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# THE CONSEQUENCES OF DRUG DECRIMINALIZATION

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## ABOUT THE AUTHORS



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After leaving the Denver D.A.'s office in 2017, Mitch co-founded United Data Connect, which has become a leader in solving cold case murders and rapes using investigative genetic genealogy. Through a unique partnership with law enforcement agencies across the county, United Data Connect has solved cold case murders and rapes, and has identified the remains of unidentified individuals. United Data Connect has also become a leader in training genealogists to conduct investigative genetic genealogy efficiently and effectively.



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## ABOUT COMMON SENSE INSTITUTE

**Common Sense Institute** is a non-partisan research organization dedicated to the protection and promotion of our economy. As a leading voice for free enterprise, CSI's mission is to examine the fiscal impacts of policies and laws and educate voters on issues that impact their lives.

CSI's founders were a concerned group of business and community leaders who observed that divisive partisanship was overwhelming policy-making and believed that sound economic analysis could help people make fact-based and common sense decisions.

CSI employs rigorous research techniques and dynamic modeling to evaluate the potential impact of these measures on the Colorado economy and individual opportunity.

## TEAMS & FELLOWS STATEMENT

CSI is committed to independent, in-depth research that examines the impacts of policies, initiatives, and proposed laws so that Coloradans are educated and informed on issues impacting their lives. CSI's commitment to institutional independence is rooted in the individual independence of our researchers, economists, and fellows. At the core of CSI's mission is a belief in the power of the free enterprise system. CSI's work explores ideas that protect and promote jobs and the economy, and the CSI team and fellows take part in this pursuit of academic freedom. The CSI team's work is informed by data-driven research and evidence.

The views and opinions of fellows do not reflect the institutional views of CSI. CSI operates independently of any political party and does not take positions.

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## INTRODUCTION

### **The public and its elected officials are changing some of their tune on the loosening of drug laws, and there is evidence that the attitude shift is justified.**

As states' populations perceive less of a risk in using marijuana, they tend to perceive less of a risk in using harder drugs. In light of the deadly substances being smuggled across the southern border, this dwindling scare factor coincides with deadly consequences.

The legalization and industrialization of marijuana began in 2012 and continues. This trend followed a decades-long campaign that included both marijuana specifically and other drugs more broadly. Attitudes towards drug offenses shifted in the late 2000s from the punitive approaches of the 1990s. Between 2009 and 2013, 40 states eased their drug laws, according to a Pew Research Center analysis.<sup>1</sup> In the late 2010s and early 2020s, some states continued loosening their laws to the point of de facto or explicit decriminalization.

The broader attitudes of drug reform, however, have run concurrently with rising overdose rates and the rise of a deadly synthetic drug, fentanyl. As public attitudes grew less fearful of drugs in general, drug overdoses rose. In the wake of drug reform, states are shifting their attitudes back towards stiffer penalties.

Government data draws a clear line between the broader acceptance of drug use and the negative consequences, including substance abuse disorder and overdose deaths. It is critical leaders understand the broader implications of loosening drug laws, particularly as the widespread legalization of marijuana has become embedded.



## KEY FINDINGS

- When comparing states, overdose rates are highest in states where marijuana is fully legal, second highest in states where marijuana is legal for only medical reasons, and the lowest for states where marijuana is fully illegal.
  - For states in which marijuana is fully legalized at a recreational level, the average overdose rate was 38 deaths per 100,000 in 2022.
  - For states where marijuana was of mixed legality (medically legal but not recreationally), the average overdose rate was 33 per 100,000 in 2022.
  - In states where marijuana is illegal both medically and recreationally, the average overdose death rate was 28 per 100,000 in 2022.
- Public attitudes and drug laws have been growing more lenient in the last two decades as marijuana and psychedelics have been legalized, according to data from the U.S. Substance Abuse and Mental Health Administration.
- The number of fentanyl pills seized in the U.S. increased by a factor of 2,300 between 2017 and 2023.
  - The number of reported narcotic seizures by the Colorado Bureau of Investigation has increased 104.4% from 3,367 in 2008 to 7,434 in 2023. The quantity (dosage units) of narcotics seized has increased 5,144% from 4,044 units in 2008 to 212,077 units in 2023.
- The cost of fentanyl overdose in two states with recently passed lenient drug laws, Colorado and Oregon, was a combined \$47 billion in 2023.
- The national rate of overdoses doubled from 1999 to 2012, then doubled again between 2012 and 2023. Colorado's number of overdoses followed the same pattern.
- Data shows a positive correlation between rising public acceptance of drug use and overdoses.
  - There is a strong positive correlation between states with lower perceptions of risk regarding marijuana and states with relaxed attitudes towards harder drugs.
  - There is a strong positive correlation between states with relaxed attitudes towards drugs and states with higher rates of drug use.
- Early adopters of marijuana legalization are cases in point. Colorado, Washington, Oregon, and Alaska each rank highly against other states for marijuana use, illicit drug use, substance use disorder rates, and overdose rates, while ranking lowly for perceptions of great risk of marijuana, cocaine, or heroin usage.

