

New York State Joint Legislative Budget Hearing on Mental Hygiene

February 16, 2023

Testimony submitted to the Joint Legislative Budget Hearing on Mental Hygiene by the Drug Policy Alliance

The Drug Policy Alliance (DPA) appreciates the opportunity to submit testimony to the Joint Legislative Budget Hearing on Mental Hygiene. DPA is the leading organization in the U.S. promoting alternatives to the War on Drugs. We envision a just society in which the use and regulation of drugs are grounded in science, compassion, health, and human rights; in which people are no longer punished for what they put into their own bodies; and in which the fears, prejudices, and punitive prohibitions of today are no more.

As an organization committed to ending the overdose crisis and supporting people and communities most impacted by drug criminalization, **DPA opposes Governor Hochul's rejection of the Opioid Settlement Advisory Board's recommendation to allocate settlement dollars toward overdose prevention centers. We further urge the Legislature to ensure that funding in the FY '24 budget is allocated to ensure that more OPCs can open.**

Background

We are in the midst of a worsening overdose epidemic. Over 6,080 New Yorkers died from a *preventable* overdose in 2021 alone - the second record breaking year in New York State history. Every hour and 26 minutes a New Yorker passes away from an overdose across our state – and overdose continues to take more New Yorkers' lives than car accidents, suicides, and homicides combined. Overdoses within Black and Brown communities, in particular, have continued to rise, and access to services remain fraught with barriers. Based on the instability of the drug supply and preliminary CDC data trends, it is likely every year will continue to break records unless there is a drastic scale-up of the care and harm reduction infrastructure.

Tough-on-crime and prohibitionist policies have created the conditions for an adulterated drug supply – fentanyl is now involved in more than 80%¹ of overdose deaths in New York City. Stimulant and fentanyl related overdose deaths are rapidly increasing throughout New York State, particularly among low-income communities and Black and Brown neighborhoods. In New York City, overdose has remained the leading² cause of death for homeless New Yorkers for the past eight years.³

¹ <https://www.nyc.gov/assets/doh/downloads/pdf/epi/databrief133.pdf>

² <https://gothamist.com/news/report-nyc-homeless-deaths-increased-dramatically>

³ <https://citylimits.org/2022/03/08/2021-was-deadliest-year-on-record-for-homeless-new-yorkers/>

With preventable overdoses surging, and an increasingly toxic drug supply, New York State must harness the purpose of opioid settlement dollars and fund life-saving overdose prevention centers (“OPCs”) statewide.

Opioid settlement dollars can and must be used to fund overdose prevention centers.

Governor Hochul rejected the recommendation to allocate opioid settlement dollars to fund OPCs, claiming that doing so would be in violation of federal and state laws. In New York, the claim that OPCs violate state law is tenuous and Governor Hochul has not cited to what state laws she believes OPCs violate. In fact, it is not clear whether an OPC would be found to violate state statutes because it has never been litigated. In addition, the Attorney General could issue a legal opinion saying they do not interpret OPCs to violate state law.

There is also the question of federal law. The question of whether OPCs violate federal law also remains unsettled. The *Safehouse* opinion – which is pending – is only binding in the 3rd Circuit, which covers Pennsylvania, New Jersey, and Delaware. No other jurisdiction has held that OPCs violate federal law. Regardless, states may choose to use their funds to support OPCs even if considered federally illegal. This is already done in the context of cannabis. Furthermore, states and counties could work with US Attorneys in their jurisdictions and come to agreements wherein the Department of Justice will exercise discretion not to intervene.

The assertion of illegality is also undercut by Rhode Island’s approval of over \$2 million for OPCs. There has been no indication that the federal government will intervene. When asked about why New York cannot follow Rhode Island’s lead on funding OPCs, Governor Hochul did not cite a concern for violating state or federal law. Rather, she said she would wait for the results of Rhode Island’s program. Finally, while the Biden administration has not taken a public position on OPCs or the *Safehouse* litigation, the Department of Justice, Department of Health and Human Services, and the Office of National Drug Control Policy have made statements suggesting support for OPCs.

New York State must continue to demonstrate leadership on the overdose crisis.

There are only two sanctioned OPCs operating in the United States, and they are both in New York State – one in East Harlem and one in Washington Heights, both neighborhoods in New York City.

Then-New York City Mayor Bill de Blasio and the New York City Department of Health approved both OPCs – managed by the non-profit harm reduction service provider, OnPoint – on November 30, 2021. This historic step made New York City a pillar in harm reduction in the country. In their first year of operation, the OPCs successfully intervened in 633 overdoses without a single fatality, in two neighborhoods with among the highest concentrations⁴ of overdose deaths.

⁴ <https://www.nyc.gov/assets/doh/downloads/pdf/epi/databrief133.pdf>

The success of NYC's OPCs has bolstered the growing national support for OPCs as a necessary component in addressing the overdose crisis. Numerous states and localities are working to establish sustainable OPCs. Rhode Island⁵ passed legislation authorizing and funding⁶ OPCs, which are slated to open in 2023. Additionally, Arizona, Illinois, Maryland, Missouri, New Jersey, New Hampshire, Kentucky, and New Mexico have pending state legislation to authorize OPCs and San Francisco, Boston, Baltimore, D.C., are among the cities who are advancing measures to open OPCs locally.

