

October 23, 2023

Joint Committee on Mental Health, Substance Use and Recovery  
Sen. John Velis & Rep. Adrian Madaro, Chairs

**SUPPORT for H.1981/S.1242**

**ESTABLISH OVERDOSE PREVENTION CENTERS  
AND INCREASE ACCESS TO TREATMENT**

Dear Senator Velis, Representative Madaro, and Members of the Joint Committee:

The American Civil Liberties Union of Massachusetts offers its strongest possible support for H.1989 and S.1242, *An Act Relative to Preventing Overdose Deaths and Increasing Access to Treatment*. The Commonwealth must exercise all evidence-based harm reduction tools to confront the opioid epidemic and save lives.

Massachusetts continues to be devastated by a long, brutal opioid epidemic that is only getting worse. According to data from the Massachusetts Department of Public Health, 2022 was the deadliest year ever: 2,357 people in our state died from opioid related overdoses.<sup>1</sup> The Commonwealth is in dire need of a comprehensive strategy that focuses on prevention and treatment and is designed to reach individuals with substance use disorders who are likely to avoid health care settings. Overdose prevention centers (OPCs) are one critical tool the state should embrace immediately.

Every major medical institution – including the American Medical Association,<sup>2</sup> Massachusetts Health & Hospital Association, and Massachusetts Medical Society<sup>3</sup> – supports OPCs as a meaningful way to combat the overdose epidemic. And voters across the Commonwealth agree with the medical experts: According to a new Beacon Research poll, 70% of Massachusetts voters support passing state legislation to allow cities and towns to establish overdose prevention centers.<sup>4</sup>

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<sup>1</sup> <https://www.mass.gov/news/massachusetts-opioid-related-overdose-deaths-rose-25-percent-in-2022>

<sup>2</sup> American Medical Association, Overdose Epidemic Report (2023), available at: <https://www.ama-assn.org/system/files/ama-overdose-epidemic-report.pdf>. “At this point in the nation’s epidemic, the AMA urges states and communities to consider all evidence-based approaches to prevent overdose death and help connect individuals to health care and treatment. Overdose prevention sites (OPSs) are a public health strategy: The data shows that OPSs help reduce risky drug use behaviors, overdose, and death while improving public safety and access to health care.”

<sup>3</sup> Massachusetts Medical Society, Report of the Task Force on Opioid Therapy and Physician Communication (April 2017), available at: <https://www.massmed.org/Advocacy/State-Advocacy/SIF-Report-2017/>.

<sup>4</sup> Beacon Research, Findings from Statewide Survey of Massachusetts Voters (Oct. 5, 2023), available at: <https://ma4opc.org/wp-content/uploads/2023/10/Key-Findings-from-Survey-of-MA-Voters-10.5.23.pdf>.

Overdose prevention centers, so named for the lives they save, are proven to prevent overdose deaths,<sup>5</sup> reduce the transmission of disease,<sup>6</sup> and connect people to treatment.<sup>7</sup> At the same time, they strengthen community safety by reducing drug use in public. OPCs have been operating across Australia, Canada, and Europe for decades and are now successfully operating in the United States as well. Since late 2021, two overdose prevention centers operating in New York City have reversed more than 1,100 overdoses and kept millions of pieces of drug-related litter off the city streets.<sup>8</sup> In 2021, the Rhode Island Legislature authorized the establishment of overdose prevention centers,<sup>9</sup> and Minnesota recently appropriated funds in the state budget to establish overdose prevention centers.<sup>10</sup>

Massachusetts has done important work to pave the way for overdose prevention centers in the Commonwealth, too. Recognizing the success of such facilities elsewhere, the 2018 Massachusetts Harm Reduction Commission recommended that “supervised consumption sites should be part of the Commonwealth’s efforts to combat the opioid crisis.”<sup>11</sup> During Governor Healey’s transition into office, she made clear she wouldn’t stand in the way of individual cities and towns opening overdose prevention centers and expressed support for “harm reduction, recovery and prevention of any kind.”<sup>12</sup> And when the Governor confronted the most recent annual opioid death count, she immediately directed the Department of Public Health to conduct a feasibility study to lay out concrete steps to move overdose prevention centers forward in our state. The study report is expected soon; we hope and expect it will include strong support for establishing overdose prevention centers and emphasize the importance of legislative action.

