February 28, 2018

The Honorable Michael Burgess
US House of Representatives
2336 Rayburn HOB
Washington, D.C. 20515

The Honorable Gene Green
US House of Representatives
2470 Rayburn HOB
Washington, D.C. 20515

We are the Drug Policy Alliance.

Dear Chairman Burgess and Ranking Member Green,

The Drug Policy Alliance appreciates the opportunity to submit testimony for consideration of HR 2851, the "Stop Importation and Trafficking of Synthetic Analogues Act of 2017" during today's hearing titled "Combating the Opioid Crisis: Helping Communities Balance Enforcement and Patient Safety."

The Drug Policy Alliance (DPA) works to increase the degree to which problematic drug use is treated as a health issue and advances evidence-based drug policy grounded in compassion and human rights. We accordingly oppose policies that predominantly rely on the criminal justice system to address drug use. Congress has recognized the failings of harsh sentences for drugs like heroin and crack and held hearings in recent years to reduce such penalties. DPA believes that we can best protect the public's health, not through relying on punitive approaches to drugs, but by focusing on the underlying reasons for their demand and offering evidence-based strategies for preventing their use, reducing their harm, and treating those who are using them problematically.

In recent years, a bipartisan consensus has emerged in Congress that urgent action is needed to address the opioid overdose crisis. Both parties have come together to pass measures such as the Comprehensive Addiction and Recovery Act and 21st Century CURES Act that treat the opioid overdose crisis as a public health – not enforcement – challenge. Most recently Congress approved six billion dollars in new funding to address this crisis. This Committee has held numerous hearings that have explored evidence-based and health-based solutions to the opioid overdose crisis. Although there is still a tremendous amount of work to be done, Congress has made important progress toward the goal of addressing the opioid overdose crisis. We are very disappointed then to see the Committee take up HR 2851.

SITSA is a counterproductive approach to the opioid overdose crisis that would greatly expand the penalties for drug offenses and enable the Attorney General to ban hundreds of substances and prosecute people with long federal prison terms in violation of the new drug laws. The Attorney General already has authority granted by Congress to use emergency scheduling powers, as well as the ability to concurrently pursue permanent rulemaking authority for substances that have been emergency scheduled. A heavy reliance on law enforcement and the criminal justice system to prevent addiction has failed to reduce rates of opioid use and overdose. HR 2851 will similarly not deter the use or sale of fentanyl and other synthetic analogues.

We know that synthetic analogues are often manufactured outside the country. This is also the case with fentanyl and fentanyl analogues. In June 2016, the head of the DEA Chuck Rosenberg testified before the Senate Judiciary Committee that, "Illicit fentanyl, fentanyl derivatives, and

their immediate precursors are often produced in China." Buyers and sellers in the United States are often unaware of the composition and potency of the drugs. However, users and sellers would face heightened penalties under the bill regardless of their knowledge of the presence or potency of these substances. Individuals with unmet overdose prevention and treatment needs are not being served or protected by supply-side strategies. Policies formulated to address the opioid crisis must effectively mitigate risks associated with use, dependence and overdose.

We are also very concerned that SITSA would establish a mechanism by which the Attorney General can add synthetic compounds to the new "Schedule A" for analogues without consent from the Department of Health and Human Services, or input from scientific experts in the relevant fields. Most substances that are permanently scheduled must undergo an administrative rulemaking process that has been in place more than 40 years.

This longstanding process under the federal controlled substances law (21 USC 811) requires that the Department of Health and Human Services analyze scientific and medical information about the substance and give the green light to schedule before the Attorney General can proceed with permanent scheduling. Each agency has equal weight when making decisions. Under this proposal, the public health role is circumvented, leaving the Attorney General with unilateral power to decide which drugs are scheduled and thus how the ensuing penalties are applied.

This is true even in cases where the Department of Health and Human Services would otherwise determine a substance should not be scheduled. This potentially means that thousands of synthetic compounds could be scheduled, including substances that pose no known health risk. Individuals could be subjected to long prison terms for possessing substances that have not even been scientifically evaluated for abuse potential. This makes no sense and provides no benefit to public health and safety but only wastes limited resources that should be prioritized toward interventions such as medication-assisted treatment and health services proven to help reduce overdose and problematic substance use.

We are also concerned about provisions in SITSA that mandate that the United States Sentencing Commission follow the Attorney General's guidance when creating drug equivalency tables for synthetic drugs. The U.S. Sentencing Commission is already studying the issue of synthetic drugs and penalties. They have held hearings on the issue and heard testimony from a variety of law enforcement and public health officials as they seek to find solutions to this complex topic. The expertise and information gathered by the Commission is important to review and consider before this Committee moves forward with legislation in this area.

Thank you for considering our views,

Grant Smith
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Drug Policy Alliance