

AMENDED IN ASSEMBLY JULY 5, 2021

AMENDED IN SENATE MARCH 25, 2021

AMENDED IN SENATE MARCH 1, 2021

SENATE BILL

No. 57

Introduced by Senator Wiener

(Principal coauthor: Senator Kamlager)

(Principal coauthors: Assembly Members Chiu and Friedman)

(Coauthors: Senators Eggman and Skinner)

(Coauthors: Assembly Members Bonta, Carrillo, Ting, and Wicks)

December 7, 2020

An act to add and repeal Section 11376.6 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 57, as amended, Wiener. Controlled substances: overdose prevention program.

Existing law makes it a crime to possess specified controlled substances or paraphernalia. Existing law makes it a crime to use or be under the influence of specified controlled substances. Existing law additionally makes it a crime to visit or be in any room where specified controlled substances are being unlawfully used with knowledge that the activity is occurring, or to open or maintain a place for the purpose of giving away or using specified controlled substances. Existing law makes it a crime for a person to rent, lease, or make available for use any building or room for the purpose of storing or distributing any controlled substance. Existing law authorizes forfeiture of property used for specified crimes involving controlled substances. Existing law regulates specified medical practitioners under the Medical Practice

Act and requires the Medical Board of California and the Osteopathic Medical Board of California to enforce those provisions.

This bill would, until January 1, 2027, authorize the City and County of San Francisco, the County of Los Angeles, *the City of Los Angeles*, and the City of Oakland to approve entities to operate overdose prevention programs for persons that satisfy specified requirements, including, among other things, providing a hygienic space supervised by trained staff where people who use drugs can consume preobtained drugs, providing sterile consumption supplies, providing access or referrals to substance use disorder treatment, and that program staff be authorized and trained to provide emergency administration of an opioid antagonist, as defined by existing law. The bill would require the City and County of San Francisco, the County of Los Angeles, *the City of Los Angeles*, and the City of Oakland, prior to authorizing an overdose prevention program in its jurisdiction, to provide local law enforcement officials, local public health officials, and the public with an opportunity to comment in a public meeting. The bill would require an entity operating a program to provide an annual report to the city or the city and county, as specified. The bill would exempt a person from, among other things, civil liability, professional discipline, or existing criminal sanctions, solely for good faith actions, conduct, or omissions in compliance with an overdose prevention program authorized by the city or the city and county. The bill would clarify that the Medical Board of California or the Osteopathic Medical Board of California is authorized to take disciplinary action against a licensee related to the operation of an overdose prevention program that violates the Medical Practice Act.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City and County of San Francisco, the County of Los Angeles, *the City of Los Angeles*, and the City of Oakland.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

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

1 (a) Overdose deaths in California are an urgent public health
2 crisis. Overdose has been the leading cause of accidental death in
3 the United States and in California each year since 2011.

4 (b) The COVID-19 pandemic has been associated with a rapid
5 increase in drug overdose deaths. According to data published in
6 the article “‘Cries for help’: Drug overdoses are soaring during
7 the coronavirus pandemic” by the Washington Post, overdoses
8 increased every month in fall of 2020 compared to the prior year.
9 In May 2020, the increase was 42 percent compared to the prior
10 year.

11 (c) Overdose prevention programs (OPPs) are an evidence-based
12 harm reduction strategy that allows individuals to consume drugs
13 in a hygienic environment under the supervision of staff trained
14 to intervene if the individual overdoses. OPPs also provide sterile
15 consumption equipment and offer general medical advice and
16 referrals to substance use disorder treatment, housing, medical
17 care, and other community social services.

18 (d) There are approximately 165 overdose prevention programs
19 operating in 10 countries around the world. Numerous
20 peer-reviewed studies have confirmed that OPPs are effective in
21 reducing overdose deaths and HIV transmission, and in increasing
22 access to counseling, treatment, and other risk reduction services.
23 Research has also demonstrated that OPPs decrease use of
24 emergency medical services, reduce public drug use, reduce syringe
25 debris, and do not increase crime or drug use.

26 (e) In July 2020, the American Medical Association (AMA)
27 joined several associations representing health officials and public
28 health, drug policy, and substance use disorder treatment
29 specialists, in an amicus brief supporting an OPP in Philadelphia,
30 Pennsylvania. The AMA and others wrote that, “Supervised
31 consumption sites are an evidence-based medical and public health
32 intervention with the potential to improve individual and
33 community health.”