## LENIENCY'S LINK TO HIGHER USE RATES AND OVERDOSE

More relaxed attitudes towards drug use are positively correlated with overdose death rates, according to a cross-comparison of U.S. Centers for Disease Control and Prevention and U.S. Substance Abuse and Mental Health administration data. The overdose rate in states in which marijuana is illegal is only 71% the overdose rate of states in which marijuana has been legalized.

There is a preponderance of correlations between higher social tolerance of drugs and negative outcomes including substance use disorder and overdose. Higher tolerance levels also correlate with higher substance use disorder rates and, ultimately, higher rates of overdose deaths.

This trend is ultimately borne out by the confluence of overdose rates and marijuana legalization status. The states which have fully legalized marijuana have higher overdose rates than states where marijuana has a mixed legal status, which in turn have higher overdose rates than states in which marijuana is fully illegal.

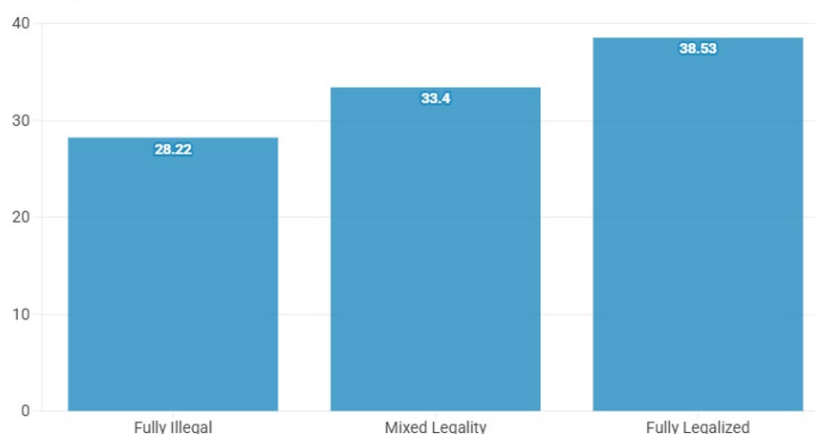
In states where marijuana is illegal both medically and recreationally, the average overdose death rate was 28.22 in 2022. For states where marijuana was of mixed legality (medically legal but not recreationally), the average overdose rate was 33.4 in 2022. For states in which marijuana is fully legalized at a recreational level, the average overdose rate was 38.53 in 2022.

Data from the Substance Abuse and Mental Health Administration makes this trend more clear. The data does not point to marijuana being a gateway drug; rather, it points to the reality that social tolerance of drugs is connected to drug use.

**FIGURE 1 - AVERAGE OVERDOSE DEATHS RATE AMONG STATES BY MARIJUANA LEGAL STATUS**

### Average Overdose Deaths Rate Among States By Marijuana Legal Status

Deaths per 100,000



Source: U.S. Substance Abuse and Mental Health Administration



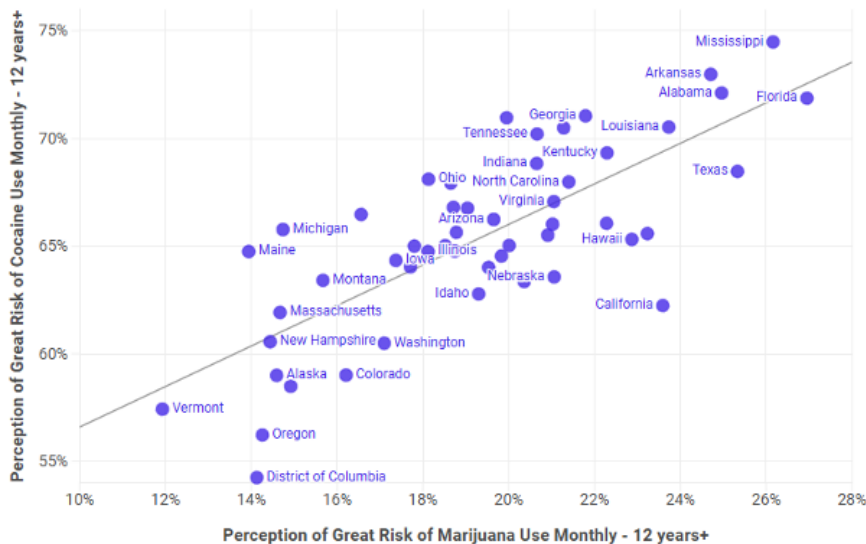
The states with higher social tolerance levels of marijuana also have higher social tolerance levels for harder drugs such as heroin and cocaine. This is measured by SAMHSA survey data in which respondents report their perceptions of great risk of a certain drug. A lower perception of great risk would indicate a higher level of social tolerance.

