

Report Summary on the  
Impact of HB22-1326  
January 2025

# MEASURING THE HEALTH IMPACTS OF FELONIZING FENTANYL POSSESSION

This is a summary digest of the 66-page report on a study that was conducted by research staff of the University of Colorado School of Medicine and School of Law per State statute and posted on the website of the Colorado Behavioral Health Administration in mid-January 2025. The researchers are the co-authors of the report.

The summary consists of material extracted from the report, representing many of the most salient findings of the report. Interested readers are encouraged to consult the [full report](#) for additional details, including information about the study methodology and detailed data analyses.

The summary was prepared by José Esquibel, Director of the Colorado Consortium for Prescription Drug Abuse Prevention (University of Colorado Skaggs School of Pharmacy and Pharmaceutical Science) and reviewed by Dr. Joshua Barocas (University of Colorado School of Medicine), a prime co-author of the final report.

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## Background of the Study

The Colorado General Assembly enacted HB 22-1326, the Fentanyl Accountability and Prevention Act

First, the bill increased punitive measures by elevating possession of 1-4 grams of any drug containing fentanyl from a misdemeanor to a level 4 drug felony.

Second, it mandated that individuals convicted of this offense undergo a substance use assessment to determine the appropriate post-conviction court-ordered treatment, if any.

Third, it boosted funding for harm reduction and mental health services by allocating \$40 million toward overdose prevention, including \$19.7 million for naloxone distribution, expanded access to fentanyl test strips, and \$3 million for jail-based behavioral health services; however, disbursement of harm reduction-related funding did not occur until 2023, and jails were required to implement a plan for providing all forms of medications for opioid use disorders (MOUD) by July 2023.

Fourth, it required that all state jails implement a plan for providing all three formulations of MOUD (buprenorphine, methadone, and extended-release naltrexone) to incarcerated individuals. While increased criminal penalties for fentanyl possession took effect on July 1, 2022, the disbursement of harm-reduction-related funding did not occur until 2023, and jails were not required to implement a plan for providing all MOUD until July 2023, although many jails took actions to provide such care prior to this date.

HB22-1326 required the Behavioral Health Administration to contract with an independent entity to study the health effects of criminal penalties pursuant to section 18-18-403.5, Colorado Revised Statutes.

The study team, a collaboration between the University of Colorado Schools of Medicine and Law and Kaiser Permanente Colorado, proposed accomplishing three aims that the BHA determined to be sufficient for this legislation:

- Aim 1: To estimate the effect of increasing criminal penalties for fentanyl possession on overdose deaths (part 1) and initiation and retention on MOUD in Colorado (part 2).
- Aim 2: To evaluate trends in felony charges associated with synthetic opioids in Colorado.
- Aim 3: To apply a participatory action research approach to understand the intersection of justice involvement and substance use disorder in Colorado.

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## Overall Findings from the Executive Summary

Comparing the observed to the expected trends in overdose death rates following the enactment of HB22-1326, we found no reduction in overdose death rates associated with the law's enactment.

In summary, it was found that trends in drug overdose death rates in Colorado did not change after the legislation. In a subgroup analysis, non-Hispanic Black Coloradans had higher rates of fatal overdose in some months after the law's passage than before, though it is difficult to say if this was related to the law. Regarding initiation and retention on medications for OUD, we found variable results comparing trends before and after the new legislation—largely that there was a decrease in methadone retention with no significant changes for buprenorphine initiation or retention or methadone initiation.

Caution is urged in interpreting the methadone results as these data represent only the portion of methadone patients who are reported to DACODS (see limitations section for further discussion).

Furthermore, while the analytic models used were designed to account for time trends, not all of the other population-level factors that may influence medication uptake and retention could be accounted for.

Finally, in qualitative analyses, criminal penalties were perceived by participants as misguided in contrast to other approaches to stemming drug overdoses, including expanding access to medication, other treatment services, and criminal legal diversion options.

