LEGAL ACTION CENTER
Breaking Barriers. Defending Dignity.

Frequently Asked Questions on Overdose Prevention Centers

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Q1 - What are overdose prevention centers?

Q2 - How do OPCs affect individuals who use drugs?

Q3 - How do OPCs affect surrounding communities?

Q4 - What is the legal status of OPCs in the US?

Q5 - What can states do to enable the establishment of OPCs?

Q6 - How are OPCs operating despite legal barriers?

Q7 - How are harm reduction organizations and people who use drugs taking action to mitigate drug-related harm in the face of legal and political barriers to OPCs?

Q1 - What are overdose prevention centers?

Overdose prevention centers ("OPCs") are also known as safe consumption sites, drug consumption rooms, safe injection facilities, and supervised consumption sites. OPCs are spaces where individuals may use pre-obtained drugs in a supervised and hygienic setting with access to sterile supplies and OPC staff who will respond in the event of an overdose.

OPCs are one type of evidence-based harm reduction strategy to reduce fatal overdose and other harms associated with drug use. [Harm reduction is a philosophy of care and set of principles and approaches that aim to reduce the harms associated with drug use, as well as the harms resulting from racialized and punitive drug policies. Importantly, harm reduction is grounded in social justice and prioritizes dignity, agency, and respect for people who use drugs…Critically, most harm reduction interventions have been developed by and for people who use(d) drugs.[1]]

OPCs reduce the harms that people who use drugs face by providing sterile supplies, overdose response services, and, in many cases, wraparound health care and social support.[2] There are

[1] Alexandra B. Collins et al., *Somerville Supervised Consumption Site: Needs Assessment and Feasibility Report*, CITY OF SOMERVILLE, MASS. 1, 12 (June 16, 2021), https://s3.amazonaws.com/somervillema.gov.if-us-east-1/s3fs-public/somerville-scs-final-report.pdf.
[2] *See id.* at 23.

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approximately 200 OPCs in 14 countries, including Canada, Australia, and throughout western Europe.[3] In November 2021, New York City became the first U.S. city to publicly recognize an OPC.[4]

Q2 - How do OPCs affect individuals who use drugs?

The United States is in of the grip of an opioid overdose crisis. In 2021, more than 107,000 people died from a drug overdose in the US,[5] and drug overdose deaths have increased by more than 500% between 1999 and 2020.[6] Recent studies suggest that an increasingly toxic illicit drug supply is contributing to worsening of the US overdose crisis and that there has been disproportionate harm to racial and ethnic minoritized communities.[7]

This is borne out by the data: Black Americans experience higher annual percentage increases in overdose deaths when compared to white individuals each year since 2012; Native people (including Alaska Native peoples) experienced the highest rate of overdose mortality out of all groups studied in 2020; and Latino (including Hispanic) people experienced a 40.1% increase in drug overdose rates in 2020.[8]

Since their November 2021 launch, the two New York City OPCs, operated by OnPoint NYC, reported that they have prevented over 700 overdose deaths.[9] Evidence demonstrates that OPCs reduce overdose mortality, risk of infectious disease, and injection-risk behaviors such as sharing or reusing syringes.[10] OPCs also help facilitate access to health and social services and increase entry to drug treatment.[11] Studies demonstrate that there have been no overdose deaths in OPCs.[12]

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[3] *Overdose Prevention Centers*, WE ARE THE DRUG POL'Y ALL., https://drugpolicy.org/issues/supervised-consumption-services (last visited Feb. 9, 2023); *see also What's an Overdose Prevention Centre*, TRANSFORM DRUG POL'Y FOUND., https://transformdrugs.org/drug-policy/uk-drug-policy/overdose-prevention-centres (last visited Feb. 9, 2023) (including a link to see all the current OPCs worldwide).

[4] *Overdose Prevention Centers Averted 59 Overdoses in First Three Weeks of Operation*, N.Y. CITY (Dec. 21, 2021), https://www1.nyc.gov/site/doh/about/press/pr2021/overdose-prevention-centers-prevent-59-deaths.page [hereinafter *N.Y. City OPCs*].

[5] *Provisional Drug Overdose Death Counts*, CTRS. FOR DISEASE CONTROL & PREVENTION: NAT'L CTR. FOR HEALTH STATS. (July 5, 2022), https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm.

[6] *CDC's Efforts to Prevent Overdoses and Substance Use-Related Harms: 2022–2024*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/drugoverdose/prevention/pdf/CDC-Efforts-to-Prevent-Overdoses_2022-2024.pdf (last visited Feb. 9, 2023).

[7] Joseph R. Friedman & Helena Hansen, *Evaluation of Increases in Drug Overdose Mortality Rates in the US by Race and Ethnicity Before and During the COVID-19 Pandemic*, 79 J. AM. MED. ASS'N: PSYCH. 379 (2022), https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2789697.

[8] *Id.*

[9] *See* ONPOINTNYC, https://onpointnyc.org/ (last visited Feb. 23, 2023).

[10] *See, e.g.*, Eric Armbrecht et al., *Supervised Injection Facilities and Other Supervised Consumption Sites: Effectiveness and Value*, NEW ENGLAND COMPAR. EFFECTIVENESS PUB. ADVISORY COUNCIL (Jan. 8, 2021), https://icer.org/wp-content/uploads/2020/10/ICER_SIF_Final-Evidence-Report_010821.pdf (conducted by an independent non-profit research organization, the Institute for Clinical and Economic Review).

