

Initiative 85: Increase Penalties for Fentanyl Crimes

Placed on the ballot by citizen initiative • Passes with a majority vote

Initiative 85 proposes amending the Colorado statutes to:

- increase penalties for possession and distribution of any amount of certain synthetic opioids, commonly known as fentanyl; and
- eliminate the possibility of reduced sentences for offenders in possession of one to four grams of fentanyl after completing drug treatment.

What Your Vote Means

YES

A “yes” vote on Initiative 85 makes possession of any amount of fentanyl a felony, eliminates treatment-based sentence reductions for certain possession cases, and requires an 8-year minimum prison sentence for fentanyl distribution convictions regardless of quantity.

NO

A “no” vote on Initiative 85 would keep minor possession charges of fentanyl a misdemeanor, maintain tiered felony penalties for fentanyl distribution based on drug quantity, and keeps court ordered treatment an option for more offenders.

Summary and Analysis of Initiative 85

What is fentanyl?

The term “fentanyl” is used to refer to a class of potent synthetic opioids with similar characteristics. Fentanyl is used medically for pain relief. Possessing or distributing fentanyl without a prescription is illegal. Fentanyl has become the leading cause of drug overdose deaths in both Colorado and the United States because it can be fatal in very small amounts and is often mixed into other illicit drugs without a user’s knowledge.

What are the current penalties for fentanyl offenses in Colorado?

Different penalties exist for different types and quantities of drugs. Current penalties range from court-ordered treatment, fines, and probation to incarceration. State law specifies which fentanyl offenses require prison sentences, which qualify for alternative penalties, and those subject to judicial discretion.

The severity of the charge and associated penalties depends on the intent to distribute and the weight of the involved substance. A “substance” includes any mixture containing fentanyl, and substance weight does not reflect the amount of fentanyl itself.

Under current Colorado law, only some fentanyl crimes require a minimum prison sentence of eight years. This includes offenders who:

- distributed to a minor;
- distributed more than 50 grams of a substance; or
- distributed at least 4 grams of a substance that caused death.

In other cases, state law allows for sentences such as probation and treatment, and prohibits prison for offenders who either:

- possessed less than 1 gram of a substance, did not intend to distribute, and do not have multiple past fentanyl convictions; or
- distributed less than 4 grams and were eligible for "Good Samaritan" protections that reduce criminal penalties for reporting an overdose and staying until help arrives.

When prison time is neither mandated nor prohibited by state law, a judge may determine a sentence within a penalty range. In these scenarios, judges consider the unique circumstances of the offense, including whether an offender could benefit from drug treatment or if the offender was aware of fentanyl in the substance. Judges may also reduce or modify a sentence in exchange for successful completion of treatment.

How will penalties change under Initiative 85?

Initiative 85 will make penalties harsher and prison sentences longer for fentanyl offenses. It mandates a minimum sentence of at least eight years in prison for individuals who distribute any amount of fentanyl. The measure also eliminates "Good Samaritan" protections for distribution offenses. For possession related cases, it permits varying lengths of imprisonment depending on quantity.

Except in possession cases of less than one gram, Initiative 85 restricts judicial discretion to reduce sentences for completing court ordered treatment. It also prohibits judges from considering whether an offender reasonably believed the substance did not contain fentanyl.

Table 1 compares fentanyl offense sentencing between current law and Initiative 85.

Table 1
Fentanyl Offense Sentencing Under Current Law and Initiative 85

Offense	Sentencing under Current Law	Sentencing under Initiative 85
Distribution over 50g	Mandatory, 8-32 years in prison.	Mandatory, 8-32 years in prison.
Distribution 4-50g	Possible, 4-8 years in prison. Increased sentence for distribution resulting in death or distribution to a minor.	Mandatory, 8-32 years in prison.
Distribution under 4g	Possible, 2-4 years in prison. Increased sentence for distribution to a minor; reduced sentence for "Good Samaritan" actions.	Mandatory, 8-32 years in prison.
Possession 1-4g	Possible, 0.5-1 year in prison. Reduced sentence for reasonable deniability. Treatment eligible.	Possible, 2-4 years in prison. Not eligible for reduced sentence.
Possession under 1g	No prison time. Increased sentence for multiple past convictions; reduced sentence for reasonable deniability. Treatment eligible.	Possible, 0.5-1 year in prison. Eligible for reduced sentence for treatment.

Argument For Initiative 85

- 1) Fentanyl is highly potent and deadly, and it warrants stronger penalties than other drugs. The measure targets traffickers with harsher sentences and disrupts the distribution of fentanyl, including when it is mixed into other substances. Finally, longer prison sentences for fentanyl offenders will enhance public safety by keeping them off the street, as well as provides victims and their families with a greater sense of justice. Initiative 85 demonstrates Colorado's commitment to addressing fentanyl-related crime.

Argument Against Initiative 85

- 1) Initiative 85 will not reduce fentanyl use, lower crime rates, or prevent overdose deaths. Individuals may be discouraged from seeking addiction treatment, or calling for emergency assistance during overdoses, due to fear of criminal prosecution and prison time. The measure treats people who distribute trace amounts of fentanyl as major drug distributors. In addition, the measure would shift resources away from treatment programs and other public services and toward an already overcrowded and understaffed prison system.

Information about the organizations supporting and opposing this measure is available on the Colorado Secretary of State's website:

www.coloradosos.gov/pubs/elections/Initiatives/ballot/contacts/2026.html

- 1 **Fiscal Impact of Initiative 85**
- 2 The fiscal impact will be included in the second draft.