SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No:	SB 57	**Hearing Date:**	April 6, 2021
Author:	Wiener		
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Urgency:	No	**Fiscal:**	No
Consultant:	SJ		

Subject: ***Controlled substances: overdose prevention program***

HISTORY

Source: California Association of Alcohol and Drug Program Executives
California Society of Addiction Medicine
Drug Policy Alliance
Healthright 360
SF AIDS Foundation
Tarzana Treatment Center, Inc.

Prior Legislation: AB 2077 (Ting), Ch. 274, Stats. 2020
AB 362 (Eggman), not heard in Senate Health during the 2019-2020 legislative session
AB 186 (Eggman), vetoed in 2018
AB 2495 (Eggman), heard in Assembly Public Safety in 2016
AB 635 (Ammiano), Ch. 707, Stats. 2014
AB 1743 (Ting), Ch. 331, Stats. 2014
AB 604 (Skinner), Ch. 744, Stats. 2011
SB 41 (Yee), Ch. 738, Stats. 2011
AB 2145 (Ammiano), Ch. 545, Stats. 2010
SB 767 (Ridley-Thomas), Ch. 477, Stats. 2007
SB 1159 (Vasconcellos), Ch. 608, Stats. 2004
AB 136 (Mazzoni), Ch. 762, Stats. 1999

Support: Access Support Network of San Luis Obispo, Monterey, and Santa Barbara Counties; ACLU of California; American Academy of HIV Medicine, California/Hawaii Chapter; APLA Health; Being Alive- Los Angeles; Bienenstar Human Services; California Association of Social Rehabilitation Agencies; 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; Desert AIDS Project; Ella Baker Center for Human Rights; End Hep C SF; Friends Committee on Legislation of California; GLIDE; Harm Reduction Coalition of Santa Cruz County; Harm Reduction Services; HIVE; Housing California; Immigrant Legal Resource Center; Inland Empire Harm Reduction; Law Enforcement Action Partnership; Legal Services for Prisoners with Children; Los Angeles County Board of Supervisors, Supervisor Hilda Solis; Los Angeles County Board of Supervisors, Supervisor Kuehl; Los Angeles County 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; National Health Law Program; Planned Parenthood Affiliates of California; Psychiatric Physicians Alliance of California; Rafiki Coalition for Health & Wellness; San Francisco Community Health Center; San Francisco District Attorney's Office; San Francisco Mayor London Breed; San Francisco Public Defender's Office; San Francisco Taxpayers for Public Safety; San Francisco Hepatitis C Task Force; Shanti Project; Smart Justice California; St. James Infirmary; Team Lily; Transitions Clinic Network; Treatment Action Group; Treatment on Demand Coalition; UCSF Alliance Health Project; Valley Community Healthcare; Women Organized to Respond to Life-threatening Diseases; an individual

Opposition: Alliance to Protect Children; California Association of Code Enforcement Officers; California Coalition Against Drugs; California College and University Police Chiefs Association; California District Attorneys Association; California Family Council; California Narcotics Officers' Association; California Peace Officers' Association; California State Sheriffs' Association; Capitol Resource Institute; Congress of Racial Equality; Peace Officers' Research Association of California; Riverside Sheriffs' Association; an individual

PURPOSE

The purpose of this bill is to permit 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.

Existing law classifies controlled substances into five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054-11058.)

Existing law prohibits the possession of cocaine, cocaine base, heroin, opiates, opium derivatives, and other specified controlled substances and specifies a term of imprisonment in a county jail for 16 months, or two or three years for a violation. (Health & Saf. Code, § 11350, subd. (a).)

Existing law provides that it is unlawful to possess any device, instrument, or paraphernalia used for unlawfully injecting or smoking specified controlled substances. Provides that until January 1, 2026, this section does not apply to the possession of hypodermic needles or syringes solely for personal use. (Health & Saf. Code, § 11364, subds. (a) & (c).)

Existing law provides that it is unlawful to visit or to be in any room or place where specified controlled substances are being unlawfully smoked or used with knowledge that such activity is occurring. Applies only where the defendant aids, assists, or abets the perpetration of the unlawful smoking or use of the controlled substance. (Health & Saf. Code, § 11365, subds. (a) & (b).)

