

# The Controlled Substances Act and safe consumption facilities

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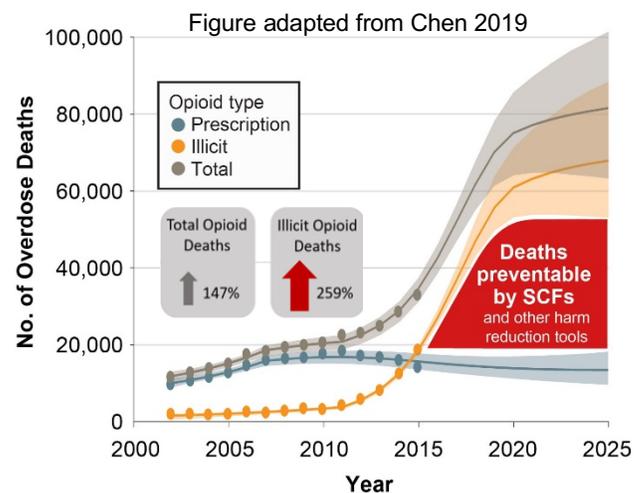
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**Executive Summary:** Safe consumption facilities (SCFs) are effective at preventing overdose fatalities and reducing transmission of infectious diseases, like HIV and Hepatitis C. The city of Philadelphia is moving forward with plans to open the first SCF in the United States; however, the U.S. Attorneys' Office has filed a lawsuit to stop these plans from moving forward. Estimates predict that >24 overdose deaths per year will be prevented in Philadelphia if the proposed SCF is opened while also connecting drug users to treatment and social services. It is also expected to save the city millions of dollars in hospitalizations, ambulance rides, and emergency room visits. SCFs reduce public nuisances like public injecting and littered syringes, and do not increase local crime or the number of people who are addicted to drugs. Despite these benefits, SCFs are illegal under 21 U.S.C. §856 of the Controlled Substances Act according to the Department of Justice. We propose that Congress amend the Controlled Substances Act such that federal law cannot be interpreted to prohibit localities from opening and operating Safe Consumption Facilities.

## I. Statement of issue

The United States is in the midst of a deadly opioid crisis. According to the National Safety Council, the lifetime odds of dying from an opioid overdose are now greater than the odds of dying in a car accident<sup>1</sup>. Overdose deaths, largely due to illicit opioids, are projected to continue increasing<sup>2</sup>. However, one of the strongest interventions to combat this crisis, Safe Consumption Facilities (SCFs), are currently illegal under 21 U.S.C. §856 of the Controlled Substances Act. Congress should amend the outdated language in the Controlled Substances Act such that federal law cannot be interpreted to prohibit Safe Consumption Facilities.



Safe consumption facilities (SCFs) are legally sanctioned venues where people can safely inject previously obtained illicit drugs, such as heroin or fentanyl, in the presence of medical staff.

While U.S. federal law currently prevents the opening of SCFs, such facilities operate successfully around the world<sup>3-5</sup>. SCFs effectively reduce overdose deaths, infections, disease transmission, public injecting, littered syringes, and hospitalizations<sup>5-12</sup>. They also facilitate access to addiction treatment, overdose reversal drugs, and other health services<sup>4,5,13,14</sup>.

While the most comprehensive studies of SCFs have focused mainly on only two facilities, InSite in Vancouver and MSIC in Sydney, data from SCFs around the world are overwhelmingly positive<sup>3,6,11,15</sup>.

## II. Political and legal status

SCFs are politically polarizing<sup>16,17</sup>. Many politicians and their constituents feel that the government should explore any solution to the crisis. However, many well-meaning stakeholders believe that SCFs condone law-breaking and publicly convey that injecting drugs is “safe”<sup>16</sup>. Policy-makers in favor of SCFs also must address the fear that SCFs will promote crime and addiction in the area<sup>18-20</sup>.

Contrary to these fears, there is no evidence that SCFs increase drug use, addiction rates, crime, car crashes, or drug sales near SCF sites<sup>6,11,21-25</sup>. In addition, several analyses find that SCFs save lives and millions of dollars<sup>6,9</sup>. Philadelphia estimates that opening a SCF could prevent up to 76 deaths annually with an associated \$74,773,276 saved<sup>15</sup>.

