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"You can't incarcerate yourself out of the drug problem in America:" A qualitative examination of Colorado's 2022 Fentanyl criminalization law

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Abstract

Background In response to the U.S. overdose crisis, many states have increased criminal penalties for drug possession, particularly fentanyl. This study sought to qualitatively explore diverse community perspectives on increasing criminal legal penalties in Colorado for fentanyl possession (House Bill 22-1326) and the broader role of the criminal legal system in addressing substance use and overdose prevention. We conducted 31 semi-structured interviews in 2023 with community leaders directly working with people who use drugs, individuals with lived experience with drug use and the criminal legal system, and law enforcement throughout Colorado. Interviewees were asked about the perceived impact of House Bill 22-1326 on their communities and agencies. After interviews were complete, we created templated summaries and matrix analyses to conduct rapid qualitative analysis, an action-oriented approach to qualitative data analysis.

Results Respondents included peer support specialists ($n=7$), policymakers ($n=6$), community behavioral health/harm reduction providers ($n=6$), criminal legal program staff ($n=8$), and law enforcement ($n=4$), with nine participants from rural counties. Analysis revealed that participants found increasing criminal penalties for fentanyl possession to be misguided: "And the felony [of HB-1326] is such a good example of a policy being led by feelings rather than evidence." This was in the context of participants' divergent views on police as conduits to treatment and punishment and perceiving jail as an (in)appropriate response for substance use disorder treatment.

Conclusions All participants supported policy efforts to prevent fatal fentanyl overdoses, yet, most thought that increased use of police and incarceration as avenues to prevent overdose was misguided. This study highlights a diverse array of community perspectives that can inform policy decisions concerning criminal penalties for fentanyl possession and distribution and can inform policies that affect people who use drugs broadly.

Keywords Drug policy, Criminal legal involvement, Substance use, Overdose prevention, Community engagement, Fentanyl criminalization, Qualitative research, Harm reduction

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Background

The opioid overdose epidemic continues to evolve in the United States (US). While the epidemic began with prescription opioids in the 1990's, it evolved to consist largely of heroin by 2010, and synthetic opioids by 2013, driven by high-potency illicitly manufactured fentanyl and fentanyl analogs (Centers for Disease Control and Prevention, 2023). By 2019, half of the 70,630 drug overdose deaths in the US involved synthetic opioids; from 2013 to 2019, the age-adjusted synthetic opioid-involved death rate increased 1,040% from 1.0 to 11.4 per 100,000 (Mattson et al., 2021). From 2018 to 2019 alone, Colorado, the setting for this study, experienced the largest relative increase in the age-adjusted synthetic opioid-involved death rate of any state (95.5%). Further, in 2022, Colorado's drug overdose death rate was 29.8 per 100,000, and has continued to climb annually, with fentanyl-involved deaths increasing 18.4% in 2023 (Centers for Disease Control and Prevention., n.d.).

Criminal penalties have long been a tool used to combat the overdose epidemic with more individuals being arrested for drug offenses than any other offense type in 2019, accounting for 1 in 10 of all arrests (Horowitz et al., 2022). However, increased criminal legal penalties - such as assigning felonies as opposed to misdemeanors for drug possession - are not associated with reductions in drug use or recidivism, but with worsened health and well-being, reduced job and housing opportunities, and increased risk of non-fatal and fatal overdose post-release from incarceration (Gelb et al., 2018; Wildeman & Wang, 2017). Further, these penalties, and their effects on health, employment, and housing, are applied in a racially disparate way. While Black individuals made up 12% of the US adult population in 2019, they accounted for 27% of drug-related arrests (Horowitz et al., 2022).

In the midst of the growing and evolving overdose epidemic, many states have introduced legislation to increase criminal penalties for drug possession, particularly fentanyl possession (Hill, 2023). In May of 2022, Colorado passed House Bill (HB) 22-1326, The Fentanyl Accountability and Prevention Bill. The bill was signed into law in July 2022, with key components taking effect at that time. One such component was that the bill increased penalties for possessing drugs weighing 1–4 g that knowingly contain fentanyl from a misdemeanor to a felony (Fentanyl Accountability And Prevention, 2022). Misdemeanors in Colorado may not include an incarceration sentence but can include a sentence in jail (a county-run facility where individuals are often held pretrial or when sentenced for less than one year) whereas felonies are more serious and are more likely to result in a prison sentence (a state-run facility where individuals are often incarcerated when they receive a sentence to one or more years) (McCann, 2024).

In the context of this legislation, we aimed to explore individuals' perspectives on HB 22-1326 and the role of the criminal legal system in addressing substance use and overdose more broadly. This study was one component of a larger project funded by the Colorado Department of Human Services to holistically study the impact of Colorado HB 22-1326 on the health of people who use drugs (PWUD).

