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H.B. 22-1326: Analysis of Colorado's Fentanyl Policy

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H.B. 22-1326: Analysis of Colorado's Fentanyl Policy

Abstract

Fentanyl is one of the most potent drugs on the market, its synthetic nature makes it one of the deadliest at the lowest quantities. Many of its injectors are entirely unaware of its existence when they consume cocaine, methamphetamine, Xanax, ecstasy, and heroin. Nationwide and within Colorado, the use of synthetic fentanyl has perpetuated a crisis that threatens the health and safety of numerous communities, with both fatal and non-fatal overdoses continually on the rise. In 2022, Colorado passed H.B. 22-1326, aimed at curbing fentanyl deaths and non-fatal overdoses, by further criminalizing fentanyl possession. Understanding the effectiveness of felony-heavy drug policies similar to this one is crucial in order to implement measures to curb the impact that fentanyl bears. Additionally, analyzing the significance of this measure in more ways than just death counts provides insight into secondary and tertiary effects, such as those on communities of color. Looking into two alternate policy strategies, as well as observing pre and post-implementation data from each, can provide important clarity on what elements of a fentanyl policy have compelling results that should be instituted in measures in the future. Adherence to the recommended policy changes and strategies will aid in minimizing the adverse impacts that fentanyl may have, as it continues to be synthetically manufactured and distributed.

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Executive Summary

Fentanyl is a prevalent topic of discussion today, from think tanks to college classrooms, and from local police precincts to statehouse chambers. Many states have passed legislation in varying degrees of severity to counteract the noxious effects of fentanyl. One of the most potent drugs on the market, its synthetic nature means it is one of the deadliest at the lowest quantities. Many of its injectors are entirely unaware of its existence when they consume cocaine, methamphetamine, Xanax, ecstasy, and heroin (Drug Enforcement Administration, 2015).

In the leadup to the passage of H.B. 22-1326, Colorado was experiencing the highest rates of drug overdose-related deaths in its history, with the majority being opioid-related overdoses tied to fentanyl (Whittington & Solís, 2021). Pressure from Coloradoans to curb the death toll led to the passage of a stringent policy focused on felonies, aimed at punishing those dealers who were “peddling death,” in order to get fentanyl off of Colorado's streets as quickly as possible (Miller, 2022).

By 2021, Colorado’s crisis-level increase of fentanyl overdoses and deaths warranted a policy response. This thesis asks: how can a state-level drug policy reverse this trend, while equitably benefiting all Coloradans regardless of race, ethnicity, or socio-economic status? I will analyze H.B. 22-1326, as well as similar policies implemented in Oregon and Wisconsin, to assess the best approach.

Overall, this thesis aimed to analyze the effects of three state-level fentanyl policies on a number of factors: deaths, non-fatal overdoses, incarcerations, and treatment program enrollments, while analyzing the extent to which they were equitable for racial and ethnic minority communities. Due to a level of inconsistencies within available data, analysis was limited to numbers of deaths and non-fatal overdoses. With the data available, this thesis recommended combining aspects of Colorado and Wisconsin’s fentanyl policies, as they indicated levels of success post-implementation. A more thorough

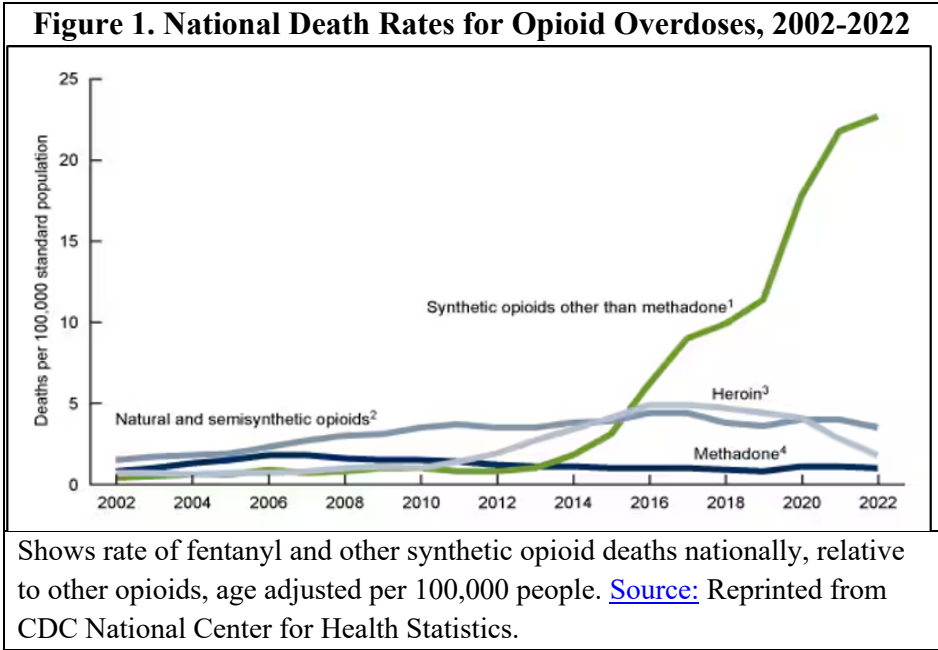
analysis would be beneficial in the future to determine the effects of these policies, though the availability of publicly available data will need to be vastly expanded for this to be feasible.

