HB 287 - AS INTRODUCED

2023 SESSION

23-0541
04/05

HOUSE BILL ***287***

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

SPONSORS: Rep. Newell, Ches. 4; Rep. Read, Rock. 10; Rep. Popovici-Muller, Rock. 17; Rep. Wheeler, Hills. 33; Rep. Seibert, Hills. 21

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill amends the definition of drug paraphernalia in the controlled drug act and repeals testing equipment from the definition of drug paraphernalia.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 287 - AS INTRODUCED

23-0541
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Controlled Drug Act; Definition of Drug Paraphernalia. Amend the introductory paragraph in RSA 318-B:1, X-a to read as follows:

X-a. "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:

2 Repeal. RSA 318-B:1, X-a(d), relative to testing equipment in the definition of drug paraphernalia, is repealed.

3 Effective Date. This act shall take effect 60 days after its passage.

HB 287 - AS INTRODUCED

LBA
23-0541
12/5/22

HB - FISCAL NOTE
AS INTRODUCED

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

FISCAL IMPACT: [X] State [X] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

COUNTY:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

METHODOLOGY:

This bill exempts fentanyl test strips from the definition of drug paraphernalia. This bill would impact penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many fewer misdemeanor charges would be brought because of the changes contained in this bill in order to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Violation and Misdemeanor Level Offense	$119	$122	$122
Appeals	Varies	Varies	Varies

Judicial Council	FY 2023	FY 2024
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Misdemeanor	$300/Case $70 administrative fee $100 incarceration fee	$300/Case $70 administrative fee $100 incarceration fee

	(If applicable)	(If applicable)
Assigned Counsel- Misdemeanor. Travel time to court does not count toward the cap.	$90/Hour up to $2,000	$90/Hour up to $2,000
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		

Department of Corrections	FY 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	$64,223	$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	$6,123	$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	$688	$688

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

CONSENT CALENDAR

March 10, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Criminal Justice and Public Safety to which was referred HB 287,

AN ACT removing testing equipment from the definition of drug paraphernalia in the controlled drug act. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Karen Reid

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Criminal Justice and Public Safety**
Bill Number:	**HB 287**
Title:	**removing testing equipment from the definition of drug paraphernalia in the controlled drug act.**
Date:	**March 10, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**OUGHT TO PASS**

STATEMENT OF INTENT

This bill amends the definition of drug paraphernalia in the controlled drug act and repeals testing equipment from the definition of drug paraphernalia. The aum of this bill is to provide persons suffering from substance misuse disorder a harm reduction tool that may decrease the chance of a drug overdose. This bill exempts Fentanyl test strips from the definition of drug paraphernalia from the controlled drug act.

Vote 20-0.

Rep. Karen Reid
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Criminal Justice and Public Safety

HB 287, removing testing equipment from the definition of drug paraphernalia in the controlled drug act. **OUGHT TO PASS.**

Rep. Karen Reid for Criminal Justice and Public Safety. This bill amends the definition of drug paraphernalia in the controlled drug act and repeals testing equipment from the definition of drug paraphernalia. The aim of this bill is to provide persons suffering from substance misuse disorder a harm reduction tool that may decrease the chance of a drug overdose. This bill exempts Fentanyl test strips from the definition of drug paraphernalia from the controlled drug act. **Vote 20-0.**

Original: House Clerk
Cc: Committee Bill File

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: HB 287 Date: 1/18/23

Committee: Criminal Justice and Public Safety

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Dan Hynes			HD/15 2	✓	
Sebastian Fuentes	Thornton NH	6039914687	Rad NH	✓	
Kerry Nolte	321 Dennett St Ports NH 03801	603-315-1714	self	+	
Lauren McGinley	Newmarket NH	6035680258		+	
Rep. DANIEL Potovici-Muller	WILDER	6032674142	CO-Sponsor	✓	
Rep. Christine Seibert	90 EVE STR. Manchester, NH 03104		(HHS-District 21)	✓	
Rep Ellen Read			Rock (C)	✓	

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 287-FN

BILL TITLE: **removing testing equipment from the definition of drug paraphernalia in the controlled drug act.**

DATE: **January 18, 2023**

LOB ROOM: **202-204** **Time Public Hearing Called to Order:** **12:36 p.m.**

Time Adjourned:

Committee Members: Reps. Roy, Rhodes, A. Murray, Sytek, Proulx, D. Mannion, Reid, Stone, Tenczar, Harriott-Gathright, Meuse, Bouldin, Bradley, N. Murphy, R. Newman, Newell, Selig and Wheeler