Methods

Study design, population, and data source

This study utilized an illustrative design, as we aimed to generate formative knowledge as to how a specific Colorado law was affecting a diverse group of individuals (Creswell, 2007). To do this, we reviewed the HB 22-1326 and conducted individual semi-structured interviews across the state of Colorado from August through December 2023. These one-time interviews took place in the 13–17 months after the bill's passage. Individuals were compensated $50 for a 45–60-min interview conducted in-person or virtually, depending on the participant's preference. This study was reviewed and approved by the Colorado Multiple Institutional Review Board.

To ensure that individuals with diverse positions and perspectives were included, we sought to interview policy makers, peer support specialists, law enforcement, community behavioral health providers, and criminal legal behavioral health providers, and to assess different experiences by rurality. We recruited individuals in both urban and rural counties, with rural counties being defined as those with population centers of less than 50,000 people (Mills et al., 2023). Potential participants were recruited throughout the state from both urban and rural areas through email advertisements and presentations at meetings to sheriff's departments, the attorney general's office, state legislators, community-based organizations working with PWUD, and statewide healthcare, behavioral health, and criminal legal policy leaders. These organizations, departments, and individuals were identified a priori as being knowledgeable about the intersection of the criminal legal system and substance use or influential in the policy making process on these topics, through our community-engagement consultant (BC), and through snowball sampling with initial participants.

Interview guide

We collected demographic information and used a semi-structured interview guide developed by the research team (KL, SN, CJ, BC, JB) with the following domains: (1) their professional role as it relates to substance use and overdose; (2) their views on HB 22-1326 and how they more broadly view the relationship between the criminal legal system, substance use, and overdose; (3) how they view the role of law enforcement specifically in

addressing substance use and overdose; (4) how well the current system is addressing substance use and the overdose crisis; and (5) what the future role of the criminal legal system and law enforcement should be in addressing substance use and the overdose crisis.

Data collection

All interviews were conducted by the first author (KL) with additional research team members serving as note-takers (CJ, SN, BC). All team members were trained and experienced in qualitative methods, emphasized that individual responses would not be shared outside of the study team. All interviews were audio-recorded and professionally transcribed. Transcriptions were then reviewed and revised by note takers. All participants provided written informed consent. Transcripts were reviewed iteratively, and no substantial modifications to the interview guide were made during the interview process. Data were collected until data saturation was achieved, which was determined by the research team finding redundancy when reading through interview transcripts.

Data analysis

Following professional transcription, we utilized rapid qualitative analytic techniques and matrix analysis, an action-oriented approach to qualitative data analysis used when findings are needed to quickly inform policy or practice (Vindrola-Padros & Johnson, 2020). This pragmatic approach has been shown to produce themes consistent with a more traditional approach when the research question is focused on the implementation of and perspectives on a law, policy, or program (Brown et al., 2025). It does this by reducing the time between data collection and analysis and allowing the research team to collect more data and include more research participants. First, templated summaries were created for each interview using Microsoft Excel. Each summary was organized based on domains (i.e., key topics). Each row was content from a given interview and each column refers to a unique domain or question from the interview guide. Three team members (CJ, SN, BC) created summaries for each interview with a separate team member reviewing each summary and associated transcript to confirm concordance in methods applied.

A matrix analysis was then conducted, which created an organized display of summarized data (Averill, 2002). This allowed the research team to begin to understand what themes may exist within the data and how the data interact. To do this, KL created summaries with example quotes for each participant type (peer support specialists, policy, community behavioral health/harm reduction providers, criminal legal behavioral health providers, and law enforcement) separately for urban and rural respondents. Informed by the summaries, four team members (CJ, SN, BC, KL) then collaboratively identified and grouped key themes, which are detailed below. Within each participant category, numbers are used to differentiate between participants rather than name or location to protect confidentiality.

Table 1 Demographic characteristics ($N = 31$)

Variable	*N*/Mean	%/Min-Max
Professional Role		
Criminal Legal Behavioral Health Program	8	26%
Community Behavioral Health Program or Harm Reduction Provider	6	19%
Law Enforcement	4	13%
Criminal Legal and Substance Use Policy	6	19%
Peer Support Specialist	7	23%
Urbanicity		
Urban County	22	71%
Rural County	9	29%
Age (Years)	42.7	27–72
Gender		
Male	18	58%
Female	12	39%
Gender Non-Confirming	1	3%
Race/Ethnicity		
Black non-Hispanic	1	3%
White non-Hispanic	23	74%
White Hispanic	2	6%
Another race, non-Hispanic	2	6%
Another race, Hispanic	3	10%

Results

A total of 62 individuals were contacted to participate, and 31 (51%) either declined the interview or did not respond. Among 31 participants (Table 1), seven were peer support specialists, six were involved in policy, six were community behavioral health/harm reduction providers (including those working and directing syringe service programs, addiction medicine physicians, and clinical directors of nonprofits and treatment programs), eight worked in criminal legal behavioral health programs, and four worked in law enforcement. Nine were in rural counties. In total, participants represented 15 municipalities ranging in population from 900 to 715,000.

