

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 23-0281.01 Jacob Baus x2173

HOUSE BILL 23-1164

HOUSE SPONSORSHIP

Lynch,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING OPIOID HARM REDUCTION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, the knowing possession of any material, compound, mixture, or preparation that weighs more than one gram and not more than 4 grams and contains any quantity of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, is a level 4 drug felony; except that, if a defendant shows supporting evidence to establish that the defendant made a reasonable mistake of fact and did not know that the controlled substance contained fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, the matter must be submitted to the finder of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

fact in the form of interrogatory included in the verdict form. If the finder of fact determines the defendant made a reasonable mistake of fact, the defendant commits a level 1 drug misdemeanor. The bill eliminates this provision. Under current law, the knowing possession of any material, compound, mixture, or preparation that weighs not more than one gram and contains any quantity of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, is a level 1 drug misdemeanor; except that a fourth or subsequent offense is a level 4 drug felony. The bill eliminates the requirement that the possession must be knowing.

The bill creates the opioid antagonist fund in the department of education to bulk purchase and distribute opioid antagonists to eligible schools. For the 2023-24 state fiscal year, the general assembly appropriates \$2 million to the fund from the general fund.

The bill extends civil and criminal immunity to the department of education, or a person acting on behalf of the department, for acting in good faith to furnish an opioid antagonist to an eligible school.

The bill requires every agency that employs a peace officer to submit an annual report to the department of public health and environment (department) concerning every incident in which a peace officer administered an opioid antagonist to an individual. Using that information the department creates a consolidated report and provides it to the house of representatives judiciary and public and behavioral health and human services committees and the senate judiciary and health and human services committees.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 18-18-403.5, **amend**
3 (2.5)(a) introductory portion; and **repeal** (2.5)(b) as follows:

4 **18-18-403.5. Unlawful possession of a controlled substance -**
5 **notice to revisor of statutes - repeal.** (2.5) (a) Notwithstanding
6 subsection (2)(c) of this section, on or after ~~July 1, 2022~~ JULY 1, 2023, a
7 person who violates subsection (1) of this section by ~~knowingly~~
8 possessing:

9 (b) ~~Notwithstanding the provisions of section 18-18-403.5~~
10 ~~(2.5)(a)(I) of this section, when a defendant shows supporting evidence~~
11 ~~to establish that he or she made a reasonable mistake of fact and did not~~

1 ~~know that the controlled substance he or she possessed contained~~
2 ~~fentanyl, carfentanil, benzimidazole opiate, or an analog thereof as~~
3 ~~described in section 18-18-204 (2)(g), the matter shall be submitted to the~~
4 ~~finder of fact in the form of an interrogatory included in the verdict form.~~
5 ~~Should the finder of fact determine the defendant made such a reasonable~~
6 ~~mistake of fact, the defendant commits a level 1 drug misdemeanor.~~

7 **SECTION 2.** In Colorado Revised Statutes, **add** 22-1-140 as
8 follows:

9 **22-1-140. Opioid antagonist fund - creation - limited immunity**
10 **- report - rules - appropriation - definitions - repeal.** (1) (a) THE
11 OPIOID ANTAGONIST FUND, REFERRED TO IN THIS SECTION AS THE "FUND",
12 IS CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF MONETARY
13 GIFTS, GRANTS, AND DONATIONS CREDITED TO THE FUND PURSUANT TO
14 SUBSECTION (1)(b) OF THIS SECTION AND ANY MONEY THAT THE GENERAL
15 ASSEMBLY APPROPRIATES OR TRANSFERS TO THE FUND.

16 (b) THE DEPARTMENT MAY SEEK, ACCEPT, AND EXPEND IN-KIND OR
17 MONETARY GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC
18 SOURCES FOR THE PURPOSES OF THIS SECTION. THE DEPARTMENT SHALL
19 TRANSMIT ALL MONETARY GIFTS, GRANTS, OR DONATIONS TO THE STATE
20 TREASURER, WHO SHALL CREDIT THE MONEY TO THE FUND.

21 (c) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
22 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
23 FUND TO THE FUND.

