

**Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism hearing:
“Defeating Fentanyl: Addressing the Deadliest Drugs Fueling the Opioid Crisis”
April 11, 2018**

On Wednesday, April 11, the Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism held a hearing titled, “*Defeating Fentanyl: Addressing the Deadliest Drugs Fueling the Opioid Crisis.*” The hearing discussed the increasing number of opioid-related deaths attributable to fentanyl and its analogs, how fentanyl is testing law enforcement methods and straining resources in communities and emergency departments, and if mandatory minimum penalties are necessary for dealers of fentanyl.

For a webcast of the hearing and witness testimonies, see [here](#).

Witnesses who testified on the first panel included:

- The Honorable Christina Nolan, United States Attorney District of Vermont, Burlington, VT
- Mr. Kemp Chester, Associate Director, National Heroin Coordination Group Office of National Drug Control Policy, Washington, DC

Panel 2 witnesses included:

- Chief Kenneth C. Miller, Greenville Police Department, Greenville, SC
- Dr. Josiah "Jody" Rich, MD, MPH, Director of the Center for Prisoner Health and Human Rights, The Miriam Hospital, Providence, RI
- Dr. Brian J. Browne, MD, Department of Emergency Medicine, University of Maryland School of Medicine, Baltimore, MD

In his opening statement, Subcommittee Chairman Lindsey Graham (R-SC) cited a statistic that one third of overdose deaths in the U.S. are a result of fentanyl and its analogs. He said treatment, recovery, interdiction and deterrence are needed to address this issue, and the hearing will focus on deterrence and mandatory minimums being proposed in legislation ([S. 2635](#), the Ending the Fentanyl Crisis Act of 2018) introduced by Sens. John Kennedy (R-LA) and Tom Cotton (R-AR).

Subcommittee Ranking Member Sheldon Whitehouse (D-RI) urged the Committee to sign onto his and Sen. Rob Portman’s (R-OH) bill, CARA 2.0 (S. 2456) and said he also supports Sen. Portman’s STOP Act ([S. 372](#)), which would help stop dangerous synthetic drugs like fentanyl from being shipped to the U.S.

Panel 1

Witnesses and Members in the first panel gave an overview on the influx of fentanyl to the U.S., described the deadly potency of fentanyl, and how it is often mixed in with drugs such as heroin, cocaine, meth and even sometimes marijuana.

Key issues discussed during the first panel are as follows:

Medication Assisted Treatment (MAT)

Nolan responded to a question on demand in Vermont saying that overdose deaths remained stagnant due to their hub and spoke model in Vermont that utilizes MAT to treat individuals with substance use disorders (SUDs) and it has reduced waiting lists for treatments to nearly zero.

Dark Web and Cryptocurrency

Kemp Chester described the dark web as easily accessible and basic in itemizing technology where individuals can disguise their IP address, and which contains tens of thousands of webpages where fentanyl can be purchased easily using cryptocurrency like bitcoin.

Border Security and USPS

Chester testified that fentanyl is largely being produced in China and coming through the U.S. Postal Service in small quantities, and is usually a very pure product. He said fentanyl does sometimes come over the southwest border and there has been one fentanyl synthesis lab located in Mexico this year, and also one in 2006. It is unclear whether the lab in Mexico is synthesizing the fentanyl themselves, or importing it from China and milling it in the lab. Nolan said she sometimes sees fentanyl being shipped from China to Canada, then over the border to the U.S. Both Chester and Nolan said there is no evidence of any synthetic fentanyl being produced in the U.S.

Sen. Klobuchar asked witnesses whether requiring USPS to provide electronic data of foreign shipments, which the STOP Act would require, would be helpful in reducing the influx of fentanyl. Chester answered that USPS and the Postal Inspection Service is working hard to increase the percentage of advanced electronic data that is coming from China and other countries, which helps targeting efforts and identifying shippers of illicit goods. He said right now USPS is above 50% in utilizing advanced electronic data and is on pace to get to 100% in the next 3-5 years. Nolan said any efforts to give law enforcement the tools to stop the influx of fentanyl is welcome.

