



EXPLAINER

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Overdose Prevention Sites & Federal Drug Policy

Last Updated: March 16, 2021

The United States' draconian Drug War gets in the way of evidence-based public health and [harm reduction](#) interventions that are proven to save lives. Federal barriers prevent healthcare practitioners and advocates from using approaches that are proven to decrease the country's historic and preventable overdose crisis. Local communities often bring innovative solutions to addressing overdose deaths in their jurisdictions, but the federal government is getting in the way of community-based public health initiatives, including overdose prevention sites.

Harm Reduction Approaches to Drug Policy

Overdose Prevention Sites

Known by a variety of names, including “safe injection facilities” and “[supervised consumption sites](#),” [overdose prevention sites](#) are facilities where people use pre-obtained drugs under the supervision of trained staff. Rather than using alone in often unsafe and unsanitary environments, overdose prevention sites bring people out of the shadows into stigma-free, lifesaving, and safer conditions. Overdose prevention sites are a [proven public health approach](#) supported by [numerous medical associations](#)—including the [American Medical Association](#)—that prevent the spread of infectious disease like HIV and hepatitis C, as well as abscess, by providing sterile supplies and safer use education. In addition, overdose prevention sites operate as resource hubs to connect people with housing services, drug treatment, other forms of healthcare, harm reduction services and more.

At the sites, staff trained to use naloxone ([a medication that reverses an opioid overdose](#)) or provide oxygen are able to respond to overdoses immediately. This is critical as the number one reason that people die from a preventable overdose is because they are using alone. People who use drugs face incredible [stigma in the healthcare system](#) and beyond, making overdose prevention sites a critical point of access to essential healthcare in a nonjudgmental environment. In fact, these sites have [reduced the amount and frequency of drug use](#), and [increased access to drug treatment](#), especially among people who distrust the treatment system and those who are unlikely to access treatment on their own. Research has also shown that overdose prevention sites [reduce injection-related hospitalizations](#), [improper syringe disposal](#), [public injecting](#), and [neighborhood crime](#).

While no sites are legally operating currently in the U.S., more than 150 sites across [Europe](#), [Canada](#), and [Australia](#) have successfully [operated for over 30 years with reductions in overdose deaths](#).

The Racist Drug War

Black, brown, Indigenous, and low-wealth communities have been [targeted and criminalized through the racist drug war](#). The drug war has been a [vehicle](#) for mass incarceration, deportation, disenfranchisement, and militarized police force and violence. It has created unnecessary and discriminatory barriers to housing and employment, restricted access to [public services](#) like TANF and SNAP. Too many families have been torn apart by racist drug laws.

In 2017, [27 percent of people arrested for drug violations were Black](#), although Black people make up only 13.4 percent of the U.S. population and use drugs at the same rate as other racial groups. Incarceration is a discriminatory and ineffective approach to addressing problematic substance use, and research demonstrates that it is not only a revolving door, but deadly. Studies show overdose is the [leading cause of death](#) for people with substance use disorder who are released from jail or prison, making mass incarceration especially deadly for Black and brown people even after release.

The Rising Death Toll

A devastating [half a million people in the U.S.](#) have died from overdoses since 1999. COVID-19 has intensified challenges for people who use drugs. People with opioid use disorder are [more than twice as likely to contract COVID-19](#), and those with a lifetime substance use disorder face more adverse health outcomes from the Coronavirus. [More than 83,544 people in the U.S. died of a drug overdose](#) from July 2019–July 2020, the largest number of overdose deaths over one year, and “the latest numbers suggest an acceleration of overdose deaths during the pandemic.”

Barriers Under Federal Law to Harm Reduction Approaches

Legal Implications of the Third Circuit’s Safehouse Ruling

Federal law must make it unmistakably clear that there is legal protection for overdose prevention sites. [Safehouse](#), a Pennsylvania nonprofit dedicated to saving lives through a range of overdose prevention services, attempted to open an overdose prevention site in Philadelphia. The [Third Circuit Court of Appeals ruled in January](#) that “Congress has made it a crime to open a property to others to use drugs ([21 U.S.C. §856](#))” and stated that “Safehouse and its supporters can lobby congress to carve out an exception.” Safehouse [intends to appeal the January 2021 Third Circuit decision](#) that reversed a [previous ruling from the U.S. District Judge](#) which gave Safehouse the green light to proceed. This decision—while limited to the [Third Circuit covering all of Pennsylvania, New Jersey, Delaware, and the U.S. Virgin Islands](#)—illustrates the need for unmistakable legal protections for overdose protection sites across the country, such as the sites planned in [San Francisco](#), [New York City](#), [Seattle](#), and other U.S. cities.

An Examination of 21 USC § 856

In 1986, Congress passed the [Anti-Drug Abuse Act](#), an amendment to the Controlled Substances Act, and included what is known as the “Crack House Statute,” which subjects “managing or controlling any place for the purpose of manufacturing, distributing, or using any controlled substance” to criminal prosecution.

In 2003, the statute was expanded through the [Illicit Drug Anti-Proliferation Act](#), formerly known as the RAVE Act, to “prohibit knowingly leasing, renting, or using, or intentionally profiting from, any place (as well as opening, maintaining, leasing, or renting any place, as provided under current law), whether permanently or temporarily, for the purpose of manufacturing, storing, distributing, or using a controlled substance.”

This outdated, vague, and overly broad law has the unintended consequence of stopping overdose prevention sites like Safehouse from potentially saving thousands of lives each year.

Potential Executive and Congressional Actions

The following actions could be taken to remove federal barriers and extend unmistakable clear legal protection to overdose prevention sites.

Executive Actions

President Biden could instruct the Department of Justice (DOJ) to drop all pending cases challenging overdose prevention sites, including the *Safehouse* case. The DOJ could also institute a policy deprioritizing future prosecution under the “Crack House Statute” or any other provision of the Controlled Substances Act.

Appropriations Riders

Similar to the [existing appropriations rider](#) that prevents the DOJ from interfering with state marijuana laws, Congress could pass an appropriations rider that prevents the DOJ, Drug Enforcement Agency (DEA), and other federal agencies from interfering in state and local overdose prevention site initiatives.

Simple Changes to the Controlled Substances Act

The federal “Crack House Statute” ([21 U.S.C. §856](#)) prohibits the known use of a controlled substance in a facility, which prevents nonprofits like Safehouse from operating an overdose prevention site in their community. It reads as follows:

(a) Unlawful acts

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](#).

Congress could amend this statute to remove the words “or using” from the statute above so that using controlled substances in a place covered under [21 U.S.C. §856](#) is not a prohibited act under the statute. Alternatively, Congress could consider adding a carveout in the Controlled Substances Act for the operation of overdose prevention sites with local or state approval. Additionally, Congress may want to reconsider the

statute more broadly given its racist origin, including its role in exacerbating and perpetuating mass incarceration.

Conclusion

Overdose prevention sites are an important public health strategy that reduce harms associated with problematic drug use and save lives. To comprehensively address the overdose crisis, we need many interventions working together. Federal drug policy reforms must also work to reduce the stigma and marginalization of people who use drugs, opening pathways to healthcare and treatment for those that want it. Access to medication-assisted treatment without barriers, access to syringe service programs, and [funding for harm reduction](#), public health, and evidence-based services are additional steps that lawmakers must consider in a holistic approach to ending the preventable overdose crisis.

The Congressional Progressive Caucus Center thanks Safehouse and the Drug Policy Alliance for their expert comments and insights.