Bill Sponsors:
Rep. Newell **Rep. Read** **Rep. Popovici-Muller**
Rep. Wheeler **Rep. Seibert**

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep Jodi Newell introduces her bill

- Overdoses have not gone down in NH, only overdose deaths. Fentanyl test strips are something we want to encourage people to have to prevent potential deaths from tainted drugs. We don't want to encourage use but we must deal with reality.
- Rep Newman asks for clarification on what the drug test strips look like, Rep Newell describes them as a pregnancy test

Anena Hasen, private citizen from Peterborough

- In support of bill
- Shares about her life partner, former Representative Phil Spagnulo, who died of a fentanyl overdose over a year ago. Testifies how the brain eventually will see drugs as necessary for survival and how difficult it is to stay clean.
- It should not be a crime to try to survive drug use to make it to the next day and get a second chance

Rep Daniel Popovici-Muller of Windham

- In support of bill
- Drug use is deadly, even when the drugs are pure, but contaminated drugs almost always are. Harm reduction is the correct way to look at drug policy.
- Classifying testing strips as drug paraphernalia will discourage efforts to distribute materials that can mitigate overdoses and deaths in NH, makes NH seem not worth investing in

Kerry Nolte, associate professor of nursing at UNH where she works on harm reduction and reducing drug related harm. Nurse practitioner who does homeless outreach.

- In support of bill
- Mentions that HB 470 more comprehensively allows comprehensive drug checking, not just fentanyl test strips, FTIR machines that can test for various substances
- Animal tranquilizer has been increasingly cut into drugs in New England which is a sedative, slows heart rate, and can cause infected wounds

Kate Frey, VP of Advocacy at New Futures, brings a CDC overview of why fentanyl test strips are effective at harm reduction

- In support of bill
- Also mentions HB 470 as a more comprehensive alternative
- Rep Meuse asks for an overview of New Futures stance on harm reduction, Frey discusses how harm reduction is an integral part of lessening drug use and deaths

Frank Knack, ACLU

- In support of bill
- These strips don't test the purity of the drug, only if fentanyl is there or not
- There is no evidence that these strips encourage drug us, but plenty that they do save lives
- Rep Bouldin asks if there is any evidence that test strips discourage drug use, Knack says there is evidence that if test strips are used individuals are more likely to use less often and more safely
- Unclassified misdemeanor for distribution, possession is protected

Rep Christine Seibert of Manchester

- In support of bill
- All of our services in Manchester are stretched, first responders are fatigued by the demand on their units

Lauren McGinely, executive director of NH Harm Reduction Coalition

- In support of bill
- Currently NHHRC is the state's largest distributor of fentanyl test strips
- Fentanyl can be a contaminate in not just heroin but in many substances where an individual may not be aware of the risk and would not be prepared to deal with overdose, such as college students using cocaine
- Federal resources can be used to purchase these strips and the CDC has encouraged it
- Chairman Roy asks if people are able to regularly obtain these at a physical location, McGinely describes their events and regional care coordinators who can procure strips for them and show them how to use them. Follow up from Chairman Roy asking if they are prepared for broader distribution, McGinley says yes
- Rep Bouldin asks for clarification on the federal and state statutes regarding test strips. McGinley says NHHRC is protected by law but other organizations that are not properly registered may not be covered, and individuals are not protected if they distribute test strips. The law is currently not very clear which is why this bill's clarifying language is needed.

Rep Ellen Read of Newmarket

- In support of bill
- We cannot penalize people out of mental health or substance abuse conditions
- May be strategic to pass this as HB 470 is more complicated and could get held up
- Rep Wheeler asks if it makes sense to retain this bill or 470, Rep Read suggests retaining 470

Captain John Scippa of the State Police

- Not taking a position but says there should be no unintended consequences if we removed this language from the RSA
- By the technicality of the current law, yes someone could be charged with possession of drug paraphernalia if found with test strips however he is not aware of any cases where that happened

