

SAFE INJECTION SITES: NOT A PANACEA FOR THE DRUG CRISIS, BUT A SOUND IDEA

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I. INTRODUCTION

A mother suffered the sudden death of her 17-year-old daughter after she unknowingly took a fentanyl-laced pill from a friend to help with cancer pain.¹ Another mother found her 23-year-old son dead in his bedroom after Super Bowl Sunday; he too died from acute fentanyl poisoning.² An 18-year-old attending college on a full scholarship, whose parents could tell something was not right, died from fentanyl laced Percocet pills.³ These tragic stories are only a few of the tens of thousands of deaths from victims who unknowingly took fentanyl laced drugs.

The world has struggled with drug addiction for centuries.⁴ There is no simple answer as to why a person suffers with drug addiction and abuse; neither is there a simple answer to ending drug addiction and abuse. Some are addicted through medical prescriptions, while others are influenced by mental illness, self-esteem problems,⁵ or emotional instability or stress.⁶ No

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1. Seni Tienabeso et al., *Americans Suffer Deadly Fentanyl Overdoses in Record Numbers*, ABC NEWS (Apr. 19, 2022, 9:29 AM), <https://abcnews.go.com/US/americans-suffer-deadly-fentanyl-overdoses-record-numbers/story?id=84146782>.

2. Jillian Lynch, *Parents Struggle to Find Answers in Aftermath of Fentanyl-Related Deaths of Their Children*, DAILY NEWS-REC. (Mar. 11, 2024), https://www.dnronline.com/news/local/parents-struggle-to-find-answers-in-aftermath-of-fentanyl-related-deaths-of-their-children/article_69b3e20b-27aa-54c2-bfb7-598242f2cbc6.html.

3. *See id.*

4. *See infra* notes 15–62 and accompanying text.

5. Seth Fletcher, *Why Do People Use Drugs?*, CANADIAN CTR. FOR ADDICTIONS (Feb. 26, 2024), <https://canadiancentreforaddictions.org/why-do-people-use-drugs-7-reasons/>.

6. *Id.*

matter the underlying cause, the world, and particularly the United States, has struggled with illicit drug use and fatal overdoses.

In 2022, the United States suffered 107,081 drug overdose deaths, with more than 72,815 linked to synthetic opioids.⁷ “Over 150 people die each day from overdoses related to synthetic opioids like fentanyl.”⁸ Fentanyl is an extremely deadly synthetic opioid—“50 times stronger than heroin and 100 times stronger than morphine.”⁹ Fentanyl is the leading contributor to our country’s fatal and nonfatal overdoses.¹⁰

As fentanyl-related deaths have become a major concern in U.S. cities, some local governments have turned to the idea of implementing safe injection sites, New York being the first.¹¹ Europe, Canada, and Australia have used safe injection sites for decades, which has shown to decrease fatal overdoses, increase participation in drug treatment programs, and decrease drug use in public places,¹² while helping keep the drug user safe from transmittable diseases.¹³

There is not one simple solution to the drug problem our country faces. Safe injection sites are a step forward in controlling drug addiction in our communities; however, they are not a comprehensive answer to the problem. To tackle the opioid fentanyl crisis, federal and local governments must do more than just implement safe injection sites.

This Note will examine the impact safe injection sites can have in fighting drug addiction and overdoses, while suggesting additional measures to fight an opioid-fentanyl crisis. Part II discusses the United States’ approach to fighting drugs compared to other developed countries, and explores what safe injection sites are and how they can help here. Part III describes the fentanyl crisis our country faces, unlike any other, and discusses how safe injection sites along with other measures can address this crisis.

7. Mbabazi Kariisa et al., *Illicitly Manufactured Fentanyl—Involved Overdose Deaths with Detected Xylazine — United States, January 2019–June 2022 in 72 CTRS. FOR DISEASE CONTROL AND PREVENTION [CDC], MORBIDITY AND MORTALITY WKLY. REP. 721, 721* (June 30, 2023), https://www.cdc.gov/mmwr/volumes/72/wr/mm7226a4.htm?s_cid=mm7226a4_w#.

8. *Fentanyl Facts*, CDC, <https://www.cdc.gov/stopoverdose/fentanyl/index.html> (last reviewed Apr. 4, 2024).

9. *Id.*

10. *Id.*

11. Brian Mann & Caroline Lewis, *New York City Allows the Nation’s 1st Supervised Consumption Sites for Illegal Drugs*, NPR (Nov. 30, 2021, 3:54 PM), <https://www.npr.org/2021/11/30/1054921116/illegal-drug-injection-sites-nyc>.

