

House Judiciary Committee  
Colorado General Assembly  
200 E. Colfax Ave. HCR 0107  
Denver, CO 80203

April 12, 2022

**Re: HB22-1326 Fentanyl Accountability and Prevention**

Dear Mr. Chair, Madam Vice Chair, and Committee Members:

Thank you for the opportunity for the Colorado Center on Law and Policy (“CCLP”) to submit written testimony regarding House Bill 22-1325, Fentanyl Accountability and Prevention. CCLP is an anti-poverty organization that dedicates advocacy, litigation, and research to topic areas including affordable housing, employment, and access to healthcare and food. The criminal legal system is inextricably intertwined with each of our four focus areas. Specifically, growing up in poverty significantly increases the likelihood of incarceration, and incarceration or criminal justice involvement perpetuates poverty. Further, it is well documented that lower income people and communities of color are [disproportionately represented](#) in our jail and prison populations.

The fentanyl crisis has undoubtedly devastated communities across the state and requires prompt action. The proper response is to create a public education campaign, provide substance use treatment, and increase the availability of life-saving drugs, as HB 22-1326 proposes. CCLP supports these efforts, though it notes that there is [already a shortage](#) of residential treatment providers in Colorado and a substantial increase in funding is necessary to support an influx of people seeking treatment.

CCLP does not support any efforts to revert back to old, failed policies of increasing the offense level of simple possession from a misdemeanor to a felony. Doing so would inevitably have a harmful impact on communities of color and would only deepen the wealth gap further. As [the Brennan Center for Justice](#) reported, our criminal legal system is set up in such a way to perpetuate wealth inequalities through inadequate reentry processes and the social stigma associated with past incarceration, resulting in a substantial decrease in annual earnings over the course of a person’s lifetime. Indeed, the people who have felonies on their records see a reduction in annual earnings of between 22-52 percent. Because Black and Latino people are overrepresented in the criminal legal system, these economic impacts are concentrated in their communities.

Coloradans have certainly endured countless heartbreaks from fentanyl overdoses and a public health response is needed to prevent further tragedy. Increasing criminal penalties, however, is not the answer. It will cost the state more money yet have little [deterrent effect](#) and will only further perpetuate the harmful impacts of past policies. For these reasons, CCLP emphatically



urges the House Judiciary Committee to vote no on any amendment to increase the criminal offense level of simple possession.

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ellen K. Giarratana', written in a cursive style.

**Ellen K. Giarratana**  
*Managing Attorney*

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April 12, 2022

The Honorable Mike Weissman  
Chair, Committee on the Judiciary  
House of Representatives  
Colorado General Assembly  
State Capitol  
Denver, CO 80203

**RE: House Bill 22-1326 (“Fentanyl Accountability and Prevention”)**

Dear Representative Weissman:

This letter provides testimony regarding House Bill 22-1326 (“HB 22-1326”), and I ask that it be included in the Committee on the Judiciary’s (“Committee”) record as it considers this bill. I regret that I am unable to deliver these remarks in person as, prior to the Committee’s calendaring of HB 22-1326, I was scheduled to be in Washington, D.C. for meetings related to pending federal litigation and implementation of the Colorado Privacy Act.

In 2021, the United States reached a terrifying threshold by losing over 100,000 lives to drug overdoses during a single year.<sup>1</sup> That number exceeds deaths from car crashes and gun violence deaths combined for that year. Stated simply, we are facing an addiction crisis and it is a deadly one. The majority of these overdose deaths are from opioids and, increasingly, those deaths are because of fentanyl. According to the District of Colorado U.S. Attorney’s Office, fentanyl overdose deaths in our State grew to over 800 in 2021.<sup>2</sup> Recognizing this crisis, former U.S. Attorney Jason Dunn and I highlighted last year that fentanyl is 50 to 100 times more potent than morphine and 30 times as strong as heroin; it is an exceptionally deadly drug. And many taking this drug are not even aware that they are ingesting it as fentanyl is being used in counterfeit versions of prescription pills like Xanax, generic oxycodone, and Adderall as well as placed in other widely used illicit substances,

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<sup>1</sup> National Center for Health Statistics, Centers for Disease Control and Prevention, *Drug Overdose Deaths in the U.S. Top 100,000 Annually*, (Nov. 17, 2021), available at [https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2021/20211117.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm) (“Provisional data . . . indicate that there were an estimated 100,306 drug overdose deaths in the United States during 12-month period ending in April 2021, an increase of 28.5% from the 78,056 deaths during the same period the year before.”).

<sup>2</sup> Richard Cote, *Officials Hold News Conference on the ‘Alarming Increase’ of Fentanyl Deaths*, 9 NEWS, Apr. 7, 2022, available at <https://www.9news.com/article/news/crime/colorado-fentanyl-deaths/73-f270a0fe-8d03-4bef-ae5b-d39758dc146f>.

including cocaine and methamphetamines.<sup>3</sup> This means that, in some cases, it is not even accurate to use the term “overdose”; rather, we are witnessing increasing numbers of deaths by fentanyl poisoning.

Since the mid-1990s, manufacturers, corporate executives, and other actors acted irresponsibly and illegally by pushing opioid pharmaceuticals and making them widely available. During this dark chapter, these companies concealed and misled the public about the truly addictive nature of these drugs. As a consequence, millions became addicted to opioids, had their lives destroyed, and struggled to live with their addiction.

Our department has taken action to hold accountable those bad actors who pushed out prescription pills and fueled our nation’s opioid epidemic. To date, we have secured \$400 million in settlement dollars that will flow to Colorado communities via a historic framework with every county and region in Colorado. This money will be used to begin to address the lack of drug treatment and recovery options available. At present, Colorado has only 16 percent of the drug treatment capacity we need for those seeking treatment services. Without more resources, far too many Coloradans continue to struggle with—and feed—their addiction because of a lack of treatment and recovery options.

The decline in available prescription pills, however, and the large number of those struggling with drug addiction have created an opportunity for drug cartels to fill this vacuum with synthetically produced opioids such as fentanyl. As a result, fentanyl now flows into our communities. It must be stopped. This crisis calls for action on several fronts.

To address this crisis, Colorado should enact comprehensive legislation that addresses the problem through a mix of public health, education and prevention, harm reduction, and law enforcement strategies. HB 22-1326 is a necessary stride forward and complements the work our department is doing to address the opioid crisis. Notably, we are working to raise greater awareness of the risks of opioids (particularly fentanyl), provide more drug treatment and recovery services, and support appropriate harm reduction strategies (such as the distribution of Narcan). But even with the \$400 million we are bringing to Colorado from our litigation against Big Pharma, we need more resources to address this crisis.

I’m grateful for Speaker Garnett’s and Representative Lynch’s leadership in crafting HB 22-1326. I urge the Committee’s support for this bill as well as for additional improvements that will enhance the effectiveness of our State’s response to this crisis. And I should underscore that this bill will be part of our ongoing public policy response to this crisis. To address this crisis, which is 25 years in the making, we need an urgent, vigilant, and continued response over the years ahead to act effectively and save lives.

There are several components of this bill I want to highlight as sound policy and important building blocks of a comprehensive response to the addiction crisis and the rise of fentanyl. First, the dedication of resources to education and prevention is essential. We

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<sup>3</sup> Jason Dunn and Phil Weiser, Op-Ed., *Weiser and Dunn: Stop Colorado’s Deadly Flow of Fentanyl*, THE DENVER POST, Dec. 16, 2021, available at <https://www.denverpost.com/2021/12/16/fentanyl-colorado-laws-opioid-overdose/>.

continue to hear of overdoses by persons who unknowingly ingest the substance or children who come into contact with fentanyl after adults leave pills within reach.<sup>4</sup> By informing the public of the extreme dangers of this substance, including how to identify it, this bill promises to save lives. The U.S. Drug Enforcement Administration's campaign—"one pill can kill"—is no exaggeration. We must spread this message far and wide. Our department looks forward to supporting and collaborating with those seeking to protect the public through education on this risk.

Second, the inclusion of greater penalties for those who deal fentanyl is a critical tool for law enforcement to arrest and prosecute those who sell this poison. Importantly, the bill makes the crime of distributing fentanyl resulting in a person's death a level one drug felony. Fentanyl is an incredibly deadly opioid, and our criminal laws must reflect the heightened risk of death that dealing this drug poses. The knowing sale of fentanyl in the form, for example, of a counterfeit Xanax pill is, in effect, a poisoning. Those responsible for deaths by poisoning should be held accountable.

Third, the bill provides greater resources for public health and harm reduction strategies. HB 22-1326 would make available millions in funding for harm reduction resources and behavioral health services and expand the use of opioid detection tests. In particular, the investment in naloxone should be maintained at the level requested in the bill as it has a great potential to save lives. These are sound public health strategies and resources that must be deployed to ensure we comprehensively address the fentanyl crisis.