Respectfully submitted,

Rep. Alissandra Murray, Clerk

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB287 on 2023-

Support: 18 Oppose: 1 Neutral: 0 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Support	No	No
Smith, Julie	Nashua, NH cantdog@comcast.net	A Member of the Public	Myself	Oppose	No	No
McWilliams, Rebecca	Concord, NH rebecca.mcwilliams@leg.state.nh.us	An Elected Official	Merrimack 30	Support	No	No
Smith, Hayden	Hanover, NH hasmith1520@gmail.com	A Member of the Public	Myself	Support	No	No
Gilman, Representative Julie	Exeter, NH julie.gilman@leg.state.nh.us	An Elected Official	Town of Exeter	Support	No	No
Hatcher, Phil	Dover, NH phil.hatcher@gmail.com	A Member of the Public	Myself	Support	No	No
Benevides, Eric	Gilford, NH ericbenevides@gmail.com	A Member of the Public	Myself	Support	No	No
LeClerc, Dan	Amherst, NH djl91862@gmail.com	An Elected Official	Myself	Support	No	No
Spier, Carry	Nashua, NH carry.spier@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Short, Raymond	Hooksett, NH rayshort910@gmail.com	A Member of the Public	Myself	Support	No	No
Williams, Bobby	Keene, NH spikewilliams@gmail.com	An Elected Official	Myself	Support	No	No
Morton, Jennifer	Amherst, NH jenn@mortonfornh.com	An Elected Official	Myself	Support	No	No
Germana, Nick	Keene, NH herthausa@gmail.com	An Elected Official	Keene, Cheshire - District 1	Support	No	No
Parshall, Lucius	Marlborough, NH lucius.parshall@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Palmer, William	Cornish, NH wpalmernh@gmail.com	An Elected Official	Myself	Support	No	No
Frost, Sherry	Dover, NH sherryfrost626@gmail.com	A Member of the Public	Myself	Support	No	No
Stockwell, Heather	Dublin, NH heather@radnh.org	A Member of the Public	Myself	Support	No	No
Lane, Connie	Concord, NH connie.lane@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Schapiro, Joe	Keene, NH joe.schapiro@leg.state.nh.us	An Elected Official	Cheshire 16	Support	No	No

ACLU New Hampshire

HB 287

Frank Knaack
Policy Director
fknaack@aclu-nh.org
603.545.0433

Support HB 287 - Expand New Hampshire's Harm Reduction Strategy

HB 287 would remove drug testing equipment, including fentanyl test strips (FTS), from the definition of drug paraphernalia. Under current law, the possession with intent to distribute lifesaving drug testing equipment is an unclassified misdemeanor and punishable by up to one year in jail and a fine of $2,000.[i]

New Hampshire must build on its harm reduction 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 2021 and October 2022, the most current New Hampshire Drug Monitoring Initiative Drug Environment Report available, naloxone administered by EMS saved 865 lives.[v] It is past time to expand New Hampshire's data-supported harm reduction tools.

Drug testing kits are an additional proven strategy to save lives. FTS were specifically designed to prevent overdoses. According to the Centers for Disease Control, 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." Multiple studies have shown that FTS reduce overdose risk behavior and save lives.[vi] For example, a pilot program in Vancouver, Canada found that 79 percent of drugs checked had fentanyl and 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 287 will help reduce risky behavior and save lives.

FTS do 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 fentanyl test strips and other drug-checking supplies 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 testing equipment. As of August 31, 2022, 24 states, including our neighbors in VT, ME, and MA, have legalized the possession and distribution of drug testing equipment, with certain limitations.[xiii] Among these states, 10 states (AL, AZ, CT, LA, ME, NJ, NM, TN, WV, and WI) passed laws to permit the possession and/or distribution of drug checking equipment in just the 13 month period between August 1, 2021 and August 31, 2022.[xiv] New Hampshire should join this diverse, rapidly growing set of states.

Support HB 287 - Drug testing kits are a data-driven approach to saving lives and reducing harm in New Hampshire

Last updated January 17, 2023

[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] *Id.*

[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/fantanyl-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 ("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 states include: AL (limited to fentanyl testing equipment), AK, AZ (limited to fentanyl testing equipment), CO, CT, DE (limited to fentanyl testing equipment), LA (limited to fentanyl testing equipment), ME, MD, MA, MI, MN (limited to fentanyl testing equipment), NE, NV, NJ (limited to fentanyl testing equipment), NY, RI, SC, TN, (limited to synthetic opioid testing equipment), VT, VA, WV, WI (limited to fentanyl testing equipment), and WY. Source: The Network for Public Health Law, *Harm Reduction and Overdose Prevention, 50-State Survey, Legality of Drug Checking Equipment in the United States*, August 2022 Update, *available at* https://www.networkforphl.org/wp-content/uploads/2023/01/Legality-of-Drug-Checking-Equipment-in-the-United-States-August-2022-Update.pdf.

