

United States Sentencing Commission

2025 Amendment Cycle

Public Comment on Offenses Involving
Fentanyl, Fentanyl Analogues, and
Other Opioids
90 FR 8840



UNITED STATES SENTENCING COMMISSION



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Written public comment should be received by the Commission not later than **May 1, 2025**. Public comment received after the close of the comment period may not be considered. All written comment should be sent to the Commission via any of the following two methods: (1) comments may be submitted electronically via the Commission's Public Comment Submission Portal at <https://comment.ussc.gov>; or (2) comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2-500, Washington, D.C. 20002-8002, Attention: Public Affairs – Issue for Comment on Fentanyl and Other Opioids. For further information, see the full contents of the official notice when it is published in the Federal Register (available at www.ussc.gov).

The issue for comment is as follows:

REQUEST FOR COMMENT ON OFFENSES INVOLVING FENTANYL, FENTANYL ANALOGUES, AND OTHER OPIOIDS

Fentanyl and fentanyl analogue cases have increased substantially over the last several years. Since fiscal year 2019, fentanyl cases have increased 244.7 percent, such that they comprised 16.3 percent of all federal drug trafficking cases in fiscal year 2023. Today, fentanyl represents the third most common drug type in federal drug trafficking cases. Fentanyl analogue cases have increased 113.5 percent since fiscal year 2019, but those cases occupy a much smaller portion of the federal drug trafficking case load (1.4%).

Previous Commission Action

In response to rising numbers of fentanyl and fentanyl analogue cases, the Commission previously undertook a multi-year study of synthetic controlled substances. In 2018, following that study, the Commission amended §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit Those Offenses); Attempt or Conspiracy) to add an enhancement specific to fentanyl and fentanyl analogue cases. In particular, the Commission added a new specific offense characteristic at subsection (b)(13) providing a 4-level increase when the defendant knowingly misrepresented or knowingly marketed as another substance a mixture or substance containing fentanyl or a fentanyl analogue. *See* USSG, App. C. amend. 807 (effective Nov. 1, 2018). In adding this new specific offense characteristic, the Commission pointed to the harm attendant to cases where a user does not know the substance they are using contains fentanyl or fentanyl analogue. *Id.* As the Commission explained, “[b]ecause of fentanyl’s extreme potency, the risk of overdose death is great, particularly when the user is inexperienced or unaware of what substance he or she is using.” *Id.* Thus, the Commission concluded that “it is appropriate for traffickers who knowingly misrepresent fentanyl or a fentanyl analogue as another substance to receive additional punishment.” *Id.*

In 2023, the Commission amended §2D1.1(b)(13) based on the continued increase in fentanyl and fentanyl analogue distribution. *See* USSG, App. C. amend. 818 (effective Nov. 1, 2023). The amendment added a new subparagraph (B) with an alternative 2-level enhancement for offenses where the defendant represented or marketed as a legitimately manufactured drug another mixture or substance containing fentanyl 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. *Id.* As grounds for the amendment, the Commission cited data from the Drug Enforcement Agency (“DEA”) showing a substantial increase in the seizure of fake prescription pills. *Id.* The DEA reported seizing over 50.6 million fake pills in calendar year 2022, with 70 percent containing fentanyl. *Id.* Of those seized pills containing fentanyl, six out of ten contained a potentially lethal dose of the substance. *Id.* The Commission also pointed to the increase in drug overdose deaths—most of which involved synthetic opioids, primarily fentanyl. *Id.*

Feedback from Stakeholders

Since 2023, the Commission has continued to receive public comment on whether the guidelines appropriately account for factors specific to offenses involving fentanyl, fentanyl analogues, and other opioids. For example, in a recent letter to the Commission, the Department of Justice stated that, “although the Commission added [a] new two-level enhancement [at §2D1.1(b)(13)(B)] to address the harm associated with imitation pills, the new two-level enhancement has proven not to be very useful.” Letter from Scott Meisler, *Ex-Officio* Member, U.S. Sent’g Comm’n, to Hon. Carlton W. Reeves, Chair, U.S. Sent’g Comm’n (July 15, 2024) at 5, available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/202407/89FR48029_public-comment_R.pdf [hereinafter “DOJ Letter”]. Commission data shows that, in fiscal year 2023, 2.1 percent of individuals sentenced for fentanyl trafficking and 1.5 percent sentenced for fentanyl analogue trafficking received the 4-level increase for knowingly misrepresenting or knowingly marketing a mixture or substance containing fentanyl or a fentanyl analogue as another

substance. Because the enhancement at §2D1.1(b)(13)(B) became effective November 1, 2023, only preliminary 2024 data is available. Based on this preliminary data, 12 individuals sentenced for fentanyl trafficking and zero individuals sentenced for fentanyl analogue trafficking received the 2-level willful blindness enhancement.

To address the harm in cases involving fentanyl, fentanyl analogues, and other opioids, the Department of Justice proposed several amendments to §2D1.1 to enhance sentences when certain circumstances are present. *See* DOJ Letter at 6–8. First, the Department of Justice proposed creating an enhancement under §2D1.1 for distribution of fentanyl, fentanyl analogues, and other opioids to individuals under the age of 21. *Id.* at 6. According to the Department of Justice, “[m]embers of that age group have increasingly become victims of drug overdoses.” *Id.* Commission data reveals 37 cases in fiscal year 2023 in which the offense involved distribution of fentanyl or a fentanyl analogue to a person under 21 years old.

Second, the Department of Justice proposed creating an enhancement under §2D1.1 for drug-trafficking offenses using “the dark web or other anonymizing technologies to avoid detection.” DOJ Letter at 6. The Department of Justice explains that individuals “are increasingly relying on anonymizing technologies to further their illicit activity, posting advertisements for fentanyl pills on dark web marketplaces where the seller is unknown to the buyer, the transaction involves an exchange of cryptocurrency, and the product is shipped with misleading tracking information.” *Id.* Commission data reveals 60 cases in fiscal year 2023 in which the offense involved the use of the dark web or cryptocurrency to traffic fentanyl or a fentanyl analogue. Of these 60 cases, 39 cases involved the use of both the dark web and cryptocurrency, 17 cases involved only the use of the dark web, and four cases involved only the use of cryptocurrency.

Third, the Department of Justice asked the Commission to consider an enhancement for drug trafficking offenses involving fentanyl or another synthetic opioid adulterated with xylazine or medetomidine. DOJ Letter at 6–7. According to the Department of Justice, individuals engaged in drug trafficking “are increasingly adulterating fentanyl with these alpha-2-adrenergic agonists, which can extend a user’s high and also serve as a filler and binding agent.” *Id.* The Department of Justice notes that the effects of these substances “have not yet been fully studied” but states that they “are profoundly dangerous because their effects cannot be reversed by life-saving medicines like naloxone (Narcan).” *Id.* at 7. Commission data reveals 94 cases in fiscal year 2023 in which the offense involved mixing fentanyl or a fentanyl analogue with xylazine or medetomidine. Of these 94 cases, 90 cases used xylazine as the mixing agent, and four cases used medetomidine as the mixing agent.

Issues for Comment:

1. The Commission seeks comment on whether it should consider revising §2D1.1 to add an enhancement for distribution of fentanyl, fentanyl analogues, and other opioids to individuals under the age of 21. If so, should the enhancement be defendant-based or offense-based? By how many levels should the enhancement increase base offense levels, and what is the basis for such increase? Should the Commission consider any other changes to §2D1.1 to address the harm in these cases?

2. The Commission seeks comment on whether it should consider revising §2D1.1 to add an enhancement for fentanyl, fentanyl analogue, and opioid offenses involving the use of the dark web or other anonymizing technologies. If so, how should the Commission define or describe what technologies qualify for the enhancement? Should the enhancement be defendant-based or offense-based? By how many levels should the enhancement increase base offense levels, and what is the basis for such increase? Should the Commission consider any other changes to §2D1.1 to address the harm in these cases?
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Issues for Comment:

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Response

I don't know that punishing the distribution of fentanyl and fentanyl analogues differently depending upon the age of the user will provide the deterrent effect that some believe it will. The age of the user does not make the drug more lethal. Distributing any drug to young people, especially minors, is morally repugnant, but does it warrant an enhancement? I would argue, as I have in the past, that we should veer away from enhancements. It is well known that fentanyl and fentanyl analogues pose a significant risk of overdose and death, and perhaps an increase in the base offense level for the distribution of these drugs is appropriate because of its threat to public safety, but such an increase should be applied equally. If the Commission disagrees and puts forward an increase for distribution to individuals under a certain age, I suggest it should target distribution to individuals under the age of 18 (minors) as it would then be in line with the adjustment reflected in § 2D1.1(b)(14)(B) for distribution of methamphetamine on premises where minors are present.

Any adjustment should be offense-based, removing any mens rea from the equation. Simply put, if the offense involved the distribution of fentanyl, fentanyl analogues, or other opioids, the adjustment applies. Knowledge of the presence of fentanyl should not be considered. If the drug distributed by the defendant included fentanyl, fentanyl analogues, or other opioids, the enhancement should apply.

As for the number of levels for such an enhancement, a two-level adjustment would be appropriate. Again, such an adjustment would be consistent with the adjustment found in §2D1.1(b)(14)(B) as mentioned above.

Instead of an enhancement, the issue would be best addressed by adjusting the drug quantity table to reflect the harm posed by fentanyl and fentanyl analogues. Instead, respectfully, the Commission seems to refuse to alter the drug quantity table unless it is to lower the levels. Rather than complicating the matter with often difficult to apply enhancements, I suggest the Commission adjust the drug quantity table appropriately, to account for the harm of fentanyl and its analogues.

2. The Commission seeks comment on whether it should consider revising §2D1.1 to add an enhancement for fentanyl, fentanyl analogue, and opioid offenses involving the use of the dark web or other anonymizing technologies. If so, how should the Commission define or describe what technologies qualify for the enhancement? Should the enhancement be defendant-based or offense-based? By how many levels should the enhancement increase base offense levels, and what is the basis for such increase? Should the Commission consider any other changes to §2D1.1 to address the harm in these cases?

Response

This proposed adjustment seems a bit absurd in the current day. It's 2025, not 1925, or even 1995. We live and function in a world filled with technology, good and bad. It's common for a great deal of criminal activity, not only the distribution of fentanyl, to be committed by using anonymizing technologies or some other means to hide such activity and evade law enforcement.

Instead of adding to an ever-growing list of complicated, ambiguous guideline enhancements, perhaps courts should utilize tools (variances using 3553(a) factors) already available to address these situations. If a court believes the defendant's use of the dark web or some anonymizing technology aggravated the offense, an increase could easily be justified by 3553(a) factors.

3. The Commission seeks comment on whether it should consider revising §2D1.1 to add an enhancement for drug trafficking offenses involving fentanyl, a fentanyl analogue, or another synthetic opioid adulterated with xylazine or medetomidine. The Commission invites comment on xylazine and medetomidine, particularly their pharmacological effects, potential for addiction and abuse, the patterns of abuse and harms associated with their abuse, and the patterns of trafficking and harms associated with their trafficking. The Commission also invites comment on whether there are other adulterants to fentanyl, fentanyl analogues, and other synthetic opioids for which an enhancement should apply. If the Commission were to add an enhancement to §2D1.1 for drug trafficking offenses involving fentanyl, a fentanyl analogue, or another synthetic opioid adulterated with xylazine, medetomidine, or another adulterant should the enhancement be defendant-based or offense-based? By how many levels should the enhancement increase base offense levels, and what is the basis for such increase? Should the Commission consider any other changes to §2D1.1 to address the harm in these cases?

Response

I support an adjustment for offenses involving fentanyl or fentanyl analogues adulterated with xylazine and/or medetomidine. Both drugs enhance fentanyl's effects, posing a significant risk to the public.

Again, any adjustment should be offense-based, eliminating the defendant-based mens rea requirements. As to the number of levels, a two-level adjustment seems appropriate.

The DEA reports the following on Xylazine:

Xylazine and medetomidine are both veterinary sedatives, and much like fentanyl they have a profound effect on the central nervous system. When combined with fentanyl or other synthetic opioids, xylazine can increase the potential for fatal overdoses, as the similarity in pharmacological effects can further reduce the already decreased respiratory function. Overdoses associated with xylazine may be more difficult to identify in clinical settings, as they often appear similar to opioid overdoses and may not be included in routine drug screening tests. Xylazine has no approved antidote for human use, and as xylazine is not an opioid, naloxone does not reverse its effects. Consequently, the presence of xylazine may render naloxone less effective; however, the administration of naloxone can still address the effect of an opioid on breathing which may be sufficient to prevent death.

The detection of xylazine in drug mixtures – particularly in combination with fentanyl – is increasing across the country. The fact that xylazine, a non-opioid, can cause respiratory depression similar to that of an opioid overdose may increase the potential for a fatal outcome at a time when overdose deaths in the United States continue to reach record highs. Treatment with naloxone will only counteract the effects of the opioid in a mixture, meaning the victim may require additional measures to survive. Responders may not be aware that xylazine intoxication is a factor and as a result may not know to apply additional life-saving methods when naloxone only partially reverses the symptoms.

The expanded use of xylazine as an adulterant may be driven in part by its low cost and lower risk of law enforcement scrutiny as it is not a controlled substance. Moreover, its addition to fentanyl can increase the profit for traffickers and attract additional customers. It is difficult to assess with certainty how widespread the use of xylazine is or the true number of xylazine-involved overdose deaths without expanded testing.

The emergence of xylazine across the United States appears to be following the same path as fentanyl, beginning with white powder heroin markets in the Northeast before spreading to the South, and then working its way into drug markets westward. This pattern indicates that use of xylazine as an adulterant will likely increase and be commonly encountered in the illicit fentanyl supply. Xylazine use throughout the United States may also follow the pattern seen in Puerto Rico and emerge as a drug of abuse on its own in the future, although it is unlikely to replace fentanyl or other opioids among illicit drug users.

[The Growing Threat of Xylazine and its Mixture with Illicit Drugs.pdf](#)

Due to the similarities of medetomidine and dexmedetomidine to xylazine — medetomidine is used in a similar manner as xylazine in veterinary medicine, and dexmedetomidine in human practice and veterinary medicine — DEA assesses that both drugs have the potential to be supplements to or replacements for xylazine in terms of mixing with illicit opioids.

If xylazine is scheduled under the Controlled Substances Act, medetomidine and dexmedetomidine are readily accessible alternatives to xylazine.

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

District Judge Susan Wigenton, New Jersey

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

Should be Defendant based.

Submitted on: January 30, 2025



U.S. Department of Justice

Criminal Division

Appellate Section

Washington, D.C. 20530

May 1, 2025

The Honorable Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Judge Reeves:

Our nation remains immersed in a drug crisis: cartels are flooding the United States with deadly drugs that have led to the overdose deaths of hundreds of thousands of American victims.¹ Fentanyl and other synthetic opioids are at the heart of this crisis.² Fentanyl is cheap to make, easy to disguise, and—all too often—deadly to those who consume it. More than seven in ten drug overdose deaths in the United States in 2023 involved illegally manufactured fentanyl,³ and Drug Enforcement Administration testing reveals that approximately half of pills with fentanyl contain a potentially lethal dose.⁴

¹ Drug Enforcement Administration, *National Drug Threat Assessment 2024* (May 9, 2024) at 2, <https://www.dea.gov/sites/default/files/2024-05/5.23.2024%20NDTA-updated.pdf>; Centers for Disease Control and Prevention, National Vital Statistics System, *12 month-ending Provisional Number and Percent Change of Drug Overdose Deaths*, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (Feb. 2, 2025); see also Press Release, Centers for Disease Control and Prevention, *U.S. Overdose Deaths Decrease in 2023, First Time Since 2018* (May 15, 2024), https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2024/20240515.htm; Press Release, Centers for Disease Control and Prevention, *CDC Reports Nearly 24% Decline in U.S. Drug Overdose Deaths* (February 25, 2025) (Provisional data shows about 87,000 drug overdose deaths from October 2023 to September 2024 and drug deaths remain unacceptably high), <https://www.cdc.gov/media/releases/2025/2025-cdc-reports-decline-in-us-drug-overdose-deaths.html>.

² We collectively refer to fentanyl, fentanyl analogues, fentanyl-related substances, and other synthetic opioids as “synthetic opioids.”

³ Lauren J. Tanz, et al, Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report, Detection of Illegally Manufactured Fentanyls and Carfentanil in Drug Overdose Deaths – United States 2021-2024* (December 5, 2024), <https://www.cdc.gov/mmwr/volumes/73/wr/mm7348a2.htm>.

⁴ Drug Enforcement Administration, *One Pill Can Kill: Fake Pills Fact Sheet* (Nov. 2024), https://www.dea.gov/sites/default/files/2024-11/DEA-OPCK_FactSheet_November_2024.pdf.

Fueling the problem is the ease with which fentanyl can be produced, bought, and sold. Cartels use the dark web to operate with increased anonymity⁵ and leverage social media⁶ to directly market “to unsuspecting children, young adults, and members of the public who think they are getting legitimate prescription drugs” but are actually purchasing fentanyl.⁷ Further exacerbating the fentanyl epidemic is the increasing prevalence of adulterants such as xylazine or medetomidine, which are dangerous substances that do not respond to life saving medications like naloxone.⁸

To address this growing threat, in July 2024, the Department of Justice proposed several amendments to ensure that the Sentencing Guidelines appropriately address the harms from fentanyl trafficking.⁹ The Commission has now requested comment on some of those proposals.¹⁰ We appreciate the Commission’s consideration of our proposals. We urge the Commission to combat this public-safety threat and enact the proposals at issue, which would provide common-sense targeted increases in the guideline ranges for synthetic opioid traffickers who engage in aggravated conduct.

⁵ See, e.g., Drug Enforcement Administration, *National Drug Threat Assessment*, *supra* note 1, at 23; U.S. Dep’t of Justice, Press Release, *Canadian Dark Web Vendor Sentenced for Importing Millions of Counterfeit Xanax Pills into the United States* (January 23, 2025), <https://www.justice.gov/usao-ndga/pr/canadian-dark-web-vendor-sentenced-importing-millions-counterfeit-xanax-pills-united#:~:text=Arden%20McCann%2C%2037%2C%20of%20Quebec,2023%2C%20after%20he%20pleaded%20guilty>.

⁶ See, e.g., Press Release, Drug Enforcement Administration, *DEA Operation Last Mile Tracks Down Sinaloa and Jalisco Cartel Associates Operating within the United States* (May 3, 2023), <https://www.dea.gov/press-releases/2023/05/05/dea-operation-last-mile-tracks-down-sinaloa-and-jalisco-cartel-4>; Press Release, Drug Enforcement Administration, *Drug Enforcement Administration announces seizure of over 379 million deadly doses of fentanyl in 2022* (Dec. 20, 2022), <https://www.dea.gov/press-releases/2022/12/20/drug-enforcement-administration-announces-seizure-over-379-million-deadly>; Public Safety Alert, Drug Enforcement Administration, *Public Safety Alert: Sharp Increase in Fake Prescription Pills Containing Fentanyl and Meth* (September 2021), <https://www.dea.gov/alert/sharp-increase-fake-prescription-pills-containing-fentanyl-and-meth>.

⁷ Press Release, Drug Enforcement Administration, *Fentanyl Deaths Climbing, DEA Washington Continues the Fight* (Feb. 16, 2022), <https://www.dea.gov/stories/2022/2022-02/2022-02-16/fentanyl-deaths-climbing-dea-washington-continues-fight>

⁸ Drug Enforcement Administration, *Joint Intelligence Report, the Growing Threat of Xylazine And Its Mixture With Illicit Drugs* (Oct. 2022) at 2-4, <https://www.dea.gov/sites/default/files/2022-12/The%20Growing%20Threat%20of%20Xylazine%20and%20its%20Mixture%20with%20Illicit%20Drugs.pdf>. See also Joseph J. Palamar, *et al.*, *Medetomidine Infiltrates the US Illicit Opioid Market*, *JAMA Network* 332(17):1425-1426 (2024), <https://jamanetwork.com/journals/jama/fullarticle/2823005?resultClick=1>.

⁹ Letter from Scott Meisler, U.S. Dept. of Justice, to Hon. Carlton W. Reeves, Chair, U.S. Sent’g Comm’n, (July 15, 2024), at 5-8 (“DOJ July 15 2024 Letter”), <https://www.justice.gov/criminal/media/1362211/dl?inline>.

¹⁰ Notice of request for public comment, 90 Fed. Reg. 22, 8840 (Feb 3, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-02-03/pdf/2025-02128.pdf>; see also U.S. Sent’g Comm’n, *Request for Public Comment* (January 24, 2025), <https://www.uscc.gov/policymaking/federal-register-notices/federal-register-notice-january-2025-issue-comment>.

BACKGROUND ON FENTANYL

Fentanyl is the primary drug driving the public-safety crisis afflicting our country.¹¹ The annual number of deaths from fentanyl and other synthetic opioids far exceeds the number of deaths associated with other types of drugs.¹² Fentanyl trafficking cases have increased and now comprise the second most common drug type in federal drug trafficking cases.¹³ Fentanyl and other synthetic opioids pose unique dangers for several reasons.

First, these drugs are potent and can be deadly in small doses. About 100 times more potent than morphine, a mere two milligrams of fentanyl can be a potentially deadly dose.¹⁴ And the Drug Enforcement Administration has seized tens of millions of fentanyl-laced fake pills that contain potentially lethal doses.¹⁵

Second, unlike plant-based drugs (such as heroin), synthetic opioids do not depend on growing seasons and are not affected by climate issues.¹⁶ The result is a potentially limitless supply of synthetic drugs that can be manufactured in makeshift clandestine laboratories using a variety of precursor chemicals.¹⁷

Third, the synthetic nature of these substances means that laboratories can create similar substances with even more potency. For example, carfentanil is a fentanyl analogue that is 100 times more potent than fentanyl.¹⁸ Another group of synthetic opioids, nitazenes, which have

¹¹ DEA's *National Drug Threat Assessment 2024*, *supra* note 1, at 1, 24 ("Fentanyl and other synthetic drugs, like methamphetamine, are responsible for nearly all of the fatal drug overdoses and poisonings in our country.").

¹² For example, the Centers for Disease Control and Prevention estimated that there were approximately 72,776 deaths involving synthetic opioids in 2023. This is more than double the number of deaths associated with psychostimulants, such as methamphetamine. Centers for Disease Control and Prevention, *Drug Overdose Deaths in the United States 2003-2023* (December 2024), at 10-11, <https://www.cdc.gov/nchs/data/databriefs/db522.pdf>.

¹³ U.S. Sent'g Comm'n, *2024 Sourcebook for Federal Sentencing Statistics, 2024 Drug Offenses*, Table 1, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/Drug-Offenses-Section.pdf>.