34 (f) On July 8, 2020, the New England Journal of Medicine
35 published a study on the outcomes of an unsanctioned OPP
36 operating in the United States from 2014 to 2019, inclusive. The
37 study and supplemental material show that not only were there no
38 deaths resulting from over 10,000 injections, but that it was not
39 once necessary in five years to call for paramedic services or use
40 an outside medical facility. The authors conclude that, “sanctioned

1 safe consumption sites in the United States could reduce mortality
2 from opioid-involved overdose. Sanctioning sites could allow
3 persons to link to other medical and social services, including
4 treatment for substance use, and facilitate rigorous evaluation of
5 their implementation and effect on reducing problems such as
6 public injection of drugs and improperly discarded syringes.”

7 (g) An analysis published in the *Journal of Drug Issues* in 2016
8 found that, based on the experience of an OPP in Vancouver,
9 *Canada*, a proposed program in San Francisco would reduce
10 government expenses associated with health care, emergency
11 services, and crime, saving \$2.33 for every dollar spent. It is
12 estimated that one OPP would save the City and County of San
13 Francisco \$3,500,000 in other costs.

14 (h) As demands for reform of the criminal justice and legal
15 system reverberate around the country, OPPs offer an alternative
16 framework for addressing both drug use as well as the enforcement
17 of drug laws that disproportionately injures communities of color.
18 OPPs bring people inside to a safe and therapeutic space, instead
19 of leaving them vulnerable to police intervention, arrest, and
20 incarceration.

21 (i) In July 2020, California law enforcement leadership,
22 including district attorneys of the Counties of Los Angeles, San
23 Francisco, Santa Clara, and Contra Costa, signed onto an amicus
24 brief in support of an OPP in Philadelphia, Pennsylvania, writing,
25 “The issues are particularly acute at this current moment, with a
26 global pandemic and fractured relations between law enforcement
27 and communities. There is an urgent need to fortify trust in the
28 justice system. Failing to address the loss of life resulting from
29 drug overdose-and criminalizing a community based public health
30 organization working to save lives-will further erode trust. If there
31 were ever a time to demonstrate that the justice system values the
32 dignity of human life, that time is now.”

33 (j) Also in July 2020, California Attorney General Xavier
34 Becerra joined an amicus brief with eight other states and the
35 District of Columbia, in support of an OPP. In the brief, the
36 attorneys general wrote, “After studying SIS [safe injection
37 services] interventions in other countries, many states and cities
38 are considering them as a means of saving lives. The studies predict
39 that the sites will reduce deaths, the spread of bloodborne diseases,
40 and costs. And they are a unique solution to the common problem

1 in many urban areas of rapid, unintended overdoses of heroin or
2 fentanyl.”

3 (k) It is the intent of the Legislature to promote the health and
4 safety of communities by evaluating the health impacts of OPPs
5 in San Francisco, Los Angeles, and Oakland.

6 (l) It is the intent of the Legislature to prevent fatal and nonfatal
7 drug overdoses, reduce drug use by providing a pathway to drug
8 treatment, as well as medical and social services for high-risk drug
9 users, many of whom are homeless, uninsured, or very low income,
10 prevent the transmission of HIV and hepatitis C, reduce nuisance
11 and public safety problems related to public use of controlled
12 substances, and reduce emergency room use and hospital utilization
13 related to drug use, reserving precious space, including intensive
14 care beds for treatment of COVID-19 and other life-threatening
15 conditions.

16 (m) It is the intent of the Legislature that OPPs should be
17 evaluated in California cities that authorize them, as OPPs show
18 great promise to save lives, enhance public safety, improve access
19 to substance use disorder treatment, medical care, and related
20 services, reduce emergency department and hospital utilization
21 related to drug overdose, and reduce the human, social, and
22 financial costs of the triple epidemics of drug misuse,
23 homelessness, and COVID-19.

24 SEC. 2. Section 11376.6 is added to the Health and Safety
25 Code, to read:

26 11376.6. (a) Notwithstanding any other law, the City and
27 County of San Francisco, the County of Los Angeles, *the City of*
28 *Los Angeles*, and the City of Oakland may approve entities within
29 their jurisdictions to establish and operate overdose prevention
30 programs that satisfy the requirements set forth in subdivision (c).

31 (b) Prior to approving an entity within its jurisdiction pursuant
32 to subdivision (a), the City and County of San Francisco, the
33 County of Los Angeles, *the City of Los Angeles*, or the City of
34 Oakland shall provide local law enforcement officials, local public
35 health officials, and the public with an opportunity to comment in
36 a public meeting. The notice of the meeting to the public shall be
37 sufficient to ensure adequate participation in the meeting by the
38 public. The meeting shall be noticed in accordance with all state
39 laws and local ordinances, and as local officials deem appropriate.