Problem Definition

Fentanyl was first created in 1959 and approved by the FDA as an analgesic (a type of prescribable pain-killer) to treat various conditions (Drug Enforcement Administration, 2020). A synthetic opiate, it holds unique chemical properties with the ability to quickly pass through the fat of the brain and firmly bind to the opioid receptors (“Fentanyl DrugFacts”, 2021). This affects how the brain receives neurotransmitters and hormones like pain, allowing fentanyl to act quickly and numb pain efficiently. Due to these same chemical properties, it is more efficient at reducing pain than any other opioid, such as morphine, and is up to 500 times more potent than other street analgesics like heroin (Bond, 2023). As little as two milligrams of the substance can be lethal, making the risk of an overdose higher than any drug currently on the market, prescription or illicit (Drug Enforcement Administration, n.d.). While fentanyl is produced for pharmaceutical uses, the majority enters the U.S. market from foreign, synthetic producers—mainly from China and Mexico. The Drug Enforcement Administration (DEA) under the U.S. Department of Justice reports that “most fentanyl precursors arrive via air cargo or through postal facilities,” as these methods are more efficient and harder to detect than direct smuggling (Milgram, 2024, p. 14). Drug dealers utilize the synthetic opiate for its heroin-like properties. It is added to other street drugs to increase potency and enable cheaper manufacturing, as fentanyl-laced narcotics add an extremely powerful boost to a high while increasing the chance for addiction and overdose (*Fentanyl Facts*, 2024).

Throughout the widespread “Opioid Crisis” of the last 20-25 years, overdose rates and subsequent overdose deaths have risen rapidly (Congressional Research Service, 2022). Lawmakers have seen a surge of fentanyl-related deaths both within Colorado and on a national scale, especially in the 10 years

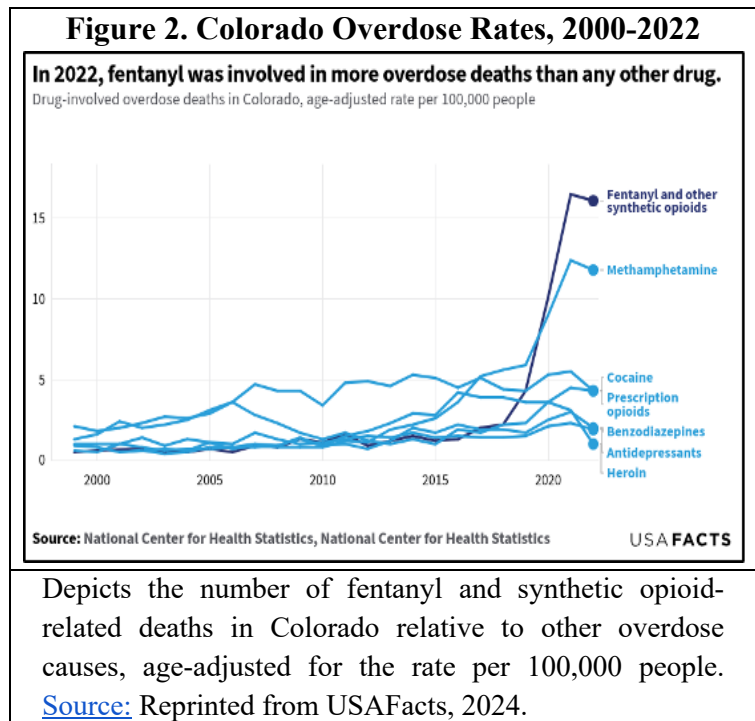
prior to Covid-19, when statistics were atypically altered by the worldwide pandemic. Before Covid-19, the U.S. saw a spike in fentanyl deaths — an increase of 2,050% from 2012 to 2020 (2,628 deaths to 56,516 deaths) caused by fentanyl overdoses. During this same period, other categories of high potency drug overdoses either fell, maintained, or rose only marginally (See Figure 1; Vankar, 2024).



Colorado mirrored national trends with a spike in fentanyl and synthetic opioid-related deaths per 100,000, peaking in 2021 with 16.5. In Colorado, deaths declined from heroin and other highly potent

opioids, while synthetic opioids (almost entirely fentanyl) saw a significant increase in overdoses before and during Covid-19, reaching nearly 23 deaths per 100,000 in 2021 (Spencer et al., 2024). The growing impact of fentanyl in Colorado can be considered within the broader context of drug overdose deaths at the time, due to surges in both. Between 2019 and 2020, the state saw the highest ever number of recorded drug overdose deaths of 1,477 total, representing a 38% increase in one year (Whittington & Solis, 2021). Comparatively, fentanyl’s overdose death numbers rose by over three times that figure at 143% in that same year, and by an additional 70% from 2020 to 2022, where the highest ever count of 920 fentanyl-related deaths in the state pushed Colorado’s legislature to take action (See Figure 2; Byers, 2024).

Fentanyl additionally has impacts beyond its own market. According to Kirk Bol of the Colorado Department of Public Health & Environment, even “the increase in cocaine-involved deaths is being driven principally by co-involvement of fentanyl” (Miller, 2021). Evidence suggests that deaths resulting from fentanyl overdose via consumption are not always recorded and counted as such, meaning the true number of fentanyl overdose deaths could be much higher (Fletcher, 2022).



Research Approach

To examine whether a tough-on-drug-crime policy will effectively address the fentanyl crisis in Colorado, it is crucial to conduct a brief review of the academic literature focused on four elements: (1) the effectiveness of tough-on-crime policies; (2) whether and which treatment options might be effective; (3) the effectiveness of education and prevention measures; and (4) the policy and social factors leading to racial and ethnic disparities for drug-related charges and opioid/drug overdoses.