¹⁴ DEA's *Facts about Fentanyl*, <https://www.dea.gov/resources/facts-about-fentanyl>; Press Release, Drug Enforcement Administration, *Overdose Deaths Decline, Fentanyl Threat Looms* (December 16, 2024), <https://www.dea.gov/press-releases/2024/12/16/overdose-deaths-decline-fentanyl-threat-looms>.

¹⁵ DEA seized more than 60 million fentanyl-laced fake pills in 2024. Drug Enforcement Administration, *One Pill Can Kill*, <https://www.dea.gov/onepill>. Approximately half of the pills tested by DEA contain a potentially deadly dose of fentanyl. Drug Enforcement Administration, *One Pill Can Kill Fact Sheet*, *supra* note 4; *see also* Drug Enforcement Administration, *Overdose Deaths Decline, Fentanyl Threat Looms*, *supra* note 14.

¹⁶ U.S. Comm'n on Combating Synthetic Opioid Trafficking, *FINAL REPORT* (Feb. 2022), at 19-20, https://www.rand.org/content/dam/rand/pubs/external_publications/EP60000/EP68838/RAND_EP68838.pdf; *see also* Drug Enforcement Administration, *Drug Fact Sheet: Synthetic Opioids* (April 2020), <https://www.dea.gov/sites/default/files/2020-06/Synthetic%20Opioids-2020.pdf>.

¹⁷ DEA's *National Drug Threat Assessment*, *supra* note 1, at 1.

¹⁸ Deaths involving carfentanil increased 720.7 percent from the first half of 2023 to the first half of 2024. Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report, Detection of Illegally Manufactured Fentanyl and Carfentanil in Drug Overdose Deaths – United States 2021-2024*, *supra* note 3; *see also* Drug

never been approved for use in the United States, are also deadly, and some are even more powerful than fentanyl.¹⁹ The chemical malleability of synthetic opioids also makes it difficult for scheduling to keep pace with their development.²⁰

Fourth, fentanyl and other lethal substances are frequently distributed in the form of pills disguised to look like legitimate prescription drugs and often sold on social media.²¹ Although these pills often appear like legitimately manufactured pharmaceuticals, their potency varies unpredictably, and even experienced users may be unaware that the pills contain potentially lethal doses of fentanyl.²² Against this backdrop, we respond to the Commission's issues for Comment.

ISSUES FOR COMMENT

The Commission requested public comment on whether to add an enhancement for trafficking synthetic opioids: 1) to individuals under 21; 2) using the dark web or other anonymizing technologies; and 3) adulterated with xylazine or medetomidine.²³ For the reasons articulated below, we recommend that the Commission add such enhancements with our proposed modifications.

Additionally, we note that the Commission solicited comment about whether additional changes to §2D1.1 would appropriately address the harms associated with fentanyl and other synthetic opioids. In that regard, the Department thanks the Commission for its recent amendment revising the *mens rea* requirement for the enhancement at §2D1.1(b)(13) for fake pills.²⁴ We are hopeful that this revision will broaden application of the enhancement to reflect the gravity of distributing fake pills laced with synthetic opioids and that it will lead to guideline ranges commensurate with the seriousness of, and public-safety threat posed by, such offenses. At the same time, the Department remains concerned that this recent change may not ensure appropriate application of the fake pills enhancement at §2D1.1(b)(13) and that, even if it does,

Enforcement Administration, *Carfentanil: A Dangerous New Factor in the U.S. Opioid Crisis*, https://www.dea.gov/sites/default/files/2018-07/hq092216_attach.pdf.

¹⁹ Allison Roberts, Jessica Korona-Bailey, and Sutapa Mukhopadhyay, Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, *Notes from the Field: Nitazene-Related Deaths – Tennessee, 2019 – 2021*, (September 16, 2022), <https://www.cdc.gov/mmwr/volumes/71/wr/mm7137a5.htm>; see also Drug Enforcement Administration, *Benzimidazole-Opioids* (March 2024), https://www.deadiversion.usdoj.gov/drug_chem_info/benzimidazole-opioids.pdf.

²⁰ Drug Enforcement Administration, *Fentanyl-Related Substances* (January 2025), https://www.deadiversion.usdoj.gov/drug_chem_info/frs.pdf.

²¹ Drug Enforcement Administration, *One Pill Can Kill Fact Sheet*, *supra* note 4; Drug Enforcement Administration, *Emoji Drug Code Decoded* (March 2025), https://www.dea.gov/sites/default/files/2022-04/Emoji%20Decoded_FO%20One%20Page_v2.pdf.

²² *Id.*; Drug Enforcement Administration, *Counterfeit Pills* (May 13, 2021), <https://www.dea.gov/sites/default/files/2021-05/Counterfeit%20Pills%20fact%20SHEET-5-13-21-FINAL.pdf>.

²³ *Request for Public Comment*, *supra* note 10.

²⁴ U.S. Sent'g Comm'n, *Adopted Amendments* (Effective November 1, 2025), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202504_prelim-rf.pdf.

guideline ranges will not fully reflect the gravity of peddling these deadly substances. The Department therefore requests that the Commission continue to monitor closely the application of §2D1.1(b)(13) as amended. We would also welcome the opportunity to engage with the Commission to explore additional measures to ensure that the Guidelines are responsive to this ongoing public-safety issue.

1. Enhancement for Trafficking Synthetic Opioids to or Involving Individuals Under 21 in Synthetic Opioid Trafficking

The Commission has requested comment on whether it should consider revising §2D1.1 to add an enhancement for the distribution of fentanyl, fentanyl analogues, and other opioids to individuals under the age of 21. We agree that such an enhancement would be appropriate but recommend that it apply not only to those who *sell* synthetic opioids to young people, but also to those who *otherwise involve* young people in trafficking synthetic opioids.

This enhancement is necessary to help counter the devastating effect of synthetic opioids on young people. Drug overdoses are the leading cause of death among Americans aged 18 to 44.²⁵ The unintentional drug overdose death rate for 15- to 19-year-olds in the United States doubled from 2015 to 2020.²⁶ The vast majority of these drug-related deaths are associated with opioids, predominately fentanyl.²⁷ Disturbingly, the share of drug fatalities involving fentanyl has increased faster among adolescents than among adults.²⁸ The significant growth in adolescent deaths has been driven by the widespread availability of fake pills containing fentanyl.²⁹ And short of death, controlled substances can cause long-term damage to children's development, as well as their mental and physical health.³⁰

Although the dialogue regarding the effects of synthetic opioids on young people has typically focused on the risk of overdose, involving them in drug operations—whether as dealers, lookouts, couriers, or workers in a stash house—contributes to the scourge of synthetic

²⁵ CDC Reports Nearly 24% Decline in U.S. Drug Overdose Death, *supra* note 1.

²⁶ The death rate per 100,000 increased from .66 in Q1 of 2015 to 1.32 in Q1 of 2020 and has remained above this level ever since. National Institute on Drug Abuse, *Unintentional Drug Overdose Death Rate Among US Youth Aged 15-19* (December 13, 2023), <https://nida.nih.gov/research-topics/trends-statistics/infographics/unintentional-drug-overdose-death-rates-among-us-youth-aged-15-19>.

²⁷ KFF, *Teens Drugs, and Overdose, Contrasting Pre-Pandemic and Current Trends* (October 15, 2024), <https://www.kff.org/mental-health/issue-brief/teens-drugs-and-overdose-contrasting-pre-pandemic-and-current-trends/>. Of 708 adolescent deaths in 2023, 539 were related to fentanyl. *Id.*

²⁸ *Id.*

²⁹ Joseph Friedman and Scott E. Hadland, The New England Journal of Medicine, The Overdose Crisis among U.S. Adolescents (January 6, 2024), <https://www.nejm.org/doi/full/10.1056/NEJMp2312084>.

³⁰ U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention, *Drug Identification and Testing Summary* (May 1998), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/drugid/ration-03.html>; Get Smart About Drugs, *How Drugs Alter Brain Development and Affect Teens*, (March 8, 2023), <https://www.getsmartaboutdrugs.gov/consequences/how-drugs-alter-brain-development-and-affect-teens>; Alonzo J. Whyte, Mary M. Torregrossa, Jacqueline M. Barker, and Shannon L. Gourley, *Frontiers in Behavioral Science, Editorial: Long-Term Consequences of Adolescent Drug Use: Evidence from Pre-Clinical and Clinical Models* May 3, 2018), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5943494/>.

opioids affecting our Nation’s young people. The Department has prosecuted multiple cases in which defendants recruited young people to participate in drug-trafficking conspiracies.³¹ Purposefully involving young people in drug-trafficking operations causes irreparable harm, exposing them to violence and other threats to their well-being.³² As such, the Department supports a sentencing enhancement that applies to individuals who traffic synthetic opioids to young people or involve them in trafficking activities.

Several existing provisions in the Guidelines address the use of those under 18 or 21 in certain circumstances, but each has gaps:

- Section 3B1.4 provides for a two-level adjustment when the defendant uses a person *under* the age of 18 to commit an offense. While this provision broadly applies to all crimes, it does not apply when the defendant uses individuals between the ages of 18 and 21 to commit offenses, and may not apply to defendants who distribute drugs to youthful customers who otherwise are not participants in the offense.³³
- Section 2D1.1(b)(16)(B) provides for a two-level enhancement when a defendant receives an aggravating-role adjustment under §3B1.1 and the defendant knowingly distributed a controlled substance to an individual under the age of 18 or involved that individual in the offense. But application of this enhancement requires the defendant to receive the aggravating-role adjustment, and it applies only to distributing to or involving individuals *under* 18. It does not apply when the young person that the defendant distributed to or involved in the offense is between ages 18 and 21.
- Section 2D1.2 provides for enhanced base offense levels to reflect the enhanced statutory penalties for distribution to persons under 21, but that guideline is limited to violations of

³¹ See, e.g., Press Release, U.S. Dep’t of Justice, *Drug Trafficker Who Used College-Age Drivers to Import Methamphetamine Sentenced to 12 Years* (May 17, 2024), <https://www.justice.gov/usao-sdca/pr/drug-trafficker-who-used-college-age-drivers-import-methamphetamine-sentenced-12-years>; Press Release, U.S. Dep’t of Justice, *Teen Who Smuggled Individuals and Recruited Juveniles to Smuggle Drugs Sentenced to 46 Months in Custody* (August 19, 2019), <https://www.justice.gov/usao-sdca/pr/teen-who-smuggled-individuals-and-recruited-juveniles-smuggle-drugs-sentenced-46-months>; Press Release, U.S. Dep’t of Justice, *Leader of Drug Trafficking Ring that Used Social Media to Communicate and Advertise Wares Sentenced to 10 Years in Prison* (January 28, 2025), <https://www.dea.gov/press-releases/2025/01/28/leader-drug-trafficking-ring-used-social-media-communicate-and-advertise>.

³² Xiaoming Li, Bonita Standon, and Susan Feigelman, Archives of Pediatric and Adolescent Medicine, *Exposure to Drug Trafficking Among Urban, Low-Income African American Children and Adolescents* (February 1999), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/345180>. This same study noted that youth who are asked to sell drugs are exposed to more violent events than those who were not asked to sell drugs. The study also noted that young people involved in drug trafficking were also more likely to have engaged in other risky behaviors. *Id.*

³³ U.S.S.G. §3B1.4, would, however, potentially apply if the minor then further distributed drugs as part of a larger drug trafficking conspiracy. See *United States v. Corbett*, 870 F.3d 21, 32 (1st Cir. 2017); *United States v. Acosta*, 534 F.3d 574, 587-88 (7th Cir. 2008).

21 U.S.C. §§ 859, § 860, or § 861, and is therefore generally unavailable in cases prosecuted under the principal federal drug statutes, 21 U.S.C. §§ 841 and 846.³⁴

While each of these provisions can be useful in certain cases, they contain inconsistencies and limitations, including differing age limitations (18 or 21) and other restrictions regarding the conduct that triggers the enhancement and the defendant to whom the enhancement applies.

Using the most commonly charged drug statute, 21 U.S.C. § 841,³⁵ two examples help illustrate the gaps.

- Example 1: a defendant who is convicted under 21 U.S.C. § 841 for distributing fentanyl to an 18-year-old high school student.

Existing guideline enhancements generally do not cover this aggravated conduct. Section 3B1.4, using a minor to commit a crime, applies only to using someone *under* 18 to commit a crime. Because selling to the student does not necessarily constitute using them to commit a crime, §3B1.4 may not apply in all circumstances. The same age restriction is present in §2D1.1(b)(16)(B).³⁶ While §2D1.1(b)(16)(B) applies to distributing controlled substances to young people (or involving them in the offense), it applies only to distributions to people *under* 18 and requires the defendant to receive an aggravating-role adjustment. Even if the defendant received the aggravating-role adjustment under §3B1.1, §2D1.1(b)(16)(B) would seem inapplicable because the student buyer was 18 or if the defendant sold to multiple 18-year-olds or multiple students between ages 18 and 21. Absent a conviction under a triggering statute or a cross-reference, §2D1.2 would not be available.

- Example 2: a defendant who is convicted under 21 U.S.C. § 841 and uses an 18-year-old or 19-year-old high-school student to assist in a fentanyl-trafficking crime, such as by acting as a courier or packager or otherwise assisting in the commission of the offense.

For similar reasons as those in Example 1, this aggravated conduct generally falls outside existing guideline enhancements. Both §2D1.1(b)(16)(b) and §3B1.4 require the individual used in the trafficking offense to be under 18; and §2D1.2 would require a conviction under a triggering statute (or cross-reference from another guideline).

To fill the gap of trafficking synthetic opioids to individuals who are 18 to 21 years of age or otherwise using such individuals to further synthetic opioid trafficking offenses, the

³⁴ U.S. Sent’g Comm’n, Adopted Amendment 591 Reason for Amendment (Effective November 1, 2000) (“in order for the enhanced penalties in §2D1.2 to apply, the defendant must be convicted of an offense referenced to §2D1.2”), <https://www.uscc.gov/guidelines/amendment/591>.

³⁵ U.S. Sent’g Comm’n, *Sentencing Commission Primer on Drug Offenses* (2022) at 1, https://www.uscc.gov/sites/default/files/pdf/training/primers/2022_Primer_Drugs.pdf

³⁶ §2D1.1(b) provides the following “(16) If the defendant receives an adjustment under §3B1.1 (Aggravating Role) and the offense involved 1 or more of the following... (B) the defendant, knowing that an individual was (i) less than 18 years of age ...distributed a controlled substance to that individual or involved that individual in the offense... increase by 2 levels.” U.S.S.G. §2D1.1(b)(16) (2024).

Department recommends creating a narrow standalone enhancement that specifically addresses synthetic opioid offenses involving individuals under 21:

(b)(19) If the defendant, knowing that an individual was less than 21 years of age, distributed fentanyl, a fentanyl analogue, or synthetic opioid to that individual or otherwise involved that individual in the offense, increase by 4 levels.

This proposal is specifically addressed to fentanyl, fentanyl analogues, and synthetic opioids. But we recognize that in so limiting this proposal, it would not cover the gaps explained above for trafficking other dangerous drugs to those under 21. Should the Commission have an interest in broader application or a different level enhancement, the Department would be happy to engage with the Commission and provide additional options.

This proposal would fill these gaps in several specific ways. First, this proposal would address the age limitations of §3B1.4 and §2D1.1(b)(16)(B) when applied to the specific dangers of fentanyl and other synthetic opioids by including individuals under 18 as well as those 18 to 21. It would appropriately provide for an enhancement when a defendant *knows* that the person they are using to traffic synthetic opioids is under 21. By retaining knowledge as a *mens rea*, application is limited to only those who are truly aware of the age of the individual involved in the offense. Second, this proposal would apply to defendants who traffic synthetic opioids to individuals under 21 regardless of whether the aggravating-role adjustment applies.³⁷ Third, this proposal would apply to convictions under 21 U.S.C. § 841. While §2D1.2 can apply to drugs sales to those over 18, it applies only to defendants who are convicted under infrequently charged statutes, such as 21 U.S.C. § 859.³⁸ Application may not include situations in which individuals under 21 were involved as participants in the offense and thus our proposal is necessary to ensure appropriate punishment.³⁹ This targeted proposal would ensure that defendants receive an appropriate enhancement when they sell synthetic opioids to young people or otherwise get them involved in trafficking offenses.⁴⁰ In doing so, it would provide an appropriate enhancement for the aggravating circumstances illustrated in Examples 1 and 2 above.

³⁷ To avoid double-counting, the Department would suggest that the enhancement under §2D1.1(b)(16)(B)(i) should not apply if a defendant receives a four-level enhancement under this new provision.

³⁸ One reason why 21 U.S.C. § 859 is not charged frequently is that it triggers a one-year mandatory minimum sentence. In most cases involving a substantial quantity of drugs, a higher mandatory minimum sentence is available under 21 U.S.C. § 841(b)(1)(A) or (B). However, unless a defendant is convicted for violating § 859, the Guidelines do not provide for an enhancement for distributing drugs to an individual under the age of 21.

³⁹ For cases in which a defendant qualifies for the two-level enhancement under §2D1.2(a)(3), the Department would advocate for a cross-reference to the new provision so that the same four-level enhancement applies to defendants who sell synthetic opioids to individuals under the age of 21, regardless of whether they are prosecuted under 21 U.S.C. § 841 or § 859.

⁴⁰ There may be cases where a defendant qualifies for the new proposed enhancement but also would qualify for the §3B1.4 adjustment. To avoid double counting, the Department would support additional language that clarifies that §3B1.4 should not apply to defendants who receive the new proposed four-level enhancement.

2. Enhancement for Synthetic Opioid Offenses Using Anonymizing Technology or Direct Messaging

Technological changes—including use of the dark web, encryption, and other anonymizing technologies—have made detecting, identifying, and prosecuting synthetic opioid traffickers more challenging. Use of these technologies involves affirmative conduct intended to create a technological barrier to evade detection by law enforcement and conceal criminal conduct. And it also demonstrates sophistication. Use of the dark web, encryption, and anonymizing technologies alone is not illegal or necessarily indicative of criminal conduct. But intentional use of these tools to evade detection and facilitate illegal drug trafficking undermines law enforcement’s ability to detect and deter criminal conduct. The Guidelines in their current form do not adequately reflect recent technological advancements and should be updated to provide for an enhancement for when these technological advancements are used to further synthetic opioid trafficking.

Compounding this problem is the use of direct messaging functions on social media platforms to distribute synthetic opioids through coded language or emojis directly to consumers while avoiding detection.⁴¹ The existing mass-marketing enhancement at §2D1.1(b)(7) lacks clarity as to whether, absent the defendant posting something more broadly on the internet or sending a mass communication,⁴² it would cover synthetic opioid trafficking accomplished through direct electronic communication.⁴³ We are similarly concerned that §2D1.1(b)(7) lacks clarity as to whether it covers the use of anonymizing technologies to advance criminal conduct (including end-to-end encrypted communications), or the use of the dark web. Through our proposal, we urge the Commission to clarify that such conduct is covered.

The dark web consists of internet sites that cannot be accessed without special software tools that enable online anonymity.⁴⁴ Information related to the operators of dark web sites is limited, and transactions are conducted with reduced risk of detection.⁴⁵ The dark web includes darknet markets for illegal drugs and distribution of child sexual abuse material, and defendants

⁴¹ See *Emoji Drug Code Decoded*, *supra* note 21.

⁴² We are aware of cases in which courts have applied §2D1.1(b)(7)’s enhancement when the defendant first posted a solicitation more broadly on social media and finalized the drug trafficking transaction through direct messaging. But we remain concerned that the existing mass-marketing enhancement may not cover transactions conducted entirely via direct communication.

⁴³ U.S.S.G. §2D1.1, comment. (n.13) (2024). See, e.g., *United States v. Perez*, 840 Fed. App’x 792, 794, 2021 WL 1111404, at *2 (5th Cir. March 23, 2021) (unpublished) (affirming application of §2D1.1(b)(7) when Facebook messenger and Facebook used to solicit large numbers of persons to buy drugs); *United States v. Victoria Martinez*, 823 Fed. App’x 284, 285-86, 2020 WL 5823325, at *1-2 (5th Cir. Sept. 30, 2020) (unpublished) (affirming application of §2D1.1(b)(7) enhancement when defendant posted to 3,100 Facebook friends that she had bags available and a co-conspirator sold through Facebook groups); *United States v. Margenat-Castro*, 754 Fed. App’x 879, 8801-81, 2018 WL 5805923, at *1-2 (11th Cir. Nov. 6, 2018) (unpublished) (noting that district court applied §2D1.1(b)(7) enhancement when website and social media board used to further drug distribution).

⁴⁴ U.S. Sent’g Comm’n, *Cyber Technology in Federal Crime* (Sept. 2024) (“Cyber Technology Report”) at 3, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2024/202409_cyber-technology.pdf.

⁴⁵ Congressional Research Service, *The Dark Web: An Overview* <https://www.congress.gov/crs-product/IF12172>; Cyber Technology Report, *supra* note 44, at 3.

often use it to commit fraud, sexual abuse, and money laundering.⁴⁶ While law enforcement investigators have had some success infiltrating drug trafficking networks on the dark web,⁴⁷ the sheer scope of the trafficking activity on the dark web and the increased technical challenges imposed by anonymizing technologies make such investigations far more difficult than traditional law enforcement investigations, requiring substantial resources and technological expertise. Anonymizing technology can also be used by drug traffickers outside of the dark web to mask a user's identity through encryption or encrypted communications. Traffickers use anonymizing technologies to conceal their identities, IP addresses, and drug trafficking transactions to evade law enforcement scrutiny.

The Sentencing Commission's recent report, *Cyber Technology in Federal Crime*, noted the growth in the use of the dark web for criminal activity.⁴⁸ While only 28 sentenced individuals used the dark web to commit their offenses in FY 2014, more than 361 did so in FY 2019.⁴⁹ Notably, drug trafficking offenses were the second most common type of crime in which individuals used the dark web, accounting for over 25 percent of such crimes.⁵⁰ Although the report found that the average guideline range for drug traffickers using cyber technology was higher than for other drug traffickers, the average sentence imposed was lower than the sentences imposed on other drug traffickers.⁵¹ The growing use of the dark web and other anonymizing technologies merits the Commission's attention.

The use of direct messaging to distribute synthetic opioids is also concerning. The current enhancement for drug trafficking through "mass-marketing by means of an interactive computer service" in §2D1.1(b)(7)⁵² covers electronic solicitations to "a large number of persons to induce those persons to purchase a controlled substance."⁵³ Synthetic opioid trafficking

⁴⁶ Cyber Technology Report, *supra* note 44, at 13.