Existing law provides that every person who opens or maintains any place for the purpose of unlawfully selling, giving away, or using specified controlled substances shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison. (Health & Saf. Code, § 11366.)

Existing law provides that any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail up to three years. (Health & Saf. Code, § 11366.5, subd. (a).)

Existing law makes the possession of methamphetamine and other specified controlled substances punishable by imprisonment in a county jail for a term not to exceed one year, except as specified. (Health & Saf. Code, § 11377, subd. (a).)

Existing law provides that it is unlawful to be under the influence of specified controlled substances, except as specified. Provides that the punishment is a sentence of not more than one year in a county jail, and the court may also place a person on probation for a period not to exceed five years. (Health & Saf. Code, § 11550, subd. (a).)

Existing law authorizes any city, county, or city and county, to establish a clean needle and syringe exchange project, upon approval by local officials. (Health & Saf. Code, § 121349, subd. (b).)

Existing law prohibits staff and volunteers participating in a clean needle and syringe exchange project authorized by the state, county, city, or city and county from being subject to criminal prosecution for violation of any law related to the possession, furnishing, or transfer of hypodermic needles or syringes or any materials deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability during participation in an exchange project. Prohibits program participants from being subject to criminal prosecution for possession of needles or syringes or any materials deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability acquired from an authorized needle and syringe exchange project entity. (Health & Saf. Code, § 121349.1.)

Existing law provides that until January 1, 2026, a physician or pharmacist may, without a prescription or a permit, furnish hypodermic needles and syringes for human use to a person 18 years of age or older, and a person 18 years of age or older may, without a prescription or license, obtain hypodermic needles and syringes solely for personal use from a physician or pharmacist. (Bus. & Prof. Code, § 4145.5, subd. (a).)

Existing law provides that until January 1, 2026, a pharmacy that furnishes nonprescription syringes is required to provide written information or verbal counseling to consumers at the time of furnishing or sale of nonprescription hypodermic needles or syringes on how to do the following: (1) access drug treatment; (2) access testing and treatment for HIV and hepatitis C; and (3) safely dispose of sharps waste. (Bus. & Prof. Code, § 4145.5, subd. (f).)

This bill permits the City and County of San Francisco, the County of Los Angeles, and the City of Oakland to approve entities within their jurisdictions to establish and operate overdose prevention programs.

This bill requires prior to approving an OPP, the City and County of San Francisco, the County of Los Angeles, or the City of Oakland to provide local law enforcement officials, local public health officials, and the public with an opportunity to comment in a public meeting. Requires the notice of the meeting to the public to be sufficient to ensure adequate participation in the meeting by the public. Requires the meeting to be noticed in accordance with all state laws and local ordinances, and as local officials deem appropriate.

This bill requires that in order for an entity to be approved to operate an OPP, the entity must demonstrate that it will, at a minimum:

- Provide a hygienic space to consume controlled substances under supervision of staff trained to prevent and treat drug overdoses.
- Provide sterile consumption supplies, collect used equipment, and provide secure hypodermic needle and syringe disposal services.
- Monitor participants for potential overdose and provide care as necessary to prevent fatal overdose.
- Provide access or referrals to substance use disorder treatment services, primary medical care, mental health services, and social services.
- Provide access or referrals to HIV and viral hepatitis prevention, education, testing, and treatment.
- Provide overdose prevention education and access to or referrals to obtain naloxone hydrochloride or another overdose reversal medication approved by the U.S. FDA.
- Educate participants regarding proper disposal of hypodermic needles and syringes and provide participants with approved biohazard containers for syringe disposal.
- Provide reasonable security of the program site.
- Establish operating procedures for the program including, but not limited to, standard hours of operation, training standards for staff, a minimum number of personnel required to be onsite during those hours of operation, the maximum number of individuals who can be served at one time, and an established relationship with the nearest emergency department of a general acute care hospital, as well as eligibility criteria for program participants.
- 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.
- Require that all staff present at the program during open hours be certified in CPR and first aid. Requires certification to be demonstrated by current and valid CPR and first aid cards issued by the American Red Cross, the American Heart Association, or from an accredited college or university.
- Require that all staff present at the program during open hours be authorized to provide emergency administration of an opioid antagonist, and be trained for administration of an opioid antagonist pursuant to existing state law.
- Establish a plan for staff and workplace safety.