The majority of participants discussed personal and/or loved ones' experience with substance use, overdose, and/or the criminal legal system as motivation for their work.[1] Twenty-eight (90%) had experience with substance use and/or overdose either personally or through

[1] Participants were asked if they had experience with overdose and/or substance use in any of the following regards: personal, loved ones (friends, family, etc.), both, or neither. They were then asked if they had been involved with the criminal legal system (this could include any contact, charges, arrests, probation, and/or incarceration) in any of the following regards: personal, loved ones (friends, family, etc.), both, or neither.

loved ones, and 25 (81%) had experience with the criminal legal system either personally or through loved ones. These experiences affected individuals' outlooks with those with personal or loved ones' experience with substance use and/or the criminal legal system tending to view the criminal legal system to be at odds with substance use treatment and recovery and those without these experiences tending to view the legal system as a helpful conduit to treatment and recovery. While responses were analyzed separately based on residing in an urban or rural area, there were not substantial differences in these views aside from rural areas generally having better relationships with law enforcement due to these relationships being more personal and rural areas struggling more to connect individuals with non-criminal legal substance use treatment options.

Increasing criminal penalties for fentanyl possession as misguided: "And the felony [of HB-1326] is such a good example of a policy being led by feelings rather than evidence"

Participants largely discussed HB 22-1326 as a bill that had been driven by emotional responses rather than empirical evidence. While the policy was initially aimed at penalizing those distributing fentanyl - which participants largely agreed this policy should focus on - in practice, the policy continued to target PWUD and people distributing drugs to pay for their own use. One urban policy maker (#1) noted the tension here, stating that "advocating for appropriate enforcement of existing drug distribution crimes…is something I continue to support…but when it gets tricky is the people that are using and sharing drugs with friends or that they are using drugs and selling a small quantity of drugs to make a little bit of money…that is technically a distribution crime… there needs to be a recognition that's more nuanced when you are interacting with these folks." Thus, participants saw the policy as increasing policing of PWUD. As a result, one rural law enforcement officer (#1) did not "see any significant changes in the way we went about business out on the street during [the] process" of implementing HB 22-1326, indicating that it did not create new focus on drug distribution.

Participants worried that the policy had an inadvertent chilling effect, potentially deterring individuals from calling 911 in the event of an overdose and exacerbating the overdose crisis. One rural provider (#1) stated that "if an overdose were to occur and they did have more than four grams of fentanyl, I feel like…they're more scared to get in trouble and try and handle it themselves, and that's not what we want. So it feels that we progressed a little bit with the Good Samaritan law [Colorado Revised Statute 18-1-711, which protected individuals from criminal legal prosecution if they called 911 for an overdose or drug-related health emergency] and then that fentanyl bill came and kind of just knocked it back a little bit." They went on to say that "people are scared of getting a felony, going to jail…if they report one of their friends overdosing, I know for a fact that most people with substance abuse are not trying to report anything or get help for fear of going to jail. It's so stigmatized that everyone's just scared to do that and you're already scared where you're using." The same rural provider stated that consistently changing and sometimes conflicting legislation, such as the Good Samaritan Law and HB 22-1326, which increased criminal penalties for drug possession, created confusion. They stated that there is a long "process for disseminating this information" to the people who need to know it most. Further, the increased penalty of now being charged with a felony rather than a misdemeanor for possessing over one gram of fentanyl created fear. This confusion and fear was emphasized by an urban peer support specialist (#1) who stated that people are not always aware of legislative changes in real time, particularly that "the people that are using don't know what's going on in the legal system as far as the Good Samaritan law being put into effect again, to where if you call, they won't arrest you."

Participants largely agreed that there was a need for policy to address the fentanyl crisis, but many thought that the focus was misguided. One urban peer support specialist (#1) said that they understood why it was criminalized, "because it's killing people," but that the way "they're trying to get a grasp of it…they're doing it kind of the wrong way." Many participants thought that a better way of addressing the fentanyl crisis would be to address the root causes of the overdose crisis - such as the need for more affordable community-based treatment, particularly treatment that is voluntary and tailored to an individual's need rather than court mandated with limited options. Court-mandated treatment proved difficult, with one urban provider (#1) saying that "these stipulations and requirements that make [getting treatment] difficult, and there's really no kind of collaboration with treatment other than 'get into this court ordered treatment" and an urban peer support specialist (#2) saying that the mandated classes on parole were not helpful because they were not their "recovery pathway…there should have been more options instead of 'if you get high you're going back to prison.' In my opinion, [that] doesn't help at all."

One urban peer support specialist (#1) urged that "we got to get to the root of the problem, not just, 'oh, we got to get these drugs now, or we need to penalize these drugs.' Stop? It's not going to stop. [People using substances] need to get help." By continually criminalizing drug use, participants thought that money was

increasingly funneled into the legal system rather than community-based treatment.