[11] *See, e.g., id.* at ES7; Eva Charlotte Toth et al., *A Cross-Sectional National Survey Assessing Self-Reported Drug Intake Behavior, Contact with the Primary Sector and Drug Treatment Among Service Users of Danish Drug Consumption Rooms*, 13 HARM REDUCTION J. 27 (2016), https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-016-0115-0.

[12] *See Overdose Prevention Centers*, DEP'T OF HEALTH & HUM. SERVS. (2021) https://nida.nih.gov/sites/default/files/NIH-RTC-Overdose-Prevention-Centers.pdf [hereinafter *HHS Report: OPCs*] (report to Congress prepared in collaboration with the National Institutes of Health and the CDC); Armbrecht, *supra* note 10, at ES5.

OPCs may be particularly beneficial to highly marginalized individuals.[13] A survey study among people who inject drugs in Ottawa, Canada, found that individuals most willing to access OPC services were those who injected in public spaces, required assistance to inject, tested positive for hepatitis C virus, experienced overdose in the previous year, and/or identified as LGBTQ.[14] A survey study of three US cities found that, among adult persons who use opioids, the willingness to use supervised consumption sites was higher if the person belonged to a racial minority group, used drugs in public or semi-public settings, and/or held suspicion (or knew) that their drugs contained fentanyl.[15] "Indeed, the research suggests that by mitigating some of the environmental risks fueled by socioeconomic marginalization, supervised injection facilities benefit the most at-risk persons who inject drugs and, thus, society at large by reducing injection drug use-related morbidity and mortality."[16]

Q3 - How do OPCs affect surrounding communities?

OPCs have been shown to decrease public injection and injection-related litter, including syringes.[17] A systematic review of OPCs found that they did not increase overall drug or other crime rates in the surrounding environments.[18]

Additionally, several studies on cost-effectiveness have demonstrated that establishing OPCs would reduce public costs in US cities.[19] A cost-effectiveness analysis of establishing a single OPC in Boston found that creating such a facility would prevent 773 ambulance rides, 551 emergency department visits, and 264 hospitalizations each year, saving the city at least $3 million annually.[20] Another study found that a single OPC in Baltimore would annually save $7.8 million by preventing "3.7 HIV infections, 21 Hepatitis C infections, 374 days in the hospital for skin and soft-tissue infection, 5.9 overdose deaths, 108 overdose-related ambulance calls, 78

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[13] Chloé Potier et al., *Supervised Injection Services: What Has Been Demonstrated? A Systematic Literature Review*, 145 DRUG & ALCOHOL DEPENDENCE 48 (2014), https://www.sciencedirect.com/science/article/abs/pii/S0376871614018754.
[14] Ashley Shaw et al., *Risk Environments Facing Potential Users of a Supervised Injection Site in Ottawa, Canada*, 12 HARM REDUCTION J. 1 (2015), https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-015-0083-9.
[15] Ju Nyeong Park et al., *Willingness to Use Safe Consumption Spaces Among Opioid Users at High Risk of Fentanyl Overdose in Baltimore, Providence, and Boston*, 96 J. URBAN HEALTH 353 (2019), https://doi.org/10.1007/s11524-019-00365-1.
[16] Wendy Macias-Konstantopoulos et al., *Between Emergency Department Visits: The Role of Harm Reduction Programs in Mitigating the Harms Associated with Injection Drug Use*, 77 ANNALS EMERGENCY MED. 479 (2021), https://doi.org/10.1016/j.annemergmed.2020.11.008.
[17] Sharon Larson et al., *Supervised Consumption Facilities—Review of the Evidence*, MAIN LINE HEALTH CTR. FOR POPULATION HEALTH RSCH. AT LANKENAU INST. FOR MED. RSCH. 1, 14 (Dec. 2017), http://dbhids.org/wp-content/uploads/2018/01/OTF_LarsonS_PHLReportOnSCF_Dec2017.pdf; A. Espelt et al., *The Impact of Harm Reduction Programs and Police Interventions on the Number of Syringes Collected from Public Spaces. A Time Series Analysis in Barcelona, 2004–2014*, 50 INT'L J. ON DRUG POL'Y 11 (2017), https://pubmed.ncbi.nlm.nih.gov/28957740/; Elizabeth N. Kinnard et al., *Self-Reported Changes in Drug Use Behaviors and Syringe Disposal Methods Following the Opening of a Supervised Injecting Facility in Copenhagen, Denmark*., 11 HARM REDUCTION J. 29 (2014), https://harmreductionjournal.biomedcentral.com/articles/10.1186/1477-7517-11-29; Alex H. Kral et al., *Evaluation of an Unsanctioned Safe Consumption Site in the United States*, 383 NEW ENGLAND J. OF MED. 589 (July 8, 2020), https://www.nejm.org/doi/full/10.1056/NEJMc2015435.
[18] Potier, *supra* note 13.
[19] Armbrecht, *supra* note 10, at 58–59; Amos Irwin et al., *Mitigating the Heroin Crisis in Baltimore, MD, USA: A Cost-Benefit Analysis of a Hypothetical Supervised Injection Facility*, 14 Harm Reduction J. 29 (2017), https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-017-0153-2 [hereinafter *Mitigating the Heroin Crisis in Baltimore, MD, USA*]; Amos Irwin et al., *The Costs and Benefits of a Supervised Use Site in Denver, Colorado*, DRUG POL'Y ALL. 1, 4 (2019), https://drugpolicy.org/sites/default/files/dpa-denver-scs-cost-benefit-analysis_0.pdf; Amos Irwin et al., *A Cost-Benefit Analysis of a Potential Supervised Injection Facility in San Francisco, California, USA*, 47 J. OF DRUG ISSUES 164 (2017), https://journals.sagepub.com/doi/10.1177/0022042616679829.
[20] Armbrecht, *supra* note 10, at 49.