Indeed, action from the legislature is crucial to ensure that this innovative public health strategy is shielded from undue legal barriers. Several communities across Massachusetts have expressed interest in establishing OPCs to save residents’ lives, and at least one, Somerville, has developed

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<sup>5</sup> Armbrrecht E, Guzauskas G, Hansen R, Pandey R, Fazioli K, Chapman R, Pearson SD, Rind DM. Supervised Injection Facilities and Other Supervised Consumption Sites: Effectiveness and Value; Final Evidence Report. Institute for Clinical and Economic Review, January 8, 2021. [https://icer.org/wp-content/uploads/2020/10/ICER\\_SIF\\_Final-Evidence-Report\\_010821-1.pdf](https://icer.org/wp-content/uploads/2020/10/ICER_SIF_Final-Evidence-Report_010821-1.pdf)

<sup>6</sup> Studies of Canadian cities with OPCs (Vancouver and Montreal) from 2012 to 2016 estimate up to 30 HIV infections and up to 80 Hepatitis C infections averted per year. Irwin A, Jozaghi E, Bluthenthal RN, Kral AH. A Cost-Benefit Analysis of a Potential Supervised Injection Facility in San Francisco, California, USA. *Journal of Drug Issues*. 2017;47(2):164-184. <https://journals.sagepub.com/doi/10.1177/0022042616679829>.

<sup>7</sup> OPC use is associated with an increased chance of accessing detox and addiction treatments. According to a review of over a decade of research, more than half of OPC visitors accessed addiction treatment, and frequent OPC visitors were two times more likely to access addiction services than less frequent visitors. Dow-Fleisner, Sarah J., Lomness, Arielle, Woolgar, Lucia (2022). Impact of safe consumption facilities on individual and community outcomes: A scoping review of the past decade of research. *Emerging Trends in Drugs, Addictions, and Health*. Vol. 2, 2022. <https://www.sciencedirect.com/science/article/pii/S2667118222000137/pdf?md5=dcdbc098cb793cbb38d42c1d0f6bae31&pid=1-s2.0-S2667118222000137-main.pdf>.

<sup>8</sup> See OnPoint NYC: <https://onpointnyc.org/>

<sup>9</sup> See R.I. Gen. Laws § 23-12.10-1 and R.I. Gen. Laws § 23-12.10-5.

<sup>10</sup> See Laws of Minnesota 2023, Chapter 61, article 4, section 13: <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/61/>.

<sup>11</sup> Massachusetts 2018 Harm Reduction Commission Report (Mar. 1, 2019), available at: <https://www.mass.gov/doc/harm-reduction-commission-report-3-1-2019/download>.

<sup>12</sup> <https://www.wgbh.org/news/local/2023-06-27/somervilles-overdose-prevention-site-plan-marks-a-tremendous-shift-in-attitudes-around-harm-reduction>

extensive plans for such a facility and appropriated funds to advance the project. Cities and towns feel tremendous urgency to move forward, but legislative authorization and statutory protections against liability would provide sorely needed safeguards for all parties involved, especially for municipal personnel and partnering medical institutions, providers, and other staff.<sup>13</sup>

In our federated legal system, with national laws that criminalize possession of controlled substances, it may not be possible for Massachusetts to address all legal questions surrounding the establishment of overdose prevention centers, or to eliminate all risk for the people who visit OPCs. However, concerns about a potential conflict between authorizing OPCs and the federal Controlled Substances Act (CSA) are overstated for several reasons.