While there are many other components of the bill worthy of support, I wish to direct the Committee's attention to two areas that I have previously stressed should be included in any bill taken up by the General Assembly to address the fentanyl crisis.<sup>5</sup>

One, we should devote significant resources to law enforcement for interrupting the supply chain of fentanyl. By preventing fentanyl from reaching our State and removing pills before they ever reach the street, we can save thousands of lives. Take, for example, a trafficking ring in which my department partnered with 17<sup>th</sup> Judicial District Attorney Brian Mason and the U.S. Drug Enforcement Administration. By working together as a multi-jurisdictional taskforce, our team confiscated 77,000 fentanyl-laced counterfeit oxycodone

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<sup>4</sup> See Shelly Bradbury and Elise Schmelzer, *Five Dead in Commerce City Apartment Likely Overdoses on Fentanyl, DA Saves: Prosecutor Says Victims Were Ingesting Cocaine That They Did Not Know was Laced with the Powerful Opioid*, THE DENVER POST, Feb. 21, 2022, available at <https://www.denverpost.com/2022/02/21/commerce-city-overdose-deaths-fentanyl/>. See also Tony Keith, *Colorado Springs Woman Suspected of Providing Fentanyl to a Teen Resulting in Overdoses Death of a Mitchell High School Student*, KKTV 11 NEWS, Mar. 16, 2022, available at <https://www.kktv.com/2022/03/16/colorado-springs-woman-suspected-providing-fentanyl-teen-resulting-overdose-death-mitchell-high-school/>.

<sup>5</sup> Press Release, Colorado Department of Law, Office of the Attorney General, *Statement of Attorney General Phil Weiser on Proposed State Legislation to Address the Fentanyl Crisis* (Mar. 23, 2022) available at <https://coag.gov/press-releases/3-23-22-2/>.

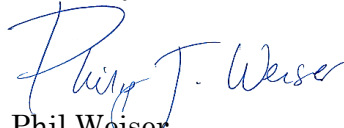
pills as well as hundreds of pounds of methamphetamine, heroin, and cocaine.<sup>6</sup> By removing this magnitude of pills from the supply chain before they reached the public, this work undoubtedly saved lives. HB 22-1326 should be further strengthened by providing greater resources for law enforcement agencies to devote directly to fentanyl trafficking interruption operations. These investigations are difficult, and we need more support for such efforts.

Two, the legislature should update the State's drug possession laws to account for the deadliness of fentanyl. Last year, former U.S. Attorney Dunn and I urged the General Assembly to do just that, updating the possession penalties that apply to "those who possess enough fentanyl to kill hundreds or thousands of people."<sup>7</sup> Fentanyl kills people at rates far greater than heroin or cocaine. In fact, just a few grams of the substance have a potency capable of ending thousands of lives.

I understand that the Committee may consider an amendment to adjust the current law's 4-gram threshold for felony possession—by making the possession of *any* amount of pure fentanyl a felony and lowering the threshold for a felony when an individual possesses a fentanyl analogue (that is, a substance that contains any fentanyl). This is a necessary change to our criminal code—and a concept that I urge the Committee to adopt. As we continue to learn more about synthetic opioids and greater research is available, I urge the General Assembly to continue to adjust this figure as necessary to ensure that criminal possession penalties match the deadliness of this opioid in a responsible manner that does not criminalize addiction.

Thank you for your consideration of these comments.

Sincerely,



Phil Weiser  
Attorney General

cc: Rep. Kerry Tipper, Vice-chair, Committee on the Judiciary  
Committee on the Judiciary members  
Speaker Alec Garnett  
Rep. Mike Lynch  
Sen. Brittany Pettersen  
Sen. John Cooke  
Mr. Stan Hilkey, Executive Director, Department of Public Safety  
Ms. Jill Hunsaker Ryan, Executive Director, Department of Public Health  
and Environment

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<sup>6</sup> Press Release, U.S. Drug Enforcement Administration, *Colorado Attorney General, DEA Task Force Dismantle Major Drug Trafficking Ring: More Than 77,000 Counterfeit Oxycodone Pills Containing Fentanyl that Flooded the Metro Area During the Pandemic Seized* (Feb. 12, 2021).

<sup>7</sup> Dunn & Weiser, *supra* note 3.

FROM: Bernard Jones #49967  
Arkansas Valley Correctional Facility  
12750 Hwy 96 @ Lane 13  
Ordway, CO 81034

TO: Members of Colorado Legislature

DATE: April 10, 2022

RE: House Bill 22-1362

Hello everyone,

I, Bernard Jones, support the majority of H.B. 22-1326 but I oppose the part of the bill - AS IT STANDS - that will increase the prison population. I am an elected member of the Second Chance Center Legislation Inside Committee.

The previous "war on drugs" has been proven to be a complete failure as it resulted in the unnecessary incarceration of large numbers of minorities without benefit. Each drug dealer locked up is quickly replaced by another drug dealer. Why would this Committee commit the same mistake? Less than 4 grams of fentanyl should remain a misdemeanor.

I was sentenced to a 40-year life sentence for 7 grams of cocaine. I was also sentenced to a 96-year prison term for 2½ grams of cocaine. I have served a total of 31 years in prison for 9½ grams of cocaine at a cost of over \$1,000,000 even though the street value of the drugs was \$900. This is absurd.

This is a complete waste of taxpayer money because I am not the same person that I was when first locked up at age 32 in these cases. I am now 63. I have taken many programs to address my drug addiction since then. I have not received a disciplinary write-up in over two decades. Both of my sentences were significantly enhanced even though they are non-violent crimes due to prior convictions. New drug laws were enacted but not made retroactive. Therefore, I must serve 7 more years in prison instead of 16-year sentences under the new drug sentencing laws.

If less than 4 grams of fentanyl is raised to a felony, it will increase the prison population by 1000 inmates each year. Let this money be spent providing financial support to parents that have lost a child to fentanyl so that they can visit junior high schools to share their stories of tremendous heartache and pain. Also, have an expert explain the dangers of fentanyl. When given accurate and proper information, our children can then begin to make intelligent decisions to avoid drugs. This is the real way to save lives and it must be done through education - not incarceration.

Members of this Committee, please allow us to stop conning ourselves into adopting "feel good" but meaningless attacks on the "supply" of drugs through small-time drug dealers as done before because it is limitless. Instead, let us take a new and more promising approach to resolving this issue by addressing the "demand" for illegal drugs by amending H.B. 22-1326. Thank you.

Sincerely,



Bernard Jones

## AGAINST BILL HB1326

I am opposed to Bill HB1326. This Bill is yet another addition to the failed "War On Drugs" and should be halted in its tracks and thrown out.

Criminality is being confused with mental health, addiction and substance use disorder!

We have a Public Health Crisis yet your focus is to further torture those who are suffering from these diseases. Many of these people are the victims of the Opioid Crisis, the Survivors. Yet they go unrecognized accept in a dehumanizing, insignificant and stigmatizing way.

Please understand that those that will be impacted the most by your Bill, are those journeying through recovery, those who relapse, those who have yet to relapse, along with their families, friends and communities. It is time for you to take your feet off their necks!

Addiction/Substance Abuse Disorder is a disease not a crime, and those suffering need professional help, and the strength of our communities to unite to combat it. The very last thing they need is incarceration and felony convictions! Charging people with a felony will do nothing to reduce drug use and will instead cause more harm to people and communities and increase our prison population. The facts show this!

Currently our prisons and jails are not equipped to support, medically treat, or rehabilitate so why would you do this? Our prisons and jails will set those struggling and incarcerated back years. The opposite of addiction is connection yet you are willing to strip everything from them, and their families. And then those that are eligible for release are 40% more likely to overdose. This is a fact so why would you do this?

You have stated Fentanyl has infiltrated all drugs on our streets from heroin to marijuana. You have stated that anyone picking up drugs should assume Fentanyl is in it. Does this mean you are prepared to prosecute and incarcerate all drug users over time since it is in everything? And then what happens after Fentanyl as I am sure something else will come. Facts show the drug industry trend is a move to synthetic drugs, so are you going to just keep creating new Bills to punish and incarcerate as this industry progresses? What is your overall goal - lock them all up in the hope no more evolve? Build more prisons and jails, line more pockets for private prison owners?

We need quality health care and rehabilitation facilities. We need to educate the public better on all fronts from those using and unable to stop to those who just want to use. We need consumption/overdose/harm reduction and prevention centers. We need wrap around support resources to further help. Other states and countries do this, are moving to this, why not Colorado?

Above all we need you our representatives, senators and legislators to stop the insanity of creating even more draconian torture Bills and policies on the possession and distribution of drugs. The time has come to decriminalize drugs, and our state and federal approach should be health focused and evidence-based recovery. Stop wasting millions of dollars criminalizing people for drug use and start reinvesting in social services, harm reduction and treatment. It is simple supply and demand, so let's reduce the demand!

Just imagine how many lives you can save with a different approach. Or will you continue to impose more pain on those who are suffering, continue to line the pockets of private prison owners, or is it time for common sense, facts, humanity, care, and dignity to make an appearance?

I urge you all to ditch this bill and involve more organizations, communities, drug users and those in recovery to develop a plan for a better and safer future, and to save lives. You serve all of us and you clearly have not heard all of our voices. or this Bill 1326 would never have come about!