12. Alex Kreit, *Safe Injection Sites and the Federal “Crack House” Statute*, 60 B.C. L. REV. 413, 416 (2019).

13. See James Satterberg, *You Can’t Save Dead People: The Emerging Battles Over Supervised Consumption Sites*, 93 WASH. L. REV. ONLINE 143, 160 (2018), <https://digitalcommons.law.uw.edu/wlro/vol93/iss1/8/>.

Part IV examines the federal challenges safe injection sites face in the United States and suggests strategies for overcoming them. Finally, Part V concludes with recommendations on fighting the opioid-fentanyl crisis, including the implementation of safe injection sites.

II. SAFE INJECTION SITES: WHAT ARE THEY AND DO THEY WORK?

A. *The “War on Drugs”*

The United States is struggling with an opioid crisis,¹⁴ with more extreme consequences than past drug use issues over the past century. Deregulation of pharmaceutical drugs in the 1800s contributed to the start of an opioid addiction.¹⁵ The Civil War drastically increased drug abuse and addiction, as opium, specifically morphine, was used to treat illnesses and injuries.¹⁶ The brutality of the Civil War led doctors to heavily rely on morphine both on and off the battlefield.¹⁷ So much so that over 10 million pills and 2 million ounces of powder were provided to the Union Army.¹⁸ Addiction outlasted the war as tens of thousands of soldiers returned home afflicted with diseases and disabilities.¹⁹ Soldiers turned to morphine for relief, as did “hopeless wives and mothers” grieving for their lost loved ones.²⁰ By the end of the 19th century, approximately 250,000 opiate addicts lived in the United States.²¹

Pharmaceutical companies sold cocaine and heroin as remedies for morphine addiction.²² With no regulation, Americans could purchase cocaine and heroin over the counter.²³ This led to new issues and addiction, as cocaine and heroin had a more intense high and only became an unfortunate substitute for morphine.²⁴ The United States only began to

14. Josh Bowers & Daniel Abrahamson, *Kicking the Habit: The Opioid Crisis, America's Addiction to Punitive Prohibition, and the Promise of Free Heroin*, 80 Ohio State L.J. 787, 788–90 (2019).

15. *Id.* at 792 (describing how Americans were able to purchase opiates through “mail-order catalogs and at local pharmacies” without government regulation).

16. *See* THOMAS DORMANDY, *OPIUM: REALITY'S DARK DREAM* 163 (2012).

17. *See id.*

18. *See id.*

19. *See id.*

20. *See id.*

21. *Opioid Epidemic Shares Chilling Similarities with the Past*, CBS NEWS (Oct. 30, 2017, 11:59 AM), <https://www.cbsnews.com/news/opioid-epidemic-shares-chilling-similarities-with-the-past/>.

22. *Id.*

23. *See id.*

24. *See id.*

recognize the harmful effects of drug addiction after linking recreational cocaine use to an increase in prostitution and violent crimes.²⁵ This realization led to the passage of the Harrison Narcotics Tax Act in 1914, which restricted the purchase of cocaine and heroin through a doctor's prescription.²⁶ This marked the first federal initiative in the United States to criminalize illicit drug use.²⁷

As scientific development and medical knowledge improved, the United States officially recognized the harms of addiction on the human body. However, throughout the mid-20th century, new waves of drugs and addiction hit the United States, causing new abuse outbreaks.²⁸ Amphetamines and methamphetamines emerged as doctors were promoting these newly marketed drugs.²⁹ Methamphetamines were even prescribed as a diet pill. However, addiction rose because of its effect on a user's energy.³⁰ During the 1960s and 1970s, amid the Vietnam War, the country experienced a surge in illicit heroin use.³¹ Many soldiers returned home after being exposed to the drug.³² Awareness of this new drug prompted others to use, particularly in poor inner-city neighborhoods.³³ Heroin-related incidents became the number one cause of death among adolescents in New York City.³⁴ As heroin addiction and fatalities rose, immigrants introduced other drugs to Americans.³⁵ President Nixon viewed this as a threat to the country³⁶ and initiated the "war on drugs" campaign.³⁷

The "war on drugs" initiated a government focus on eliminating drugs from American society.³⁸ Many succeeding presidents adopted President Nixon's approach.³⁹ The most significant legislation, still in effect today,

25. *See id.*

26. *See id.*

27. S. Ashraf, *What is the Harrison Act?* UNITEDSTATESNOW, <https://www.unitedstatesnow.org/what-is-the-harrison-act.htm> (Mar. 6, 2024).

28. *Opioid Epidemic Shares Chilling Similarities with the Past*, *supra* note 21.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *See* JOHN HUDAK, *MARIJUANA: A SHORT HISTORY* 50 (2016).

36. *See id.* at 50–51; *Opioid Epidemic Shares Chilling Similarities with the Past*, *supra* note 21.

37. *See* HUDAK, *supra* note 35, at 49–50; *Opioid Epidemic Shares Chilling Similarities with the Past*, *supra* note 21.