Another root cause of the crisis that was discussed was the stigmatization of PWUD. The increased penalties for use continue to stigmatize people, but "lesser penalties, that literally reduces the stigma of the drug use, and that helps us move towards a more open society where people can talk about the problems that they have and get help for them" stated one rural provider (#2). The final root cause of the crisis discussed was the racialization of drug criminalization and the delayed attention paid to this crisis due to it historically affecting minoritized communities. One urban provider (#1) stated that "in minority neighborhoods, there's been a lot of heroin use and a lot of overdoses and a lot of people dying. However, nobody really cared or paid attention to that until…it hit the suburbs and then it was white folk and kids who were dying, and then all of a sudden it's an epidemic and it's a medical issue and we needed to take care of it."

By ignoring these root causes (e.g., lack of affordable community-based treatment, stigmatization of PWUD, historical racialization of drug criminalization), current policies were perceived to create a revolving door between criminal legal involvement and substance use. This was a view held across participant types, with a rural law enforcement officer (#1) stating that "you can't incarcerate yourself to sobriety or you can't incarcerate yourself out of the drug problem in America. And I agree with that, that's not a solution." Others spoke explicitly to the historical use of incarceration and criminalization with one urban policy maker (#2) citing the "decades of studies have shown that the ways in which substances can alter your brain, incarceration and consequences aren't a deterrent, aren't really effective in reducing use." An urban provider (#2) had a similar perspective, stating that given the United States' historical criminalization of drug use, if "the criminal justice system was an effective way to prevent overdose deaths, we would not be in the situation that we're in now."

However, there were divergent views with two individuals viewing the increased penalties as a positive solution. One urban policy maker (#3) viewed "a higher potential for greater sanctions on the possession of fentanyl" as "[having] other opportunities to intervene along a roadmap." One urban policy maker also warned that it was too early to be assessing the effects of a law implemented less than two years prior. This policy also made clear that some did not fully understand the consequences that this increased penalty would have on peoples' well-being and substance use. For example, four stated that they did not know how probation - the most common sentence for a first-time drug felony - affects future substance use or overall health.

Divergent views on police as conduits to treatment and punishment: "I [law enforcement] should be out of the drug use business"

Beyond the policy itself, participants had divergent views on the role of police in combating the overdose crisis. Participants' three main perspectives were that police (1) should continue addressing the overdose crisis through arrests and charges, (2) should not have any role in addressing substance use and should defer these responsibilities to behavioral health professionals, and (3) should act as conduits for treatment rather than arresting people.

The first and smallest group were those who thought that police should continue their work as is. These participants distinguished between PWUD and distributors, with one rural law enforcement officer (#1) stating that "the consequences should be significantly different for [distributors]" but that "[law enforcement] certainly play a role in holding individuals accountable for their actions" regardless.

These perspectives stood in contrast to a group of participants who believed that police should not have any role in addressing a substance use disorder (SUD). An urban policy maker (#4) stated that "[Law Enforcement] are almost always impediments to [addressing the overdose crisis], impediments by their actions, impediments by the spreading of myths… [Law Enforcement's role should be] nothing. Drug use should be decriminalized. People should be offered services if we actually cared collectively." One urban criminal legal program professional (#1) had a similar opinion, adding that law enforcement are ill-equipped to address the overdose epidemic, while "they respond to the overdose crisis, but they don't [address] the actual problem." An urban law enforcement officer (#2) also agreed, stating that "I should be out of the drug use business as law enforcement. I want my officers out of the drug use business…we should be connecting them with a co-responder and or a peer support person and continually offer them services until they decide they want services."

This group was also largely not in favor of the primary way that police are able to connect individuals– specialty courts, also known as problem-solving courts. While these participants thought that these options were beneficial in theory, they often remained harmful in practice. One rural provider (#2) noted how the specialty courts are "really restricted with all of these meetings and all of these things you have to do all the time regularly for the courts… it makes it a lot easier to go to criminal behavior again, to make ends meet." People often did not receive sufficient support after being in these intensive programs, as "there was no safety net for them after graduation [from drug court]" noted one urban law enforcement officer (#2). They said that "there was nothing there to

continue support. [I] started viewing drug court a little differently. We're using a hammer again instead of pulling people along." Because of these many restrictions and burdens that specialty courts create, one urban policy maker (#4) said that "drug court is something that 20 years ago I conceptually thought was a good idea. I do not support most of the diversion and things we do now because we now see that they didn't, I mean, they were fine to think [it] would work, but it turns out they didn't."