Overdose Prevention Centers are endorsed by the American Medical Association⁷, the American Public Health Association, the HIV Medicine Association, and the Infectious Disease Society of America⁸, and National Alliance Of State & Territorial Aids Directors (NASTAD). On December 20, 2021, the New York City Board of Health, through unanimous vote, issued a statement⁹ urging New York State to authorize OPCs.

The bi-partisan support for OPCs has also indicated a shift of public opinion and support for these life-saving centers. According to a Data for Progress Poll released in 2021, 64% of New Yorkers statewide support Overdose Prevention Centers.¹⁰ Opening OPCs was proposed in New York State's Blueprint to End the AIDS Epidemic,¹¹ and included in the Hepatitis C Elimination Plan.¹²

Overdose prevention centers save lives and support improved health and wellness.

OPCs are controlled health care settings where people can more safely use pre-obtained drugs under clinical supervision and receive health care, counseling, and referrals to health and social services, including drug treatment. OPCs are able to prevent fatal overdoses especially for high-risk populations, like street homeless individuals, and they foster stigma-free spaces for engaging a population that has traditionally been unlikely to participate in formal health care services.

Overdose prevention centers are globally successful. In more than 35 years of operation, with more than 100 OPCs operating in 66 cities, **there has been no fatal overdose at an OPC.**

Numerous peer-reviewed scientific studies have proven the positive impacts of OPCs for people who use drugs. These benefits include, but are not limited to:

- Increased access to drug treatment,¹³ especially among people who have had negative experiences with the treatment system and have higher barriers to access
- Reduced HIV and hepatitis C¹⁴ risk behavior (e.g. syringe and other injection equipment sharing)
- Reduced prevalence and harms¹⁵ of bacterial infections

⁵ <https://www.browndailyherald.com/article/2021/10/r-i-is-first-to-legalize-safe-injection-sites>

⁶ <https://www.nytimes.com/2022/10/12/us/politics/rhode-island-overdoses.html>

⁷ <https://www.ama-assn.org/press-center/press-releases/ama-wants-new-approaches-combat-synthetic-and-injectable-drugs>

⁸ http://www.hivma.org/uploadedFiles/HIVMA/Policy_and_Advocacy/Safe_Consumption_Statement_SIDP_final_4.6.17.pdf

⁹ <https://www1.nyc.gov/assets/doh/downloads/pdf/notice/2021/boh-statement-on-action-preven-overdose.pdf>

¹⁰ <https://www.cityandstateny.com/policy/2022/04/poll-new-yorkers-support-safe-injection-sites/366119/>

¹¹ https://www.health.ny.gov/diseases/aids/ending_the_epidemic/docs/blueprint.pdf

¹² https://health.ny.gov/diseases/communicable/hepatitis/hepatitis_c/docs/hepatitis_c_elimination_plan.pdf?source=email

¹³ http://www.communityinsite.ca/Wood_ADDICTION_TREATMENT.pdf

¹⁴ <http://onlinelibrary.wiley.com/doi/10.1111/j.1360-0443.2009.02541.x/full>

- Successful management of overdoses

Additionally, overdose prevention centers support community wellness. Research of sites across the world demonstrate OPCs:

- Decrease public injection and syringe litter¹⁶
- Reduce public expenses¹⁷ and strain on the health care system associated with addressing disease, overdoses, and need for emergency medical services¹⁸
- Increase preventative health care¹⁹ and drug treatment utilizations.
- Do not increase community drug use²⁰
- Do not increase initiation into injection drug use²¹
- Do not increase drug-related crime²² and public disorder.²³

OPCs are a necessary part of a comprehensive continuum of care.

A comprehensive continuum of mental health and substance use care requires points of access for all people who need and want care. OPCs are stigma-free, low-barrier points of care for people who have not been well-served through traditional health care and social service systems. Through OPCs, people who are disconnected from care can be connected to appropriate services when they are ready.

Most people who enter a drug treatment program for the first time do not successfully resolve their substance use disorder after treatment. We also know that many people are not ready yet - or may never be ready - to make the decision to enter treatment. However, all people deserve to stay alive and receive compassionate care. OPCs ensure that people stay alive, are met with dignity and compassion, and have staff ready to link participants to care for when and if they are ready to engage in treatment.

Evidence shows that harm reduction programs and OPCs actually *increase* the likelihood of people entering drug treatment programs. An OPC in Vancouver found that after their first year of operation, the amount of people entering drug treatment went up by 30%.²⁴ OPCs connect drug users to medical professionals and social workers who can successfully link participants to treatment services and acts as a warm handoff for people who choose to reduce or stop use and encourage them to make choices that promote health and wellness.

