



ISSUE BRIEF | Center for Law & Justice

ENHANCED PROSECUTIONS FOR FENTANYL

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TOPLINE POINTS

- ★ With ever-greater amounts of fentanyl infiltrating our Nation, it is time to increase penalties against those who seek to manufacture or distribute this poison.
- ★ Tough-on-crime policies have worked to reduce crime in the past. Increased prosecutions and stronger sentences for drunk driving and domestic violence have reduced those crimes.
- ★ Fentanyl must be addressed holistically and confronted with a whole-of-government approach.

Introduction

Fentanyl continues to ravage communities across the Nation, infiltrating our borders and poisoning Americans of all ages and backgrounds. In each of the past two years, more than 100,000 Americans lost their lives to drug overdose, with a substantial amount of those coming at the hands of opioids like fentanyl ([Centers for Disease Control and Prevention, 2023](#)). If we are to begin to turn the tide against this scourge, the Nation must get serious about how we treat criminals who engage in the manufacturing or distribution of this particularly dangerous drug.

While the lifecycle of fentanyl often begins overseas—as precursors used to make fentanyl are developed in China—and winds its way through a labyrinthine maze of cartel manufacturers and distributors, primarily in Mexico, it is nonetheless a decidedly domestic threat ([AFPI, 2022](#)).

To effectively combat the relentless grip of fentanyl on our communities, it is imperative that we implement stricter penalties against those responsible for its production and



distribution. Imposing harsher consequences on manufacturers and distributors would send a clear message that the reckless propagation of this lethal substance will not be tolerated. Accountability must be at the heart of any meaningful effort to reduce aberrant behavior, and this must include holding individuals accountable for their actions.

Ensuring that perpetrators face the full weight of the law for their contribution to the devastation caused by fentanyl is an essential first step. By doing so, we can deter potential offenders, dismantle illicit networks, and safeguard the lives of countless Americans who would otherwise fall victim to this insidious drug.

Increased enforcement measures have proven effective in the past. Public campaigns to address serious societal issues, such as drunk driving and domestic violence, have been truly successful. Bolstering enforcement efforts and enhancing penalties associated with these crimes has resulted in a remarkable shift in attitudes and behaviors.

Through rigorous enforcement coupled with strong education and public awareness campaigns, we have fostered a culture that does not tolerate such dangerous and harmful behaviors. We can apply the same resolve and determination to combat the fentanyl crisis and, ultimately, the same reduction in harmful behaviors and tragedy.

Background

Public awareness campaigns and enhanced enforcement measures have worked in the past. Two examples are the campaigns against drunk driving and domestic violence. Each phenomenon at one time was not given the same degree of scrutiny or public condemnation as it rightly is today, but the shift in attitudes did not occur overnight. To foster a change in social attitudes toward these crimes—and to reduce their incidence—required a concerted effort not only to bring awareness to the problem but also to leverage strengthened enforcement and sentencing measures against those perpetrating the crimes.

Mothers Against Drunk Driving (MADD) emerged as one of the first major public awareness campaigns highlighting the dangers posed by drunk driving. Its founder, Candy Lightner, began the movement in 1980 after the death of her 13-year-old daughter at the hands of a drunk driver ([MADD, 2023](#)). As public awareness increased and the act of drunk driving became increasingly socially unacceptable, concurrent efforts to increase penalties associated with the crime began to reduce its prevalence sharply.

The passage of the National Minimum Drinking Age Act in 1984 raised the legal drinking age across the country to 21 ([NIH, n.d.](#)). At the same time, many jurisdictions began to lower the Blood Alcohol Concentration (BAC) threshold for driving under the



influence from 0.10% to 0.08% ([Scherer & Fell, 2019](#)). These measures alone began to constrict the parameters within which a person could legally drive after having consumed alcohol, but measures to deter drunk driving did not end there.

Many jurisdictions implemented policies that allowed states administratively to suspend a person's driver's license upon arrest for suspicion of drunk driving, even before the imposition of criminal sanctions ([Fell & Scherer, 2017](#)). The rapid implementation of this deterrent measure proved one of the most forward-leaning efforts at the time.

States also began to implement enhanced penalties for drunk driving repeat offenders. In many cases, this meant providing for maximum sentences of life in prison for those repeatedly convicted of egregious incidents of drunk driving or those convicted of causing serious harm or death due to an accident caused by their drunk driving.

Collectively, these efforts contributed to a significant decline in the incidence of drunk driving across the Nation. According to the National Highway Traffic Safety Administration (NHTSA), alcohol-impaired driving fatalities declined by roughly 50% between 1982 and 2019 ([NHTSA, n.d.](#)). One study demonstrated that lowering the threshold BAC level from 0.10% to 0.08% alone was responsible for reductions “of 10.4% on annual drinking driver fatal crash rates” between 1982 and 2014 ([Scherer & Fell, 2019](#)). Comparable results were found in studies analyzing similar reductions in BAC thresholds in Canada and Australia ([Fell & Scherer, 2017](#)).

Like drunk driving—although the crime is of a wholly different nature—domestic violence had been far more prevalent, underreported, and under-punished prior to a concerted effort to reduce its incidence through enhanced public awareness and increased penalties. Prior to the 1970s, the scholarly literature on domestic violence and wife abuse was “virtually nonexistent” ([Gelles, 1980](#)). Public attitudes toward domestic violence were cavalier at best; at worst, such issues were seen as a source of humor, although that began to change during the 1970s with the emergence of the feminist movement ([Jacquet, 2015](#)).

