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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 186                      **Hearing Date:** July 11, 2017  
**Author:** Eggman  
**Version:** March 23, 2017  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** SJ

**Subject:** *Controlled Substances: Safer Drug Consumption Program*

## HISTORY

**Source:** California Association of Alcohol and Drug Program Executives  
California Society of Addiction Medicine  
Drug Policy Alliance  
Harm Reduction Coalition  
Project Inform  
Tarzana Treatment Center

**Prior Legislation:** AB 2495 (Eggman) Heard in Assembly Public Safety in 2016  
AB 635 (Ammiano) Ch. 707, Stats. of 2014  
AB 1743 (Ting) Ch. 331, Stats. of 2014  
AB 604 (Skinner) Ch. 744, Stats. of 2011  
SB 41 (Yee) Ch. 738, Stats. of 2011  
AB 2145 (Ammiano) Ch. 545, Stats. of 2010  
SB 767 (Ridley-Thomas) Ch. 477, Stats. of 2007  
SB 1159 (Vasconcellos) Ch. 608, Stats. of 2004  
AB 136 (Mazzoni) Ch. 762, Stats. of 1999

**Support:** A New Path; Aegis Treatment Centers; AIDS Community Research Consortium; American Civil Liberties Union of California; Any Positive Change, Inc.; APLA Health; CaliforniaHealth Advocates; California Alliance for Retired Americans; California Council of Community Behavioral Health Agencies; California Consortium of Addiction Programs and Professionals; California Hepatitis Alliance; California Opioid Maintenance Providers; California Psychiatric Association; California Public Defenders Association; Center for Living and Learning; Coalition on Homelessness, San Francisco; Community Clinic Association of Los Angeles County; Courage Campaign; Dataway; End Hep C SF; Equality California; Face to Face/ Sonoma County AIDS Network; Gender Health Center; The Glide Foundation; The Gubbio Project; Harm Reduction Coalition; Harm Reduction Services; HealthRight360; HepCarestream/ Hepatitis C Clinical Education Group, Inc.; HIV Education and Prevention Project of Alameda County; Homeless Health Care Los Angeles; Homeless Youth Alliance; Humboldt Area Center for Harm Reduction; Law Enforcement Action Partnership; Los Angeles LGBT Center; Los Angeles Overdose Task Force; Los Angeles Regional ReEntry Partnership; Mental Health America of California; National Association of Social Workers, California; National Viral Hepatitis

Roundtable; Needle Exchange Emergency Distribution; Northeast Valley Health Corporation; Orange County Needle Exchange Program; Positive Women's Network; Saint Francis Foundation; San Francisco AIDS Foundation; San Francisco District Attorney's Office; St. Anthony Foundation; Transitions Clinic Network; 2 individuals

Opposition: Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California District Attorneys Association; California Narcotic Officers Association; California Police Chiefs Association; California State Sheriffs' Association; City of West Covina; Los Angeles County Probation Officers Union AFSCME Local 685; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Peace Officers Research Association of California; Riverside Sheriffs' Association; Santa Cruz County Supervisor Bruce McPherson; Santa Cruz County Supervisor Ryan Coonerty; 4 individuals

Assembly Floor Vote: 41 - 33

### PURPOSE

***The purpose of this bill is to establish a pilot program to permit the establishment and operation of safe drug consumption programs, as specified.***

*Existing law* classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054 to 11058.)

*Existing law* provides that possession of cocaine, cocaine base, heroin, opiates, opium derivatives, and other specified controlled substances shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years. (Health & Saf. Code, § 11350, subd. (a).)

*Existing law* provides that it is unlawful to possess any device, instrument, or paraphernalia used for unlawfully injecting or smoking specified controlled substances. Existing law further provides that until January 1, 2021, this section does not apply to the possession of hypodermic needles or syringes solely for personal use if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription. (Health & Saf. Code, § 11364, subd. (a) & (c).)

*Existing law* provides that it is unlawful to visit or to be in any room or place where specified controlled substances are being unlawfully smoked or used with knowledge that such activity is occurring. Applies only where the defendant aids, assists, or abets the perpetration of the unlawful smoking or use of the controlled substance. (Health & Saf. Code, § 11365, subd. (a) & (b).)

*Existing law* provides that every person who opens or maintains any place for the purpose of unlawfully selling, giving away, or using specified controlled substances shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison. (Health & Saf. Code, § 11366.)

*Existing law* provides that any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail up to three years. (Health & Saf. Code, § 11366.5, subd. (a).)

*Existing law* makes the possession of methamphetamine and other specified controlled substances punishable by imprisonment in a county jail for a term not to exceed one year, except as specified. (Health & Saf. Code, § 11377, subd. (a).)