Tough-on-Crime Policies

Numerous scholars and policy experts have reported that tough-on-crime policies *do not* positively impact drug usage and overdoses. Spohn and Holleran (2002) found that drug offenders met with harsher prison sentences were more likely than those placed on probation to be convicted of a new

offense and be re-incarcerated, finding that these sentences did not prevent further drug use. Chandler, Fletcher and Volkow (2009) found that incarceration alone is not an effective deterrent of drug usage and incarceration for drug offenders can instead reinforce addiction, use, and overdoses due to the prevalence of illicit drugs in prison institutions. Caulkins et al. (1998) found, when studying mandatory minimums as a part of drug policy, that laws such as these did not “represent an effective way of reducing drug use or drug-related crime” (Caulkins et al., 1998, p. 73). Jensen, Gerber, and Mosher (2004) found that the “War on Drugs” and aggressive drug policies result in negative societal consequences, such as higher unemployment, rises in HIV/AIDS, and the loss of “of the political power of targeted subordinate racial and ethnic groups,” outweighing the positive impacts that these policies may have on the illicit drug market (Jensen et al., 2004, p. 116).

The results of these studies align with multiple reports from the Pew Research Center, which found that harsher drug punishments and higher rates of imprisonment did not correlate with lower rates of use or overdose deaths (“More imprisonment,” 2018). Additionally, Pew did not find any statistical relationship between states with more severe penalties for drug use or drug-related crime, and lower rates of drug use or drug crime (“Pew Analysis,” 2017).

Drug Use and Addiction Treatment in Policies

Viable drug addiction and opioid use treatment options are often hard to find within large-scale drug policies; they can be buried by criminalization measures and are sometimes omitted entirely. Yet, within the existing literature, there is widespread agreement that prioritizing treatment measures within drug reform policies is important due to the effectiveness of treatment measures in helping reduce negative drug-related outcomes.

One treatment proven to be effective is the implementation of Medication-Assisted Treatment (MAT), such as methadone, buprenorphine, and naltrexone as a part of Medicines for Opioid Use Disorder (MOUD). Commonly “considered the ‘gold standard’ of care for opioid use disorder,” MAT has been fully endorsed by the American Society for Addiction Medicine (ASAM) for patient use, and the National Commission on Correctional Health Care (NCCHC) for use in the correctional setting (National Association of Counties, 2023, p.1).

In a review of MAT within U.S. prisons, Homans and Allen (2023) found effectiveness in treatment and recommended expanded use nationwide in prisons to prevent continued opioid usage. An NYU Langone Medical Center study also found that the use of these same medicines lowered the risk of dying from an opioid overdose by 80% compared to people in treatment without the use of these medications” (Krawczyk, 2020). They also found that overdose risk increased once patients left treatment, indicating medication-based treatment might be a necessary component of a long-term strategy for combating addiction. These results align with yet another study of nearly 41,000 patients by researchers at Massachusetts General Hospital, which found that medicated treatment “was associated with a 76% reduction in overdose at three months and a 59% reduction in overdose at 12 months” (Wakeman et al., 2020, p. 8). All of these studies are consistent with World Health Organization recommendations on proper treatment of opioid use disorders (World Health Organization, 2023).

Education and Prevention Measures

Several studies highlight the importance of opioid education and other preventative measures in reducing overdoses and opioid use disorders. First, patterns of substance abuse among parents have been shown to increase the risk of substance abuse within the next generation, with an estimated nine million children in the U.S. being affected by parental substance abuse (“The importance of drug prevention,” 2020). This abuse can emerge in early indicators like aggressive behavior. Utilizing early preventative

measures, such as the *Fast Track Program* targeted at improving conditions for children with high rates of aggression, produces positive results for these participants as they showed lowered rates of substance misuse later in life, as opposed to those who did not receive the same programming (Substance Abuse and Mental Health Services Administration, 2016). This indicates that earlier preventative measures, aimed at those groups of adolescents who were more predisposed to substance abuse later in life, can reduce substance use as adults, reducing substance usage in a society as a whole.

For preventing opioid misuse, a report by the National Library of Medicine found that implementing prescription drug monitoring programs was associated with a slight decrease in the opioid-related overdose death rate one year after implementation (1.12 fewer opioid-related overdose deaths per 100,000) (Nelson, et al., 2017). If similar measures at this same level of efficacy were enacted nationwide, the U.S. could reduce overdose deaths by as much as 600 per year (Substance Abuse and Mental Health Services Administration, 2016). Moreover, Good Samaritan laws that excuse wrongdoing in the cases of reporting opioid misuse have seen patterns of lower rates of opioid-related overdose, especially when citizens are aware of the laws and practices for reporting (U.S. Government Accountability Office, 2021).

Education about opioid misuse has been shown to be just as, if not more, successful as a preventive measure. A 2023 study by Robert M. Bohler published in *Drug and Alcohol Dependence Reports* found that community programs dedicated to opioid education were “associated with community-level decreases in overdose rates,” while also improving attitudes towards the use of naloxone, which could save lives (Bohler et al., 2023, p. 2). Razaghizad et al. (2023) also found that the implementation of Opioid Education and Naloxone Distribution (OEND) programs provided crucial training that “reduce opioid-related mortality at the population level” and set the expectation that continuation of these measures would see the continued success of opioid overdose reduction (Razaghizad et al., 2023, p. e9).

Factors leading to racial and ethnic disparities

The last section of this literature review discusses aspects of drug policy and the opioid epidemic that may disproportionately harm racial and ethnic minorities. Tough-on-crime drug policies, especially targeted at opioids, continue to be passed despite showing little correlation with decreased drug usage. These policies exacerbate harmful policing, through racial profiling, racialized arrests, and disproportionately increased incarceration of Black men and women (Savinkina et al., 2023). According to Rosenberg, Groves, and Blankenship, (2017), Black Americans had a higher chance of arrest than White Americans, despite “no statistical race difference in self-reports of ever having sold drugs (79% of Blacks vs. 70% of Whites).” Additionally, Black Americans were more likely than Whites to be charged with crimes of either drug sales or possession (27% vs 4%; 20% vs 16%, respectively), despite evidence showing no significant differences in behavior (Rosenberg et al., 2017, p. 136).