⁴⁷ See, e.g., U.S. Dep't of Justice, Press Release, *Canadian Dark Web Vendor Sentenced for Importing Millions of Counterfeit Xanax Pills into the United States* (January 23, 2025), <https://www.justice.gov/usao-ndga/pr/canadian-dark-web-vendor-sentenced-importing-millions-counterfeit-xanax-pills-united#:~:text=Arden%20McCann%2C%2037%2C%20of%20Quebec,2023%2C%20after%20he%20pleaded%20guilty>; U.S. Dep't of Justice, Press Release, *Dark Web Vendor Pleads Guilty to Distributing Fentanyl Through the Mail* (August 28, 2024), <https://www.justice.gov/usao-edny/pr/dark-web-vendor-pleads-guilty-distributing-fentanyl-through-mail>; U.S. Dep't of Justice, Press Release, *Dark Web drug vendor and clandestine lab manufacturer sentenced to prison for trafficking in methamphetamine and fentanyl* (May 21, 2024), <https://www.justice.gov/usao-sdfl/pr/dark-web-drug-vendor-and-clandestine-lab-manufacturer-sentenced-prison-trafficking>.

⁴⁸ Cyber Technology Report, *supra* note 44, at 13.

⁴⁹ *Id.* The figures dipped to 286 in FY 2020 and 287 in FY 2021, possibly as a result of the pandemic's influence on the caseload. *Id.*

⁵⁰ Child pornography crimes accounted for over 42 percent of the dark web offenses. *Id.*

⁵¹ *Id.* at 18. The average guideline range for drug traffickers using cyber technology was 104 months, yet their average sentence was 65 months. By contrast, the sentencing range for other drug traffickers was 99 months, with an average sentence of 72 months. *Id.*

⁵² Section 2D1.1(b)(4) contains the corollary enhancement for trafficking, importing, exporting, or possession certain chemicals, and the same application note limiting the enhancement's scope. Should the Commission be interested in adopting this proposal, the Department would support a similar amendment to §2D1.1(b)(4).

⁵³ U.S.S.G. §2D1.1, comment. n. 13.

schemes that rely upon social media platforms will not necessarily fall within the current definition of mass-marketing because the marketing is done in a more targeted fashion, generally through direct messaging functions on various platforms.⁵⁴ Despite the proliferation in the use of social media and other online tools to market and distribute controlled substances, §2D1.1(b)(7) enhancements are applied in less than one percent of federal drug trafficking cases.⁵⁵ The enhancement applies to all controlled substance trafficking but, notably, may not cover use of anonymizing technologies (including end-to-end encrypted communications or direct messaging via social media). Although the fraud and tax guidelines include enhancements for “sophisticated means,”⁵⁶ all accounting for complex conduct pertaining to the concealment of the offense,⁵⁷ the drug trafficking guideline does not.

To address specific concerns about the gaps in sentencing synthetic opioid trafficking, the Department recommends that the Commission amend §2D1.1 to add separate standalone enhancements to address the use of direct messaging on social media and anonymizing technology to sell synthetic opioids:⁵⁸

“(b)(20) If (A) the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed fentanyl, a fentanyl analogue, or a synthetic opioid by use of a function that provides online direct messaging or another similar function on a social media site, computer application or other similar platform, increase by **2 levels**. If U.S.S.G. § 2D1.1(b)(7) (related to mass marketing) applies, do not apply this enhancement;

(B) anonymizing technology was used in the commission of an offense involving fentanyl, a fentanyl analogue, or a synthetic opioid, increase by an additional **2 levels**. For the purposes of this provision, “anonymizing technology” includes any program, function or other mechanism that permits an individual to hide or alter a user’s name or IP address, encrypt communications, or otherwise serves to prevent others from identifying

⁵⁴ Courts that have approved the application of the enhancement for sales over social media have noted the large number of potential customers who received the solicitation. *See, e.g., Perez*, 840 Fed. App’x at 794; *Martinez*, 823 Fed. App’x at 285-86.

⁵⁵ The enhancement was applied in 102 cases (.5 percent) in FY 2023. U.S. Sent’g Comm’n, *Use of Guidelines and Specific Offense Characteristics Guideline Calculation Based Fiscal Year 2023* at 58, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/guideline-application-frequencies/2023/Ch2_Guideline_FY23.pdf. It was applied in 88 cases (.4 percent) in FY 2022. U.S. Sent’g Comm’n, *Use of Guidelines and Specific Offense Characteristics Guideline Calculation Based Fiscal Year 2022* at 58, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/guideline-application-frequencies/2022/Ch2_Guideline_FY22.pdf.

⁵⁶ U.S.S.G. §2B1.1(b)(10); §2T1.1(b)(2); §2T1.4(b)(2), §2T3.1(b)(1) (2024).

⁵⁷ *See, e.g.,* §2B1.1 comment n.9(B) (2024) (“sophisticated means” means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense”).

⁵⁸ This proposal is tailored to synthetic opioids, which are of particular concern because of their potential lethality in small doses and their frequent use in fake pills. We recognize that traffickers employ these technologies to distribute more traditional controlled substances. Should the Commission have an interest in broader application, the Department would be happy to engage with the Commission and provide additional options.

the actual identity of the individual. The use of a false name alone does not constitute use of anonymizing technology.”

This proposal creates a standalone defendant-based enhancement for using direct online marketing. To avoid overlap with the existing §2D1.1(b)(7), which applies to all controlled substance trafficking, the direct messaging enhancement would not apply if §2D1.1(b)(7) applies. This enhancement would update the Guidelines to reflect the added dangers and challenges brought by new technology. Doing so would appropriately target intentional aggravated conduct in synthetic opioid trafficking criminal conduct and reflect the current realities of fentanyl trafficking.

The Department also proposes a two-level offense-based enhancement for when anonymizing technology is used. This recognizes the fundamental difference associated with drug trafficking that is conducted using the extra cloaking provided by anonymizing technology. An offense-based enhancement is appropriate to acknowledge the higher culpability associated with sophisticated efforts to avoid detection that do not result in a separate conviction for obstruction of justice or an enhancement under §3C1.1. It also recognizes the substantial additional law enforcement work that is required to identify and prosecute these individuals successfully. By increasing the penalties for using these technologies, the Guidelines can recognize the additional societal harms caused using these technologies and deter synthetic opioid traffickers from using anonymizing tools. Importantly, the Department’s proposed definition of anonymizing technology makes it clear that merely using a false name is not sufficient to trigger the enhancement.

3. Enhancement for Offenses Involving Synthetic Opioids Mixed With Xylazine, Medetomidine, and Similar Adulterants

Synthetic opioids alone can be lethal, but they are appreciably more dangerous when mixed with xylazine, medetomidine, or other similar substances. As we noted in last year’s annual report,⁵⁹ drug traffickers are increasingly adulterating fentanyl with these substances (known as alpha-2 adrenergic agonists),⁶⁰ which can extend a user’s high and can cause other problems, including heightened sedation and bradycardia (abnormal slowing of the heart rate).⁶¹ Trafficking of substances adulterated with drugs is dangerous, and it is appreciably more dangerous when the combination includes a drug as deadly as fentanyl or other synthetic opioids. We ask the Commission to add an enhancement to deter such conduct.

⁵⁹ DOJ July 15, 2024 Letter, *supra* note 9, at 6-7.

⁶⁰ See, e.g., N.Y. Dep’t of Health, Press Release, *New York State Department of Health Issues Public Health Alert for Medetomidine Detected In Drug Samples In Schenectady and Syracuse* (June 21, 2024) (“New York State Public Health Alert”), https://www.health.ny.gov/press/releases/2024/2024-06-21_medetomidine.htm#:~:text=The%20Public%20Health%20Alert%20was,%2C%22%20State%20Health%20Commissioner%20Dr.

⁶¹ See, e.g., Ctr. for Forensic Science, Research, and Education, *Medetomidine Rapidly Proliferating Across USA — Implicated In Recreational Opioid Drug Supply & Causing Overdose Outbreaks* (May 20, 2024), <https://www.cfsre.org/nps-discovery/public-alerts/medetomidine-rapidly-proliferating-across-usa-implicated-in-recreational-opioid-drug-supply-causing-overdose-outbreaks>.

Xylazine is a veterinary tranquilizer⁶² that is increasingly mixed with fentanyl and other drugs.⁶³ Xylazine slows breathing, heart rates, and blood pressure to dangerously low levels. Particularly when used in combination with opioids, xylazine can be life threatening. It also can have other effects, including causing serious skin and muscle sores that can be painful, become infected, or even result in amputations.⁶⁴ Individuals can even develop a dependency on xylazine and experience withdrawal symptoms.⁶⁵ At the same time, the effect of xylazine (as well as medetomidine, discussed below) cannot be reversed by opioid antagonist medications like naloxone (Narcan).⁶⁶

Unfortunately, xylazine is not the only such drug to appear in the drug supply. Medetomidine, another veterinary sedative, also is appearing in the drug supply in multiple states.⁶⁷ This substance is more potent than xylazine and can produce longer sedative effects.⁶⁸ Because, like xylazine, it is not approved for human use, the full range of potential adverse effects from this substance is not fully known.⁶⁹ Nevertheless, it is sufficiently dangerous that it

⁶² National Institute on Drug Abuse, *Xylazine* (September 2024) (“NIDA Xylazine Information”), <https://nida.nih.gov/research-topics/xylazine#:~:text=Xylazine%20can%20make%20people%20drowsy,cause%20people%20to%20stop%20breathing>.

⁶³ See, e.g., Philadelphia Department of Public Health, *Unintentional Drug Overdose Fatalities in Philadelphia, 2022* (September 2023) at 2 (“Xylazine, a veterinary anesthetic and analgesic commonly added to street opioids, was detected in 34% (480) of all overdose deaths in 2022”), <https://www.phila.gov/media/20231002090544/CHARTv8e3.pdf>.

⁶⁴ Centers for Disease Control and Prevention, *What You Should Know About Xylazine* (“What You Should Know About Xylazine”), <https://www.cdc.gov/overdose-prevention/about/what-you-should-know-about-xylazine.html> (May 16, 2024); NIDA Xylazine Information, *supra* note 62.

⁶⁵ Food and Drug Administration, Dear Colleague Letter, *FDA warns about the risks of xylazine exposure in humans* (November 8, 2022) at 2, <https://www.fda.gov/media/162981/download>; see also *What You Should Know About Xylazine*, *supra* note 64.

⁶⁶ Drug Enforcement Administration, *DEA Reports Widespread Threat of Fentanyl Mixed with Xylazine*, <https://www.dea.gov/alert/dea-reports-widespread-threat-fentanyl-mixed-xylazine>; N.Y. State Office of Addiction Services and Supports, *Advisory: Another Potent Sedative, Medetomidine, Now Appearing in Illicit Drug Supply* (May 31, 2024), <https://oasas.ny.gov/advisory-may-31-2024>.

⁶⁷ Philadelphia Department of Public Health, Health Alert, *In Philadelphia, medetomidine, a potent non-opioid veterinary sedative, has been detected in the illicit drug supply* (May 13, 2024) (“Philadelphia Public Health Alert”), [https://hip.phila.gov/document/4421/PDPH-HAN-0441A-05-13-24.pdf#:~:text=Similar%20to%20xylazine%2C%20medetomidine%20is,\(Precedex%C2%AE\)%20and%20clonidine](https://hip.phila.gov/document/4421/PDPH-HAN-0441A-05-13-24.pdf#:~:text=Similar%20to%20xylazine%2C%20medetomidine%20is,(Precedex%C2%AE)%20and%20clonidine); Michigan Department of Health and Human Services, *New drug showing up in illicit drug supply, resulting in overdose deaths across Michigan* (June 6, 2024) (“Michigan Public Health Alert”), <https://www.michigan.gov/mdhhs/inside-mdhhs/newsroom/2024/06/06/medetomidine>.

⁶⁸ Philadelphia Public Health Alert, *supra* note 67.

⁶⁹ Evan S. Schwarz, et al., Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report, Detection of Medetomidine Among Patients Evaluated in Emergency Departments for Suspect Opioid Overdoses – Missouri, Colorado, and Pennsylvania, September 2020–December 2023*, at 2 (August 1, 2024) (“CDC Medetomidine Report”), <https://www.cdc.gov/mmwr/volumes/73/wr/pdfs/mm7330a3-H.pdf>; Philadelphia Public Health Alert, *supra* note 67. Medetomidine is a mixture that includes dexmedetomidine. Dexmedetomidine is a sedative that is used in medical procedures. CDC Medetomidine Report at 1.

has triggered public health alerts in multiple jurisdictions.⁷⁰

The Department supports an enhancement that would apply when fentanyl, a fentanyl analogue, or a synthetic opioid has been mixed with xylazine, medetomidine, or another similar substance or adulterant:

“(b)(21) If the offense involved: a substance that is (1) fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), (2) a fentanyl analogue, or (3) a synthetic opioid, and the substance has been mixed with xylazine, medetomidine, another alpha-2 adrenergic agonist, or another substance that is approved for use in animals but not approved for use in humans, increase by 4 levels.”

This proposed amendment would address this emerging threat. Xylazine is being mixed with the street drug supply with increasing frequency and has been found in nearly every state.⁷¹ In 2024, over 36 percent of fentanyl powder and 11 percent of fentanyl pills seized by the DEA contained xylazine.⁷² Despite the risks associated with xylazine, some opioid users may seek out drugs that contain xylazine because it may produce a longer-lasting high than fentanyl alone.⁷³

While xylazine and medetomidine are the two alpha-2 adrenergic agonists that are currently appearing with the most frequency, the Department has concerns that a narrowly drafted enhancement that addresses only these two substances may simply prompt drug traffickers to use a different alpha-2 adrenergic agonist or veterinary medicine as an adulterant. To avoid this risk, the Department suggests that the Commission make clear that the enhancement would apply to a narrow class of similar substances and adulterants.

This proposed offense-based enhancement would apply to all offenses in which fentanyl, fentanyl analogues, or other synthetic opioids have been adulterated with xylazine, medetomidine, another alpha-2 adrenergic agonist, or any other veterinary medication that is not approved for human use. The Department’s proposed four-level enhancement recognizes the public health risk these adulterants pose when they are added to the fentanyl supply. As noted earlier, the appearance of xylazine and medetomidine has generated multiple public health alerts

⁷⁰ See, e.g., San Francisco Chronicle, *Exclusive: San Francisco records first fatal overdose involving dangerous new street drug* (April 10, 2025), <https://www.sfchronicle.com/sf/article/sf-records-first-fatal-overdose-involving-new-drug-20267834.php>; Pennsylvania Department of Health, *Medetomidine, a Potent Non-opioid Veterinary Sedative, Has Been Detected in the Illicit Drug Supply* (August 1, 2024), <https://www.pa.gov/content/dam/copapwp-pagov/en/health/documents/topics/documents/2024%20HAN/2024-762-8-1-ADV-Medetomidine.pdf?ref=kensingtonvoice.com>; New York City Department of Health and Mental Hygiene, *2024 Health Advisory #20: Carfentanil and Medetomidine in the NYC Drug Supply* (July 25, 2024), <https://www.nyc.gov/assets/doh/downloads/pdf/han/advisory/2024/han-advisory-20.pdf>; New York State Public Health Alert, *supra* note 60; Michigan Public Health Alert, *supra* note 67; Ctr. for Forensic Science, Research, and Education, *Toxic Adulterant Alert: Medetomidine/Dexmedetomidine* (December 2023), https://www.cfsre.org/images/content/reports/public_alerts/Medetomidine_Public_Health_Alert_Final.pdf.

⁷¹ Drug Enforcement Administration, *Xylazine Information*, <https://www.dea.gov/xylazine-information>.

⁷² *Id.*

⁷³ Drug Enforcement Administration, *The Growing Threat of Xylazine and its Mixture with Illicit Drugs*, *supra* note 8, at 1.

in various parts of the country. These public health alerts demonstrate the substantial dangers posed by these substances, ranging from respiratory impacts to significant wounds. While fentanyl and other synthetic opioids are already exceedingly dangerous, it is important to send a message to drug traffickers that substantial additional punishments will be imposed on those who add xylazine and other dangerous adulterants to these drugs.

* * *

We appreciate the opportunity to provide the Commission with our views, comments, and suggestions on these important topics related to fentanyl and other dangerous drugs, and we look forward to working with the Commission on these issues in the next amendment cycle.

Sincerely,

Scott Meisler

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Ex Officio Member, U.S. Sentencing Commission

cc: Commissioners
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**FEDERAL DEFENDER
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May 1, 2025

Honorable Carlton W. Reeves
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**Re: Defender Comment on Offenses Involving Fentanyl,
Fentanyl Analogues, and Other Opioids**

Dear Judge Reeves:

On January 24, 2025, the Commission published an Issue for Comment (IFC) on fentanyl, fentanyl analogues, and other synthetic opioids. Specifically, the Commission asks whether to add enhancements to §2D1.1 proposed by the Department of Justice for: (1) distributing to individuals under 21 years old; (2) using the dark web or other anonymizing technologies; and (3) distributing substances laced with xylazine or medetomidine.¹ The IFC also raises related questions.

With this letter, the Federal Public and Community Defenders respond to this request for comment. [Part I](#) (pp. 3–7) details the history and ramifications of the War on Drugs and why a drug war approach to fentanyl will do more harm than good. [Part II](#) (pp. 7–13) examines data showing that fentanyl-related deaths are declining and explores reasons for the decline. [Part III](#) (p. 13) reviews sentencing data that support lower fentanyl guideline ranges, not higher. Finally, [Part IV](#) (pp. 14–17) considers the interplay between the contemplated enhancements and some of the ameliorative amendments the Commission just voted to adopt.

¹ USSC, [Issue for Comment: Offenses Involving Fentanyl, Fentanyl Analogues, and Other Opioids](#) (Jan. 2025); *see also* [DOJ Comment to USSC on 2024-2025 Proposed Priorities](#) at 5–8 (July 15, 2024).

In short, the Commission should not add these enhancements (which are in tension with recent guideline amendments) to an already-complex guideline riddled with factor creep. For years, judges and other stakeholders have criticized §2D1.1 as too punitive and overly reliant on drug type and quantity as proxies for culpability. Indeed, sentencing data show most fentanyl sentences (like those for other drugs) are below the applicable guideline range. Further, overdose data indicate fentanyl-related deaths are rapidly declining for reasons unrelated to criminal enforcement, with adulterants like xylazine and medetomidine likely playing a role in this decline, undermining calls for enhanced penalties.

As Defenders have urged before, this moment demands public health solutions—not increased sentences.² Instead of an unstudied, fear-based, and reactionary approach to fentanyl and similar opioids that would repeat the historic failures of the “War on Drugs” (with its roundly condemned 1980s crack cocaine sentencing policy), we offer a better path forward: treat opioid use disorder and overdose death like the public health crises they are. We encourage the Commission to resist the well-intentioned but misguided temptation to respond to the rapidly evolving fentanyl market and overdose rates with the higher penalties contemplated, and to study the need for, and utility of, these enhancements. We welcome the opportunity to be involved in this study.

² See, e.g., [Defenders’ Comments on USSC’s 2025 Proposed Amendments: Drug Offenses](#), at 1–7 (March 3, 2025); [Statement of Michael Caruso](#) on behalf of Defenders to USSC at *Public Hearing on First Step Act-Drug Offenses and Counterfeit Pills*, at 17–19 (March 7, 2023); [Statement of Kiyana Givens](#), *Undoing the Damage of the War on Drugs: A Renewed Call for Sentencing Reform*, Hrg. before House Comm. on the Judiciary, Subcomm. on Crime, Terrorism, & Homeland Security (June 17, 2001); [Statement of Patricia L. Richman](#), *An Epidemic within a Pandemic*, Hrg. before House Comm. on Energy and Commerce, Subcomm. on Health (April 14, 2021); [Statement of Kevin Butler](#), *Fentanyl Analogues: Perspectives on Classwide Scheduling*, House Comm. on the Judiciary, Subcomm. on Crime, Terrorism, & Homeland Security (Jan. 28, 2020).

I. The contemplated enhancements would perpetuate the devastating harms of the War on Drugs while failing to stymie fentanyl use and overdose deaths.

More than 50 years ago, President Nixon referred to drug use as “America’s public enemy number one.”³ The War on Drugs began in earnest 15 years later, when President Reagan warned that illegal drugs are “every bit as much a threat to the United States as enemy planes and missiles.”⁴ During this time, police funding and drug-related arrest rates grew significantly, Congress passed steep mandatory minimum sentencing laws and limited resources aimed at prevention and treatment, and the Sentencing Commission tethered its drug guidelines to statutory mandatory minimums.⁵

This drug war, ostensibly designed to eradicate drug supply and misuse, utterly failed to do so.⁶ We now have over 30 years of evidence that enhancing penalties for drug crimes will not reduce demand or supply, the incidence of substance use disorder (which fuels demand), or the number of

³ Richard Nixon, [*Remarks About an Intensified Program for Drug Abuse Prevention and Control*](#) (Jun. 17, 1971).

⁴ Ronald Reagan, [*Remarks on Signing the Just Say No to Drugs Week Proclamation*](#), Ronald Reagan Presidential Library & Museum (May 20, 1986).

⁵ See, e.g., Jelani Jefferson Exum, *Reconstruction Sentencing: Reimagining Drug Sentencing in the Aftermath of the War on Drugs*, 58 Am. Crim. L. Rev. 1685, 1694 (2021); Nazgol Ghandnoosh & Casey Anderson, The Sentencing Project, [*Opioids: Treating an Illness, Ending a War*](#), at 19 (2017); Patti B. Saris, *A Generational Shift for Federal Drug Sentences*, 52 Am. Crim. L. Rev. 1, 5–6 (2014) (“[T]he original Commission incorporated mandatory minimum penalties into the Guidelines at their inception.”).

⁶ See, e.g., [*Ghandnoosh & Anderson*](#), at 19–20 (“[T]he War on Drugs did not play a major role in ebbing cycles of drug use Aggressive law enforcement did not deter longtime users from the drug or eliminate adaptable drug markets, as revealed by anecdotes of police chiefs, surveys of past users, and comparisons across cities.”); Jeremy Travis et. al., Nat’l Res. Council, [*Incarceration in the United States: Exploring Causes and Consequences*](#), at 154 (2014) (“[T]he best empirical evidence suggests that the successive iterations of the war on drugs—through a substantial public policy effort—are unlikely to have markedly or clearly reduced drug crime over the past three decades.”).

drug-related deaths.⁷ Some experts even contend punitive drug war policies have contributed to an *increase* in drug overdose deaths.⁸

At a minimum, fentanyl overdose death data between 2016 and 2023 show that as fentanyl exploded onto the scene and related federal convictions and sentencings soared, the nationwide overdose death rate rose steadily, until it declined towards the end of 2023, undermining arguments that criminal enforcement efforts curb deaths.⁹ This makes sense: increased fentanyl convictions and sentences do nothing to address “the under-recognized driver[s] of drug mortality [which are] demand and the under-treated root causes of drug demand,” such as mental health crises and

⁷ See, e.g., Michael Collins & Sheila P. Vakharia, The Drug Policy Alliance, [*Criminal Justice Reform in the Fentanyl Era: One Step Forward, Two Steps Back*](#), at 15 (2020) (discussing decades of studies and expert reports revealing that increasing drug penalties “does not dramatically reduce their use or sale, or save lives” and noting that “[t]o date, none of the states that enacted harsher penalties for fentanyl, nor the federal government, have provided evidence that their strategy has contributed to a reduction in fentanyl-involved deaths”).