38. *See* HUDAK, *supra* note 35, at 50–51.

39. President George H. W. Bush and Bill Clinton continued the criminalization of drugs initiated by Nixon and Reagan. *See* HUDAK, *supra* note 35, at 76–77, 81–82. President Trump focused on law enforcement and non-narcotic pain management development. Anne Corbett, *The*

that set the foundation for the “war on drugs” includes the schedules of controlled substances⁴⁰ under the Controlled Substances Act and the Anti-Drug Abuse Act of 1986.⁴¹ Together these laws vastly enhanced criminal penalties for drug offenders and dealers.⁴² One of the largest modern-day drug legislations is the Comprehensive Addiction and Recovery Act of 2016.⁴³ This Act focused heavily on opioid prevention, education, and treatment.⁴⁴ Today, the federal government focuses on criminalizing opioid distributors, traffickers, and “pill-mill” operations, rather than focusing primarily on individual users or possessors.⁴⁵

B. *A Different Approach: Safe Injection Sites*

It is no surprise that the United States is not the only country where drug addiction and abuse is prominent. However, as the United States declared its “war on drugs,”⁴⁶ several other countries, including Canada, Australia, and some European countries, took different approaches.⁴⁷ Many of these approaches included the concept of harm reduction.⁴⁸ Instead of focusing on preventing drug use itself, harm reduction aims to prevent the harmful consequences of drug use.⁴⁹ At the end of the 19th century, opium and morphine were extremely popular for medical and recreational purposes in Britain.⁵⁰ Britain passed legislation heavily focused on drug addiction and abuse,⁵¹ following in the footsteps of the United States, but still focused heavily on harm reduction.⁵² Other countries in Europe suffered addiction of less lethal drugs, and primarily had issues with alcoholism.⁵³ For example,

Locality’s Case for Safe Injection Facilities: Legal Obstacles and Ways to Overcome Them, 24 U. PA. J.L. & SOC. CHANGE 37, 41–42 (2017).

40. 21 U.S.C. § 812 (West 1970) (amended 2018).

41. 21 U.S.C. § 856 (2012).

42. HUDAK, *supra* note 35, at 76.

43. Corbett, *supra* note 39, at 41.

44. Comprehensive Addiction and Recovery Act of 2016, Pub. L. No. 114-198, 130 Stat. 695 (codified in scattered sections of 5 U.S.C., 10 U.S.C., 21 U.S.C., 25 U.S.C., 38 U.S.C., 42 U.S.C.).

45. Corbett, *supra* note 39, at 42.

46. *See supra* notes 15–45 and accompanying text.

47. Satterberg, *supra* note 13, at 144.

48. *Id.* at 149–50.

49. *Id.* at 149.

50. *Heroin History: 1900s*, NARCONON, <https://www.narconon.org/drug-information/heroin-history-1900s.html> (last visited Feb. 14, 2023).

51. Virginia Berridge et al., *Addiction in Europe, 1860s-1960s: Concepts and Responses in Italy, Poland, Austria, and the United Kingdom*, 41 CONTEMP. DRUG PROBS. 551, 561 (2014).

52. *History of Drug Policy in Canada*, CANADIAN DRUG POL’Y COAL., <https://drugpolicy.ca/about/history/> (last visited Apr. 14, 2024).

53. *See Berridge et al.*, *supra* note 51, at 555–57, 560.

in Poland and Austria, illicit drugs were not as significant of a concern as alcoholism.⁵⁴ After the Second World War, Poland focused heavily on legislation combating alcoholism rather than illicit drugs.⁵⁵ Italy took a different approach, as its focus was on drugs, specifically a synthetic drug called Dolantin, a medicine used for pain.⁵⁶ Each of the aforementioned countries took different approaches to drug legislation, as each country faced its own unique challenges.⁵⁷ Similar to the United States, Australia also suffered with opiate addiction, most notably heroin.⁵⁸ In response, Australia launched a National Drug Strategy that placed restrictions on opiates, with harm reduction as a critical component.⁵⁹ Canada also suffered from opiate addiction, similar to the United States, due to repercussions of colonization and World War II.⁶⁰ However, like many of the countries mentioned above, Canada resisted the “war on drugs” and focused heavily on harm reduction.⁶¹ One harm reduction initiative was the creation of safe injection sites.⁶²

Safe injection sites are legally sanctioned locations where individuals may consume illegal substances in a supervised, hygienic space.⁶³ In the presence of trained professionals, drug users may use illegal substances,⁶⁴ with access to anti-overdose drugs, oxygen, and other readily available equipment in case of overdose symptoms.⁶⁵ These spaces not only help keep drug users safe but also help reduce public nuisances associated with drug use, such as drug use in streets and public restrooms.⁶⁶ Since its introduction, countries with safe injection sites have seen a decline in drug overdoses and deaths, an increase in drug treatment program participation, and a decrease in drug use in public places.⁶⁷

54. *Id.* at 556, 560.