Disproportionate impacts have also resulted from the opioid crisis and drug addiction. Covid-19 exacerbated the effects of drug addiction and, among a nationwide spike of drug overdoses, the overdose rates rose. By August of 2021, both American Indian/Alaska Native men between 15 to 34 years as well as Black and American Indian/Alaska Native men between 35 to 64 years suffered the highest overdose rates (Han et al., 2022). Friedman, Beletsky, and Jordan (2022) similarly found that the highest observed overdose death rate was among Black men aged 55-59 years. Additionally, overdose death rates for American Indian/Alaska Native persons increased between 2010 and 2019 from 1.03 times that of Whites to 1.15 (Friedman et al., 2022). Importantly, Britz et al. (2023) found disparities within treatment options as well, with Black individuals being less likely to be connected to programs for MOUD, more likely to experience additional barriers in transportation options to clinics, and more likely to face limited access to take-home medications.

This thesis considers the evidence base regarding tough-on-crime policies, the use of effective treatment, as well as education and prevention, and avoidance of unwarranted racial and ethnic disparities within current legislation combating fentanyl from Colorado alongside Oregon and Wisconsin.

Issue Analysis

Colorado's State Fentanyl Policy, passed as House Bill 22-1326, was signed into law by Colorado Governor Jared Polis on May 25, 2022. Though only two years have passed since the law was enacted, this paper aims to conduct a preliminary examination for indications of the policy's effectiveness. A formal policy analysis from the Colorado State Senate and Attorney's Office is forthcoming, but assessing the policy for potential short-term outcomes could also be instructive for Colorado's policymakers and stakeholders.

The purpose of analyzing Colorado, Oregon, and Wisconsin's fentanyl legislation is to assess whether there could be an association between state-level policies and opioid overdose rates. As previously discussed, much scholarly literature finds that tough-on-crime policies do not decrease drug usage and often reinforce aspects of racial profiling and other racial inequities, because the laws are largely enforced more vigorously in places where communities of color are more likely to reside (Savinkina et al., 2023).

This analysis describes Colorado's policy measure and how it differs from the previous policy H.B. 19-1236, and it contains statistical data on fentanyl-related deaths from available public health resources at the state and federal levels. As the rising number of overdose deaths and injuries were a significant motivator for the passing of this policy (Colorado Senate Democrats, 2022), I used these indicators to examine whether the policy might be moving toward its intended goals. I also compared Oregon's relatively more rehabilitative policy and Wisconsin's relatively more punitive policy with

Colorado's to understand their potential relationships with key outcomes. This includes investigating whether the felony-heavy measures are associated with increased incarcerations for communities of color. Many current and former lawmakers who supported these policies may not have been aware of potential deleterious effects on communities of color. Racial Impact Statements of the nature innovated by former Iowa State Representative Wayne Ford call for such considerations.

How Colorado's New Law, H.B. 22-1326 Differs from its Predecessor, H.B. 19-1263

H.B. 22-1326 was passed as a bill to felonize fentanyl, placing harsh restrictions on the possession, sale, and distribution of the powerful opiate. The 73-page bill had two types of impacts: (1) it shifted the legal justifications and consequences of fentanyl [and other synthetic opiates like carfentanyl and benzimidazole] possession and distribution, and (2) it allocated resources and programs aimed at aiding those who were addicted at any time, were serving time or had served time for fentanyl possession, or were at-risk of developing an opioid addiction. This analysis concerns two key provisions in the law – one outlining prohibitions regarding fentanyl followed by a second allocating resources for intervention and public awareness campaigns (See Appendix A for excerpts).

The law further amends Colorado's previous fentanyl policy, H.B. 19-1263, by increasing sentencing measures for fentanyl possession. The new bill raises the classification of crime from a misdemeanor to felony, thereby strengthening penalties for an even smaller amount of the substance, lengthening probation and time served, and increasing the amount fined (H.B. 19-1263, 2019; H.B. 22-1326: Fentanyl Accountability and Prevention, Colorado, 2022).

Notably, the bill refers to a *fentanyl containing substance*, meaning that the entirety of the substance's weight is taken into account, rather than the specific measurement of fentanyl within the substance. This is particularly important, as much of fentanyl consumption is indirect, having been added

to another drug. Finally, another important feature comes from subsection 18-18-403.5 (II) (b) and provides that a person could be charged with possession of fentanyl without knowledge of its presence, facing a misdemeanor charge despite proving no knowledge of the substance (See Appendix D; H.B. 22-1326: Fentanyl Accountability and Prevention, Colorado, 2022).

Funding

The spending package totaled \$54,560,756 and was distributed across a variety of programs, departments, and cash funds. Over half of the package, \$31,792,413, went to the Colorado Department of Public Health and Environment (CDPHE), to be used for education and detection tests, and nearly \$20M went to a Naloxone bulk purchase. Prevention services received about \$6M, as did the Harm Reduction Grant Program cash fund. The Behavioral Health Administration received \$14.3M, and about \$8M went to measures in the Division of Criminal Justice, as well as the Department of Law.

Public Reception of the Law

H.B. 22-1326 saw spotlight media coverage when it was first enacted, with differing opinions. Colorado Senate Democrats touted the bill for its bipartisan support, mission to save lives, and increased criminal penalties (Colorado Senate Democrats, 2022). An article published in *5280 Magazine* questioned the measure's impact on communities of color, while tying the bill's "harsher possession penalties" to the "War on Drugs" (Clapham, 2022). A Colorado Newline article detailed the back-and-forth process of the bill, and described critics' projections that the bill would have "collateral consequences associated with felony possession" (Miller, 2022).