⁸ Christopher J. Coyne & Abigail R. Hall, Cato Inst., [*Four Decades and Counting: The Continued Failure of the War on Drugs*](#) 1 (Apr. 12, 2017) (“Given the insights from economics and the available data, we find that the domestic War on Drugs has contributed to an increase in drug overdoses and fostered and sustained the creation of powerful drug cartels.”).

⁹ In fiscal year 2016, there were only 51 federal sentences imposed for offenses involving fentanyl; by fiscal year 2023, there were 3,085—a 60-fold increase. Compare USSC, [*Public Data Presentation for Synthetic Cathinones, Synthetic Cannabinoids, and Fentanyl and Fentanyl Analogues Amendments January 2018*](#), at 27, with USSC, [*Quick Facts: Fentanyl Trafficking*](#) (FY 2023). During a roughly similar time period, CDC data show that the synthetic opioid overdose death rate continued to rise, until starting to fall in mid-late 2023. See Ctrs. for Disease Control and Prevention, Nat’l Ctr. for Health Stats., [*Provisional Drug Overdose Death Counts*](#) (last accessed 4/30/2025) (note limitations of comparison as these CDC data are not limited to fentanyl deaths and use rolling 12-month time periods). Convictions and sentencings for fentanyl analogues also rose significantly after the DEA administratively scheduled them as controlled substances (in Schedule I) in early 2018, with no impact on the drug overdose rate. Compare USSC, [*Quick Facts: Fentanyl Analogue Trafficking*](#) (FY 2020) showing 47 drug offenses sentenced involving fentanyl analogues in FY 2018, with USSC, [*Quick Facts: Fentanyl Analogue Trafficking*](#) (FY 2023) (showing 269 drug offenses sentenced involving fentanyl analogues in FY 2023).

economic distress.¹⁰ Instead, the drug war has left in its wake a legacy of tragic, widespread, and enduring social consequences, including this country's mass incarceration crisis,¹¹ as well as substantial racial disparities in drug prosecutions and sentencing with poor, Black communities shouldering the brunt of the devastation.¹²

The concerns behind efforts to increase fentanyl sentences are the same that drove drug war mandatory minimums for marijuana, cocaine, crack cocaine, heroin, and methamphetamine. Likewise, today's rhetoric around fentanyl and the resulting federal policy proposals echo those of the crack-era War on Drugs.¹³ But fentanyl is no different than these other

¹⁰ [Statement of Daniel Ciccarone](#), M.D., Ph.D., *Fentanyl Analogues: Perspectives on Classwide Scheduling*, before House Comm. on the Judiciary, Subcomm. on Crime, Terrorism, and Homeland Security, at 5–6 (Jan. 28, 2020).

¹¹ Drug-war era policies like the contemplated enhancements contributed to an explosion in the federal prison population, creating an ongoing crisis at the Bureau of Prisons, which lacks the staff or infrastructure to care for its growing population. See [Defenders' Comments on USSC's 2025 Proposed Amendments: Drug Offenses](#), at 7–13 (March 3, 2025). The Commission is statutorily obligated to “take into account the nature and capacity of the penal, correctional, and other facilities and services available” and to “minimize the likelihood that the Federal prison population will exceed the capacity of Federal prisons . . .” 18 U.S.C § 994(g).

¹² See, e.g., [Ghandnoosh & Anderson](#), at 20 (“Despite its limited benefits, the War on Drugs has levied an extraordinarily high economic and social toll—disproportionately on low-income communities of color and with lifelong consequences on employment and access to housing, education, and federal benefits.”); Jefferson Exum, at 1694–95 (discussing racial disparities in drug war arrests, charging, and punishment and arguing law enforcement efforts during this time were “focused on poor, Black communities as a method of social control, as opposed to purely crime control”); Eric L. Jensen et al., [Social Consequences of the War on Drugs: The Legacy of Failed Policy](#), 15 *Crim. Just. Pol’y Rev.* 100, 102–14 (2004) (describing the racially disproportionate explosion in the U.S. prison population between 1980 and 2001, attributable largely to nonviolent drug crimes, and its concomitant negative employment, family stability, health, and political consequences).

¹³ See [Collins & Vakharia](#), at 9–11 (cataloging harsh political rhetoric and state and federal legislative proposals related to fentanyl). The Attorney General during the current President's first administration claimed that trafficking in fentanyl “amounts to outright murder.” William P. Barr, [William Barr: Fentanyl could flood the country unless Congress passes this bill](#), *Washington Post* (January 10, 2020). Some policymakers and law enforcement officials have even sought to have fentanyl legally classified as a “weapon of mass destruction.” See, e.g., [Senate Passes Johnson](#)

drugs—each surged in popularity after a crackdown on a previously popular drug.¹⁴ It is also no different in that increased criminal penalties have failed to reduce the fentanyl supply and demand, are detrimental to public health, and exacerbate the overdose crisis.¹⁵

In keeping with other trends of the failed War on Drugs, federal sentencings for fentanyl trafficking are marked by substantial racial disparities: 77% of people convicted and sentenced for fentanyl trafficking offenses in fiscal year 2023 were Black or brown.¹⁶ The disparity is even greater for fentanyl analogue trafficking sentencings: 83% involved Black or brown people in fiscal year 2023.¹⁷ The Department’s requested enhancements would likely perpetuate (if not exacerbate) these racial disparities. They also are likely to fall most heavily on low-level individuals—particularly street-level dealers (many of whom struggle with substance use disorders themselves)—whose role is far from that of the kingpins, manufacturers, and importers who are responsible for producing synthetic opioids and bringing them into the United States, and whom Congress intended to target.¹⁸

[*Resolution Urging Congress to Declare Fentanyl a Weapon of Mass Destruction*](#), The Ohio Senate (Feb. 27, 2025); [*H. Res. 1172*](#), 117th Cong. (expressing that fentanyl is a weapon of mass destruction). Just yesterday, Attorney General Pamela Bondi claimed that the Administration’s seizure of fentanyl pills “saved 258 million lives”—roughly 75% of the U.S. population. William Vaillancourt, [*Pam Bondi Makes Head-Spinning Claim Trump Saved 258M American Lives*](#), The Daily Beast (May 1, 2025); see also Jim Newell, [*The DOJ Says Trump Has Saved 258 Million Lives. I Asked Them What That’s Based On*](#), Slate (May 1, 2025).

¹⁴ See [*Ciccarone Statement*](#), at 5–6 (“Each era has its problematic drug defined by supply or cultural desire, but the underlying driver of problematic drug use leading to death is independent of the type of drug and getting worse over time. Deaths due to opioids, including fentanyl, is only the latest manifestation of this multi-decade phenomenon.”).

¹⁵ See [*Collins & Vakharia*](#), at 15–16.

¹⁶ [*2023 Fentanyl Quick Facts*](#).

¹⁷ [*2023 Fentanyl Analogue Quick Facts*](#).

¹⁸ See USSC, [*Public Data Briefing: Proposed Amendments on Drug Offenses \(2025\)*](#), at 15 (observing that, out of a sample of fentanyl cases sentenced in fiscal year 2019, approximately 61% of people convicted of fentanyl and fentanyl analogue offenses were at the level of street dealer or below).

In response, advocates are calling on policymakers to move away from “harsh penalties and further criminalization,” toward “evidence-based public health and harm reduction approaches.”¹⁹ Indeed, this past March, drug policy and addiction experts urged the Commission to “treat substance use . . . as [a] public health matter[] outside of the criminal-legal system,”²⁰ and similarly to “incorporate[e] a medical model of substance use . . . into [the guidelines] framework[.]”²¹ But the contemplated enhancements would do just the opposite. They would also conflict with the Commission’s obligation under 28 U.S.C. § 994(g) to formulate sentencing guidelines that “minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons[.]”

II. The rapidly declining fentanyl overdose death rates in recent years prove the contemplated enhancements ill-advised and underscore the need for further study.

A. Overdose deaths, including fentanyl deaths, declined sharply in 2024, with many states seeing a decline as early as 2021.

The Department’s request for more fentanyl-related specific offense characteristics (SOCs) is based not just on the faulty premise that longer

¹⁹ [Collins & Vakharia](#), at 4 (recommending that policymakers protect and expand “911 Good Samaritan” laws, access to naloxone, and opioid agonist treatment; improve and make more accessible drug checking and surveillance and collection data; authorize safe consumption sites; and fund pilot injectable opioid treatment); *see also* [Statement of Marc Mauer](#), *Defeating Fentanyl: Addressing the Deadliest Drugs Fueling the Opioid Crisis*, before Senate Comm. On the Judiciary, Subcomm. On Crime and Terrorism, at 3 (Apr. 10, 2018) (“After nearly a half century of responding to drug addiction with punitive policies, many policymakers and the majority of Americans now support pursuing evidence-based policies that prevent and treat drug use disorder rather than fruitlessly, and harmfully, ratcheting up criminal penalties for sellers.”); [Ghandnoosh & Anderson](#), at 22 (urging policymakers to reduce the number of people incarcerated for drug crimes and employ harm-reduction measures to end the opioid crisis).

²⁰ Allison Frankel & Nina Patel, ACLU, [Comment on USSC 2025 Supervised Release Proposed Amendment](#), at 3 (Mar. 3, 2025).

²¹ Reena Kapoor, M.D., [Comment on USSC 2025 Supervised Release Proposed Amendment](#), at 1 (Feb. 27, 2025).

sentences will deter fentanyl trafficking and reduce overdose deaths,²² but also on the assumption the fentanyl overdose crisis is ever-worsening, justifying swift and severe sentencing increases. However, recent overdose data from the Centers for Disease Control and Prevention (CDC) demonstrate that this assumption is flawed, and that more study is needed before we can truly understand recent trends in fentanyl use and how (if at all) the guidelines should attempt to address them.

The CDC’s provisional data reflect that in the 12-month period ending in November 2024, overall drug overdose deaths declined more than 26% from the previous 12-month period.²³ Drug deaths dropped from a high of 114,000 in July 2023 to just under 82,000 in November 2024.²⁴ This steep decline in the annual number of overdose deaths is unprecedented.²⁵ The director of the National Institute on Drug Abuse has said that fentanyl overdose deaths saw an even greater decline than overall overdose deaths: they dropped by 30.6% in one year.²⁶ These statistics led one commenter to proclaim that “[t]he deadliest phase of the street fentanyl crisis appears to have ended, as drug deaths continue to drop at an unprecedented pace.”²⁷

Researchers who have taken a more granular look at the data determined that overdose deaths began declining in most states in 2022 and 2023, with many states seeing a decline in deaths in 2021 and 2022, earlier than previously reported.²⁸ And as of August 2024, 19 states had overdose

²² [DOJ Comment on 2024-2025 Proposed Priorities](#), at 6 (referring to the “deterrent effect” of the proposed enhancements, which will be “likely to bring about significant, large-scale change”).

²³ CDC, [Provisional Drug Overdose Death Counts](#) (using predicted values). These data are not limited to fentanyl or fentanyl analogue deaths and include overdose deaths from other drugs.

²⁴ *Id.*

²⁵ Ctrs. for Disease Control and Prevention, [CDC Reports Nearly 24% Decline in U.S. Drug Overdose Deaths](#) (Feb. 25, 2025) (reflecting the decline in projected deaths from September 2023 to September 2024; the number of deaths continued to decline through November 2024, per the latest data on the CDC’s [website](#)).

²⁶ Brian Mann, [Deadliest phase of fentanyl crises eases, as all states see recovery](#), NPR (Mar. 10, 2025).

²⁷ *See id.*

²⁸ *See id.*

rates near or even lower than their pre-COVID, January 2020 baseline rates.²⁹ According to experts, the declining overdose rate “is long-term and sustainable,” and “if the current trend holds, the U.S. could return to a level of fatal overdose not seen since 2016, when fentanyl began replacing heroin in the street drug supply.”³⁰

While the overdose death rate is still far too high, policymakers must examine the reasons behind the steep decline and must not rush to act in ways that could prove ineffectual at best or counterproductive at worst. Research into the sharp decline in fentanyl-related overdose deaths is still nascent, with public health experts agreeing the reasons are not yet entirely clear.³¹ The CDC attributes the decline to multiple factors, including more widespread naloxone distribution, better access to evidence-based treatment for substance use disorders, shifts in the illegal drug supply (including decreasing purity, addressed below), and continued investments in prevention and response programs after pandemic-related disruptions.³² The CDC cites these community driven interventions as critical to ensuring that overdose death rates continue to go down.³³

Other researchers similarly attribute the declining fentanyl overdose death rates to harm-reduction strategies such as increasing the availability of naloxone, fentanyl test strips, and sterile needle exchange programs.³⁴ Notably, the drop-off in overdose deaths began in earnest just after the Food and Drug Administration issued guidance in September 2022 that facilitated the wide availability of naloxone by removing barriers to its distribution.³⁵

²⁹ Nabarun Dasgupta, Colin Miller, & Adams Sibley, [Peak OD Phenotypes](#), Opioid Data Lab (Feb. 12, 2025).

³⁰ See Mann, [Deadliest phase of fentanyl crises eases](#).

³¹ *Id.*

³² See [CDC Reports Nearly 24% Decline in U.S. Drug Overdose Deaths](#), CDC Newsroom (Feb. 25, 2025).

³³ *Id.*

³⁴ See Jan Hoffman & Noah Weiland, [What’s Behind the Remarkable Drop in U.S. Overdose Deaths](#), N.Y. Times (Nov. 21, 2024).

³⁵ See U.S. Dep’t of Health and Human Services, Food and Drug Admin., Ctr. For Drug Eval. and Rsch., [Exemption and Exclusion from Certain Requirements of the Drug Supply Chain Security Act for the Distribution of FDA-Approved Naloxone](#)

Experts also point to an uptick in prescriptions for medications that suppress opioid cravings and education campaigns about the harms of fentanyl-laced pills as helping to abate the crisis.³⁶

It is not surprising, given that fentanyl addiction is a public health problem, that public health factors are the primary drivers of the decline in overdose deaths. As the President of the American Society of Addiction Medicine explains: harm reduction policies “are all part of a health response to substance use that is bending the curve.”³⁷ And while some government officials also point to law enforcement strategies, such as crackdowns on Mexican cartels and on the international fentanyl precursor supply chain,³⁸ Defenders are unaware of any experts citing to criminal sentences—particularly those imposed on street-level dealers, who tend to comprise the largest percentage of individuals convicted and sentenced for fentanyl offenses³⁹—as reasons for the declining death rates. Given that the average sentence for a fentanyl trafficking offense has increased by only 5 months from 2016 to 2023, it is difficult to argue that increased sentences have played a role in curtailing the crisis.⁴⁰

B. Emerging research suggests the increasing prevalence of xylazine and medetomidine in the fentanyl supply could be contributing to the decline in overdose deaths.

One enhancement the Commission is considering is for distributing synthetic opioids mixed with xylazine or medetomidine. These are non-opioid

[*Products During the Opioid Public Health Emergency, Guidance for Industry*](#) (Sept. 2022).

³⁶ *Id.*

³⁷ Hoffman & Weiland, [*What’s Behind the Remarkable Drop in U.S Overdose Deaths*](#).

³⁸ *See id.*

³⁹ *See* USSC, [*Public Data Briefing: Proposed Amendments on Drug Offenses*](#), at 15 (2025).

⁴⁰ Compare [*Public Data Presentation for Synthetic Cathinones, Synthetic Cannabinoids, and Fentanyl and Fentanyl Analogues Amendments*](#), at 27 (Jan. 2018) (showing that the average sentence for a fentanyl trafficking offense in FY 2016 was 66 months), with USSC, [*Quick Facts: Fentanyl Trafficking*](#) (May 2024) (showing that the average sentence for a fentanyl trafficking offense in FY 2023 was 71 months).

veterinary tranquilizers not approved for use in humans.⁴¹ When combined with opioids such as fentanyl, they can prolong the duration and effects of those drugs.⁴² They are not controlled substances, and drug users typically consume them only in conjunction with other substances.⁴³

Although DOJ concedes that the effects of xylazine and medetomidine on humans “have not yet been fully studied,” it requests this enhancement because these effects “can include heightened sedation and bradycardia.”⁴⁴ According to the DOJ, these substances are “profoundly dangerous because their effects cannot be reversed by life-saving medicines like naloxone (Narcan).”⁴⁵ However, emerging research on these mixing agents indicates their growing presence in the fentanyl supply could be *reducing* overdose deaths—making this enhancement particularly inapt.⁴⁶

Doctors and addiction experts generally agree that “[t]he amount of fentanyl [in the U.S. drug supply] appears to be dropping . . . while the amount of animal tranquilizers, such as medetomidine and xylazine, is rising.”⁴⁷ But they also agree that xylazine and medetomidine “aren’t as immediately lethal as fentanyl.”⁴⁸ According to the National Institute on Drug Abuse, research shows that xylazine *decreases* the odds of fatal overdose when compared to using fentanyl alone.⁴⁹

In a study of patients admitted to emergency departments (EDs) for illicit opioid overdoses, clinical outcomes “were significantly less severe in

⁴¹ See Drug Policy Alliance, [Facts About Xylazine](#), at 1 (June 2024).

⁴² See *id.*

⁴³ See *id.*

⁴⁴ [DOJ Comment on 2024-2025 Proposed Priorities](#), at 7 (July 15, 2024).

⁴⁵ *Id.*

⁴⁶ See, e.g., Mann, [Deadliest phase of fentanyl crises eases](#); Hoffman & Weiland, [What’s Behind the Remarkable Drop in U.S Overdose Deaths](#).

⁴⁷ Brian Mann, [Reporter’s Notebook: 8 theories why fentanyl deaths are plummeting](#), NPR (Mar. 25, 2025).

⁴⁸ *Id.*

⁴⁹ See Nat’l Inst. on Drug Abuse (NIDA), [Xylazine](#) (Sept. 2024) (last accessed Apr. 29, 2025) (“NIDA-funded research found that people with xylazine and fentanyl in their systems at the time of overdose had lower rates of heart attack and coma than those who tested positive for opioids alone.”).

those testing positive for xylazine.”⁵⁰ Patients who had xylazine and fentanyl in their systems had substantially lower heart attack and coma rates than opioid overdose patients who tested negative for xylazine.⁵¹ Some addiction experts posit this is because, while xylazine has its own harmful side effects, including severe skin wounds, it sedates users for hours, preventing them from consuming fentanyl as frequently.⁵²

Additional xylazine and medetomidine studies challenge the DOJ’s proposition that naloxone cannot reverse their effects. Just last year, scientists studying their effects in mice found that, “contrary to commentary from politicians and public health officials, it is unknown how xylazine impacts naloxone efficacy,” and naloxone does, in fact, block xylazine from binding to certain opioid receptors—suggesting xylazine might actually be responsive to naloxone.⁵³

These new discoveries, at a time when fentanyl overdoses have been dropping sharply, make it imperative for the Commission to receive testimony from scientists, medical professionals, and public health experts before adding any fentanyl enhancements—particularly an enhancement based on substances that could actually be *saving lives*. In 2018, when the fentanyl crisis was exploding rather than declining, and when the Commission first adopted a fentanyl-related enhancement for knowingly misrepresenting fentanyl as another substance, it did so only after in-depth study involving “extensive data collection, review of scientific literature, multiple public comment periods, and four public hearings.”⁵⁴ Now, when the

⁵⁰ Jennifer S. Love, et. al., [*Opioid Overdoses Involving Xylazine in Emergency Department Patients: A Multicenter Study*](#), 61 *Clinical Toxicology* 3, at 2 (Mar. 2023).

⁵¹ *See id.*

⁵² Hoffman & Weiland, [*What’s Behind the Remarkable Drop in U.S Overdose Deaths*](#) (“People addicted to fentanyl often need the drug numerous time a day. But xylazine can sedate users for hours. If someone consumes fentanyl mixed with xylazine, ‘you might not shoot another bag of fentanyl, because you’re knocked out,’ said Colin Miller, a researcher at the University of North Carolina, Chapel Hill, who has been interviewing drug users in Grand Rapids, Mich., and Pittsburgh about the effects of xylazine in the street supply.”).

⁵³ Madigan L. Bernard, et. al., [*Xylazine is an agonist at kappa opioid receptors and exhibits sex-specific responses to opioid antagonism*](#), 11 *Addiction Neuroscience* at 2 (June 2024).

⁵⁴ USSG App. C, [*Amend. 807*](#), Reason for Amendment (Nov. 1, 2018).

tide has suddenly turned and experts are only beginning to understand why, it is even more critical that the Commission conduct rigorous, empirical analysis before increasing penalties.

III. Sentencing trends counsel against the enhancements.

Overdose rates are not the only statistics that counsel against the contemplated enhancements. Saliently, the Commission does not point to any sentencing data suggesting the conduct targeted by any of these enhancements currently leads to above-guideline sentences. Instead, through the iterative process established by the Commission's organic statute, judges are warning, through the sentences they impose, that the fentanyl guidelines are already too high. In FY 2023, only 29% of sentences imposed for fentanyl offenses were within the applicable guideline range, with judges varying or departing upward in only 3% of cases.⁵⁵ The other 68% of fentanyl sentences were below the applicable guideline range, either through downward departures or variances.⁵⁶ The numbers were even more stark for offenses involving fentanyl analogues: only 22% of sentences were within the guideline range, and only 4% of sentences were above the range, while 73% were below the range.⁵⁷ This is not a new trend; Commission data show that in recent years, for fentanyl and analogues alike, judges very rarely sentence above the guidelines and only sentence within the guidelines in less than one third of cases.⁵⁸

The low rates of within- and above-guideline sentences in these cases reflect that §2D1.1 already results in guideline ranges for fentanyl-related offenses that sentencing courts consider too long. Piling on enhancements will only deepen the disconnect between the sentences courts find appropriate and those called for by the guidelines.

⁵⁵ USSC, [2023 Fentanyl Quick Facts](#).

⁵⁶ *See id.*

⁵⁷ USSC, [2023 Fentanyl Analogue Quick Facts](#).

