The Network for Public Health Law

Overdose Prevention

Utilizing drug checking programs to save lives

October 29, 2026

About the Network for Public Health Law

The Network advances health equity and improves health outcomes by providing guidance on the effective use of laws and policies.

We work with:

- Public health officials and practitioners
- Policymakers
- Attorneys
- Community and Advocacy Organizations

We provide:

- Research and analysis
- Strategic consultation and guidance
- Knowledge-building and training

Harm Reduction Legal Project

The Network's Harm Reduction Legal Project works to address the legal and policy barriers that impede evidence-based harm reduction measures including naloxone, SSPs, and evidence-based treatment.

The Project provides guidance and consultation on laws and regulations that hamper harm reduction initiatives. We also create non-partisan, evidence-based publications and training on laws and policies that impact people who use drugs, individuals in recovery, and their communities.



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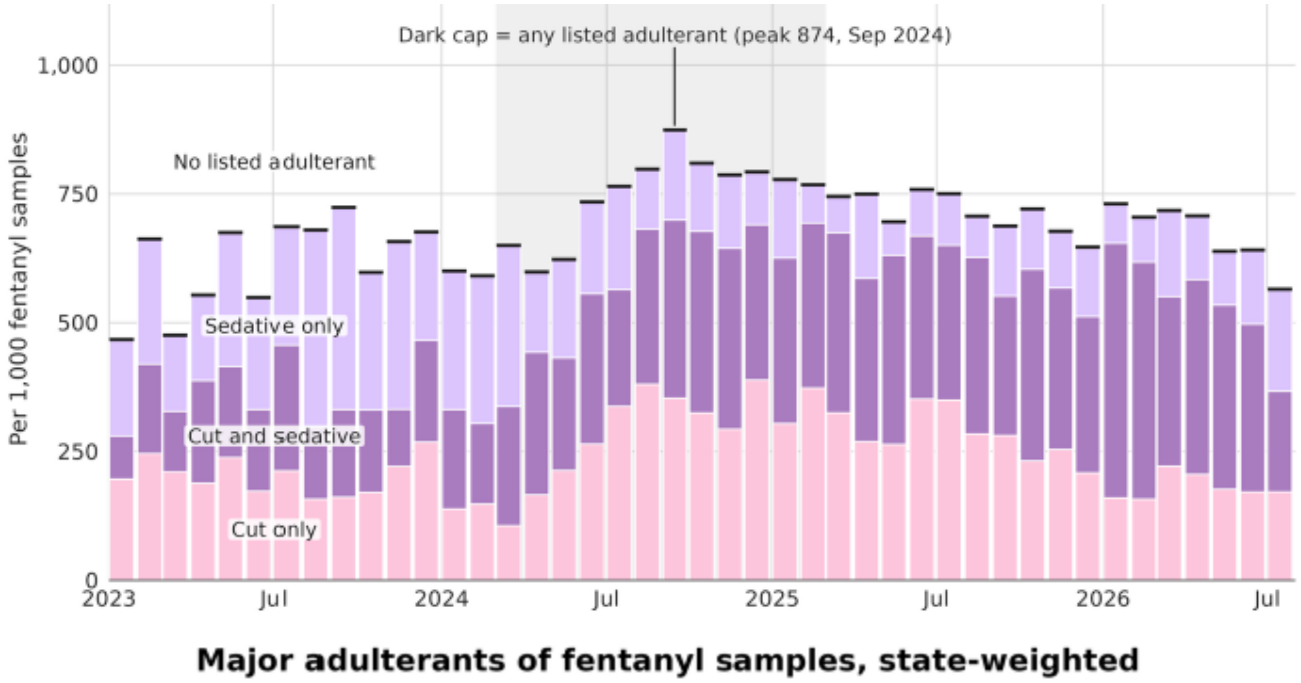
1. Why drug checking?
2. Legal background
3. Current status of state laws
4. Q&A



Why drug checking?