emergency room visits, and 27 hospitalizations, while bringing 121 additional people into treatment."[21]

Q4 - What is the legal status of OPCs in the US?

No federal laws explicitly authorize or ban overdose prevention sites, but at least two sections of the Controlled Substances Act ("CSA") pose legal barriers. First, Section 844 bars simple drug possession of controlled substances unless such substances were lawfully obtained pursuant to a valid prescription.[22] Section 844 is likely violated by any individual who brings controlled substances into an OPC.[23]

And second, Section 856 of the CSA bars individuals from managing or controlling any place "for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance."[24] In January 2021, the Third Circuit Court of Appeals, overturning a 2019 district court ruling, held that a city-approved OPC proposed in Philadelphia would violate Section 856.[25] The court concluded that the requisite "purpose" in the statute refers to the individuals who would use drugs. To violate the statute, Safehouse, the operator of the proposed OPC, "need only knowingly and intentionally open its site to visitors who come for the purpose of…using drugs."[26] The court also concluded that the Section 856 prohibition, as applied to Safehouse, was a valid exercise of Congress's power to regulate interstate commerce.[27]

The Supreme Court denied Safehouse's petition for a *writ of certiorari*, leaving open the possibility that other jurisdictions may come to a different conclusion should similar cases arise (only Delaware, New Jersey, and Pennsylvania are bound by the Third Circuit's decision).

Additionally, legislative history supports the contention that Section 856 does not apply to OPCs. As a 2008 article explained, "[T]he law was a response to the proliferation of "crack houses" in which users congregated to purchase and consume drugs during the height of the crack epidemic, and later amendments addressed the emergence of "rave" parties whose sponsors were deemed to be profiting from Ecstasy use. It was never intended to interfere with a legally authorized public health intervention. It should not be interpreted to infringe upon states' traditional authority in public health, absent a "clear statement" of Congress's intention to do so."[28]

Ultimately, however, "the most important legal question is really a political one: would federal lawmakers or law enforcement officials support, or at least ignore, a state-authorized [OPC]?"[29] Safehouse has been in talks with the Biden administration since September 2021, and has repeatedly agreed to extensions for the Department of Justice (DOJ) to respond to counterclaims in the case, which is currently on remand in the Eastern District of Pennsylvania.[30] In February 2022, in response to questions from the Associated Press, the DOJ

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[21] *Mitigating the Heroin Crisis in Baltimore, MD, USA*, *supra* note 19.
[22] 21 U.S.C. § 844.
[23] *See* Leo Beletsky et al., *The Law (and Politics) of Safe Injection Facilities in the United States*, 98 AM. J. OF PUB. HEALTH 231 (2008), https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2006.103747.
[24] 21 U.S.C. § 856(a)(2).
[25] United States v. Safehouse, 985 F.3d 225 (3d Cir. 2021), *cert. denied sub nom.* Safehouse v. Dep't of Just., 142 S. Ct. 345 (2021).
[26] *Id.* at 232 (internal quotations omitted).
[27] *See id.* at 239–43.
[28] Beletsky, *supra* note 23.
[29] *Id.*
[30] Nina Feldman, *Safehouse Is in Settlement Talks with the U.S. Department of Justice*, WHYY (Feb. 9, 2022), https://whyy.org/articles/safehouse-is-in-settlement-talks-with-the-u-s-department-of-justice/.

said it is "evaluating" OPCs and talking to regulators about "appropriate guardrails."[31] Additional information about next steps in the Safehouse litigation should be forthcoming. Although in June 2022 Safehouse reported that the DOJ was "negotiating in good faith" and expected to reach a settlement "agreeable to both sides,"[32] following a December 2022 additional DOJ request for a two-month extension, Safehouse filed a countermotion, instead proposing a two-week extension. After an additional extension, the judge ordered the DOJ to respond by March 7, 2023; Safehouse and the DOJ are now reportedly engaged in settlement negotiations.[33]

Federal inaction limits states and localities from taking decisive action. The executive branch could clear a path for OPCs in several ways: the DOJ could take a public, affirmative position that Section 856 of the CSA does not apply to state or locally sanctioned OPCs, or it could issue guidance like "the Cole Memorandum" of the Obama administration, which, in light of state laws legalizing the production and sale of cannabis (contravening the CSA), directed federal prosecutors to focus their limited investigative and prosecutorial resources on specific priorities regarding cannabis, rather than general prohibition.[34] The DOJ could use guidance to signal that it will not use its investigatory or prosecutorial powers to interfere with state or locally sanctioned OPCs without announcing its position on the applicability of Section 856. These options represent immediate actions that could enable states and localities to better address drug-related harm, but they could still leave OPCs vulnerable to the whims of a new administration.

