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PROPOSITION 132: INCREASING OPIOID PENALTIES

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INTRODUCTION

This November, Colorado voters will consider Proposition 132, a measure that would increase criminal penalties for offenses involving fentanyl and certain related synthetic opioids. Proposition 132 would make the unlawful manufacture, dispensing, sale, distribution, or possession with intent to distribute any amount of fentanyl or certain related synthetic opioids a Level 1 drug felony.¹ It would also increase possession penalties and create a treatment-mandated Level 4 drug felony for possession of not more than one gram. As a part of the C.R.S., this initiative could be modified or repealed by the state legislature in the future.

Proposition 132 attempts to further respond to the fentanyl crisis in Colorado. It follows the addition of bills that established fentanyl-specific possession crimes as well as increased penalties for distribution, manufacturing, and selling fentanyl.

Supporters argue that the measure's higher penalties would deter fentanyl distribution and use. Opponents argue that the measure would increase overdose deaths and fail to disrupt drug supply.

Proposition 132 would assign Colorado's highest drug-felony classification and an eight-year mandatory minimum sentence to the distribution of any detectable amount of a covered substance.

This report examines the provisions of Proposition 132, the arguments advanced by proponents and opponents, its economic implications, and how it compares to policies already in place by neighboring states.

KEY FINDINGS

- **Colorado reported 931 fentanyl overdose-related emergency department visits in 2025**
 - According to the Colorado Department of Public Health and Environment, fentanyl-related emergency department visits increased 15.4% from 2024 to 2025.
 - The 17th District Attorney's Office reports that fentanyl deaths increased by more than 1,000% between 2015 and 2021, with 1,578 fentanyl deaths during that period.ⁱⁱ
- **Colorado's synthetic opioid overdose rates have grown while the national rate has declined**
 - From December 2024 to August 2025, Colorado's synthetic-opioid overdose deaths increased 17%, the third-fastest rise among states, behind Arizona at 26% and New Mexico at 21%.ⁱⁱⁱ

Proposition 132 would increase General Fund spending by an estimated \$0.9 million in the first budget year and \$8.9 million in the second, with total increased state spending reaching \$68.2 million by year five.

- **Colorado's current fentanyl penalty framework was largely established by HB22-1326**
 - House Bill 1326 defines and penalizes fentanyl-related offenses differently depending on type of violation and the weight of drug involved in the violation.

WHAT IS PROPOSITION 132?

Proposition 132 would amend several sections of the Colorado Revised Statutes to classify the unlawful manufacture, dispensing, sale, distribution, or possession with intent to distribute any amount of fentanyl or certain related synthetic opioids as a Level 1 drug felony punishable by eight to 32 years in prison.

The measure would also increase penalties for possession. After the Colorado Bureau of Investigation provides the required notice that it can determine a substance's composition, possession of material composed of more than 60% fentanyl or another covered synthetic opioid would be a Level 2 drug felony. Knowing possession of not more than one gram of material containing fentanyl or another covered synthetic opioid would be a treatment-mandated Level 4 drug felony, while possession of more than one but not more than four grams would be a Level 3 drug felony.

It would also eliminate the current provision permitting a lower charge when a defendant reasonably did not know that the substance contained fentanyl or another covered synthetic opioid. The measure intends for a qualifying Level 4 conviction to be vacated and replaced with a Level 1 drug-misdemeanor conviction following successful treatment.

These changes would replace portions of the sentencing framework enacted by HB22-1326, under which offense classifications generally vary according to the conduct involved, the type and weight of the substance, and other circumstances.^{iv} The measure would also repeal the exception that prevents certain Level 4 drug-felony convictions from counting toward habitual-criminal sentencing. Proposition 132 would take effect January 1, 2027.

Legislative Council Staff estimates that Proposition 132 would increase state General Fund spending by \$68.2 million by year five, with additional, unquantified costs possible if Colorado must construct or contract for more prison space.^v

The measure would also prohibit the arrest or prosecution of employees, agents, or volunteers of qualifying entities who possess controlled substances solely for lawful safe disposal.

Supporters argue that fentanyl's potency warrants stronger penalties than those applied to other drugs. They contend that mandatory prison sentences would hold distributors accountable, remove traffickers from communities, deter fentanyl distribution and use, and potentially reduce overdose deaths.

Opponents argue that harsher penalties are unlikely to disrupt the drug supply or prevent overdose deaths. They contend that the measure could impose severe penalties on people unaware that a substance contained fentanyl, discourage witnesses from reporting overdoses, and increase prison costs and capacity pressures without providing new funding for treatment.

ECONOMIC IMPLICATIONS

By increasing felony classifications and mandatory prison terms, Proposition 132 could increase prison admissions, sentence lengths, and correctional costs, although the magnitude of the effect is uncertain.

Because this measure contains no dedicated funding mechanism, increased correctional expenditures could require lawmakers to alter the budget. This may include reallocating funds from other priorities, reducing spending elsewhere, or identifying additional revenue sources. The Colorado Department of Corrections reports an average annual cost of \$56,972 per incarcerated person, although the marginal cost of additional incarcerations may differ from this statewide average.