Policies of Oregon and Wisconsin

The purpose of including statistical analysis of Oregon's relatively less punitive fentanyl policy and Wisconsin's relatively more punitive policy is to compare potential linkages between these policies and the aforementioned outcomes of concern.

Oregon: By a referendum vote in November of 2020, the State of Oregon passed Measure 110, which qualified possession of all schedules of drugs (including fentanyl) as a Class E Violation ("State of Oregon," 2020), effectively decriminalizing possession of all controlled substances in amounts under five grams (See Appendix B; "Crime category classifications," 2024). This measure differed largely from Colorado's policy, with a strong push towards rehabilitation rather than any punitive measures for possession of controlled substances like fentanyl. An amount above five grams of fentanyl under Measure 110 qualified as a Class B Felony, which resulted in up to 10 years of prison time, and a maximum fine of \$250,000 ("Maximum terms of imprisonment," 2023). While this aspect resulted in felony charges for larger amounts of fentanyl, small amounts (those less than five grams) remained almost entirely decriminalized, making this measure lenient for first-time, small possession violators. The measure also created the Drug Treatment and Recovery Services Fund with funds appropriated to the Oregon Health Authority for use in multiple different treatment and recovery capacities. ("State of Oregon," 2020, pp. 2-3, 5-9). The amount within the first year of the act's implementation was set at a minimum of \$57M, with increases based on the U.S. Consumer Price Index ("State of Oregon," 2020, p. 6).

Wisconsin: In March of 2022, the State of Wisconsin passed Senate Bill 352 (S.B. 352, 2022), which increased the penalty for fentanyl possession (See Appendix C). This bill has been recognized as one of the more restrictive and punitive fentanyl measures enacted across the U.S. (Jurecka & Barocas, 2023). An important distinction within Wisconsin's fentanyl policy is that while all felony charges have a minimum of one year in prison time ("What is the minimum sentence," 2024), the maximum sentences

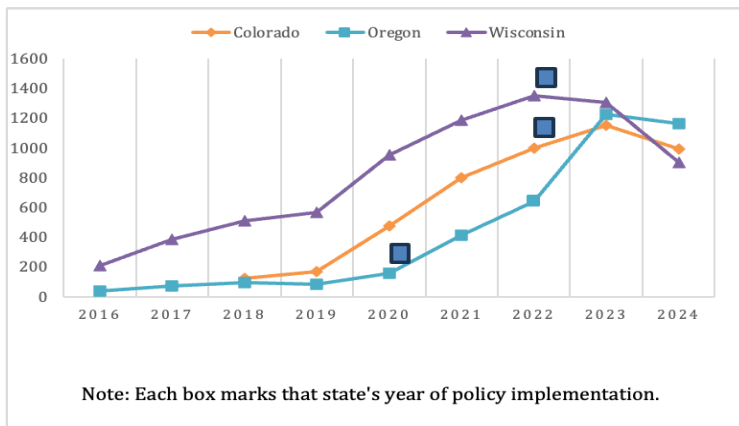
for levels of fentanyl possession vary depending upon the amount associated with the charge. These legislative changes carry harsher prison terms than those of Colorado, by as many as one to 21 years (Crimes – General Provisions, 2025). Wisconsin’s policy saw no additional allocation or changes to funding related to fentanyl recovery and/or treatment services.

S.B. 352 was also amended to allow the State of Wisconsin to surpass predetermined maximum sentences in special circumstances including committing a crime on the “premises of a scattered-site public housing project”; in public parks, jails or correctional facilities; public swimming pools; youth or community centers; all schools whether public, private, or tribal; and school buses (Uniform Controlled Substances Act, 2025). This distinction allows for Wisconsin to increase criminal penalties and raise sentences over the pre-designated maximums, which is an important difference from that of H.B. 22-1326.

Analysis of All Three State Policies

Analysis of all three policies is informed by publicly reported data from the CDC, U.S. Department of Justice, and each state’s health and crime agencies. As will be discussed later in the paper, a significant lack of current and reliable data limited analysis of these policies. The initial analytical approach set out to examine fentanyl overdose deaths, non-fatal fentanyl overdoses resulting in hospital visits, and incarcerations for fentanyl possession and distribution considering differences across racial and ethnic groups as indicators. Data for both incarcerations and demographic subgroups were systematically under-reported and, thus, could not be compared. Below, are results based on the former two indicators: fentanyl overdose deaths and two measures of non-fatal fentanyl overdoses—inpatient hospitalizations and emergency department (ED) visits. Where possible, I calculated the annual percentage change (growth rate) for several years prior to each state’s policy implementation and since, up to the most recently reported data.

Figure 3. Fentanyl Overdose Death Count by State, 2016-2024



Charts the July count for fentanyl overdose deaths for Colorado between 2018-2024 and Oregon and Wisconsin between 2016-2024. [Source:](#) CDC's National Center for Health Statistics.

Fentanyl Overdose Deaths

The CDC's National Center for Health Statistics releases data reported voluntarily by states.