⁵⁸ *See* USSC, *Quick Facts: Fentanyl Trafficking* for [FY 2023](#), [FY 2022](#); and [FY 2021](#); *see also* USSC, *Quick Facts: Fentanyl Analogue Trafficking* for [FY 2023](#), [FY 2022](#), and [FY 2021](#).

IV. The contemplated enhancements are in tension with the Commission’s recent, laudable efforts to simplify the Guidelines Manual and fix the overly punitive drug guideline.

For years, commenters have warned of the dangers of guideline “factor creep”—the proliferation over time of numerous, primarily aggravating SOC’s throughout the Manual, leading to an “inherently unstable” and complex federal sentencing system.⁵⁹ Factor creep, and the resulting complexity of the federal sentencing guidelines, are primary reasons the federal guidelines are more frequently criticized than the Parole Commission guidelines and those adopted by various states.⁶⁰ It is inherently problematic given “there is no practical way to account for the large number of diverse harms arising in different circumstances[.]”⁶¹ Factor creep is especially pervasive in §2D1.1, which started with just one SOC enhancement in 1987, and now contains 16.⁶²

Justice Stephen Breyer, a member of the original Sentencing Commission, warned over 25 years ago about the danger of upward offense level creep:

[T]he Guidelines should contain at least a few distinctions—in the form of offense characteristics that can enhance, or diminish, the base offense level. But it is important to know when to stop[.] There is little if anything to be gained in terms of punishment’s classical objectives by trying to use highly detailed offense characteristics to distinguish finely among similar

⁵⁹ R. Barry Ruback & Jonathan Wroblewski, *The Federal Sentencing Guidelines: Psychological and Policy Reasons for Simplification*, 7 Psychol. Pub. Pol’y & L. 739, 753 (2001); *see also, e.g.*, [Defender’s Comment on the USSC’s Proposed Priorities for the 2024-2025 Amendment Cycle](#) at 2–8 (July 15, 2024) (describing how, over the years, the Commission has made piecemeal additions to the Manual leading to needless complexity, compounding the guidelines’ harshness and discussing ways in which factor creep has led to elevated offense levels under the most commonly-applied guidelines); Stephen G. Breyer, *The Original U.S. Sentencing Guidelines and Suggestions for a Fairer Future*, 46 Hofstra L. Rev. 799, 804 (2018) (criticizing “add-on” SOC’s and recommending simplification of the guidelines).

⁶⁰ *See* Ruback and Wroblewski, at 762.

⁶¹ *Id.* at 753.

⁶² *See* [Defender Comment on 2024-2025 Proposed Priorities](#), at 6.

[individuals]. And there is much to be lost, both in terms of Guideline workability and even in terms of fairness Ranking [people] through the use of fine distinctions is like ranking colleges or “liveableness” of cities with numerical scores that reach ten places past a decimal point. The precision is false.⁶³

Justice Breyer urged the Commission to “act[] forcefully to diminish significantly the number of offense characteristics attached to individual crimes” and to include only those “justified . . . by data that shows their use by practicing judges to change sentences[.]”⁶⁴ He acknowledged that eliminating finer offense distinctions risked increasing disparity and decreasing proportionality, but he also admonished: “[T]he goal of the Sentencing Guidelines was not *perfect*, but *increased*, fairness.”⁶⁵ He suggested moving the guidelines toward better “fairness and equity in the individual case” by simplifying their operation, “which entails greater judicial discretion.”⁶⁶

Recognizing these concerns, the Commission has long explored ways to simplify the guidelines’ operation, often listing simplification as a final policy priority.⁶⁷ Thirty years ago—when the guidelines were not even ten years old and contained far fewer SOC’s—the Commission created a staff working group whose mandate was to “reduce the complexity of guideline application” and “improve federal sentencing by working closely with the judiciary and others to refine the guidelines[.]”⁶⁸ Nonetheless, over the last 30 years the guidelines have mostly “grown in complexity and severity as each

⁶³ Justice Stephen Breyer, *Federal Sentencing Guidelines Revisited*, 36 Fed. Sent. Rep. 244, 249 (2024), orig. pub’d 11 Fed. Sent. Rep. 4 (1999).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See, e.g., USSC, [Notice of Final Priorities for 2024-2025 Amendment Cycle](#), at 2 (Aug. 2024); USSC, [Notice of Final Priorities for 2023-2024 Amendment Cycle](#), at 3 (Aug. 2023); USSC, [Notice of Final Priorities for 2014-2015 Amendment Cycle](#), at 5 (Aug. 2014); USSC, Notice of priority areas for Commission research and amendment study and request for public comment, 60 Fed. Reg. 49316, 1995 WL 557121 (Sept. 22, 1995).

⁶⁸ 60 Fed. Reg. 49316, 49316–49317.

Commission has reacted to discrete legal developments and made piecemeal changes to the Manual.”⁶⁹

That is, until this year. Last month, the Commission made significant strides in its simplification endeavors by voting to adopt an amendment removing most departures from the Guidelines Manual—many of which are piecemeal upward departure provisions in chapter two.⁷⁰ By adding unwarranted, piecemeal upward SOC to the fentanyl guidelines, the contemplated amendments would work against the recent Simplification Amendment and the Commission’s 30-year goal to reduce complexity.

Moreover, the Commission’s data show the contemplated enhancements would apply to only a tiny fraction of fentanyl or fentanyl analogue cases.⁷¹ This suggests the conduct targeted is isolated and better addressed through the Court’s § 3553(a) analysis in individual cases. And if history is any indication, there is a risk that if added, the DOJ would seek more or more expansive enhancements covering the same conduct to capture more cases, as it did with the fentanyl misrepresentation enhancement in recent years.⁷² If heeded, these requests would merely contribute to the ever-present problem of factor creep.

⁶⁹ [Defender Comment on 2024-2025 Proposed Priorities](#), at 5 (July 15, 2024); *see also* Breyer, *Suggestions for a Fairer Future*, at 804 (“I made roughly the same recommendations [to simplify the guidelines by removing SOC add-ons] nineteen years ago, and nothing happened.”).

⁷⁰ USSC, [Amendments to the Sentencing Guidelines \(Preliminary\)](#), at 3 (Apr. 11, 2025).

⁷¹ In FY 2023, the contemplated enhancements would have applied in only 1% (distribution to individuals under 21), 1.7% (use of dark web or anonymizing technology), and 2.8% (xylazine or medetomidine adulteration) of cases involving fentanyl or fentanyl analogues. *Compare* [Issue for Comment](#), at 3 *with* [2023 Fentanyl Quick Facts](#) (3,085 total fentanyl sentenced cases); [2023 Fentanyl Analogue Quick Facts](#) (269 total fentanyl analogue sentenced cases).

⁷² *See* [DOJ Comment on 2024-2025 Proposed Priorities](#) at 5. The DOJ attributed the enhancement’s infrequent application to the difficulty of proving mens rea, *see* [DOJ Comment on 2025 Proposed Amendments](#), at 21–26 (March 3, 2025), but the Commission’s March 2025 report on drug overdose deaths reveals a different explanation: courts rarely apply the enhancement because the conduct it targets rarely occurs. *See* USSC, [Overdoses in Federal Drug Trafficking Crimes](#), at 2 (March 2025) (finding less than 5% of sentenced individuals knowingly misrepresented the drugs they were trafficking, and that “most people selling drugs in this study and

The contemplated enhancements also conflict with Part A of the 2025 Drug Offenses Amendment, which lowers certain §2D1.1(a)(5) mitigating role caps and expands the §3B1.2 mitigating role adjustment in drug cases in response to “comment [the Commission has received] over the years indicating that §2D1.1 results in sentences greater than necessary for individuals performing low-level functions in drug trafficking offenses.”⁷³ Eric Sterling, a key architect of the mandatory minimum thresholds in the Anti-Drug Abuse Act of 1986 (ADAA), testified at the Commission’s hearing on this amendment. He acknowledged that these thresholds, which “became the foundation of the drug weights for the sentencing guidelines,” were “based on a hasty reliance on flawed expertise” and have “failed to target kingpins and instead disproportionately punished couriers, street-level dealers, and individuals with minimal control over drug operations.”⁷⁴ Similarly, as we said at the beginning, the contemplated enhancements—like the rest of §2D1.1—would inevitably fall predominantly on low-level individuals, undoing in some cases the Commission’s important work to calibrate their sentencing ranges down.

Of course, this brings us back to where we started. The Commission must avoid the kind of “hasty reliance on flawed expertise” that drove the ADAA and the War on Drugs more than 30 years ago. Having abandoned both the “exercise of its characteristic institutional role,” and “empirical data and national experience” in formulating the drug guidelines,⁷⁵ the Commission now has an opportunity to chart a better course. The mandate that the guidelines “reflect to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process” demands no less.⁷⁶

* * *

most of those who overdosed on these drugs did not know the exact drugs involved in the transaction”).

⁷³ [2025 Preliminary Amendments](#), at 3.

⁷⁴ [Statement of Eric E. Sterling on behalf of LEAP to USSC on Drug Amendments](#), at 3, 4 (Mar. 12, 2025).

⁷⁵ *Kimbrough v. United States*, 552 U.S. 85, 109 (2007).

⁷⁶ 28 U.S.C. § 991(b)(1)(C).

Defenders urge the Commission not to adopt any of the enhancements outlined in its IFC, and to work with Defenders and other stakeholders to continue the progress enjoyed in recent years in reducing overdose deaths. As always, we appreciate the Commission's consideration of our views.

Very truly yours,



Heather Williams
Federal Public Defender
Chair, Federal Defender Sentencing
Guidelines Committee

Sentencing Resource Counsel
Federal Public and Community
Defenders

Cc: Hon. Luis Felipe Restrepo, Vice Chair
Hon. Laura E. Mate, Vice Chair
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RE: Practitioners Advisory Group Comment on Offenses Involving Fentanyl, Fentanyl Analogues, and Other Opioids

Dear Judge Reeves,

The Practitioners Advisory Group (“PAG”) submits the following comment regarding three enhancements proposed by the Department of Justice (“DOJ”) related to offenses involving fentanyl, fentanyl analogues, and other opioids.

The PAG opposes these proposed enhancements to punish fentanyl trafficking. These enhancements would only apply to a narrow subset of drug crimes and will further complicate the drug guideline without providing any commensurate benefit. In addition, the PAG believes that even if the limited application of the proposed enhancements was not itself fatal to their adoption, more study is necessary before these proposals can be justified.

I. The Proposed Enhancements Would Apply Only Sparingly

Just four years ago, the Commission issued its report on fentanyl and fentanyl analogues.¹ While noting the acute risks of fentanyl, the Commission’s report also showed that fentanyl distribution represented a small subset of drug trafficking offenses. Of the 76,538 total federal offenders in Fiscal Year 2019, roughly one-quarter (19,765) were drug trafficking offenders.² Of those

¹ U.S.S.C., *Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns* (January 2021), available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20210125_Fentanyl-Report.pdf.

² *Id.* at 19.

offenders, 5.8% (1,119) involved fentanyl and fentanyl analogues.³ Despite the relatively small percentage of drug offenses involving fentanyl, DOJ proposes not one, but three, separate enhancements to combat fentanyl distribution. The PAG believes that the enhancements are unwarranted, partly because the Commission’s own data suggest that these would only cover a small subset of fentanyl offenses, which already constitute only a small subset of drug offenses.⁴

First, DOJ has proposed an age-related enhancement based on information that young individuals “have increasingly become victims of drug overdoses.”⁵ But Commission data reveal only 37 cases in which an offense involved distribution of fentanyl to a person under 21 years old.⁶ And even that data do not speak to the government’s rationale, namely overdose deaths, but instead represents the total number of cases involving distribution to a young person — not deaths.

Next, DOJ’s proposal to create an enhancement for using “the dark web or other anonymizing technologies to avoid detection” suffers from a similar shortcoming. Setting aside the difficulties courts will encounter in defining the amorphous terms of “dark web” and “anonymizing technologies,” the government’s proposal would apply only rarely. The Commission’s data reveal only 60 cases – again, a small subset of another small subset – in which the offense involved the use of the dark web or cryptocurrency to traffic fentanyl.⁷

Lastly, DOJ has proposed an enhancement for distribution of fentanyl that is adulterated with xylazine or medetomidine. Despite the government’s acknowledgement that the effects of these substances “have not yet been fully studied,”⁸ it nonetheless proposes an enhancement to punish its unproven assumptions. Moreover, DOJ’s proposal, like its other two proposed amendments, would affect only a small fraction of fentanyl offenses. The Commission identified only 94 cases in 2023 in which the offense involved fentanyl mixed with xylazine or medetomidine.⁹

³ *Id.* at 20.

⁴ Even though fentanyl cases have increased 244.7% since 2019, these cases comprised only 16.3% of all drug trafficking cases in fiscal year 2023, and fentanyl analogue cases comprised only 1.4% of federal drug trafficking cases. *See* U.S.S.C., Request for Public Comment at 3 (Jan. 2025) (“Request for Comment”), available at: https://www.ussc.gov/sites/default/files/pdf/amendment-process/federal-register-notices/202501_IFC.pdf. They continue to amount to a limited number of overall cases.

⁵ Letter from Scott Meisler, *Ex-Officio* Member, U.S. Sent’g Comm’n, to Hon. Carlton W. Reeves, Chair, U.S. Sent’g Comm’n (July 15, 2024) (“DOJ Letter”) at 6, available at: https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/202407/89FR48029_public-comment_R.pdf at page 129.

⁶ *See* Request for Comment at 6.

⁷ *See id.*

⁸ DOJ Letter at 7.

⁹ *See* Request for Comment at 7.

As the Commission’s data reveal, the DOJ has proposed amendments that would apply, if at all, only infrequently. Judges are already well equipped to punish conduct they believe poses unique risks. Judges are no strangers to departures and variances to account for aggravating circumstances. The necessity of the proposed enhancements is belied by the infrequency of their application. Indeed, there is no need to adopt still more enhancements to an already bloated drug guideline, particularly where the enhancements will seldom apply.

II. Additional Study is Needed to Determine Whether These Proposed Enhancements Serve the Purposes of the Guidelines in Light of the Inefficacy of Recent Amendments

That fentanyl poses a danger to drug users is beyond dispute. But DOJ’s proposals do little to address that danger, and instead further complicate the already unwieldy drug guideline. The government offers no evidence that additional enhancements will effectively combat either the prevalence of, or dangers posed by, fentanyl. Nor could it. Past efforts at stemming the tide of fentanyl distribution through guideline enhancements have been ineffective.

The Commission amended the fentanyl guideline in 2018, presumably to punish and deter fentanyl distribution.¹⁰ It did so again in 2023, providing another two-level increase for offenses where the defendant misrepresented the nature of the drug distributed.¹¹ But increases in punishment did little to slow the spread of fentanyl. As the Commission noted in its request for comment, “fentanyl and fentanyl analogue cases have increased substantially over the last several years.”¹² It is unclear how three additional enhancements will help curtail the spread of fentanyl distribution where multiple enhancements in recent years have failed to do so.

Even setting aside whether additional enhancements can effectively deter drug offenders, there exists little justification for adopting enhancements that cover drug distribution practices that are constantly evolving. The government’s proposal offers an ever-expanding patchwork of enhancements aimed at punishing a moving target. But drug offenders, like all businessmen, adapt. New methods, and even new substances, will replace those that become quickly outdated. Rather than engaging in regulatory whack-a-mole, the Commission should wait to see whether the need for the government’s proposals persists.

It remains unclear whether DOJ’s proposed amendments will serve a lasting purpose or become merely a fleeting concern. But one need not search far for a cautionary tale. DOJ recently supported a two-level enhancement to address harms associated with imitation pills, but even the government recently acknowledged that “the new two-level enhancement has proven not to be very useful.”¹³ And Commission data confirm what DOJ surmised: preliminary data from 2024

¹⁰ See U.S.S.G., App. C. amend 807 (effective Nov. 1, 2018).

¹¹ See U.S.S.G., App. C. amend 818 (effective Nov. 1, 2023).

¹² See Request for Comment at 3.

¹³ DOJ Letter at 5.

show that only 12 individuals received the two-level willful blindness enhancement since it went into effect on November 1, 2023.¹⁴

Rather than recognizing that the same criticism the government levied against §2D1.1(b)(13)(B) applies to the proposals it now advances, DOJ seeks additional enhancements in the hope that they will prove more effective. Adopting additional enhancements should be undertaken after far more study; transitory trends should not drive policy. The government's approach inverts the tried-and-true process by which the Commission traditionally operates: crunching the numbers and examining the suitable solutions before acting.

At a minimum, the Commission should seek input from other stakeholders about the risks posed by the conduct the government seeks to address through these proposed enhancements, along with empirical data about how additives like xylazine and medetomidine impact the body. In short, the PAG recommends that scientific research and more careful consideration take place before adding to the ever-expanding enhancements in the drug guideline.

III. Conclusion

On behalf of the PAG's members, who work with the guidelines daily, we appreciate the opportunity to offer our input on these proposed enhancements for offenses involving fentanyl and fentanyl analogues. We look forward to further opportunities for discussion with the Commission and its staff.

Respectfully submitted,

/s/ Natasha Sen
Natasha Sen, Esq., Chair
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¹⁴ See Request for Comment at 5.

PROBATION OFFICERS ADVISORY GROUP

An Advisory Group of the United States Sentencing Commission

Joshua Luria, Chair, 11th Circuit
Melinda Nusbaum, Vice Chair, 9th Circuit



Circuit Representatives

Laura M. Roffo, 1st Circuit
Tandis Farrence, 2nd Circuit
Alex Posey, 3rd Circuit
Sami Geurts, 4th Circuit
Andrew Fountain, 5th Circuit
David Abraham, 6th Circuit
Rebecca Fowlie, 7th Circuit

Vacant, 8th Circuit
Daniel Maese, 10th Circuit
Vacant, DC Circuit
Amy Kord, FPOA Ex-Officio
Dollie Mason, PPSO Ex-Officio

May 1, 2025

The Honorable Carlton W. Reeves
United States Sentencing Commission
Thurgood Marshall Building
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Reeves,

The Probation Officers Advisory Group (POAG) submits the following commentary to the United States Sentencing Commission (the Commission) regarding the issue for comment on Fentanyl.

Offenses Involving Fentanyl, Fentanyl Analogues, and Other Opioids

Enhancement Based on Distribution to an Individual Under the Age of 21

The majority of POAG was opposed to creating an enhancement under §2D1.1 for distribution of fentanyl, fentanyl analogues, and other opioids to individuals under the age of 21. POAG discussed that the age of 21 appeared arbitrary when presented without explanation. POAG generally believed that if such an enhancement was to be considered, the age should be 18, rather than 21, to promote consistency with the age of a minor as it appears elsewhere in the Guidelines and 18 U.S.C. § 25. While this age distinction does not have any specific research related to it, POAG did observe that the age distinction between a minor and an adult is one that has well established legal significance.

POAG also questioned why there should be a distinction between distributing fentanyl, fentanyl analogues, and other opioids to youthful drug users compared to distribution of other controlled substances (i.e. methamphetamine, cocaine, and heroin) to youthful offenders. While fentanyl and fentanyl analogue pose serious risks to youth, there are other illicit substances that also pose as significant a harm to youth, such as methamphetamine or heroin. POAG believes additional data regarding the harm of controlled substances, generally, to youthful drug users would be helpful in ascertaining if an enhancement should be limited to certain drug types.

POAG also observed that the fiscal year 2023 data reflected 37 cases involved the distribution of fentanyl or fentanyl analogue to a person under the age of 21, which appeared to be a small percentage of the drug cases. POAG believed that collecting additional data to determine if this figure is trending upward may be helpful before including an enhancement in an already lengthy guideline section. Further, POAG believed it would be helpful to review data as to how this factor is currently considered by courts and if there have been upward variances based on this factor.

Lastly, regarding whether an enhancement should be offense-based or defendant-based, POAG believed this may hinge on whether there is a *mens rea* requirement for the enhancement. POAG discussed that in the cases currently seen, there is very little evidence, if any, whereby defendants or participants discuss or would have reason to know the drug purchasers' age. There was concern that this may lead to situations wherein a confidential informant or undercover agent may mention an age during conversations with defendants to ensure such an enhancement will be applied. Absent this type of approach, the enhancement may likely only apply in circumstances where a defendant targeted a specific class of purchasers, like trying to sell to high school students or college students, or in cases involving known overdose victims who are under a certain age. In those instances, there may be overlap with the vulnerable victim enhancement at USSG §3A1.1.

Enhancement Based on Drug-Trafficking Offenses Using “The Dark Web or Other Anonymizing Technologies to Avoid Detection”

The majority of POAG was opposed to creating an enhancement under §2D1.1 for drug-trafficking offenses using “the dark web or other anonymizing technologies to avoid detection.” POAG discussed that, in the current body of cases generally seen, some cases involving the dark web or other anonymizing technologies are already captured under the enhancement at §2D1.1(b)(7) for mass-marketing by means of an interactive computer service. POAG believes further analysis regarding the application of §2D1.1(b)(7) and the corresponding Application Note 13 may be helpful to support an amendment to that specific offense characteristic to better capture the types of cases identified by the Department of Justice.

Fiscal year 2023 reflected only 60 cases involving a fentanyl or fentanyl analogue connected with the dark web or anonymizing technologies. This accounts for 1.5% of the 3993 fentanyl related cases that year. POAG considered how the Commission may approach this issue to have a more substantial impact on illicit activity that is supported by the dark web or anonymizing technologies.

Along those lines, POAG reviewed the Commission's report published September 18, 2024, Cyber Technology in Federal Crime, which reflects that the most common offenses committed by individuals who used cyber technology in their offense were child pornography (28.9%), fraud (27.5%), drug trafficking (20.6%), and money laundering (8.9%);¹ given fraud represented an equal share of these cases, and given there is already an enhancement for use of a computer for

¹ <https://www.ussc.gov/research/research-reports/cyber-technology-federal-crime>

child pornography offenses, POAG discussed the notion of having an enhancement that functions more generally towards a variety of offenses, perhaps in Chapter Three of the Guidelines, as this may better capture this conduct as seen throughout all types of crimes, rather than just limit the enhancement to drug trafficking.

Enhancement for Drug Trafficking Offenses Involving Fentanyl or Another Synthetic Opioid Adulterated with Xylazine or Medetomidine

The majority of POAG was opposed to an enhancement for drug trafficking offenses involving fentanyl or another synthetic opioid adulterated with xylazine or medetomidine without further studies as to the effects of these substances. POAG observes that there are only 94 cases in fiscal year 2023, involving the mixture of these adulterants with fentanyl or fentanyl analogue, accounting for only 2.5% of the 3,993 cases involving a form of fentanyl.