*Existing law* provides that it is unlawful to be under the influence of specified controlled substances, except as specified. The punishment is a sentence of not more than one year in a county jail, and the court may also place a person convicted under this subdivision on probation for a period not to exceed five years. (Health & Saf. Code, § 11550, subd. (a).)

*Existing law* provides that until January 1, 2021, a physician or pharmacist may, without a prescription or a permit, furnish hypodermic needles and syringes for human use to a person 18 years of age or older, and a person 18 years of age or older may, without a prescription or license, obtain hypodermic needles and syringes solely for personal use from a physician or pharmacist. (Bus. & Prof. Code, § 4145.5, subd. (b).)

*Existing law* provides that until January 1, 2021, a pharmacy that furnishes nonprescription syringes is required to provide written information or verbal counseling to consumers at the time of furnishing or sale of nonprescription hypodermic needles or syringes on how to do the following: (1) access drug treatment; (2) access testing and treatment for HIV and hepatitis C; and (3) safely dispose of sharps waste. (Bus. & Prof. Code, § 4145.5, subd. (f).)

*This bill* allows the Counties, or cities within the Counties, of Alameda, Fresno, Humboldt, Los Angeles, Mendocino, San Francisco, San Joaquin, and Santa Cruz, to approve entities to establish and operate a safer drug consumption program for persons 18 years of age or older if certain requirements are satisfied.

*This bill* provides that in order for an entity to be approved to operate a safer drug consumption program pursuant to this section, the entity is required to demonstrate that it will, at a minimum:

- 1) Provide a space supervised by health care professionals where people who use drugs can consume preobtained drugs;
- 2) Provide sterile consumption supplies, collect used hypodermic needles and syringes, and provide secure hypodermic needle and syringe disposal services;
- 3) Answer questions on safe consumption practices;

- 4) Administer first aid, if needed, monitor participants for potential overdose, and provide treatment as necessary to prevent fatal overdose;
- 5) Provide access or referrals to addiction treatment services, medical services, and social services;
- 6) Educate participants on the risks of contracting HIV and viral hepatitis;
- 7) Provide overdose prevention education and access to or referrals to obtain naloxone;
- 8) Educate participants regarding proper disposal of hypodermic needles and syringes;
- 9) Provide reasonable security of the program site;
- 10) Establish operating procedures for the program that are publicly noticed, including, but not limited to, standard hours of operation, a minimum number of personnel required to be on site during those hours of operations, an established maximum number of individuals that can be served at one time, and an established relationship with the nearest emergency care facility, as well as eligibility criteria for program participants;
- 11) Train staff members to deliver services offered by the program;
- 12) Establish a good neighbor policy to address neighborhood concerns and complaints; and
- 13) Establish a policy for informing local government officials and neighbors about the approved entity's complaint procedures, and the contact number of the operator of the approved entity.

*This bill* requires an entity operating a safer drug consumption program to provide an annual report to the approving city, county, or city and county at a date set by the city, county, or city and county that includes:

- 1) The number of program participants;
- 2) Aggregate information regarding the characteristics of program participants;
- 3) The number of hypodermic needles and syringes distributed for use onsite;
- 4) The number of overdoses experienced and the number of overdoses reversed onsite; and
- 5) The number of individuals directly and formally referred to other services and the type of service.

*This bill* provides that a person or entity, including, but not limited to, property owners, managers, employees, volunteers, and clients or participants, shall not be arrested, charged, or prosecuted for possession of drugs for personal use, or being under the influence of drugs, including for attempt, aiding and abetting, or conspiracy to commit those crimes, or have his or her property subject to forfeiture, or otherwise be penalized solely for involvement in a safer

drug consumption services program approved by a city, county, or a city and county.

*This bill* provides that the provisions of this bill will sunset on January 1, 2022.

## COMMENTS

### 1. Need for This Bill

According to the author:

Across the United States, heroin and opiate use and overdose is on the rise. Legislation in many states, including California, has improved access to sterile needles to prevent HIV and viral hepatitis, broadened the use of the life-saving drug naloxone, and expanded the use of effective treatment and drug diversion programs. However, with 125 Americans dying every day, and California hospitals treating one overdose every 45 minutes, we must continue to look for innovative strategies for addressing this epidemic.

This bill extends the harm reduction strategies we are already using in California by enabling local governments to permit programs to provide drug users a safe and hygienic space to use pre-obtained drugs under the supervision of trained staff. Programs like this have been proven to save lives, connect individuals with vital services like detoxification, treatment, medical care, and housing, and reduce public nuisance and safety concerns such as improperly disposed syringes. Approximately 90 such programs are currently operating in 66 cities around the world.

