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## FISCAL IMPACT REPORT

**SPONSOR** Armstrong, D.      **ORIGINAL DATE** 02/02/21  
**LAST UPDATED** 02/18/21      **HB** 123  
**SHORT TITLE** Limited Immunity for Overdose Program      **SB** \_\_\_\_\_  
**ANALYST** Glenn

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$64.2	\$64.2	\$128.4		General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 Administrative Office of the Courts (AOC)  
 Human Services Department (HSD)

### SUMMARY

#### Synopsis of Bill

House Bill 123 permits municipalities and counties, after consultation and consideration of DOH guidelines, to approve entities to establish and operate overdose prevention programs for the purpose of reducing death, disease, or injury from the use of controlled substances. An approved program must provide a safe and hygienic space supervised by trained staff where a person may consume pre-obtained drugs; provide access or referrals to substance use disorder treatment services, medical services, mental health services or social services; or monitor participants for potential overdose and provide care as necessary and permitted by law to prevent fatal overdose.

The bill includes limited immunity for persons who establish, provide premises for, provide services to or use an overdose prevention program, by providing that those persons shall not be arrested, charged, prosecuted or otherwise penalized, or their property subjected to civil forfeiture, for violating provisions of the Controlled Substances Act prohibiting possession of controlled substances and drug paraphernalia; a restraining order; the conditions of probation or parole.

HB123 includes a temporary provision requiring DOH to prescribe guidelines for overdose prevention programs established by municipalities and counties by October 1, 2021.

The effective date of Sections 1 through 3 of HB123 is January 1, 2022.

There is no effective date for the temporary provision in Section 4 of the bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

DOH reports that HB123, if enacted, will increase its costs for personnel services and employee benefits, computers, phones, and other office expenses. DOH would require one full-time employee in the position of Health Educator-Advance to develop and oversee guidance for counties, cities and other local jurisdictions that opt to establish facilities under the bill and to monitor compliance via regular site visits. The cost for one FTE at pay band 65 (mid-point salary of \$22.21 per hour) x 2,080 hours per year plus benefits = \$64,214 per year.

AOC reports that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

DOH explains that the overdose prevention programs authorized under HB123 are designed to address the negative health consequences of substance abuse, including preventing medical issues and deaths associated with overdoses. According to DOH, New Mexico has had historically high rates of overdose and substance use related harm. New Mexico was 12<sup>th</sup> in drug overdose deaths in 2019 and preliminary data shows rates will be higher for 2020. There were 537 deaths due to drug overdose in 2018 and 605 in 2019, a 13 percent increase. Overdose-related emergency department visits increased at least 11 percent from 2019 to 2020, with data for 2020 being incomplete at this time. With over 16,000 individuals registered in DOH's Harm Reduction Program, there is a significant population who could benefit from municipal and county overdose prevention programs.

HSD notes that injection-related wound disease has been documented in New Mexico, most recently in January 2021 as botulism infections occurred in Southeast New Mexico.<sup>1</sup>

While sanctioned overdose prevention programs as envisioned by the bill do not currently exist in the United States, DOH states that there is significant evidence of their efficacy. Overdose prevention sites in international jurisdictions significantly decrease the likelihood of overdose death,<sup>2</sup> particularly in areas where there is a high density of overdose mortality. Other negative health consequences associated with substance use are also reduced, including reductions in

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<sup>1</sup> <https://www.nmhealth.org/news/alert/2021/1/?view=1316>

<sup>2</sup> <https://pubmed.ncbi.nlm.nih.gov/21497898/>

activation of emergency medical services for overdose and a reduction in skin infections, which can lead to hospitalization or death.<sup>3</sup> DOH notes that several entities in New Mexico, including community health councils, have been examining the feasibility of establishing overdose prevention facilities based on their successful track record in other jurisdictions internationally.

HSD notes that the legality of supervised injection sites in the United States is unclear. In early 2018, the U.S. Attorney in Philadelphia sued to block a proposed site in Pennsylvania, arguing that supervised consumption violates the Controlled Substances Act. In October 2019, a federal district judge rejected the prosecutor’s arguments and ruled in favor of the proposed site. On appeal the District Court ruling was reversed on January 13, 2021, indicating that operation of a supervised injection site is a federal crime.

### **ADMINISTRATIVE IMPLICATIONS**

DOH notes that HB123 requires it to enact guidelines or regulations and provide guidance to local jurisdictions, and will potentially allow existing Harm Reduction Program sites and contract partners to expand services based on local ordinances enacted under the bill. DOH will require additional staffing to produce guidelines or regulations and to interface with local jurisdictions and overdose prevention site providers to ensure a high quality of service and to oversee and ensure compliance with guidelines.

AOC states that while the bill presents no apparent issues for courts, it could potentially impact the work being done by the district Criminal Justice Coordinating Councils (CJCCs) in various jurisdictions. According to AOC, cross agency collaboration partners and community members might interpret the bill act as condoning illicit substance use, which might create a need for CJCCs and judicial officers to engage in community discussions regarding the illicit use of substances.

### **OTHER SUBSTANTIVE ISSUES**

HSD states that HB123 would remove barriers and provide policy structure for the establishment of local overdose prevention programs. Supervised injection is part of a harm reduction strategy to provide a space for people to bring pre-obtained drugs and use them with sterile supplies under clean conditions and with safe disposal of used drug equipment. In addition to providing opportunities for safe injection, overdose monitoring, and other treatment services, the sites could also provide overdose prevention education and distribution of naloxone.

According to HSD, eleven countries (Australia, Canada, and nine in Europe) allow supervised injection, with nearly 300 sites in operation. Research published in the Canadian Family Physician journal in 2017 on a safe injection site in Edmonton found that “[b]est evidence from cohort and modeling studies suggests that SISs are associated with lower overdose, 67 percent fewer ambulance calls for treating overdoses, and a decrease in HIV infections.”<sup>4</sup>

HSD points to one unsanctioned supervised injection site in California that has been in operation

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<sup>3</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5685449/>

<sup>4</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5685449/>

since 2014. In the American Journal of Preventive Medicine, researchers evaluating the site identified several benefits, including reduction in injection-related injury and disease.<sup>5</sup> Another evaluation of the California site, published in the New England Journal of Medicine, found that there were 10,514 injections and 33 opioid-involved overdoses over five years, all of which were reversed by naloxone administered by trained staff. No person who overdosed was transferred to an outside medical institution, and there were no deaths.<sup>6</sup>

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<sup>5</sup> ([https://www.ajpmonline.org/article/S0749-3797\(17\)30316-1/fulltext](https://www.ajpmonline.org/article/S0749-3797(17)30316-1/fulltext))

<sup>6</sup> [https://www.nejm.org/doi/full/10.1056/NEJMc2015435?query=featured\\_home](https://www.nejm.org/doi/full/10.1056/NEJMc2015435?query=featured_home)