To permanently clarify the legal status of OPCs, Congress could amend the CSA to explicitly allow OPCs, or it could pass a budget rider prohibiting federal funds from being used to enforce the CSA against OPCs. However, "the possibility of laws like this passing in the current legislative environment seems dim."[35] A more promising possibility is that the Attorney General could authorize OPC pilot research programs under Section 872 of the CSA.[36] In 2020, the House Committee on Appropriations' requested that the National Institutes of Health, in collaboration with the Centers for Disease Control and Prevention (CDC), evaluate the potential impact of OPCs in the US.[37] Finding ample evidence on the benefits of OPCs, the report concluded that it "may be prudent to consider the American Medical Association's recommendation of developing and implementing OPC pilot programs in the United States…"[38]

Q5 - What can states do to enable the establishment of OPCs?

[31] Jennifer Peltz & Michael Balsamo, *Justice Dept. Signals it May Allow Safe Injection Sites*, ASSOCIATED PRESS (Feb. 7, 2022), https://apnews.com/article/business-health-new-york-c4e6d999583d7b7abce2189fba095011.
[32] Safehouse [@SafehousePhilly], TWITTER (June 23, 2022, 9:21 PM), https://twitter.com/SafehousePhilly/status/1540158152699674626 ("Safehouse again agrees to extend time to resolve lawsuit asserting right to open overdose prevention site after ex-US Atty for Eastern District of PA sued us. We think Justice Dept is negotiating in good faith and we'll reach settlement agreeable to both sides. Next deadline Aug 8.").
[33] Nina Feldman, *Safehouse Is in Settlement Talks with the U.S. Department of Justice*, WHYY (Feb. 9, 2022), https://whyy.org/articles/safehouse-is-in-settlement-talks-with-the-u-s-department-of-justice/.
[34] *See* Guidance Regarding Marijuana Enforcement, from James M. Cole, Deputy Attorney General, to All U.S. Attorneys (Aug. 29, 2013), https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.
[35] *See* Beau Kilmer & Bryce Pardo, *Treating Supervised Drug Consumption Sites Like Cannabis*, THE RAND BLOG (Oct. 22, 2021), https://www.rand.org/blog/2021/10/treating-supervised-drug-consumption-sites-like-cannabis.html.
[36] 21 U.S.C. § 872 ("The Attorney General is authorized to carry out educational and research programs directly related to enforcement of the laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under this subchapter.").
[37] H.R. Rep. No. 116-450, at 120–121 (2020), https://www.congress.gov/congressional-report/116th-congress/house-report/450.
[38] *HHS Report: OPCs*, *supra* note 12, at 11.

State "police power" must be used to protect the public's health, safety, and welfare, so may accord states the authority to sanction the operation of OPCs.[39] In July 2021, Rhode Island became the first state to authorize OPCs.[40] The state's legislature authorized a two-year pilot program to prevent drug overdoses through "harm reduction centers," defined as "a community based resource for health screening, disease prevention, and recovery assistance where persons may safely consume pre-obtained substances."[41] The law requires the approval of the town council or equivalent governing body of any municipality where the harm reduction center would operate.[42] Absent reauthorization by Rhode Island's General Assembly, the program will sunset in March 2024.[43]

Bills to establish OPCs have been proposed in at least nine other states. In July 2020, the Massachusetts Senate ordered a study on S. 1272, which would establish a ten-year OPC pilot program in the state.[44] Elsewhere, OPC bills are faltering. In June 2022, the California Assembly passed S.B. 57, a bill that would authorize San Francisco, Los Angeles, and Oakland to approve entities to operate OPCs, but Governor Newsom vetoed the bill in August 2022.[45] In New York, the 2022 legislative session came to an end without passage of S.B. 2530/A.B. A751, which would have allowed the establishment of OPCs in limited jurisdictions with either state or city approval.[46] In Vermont, Governor Scott vetoed H.B. 728, which stopped short of sanctioning OPCs and instead would have established a working group to "identify the feasibility, liability, and cost of both publicly funded and privately funded overdose prevention sites . . . ."[47] OPC bills have met similar fates in Colorado, Maine, Maryland, Missouri, and New Mexico.[48]

An important element of expanding support for OPCs is ensuring there is adequate funding, including public funding, to support the establishment and operations of OPCs. Harm reduction programs are a form of health care,[49] and sustainable funding streams are imperative to ensuring that these programs can be properly utilized to improve public health outcomes.[50]

