

April 14, 2021



The Honorable Anna Eshoo
Chairwoman
House Committee on Energy and Commerce
Subcommittee on Health
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Brett Guthrie
Ranking Member
House Committee on Energy and Commerce
Subcommittee on Health
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Eshoo and Ranking Member Guthrie,

I am writing to share additional information for the record of today's hearing before the Subcommittee on Health entitled "An Epidemic Within a Pandemic: Understanding Substance Use and Misuse in America." The following serves as an addendum to the accompanying [letter](#) submitted for the record of this hearing that has been signed by over 100 civil rights, criminal justice and public health organizations in opposition to any extension of the Trump Administration class-wide scheduling of fentanyl analogues policy, which is currently set to expire on May 6, 2021.

The United States is facing an urgent drug overdose crisis that is estimated to have surpassed 100,000 opioid overdose deaths in 2020, a 41% increase over 2019 (which already was a record year with 70,980 deaths). The infectious diseases associated with opioid and use of other drugs also have dramatically increased. The number of new hepatitis C infections has more than tripled since 2010, with an estimated 44,000 people newly infected and 17,253 associated deaths in 2017. Since 2014, new hepatitis B infections have increased, with 32 states reporting increases in acute infections in adults over 40 years old in 2017. Outbreaks or significant spikes in infections of viral hepatitis as well as HIV among people who inject drugs continue to occur throughout the country.

The passage in recent years of legislative initiatives such as the Comprehensive Addiction and Recovery Act and the SUPPORT Patients and Communities Act helped apply a public health approach to substance use disorder and harms associated with drugs. Despite these federal initiatives, access to evidence-based treatment, harm reduction and recovery support services remains severely inadequate in many communities. These deficiencies are well documented in research and expert testimony before Congress, yet federal budgets and drug policy continue to prioritize enforcement-first approaches to illicit drugs. Despite allocating billions of dollars, drug enforcement tactics, programs and policies have failed to reduce illicit drug supply or demand. And rather than mitigate harms associated with illicit drugs, law enforcement activities including interdiction, prosecutions and incarceration have actually contributed to the

steadily worsening public health measures of the overdose crisis, including increasing measures of potency in the illicit supply of opioid drugs.

The growing saturation of illicit fentanyl in the drug supply, and emergence of novel fentanyl analogues, as well as other novel classes of drugs, reflects efforts to adapt to law enforcement tactics. Resulting outcomes for public health have worsened as law enforcement activities have intensified. Illicit opioid substances have become more potent, varied and novel, and remained widely available during the course of the Trump Administration, and despite a massive scale up by the Trump Administration in drug enforcement and prosecutions targeting synthetic opioids, which included the introduction of class-wide scheduling of fentanyl analogues.

Between June 2019 and July 2020, as class-wide scheduling of fentanyl analogues was in full effect, the Centers for Disease Control and Prevention reported that 37 of the 38 U.S. jurisdictions with available synthetic opioid data reported increases in synthetic opioid-involved overdose deaths, 18 of these jurisdictions reported increases greater than 50 percent, and 10 western states reported over a 98 percent increase in synthetic opioid-involved deaths.¹ These statistics mirror continued increases in overdose deaths from fentanyl-related substances since 2013.

At a time when the coronavirus pandemic and economic downturn is further exacerbating the overdose crisis, it is crucial that policymakers prioritize health and science-based approaches to reducing overdose deaths from illicit fentanyl-related substances and other drugs rather than double down on enforcement-first approaches like class-wide scheduling of fentanyl analogues that will continue to fail to address the root causes of the crisis.

On April 12th, the Biden Administration confirmed to the press that it supports a 7-month extension of this Trump Administration policy. As [this piece from *The Intercept*](#) entitled “*Biden Looks to Extend Trump’s Bolstered Mandatory Minimum Drug Sentencing*” points out, “Advocates wonder why the Biden administration would go out of its way to extend a policy that would mark a return to the harsh drug sentencing laws from which the president has tried to distance himself, and even in some cases, [apologized for pursuing](#).”²

The Biden Administration claims it needs more time to review the implications of this draconian Trump-era policy, despite three decades of evidence that enforcement first policies fail. Moreover, Congress already requested from the Government Accountability Office (GAO) a report to evaluate the utility of class-wide scheduling when it temporarily extended this policy in January 2020 for 15 months.

In its report publicly released on April 12th, [GAO found](#)³ that:

- The Trump Administration rarely used the additional sentencing authorities provided by class-wide scheduling, and when it did the target was low-level drug offenders. (p. 58)

- Despite assertions by the Trump Administration that class-wide scheduling would reduce the availability of fentanyl analogues in the U.S., Drug Enforcement Administration laboratory information system reports of seized fentanyl analogues increased in the two years since the implementation of the policy. (pp. 54, 65, 67). Further, the GAO did not substantiate claims that the classwide ban has reduced the number of novel fentanyl-related substances in the United States. (22, 54).
- Law enforcement representatives confirmed that they are seeking the classwide ban to **enhance already harsh penalties**, telling GAO that the ban would “facilitate . . . prosecutions,” and that failure to enact the ban “may result in . . . **lighter sentences**” for individuals prosecuted for drugs. (60).
- This Trump-era policy sidelined HHS and the scientific community’s customary role of properly evaluating the suitability of placing on Schedule I *thousands* of unique fentanyl-related compounds, including substances that could become potential new vaccines and treatments against opioid misuse and overdose. In turn, the Schedule I classification could be an obstacle in the development of life-saving drugs and substances were inappropriately included on Schedule I. (pp. 38, 41).