The last group, and the most common perspective, was those advocating for law enforcement being conduits to treatment. This group emphasized the need for better education for law enforcement around drug use, and for improving relationships between law enforcement, community members, and community organizations. One rural law enforcement officer (#1) stated that "[Law Enforcement] play a part in that harm reduction, in that treatment space, that first touchpoint, but understanding hopefully that we are not the do all, end all," thus noting the role for law enforcement in connecting individuals to more comprehensive treatment and harm reduction but not be the sole source of care for individuals. One urban law enforcement officer (#1) also wanted to connect individuals to more treatment and expressed frustration with the lack of community treatment options for them to take individuals to, stating that, "[police are] always in contact with somebody that's using drugs. We need to have somewhere that's not the detention facility and not a hospital to take somebody."

Beyond connecting individuals to harm reduction and treatment services, multiple participants noted the need for more law enforcement education. One rural criminal legal program officer (#1) explained that they have begun to see a shift in law enforcement in the past couple of decades, stating that "we're getting more education for staff, both on patrol and in the jail, on what substance use disorders are, how to best support individuals that are in crisis if they're in a mental health crisis or if they're struggling with substance use." This need for education was emphasized by an urban peer support specialist (#3), who stated that it would be "really profound for law enforcement to go through and learn more about addiction, whether it's just taking a class…about peer recovery coaching so we can learn the language of addiction, learn the language of recovery." They thought that this education would help improve relationships between police and community members because, "nobody trusts the police, especially if you're using or you've been there done that or anything like that. Police are supposed to be a positive entity and be there for the people, but they're not there for people with substance abuse disorder. They'll treat you like you ain't shit basically."

Contrary to the prior group, these participants stated that the specialty courts were beneficial, often citing them as a way that the criminal legal system has succeeded in better addressing substance use. One urban peer support specialist (#4) thought that specialty courts were a positive exception to the harmful criminal legal system, stating that "I feel like specialty courts should be something offered to a lot more people instead of just automatic prison…if it's something involving substance use, then give 'em the option to work on their substance use." These specialty courts provide "a lot more support. You've got a lot more people helping you. You've got to go to court every week. You've got multiple [urinalyses] every week. You've got to go to outpatient treatment multiple days a week…then they really help you if you mess up" another urban peer support specialist (#5) explained. Participants also cited the cost savings of specialty courts compared to traditional legal involvement. While the programs and treatment provided could appear expensive, due to their low recidivism rates, participants thought these specialty courts would be a better use of limited resources than sending someone to prison or jail. One urban policy maker (#5) said that they thought "treatment for folks with drug and alcohol and mental issues is probably at a minimum the same cost as litigating, charging, convicting, so on and so forth, running people through the legal system."

Regardless of peoples' views of what the police should do, participants largely found that current police interactions with PWUD to be negative. This is because most police interactions perpetuate the revolving door of criminalization and induce fear. A rural provider (#2) explained that "people who have chaotic issues with substance use are those who are living with trauma…these interactions can be more anxiety provoking, but it's again, this weird Catch-22 where that leads to more use because there's more stress and mental duress over the worthiness of a person." Law enforcement generally agreed with this with one urban officer (#2) stating that "when the badge and the gun shows up on the scene, everything [escalates] because the person knows, man, if they find this, I'm going to jail." However, rural areas sometimes had more positive relationships because it was a tighter knit community, resulting in rural law enforcement officer's (#1) approach being "to treat 'em as how we would want to be treated if we were just having a shit day and we just needed some help from someone."

This fear of police resulted not only in increased stress, drug use, and more legal involvement, but also a lower likelihood to call the police in case of medical emergencies. An urban peer support professional (#1) stated that:

> *"it just seems like there's no getting away from [the police], they're everywhere. They're always there… I got arrested by the same cops, I don't know how many times. And then it makes you want to try to*

be avoidant or run because they're not going to help you…so it makes you not want to reach out if something bad does happen. You don't want to call the cops. You don't want to try to help anybody. If someone's say overdosing or whatever, you don't want to make that phone call because you're just going to get retaliated against."

The harms of these police interactions particularly affected unhoused individuals - a community with many PWUD - in both rural and urban areas. One rural provider (#3) explained that "about 80% of our participants are either unhoused or have very transitional housing situations. And so their interactions with law enforcement are their camps getting torn down, losing all their supplies and stuff [weekly] or most nights." Thus, while respondents had divergent views on the future role of police in addressing SUD, they largely believed that current interactions between police and those with SUD were harmful.

Jail as an (in)appropriate response for SUD treatment: "I don't want to see [people] incarcerated, but I don't want 'em to die either"

After police involvement, participants spoke frequently about the appropriateness of jail incarceration as a response to SUD related charges. Participants largely thought that while incarceration was not an ideal setting for treatment - and many jails lacked robust treatment programs - it was often counties' default treatment setting due to a lack of community-based services, particularly in rural communities. However, these institutions are not meant to be therapeutic treatment settings. A rural criminal legal program professional (#2) stated that "I would like to emphasize that jail, it's not a mental health facility." The use of jails for treatment thus contributed to the revolving door of incarceration, as people often did not receive sufficient treatment inside and were often then reincarcerated for drug use later. An urban law enforcement officer (#2) stated that, "until we can find his way to divert people into something more meaningful [than jail], more effective, we're going to be chasing our tails for a while and dealing with the same people over and over and over again." Further, one urban criminal legal program professional (#1) stated that, inside the jail, they have "constantly seen overdoses happening. That's been [a] pretty regular occurrence, unfortunately" and something that had not changed with the recent legislation.

