



March 16, 2022

Dear Honorable Members of the Colorado General Assembly,

On behalf of the more than 60 undersigned organizations, we are writing to urge you to oppose making simple drug possession a felony. We agree that bold action must be taken to address the overdose crisis. But we do not believe people with an addiction should be made felons for simple drug possession, and polls show most Coloradans (and most Americans) agree.

For decades, Colorado attempted to prevent addiction and overdose deaths by giving people felony records and prison sentences for low-level drug possession offenses. It proved to be ineffective and counterproductive, and in 2019 the Legislature enacted bipartisan legislation to reduce the penalty for simple possession offenses from a felony to a misdemeanor.

Going back to the failed policy of the past will exacerbate the overdose crisis and do more harm than good, especially for low-income individuals and people of color, who have long bore the brunt of criminal drug laws. The most effective way to prevent drug overdoses is through a comprehensive public health approach including greater access to treatment and evidence-based harm reduction practices.

Below, we address some misconceptions about the 2019 drug penalty legislation that have recently surfaced in public discussions about the fentanyl crisis. We also offer our recommendations for public health approaches to preventing fentanyl overdose deaths in Colorado.

The overdose crisis in Colorado was not created or made worse by the 2019 legislation that made simple possession a misdemeanor (HB19-1263).

- Overdose deaths began increasing in Colorado in 1999, well before the passage of HB19-1263, which didn't go into effect until March 2020. Colorado's rate of overdose deaths began to rise more sharply in 2016, when simple possession was still a felony.
- Overdose rates have risen throughout the country in recent years, including in states where simple possession is a felony. Colorado had the 29th-highest rate of overdose deaths in 2020, according to the U.S. Centers for Disease Control and Prevention. Most of the states with higher overdose rates have felony penalties for simple possession.
- The Colorado Health Institute attributed the sharp rise in overdose deaths in 2020 to the COVID-19 pandemic, which resulted in social isolation, a pandemic-induced recession, and changes to care delivery that had an "unprecedented impact on substance use and on treatment and support options."

- More than 20 years of research has demonstrated that incarceration is not an effective deterrent to drug use. According to research findings prepared for the Colorado Commission on Criminal and Juvenile Justice in 2009, brain function and chemistry can be altered by drug use which may cause a person to continue using drugs despite the adverse health, social, and legal consequences.

Simple possession was not “decriminalized” in 2019, as some have incorrectly suggested.

- Under current law, simple possession of less than 4 grams of a controlled substance is the most serious level of misdemeanor and carries a penalty of up to 364 days in jail for the first three offenses. A fourth conviction for simple possession or possession of more than 4 grams is a felony. The 4g cut point is total weight which includes any other compound that is mixed in with the drug -- not the weight of just the controlled substances.
- When simple possession was a felony, it was punishable in the presumptive range of 6-12 months in prison. By reclassifying the crime as a misdemeanor, HB19-1263 did not change the amount of time an individual can be incarcerated, just the location (jail rather than prison).
- A single felony conviction can substantially impact a person’s ability to find work and stable housing, which are essential to long-term recovery.

The “drug war” in Colorado continues to primarily impact low-income people who use and share drugs, not high-level dealers.

From January 2020 to January 2022, more than 31,000 drug cases in Colorado were filed against low-income people who were represented by the State Public Defender’s Office. Of those cases, 75% were for simple drug possession or sharing drugs. Only 9% for low-level dealing (DF3), 9% for mid-level dealing (DF2), and 6% for high-level dealing (DF1).

The overdose crisis is a public health emergency that demands a comprehensive public health approach.

Re-felonizing simple possession will result in more overdose deaths because the risk of a felony conviction will drive people who use drugs away from health services and result in riskier drug-using activity to avoid detection and prosecution.

The most effective ways to address the fentanyl crisis are evidence-based public health and harm reduction approaches that keep people alive and maximize their potential for recovery. Such efforts warrant substantial investment, particularly in underserved communities of color that are experiencing higher rates of overdose deaths. Specifically, we recommend the following:

- Greatly increase access to Naloxone, which reverses an opioid overdose and saves lives.
- Increase the number of harm reduction organizations and mobile outreach services that engage with people who use drugs.

- Substantially increase funding for drug prevention, harm reduction, treatment, and peer and recovery support services that have been proven to save lives, including treatment on demand.
- Increase funding for wider community education by trusted messengers.
- Make fentanyl testing strips and other drug-checking resources easily attainable, so people can test drugs for the presence of fentanyl.
- Support realistic, evidence-based programs to educate teens about drugs and harm reduction.
- Increase the number of Medication Assisted Treatment (MAT) providers, including jails, prisons, and halfway houses, and expand medical withdrawal management that is specific to synthetic opioids.
- Require jails to have withdrawal protocols for opioid dependence like they do for alcoholism.
- Incentivize safe disposal of controlled substances with law enforcement or community-health agencies.
- Support innovation of other evidence-based interventions that can save lives.

Sincerely,

Advocates for Recovery
 American Friends Service Committee
 Atlantis Community, Inc.
 AUL Denver
 B-konnected
 Black Cannabis Equity Initiative
 Boulder County AIDS Project
 Bring Our Neighbors Home
 Colorado Behavioral Health Council
 Colorado Black Round Table
 Colorado Center on Law and Policy
 Colorado Coalition for the Homeless
 Colorado Criminal Justice Reform Coalition
 Colorado Cross Disability Coalition
 Colorado Freedom Fund
 Colorado Health Network
 Colorado Mental Wellness Network
 Colorado Organization for Latina Opportunity and Reproductive Rights
 Colorado Organizations & Individuals Responding to HIV/AIDS
 Colorado Poverty Law Project
 Colorado Providers Association

Colorado Public Health Association
Colorado Working Families Party
Community Works
CURE
Dance Safe
Denver Inner City Parish
Denver Street Partnerships
Disability Law Colorado
Embark Peer Coach Academy
Empowerment Program
Front Range Clinic
Harm Reduction Action Center
High Rockies Harm Reduction
Hazelbrook
Healthier Colorado
Kingdom Builders
Lifeline
Lighthouse Consultants Colorado
Make a Chess Move
Mental Health Colorado
Mile High Behavioral Healthcare
NAACP – Aurora Branch
NAACP – Denver Branch
Paradigm One
Peer Coach Academy
Public Health Institute at Denver Health
Public Health for Public Safety Leadership Team
Reimagining Policing & Public Safety Task Force
Second Chance Center
Servicios de la Raza
SHARE Network
The Center for Trauma & Resilience
The Conflict Center
The Don't Look Back Center
The Freedom Institute
The Initiative
The Reentry Initiative
The Rock Found
Tribe Recovery Homes
Urban Colors
Vivent Health
Whole Body Harmony