Increased knowledge = reduced harm

- While fentanyl receives the most mainstream attention, many other substances – including xylazine, medetomidine, nitazines, and benzodiazepines – are now present in the drug supply
- These adulterants increase risk of overdose and other health harms
- Because no regulated supply is readily available, increasing knowledge of content can help people reduce their risk
- At a population level, it can also help improve prevention and services



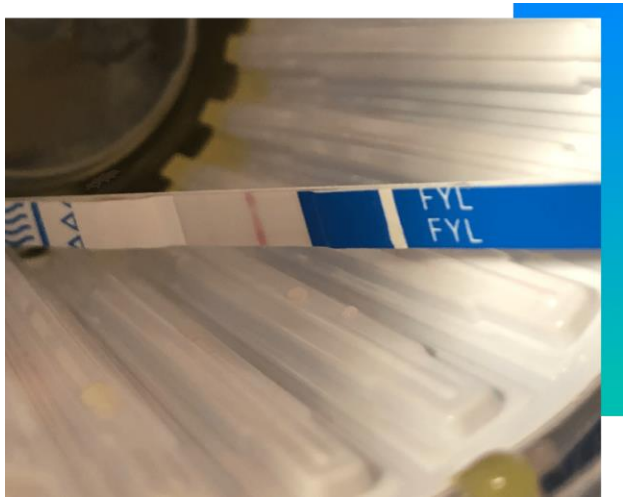
Dasgupta, N. Understanding the Recent Rise and Decline of Overdose Deaths in the United States. Baltimore: Bloomberg American Health Initiative, Johns Hopkins Bloomberg School of Public Health. 20 October 2026. DOI: https://doi.org/10.26144/ YT63-WB31

Community drug checking overview

- There are two main types of community drug checking:
  - Provision of drug checking strips or reagents
  - Analytical devices that provide detailed information on drug components
- Both provide timely data directly to PWUD, empowering them to take steps to reduce harm
- Both differ in important ways from prior main sources of this information – law enforcement and coroners/medical examiners
- Both have both advantages and drawbacks