- Trends in drug overdose death rates in Colorado did not change after the legislation

- Non-Hispanic Black Coloradans had higher rates of fatal overdose in four of the sixteen months examined after the law’s passage than before, though it is difficult to say if this was related to the law.
- No increase in population overdose death rates was associated with the law’s enactment for the general population, but a relative increase in overdose mortality was observed among non-Hispanic Black adults that may or may not have been associated with the law.
- Overall rates of opioid possession-related convictions remained relatively stable from 2020-2024.
- Rates of opioid possession-related convictions were the highest among the Non-Hispanic Black population.
- No significant change in overall rates of buprenorphine initiation or retention associated with the law’s enactment in 2022.
- From 2018 forward, there was an overall increasing rate of buprenorphine initiation that did not change following the 2022 law.
- Among all methadone dispensations that were reported to Behavioral Health Administration via DACODS, the period following the enactment of the law was associated with a statistically significant decrease in the rate of methadone retention with no changes in initiation..
- The qualitative analyses suggest that community members across the spectrum of experiences, including law enforcement professionals, perceived fentanyl possession criminal penalties to be misguided and that expanding services including medications, other treatment services, and diversion options would be more likely to reduce overdose rates.

The research team also encourages the legislature to support:

- Better estimation of drug use disorders (e.g., OUD, opioid misuse) prevalence rather than relying on national data.
- Infrastructure for linked data (e.g., data warehouses) where these complex diseases can be studied across the lifespan.
- A standard interpretation of 42 CFR Part 2 across agencies, which would facilitate timely data analyses.

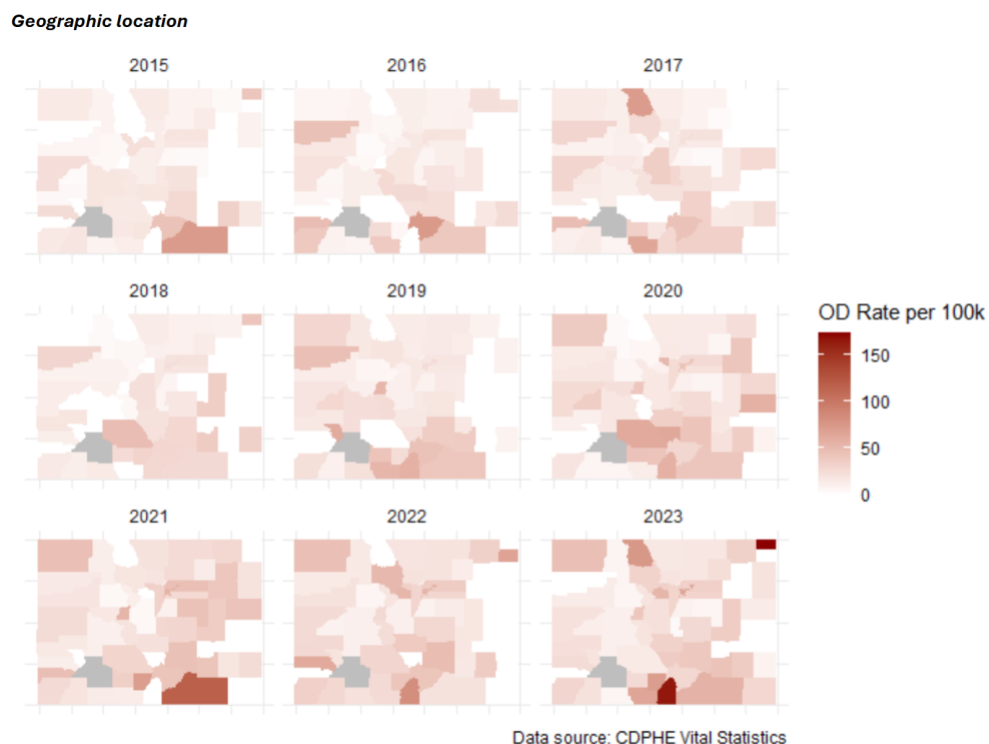
These key steps will help to enhance the rigor and expediate the completion of future studies, thus providing lawmakers with additional evidence to inform decision-making that improves the lives of Coloradans.