Building upon the shift in cultural attitudes toward domestic violence, Congress initiated the passage of the Violence Against Women Act (VAWA) in 1994. After VAWA, the rate of victimhood for domestic violence declined by 72% for women and 64% for men between 1993 and 2011, according to the Department of Justice ([DOJ, 2016](#)). Among other measures, VAWA encouraged the adoption of mandatory arrest policies in cases of domestic violence. It also enhanced federal penalties for certain domestic violence-related offenses, such as the violation of protection orders or the commission of domestic violence across state lines.



Successful past efforts to combat the crimes of drunk driving and domestic violence have proven that by taking a more concerted approach to public awareness and punishment, society can implement effective deterrents to specific criminal behavior.

Detering the Scourge of Fentanyl Through Enhanced Penalties

Unlike drunk driving or domestic violence, society has not turned a blind eye toward the dangers of fentanyl, nor has it taken a cavalier approach toward its proliferation. Rather, efforts have been underway to ensure that the public is fully aware of its particular danger within the context of the proliferation and use of illicit drugs.

Campaigns such as *One Pill Can Kill*, run by the U.S. Drug Enforcement Administration, aim to provide greater understanding of the unique dangers associated with this particular synthetic opioid, which is estimated to be upwards of 50 times stronger than heroin and 100 times stronger than morphine ([CDC, 2023](#)). Public awareness campaigns such as this one highlight not only the lethality of fentanyl but also its prevalence within the illicit market of counterfeit pills and the fact that six out of every 10 pills found to contain fentanyl contain a lethal dose ([CDC, 2022](#)).

Public awareness efforts notwithstanding, ever more states in recent years have pursued legislation that enhances the penalties for those who are convicted of manufacturing or distributing fentanyl.

In 2022, the state of Florida enacted HB 95, which increased the penalties associated with possessing or distributing fentanyl. The legislation included an enhancement for penalties related to the “sale of a controlled substance within 1,000 feet of substance abuse treatment facilities” and an increase in the “mandatory minimum sentence for trafficking fentanyl from 3 years to 7 years for 4-14 grams, and from 15 to 20 years for 14-28 grams” ([Florida Governor’s Office, 2022](#)).

Texas has taken a similarly tough approach to fentanyl, with the state legislature recently passing SB 645, which would allow prosecutors to pursue murder charges against individuals convicted of manufacturing, selling, or delivering fentanyl under certain circumstances ([Barragan, 2023](#)). The bill also made the manufacturing or delivery of less than 1 gram of fentanyl a third-degree felony.

Texas, like many other states, has seen a rapid uptick in the number of fentanyl-related overdose deaths in recent years, experiencing a 400% increase between 2019 and 2021 ([Barragan, 2023](#)).



The pursuit of harsher legal ramifications related to fentanyl has even emerged in notably liberal enclaves around the Nation. Nevada Attorney General Aaron Ford recently backed a bill that would sentence an offender to “one to 20 years in prison for selling, possessing, manufacturing or transporting 4 grams or more of fentanyl into the state.” This is notable because the attorney general, only a few years ago, actively supported much more lenient legislation that mandated such sentences only for those convicted of possessing at least 100 grams ([Stern et al., 2023](#)).

Even the California legislature, well known for its legislators’ proclivity toward drug decriminalization policies, has advanced more than a dozen pieces of fentanyl-related legislation in the build-up to the end of their legislative session this year. Some of the proposed legislation would mandate harsher prison sentences for individuals convicted of dealing fentanyl ([Nyguen, 2023](#)).

The federal government has not taken this issue lightly either. The House of Representatives recently passed the HALT Fentanyl Act on a bipartisan vote of 289–133. This bill would permanently place “fentanyl-related substances as a class into schedule I of the Controlled Substances Act,” thereby enhancing the applicable penalties associated with its use, possession, or proliferation ([Congress, 2023](#)). The bill is now before the United States Senate and is widely expected to pass there as well, after which it will head to the president’s desk for enactment into law.

Conclusion: Stopping Fentanyl Requires Accountability

Any serious effort to address the proliferation of fentanyl in the U.S. begins far in advance of its introduction into the interior of our Nation. Stronger border control measures, severely lacking since the beginning of the Biden Administration, are an obvious and essential first step in addressing this scourge. Additionally, collaborative efforts between law enforcement agencies, particularly in the area of intelligence sharing, and enhanced international cooperation efforts can all help disrupt and fracture the supply chain before it infiltrates our communities. Once here, however, it requires a clear-headed and realistic approach to stop its debilitating impact on public safety and public health.

Enhancing the legal penalties against individuals convicted of the manufacture, sale, and distribution of fentanyl is a vital step toward combating the devastating effects it inflicts on our communities. Society sends a clear message that certain behaviors will not be tolerated when the laws governing the punishment of those behaviors correspond adequately to the effect they have on society.

While many states have already undertaken efforts to strengthen and enhance punishments against offenders proliferating the fentanyl trade within the U.S., those



states that have not yet done so must act. Mandatory minimum sentences, graduated penalties for repeat offenders, and harsher overall penalties—along with lower possession and manufacturing thresholds for the imposition of those penalties—are a good start toward imposing real accountability in the fight against fentanyl.

Deterring individuals from experimenting with drugs—unwittingly or otherwise, as fentanyl is often surreptitiously laced into other illicit substances—can be supported through comprehensive and targeted drug education and prevention programs. These programs are important, but as with previous efforts related to drunk driving and domestic violence, they need to be coupled with stronger penalties if we hope to achieve noticeable reductions in the proliferation of fentanyl use.

Fully pursuing these changes to the law, at both the state and federal levels, can help establish the proper national framework for achieving meaningful reductions to the presence of fentanyl in our communities. Public safety, public health, and the integrity of our Nation depend upon it.



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