Johnny Andrews/UNC-Chapel Hill



Dr. Kim Sue

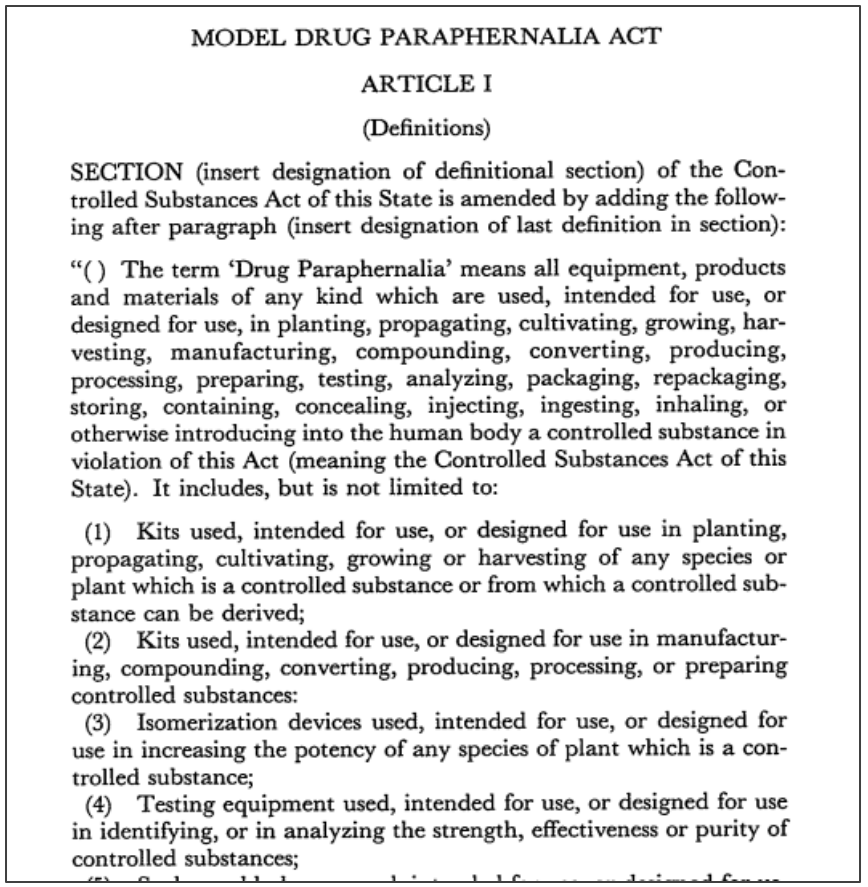
Drug checking works

- Evidence shows positive impacts from fentanyl test strip distribution
  - A study of people who inject drugs (PWID) in North Carolina found that people who obtained a positive fentanyl test strips (FTS) result were five times more likely to report changes in drug use behavior than those who obtained a negative result
  - A Rhode Island study found that a positive FTS result was significantly associated with positive changes in overdose risk behavior, such as using a smaller amount or using more slowly
  - A study of PWUD in 3 states found that a positive FTS result was associated with risk reduction such as taking turns, having naloxone nearby, and reduction in amount used
  - Similarly, a 2025 multisite observational cohort study found that people who used FTS engaged in significantly more overdose risk-reduction behaviors, such as keeping naloxone nearby, testing drug strength, and asking someone to check on them

Legal background

Background on relevant law

- Prior to 1979, drug equipment was not illegal in most states. That year, DEA created a model law that defined essentially anything used with illicit drugs as paraphernalia
- Many states adopted that model, with some variations
- Many have since created exceptions, such as for SSPs or drug checking equipment
- This has created a patchwork of restrictions and permissions across the country



MODEL DRUG PARAPHERNALIA ACT

ARTICLE I

(Definitions)

SECTION (insert designation of definitional section) of the Controlled Substances Act of this State is amended by adding the following after paragraph (insert designation of last definition in section):

"( ) The term 'Drug Paraphernalia' means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act (meaning the Controlled Substances Act of this State). It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species or plant which is a controlled substance or from which a controlled substance can be derived;
(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances:
(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
(4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

Paraphernalia laws and drug checking

- State laws can limit the uptake of drug checking initiatives
- The model paraphernalia law and most state laws criminalized the possession and distribution of devices for “testing” or “analyzing” controlled substances in violation of the law
- Although not intended to apply to drug checking, the plain language (testing, analyzing) does seem to apply to drug checking devices – both test strips and more advanced drug checking equipment
- While arrest and prosecution for drug checking equipment is rare, these laws can discourage it

Paraphernalia laws and drug checking

- While there is a federal paraphernalia law (21 U.S.C. § 863), it does not include the testing/analyzing language
- The federal paraphernalia law also defers to state legality: if the activity is permitted under state law, it's permitted under federal law as well
- Most states have modified paraphernalia laws so that at least some drug checking equipment is permitted
- Whether a specific device is considered paraphernalia is state-specific, and in some states may vary based on circumstances (such as whether distributed by an SSP)
- Whether protection from possession for the drugs being checked also varies between states


