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April 21, 2021

Honorable Merrick Garland
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Re: Support for overdose prevention program

Dear Mr. Attorney General:

As Mayors of cities committed to preventing overdose deaths, we write to express our strong support for the opening of supervised overdose prevention programs to address the serious public health concern of opioid-related overdose deaths. To that end, we urge you to issue a public statement on behalf of the U.S. Department of Justice ("DOJ") to institute a new policy that deprioritizes federal enforcement of the Controlled Substances Act ("CSA") against medically supervised overdose prevention programs. And we request that the DOJ reverse the position of the prior administration that the CSA prohibits evidence-based medical programs aimed at preventing drug overdoses and connecting individuals to drug treatment. This shift in federal policy will pave the way for harm reduction programs to open, saving countless lives and assisting in efforts to successfully connect people to recovery programs for their addictions, reduce needles on our streets, and promote healthier and safer communities in cities across the nation.

There is a serious national epidemic of opioid addiction and overdose deaths. In 2019, over 1.6 million Americans suffered from substance use disorders related to prescription opioids, heroin, and synthetics such as fentanyl. During the 12 months ending in May 2020, the Centers for Disease Control and Prevention reported a 98% increase in synthetic opioid involved deaths in 10 western states including California. (*See Substance Abuse and Mental Health Services Administration, Key Substance Use and Mental Health Indicators in the United States: Results from the 2019 National Survey on Drug Use and Health*, HHS Publication No. PEP20-07-01-001, NSDUH Series H-55 (2020); Centers for Disease Control and Prevention, *Overdose Deaths Accelerating During COVID-19*, Dec. 17, 2020, www.cdc.gov/media/releases/2020/p1218-overdose-deaths-covid-19.html.)

According to new data published by the Centers for Disease Control and Prevention, more than 87,000 Americans died of drug overdoses between September 2019 and September 2020, the highest ever recorded since the opioid epidemic began in the 1990s. (*See Ahmad FB, Rossen LM, Sutton P. Provisional drug overdose death counts. National Center for Health Statistics. 2021, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>*.) In 2020, exacerbated by the COVID-19 pandemic, the number of overdose fatalities soared due to fear, stress, job loss,

isolation and limited access to support services. Synthetic opioids, such as illicitly manufactured fentanyl, are a primary driver in overdose deaths nationally. While all of our cities invest in a continuum of behavioral health care services including prevention and treatment services for substance use disorders and provide and administer thousands of life-saving doses of naloxone each year, these tools are insufficient to help everyone who needs them.

Overdose prevention programs are a proven tool that will reduce deaths and help end the addiction and overdose epidemic. Also known as supervised consumption programs, overdose prevention programs allow individuals to inject or consume illicit drugs in a hygienic environment under the supervision of trained staff while they are provided with opportunities to engage in other health and social services that encourage treatment. In addition to providing clean injecting equipment, safe injection education, and referrals to treatment or other parts of the care continuum, these programs would administer oxygen and emergency medical care. Monitoring for overdose is a key element of supervised consumption, particularly pertinent to fentanyl, because onset of overdose can be rapid and waiting for emergency medical service assistance could mean the difference between life or death. Overdose prevention programs will be critical to reducing the number of overdose deaths and saving hundreds of lives each year. State legislatures are recognizing the promise of this policy and ten other states have introduced legislation permitting the operation of supervised overdose prevention programs including Arizona, California, Colorado, Illinois, Maryland, New Hampshire, New Jersey, New Mexico, New York and Rhode Island.

Internationally, such programs have shown strong success in reducing harm and encouraging people to accept services. There are approximately 100 programs currently operating in over 65 cities and ten countries around the world (Switzerland, Germany, the Netherlands, Norway, Luxembourg, Spain, Denmark, France, Australia, and Canada). A study of a facility in Vancouver, Canada found that there was a 35% reduction in mortality within 500 meters of the facility within three years of opening, and 46% of clients entered treatment during the same time period. (See Marshall, B.D., et al., *Reduction in overdose mortality after the opening of North America's first medically supervised safer injecting facility: a retrospective population-based study*, Lancet, 2011, pp. 1429-37; DeBeck, K., et al., *Injection drug use cessation and use of North America's first medically supervised safer injecting facility*, Drug Alcohol Dependence, 2011, 113(2-3): p. 172-6.) A new study suggests that documented criminal activity decreased rather than increased in the area around an unsanctioned safe consumption site in the five years following opening. (See Peter J. Davidson, et al., *Impact of an unsanctioned safe consumption site on criminal activity, 2010–2019*, Drug and Alcohol Dependence, 2021.) Safe consumption programs have also been shown to reduce perceived safety and neighborhood disorder associated with public injection of drugs and to reduce injection-related litter in the surrounding area.

The Trump administration opposed these harm reduction programs and took the position that such programs would violate the “crackhouse” provision of CSA. Based on that position, the DOJ filed suit to block a Philadelphia non-profit from opening such a site, and issued public statements condemning efforts by other cities. The district court in the Philadelphia lawsuit held that harm reduction efforts do not violate the CSA, but unfortunately the Third Circuit Court of Appeals reversed, siding with the Trump administration. See *United States v. Safehouse*, 408 F.

Supp. 3d 583 (E.D. Pa. 2019); *United States v. Safehouse*, 2021 WL 97622 (3d Cir. Jan. 12, 2021). The issue may be further litigated in the Third Circuit and elsewhere.

We urge you to reevaluate the DOJ's position on the question of whether the CSA prohibits medically supervised overdose prevention programs, and to issue a public statement explaining that it does not. Even if you are not prepared to issue a public conclusion on the legal question interpreting the CSA, we urge you to issue a policy deprioritizing enforcement of the CSA against operators and clients of overdose prevention programs as a national policy. The threat of federal enforcement is one of the greatest disincentives to opening and operating these life-saving programs in San Francisco and elsewhere, and we ask that you end that threat.

With overdose prevention programs in place, cities will be better able to address the needs of individuals suffering from addiction and save countless lives. These medically supervised sites help people get into treatment and do not perpetuate criminality. They are a sensible harm reduction tool that is key to stopping the epidemic plaguing this country. As Mayors, we see this tool as critical to addressing the urgent crisis of overdose deaths occurring in our cities. We appreciate your consideration of these issues and look forward to your response so that we can immediately move forward with authorizing these programs and begin saving lives.

Sincerely,



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