Supporters argue that these higher costs could be offset partially if the passed measure reduced fentanyl distribution, which would lead to lower overdose rates and reduced expenditures on emergency response and healthcare. However, the extent of these potential savings relies on the effectiveness of increased criminal penalties. These uncertainties make the overall fiscal impact difficult to predict.

BORDERING STATES

The table below summarizes selected fentanyl-related penalties in Colorado's neighboring states; because offense definitions, drug-quantity thresholds, criminal histories, and aggravating circumstances differ, the listed ranges are not directly comparable.

SELECTED FENTANYL-DISTRIBUTION PENALTIES IN COLORADO AND BORDERING STATES

	Colorado (Prop. 132)	Arizona	Utah	Wyoming	Nebraska	Kansas	Oklahoma	New Mexico
Specific Statute	Proposition 132	A.R.S. § 13-3408	Utah Code §58-37-8.1 (HB87)	W.S. § 35-7-1031	Neb. Rev. Stat. §28-416	K.S.A. § 21-5705	Okla. Stat. tit. 63, §§2-401 and 2-415	NMSA § 30-31-20
Minimum Penalty	8 Years	5 Years ¹	5 Years ²	No Statutory Minimum	1 Year ³	14 Months ⁴	No Statutory Minimum ⁵	No Mandatory Minimum ⁶
Maximum Penalty	32 Years	20 Years	Life Imprisonment	20 Years	Life Imprisonment	34 Years	Life Imprisonment	18-Year Basic Sentence

1. Beginning September 12, 2026, Arizona's enhanced sentences apply to the sale of at least 100 grams. The range is five to 15 years for a first conviction and 10 to 20 years for a qualifying repeat conviction.
2. Utah's penalty applies to trafficking at least 100 grams. A court may suspend the prison sentence under limited statutory conditions.
3. Nebraska imposes one to 50 years below 10 grams, three to 50 years at 10 to less than 28 grams, five to 50 years at 28 to less than 140 grams, and 20 years to life at 140 grams or more.
4. Kansas penalties depend on quantity and criminal history. Fourteen months is the lowest presumptive prison term, but some Level 4 cases may receive nonprison sentences. The maximum presumptive term for qualifying fentanyl offenses can reach 34 years.
5. Oklahoma's general distribution offense carries up to seven years with no statutory minimum. Trafficking at one gram carries up to 20 years, while aggravated trafficking at five grams carries two years to life.
6. New Mexico provides a nine-year basic sentence for a first trafficking offense and an 18-year basic sentence for a subsequent offense. These are basic sentences, not strict statutory minimum and maximum terms.

Under Arizona Revised Statutes § 13-3408, selling at least 200 grams of fentanyl is punishable by five to 15 years for a first conviction and 10 to 20 years for a qualifying repeat conviction.

Utah enacted House Bill 87 in 2025, establishing a sentence of seven years to life for trafficking at least 100 grams of fentanyl or a fentanyl-related substance.

Wyoming has no general fentanyl-specific trafficking threshold. Fentanyl is handled as a Schedule II narcotic. Manufacture, delivery, or possession with intent to deliver is punishable by up to 20 years. Felony-level possession is punishable by 0-7 years, being less severe than Proposition 132.

More severe than Proposition 132 is Nebraska, with distribution penalties escalating from 1-50 years to 20 years-life imprisonment, depending on the amount.

Distribution penalties in Kansas escalate from Drug Severity Level 4 to Level 1 under Kansas Statutes Annotated section 21-5705, with maximum presumptive sentences of up to 34 years.

Because Oklahoma has both a general distribution statute and a separate Trafficking in Illegal Drugs Act, it has one of the stricter fentanyl penalty structures. The maximum sentence is life imprisonment, which is more severe than the maximum under Proposition 132.

Like Wyoming, New Mexico has no standalone fentanyl trafficking statute. It is prosecuted under the general trafficking statute, NMSA 30-31-20, since fentanyl is classified as a Schedule II narcotic. In 2025, lawmakers considered HB 274, which would have created fentanyl-specific trafficking offenses, but it did not pass.

States have increasingly adopted fentanyl-specific penalties, but the severity of those laws varies according to the offense, drug quantity, criminal history, and applicable aggravating circumstances.

BOTTOM LINE

Proposition 132 would amend Colorado law to classify the unlawful manufacture, dispensing, sale, distribution, or possession with intent to distribute any amount of fentanyl or certain related synthetic opioids as a Level 1 drug felony. It would also increase possession penalties and mandate treatment for qualifying Level 4 possession offenses. This measure comes as Colorado aims to better manage and reduce fentanyl-related overdoses and deaths in the state.

Proposition 132 does not directly fund prevention or drug interdiction; it relies primarily on higher criminal penalties and mandated treatment. Whether those changes would reduce fentanyl circulation, use, overdoses, or deaths is uncertain.

SOURCES

- i. 2025-2026 #85 - Final Text
- ii. Colorado Springs Gazette: As politicians dither, fentanyl is killing kids - Colorado Politics
- iii. Why are Synthetic Opioids Overdose Deaths Rising Faster in Colorado? – Common Sense Institute
- iv. HB22-1326 Fentanyl Accountability And Prevention | Colorado General Assembly
- v. 2025_2026_85v3.pdf