State laws

Many changes, but barriers remain

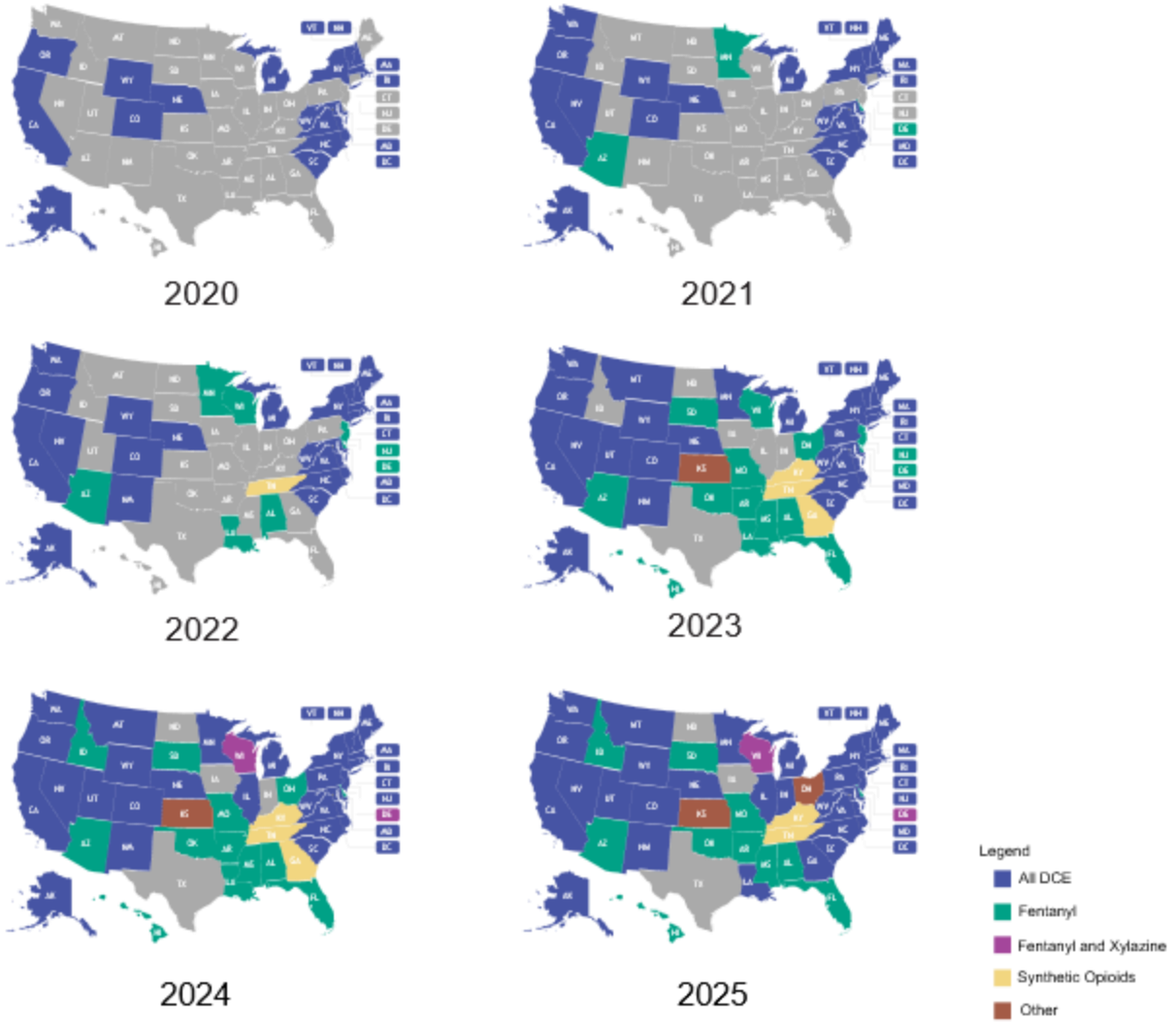
- To determine the legality of drug checking in the US, we systematically surveyed relevant laws in each state, DC, and Puerto Rico
- We have conducted this survey each year since 2020, and have updated it through August 2026
- States have rapidly modified laws to increase access to DCE, typically by removing some or all from the definition of paraphernalia
- Initially, many of these reforms were limited to FTS but many have expanded these amendments to incorporate tests for other specific substances
- Increasingly states are abandoning this “whack-a-mole” strategy and exempting all DCE
  - This negates the need to modify law as new adulterants enter the illicit drug supply and maximizes the potential public health impact of these laws

Rapid shift over the past half-decade

- Approximately half a dozen states never criminalized either the free distribution or possession of DCE
- In 2021, laws that permit at least some drug checking equipment to be possessed, distributed, or both went into effect in **five** states
- In 2022, laws went into effect in an additional **nine** states
- In 2023, laws went into effect for the first time in **twenty-one** states and three states expanded access
- In 2024, **one** new state passed DCE law, and six expanded existing laws
- In 2025, **one** state passed a DCE access law for the first time, and five additional states expanded existing laws to include more types of drug checking equipment

