

**SUBMITTED TO: PA House Judiciary Public Hearing - 1/10/22**  
**RE: Testimony on HB 1393: Overdose deaths/ Fentanyl Test Strips**

**FROM:** Gail Groves Scott, MPH, Director of Research and Advocacy, Health Policy Network, LLC

Thank you for inviting me to testify today in support of House Bill 1393.

**My credentials / experience re: overdose prevention policy:**

- Public health policy researcher and advocate, Health Policy Network, LLC in Lancaster.
- Masters in Public Health, doctoral student at University of the Sciences, Philadelphia.
- Research focus: opioid use disorder treatment policy, and pharmaceutical marketing.
- Opioid criminal & civil cases: fact witness to a federal grand jury in Purdue Pharma case. Whistleblower in DOJ prosecution/ \$2 billion federal settlement w/ buprenorphine (Suboxone) manufacturer. Former 16 year pharmaceutical sales representative.
- Parent of five adult children, including one in recovery from an opioid use disorder. Family member of loved ones who have sustained injuries or died due to substance use.

As a researcher and health policy advocate, I echo the comments you are hearing from my colleagues today. We know that drug testing technologies, like fentanyl test strips, can be useful tools to check substances in street drugs. Promising research shows that their use can alter drug use behavior in ways that reduces overdoses, and saves lives.<sup>1</sup>

**At least 18 states do not list, or have removed, testing strips from “drug paraphernalia” laws; Pennsylvanians deserve up-to-date overdose prevention policies too.<sup>2</sup>**

I'm also here today to testify as the parent of a child who developed an opioid use disorder, and overdosed multiple times. We are so grateful my child survived; a significant reason was access to robust overdose prevention and harm reduction services in a city outside of Pennsylvania, where they had moved to go to school.

My child achieved sustained recovery. But just a few months ago, I attended a funeral in Lancaster for a friend's son, who'd gone to elementary school with some of our children. This young man had received treatment for his heroin use disorder, but he had a slip, a recurrence of use, which is common in early recovery. *It should not be a death sentence.* But without harm reduction education and tools, one slip was deadly. Too many of our friends, too many in our communities have died! The death toll is devastating – and preventable. You have the power to save lives by supporting this bill– the power to save another parent, spouse, child, or grandparent, from the heartbreak of losing their loved one.

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<sup>1</sup> Davis, Corey, Derek Carr, and Elizabeth Samuels. "Paraphernalia Laws, Criminalizing Possession and Distribution of Items Used to Consume Illicit Drugs, and Injection-Related Harm." *American Journal of Public Health*, 109, no. 11 (September 2019): e1-e4. [https://www.researchgate.net/publication/335940120\\_Paraphernalia\\_Laws\\_Criminalizing\\_Possession\\_and\\_Distribution\\_of\\_Items\\_Used\\_to\\_Consume\\_Illicit\\_Drugs\\_and\\_Injection-Related\\_Harm](https://www.researchgate.net/publication/335940120_Paraphernalia_Laws_Criminalizing_Possession_and_Distribution_of_Items_Used_to_Consume_Illicit_Drugs_and_Injection-Related_Harm).

<sup>2</sup> Legislative Analysis and Public Policy Association (May 2021) Fentanyl Test Strips: Policy Analysis, 1-5, Washington D.C. See page 3, footnote 1.

## Policy recommendations:

- Although some PA District Attorneys and the PA Attorney General do not prosecute fentanyl test strip possession or distribution currently, **amending PA's outdated “drug paraphernalia” laws statewide** is necessary to expand overdose prevention statewide. Decriminalizing fentanyl test strips also gains access to new federal grant funds.<sup>3</sup>
- **Suggested amendments to HB 1393** (see the Rhode Island model<sup>4</sup>) will help future-proof our Controlled Substance, Drug, Device and Cosmetic Act for later innovations in drug testing, or changes in toxic adulterants or dangerous drug prevalence. For example, one testing technology, a handheld spectroscope, can accurately identify the “date rape” drug flunitrazepam (Rohypnol) in alcoholic beverages.<sup>5</sup> Let’s amend the bill so this type of testing and device is legal to utilize for harm reduction too.
  - 1) **decriminalize all drug testing/ drug checking technologies.**
  - 2) **for any dangerous, or unexpected adulterants in any substances.**
  - 3) **clarify that third parties can carry, administer or assist another person with drug testing** (i.e. distribution by public health/ harm reduction workers, friends, family.)
- Effective overdose prevention in the Commonwealth requires passing both HB 1393 and **the bipartisan Syringe Services Program legislation: SB926** (P. Browne, et al); the House counterpart bill will be introduced soon (Innamorato, Struzzi). Together, these bipartisan bills will modernize PA’s policies by expanding community-level harm reduction services, part of the complex health and justice changes needed.

## Answering Frequently Asked Questions:

**Has criminalizing drug use or enforcing paraphernalia laws reduced the drug supply, drug use, or overdose deaths?** The research says no.<sup>6</sup> Criminalizing the tools people need to reduce their risk, does increase infectious disease spread, illness or death, but it has not stopped the behaviors. You’ve heard law enforcement professionals state “we can’t arrest our way out of the drug overdose crisis.” It’s almost a cliche now; we hear it so often. Making it illegal to possess or share tools that reduce a health harm (whether it’s sterile, clean syringes or drug testing strips) is the opposite of an effective public health approach. It harms the community, and wastes tax dollars needed for health services. Enforcement has disproportionately harmed minoritized communities and people of color.<sup>7</sup>

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<sup>3</sup> Federal Grantees May Now Use Funds to Purchase Fentanyl Test Strips (April 7, 2021) Centers for Disease Control, press release: <https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html>

<sup>4</sup> “(a) Any person may provide, administer, or utilize a narcotic testing product to assist another person in determining whether a narcotic or substance contains chemicals, toxic substances, or hazardous compounds. Narcotic testing products shall include, but not be limited to, fentanyl test strips. (b) A person who provides, administers, or utilizes a narcotic testing product to assist another person shall not be subject to civil liability or criminal prosecution as a result of providing, administering, or utilizing the narcotic testing product to assist another person. R.I. Gen. Laws § 21-28.9-3.1 (2020).