In addition, any extension of this Trump-era policy threatens to exacerbate disturbing federal sentencing trends involving fentanyl analogues. Between 2015 and 2019, prosecutions for fentanyl-analogue prosecutions [increased a stunning 5,000%](#). There are significant racial disparities in these prosecutions, with people of color comprising [68% of those sentenced](#) in fentanyl analogue cases in 2019. In addition, *more than half* of all federal fentanyl-analogue prosecutions in 2019 [involved a street-level seller or other minor role](#); only 10.3% of these cases involved the most serious functions.

The Biden Administration’s decision to be at odds with the civil rights, criminal justice and public health communities on this issue comes at a time when policymakers have been making progress undoing the harms of mandatory minimum sentencing brought about during the fear-driven, sensationalist panic around crack-cocaine in the 1980s. The emergence of fentanyl-related substances in recent years has fueled similar waves of alarmist media and law enforcement headlines that are informed by mythology rather than science.

Last month, the [Drug Enforcement and Policy Center](#) at The Ohio State University Moritz College of Law hosted a multi-panel virtual symposium, titled "[Prioritizing Science Over Fear: An Interdisciplinary Response to Fentanyl Analogues](#)," which explored the harms of approving any further extensions of this Trump-era policy. A [transcript](#) and [captioned recordings](#) of each panel from this event are now available. For more background on this event please see [here](#).

Rather than extend anti-science Trump-era policies that will exacerbate mass incarceration and racial disparities in drug policy, Congress and the Biden Administration should prioritize public health legislation that applies evidence-based approaches to illicit fentanyl and fentanyl analogues, including:

- **Mainstreaming Addiction Treatment (MAT) Act:** This legislation eliminates the redundant, outdated and stigmatizing DATA 2000 WAIVER requirement that practitioners must apply for a separate waiver through the DEA to prescribe buprenorphine for the treatment of opioid use disorder. This additional requirement discourages practitioners from integrating evidence-based treatment in their practices and perpetuates stigma in the medical community against patients who would benefit from buprenorphine treatment. Buprenorphine is one of three medications approved by the FDA to treat opioid use disorder, is highly effective at alleviating the painful symptoms associated with opioid use disorder and reduces mortality by up to 50 percent.⁴
- **Support, Treatment, and Overdose Prevention (S.T.O.P.) of Fentanyl Act of 2021:** This legislation provides for a comprehensive health- and evidence-based approach to addressing illicit fentanyl and fentanyl analogues without relying on policing and incarceration by putting forward policies and initiatives that bolster public health surveillance and research, deploy health resources to combat overdose deaths, connect individuals with treatment programs, and support on-going prevention and education activities. The legislation helps address overdose deaths and harm associated with illicit fentanyl-related substances by removing barriers and expanding telehealth and other forms of access to Medication Assisted Treatment (MAT), helping state and community-based organizations address the harms of drug misuse, and funding education for stakeholders on evidence-based treatment for opioid and fentanyl misuse.
- **The Medicaid Reentry Act of 2021:** This legislation permits Medicaid to provide essential health care for people in incarcerated settings 30 days prior to their release. Ninety-five percent of the more than 2 million adults who are incarcerated in the United States will be released and face a variety of reentry challenges.⁵ Transition into the community following a period of incarceration is a particularly crucial period for those with mental illness and substance use disorder because it is associated with significant stress and high risk of recidivism, relapse, or crisis. Most of these individuals lack health insurance and will face barriers navigating and gaining access to public health care programs. According to one study, risk of a fatal drug overdose is 129 times as high as it is for the general population during the two weeks after release.⁶ This legislation enables incarcerated individuals to secure a warm handoff to lifesaving community-based mental health and substance use disorder services, medications, and other supports.
- **The State Opioid Response Grant Reauthorization Act:** This legislation authorizes State Opioid Response (SOR) Grants and Tribal Opioid Response

(TOR) Grants for five years. As the current authorization for SOR and TOR Grants is set to expire, this legislation ensures continuity of this funding support by extending the authorization an additional five years. SOR and TOR Grants help states, tribal organizations and community-based stakeholders implement health and evidence-based responses to the overdose crisis, including overdoses involving illicit fentanyl and fentanyl analogues. SOR and TOR grants help support increasing access to FDA-approved medication-assisted forms of treatment, and reducing opioid overdose related deaths through the provision of prevention, treatment and recovery activities for opioid use disorder.

Please contact me if you would like more information about the views or legislation outlined above or with any questions. Thank you.

Sincerely,



Grant Smith
Deputy Director, National Affairs
Drug Policy Alliance

¹ JAMA Network, "CDC Warns of Surge in Drug Overdose Deaths During COVID-19,"

Joan Stephenson, PhD, January 5, 2021

² The Intercept, "Biden Looks to Extend Trump's Bolstered Mandatory Minimum Drug Sentencing," April 12, 2021, Akela Lacy, <https://theintercept.com/2021/04/12/fentanyl-drug-sentencing-biden/>

³ U.S. Government Accountability Office, "SYNTHETIC OPIOIDS: Considerations for the Class-Wide Scheduling of Fentanyl-Related Substances," April 2021, GAO-21-499, <https://www.gao.gov/assets/gao-21-499.pdf>

⁴ National Academies of Sciences, Engineering, and Medicine. 2019. *Medications for opioid use disorder save lives*. Washington, DC: The National Academies Press. doi: <https://doi.org/10.17226/25310>.

⁵ See Lakeesha Woods et. al., *The role of prevention in promoting continuity of health care in prisoner reentry initiatives*, American journal of public health, vol. 103,5 (2013), 830-8, doi:10.2105/AJPH.2012.300961

⁶ Ingrid Binswanger et al. *Release from prison--a high risk of death for former inmates*, The New England Journal of Medicine, 356, no. 2 (Jan 2007), 157-65, DOI: 10.1056/NEJMsa064115