

Colorado's 2022 Fentanyl Legislation

Mike Weissman

State Rep. Colorado House District 36

Chair, House Judiciary Committee

mike@mikeweissman.com

720-320-9031 cell

Follow-up questions welcome!

Brief History

past is prologue...

- [2013 SB-250](#) – drug sentencing reform – including new sentencing grid & “wobbler”
- 2017 – 2019 – [opioid interim study committee](#)
- [2019 HB-1263](#) – defelonization (not decriminalization) of possession of most drugs <= 4 grams – fentanyl & analogs included (bipartisan sponsorship & passage)
- [2020 HB-1150](#) – attempted repeal of 1263 (postponed due to COVID)
- 2020 [final recommendations of CCJJ Drug Offense Task Force](#) (per SB19-008)
 1. Create and Implement a Process for Automatically Sealing Criminal Conviction Records for Drug Offenses
 2. Support a Public Health Model of Deflection
 3. Establish a Statewide Entity to Coordinate Strategy Regarding Dangerous Drugs
 4. Implement Unified Drug Overdose Reporting and Tracking

Colorado in Context

Nature of crisis in your state may bear on legislation

Table 1. State Drug Possession Penalties and Overdose Death Rates in 2020

Age-adjusted overdose death rates (per 100,000)

F = Felony M = Misdemeanor CV = Civil Violation

Rank	State	Penalty	Rate	Rank	State	Penalty	Rate	Rank	State	Penalty	Rate
1	West Virginia	M	81.4	18	Vermont	M	32.9	35	Utah	M	20.5
2	Kentucky	F	49.2	19	Missouri	F	32.1	36	Oklahoma	M	19.4
3	Delaware	M	47.3	20	New Jersey	F	32.1	37	Arkansas	F	19.1
4	Ohio	F	47.2	21	North Carolina	F	30.9	38	Minnesota	M	19.0
5	Tennessee	M	45.6	22	New Hampshire	F	30.3	39	Oregon	CV	18.7
6	Maryland	M	44.6	23	Michigan	F	28.6	40	Hawaii	F	18.3
7	Louisiana	F	42.7	24	Illinois	F	28.1	41	Georgia	F	18.0
8	Pennsylvania	M	42.4	25	Wisconsin	F	27.7	42	Kansas	F	17.4
9	Maine	M	39.7	26	Virginia	F	26.6	43	Wyoming	M	17.4
10	Connecticut	M	39.1	27	Nevada	F	26.0	44	Idaho	F	15.9
11	New Mexico	F	39.0	28	New York	M	25.4	45	Montana	F	15.6
12	Rhode Island	M	38.2	29	Colorado	M	24.9	46	North Dakota	M	15.6
13	Indiana	F	36.7	30	Alabama	F	22.3	47	Iowa	M	14.3
14	Arizona	F	35.8	31	Alaska	M	22.0	48	Texas	F	14.1
15	Florida	F	35.0	32	Washington	M	22.0	49	Nebraska	F	11.3
16	South Carolina	M	34.9	33	California	M	21.8	50	South Dakota	F	10.3
17	Massachusetts	M	33.9	34	Mississippi	M	21.1				

Source: Centers for Disease Control and Prevention

HB22-1326

“Concerning Measures To Address Synthetic Opiates...”

...AND, IN CONNECTION THEREWITH, CHANGING THE CRIMINAL PENALTIES ASSOCIATED WITH SYNTHETIC OPIATES; USING A SUBSTANCE ABUSE ASSESSMENT TO DIRECT APPROPRIATE TREATMENT AT SENTENCING; PROVIDING OPIATE ANTAGONISTS IN THE COMMUNITY; PROVIDING SYNTHETIC OPIATE DETECTION TESTS IN THE COMMUNITY; CREATING IMMUNITY FOR FURNISHING SYNTHETIC OPIATE DETECTION TESTS; PROVIDING TREATMENT FOR PERSONS IN THE CRIMINAL JUSTICE SYSTEM; DEVELOPING A FENTANYL PREVENTION AND EDUCATION CAMPAIGN; PROVIDING FUNDING FOR SUBSTANCE USE AND HARM REDUCTION; EVALUATING THE SUBSTANCE USE AND HARM REDUCTION NEEDS ACROSS THE STATE; REQUIRING A POST-ENACTMENT REVIEW OF THE IMPLEMENTATION OF THIS ACT; AND MAKING AN APPROPRIATION.