55. *Id.* at 557–58.

56. *Id.* at 559.

57. Berridge et al., *supra* note 51, at 562.

58. Steve Bolt, *A Brief History of Australian Drug Laws*, UNHARM (July 16, 2016), <https://www.unharm.org/a-brief-history-of-australian-drug-laws/>.

59. *Id.*

60. *History of Drug Policy in Canada*, *supra* note 52.

61. *Id.*

62. *Id.*

63. Alex H. Kral & Peter J. Davidson, *Addressing the Nation’s Opioid Epidemic: Lessons from an Unsanctioned Supervised Injection Site in the U.S.*, 53 AM. J. PREVENTIVE MED. 919, 919 (2017).

64. Kreit, *supra* note 12.

65. Satterberg, *supra* note 13, at 144.

66. Kreit, *supra* note 12.

67. *Id.*

The first legal safe injection site in the world opened in Berne, Switzerland in 1986.⁶⁸ In 2001, Australia opened its safe injection site and has since had over 12,000 drug users admitted for drug treatment programs.⁶⁹ Vancouver, Canada and Oslo, Norway followed suit and opened injection sites in 2003 and 2005, respectively.⁷⁰ Vancouver prevented an estimated six overdoses a day, while Oslo prevented 295 overdoses in just 2016.⁷¹ In Vancouver alone, mortality rates within a 500-meter radius of a safe injection site decreased by 35%.⁷² Drug overdose deaths in Spain were cut in half from 1991 to 2008, and in Sydney, Australia, ambulance calls for opioid-related overdoses decreased by 68% after a facility opened.⁷³ In addition to reducing and eliminating drug use,⁷⁴ these countries focused on reducing fatal overdoses, increasing health awareness amongst users, and eliminating public nuisances.⁷⁵ Since, close to 200 sites have operated worldwide, with the United States being a major exception.⁷⁶

III. THE FENTANYL CRISIS REQUIRES MEASURES BEYOND SAFE INJECTION SITES

A. *Fentanyl Crisis in the US*

In the summer of 2022, law enforcement seized more than 10.2 million fentanyl pills and 980 pounds of fentanyl powder in the United States.⁷⁷ The United States faces a national epidemic with the increase in overseas-produced illicit fentanyl, heroin, and other opioids.⁷⁸ Synthetic opioids are

68. *Supervised Injection Sites Are Coming to the United States: Here's What You Should Know*, UNIV. S. CAL.: NURSING@USC BLOG (May 2, 2019), <https://nursing.usc.edu/blog/supervised-injection-sites/> [https://perma.cc/N6J3-JQXJ].

69. *Id.*

70. *Id.*

71. *Id.*

72. *Do Safe Injection Sites Work?*, LANDMARK RECOVERY (June 12, 2018), <https://landmarkrecovery.com/do-safe-injection-sites-work/>.

73. *Id.*

74. *See infra* notes 101–03.

75. Kreit, *supra* note 12, at 420–21.

76. *Facts about Overdose Prevention Centers*, DRUG POL'Y ALL. 2 (June 12, 2023), https://drugpolicy.org/wp-content/uploads/2023/06/DPA-OPCs_FactSheet.pdf; *Supervised Injection Sites Are Coming to the United States: Here's What You Should Know*, *supra* note 68.

77. Randy Wyrick, *Spotlighting America's Fentanyl Crisis on Red Ribbon Week*, EPOCH TIMES (Oct. 30, 2022), https://www.theepochtimes.com/spotlighting-americas-fentanyl-crisis-on-red-ribbon-week_4830199.html?src_src=Morningbrief&src_cmp=mb-2022-11-

78. *Combating Drugs and Crime*, U.S. DEP'T STATE, <https://www.state.gov/policy-issues/combating-drugs-and-crime/> (last visited Nov. 10, 2022).

the main contributor to drug overdose deaths, accounting nearly 88%.⁷⁹ From 2014 to 2020, fentanyl-related deaths drastically rose by approximately 842%, with 56,516 overdose deaths reported in 2020 alone.⁸⁰ Today, over 150 people die each day from overdoses related to fentanyl-laced opioids.⁸¹

On the other hand, fentanyl has been widely used to treat chronic severe pain, severe pain following surgery, and for advanced-stage cancer.⁸² However, when fentanyl is illicitly manufactured in foreign countries, the problems arise. Fentanyl is extremely powerful and fatal if not monitored and prescribed by a specialized physician.⁸³ Street fentanyl is 100 times more potent than morphine and 50 times stronger than heroin,⁸⁴ and much more potent than the legally prescribed opioids. While not all laced drugs will lead to a fentanyl overdose, those that are laced with two milligrams of fentanyl can be lethal.⁸⁵ The DEA has found counterfeit pills ranging from .02 to 5.1 milligrams.⁸⁶