24 (2) MONEY IN THE FUND IS ANNUALLY APPROPRIATED TO THE
25 DEPARTMENT FOR BULK PURCHASING AND DISTRIBUTION OF OPIOID
26 ANTAGONISTS TO ELIGIBLE SCHOOLS. ELIGIBLE SCHOOLS MAY APPLY TO
27 RECEIVE OPIOID ANTAGONISTS FROM THE DEPARTMENT. THE DEPARTMENT

1 MAY CONTRACT WITH A PRESCRIPTION DRUG OUTLET, AS DEFINED IN
2 SECTION 12-280-103 (43), FOR THE BULK PURCHASING AND DISTRIBUTION
3 OF OPIOID ANTAGONISTS. THE DEPARTMENT MAY PRIORITIZE THE
4 DISTRIBUTION OF OPIOID ANTAGONISTS TO AN ELIGIBLE SCHOOL BASED ON
5 THE SUPPLY OF THE OPIOID ANTAGONISTS AND THE ELIGIBLE SCHOOL'S
6 DEMONSTRATED NEED.

7 (3) (a) NO LATER THAN JANUARY 2, 2025, AND NO LATER THAN
8 EVERY JANUARY 2 THEREAFTER, THE DEPARTMENT SHALL SUBMIT A
9 REPORT TO THE HOUSE OF REPRESENTATIVES AND SENATE EDUCATION
10 COMMITTEES, OR THEIR SUCCESSOR COMMITTEES, CONCERNING THE FUND.
11 THE REPORT MUST INCLUDE THE FOLLOWING INFORMATION REGARDING
12 THE PREVIOUS STATE FISCAL YEAR:

13 (I) THE AMOUNT OF OPIOID ANTAGONISTS PURCHASED BY THE
14 DEPARTMENT;

15 (II) THE AMOUNT OF OPIOID ANTAGONISTS REQUESTED BY ALL
16 ELIGIBLE SCHOOLS;

17 (III) THE AMOUNT OF OPIOID ANTAGONISTS DISTRIBUTED BY THE
18 DEPARTMENT TO ELIGIBLE SCHOOLS;

19 (IV) THE ELIGIBLE SCHOOLS THAT RECEIVED OPIOID ANTAGONISTS
20 FROM THE DEPARTMENT AND THE AMOUNT OF OPIOID ANTAGONISTS
21 DISTRIBUTED TO EACH ELIGIBLE SCHOOL; AND

22 (V) THE DISCOUNT PROCURED BY THE DEPARTMENT FOR BULK
23 PURCHASING OPIOID ANTAGONISTS.

24 (b) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE REPORT
25 REQUIRED IN THIS SUBSECTION (3) CONTINUES INDEFINITELY.

26 (4) THE DEPARTMENT MAY PROMULGATE RULES THAT ARE
27 NECESSARY FOR THE ADMINISTRATION OF THIS SECTION.

1 (5) THE DEPARTMENT, OR A PERSON ACTING ON BEHALF OF THE
2 DEPARTMENT, IS NOT SUBJECT TO CIVIL LIABILITY OR CRIMINAL
3 PROSECUTION, AS SPECIFIED IN SECTIONS 13-21-108.7 (3) AND 18-1-712
4 (2), RESPECTIVELY.

5 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
6 REQUIRES:

7 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF EDUCATION,
8 CREATED AND EXISTING PURSUANT TO SECTION 24-1-115.

9 (b) "ELIGIBLE SCHOOL" MEANS A PUBLIC OR NONPUBLIC
10 ELEMENTARY, MIDDLE, JUNIOR HIGH, OR HIGH SCHOOL ACTING IN
11 COMPLIANCE WITH SECTION 22-1-119.1.

12 (c) "OPIOID ANTAGONIST" MEANS NALOXONE HYDROCHLORIDE OR
13 ANY SIMILARLY ACTING DRUG THAT IS NOT A CONTROLLED SUBSTANCE
14 AND THAT IS APPROVED BY THE FEDERAL FOOD AND DRUG
15 ADMINISTRATION FOR THE TREATMENT OF A DRUG OVERDOSE.

16 (7) (a) FOR THE 2023-24 STATE FISCAL YEAR, THE GENERAL
17 ASSEMBLY SHALL TRANSFER TWO MILLION DOLLARS FROM THE GENERAL
18 FUND TO THE FUND; EXCEPT THAT THE DEPARTMENT SHALL NOT SPEND
19 THE MONEY APPROPRIATED FROM THE FUND UNTIL THE APPROPRIATION
20 SPECIFIED IN THE SESSION LAWS OF COLORADO 2022, SECTION 56 OF
21 CHAPTER 225, SECTION (10) IS ENCUMBERED.

22 (b) THIS SUBSECTION (7) IS REPEALED, EFFECTIVE JULY 1, 2025.