[xiv] Corey Davis, *Legality of Drug Checking Equipment in the United States*, The Network for Public Health Law, *available at* https://www.networkforphl.org/resources/legality-of-drug-checking-equipment-in-the-united-states/.

Last updated January 17, 2023

Fentanyl Test Strips: A Harm Reduction Strategy

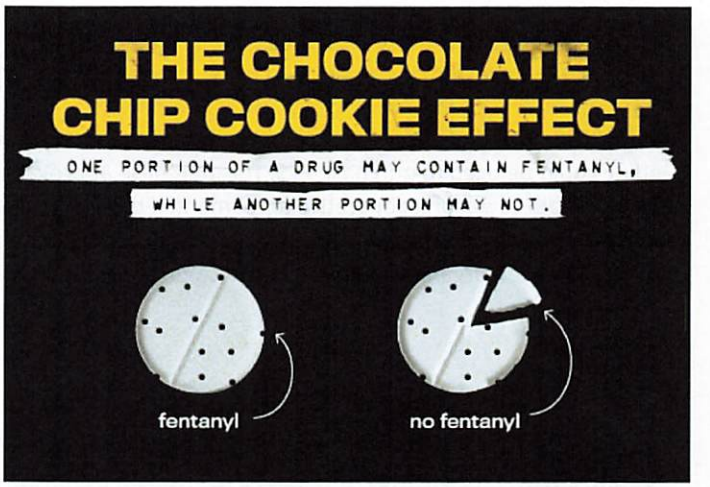
What are fentanyl test strips?

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).[1] 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.[2] **Look for organizations in your city or state that distribute FTS, keep them on you, and use them!**

How to use fentanyl test strips

Below are steps[3] to test your drugs for fentanyl using FTS. Depending on the types of drugs you're testing, the steps may be slightly different:

- Step 1: Put a small amount (at least 10mg) of your drugs aside in a clean, dry container.
- Step 2: Add water to the container and mix together.
  - *Please note: For most drugs, you need ½ teaspoon of water. If you are testing methamphetamines, use1 full teaspoon.*[4]
- Step 3: Place the wavy end of the test strip down in the water and let it absorb for about 15 seconds.
- Step 4: Take the strip out of the water and place it on a flat surface for 2 to 5 minutes.
- Step 5: Read results.



  - Positive results: A single pink line on the left-hand side indicates that fentanyl or a fentanyl analog has been detected in your drugs. If you receive a positive result, it is much safer to discard the batch. Using it could kill you. Illicitly manufactured fentanyl is extremely potent and can be deadly.
  - Negative results: Two pink lines indicate that fentanyl or a fentanyl analog has not been detected in your drugs. Remember that no test is 100% accurate and your drugs may still contain fentanyl or fentanyl analogs even if you receive a negative result. You should still take caution as FTS might not detect more potent fentanyl-like drugs, like carfentanil, and fentanyl might not be everywhere in your drugs and your test might miss it.
  - Invalid results: A single pink line on the right-hand side or no lines at all, indicates an invalid test. If you get an invalid result, test your drugs again using a new strip.



Lower your risk of overdose

In addition to using fentanyl test strips to know if fentanyl is in your drugs, there are other ways[5] to lower your risk of overdose. You can take steps to keep yourself and others safe:

- **Keep naloxone readily available on you and at home.** Talk with your healthcare provider or pharmacist about being prescribed naloxone (e.g., Narcan) if you or someone you know is at risk for an overdose. You can also check with your local health department or community-based organization to see if they distribute naloxone at no cost.
- **Avoid mixing drugs.** Mixing multiple stimulants like methamphetamine and cocaine, depressants like opioids and alcohol, or a combination of both can cause harm and potentially death.[6]
- **Don't rely on a previous source or experience.** Knowing where your drugs come from doesn't mean they're safe. And even if you have used drugs before, your body could react differently every time.
- **Never use drugs alone.** Make sure the people around you are aware when you have taken drugs in case they need to give you naloxone or call for emergency assistance.
- **Ask for help if you're ready to get treatment for your addiction.** Recovery from substance use disorders is possible—it's okay to ask for help. You can find evidence-based treatment and service options near you by visiting findtreatment.gov or by calling the 24/7, National Helpline at 800-662-HELP (4357).