Colorado began its fentanyl overdose death reporting in 2018, while Oregon and Wisconsin

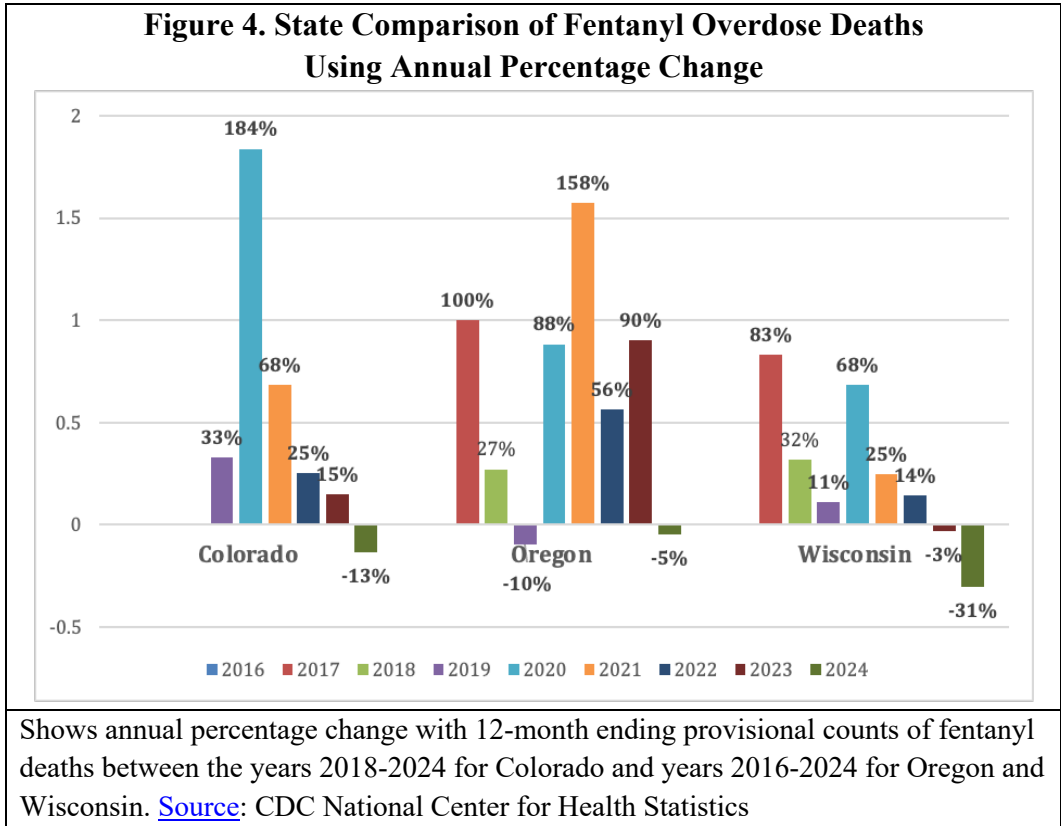
reported data in 2016. Due to occasional missing monthly data in

the early years of reporting, this analysis uses July's data for each year through 2024 from all three states to detect any potential annual patterns. See Figure 3. below for a chart depicting each state's trend for fentanyl overdose deaths.

I then calculated the percentage change for fentanyl deaths in Colorado between 2018 and 2024, which spans the four years prior to bill implementation in May 2022 and two years after. Similarly, I calculate the percentage change for Oregon between 2016 and 2024, accounting for four years prior to policy implementation in November 2020 and four years after, as well as this same period for Wisconsin which passed its law in March of 2022, accounting for six years pre- and two years post-passage.

Colorado's rising death counts, beginning in July 2018, increased each year through the bill's passage, while the annual growth rate began to decline in 2021. Colorado's annual growth rate continued to decrease the year after policy implementation at 15% in 2023 and fell even further in 2024, yielding a negative 13% change (or 13% decrease; National Center for Health Statistics, 2024). While policy

implementation may have contributed to the decrease in overdose deaths, rates had already begun declining pre-implementation, indicating other factors could have played a role here.



Oregon’s more sporadic pattern shows mostly annual growth rate increases in fentanyl deaths with two exceptions—one brief dip in 2019 with a negative ten percent change before rebounding in 2020 and then spiking higher in 2021, z year post-implementation, and then a second decrease in 2024 with a negative five percent change (National Center for Health Statistics, 2024). While a negative five percent change from a previous 90% increase shows improvement, the previous irregular growth pattern makes it difficult to link this outcome to the policy and may be (more attributable) to national trends or other factors.

Wisconsin shows a positive growth rate each year prior to implementation of its policy in March 2022, albeit at varying levels of positive growth. However, following the law’s implementation,

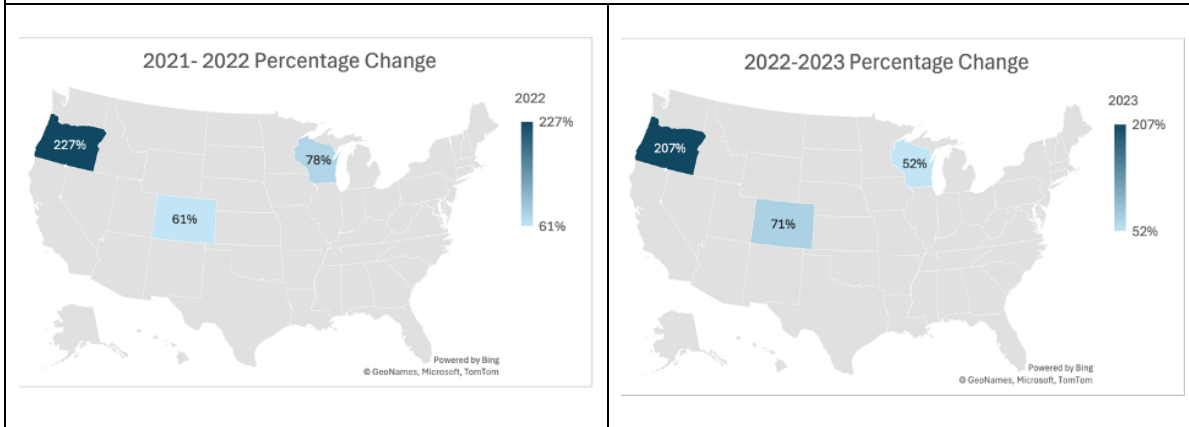
Wisconsin's fentanyl deaths fell by negative three percent in 2023 and by -31% in 2024 (National Center for Health Statistics, 2024). This data, particularly the varying levels of growth pre-implementation, indicates that a number of factors affected the death growth rate in Wisconsin pre-implementation. That said, the considerable decrease in growth rate in the years following implementation could signal that the policy might contribute to Wisconsin's declining pattern.