House Bill 22-1326 Testimony

Greetings, my name is Fred Barker. I present this Testimony on behalf justice-affected people incarcerated as an elected member of Legislation Inside; a Second Chance Center initiative. My position is "no" on the passage of House Bill 1326 due to amended sections.

Senate Bill 1326 as it reads in the amendments is a haphazard attempt to fix an epidemic that has severely ravaged communities across the country. Epidemics are not eradicated, they come in waves and are managed through humanitarian efforts. A great deal of care and concern is placed on the lives of those addicted. There is nothing humane about criminalizing substance abusers in the place of dealers we cannot apprehend.

Locking away our sick, who have no correlation to crime rates— research indicates— would be an undoing of all the measurable ground gained in recent years. Including:

- \* the closure of scanty-filled prisons that wasted millions of dollars
- \* a steady declining prison population
- \* the restructuring of misdemeanor sentencing schemes
- \* comprehensive law enforcement policy promoting public safety through community engagement initiatives
- \* voting rights for justice-affected people
- \* juvenile reforms to ensure the safety of our youth and our futures through them
- \* jailing policy to ensure that those who live at and below the poverty line are not held in jail due to cash bail

In recent years Colorado has witnessed quantifiable progress towards best research practices in criminal justice reforms. Senate Bill 1326, as it reads with amended sections, would end this positive progress and set whole community back. Without the amendments' removal our State will suffer immeasurable loss.

Contrary to misinformed beliefs, incarcerated addicts do not cease from substance abuse once inside. Lengthy sentences for substances abusers will not only negatively effect the children of tomorrow, but it will actually pack prisons.

We've concluded through our legislation and voting practices, having experienced the failures of draconian ideologies to combat a war on drugs, that our tax dollars and resources are best suited with community organizations and trained clinical professionals to address substance abuse. Please, vote "no" on House Bill 1326 for these stated reasons.

Thank you for your time and attention.

April 2022

April 12, 2022

Colorado Legislature  
Denver, CO

Re: HB22-1326: Fentanyl Accountability and Prevention

To the members of the House Judiciary Committee:

I am a founder and the Managing Partner of Johnson & Klein Law in Boulder, and I have been practicing law for more than 25 years, primarily in the areas of criminal defense and civil rights. I am writing you today in opposition to any proposed amendments of HB22-1326 (titled “Fentanyl Accountability and Prevention”) that would reduce the threshold weight necessary for possession of a mixture or substance containing fentanyl to be classified as a felony under Colorado law.

Based on my decades of experience practicing law in federal court, I am very familiar with the policy problems of singling out a particular dangerous drug for enhanced penalties. I’d like to briefly share some information regarding what happened in the federal criminal legal system as a result of that misguided policy decision with respect to crack cocaine. Several decades later, it has become clear to nearly everyone that the crack disparity policy was a serious blunder that caused untold problems in our federal legal system. While some of the worst of the policy provisions have now been rolled back, there is significant damage that has occurred that cannot be undone. I would hate to see Colorado repeat the same sort of policy mistakes now with fentanyl.

In 1986, in the throes of misinformation and hysteria about crack cocaine<sup>1</sup>, Congress passed the Anti-Drug Abuse Act, which instituted the 100:1 disparity in the

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<sup>1</sup> See <https://www.govinfo.gov/content/pkg/GPO-CRECB-1986-pt18/pdf/GPO-CRECB-1986-pt18-5-2.pdf> at p. 19 (“The whole nation knows about crack cocaine. They know it can be bought for the price of a cassette tape, and make people into slaves. It can turn promising young people into robbers and thieves, stealing anything they can to get the money to feed their habit.”); at p. 26 (“Recently, we have seen cocaine brought to yet a higher level, to what is called ‘crack’ because of the sound that is made when it is cooked.”); at p. 35 (“I wish to point out to my colleagues that the escalation of drug abuse is shown not only by the number of this scourge’s victims but may also be measured in the potency and availability of today’s illicit drugs. The purified form of cocaine known as ‘crack’ for example, has led to a number of deaths.”); at p. 36 (“Equally as tragic is the phenomenon of crack babies. During a recent visit to Harlem Hospital, I saw 1-pound babies writhing with horrible withdrawal pains. They are called crack babies and begin their lives addicted to crack cocaine because their mothers were hooked on the drug.”)

weight of powder cocaine to crack cocaine necessary to trigger certain mandatory minimum sentences. The U.S. Sentencing Guidelines adopted the same disparity.

Nearly a decade later, in 1995, the U.S. Sentencing Commission issued its first report on crack cocaine, finding that because 80% of crack offenders are Black, and the 100:1 ratio results in unduly high sentences, sentences that are harsher for racial minorities result in a criminal-justice system that is unfair and that is perceived as unjust.<sup>2</sup> Relying on myths that had been debunked<sup>3</sup>, Congress rejected the Sentencing Commission's proposed amendment to ameliorate the disparity and its untoward effects.<sup>4</sup>

In 1997, the Sentencing Commission issued a second report to Congress asking for the 100:1 disparity to be revised.<sup>5</sup> Then in 2002, the Sentencing Commission issued yet a third report to Congress debunking the flawed misconceptions about the effects of crack cocaine on its users and recommended that Congress change the mandatory-minimum sentencing scheme; in doing so, the Commission again emphasized the racial disparities that had resulted.<sup>6</sup>

The Sentencing Commission issued a *fourth* report to Congress on the crack cocaine disparity in May 2007<sup>7</sup>, and the first Sentencing Guidelines Amendment to begin to address the disparity took effect in November of that year (Amendment 706). This Amendment reduced sentences by an average of 15 months. A year later, in 2008, it was made retroactive (Amendment 713).

Two years after that, in an effort to reduce the racial bias in the law<sup>8</sup>, U.S. Senator Richard Durbin sponsored the Fair Sentencing Act of 2010. Congress passed the Fair Sentencing Act, which reduced the weight disparity for powder to crack cocaine from

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<sup>2</sup> <https://www.ussc.gov/research/congressional-reports/1995-report-congress-cocaine-and-federal-sentencing-policy>.

<sup>3</sup> See <https://www.congress.gov/congressional-record/1995/10/18/house-section/article/h10255-2> (“Crack is more addictive than powder cocaine; it accounts for more emergency room visits; it is more popular among juveniles; it has a greater likelihood of being associated with violence; crack dealers have more extensive criminal records than other drug dealers and they tend to use young people to distribute the drug at a higher rate. In short, the hearing evidence overwhelmingly demonstrated significant distinctions between crack and powder cocaine.”).

<sup>4</sup> <https://www.congress.gov/bill/104th-congress/house-bill/2259>.

<sup>5</sup> <https://www.ussc.gov/research/congressional-reports/1997-report-congress-cocaine-and-federal-sentencing-policy>.

<sup>6</sup> <https://www.ussc.gov/research/congressional-reports/2002-report-congress-federal-cocaine-sentencing-policy>.

<sup>7</sup> [https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705\\_RtC\\_Cocaine\\_Sentencing\\_Policy.pdf](https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf).

<sup>8</sup> See <https://www.durbin.senate.gov/newsroom/press-releases/durbins-fair-sentencing-act-passed-by-house-sent-to-president-for-signature>.

100:1 to 18:1, changing the drug amounts that would trigger mandatory-minimum sentences.

In April 2014, the U.S. Department of Justice, at the behest of then-President Barack Obama, announced a Clemency Initiative to encourage federal prisoners who would not pose a threat to public safety to petition to have their sentences commuted by the President. Many of the eligible individuals were those serving excessive federal prison sentences due to the crack cocaine disparity. A large number of nonprofit organizations and volunteer attorneys across the country, including myself, worked on the ensuing massive clemency effort known as Clemency Project 2014. Ultimately, President Obama commuted the sentences of 1,696 individuals in connection with this Initiative.

Still today, 36 years after Congress initially blundered into this morass, the effort to eliminate the racially problematic sentencing disparity between crack and powder cocaine is ongoing. On January 27, 2021, Senators Cory Booker and Durbin introduced the Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act, which would finally end the racial disparity present in federal sentencing law for crack cocaine. Senator Booker explained:

For over three decades, unjust, baseless and unscientific sentencing disparities between crack and powder cocaine have contributed to the explosion of mass incarceration in the United States and disproportionately impacted poor people, Black and Brown people, and people fighting mental illness. At a time of expanding awareness of the realities of our unjust drug laws and growing consensus for changing them, I encourage my colleagues to support the EQUAL Act as a necessary step in repairing our broken criminal justice system.<sup>9</sup>

Senator Durbin likewise emphasized that the proposed law's goal was to address racial discrimination in federal sentencing:

The crack to powder cocaine sentencing disparity disproportionately impacts people of color, with 81 percent of those convicted of federal crack offenses from 2015 to 2019 being Black. I was proud to author the Fair Sentencing Act of 2010, a bipartisan compromise which sufficiently reduced the disparity. We need to end this injustice once and for all by

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<sup>9</sup> See <https://www.booker.senate.gov/news/press/booker-and-durbin-announce-legislation-to-eliminate-federal-crack-and-powder-cocaine-sentencing-disparity>.

eliminating the crack-powder disparity, as my original bill would have done. I'm proud to join Senator Booker in introducing the EQUAL Act to get rid of this discriminatory sentencing disparity for good.<sup>10</sup>

The EQUAL Act was passed by the U.S. House of Representatives last September. The U.S. Senate has not yet voted on it.