Figure 2 shows the correlation between perception of great risk in each state for monthly marijuana use and monthly cocaine use according to SAMHSA survey data from 2022. For example, in 2022, 14% of survey respondents perceived a great risk from smoking marijuana once a month and 54% perceived a great risk from using cocaine once a month. Survey data shows a strong positive correlation between marijuana and cocaine social tolerance, with correlation coefficient of 0.76. States in which people do not perceive a great risk from monthly marijuana usage correspond to states in which people do not perceive a great risk from cocaine use.

The same is true of marijuana and heroin. As shown in Figure 3, states with lower perceptions of risk from marijuana also have lower perceptions of risk from trying heroin once or twice. This is also a positive correlation, with a correlation coefficient of 0.6.

**FIGURE 2 - PERCEPTIONS OF GREAT RISK OF MONTHLY MARIJUANA AND COCAINE USE BY STATE (2022)**

**Perceptions of Great Risk of Monthly Marijuana and Cocaine Use By State (2022)**



Source: CSI Analysis of SAMHSA and CDC data



**FIGURE 3 - PERCEPTIONS OF GREAT RISK OF MONTHLY MARIJUANA AND TRYING HEROIN ONCE OR TWICE BY STATE (2022)**

**Perception of Great Risk of Monthly Marijuana and Trying Heroin Once or Twice By State (2022)**



Source: CSI Analysis of SAMHSA and CDC data





**Simply put, tolerance of drugs is not specific to one drug.** Tolerance is not simply a public policy attitude, either. The more tolerant the attitudes in a state, the more likely the state’s residents are to be using drugs generally.

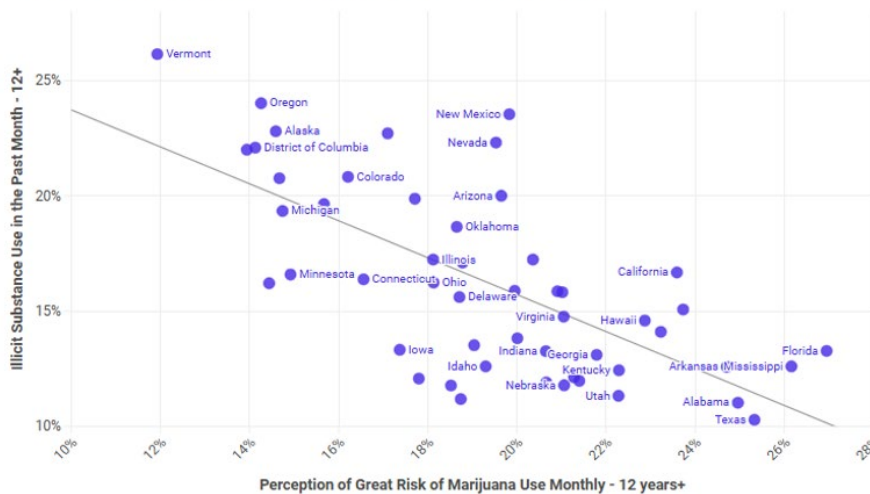
Figure 4 shows the connection between perceptions of great risk of marijuana and illicit substance use in the past month. There is a strong negative correlation between the two, with a correlation coefficient of -0.68. In states in which respondents have a low perception of risk of marijuana, there is a larger share of respondents who reported using an illicit substance other than marijuana in the last month.

The same is true with perceptions of great risk of cocaine use. There is an equally strong correlation between perception of risk regarding cocaine usage and illicit substance use, with a correlation coefficient of -0.66. The less the population sees a risk, the more likely it is to use illicit substances.

The more a state’s residents use illicit substances, the more likely they are to develop higher rates of substance use disorder. Figure 6 shows a strong positive correlation between states’ illicit substance use rates and the rates of substance use disorder reported in the last year, with a correlation coefficient of 0.77. States with higher rates of illicit substance use have higher rates of substance use disorder and vice versa.