Most of the illicit fentanyl is manufactured in China⁸⁷ and smuggled into the United States through Mexico.⁸⁸ Illicit drug manufacturers use fentanyl to lace other illicit drugs, primarily powdered or pressed pills, because of its low manufacturing cost and high addiction rate.⁸⁹ Fentanyl can also be found in liquid form for nasal sprays and eye drops, as well as added to paper drugs such as acid tabs and small candies.⁹⁰

Since China is the primary source of fentanyl in the United States,⁹¹ the federal government, in addition to implementing safe injection sites, should focus on working with China to crack down on illicit fentanyl manufacturing. The United States should offer, and China should accept, resources to help strengthen regulation and monitoring of chemical and pharmaceutical

79. *Drug Overdose Deaths Remained High in 2021*, CDC, <https://www.cdc.gov/drugoverdose/deaths/index.html> (last reviewed Aug. 22, 2023).

80. *See Number of National Drug Overdose Deaths Involving Select Prescription and Illicit Drugs*, NAT'L INST. ON DRUG ABUSE (Jan. 19, 2022), https://nida.nih.gov/sites/default/files/Overdose_data_1999-2021%201.19.23.xlsx.

81. CDC, *supra* note 8.

82. *Facts about Fentanyl*, U.S. DRUG ENF'T ADMIN., <https://www.dea.gov/resources/facts-about-fentanyl> (last visited Nov. 11, 2022); CDC, *supra* note 8.

83. *See* U.S. DRUG ENF'T ADMIN., *supra* note 82.

84. CDC, *supra* note 8.

85. *See* U.S. DRUG ENF'T ADMIN., *supra* note 82.

86. *Id.*

87. SEAN O'CONNOR, FENTANYL: CHINA'S DEADLY EXPORT TO THE UNITED STATES 3 (2017).

88. *See* U.S. DRUG ENF'T ADMIN., *supra* note 82.

89. CDC, *supra* note 8.

90. *Id.*

91. O'CONNOR, *supra* note 87.

industries.⁹² China's law enforcement has struggled to adequately regulate both legal and illegal chemical and pharmaceutical manufacturing, which is leading to increased production and export of illicit fentanyl.⁹³ Further, since illicit fentanyl is shipped from China to Mexico before being trafficked across the U.S. border,⁹⁴ the federal government, with help from local governments, should strengthen border security. This will allow the seizure of illicit fentanyl at the border as a last measure after fighting its illicit production at the source in China.

B. *Safe Injection Sites as a Response to Fentanyl*

State and local governments, while responding to the opioid crisis in different ways,⁹⁵ have started to consider and implement safe injection sites in large metropolitan areas due to an increase in drug overdoses.⁹⁶ The idea of safe injection sites in the United States is not new and has been considered since 2007.⁹⁷ Over the last decade, places facing an opioid crisis, including Denver, Seattle, Vermont, Delaware, and San Francisco, have considered and even pushed to be the first to implement safe injection sites.⁹⁸ Despite many efforts failing in the past decade, safe injection sites have once again come into the spotlight due to the drastic rise in opioid deaths and the looming abandonment of the “war on drugs.”⁹⁹

A variety of small initiatives, rather than attempting to end the issue completely with one “simple” solution, may be the wisest course. As discussed above, the United States took a harsh stance on drugs and controlled substances with its “war on drugs” initiative. Unlike the rest of the world, the United States did not prioritize harm-reducing initiatives. It was not until recently that the federal government began to consider some harm-reducing initiatives through the Comprehensive Addiction and

92. *See id.*

93. *Id.*

94. *Id.*

95. Corbett, *supra* note 39, at 42–43.

96. Satterberg, *supra* note 13, at 144–45.

97. Kreit, *supra* note 12, at 423.

98. Bobby Allyn, *Cities Planning Supervised Drug Injection Sites Fear Justice Department Reaction*, NPR (July 12, 2018, 5:21 AM), <https://www.npr.org/sections/health-shots/2018/07/12/628136694/harm-reduction-movement-hits-obstacles%20> [https://perma.cc/WM6C-37SX].