I know you are receiving some very emotional testimony today. But I hope you will let history, experience, and common sense be your guide in this most important matter. The adverse consequences that will flow from making possession of tiny amounts of fentanyl a felony are entirely predictable and entirely avoidable.

I respectfully implore you to reject any amendments to this bill that would lower the amount of fentanyl necessary to make possession of that drug a felony.

Very Truly Yours,

*s/ Gail K. Johnson*  
Gail K. Johnson, Esq.

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<sup>10</sup> *Id.*

**George G. Chavez #86421  
SCF – West Team  
April 11, 2022  
Testimony in support of  
SB22-1326**

**Testimony Structure**

1. Introduce yourself and follow that with many thanks and appreciation for the opportunity.

**Hello everyone. My name is George G. Chavez and I want to thank you all for having me today, I appreciate your time and consideration. I am here representing incarcerated individuals as an elected representative for the Second Chance Center’s Legislation Inside. For those who are not familiar with this program, individuals who are currently incarcerated throughout the state held election to vote in 2-4 individuals, at each facility, to actively represent the voice of our incarcerated neighbors through stakeholder meetings and testimony. I am here to testify in support of SB22-1326 Concerning Measures to Address Fentanyl.**

2. Explain what you are here to represent, and be mindful of how this relates and/ or affects you personally.
3. Detail why you are for the bill and how it will be beneficial to everyone.

**I would be remiss if I didn’t start today by illustrating the harsh reality that isn’t lost on anyone. By the time we are done here today hearing testimony for and against the current bill under consideration we will ‘as a community’ have lost someone else to the out of control abuse of Fentanyl. These words are not meant to be incendiary or focus blame in any location. But to illuminate the sense of urgency in which we as humans need to move and to hopefully inspire a real sense of shared humanity, which is what it is going to take to effectively fade the current path of illegal fentanyl activity.**

**In Section 1. Legislative declaration (b) the bill reads “The increase in the number of overdose deaths in Colorado demands a comprehensive response by communities and elected officials, designed to reduce the risk of harm to all people and recalibrate the criminal justice system’s response to illegal distribution of these dangerous drugs”.**

**TO REDUCE THE RISK OF HARM TO ALL PEOPLE**

1. Expanding the list of eligible entities that are eligible for standing orders to receive opiate antagonists will effectively save more lives!
2. Creating immunity from civil liability for certain entities who act in good faith to furnish a non-laboratory synthetic opiate detection test to another person will effectively save more lives!

3. Actual treatment in the fashion of providing opiate antagonists, prescribing medication, and assessment of individuals in programs for substance use withdrawal symptoms and develop protocols for medical detoxification monitoring, medication-assisted treatment and other appropriate withdrawal management care will effectively save more lives!

The effective measures mentioned above that will save more lives are but a few of the measures that are plain as day and obvious in addressing illegal fentanyl activity.

**“AND RECALIBRATE THE CRIMINAL JUSTICE SYSTEM’S RESPONSE TO ILLEGAL DISTRIBUTION OF THESE DANGEROUS DRUGS”.**

“Recalibration the Criminal Justice System” in its current form of blanket felonies in bleeding into the train of thought that has facilitated our current circumstance of mass incarceration throughout the United States. Similar language has been instituted in the past and has led to many of the current struggles the criminal justice system faces today. The higher rate of Black and Latino’s incarcerated is not an inflated reality, the lift of tax payers is not an inflated reality, and the further decay of our society as an after effect of continue mass incarceration is not an inflated reality.

In the future I would like to see a different approach to how the criminal justice system is “Recalibrated”. That said, I ask that you vote yes on SB22-1326. Thank you all both for your time and consideration.

Dear Jamie,

I hope this last minute note finds you well. I was happy to see you and Big Dave yesterday and really do appreciate you all more than I can explain. This week was rushed and so was this testimony- I am truly sorry for that! Improvements it come.

**If you don't mind, please let Mr. Latif know that I do indeed have his number on my phone list, but have not been able to get through. I understand that he wants to have a conversation with me about my case and I truly appreciate his willingness to hear me out. I don't want to assume his capacity. I would respectfully ask that Mr. Latif consider e-mailing Capt. Clare ([cris.clare@state.co.us](mailto:cris.clare@state.co.us)) here in SCF to schedule a one hour zoom meeting as a face to face meeting will be the only way to get the insight I believe Hassan is interested in getting. In any case, I appreciate him and him even keeping me in mind.**

**Okay, I'm going to shut up now and send this off. Be well and please don't forget how amazing you all are.**

**Respectfully,  
George G. Chavez**

Hello, I am Shauntiel Goree,

I am a SCC (Second Chance Center) Legislation Representative on the Inside. Elected by my peers to be part of this process at the La Vista Correctional Center. I am the clerk for the Peer Education Mentor program, a Mental Health Peer Assistant, participating with the Alliance for Higher Education in Prisons. What I do with the Second Chance Center is be a voice for currently and formally incarcerated people in Colorado.

I am forwarding my testimony concerning Senate Bill 22-1326-the "Fentanyl Bill" where I am opposing the amendment to the bill that raises possession of Fentanyl from a misdemeanor to a felony.

In my 28 years of incarceration, I have experienced many people who suffer with addiction, as well as those who have sold drugs. What I can tell you is that I have yet to see where locking people up has been productive. In fact, I have seen the opposite. I also see the problems that lawmakers are trying to solve including: risk to community, rampant overdoses, and even deeper societal issues regarding hope, meaning, and productivity, but prison is not the solution.

People who use Fentanyl need help not prison, and people who sell this drug, are more than likely trapped in the vicious cycle of addiction themselves -- trying to survive. Conservative estimates say that if SB-22-1326 were to be passed as is, it would increase our prison populations by an additional 1,000 Coloradans. That is 1,000 more people being added to the DOC rolls while the ones who are already here are not getting the degree of help they so desperately need; all while there are alternative solutions that can be more cost effect, more productive, and more importantly, long-lasting. So let's ask ourselves:

- ❖ Do we want this Legislation to be a witch hunt? *No, we need to get people the help they need.*
- ❖ What could be some solutions? *Intensive treatment that should include:*

Medically assisted treatment. Trauma based care (getting at the root causes), which saves lives, and sober-living- which is shown and experienced, not just taught. There's also a need to deal with Victim's Impact so there's accountability and awareness that more victims are created than just those where a crime was committed against them (i.e. our families and community; just to name a few). With an average cost of \$14,000 – 30,000, these treatment options help those impacted be whole again, allowing them to truly be functional members within our communities.

Do we really want a repeat of the 80's and 90's so called "War on Drugs"? At a cost of \$42,000 - \$121,000 per person, PER YEAR, another war on drugs where we incarcerate indiscriminately does not represent a viable solution to these on-going problems. It's time for people to stop thinking that throwing people in prison is the only solution to this nation's problems, and help people to find light at the end of those dark tunnels they've be walking around in. What Lawmakers should be asking for is not more prison funding, but for quality State-funded rehabilitation programs where people will gain good quality of life, instead the hopelessness of prison for people with substance abuse disorder.

We already have drug laws in place that need worked on. We don't need to make things worse by compounding the problem. Making possession of Fentanyl in any quantity, a felony, only creates more issues than it cures. It's time for us to be part of a progressive solution instead of a regressive problem.

I am Shauntiel Goree and I am asking you to "**Oppose**" the amendment to Senate Bill 22-1326 that would make possession of Fentanyl in any quantity a felony instead of a misdemeanor.