**FIGURE 4 - PERCEPTIONS OF GREAT RISK OF MONTHLY MARIJUANA USE AND ILLICIT SUBSTANCE USE IN THE LAST MONTH (2022)**

**Perceptions of Great Risk of Monthly Marijuana Use and Illicit Substance Use in the Last Month by State (2022)**

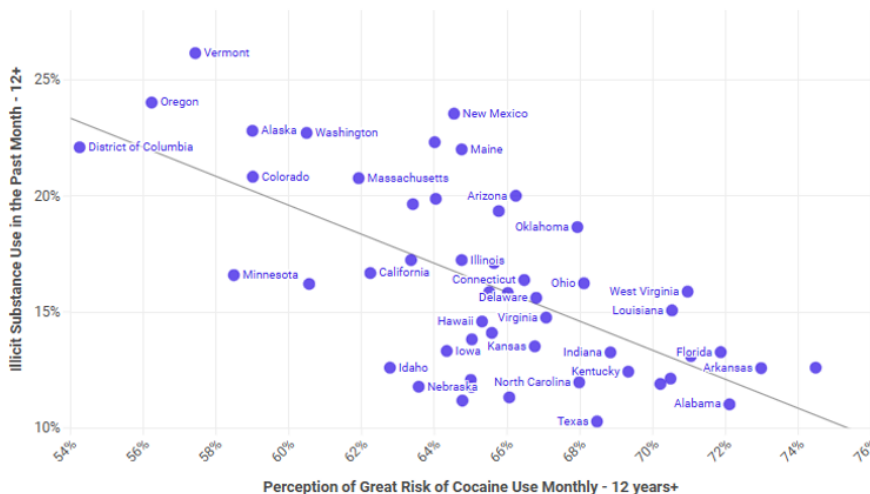


Source: CSI Analysis of SAMHSA and CDC data



**FIGURE 5 - PERCEPTIONS OF GREAT RISK OF MONTHLY COCAINE USE AND ILLICIT SUBSTANCE USE IN THE LAST MONTH BY STATE (2022)**

**Perceptions of Great Risk of Monthly Cocaine Use and Illicit Substance Use in the Last Month by State (2022)**



Source: CSI Analysis of SAMHSA and CDC data



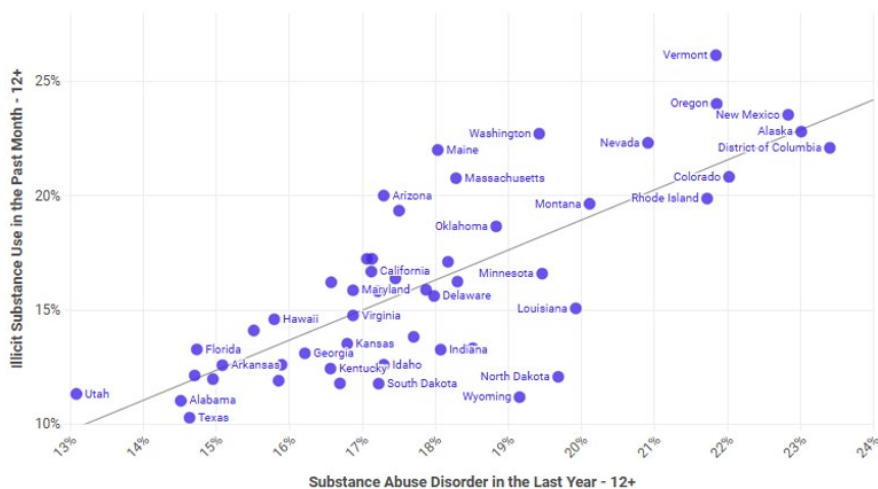
Similarly, states with higher rates of illicit substance abuse are more likely to have higher rates of overdose deaths, as shown in Figure 7. This relationship has a weaker positive relationship, with a correlation coefficient of 0.35.

Taken as a whole, there is a positive link between normalization of drug use of any kind, drug use itself, substance use disorder, and overdose death rates.

Early adopters of marijuana legalization are cases in point. Colorado, Washington, Oregon, and Alaska each rank highly against other states for marijuana use, illicit drug use, substance use disorder rates, and overdose rates, while ranking lowly for perceptions of great risk of marijuana, cocaine, or heroin usage (see appendix).

**FIGURE 6 - ILLICIT SUBSTANCE USE IN THE PAST MONTH AND SUBSTANCE ABUSE DISORDER IN THE PAST YEAR (2022)**

**Illicit Substance Use in the Past Month and Substance Abuse Disorder in the Past Year (2022)**

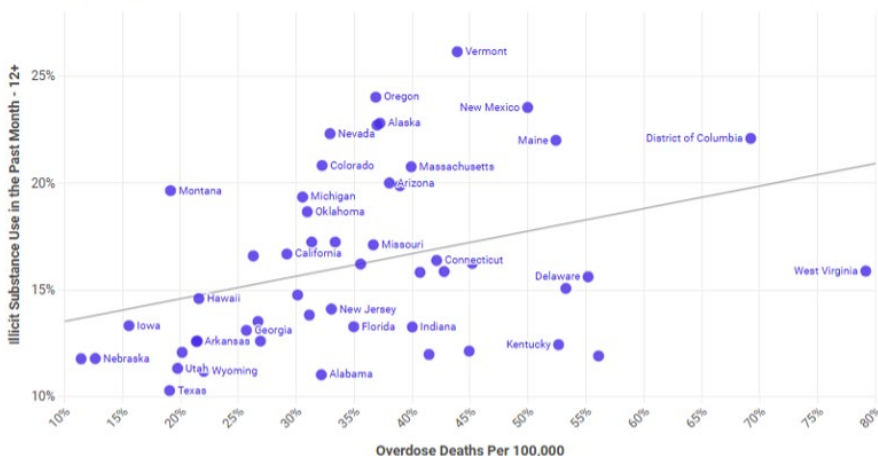


Source: CSI Analysis of SAMHSA and CDC data



**FIGURE 7 - ILLICIT SUBSTANCE USE IN THE PAST MONTH AND OVERDOSE DEATHS PER 100,000 BY STATE (2022)**

**Illicit Substance Use in the Past Month and Overdose Deaths per 100,000 by State (2022)**



Source: CSI Analysis of SAMHSA and CDC data



# DRUG LENIENCY OVER TIME

These trends have borne out nationally over time. The 2010s were a fruitful time for drug reformers. Marijuana has become broadly legalized and attitudes towards drug use have become more relaxed.