In a single year the Canadian facility made more than 2,000 referrals to community-based services like addiction counseling, detoxification, health centers, methadone maintenance therapy, and long-term recovery houses. The research also shows no increase in the number of people who use drugs, drug trafficking or consumption crimes, or relapse rates. Also, a recent study in California projects that a single supervised consumption program could save \$3.5 million in San Francisco annually.

Existing law creates barriers to the authorization of public health interventions that would reduce drug overdose fatalities, reduce public discard of syringes, reduce the spread of HIV and Hepatitis C. This bill will provide limited immunity from specified control substance offenses, but only in localities that permit the establishment of a program to supervise the consumption of control substances in safe and hygienic settings.

### 2. Heroin Use and Overdoses

In the past decade, California has seen an increase in heroin overdoses. According to Office of Statewide Health and Planning Development (OSHPD) data, emergency department (ED) encounters for individuals with heroin poisoning have increased dramatically since 2005. (<<http://www.oshpd.ca.gov/documents/PressReleases/2015/ED-Heroin-Poisoning-Age-Group.pdf>> [as of Jul. 3, 2017].) Overall, ED visits among heroin users of all ages increased, but the sharpest was among the state's young adults aged 20 to 29. About 1,300 ED visits by that

population poisoned by heroin were logged in 2015 compared with fewer than 1,000 in 2012. For individuals aged 30 to 39, ED encounters rose from approximately 400 in 2012 to 600 in 2014. All other age groups experienced a small increase in ED encounters.

A recent *San Francisco Chronicle* article focused on the prevalence of publicly discarded syringes and San Francisco's inquiry into the use of safe injection sites. (See <http://www.sfchronicle.com/news/article/Safe-injection-sites-offer-hope-in-scourge-of-11087892.php> [as of Jul. 3, 2017].) The article noted that the San Francisco Department of Public Works (SFDPW) reported collecting 13,333 syringes left on the streets in March 2017—an average of 430 every day—10,465 more needles than were collected in March 2016. These figures come only from SFDPW's "hot spot" crews, which mostly clean homeless camps, and do not include the number of syringes found by other cleaning crews, which are not tracked, or the ones found on port property and in parks. The article stated that San Francisco public health officials estimate there are 22,000 intravenous (IV) drug users in the city, and many choose to inject in public spaces in the hopes that somebody will help should they overdose. Public health officials estimate 85% of IV drug users would use SIFs and that the city could save \$3.5 million in medical costs. In April 2017, the San Francisco Board of Supervisors approved the creation of a SIF task force, which discussed more below.

### 3. Supervised Injection Facilities (SIFs)

Supervised injection facilities, also known as safe consumption spaces and safe injection sites, are legally sanctioned facilities where people who use intravenous drugs can inject pre-obtained drugs under the supervision of a health care provider. SIFs are designed to reduce the health and societal problems associated with injection drug use. SIFs provide sterile injection equipment, information about reducing the harms of drugs, health care services, treatment referrals, and access to medical staff. Some offer counseling, hygienic amenities, and other services. They also reduce public drug consumption and improper syringe disposal. Research on SIFs demonstrates that they reduce HIV and hepatitis transmission risks, prevent overdose deaths, reduce public injections, reduce discarded syringes, and increase the number of people who enter drug treatment. There are now approximately 100 SIFs operating in at least 66 cities around the world. Legislation authorizing the establishment of SIFs has been introduced this year in the legislatures of New York, Maine, and Maryland. Below are other examples of SIFs and similar facilities.

#### a) Vancouver

Insite, in Vancouver, Canada, became the first SIF established in North America in 2003. Insite was designed as part of a continuum of care for people with substance use disorders, mental illness, and HIV/AIDS. In 2015, Insite had 263,713 visits to the site by 6,532 unique individuals with an average of 722 visits per day and an average of 440 injection room visits per day. There were 5,359 clinical treatment interventions, and 5,368 referrals to other social and health services. Additionally, there were 464 admissions into their adjoining detox treatment facility, which recorded a program completion rate of 54%.

In May 2017, additional SIF sites were approved for the Vancouver area. In addition, three SIFs opened in Montreal in June 2017, and three sites are planned to open by the end of the year in Toronto. ([http://www.huffingtonpost.ca/2017/06/02/safe-injection-sites-toro\\_n\\_16926976.html](http://www.huffingtonpost.ca/2017/06/02/safe-injection-sites-toro_n_16926976.html)); (<http://www.cbc.ca/news/canada/montreal/montreal-safe-injection-sites-open-2017-1.4166638>) [as of Jul. 3, 2017].)