Thank you,



Shauntiel Goree - 85998  
LaVista Correctional Facility  
1401 West 17<sup>th</sup> Street  
Pueblo, CO 81003

Attached: [Colorado Department of Corrections Cost Per Offender by Facility 2020-21](#)

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**Cost Per Offender by Facility**  
**FY 2020-21**

	2021 Facility ADP	Direct Facility Cost Per Day	Clinical Services Cost Per Day	Facility Cost Per Day Total	Centralized Cost Per Day	Administrative Cost Per Day	Total Cost Per Day	Annual Cost
<b>State Prison Facilities</b>								
<b>Level I</b>								
Colorado Correctional Center	74	\$122.27	\$11.93	\$134.19	\$10.82	\$3.91	\$148.92	\$54,355
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Skyline Correctional Center *	94	\$184.56	\$26.41	\$210.98	\$10.82	\$3.91	\$225.70	\$25,729
<b>Total Level I **</b>	<b>534</b>						<b>\$156.53</b>	<b>\$57,135</b>

<b>Level II</b>								
Arrowhead Correctional Center	393	\$84.18	\$18.42	\$102.60	\$10.82	\$3.91	\$117.32	\$42,823
Four Mile Correctional Center	398	\$80.68	\$19.27	\$99.95	\$10.82	\$3.91	\$114.67	\$41,854
Trinidad Correctional Facility	333	\$111.07	\$24.73	\$135.80	\$10.82	\$3.91	\$150.52	\$54,941
<b>Total Level II</b>	<b>1,124</b>						<b>\$126.22</b>	<b>\$46,070</b>

<b>Level III</b>								
Arkansas Valley Correctional Facility	996	\$74.12	\$32.08	\$106.20	\$10.82	\$3.91	\$120.92	\$44,135
Buena Vista Correctional Facility	943	\$87.52	\$23.42	\$110.94	\$10.82	\$3.91	\$125.66	\$45,867
Colorado Territorial Correctional Facility	664	\$114.76	\$55.49	\$170.24	\$10.82	\$3.91	\$184.96	\$67,512
Fremont Correctional Facility	1,298	\$82.59	\$29.50	\$112.09	\$10.82	\$3.91	\$126.81	\$46,287
La Vista Correctional Facility	300	\$163.37	\$37.18	\$200.55	\$10.82	\$3.91	\$215.28	\$78,575
<b>Total Level III</b>	<b>4,201</b>						<b>\$140.67</b>	<b>\$51,343</b>

<b>Level IV</b>								
Limon Correctional Facility	848	\$93.56	\$23.05	\$116.60	\$10.82	\$3.91	\$131.33	\$47,934
<b>Total Level IV</b>	<b>848</b>						<b>\$131.33</b>	<b>\$47,934</b>

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<b>Total Level V</b>	<b>4,666</b>						<b>\$176.39</b>	<b>\$64,382</b>
<b>Grand Total Level I-V</b>	<b>11,373</b>	<b>\$109.83</b>	<b>\$33.96</b>	<b>\$139.79</b>			<b>\$152.65</b>	<b>\$55,716.93</b>

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Youthful Offender System Aftercare	33	\$117.33	\$0.00	\$117.33	\$0.00	\$3.91	\$121.24	\$44,253
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YOS Jail Backlog	4	\$57.97	\$0.00	\$57.97	\$0.00	\$5.66	\$63.63	\$23,225

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April 11, 2022

Dear Colorado General Assembly:

I was encouraged to see the HB22-1326 has provisions for **mandatory treatment**. **Look at pages 12-16**. If HB22-1326 passes, the state will do an assessment and can now require **mandatory treatment** for possession of ANY amount of fentanyl or drug containing fentanyl! We will need a LOT MORE treatment facilities! **This mandatory treatment policy is what I have been begging for!**

**This could be a game changer!** Please make sure the bill has the requirement for mandatory assessment and mandatory treatment for drug abusers.

The National Institute on Drug Abuse states that, "Most studies suggest that outcomes for those who are legally pressured to enter treatment are as good as or better than outcomes for those who entered treatment without legal pressure. Individuals under legal pressure also tend to have higher attendance rates and remain in treatment for longer periods, which can also have a positive impact on treatment outcomes" (<https://nida.nih.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations-research-based-guide/legally-mandated-treatment-effective>).

Also, check this out:

The Effectiveness of Coerced Treatment for Drug-Abusing Offenders BY DAVID FARABEE, MICHAEL PRENDERGAST, AND M. DOUGLAS ANGLIN\*  
<https://www.uscourts.gov/file/23151/download>. They look at 11 studies in this paper.

My conclusion is looking at a lot of these studies is that it depends on exactly what the treatment plan is on whether it is effective. Some treatment programs work, and some don't, whether forced or voluntary.

However, I am deeply disappointed and frustrated that the proposed "Fentanyl Bill" HB22-1326 does nothing to address possession of up to 4 grams of fentanyl which can amount to 2,000 fatal doses of the drug. Fentanyl, which is fatal at about 2 or 3 milligrams, is 50 times more potent than heroin and 100 times more potent than morphine ([https://www.gisentinel.com/news/western\\_colorado/many-believe-4-gram-law-is-flawed-when-it-comes-to-fentanyl/article\\_424bdc18-9595-11ec-ab31-6b77e220a4f8.html](https://www.gisentinel.com/news/western_colorado/many-believe-4-gram-law-is-flawed-when-it-comes-to-fentanyl/article_424bdc18-9595-11ec-ab31-6b77e220a4f8.html)).

**Surely you realize that drug dealers will simply walk around with less than 4 grams of drugs and when caught will claim to be "just users." Police will then only be able to issue a ticket, like they do today.**

Unless the police are able to prove (beyond reasonable doubt) intent to distribute, or personally observe fentanyl distribution, they will not be able to arrest dealers under this proposed new law!

Also, it is time for the Colorado General Assembly re-felonize hard drugs (such as meth, heroin, and fentanyl) to promote stronger incentives for public drug abusers to take the option of drug treatment in the Drug Courts versus opting for jail time or probation. I Demand that the Colorado General Assembly Repeal the Defelonization of Hard Drugs Laws now (<https://leg.colorado.gov/bills/hb19-1263>). The illegal street drugs today are commonly laced with deadly fentanyl that is killing two people a day in Colorado (<https://www.denverpost.com/2021/09/26/fentanyl-deaths-colorado/>).

See what else you can do to stop the further decline of Colorado at  
<https://www.safeandcleanddenver.com/actnow>.

Thanks,

**Terry H. Hildebrandt, PhD**  
+1 (720) 318-6625  
email: [terry@terryhildebrandt.com](mailto:terry@terryhildebrandt.com)  
Denver, CO 80204

Mr. Chair and members of the judiciary committee, thank you for the opportunity to present to you today.

My name is Helena Heister, and I am with a group of medical and pre-medical students from Rocky Vista University in support of only certain aspects of this bill for its ability to get life-saving opioid antagonists into the community.

As a future physician, I am here to specifically speak to the importance of increasing availability of Narcan for trained individuals such as medical students as introduced in sections 12 and 21 of this bill. To illustrate the importance of getting Narcan into the hands of trained individuals, I would like to tell you a personal story.

In summer 2019, my extended family gathered out of state at a secluded venue for a wedding. As we were excitedly conversing and awaiting the bride's walk down the aisle, I noticed a family member slumped in their chair. I tried chatting with this family member but got only confused and slurred speech in return.

This family member had a history of poorly managed chronic pain. A history of insomnia. And a history of mixing and concocting drugs—prescribed or otherwise—for self-treatment of the two.

I was a trained EMT. And this family member's shallow breathing, pinpoint pupils, and history of mismanaged chronic pain pointed me to one thing: an opioid overdose. My EMT training kicked in. I knew exactly what to do: give Narcan and transport. But off-duty and out of the state where I had EMT licensing, I had no Narcan—and in that moment there was nothing I could do.

I called 9-1-1 and waited. An eternity passed between each shallow breath, and I realized then what I now know: training folks how to recognize opioid overdoses and how to treat them with Narcan is only any good if these people also have Narcan in hand.

As you've heard from medical professionals and my student peers, we want to have Narcan in hand to benefit our community—our own loved ones. As medical students, there are numerous occasions—whether through volunteering, or just out and about in our communities—where people look to us to act on our training to save lives. Getting Narcan into the hands of trained medical students will help us save those lives instead of resigning us to sitting back and counting the seconds between each breath.

My story has a good ending: As paramedics arrived, my family member's life was saved by Narcan administration that day. But the opioid in my family member's system was morphine, not the far more potent fentanyl. As we've heard from so many other speakers today, fentanyl kills fast. And this is why we need Narcan available on hand.

I would like to conclude by urging you to reconsider certain aspects of this bill and the ways they criminalize addiction and those seeking to save the life of overdosing individuals. My concern, based in evidence, is that further criminalization of opioids will only discourage those who are struggling with pain and addiction from seeking the treatments or emergency services that would save their life. It will prevent good Samaritans from intervening to save lives.

Thank you for your time.

KYLE

On behalf of Second Chance Center's Legislative Inside group and the men of Buena Vista Correctional Facility I would like to speak to you today to encourage you to amend HB 1326. As it stands and despite its intentions, this bill will not adequately or substantially address the public health crisis that fentanyl has created.

Criminalizing a health crisis is not a way to curb the crisis. Instead of working to treat the root causes or even the symptoms of fentanyl abuse this bill chooses to warehouse thousands of people. Hear no evil, see no evil is not a successful governance. There are not enough programs in the DOC system, the community corrections system, or the community to even make locking up or treatment an option. Felonizing any possession to force someone to treatment is a farce, treatment only works when it is the individual needing treatment that seeks it on their own will. This must be amended. Do not just pass this bill to say that you did something. Because you will simply have kicked the can down the road. Get in the trenches, ask the hard questions, be ready for the ugly truths. This is a moment of crisis, but also a moment of opportunity. Today you can choose to make a real difference, a real change. Many of you came to this body to make a positive impact on your neighborhoods, districts, and state. It is time to back those words, work to change this bill to help those who desperately need it, those people are your constituents. Those people are your neighbors. Those people may even be your very own family. Do right by them, do not felonize a health crisis.