HB 1326: Three Lanes

Where we're going - my taxonomy only

1. Harm Reduction approach
2. Criminal Justice approach
3. Numerous studies to inform future policy

Lane 1 – Harm Reduction

Within the justice system

- Expansion of good Samaritan statute – exception to expanded “drug induced homicide” + heightened reporting by law enforcement and district attorneys
- Jail requirements re: antagonists; prescribing; coordination of care
- Community corrections requirements re: screening & MAT
- Expansion of entity eligibility for existing harm reduction grant program + \$6M new funding
- Expansion of [Jail Based Behavioral Health Services](#) – req. MAT and withdrawal management & not limited to time of booking
- Jail requirements re: MAT & withdrawal management throughout duration of incarceration; [Behavioral Health Admin.](#) (BHA) to offer technical assistance
- Overdose Detection Mapping Application Program (ODMAP) participation – may NOT be used for criminal investigations or welfare/warrant checks
- BHA shall train emergency depts and peace officers in civil SUD commitment

Lane 1 – Harm Reduction

Without the justice system

- Expansion of entities to which antagonists may be prescribed & dispensed (now nearly 2 dozen)
- Medicaid reimbursement to hospitals for dispensing antagonists (federal or state \$)
- Expansion of civil immunity for administration of antagonists
- Civil immunity re: test strips
- School districts MAY develop policies re: test strips
- \$19.7M for antagonist bulk purchase + \$600K for test strips
- Statewide fentanyl education campaign w/ \$5.08M funding
- Expansion of entity eligibility for existing harm reduction grant program + \$6M new funding
- [Managed Service Organizations](#) (MSOs) – assessment of MAT capacity; ambulatory withdrawal mgmt; recovery services & residences
- MSOs - contract for withdrawal mgmt.; crisis stabilization; MAT + \$10M new funding

Lane 2 – Criminal Justice

Distribution

- Drug Felony 1 - >50 grams compound/mixture
- Drug Felony 2 – 4-50 grams compound/mixture
- Drug Felony 3 - <4 grams compound/mixture
- (Above – intent element must be proven!)
- “special offender” → Drug Felony 1
 - importing any amount
 - use of pill press with intent
 - Distribution resulting in death (s/k/a “DIH”)
- “Investigation & distribution interdiction grant program”

Lane 2 – Criminal Justice

Possession

1. New possession DF4 for 1-4 grams compound/mixture
 - Can mitigate to DM1 upon showing of “reasonable mistake of fact”
 - Probation or county jail sentencing only; no DOC (!)
 - Can “wobble” to DM1 upon completion of com-cor or probation
 - Seals on DM1 timeline
 - Habitual statute exclusion
2. New possession DF2 for any amount of 60%+ pure compound/mixture (this doesn’t exist on the street)
3. “education and treatment procedures” / substance abuse assessment; possible residential treatment as a condition of probation; costs paid by state if indigent

Lane 3 – Studies / Research

For evidence-informed policy in coming years

1. [CO Dept of Public Health & Env.](#) (CDPHE)-commissioned “independent study” – 12/31/24 (\$300K)
2. [Attorney general](#) study of online trafficking – 3/1/23 (\$150K)
3. BHA study of health effects of felony possession – 1/31/25 (\$253K)
4. CDPHE “overdose trends review committee” – 9/1/23
5. Legislative post enactment review – 7/1/25

Thank you – Questions?

Mike Weissman

State Rep. Colorado House District 36

Chair, House Judiciary Committee

mike@mikeweissman.com

720-320-9031 cell

Follow-up questions welcome!