23 **SECTION 3.** In Colorado Revised Statutes, 13-21-108.7, **amend**
24 (3)(b)(I) and (3)(b)(II); and **add** (3)(b)(III) as follows:

25 **13-21-108.7. Persons rendering emergency assistance through**
26 **the administration of an opiate antagonist - limited immunity -**
27 **legislative declaration - definitions. (3) General immunity. (b) This**

1 subsection (3) also applies to:

2 (I) A person or entity described in section 12-30-110 (1)(a);
3 except that an employee or agent of a school must be acting in accordance
4 with section 12-30-110 (1)(b), (2)(b), and (4)(b), and, as applicable,
5 section 22-1-119.1; ~~and~~

6 (II) A person who acts in good faith to furnish or administer an
7 opiate antagonist in accordance with section 25-20.5-1001; AND

8 (III) THE DEPARTMENT OF EDUCATION THAT, OR A PERSON WHO
9 ACTS ON BEHALF OF THE DEPARTMENT OF EDUCATION WHO, ACTS IN GOOD
10 FAITH TO FURNISH AN OPIATE ANTAGONIST IN ACCORDANCE WITH SECTION
11 22-1-140.

12 **SECTION 4.** In Colorado Revised Statutes, 18-1-712, **amend**
13 (2)(b)(I) and (2)(b)(II); and **add** (2)(b)(III) as follows:

14 **18-1-712. Immunity for a person who administers an opiate**
15 **antagonist during an opiate-related drug overdose event - definitions.**

16 (2) **General immunity.** (b) This subsection (2) also applies to:

17 (I) A person or entity described in section 12-30-110 (1)(a);
18 except that an employee or agent of a school must be acting in accordance
19 with section 12-30-110 (1)(b), (2)(b), and (4)(b), and, as applicable,
20 section 22-1-119.1; ~~and~~

21 (II) A person who acts in good faith to furnish or administer an
22 opiate antagonist in accordance with section 25-20.5-1001; AND

23 (III) THE DEPARTMENT OF EDUCATION THAT, OR A PERSON ACTING
24 ON BEHALF OF THE DEPARTMENT OF EDUCATION WHO ACTS IN GOOD FAITH
25 TO FURNISH AN OPIATE ANTAGONIST IN ACCORDANCE WITH SECTION
26 22-1-140.

27 **SECTION 5.** In Colorado Revised Statutes, **add** part 20 to article

1 20.5 of title 25 as follows:

2 PART 20

3 OPIOID ANTAGONIST DISCHARGE REPORT

4 **25-20.5-2001. Colorado opioid antagonist discharge - report**

5 **- definition.** (1) NO LATER THAN JANUARY 31, 2025, AND NO LATER THAN
6 EVERY JANUARY 31 THEREAFTER, EVERY AGENCY THAT EMPLOYS A PEACE
7 OFFICER SHALL SUBMIT A REPORT TO THE DEPARTMENT CONCERNING
8 INCIDENTS FROM THE PREVIOUS CALENDAR YEAR IN WHICH A PEACE
9 OFFICER ADMINISTERED AN OPIOID ANTAGONIST TO AN INDIVIDUAL WHO
10 THE PEACE OFFICER BELIEVED TO BE SUFFERING AN OPIOID-RELATED DRUG
11 OVERDOSE EVENT.

12 (2) NO LATER THAN FEBRUARY 28, 2025, AND NO LATER THAN
13 EVERY FEBRUARY 28 THEREAFTER, THE DEPARTMENT SHALL SUBMIT A
14 CONSOLIDATED REPORT TO THE HOUSE OF REPRESENTATIVES JUDICIARY
15 AND PUBLIC AND BEHAVIORAL HEALTH AND HUMAN SERVICES
16 COMMITTEES AND THE SENATE JUDICIARY AND HEALTH AND HUMAN
17 SERVICES COMMITTEES, OR THEIR SUCCESSOR COMMITTEES, CONTAINING
18 THE INFORMATION PROVIDED TO THE DEPARTMENT PURSUANT TO
19 SUBSECTION (1) OF THIS SECTION.

20 (3) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE REPORTS
21 REQUIRED IN THIS SECTION CONTINUE INDEFINITELY.

22 (4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
23 REQUIRES, "OPIOID ANTAGONIST" MEANS NALOXONE HYDROCHLORIDE OR
24 ANY SIMILARLY ACTING DRUG THAT IS NOT A CONTROLLED SUBSTANCE
25 AND THAT IS APPROVED BY THE FEDERAL FOOD AND DRUG
26 ADMINISTRATION FOR THE TREATMENT OF A DRUG OVERDOSE.

27 **SECTION 6. Effective date - applicability.** (1) This act takes

1 effect July 1, 2023.

2 (2) Section 1 of this act applies to offenses committed on or after
3 July 1, 2023.

4 **SECTION 7. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, or safety.