Non-fatal Fentanyl Overdoses, Inpatient Hospitalizations and Emergency Department Visits

The data for non-fatal overdoses comes from the CDC, where data are available for all three states from 2021 to 2023 for both inpatient hospitalizations and emergency department visits (National Center for Health Statistics, 2024). The two-year time period constricts the analysis to one year before and after implementation for Colorado and Wisconsin. Even this preliminary pre- and post-implementation analysis is not possible for Oregon, as data only became available after its 2020 implementation. Nevertheless, we can observe two years of post-implementation data, which could still be informative. Side-by-side comparisons of inpatient hospitalizations shows signs of a slowing growth rate following policy implementation in Oregon, falling from 227% to 207%, and in Wisconsin, falling from 78% to 52%. Colorado's growth rate for inpatient hospitalizations, however, increased following implementation from 61% to 71% (See Figure 5 on the next page).

Though Oregon experienced a slightly lower growth increase from 2021-2022 to 2022-2023, the extremely high base rate makes it difficult to associate this modest change with its policy. Wisconsin's more substantial fall in the growth rate of inpatient hospitalizations post-implementation suggests that the policy could have contributed to this decline. Colorado maintained a much lower rate of growth than Oregon's but still saw an increase in hospitalizations after policy implementation, indicating no improvement.

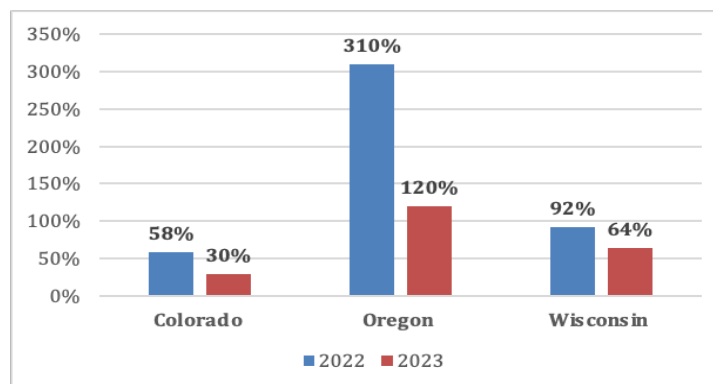
Figure 5. Side-by-Side State Comparisons of Percentage Change in Inpatient Hospitalizations



Shows percentage change in inpatient hospitalizations due to non-fatal fentanyl overdoses for Colorado, Oregon, and Wisconsin between 2021-2022 and 2022-2023. [Source:](#) CDC National Center for Health Statistics.

Similar to the in-patient hospitalization timeframe, data for emergency department (ED) visits are only available for the two-year span of 2021 to 2023, allowing for one year pre- and post- implementation snapshots of Colorado and Wisconsin and only post-implementation data for Oregon. Figure 6 shows the calculated percentage changes in ED visits resulting from non-fatal fentanyl overdoses, and indicates potentially positive signs for the policy across the board. Each state saw a decline in the growth rate for ED visits. For Colorado and Wisconsin, this 28 percentage-point decrease potentially indicates their respective policies could be a

Figure 6. Percentage Change in ED Visits (2021-2022) & (2022-2023)



Depicts the growth rate in emergency department (ED) visits resulting from non-fatal fentanyl overdoses between 2021 and 2023 for Colorado, Oregon, and Wisconsin. [Source:](#) CDC National Center for Health Statistics

contributing factor. Despite Oregon's much higher growth rate in of 120% in 2023 than Colorado or Wisconsin's, the 190 percentage-point decrease is notable.

Incarcerations & Treatment Data

I was unable to find systematic evidence of state reporting on fentanyl incarcerations or enrollment in treatment to federal agencies or on their own respective agency websites, and was, therefore, unable to examine these indicators in my issue analysis. Please see "Weaknesses and Limitations" section for a fuller explanation.

Data Discussion

Preliminary data are suggestive of positive trends in Colorado for overdose death rates and ED visits due to overdoses as well as in Wisconsin for overdose deaths, inpatient hospitalizations, and ED visits. For Oregon, results are mixed and inconclusive. If the percentage decrease observed in overdose deaths continued beyond 2024, this could signal a positive trend for Oregon's policy, but the sporadic growth pattern prior to 2024 makes it difficult to infer much from the recent decline. Missing non-fatal overdose data pre-implementation hampers analysis, but with these limited data we do observe declining growth rates for inpatient hospitalizations and ED visits.

An observed trend for the three states is a decline in death rates over the last year in 2024, which mirrors trends observed nationally. A number of academics and policy experts have associated the following reasons with this decline: increased deployment of the overdose prevention drug Naloxone and other harm reduction services, increased access to medications for opioid use disorder (MOUD), and seizures and a reduced presence of illicit fentanyl on the streets (Henderson, 2024, Megerian et al., 2024,

Drug Enforcement Administration, 2024, American Medical Association (AMA), 2024, & Bonavitacola, 2024).

Considering the last three to eight years' worth of data in the three states analyzed, however, Wisconsin seems to show the most promising signs post-implementation, with its more consistent declining growth rate patterns observed across all three indicators.

Proposed Solutions

So far, Oregon's misdemeanor drug policy does not appear to be a successful policy strategy for reducing fentanyl-related deaths. Working with some level of felony punishment within fentanyl drug policy, like those of Colorado and Wisconsin, has shown a greater association with lowered fatal and non-fatal overdoses. Both states maintain similar growth rate decreases for fentanyl-related emergency department visits, while Wisconsin saw a larger drop in growth rates for both fentanyl deaths and inpatient hospitalizations.