## Overdose Fatalities Data (Aim 1, Part 1)

Between January 2015 and November 2023, there were 11,275 fatal overdoses in our Colorado adult resident population (66% were men). Overdose accounted for 2.4% of all adult deaths among Colorado residents in 2015, 2.4% in 2016, 2.6% in 2017, 2.5% in 2018, 2.7% in 2019, 3.0% in 2020, 3.8% in 2021, and 3.7% in 2022.

Among total overdose deaths, non-Hispanic White adults accounted for 66.9%, non-Hispanic Black adults for 5.9%, and Hispanic adults for 23.8%. While the non-Hispanic White population had the greatest absolute number of overdose deaths (7,550), the non-Hispanic Black and Hispanic populations had overdose death rates per 100,000 that were between 1.5 and 2 times higher than for non-Hispanic Whites.

Among total overdose deaths, males accounted for 66%, and females accounted for 34%.



**Figure 1. Heat map of overdose rates by county and year, in Colorado from 2015-2023, adjusted for adult population each year per 100,000 adults.** Counties in grey have a population <1000 and are excluded from the analysis. Counties in white were also excluded as < 3 overdoses occurred.

### Main Findings from the Data Analyses:

1. Our analysis revealed no significant changepoint in overdose rates associated with the enactment of the law for Coloradans. We observed a significant changepoint in overdose rates for non-Hispanic Black individuals coinciding with the implementation of the policy that may or may not have been associated with the law's enactment. Across all groups, the most commonly observed changepoint

occurred during the height of the COVID-19 pandemic, highlighting the pandemic's broad impact on, and potential for confounding findings on, overdose trends.

2. Comparing the observed to the expected trends in overdose death rates following the enactment of HB22-1326, we found no reduction in overdose death rates associated with the law's enactment. However, we observed relative increases in overdose mortality among non-Hispanic Black adults around the time of the law's enactment, though this was confined to only four months out of a total of 16 months, and may or may not have been causally linked to the law's enhancement of criminal penalties.

Overall, the provision of HB22-1326 increasing criminal penalties for possession of small amounts of fentanyl (1-4g) was the only major provision that was enacted in July 2022. In terms of other provisions of the law, jails were required to have a plan for offering MOUD completed by July 2023 although the provision for a plan did technically start in July 2022.

For the overall population, there was no statistically significant change in overdose death rates in the period following July 2022, compared to rates that would have been expected in the absence of the bill. However, in subgroup analyses, overdose death rates increased in several months following the passage of HB22-1326 among non-Hispanic Black individuals, but no other subgroups.

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## **Buprenorphine Initiation and Retention in Colorado 2018-2024 (Aim 1, Part 2)**

Part 2 of our first aim was to assess trends in MOUD initiation and retention in Colorado. We posed the question: "Was there any association between the enactment of HB 22-1326 and changes in rates of buprenorphine initiation and retention in Colorado? Data were collected from CDPHE's PDMP via CORA request.

The analytic sample was individuals aged 18-64, who received a buprenorphine prescription from January 1, 2018 to December 31, 2023

- Buprenorphine Initiation Main Finding: The period following the law's enactment in 2022 was associated with no significant change in overall rates of buprenorphine initiation.
- Buprenorphine Retention Main Finding: The period following the law's enactment in 2022 was associated with no statistically significant change in overall rates of buprenorphine retention.

## **Methadone Initiation and Retention in Colorado 2018-2024 (Aim 1, Part 2)**

Part 2 of our first aim also included an assessment of trends in methadone initiation and retention in Colorado from 2018 to 2024. We posed the question “Was there any association between the enactment of HB 22-1326 and changes in rates of methadone initiation and retention in Colorado?”

Data were collected from state DACODS database.

The final analytic sample was individuals aged 18-64, who received methadone treatment from January 1, 2018 to December 31, 2023.

