

# Research Protocol for Overdose Data to Action: Harm Reduction Laws

**Prepared by the Association of State and Territorial Health  
Officials**

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## Overdose Data to Action: Harm Reduction Laws

- I. **Date of Protocol:** July 2023
- II. **Scope:** Collect, code, and analyze current state/territorial statutes and regulations as of January 1, 2023, related to community distribution of opioid antagonists, fentanyl test strips, and the establishment of overdose prevention centers.
- III. **Primary Data Collection**
  - a. **Project Dates:** October 2021 – July 2023
  - b. **Dates Covered in the Dataset:** This is a cross-sectional dataset analyzing statutes and regulations related to the community distribution of opioid antagonists, fentanyl test strips and the establishment of overdose prevention centers as of January 1, 2023. *The effective date listed for each jurisdiction is the date of the most recent version of the law or regulation within that state. If more than one law or regulation is included in the legal text for a state, the effective date reflects the date of the most recently amended or enacted law or regulation within the legal text.*
  - c. **Data Collection Methods:** The research team (“team”) consisted of five legal researchers (“researchers”) and six data entry staff (“staff”) who entered data into the MonQcle system.

The researchers included two licensed attorneys and three legal interns (second- and third-year law students). Researchers used LexisNexis to identify which states had statutes and regulations related to the community distribution of opioid antagonists, fentanyl test strips and the establishment of overdose prevention centers.
  - d. **Databases Used:** LexisNexis was used to identify current statutes and regulations and researchers then pulled the sources from jurisdiction legislative websites when available. Additional secondary sources and datasets used to supplement the search and analysis included the following:
    - i. Legislative Analysis and Public Policy Association, Drug Paraphernalia: Summary of State Laws. April 2022. Available at <https://legislativeanalysis.org/drug-paraphernalia-summary-of-state-laws/>
    - ii. Legislative Analysis and Public Policy Association, Naloxone Access: Summary of State Laws. January 2023. Available at <http://legislativeanalysis.org/wp-content/uploads/2023/02/Naloxone-Access-Summary-of-State-Laws.pdf>
    - iii. The Network for Public Health Law. Legality of Drug Checking Equipment in the United States. August 2022 Update. Available at

<https://www.networkforphl.org/resources/legality-of-drug-checking-equipment-in-the-united-states/>

- iv. Dataset of laws regulating administration of naloxone. Available at <https://pdaps.org/datasets/laws-regulating-administration-of-naloxone-1501695139>
- v. Legislative Analysis and Public Policy Association, Fentanyl Test Strips, May 2021. Available at <https://legislativeanalysis.org/wp-content/uploads/2021/05/Fentanyl-Teststrips-FINAL-1.pdf>
- vi. ASTHO, Harm Reduction Policies can Prevent Overdose Fatalities, November 2022. Available at <https://www.astho.org/communications/blog/harm-reduction-policies-can-prevent-overdose-fatalities/>

**e. Search Terms and Methodology:** The following search terms were used to capture the legislation for the dataset:

**i. Fentanyl Test Strips**

1. ((Fentanyl) AND (test\* OR test\* strip OR “drug checking” OR “drug testing”)) in LexisNexis
  - a. For the purpose of locating drug paraphernalia laws in all jurisdictions (question 3), “drug paraphernalia” was also added as a search term in LexisNexis.
  - b. If no responses were generated from the above, “paraphernalia” was searched in LexisNexis for the relevant jurisdiction.
2. “Fentanyl test\*” and (distribute\* or “bulk purchase”) in LexisNexis (question 4).
3. “Paraphernalia” in the territories and freely associated states in LexisNexis to ensure that drug paraphernalia definitions were located (question 3).
4. Fentanyl test strip and both distribution and bulk purchase, for each jurisdiction, in an internet search engine for distribution related questions (question 4).
5. Fentanyl test strip and the relevant jurisdiction in an internet search engine to capture any missed items related to classification as paraphernalia (question 3).

**ii. Naloxone**

1. “Naloxone” OR “Narcan” OR “opioid antagonist” in LexisNexis.
2. “Naloxone distribution” and “naloxone bulk purchase” and the jurisdiction in an internet search engine.

**iii. Safe Consumption Sites/Overdose Prevention Centers**

1. (“Harm reduction center” OR safe\* consumption OR “safe injection site” OR “supervised consumption site” OR safe injection facility\*) in LexisNexis
2. The above terms were also run more generally in an internet search engine to look for relevant search results.