- 1 (c) In order for an entity to be approved to operate an overdose
2 prevention program pursuant to this section, the entity shall
3 demonstrate that it will, at a minimum:
- 4 (1) Provide a hygienic space to consume controlled substances
5 under supervision of staff trained to prevent and treat drug
6 overdoses.
- 7 (2) Provide sterile consumption supplies, collect used equipment,
8 and provide secure hypodermic needle and syringe disposal
9 services.
- 10 (3) Monitor participants for potential overdose and provide care
11 as necessary to prevent fatal overdose.
- 12 (4) Provide access or referrals to substance use disorder
13 treatment services, primary medical care, mental health services,
14 and social services.
- 15 (5) Provide access or referrals to HIV and viral hepatitis
16 prevention, education, testing, and treatment.
- 17 (6) Provide overdose prevention education and access to or
18 referrals to obtain naloxone hydrochloride or another overdose
19 reversal medication approved by the United States Food and Drug
20 Administration.
- 21 (7) Educate participants regarding proper disposal of hypodermic
22 needles and syringes and provide participants with approved
23 biohazard containers for syringe disposal.
- 24 (8) Provide reasonable security of the program site.
- 25 (9) Establish operating procedures for the program including,
26 but not limited to, standard hours of operation, training standards
27 for staff, a minimum number of personnel required to be onsite
28 during those hours of operation, the maximum number of
29 individuals who can be served at one time, and an established
30 relationship with the nearest emergency department of a general
31 acute care hospital, as well as eligibility criteria for program
32 participants.
- 33 (10) Establish and make public a good neighbor policy that
34 facilitates communication from and to local businesses and
35 residences, to the extent they exist, to address any neighborhood
36 concerns and complaints.
- 37 (11) Require that all staff present at the program during open
38 hours be certified in cardiopulmonary resuscitation (CPR) and first
39 aid. Certification shall be demonstrated by current and valid CPR

1 and first aid cards issued by the American Red Cross, the American
2 Heart Association, or from an accredited college or university.

3 (12) Require that all staff present at the program during open
4 hours be authorized to provide emergency administration of an
5 opioid antagonist, and be trained for administration of an opioid
6 antagonist pursuant to Section 1714.22 of the Civil Code.

7 (13) Establish a plan for staff and workplace safety.

8 (d) An entity operating an overdose prevention program under
9 this section shall provide an annual report to the authorizing
10 jurisdiction that shall include all of the following:

11 (1) The number of program participants.

12 (2) Aggregate information regarding the characteristics of
13 program participants.

14 (3) The number of overdoses experienced and the number of
15 overdoses reversed onsite.

16 (4) The number of persons referred to substance use disorder
17 treatment, primary medical care, and other services.

18 (e) (1) A person or entity, including, but not limited to, property
19 owners, managers, employees, volunteers, clients or participants,
20 and employees of the City and County of San Francisco, the County
21 of Los Angeles, *the City of Los Angeles*, or the City of Oakland
22 acting in the course and scope of employment, engaged, in good
23 faith, in the activities of an overdose prevention program authorized
24 by this section, in accordance with established protocols and on
25 the program site, shall not be subject to any of the following:

26 (A) Arrest, charge, or prosecution pursuant to Section 11350,
27 11364, 11365, 11366, 11366.5, or 11377, or subdivision (a) of
28 Section 11550, including for attempt, aiding and abetting, or
29 conspiracy to commit a violation of any of those sections, for
30 activity or conduct on the site of an overdose prevention program.

31 (B) Civil or administrative penalty or liability or disciplinary
32 action by a professional licensing board or for conduct relating to
33 the approval of an entity to operate, inspection, licensing, or other
34 regulation unless performed in a grossly negligent manner or in
35 bad faith.

36 (2) This section shall not limit the Medical Board of California
37 or the Osteopathic Medical Board of California from taking
38 administrative or disciplinary action against a licensee for any
39 action, conduct, or omission related to the operation of an overdose
40 prevention program that violates the Medical Practice Act pursuant

1 to each board’s authority in Chapter 5 (commencing with Section
2 2000) of Division 2 of the Business and Professions Code.

3 (f) This section shall remain in effect only until January 1, 2027,
4 and as of that date is repealed.

5 SEC. 3. The Legislature finds and declares that a special statute
6 is necessary and that a general statute cannot be made applicable
7 within the meaning of Section 16 of Article IV of the California
8 Constitution because of the unique needs of the City and County
9 of San Francisco, the County of Los Angeles, *the City of Los*
10 *Angeles*, and the City of Oakland.

O