- Methadone Initiation Main Finding: The period following the enactment of the law was associated with no statistically significant change in initiation on methadone treatment for the overall population.
- Methadone Retention Main Finding: The period after the law’s enactment was associated with statistically significant decreases in rates of retention on methadone treatment for the overall population, along with all subpopulations. Caution is urged in interpreting these results as the methadone data does not include observations of all patients receiving methadone treatment and reporting standards changed for methadone clinics during the study period.

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## **Trends in Felony Charges Associated with Synthetic Opioids (Aim 2)**

Data from the Colorado Department of Corrections (DOC) on individuals convicted on felony drug charges that resulted in prison sentences was analyze for the period of January 2020 through February 2024.

Included in the sample population for data analysis were individuals convicted on felony drug charges that resulted in prison sentences, but excluded individuals who did not have opioid possession-related convictions. Then, from the resulting dataset, individuals with an offense date that predated March 2020 were excluded to get a sample of individuals who were convicted of felony opioid possession from March 2020 to February 2024. Finally, from that dataset, only individuals who were convicted of felony fentanyl possession (charged with Possession Fentanyl Sub I-II) were included in the data analysis.

The final analytic sample sets were:

1. All Colorado adults (ages 19-64) who were convicted on felony opioid possession charges that resulted in prison sentences from March 2020 through July 2022.
2. All Colorado adults (ages 19-64) who were convicted on felony fentanyl possession charges that resulted in prison sentences (beginning in July 2022).

Overall rates of opioid possession-related convictions remained relatively stable from 2020-2024. Rates of opioid possession-related convictions were the highest among the Non-Hispanic Black population, followed by the Hispanic population, with the Non-Hispanic White population experiencing the lowest rates. No analysis was conducted on a potential association between trends in felony convictions and fatal overdose rates.

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## Community Based Participation & Lived Experience Qualitative Work (Aim 3)

Impact of criminal legal involvement on overdose and substance use

Data were obtained via focus groups conducted between June 2023 and July 2023 over four sessions and participants were compensated \$50 per session for involvement in each session following an introductory meeting.

Participants were individuals with personal living and/or lived experience with the criminal legal system, substance use, and/or overdose, or were a loved one of someone with those experiences, or provided services to individuals with these experiences for at least one month at their current place of employment.

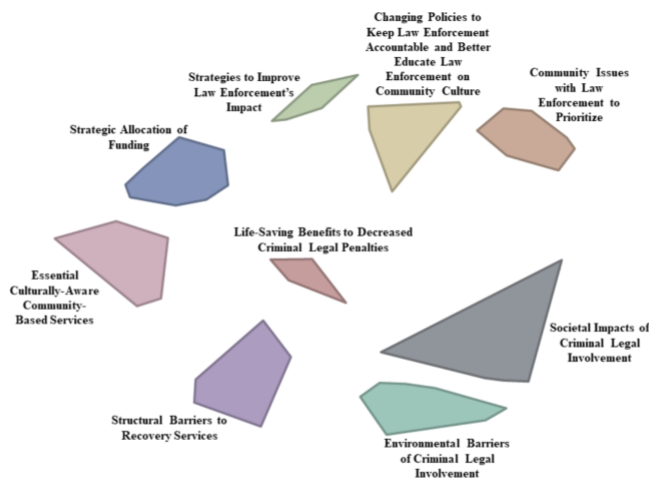
Twenty-four (24) participants were identified in partnership with the study's community engagement consultant as well as community-based organizations working at the intersection of re-entry, harm reduction, and substance use treatment programs across Colorado. Potential participants had to be at least 18 years old and speak English.

The following prompt was used to guide the discussion in all four focus group sessions: "Do you see overdose and substance use, in Colorado, being impacted by an individual's involvement with the criminal legal system?"

128 factors were generated and then condensed into 100 factors, merging similar ones and removing duplicates. Participants then rated each factor listed in terms of 1) how much each factor related to substance use, overdose, and criminal legal involvement, and 2) how common each factor was in their community.