The legislation that increased penalties for fentanyl possession also attempted to increase medications for opioid use disorder (MOUD) in jails by mandating plans to offer such treatments. This was particularly important in rural areas, with one rural criminal legal program manager (#3) saying, "had we not had the bill…we would've never brought Suboxone or [MOUD] here because I live in a very rural area." However, these initiatives suffer from a lack of funding and staffing. One rural criminal legal program professional (#4) stated that, "for our jail, [we] don't have a nurse. And so that has been kind of an obstacle." As a result, barriers to accessing treatment in jail persist. One criminal legal program manager in an urban area (#2) also worried about potential increases in people needing MOUD due to the recent legislation that would "create a big tidal wave" of individuals entering jail when "things were already at capacity."

These barriers are compounded by logistical barriers with continuing individuals on MOUD. One urban provider (#2) explained that because most individuals are given prescriptions at seven-day intervals, "it's not uncommon for people's prescriptions to lapse…if they're arrested on day eight of that prescription, that doesn't count as an active prescription, even if it was active yesterday. And so that person [likely] will not be continued on [MOUD] even though they may have been getting active prescriptions from me every week for the last three months." Due to these barriers, this urban provider stated that "from a medical perspective, arresting someone with opioid use disorder and putting them in jail, particularly without medication for opioid use disorder is about the most harmful thing you can do to a person."

Further, rural jails struggled to connect individuals with community-based treatment when it also was not available in the community, particularly for methadone treatment. One rural criminal legal program professional (#4) stated that in addition to not having a nurse on staff, that "we don't have any methadone clinics near us at this point." Another rural criminal legal program professional similarly said that their "closest methadone clinic is close to 40 miles away, so there's no way we could take someone to [a] methadone clinic every single day." A rural law enforcement officer (#1) stated that they were the largest treatment provider in their region because they "don't have a lot of the other resources outside of the jail."

A lack of coordinated transitions from jail- to community-based care further exacerbated these issues, highlighting the need for a more comprehensive approach to SUD treatment that extends beyond the confines of incarceration. This lack of a care continuum began immediately upon release when, as one urban provider (#1) noted, "many times people will get released at 2:00 AM at 1:00 AM at midnight, they get released and they just get thrown out. Where are you going to go at 2:00 AM right? There's no treatment centers open, there's nothing opened…. so I think that the big thing is that I still don't see kind of a good transition." A rural provider (#3) also noted that a lot of the plans for continuity in care do not happen due to waitlists and costs: "We speak with some

of our participants who are released and they're still, they didn't get connected to [MOUD] services upon release or discharge. And then just knowing that there's not really options for people that they'd have to wait four days to get in with somewhere, which is probably too long." In urban areas with more community-based treatment options, a law enforcement officer (#1) recommended "connecting with one of those community-based treatment centers rather than having probation…send the probation officers out to those community-based programs and have their check-ins there, because then those services are readily available."

Regardless of care coordination, participants discussed the difficulties of being incarcerated for drug use. One rural provider (#1) explained that "a lot of times people get arrested, they go to jail while they're in jail, they lose a lot of their possessions, whether they're stolen, they get evicted from their house, their girlfriend sells the car…a lot of times people are using [substances] to self-medicate and to deal with emotions. And so then it starts a cycle because until you're out of that cycle of just using to deal with your life at the moment, it just continues. You continually lose things. And, also it just makes it a lot harder…so it's a really ripple effect with people who use drugs if you get arrested for using drugs." These difficulties were heightened for unhoused individuals. One urban provider (#2) stated that "any time spent in jail for someone who's living on the streets or someone with opioid use disorder or both is incredibly disruptive…they lose all their belongings…so they have nothing. They have none of their medications. They might lose their vital documents…and by the time that they're released… maybe they don't even know where their camp mates have gone to, and they're isolated."

Participants had similarly negative outlooks on probation with its many restrictions and regulations. One urban peer support specialist (#3) explained that "how is a person supposed to pay for their bills if they have to do that? How are they supposed to get it? Or maybe they can only work overnight. Well, their probation requires them to be at home so that they can get a phone call saying, oh, are you at home when you're supposed to be at home? Well, they can't work during the nighttime, so there's a lot of sober houses that put on restrictions about how late a person can work. Well, that's not serving the person." An urban policy maker (#4) stated that "[probation] is a setup for failure" given the excessive monitoring that could get people reincarcerated and the stress related to probation often leads individuals to use substances to cope.