CDC supports state and community-level FTS efforts

In April 2021, CDC and the Substance Abuse and Mental Health Services Administration (SAMHSA) announced[7] federal funding could be used to purchase FTS. This purchase approval applies to all federal grant programs, like CDC's multiyear Overdose Data to Action cooperative agreement, if the purchase of FTS is consistent with the purpose of the program. Allowing federal grant programs to purchase FTS helps create opportunities for people who use drugs to interact with community-based organizations who may also offer mental health and behavioral services a person needs.

Footnotes

1. https://www.healthaffairs.org/do/10.1377/forefront.20210601.974263/
2. https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html
3. https://www1.nyc.gov/assets/doh/downloads/pdf/basas/fentanyl-test-strips-poster.pdf
4. Fact Sheet: Fentanyl Testing to Prevent Overdose – Information for People Who Use Drugs and Healthcare Providers
5. https://www1.nyc.gov/assets/doh/downloads/pdf/basas/fentanyl-test-strips-brochure.pdf
6. https://www.cdc.gov/stopoverdose/polysubstance-use/index.html
7. https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html

Last Reviewed: September 30, 2022

HEALTH AFFAIRS FOREFRONT

RELATED TOPICS:
PHARMACEUTICALS | SUBSTANCE USE | ACCESS TO CARE | SUBSTANCE USE DISORDER | PANDEMICS | OPIOID USE DISORDER | COVID-19

Fentanyl Test Strips Empower People And Save Lives—So Why Aren't They More Widespread?

Giselle Appel, Brenna Farmer, Jonathan Avery

JUNE 2, 2021

DOI: 10.1377/forefront.20210601.974263
<https://www.healthaffairs.org/do/10.1377/forefront.20210601.974263>



Fentanyl test strips (FTS) are a simple, inexpensive, and evidence-based method of averting drug overdose. FTS are small strips of paper that can detect the presence of fentanyl in any drug batch—pills, powder, or injectables. This tool might be lifesaving for the teenager experimenting for the first time, the individual in the throes of a severe opioid use disorder, the concert-goer looking for a trip, the person using a preferred substance obtained from a new source, or the individual years into recovery. FTS also support the dignity and well-being of people who use drugs (PWUD), enabling them to make educated decisions about their safety.

And yet after years <https://www.wbur.org/commonhealth/2017/05/11/fentanyl-test-strips> of <https://www.theatlantic.com/health/archive/2018/10/study-shows-fentanyl-test-strips-keep-addicts-safe/571981/> press <https://www.scientificamerican.com/article/1-fentanyl-test-strip-could-be-a-major-weapon-against-opioid-ods/> and discussions <https://www.cnn.com/2019/01/02/health/fentanyl-test-strip> of the strips' utility, FTS aren't as widely available as one would expect them to be. It is time to take a more critical look at the importance of destigmatizing this tool and increasing its distribution and availability, while highlighting the grave risks in not doing so.

Empowerment In A Test Strip

Fentanyl, a synthetic opioid 50 to 100 times <https://www.cdc.gov/drugoverdose/opioids/fentanyl.html> more powerful than morphine, is commonly found in unregulated drugs, as it is cheap to make and easily mixed or "cut" into drugs. It can be found in heroin or cocaine or formed into "pills" that are sold on the street in the guise of other substances such as MDMA, alprazolam, oxycodone, and others. Because of this, many users are unaware of the composition of drug they are taking or whether it contains traces of fentanyl. This lack of knowledge can be deadly; as we'll discuss later, fentanyl is responsible for an increasing number of drug overdoses.

Since their creation in 2011 by the biotech company BTNX <https://www.btnx.com/HarmReduction> , FTS have been distributed mainly at harm-reduction sites, such as needle and syringe programs, or through a distributor's website, but they could be sold at any bodega or dollar store. They are inexpensive ($1 each), simple to use <https://www.btnx.com/HarmReduction> , and can be carried in a wallet or purse. The single-use strips work like other over-the-counter testing products: The user dips the strip into water containing a small amount of well-mixed drug residue and waits a few minutes for the result. The appearance of a single line signifies the presence of fentanyl or fentanyl analogues such as acetylfentanyl, and two red lines signifies its absence.