Many cities and states are considering SCFs to combat their opioid crises<sup>26</sup>. Philadelphia has been especially hard-hit and has partnered with the non-profit group Safehouse to open the first SCF in the United States<sup>15</sup>. Safehouse will operate and finance the SCF, so tax-dollars will not be used to fund it.

Unfortunately, Philadelphia is facing a lawsuit on the basis that SCFs are illegal under 21 U.S.C. §856 of the Controlled Substances Act, commonly known as the “crack house” provision. Until resolved, this legal

challenge is likely to deter other interested localities from investing in SCFs as a solution to the opioid crisis.

## III. Policy options

### *i. Option 1: Amend the Controlled Substances Act*

The Controlled Substances Act prohibits unlawful maintenance or management of drug-involved premises, defined as any place occupied “to manufacture, distribute, or use controlled substances.” SCFs are not the law’s intended target, but the existing language encompasses these facilities. This statute is overly broad and should be clarified to exempt medically licensed safe consumption facilities.

We propose that this statute be amended to state that nothing in this subsection shall apply to:

- a. the monitored consumption of a controlled substance by a trained medical professional.
- b. the persons or entities operating a federally recognized not-for-profit facility or licensed medical establishment that allows the medical oversight of safe drug consumption.

### *i.i. Advantages*

This amendment would clarify that SCFs are not illegal in the U.S. and is likely to garner bipartisan support, as it defers to states to govern SCFs. It does not allocate public funds or actively encourage SCF use and avoids alienating constituents who are wary of SCFs, especially when funded by tax dollars.

### *i.ii. Disadvantages*

Available data on SCFs is limited, so caution and awareness of limitations is advisable. Harm reduction is the goal, but SCFs may not increase abstinence rates. Language must be careful to permit SCFs without creating loopholes for nefarious establishments.

### *ii. Option 2: Amend the Support for Patients and Communities Act*

The Support for Patients and Communities Act directed resources to combating the opioid epidemic. Section 7121 authorizes a grant program administered through SAMHSA to establish comprehensive opioid recovery centers. Section

7041 allows for the NIH to use its other transactions authority to fund research that responds to the public health threat of the opioid crisis. Either section could be amended to include an allowance for SCFs on a pilot basis.

#### ii.i. Advantages

Grant funding ensures proposed SCFs meet desired criteria before opening. Also ensures rigorous scientific study of SCFs when they open. Grant funding is generally not indefinite, so SCFs can be closed if not effective or causing harm.

#### ii.ii. Disadvantages

SCFs would be funded by tax-dollars. Also, grant funding is a slow process and not ideal for responding to a crisis.

#### iii. Option 3: Inaction

The Controlled Substances Act is central to the U.S. attorney's legal challenge to the opening of a SCF. Without a statutory change, legal proceedings will continue until the courts rule on their legality.

#### iii.i. Advantages

May be politically expedient to defer to courts. Courts might rule that SCFs are legal based on provisions in the Controlled Substances Act allowing for education, research, and training focused on addiction prevention and rehabilitation.

#### iii.ii. Disadvantages

Will either prohibit SCFs in the U.S. or result in years of uncertainty about their legal status. Substantial cost in both lives and dollars. Would relinquish legislative authority to judicial branch.

### IV. Policy Recommendation

We recommend that Congress approve Option 1, Amend the Controlled Substances Act. This statutory change has the advantage of allowing each state and/or locality to determine whether safe consumption facilities are advantageous for themselves. The states are uniquely positioned to assess SCFs in terms of public health outcomes, societal and economic impacts, and political feasibility.

All potential policy instruments should be implemented to combat this epidemic, but lawmakers in cities and states should prioritize those that will be most effective locally. As illicit opioid deaths rapidly become the main driver of overdose mortality, safe consumption facilities stand out as interventions that can save lives. Congress should amend the Controlled Substances Act to enable states and cities to respond effectively as the opioid epidemic worsens.

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