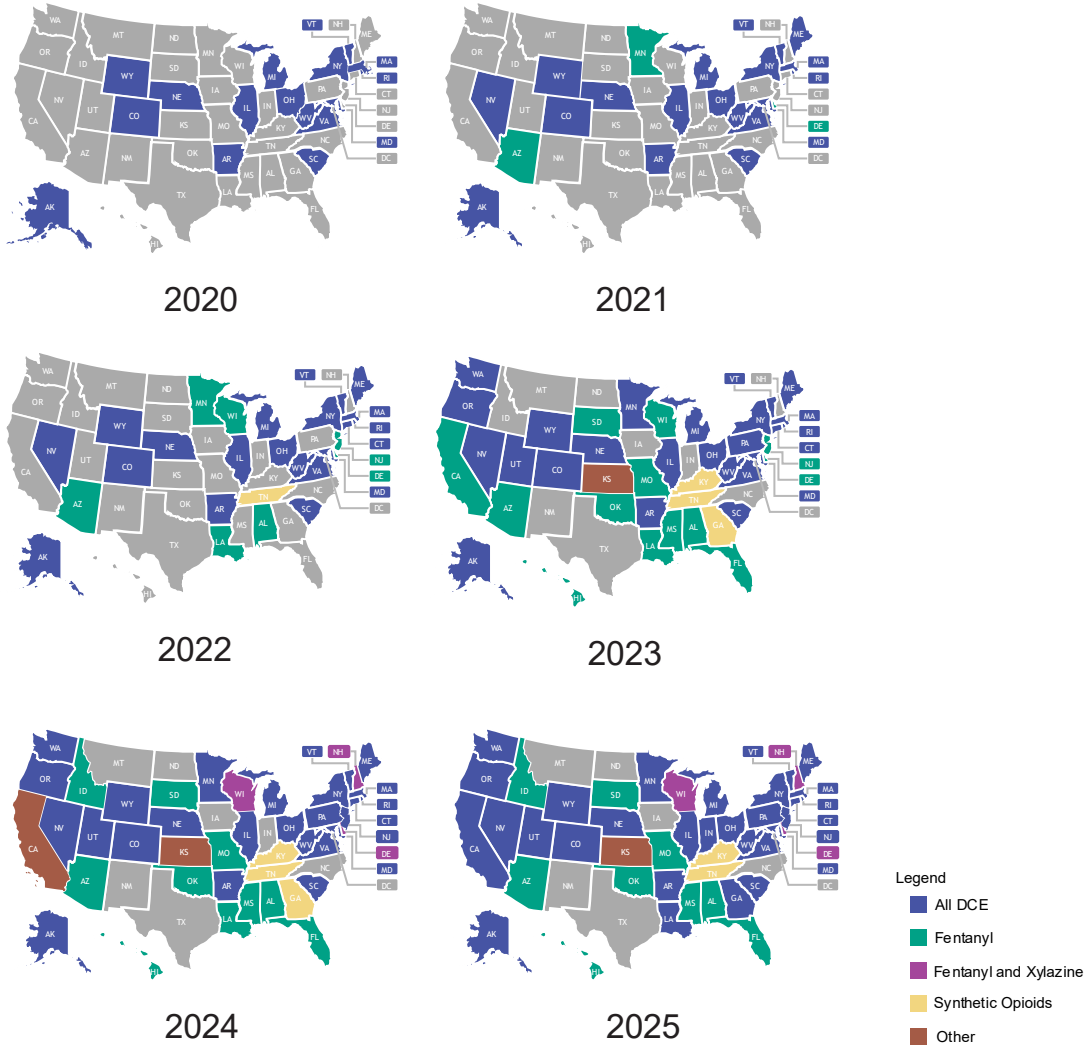
Many changes, but barriers remain

Change in state laws permitting DCE possession, by year



Many changes, but barriers remain

Change in state laws permitting DCE distribution, by year



High-level summary – as of August 2026

- All forms of DCE are legal to sell, give away, and possess in 25 states
- Five states allow possession of all DCE but restrict or prohibit both free distribution and sale
- Fourteen states expressly allow the possession, free distribution, and sale of DCE only for specific drugs or with certain types of testing modalities—most commonly fentanyl and fentanyl test strips
- Two additional states (Arkansas and Ohio) restrict possession of DCE to only certain test strips, while allowing distribution or sale of DCE more generally
- In six states, SSPs are permitted to distribute drug checking equipment even where such distribution is not otherwise permitted.
- In four states (Iowa, North Dakota, Puerto Rico, and Texas), possession, free distribution, and sale of all drug checking equipment remains arguably a crime outside of the SSP context
- Overdose Good Samaritan laws in thirty-nine states provide protection from criminal action related to drug checking equipment

Many changes, but barriers remain

- Advanced drug checking modalities are becoming increasingly common, but may encounter their own legal problems
- The primary legal barrier is that possession of controlled substances remains generally illegal, and possessing drugs – at least small quantities – is necessary to check them
- However, some states have recently modified law to address this problem

State examples

California

- The definition of drug paraphernalia was modified to remove equipment used to test for the presence of adulterants or drugs
- Organizations such as SSPs, universities, or nonprofits working with public health departments may operate drug checking services, including using any type of equipment or test used to determine what is in a substance
- Possession of any equipment used for injecting or smoking drugs is not illegal when obtaining drug checking services

State examples

California (continued)

- Broad protections for staff, including from searches
- A person “engaged in obtaining” drug checking services is immune from detention, arrest, prosecution, violation of parole, probation, or any form of community supervision, civil, disciplinary, or administrative action, forfeiture of property, or referral to ICE for possession of drugs
- No personal information can be collected, except when a provider is using it to share results, after which it must be destroyed immediately. Personal information may not be shared with law enforcement.