99. *See* Kreit, *supra* note 12, at 424.



the people who are in complete disarray, because they know they have a door they can enter,” and “[t]hey can come here, they can get counselling, they can get assistance, and get guided toward a life that will get them out of these addictions.”¹⁰⁸ Additionally, the sites provide harm reductions to both the public and to the drug user.¹⁰⁹ Safe injection sites can “reduce public drug use and its consequences, benefiting the community as a whole,” with research shown to have no impact on crime levels in the surrounding area, including drug-related crimes.¹¹⁰ Further, data shows that safe injection sites help reduce transmittable diseases amongst drug users. Sites provide a sterile place for drug users by providing clean and unused needles, which can reduce issues with HIV and AIDS.¹¹¹ Safe injection sites are also shown to reduce overdose deaths and increase treatment for substance use disorders.¹¹²

A key element all safe injection sites should offer is free drug testing. Given that fentanyl is the leading cause of drug-related deaths, surpassing heroin, all safe injection sites should test drugs for laced fentanyl.¹¹³ This can, in turn, help minimize fatal fentanyl overdoses for those drugs that are being injected.

Naloxone, a medication that blocks the effects of opioids and reverses an overdose, is used to treat patients with overdose symptoms and would be available at safe injection sites.¹¹⁴ However, fentanyl is extremely deadly. If one were to overdose on fentanyl, especially drugs laced with fentanyl, an individual’s survival may be threatened even with preventative measures taken at safe injection sites.¹¹⁵ Additionally, since fentanyl is mostly laced or made into pressed pills and powders,¹¹⁶ safe injection sites may not be very effective in addressing the fentanyl crisis. Even with its safe injection sites, Canada has seen a 158% overall increase of opioid deaths since 2016.¹¹⁷

108. Yasmeen Serhan, *France’s Solution to Drug Addiction*, ATLANTIC (Oct. 13, 2016), <https://www.theatlantic.com/news/archive/2016/10/france-drugs/503789/>.

109. See Satterberg, *supra* note 13, at 157–62.

110. *Id.* at 157.

111. See *id.* at 158, 160.

112. Shehan Karunaratne, *Safe Injection Sites: Are They Helping or Hurting?*, NOVA RECOVERY CTR. (Oct. 18, 2021), <https://novarecoverycenter.com/addiction/safe-injection-sites/>.

113. See Satterberg, *supra* note 13, at 160–61; CDC, *supra* note 8.

114. Karunaratne, *supra* note 112.

115. Fentanyl can be treated with Naloxone, however, it is unknown how many doses of Naloxone are required and it must be administered extremely timely. *Fentanyl DrugFacts*, NAT’L INST. ON DRUG ABUSE, <https://nida.nih.gov/publications/drugfacts/fentanyl> (last updated June 2021).

116. See *id.*

117. Maya Lach-Aidelbaum, *Why Is Canada’s Illicit Drug Supply So Deadly and What’s Being Done about It?*, CBC NEWS (Mar. 18, 2022, 1:00 AM), <https://www.cbc.ca/news/canada/canada-illicit-drug-supply-explainer-1.6361623>.

With safe injection sites primarily focused on protecting those administering injectable drugs, the users at these facilities are not consuming pressed pills or powders. Due to convenience, a drug user will most likely swallow or snort a drug without bothering to go to a safe injection site.

Although safe injection sites will not eliminate the fentanyl crisis, injection sites should still be implemented to fight overdoses related to drugs, such as methamphetamine and heroin, and injectable drugs laced with fentanyl. Additionally, education efforts might convince individuals in doubt about the contents of a pill to seek guidance from experts at the safe injection site.

IV. FEDERAL CHALLENGES AND HOW TO OVERCOME

Safe injection sites could face federal challenges. Although drugs are not manufactured or distributed at safe injection sites, consumption of drugs at these facilities will create challenges for owners and operators.¹¹⁸ As safe injection sites are considered by local governments, legislative authorization should emphasize through legislation that safe injection sites will be used for patients seeking treatment.

A. *Anti-Drug Abuse Act of 1986 and its “Crack House” Statute*

The biggest federal challenge cities, states, and users at facilities may face are statutes passed under the Anti-Drug Abuse Act of 1986. Courts have yet to decide whether safe injection sites will violate a federal statute, known as the “crack house” statute.¹¹⁹ The statute makes it unlawful for a person, including owners, agents, and employees, to knowingly or intentionally use or operate a place, permanently or temporarily, for the use, storage, distribution of any controlled substance.¹²⁰

The statute was enacted in response to a panic surrounding crack cocaine and its manufacturing and use at various locations. Whatever Congressional intent was at the time, courts have interpreted and applied the rule more broadly to include all controlled substances.¹²¹ On its face, safe injection sites would violate this federal statute. Safe injection sites will be a place where its user visits a location for the purpose of using a controlled substance. Further, owners and employees would unlawfully operate safe injection sites

118. Satterberg, *supra* note 13, at 164.

119. *Id.* at 164–65; *see also* Kreit, *supra* note 12, at 428–29.

120. 21 U.S.C. § 856(a).