## b) Seattle

In January 2017, officials in Seattle and King County, WA voted to create two SIFs for drug users, the first of their kind in the U.S., as part of an effort to halt the surge of heroin and prescription opioid overdose deaths in the region. (<<http://www.seattletimes.com/seattle-news/crime/seattle-king-county-move-to-create-2-injection-sites-for-drug-users/>> [as of Jul. 3, 2017].) The sites will be stocked with opioid antagonists and aim to save lives and connect people with substance use disorders to treatment services. The vote to approve the facilities is part of efforts to implement all of the recommendations made by the joint city and county Heroin and Prescription Opiate Addiction Task Force that met throughout 2016. (<[http://www.kingcounty.gov/~media/depts/community-human-services/behavioral-health/documents/herointf/final-heroin-opiate-addiction-task-\\_force-report.ashx?la=en](http://www.kingcounty.gov/~media/depts/community-human-services/behavioral-health/documents/herointf/final-heroin-opiate-addiction-task-_force-report.ashx?la=en)> [as of Jul. 3, 2017].) The approval of two SIFs in King County has prompted a campaign to ban them. (<<http://www.seattletimes.com/seattle-news/politics/initiative-proposed-to-ban-heroin-safe-injection-sites-in-king-county/>> [as of Jul. 3, 2017].)

## c) Boston

In response to Boston's increase in opioid overdoses, which are magnified among people experiencing homelessness, Boston Health Care for the Homeless Program's (BHCHP) has implemented a program called Supportive Place for Observation and Treatment (SPOT). (<<https://www.bhchp.org/spot>> [as of Jul. 3, 2017].) The SPOT offers engagement, support, medical monitoring, and serves as an entry way to primary care and treatment on demand for 8-10 individuals at a time who are over-sedated from the use of substances and who would otherwise be outside on a street corner, alleyway, or alone in a public bathroom, at high risk of overdose. The SPOT does not permit drug injection on site. In the first four months of SPOT's opening, the program has cared for nearly 200 individuals in over 800 different encounters. While the immediate goal is to reduce the harm associated with use of opioids and other substances in a population who lacks stable housing and supports, SPOT's ultimate goal is to help medically complex individuals gain access to treatment for SUDs on demand, including medication-assisted therapies or detoxification. BHCHP states that it will continuously evaluate the positive effect of SPOT on these individuals and the surrounding community.

## d) San Francisco

In April 2017, the San Francisco County Board of Supervisors unanimously passed a resolution urging the city's department of public health to convene a SIF task force to make recommendations regarding the need for safe injection facilities, the feasibility of opening and operating such facilities, and the obstacles associated with the facilities. The task force will develop recommendations for the mayor, board of supervisors, and city departments. The final report will be released in September 2017. (<<https://www.sfdph.org/dph/files/SISTaskforce/Meeting-01/SIS-TF-Slides-6-15-17-FINAL.pdf>> [as of Jul. 3, 2017].)

#### 4. California Allows Sale of Hypodermic Needles

California has allowed the sale of hypodermic needles and syringes for a number of years. SB 1159 (Vasconcellos), Chapter 608, Statutes of 2004, established a five-year pilot program to allow California pharmacies, when authorized by a local government, to sell up to 10 syringes to

adults without a prescription. Within several years, there were hundreds of pharmacies participating in the program. The pilot was suspended when statewide sales were authorized by SB 41 (Yee), Chapter 738, Statutes of 2011. SB 41 also required the Department of Public Health (DPH) to evaluate the results of the pilot project.

In July 2010, DPH published an evaluation of the pilot. The report had a number of findings. Among the most relevant were that an increased number of intravenous drug users (IDUs) reported using pharmacies as a source of their syringes. The availability of these sterile syringes seemed to impact behavior. A significantly lower portion of IDUs reported sharing of syringes and there was no evidence of increased unsafe discard of used hypodermic needles or syringes was observed in the Disease Prevention Demonstration Projects (DPDP). DPH reported that the level of injection of illegal drugs decreased among publicly funded HIV testing clients. The report also found that drug-related crime remained stable in the jurisdictions that authorized DPDPs. Nevertheless, DPH concluded that the program appeared to be having the desired effect of augmenting access to sterile syringes.

A number of studies provide evidence that access to non-prescription sterile hypodermic needles and syringes reduces HIV transmission. Public health experts, including the Centers for Disease Control and Prevention, have identified access to sterile syringes as one component of a comprehensive HIV prevention strategy designed to reduce HIV transmission among IDUs. In the last 10 years, a number of national organizations have endorsed deregulation to allow IDUs to purchase and possess syringes and needles without a prescription, including the American Medical Association, the American Pharmaceutical Association, the NABP, the National Alliance of State and Territorial AIDS Directors, and the Association of State and Territorial Health Officials.