Mandatory Minimum Sentencing

Nolan said prosecutors would like to see the quantity thresholds necessary to trigger mandatory minimums lowered, because 4 grams could potentially be 2000 lethal doses and currently carries about a 6-12-month sentence which doesn't seem commensurate to the threat posed. However, she also said she doesn't believe this problem can be solved by charging people excessively, and a holistic approach of prevention, reduction, treatment and recovery efforts is needed.

Sen. Dick Durbin (D-IL) used the example of raising sentencing of crack cocaine offenses in the 1990's, which did not help in reducing drug misuse, but did dramatically raise the prison population, as reason to tread carefully on this issue of raising criminal penalties for fentanyl. Nolan said she believed that fentanyl is far deadlier and is a drug like she has never seen before.

Sen. Booker (D-NJ) also expressed skepticism that increasing sentencing for drug offenses will drive down drug use and crime and asked the witnesses to comment on some politicians call for the death penalty for those who distribute fentanyl. Nolan said she can't comment on the specifics of that school of thought, but thinks more prosecutorial discretion is needed in these cases.

Sen. Amy Klobuchar (D-MN) mentioned a bill she and Sen. Graham have introduced, the SALTS Act ([S. 207](#)), which would make it easier to prosecute the sale of distribution of fentanyl synthetic analogs.

Panel 2

Key issues discussed during the second panel are summarized below.

Sentencing

Dr. Rich in his opening statement said he doesn't believe in a punitive approach to sentencing because often those who suffer from substance use disorders distribute drugs to maintain their habit. He said a public health approach with a focus on treatment is a better pathway.

Chairman Graham asked Miller if he believed the punishments are inconsistent with the threats faced by fentanyl. Miller answered that regarding legislation that affects minimums and maximums, as long as it is targeted toward traffickers, the law should reflect the increased threat of fentanyl.

Dr. Rich told Members that he visited individuals incarcerated for drug related crimes and asked them if sentencing changes would have been a deterrent, and they unanimously said no. He noted that the first panel asked for discretion in prosecuting crimes involving fentanyl, and noted that the legislation being discussed to mandate minimum sentencing for fentanyl would not allow courts discretion.

Border Security and USPS

Kenneth Miller called for more screening of packages coming through USPS and private shipping companies.

Emergency Departments and Naloxone

Dr. Browne in his opening statement said that Maryland has been experiencing problems with opioid and heroin misuse for over two decades, but the increase in fentanyl has added a new and grim factor to this issue. He noted that 75% of those who presented for overdose to the University of Maryland Medical System (UMMS) emergency department tested positive for fentanyl. Authored a brief history of the opioid crisis which he submitted as a supplement to his testimony.

Dr. Browne shared several stories, one of a long time opiate user overdosing for the first time because fentanyl was present; another patient who overdosed and died, unable to be revived by naloxone in the emergency room; and one patient, who after being revived by naloxone in the hospital, became combative. Browne said he has seen more patients behaving violently after overdose reversals in cases where fentanyl has been ingested. He suggested Congress pass legislation to ensure naloxone remains cheap and available.

Treatment

Sen. Graham asked witnesses if they have seen any benefits of the federal funds Congress passed last year in treatment and prevention. Dr. Browne said he is not sure because some of the programs are newly implemented. Dr. Rich said he has felt that the money has helped, but it is still early.

Dr. Rich noted that utilizing medication assisted treatment (MAT) in the prison system is effective and should be utilized more.

Funding and Next Steps

Responding to an earlier question from Sen. Graham regarding whether federal funding for the opioid epidemic has made an impact yet, Sen. Whitehouse noted that an impact would not be seen yet, because the only money that has gone out is the first half of the \$1 billion that was promised in the Comprehensive Addiction and Recovery Act (CARA). In the most recent funding measure, appropriators added \$6 billion in opioid funding over 2 years, and there was a certain amount of front loading of that

amount into the first year, so in addition to those funds, another \$500 million should go out that was promised through CARA, plus the first front-loaded sum of the \$6 billion, and with any luck there will be more to come. Whitehouse is encouraged by these efforts and said, “we need to keep the pedal to the proverbial metal,” by way of scaling this, and there is still room to address this in a responsible and bipartisan way. Graham added that \$6 billion is a lot of money, but given the breadth of the problem it probably isn’t nearly enough. Graham said the goal now is to have a hearing a year from now and see what effect this funding has had.