POAG acknowledges the mixing agents are dangerous because their effects cannot be reversed by life-saving medicines like naloxone (Narcan).² However, POAG is concerned that creating an enhancement limited to these specific mixing agents may result in drug traffickers finding alternative, equally or more harmful, mixing agents. POAG observed that capturing the latest dangerous trend of activity can be extremely challenging. As such, POAG discussed a more general enhancement for the use of mixing agents that dangerously enhance the effect of an illicit substance or present an independent risk of harm to someone who ingests them.

POAG further discussed that testing practices differ in districts currently handling these types of cases. When a substance is tested, not all laboratories include information about the mixing agents in the reports. When there is testing for these agents, the laboratory reports inconsistently reflect the amount of the mixing agent present. Further, while these mixing agents are commonly encountered in combination with fentanyl, they have also been detected in mixtures containing cocaine, heroin, and a variety of other drugs such that, similar to above, POAG contemplated any such enhancement extending to other types of drugs and not just fentanyl.

Regarding whether an enhancement should be offense-based or defendant-based, POAG is of the opinion this may hinge on whether there is a *mens rea* requirement for the enhancement, as a defendant distributing or possessing with the intent to distribute a drug mixed in this fashion, may not have knowledge that the drug contained a mixing agent.

² <https://www.dea.gov/sites/default/files/2022-12/The%20Growing%20Threat%20of%20Xylazine%20and%20its%20Mixture%20with%20Illicit%20Drugs.pdf>

In conclusion, POAG would like to sincerely thank the United States Sentencing Commission for the opportunity to share our perspective.

Respectfully,

Probation Officers Advisory Group
May 2025

United States Sentencing Commission
TRIBAL ISSUES ADVISORY GROUP

*Honorable Ralph Erickson, Chair
One Columbus Circle N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002*



*Voting Members
Honorable Natasha K. Anderson
Manny Atwal
Meghan Bishop
Neil Fulton*

*Jami Johnson
Honorable Gregory Smith
Carla R. Stinnett*

April 29, 2025

Hon. Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Judge Reeves,

On behalf of the Tribal Issues Advisory Group, we submit the following views, comments, and suggestions in response to the United States Sentencing Commission's call for public comment on issues related to offenses involving fentanyl, fentanyl analogues, and other opioids.

A. Distribution to Persons Under Age 21

1. The Commission seeks comment on whether it should consider revising §2D1.1 to add an enhancement for distribution of fentanyl, fentanyl analogues, and other opioids to individuals under the age of 21. If so, should the enhancement be defendant-based or offense-based? By how many levels should the enhancement increase base offense levels, and what is the basis for such increase? Should the Commission consider any other changes to §2D1.1 to address the harm in these cases?

TIAG understands and appreciates that the lethality of fentanyl is a tremendous problem and that intense efforts need to be made to eliminate the

use of fentanyl as a street drug—particularly use by youthful offenders. There are, however, some unique considerations in Indian Country. Because most drug offenses in Indian Country are prosecuted in the federal courts—including cases that would ordinarily be pursued in state courts—the most common offenses involving distribution to persons under the age of 21 are those that involve one young person selling or giving drugs to another young person at a party or gathering. An example might be a 25-year-old who is in possession of fentanyl sharing his fentanyl with a 20-year-old companion. While in most places such an offense would not acquire federal interest, such cases are pursued in Indian Country often because of the limited resources that tribal courts have to acquire appropriate drug and alcohol treatment for their defendants. Once this case moves into federal court the two-level enhancement aggravates the already existing problems related to likely higher guideline sentences than those likely to be imposed in state court. We believe that in Indian Country the group of people most likely to be exposed this enhancement are people who have not achieved full maturity themselves, that is person under the age of 25 or 26. Anchoring the guideline range higher for these offenses by application of the proposed new provision will only increase the risk of injustice.

TIAG is also concerned that at this time insufficient information and data exist in the record to adequately predict whether this proposed sentencing enhancement would actually capture the group of offenders that it is intended to target. Given our concerns about both the likely over-inclusive impact in Indian Country and the possibility of unintended consequences, TIAG urges the Commission to conduct further study and delay consideration of this proposed amendment to a future cycle after a full analysis can be completed.

B. Enhancement for use of dark web, anonymizing technologies or cryptocurrency.

TIAG generally urges the Commission to take additional time to study the problems that arise out of the use of the dark web, anonymizing technologies and cryptocurrencies. We are unaware of any empirical evidence that the use of these technologies is making the use of fentanyl, fentanyl analogues, or other opiates more dangerous than it otherwise would be. It is axiomatic that people involved in drug trading and trafficking have always attempted to do so in secret. While TIAG does not perceive any particular unique impact in Indian Country relating to the proposal, we are concerned that younger, more computer savvy persons will turn to these tools in an attempt to not get caught. It is also demonstrably true that such youthful offenders seem to be less likely

to modify their behaviors in response to such a sentencing enhancement, as they are more prone, because of their developmental stage, to dismiss the possibility that they could get caught. TIAG perceives a real possibility that over time the proposed enhancement would capture greater and greater numbers of people without reducing the risk to offenders or the public. Under these circumstances TIAG believes the question is worthy of further study and consideration.

C. Enhancement for xylazine, medetomidine.

TIAG believes that it is without the technical expertise to opine on the most basic question presented by this call for comment: whether the presence of these substances renders fentanyl more dangerous and, if so, the magnitude of the increased risk. We would defer to scientists with knowledge of the area on that question. TIAG also observes that the number of cases involving these substances appears to be quite small—although they may be occurring with increasing frequency.

TIAG would urge the Commission to take the time to study the science, magnitude of the problem, and any unintended consequences before it takes any action on this proposal.

Sincerely yours,

A handwritten signature in blue ink, reading "Ralph R. Erickson". The signature is fluid and cursive, with the first name "Ralph" being the most prominent part.

Ralph R. Erickson

VICTIMS ADVISORY GROUP

A Standing Advisory Group of the United States Sentencing Commission



Christopher Quasebarth, Chair

Colleen Clase
Shawn M. Cox
Rachael Denhollander
Liz Evan

Michelle Means
Colleen Phelan
Theresa Rassas
Richard Welsh

May 1, 2025

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington D.C. 20008-8002

RE: Request for Comment on Offenses Involving Fentanyl, Fentanyl Analogues, and Other Opioids

Dear Chair Reeves, Vice-Chairs, Members of the Commission:

The Victims Advisory Group ("VAG") appreciates this opportunity to provide information to the Sentencing Commission ("Commission") regarding whether the Commission should enhance penalties under § 2D1.1 for offenses involving Fentanyl, Fentanyl Analogues, and Other Opioids. Our advisory group responsibility is to assist you in fulfilling your statutory responsibilities under 28 U.S.C. § 994(o) and to provide our views on how your proposed amendments may and will affect federal crime victims. The Commission's research data and concern for the substantial increase since 2019 in fentanyl and fentanyl analogue federal drug trafficking cases, and the markedly increased risk of fatal overdoses from fentanyl and fentanyl analogues, makes this an issue of grave rising concern for victims, victim families and communities. For the reasons stated below, the VAG supports the Commission proposing and adopting § 2D1.1 sentencing enhancements for fentanyl, fentanyl analogues and other opioids.

Fentanyl Issues

As important stakeholders with recognized statutory rights in the federal criminal court process, victims deserve fair, just, and predictable outcomes in the criminal justice process. Communities, also real victims of the burgeoning drug pandemic, are victimized equally by dangerous drugs, like fentanyl and its analogues.

Underage Users

The Commission should revise § 2D1.1 to add an enhancement for defendants who distribute fentanyl, fentanyl analogues, and other opioids (for ease, referred to here as “fentanyl”) to people under the age of 21 (“underage users”). Just as “[a]nyone selling fentanyl to children will find themselves becoming a top priority for the Drug Enforcement Administration,”¹ those fentanyl distributors’ sentences should be enhanced. This sentencing enhancement is needed now. *The American Journal of Drug and Alcohol Abuse* March 7, 2025, published article “Nonfatal Pediatric Fentanyl Exposures Reported to US Poison Centers 2015-2023” found a sharp increase in minors overdosing on fentanyl.²

Fentanyl is up to 100 times more potent than morphine and just two milligrams can be fatal.³ This makes it incredibly dangerous, especially for children who may accidentally ingest it. The risk of overdose and death is significantly higher with fentanyl compared to other drugs. Exposure to fentanyl can lead to irreversible cognitive and physical damage, impairing children’s ability to lead healthy and productive lives.⁴ Early exposure to fentanyl is strongly correlated with substance abuse problems later in life.⁵ In sum, individuals who begin using drugs during adolescence are significantly more likely to develop addiction issues as adults.⁶

¹ <https://www.dea.gov/press-releases/2023/07/06/fentanyl-distributor-tied-13-year-olds-overdose-death-pleads-guilty> (last visited March 24, 2025).

² <https://www.tandfonline.com/doi/full/10.1080/00952990.2025.2457481#abstract> (last visited March 24, 2025).

³ <https://www.newsweek.com/alarming-rise-fentanyl-poisoning-among-us-children-revealed-2041275> (last visited March 24, 2025).

⁴ <https://www.newsweek.com/alarming-rise-fentanyl-poisoning-among-us-children-revealed-2041275> (last visited March 24, 2025).

⁵ Id.

⁶ Id.

This not only affects their personal lives but also imposes a substantial burden on society in terms of healthcare and the shared burden with the generation that follows. The age of 21 is justified by the ongoing brain development that continues until the mid-20s; drug use before that time can interfere with that growth.⁷

The Commission should adopt an offense-based two-level enhancement for distributing fentanyl to underage users. The two-level enhancement is consistent with age-level enhancements in the Guidelines.⁸ Because this enhancement focuses on the vulnerability of the underage user, the enhancement should be offense-based rather than based on role or behavior of the defendant.⁹

Society has a moral obligation to protect its most vulnerable members. Children deserve a safe environment where they can grow and thrive without the threat of fentanyl exposure. By imposing stricter penalties on those who put our children at risk, we affirm our commitment to safeguarding their well-being and future.

Use of the Dark Web

The use of the dark web in dealing fentanyl stops law enforcement from saving lives. The Commission should revise § 2D1.1 to add a two-level enhancement for defendants who use the dark web in distributing fentanyl. Because this enhancement focuses on the technology used, the enhancement should be offense-based rather than based on the role or behavior of the defendant.¹⁰

As law enforcement seeks to isolate fatal batches of fentanyl pills to save the lives of people that would otherwise face death if they ingest from the fatal batches, the dark web

⁷ <https://nida.nih.gov/news-events/news-releases/2024/12/brain-structure-differences-are-associated-with-early-use-of-substances-among-adolescents> (visited March 24, 2025).

⁸ U.S.S.G. § 2A3.3(b)(1).

⁹ https://www.ussc.gov/sites/default/files/pdf/about/overview/Overview_Federal_Sentencing_Guidelines.pdf (last visited March 24, 2025).

¹⁰ https://www.ussc.gov/sites/default/files/pdf/about/overview/Overview_Federal_Sentencing_Guidelines.pdf (last visited March 24, 2025).

provides a platform for anonymous transactions.¹¹ These dealers are not only hiding themselves, they are also making it difficult for law enforcement to intercept the fatal batches and save lives. This anonymity allows dealers to reach a global market, increasing the availability of fentanyl and the potential for widespread harm. Typical web browsers reveal their unique IP (Internet Protocol) address, making them traceable by law enforcement. But a dark web browser issues a false IP address, using a series of relays, to mask the user's identity. The Commission should defer to Department of Justice experts on how to define "dark web." "Dark web" typically is defined as "hyperlinked services on the dark net accessible only through The Onion Router (or Tor) protocol or similar protocols."¹² Tor is a specially configured browser enabling users to access services on the web in ways that are difficult or impossible to trace.

Adulteration of fentanyl with xylazine or medetomidine

Selling fentanyl mixed with Xylazine and Medetomidine is an exceptionally dangerous and harmful activity that warrants increased punishment. The extreme potency of fentanyl, combined with the additional risks posed by Xylazine and Medetomidine, necessitates an increased penalty. Xylazine, also known as "Tranq," is a powerful sedative approved for veterinary use.¹³ When mixed with fentanyl, it increases the risk of fatal drug poisoning. Xylazine is not an opioid, so naloxone (Narcan) does not reverse its effects. Users of fentanyl-Xylazine mixtures can develop severe wounds, including necrosis, which may lead to amputation.¹⁴

Medetomidine is another veterinary sedative that can depress the central nervous system.¹⁵ When combined with fentanyl, it can exacerbate the sedative effects, leading to

¹¹ <https://nij.ojp.gov/topics/articles/taking-dark-web-law-enforcement-experts-id-investigative-needs> (last visited March 24, 2025).

¹² https://www.law.cornell.edu/wex/dark_web (last visited March 24, 2025).

¹³ <https://www.dea.gov/alert/dea-reports-widespread-threat-fentanyl-mixed-xylazine> (last visited March 24, 2025).

¹⁴ <https://www.dea.gov/sites/default/files/2022-12/The%20Growing%20Threat%20of%20Xylazine%20and%20its%20Mixture%20with%20Illicit%20Drugs.pdf> (last visited March 24, 2025).

¹⁵ Id.

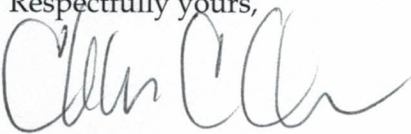
respiratory failure and death. The combination of these drugs poses a significant threat to users, who may be unaware of the presence of these additional substances.

Fentanyl mixed with Xylazine and Medetomidine often is disguised as other drugs, such as counterfeit prescription pills. This deception increases the risk of accidental overdose, as users may be unaware that they are consuming a lethal combination. The high potency of fentanyl means that even a small miscalculation in dosage can be deadly.

Conclusion

For the foregoing reasons, the VAG asks the Commission to propose and adopt § 2D1.1 sentencing enhancements for fentanyl, fentanyl analogues and other opioids. The VAG appreciates the opportunity to comment upon these important issues. The VAG takes seriously its commitment to advise the Commission, share victim perspectives on the sentencing process and respect the rights of victim survivors.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Chris Quasebarth', written over the typed name.

The Victims Advisory Group
Christopher Quasebarth, Chair

cc: Victims Advisory Group Members



May 1, 2025

U.S. Sentencing Commission

Office of Public Affairs
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Attention: Public Affairs – Issue for Comment on Fentanyl and Other Opioids

Dear Honorable Chairman Reeves and the United States Sentencing Commission,

We, the undersigned organizations, strongly oppose the proposed sentencing enhancements for drug trafficking offenses involving fentanyl, fentanyl analogues, and synthetic opioids adulterated with xylazine or medetomidine. As a broad coalition of criminal justice, drug policy, civil rights, and public health organizations, we advocate for a comprehensive, health-centered approach to drug policy—one that prioritizes evidence, equity, human rights, and community wellbeing.

Criminalization has failed to reduce drug use or overdose deaths.

Decades of punitive drug policies have not prevented drug use nor improved public safety. On the contrary, drug potency has increased, overdose deaths have reached record highs, and illicit markets have evolved in ways that exacerbate harm. The federal criminalization of fentanyl-related substances in 2018 offers a clear example of these failures: despite increased enforcement, overdose deaths surged by 60% over the subsequent four years, rising from 67,367 in 2018 to 107,941 in 2022.¹ The recent decline in overdose deaths is not attributable to harsher sentencing, but to the expansion of health-based interventions—like increased access to medications for opioid use disorder, naloxone distribution, and prevention programs.²

Enhancements for fentanyl and similar substances incentivize more dangerous drug markets.

The criminal enforcement of drugs has historically pushed the drug market toward newer and often more potent or unpredictable substances. We are witnessing this now in real time. A crackdown on fentanyl and fentanyl analogues has led to the proliferation of tranquilizers like xylazine and medetomidine in the drug supply, as well as other synthetic opioids such as nitazenes. Proposed enhancements will only perpetuate this cycle, encouraging the emergence of substances for which users are unprepared, and which carry unknown or increased risks,

¹ Drug Policy Alliance. "Reduce Harms of Fentanyl." <https://drugpolicy.org/issue/reduce-harms-of-fentanyl>

² CDC. (2025). CDC Reports Nearly 24% Decline in U.S. Drug Overdose Deaths.

<https://www.cdc.gov/media/releases/2025/2025-cdc-reports-decline-in-us-drug-overdose-deaths.html>

placing lives in even greater danger. This “whack-a-mole” approach fails to account for the realities of illicit markets and does nothing to enhance public safety.

The chaotic and unregulated drug market, coupled with criminalization and stigma, means that people who use drugs often do not know what substances they are consuming. In many parts of the country, the very supplies that can help people make informed decisions are illegal, such as drug checking tools. Enhancements risk punishing individuals for drug characteristics entirely outside of their knowledge or control.

Criminalization deters lifesaving interventions and undermines recovery.

Harsher penalties not only fail to deter drug use, they also actively deter people from seeking help during an overdose for fear of prosecution or other consequences, such as job loss, housing insecurity, or loss of child custody. These chilling effects cost lives.

Addiction is a chronic, complex health condition that often involves multiple recovery attempts. Research indicates individuals typically require an average of five recovery efforts, with even higher numbers among those with co-occurring mental health conditions.³ Recovery is a nonlinear process that requires access to healthcare, stable housing, employment, and community—elements collectively known as “recovery capital.”⁴ Incarceration and criminalization sever these supports, setting people back and exacerbating cycles of harm.

Moreover, people are unlikely to receive proper health care in prison settings. Within the context of the criminal legal system, only 1 in 13 people who were arrested and had a drug dependency received treatment while in jail or prison.⁵ And less than half of prisons and jails in the U.S. offer methadone or buprenorphine, the gold standard medication to treat opioid use disorder.⁶ Due to lack of support, formerly incarcerated individuals are 27 times more likely, on average, to die of opioid overdose than the general population just two weeks after leaving prison.⁷

³ Kelly, J. F., Greene, M. C., Bergman, B. G., Hoepfner, B. B., & White, W. (2019). How many recovery attempts does it take to successfully resolve an alcohol or drug problem? Estimates and correlates from a national study of recovering U.S. adults. *Alcoholism: Clinical and Experimental Research*, 43 (7), 1533-1544.

⁴ Cloud W and Granfield R (2009) Conceptualizing recovery capital: expansion of a theoretical construct. *Substance Use and Misuse*, 43: 1971–1986.

⁵ Substance Abuse and Mental Health Data Archive, National Survey on Drug Use and Health, 2019, https://pdas.samhsa.gov/#/survey/NSDUH-2019-DS0001?column=UDPYILL&control=TXYRPRILL&filter=NOBOOKY2%21%3D0%26UDPYILAL%3D1&results_received=true&row=NOBOOKY2&run_chisq=false&weight=ANALWT_C.

⁶ Wdara, Emily. (2024). Addicted to punishment: jails and prisons punish drug use far more than they treat it. Prison Policy Initiative. <https://www.prisonpolicy.org/blog/2024/01/30/punishing-drug-use/>

⁷ Hartung, D. M., McCracken, C. M., Nguyen, T., Kempny, K., & Waddell, E. N. (2023). Fatal and nonfatal opioid overdose risk following release from prison: A retrospective cohort study using linked administrative data. *Journal of substance use and addiction treatment*, 147, 208971. <https://doi.org/10.1016/j.josat.2023.208971>

Punitive measures target low-level sellers and people who use drugs, not high-level traffickers.

In practice, the individuals most often prosecuted under trafficking statutes are not major manufacturers or high-level dealers.⁸ They are frequently people who use drugs themselves, selling small quantities to support their own use.⁹

Drug-induced homicide laws, mandatory minimum laws, and sentencing enhancements often punish those at the lowest levels of the supply chain, people who rarely have control over drug contents, mixing, or strength.

Additionally, enforcement actions against low-level sellers fail to reduce overall drug availability due to the replacement effect: arrested individuals are swiftly replaced by others, and demand remains unchanged.¹⁰ As long as demand exists and safer supply is not offered, illicit fentanyl and other dangerous substances will persist in the market.

Criminalization perpetuates racial and economic injustice.

Drug enforcement practices continue to reflect and reinforce structural inequities. Black Americans, despite using illicit drugs at similar rates to white Americans, comprise a disproportionate share of those arrested and sentenced for drug offenses. Criminal records, whether from enhancements, mandatory minimums, or other charges, create lifelong barriers to employment, housing, and economic mobility, deepening cycles of poverty and marginalization which in turn, can worsen problematic substance use.

Formerly incarcerated individuals are 10 times more likely to experience houselessness than the general public. Misdemeanor convictions reduce annual earnings by 16%, and incarceration slashes income by more than 50%.¹¹ These systemic penalties make recovery, stability, and reintegration nearly impossible for many.

Criminalizing xylazine and medetomidine is misguided.

Researchers are still trying to fully understand the impacts of xylazine and medetomidine on people's health. Research suggests that xylazine may be contributing to lower overdose death

⁸ U.S. Sentencing Commission, "2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (October 2011), Chapter 8, <https://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system>.

⁹ Ibid.

¹⁰ Torres, C. E., D'Alessio, S. J., & Stolzenberg, L. (2020). The Replacements: The Effect of Incarcerating Drug Offenders on First-Time Drug Sales Offending. *Crime & Delinquency*, 67(3), 449-471. <https://doi-org.libproxy.berkeley.edu/10.1177/0011128720968507> (Original work published 2021)

¹¹ Brennan Center for Justice (2020). "Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality." <https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport.pdf>

rates because it leads to people consuming less fentanyl.¹² Rather than criminalizing these chemically similar substances, we must invest in more research to understand their impacts.

Further, most people who use drugs are not actively seeking out xylazine or medetomidine.¹³ This means that criminalization will impact many people who do not know they possess the substances. Xylazine, for instance, is predominantly found in conjunction with fentanyl, for which criminal penalties already exist.¹⁴ In fact, 99.5% of xylazine-involved deaths in 2021 also involved illicitly manufactured fentanyl or fentanyl analogues, substances that are already criminalized.¹⁵

Conclusion

We, the undersigned organizations, urge the Commission to reject proposed enhancements for fentanyl, its analogues, and synthetic opioids adulterated with xylazine or medetomidine. These policies are not grounded in public health evidence and are likely to increase harm rather than reduce it. They threaten to push drug markets toward even more dangerous substances, deter people from seeking help during emergencies, and continue the cycle of over-policing and mass incarceration—especially among poor communities and communities of color.

Instead, we call on the Commission to support sentencing reforms that reflect an evidence-based, health-centered approach to drug policy. Reducing sentences for drug offenses and investing in care, harm reduction, and recovery supports will save lives and build safer, healthier communities.