~~Further, I urge you to look into where the funding of this bill~~

I further strongly urge this body to reconsider its decision to divert funds from the Mental and Behavioral Health budget for the funding of this legislation and urge this body to divert funds from the CDPHE or other

non vital funds, the state general fund or to seek federal grant funding to fund harm reduction and opiate antagonist programs.

I also urge this body to increase access to rehabilitation programs. This can be achieved through the opening of more state operated facilities or requiring private facilities to accept Medicaid or state subsidized treatment. These facilities will make a difference. Prison will not. IF this body is willing to disburse funds to imprison thousands of new people each year then it must attempt every measure prior to incarceration. Fund treatment. Fund diversion. Fund real change and do it now. Amend HB 1326, make the difficult changes that we so desperately need. Thank you.

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Hello and thanks for having me today. My name is Lamar Blackwell and I am representing incarcerated individuals as an elected representative for Second Chance Center Legislation Inside.

Did you know that Law Enforcement has argued that they can't arrest people for simple drug use because it's a misdemeanor? This is not accurate... From January 2020 to January 2022 there were more than 31,000 drug cases filed in Colorado that were handled by the state Public Defenders Office and the majority were for simple possession!

I am testifying today to vehemently oppose making simple possession a felony in the amendment of HB 22-1326.

Speaking from personal experience, I was convicted of simple possession of crack cocaine of less than a gram back in 1977 and in 2006 that simple possession felony was used against me again to qualify me as an habitual criminal. Thus enhancing my sentence from 6 yrs. to 18 yrs.

Minorities and low-income communities has and will continue to take the brunt of drug laws. It wasn't until March 2020 that HB 19-1253 went into effect that made simple possession a misdemeanor and here we are two years later trying to revert back to the laws of the past that was proven not to work and that's why they were changed in the first place.

Our country and our society is and has been about progression and I strongly implore us to stay the course

There's no correlation between drug overdose death rates and the severity of criminal penalties for simple possession.

Overdose death rates in Colorado began to climb in 1999 and started to spike in 2016 and simple possession was a felony!

~~So while I believe overdose~~

So while I do believe overdose deaths is a health crisis  
I also believe that reverting back to the war on drugs just  
say say no mentality is not the answer. Let's continue to  
progress not regress.

The Center of Disease Control Prevention States (and I quote)  
"Overdose rates has risen in recent years including in states where  
simple possession is a felony." (end quote)

These are facts that show and prove that stiffer penalties  
do not always work. But we do know that stiffer penalties such  
as classifying simple possession as a felony will lead  
back to mass incarceration of minorities and those on  
low-income such as myself and 95% of the people I know.

I adamantly oppose the amendment purposed to  
HB22-1326 making simple possession a felony and I beg and pray that  
~~the~~ you elected officials hear my cry and that it does  
not just fall on death ears.

Thank You

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Thank You



# LAW ENFORCEMENT ACTION PARTNERSHIP

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Date: April 12, 2022

Re: HB22-1326 Fentanyl Accountability And Prevention

Position: OPPOSE

To: The Colorado House Judiciary Committee

Dear distinguished members of the House Judiciary Committee:

As an organization of law enforcement professionals, the Law Enforcement Action Partnership is writing to express our opposition to House Bill 22-1326. LEAP is a national nonprofit group of police, prosecutors, judges, and other law enforcement professionals who speak from firsthand experience. Our goal is to make communities safer by focusing law enforcement resources on the greatest threats to public safety, addressing the root causes of crime, and healing police-community relations.

Colorado ceased felonization of small amounts of drugs in 2019. It now looks to take a step in the wrong direction by reinstating felony possession for small amounts of fentanyl, putting this issue squarely back on law enforcement to enforce.

When it comes to drug addiction, police are not effectively equipped to help. Very few people who conquered their addiction did so because they were arrested and incarcerated for a drug offense. Incarceration is not a pathway to making our society safer.

This fact is backed up by research and data. For example, a 2019 study by the Pew Charitable Trusts found that drug imprisonment and rates of drug arrests do not decrease overdose deaths or otherwise alleviate the societal toll of drug addiction.<sup>1</sup>

If anything, the arrests we make for low-level drug possession are likely making things worse. Having a felony record negatively impacts a person's ability to succeed in life. The stigma that accompanies a past conviction makes it harder to find a job, rent an apartment, receive student aid, and

**LawEnforcementActionPartnership.org**

*Formerly known as Law Enforcement Against Prohibition*

invite hundreds of statutory restrictions, including prohibitions on certain occupational licenses and fields of work. Yet, our state relies on felony convictions and incarceration as a response to substance use.

Criminalizing fentanyl will prevent people from calling for help in an overdose situation. Criminalization also encourages people to take the drug as quickly as possible after buying it, to reduce the chance of being arrested, which leads to its being used in unsafe environments and increasing the chance of overdose. Criminalization makes it more difficult for people to stabilize their lives, making a return to drug use more, not less, likely.

We are also concerned to see that the state might walk back its commitment by re-felonizing fentanyl possession with House Bill 22-1326. Designating certain drugs in the fentanyl family as 'special', as this legislation does, and criminalizing it when other drugs that have already been decriminalized creates a marketplace ripe for innovation, in which new drugs will take the place of fentanyl on the market. There are plenty of other synthetic opioids besides fentanyl waiting in the wings to take center stage in Colorado if you, the lawmakers, make fentanyl possession a felony.

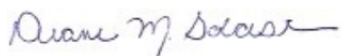
We also believe that House Bill 22-1326 will diminish trust between police and the communities we serve. Law enforcement is only as strong as its relationships with the public, because we prevent and solve crime based on information from witnesses and victims. When our officers solicit help in investigations, citizens frequently exhibit reluctance to cooperate if they have experienced loved ones being arrested as a result of their addiction.

Any officer will tell you that the police's top priority should be to prevent and solve serious crime. Yet we relinquish the community trust we so desperately need for these serious cases when we make low-level arrests. In 2019, trust that was lost between the community and police was repaired with defeloning. Reinstating felony penalties for minor possession will drag these efforts backwards and take years to gain that trust again, if we ever can.

In order to rebuild trust and strengthen our ability to solve crimes, police should hand responsibility for solving addiction over to health professionals. House Bill 22-1326 would make it harder for Coloradans to overcome addiction, destroy trust in police, and tie up scarce criminal justice resources. Colorado cannot afford to make this change.

Thank you for the opportunity to share our perspective in opposition to this bill.

Respectfully,



Lt. Diane Goldstein (Ret.)

Executive Director, Law Enforcement Action Partnership

I. "More Imprisonment Does Not Reduce State Drug Problems ...." 8 Mar. 2018,  
<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>.  
Accessed 2 Feb. 2022.

# Testimony

## Against the Amendments in Sections 2, 3, 4 & 6 of HB22-1326

Monir Wood

Thank you all for this huge opportunity to speak on such a critical issue that all our communities, both outside and inside, are dealing with.

My name is Monir Wood, and I represent Second Chance Center's Legislation Inside initiative, as well as the minimum-restricted residents housed at Sterling Correctional Facility. I am testifying against the Amendments contained in Sections 2, 3, 4 & 6 within House Bill 22-1326.

The first lines of this bill recognize the fact that "*Colorado has not adequately funded behavioral health interventions, treatment, overdose prevention, and other supportive services that **research demonstrates** reduce the risk of harm and the recovery of people suffering from a behavioral health disorder*" (pg. 4, lines 12-15). Simultaneously, however, the Amendments in Sections 2, 3, 4, & 6 within this bill also propose to inundate the criminal justice system with that which is ultimately a behavioral health problem.

Immediately, these amendments are fiscally irresponsible and unrealistic. HB22-1326 asks for \$29,300,000.00 to be applied to supportive services, which "directly" address the behavioral health crisis of fentanyl and its analogs. "Indirectly," however, the proposed amendments demand a perpetual extra \$20—\$30 million per year through a projected increase in DOC's population by turning a 1,000+ behavioral health cases into criminals instead of addressing them patients.

We must reconcile with the fact that most distributors of these dangerous drugs are users of and addicted to those substances themselves. Furthermore, people do not stop abusing these substances just because they come to prison. Blatant proof of this is that fentanyl, its analogs, and the crises that accompany these substances are currently just as rampant in prison as in the free world. This month alone Sterling Correctional Facility has had several incidents wherein residents were caught with drugs, gave positive U.A.s, overdosed, or staff were inadvertently exposed to dangerous substances and immediately rushed to the hospital for detox.

Colorado prisons are currently short-staffed, recovering from the ravaging blows of COVID, and struggling with no, or miniscule, educational, pre-release, cognitive, or vocational programming—let alone behavioral health programming. The context of prison exacerbates the unaddressed behavioral health issue(s) at the root of drug addiction and distribution, and the amendments in this bill would only further aggravate this dilemma.

