Philadelphia Safe Injection Site Does Not Violate Federal Law

Judge's ruling may pave the way for opening the nation's first supervised overdose prevention facility.

October 2, 2019 By Liz Highleyman

A federal judge has struck down the government's latest attempt to block the opening of what could become the first supervised injection site in the United States.

On October 2, U.S. District Judge Gerald McHugh ruled that Philadelphia's proposed Safehouse facility does not violate the so-called crack house provision of the federal Controlled Substances Act, which makes it a crime to operate a site where illegal drugs are produced, distributed or consumed.

"We have maintained that the federal laws couldn't possibly be interpreted to stop people from saving other people's lives," Ronda Goldfein, Safehouse vice president and director of the AIDS Law Project of Pennsylvania, told the Philadelphia Inquirer.

Indeed, Judge McHugh concluded in his ruling that there was no credible argument that Congress was considering safe injection sites when it adopted the crack house rule in 1986, as "their use as a possible harm reduction strategy among opioid users had not yet entered public discourse."

The Department of Justice (DoJ) indicated that it would appeal the decision.

"The department is disappointed in the court's ruling and will take all available steps to pursue further judicial review," Deputy Attorney General Jeffrey Rosen said in a statement. "Any attempt to open illicit drug injection sites in other jurisdictions while this case is pending will continue to be met with immediate action by the department."

Safe injection facilities—also known as supervised consumption or overdose prevention sites—allow people to bring drugs they obtain elsewhere to use under the watch of trained staff, reducing the risk of overdose death. Staff provide sterile needles, which prevents transmission of HIV and hepatitis B and C. Indoor sites also reduce street-based drug use and improper syringe disposal. Finally, they offer an entry point for medical care, hep C treatment, addiction treatment and an array of other services for people who use drugs.

There are now around 120 safe injection sites in at least 10 countries, but there are currently no authorized facilities in the United States. (At least one unsanctioned underground site has been operating in an undisclosed city for several years.)

Philadelphia's Safehouse was established as a nonprofit in 2018 to run a safe injection facility with private funding, in an effort to stem the city's overdose crisis. It has the support of the mayor, the health department and the district attorney.

Philadelphia, along with Boston, Denver, New York City, San Francisco and Seattle, is vying to open the first supervised consumption site in the United States.

"Activists and advocates are right on this issue: We must be able to provide these services as part of our efforts to end drug overdose deaths, stop HIV and hepatitis C transmission, and support the dignity and well-being of all people who use substances," said Laura Thomas, director of harm reduction policy at the San Francisco AIDS Foundation, which is part of a coalition working to open a safe consumption site in that city.

In February, the DoJ filed a lawsuit to block the opening of Safehouse, claiming it would violate federal drug laws.

Some residents of Philadelphia's Kensington neighborhood filed a friend-of-the-court brief in support of the DoJ, citing fears of drug-related crime and violence. On the other side, advocacy groups including ACT UP and the American Civil Liberties Union expressed their support for Safehouse.

The DoJ complaint read, in part, "For purposes of this action, it does not matter that Safehouse claims good intentions in fighting the opioid epidemic. What matters is that Congress has already determined that Safehouse's conduct is prohibited by federal law, without any relevant exception."

But Judge McHugh disagreed.

"The ultimate goal of Safehouse's proposed operation is to reduce drug use, not facilitate it," he wrote.

Harm reduction advocates lauded the decision and said it sets an important precedent.

"As we are in the midst of one of the nation's worst public health crises, today's ruling is a significant victory in the fight to save lives," Lindsay LaSalle of the Drug Policy Alliance said in a statement. "We hope this decision sends a signal to the Trump administration that criminalization is not the right response to overdose deaths and that the administration will rethink efforts to interfere with state-level drug policy that prioritizes individual and community health."

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