

Support HB 470 - Expand New Hampshire's Overdose Prevention Strategy

Under current law, with the exceptions of fentanyl and xylazine test strips, the possession with intent to distribute lifesaving drug checking equipment is an unclassified misdemeanor and punishable by up to one year in jail and a fine of \$2,000.ⁱ

HB 470 would:

- Remove drug checking equipment or materials used in the processing, preparing, packaging, repackaging, storing, or containing nominal amounts for the purpose of drug checking from the definition of drug paraphernalia;
- Allow the state to authorize use of state or state-administered funds for eligible drug checking activities;
- Allow individuals to possess, transport, deliver, or provide a nominal amount of one or more controlled substances or controlled substance analogs for, or during, analysis by drug checking equipment.

HB 470 does not apply if an individual possesses drug checking equipment or materials in conjunction with other evidence forming the basis of a criminal charge involving the manufacturing, possessing with the intent to sell, or compounding pursuant.

New Hampshire must build on its overdose prevention successes. Drug overdose deaths in New Hampshire peaked at 490 in 2017.ⁱⁱ Fortunately, the New Hampshire legislature made naloxone available in 2015, which is an FDA approved medication that temporarily reverses an opioid overdose to provide crucial time for medical intervention.ⁱⁱⁱ According to the New Hampshire Drug Monitoring Initiative, the availability of naloxone “very likely contributed to a decline in both overdose deaths and EMS provided Narcan administration through 2019.”^{iv} Between November 2023 and October 2023, the most current New Hampshire Drug Monitoring Initiative Drug Environment Report available, naloxone administered by EMS saved 764 lives.^v It is past time to expand New Hampshire’s data-supported harm reduction tools.

Drug checking equipment is an additional proven strategy to save lives. Multiple studies have shown that access to drug checking equipment reduces overdose risk behavior and saves lives.^{vi} For example, a pilot program in Vancouver, Canada found that people who checked drugs were over 10 times more likely to reduce their dose and 25 percent less likely to overdose.^{vii} In addition, according to the lead author of study in Rhode Island published in the International Journal of Drug Policy, “[w]e found that fentanyl test strips are an effective harm-reduction tool to prevent overdose.”^{viii} HB 470 will ensure that people be able to distribute this life-saving equipment

Drug testing equipment does not encourage drug use. According to the Dr. Rahul Gupta, the director of the Office of National Drug Control Policy, “[t]here is no scientific evidence to support this notion that harm-reduction services like fentanyl test strips somehow encourage drug use, but there is significant evidence to support the fact that these tools can save lives[.]”^{ix} Lawmakers should separate fact from fiction and expand its available data-supported harm reduction tools.

Major governmental and non-governmental medical and public health agencies and organizations support access to drug-checking equipment as a harm reduction tool. The Centers for Disease Control and Prevention,^x Substance Abuse and Mental Health Services Administration,^{xi} and the American Medical Association^{xii} have made clear that drug-testing equipment is an important tool for reducing harm and saving lives.

An increasing number of states permit the possession and distribution of drug checking equipment. Twenty-three states permit the free distribution of all drug checking equipment, including New Hampshire's neighbors in Maine, Massachusetts, and Vermont.^{xiii} The distribution of drug checking equipment remains illegal in only 8 states, with the remaining 19 states permitting certain types of drug checking equipment.^{xiv} New Hampshire should join this diverse, rapidly growing set of states.

Support HB 470 - Drug checking equipment is a data-driven approach to saving lives in New Hampshire

ⁱ “Drug paraphernalia means all equipment, products and materials of any kind which are used or intended for use or customarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to: ... (d) Testing equipment used or intended for use or customarily intended for use in identifying, or analyzing the strength, effectiveness or purity of controlled substances.” 318-B:1(X-a) “A person shall be guilty of a misdemeanor who: ... (c) Manufactures with the intent to deliver, delivers or possesses with the intent to deliver any drug paraphernalia when such paraphernalia is knowingly manufactured, delivered or possessed for one or more of the uses set forth in RSA 318-B:2, II.” 318-B:26(III)

ⁱⁱ New Hampshire Drug Monitoring Initiative, October 2022 Report, *available at* <https://www.dhhs.nh.gov/sites/g/files/ehbemt476/files/documents2/dmi-october2022.pdf>.