Lastly, at a time when our State and the Department of Corrections are trying to implement effective initiatives to help incarcerated men and women successfully re-enter society, the amendments proposed in this bill act contrary and counterproductive to the momentum and gains we have fought hard to achieve toward these ends.

Creating more felons and increasing the prison population is a “pseudo-solution” **that research and experience has already and clearly demonstrated does not** promote the recovery of people suffering from a behavioral health disorder.

As initially acknowledged by the General Assembly, interventions, treatment, overdose prevention, public education, and other supportive services are “demonstrated” solutions to addiction crises. I ask that these would be the solutions diligently pursued, while removing the proposed amendments in Sections 2, 3, 4, & 6 from the language of this bill.

Again, I sincerely thank you all for your time and serious consideration.

Hello everybody my name is Paulette Joyce and im representing as an elected facility representative at Denver Women's Correctional Facility for Second Chance Center legislative inside. Thank you all for having me today. IF you are not familiar with the legislative inside, this program allows the incarcerated community within the state to vote and elect a handful of individuals at every facility to provide a voice for our incarcerated neighbors via virtual meetings and testimony. I would like to testify against HB 1326 as it stands. I can't downplay or disregard the fact that Fentanyl is detrimental even fatal but increasing the penalty from a misdemeanor to a felony would increase the prison population unnecessarily. It's unsettling for society as a whole to incarcerate people who need intervention, it puts strains on taxpayers and does nothing to boost the economy. If we are going to enhance the punishment then the time frames for sealing a criminal record should be reduced from the excessive lengths they currently stand at. Although the intent of the general assembly is to reflect the sentence/punishment based off the high risk of addiction and death associated with fentanyl, it should also focus on building support and employment opportunities for the people who sell drugs because they need a way to get by. Prioritize treatment for people stuck in addiction and have some kind of 3 strike rule before prison comes into play. Prisons are not a therapeutic community to help drug offenders due to the prevalence of drugs in prisons. Amend the punishment for simple possession and establish some sort of element

to differentiate a person who "knowingly" puts others at risk and someone who isn't aware. This bill is challenging in its entirety when we consider fighting the war on drugs but also refraining from Mass incarceration. With adjustments this bill would be beneficial for everyone, but right now I ask that you vote "NO" on this amendment until it reaches its full potential and produces the best results for society. Thank you so much for your time and I'm honored to have this opportunity to speak on HB 1326.

Paulette Jayce  
199209

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199209

RE: HB22-1373: Court-ordered Restitution Paid By Juveniles

April 20, 2022

Dear Members of the Judiciary Committee,

Thank you for taking the time today to listen to my testimony. My name is Seth Larhode and I am 21 years old. I am sharing this story from the Denver Detention Center through a mentor of mine. I am writing to support House Bill 22-1373.

When I got my sentence the court said they had 90 days to decide restitution. I never got notice of the court hearing about that decision. After a year of being locked up, only when I had a new Client Manager was I told that I even had restitution. The only reason she said something was to ask if I knew how much it was. I said, "no " and she said, "it was over \$200,000". I only found out that I was accruing interest a few months later when my parole officer checked back in with me to give me the new number. That meant a year had gone by of me accruing interest in restitution I never knew I had. When she told me how much I owed it didn't feel real. I didn't understand why or how it could be that much. It was daunting, I had no idea how I was going to deal with it. The only way I could cope was to try and push it away and not think about it, but I couldn't. It haunted me every day.

I reached out to the public defender's office and a woman came to see me and explained why it was the amount it was, it was all towards Medicaid. I didn't understand why I would have to pay an insurance company so much money. My restitution started at \$179,000 but by the time I left, it was over \$220,000.

I was locked up for 3 years and 8 months. Getting out was really hard. Lookout Mountain Youth Service Center didn't help me get set up in any way to transition back into my community. I didn't even have an ID. If I didn't have my family I would have been homeless. I was 21 with no prior job history, no references, it was so hard to get a job. It took me a month to get a dishwashing job for minimum wage.

At this point, I was still trying to figure out how I was going to start paying my restitution. I needed to get to the courthouse in Boulder but I was living in Longmont. When I finally got a job I couldn't afford to take any days off to get to the courthouse. I spoke with a lawyer who said my best option was to file for Chapter 13 bankruptcy. But even to do that I needed to pay \$235 for the case filing fee and a \$75 miscellaneous administrative fee. I had to pay for a phone bill which is \$45/month. My mom helped me out the first month but said I needed to find a place on my own. I moved in with a buddy of mine who was taking care of his bedridden mother so I was helping pay for her medications, rent, and groceries, it all added up.

In just two paychecks somehow it was all gone and I started to freak out that I wasn't going to be able to start paying restitution and then I would get locked up again. I know it is not an excuse and I take full ownership for my choices but that stress for money was the main reason I reoffended. I needed money fast and in the thick of all of it I didn't see any other option.

I know what I did was wrong. I also believe that I would not be where I am right now if I did not have such a huge restitution fee weighing on my shoulders. Passing HB22-1373 will ensure that youth truly get a second chance - to be a better person who has learned from their mistakes and can live their fullest potential - a contributing member of their community.

RE: HB22-1373: Court-ordered Restitution Paid By Juveniles

April 20, 2022

Dear Members of the Judiciary Committee,

Thank you for taking the time today to listen to my testimony. My name is Shawn Pollock and I am 20 years old. I am writing to support House Bill 22-1373.

I am sharing my story to bring light to the impact that restitution has had on my life. This in no way negates the past choices I have made or the impact I have had on my victim. I take full ownership for my past. What I did was wrong, I am traumatized every night by the choices I made. I have had the same nightmare every night since Oct 28th, 2017.

I first got caught up in the system in 2015, I owed \$2,000 in restitution fees. I was 14 and I didn't have a job (at this point in my life I still didn't know how to read). My mom was working a minimum wage job and couldn't help me pay it off, so I didn't.

On November 2nd, 2017 I was sent to Spring Creek Youth Services Center. In 2018 I was sent to Mountview for a few months before being transferred to Lookout Mountain Youth Services Center where I stayed until 2021. From the beginning, I knew I had restitution but I never knew how much it was. It wasn't until halfway through my sentence that my PO called to tell me how much I owed, \$256,420.85. At first, I couldn't comprehend how much money that actually meant. It wasn't until I said it to a staff who replied, that's a phone number, that it started to click. After that, I got on a virtual visit with my mentor. We were talking about how due to good behavior I was going to be moved to a halfway house in the next few months. She asked me if I had started to think about what I would do with my life upon release. My immediate response was, "well I'm not going to college". When she asked why I shared that I had just learned how much I owe in restitution. I asked her, "if I pay \$100 a month how many years will it take me to pay that off". She told me, "213 years".

I was heartbroken, I will be in debt for the rest of my life. Will my kids have to pay off what I don't after I die? I tried to get a breakdown of where the fees were going to and I was met with obstacles every step of the way.

As soon as I transitioned to the halfway house I set up a payment plan for restitution. It is \$50/month. I am currently paying off the first restitution fee I have which is \$2,000 plus interest. At the current rate in 3 years I will begin to pay off my other restitution which is accumulating interest every year, I currently owe over \$275,000, which means at the current rate it will take me 426 years to pay off all my restitution.

It is a stress that weighs on me every day, with every decision I make it is in the back of my mind. Every month I have to pay \$50/month towards restitution, \$55/month for a phone, and any other needs I have like getting a haircut, food, and clothes, and I am currently paying for my

mom's car payments which is another \$500/month. I am constantly worried that when I leave here in 6 months and have to pay for rent I won't have enough money, that there will come a time when I have to decide to pay rent to keep a roof over my head or to pay restitution, so it doesn't go to collections and I end up in jail.

I am terrified to go to the courthouse by myself to pay my restitution every month. Last month I went to pay my restitution and was handcuffed and detained because they said there was a warrant for an arrest for a failure to appear in court but the court date was when I was locked up. I tried to tell them that was impossible because I was at a halfway house and had just recently spoken with my PO. After 20 min in handcuffs, the police officers said they made a mistake and let me go, I ran out of that courthouse as fast as I could. I try now to always have a staff member come with me just in case. I don't ever want to be locked up again.

My dream is to own my own business. I want to go to business school. I want to start a business but I would need to take out a loan. How do you do that when you have a credit score of 0? I understand that I need to pay for the harm I have done, but does it have to be a life sentence? Am I not allowed a second chance to prove that I have learned from my mistakes? To become an upstanding citizen who gives back to my community?

A wise man once told me that my story is no longer my story, my story is for others. If nothing else I hope that by hearing my story you are moved to pass bill HB22-1373. That this bill can help the future of so many young people, that they do not have to go through the same thing that I have to go through. Thank you for your time.

**Testimony to Amend HB 22-1326**  
**Fentanyl Accountability and Prevention**



Members of the House Judiciary committee, I am here today to implore you to amend HB 22-1326 which includes important harm reduction support, funding for Overdose awareness education and also includes terrible sentence enhancements and mandatory treatment requirements..

