



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 mperez@drugpolicy.org 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.

¹⁴ Kariisa M, O'Donnell J, Kumar S, Mattson CL, Goldberger BA. Illicitly Manufactured Fentanyl—Involved Overdose Deaths with Detected Xylazine — United States, January 2019–June 2022. *MMWR Morb Mortal Wkly Rep* 2023;72:721–727. DOI: <http://dx.doi.org/10.15585/mmwr.mm7226a4>

¹⁵ Ibid.

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The Leadership Conference on Civil and Human Rights
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NETWORK Lobby for Catholic Social Justice
North Carolina Survivors Union (NC)
Prison Policy Initiative
Reframe Health and Justice
Southern Poverty Law Center
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Texas Civil Rights Project (TX)
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