

Senate Bill No. 57

Passed the Senate August 1, 2022

Secretary of the Senate

Passed the Assembly June 30, 2022

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2022, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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, 2028, 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 require all local jurisdictions that choose to participate in the overdose prevention program to confer and choose a single independent entity, as specified, to conduct a peer-reviewed study, funded by the participating jurisdictions, of the statewide efficacy of the overdose prevention programs and the community impacts of the programs, to be submitted to the Legislature and the Governor's office on or before January 15, 2027. 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.

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

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

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

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

(c) Overdose prevention programs (OPPs) are an evidence-based harm reduction strategy that allows individuals to consume drugs

in a hygienic environment under the supervision of staff trained to intervene if the individual overdoses. OPPs also provide sterile consumption equipment and offer general medical advice and referrals to substance use disorder treatment, housing, medical care, and other community social services.

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

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

(f) On July 8, 2020, the New England Journal of Medicine published a study on the outcomes of an unsanctioned OPP operating in the United States from 2014 to 2019, inclusive. The study and supplemental material show that not only were there no deaths resulting from over 10,000 injections, but that it was not once necessary in five years to call for paramedic services or use an outside medical facility. The authors conclude that, “sanctioned safe consumption sites in the United States could reduce mortality from opioid-involved overdose. Sanctioning sites could allow persons to link to other medical and social services, including treatment for substance use, and facilitate rigorous evaluation of their implementation and effect on reducing problems such as public injection of drugs and improperly discarded syringes.”

(g) An analysis published in the Journal of Drug Issues in 2016 found that, based on the experience of an OPP in Vancouver, Canada, a proposed program in San Francisco would reduce government expenses associated with health care, emergency services, and crime, saving \$2.33 for every dollar spent. It is

estimated that one OPP would save the City and County of San Francisco \$3,500,000 in other costs.

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

(i) In July 2020, California law enforcement leadership, including district attorneys of the Counties of Los Angeles, San Francisco, Santa Clara, and Contra Costa, signed onto an amicus brief in support of an OPP in Philadelphia, Pennsylvania, writing, “The issues are particularly acute at this current moment, with a global pandemic and fractured relations between law enforcement and communities. There is an urgent need to fortify trust in the justice 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 justice system values the dignity of human life, that time is now.”

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

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

(l) It is the intent of the Legislature to prevent fatal and nonfatal drug overdoses, reduce drug use by providing a pathway to drug treatment, as well as medical and social services for high-risk drug users, many of whom are homeless, uninsured, or very low income, prevent the transmission of HIV and hepatitis C, reduce nuisance and public safety problems related to public use of controlled

substances, and reduce emergency room use and hospital utilization related to drug use, reserving precious space, including intensive care beds for treatment of COVID-19 and other life-threatening conditions.

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

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

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

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

(c) In order for an entity to be approved to operate an overdose prevention program pursuant to this section, the entity shall demonstrate that it will, at a minimum:

(1) Provide a hygienic space to consume controlled substances under supervision of staff trained to prevent and treat drug overdoses.

(2) Provide sterile consumption supplies, collect used equipment, and provide secure hypodermic needle and syringe disposal services.

(3) Monitor participants for potential overdose and provide care as necessary to prevent fatal overdose.

(4) Provide access or referrals to substance use disorder treatment services, primary medical care, mental health services, and social services.

(5) Provide access or referrals to HIV and viral hepatitis prevention, education, testing, and treatment.

(6) Provide overdose prevention education and access to or referrals to obtain naloxone hydrochloride or another overdose reversal medication approved by the United States Food and Drug Administration.

(7) Educate participants regarding proper disposal of hypodermic needles and syringes and provide participants with approved biohazard containers for syringe disposal.

(8) Provide reasonable security of the program site.

(9) 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.

(10) 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.

(11) Require that all staff present at the program during open hours be certified in cardiopulmonary resuscitation (CPR) and first aid. Certification shall 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.

(12) 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 Section 1714.22 of the Civil Code.

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

(d) (1) An entity operating an overdose prevention program under this section shall provide an annual report to the authorizing jurisdiction that shall include all of the following:

(A) The number of program participants.

(B) Aggregate information regarding the characteristics of program participants.

(C) The number of overdoses experienced and the number of overdoses reversed onsite.

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

(2) (A) All local jurisdictions that choose to participate in the overdose prevention program pursuant to this section shall confer and choose a single independent entity to conduct a peer-reviewed study of both of the following, based on the data provided in paragraph (1) and other data gathered by the entity:

(i) The statewide efficacy of the overdose prevention programs, including, but not limited to, number of participants, aggregate information regarding characteristics of the participants, overdoses onsite, reversals onsite, participants referred to treatment, hospitalizations after being seen at a program site, fatalities in hospitals after being seen at a program site, and fatalities onsite.

(ii) Community impacts of the overdose prevention program, including, but not limited to, an increase or decrease in crime, syringe litter, public drug use, and aggregate information on the attitudes of nearby businesses and community members.

(B) The independent entity conducting the study shall be either a private, nonprofit, nonpartisan research organization or a research university in the United States classified as a Research University in the Carnegie Classification of Institutes of Higher Learning.

(C) The participating jurisdictions and the selected entity shall fund the study through private donations, grants, and local funds.

(D) Prior to a local jurisdiction opting in to the pilot program, it must consent to funding the component of the study relating to its jurisdiction and program.

(E) The study shall be submitted to the Legislature and the Governor's office on or before January 15, 2027, and shall be submitted in compliance with Section 9795 of the Government Code.

(e) (1) 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, the City 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 overdose prevention program authorized

by this section, in accordance with established protocols and on the program site, shall not be subject to any of the following:

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

(B) 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.

(2) This section shall not limit 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 overdose prevention program that violates the Medical Practice Act pursuant to each board's authority in Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(f) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

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

Approved _____, 2022

Governor