The National Organization for the Reform of Marijuana Laws had a series of successes in the 20th century scoring state-level legalizations of medical marijuana. Eventually, strategies shifted to the legalization of recreational marijuana, backed not only by NORML but by similar organizations and business interests. Colorado and Washington both legalized marijuana in 2012, followed in 2014 by Oregon and Alaska. As of 2024, the majority of Americans live in a state in which recreational marijuana is legal, spread through 24 states and the District of Columbia. Marijuana now represents a multi-billion-dollar business, while state and local governments harvest tax revenue.

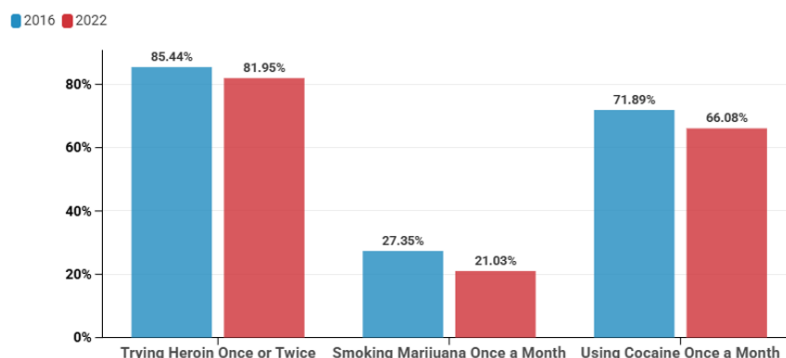
Nationally, attitudes towards drugs became less fearful as the 2010s passed. In 2014, 27% of the nation perceived a great risk in smoking marijuana once a month. That declined to 21% by 2022. Similarly, 72% of Americans perceived a great risk from monthly cocaine use. That dropped to 66% by 2022. The perception of great risk in trying heroin once or twice dropped from 85% to 82%.

Psychedelic drug legalization campaigns followed the structure marijuana campaigns established, some successfully. Two states, Colorado and Oregon, have decriminalized possession of psilocybin mushrooms. Colorado decriminalized by means of a ballot measure in 2022 and Oregon by ballot measure in 2020.

**FIGURE 8 - CHANGE IN U.S. PERCEPTION OF GREAT RISK ASSOCIATED WITH VARIOUS DRUGS**

### Change in U.S. Perception of Great Risk Associated with Various Drugs

Between 2016 and 2022, the number of Americans perceiving great risk associated with Heroin, Cocaine, and Marijuana all decreased



Source: SAMSHA Survey Data



Several other states have active legislation to decriminalize psychedelic drugs, including Alaska, California, Illinois, Massachusetts, Michigan, North Carolina, Pennsylvania, and Wisconsin. Other states are studying psychedelic medical applications, including Arizona, Connecticut, Illinois, Maryland, Minnesota, New Mexico, and Washington.

Denver had already virtually decriminalized mushrooms by ballot measure in 2019. A dozen cities around the country have done the same, including: Port Townsend and Seattle, Washington; Arcata, Berkeley, San Francisco, Santa Cruz, and Eureka, California; Minneapolis, Minnesota; Ann Arbor, Ypsilanti, Ferndale, Hazel Park, and Detroit, Michigan; Portland, Maine; Easthampton, Amherst, Somerville, Northampton, Cambridge, and Salem, Massachusetts; and the District of Columbia.

Arguably, marijuana and psychedelics have a milder reputation than the harder drugs that cause overdose deaths in great numbers. As marijuana and psychedelics legalization campaigns have gained momentum, states have also begun decriminalizing other drugs.

Oregon voters approved a ballot measure, Measure 110, in 2020 that made possession of all drugs, including heroin and methamphetamine, a civil offense rather than a criminal one. In Colorado, legislators passed a similar bill, House Bill 19-1263, that reduced the penalty for possession of less than four grams of any substance to a misdemeanor rather than a felony. In Washington, a state Supreme Court decision effectively decriminalized drug possession. Temporary rules made possession a misdemeanor from 2021 to 2023.