This bill requires an entity operating an OPP to provide an annual report to the authorizing jurisdiction that includes all of the following:

- The number of program participants.
- Aggregate information regarding the characteristics of program participants.
- The number of overdoses experienced and the number of overdoses reversed onsite.
- The number of persons referred to substance use disorder treatment, primary medical care, and other services.

This bill prohibits a person or entity, including, but not limited to, property owners, managers, employees, volunteers, clients or participants, and employees of the City and County of San Francisco, the County of Los Angeles, or the City of Oakland acting in the course and scope of employment, engaged, in good faith, in the activities of an authorized OPP, in accordance with established protocols and on the program site, from being subject to any of the following:

- Arrest, charge, or prosecution pursuant to Health and Safety Code section 11350, 11364, 11365, 11366, 11366.5, or 11377, or section 11550, subdivsion (a), including for attempt, aiding and abetting, or conspiracy to commit a violation of any of those offenses, for activity or conduct on the site of an OPP.
- Civil or administrative penalty or liability or disciplinary action by a professional licensing board or for conduct relating to the approval of an entity to operate, inspection, licensing, or other regulation unless performed in a grossly negligent manner or in bad faith.

This bill provides that the Medical Board of California or the Osteopathic Medical Board of California are not limited 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.

This bill provides that its provisions sunset on January 1, 2027.

This bill makes a number of findings and declarations.

COMMENTS

1. Need for This Bill

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 this year, compared to last year. More than 40 states have documented increases in opioid overdoses since the beginning of shelter in place.

In San Francisco, overdose deaths increased by 170% from 2018 to 2019, and have climbed even higher in 2020. San Francisco has seen nearly four times as many overdose deaths as COVID-19 deaths since March. African Americans continue to have the highest rate of overdose deaths, dying of opioid overdoses at nearly triple the rate of whites in 2018.

Oakland has seen similar increases; in 2019, the opioid-related overdose death rate in Oakland was 8.22 per 100,000, representing a 151% increase from the year before. Additionally, according to data from the Los Angeles County Medical Examiner-Coroner, death from opioid overdose in the LA County jumped by 26% in 2019 from the prior year. That trend continued in 2020, with the county on pace to see over one thousand opioid deaths this year. From the first stay-at-home order in mid-March to the end of June, 2020, the daily rate of opioid deaths in Los Angeles County grew by a full 58%, compared to the rate for the prior 12 months.

As opioid use has increased, so have newly reported hepatitis C infections in California and nationwide. An analysis by the U.S. Centers for Disease Control and Prevention (CDC) found that increases in acute hepatitis C rates mirrored increases in drug treatment admission rates in which clients reported injection drug use.

While California has made great strides in addressing the needs of those experiencing substance use disorders, there is more work to be done. As the rates of both overdose deaths and spread of infectious diseases rise, it is imperative that we utilize every tool possible in order to combat this public health crisis.

Current law hamstrings the ability of local jurisdictions to authorize the creation of overdose prevention programs (OPPs) that have been shown through rigorous studies to be very effective in preventing and mitigating overdose deaths. Senate Bill 57 aims to solve this issue by allowing, but not mandating, the outlined jurisdictions the discretion to authorize OPPs.

2. Opioid Epidemic

Opioids are a class of drugs that include the illegal drug heroin, synthetic opioids such as fentanyl, and pain relievers available legally by prescription. According to the National Institute on Drug Abuse (NIDA), opioid pain relievers are generally safe when taken for short periods of time and as prescribed by a physician. However, regular use—even as prescribed by a physician—can lead to dependence and, when misused, can lead to addiction, overdose, and death. An opioid overdose can be reversed with the drug naloxone when administered immediately.

