No, it's not Hamsterdam!
A Primer on Overdose Prevention Centers

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Simone P. Grisamore, BA
Department of Psychological & Brain Sciences
Drexel University

Jaymes Fairfax-Columbo, JD, PhD
Department of Psychological & Brain Sciences
Drexel University

David DeMatteo, JD, PhD
Department of Psychological & Brain Sciences
Thomas R Kline School of Law
Drexel University

Hamsterdam Come to Life? Not Quite

Aficionados of *The Wire* may fondly remember a key third-season storyline in which Major Howard "Bunny" Colvin—commander of the Baltimore Police Department's Western District—created "free zones" in which substances could be sold and used without police interference as long as violence and homicide remained at bay (Simon & Kostroff Noble, 2002-2006). Crime rates dropped precipitously, use and selling of substances were kept out of the public eye, and community morale improved. However—and perhaps most importantly—substance use was viewed *not solely* as a public safety problem, but also as a public health problem. Unfortunately, when news of the so-called "Hamsterdam"—and concerns that West Baltimore had "legalized" drugs—reached high-level police and political command, Major Colvin's initiative was quickly shut down.

Major Colvin's then avant-garde approach to combating problematic substance use and crime should sound familiar. It is predicated on principles and strategies of *harm reduction*, currently in vogue globally and in the United States. Arguably the most controversial harm reduction strategy—overdose prevention centers (OPCs)—has recently found its way to the U.S. In November 2021, championed by then-Mayor Bill DeBlasio, two OPCs opened in New York City's East Harlem and Washington Heights neighborhoods. Though not sanctioned by the government, the OPC provider, OnPoint NYC, received assurance that it would not be prosecuted (Mays & Newman, 2021). Further, the OPCs enjoy current mayoral support, with Mayor Eric Adams suggesting the sites should be accessible 24/7 (Martinez, 2022).

Though New York City's two OPCs have proven controversial, their mere existence represents a significant and encouraging step forward in efforts to use harm reduction strategies in addressing problematic substance use. Accordingly, this *Legal Update* column seeks to (1) overview harm reduction, the set of principles and strategies underlying OPCs; (2) outline OPCs and the evidence behind them; (3) chronicle the social and legal impediments towards the broader expansion of OPCs; and (4) discuss potential legal, clinical, and forensic implications of OPCs.

Harm Reduction: A Continuum Approach to Addressing Problematic Substance Use

Harm reduction represents both a political movement *and* a strategic approach to providing services aiming to reduce the harms associated with substance use. Programs that embrace harm reduction strategies recognize that while abstinence *can be* a worthy end goal for someone engaging in problematic substance use, it is impractical to stress it as the sole and necessary end goal. Rather, harm reduction initiatives focus on reducing death, disease, and other adverse health, social, and legal outcomes associated with problematic substance use (Harm Reduction International, 2022). As a social justice movement, harm reduction emphasizes the *human rights* of people who use substances. A harm reduction framework accepts individuals' autonomy to use substances; understands that the nature of substance use and individuals' precipitating factors for use can be extremely complex; focuses on helping individuals attain a solid quality of life, whether that includes abstinence or not; understands that the primary agent for changing problematic substance use is the individual and seeks to render services in a non-judgmental and non-coercive manner; and aims to incorporate the voice of individuals who use substances in the development of harm reduction strategies (National Harm Reduction Coalition, 2020). Examples of harm-reduction practices include syringe service programs (SSPs), naloxone (Narcan) education and distribution, and Law Enforcement Assisted Diversion programs.

Opening the Black Box: Introducing Overdose Prevention Centers (OPCs)

OPCs—alternatively known as supervised injection sites, supervised consumption sites, safe consumption sites, drug consumption rooms, and safe injection facilities—are programs where individuals can legally use illicit drugs in a safe, clean, and medically supervised environment. All drugs must be pre-obtained, and the buying and selling of drugs is generally not allowed at the facility. Services rendered at OPCs include overdose prevention and reversal, primary care, provision of hygienic supplies, and referrals to recovery services and case management. Additionally, OPCs mitigate risks from public drug use (e.g., violence, drug trafficking, unhygienic environment). OPCs complement the care other services provide, as individuals served at these sites can be challenging to engage and unlikely to access health and social supports (Potier et al., 2014). OPCs have been operating in Europe since the 1970s, with the first government-supported OPC opening in Switzerland in 1986 (Rigogne, 2022). North America lagged behind, with its first OPC opening in Vancouver, Canada in 2003 (Wood et al., 2004). The U.S. was even further behind, with the aforementioned two officially approved sites opening in 2021. Notably, however, an unsanctioned OPC had or has been operating at an undisclosed location in the U.S. since 2014 (Davidson et al., 2018; Kral et al., 2020).

