



2023 AMENDMENTS IN BRIEF

In April 2023, the U.S. Sentencing Commission promulgated amendments to the federal sentencing guidelines. For a more detailed discussion of the policy determinations made by the Commission, please refer to the *Reason for Amendment* in the “Reader-Friendly” and Official Text (link in QR code).

Amendment #818

Fake Pills

The amendment add a **2-level enhancement** at §2D1.1(b)(13) for cases where the defendant represented or marketed as a legitimately manufactured drug another mixture or substance containing **fentanyl** (Nphenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a **fentanyl analogue**, and acted with **willful blindness or conscious avoidance of knowledge** that such mixture or substance was not the legitimately manufactured drug.

THE ISSUE

Fake Pills Containing Fentanyl

In October 2022, the DEA wrote to the U.S. Sentencing Commission about the proliferation of “fake pills” (*i.e.*, illicitly manufactured pills represented or marketed as legitimate pharmaceutical pills) containing fentanyl or fentanyl analogue.

According to the DEA, these fake pills resemble legitimately manufactured pharmaceutical pills (such as OxyContin, Xanax, and Adderall) but can result in sudden death or poisoning due to the unknown presence and quantities of dangerous substances, such as fentanyl and fentanyl analogues.

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FACTS & FIGURES

The dangers associated with fentanyl, fentanyl analogues, and fake pills continue to evolve and heighten. In the last fiscal year alone, the Drug Enforcement Administration and Center for Disease Control have reported:

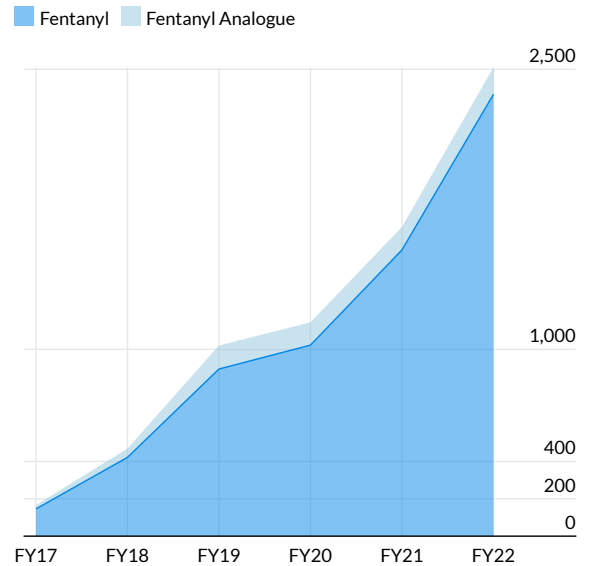
50.6M
fake pills seized

70%
contain fentanyl

+15%
overdose deaths

Commission data also demonstrate that the number of federal fentanyl and fentanyl analogue cases have dramatically increased since the initial promulgation of §2D1.1(b)(13) in 2018.

The new alternative 2-level enhancement makes clear that the government bears the burden to prove by a preponderance of the evidence that the enhancement applies based on the subjective belief and deliberate action of the defendant committing the offense.



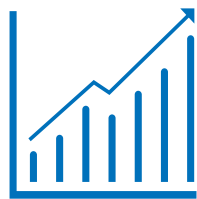
TIMELINE

The Commission's Policy Work



2018 Amendment

In 2018, the Commission added a 4-level sentencing enhancement for knowingly misrepresenting or knowingly marketing fentanyl or fentanyl analogues as another substance (which equates to an approximate 50% increase in sentence).



Policy Priorities

In October 2022, the DEA wrote to the Commission, "The DEA respectfully submits that the current [guidelines] do not adequately reflect the significant and unique risks that fake pills pose to unwitting victims."



Comment & Testimony

"Individuals who deceive their victims into taking deadly substances deserve tougher sentences. The USSC's proposed 2-level enhancement is a positive step towards holding them accountable."
- *Senators Grassley & Feinstein, March 2023 Public Comment Letter*



2023 Amendment

The new alternative 2-level enhancement reflects the increased culpability of an individual who acted with willful blindness or conscious avoidance of knowledge that the substance the individual represented or marketed as a legitimately manufactured drug contained fentanyl or a fentanyl analogue.