Over the past several years, California has seen a significant increase in opioid-related overdose deaths. According to Office of Statewide Health and Planning Development (OSHPD) data, although prescription opioids remain the leading cause of opioid-related overdose deaths, the number of opioid overdose deaths related to heroin, fentanyl, and amphetamines is increasing. (<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx> [as of Mar. 30, 2021.]) Specifically, heroin overdose deaths in the state increased 117% between 2012 and 2018. (*Id.*) During the same time period, fentanyl overdose deaths increases 858% and amphetamine deaths increased 212%. (*Id.*)

Similarly, data from the California Opioid Overdose Surveillance Dashboard indicates that emergency department (ED) visits for opioid-related overdoses have significantly increased in recent years. (<https://skylab.cdph.ca.gov/ODdash/#shiny-tab-CA> [as of Mar. 30, 2021].) The total number of ED visits for overdoses caused by any opioid in 2015 was 7,802, and by 2019, that number had increased to 11,767. (*Id.*) Looking specifically at ED visits caused by heroin overdoses, the number increased from 3,206 in 2015 to 4,623 in 2019. (*Id.*)

The state Department of Public Health describes the state's approach to addressing the opioid epidemic as "a multi-pronged, strategic collaboration at both the state and local levels to build a comprehensive approach" which includes: implementing a statewide multi-agency workgroup; changing policies of public payer healthcare systems; mandating the use of the prescription drug monitoring program; expanding medication assisted treatment (MAT) services availability and access; implementing a naloxone distribution program; increasing access to naloxone through pharmacies; educating physicians and pharmacists; supporting local opioid safety coalitions; and implementing public education campaigns for youth, seniors, and high burden rural counties. (<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx> [as of Mar. 30, 2021].)

Some of the above listed efforts by the state to address the opioid epidemic, including the expansion of access to MAT services and the naloxone distribution program, are considered harm reduction strategies. Initially developed for adults with substance use disorders for whom abstinence was not feasible, harm reduction is a public heath strategy in which the primary objective is to minimize the adverse consequences of the problematic behavior.

3. Overdose Prevention Programs (OPP)/Supervised Injection Facilities (SIFs)

Supervised injection facilities, also known as safe consumption spaces and safe injection sites, and referred to in this bill as overdose prevention programs, are legally sanctioned facilities where people who use intravenous drugs can inject pre-obtained drugs under the supervision of a health care provider. These facilities 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 services, treatment referrals, and access to medical staff. Proponents of SIFs contend that the research on SIFs demonstrates 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. Opponents of SIFs argue that the existence of SIFs will lead to increased drug use and a general increase in drug-related antisocial behaviors in the areas in which SIFs are located. According to Drug Policy Alliance, there are more than 110 SIFs operating worldwide. Legislation authorizing the establishment of SIFs has been introduced in recent years in several states and cities across the country, including New York, Maine, Maryland, San Francisco, Seattle, and Denver.

Undisclosed location in the U.S.

In September 2014, an organization in an undisclosed U.S. city opened an unsanctioned SIF. In August 2020, a letter was published in the New England Journal of Medicine containing the results of an evaluation of the first five years of operation of the SIF. (https://www.nejm.org/doi/suppl/10.1056/NEJMc2015435/suppl_file/nejmc2015435_appendix.pdf) Injections were monitored by trained staff and were conducted with sterile equipment.

All syringes were used only once and were disposed of safely at the site. Site staff used an online data-collection system to document every drug injection, 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. Reportedly, 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.

Vancouver/Canada

Insite, in Vancouver, Canada, became the first SIF established in North America in 2003. Insite was designed as part of a continuum of care for people with substance use disorders, mental illness, and HIV/AIDS. In 2015, Insite reportedly had 263,713 visits to the site by 6,532 unique individuals with an average of 722 visits per day and an average of 440 injection room visits per day. There were 5,359 clinical treatment interventions, and 5,368 referrals to other social and health services. Additionally, there were 464 admissions into their adjoining detox treatment facility, which recorded a program completion rate of 54%. Since 2003, several additional SIFs have been approved and opened throughout Canada. (<https://www.canada.ca/en/health-canada/services/substance-use/supervised-consumption-sites/status-application.html#wb-auto-2> [as of Mar. 31, 2021.]

San Francisco

In June 2020, the San Francisco County Board of Supervisors unanimously approved an ordinance that would create a system to issue permits to non-profit organizations that want to operate SIFs in San Francisco. (<https://www.courthousenews.com/san-francisco-oks-process-to-open-safe-injection-sites/> [as of Mar. 31, 2021].) In early 2020, the U.S. Attorney for the Northern District of California publicly stated that the government would file a lawsuit if San Francisco moved forward with opening SIFs. (<https://www.kqed.org/news/11804290/us-attorney-threatens-legal-action-if-san-francisco-opens-supervised-injection-sites> [as of Mar. 31, 2021].)

