

SENATE THIRD READING
SB 57 (Wiener)
As Amended January 18, 2022
Majority vote

SUMMARY

Permits the City and County of San Francisco (SF), the County of Los Angeles (LAC), the City of Los Angeles, and the City of Oakland (Oakland) to approve entities to establish and operate overdose prevention programs (OPPs) until January 1, 2028. Requires OPPs to provide a hygienic space supervised by trained staff, as specified, and provide sterile consumption supplies where people can consume controlled substances.

COMMENTS

- 1) According to the California Opioid Overdose Surveillance Dashboard, 2020 saw a 69.6% increase in opioid overdose deaths from those in 2019 (5,502 in 2020 vs. 3,244 in 2019), a 146% increase in fentanyl related overdose deaths (3,946 in 2020 vs. 1,603 in 2019), and a 33% increase in emergency department (ED) visits related to any opioid overdose (15,644 in 2020 vs. 11,767 in 2019). This dramatic increase in opioid related deaths and ED visits occurred despite a 15.4% decline in the number of opioid prescriptions written in 2020 compared to 2019. Some of the counties most affected remain northern and large urban counties, including Lake, Shasta, SF, Orange, and San Diego. Data on ED encounters for individuals with heroin poisoning from the Department of Health Care Access and Information show 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 (SIS) 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 SISs, referred to as OPPs in this bill, and that the city could save \$3.5 million in medical costs.

- 2) Harm reduction. According to the National Institutes of Health website, harm reduction is a strategy that aims to reduce the harms associated with certain behaviors. When applied to substance use disorders (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.
- 3) OPPs. OPPs, also known as SISs, safe injection facilities and safe consumption spaces, 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. It is reported that there are more than 110 OPPs operating worldwide. Legislation authorizing the establishment of OPPs has been introduced in recent years in several states and cities across the country, including New York, Maine, Maryland, San Francisco, Seattle, and Denver.
- 4) Conflict with Federal Law. Two federal statutes are particularly relevant with respect to the activity occurring at a OPP. 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 their professional practice, or except as otherwise authorized." In addition, federal law provides that it is unlawful to knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance; and, 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.

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. These statutes were the basis of the legal proceedings in Philadelphia's Safehouse case which the Supreme Court just recently declined to review. It is unclear whether the U.S. Department of Justice will continue to sue to block OPPs from opening.

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 last year, compared to the year prior. 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 LAC Medical Examiner-Coroner, death from opioid overdose in the LAC 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 LAC 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 found that increases in acute hepatitis C rates mirrored increases in drug treatment admission rates in which clients reported injection drug use.

The author concludes that while California has made great strides in addressing the needs of those experiencing SUDs, 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 hamstring the ability of local jurisdictions to authorize the creation of OPPs that have been shown through rigorous studies to be very effective in preventing and mitigating overdose deaths.

Arguments in Support

The California Society of Addiction Medicine (CSAM), cosponsor of this bill states that this bill is consistent with the recommendation of the American Medical Association announced June 12, 2017, to support the: "development of pilot facilities where people who use intravenous drugs can inject self-provided drugs under medical supervision....Studies from other countries have shown that supervised injection facilities reduce the number of overdose deaths, reduce transmission rates of infectious disease, and increase the number of individuals initiating treatment for SUDs without increasing drug trafficking or crime in the areas where the facilities are located." CSAM further states that approximately 120 OPPs exist in Europe, Australia, and Canada and they have been shown to be a cost-effective intervention that reduces health and safety problems associated with drug use, including public drug use, discarded syringes, HIV and hepatitis infections, and overdose deaths. People who used these programs were more likely to enter treatment and to stop using drugs.

Arguments in Support if Amended

The California Medical Association (CMA) in a support if amended position, states that OPPs, as would be allowed under this legislation, have been extensively researched and shown to reduce a plethora of health and safety risks associated with drug use, including public consumption, discarded syringes, HIV and hepatitis infections, and overdose deaths. Research from Australia found a reduction in paramedic and emergency room use in areas where OPPs were established, with the largest decrease during the facilities' open hours. Incredibly, concerning all OPPs across all countries, there has yet to be a single death reported in association with these programs. CMA requests that this bill be amended to include adequate liability coverage from disciplinary action from MBC for participation in the program. Currently, this bill contains liability protection from civil and criminal penalty, but should be expanded to include potential punitive measures from

licensing boards, as well, so that physicians are able to provide patients access to this program without fear of discipline.

Arguments in Opposition

The California Narcotic Officer's Association (CNOA), in opposition states that this bill is, in effect, a re-introduction of AB 186 (Eggman) from the 2017-2018 session that was vetoed by Governor Brown. CNOA believes that Governor Brown's well-reasoned veto is as applicable to the deficiencies in this bill. CNOA goes on to state that rather than a robust effort to get addicts into treatment, this bill alarmingly concedes the inevitable and immutable nature of drug addiction and abuse. For example, missing from this bill are any strategies to appropriately utilize methadone alternatives, mandatory treatment protocols, on-site 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 and leave the addict at risk. CNOA concludes by stating that as well intended as this bill is, its consequence will be to enable addictive behavior.

FISCAL COMMENTS

None.

VOTES

SENATE FLOOR: 21-11-8

YES: Allen, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, McGuire, Min, Pan, Roth, Skinner, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Glazer, Grove, Hurtado, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Archuleta, Caballero, Limón, Newman, Portantino, Rubio, Stern, Umberg

ASM HEALTH: 9-4-2

YES: Wood, Aguiar-Curry, Burke, Carrillo, Robert Rivas, McCarty, Nazarian, Luz Rivas, Santiago

NO: Cunningham, Flora, Maienschein, Waldron

ABS, ABST OR NV: Arambula, Rodriguez

ASM PUBLIC SAFETY: 5-2-0

YES: Jones-Sawyer, Mia Bonta, Bryan, Quirk, Santiago

NO: Lackey, Seyarto

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