121. *See* Kreit, *supra* note 12, at 429–30; *United States v. Tamez*, 941 F.2d 770, 773 (9th Cir. 1991); *United States v. Sturmoski*, 971 F.2d 452, 461–62 (10th Cir. 1992).

as they will knowingly control and manage a place that allows users to use controlled substances.

B. Schedules of Controlled Substances Should be Re-Evaluated

Most drugs that would be used at safe injection sites would fall within the list of controlled substances.¹²² Schedule I states under subsection (b)(1)(B), “[t]he drug or other substance has no currently accepted medical use in treatment in the United States.”¹²³ Schedule II states under subsection (b)(2)(B), “[t]he drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.”¹²⁴ Schedule III-V states, “[t]he drug or other substance has a currently accepted medical use in treatment in the United States.”¹²⁵

As the United States slowly moves toward a more harm-reducing approach to drug use,¹²⁶ Congress should amend the schedules of controlled substances. First and foremost, as many states are passing legislation to legalize marijuana,¹²⁷ Congress should remove marijuana from the controlled substance list.¹²⁸ This would allow the DEA to abandon its Domestic Cannabis Eradication and Suppression Program,¹²⁹ re-allocating the funds to focus on eradicating illicit fentanyl instead. Second, since heroin is most likely to be used by users at facilities, heroin should be moved to a Schedule II controlled substance. This would categorize heroin, amongst methamphetamine, fentanyl, and cocaine, as a drug with accepted medical use in treatment or, at its minimum, with severe restrictions. If Congress amends the schedule of controlled substances in this manner, safe injection sites could operate legally in the United States as a treatment facility.

122. Most commonly injectable drugs at safe injection sites are heroin, a Schedule I controlled substance, methamphetamine, fentanyl, and cocaine, Schedule II controlled substances, and morphine, depending on its dosage, a Schedule II or Schedule III controlled substance. 21 U.S.C. § 812.

123. *Id.* § 812(b)(1)(B).

124. *Id.* § 812(b)(2)(B).

125. *Id.* § 812(b)(3)(B)-(5)(B).

126. *See* Comprehensive Addiction and Recovery Act of 2016, Pub. L. No. 114-198, 130 Stat. 695 (codified in scattered sections of 5 U.S.C., 10 U.S.C., 21 U.S.C., 25 U.S.C., 38 U.S.C., 42 U.S.C.).

127. Kreit, *supra* note 12, at 437 n.144.

128. *See Removing Marijuana from the Schedule of Controlled Substances*, DRUG POL’Y ALL. 1 (Jan. 2019), https://drugpolicy.org/sites/default/files/marijuana-scheduling_january_2019_0.pdf [<https://perma.cc/MA7V-LEFV>].

129. *See Domestic Cannabis Suppression/Eradiation Program*, U.S. DRUG ENF’T ADMIN., <https://www.dea.gov/operations/eradication-program> (last visited Nov. 16, 2023).

C. *A Way Around the “Crack House” Statute with an Amended Schedules of Controlled Substances*

As local governments draft bills to initiate and execute safe injection sites in their respective cities, it is important for legislative authorization to emphasize that safe injection sites will be used for patients seeking treatment. If safe injection sites are created and viewed as patient treatment facilities, the federal legislation of Section 856 would most likely not apply.¹³⁰ An example would be hospitals and methadone clinics operated to treat patients and drug dependency, and not to encourage the use of controlled substances. A safe injection site, if set up as a treatment center, would operate to treat patients and not to facilitate the use of controlled substances.¹³¹

If courts take a stronger position than discussed above and hold that safe injection sites are in violation of Section 856, facilities face liability for administration of controlled substances and could be prosecuted under the “crack house” statute. However, as discussed above, if safe injection sites are set up as medical treatment facilities, users may use controlled substances under medical supervision and prescription. If safe injection sites treat its users as patients, facilities would not violate a controlled substance law, just like how hospitals and methadone clinics do not violate a controlled substance law to treat its patients and would not trigger a Section 856 violation.

Further, as mentioned above, Congress should move heroin to a Schedule II controlled substance, as this drug is the most likely to be used at safe injection sites. This would streamline and bulletproof legalization of safe injection sites at a federal level. If Congress does not amend the schedules of controlled substances to include heroin as a Schedule II controlled substance, then safe injection sites, to legally operate, may not allow its patients to use heroin.

Amendment to the schedules of controlled substances is a clever way Congress can act to help local governments legally implement safe injection sites. On the other hand, Congress can pass or amend legislation to expressly allow safe injection sites. As it is with no surprise some states may challenge such a proposal, Congress should simultaneously amend the schedules of controlled substances as they propose legislation to expressly allow safe injection sites.