Philadelphia

In 2018, the City of Philadelphia announced plans to open a SIF. See Section 4 for more details on litigation arising out of the Philadelphia's planned SIF.

4. Conflict with Federal Law

Two federal statutes are particularly relevant with respect to the activity occurring at a SIF. Title 21 United State Code section 844 provides that it is "unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his

professional practice, or except as otherwise authorized." In addition, federal law provides that it is unlawful to:

(a) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or **using any controlled substance**;

(b) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or **using a controlled substance**. (21 U.S.C. § 856.)

Arguably, these two statutes would criminalize both the behavior of the clients using the facilities as well as the owners or operators of the facilities.

The question of the legality of SIFs under federal law is currently being litigated. In January 2018, Philadelphia health officials announced their plan to allow the opening of a SIF as one way to combat the city's opioid epidemic. (<https://www.inquirer.com/philly/health/addiction/safe-injection-site-philadelphia-safehouse-faq-20181008.html> [as of Mar. 31, 2021].) Subsequently, a non-profit focused on providing a range of overdose prevention services, Safehouse, announced that it would open a SIF in the city. In February 2019, the U.S. Attorney for the Eastern District of Pennsylvania sued to block the facility from opening and sought a declaratory judgment that supervised injection sites violate 21 U.S.C. § 856(a)(2). (<https://whyy.org/articles/federal-prosecutors-sue-to-stop-nations-first-planned-supervised-injection-site-in-philly/> [as of Mar. 31, 2021].) The statute reads:

Except as authorized by this subchapter, it shall be unlawful to—

(1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;

(2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance. (21 U.S.C. § 856(a).)

The court denied the government's motion in October 2019, finding that section 856(a) "does not prohibit Safehouse's proposed medically supervised consumption rooms because Safehouse does not plan to operate them 'for the purpose of' unlawful drug use within the meaning of the statute." (*U.S. v. Safehouse* (E.D.Pa. 2019) 408 F.Supp. 3d 583, 587.) In its analysis, the court noted the absence of a controlling standard of the statutory construction of 21 U.S.C. § 856(a) because the Third Circuit had not yet considered the proper construction of this section and no court of appeal had considered its application to SIFs. (*Id*. at p. 588.) Applying established rules of statutory interpretation, the court held that Congress had not intended for the statute to apply to SIFs when the law was enacted in 1986 or when it was amended in 2003, because SIFs were not part of the public discourse on addressing drug use at either time. (*Id*. at p. 616.) Rather, Congress was responding to the proliferation of "crack houses" in 1986 and drug-fueled raves in 2003. (*Id*. at p. 613.) The court entered a final appealable order in February 2020, and the

government filed an appeal. The government simultaneously filed an emergency motion to stay the district court's February order following Safehouse's announcement that it would begin operating a SIF. In June 2020, the district court granted the stay in light of the impact of the COVID-19 pandemic and the civil unrest following the killing of George Floyd on the City of Philadelphia. (*U.S. v. Safehouse* (E.D.Pa. 2020) 2020 U.S. Dist. LEXIS 110549.)

In July 2020, then-Attorney General Xavier Becerra joined a multi-state amicus brief filed in support of Safehouse. (https://oag.ca.gov/news/press-releases/attorney-general-becerra-joins-multistate-amicus-brief-support-public-health) In January 2021, a three-judge panel of the 3rd Circuit Court of Appeals issued a 2-1 ruling reversing the district court, finding:

> Because Safehouse knows and intends that its visitors will come with a significant purpose of doing drugs, its safe-injection site will break the law. Although Congress passed § 856 to shut down crack houses, its words reach well beyond them. Safehouse's benevolent motive makes no difference. And even though this drug use will happen locally and Safehouse will welcome visitors for free, its safe-injection site falls within Congress's power to ban interstate commerce in drugs. (*U.S. v. Safehouse*, (3rd Cir. 2021) 985 F.3d 225, 229.)

After the opinion was issued, Safehouse filed a petition for rehearing *en banc*. Given the change in presidential administrations, it is unclear whether the U.S. Department of Justice will continue to sue to block SIFs from opening or what action it will take in the Safehouse case if *en banc* review is granted.