By testing a drug batch with a single fentanyl test strip, the user is provided valuable information that can best support that user's unique situation: The user can choose to use a different batch, use less of the current batch, use in the presence of others, or make sure naloxone (an opioid reversal agent <https://www.drugabuse.gov/drug-topics/opioids/opioid-overdose-reversal-naloxone-narcan-evzio>) is on hand. The results can also provide insight into the trustworthiness of a new dealer, which might

inform choices to avoid future risk or foster caution among the user's peers. In this case, greater knowledge means greater power. Although the strips do not provide information on the exact amount of fentanyl present, testing can provide enough time, space, and information for a user to contemplate the options. This alone can support a greater sense of empowerment over one's health, thereby prompting safer behaviors and practices. For those who are in remission or at risk due to an active substance use disorder, the empowerment afforded by FTS can lead to an improved sense of agency and therefore self-worth, which could mitigate risks and facilitate progress on their path toward recovery.

Yet, the pervasive stigma surrounding PWUD has created barriers around FTS and other harm-reduction tools. Negative perceptions of PWUD are fueled by a lack of compassionate understanding of why individuals would use drugs in the first place, which in turn contributes to the belief that they lack a moral compass, can't be trusted, or don't care about their own well-being. These sentiments are found in our immediate communities, but they also exist in some of the highest levels of our government. In a 2018 blog post <https://web.archive.org/web/20210108010839/https:/blog.samhsa.gov/2018/10/03/for-beating-the-opioid-crisis-america-has-better-weapons-than-fentanyl-test-strips/> that has since been removed from the Substance Abuse and Mental Health Services Administration (SAMHSA) website, former assistant secretary Elinore McCance-Katz, MD, PhD, stated, "The entire approach [of fentanyl test strips] is based on the premise that a drug user poised to use a drug is making rational choices, is weighing pros and cons, and is thinking completely logically about his or her drug use. Based on my clinical experience, I know this could not be further from the truth."

However, the research demonstrates the opposite. For example, in a 2018 study <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6701177/> , drug users provided with FTS reported that receiving a positive test result was significantly associated with a positive change in overdose risk behavior (such as using more slowly, using less, throwing the batch away, or using with another person around). The overwhelming evidence supports the safety and ease <https://pubmed.ncbi.nlm.nih.gov/30344005/> of FTS use in the community and in outpatient and inpatient treatment settings.

A Growing Need For Greater Access And Availability

The recent statistics on fentanyl-related overdoses are alarming, and they point to the need for expanded access to FTS. Responsible for just 4 percent of opioid overdose deaths in 2011, fentanyl has become one of the leading substances involved in all drug

overdoses within the United States. In 2017, fentanyl was found in 57 percent <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief104.pdf> of all overdose deaths (842) in New York City. In 2018, fentanyl was found in 89 percent of all drug overdoses <https://www.mass.gov/doc/opioid-related-overdose-deaths-among-ma-residents-august-2018/download> (477) in the entire state of Massachusetts, where a urine toxicology screen was available. In 2019 alone, fentanyl was found in 51 percent of the total overdose deaths <https://www.cdc.gov/mmwr/volumes/70/wr/mm7006a4.htm> in the United States (36,000 out of a total of 70,630).

The situation has worsened during the COVID-19 pandemic. Between October 2019 and October 2020, there was a 46 percent increase in overall overdose deaths <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> from methamphetamine and other stimulants in the United States compared to the previous year; this increase has been linked to increases in fentanyl contamination <https://www.npr.org/sections/health-shots/2021/04/22/989833102/overdose-deaths-surged-in-pandemic-as-more-drugs-were-laced-with-fentanyl> . As another example, the Office of the Chief Medical Examiner in San Francisco reported that the city experienced more overdose deaths <https://sf.gov/sites/default/files/2021-01/2021%2001_OCME%20Overdose%20Report.pdf> (699) than COVID-19 deaths (260 <https://data.sfgov.org/stories/s/dak2-gvuj>) from January 2020 to December 2020, which was 59 percent greater <https://www.sfdph.org/dph/alerts/files/PR-2020-Substance-Use-Trends-2019-Annual-Report.pdf> than in 2019. If FTS had been available to even some of these individuals, we may have been able to prevent a portion of these deaths.

With COVID-19-related restrictions in place and widespread fears of virus exposure, maintenance therapies such as methadone and harm-reduction tools such as naloxone and clean needles have been more difficult to access, and many people have struggled with increased stress and anxiety. A staggering 13 percent of individuals <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm> surveyed in a Centers for Disease Control and Prevention (CDC) study reported new or increased use of substances during the pandemic; this kind of escalation of drug use might lead individuals to seek out their drug of choice with less discretion than normal, therefore supporting the need for greater access to FTS as a harm-reduction tool.