Using the Groupwise software, graphs and maps of the categorized factors were generated for conversation with participants and additional input with the aim of reaching consensus on which map best captured the factors at the intersection of the criminal legal system, substance use, and overdoses in their communities. This resulted in 9 clusters, as seen in the following figure



**Figure 30.** The final concept map, as chosen by research staff and participants. The larger the “cluster” or shape, the more factors present in the cluster. Clusters positioned closer together are more closely-related, while clusters farther from one another are less related.

The full report provides a table with a list of individuals factors within each of the clusters on pages 52-56.

The cluster for Environment Barriers of Criminal Legal Involvement describes the struggles individuals face when reintegrating into society after incarceration. Environmental Barriers and the cluster for Societal Impacts are closely related, which is why they are positioned together on the map.

The cluster for Structural Barriers to Recovery Services describes challenges such as long waitlists for recovery services and negative experiences at these facilities. These negative experiences often stem from the requirement of sobriety without sufficient supportive measures.

The cluster for Essential Culturally-Aware Community-Based Services emphasizes the need for trauma-informed care and peer support, which are critical for effective recovery.

The cluster for Strategic Allocation of Funding covers the necessity of funding for police street outreach initiatives and harm reduction programs.

The cluster for Strategies to Improve Law Enforcement's Impact discusses co-responder programs and the importance of police serving as a bridge to mental health services.

The cluster for Changing Policies to Keep Law Enforcement Accountable and Better Educate Law Enforcement on Community Culture addresses the need to reform policies to

reduce arrests for drug use and enhance connections between law enforcement and community-based resources and agencies.

The cluster for Community Issues with Law Enforcement to Prioritize underlines the need to build stronger relationships between law enforcement and the community to foster a deeper understanding of addiction and substance use.

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## Perceptions of Intersection Between Overdose and Justice Involvement and the Impact of HB22-1326: a rapid qualitative analysis

Individual semi-structured interviews were conducted across the state of Colorado from August through December 2024 with 31 individuals from these four categories:

- Policymakers (representing both urban and rural constituents)
- Peer Support Specialists (practicing in urban and rural areas)
- Law Enforcement Officers (practicing in both urban and rural areas)
- Healthcare Providers (practicing in rural, urban, and carceral settings)

Several questions are posed with and without prompts. Three primary themes emerged from our discussion with participants:

1. Increasing criminal penalties for fentanyl possession is misguided.
2. Diverging views on both police as conduits to treatment and punishment.
3. Jail as an (in)appropriate response for SUD treatment

There was overwhelming consensus that increasing criminal penalties for fentanyl possession is misguided and that jails should provide treatment for substance use disorders, but that incarceration is not an appropriate response for addressing SUD. There was less consensus on the roles that police and law enforcement should play in addressing substance use disorders

The following themes emerged:

1. Increasing criminal penalties for fentanyl possession is misguided. Participants largely discussed HB 22-1326 as a bill that had been driven by emotional responses rather than empirical evidence. While the policy was initially aimed at penalizing those distributing fentanyl, which participants largely agreed this policy should focus on, in practice, the policy continued to target people who use drugs and people engaging in subsistence level drug distribution.

2. Diverging views on both police as conduits to treatment and punishment. Beyond the policy itself, participants had divergent views on the role of police in combating the overdose crisis. Participants' three main perspectives were that police (1) should continue addressing the overdose crisis through arrests and charges, (2) should not have any role in addressing substance use and should defer these responsibilities to behavioral health professionals, and (3) should act as conduits for treatment rather than arresting people.
3. Jail as an (in)appropriate response for substance use disorder treatment. Participants largely thought that while incarceration was not an ideal setting for treatment - and many jails lacked robust treatment programs - it was often counties' default treatment setting due to a lack of community-based services, particularly in rural communities. Regardless of care coordination, participants discussed the difficulties of being incarcerated for drug use.