5. What This Bill Does

This bill authorizes the City and County of San Francisco, the County of Los Angeles, and the City of Oakland to approve entities to establish and operate OPPs. In order for an OPP to be approved, this bill requires that the entity operating the OPP satisfy several requirements. Specifically, an entity must demonstrate that it will: provide a hygienic space to consume controlled substances under supervision of staff trained to prevent and treat drug overdoses; provide sterile consumption supplies, collect used equipment, and provide secure hypodermic needle and syringe disposal services; monitor participants for potential overdose and provide care as necessary to prevent fatal overdose; provide access or referrals to substance use disorder treatment services, primary medical care, mental health services, and social services; provide overdose prevention education and access to or referrals to obtain naloxone hydrochloride or another approved overdose reversal medication; provide reasonable security of the program site; establish operating procedures for the program, as specified; establish and make public a good neighbor policy to address any neighborhood concerns and complaints; and establish a plan for staff and workplace safety, among other things.

This bill also requires that prior to approving an OPP, the above listed jurisdictions provide local law enforcement officials, local public health officials, and the public with an opportunity to comment in a public meeting and requires the notice of the public meeting to be sufficient to ensure adequate participation in the meeting by the public.

Additionally, this bill includes criminal and civil immunity provisions. Specifically, this bill prohibits a person or entity, including, but not limited to, property owners, managers, employees, volunteers, clients or participants, and employees of the City and County of San Francisco, the

County of Los Angeles, or the City of Oakland acting in the course and scope of employment, engaged, in good faith, in the activities of an authorized OPP, in accordance with established protocols and on the program site, from being subject to any of the following:

- Arrest, charge, or prosecution for various drug-related offenses, including possession of specified controlled substances, possession of drug paraphernalia, visiting any room or place where a controlled substance is being unlawfully smoked or used, opening or maintaining any place for the purpose of using a controlled substance, making available any room or space for the purpose of unlawfully storing or distributing any controlled substance, or being under the influence of a controlled substance. This provision applies to any arrest or prosecution for attempting, aiding and abetting, or conspiring to commit a violation of any of those offenses, for activity or conduct that takes place at an OPP.
- Civil or administrative penalty or liability or disciplinary action by a professional licensing board or for conduct relating to the approval of an entity to operate, inspection, licensing, or other regulation unless performed in a grossly negligent manner or in bad faith.

Notably, this bill does not preclude the Medical Board of California or the 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.

Finally, this bill includes a sunset provision of January 1, 2027.

6. AB 186 Veto Message

AB 186 (Eggman) of the 2017-2018 legislative session would have authorized the City and County of San Francisco to open safe injection sites. Governor Brown vetoed AB 186 stating:

> I am returning Assembly Bill 186 without my signature.
>
> This bill authorizes the City and County of San Francisco to approve "overdose prevention programs," including the establishment of centers where illegal drugs can be injected under sanitary conditions.
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> The supporters of this bill believe these "injection centers" will have positive impacts, including the reduction of deaths, disease and infections resulting from drug use. Other authorities-including law enforcement, drug court judges and some who provide rehabilitative treatment-strongly disagree that the "harm reduction" approach envisioned by AB 186 is beneficial.
>
> After great reflection, I conclude that the disadvantages of this bill far outweigh the possible benefits.
>
> Fundamentally, I do not believe that enabling illegal drug use in government sponsored injection centers-with no corresponding requirement that the user undergo treatment-will reduce drug addiction.
>
> In addition, although this bill creates immunity under state law, it can't create such immunity under federal law. In fact, the United States Attorney General has

already threatened prosecution and it would be irresponsible to expose local officials and health care professionals to potential federal criminal charges.

Our paramount goal must be to reduce the use of illegal drugs and opioids that daily enslaves human beings and wreaks havoc in our communities. California has never had enough drug treatment programs and does not have enough now. Residential, outpatient and case management-all are needed, voluntarily undertaken or coercively imposed by our courts. Both incentives and sanctions are needed. One without the other is futile.

There is no silver bullet, quick fix or piecemeal approach that will work. A comprehensive effort at the state and local level is required. Fortunately, under the Affordable Care Act, California now has federal money to support a much expanded system of care for the addicted. That's the route we should follow: involving many parties and many elements in a thoroughly integrated undertaking.

I repeat, enabling illegal and destructive drug use will never work. The community must have the authority and the laws to require compassionate but effective and mandatory treatment. AB 186 is all carrot and no stick.