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[39] Beletsky, *supra* note 23.
[40] Press Release, State of Rhode Island General Assembly, Harm Reduction Center Pilot Program to Combat Overdose Deaths Becomes Law (July 7, 2021), https://www.rilegislature.gov/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=371925.
[41] 23 R.I. GEN. LAWS § 23-12.10-1 (2022).
[42] *Id.*
[43] *Id.*
[44] S.B. 1272, 192nd Gen. Assemb., Reg. Sess. (Mass. 2022), https://malegislature.gov/Bills/192/S1272 (preventing overdose deaths and increasing access to treatment); S.B. 3051, 192nd Gen. Assemb., Reg. Sess. (Mass. 2022), https://malegislature.gov/Bills/192/S3051 (ordering an investigation into overdose prevention and increasing access to treatment).
[45] S.B. 57, 2022 Leg., Reg. Sess. (Cal. 2022), https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202120220SB57.
[46] S.B. S2530, 2022 Leg., Reg. Sess. (N.Y. 2022), https://www.nysenate.gov/legislation/bills/2021/S2530; A.B. 2022 Leg., Reg. Sess. (N.Y. 2022), https://www.nysenate.gov/legislation/bills/2021/a751.
[47] H.B. 728, 2022 Leg., Reg. Sess. (Vt. 2022), https://legislature.vermont.gov/bill/status/2022/H.728 (as passed by the House and Senate).
[48] S.B. 18-040, 74th Gen. Assemb., Reg. Sess. (Colo. 2018), https://leg.colorado.gov/bills/sb18-040; H.B. 954, 128th Leg., Reg. Sess. (Me. 2017), https://legislature.maine.gov/legis/bills/display_ps.asp?LD=954&snum=128; S.B. 288, 2018 Leg., Reg. Sess. (Md. 2018), https://legiscan.com/MD/bill/SB288/2018; S.B. 445, 101st Gen. Assemb., Reg. Sess. (Mo. 2021), https://www.senate.mo.gov/21info/BTS_Web/Bill.aspx?SessionType=R&BillID=56862247; H.B. 123, 2021 Leg., Reg. Sess. (N.M. 2021), https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=123&year=21.
[49] *See Harm Reduction Is Healthcare: Sustainable Funding for Harm Reduction Programs*, NAT'L HARM REDUCTION COAL. (Apr. 25, 2022), https://harmreduction.org/issues/harm-reduction-is-healthcare-sustainable-funding-for-harm-reduction-programs/.
[50] *See Harm Reduction*, U.S. DEP'T OF HEALTH & HUM. SERVS., https://www.hhs.gov/overdose-prevention/harm-reduction; Nora Volkow, *NIH Invests in a New Harm Reduction Research Network*, NAT'L INST. ON DRUG ABUSE (Dec. 16, 2022), https://nida.nih.gov/about-nida/noras-blog/2022/12/nih-invests-in-new-harm-reduction-research-network.

While federal funds distributed to states cannot specifically be used to support OPCs at this time, the federal government recently expanded its overall investment in effective harm reduction interventions and the programs that provide those services. Discretionary dollars through the CDC and the Substance Abuse and Mental Health Services Administration (SAMHSA) can be used to support programs, including syringe service programs, that provide harm reduction services.[51] CMS (the Centers for Medicare and Medicaid Services) has also indicated that it supports states using Medicaid funds to finance harm reduction services and use best practices to promote harm reduction work.[52] In 2018, New York amended its Medicaid plan to include harm reduction services such as care plans, medication management, support groups, etc.[53] As the *Safehouse* litigation moves toward resolution, the federal government may be more likely to expand the use of federal funds to support OPCs. In addition to the potential of increased federal funding, state and local dollars can also be utilized to support OPCs. In addition to public funds, a number of states, including New York,[54] Rhode Island,[55] and Pennsylvania,[56] have expressed their intent to utilize some of the forthcoming $26 billion in opioid settlement funds[57] for harm reduction services. This funding represents a significant opportunity to strengthen access to harm reduction services nationally.

Q6 - How are OPCs operating despite legal barriers?

Absent state or federal approval, localities may still authorize OPCs.[58] This is the approach New York City has taken with OnPoint NYC,[59] and it is not entirely novel. For years, cities and counties across the US have used their local authority to manage public health crises like the overdose epidemic, regardless of federal government action or inaction: "[I]ndividual states have great responsibilities, including for public health. Thus, individual states [can] implement harm reduction programs in opposition [to] the attitudes of the federal government."[60]

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[51] The Consolidated Appropriations Act, 2023, Pub. L. No. 117-328), https://www.congress.gov/bill/117th-congress/house-bill/2617/text; *Justification of Estimates for Appropriation Committees*, DEP'T OF HEALTH & HUM. SERVS., at 19 (2022), https://www.cdc.gov/budget/documents/fy2023/FY-2023-CDC-congressional-justification.pdf (for FY 2023); *Harm Reduction Grant Program*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., https://www.samhsa.gov/grants/grant-announcements/sp-22-001 (last visited Feb. 6, 2023).

[52] *See, e.g.*, *Medicaid Guidance on the Scope of and Payments for Qualifying Community-Based Mobile Crisis Intervention Services*, CTRS. FOR MEDICARE & MEDICAID SERVS. (Dec. 28, 2021), https://www.medicaid.gov/sites/default/files/2021-12/sho21008.pdf.

[53] *NYS Harm Reduction Services: Medicaid Managed Care Billing Q&A*, N.Y. DEP'T OF HEALTH (Jan. 2022), https://www.health.ny.gov/health_care/medicaid/redesign/mrt8401/docs/harm_reduction_billing_guidance.pdf.

[54] *Annual Report*, N.Y. OPIOID SETTLEMENT FUND ADVISORY BD. (Nov. 1, 2022), https://oasas.ny.gov/system/files/documents/2022/11/osfab_yearly_report_110122.pdf.

