

**Hearing Entitled “Lives Worth Living: Addressing the Fentanyl Crisis, Protecting Critical Lifelines, and Combatting Discrimination Against Those with Disabilities”  
House Energy and Commerce Subcommittee on Health  
2123 Rayburn House Office Building  
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Statement for the Record

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Introduction

Chairman Guthrie, Ranking Member Eshoo, and Members of the Subcommittee, thank you for the opportunity to provide this statement for the record.

I am Regina LaBelle, and I currently direct the Addiction and Public Policy Initiative at the O’Neill Institute for National and Global Health Law at Georgetown Law Center. We use the law and policy to promote access to quality addiction treatment, harm reduction, and recovery support services. In addition, I direct Georgetown’s Master of Science in Addiction Policy program, a unique program where we train future addiction policy professionals.

At the beginning of the Biden-Harris Administration in 2021, I was privileged to be appointed as the Acting Director of the White House Office of National Drug Control Policy (ONDCP). I oversaw the development of this Administration’s first-year drug policy priorities.<sup>1</sup> I previously served as Chief of Staff at ONDCP during the Obama Administration.

Scope of the Overdose Crisis

In January, the Centers for Disease Control and Prevention (CDC) released data reporting that it projects over 107,000 deaths in the United States from drug overdoses during the 12-month period ending August 2022.<sup>2</sup> Although this figure represents a five-month levelling off from the peak estimated 12-month overdose death rate for the 12 months ending March 2022, it is still unacceptably high.

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<sup>1</sup> EXECUTIVE OFFICE OF THE PRESIDENT, THE BIDEN-HARRIS ADMINISTRATION’S STATEMENT OF DRUG POLICY PRIORITIES FOR YEAR ONE (2021) (<https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf>).

<sup>2</sup> Centers for Disease Control and Prevention, National Center for Health Statistics. Vital Statistics Rapid Release: Provisional Drug Overdose Death Counts (<https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>).

CDC also reports that provisional data for 2021 show that most drug overdose deaths involved synthetic opioids, the drug class that includes fentanyl and fentanyl-related substances (FRS). Of the estimated 107,622 drug overdose deaths in 2021, an estimated 80,816 (75%) involved opioids, and an estimated 71,238 (66%) involved synthetic opioids.<sup>3</sup> It is obvious, then, that we need to address synthetic opioid use in order to reduce overdose deaths.

### Addressing Substance Use

We know that substance use disorder is a chronic condition that requires a coordinated public health-based response. At the O’Neill Institute, we advocate for a public health approach to addressing substance use across the continuum of care. The continuum of care includes enhancing evidence-based prevention, improving harm reduction services to prevent risky substance use and reduce overdose deaths, increasing access to quality, evidence-based treatment by reducing barriers to treatment, and increasing access to recovery support services to sustain long-term recovery.

- Prevention – We need to enhance efforts to educate parents and schools about common warning signs indicating that an adolescent or young adult child may be struggling with a mental health condition. Untreated mental health conditions in young people can be a risk factor in engaging in problematic drug use at an early age.<sup>4</sup> Young people report that they can access illicitly manufactured fentanyl over social media platforms. Parents need to be ready to have open, honest, and difficult conversations with their children about the dangers of drugs found online or in other interactions and about their mental health. The Substance Abuse and Mental Health Services Administration (SAMHSA) gives parents helpful guidance on how to talk to their children about drugs.<sup>5</sup> There is still more that can be done to improve mental health supports in school districts nationwide.
- Treatment – Congress has dedicated considerable funding for treating people with substance use disorder, but quality treatment and coordinated funding are ongoing needs. In the context of opioid use disorder, we need to ensure that treatment providers are employing evidence-based treatment, including medications for opioid use disorder (MOUD). We applaud Congress for passing the Mainstreaming Addiction Treatment Act as part of the FY 2023 omnibus funding measure. This eliminates the “X-waiver” additional education requirements for providers who wish to prescribe MOUD that are not needed to prescribe other Controlled Substances Act (CSA) scheduled drugs.

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<sup>3</sup> Centers for Disease Control and Prevention, National Center for Health Statistics. U.S. Overdose Deaths In 2021 Increased Half as Much as in 2020 – But Are Still Up 15%, May 11, 2022 ([https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2022/202205.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm)).

<sup>4</sup> Over 2 in 5 young adults with mental health disorders are untreated, and nearly 9 in 10 young adults with substance use disorders are untreated. Mental Illness and Substance Use in Young Adults, Substance Abuse and Mental Health Services Administration, September 22, 2022. (<https://www.samhsa.gov/young-adults>).

<sup>5</sup> Substance Abuse and Mental Health Services Administration, Why You Should Talk With Your Child About Alcohol and Other Drugs. (<https://www.samhsa.gov/sites/default/files/talk-with-your-child-about-alcohol-drugs.pdf>)

Eliminating the X-waiver, coupled with the Medication Access and Training Expansion (MATE) Act, will encourage more providers to screen and treat their patients with substance use disorder. In addition, by placing substance use treatment on par with treatment of other chronic diseases, it will help address the stigma that discourages people from seeking treatment for their substance use disorder.