My name is Barb Cardell, I am the Legislative Chair of CORA, - Colorado Organizations and Individuals Representing HIV/AIDS. CORA has been representing people living with HIV and organizations which serve them in the state for 28 years. We have partnered with the Colorado Department of Health to draft policies that impact the lives of the 14,630 Coloradans living with HIV and the countless Coloradans who are vulnerable to acquiring HIV. I am also representing the US Positive Women Network, a national advocacy group led by and for women living with HIV.

We must testing in a position of amend, we know this was introduced in the hopes of impacting the epidemic of overdose deaths in Colorado. As it is written, HB 22-1326 will increase the penalties for fentanyl distribution and creates a new category of crime for the distribution of fentanyl resulting in a death.

While we are concerned about overdoses and the tidal wave of fentanyl in our state, as harm reductionists, we realize that increased policing and penalties of folks who use drugs will lead for more incarceration, and will do little to impact the overdose epidemic. If the war on drugs worked, we would have moved beyond these challenges 30 years ago. These laws target lower income folks and communities of color who have long suffered from over policing and mass incarceration.

In many cases, DA's, police chiefs and sheriff's offices do not believe these penalties go far enough, hoping that legislators will increase penalties for simple drug possession. The folks at the Colorado Criminal Justice Reform Coalition (CCJRC follow them if you don't already) believe that an amendment will be added to make possession of fentanyl a felony, no matter how small the amount.

While there are many positive parts of HB 22-1326 including increases in funding for harm reduction services, fentanyl testing strips, overdose prevention and treatment, the good does not outweigh the damage this bill will visit upon our communities.

Other problematic pieces of the legislation include a call for MANDATORY treatment for people evaluated and determined to have an addiction as a condition of probation which is not an effect was to engage people in treatment and recovery. Getting tough on people who are using fentanyl is a bad policy and will result in fear of arrest preventing folks calling for help if someone overdoses or needs assistance.

**Testimony to Amend HB 22-1326**  
**Fentanyl Accountability and Prevention**

While HB 22-1329 has several helpful provisions including expansion of naloxone standing orders and good Samaritan laws, increasing funding for Harm Reduction programs and development of a statewide fentanyl education and awareness campaign, we still have grave concerns. The mandated assessment and potential court ordered treatment of individuals convicted of fentanyl is a challenge to bodily autonomy and is not an effective recovery programmatic strategy.

Increasing criminalization will disproportionately harm already over policed communities and will worsen instead of reducing the overdose crisis in Colorado.

Thank you ,  
Barb Cardell  
2760 15th Street  
Boulder, CO 80304



To: Representative Mike Weissman, House Judiciary Committee Chair  
Members, House Judiciary Committee

From: Matt Pagnotti, State & Local Government Relations Director, Vivent Health

Re: Request to Amend HB22-1326 Relating to Fentanyl Response

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Vivent Health appreciates the opportunity to submit testimony regarding HB22-1326, concerning fentanyl accountability and prevention. We've long believed that we cannot end the HIV epidemic without also ending the overdose epidemic and we appreciate the General Assembly's attempts to respond swiftly to this crisis. While we heartily support provisions in the bill that would expand access to evidence-based services like naloxone, test strips, and medication assisted therapy, including for those who are incarcerated, we are deeply concerned by other measures in the bill that would repeat failed criminalization approaches at the expense of proven public health efforts. ***Vivent Health respectfully urges the committee to amend HB22-1326 to remove the enhanced criminal penalties for fentanyl distribution and mandatory treatment requirements for individuals convicted of fentanyl-related crimes.***

Vivent Health (previously Rocky Mountain Cares) is a 501(c)3 non-profit organization serving more than 2,100 Coloradans affected by HIV in the Denver and Pueblo areas each year. Our unique integrated, comprehensive model of care brings together medical, dental, and mental health care; clinical and traditional pharmacy services; food pantry and nutrition services; housing assistance; legal aid; and care management and coordination services for people living with HIV. Vivent Health also provides prevention programs, including Pre-Exposure Prophylaxis (PrEP), testing, and harm reduction services to help reduce the transmission of HIV. All the services Vivent Health provides are available regardless of the ability of the people we serve to pay for them, or their insurance status.

We proudly provide life-saving harm reduction services through our Lifepoint program, including:

- Providing sterile syringes and safer injection supplies to people who inject drugs
- Safely disposing used syringes

- Distributing naloxone and fentanyl test strips
- Referring participants to medical, mental health, and other supportive services

Thanks to the judgment-free care we provide at our Denver program, we were able to distribute more than 1,300 doses of naloxone and reversed 31 overdoses in 2020 alone. These services are well-studied and have consistently been found to be highly effective at preventing overdose deaths and improving the health of people who use drugs.

We are pleased to see HB22-1326 includes increased funding for naloxone and fentanyl test strip distribution and an expansion of the community institutions that can provide these lifesaving tools. We also support measures that will significantly expand access to medication assisted treatment and detox for those who are incarcerated, and that will better connect individuals to harm reduction services upon re-entry. Lastly, greater community education efforts to help raise awareness around fentanyl and measures folks can take to prevent an overdose will undoubtedly help save lives.

However, our organization is gravely concerned by a number of other provisions in the bill that will double-down on harmful approaches based in criminalization, misinformation, and stigma. Specifically, the bill proposes to raise the criminal penalties for individuals who are charged with distribution of fentanyl. This includes the creation of a new “drug induced homicide” charge if an individual is connected to an overdose death. History has repeatedly shown that increased penalties are ineffective and perpetuate the harms caused by mass incarceration. Similar legislation in other states has led to worse racial disparities in sentencing, has primarily targeted low-level dealers or the deceased’s friends or family, and has not reduced overdose rates. More criminal investigations will also divert critical resources from community-based harm reduction efforts and will discourage individuals from calling 9-1-1 when an overdose occurs.

Vivent Health also opposes the bill’s proposal to mandate treatment for some individuals convicted of fentanyl-related crimes. This provision violates autonomy and fails to take into account the existing shortage of treatment availability for even those who choose to undergo treatment. Since coerced treatment is less effective than treatment that is voluntarily opted into, it actually increases the risk that an individual overdoses as they will have a reduced tolerance if they subsequently relapse.

We agree that Colorado must respond urgently to reverse the tragic tide of overdoses devastating our state. Our organization can attest firsthand that the way to end this crisis is by meeting people who use drugs where they are and providing harm reduction services without stigma, not through more criminalization and failed “war on drugs” approaches. ***Vivent Health strongly urges the committee to follow public health, not fear, by amending HB1326 to remove the criminal penalty enhancements and forced treatment provisions. We also ask that the committee to reject the misguided calls to refelonize fentanyl possession.***

Dear Elected Leaders,

I beg you to vote to felonize fentanyl--*for everyone's benefit*. This is essential not only to impose a meaningful *deterrent* to use as well as dealing, but also to give law enforcement, prosecutors, and judges both the tools and the mandate to put *existing* users into mandatory treatment--and also, importantly, to keep the rest of the community safer and more secure, which has ripple effects on wellbeing and prosperity broadly.

As things stand, many fentanyl users *and even many dealers* get off on PR bonds and fail to return, or often aren't even cited in the first place given the unfounded, illogical, perverse carve-out of current law that lumps fentanyl together with less potent and destructive drugs. Then those folks are right back to their self- and neighborhood-destructive ways, which—tragically—they can scarcely resist (absent intervention) due to the drug's devastatingly powerful addictive quality. Individuals are dying or at least wasting away in droves—and surrounding families are being shattered and communities decaying along with them. Police, prosecutors, and courts must be able to give "tough love" to rescue users from themselves. Coddling and *enabling* is manifestly counterproductive, as we've been seeing empirically, here and in other states.

In addition, you have a concurrent responsibility to protect the 99+% rest of your constituency and not allow rampant open hard drug use, which I see outside of schools, in parks, in our public transit, outside small businesses, and all along the streets. You're naive at best if you think that public scourge doesn't have terrible trickle-down impacts on others—on children who see it happening; on business who close their doors and shut down or move (or just get less business) thus eliminating jobs and income for needy families; on potential future Colorado residents who choose not to move here, and on current residents who move elsewhere in light of the depressing trends and counterproductive state policies.

Fentanyl is not like other drugs—as you know. It's a wholesale addicter and killer that is not tolerable and sustainable at any level. Do not be fooled by misleading, if subjectively well intentioned, activists whose proposals aren't grounded in good data and who have vested interests (in a personal virtuous identity and/or financially/professionally) in the *perpetuation and institutionalization of continued hard drug addiction and dependency*, rather than in the reduction of it. They are neither "compassionate" nor "progressive," since their policies will ultimately result in the new creation and the lasting entrenchment of more harm.

**COLORADANS ARE WATCHING. PLEASE DO YOUR DUTY AND PROTECT ALL OF COLORADO'S PEOPLE BY FELONIZING ALL POSSESSION OF FENTANYL.**

Thank you for your time, consideration, and faithful public service.

Respectfully,

M. Miller

Denver citizen, homeowner, patron, future parent, and voter