However, proponents of police's role in deterrence and punishment largely supported the recent increased criminalization of fentanyl because they thought that incarceration provided a necessary reset for individuals and that the structured environment of probation offers beneficial guardrails. One urban peer support specialist (#5) stated that "a lot of times people need to be taken into custody, get that reset, and then they can get more support and get the help that they need, and then they have other people that can keep 'em accountable." Regarding probation, one urban provider (#3) stated that, "the probation period is the training wheels to keep the guardrails, maybe to keep the people going down that path because there is the threat that I might go back while they make that transition back into freedom and a society where there are all these triggers on a daily basis." An urban policy maker (#3) thought that more restrictive probation was also particularly helpful: "I think [probation officers] can have a positive impact. Having somebody to help monitor and ensure accountability is generally better than just saying, 'well, hey, good luck. Tell me how you do six months from now.' I think it's more effective having somebody that they check in with and helps establish steps along the way and sort of the accountability partner."

In sum, participants spoke at length about the difficulties of having SUD treatment within jail settings and within the criminal legal system more broadly, but in many rural counties, this was the only treatment setting available. This has led to the legal system receiving additional programming and funding for SUD, which few felt was the appropriate solution, and most suggesting community-based options instead.

Discussion

In this study, we interviewed 31 individuals in Colorado to better understand individuals' perspectives on HB 22-1326's increased penalties related to fentanyl and the criminal legal system's role in addressing substance use and overdose more broadly. We interviewed policy makers, peer support specialists, law enforcement, community behavioral health providers, and criminal legal behavioral health providers in both urban and rural areas. Participants had divergent views on the need and appropriateness of the bill, on the police's role in addressing SUD, and on jail and probation as responses to SUD. While most viewed increased criminalization as perpetuating stigma against PWUD, ignoring the lack of voluntary community-based treatment, and creating stressful encounters that only perpetuate drug use as a coping strategy, a few respondents viewed increased criminal penalties as a positive deterrence from drug use or as a necessary reset period if individuals did use drugs.

This work adds to a growing body of literature on how increased criminal penalties for drug possession and distribution affect health. Prior work has documented that the criminal legal system can be a stigmatizing revolving door that people often struggle to escape (Jones & Sawyer, 2019; LeMasters et al., 2023a). Our work expands

on this notion by highlighting how increased penalties specifically for fentanyl possession contribute to this revolving door, as people often use drugs to cope with the stress and stigmatization of criminal legal involvement, which only continues their involvement in this system. Our work also highlights that while views were largely the same in urban and rural areas, relationships between law enforcement and PWUD in rural areas may be more positive due to long-standing individual relationships and the lack of other community services that require engagement with law enforcement. This echoes prior work that has found some rural law enforcement to be supportive of syringe exchange programs, but is counter to prior work that found rural law enforcement's views towards PWUD to be particularly stigmatizing (Allen et al., 2022; Ezell et al., 2021).

Results from this study also highlight a tension between increasing jail and police funding to better address SUD and shifting this funding to community agencies that are not part of the criminal legal system. Work by the American Civil Liberties Union states that MOUD treatment programs in prisons and jails, while necessary, should never justify incarceration itself (American Civil Liberties Union, 2021). Yet, in many counties in Colorado, jails are the only place where MOUD is provided, emphasizing the need to invest in long-term community solutions. For instance, as outlined by a national coalition of recovery and harm reduction organizations, government agencies should allocate opioid abatement funds to proven public health solutions (e.g., overdose prevention centers), housing and wraparound support services (e.g., supportive housing programs), addressing collateral consequences of Drug War policies (e.g., second-chance employment programs), and supporting community-based organizations rather than further criminalizing substance use (A Roadmap for Opioid Settlement Funds: Supporting Communities & Ending the Overdose Crisis, n.d.). Results from our work highlight that within pre-existing community-based organizations, there is a need to both increase messaging from those providing services to PWUD to ensure that individuals are aware of their rights under the Good Samaritan Laws and to ensure that policing efforts are also aligned with the Good Samaritan Law (Koester et al., 2017; Schneider et al., 2020).

Evidence-based solutions also include programs that divert individuals with SUD from the criminal legal system entirely. Denver's Substance Use Navigation Program is an example of this, sending behavioral health specialists to calls to prevent unnecessary legal involvement when someone is experiencing distress related to mental health issues, poverty, homelessness and substance use (*Substance Use Navigation (SUN) Program*, n.d.). Similarly, Denver's Law Enforcement Assisted Diversion program diverts individuals away from the legal system and into services at the point of pre-arrest and pre-booking when individuals have unmet behavioral health needs, are experiencing poverty, and/or would be charged with substance use or subsistence level distribution (*Law Enforcement Assisted Diversion (LEAD) Program*, n.d.). Internationally, Portugal has found success in decriminalizing drugs and reinvesting resources into addiction medicine, substance use disorder treatment, and harm reduction services, resulting in reduced prevalence of drug use and drug-related deaths (Greenwald, 2009). In contrast, countries with punitive approaches such as Singapore have seen continued increases in drug use (Teo et al., 2024).