For these reasons, we strongly oppose the proposed enhancements. Thank you for your time and consideration. Please contact Maritza Perez Medina, Director of Federal Affairs at the Drug Policy Alliance, at [REDACTED] if you have questions or need additional information about this letter.

Sincerely,

American Civil Liberties Union
Campaign to Fight Toxic Prisons
Dream.Org
Drug Policy Alliance

¹² Gupta, R., Holtgrave, D. R., & Ashburn, M. A. (2023). Xylazine—medical and public health imperatives. *New England Journal of Medicine*, 388(24), 2209-2212.

¹³ Reed, M. K., Imperato, N. S., Bowles, J. M., Salcedo, V. J., Guth, A., & Rising, K. L. (2022). Perspectives of people in Philadelphia who use fentanyl/heroin adulterated with the animal tranquilizer xylazine; Making a case for xylazine test strips. *Drug and alcohol dependence reports*, 4, 100074.

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Law Enforcement Action Partnership
The Leadership Conference on Civil and Human Rights
Legal Action Center
More Than Our Crimes (DC)
Muslim Advocates
National Association of Criminal Defense Lawyers
NETWORK Lobby for Catholic Social Justice
North Carolina Survivors Union (NC)
Prison Policy Initiative
Reframe Health and Justice
Southern Poverty Law Center
StoptheDrugWar.org (DC)
Students for Sensible Drug Policy (SSDP)
Texas Civil Rights Project (TX)
The Porchlight Collective SAP (IL)
Trystereo (LA)
Vera Institute of Justice

JUNE 07, 2024

WE NEED A HEALTH APPROACH TO XYLAZINE.

Due to drug prohibition, xylazine is increasingly part of our drug supply. Learn more about how drug decriminalization and investing in health, overdose prevention centers, and safer supply can keep people safer.

I. WHAT IS XYLAZINE AND WHAT ARE THE EFFECTS OF XYLAZINE ON THE BODY?

We need a health approach to xylazine.

The general public knows very little about xylazine, and so much of the information on xylazine promotes fear and criminalization instead of helping people. To address our collective safety and well-being—and save lives—information on xylazine must be factual so people can make safer choices. Our responses to people who use drugs must be rooted in health. Here is what you need to know:

XYLAZINE IS A SEDATIVE INCREASINGLY DETECTED IN THE ILLICIT DRUG SUPPLY.

Xylazine, also known as tranq, sleep out, or anestetico de caballo, is a sedative drug that has been increasingly detected in fatal overdoses in some parts of the U.S. In these regions, it is being mixed into underground opioid and fentanyl supplies. Xylazine is not approved for medical use in humans. It is only FDA-approved for veterinary use with large mammals as a sedative and pain reliever.

It is appearing in the drug supply more now because it is relatively inexpensive and easy for distributors to procure. Xylazine typically is sourced from online suppliers in the underground market.

Xylazine was first detected as an adulterant in underground heroin supplies in Puerto Rico¹ over 20 years ago. However, it has spread and become more common stateside in recent years. It emerged in Philadelphia, PA, over three years ago. By 2021, xylazine was detected in 90% of street opioid samples² in Philadelphia. It has been increasingly detected³ in overdose deaths and drug seizures in the northeast, including in New York City⁴, Maryland⁵ and Connecticut⁶.

XYLAZINE IS TYPICALLY ADDED TO OPIOIDS TO PROLONG THEIR EFFECTS.

Research suggests⁷ that xylazine is synergistic with opioids, prolonging the duration and effect of drugs such as fentanyl and heroin. Because opioids have a short half-life, the effect wears off quickly. This is particularly true for people who use opioids often. This means they must seek out the drug frequently to manage opioid cravings and withdrawal symptoms. Xylazine mimics the drowsy feeling of an opioid high and extends the sensation of euphoria. Because of this, xylazine is typically added to opioids and not consumed in isolation.

DRUG PROHIBITION LEADS TO NEW DRUGS LIKE XYLAZINE ENTERING THE ILLICIT DRUG SUPPLY.

It is also likely that xylazine is being added to the fentanyl supply due to increased penalties and crackdowns on fentanyl and fentanyl analogues. When an underground supply chain is disrupted due to drug seizures, manufacturers and distributors often add various adulterants to their drugs to stretch their supplies farther. It is likely that xylazine is added to fentanyl to extend the effects

of a much smaller quantity and purity of fentanyl in our drug supply.⁸

XYLAZINE CAN CAUSE HARMFUL SIDE EFFECTS.

Xylazine is an adulterant. That means people are often not aware of its presence or the amount of it in their drug supply. This lack of control over polysubstance (using more than one drug) exposure can cause harmful side effects. This is because people are unable to prevent accidental exposure.

When taken in large doses or with opioid drugs, xylazine can lead to drowsiness, heavy sedation, and loss of consciousness.

The acute effects of xylazine include⁹:

- profound sedation,
- blurred vision,
- dry mouth,
- low blood pressure,
- low heart rate,
- weak reflexes,
- respiratory depression,
- disorientation,
- drowsiness,
- slurred speech,
- and risk of overdose.

Chronic effects can include:

- incontinence,
- high or low blood sugar,
- anemia,
- and in some cases, severe skin wounds.

Xylazine withdrawal presents its own challenges since tranquilizer withdrawal is associated with anxiety and mood disturbances, and there are currently no approved medications for xylazine treatment or withdrawal management.

COMPLICATIONS OF XYLAZINE CONSUMPTION CAN BE DEBILITATING.

Xylazine causes profound sedation and loss of awareness, leading to blackouts that can last for up to 4 hours. While unconscious, sometimes the person cannot be awakened. If they fall or collapse,

they may stay in the same position for hours, cutting blood flow off at limbs and extremities. When sedated on xylazine, one may also be vulnerable to heat or cold exposure if outdoors. There is also the risk of choking or being unable to breathe if airways are blocked off.

It's important that we have a health approach to xylazine that invests in addiction services and social supports. This includes voluntary treatment, housing, employment, harm reduction (including overdose prevention centers), recovery services, and peer support. We also need to start conversations about safer supply so that people know what's in the drugs they are getting.

2. ARE THERE ANY MEDICAL USES OF XYLAZINE?

Xylazine is not approved for medical use in humans. And it is not a controlled substance. It is only FDA-approved for veterinary use with large mammals as a sedative and pain reliever.

3. HOW LONG DOES XYLAZINE STAY IN THE SYSTEM?

Xylazine effects can be felt for up to 4 hours. Someone who recently used xylazine may test positive on a urine drug test for several days after consuming the drug. However, most standard urine drug screens do not test for xylazine. Xylazine is rapidly eliminated from blood, so there may be a risk of false negatives in blood testing.¹⁰

4. WHAT HAPPENS IF YOU MIX XYLAZINE WITH OTHER DRUGS?

Xylazine is typically added to opioids and not consumed in isolation. Mixing xylazine with other drugs can increase the risk of an overdose, especially if the other drugs are opioids or depressants. Depressant drugs include alcohol, benzodiazepines (like Valium® and Xanax®), sedatives, and tranquilizers. When xylazine is taken with these types of drugs, it can lead to drowsiness, sedation, unconsciousness, overdose, and death.

Naloxone (also called Narcan® and RiVive™) is a drug that works to reverse an opioid overdose, including fentanyl overdose. A new study shows that naloxone can be effective during an overdose of xylazine or an overdose involving an opioid like fentanyl, and xylazine¹¹. Overdoses that involve xylazine may need extra medical attention.

5. CAN YOU OVERDOSE ON XYLAZINE?

Yes, you can overdose on xylazine.

People often overdose on xylazine when it's combined with fentanyl or other potent opioids or sedatives. Xylazine is a central nervous system depressant that depresses breathing. Those effects combined with an opioid can stop someone's breathing and cause an overdose. Drugs in the underground market are not labeled and tested. This means people may accidentally consume high doses of xylazine without their knowledge, putting them at risk of overdose. The risk of a xylazine overdose is higher if consumed with other opioids or depressant drugs, like fentanyl, alcohol, benzodiazepines, or tranquilizers.

XYLAZINE OVERDOSES CAN BE REVERSED BY NALOXONE

Since it is not an opioid drug, xylazine does not respond to naloxone. However, it is still important to administer naloxone to anyone who is overdosing because most xylazine is mixed with opioid drugs and the opioids may respond to the naloxone. When responding to a xylazine-involved overdose, administer naloxone, make sure the person is breathing and to place them in the recovery position, so they do not hurt themselves. If the person does not take at least 10 breaths a minute, it is important to call 911 for help and to administer rescue breaths until help arrives.

[Read this helpful fact sheet](#) by the National Harm Reduction Coalition for more information.

6. CAN YOU BECOME ADDICTED TO XYLAZINE AFTER USING IT FOR THE FIRST TIME?

No, you cannot become addicted to xylazine or any drug after using it only one time.

PHYSIOLOGICAL DEPENDENCE IS DIFFERENT FROM SUBSTANCE USE DISORDER.

People can develop a physiological dependence upon xylazine if they use it repeatedly for several days or weeks in a row. Physiological dependence means that someone has developed an increased tolerance for a drug. They need to use more to get a desired effect. It also means they may experience physical withdrawal symptoms if they suddenly stop using a drug. Unfortunately, there is no FDA approved treatment for xylazine dependence and there are no established protocols for managing xylazine withdrawal symptoms.

ADDICTION AND SUBSTANCE USE DISORDER.

A person only meets the criteria for a substance use disorder if they continue to use a drug repeatedly despite experiencing numerous harms and negative consequences.

7. WHAT ARE TREATMENT OPTIONS FOR PEOPLE WHO USE XYLAZINE?

There are no approved medications for xylazine treatment. But most people are exposed to xylazine because they are using opioid drugs.

People with opioid use disorder and those who use fentanyl have several treatment options¹² if they want help. Substance use disorder treatment involves professionally delivered psychosocial treatment and/or medications to reduce problematic drug use and improve health and quality of life. These services are provided in a variety of settings. This includes specialized treatment facilities like outpatient, inpatient, or

residential centers. It can also include medical settings, such as hospitals and clinics. We at DPA believe that people should be able to choose the options that work best for them.

Of these treatments, medication assisted therapies have proven to be the most effective forms of treatment for opioid use disorder. There are 3 medications approved by the Food and Drug Administration (FDA) to treat opioid use disorder. These are methadone, buprenorphine (e.g., Suboxone), and naltrexone (e.g., Vivitrol).

Methadone is seen as the “gold standard” treatment for opioid use disorder. Research has shown¹³ for decades that it helps people to cut down on street opioids. It also helps patients to gain stability in their lives so they can reach their goals. To obtain methadone in the U.S., patients must visit special clinics. Due to strict regulations, most patients are required to be observed while taking their doses there, on a daily or near-daily basis.

Buprenorphine is a medication with similar benefits to methadone. Patients do not need to visit specially regulated clinics to obtain buprenorphine. However, until the recent passage of the MAT Act in Congress, medical professionals had to undergo additional training and get a special DEA waiver, commonly called the X-waiver, in order to prescribe buprenorphine.

Research shows that patients who take methadone or buprenorphine are less likely to experience cravings and withdrawal¹⁴ and are less likely to overdose¹⁵ than people who do not take these medications for their opioid use disorder.

The research on **naltrexone** is more mixed¹⁶, but it can be helpful for some people who voluntarily choose this option.

8. WHAT ARE HARM REDUCTION STRATEGIES FOR PEOPLE WHO USE XYLAZINE?

There are several important harm reduction strategies¹⁷ for people who use xylazine.

USE STERILE AND NEW EQUIPMENT.

Xylazine can be swallowed, injected, smoked, or snorted. When possible, people who use xylazine should use sterile and new equipment every time. Supplies may include syringes, cookers, pipes, and straws. People should also avoid sharing equipment with others. Reusing or sharing equipment can place users at risk of skin and soft tissue infections, and spread diseases like HIV and hepatitis C. In some cases, xylazine can cause severe skin wounds. It's important to practice good vein hygiene and seek medical care for wounds before they progress to necrosis.

NEVER USE ALONE.

People should avoid using xylazine alone. Although it is not an opioid, new research shows that xylazine responds to the opioid overdose reversal medication, naloxone¹⁸. Therefore, it is still important to have naloxone available and to give it to anyone who is overdosing.

MONITOR BREATHING.

When responding to a xylazine-involved overdose, make sure the person is breathing. And place them in the recovery position so they do not hurt themselves.

IF THE PERSON DOES NOT TAKE AT LEAST

10 BREATHS A MINUTE,

**IT IS IMPORTANT TO CALL 911 FOR HELP
AND TO ADMINISTER RESCUE BREATHS
UNTIL HELP ARRIVES.**

CHECK DRUGS IF POSSIBLE.

People should use xylazine test strips or other available drug checking technologies to test their drugs for other adulterants. Xylazine test strips are sometimes available at harm reduction programs. They can tell someone if xylazine is present. But they cannot tell someone *how much* xylazine is present.

GO SLOW.

People should “go slow,” dilute their drugs, or take a little bit at a time to reduce the risk of an overdose by accidentally taking too much. It is also advised that people do not take xylazine in combination with other opioids or depressant drugs, including alcohol. This can increase the risk of an overdose.

9. WHY DO WE NEED A HEALTH APPROACH, NOT MORE CRIMINALIZATION FOR XYLAZINE?

Xylazine is not a controlled substance. Criminalizing xylazine, including scheduling it on the federal Controlled Substances Act (CSA), will likely result in an even more unknown and potentially dangerous drug supply.

DRUG PROHIBITION LEADS TO STRONGER, MORE POTENT ILLICIT DRUGS.

Restricting prescription opioids did not end demand for opioids. Instead, it just sent people to the underground heroin supply. Crackdowns on heroin led suppliers to produce cheaper, potent and easily smuggled fentanyl. Harsh fentanyl penalties incentivized fentanyl analogues to flood our markets. And now, history is once again repeating itself. The classwide scheduling of fentanyl-related substances—which criminalizes all fentanyl-related substances more harshly, regardless of whether they are harmful or not—and the criminalization of fentanyl analogues more generally is leading to new and even more unknown drugs, like xylazine. We are increasingly seeing **xylazine**⁹, **etizolam**, **benzodiazepines**²⁰ and **nitazenes** overtaking some markets as a result of harsh crackdowns on fentanyl analogues.

SIMPLY PUT: CRACKDOWNS PUT US IN A GAME OF WHACK-A-MOLE.

When we try to eradicate one drug, a new one comes up. Often, it is a drug that consumers are not prepared for or has unpredictable effects. As a result, it creates more harms, because people who use drugs are not aware of what they are using or how strong it is.

CRIMINALIZING XYLAZINE WILL DETER PEOPLE FROM SEEKING LIFESAVING SUPPORT.

Harsher penalties and criminalization can even prevent people from calling for help when someone is experiencing an overdose. This is because they are afraid of being prosecuted or facing other kinds of repercussions. This can include loss of employment, housing, or custody of their children.

WE NEED A HEALTH APPROACH TO XYLAZINE.

Our elected officials need to invest in a health approach that invests in addiction services and social supports. This includes voluntary treatment, housing, employment, harm reduction (including overdose prevention centers), recovery services, and peer support. We also need to start conversations on safer supply so that people know what's in the drugs they are getting.

10. WHAT ARE DRUG POLICIES TO HELP PEOPLE WHO USE XYLAZINE TO BE SAFER?

There are many ways we can help people who use xylazine to be safer. This includes public education and policies we can pass at the local, state, and federal level.

- Expand access to lifesaving overdose prevention services.
 - This includes the overdose reversal drug naloxone, drug checking tools like xylazine and fentanyl test strips, and syringe service programs.
 - Authorize overdose prevention centers (OPC) on the state and local level.
- Expand and protect 911 Good Samaritan laws.
- Expand methadone and buprenorphine access to treat opioid use disorder since most people exposed to xylazine are using opioid drugs.
- Expand addiction services and social supports, including evidence-based treatment and recovery services.
- Provide fact-based public education about xylazine for people who may be accidentally exposed to xylazine-adulterated drugs.
- Oppose attempts to schedule xylazine as a controlled substance and oppose calls for criminal penalties for xylazine use, possession, and distribution. Scheduling drugs can make it more difficult for researchers to study these drugs and develop effective treatments for the people who use them. Criminalization discourages individuals from seeking health services.

- Fund more research to better understand xylazine's effects on the human body and how to prevent and manage xylazine-related wounds. We also need more research on how to manage xylazine intoxication, how to reverse its effects, and how to provide treatment to people who may be experiencing xylazine withdrawal.
- Provide training for medical and emergency staff on how to appropriately treat xylazine-related wounds and how to care for patients who may be experiencing xylazine withdrawal.

Drug Policy Alliance (DPA) recommends a comprehensive, health-based response to the overdose crisis to keep people safe and healthy.

THERE IS GROWING PUBLIC ACCEPTANCE OF THE FACT THAT DRUG USE IS A HEALTH ISSUE, NOT A CRIMINAL ONE.

Unfortunately, some elected officials and members of law enforcement continue to call for draconian criminal policies to drive up support for policies that hurt people instead of helping them.

When it comes to xylazine and other substances emerging in the illicit drug supply, we must ensure that any new laws take a health approach. This includes decriminalizing drugs, safer supply, and overdose prevention centers.

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May 1, 2025

The Honorable Carlton W. Reeves
Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500
Washington, D.C. 20002-8002

Re: Issue for Comment on Fentanyl and Fentanyl Analogues

Dear Judge Reeves,

FAMM was founded in 1991 to pursue a broad mission of creating a more fair and effective justice system. By mobilizing communities of incarcerated persons and their families affected by unjust sentences, FAMM illuminates the human face of sentencing as it advocates state and federal sentencing and corrections reform. FAMM has been an active advocate before the U. S. Sentencing Commission since our founding by submitting public comments, participating in hearings, and meeting with staff and commissioners.

The Sentencing Guidelines touch countless individuals and families, including many of our members – over 75,000 people nationwide. We welcome the opportunity to respond to the Issue for Comment relating to fentanyl and fentanyl analogue enhancements that was published on January 24, 2025.

Specifically, the Commission asked whether it should add enhancements for fentanyl, fentanyl analogue, or other opioid offenses that involve: (1) distributing to individuals under the age of 21; (2) using the dark web or cryptocurrencies; and (3) distributing fentanyl substances mixed with xylazine or medetomidine.¹

For over 30 years ago FAMM has been dedicated to reducing overly punitive drug sentences. We have the perspective to understand that historically, during times of drug epidemics, the criminal justice system can be quick to react with enhanced punishments. But we have also seen how increased prison terms do not ameliorate the public health problem of substance abuse; and this “solution” of punishment is not harmless. Communities have been destroyed by the overcriminalization of drugs. It is with this in mind that we oppose the enhancements outlined in the Issue for Comment.

¹ USSC, Issue for Comment on Offenses Involving Fentanyl, Fentanyl Analogues, and Other Opioid (Jan. 2025), <https://www.ussc.gov/policymaking/federal-register-notice/federal-register-notice-january-2025-issue-comment>.

I. Harsh Sentences Do Not Deter Crime

It is a dangerous legal fiction that longer sentences deter criminal activity.² Stakeholders, scholars, and even the Department of Justice have recognized the logical fallacy for what it is.³ And yet, time and time again, harsher sentences are the first tool removed from the toolbox in times of crisis.

Why don't longer sentences deter crime? For one, people who are engaged in criminal activity often have no idea that the punishment has been increased.⁴ Moreover, the people most impacted by harsh sentences are often low-level traffickers not the major traffickers at the top of the criminal organization.⁵ Low-level traffickers will be replaced, while the leader/organizers continue to operate their organizations (known as the replacement effect).⁶ The Commission already knows this reality. In one of its own reports the Commission observed that, "criminologists and law enforcement officials testifying before the Commission have noted that retail-level drug traffickers are readily replaced by new drug sellers so long as the demand for a drug remains high. Incapacitating a low-level drug seller prevents little, if any, drug selling; the crime is simply committed by someone else."⁷ Finally, many people convicted of trafficking offenses have substance abuse disorders themselves, which greatly influence their criminality.⁸

FAMM is sensitive to the realities of the opioid epidemic and understands the toll that it has taken on far too many people. We also appreciate the Commission's efforts to propose solutions to address the opioid epidemic. However, it is imperative that we not allow fear to overwhelm sound judgement and evidence in selecting appropriate sentences. We should learn from our history that more problems are created when fear is in the driver's seat.

² FAMM Letter to the USSC (Nov. 2007),

https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/20071100/PC200711_005.pdf; see also Nat'l Inst. of Justice, *Five Things About Deterrence* (May 2016), <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

³ See *id.*; see also J. Travis, et al., Nat'l Res. Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 90 (observing that "insufficient evidence exists to justify predicating policy choices on the general assumption that harsher punishments yield measurable deterrent effects"), <https://nap.nationalacademies.org/download/18613>.

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⁷ USSC, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* 131 (2004).

⁸ Leslie E. Scott, *Substance Use Disorder's Impact on Criminal Decision-Making and Role in Federal Sentencing Jurisprudence: Arguing for Culpability-Based SUD mitigation*, 19 Ohio State J. of Criminal Law 471, 471-77 (2022), <https://moritzlaw.osu.edu/sites/default/files/2023-02/7%20-%20Scott.pdf>.

The War on Drugs was launched in the late 80s, and over three decades later, we are still reckoning with the consequences – a prison system in crisis, communities torn apart, and no real decrease in drug sales or drug use.⁹ Professor Jelani Jefferson Exum, who testified at the Commission this March, put it best when she wrote:

Like any war, the consequences of the War on Drugs has had widespread casualties, including (but not limited to) the destruction of many communities, families, and individuals; the increase in racial disparities in punishment; and a fiscal disaster in penal systems across the country. What the War on Drugs has failed to do is eradicate drug abuse in the United States. It is time to move on from this failed War.¹⁰

The crack/powder disparity is the textbook example of fear-driven sentences and the attendant problems with that approach. In response to racially biased fears of crack cocaine, Congress created harsh mandatory minimums for crack cocaine as compared to powder cocaine. Years later, members of Congress and the Commission recognized that these overly punitive and biased sentences were not just unjust, they were ineffective at curbing criminal activity.¹¹ And yet, we are still dealing with the crack/powder disparity and the consequences to communities (in particular, communities of color). Just this year, the Commission included in its proposed amendments an issue for comment about equalizing the crack/powder disparity.¹²

⁹ Jelani Jefferson Exum, *Reconstructing Sentencing: Reimagining Drug Sentencing in the Aftermath of the War on Drugs* 58 Am. Crim. L. Rev 1685, 1687 (2021), https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2021/07/58-4_Exum-Reconstruction-Sentencin.pdf; see also Christopher Coyne & Abigail Hall, Cato Institute, *Four Decades and Counting: The Continued Failure of the War on Drugs* 1 (2017), <https://www.cato.org/policy-analysis/four-decades-counting-continued-failure-war-drugs>; Jeremy Travis et. al., Nat'l Res. Council, *Incarceration in the United States: Exploring Causes and Consequences* at 154 (2014) (“[T]he best empirical evidence suggests that the successive iterations of the war on drugs—through a substantial public policy effort—are unlikely to have markedly or clearly reduced drug crime over the past three decades.”).

