

ARE SIFs A THING OF THE FUTURE IN PHILADELPHIA?

Maggie Coan*

Supervised injection facilities (SIFs) allow addicts to use illicit drugs in a “safe place” while being monitored closely for overdose symptoms by medical professionals.¹ While SIFs operate in multiple countries throughout the world, currently no supervised injection facility is legally open in the United States.² However, injection facilities have found traction in cities such as San Francisco, Seattle, Philadelphia, and New York.³ Advocates of SIFs believe that operating this type of facility will prevent overdose related deaths by getting drug users “immediate help in the event of an overdose or adverse reaction.”⁴ Advocates also claim that supervised facilities will help reduce the spread of blood borne infections, such as HIV.⁵ On the other hand, those that oppose the United States allowing the operation of these facilities argue that opening this type of facility would violate the Controlled Substances Act (CSA), and would change the existing stigma regarding drug use to become more accepting and thus would eventually lead to an increased use of drugs in the country.⁶

In February 2019, the federal government filed a lawsuit in an attempt to block the city of Philadelphia from opening a SIF in the city which would allow the illegal use of drugs under the supervision of medical professionals.⁷ Specifically, the federal government named Safehouse, a nonprofit organization that planned to open the first SIF in Philadelphia, in the lawsuit.⁸ William M. McSwain, the United States Attorney for the Eastern District of Pennsylvania, argued that Safehouse and the city of Philadelphia would

* Candidate for *Juris Doctor*, May 2020, Cumberland School of Law; *Cumberland Law Review*, Volume 49, Junior Editor.

¹ Katie Zezima, *Justice Department Sues Philadelphia Over Supervised Injection Facility That Aims to Prevent Fatal Drug Overdoses*, WASHINGTON POST (Feb. 6, 2019), https://www.washingtonpost.com/national/justice-department-sues-philadelphia-over-supervised-injection-facility-that-aims-to-prevent-fatal-drug-overdoses/2019/02/06/ed9815a4-2a55-11e9-984d-9b8fba003e81_story.html?utm_term=.e29243cecbe0.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Scott Shackford, *Justice Department Sues to Block Philadelphia Supervised Injection Site*, REASON (Feb. 6, 2019, 3:15 pm), <https://reason.com/blog/2019/02/06/justice-dept-sues-to-try-to-block-philad>.

⁶ Zezima, *supra* note 1.

⁷ *Id.*

⁸ *Id.*

violate federal law by allowing the supervised use of illegal drugs.⁹ McSwain’s lawsuit seeks “a declaration from the judge that operating an injection center would violate federal drug laws.”¹⁰ If the facility were to open, the city would likely violate a portion of the Controlled Substances Act (CSA) aimed at crack houses, which criminalizes opening and managing a facility where illegal drugs are knowingly used.¹¹ The “Crack House Statute” of the Controlled Substances Act makes it a crime to “knowingly open, lease, rent, use, or maintain any place . . . for the purpose of . . . using any controlled substance.”¹² Therefore, those that operate or who work at SIFs or similar facilities would likely be charged under this portion of the law for knowingly maintaining a place for the purpose of people using and injecting controlled substances.

While backlash has erupted from many concerning SIFs, Philadelphia’s district attorney claimed that he would refuse to prosecute those who choose to operate a supervised injection facility or those who use drugs at these facilities.¹³ Although state and local officials are not required to enforce federal laws, Drug Enforcement Agency (DEA) officials would still have the authority to charge those who operate and visit these facilities under the CSA.¹⁴ Therefore, while Philadelphia might allege that city officials will allow SIFs to operate by refusing to prosecute, other federal officials could, and would likely, choose to prosecute for violation of the CSA and thus those who operate, work, and inject at these facilities would still face legal challenges.¹⁵

Safehouse representatives and advocates of SIFS are committed to the effort of providing lifesaving care to drug users with a high risk of overdose by way of operating SIFs throughout the United States, specifically in Philadelphia.¹⁶ While this purpose seems heroic at the forefront, saving lives in the short term likely does not solve the bigger issue at hand, the drug use itself. A SIF operating in Philadelphia might save a few lives from overdose related deaths, however, operating a SIF will allow for the continued use of

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² 21 U.S.C. § 856(a)(1) (2003).

¹³ Zezima, *supra* note 1.

¹⁴ *The Controlled Substances Act*, UNITED STATES DRUG ENFORCEMENT ADMINISTRATION, <https://www.dea.gov/controlled-substances-act> (last visited Mar. 15, 2019).

¹⁵ *Id.*

¹⁶ Zezima, *supra* note 1.

illegal drugs and overdoses that trail this continued use.¹⁷ Thus, to combat the opioid crisis in the United States, the focus must be on halting the supply of drugs entering the country and helping drug addicts practice abstinence and accordingly ending their use of harmful, illegal substances. The lawsuit filed against Philadelphia and its proposed SIF is just the beginning of many legal challenges to come in the future regarding SIFs and their operation within the United States.

¹⁷ *Id.*