Studies in Europe, Canada, and Australia support that OPCs reduce the adverse harms associated with substance use. OPCs are associated with safer substance use, increased service connections, and decreased overdoses (Potier et al., 2014), and overdose deaths are greatly reduced in the area

surrounding an OPC compared to the rest of a city (Marshall et al., 2011; Salmon et al., 2010). Additionally, OPCs are associated with decreased syringe/needle sharing, syringe/needle reuse, and public injections (Levengood et al., 2021; Myer & Belisle, 2018; Stoltz et al., 2007). Moreover, OPCs have direct benefits to the communities in which they are located, with qualitative research suggesting they keep substance use out of the public eye and increase feelings of inclusion for those with problematic substance use (Yoon et al., 2022). Further, the common misconception that OPCs will draw substance users and crime to the communities in which they are located is not empirically supported; rather, all published studies on OPCs support that crime remains static or decreases in the years following opening (Levengood et al., 2021; Wood et al., 2006).

Because OPCs are new to the U.S., there is limited research on the efficacy of the programs on American soil. The only outcome study on New York City's two OPCs indicated that 613 unique individuals utilized the services a total of 5,975 times in the OPCs' first 2 months of operation (Harocopos et al., 2022). Results also indicated that 75.9% of individuals endorsed that they would have used substances in public if they had not been able to make use of an OPC, and OPC staff intervened on 125 occasions to ameliorate overdose risk, with no fatal overdoses reported.

Additionally, there are several studies assessing the efficacy of an unsanctioned OPC in the U.S. No fatal overdoses have occurred at the site (Kral et al., 2020); individuals using the OPC were significantly less likely to visit an emergency department and/or be hospitalized (Lambdin et al., 2022), and there was a significant reduction in crime in the surrounding neighborhood (Davidson et al., 2021). Furthermore, individuals utilizing the site reported safer injection practices (Davidson et al., 2018; Suen et al., 2022) and they desired the program to expand (Davidson et al., 2018). However, it should be noted that the unsanctioned site could not provide a full range of services due to legal constraints. The site is exclusive, does not provide 24/7 care, and cannot provide linkage to care, such as social, medical, and substance use care. Regardless, taken together, these findings suggest promise for the effectiveness of OPCs as a harm reduction strategy in the United States.

Can OPCs Catch On?: Social and Legal Challenges to Standing-Up OPCs in America

Despite their promise, there are social and legal challenges impeding the widespread implementation of OPCs in the U.S. Concerning social barriers, though public opinion towards harm reduction strategies has been more favorable in recent years, there is still considerable variability in support for implementing harm reduction programs (Kulesza et al., 2015). Factors associated with greater support include more liberal political ideology, the belief that people who use substances deserve help rather than punishment, older age, being male, and endorsing less stigma regarding injection drug use. In some areas, particularly rural communities, many individuals lack knowledge about harm reduction practices (Baker et al., 2019). Further, many individuals hold misconceptions about harm reduction practices, such as that access to naloxone will increase drug use (Schlosser et al., 2022). Generally, individuals that oppose OPCs report feeling afraid of sending the wrong message about substance use, increasing traffic of substance users, and the risk to community safety and property values (Kolla et al., 2017).

There are two specific legal barriers to OPCs. First, possessing controlled substances (21 U.S.C. § 844) and drug paraphernalia (e.g., syringes/needles) (21 U.S.C. § 863) is illegal under federal law.

Further, possession of most substances is criminalized in 49 states (save Oregon, where all substance possession has been decriminalized), and possession of drug paraphernalia is criminalized in the vast majority of states (Drug Policy Alliance, n.d.).

Second, OPCs have been held to violate federal law, chiefly the Anti-Drug Abuse Act of 1986 (a.k.a. the "crack house statute"), under which it is unlawful to "knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance" (21 U.S.C. § 856(a)(1)). This is most saliently reflected in the recent case of *United States v. Safehouse* (2021). In 2018, the City of Philadelphia announced that it would support an OPC to be run by Safehouse, a private non-profit organization. Safehouse planned to offer overdose prevention services, connect consumers to treatment and wraparound services, provide testing for infectious diseases, and provide medical care. The U.S. Department of Justice (DOJ) filed suit in the United States District Court for the Eastern District of Pennsylvania to stop Safehouse's OPC from opening; the DOJ asserted the OPC would violate the Anti-Drug Abuse Act of 1986. The District Court ruled in favor of Safehouse, holding that the Anti-Drug Abuse Act of 1986 applied only to individuals/entities (actors) whose *purpose* was to manufacture, store, distribute, or consume a controlled substance; as Safehouse was a third-party whose primary purpose was to minimize harm, not to facilitate illicit substance use, the Act did not apply to it (*United States v. Safehouse*, 2019). However, the Third Circuit Court of Appeals reversed this decision, holding that the Act could apply to third parties:

> The District Court read this paragraph…to require that the defendant act for *his own* purpose of illegal drug activity. But paragraph (a)(2) does not require such a high mental state (mens rea). Instead, the defendant need only deliberately make his place available to another, knowing that *this other person* has the purpose of illegal drug activity (*United States v. Safehouse*, 2021, p. 234).