- f. Initial Returns and Additional Inclusion or Exclusion Criteria:** In order to refine the scope of relevant laws, the following topics were included or excluded:
- i. Naloxone Distribution:**
    1. Laws permitting dispensing of naloxone (e.g., by health care providers through a standing order or other mechanism) were not considered to be facilitating naloxone distribution without additional language directing distribution or bulk purchase.
    2. Laws where individual community members or schools were permitted to purchase or otherwise receive naloxone individually (and not through a broader jurisdiction-supported purchasing program or distribution initiative) were generally excluded.
    3. Naloxone standing orders were not reviewed for reference to bulk purchase or community distribution provisions.
    4. Laws that allowed the syringe service programs to distribute naloxone, but did not require programs to supply naloxone, were generally excluded.
  - ii. Fentanyl Test Strip Distribution**
    1. Laws that decriminalize fentanyl test strips were excluded as evidence of facilitating distribution. However, these laws would clearly be relevant to the Fentanyl Test Strip legality analysis.
    2. Laws that actively support distribution of fentanyl test strips in the community setting or by a state or local health agency were included. This includes distribution authorized through specific programs, such as syringe service programs.
    3. Laws that provide immunity from liability for possession of fentanyl test strips without explicitly directing or permitting distribution in the community setting were excluded.
    4. Laws that support or required education-based programs regarding fentanyl test strip use were excluded.
  - iii.** Laws or regulations related to marijuana consumption sites were excluded.
  - iv.** Municipal laws and regulations were excluded from the scope of the search.

#### **IV. Coding**

- a. Development of Coding Scheme:** The research team and subject matter experts developed the coding questions, circulated them with additional subject matter experts as well as legal epidemiology experts for review. When the questions were finalized, the team entered them into MonQcle, a web-based software-coding platform. Search strategies were then designed and conducted as described herein. Once all the relevant statutes and regulations were identified, researchers used the information to populate a master spreadsheet that mirrored the MonQcle system. This master spreadsheet included answers to the questions noted below for each topic area, as well as a link to the source document in both Lexis Nexis and, when available, a publicly available source. If an

updated unencumbered source was not available, when the text was copied into MonQcle, staff utilized a copy of the statute or regulation from the subscription database.

- b. Research and Coding Methods:** Below are specific rules used when coding the questions and responses in the Harm Reduction dataset.
- **Question 1: “Does the jurisdiction have a law authorizing an overdose prevention center? (Yes/No)”**
    - Jurisdictions were coded “yes” if a statute or regulation authorized an overdose prevention center or harm reduction center.
    - If no such law existed, the jurisdiction was coded as “no.”
  - **Question 1.1: “Is the overdose prevention center a pilot project? (Yes/No)”**
    - Jurisdictions were coded “yes” if the overdose prevention center was described as a pilot project or was referenced as time limited.
    - Jurisdictions were coded “no” if the law did not explicitly address or impose time limitations on the center’s creation or operation. (This was not applicable in this circumstance).
  - **Question 1.2: “Does the law require law enforcement authorization before operating? (Yes/No)”**
    - Jurisdictions were coded “yes” if law enforcement authorization was required prior to operation. (This was not applicable in this circumstance).
    - Jurisdictions were coded “no” if law enforcement authorization was not required prior to operation, or if law enforcement notification (but not authorization) was required.
  - **Question 1.3: “Does the law require local government approval before operating? (Yes/No)”**
    - Jurisdictions were coded “yes” if local government approval was required before operating.
    - Jurisdictions were coded “no” if local government approval was not required prior to operation, or if local government notification or collaboration (but not authorization) was required.
  - **Question 1.4: “What services are overdose prevention centers required to provide? (Categorical – check all that apply)”**
    - Syringe exchange: this box was checked if the center was required to provide needle or syringe exchange.
    - Fentanyl Test Strips distribution: this box was checked if the center was required to provide harm reduction supplies, including fentanyl test strips, for use within the center and for take home use.
    - Naloxone: this box was checked if an opioid antagonist was required to be available on site.
    - Referrals to treatment for infectious disease: this box was checked if the center was required to provide referrals for medical treatment that may be appropriate for persons utilizing the center.