A Shifting Attitude Under The Biden Administration

On April 7, 2021, the CDC and the SAMHSA announced <https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html> that federal funding can now, for the first time, be used to purchase FTS for research, clinical, or public health purposes. This comes about four months after a CDC Health Advisory Statement <https://emergency.cdc.gov/han/2020/pdf/CDC-HAN-00438.pdf> that addressed the need to "improve the detection of overdose outbreaks due to fentanyl, novel psychoactive substances (e.g., fentanyl analogs), or other drugs to facilitate an effective response." They advised harm-reduction organizations to implement "drug checking services and drug supply surveillance in line with applicable state and local laws."

The legality of drug checking, such as via FTS, still varies state to state. While some states <https://www.pennlive.com/news/2019/03/could-fentanyl-test-strips-prevent-fatal-drug-overdoses-in-pa.html> still categorize such drug-checking items as illegal drug paraphernalia, other states—including New Mexico <https://www.nmlegis.gov/Sessions/19%20Regular/final/SB0323.pdf> , Colorado <https://leg.colorado.gov/sites/default/files/documents/2019A/bills/2019a_227_enr.pdf> , Rhode Island <http://webserver.rilin.state.ri.us/BillText/BillText18/HouseText18/H8132.pdf> , and Maryland <https://legiscan.com/MD/text/SB1137/2018> —have made efforts in the past few years to decriminalize such tools. Most recently, on May 18, 2021, Arizona Governor Doug Doucey signed into law a bill <https://legiscan.com/AZ/bill/SB1486/2021> that legalizes FTS to the extent that they are now no longer considered drug paraphernalia in the state. The date marked the one-year anniversary of Arizona Senator Christine Marsh's loss of her 25-year-old son to an accidental fentanyl overdose (Marsh sponsored the bill). Her hope, like ours, is that these tests will eventually be sold at more accessible locations for the lay public.

Decriminalization of FTS is a step toward reducing the stigma around PWUD, but it's an uphill battle. Drug harm-reduction strategies have a long history of aversion within US society. Take naloxone, for example. The largest funder of addiction research, the National Institute on Drug Abuse <https://www.nejm.org/doi/full/10.1056/NEJMsr1706626> , has long supported its utility in decreasing opioid-related mortality <https://www.drugabuse.gov/drug-topics/opioids/opioid-overdose-reversal-naloxone-narcan-evzio> ; however, like FTS, it remains a contentious weapon in the fight to end the opioid crisis across the United States, with some opponents arguing it will lead to increased substance use. Naloxone

has been Food and Drug Administration (FDA)-approved for overdose reversals since the 1970s, yet its distribution has only been normalized over the past few years <https://www.theatlantic.com/health/archive/2018/10/us-surgeon-general-jerome-adamss-naloxone-mission/572233/>. Naloxone can now reach the hands of individuals through free-of-cost <https://medium.com/@scripthealth/how-to-get-free-narcan-5870a7815c9d> distribution across hospitals, school systems, and places of worship. The availability, however, may depend on whether or not an organization is willing to allocate their funds to purchase kits for free distribution or if the organization has made arrangements with their local governmental agency to be distributing centers. As an example, the New York City Department of Health has partnered with CVS and Walgreen pharmacies to make naloxone free to any New Yorker during the COVID-19 pandemic <https://www1.nyc.gov/assets/doh/downloads/pdf/basas/naloxone-list-of-prevention-programs.pdf>.

In some cases, however, naloxone might not be sufficient to reverse an overdose if fentanyl is present, given fentanyl's high potency. Recognizing this concern, on April 30, 2021, the FDA approved a higher-dose naloxone nasal spray product <https://www.fda.gov/news-events/press-announcements/fda-approves-higher-dosage-naloxone-nasal-spray-treat-opioid-overdose>, which carries eight milligrams of naloxone compared with the two and four milligrams of naloxone currently accessible to the public. However, it is unclear what the cost and availability of this new product will be. Currently, a single dose of naloxone can cost $75 out of pocket, preventing some of the most vulnerable populations from accessing this life-saving measure; given that, it is expected that the new naloxone product will be prohibitively expensive. We need cheaper and more accessible naloxone and harm-reduction tools—such as FTS—for those who might be at risk for overdosing, rather than a higher and more costly dose of an existing medication.