This work also highlighted that while many participants had perspectives on how police interactions and incarceration stays would impact PWUD, fewer had knowledge about probation, a very common sentence for drug possession known to have negative consequences on physical and mental health (LeMasters et al., 2023a; Phelps et al., 2022; Sawyer & Wagner, 2023). Negative mental consequences are due to the stress of constant state-sanctioned surveillance and the burdensome requirements of monthly fees, movement restrictions, regular meetings, house searches, drug tests, and reduced job and housing prospects (Bryan, 2023; Phelps et al., 2022; Zatz, 2020). Negative physical health consequences are largely due to inequities in structural determinants of health that both directly impact health and prevent individuals from being able to access healthcare (e.g., food insecurity, un- and under-employment, housing insecurity, and low access to health insurance) (Dong et al., 2018; Jacobs & Gottlieb, 2020; LeMasters et al., 2023b; Pager et al., 2009). As a result, those on probation have higher age-adjusted mortality than the general population, those in jail, and those in prison (Wildeman et al., 2019). It is necessary that policy makers and the public more broadly understand what probation entails and how it affects PWUD.

This work has multiple implications for the policymaking process and future policy related to fentanyl possession and distribution. First, there is a need for a more participatory policymaking process in which the expertise of PWUD is directly integrated into policy decisions that would directly affect them. This approach has been called for in prior work (Askew et al., 2022) and a process for doing so has been detailed by AIDSUnited (AIDS United, 2018). Second, participants emphasized a need for laws to focus on larger amounts of fentanyl commensurate with distribution, as the current law has far-reaching implications for PWUD by failing to distinguish between those distributing at subsistence levels and those distributing at high levels. However, given the dynamic drug market, incarcerating those distributing at high levels may not lead to decreases in overall drug distribution (Przybylski, R, 2009).

Our analysis has limitations on which future work can expand. First, while our aim was to assess the effects of HB 22-1326, it may be too early to capture all effects of this bill. Felony cases take many months to go through the court system, so any increases in felony-related charges and criminal legal sentences for fentanyl are only beginning to be seen in the state. Relatedly, these interviews were conducted over a five-month period and perspectives may evolve over time as the effects of this bill become clear and the overdose epidemic continues. Second, the urban and rural distinction made is imperfect. Multiple individuals residing in urban counties worked in rural areas of their county, and multiple individuals worked in rural counties that were further designated as Frontier Counties, counties with fewer than six people per square mile (Mills et al., 2023). Third, we did not fully analyze data until all interviews had been conducted, potentially preventing us from exploring all emergent themes. We also missed perspectives from critical populations such as Spanish-speaking individuals,[2] those currently incarcerated due to the increased penalties related to fentanyl, and peer support professionals in rural areas, who may have had differing perspectives. We hope that future work both captures these additional perspectives and further explores what drives and influences individuals' varying perspectives and influence on policies related to the criminal legal system, substance use, and overdose. Lastly, while the findings are specific to Colorado, they may still serve as a useful contrast to other states and countries (e.g., Oregon, Washington, Portugal) that have pursued decriminalization efforts and which are similarly studying their health implications (Smiley-McDonald et al., 2023).

Conclusion

In an age where drug use continues to be criminalized and penalties are increasing, particularly around fentanyl, it is critical to gather first-person perspectives on how criminalizing substance use affects the health and other outcomes of PWUD. While individuals have divergent views ranging from the policies themselves, to the role of police, to the appropriateness of jail and probation for PWUD, participants largely viewed increased punishment and involvement in the criminal legal system as misguided. As potential policies around fentanyl and other drugs are introduced, we must center the narratives of PWUD and those working with this population to increase awareness around how these policies impact PWUD and advocate for policy informed by these communities.

[2] 3% of individuals in Colorado speak Spanish at home and speak English less than "very well" (Migration Policy Institute, n.d.).

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Author contributions
Conceptualization, J.A.B., K.L., S.K.N., C.J., B.C. Data collection, S.K.N., C.J., B.C., K.L. Data analysis, S.K.N., C.J., B.C., K.L. All authors were involved in manuscript preparation and review, and all authors approved the final manuscript.

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Data availability
The data that support the findings of this study are available on request from the senior author, JAB. The data are not publicly available due to their containing information that could compromise the privacy of research participants.

Declarations

Ethics approval and consent to participate
All subjects participated voluntarily and were offered compensation of $50. The participants provide their written informed consent to participate in this study. The study was approved by the Colorado Multiple Institutional Review Board (COMIRB #22-1696) and is in accordance with the Declaration of Helsinki.

Competing interests
The authors declare no competing interests.

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