Another critical area for intervention, both to reduce overdose deaths and strengthen communities, is through a greater focus on addressing substance use and mental health conditions in corrections. According to the Bureau of Justice Statistics, in 2019, suicide was the leading cause of death in jail. From 2000 to 2019, the rate of jail deaths due to drug or alcohol intoxication more than quadrupled.<sup>6</sup> Research we conducted at Georgetown’s O’Neill Institute found that withdrawal-related deaths are preventable if correctional settings provide withdrawal management upon intake, as well as access to longer-term treatment. The Bureau of Justice Assistance used this research to develop a set of recommendations for preventing harms from unsupervised withdrawal in jails.<sup>7</sup> Lack of treatment during incarceration and a lack of community-based care places individuals leaving corrections and reentering their communities at increased risk of overdose and death. State and local prison officials need to be educated about the benefits of providing MOUD during incarceration, and they need to be provided resources to provide such treatment. We encourage Congress to modify SAMHSA’s Substance Abuse Prevention and Treatment Block Grant program to remove restrictions that limit states’ ability to provide substantive Block Grant funds to pay for treatment in prisons and jails.

- Recovery – Successful recovery involves deterring return to use by fostering social connections, community integration, and other recovery support services. There are numerous actions that impact successful recovery. More obviously, stigma towards people with substance use disorder can deter people from receiving necessary services. To prevent risky substance use and limit stigma’s harmful impact, we must move to limit the stigmatization and treat addiction like any other chronic disease. In addition, we must improve environmental factors that help sustain successful recovery, such as removing barriers to housing, jobs, and education. And since many of those in recovery have limited personal resources, we must ensure opportunities are afforded to those who are just getting back on their feet.

### The “HALT Fentanyl Act”

In 2021, during my tenure as ONDCP Acting Director, ONDCP, in conjunction with the Department of Health and Human Services (HHS) and the Department of Justice (DOJ),

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<sup>6</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Mortality in Local Jails, 2000–2019 – Statistical Tables, Dec. 2021. (<https://bjs.ojp.gov/content/pub/pdf/mlj0019st.pdf>)

<sup>7</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. Managing Substance Withdrawal in Jails: A Legal Brief. Feb. 2022. (<https://bja.ojp.gov/doc/managing-substance-withdrawal-in-jails.pdf>)

submitted recommendations to Congress for legislation to reduce the supply and availability of illicitly manufactured FRS, while protecting civil rights and reducing barriers to scientific research for all CSA Schedule I substances. This proposal included the following recommendations:

- Permanently place FRS into Schedule I of the CSA.
- Establish a simplified process that would align research registration for all Schedule I substances, including FRS, more closely with the research registration process for Schedule II substances.
- Exclude those FRS that are scheduled by class from all quantity-based mandatory minimum penalties (normally associated with domestic trafficking offenses of CSA Schedule I compounds).
- Create a streamlined process overseen by HHS to identify and remove or reschedule any individual FRS that is found to not have a high potential for abuse as defined in the CSA.
- Ensure that a federal court can vacate or reduce the sentence of an individual convicted of an offense involving an individual FRS that is subsequently removed or rescheduled from Schedule I.
- Direct the Government Accountability Office to analyze the implementation and impact of permanent class scheduling of FRS, including its impact on research, civil rights and the illicit manufacturing and trafficking of FRS.<sup>8</sup>

The “Halt All Lethal Trafficking of (HALT) Fentanyl Act” (Act), as introduced, only would address the first two recommendations.

We appreciate that the Act would make it easier for researchers to obtain access to and conduct work on Schedule I substances. The research community has long asserted that burdensome requirements placed on these substances has slowed ongoing research progress on them and sometimes has discouraged researchers from conducting research on them at all. The modifications proposed in the Act would ease the burden on researchers while ensuring appropriate safeguards of these substances by DOJ.

However, we are concerned that, without the civil rights protections contained in the Administration’s proposal, judges are robbed of their discretion to impose appropriate sentences based on the facts of the individual case. Imposing harsh sentences on people with substance use

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<sup>8</sup> Office of National Drug Control Policy, Biden-Harris Administration Provides Recommendations to Congress on Reducing Illicit Fentanyl-Related Substances, Sept. 2, 2021. (<https://www.whitehouse.gov/ondcp/briefing-room/2021/09/02/biden-harris-administration-provides-recommendations-to-congress-on-reducing-illicit-fentanyl-related-substances/>)

disorder who have been convicted under statutes involving Schedule I substances due to circumstances, where the activities were conducted to address their addiction, only serves to further stigmatize these people because of their illness. Similarly, to permanently schedule the class of FRS into CSA Schedule I without providing a mechanism to deal with those substances that are subsequently found to not have a high potential for abuse subverts the intent of the statute and violates basic principles of justice.

### Closing

Action to expand the ability for researchers to work on CSA Schedule I substances is laudable and would create greater opportunities for scientific discoveries, possibly helping to address the overdose crisis itself; however, the Subcommittee should take a more holistic approach to legislation that attempts to address the issue, particularly as the temporary scheduling order is in effect until the end of the 118<sup>th</sup> Congress. This is especially important as new synthetic substances are being identified in the nation's drug supply, and these new synthetic opioids may not fall into any definition of FRS.

Permanent scheduling is not enough. Federal law enforcement representatives contend that temporary scheduling action has helped to reduce the proliferation of new types of fentanyl analogs;<sup>9</sup> however, if that were enough, we would not be experiencing the increases in overdose deaths since the DOJ's temporary scheduling action in February 2018. We hope the Subcommittee continues to work with the Administration and interested constituent groups like the O'Neill Institute on solutions to end the tragedy of overdoses related to illicit drug use.

Thank you for the opportunity to provide this statement for the record.

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<sup>9</sup> See Government Accountability Office, *Synthetic Opioids: Considerations for the Class-Wide Scheduling of Fentanyl-Related Substances*, GAO-21-499, April 2021. (<https://www.gao.gov/assets/gao-21-499.pdf>)