A number of different states have passed fentanyl policies with similar aspects to the three aforementioned, with varying levels of intensity. Each state molds its policy to what it perceives as its best possible solution, as fentanyl's impact changes state to state. Oregon, Wisconsin and Colorado have three feasible routes for how their individual legislatures would act in the future regarding fentanyl.

1. *The Status Quo*: Each state could continue to do what it is doing, particularly because more time to implement the policy and collect data would help analysts better establish trends. While this is the easiest method to implement, Oregon could continue to see rises in death and overdose numbers, while Wisconsin and Colorado might not see long-term successes in continuing their current strategies

2. *Emulate Wisconsin:* Oregon and Colorado (or other states) could adopt Wisconsin-style measures, given its stronger associations with reduced overdose deaths and injuries. This strategy would indicate that only the sentencing measures of a fentanyl policy have an impact, when including [funding for] treatment options is an important addition for long-term successes.
3. *Colorado-Wisconsin Hybrid:* Colorado and Oregon could amend their laws to achieve a hybrid of Colorado and Wisconsin's policies, which would combine stronger penalties while ensuring funding goes towards essential treatment and education programs to combat fentanyl. This would combat its impact in two ways: through ensuring proper awareness of its danger and imprisoning larger-scale dealers. I believe this strategy has the strongest potential for long-term success, but without mandated reporting and updating of statistics, it would be difficult to assess the efficacy of these policies in the future.

Strategic Recommendations

Based on the preliminary data available, I recommend a policy approach that combines the best elements of all three state policies discussed within this thesis. A bill that combines strong punitive measures, while funding vital services and programming, would facilitate a balanced approach to the fentanyl crisis, enabling positive change to two different sides of the problem. Additionally, reinforcing the observation of data and statistics will help future researchers determine a more holistic view of the effectiveness of this approach. I recommend that each state:

1. Implements a state fentanyl policy that enforces one-year felony minimums for fentanyl; possessions but restricts maximum sentences for the specific weight of fentanyl, when it is added to another substance like cocaine or heroin. This will present the opportunity to determine intent

and knowledge (if any exists) of fentanyl within a substance, and can enforce a tough agenda against fentanyl, while maintaining equity in the judicial process.

2. Implements a comprehensive spending plan within a state fentanyl policy, that boosts education measures and enhances the capacities and capabilities of overdose treatment and recovery programs. One example of this is Oregon’s Drug Treatment and Recovery Services Fund; while the state saw limited success in the short term, investing in programing like this could benefit more than just those suffering from fentanyl overdoses in the future. Increasing knowledge about fentanyl’s danger will help reinforce safe communities and save lives (Bohler et al., 2023, & (Razaghizad et al., 2023). Adding funding to programs will enable more people to get help with fentanyl overdose symptoms, and enable treatment programs to continue to expand their services long into the future.
3. Mandates tracking of data points such as ethnic and racial impact, treatment program enrollment, and fentanyl-specific incarcerations. It is crucial to hold states accountable for publishing statistics on program enrollment, incarcerations, and non-fatal overdoses, so that further analysis can occur. Transparency is needed for the effects of these policies, so that future policies can build on their work and find new solutions.

Weaknesses and Limitations

I encountered several data limitations that would have aided policy analysis. State and federal agencies did not systematically publish race and other ethnic demographics, as well as fentanyl incarcerations and treatment program enrollments. Even for the data I was able to analyze, these were not available for every state, such as for Texas—an initial interest given its size and claims as the “toughest” anti-fentanyl legislation in the country. Additionally, future analysis of these or similar policies would

require more specific data and a longer post-implementation time frame to more accurately and thoroughly gauge trends. Finally, use of more sophisticated statistical methods, particularly causal analysis, would allow the analyst to make more definitive claims about the success of these measures.

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Appendices

Appendix A – Colorado, H.B. 22-1326, Section 1 (1)(b) and (2)(a)

“Enact a properly calibrated sentencing scheme, prescribing specific penalties for the unlawful manufacturing, distribution, dispensing, or selling of fentanyl, carfentanil, benzimidazole opiate, and analogs thereof, including specifically designed penalties for people whose manufacturing, distribution, dispensing, or selling leads to the death of another person”

“Direct additional resources to communities and agencies to allow more effective and healthy interventions and treatment for people who use fentanyl, carfentanil, benzimidazole opiate, or analogs thereof, and develop an effective public education campaign about the dangers of these drugs and their presence in other drugs

Appendix B – Oregon, Measure 110, Section 19 (2)(e)

\$100, or, in lieu of the fine, a completed health assessment as specified in section 2(2)(b)(ii) or section 23(2), for a Class E violation.

Appendix C – Wisconsin, S.B. 352, Section 2, 961.41 (1)

1. Ten grams or less, the person is guilty of a Class E felony.
2. More than ten grams but not more than 50 grams, the person is guilty of a Class D felony.
3. More than 50 grams, the person is guilty of a Class C felony.

(c) For a Class C felony, a fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both.

(d) For a Class D felony, a fine not to exceed \$100,000 or imprisonment not to exceed 25 years, or both.

(e) For a Class E felony, a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both.

Appendix D – Colorado, H.B. 22-1326, Section 2, 18-18-403.5, (II)(b)

When a defendant shows supporting evidence to establish that he or she made a reasonable mistake of fact and did not know that the controlled substance he or she possessed contained fentanyl... the matter shall be submitted to the finder of fact in the form of an interrogatory included in the verdict form. Should the finder of fact determine the defendant made such a reasonable mistake of fact, the defendant commits a level 1 drug misdemeanor.