## 5. Conflict with Federal Law

Under federal law, the conduct that would take place in SIFs would continue to be illegal. Two federal laws are particularly relevant with respect to the activity occurring at a SIF. Title 21 United State Code section 844 provides that it is “unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized.” In addition, federal law provides that it is unlawful to:

- (a) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or **using any controlled substance**;
- (b) 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**. (21 U.S.C. § 856.)

These two statutes would criminalize both the behavior of the clients using the facilities and the owners or operators of the facilities.



## 6. What This Bill Does

This bill establishes a pilot program which permits, but does not mandate, 8 specified counties and cities within those counties to establish and operate SIFs. Facilities must meet several requirements, including providing a space supervised by health care professionals where people who use drugs can consume their own drugs. This bill also prohibits the arrest or prosecution of specified drug offenses related to *involvement* in a safer drug consumption services program.

This bill includes a sunset provision. The following section delineates the amendments the author intends to make to clarify various provisions of the bill.

## 7. Proposed Amendments

The author intends to make the following amendments:

- Clarifying that the establishment and operation of a safer drug consumption program would take place upon the action of a county board of supervisors, or upon the action of a city council and mayor;
- Clarifying that an action by a county board of supervisors would pertain to the areas of the unincorporated county outside of municipal jurisdictions, and an action of a city council and mayor would only pertain to an action within the city boundary and jurisdiction;
- Specifying that the space provided for a safer drug consumption program would be a “hygienic” space;
- Defining “health care professional” to include “a physician, physician assistant, nurse practitioner, licensed vocational nurse, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed professional clinical counselor, mental health provider, social service provider, or substance use disorder providers, trained in overdose recognition and reversal pursuant to Civil Code 1714.22”;
- Including mental health services in the subsection on providing access or referrals;
- Amending the subsection on naloxone to say “naloxone hydrochloride or another overdose reversal medication approved by the United States Food and Drug Administration”;
- Including the licenses and/or training standards for staff in the subsection on operating procedures for the program; and
- Amending subdivision (d) to say: Notwithstanding any other law a person or entity, including, but not limited to, property owners, managers, employees, volunteers, and clients or participants, shall not be arrested, charged, or prosecuted 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, or have his or her property subject to forfeiture, or otherwise be penalized solely for **actions or conduct within** a safer drug consumption services program approved by a city, county, or a city and county pursuant to subdivision (a).

## 8. Prior Legislation

SB 2495 (Eggman) of the 2015-2016 legislative session would have decriminalized conduct connected to the use and operation of an adult public health or medical intervention program that is permitted by state or local health departments and intended to reduce death, disability, or

injury due to the use of controlled substances. SB 2495 was heard for testimony, but no vote was taken.

## 9. Argument in Support

The California Public Defenders Association writes:

Safe injections facilities have been shown to reduce overdoses, HIV and Hepatitis infection rates, public drug use, and discarded syringes. They are an evidence-based strategy for harm reduction and have been successfully deployed in many other countries, including Canada. Those who used the safe injection facilities in Canada were shown to be more likely to seek drug treatment, and ultimately more likely to stop using drugs altogether.

AB 186 establishes pilot programs for specified counties in the hopes that they will replicate the health and safety benefits that are the results of using safe injection facilities in other jurisdictions. It represents a data-driven and humane approach to the health problems associated with drug use.

## 10. Argument in Opposition

The California District Attorneys Association writes:

While we appreciate that the intent of the bill is to provide a space where people who use drugs can do so under the watchful eye of healthcare professionals who may also educate and connect them with addiction treatment services, we are concerned about the impact this drug activity would have on crime in the areas surrounding these sites. Beyond the drug and theft crimes that are often committed by individuals with substance abuse issues, those individuals themselves may become attractive targets for other criminals who would take advantage of these geographic clusters of impaired victims.

In addition to these general concerns, we believe that proposed Penal Code section 11376.6(d) is drafted so broadly that it could be interpreted that an individual who participates in one of these programs could never be arrested for drug possession, even outside of the designated program site. This subdivision provides that a person “shall not be arrested, charged or prosecuted...or otherwise be penalized solely for involvement in a safer drug consumption services program...”. Nowhere in that language does it limit this safe harbor to the area on or around the program site. An individual possessing heroin five miles away could avoid arrest simply by alleging that he or she intended to consume those drugs at the program site.

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