# FENTANYL

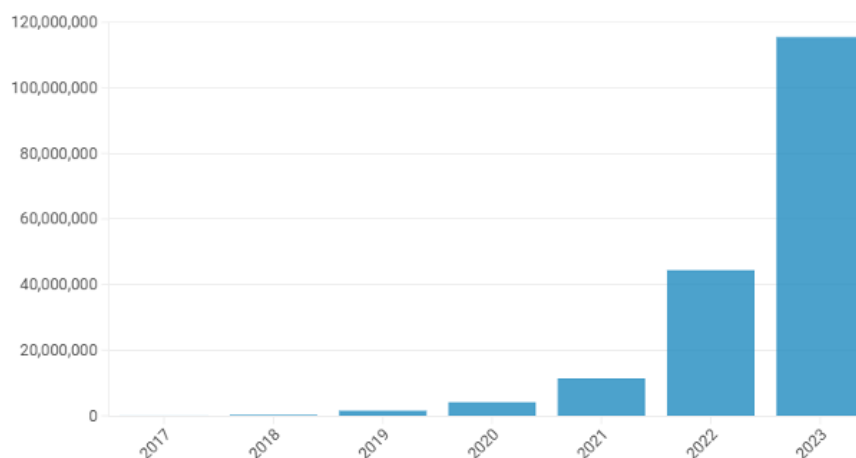
The newfound drug laxity and social tolerance coincided with the rise of fentanyl as the nation’s biggest drug threat. The synthetic opioid became a favorite import of Mexican drug cartels in the 2010s, as it is more potent than heroin, easier to smuggle across the border, and cheaper and more convenient to produce.

Seizures in the Mountain West alone show progressively larger amounts of fentanyl seized in the western U.S. each year, as examined in a Common Sense Institute report in 2024.<sup>ii</sup> The DEA’s Rocky Mountain Field Division seized a record 425.6 kilograms of fentanyl in 2023. The number of reported narcotic seizures by the Colorado Bureau of Investigation has increased 104.4% from 3,367 in 2008 to 7,434 in 2023. The quantity (dosage units) of narcotics seized has increased 5,144% from 4,044 units in 2008 to 212,077 units in 2023.

Fentanyl-specific death rates rose with seizures. In 2023, there were over 1,200 drug overdose deaths from fentanyl, 59% of which resulted from illegally manufactured fentanyl. This is approximately three deaths per day on average. This is more than the number of people killed in homicides in Colorado in 2021, 2022, and 2023 combined (1,146).

**FIGURE 9 - NUMBER OF PILLS CONTAINING FENTANYL SEIZED BY LAW ENFORCEMENT IN THE UNITED STATES, 2017-2023**

**Number of Pills Containing Fentanyl Seized By Law Enforcement in the United States, 2017-2023**



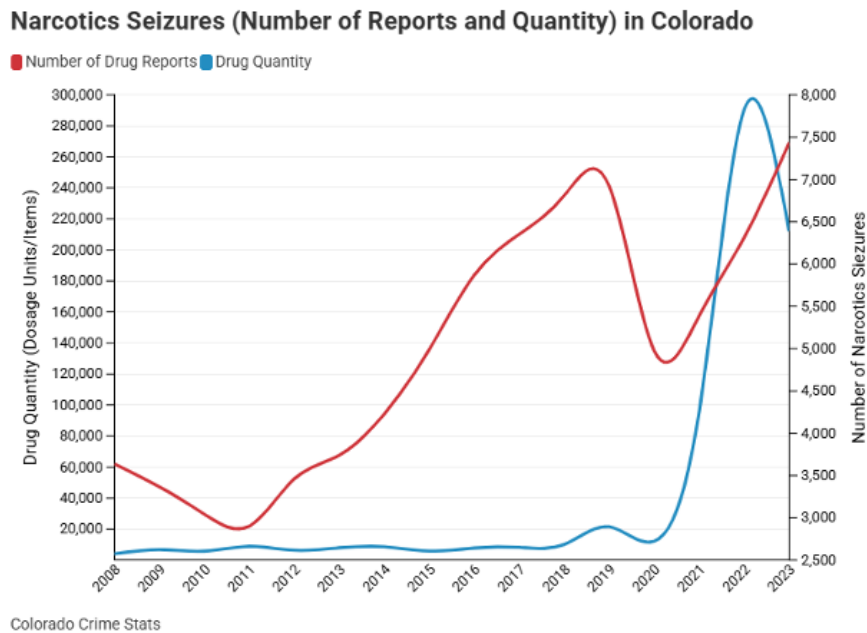
Source: [National Institutes of Health](#)





Economically, fentanyl has been devastating. In two states alone, this single drug accounts for a combined loss of \$47 billion in 2023. The total cost of fentanyl-related overdose deaths in Colorado is estimated to be \$16 billion in 2023. This is over ten times the cost of fentanyl overdose from 2017, \$1.3 billion. In Oregon, the cost of the fentanyl crisis is more than \$31 billion annually, up from \$5.88 billion in 2017.<sup>iii</sup>

**FIGURE 10 - NARCOTICS SEIZURES (NUMBER OF REPORTS AND QUANTITY) IN COLORADO**



# NATIONAL DRUG INDUCED DEATHS

Fentanyl's presence accelerated the trend of rising overdose rates that began in 1999. The United States is in the throes of record rates of drug induced deaths. Nationally, between 1999 and 2022, the U.S. rate of overdose deaths increased by nearly 400%.

