health crisis of overdoses in this state; the success of OPPs in other countries; estimated cost savings; and the sharp increase in overdose deaths being observed nationwide in 2020, exacerbated by the COVID-19 pandemic, compared to the same timeframe in 2019.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

1) *Author's statement.* According to the author, California is in the midst of an unprecedented overdose crisis that must be treated as a public health crisis. Since 2011, drug overdose has

been the leading cause of accidental death among adults in California. In the context of the COVID-19 pandemic in the United States and in California, the already alarming rate of drug overdose is worsening. A recent study of Emergency Medical Services data in the *Journal of the American Medical Association* found overdose rates were doubled in May of 2020, compared to 2019. More than 40 states have documented increases in opioid overdoses since the beginning of shelter in place. OPPs, also called supervised consumption services, are a necessary intervention to prevent overdose deaths. Approximately 165 OPPs exist in ten countries, and have been rigorously researched and shown to reduce health and safety problems associated with drug use, including public drug use, discarded syringes, HIV and hepatitis infections, and overdose deaths. In these desperate times, this bill provides California with the opportunity to lead by example and to equip itself with another tool that is scientifically proven to help prevent and decrease overdose deaths.

2) *Opioids and consequences of abuse.* Opioids are a class of drugs that include the illegal drug heroin, synthetic opioids such as fentanyl, and pain relievers available legally by prescription, such as oxycodone, hydrocodone, codeine, morphine, methadone, and many others. Taken as prescribed, opioids can be used to manage pain. However, opioids may also produce other effects, and according to the National Institute on Drug Abuse (NIDA), some individuals experience a euphoric response to opioid medications since these drugs affect the regions of the brain involving reward response. NIDA states that those who abuse opioids may seek to intensify their experience by taking the drug in ways other than those prescribed. For example, OxyContin is an oral medication used to treat moderate to severe pain through a slow, steady release of the opioid. However, NIDA states people may crush or dissolve the drug in order to snort or inject it, thereby increasing their risk for serious medical complications, including overdose. Prescription opioid misuse can lead to long-term health consequences, including limitations in daily activity, impaired driving, mental health problems, trouble breathing, overdose, and death. According to the Centers for Disease Control and Prevention's (CDC) website, drug overdose deaths and opioid-involved deaths from prescription opioids have more than quadrupled since 1999. The majority of drug overdose deaths (more than six out of ten) involve an opioid. The CDC states that overdoses from prescription opioids are a driving factor in the 15-year increase in opioid overdose deaths. Since 1999, the amount of prescription opioids sold in the U.S. nearly quadrupled, yet there has not been an overall change in the amount of pain that individuals report. According to CDPH, in the past, opioids were prescribed to relieve acute, short-term pain. Today, they are increasingly being used for long-term, chronic pain management.

   According to the California Opioid Overdose Surveillance Dashboard, in 2019 there were 3,244 deaths related to any opioid overdose; 1,603 deaths related to fentanyl overdoses; 11,767 ED visits related to any opioid overdose; and 17,576,679 prescriptions for opioids. Some of the counties most affected are northern and large urban counties, including Lake, Shasta, SF, Orange, and San Diego. For example, Lake and Shasta counties have prescription opioid-related death rates that are two to three times higher than the national average while SF, Orange, and San Diego counties have higher than state average rates, accounting for a greater total number of deaths.

   Data on ED encounters for individuals with heroin poisoning from the Office of Statewide Health Planning and Development (OSHPD) shows dramatic increases since 2005. Overall, ED visits among heroin users of all ages increased, but the greatest was among the state's young adults aged 20 to 29. About 1,300 ED visits by that population poisoned by heroin were logged in 2015 compared with fewer than 1,000 in 2012. For individuals aged 30 to 39,

ED encounter rates rose from approximately 400 in 2012 to 600 in 2014. All other age groups experienced a small increase in encounter rates.

In an April 21, 2017, *San Francisco Chronicle* article, "Safe injection sites offer hope in scourge of discarded syringes," the SF Department of Public Works (SFDPW) reported collecting 13,333 syringes left on the streets in March 2017—an average of 430 every day—10,465 more needles than were collected in March 2016. These figures come only from SFDPW's "hot spot" crews, which mostly clean homeless camps, and do not include the number of syringes found by other cleaning crews, which are not tracked, or the ones found on port property and in parks. The article reported on incidents of intravenous drug use in public spaces, including instances where a man was passed out on a bike rack in a busy public plaza with needles spread around him, and another man was injecting drugs between his toes in an area close to City Hall and other accounts of mothers with children encountering discarded needles near the ocean, busy public parks, and other public spaces. The article further stated that SF public health officials estimate there were 22,000 intravenous (IV) drug users in the city, and many choose to inject in public spaces in the hopes that somebody will help should they overdose. Public health officials estimated 85% of IV drug users would use supervised injection facilities (SIFs, referred to as OPPs in this bill) and that the city could save $3.5 million in medical costs.