We also know that some people struggle to maintain treatment. Guided by a philosophy of harm reduction, OPCs meet people where they are, and move them to more stability and wellness. This includes reducing the quantity and frequency of drug use. OPCs often contribute to a reduction in drug use simply by providing dignified care, love and acceptance, and

¹⁵ <https://pubmed.ncbi.nlm.nih.gov/21515001/>

¹⁶ <https://www.cmai.ca/content/171/7/731>

¹⁷ https://d279m997dpfwgl.cloudfront.net/wp/2020/11/ICER_SIF_Evidence-Report_1111320.pdf

¹⁸ <https://www.healthline.com/health-news/why-safe-injection-sites-are-considered-more-effective-than-needle-exchange-programs>

¹⁹ https://www.researchgate.net/profile/Mark_Tyndall2/publication/7738361_Do_Supervised_Injecting_Facilities_Attract_Higher-Risk_Injection_Drug_Users/links/0c9605273d4b3ddaef000000/Do-Supervised-Injecting-Facilities-Attract-Higher-Risk-Injection-Drug-Users.pdf

²⁰ https://icer.org/wp-content/uploads/2020/10/ICER_SIF_Final-Evidence-Report_010821.pdf

²¹ <https://pubmed.ncbi.nlm.nih.gov/25456324/>

²² <https://www.sciencedirect.com/science/article/abs/pii/S0376871614018754?via%3DIhub>

²³ <https://pubmed.ncbi.nlm.nih.gov/28875422/>

²⁴ http://www.communityinsite.ca/Wood_ADDICTION_TREATMENT.pdf

community but also through their ability to establish trusting relationships with participants and connect them with other services.

OPCs are especially necessary in a worsening overdose crisis.

Complicating life-saving overdose responses is the unfortunate reality that the increasingly adulterated drug supply is producing faster onset overdoses. The more potent drug supply, driven by fentanyl, has narrowed the window of time to successfully intervene in an overdose and resume the breathing of a person experiencing an overdose. Whereas heroin overdoses occur within the span of hours, fentanyl overdoses occur in a matter of minutes and sometimes even seconds. This means that relying on emergency services and civilians alone to respond to overdoses is insufficient and will continue leading to an increasing number of overdoses that become fatal. Using drugs in a supervised setting, such as an OPC, allows for the immediate provision of medical assistance in the event of an overdose.

In addition, New York is beginning to see more non-opioid adulterants in the drug supply, which complicates overdose responses outside of an OPC setting. Xylazine, for example, is a veterinary grade sedative that, in humans, carries the risk of overdose and very difficult to treat skin necrosis. The opioid reversal medication, Narcan – which has become a frontline life-saving medication for emergency personnel and the public alike – does not work to reverse non-opioid overdoses. The evolving drug supply even more urgently necessitates the availability of OPCs, which are better equipped to respond to overdoses resulting from sometimes unknown substances.

OPCs enhance the impact of drug sample checking.

Governor Hochul has spoken to her personal connection and commitment to preventing overdose deaths and toward this end has done much to build on many years of advances in harm reduction in New York. Notably, she signed legislation decriminalizing possession of hypodermic needles and syringes, decriminalizing possession of opioid reversal medication, easing restrictions and expanding distribution of Narcan and fentanyl testing strips, and most recently announced the expansion of drug sample checking technology statewide.

Drug sample checking using sophisticated Fourier Transform Infrared Spectroscopy (FTIR), mass spectrometry and similar technology allows service providers and consumers to receive more detailed information about the types and quantities of substances in the drug supply. More than a fentanyl test strip – which is useful for non-opioid users to test whether opioids are present in their supply – sophisticated drug sample checking provides deeper analysis of the chemical makeup of a person's drug. For example, these machines can provide insight into levels of fentanyl in a batch, not just the presence of fentanyl. For opioid users, that is particularly useful, as a batch of drugs that is 6 percent fentanyl versus a batch of drugs that is 20 percent fentanyl can be the difference between life and death. Equipped with this information, people can make informed decisions about how and whether to consume a particular supply.

The New York City Department of Health currently offers this sophisticated drug sample checking as a pilot program at OnPoint NYC's East Harlem location, as well as at two other locations where there is not an OPC. While knowledge of the drug supply is a helpful harm reduction service, our highly adulterated supply means that even with knowledge of what substances are in the supply, it can be hard to predict a consumer's reaction to the supply. Having access to an OPC means people can use the knowledge of what's in their supply to modify the quantity or modality of use and also be in the care of providers trained in overdose response in the event of an overdose.

New York State should be coupling its expansion of drug sample checking services with OPCs. New Yorkers need a comprehensive, public health-based approach to addressing substance use and mental health and bold action to get ahead of the overdose crisis. No one else needs to die from a preventable drug overdose and everyone deserves to be supported in wellness.

At a time when the country is following the successes of New York's OPCs, and developing their own programs, New York State has an opportunity to continue to be a leader on this issue by expanding OPCs statewide and providing the funding to support and sustain them. We urge the Legislature to include the necessary funding for the creation of OPCs in the FY '24 budget.

New York can save lives and continue being on the forefront of effective overdose prevention by choosing bold, evidence-based health solutions.

The Legislature must allocate the necessary funding from opioid settlement dollars for overdose prevention centers in the FY '24 Budget.