[55] *EOHHS, Opioid Settlement Advisory Committee Allocate $20 Million to Support Those Impacted by the Overdose Epidemic*, R.I.: EXEC. OFF. OF HEALTH & HUM. SERVS. (Aug. 9, 2022), https://eohhs.ri.gov/EOHHS-Opioid-Settlement-Advisory-Committee-Allocate-%2420-Million-to-Support-Those-Impacted-by-the-Overdose-Epidemic

[56] Press Release, AG Josh Shapiro Secures Over $10 Billion in Opioid Crisis Relief Funds from CVS and Walgreens (Dec. 12, 2022), https://www.attorneygeneral.gov/taking-action/ag-josh-shapiro-secures-over-10-billion-in-opioid-crisis-relief-funds-from-cvs-and-walgreens/.

[57] Brian Mann, *4 U.S. Companies Will Pay $26 Billion to Settle Claims They Fueled the Opioid Crisis*, NAT'L PUB. RADIO (Feb. 25, 2022), https://www.npr.org/2022/02/25/1082901958/opioid-settlement-johnson-26-billion.

[58] Sam Thompson, *Localism and the Opioid Crisis: Overcoming State and Federal Hurdles to City- and County-Run Supervised Injection Facilities and Syringe Exchange Programs in Indiana*, 18 IND. HEALTH L. REV. 443 (2021), https://journals.iupui.edu/index.php/ihlr/article/view/25464/23771.

[59] *Mayor de Blasio Announces Nation's First Overdose Prevention Center Services to Open in New York City*, N.Y. CITY (Nov. 30, 2021), http://www1.nyc.gov/office-of-the-mayor/news/793-21/mayor-de-blasio-nation-s-first-overdose-prevention-center-services-open-new-york; *N.Y. City OPCs*, *supra* note 4.

[60] Don C. Des Jarlais, *Harm Reduction in the U.S.A.: The Research Perspective and an Archive to David Purchase*, 14 HARM REDUCTION J. 51 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5530540/.

Despite formal recommendations to establish OPCs in cities including Seattle,[61] Somerville,[62] and Burlington,[63] localities have faced significant political barriers. For example, after the King County Board of Health (encompassing Seattle, Washington and surrounding areas) announced in 2017 that it would establish two OPCs, one in Seattle, and the other outside the city,[64] city councils across King County instituted bans on OPCs through resolutions and land use municipal codes.[65] These bans were driven by stigma, as well as unfounded constituent fears, including that the sites would foster criminal activity, increase mortality, and burden tax-payer funded services.[66] The King County Council amended its appropriations ordinance to include a prohibition on the use of county funds to establish an OPC without an affirmative vote from the city's governing body.[67] As of February 2023, no cities in King County have used these funds to support development of OPCs.

Across the country, a planned OPC in Somerville, Massachusetts, a Boston suburb, looks more likely, despite no formal permissions from the state. Heeding an official needs assessment and feasibility study recommendation that Somerville establish at least one integrated OPC,[68] the city signed a $40,000 contract with Fenway Health to assist with "scouting locations, setting up a community advisory board and reviewing clinics that monitor drug use in Canada."[69] After undergoing a community engagement process, the city earmarked $500,000 for an OPC in its FY 2023 budget, and has now moved into the next phase—planning and execution.[70] The US District Attorney for the District of Massachusetts, Rachel Rollins, and Massachusetts Governor, Maura Healey, have voiced support for OPCs.[71]

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[61] *Heroin and Prescription Opiate Addiction Task Force - Final Report and Recommendations*, KING CNTY. HEROIN & PRESCRIPTION OPIATE ADDICTION TASK FORCE (Sept. 16, 2016), https://kingcounty.gov/~/media/depts/community-human-services/behavioral-health-recovery/documents/herointf/Final-Heroin-Opiate-Addiction-Task-_Force-Report.ashx?la=en.

[62] Collins, *supra* note 1.

[63] Rachel Mann, *Burlington Considering Safe Injection Site*, WCAX (July 18, 2022, 10:39 PM), https://www.wcax.com/2022/07/19/vermont-city-considering-overdose-prevention-sites/.

[64] Charlie Ban, *King County to Open Safe Injection Sites for Opioids*, NAT'L ASS'N OF CNTYS. (Feb. 3, 2017), https://www.naco.org/articles/king-county-open-safe-injection-sites-opioids; *Board of Health Resolution 17-01*, KING CNTY BD. OF HEALTH (Jan. 20, 2017), https://kingcounty.gov/depts/health/board-of-health/~/media/depts/health/board-of-health/documents/resolutions/BOH-resolution-17-01.ashx.

[65] *See, e.g.*, *A Resolution of the City of Sammamish, Washington, Opposing the Siting of Illegal Substance Injection Facilities Within City Limits*, CITY OF SAMMAMISH (Sept. 5, 2017), https://www.sammamish.us/attachments/resolutions/R2017-746%20-%20Opposing%20Injection%20Facilities.pdf.

[66] *See, e.g.*, Kevin Hanson, *Council Assures No Injection Sites in Enumclaw*, COURIER-HERALD (Sept. 15, 2017), https://www.courierherald.com/news/council-assures-no-injection-sites-in-enumclaw/.