ⁱⁱⁱ *Id.*

^{iv} *Id.*

^v New Hampshire Drug Monitoring Initiative, October 2023 Report, *available at* <https://www.dhhs.nh.gov/sites/g/files/ehbemt476/files/documents2/dmi-oct2023.pdf>.

^{vi} Maxwell Krieger, et. al., *Use of rapid fentanyl test strips among young adults who use drugs*, International Journal of Drug Policy, Nov. 2018, *available at* <https://www.sciencedirect.com/science/article/abs/pii/S0955395918302469>; see also, Nicholas Peiper, et. al., *Fentanyl test strips as an opioid overdose prevention strategy: Findings from a syringe services program in the Southeastern United States*, International Journal of Drug Policy, Jan. 2019, *available at* <https://www.sciencedirect.com/science/article/pii/S0955395918302135>; Centers for Disease Control and Prevention, *Fentanyl Test Strips: A Harm Reduction Strategy*, *available at* <https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html>.

^{vii} Drug Policy Alliance, *Preventing Overdose Deaths with Drug Checking*, *available at* https://drugpolicy.org/sites/default/files/factsheet_drugcheckingmaryland_0.pdf.

^{viii} Brown University, *Fentanyl test strips prove useful in preventing overdoses*, Press Release, *available at* <https://www.brown.edu/news/2018-10-18/fentanyl>.

^{ix} Jan Hoffman, *Fentanyl Test Strips Highlight Rift in Nation's Struggle to Combat Drug Deaths*, NY Times, Oct. 1, 2022, *available at* <https://www.nytimes.com/2022/10/01/health/fentanyl-test-strips.html#:~:text=%E2%80%9CThere%20is%20no%20scientific%20evidence,of%20National%20Drug%20Control%20Policy..>

^x Centers for Disease Control and Prevention, *Fentanyl Test Strips: A Harm Reduction Strategy*, *available at* [https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20\(FTS\)%20are,%2C%20powder%2C%20and%20injectables](https://www.cdc.gov/stopoverdose/fentanyl/fentanyl-test-strips.html#:~:text=Fentanyl%20test%20strips%20(FTS)%20are,%2C%20powder%2C%20and%20injectables)

(“Fentanyl test strips (FTS) are a low-cost method of helping prevent drug overdoses and reducing harm. FTS are small strips of paper that can detect the presence of fentanyl in all different kinds of drugs (cocaine, methamphetamine, heroin, etc.) and drug forms (pills, powder, and injectables). FTS provide people who use drugs and communities with important information about fentanyl in the illicit drug supply so they can take steps to reduce risk of overdose.”)

^{xi} In its announcement that federal funding may now be used to purchase FTS, the interim leader at SAMHSA stated “This is a major step forward in the ongoing and critical work to prevent overdose and connect people who have substance use disorders to evidence-based treatment options[.] This will save lives by providing tools to identify the growing presence of fentanyl in the nation’s illicit drug supply and – partnered with referrals to treatment – complement SAMHSA’s daily work to direct help to more Americans.” See, Centers for Disease Control and Prevention, *Federal Grantees May Now Use Funds to Purchase Fentanyl Test Strips*, Apr. 7, 2021, *available at* <https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html>.

^{xii} American Medical Association policy: “Encourage[s] state and county medical societies to advocate for harm-reduction policies that provide civil and criminal immunity for the possession, distribution and use of “drug paraphernalia” designed for harm reduction from drug use, including but not limited to drug-contamination testing and injection-drug preparation, use and disposal supplies. Support[s] efforts to increase access to fentanyl test strips and other drug-checking supplies for the purpose of harm reduction.”

See, Andis Robeznieks, *Harm-reduction efforts needed to curb overdose epidemic*, American Medical Association, Nov. 15, 2022, available at <https://www.ama-assn.org/delivering-care/overdose-epidemic/harm-reduction-efforts-needed-curb-overdose-epidemic>.

^{xiii} The 23 states are: Alaska, Arkansas, Colorado, Connecticut, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

^{xiv} *Legality of Drug Checking Equipment in the United States*, The Network for Public Health Law, Aug. 2023, available at <https://www.networkforphl.org/wp-content/uploads/2023/11/50-State-DCE-Fact-Sheet-2023-2.pdf>.