<sup>5</sup> Ali E., Edwards H. (2017) The detection of flunitrazepam in beverages using portable Raman spectroscopy. *Drug Test Anal.* 9(2):256–9. cited in Harper, L., Powell, J., & Pijl, E. M. (2017). An overview of forensic drug testing methods and their suitability for harm reduction point-of-care services. *Harm Reduction Journal*, 14(1), 52. <https://doi.org/10.1186/s12954-017-0179-5>

<sup>6</sup> Csete J, Kamarulzaman A, Kazatchkine M, et al. (2016) Public health and international drug policy. *Lancet*.387, 1427-1480.

<sup>7</sup> Davis, C., Burris SI, Kraut-Becher J., Lynch K., Metzger D., (2005) Effects of an intensive street-level police intervention on syringe exchange program use in Philadelphia, PA. *Am J Public Health*. 2005;95(2):233–236.

**Could deadly outcomes from drug use serve to deter use? If not, don't people deserve the consequences that result from their actions?** I am confident that Pennsylvanians truly do NOT believe that people deserve to die from an accidental overdose as punishment for substance use. Substance use, whether to stop or numb pain or to induce euphoria, is universal in human history. Risky use and/or non-prescribed substance use *can* be deterred through health education. Harm reduction principles like supporting “any positive change” are proven to engage and empower people. Punishment and criminalization drive people away.

**Are we just encouraging people to use more drugs if we make it legal to distribute risk reduction tools, in clubs and bars or on the street?**

We’re encouraging people to stay alive. Pennsylvania legislators broadly supported policies easing access to the prescription drug for overdose reversal, naloxone (Narcan). Some had a similar concern, that having a reversal drug available might encourage risky drug use, a concept called “risk compensation.” We’ve seen little evidence of increased risky behaviors to health interventions like naloxone distribution (or condom distribution, for that matter.) Certainly not to the extent that it outweighs the strong evidence of the positive public health impacts.<sup>8</sup>

**Will exempting harm reduction tools from drug paraphernalia laws cause difficulty for prosecutors?** Possession of a drug testing kit or device, by itself, shouldn’t support charges for criminal drug use or sales; the idea defies sense. DA’s in several counties, like Philadelphia and Allegheny, plus Pennsylvania’s Attorney General, have already announced they won’t prosecute someone just for fentanyl test strip possession.<sup>9</sup>

**Could drug dealers use drug testing tools to confirm that their products have fentanyl, to possibly attract more sales?** It’s possible. However, recent research among drug sellers found them willing to reduce overdose risk for customers and some did modify products for harm reduction.<sup>10</sup> We’ve seen this in Pennsylvania; I’ll share examples with you next. Please remember that tools feasible for harm reduction drug checking, like fentanyl testing strips, reagent kits, or eventually, portable spectroscopic scanners, provide only imprecise information about drug ingredients, not a detailed, qualitative analysis. These are tools to start the conversation about risk reduction, not tools sufficient to turn a low level dealer into a high level drug manufacturer or laboratory.

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<sup>8</sup> Humphreys, K. (2015). An Overdose Antidote Goes Mainstream. *Health Affairs*, 34(10), 1624–1627. <https://doi.org/10.1377/hlthaff.2015.0934>

<sup>9</sup> Mayor Signs Executive Order to Decriminalize Test Strips (August 2, 2021) Office of the Mayor, Philadelphia, press release: <https://www.phila.gov/2021-08-02-mayor-signs-executive-order-to-decriminalize-fentanyl-test-strips/>

<sup>10</sup> Betsos, A., Valleriani, J., Boyd, J., Bardwell, G., Kerr, T., & McNeil, R. (2021). “I couldn’t live with killing one of my friends or anybody”: A rapid ethnographic study of drug sellers’ use of drug checking. *The International Journal on Drug Policy*, 87, 102845. <https://doi.org/10.1016/j.drugpo.2020.102845>

**3 real-world drug-testing examples** shared by colleagues serving on the Pennsylvania Harm Reduction Network (PAHRN) Advisory Committee:

- Jordan Scott, of the PA chapter of the Recovery Advocate Project (PA RAP) said: “ ‘Joe’ is a regular in my community. He has been selling drugs on and off most of his adult life. Joe contacts me when he is in need of more testing strips and naloxone. He makes it a point to test what his supply is before selling and will purposefully dilute. Jordan also notes: “We spend a lot of time distinguishing between users and sellers without understanding the intersection. Sellers need services and access to resources in equal proportions to users. They are not the villain in this story but another victim of a failed war on drugs. The need to always have someone or something to blame creates more barriers and causes more deaths.”
- Alice Bell of Prevention Point Pittsburgh often hears from people who get test strips to give to their dealer to test what they have so they can communicate accurately to people they sell to. Alice says: “This is an excellent use of test strips, as it keeps many people safer, not just one individual person who tests the drugs they are using themselves.”
- Just last week, on New Year’s Eve, Julia Hilbert, President of Pittsburgh DanceSafe and an Overdose Prevention Specialist, reports that a DanceSafe member used a reagent drug checking kit *and* a fentanyl test strip to test a sample believed to be a benzodiazepine. Realizing that the pill actually contained fentanyl, the person chose not to use it, avoiding a potential overdose.