[67] King County Ordinance No. 2017-0136 § 37, KING CNTY. COUNCIL (enacted July 6, 2017), https://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=2988102&GUID=9FB638FC-6EA7-4C20-84B4-C125167E45AF&Options=Advanced&Search=&FullText=1 ("Of this appropriation, no funds shall be expended or encumbered to establish except in any city which chooses to establish such a location by vote of its elected governing body any community health engagement locations, as described in the Heroin and Opiate Addiction Task Force Final Report and Recommendations, dated September 15, 2016, presented by the heroin and opiate addiction task force to the King County executive and mayors of the cities of Auburn, Renton and Seattle.").

[68] Collins, *supra* note 1.

[69] Martha Bebinger, *Somerville Hires Partner to Help Open State's First Supervised Consumption Site*, WBUR (Mar. 10, 2022), https://www.wbur.org/news/2022/03/10/somerville-fenway-supervised-consumption-site.

[70] Gracie Vogel, *Somerville Officials Are Making Plans to Open the State's First Safe Drug Consumption Site*, THE BOSTON SCOPE (Jan. 25, 2023), https://thescopeboston.org/8541/features/somerville-officials-are-making-plans-to-open-the-states-first-safe-drug-consumption-site/; *Somerville Supervised Consumption Site*, CITY OF SOMERVILLE, https://www.somervillema.gov/departments/programs/somerville-supervised-consumption-site (last visited Feb. 13, 2023); Annie Sandoli, *What To Know About Somerville's FY23 Budget*, PATCH: SOMERVILLE, MA (July 14, 2022, 1:22 PM), https://patch.com/massachusetts/somerville/what-know-somerville-s-fy23-budget.

[71] *See* Rick Sobey, *DA Rollins Pushes for Safe Injection Sites in Bay State after Philadelphia Court Ruling*, BOSTON HERALD (Oct. 9, 2019, 7:34 PM), https://www.bostonherald.com/2019/10/09/da-rollins-pushes-for-safe-injection-sites-in-bay-state-after-

Q7 - How are harm reduction organizations and people who use drugs taking action to mitigate drug-related harm in the face of legal and political barriers to OPCs?

In the face of the escalating overdose crisis and the failure of government entities to endorse the full array of evidence-based harm reduction strategies, "people who inject drugs and the social service agencies who serve them have come up with a range of strategies to create supervised or semi-supervised spaces that reduce the risk of overdose death."[72]

In 2016, Boston Health Care for the Homeless Program ("BHCHP") opened the Supportive Place for Observation and Treatment ("SPOT").[73] SPOT is not a supervised consumption space, but rather a drop-in facility "for people who are intoxicated from the use of sedating drugs…"[74] Although BHCHP and SPOT are not OPCs, clients frequently use their bathrooms to inject drugs.[75] It was very common for individuals to overdose in the bathrooms, so BHCHP equipped them with reverse motion sensors to notify and enable staff to respond to an overdose when occurring behind locked doors.[76]

BHCHP is not alone in taking this approach. Syringe exchange programs and other entities serving people who use drugs have adopted a range of harm reduction practices to reduce the risk and instance of fatal overdose. A primary example of this is outfitting site bathrooms to promote safe injection practices, including by placing in the bathroom safe-injection posters, impermeable tables, hand warmers, and sharps containers, as well as installing intercoms for easy communication (enabling staff members to ask if a person needs help, and if there is no response, to act promptly in case of an overdose).[77] Even deciding not to implement certain practices designed to deter drug use in the bathroom can promote harm reduction. For example, the use of blue lights in bathrooms makes it harder to see veins and is supposed to deter individuals from injecting drugs, but often individuals still do, and then these lights increase the danger of injection; so, to promote safe use, programs should elect not to utilize these lights.[78] Other practices designed to deter injection include limiting access to bathrooms

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philadelphia-court-ruling/; Chris Lisinski, *Mass. Opioid Settlement to Provide $525 Million for Treatment, Prevention*, THE HERALD NEWS (Apr. 6, 2022, 8:45 AM), https://www.heraldnews.com/story/news/2022/04/06/opioid-settlement-provide-525-million-treatment-prevention/9481725002/.

[72] Peter J. Davidson, Andrea M. Lopez & Alex H. Kral, *Using Drugs in Un/Safe Spaces: Impact of Perceived Illegality on an Underground Supervised Injecting Facility in the United States*, 53 INT'L J. OF DRUG POL'Y 37 (2018), https://www.sciencedirect.com/science/article/abs/pii/S0955395917303614?via%3Dihub.

[73] Jessie Gaeta, Barry Bock & Mary Takach, *Providing a Safe Space and Medical Monitoring To Prevent Overdose Deaths*, HEALTH AFFS. FOREFRONT (Aug. 31, 2016), https://www.healthaffairs.org/do/10.1377/forefront.20160831.056280.

[74] *Id.*

[75] *See Clinic Bathroom Alarm Helps Prevent Fatal Overdoses*, CBS NEWS BOSTON (Nov. 20, 2017, 5:25 PM), https://www.cbsnews.com/boston/news/clinic-bathroom-alarm-helps-prevent-fatal-overdoses/ (explaining that bathrooms are often a place people feel comfortable using in because they are private and have a sink and mirror).