- Referrals to treatment for substance use disorder: this box was checked if the center was required to provide referrals for counseling or other medical treatment that may be appropriate for persons utilizing the center.
- **Question 2: “Are fentanyl test strips legally authorized in the jurisdiction? (Yes/No)”**
  - Jurisdictions were coded “yes” if statute or regulation exempted drug testing or checking equipment (such as fentanyl test strips) from the definition of drug paraphernalia or if the law was silent.
  - Jurisdictions were coded as “no” if drug testing or drug checking equipment (such as fentanyl test strips) was considered drug paraphernalia, or if use or distribution of fentanyl test strips was limited to certain entities or programs (SSPs). Note that distribution by SSPs is addressed in question 3.
- **Question 3: “Is there a law facilitating community distribution of fentanyl test strips? (Yes/No)”**
  - Jurisdictions were coded “yes” if statute or regulation explicitly permits or directs distribution of fentanyl test strips to the community, whether through a community-based organization, state or local health agency, health care provider or other entity.
  - Caution flags were noted if the law referencing distribution was limited to syringe services programs within the jurisdiction.
  - Jurisdictions were coded “no” if the law did not explicitly permit or direct fentanyl test strip distribution.
- **Question 3.1: “Does the law provide liability protections for distributors? (Yes/No)”**
  - Jurisdictions were coded “yes” if statute or regulation explicitly provided immunity to the individual or entity distributing fentanyl test strips.
  - Jurisdictions were coded “no” if the statute or regulation did not explicitly provide immunity to the individual or entity distributing fentanyl test strips.
  - Decriminalization of fentanyl test strips in a jurisdiction was not sufficient to answer “yes” to this question without explicit liability protections for distribution.
- **Question 3.2: “Does the law require distribution without compensation? (Yes/No)”**
  - Jurisdictions were coded “yes” if statute or regulation required distribution at no cost or without compensation.
  - Jurisdictions were coded “no” if the law did not explicitly require free or no-cost distribution.
- **Question 4: “Does the jurisdiction provide liability protections for laypeople or the general public to administer naloxone? (Yes/No)”**
  - Jurisdictions were coded “yes” if statute or regulation provided liability protections for laypeople or the general public to administer naloxone.

- Jurisdictions were coded “no” if the law did not provide liability protections for laypeople or the general public to administer naloxone.
- **Question 5: “Is there a law facilitating community distribution of naloxone? (Yes/No)”**
  - Jurisdictions were coded “yes” if statute or regulation allowed community organizations or non-governmental actors to distribute naloxone. Laws that required schools or syringe services programs to keep naloxone on site or distribute it were included. Laws that allowed but did not require schools or syringe services program to keep naloxone on site or distribute it were excluded.
  - Jurisdictions were coded “no” if the law did not explicitly permit or direct naloxone distribution.
- **Question 5.1: “Does the law support bulk purchasing of naloxone to lower costs to community organizations and non-profits distributing it? (Yes/No)”**
  - Jurisdictions were coded “yes” if statute or regulation explicitly supports or directs bulk purchasing of naloxone by community and non-profit organizations.
  - Jurisdictions were coded “no” if the law did not explicitly support or direct bulk purchasing of naloxone by community and non-profit organizations. Law or regulation that allowed individual locations or entities to purchase naloxone and various price points were not sufficient answer “yes” to this question.
- **Question 5.2: “Does the law provide liability protections for distributors? (Yes/No)”**
  - Jurisdictions were coded “yes” if statute or regulation explicitly provided immunity to the individual or entity distributing naloxone.
  - Jurisdictions were coded “no” if the statute or regulation did not explicitly provide immunity to the individual or entity distributing naloxone.
- **Question 5.3: “Does the law require distribution without compensation? (Yes/No)”**
  - Jurisdictions were coded “yes” if statute or regulation required distribution at no cost or without compensation.
  - Jurisdictions were coded “no” if the law did not explicitly require free or no-cost distribution.

## V. Quality Control

- a. **Quality Control – Background Research:** Quality control of the original research consisted of the research team attorneys evaluating the data entered in the Microsoft Excel document to ensure that there were no missing entries, and to ensure that there were complete citations and that caution note information and questions were clarified when applicable. The research results for each parent question were then assigned to an

attorney (or a second attorney) for quality control. Research performed by law student interns was checked at 100% redundancy, while research performed by attorneys was spot checked (at least 20% of results). When necessary, divergent conclusions were discussed for resolution, and if a conclusion could not be reached, elevated to a supervising attorney. Regular meetings were held to determine how to consistently account for different situations and resolve all divergences and differences of opinion with respect to the relevant statutes and regulations.

- b. Quality Control – Original Coding:** Two staff teams with three staff on each team, used the master spreadsheet populated by the research team to enter information into the MonQcle system. All jurisdictions were 100% redundantly coded from the master spreadsheet, using two separate MonQcle focused teams. MonQcle entry team A input all the jurisdictions information from the spreadsheet. MonQcle entry team B conducted the quality control entries by cloning the jurisdictions record in MonQcle without the answers, then entering all information based on the master spreadsheet. All errors were resolved by the attorney team of researchers.
- c. Quality Control – Data Limitations:** The research team acknowledges that the jurisdictions may interpret the laws (or questions and answers) differently.

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