3) *Harm reduction*. According to the National Institutes of Health (NIH) website, harm reduction is a strategy that aims to reduce the harms associated with certain behaviors. When applied to SUDs, harm reduction accepts that a continuing level of drug use (both legal and illegal) in society is inevitable and defines objectives as reducing adverse consequences. It emphasizes the measurement of health, social, and economic outcomes, as opposed to the measurement of drug consumption. Harm reduction has evolved over time, from its initial identification in the 1980s, as an alternative to abstinence-only focused interventions for adults with SUDs. At the time, it was recognized that abstinence was not a realistic goal for those with SUDs. In addition, those individuals who were interested in reducing, but not eliminating, their use were excluded from programs that required abstinence. NIH's website states there is persuasive evidence that harm reduction approaches greatly reduce morbidity and mortality associated with risky health behaviors. For example, areas that have introduced needle-exchange programs have shown mean annual decreases in HIV prevalence compared with those areas that have not introduced needle-exchange programs. Access to and use of methadone maintenance programs are strongly related to decreased mortality, both from natural causes and overdoses, which suggests that these programs have an impact on overall socio-medical health. The most recent addition to the harm reduction continuum is that of SIFs, which have been successfully implemented in Switzerland and the Netherlands, and more recently in Vancouver.

4) *SIFs/OPPs*. According to the Drug Policy Alliance (DPA), a co-sponsor of this bill, SIFs are legally sanctioned facilities where people who use intravenous drugs can inject pre-obtained drugs under medical supervision. SIFs are designed to reduce the health and societal problems associated with injection drug use and provide sterile injection equipment, information about reducing the harms of drugs, health care, treatment referrals, and access to medical staff. Some offer counseling, hygienic amenities, and other services. They are also successful in reducing public disorder associated with illicit drug use, including improper syringe disposal and public drug use. SIFs have been researched and evaluated for years. DPA states the evidence is conclusive that they reduce HIV and hepatitis transmission risks, prevent overdose deaths, reduce public injections, reduce discarded syringes, and increase the

number of people who enter drug treatment. There are now approximately 165 SIFs operating in ten countries around the world. Below are other examples of SIFs and similar facilities:

a) In August 2020, the *New England Journal of Medicine* published an evaluation of an unsanctioned SIF/OPP that has operated in an undisclosed city in the United States since September 2014. An organization in this undisclosed city opened the site in response to a local opioid overdose crisis, where injections are monitored by trained staff and conducted with sterile equipment (used only once) on stainless-steel tables that are disinfected before each use. Site staff used an online data-collection system to document every drug injected, type of drug used, opioid-involved overdose, and related death that occurred during injections at the site. The evaluation found there were 10,514 injections and 33 opioid-involved overdoses between 2014 and 2019, all of which were reversed by naloxone administered by trained staff. No person who overdosed was transferred to an outside medical institution, and there were no deaths. Overdoses increased over the years as injections also increased over the same period of time. The types of drugs used at the site changed over the five years with a steady increase in the proportion of injections involving the combination of opioids and stimulants, from 5% in 2014 to 60% in 2019. The evaluation generally concluded that implementing sanctioned SIFs/OPPs in the United States could reduce mortality from opioid-involved overdose, and could allow participants to link to other medical and social services, including SUD treatment.

b) Insite, in Vancouver, Canada, became the first SIF/OPP established in North America in 2003. Insite was designed as part of a continuum of care for people with SUDs, mental illness, and HIV/AIDS. Since its inception, Insite has had 3.6 million visits to inject illicit drugs under supervision by nurses. As of July 2020, there have been 48,798 clinical treatment visits and 6,440 overdose interventions without any deaths. Substances reported used are opioids (62% of instances), stimulants (19% of instances), and mixed (19% of instances).

c) According to the Boston Health Care for the Homeless Program's (BHCHP) website, in response to the to the city's increase in opioid overdoses, which are magnified among people experiencing homelessness, BHCHP has implemented a program called Supportive Place for Observation and Treatment (SPOT). The SPOT offers engagement, support, medical monitoring, and serves as an entry way to primary care and treatment on demand for eight to ten individuals at a time who are over-sedated from the use of substances and who would otherwise be outside on a street corner, alleyway, or alone in a public bathroom, at high risk of overdose. Overdose is the leading cause of death among people served by BHCHP and alarmingly, opioids were implicated in 81% of overdose deaths in a study of mortality among homeless people served between 2003 and 2008. In the first four months of SPOT's opening, the program cared for nearly 200 individuals in over 800 different encounters. While the immediate goal is to reduce the harm associated with use of opioids and other substances in a population who lacks stable housing and supports, BHCHP's ultimate goal is to help medically complex individuals gain access to treatment for substance use disorders on demand, including medication-assisted therapies or detoxification. BHCHP will continuously evaluate the positive effect of the SPOT on these individuals and the surrounding community.