It's Time To Normalize Fentanyl Test Strips

If society has begun to accept naloxone's utility for preventing drug overdose and death, why aren't we implementing a tool to prevent the overdose from happening in the first place? We cannot afford to wait decades for society to integrate FTS into our day-to-day lives. The greater availability of FTS, the greater the number of deaths we can prevent. FTS must be normalized at every party, available in social situations of drug use, and distributed in bathrooms at concerts or clubs. More health care organizations and hospital systems must take greater initiative in distributing FTS in their outpatient and inpatient settings, especially the emergency department, for those clinically indicated to benefit. More states should decriminalize FTS and recognize their ability to save lives.

We must collectively take a step back and evaluate the basis for preventing life-saving measures from being accessed in our communities. A critical component in defeating the opioid crisis is defeating long-standing stigma toward PWUD. Stigma toward PWUD and access to FTS bidirectionally affect one another: Stigma creates barriers to accessing harm-reduction tools, while removing barriers can reduce stigma. With efforts to combat stigma and increase access to FTS underway, including decriminalization and expanded funding for increased availability, we must now address the need for greater distribution channels, so that those who need it most can access it and remain empowered in their lifestyle choices.

Authors' Note

Giselle Appel, Brenna Farmer, MD, and Jonathan Avery, MD, are employed by Weill Cornell Medical College, which is one of the top-ranked clinical and medical research centers in the country, dedicated to the tripartite mission of education, research, and patient care.

Article Metrics



<https://www.altmetric.com/details.php?domain=www.healthaffairs.org&citation_id=124496576>

Related

CONTENT

Substance Use

TOPICS

Pharmaceuticals
Substance Use
Access To Care
Substance Use Disorder
Pandemics
Opioid Use Disorder

Daniel Richardson

Allowing the legal use of testing equipment is correct assurance of user safety from adulterated product. Nobody wishes anybody a death wish.

Rebecca McWilliams

If you know a NH family that has struggled with a loved one who has a history of substance misuse, one of the things families do to protect a loved one who will likely use drugs, is provide them test straps to ensure that when they do, the quality of the drugs won't kill them. We should not be treating test strips as drug paraphernalia. These are potentially life saving, and available online across the nation. This good bill is an administrative fix for misclassification.

Bobby Williams

This is a valuable means of harm reduction that will help prevent deaths by overdose.

Nick Germana

We have learned that the most effective way to deal with drug addiction is to treat users as people with treatable illnesses, supporting them with treatment options. Criminalization of drug users is never going to address the underlying causes of addiction and use. These people will never get help, and the market for drugs will continue to draws dealers to our state. This bill would take an important step in that direction by not having testing supplies be considered as paraphernalia as the basis of criminal charges. Testing supplies can be an indication that an individual is trying to take some responsibility for her/his actions; it should not be used for the counter-productive purpose of punishment. This is not good for the individual, the criminal justice system, or society.

Lucius Parshall

This is common sense revision of an otherwise good RSA to allow drug tests to be exempt from inclusion as drug paraphernalia. It serves public safety in the same way as Naloxone, in that this legislation has the potential of saving lives.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 287-FN

BILL TITLE: removing testing equipment from the definition of drug paraphernalia in the controlled drug act.

DATE: March 10, 2023

LOB ROOM: 202-204

MOTIONS: OUGHT TO PASS

Moved by Rep. Reid Seconded by Rep. Proulx Vote: 20-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Alissandra Murray, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2023 9:55:43 AM
Roll Call Committee Registers Report

2023 SESSION

Criminal Justice and Public Safety

Bill #: 287 Motion: Retain AM #: _____ Exec Session Date: 2/3/23

Members	YEAS	Nays	NV
Roy, Terry Chairman	19		
Rhodes, Jennifer M. Vice Chairman	1		
Pratt, Kevin M.	2		
Sytek, John Hill	3		
Proulx, Mark L. Sellers	4		
Janvrin, Jason A.	5		
Mannion, Dennis	6		
Reid, Karen A	7		
Stone, Jonathan F.	8		
Tenczar, Jeffrey	9		
Harriott-Gathright, Linda C.	10		
Meuse, David	11		
Bouldin, Amanda C.	12		
Bradley, Amy Clerk	13		
Murphy, Nancy A.	14		
Newman, Ray E.	15		
Murray, Alissandra	16		
Newell, Jodi K	17		
Selig, Loren	18		
Wheeler, Jonah O		1	
TOTAL VOTE:	19	1	