7. Argument in Support

According to the San Francisco Public Defender's Office:

SB 57 will allow specified California jurisdictions to pilot and evaluate overdose prevention projects (OPP), sometimes referred to in studies as "supervised consumption services," or "supervised injection sites." These pilots would require a vote of the local government, require evaluation, and be subject to a five-year sunset in the legislation. The bill would give the City and County of San Francisco, City of Oakland, and the County of Los Angeles the ability to implement and evaluate these promising programs to better address the high rates of fatal drug overdose, homelessness, public substance use, and to connect people to substance use disorder treatment and housing, and to prevent HIV, viral hepatitis, and soft tissue infections.

Overdose prevention programs, such as those that could be established under this bill, have been extensively 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. More than 110 exist in eleven countries, including Canada, Australia and European nations. People who used an OPP in Canada were more likely to enter treatment and more likely to stop using drugs. Research from Sydney, Australia found a reduction in paramedic and emergency room use in areas where OPP were established, with the strongest reduction during their open hours. Incredibly, the cumulative research shows that even with tens of thousands of injections, there has never been a known death associated with these programs. Not one.

This bill is timely and urgent. The coronavirus pandemic has exacerbated overdose rates, and as hospital resources are stretched thin, we need a science-driven measure to prevent fatal and nonfatal drug overdose. California should lead the nation on the implementation of OPP pilot projects that have proven to be cost effective, act as essential points of health access to highly marginalized communities, and to contribute to the stability of communities as a whole.

Furthermore, in the context of the national debate to re-imagine public safety and emergency responses, OPPs should be in the foreground of our strategies to address the needs of community members living at the intersection of homelessness, mental illness and drug use. These programs will act as health settings that will mitigate overdose mortality rates, as well as emergency room use.

Local governments should have the discretion to address the overdose crisis through proven methods that minimize the need for confrontational encounters between police and citizens, especially in this time of pandemic and tension between communities and law enforcement. There is an urgent need to fortify trust in the legal system. Failing to address the loss of life resulting from drug overdose--and criminalizing a community based public health organization working to save lives—will further erode trust. If there were ever a time to demonstrate that the legal system values the dignity of human life, that time is now.

8. Argument in Opposition

The California District Attorneys Association writes:

The measure would create drug injection sites in the City and County of San Francisco, the County of Los Angeles and the City of Oakland, which comprise nearly 30 percent of the State's population and are still in the grip of the COVID-19 pandemic. As with AB 186, the theory of legal injection sites is that people can bring their own drugs to the site, inject themselves and then leave.

We believe the reasons cited by Governor Brown in his veto message are equally applicable to SB 57. We particularly echo Governor Brown's concern that "enabling illegal drug use in government sponsored injection centers – with no corresponding requirement that the user undergo treatment – will reduce drug addiction.

We share Governor Brown's argument that California's "paramount goal must be to reduce the use of illegal drugs and opioids that daily enslaves human beings and wreaks havoc in our communities. California has never had enough drug treatment programs and does not have enough now. Residential, outpatient and case management - all are needed, voluntarily undertaken or coercively imposed by our courts. Both incentives and sanctions are needed. One without the other is futile."

The recent study of injection sites completed last year by the Canadian Province of Alberta is instructive in assessing this policy. According to the study, the

injection sites have a magnet effect where addicts are drawn to the areas around the sites in the mistaken belief that use of the controlled substances in question are now legal. Consistent use of injection sites is very low, overdose deaths in the vicinity of the injection sites actually increase and COVID-19 risks are magnified.

CDAA believes we should heed the lessons from Canada. Moreover, the bill fails to include any strategies to utilize methadone alternatives, mandatory treatment protocols or on-site drug counseling. The bill also creates myriad problems for local law enforcement who would be stymied in responding to calls for service by individuals and businesses in neighborhoods around a site, since local approval of this program would necessarily require leniency on all drug crimes in a certain area. Those areas would almost certainly see a corresponding increase in crime and blight.

…

Governor Brown best summarized the flawed approach embraced by SB 57 in noting that "enabling illegal and destructive drug use will never work. The community must have the authority and the laws to require compassionate but effective and mandatory treatment." In his veto of AB 186, he termed the bill "all carrot and no stick." CDAA believes SB 57, though well-intentioned, is plagued by the same flaw.

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