¹⁰ Jefferson Exum *supra* n 9.

¹¹ See Letter from Senator Jeff Sessions 45-46 (March 30, 2007), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/200703/200703_PCpt11.pdf; Letter from Senators Patrick Leahy, Edward Kennedy, Joseph R. Biden, Dianne Feinstein, & Richard Durbin (2007), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/200703/200703_PCpt11.pdf.

¹² See *USSC Issue for Comment* (Jan. 2025), https://www.ussc.gov/sites/default/files/pdf/amendment-process/federal-register-notices/202501_fr-proposed-amdts.pdf.

The persistence of the crack/powder disparity is an indictment on our entire criminal justice system. It also demonstrates that once harsher sentences are created, it is nearly impossible to reduce them. As one scholar noted, “the federal sentencing rulemaking power has become a one-way upward ratchet in which the sentences nominally required by the Guidelines are raised easily and often and lowered only rarely and with the greatest difficulty.”¹³

The Commission should learn from the past and not create new enhancements as an attempt to curb criminal activity related to the opioid crisis. Harsher sentences will not deter criminal activity and may have the unintended consequence of disrupting effective public health strategies.

II. Harsh Sentences Do Not Appropriately Address Public Health Problems

The opioid crisis is a public health epidemic.¹⁴ Our response to this public health crisis should be led by public health strategies.¹⁵ And public health strategies are working. Overdose deaths from all drugs are *declining* substantially – by nearly 24%.¹⁶ The reduction in fatal overdoses for fentanyl is even more significant than the reduction in overdose deaths for all drugs – around 30.6%.¹⁷ Researchers attribute these positive trends to increased distribution of naloxone, increased evidence-based treatment for substance abuse disorder, shifts in the illegal drug supply¹⁸, and investment in prevention and response programs.¹⁹ Researchers, however, never mention lengthy sentences as a contributing factor. And for good reason.

Creating longer sentences may actually disrupt positive trends. Incarcerating people with substance abuse disorder can lead to increased fatal overdoses.²⁰ When people with substance abuse disorder spend significant time in prison, they may be more likely to use illicit substances

¹³ Frank O. Bowman III, *Mr. Madison Meets a Time Machine: The Political Science of Federal Sentencing Reform*, 58 Stanford L. Rev. 235, 246 (2005).

¹⁴ Determination that a Public Health Crisis Exists, (Oct. 26, 2017), <https://aspr.hhs.gov/legal/PHE/Pages/opioids.aspx>.

¹⁵ Carlos Blanco, et al., Nat’l Institute of Health, *America’s Opioid Crisis: The Need for an Integrated Public Health Approach* (May 2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7286889>.

¹⁶ See, e.g., Brian Mann, *Deadliest Phase of Fentanyl Crisis Eases, as all States see Recovery*, NPR (Mar. 10, 2025), <https://www.npr.org/2025/03/07/nx-s1-5295618/fentanyl-overdose-drugs>; Center for Disease Control, CDC Reports Nearly 24% Decline in U.S Drug Overdose Deaths. (Feb. 25, 2025), <https://www.cdc.gov/media/releases/2025/2025-cdc-reports-decline-in-us-drug-overdose-deaths.html>.

¹⁷ Mann *supra* n. 16 (“It has been a complete shock to see the [overdose deaths] declining in the way they have been).

¹⁸ For a more comprehensive conversation about change in supply, see the comment submitted by the Federal Defenders.

¹⁹ CDC *supra* n. 16.

²⁰ Nora D. Volkow, *Addiction Should be Treated, not Penalized*, J. of Neuropsychopharmacology (Aug. 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8369862/>.

upon release.²¹ This can be uniquely fatal for people with opioid related addictions because their tolerance to the drug wanes in prison but, upon release they often return to using the same amount they used prior to incarceration.²²

Put simply, we now know how to successfully fight the opioid epidemic - it has everything to do with public health strategies. Prisons are not equipped to provide the needed treatment for substance abuse disorder.²³ And increasing the prison population by leveraging harsher sentences only creates more harm.

III. Harsh Sentences For Fentanyl and Fentanyl Analogues Disproportionately Impact Communities of Color

Racial bias infects the criminal justice system, particularly in the context of drugs. As one researcher put it, “[a]bundant data show that Black people and other communities of color have been disproportionately harmed by decades of addressing drug use as a crime rather than as a matter of public health.”²⁴

The racial disparities that exist in convictions for other types of drugs persist in fentanyl and fentanyl analogue convictions – an overwhelming majority of people sentenced for these offenses are people of color.²⁵ And this is so, even though communities of color do not use drugs more significantly than white communities.²⁶ Moreover, communities of color are less likely to receive the evidence based public health interventions that help curb substance abuse.²⁷ As such, they are more likely to be caught in a vicious cycle of criminalization, drug use, and all of the many consequences that follow.²⁸

The Commission should consider the impact that additional enhancements would have on communities of color before adopting any such enhancements.

IV. Harsh Sentences Contribute To The Crisis Plaguing The Bureau Of Prisons

The Commission has an obligation to consider “the nature and capacity of the penal” services available and to formulate guidelines that “minimize the likelihood that the Federal

²¹ *Id.*

²² *Id.*

²³ Nat’l Institute of Health, *Criminal Justice Drug Facts* (June 2020) (“Only a small percentage of those who need treatment while behind bars actually receive it, and often the treatment provided is inadequate.”), <https://nida.nih.gov/publications/drugfacts/criminal-justice>.

²⁴ Volkow *supra* n. 20.

²⁵ USSC *Fentanyl Analogue Trafficking*, <https://www.ussc.gov/research/quick-facts/fentanyl-analogue-trafficking>; USSC *Fentanyl Trafficking*, <https://www.ussc.gov/research/quick-facts/fentanyl-trafficking>.

²⁶ Volkow *supra* n. 20.

²⁷ *Id.*

²⁸ *Id.*

prison population will exceed the capacity of the Federal prisons.”²⁹ The War on Drugs led to a swell in the prison population. People are still serving excessive sentences for drug offenses. Now is not the time for the Commission to add more people to the prison population for increasing amounts of time – the federal prison system cannot handle it.

The Bureau of Prisons is chronically understaffed. In 2024, former president of the Council of Prison Locals Shane Fausey predicted that the BOP was short at least 8,000 correctional staff.³⁰ Additionally, our prisons are crumbling. In testimony before the Senate Judiciary Committee, former BOP Director Peters noted that the BOP is facing a multi-billion dollar backlog for critical repairs to BOP infrastructure.³¹

If that weren’t enough, the BOP has been plagued by scandals of rampant sexual abuse,³² of physical abuse.³³ BOP cannot handle the population that it currently has. Given the Commission’s statutory obligations under 994(g) it is difficult to see how the Commission could support enhancements that will ultimately increase the prison population at this moment in time.

V. Conclusion

For the reasons discussed above, FAMM opposes attempts to repeat the mistakes of our past failed war on drugs, which only hurt the most vulnerable in our society. This is particularly so at a time when the opioid epidemic is seeing a decline in overdoses related deaths. Public health interventions are the best tool to address the devastating opioid crisis, not longer prison sentences. We are grateful to the Commission for considering our views.

Sincerely,



Shanna Rifkin
Deputy General Counsel

²⁹ 28 U.S.C. § 994(g).

³⁰ Cecilia Vegas and Aliza Chasan, *Federal prisons, short on correctional officers, rely on other staff to supervise offenders*, CBS News (Jan. 28, 2024), <https://www.cbsnews.com/news/federal-prison-staffing-sexual-abuse-problems-60-minutes/>.

³¹ Colette Peters, Statement of Colette Peters, Director, Federal Bureau of Prisons, before the Committee on the Judiciary of the United States Senate for a Hearing on “Oversight of the Bureau of Prisons,” (Sept. 13, 2023), https://www.judiciary.senate.gov/imo/media/doc/2023-09-13_-_testimony_-_peters.pdf.

³² Permanent Subcommittee on Investigations, United States Senate, *Sexual Abuse of Female Inmates in Federal Prisons* (Dec. 13, 2022), <https://www.osssoff.senate.gov/wp-content/uploads/2022/12/PSI-Embargoed-Staff-Report-re-Sexual-Abuse-of-Female-Inmates-in-Federal-Prisons.pdf>.

³³ Washington Lawyer’s Committee, *An Investigation Into Prison Abuse at USP Thompson*, <https://www.washlaw.org/wp-content/uploads/2023/07/Cruel-and-Usual-An-Investigation-Into-Prison-Abuse-at-USP-Thomson.pdf>.

30 April 2025

MEMORANDUM FOR UNITED STATES SENTENCING COMMISSION ADMINISTRATOR

FROM: Sydney Biggs

Subject: Comment on Proposed Rule (Fentanyl, Fentanyl Analogues, and Other Opioids)

Administrator,

Although I agree that the distribution of controlled substances to minors is abhorrent, I am opposed to adding an enhancement specifically for fentanyl-related offenses. If the goal is deterrence of distribution of drugs to the under-21 population, why not make the enhancement no matter the drug type? If this enhancement was created, it should be modeled after the existing enhancements of distribution in protected locations or involving an underage individual. This would be an increase by 2 levels. Lastly, this drug-type-specific enhancement could lead to collateral damage like the effects of the failed War on Drugs, which are still felt today. This enhancement will overwhelmingly affect the Black and Hispanic communities as they were sentenced at 37.8% and 39.5%, respectively.¹ Therefore, rather than introducing a drug-specific enhancement that risks perpetuating racial disparities and historical injustices, the Commission should focus on equitable, substance-neutral policies that effectively deter harm without repeating the mistakes of the past.

Very Respectfully,

Sydney Biggs

¹ United States Sentencing Commission, Quick Facts on Fentanyl Trafficking
https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Fentanyl_FY23.pdf.

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Autumn Burris

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

USSC-Fentanyl Enhancements Issue for Comment

Honorable Judge Carlton W. Reeves, Chair of the United States Sentencing Commission (USSC) and Distinguished Members of the Commission

With appreciation for the opportunity to comment on enhancements regarding fentanyl, fentanyl analogues and other adulterated synthetic opioids, I respectfully reject all enhancements to sentencing at this time. The fentanyl crisis is still emerging and developing, with insufficient clarity on the roles and appropriate penalties for various participants in the supply chain - from manufacturers of ingredients and drug makers to traffickers who strategically recruit vulnerable youth as their pawns. We must recognize that the fentanyl epidemic is undoubtedly an undeclared public health crisis, and harsh sentencing of low-level offenders fails to address its root causes. The current approach lacks a robust body of research and results in issuing lengthy sentences to individual offenders who were often lured, unknowingly, into the trappings of sophisticated networks controlled by international crime rings. Throwing the book at these low-level offenders plays directly into the hands of the criminal masterminds who orchestrated this crisis. The short-term satisfaction of imposing decades-long or lifelong sentences is almost instantly replaced by regret when the tsunami of new dealers emerges on the streets. As with other failed drug crackdowns, a dozen more dealers will emerge for every one locked up, costing government, individuals, families and communities countless resources and inflicting great harm. A more effective use of government resources would be to allocate them toward addressing the international threats by stopping drugs and ingredients from being trafficked across our borders, as well as investing in research, prevention of further exploitation of vulnerable youth (both as dealers and users), and intervention rather than incarceration.

Federal charges related to fentanyl are disproportionately severe for street-level dealers. I commend the USSC for exploring the mitigating roles of drug traffickers this year. The data

clearly demonstrates that street-level dealers are being incarcerated at higher rates than individuals who are manufacturers and producers (i.e., bona fide traffickers of drugs, weapons, and humans). Implementing enhancements for street-level dealers would constitute failed policy that harms addicted individuals, their families, and communities.

While it is necessary to hold individuals accountable for their actions, we cannot ignore the larger context. As long as countries and large criminal organizations are not held accountable for their share of manufacturing, production, distribution, and sale of controlled substances, the criminal burden is unfairly placed on individuals selling small quantities rather than those who produce and manufacture. As noted in congressional testimony, "Drug prosecutions generally catch low-level dealers, but very rarely reach the leaders of trafficking organizations. Since cartel leaders can often recruit new dealers, more arrests and longer sentences for low-level dealers does not stop the flow of drugs into our communities."³ The scales of justice are currently tipped toward prosecution of the parties with the least culpability and influence over the broader crisis.

The balance between accountability and culpability is lacking in our current approach. Many street-level dealers lack the requisite mens rea for the severe penalties they face, often unaware of the potency, composition, or even presence of fentanyl in the substances they distribute. They are frequently victims themselves - of addiction, poverty, coercion, or deception by those higher in the distribution chain.

The fentanyl epidemic is relatively new in the landscape of drug criminality. Looking at past failed drug policies, it is evident that we cannot incarcerate our way out of this crisis. As stated in a Congressional Hearing entitled "THE FENTANYL CRISIS IN AMERICA: INACTION IS NO LONGER AN OPTION," Representative Lee [D-TX] emphasized that "we cannot incarcerate our way out" of this crisis unlike past strategies.¹ This lesson from our experiences with the crack epidemic of the 1980s, followed by amphetamine in the 1990s, prescription drugs, and the resurgence of heroin, demonstrates that incarceration alone cannot address the scourge of fentanyl and synthetic opioids.

Enhancement of penalties for distribution of fentanyl, fentanyl analogues, and other opioids to individuals under the age of 21 would constitute failed policy because it further restricts judicial discretion already constrained by mandatory minimums. These enhancements fail to recognize the complex realities of youth involvement in drug distribution and use. Judges need the flexibility to consider individual circumstances, especially when dealing with young offenders who may themselves be victims of exploitation and addiction.

As the Prison Policy Initiative accurately observes in their analysis of fentanyl policies, "drug users and drug suppliers are most often the same people; sentencing enhancements are unlikely to affect so-called drug 'kingpins' and will more likely target users and low-level sellers."² From a policy perspective, it is necessary to understand how networks of fentanyl trafficking operate, determine the reasons low-level dealers become involved, and develop accountability measures that address addiction rather than merely punishing those left with few options created by their

addictions and the lack of opportunities in many of the hardest hit communities.

Furthermore, extensive brain development research demonstrates that younger people are more likely to engage in impulsive, reward-seeking behavior and are particularly susceptible to peer pressure. The brain is not fully developed until the mid-twenties, and criminality often emerges in the context of youth, poverty, racism, developmental disabilities, and extraordinarily high rates of Adverse Childhood Experiences (ACEs). Both youthful parties in these transactions—the seller and the buyer—are vulnerable to being misled, manipulated, and criminally coerced by older, more powerful individuals. Often out of fear, they will not speak up even to protect themselves. This raises the question: when both parties involved are young individuals, is it just to add enhancements in ALL cases during an epidemic?

In conclusion, as members of society and as humans, my hope is that we approach this epidemic with clear vision and develop solutions-based options for individuals, families, and communities suffering from the harms of fentanyl use, addiction, and incarceration. This includes both those currently and previously incarcerated. "We must learn from the failures of our past to treat the fentanyl crisis not as a crime problem, but as a public health problem. We must address the root causes of addiction and substance abuse, or we will end the war on fentanyl only to begin a war on the next, even deadlier drug."⁴

A more effective approach would be to adopt public health-based solutions by making substance use disorder treatment, overdose prevention medications, and medically assisted treatment widely available to individuals in need. We must invest in prevention, education, harm reduction, rehabilitation, and community support services rather than continuing to pour resources into a punitive approach that has repeatedly failed to address similar crises throughout our history.

Thank you for considering my viewpoint on this critical matter.

Respectfully submitted,

Autumn Burris

¹ U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Crime and Federal Government Surveillance. (2023, March 1). "The Fentanyl Crisis in America: Inaction is No Longer an Option." Congressional Hearing. <https://www.cwla.org/house-hearing-on-the-fentanyl-crisis/>

² Prison Policy Initiative. (2024, January 24). "Zombie politics: The return of failed criminal legal system policies in 2023 – and how to fight back." <https://www.prisonpolicy.org/blog/2024/01/24/zombie-politics/>

³ Congressional Hearing "The Fentanyl Crisis in America: Inaction is No Longer an Option" and associated materials

⁴ Congressional Hearing "The Fentanyl Crisis in America: Inaction is No Longer an Option,"

Submitted on: May 1, 2025

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Whitney Carter

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

Any federal inmate in prison on fentanyl drug charges should be required to serve maximum sentences! These inmates are a danger to our society! So many innocent citizens are dying & becoming addicted to this powerful drug. Drug dealers are making maximum untaxable profit off of this drug! How is this fair to hardworking taxpayers in this society? Drug dealers get away scotch free, while taxpayers struggle with paying to keep our communities afloat! Let's take a stand & hold drug dealers accountable!

Submitted on: February 12, 2025

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Antjuan Doss, Inmate

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

Prevention and Education: Punishing individuals harshly may not deter others from engaging in similar behaviors. Instead, investing in prevention programs, education, and public health initiatives can more effectively curb the spread of fentanyl abuse.

Submitted on: February 17, 2025

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Anahita Khadang

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

Fentanyl users are the number one person to sell the drug because of the addiction they have. Extending sentences is not going to help. Rehabilitation will help with some structure. Addiction is a mental thing and it is hard and not fair to send someone with an addiction to the federal institute. They have denied people rehab when there is apparent proof they have a problem. Since this is one of the highest used drugs it's because there is no help given no resources given at time of getting in trouble or caught instead they are put under an iron thumb and thrown away until they get out and now they are doing the only thing they know because they have been traumatized by the system that's supposed to be helping and protecting us.

Submitted on: March 12, 2025

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Lindsey London, Defendant

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

People facing fentanyl charges should be treated with a balanced approach that considers both the severity of the issue and the potential for rehabilitation. Here are some positive reasons why harsh punishments may not be the best solution:

Addiction as a Health Issue: Many individuals charged with fentanyl-related offenses may be struggling with addiction, which is a medical condition rather than a criminal behavior. Focusing on treatment and rehabilitation, rather than severe punishment, can help address the root causes of addiction and provide individuals with the support they need to recover.

Opportunity for Redemption: People who are involved in fentanyl-related activities may be in a cycle of desperation or bad circumstances. Providing opportunities for education, job training, and therapy allows individuals to reintegrate into society in a meaningful way, reducing recidivism and offering hope for change.

Overburdened Justice System: The criminal justice system can be overwhelmed by the sheer volume of drug-related offenses, and prioritizing harsh punishments for every case can divert resources away from more serious and violent crimes. Focusing on rehabilitation allows for more appropriate use of law enforcement resources.

Prevention and Education: Punishing individuals harshly may not deter others from engaging in similar behaviors. Instead, investing in prevention programs, education, and public health initiatives can more effectively curb the spread of fentanyl abuse.

Disproportionate Impact on Marginalized Communities: Harsh sentences for fentanyl offenses can disproportionately affect marginalized communities who may be more vulnerable to addiction and trafficking. Fair and balanced approaches can help break cycles of inequality and offer a more just response.

Restorative Justice: Focusing on restorative justice practices that encourage offenders to take responsibility for their actions while helping to repair harm within the community can be a more effective and compassionate approach. It encourages accountability without resorting to punitive measures that may do more harm than good.

Humanizing the Issue: Fentanyl abuse is often tied to broader societal issues, including poverty, mental health struggles, and trauma. A more humane approach, with an emphasis on understanding these underlying factors, may lead to better outcomes for both individuals and society at large.

These arguments support a more compassionate and rehabilitative approach to fentanyl-related offenses, with the goal of reducing recidivism and improving public health outcomes.

Submitted on: February 17, 2025

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Josh Smith

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

Fentanyl offender should not be treated different from any other offender so cases are to harsh

Submitted on: March 13, 2025

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Je Villoria

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

Inmates who were incarcerated for fentanyl-related offenses should not face extended sentences, especially if they were non-violent offenders. Rather than prolonging their time behind bars, we should focus on rehabilitation and treatment to address the root causes of addiction. Extending their sentences doesn't necessarily make communities safer; it often just perpetuates a cycle of incarceration without offering the chance for recovery or reintegration. A more effective approach would be to invest in addiction support, mental health resources, and programs that help these individuals break free from substance abuse.

Submitted on: February 15, 2025

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Desirae Webster

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

1. An enhancement to § 2D1.1 for individuals who distribute fentanyl to anyone under 21 should be made. A moderate level of enhancement should be made due to the increased number of fentanyl related deaths in the underage population. The added deterrence of increased jailtime may be effective in reducing the overdose rates for the under 21 population. Many people in this age range are not fully aware of the consequences of using drugs like fentanyl, so the focus should be on the offender. Enhancements should be defendant-based and severity should increase with considerations for prior offenses.

2. An enhancement should be made for distribution of fentanyl using the dark web or other technologies. Virtual drug distribution is dangerous and should be treated as such. This enhancement should be offense-based and increased to a level 4. Both the distributor and the buyer should be punished in this case.

Although enhancements may deter distribution of fentanyl, an individualized approach should be considered. Every distributor should undergo an assessment to discover their purpose for distributing. If they are struggling with substance use disorder, then medical care should be a first plan of action. If they are struggling with employment, then a career counselor may be beneficial. After their punishment, it is important to provide services to individuals who are engaging in these activities. If we can address the real issue, poverty, addiction, etc., then we may be able to make a real difference and improve the rate of fentanyl related deaths.

Submitted on: April 20, 2025

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Susie Whitiman

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

This is a VERY dangerous drug. A different sort of rehab should be used for the offender. They need time, a clear mind and routine. Not to be thrown in with gang members...

Submitted on: February 2, 2025

Public Comment - Issue for Comment on Fentanyl, Fentanyl Analogues, and Other Opioids

Submitter:

Lewis Whitmire

Topics:

Fentanyl, Fentanyl Analogues, and Other Opioids

Comments:

In regards to the issue of fentanyl, please remember there are people like my family member whose only lifeline is fentanyl. She's literally been to every doctor and pain clinic in the US and no one can treat her pain without it.

US drug policy and laws have not put a single dent in the illegal drug trade ever. In fact, it has only blossomed under harsher sentences and it has the dangerous side effects of making people like my family members lives much worse because the medical community does not understand the laws so they choose to ignore her pain. The cite laws that don't exists but are driven by fear of prosecution.

Let's try something else for a change. Draconian laws have not worked and will not work ever. Let's try treating people like humans.

Submitted on: January 27, 2025

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