Accordingly, the Third Circuit effectively prevented Safehouse's opening. Since then, however, the Trump Administration was replaced by the Biden Administration, with Attorney General Merrick Garland intimating signs of being open to OPCs.

An Eye Towards the Future: Legal, Clinical, and Forensic Implications of NYC's OPCs

As overdoses continue to rise, effective interventions for reducing mortality rates are increasingly urgent. This *Legal Update* column highlights harm reduction, and OPCs specifically, as one approach that has demonstrated efficacy in reducing the fatality of overdoses. As referenced above, there are ongoing social and legal barriers to their widespread implementation.

The opening of OnPoint in NYC may represent a turning point for reconceptualizing successful addiction treatment. The opening of the sites indicates feasibility for future OPCs to overcome the legal hurdles and community pushback that have been a barrier in other jurisdictions, particularly with political administrations that may view harm reduction strategies—of all kinds—more favorably. The first outcome study from this site demonstrates promising outcomes (Harocopos et al., 2022). Continued favorable shifts towards reduction in overdoses and increased treatment engagement may galvanize future sites. There are still considerable challenges, however (see, e.g., Ahrens, 2020).

This holds in the specific case of OnPoint. Though Mayor Adams called for the OPCs to be open 24/7, the proposition is expensive, and OnPoint is currently funded only through private donations after the New York Legislature declined to pass the Safer Consumption Services Act, which would have expanded OPCs across New York and opened up taxpayer funding of such sites (Lewis, 2022). Further, at the federal level, a bill was introduced to block any federal funds—such as COVID-19 stimulus funds—from supporting OPCs (Corona, 2021). As such, jurisdictions seeking to adopt OPCs may have to use innovative strategies (for suggestions, see, e.g., Beletksy et al., 2008; Weaver, 2021). However, ongoing changes in drug reform and policing (e.g., decriminalizing drugs in Oregon; Drug Addiction Treatment and Recovery Act of 2020, OR. REV. STAT. § 475.900(1)(b)) suggest we are moving in the direction of decreasing barriers to OPCs.

From a *clinical* standpoint, OPCs and harm reduction may create new avenues for those with problematic substance use to access treatment. Those who use OPCs represent a marginalized subset of individuals with substance misuse that often experience housing insecurity, poverty, and mental illness (Armbrecht et al., 2021). Individuals with housing instability are at high risk of overdose as they may inject in secluded places or rush their injections. Not only would OPCs satisfy the unmet needs of this population, but it is a service that people who use substances would utilize (Harris et al., 2018). Also, frequent use of OPCs is associated with increased entry into treatment and recovery services (Levengood et al., 2021). Further embracing this low-threshold approach to engaging individuals with harmful substance use by supporting OPCs, we may see shifts towards increased treatment engagement and decreases in fatal overdoses.

Concerning forensic implications of OPCs, further embracing a harm reduction approach to problematic substance use suggests the field may need to add nuance to how it views substance use as a risk factor in risk assessment. Were substance use to be viewed increasingly as a public health problem—which further adoption and spread of OPCs would surely dictate—a likely byproduct is that substance-related arrests would decrease and, as such, criminal records would decrease. To the extent that some lengthy criminal records are influenced heavily by substance-related offenses, the nature of substance use in relation to criminal behavior may need to be critically re-examined.

Second, further adoption and spread of OPCs helps create a system of care conducive to shifting the focus on addressing problematic substance use to earlier points of contact with the criminal justice system. To date, drug courts are held up as the model psycholegal intervention for addressing substance misuse. Unfortunately, involvement in drug court typically entails a formal filing of charges—even if they are ultimately dismissed or held in abeyance. However, with an increasing focus on strengthening the crisis system in America to address behavioral health challenges before they escalate to point of legal involvement, bolstering resources available to individuals with problematic substance use may help to avoid individuals from officially penetrating the criminal justice system.

To conclude, OPCs have gained a foothold in the U.S.—or, at least, some long overdue momentum—and seemingly stand to gain more support in the future, particularly in the context of the Opioid Epidemic. NYC's OPCs are early exemplars of what OPCs *could* contribute to ameliorating the harmful effects of problematic substance use if they are allowed to evolve and expand. Further, an established worldwide research base—and emerging research in the U.S.—

demonstrates the efficacy of OPCs, cutting against the notion that OPCs are just a route to legalize substance use. “Hamsterdam” they are not—they are an effective method of harm reduction that political officials are increasingly realizing hold water and put their support behind. Though such expansion faces both social and legal barriers, the promise of OPCs in helping to combat the Opioid Epidemic and substance misuse in the U.S.—as well as contribute to creating further nuance in the relationship between problematic substance use and criminal risk—is undeniable. Major Colvin would be proud!

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