130. See Kreit, *supra* note 12, at 433–34; 21 U.S.C. § 856(a).

131. See Kreit, *supra* note 12, at 433–34; Scott Burris et al., *Federalism, Policy Learning, and Local Innovation in Public Health: The Case of the Supervised Injection Facility*, 53 ST. LOUIS U. L.J. 1089, 1131 (2009).

D. Lack of Enforcement

With the Comprehensive Addiction and Recovery Act of 2016, Congress passed the largest piece of drug legislation since the “war on drugs,” hinting at a shift in tackling drug issues through harm-reducing initiatives.¹³² The bill focused heavily on opioid prevention, education, and treatment.¹³³ With the enactment of the Comprehensive Addiction and Recovery Act of 2016, and in light of the shifting approach towards more harm-reducing initiatives, the Department of Justice (DOJ) might choose to forego prosecution of safe injection sites. If the DOJ forgoes prosecution as state governments reform its drug policies to include safe injection sites, then no federal barrier would exist.¹³⁴

Although the DOJ spent more than a decade in opposition to state medical marijuana laws, in 2013, the DOJ adopted an advisory marijuana non-enforcement policy advising federal prosecutors not to prosecute people who are complying with state marijuana laws.¹³⁵ This allowed states to legalize possession, manufacturing, and retail sale of marijuana without interference from the federal government.¹³⁶ The DOJ recently hinted at the same approach for safe injection sites.¹³⁷ According to one report, the Department “is evaluating supervised consumption sites, including discussions with state and local regulators about appropriate guardrails for such sites, as part of an overall approach to harm reduction and public safety.”¹³⁸

V. CONCLUSION

For the reasons stated above, local governments should consider safe injection sites, and the federal government should be more open to harm-reducing initiatives. Safe injection sites are nothing new and have been used

132. See Comprehensive Addiction and Recovery Act of 2016, Pub. L. No. 114-198, 130 Stat. 695 (codified in scattered sections of 5 U.S.C., 10 U.S.C., 21 U.S.C., 25 U.S.C., 38 U.S.C., 42 U.S.C.).

133. See *id.*

134. Kreit, *supra* note 12, at 437–38.

135. *Id.*

136. *Id.*

137. See Callie Patteson, *DOJ Reportedly Considering Safe Injection Sites in Shift from Trump Era*, N.Y. POST (Feb. 8, 2022, 3:05 PM), <https://nypost.com/2022/02/08/doj-is-looking-at-opening-safe-injection-sites-report/>; Jennifer Peltz & Michael Balsamo, *Justice Dept. Signals It May Allow Safe Injection Sites*, U.S. NEWS (Feb. 8, 2022, 12:37 AM), <https://www.usnews.com/news/health-news/articles/2022-02-07/justice-dept-signals-it-may-allow-safe-injection-sites>.

138. See Patteson, *supra* note 137.

around the world for decades;¹³⁹ they have shown to have substantial benefits. These injection sites can and should be used to help those with addiction to eliminate overdoses, increase participation in treatment programs, and minimize public nuisances. To ensure a successful implementation, local governments should treat facilities as patient treatment centers to bypass violation of the “crack house” statute. Further, Congress should re-evaluate and amend the schedules of controlled substances. Marijuana should be removed from Schedule I to eliminate criminalizing marijuana use and operations, in hope of redirecting focus on actual fatal drug operations, such as illicit fentanyl. Additionally, Congress should consider moving heroin to a Schedule II drug to allow safe injection sites and other treatment facilities to use heroin toward drug prevention and treatment. Simultaneously, Congress should amend or pass legislation expressly legalizing local implementation of safe injection sites. Lastly, the DOJ should assist local government with executing safe injection sites instead of enforcing outdated federal laws.

Safe injection sites won’t solve the fentanyl crisis completely, but they are a positive step toward educating and helping people who are concerned about safety of what they are taking. Users of safe injection sites are primarily injecting drugs. Illicit fentanyl is mostly found and seized in laced pills and powders.¹⁴⁰ Out of convenience, a user will administer a pill or powder in seconds rather than taking lengthy precautions by visiting a safe injection site. Additionally, pill and powder users do not anticipate taking a drug with laced fentanyl¹⁴¹ and would not take precautions, such as testing. Therefore, in addition to implementing safe injection sites, local and federal governments should work with China to regulate and strengthen its oversight on chemical and pharmaceutical operations, as China’s weak stance is fueling our country’s illicit fentanyl crisis.¹⁴² Further, the United States, with local governments, should strengthen its border security to seize illicit fentanyl before it makes its way across the border. Lastly, the United States can maintain its ideologies and traditions of criminalizing drug use, while implementing harm-reducing initiatives, such as safe injection sites, to help those with struggling addictions.

139. See *supra* notes 68–73, 75–76.

140. See NAT’L INST. ON DRUG ABUSE, *supra* note 115.

141. See *supra* notes 1–3.

142. See *supra* notes 91–94.