[76] *See* Judy Wakefield, *Alarm Designed by Andover Man Prevents Bathroom Overdoses*, ANDOVER TOWNSMAN (Nov. 16, 2017), https://www.andovertownsman.com/news/alarm-designed-by-andover-man-prevents-bathroom-overdoses/article_0bf2945d-d9fd-5908-8470-240ddffd6508.html.

[77] Melissa Vallejo, *Safer Bathrooms in Syringe Exchange Programs: Injecting Progress into the Harm Reduction Movement*, 118 COLUM. L. REV. 1185, 1188 (2018), https://columbialawreview.org/content/safer-bathrooms-in-syringe-exchange-programs-injecting-progress-into-the-harm-reduction-movement/.

[78] *See* Alexis Crabtree et al., *A Qualitative Study of the Perceived Effects of Blue Lights in Washrooms on People Who Use Injection Drugs*, 10 HARM REDUCTION J. 22 (2013), https://harmreductionjournal.biomedcentral.com/articles/10.1186/1477-7517-10-22.

or requiring people to leave the facility immediately after receiving sterile supplies, ultimately encouraging people to use in public or unsafe places.[79] Additional practices that can be implemented to promote safer use include: providing biohazard boxes; stocking bathrooms with naloxone; ensuring rooms are well lit and clean; and constructing spaces so doors open out and can be unlocked from the outside (in case of collapse or overdose).[80] By following these easy (and legal) practices, programs can significantly reduce drug-related harms without needing affirmative approval from state or local governments.

Lacking political consensus on OPCs, state and local governments may still make key reforms to better protect people who are taking action to reduce harms associated with drug use.

Examples of these reforms include:

- Enacting Good Samaritan laws that provide safe harbor for those aiding individuals at risk of overdose;[81]
- Repealing laws that penalize possession of drugs and/or drug paraphernalia;[82] and
- Prioritizing access to housing regardless of substance use and removing housing penalties for substance use.[83]

These reforms reduce liability for caregivers and other advocates in the field of harm reduction and can help facilitate access to proven harm reduction tools for individuals currently using substances, such as drug test strips[84] and safer use supplies.[85]

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[79] Vallejo, *supra* note 69, at 1202.

[80] Martha Bebinger, *Public Restrooms Become Ground Zero in the Opioid Epidemic*, NAT'L PUB. RADIO (May 8, 2017, 12:32 PM), https://www.npr.org/sections/health-shots/2017/05/08/526523520/public-restrooms-become-ground-zero-in-the-opioid-epidemic. In fact, the National Recreation and Park Association put out guidance to all parks that cites to the NPR article and encourages parks to use these best practices whenever possible. *See* Press Release, National Recreation and Park Association, NRPA Announces New Resource for Park and Recreation Professionals Addressing the Substance Use Crisis (Aug. 6, 2020), https://www.nrpa.org/about-national-recreation-and-park-association/press-room/nrpa-announces-new-resource-for-park-and-recreation-professionals-addressing-the-substance-use-crisis/.

[81] Leo Beletsky, *Supervised Consumption Facilities: Legal and Policy Considerations* (Jan. 9, 2019), https://www.mass.gov/files/documents/2019/01/17/HRC%20Beletsky%201-9-2019.pdf.

[82] Jeffrey A. Singer & Sophia Heimowitz, *Drug Paraphernalia Laws Undermine Harm Reduction*, CATO INST. (June 7, 2022), https://www.cato.org/policy-analysis/drug-paraphernalia-laws-undermine-harm-reduction-reduce-overdoses-disease-states; *see also* Amy Lieberman & Corey Davis, *Harm Reduction Laws in the United States*, THE NETWORK FOR PUB. HEALTH (Dec. 2, 2020), https://www.networkforphl.org/resources/harm-reduction-laws-in-the-united-states/ (demonstrating the importance of removing drug paraphernalia laws by providing a 50-state survey of drug paraphernalia laws and penalties).

[83] *See Housing First and Harm Reduction*, U.S. DEP'T OF HOUS. & URB. DEV.: HOUS. OPPORTUNITIES FOR PERSONS WITH AIDS, https://files.hudexchange.info/resources/documents/HOPWA-Factsheet-Housing-First-and-Harm-Reduction.pdf (last visited Feb. 15, 2023); *Housing First Supports Recovery from Substance Use Disorder*, NAT'L LOW-INCOME HOUS. COAL. (June 3, 2022), https://nlihc.org/sites/default/files/Housing-First-Substance-Abuse.pdf (explaining the importance of providing support for individuals as they want it); *see also* Sam Tsemberis et al., *Housing First, Consumer Choice, and Harm Reduction for Homeless Individuals with a Dual Diagnosis*, 94 AM. J. PUB. HEALTH 651 (2004), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448313/ (conducting a study of individuals who received housing conditioned on attending treatment against individuals who received housing unconditionally, which revealed that "Participants in the Housing First program were able to obtain and maintain independent housing without compromising psychiatric or substance abuse symptoms.").

[84] Jacqueline E. Goldman et al., *Perspectives on Rapid Fentanyl Test Strips as a Harm Reduction Practice Among Young Adults Who Use Drugs: A Qualitative Study*, 16 HARM REDUCTION J. 1 (2019), https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-018-0276-0.

[85] *See Harm Reduction*, U.S. DEP'T OF HEALTH & HUM. SERVS.: SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., https://www.samhsa.gov/find-help/harm-reduction (last visited Feb. 15, 2023).