First, while the CSA makes it unlawful to maintain a site for the purpose of manufacturing, distributing, or using illegal drugs, it is well understood that overdose prevention centers are established for a different purpose. While they are places where people can, without interference, use drugs that they bring there, their objective is to prevent overdose and save lives. Second, the only court decision that has found otherwise, in the Pennsylvania case of *U.S. v. Safehouse*,<sup>14</sup> does not control courts in the District of Massachusetts. The First Circuit, where Massachusetts is located, could conclude, as the district court judge did in *Safehouse*, that OPCs are a legitimate public health measure, given the compelling and scientific evidence that these facilities have both therapeutic value for participants and reduce the overall harm to public health. Since Congress was not aware of the existence of OPCs when it drafted the law, the judge reasoned that “no credible argument can be made that facilities such as [overdose prevention centers] were within the contemplation of Congress either when it adopted [the Controlled Substances Act] in 1986, or when it amended the statute in 2003.”<sup>15</sup> Finally, as Northwest District Attorney David Sullivan explained at the recent public hearing on this legislation, the power to protect the public’s health rests squarely in the province of the states, and it is granted great deference by the federal government. Moreover, when exercised for a life-saving endeavor such as establishing overdose prevention centers, that sovereign power should be robustly defended.

Even in the face of conflicting federal law, states have developed their own drug policy where they have strong moral and public policy reasons to go in a different direction.<sup>16</sup> That is exactly what states have done in legalizing and regulating cannabis, and the federal government has exercised discretion and chosen not to prosecute people operating within the state regulatory structure. The Biden administration has sent strong signals that it intends to take a similarly

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<sup>13</sup> In addition to simply authorizing municipalities to establish OPCs if they so choose, we believe the legislation’s most important provisions are those that aim to protect property owners, providers, and participants from civil and criminal liability.

<sup>14</sup> *United States v. Safehouse*, No. 20-1422, 2021 WL 97622 (3d Cir. Jan. 12, 2021).

<sup>15</sup> *United States v. Safehouse*, 408 F.Supp.3d 583 (E.D. Pa. 2019).

<sup>16</sup> Legislative authorization for OPCs would allow Massachusetts communities to experiment with new ways of solving difficult social problems. As Supreme Court Justice Louis Brandeis famously wrote, “[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” *New State Ice Co. v. Liebman*, 285 U.S. 252 (1932).

hands-off approach to overdose prevention centers, describing them as “part of an overall approach to harm reduction and public safety”<sup>17</sup> and even funding studies of the OPCs in New York and Rhode Island.<sup>18</sup>

When taken together, local community interest in employing OPCs as a harm reduction strategy and federal developments uniquely position this Legislature to enact lasting, evidence-based change. While the intersection of the federal Controlled Substances Act with state efforts remains unsettled, the Commonwealth would be within its rights to enact legislation authorizing overdose prevention centers. It is well-established that the state and federal governments can adopt different laws addressing the same activities and separately enforce each within the boundaries of the state under the “dual sovereignty” doctrine.<sup>19</sup>

Over the last several years, the legislature and the Baker administration took bold steps to make Massachusetts a leader in harm reduction strategies and reducing stigma. Yet people continue to die at the alarming rate of more than 6 lives lost every day. These are preventable deaths. More innovation is needed. The present legislation represents our next step toward opioid recovery and repair through a public health and community-centered response.

We thank the Committee for giving OPC legislation a favorable report last session, and we urge you to do so again – and to lead the effort to see the legislation enacted into law this session. We would welcome the opportunity to be a resource to the Committee as you consider this critical legislation. Thank you.

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<sup>17</sup> WHYY (NPR & PBS), “Safehouse is in settlement talks with the U.S. Department of Justice.” Nina Feldman. Feb. 9, 2022. Available at <https://whyy.org/articles/safehouse-is-in-settlement-talks-with-the-u-s-department-of-justice/>.

<sup>18</sup> See NYU Langone Health, “NYU Langone to Study Ability of Overdose Prevention Centers to Counter Unprecedented Overdose Crisis.” Sasha Walek. May 8, 2023. Available at <https://nyulangone.org/news/nyu-langone-study-ability-overdose-prevention-centers-counter-unprecedented-overdose-crisis>; See also Brown University, “Brown Researchers to study ability of Rhode Island’s first overdose prevention center to counter overdose crisis.” May 8, 2023. Available at <https://www.brown.edu/news/2023-05-08/opc-evaluation>.

<sup>19</sup> *Moore v. Illinois*, 55 U.S. 13, 20 (1852).