

APRIL 2024

The overdose crisis has killed more than one million people since 1999. It doesn't have to be this way. Our political leaders have stood in the way of one proven public health intervention to prevent overdose deaths: Overdose Prevention Centers.

Overdose Prevention Centers (OPCs), also known as safe consumption sites, are facilities where people consume pre-obtained drugs while trained personnel are available to intervene to prevent or reverse an overdose. In addition to offering an immediate medical response to an overdose, OPCs also connect people to long-term, life-sustaining resources.

OPCs have existed for over 35 years. Today, nearly 200 OPCs operate around the world. Two sanctioned OPCs currently operate in the United States and a third OPC is scheduled to open in 2024.

Decades of research on OPCs have demonstrated numerous benefits, including:

- OPCs save lives by preventing overdose deaths.
- OPCs improve public health by reducing the spread of infectious diseases.
- OPCs increase connections to treatment and medical/mental healthcare.
- OPCs provide life-sustaining resources such as food, showers, and laundry services.
- OPCs improve public safety by reducing public drug use and drug-related litter.
- OPCs save money by reducing reliance on emergency response services.

## OPCS ARE ALREADY OPERATING IN THE UNITED STATES.

In New York City, OnPoint NYC has been operating two OPCs with city approval since November 2021. The OPCs have been utilized nearly 130,000 times and staff have intervened in nearly 1,500 overdoses with no deaths.

**Rhode Island** became the first state to pass legislation to authorize OPCs in 2021. The state has promulgated regulations for OPCs and allocated over \$2 million in opioid litigation settlement funds for OPCs. The Rhode Island OPC will open in Providence in the summer of 2024.

In **San Francisco**, local government funded a temporary OPC as part of the city's 2022 emergency overdose response plan. In the 11 months that the center operated, the OPC intervened in 333 overdoses with no deaths.

In 2023, **Minnesota** became the second state to officially endorse OPCs when the Governor signed legislation that included more than \$14 million for fiscal year 2024 to establish OPCs.

Following the leadership of these local and state governments, numerous other states are considering legislation to authorize OPCs, including Vermont, Massachusetts, and Colorado.

## STATE AND LOCAL ACTION CAN CLEAR A PATH FOR MORE OPCS.

Local and state leadership is critical to expanding OPCs. Law enforcement professionals across the country are joining the movement. Before the launch of NY's OPC services, four District Attorneys in the city agreed not to interfere with efforts to provide such services.

**“While it may seem counterintuitive for law enforcement professionals like us — the Chittenden County state’s attorney, Brooklyn district attorney and a former federal narcotics strike force prosecutor — to support such centers, we’ve witnessed the anguish of parents who’ve lost children to overdoses. They would have done anything to keep their loved ones alive.”**

– Eric González, District Attorney in New York City; Sarah George, State Attorney in Vermont; and Miriam Aroni Krinsky, Executive Director of Fair and Just Prosecution.

Even the Department of Justice has suggested that the implementation of OPCs should be left to states and localities. In 2023 a spokesperson for the Department of Justice reportedly said, “that supervised consumption sites were being evaluated on a district-by-district basis, in discussion with local leaders, to determine ‘appropriate regulatory guardrails.’”

### **EXISTING FEDERAL LAWS WERE WRITTEN AT THE HEIGHT OF THE WAR ON DRUGS — BEFORE OPCs EXISTED. THEY SHOULD NOT SERVE AS A BARRIER TO STATES MOVING FORWARD.**

One concern raised about OPCs is whether they may conflict with a federal statute, [21 USC § 856](#). Commonly referred to as the “**crack house statute**,” this statute prohibits using a location to facilitate drug trafficking, sales, and use. When [passed in 1986](#), legislators did not conceive of today’s overdose crisis and could not have intended for the law to apply to OPCs (which did not exist yet).

As a result, many legal scholars and law enforcement leaders ([including state attorneys general, prosecutors, and former Department of Justice officials](#)) believe that federal law does not prohibit interventions like OPCs.

There has only been one federal circuit court case to consider the question of whether OPCs violate federal law (and no courts have ruled on whether they violate state law).

In [United States v. Safehouse](#), the federal district court ruled that the planned operation of an OPC would not violate federal law under 21 USC § 856. The Third Circuit Court of Appeals [overruled the district court](#) and held that the planned operation of an OPC would violate federal law.

The Third Circuit’s opinion only applies within that jurisdiction, i.e., Pennsylvania, New Jersey, Delaware, and the U.S. Virgin Islands. Other areas of the country are not bound by the Third Circuit’s ruling. The federal government has [not taken action](#) to prevent OPCs from opening or operating in New York, Rhode Island, San Francisco, or Minnesota.

### **STATE AND LOCAL GOVERNMENTS CAN PROVIDE PROTECTIONS AGAINST POSSIBLE FEDERAL ENFORCEMENT.**

State or local legislation authorizing OPCs may be able to [provide legal protections](#) against possible federal enforcement. States and localities may also consider implementing emergency declarations to suspend the enforcement of controlled substances laws against OPCs or entering into non-enforcement agreements with relevant stakeholders.

### **IN ADDITION TO STATE AND LOCAL ACTION, THE FEDERAL GOVERNMENT CAN AND SHOULD ALLEVIATE CONCERNS OF ENFORCEMENT AGAINST OPCs.**

- The DOJ could announce that OPCs will not be an enforcement priority and direct U.S. attorneys not to bring charges against OPCs, like the [Obama administration’s approach](#) to state legalization of marijuana for adult use.
- Congress could prevent the use of taxpayer funds from being used to prosecute OPCs, like it has done with [medical marijuana since FY2014](#).
- Congress could also enact legislation clarifying that OPCs are not within the scope of prohibited activities under the Controlled Substances Act.

### **FOR MORE INFORMATION, SEE OUR IN-DEPTH LEGAL ANALYSIS.**

**RESEARCH IN SUPPORT OF OVERDOSE PREVENTION CENTERS AND ADDITIONAL RESOURCES MAY BE FOUND [HERE](#).**