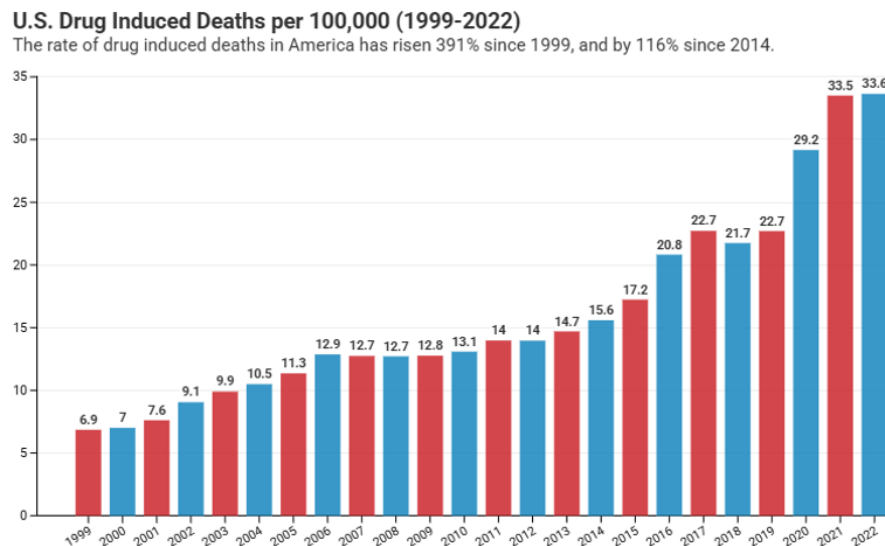
Figure 11 below shows the rapid increase in the rate of drug induced deaths nationally. Drug overdose death rates have been rising annually since 1999, but were relatively level between 2006 and 2012. Only in 2007 did national drug overdose rates decrease from the prior year.

Since 2012, the rate of increase in annual drug overdose deaths rose sharply. Rates rose by 116% since 2014.

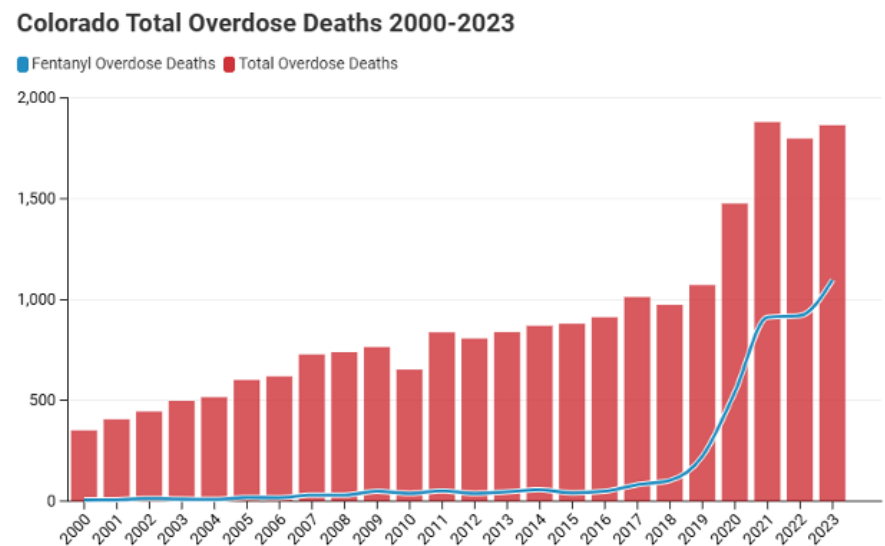
The raw number of drug overdoses increased by 124% on average amongst the 50 states and D.C. due to the massive increase in nearly every state, Colorado performed better than average despite a 105% increase in the number of drug overdose deaths. Alaska, Oregon, and Washington, however, performed below average in both categories.

In Colorado, overdose rates in 2023 were higher than in any year but 2021. Since 2019, the overdose rate has increased 74% - over half of which were fentanyl-related.

**FIGURE 11 - U.S. DRUG INDUCED DEATHS PER 100,000 (1999-2022)**



**FIGURE 12 - COLORADO TOTAL OVERDOSE DEATHS 2000-2023**



Source: CDPHE



## WALKBACKS AND BOTTOM LINE

### States are beginning to reconsider their policies on drug decriminalization

Oregon voters passed Measure 110 in November 2020, making it the first state to decriminalize the possession of small amounts of all drugs. After the law took effect, however, there was an increase in visible drug use and overdose deaths and difficulties steering users into treatment. The public attitude shifted, and the Oregon Legislature reinstated criminal penalties for the possession of small amounts of hard drugs in 2024.

Colorado legislators have attempted to retrack, as well. 2022 legislation attempted to address the fentanyl issues. It reduced the amount to charge a felony from four grams to one gram, reversing course from a 2019 de-defelonization of all drug possession under four grams. The law contained a clause critics say makes enforcement difficult, however, as prosecutors must demonstrate that the drug's possessors specifically knew they were carrying fentanyl. Attempts to reverse this portion of the law have since failed in the legislature.