5) *Double referral.* Should this bill pass out of this Committee, it will be referred to the Senate Committee on Public Safety.

6) *Prior legislation.* AB 362 (Eggman of 2020) and AB 186 (Eggman of 2018) were identical to this bill. *AB 362 was not heard in this Committee. AB 186 was vetoed by Governor Brown who stated, in part, that while supporters of this bill believe these centers will have positive impacts, the disadvantages of this bill far outweigh the possible benefits. Governor Brown stated he did not believe that enabling illegal drug use in government-sponsored injection centers with no corresponding requirement that the user undergo treatment would reduce drug addiction. Governor Brown also stated that although this bill creates immunity under state law, it can't create such immunity under federal law, and the United States Attorney General has already threatened prosecution.*

AB 2077 (Ting, Chapter 274, Statutes of 2020) extends until January 1, 2026, the authority of a physician or pharmacist to, without a prescription or permit, furnish hypodermic needles and syringes for human use to a person 18 years of age or older, and the authority of a person 18 years of age or older to, without a prescription or license, obtain hypodermic needles and syringes solely for personal use from a physician or pharmacist.

AB 2495 (Eggman of 2016) would have decriminalized conduct connected to use and operation of an adult public health or medical intervention facility that is permitted by state or local health departments and intended to reduce death, disability, or injury due to the use of controlled substances. *AB 2495 was heard for testimony in the Assembly Public Safety Committee, but no vote was taken.*

SB 75 (Committee on Budget and Fiscal Review, Chapter 18, Statutes of 2015) permits CDPH, among other things, to purchase sterile hypodermic needles and syringes, and other supplies, for distribution to syringe exchange programs, as specified.

AB 1743 (Ting, Chapter 331, Statutes of 2014) authorizes, until January 1, 2021, a pharmacist or physician to provide hypodermic needles and syringes to a person 18 years of age or older solely for his or her personal use, and exempts from the prohibition of possession the possession of any amount of hypodermic needles and syringes that are acquired from an authorized source.

AB 831 (Bloom of 2013) would have required the California Health and Human Services Agency (CHHSA) to convene a temporary working group to develop a state plan to reduce the rate of fatal drug overdoses and would have appropriated $500,000 from the General Fund to CHHSA to provide grants to local agencies to implement drug overdose prevention and response programs. *AB 831 was held on the Assembly Appropriations Committee suspense file.*

SB 41 (Yee, Chapter 738, Statutes of 2011) authorized a county or city to authorize a licensed pharmacist to sell or furnish ten or fewer hypodermic needles or syringes to a person 18 or older for human use without a prescription.

AB 604 (Skinner, Chapter 744, Statutes of 2011) authorized, among other things, CDPH to authorize, as specified, certain entities to provide hypodermic needle and syringe exchange services in any location where it determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. Requires, until January 1,

2019, CDPH to establish and maintain on its Internet website the address and contact information of these programs.

SB 1159 (Vasconcellos, Chapter 608, Statutes of 2004) authorized the Disease Prevention Demonstration Projects (DPDP) to evaluate the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens. Authorized a licensed pharmacist, until December 31, 2010, and subject to authorization by a county or city, to sell or furnish ten or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered in the DPDP with a local health department.

AB 136 (Mazzoni, Chapter 762, Statutes of 1999) exempted from criminal prosecution public entities and their agents and employees who distribute 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.