Cal. Health & Safety Code §§ 11300 -11306

State examples

Massachusetts

- Testing equipment is broadly defined
- Staff and participants are protected from charges for paraphernalia possession, drug possession, and conspiracy while on the drug checking premises
- Staff and contractors are protected from criminal and civil liability for their good faith actions (outside of gross negligence)

Mass. Gen. Laws Ann. ch. 94C, § 34A½

State examples

Vermont

- Broad protections for “approved drug-checking service provider to receive, possess, transport, or store samples of a substance that may contain a regulated drug solely for purposes of analyzing the substance to determine its chemical composition and disseminate information regarding the analysis to the provider of the substance.”
- Explicit protection for drug checkers transporting samples, including packaging and sending to a lab
- Explicit protections for participants when the evidence for a drug crime is collected because the participant sought drug checking services

Vt. Stat. Ann. tit. 18, § 4258

Want to do drug checking?

Great!

TALK TO DRUG CHECKERS.

TALK TO PEOPLE WHO USE DRUGS.



Summary

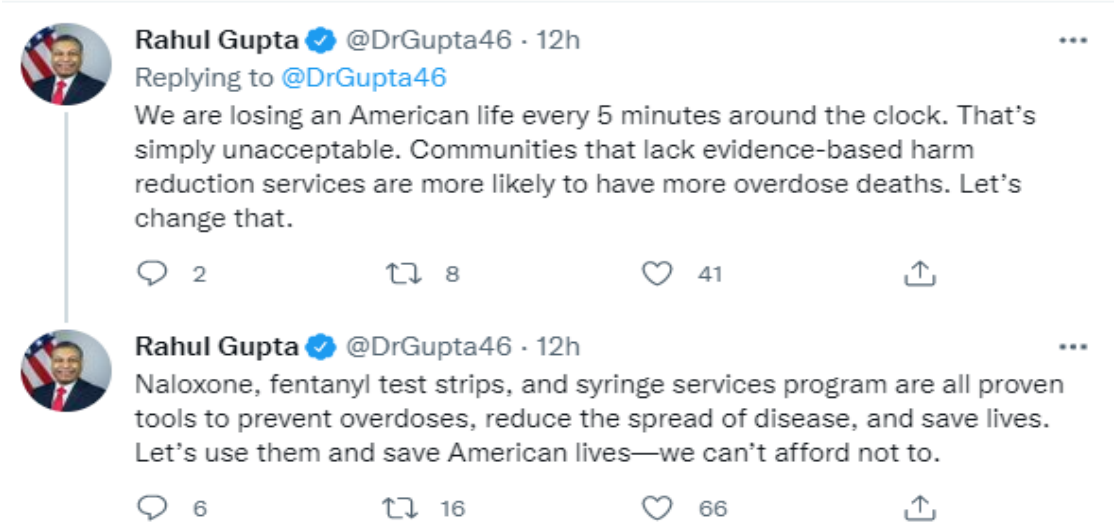
Summary and conclusions

- Drug checking laws showcase the ability both of states to act quickly in the face of an emerging threat and to fall back on a “war on drugs” mentality
- While states rapidly removed some barriers to DCE, most initially limited those changes to specific modalities, such as FTS – and several still do
- Even today, most do not explicitly provide protection for arrest, charge, and prosecution for the drugs being checked

- Read our full report here!

Summary and conclusions

- Paraphernalia laws increase harm
- Continued criminalization of drug possession muddies the DCE legal landscape and causes implementation issues
- Laws that prioritize the arrest and prosecution of people who use drugs are counter to public health and public safety
- Public health shouldn't be a partisan issue
- People who use drugs should be meaningfully involved in drug checking policy and implementation



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Q&A

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Thank You!

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