In 2024, Washington lawmakers this year raised the state's penalty for drug possession to a gross misdemeanor and criminalized public drug use. California Gov. Gavin Newsom vetoed a measure in California that would have opened safe injection sites, and a ballot initiative was introduced in that state to increase drug possession penalties.

It is critical that states consider drug decriminalization history in their ongoing discussions of law, order, and public health. As states have dialed back their drug laws in the last two decades, the nation has been introduced to a deadly drug and seen skyrocketing overdoses. Whatever the justification for more lenient drug laws, data suggests that drug use becomes more widespread in places that perceive less of a risk in their use. This has profound implications, including the potential for increasing overdose deaths.

## APPENDIX AND METHODOLOGY

### Calculating the costs of fentanyl overdose deaths:

The Center for Disease Control and Prevention (CDC) methodology from “State-Level Economic Costs of Opioid Use Disorder and Fatal Opioid Overdose – United States, 2017” was used to estimate the cost of an opioid overdose in Colorado and Oregon. The CDC estimated the cost of fatal opioid overdoses for thirty-eight states and DC in 2017. The CDC used a case count of 578 fatal opioid overdoses, a per death cost of \$11.5 million. Using this same approach CSI estimated the cost per death and total costs in 2018 through 2023 by inflating the per death costs in each category by the Personal Consumption Expenditure Price Index (excluding energy and food).

### SAMHSA Survey Rankings Among Four First States To Legalize Marijuana

#### SUBSTANCE USE DISORDER IN THE PAST YEAR (2022)

	12+	12-17	18-25	26+	18+
Alaska	2nd	5th	9th	1st	1st
Colorado	4th	7th	10th	3rd	4th
Oregon	5th	4th	3rd	7th	6th
Washington	13th	10th	11th	13th	13th

#### ILLICIT DRUG OTHER THAN MARIJUANA IN THE LAST MONTH (2022)

	12+	12-17	18-25	26+	18+
Alaska	37th	15th	6th	38th	38th
Colorado	3rd	29th	2nd	4th	3rd
Oregon	2nd	26th	4th	3rd	2nd
Washington	8th	11th	10th	9th	10th

### MARIJUANA USE IN THE PAST YEAR (2022)

	12+	12-17	18-25	26+	18+
Alaska	4th	3rd	6th	3rd	4th
Colorado	9th	5th	9th	9th	8th
Oregon	3rd	6th	3rd	2nd	3rd
Washington	5th	10th	13th	5th	5th

### METHAMPHETAMINE USE IN THE PAST YEAR (2022)

	12+	12-17	18-25	26+	18+
Alaska	27th	51st	9th	26th	27th
Colorado	36th	30th	33rd	36th	36th
Oregon	19th	40th	36th	19th	20th
Washington	16th	39th	22nd	16th	17th

### COCAINE USE IN THE PAST YEAR (2022)

	12+	12-17	18-25	26+	18+
Alaska	46th	48st	38th	45th	47th
Colorado	1st	26th	1st	3rd	1st
Oregon	12th	27th	6th	15th	11th
Washington	19th	28th	8th	22nd	19th

### HEROIN USE IN THE PAST YEAR (2022)

	12+	12-17	18-25	26+	18+
Alaska			5th	12th	12th
Colorado			42nd	48th	48th
Oregon			26th	37th	38th
Washington			36th	28th	28th

### PRESCRIPTION PAIN RELIEVER MISUSE IN THE PAST YEAR (2022)

	12+	12-17	18-25	26+	18+
Alaska	25th	2nd	35th	31st	31st
Colorado	22nd	18th	37th	19th	21st
Oregon	6th	20th	1st	9th	7th
Washington	37th	27th	40th	34th	35th



**PERCEPTIONS OF GREAT RISK FROM SMOKING MARIJUANA ONCE A MONTH (2022)**

	12+	12-17	18-25	26+	18+
Alaska	46th	45th	46th	46th	46th
Colorado	41st	43rd	40th	41st	41st
Oregon	48th	51st	48th	47th	47th
Washington	39th	46th	18th	39th	38th

**PERCEPTIONS OF GREAT RISK FROM USING COCAINE ONCE A MONTH (2022)**

	12+	12-17	18-25	26+	18+
Alaska	47th	40th	49th	47th	45th
Colorado	46th	49th	51st	46th	46th
Oregon	50th	43rd	47th	50th	50th
Washington	45th	36th	39th	45th	45th

**PERCEPTIONS OF GREAT RISK FROM TRYING HEROIN ONCE OR TWICE (2022)**

	12+	12-17	18-25	26+	18+
Alaska	42nd	38th	50th	40th	42nd
Colorado	40th	43rd	45th	41st	41st
Oregon	51st	44th	48th	50th	50th
Washington	48th	45th	40th	49th	49th

## REFERENCES

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