7) *Support*. The co-sponsors of this bill and other supporters, largely health care providers and health and justice advocates, state that OPPs/SIFs, such as those that could be established under this bill, are sites where individuals are able to use controlled substances in a clinical setting with expert supervision and sterile supplies. They have been shown to reduce health and safety problems associated with drug use, including public drug use, discarded syringes, HIV and hepatitis infections, and overdose deaths. People who used such programs in Canada were more likely to enter treatment and more likely to stop using drugs. They are an evidence-based, effective response to address the harms of drug use for individuals and communities. Supporters further state that in 2019 there was an emergency room admission for overdose in California every 11 minutes. Approximately 5,401 people died of drug overdose in California in 2018. Current data suggests that in the context of the COVID-19 pandemic in the United States and in California, the already-high rate of fatal drug overdose is worsening. Drug overdose has been the leading cause of accidental death in the United States, every year since 2011, and California is one of five states in which rates of overdose continue to rise. In the midst of the pandemic in 2020, SF had more deaths (621) attributable to overdose than COVID-19 (173). Supporters state that death rates among homeless people in SF also spiked since the first confirmed COVID-19 case in the Bay Area. Between March 30 and May 24 of 2020, 48 homeless people died, compared to 14 during the same period in 2019, according to data provided by the SF Department of Health. Physicians suggest that fatal drug overdose rates worsened, in part due to disruption of shelter and services due to the coronavirus pandemic. Supporters argue that the COVID-19 pandemic has increased the urgency of the need for OPP services. Unhoused individuals, including those who use drugs, are experiencing the brunt of the dislocations, economic pressures, and closure of services as a result of COVID-19. OPPs not only reduce overdose deaths but also reduce the need for ambulance calls, ED visits, and hospital beds—resources stretched thin by COVID-19. Supporters argue OPPs can prevent the potential transmission of COVID-19, as well as provide sterile equipment and additional opportunities for hand washing and sanitation. OPPs are complementary to other strategies of decarceration and reduced use of policing to address public health issues, such as drug use, by removing people who use drugs from the streets. Supporters state that in the context of the national debate to re-imagine public safety and emergency responses, OPPs should be in the foreground of the strategies used to address the needs of community members living at the intersection of homelessness, mental illness, and substance use. These programs will act as health settings that will mitigate overdose

mortality rates, as well as emergency room use.

8) *Opposition*. Opponents of this bill, largely law enforcement organizations, state that Governor Brown's previous veto of a similar bill is as applicable to the deficiencies in this bill as they were to the shortcomings of AB 186. Opponents argue that there is no pathway to treatment, nor is there any effort to assure that persons leaving OPPs are not so impaired as to harm themselves or others. Rather than a robust effort to get addicts into treatment, this bill concedes the inevitable and immutable nature of drug addiction and abuse. Opponents state that missing from this bill are any strategies to appropriately utilize methadone alternatives, mandatory treatment protocols, onsite drug counseling, or even efforts to gradually wean an addict off the cycle of dependence. In effect, the unintended consequence of this bill is to normalize substance abuse. Opponents argue that this bill creates other problematical issues, including tremendous liability issues, law enforcement's inability to respond to calls, and the concentration of drug addicts. Opponents argue this bill also exacerbates the COVID-19 pandemic because people will congregate in one location and not socially distance.

SUPPORT AND OPPOSITION:

Support: Drug Policy Alliance (co-sponsor)
California Association of Alcohol and Drug Program Executives (co-sponsor)
California Society of Addiction Medicine (co-sponsor)
HealthRIGHT 360 (co-sponsor)
San Francisco AIDS Foundation (co-sponsor)
Tarzana Treatment Centers (co-sponsor)
ACLU California
AIDS Legal Referral Panel
American Academy of HIV Medicine California/Hawaii Chapter
APLA Health
Asian American Drug Abuse Program, Inc.
Being Alive - LA
Bienestar Human Services
CA Bridge
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professionals
California Public Defenders Association
Californians for Safety and Justice
City of Oakland
Community Clinic Association of Los Angeles County
Community Legal Services in East Palo Alto
County Behavioral Health Directors Association of California
Desert AIDS Project
Ella Baker Center for Human Rights
End Hep C SF
Friends Committee on Legislation of California
GLIDE
Harm Reduction Services
HIVE
Housing California
Immigrant Legal Resource Center
Larkin Street Youth Services
Law Enforcement Action Partnership

Legal Services for Prisoners with Children
Los Angeles Continuum of Care
Los Angeles County Board of Supervisors
Los Angeles District Attorney's Office
Los Angeles Homeless Services Authority
Los Angeles LGBT Center
Los Angeles Regional Reentry Partnership
NAMI San Francisco
National Association of Social Workers, California Chapter
National Harm Reduction Coalition
Psychiatric Physicians Alliance of California
Rafiki Coalition for Health & Wellness
San Francisco Bay Area Rapid Transit District
San Francisco Chamber of Commerce
San Francisco District Attorney Chesa Boudin
San Francisco Getting to Zero Consortium
San Francisco Hepatitis C Task Force
San Francisco Mayor London N. Breed
San Francisco Tax Payers for Public Safety
Senior and Disability Action
Shanti Project
Sierra Harm Reduction Coalition
Smart Justice California
St. James Infirmary
Team Lily
Treatment Action Group
Treatment on Demand Coalition
UCSF Alliance Health Project
Valley Community Healthcare
Women Organized to Respond to Life Threatening Diseases
Three Individuals

Oppose: California Association of Code Enforcement Officers
California Family Council
California Narcotic Officers' Association
California State Sheriffs' Association
Congress of Racial Equality
Peace Officers' Research Association of California

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