

**Statement for the Record by**

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**Hearing Before the United States Senate Committee on Judiciary**

**"The Poisoning of America: Fentanyl, its Analogues, and the Need for Permanent Class Scheduling"**

**February 4, 2025**

Chairman Grassley and Ranking Member Durbin, thank you for the opportunity to testify before you today. I am here representing the Major County Sheriffs of America (MCSA), a professional law enforcement association of the largest Sheriff's offices across the country. Our members serve more than one third of the United States population. Our membership is comprised of Sheriffs Offices serving counties with a population of 400,000 or more and employing over 700 personnel.

As Sheriff of Orange County, I lead an agency of more than 4,000 men and women who provide exceptional public safety services to 3.13 million residents. Our county consistently ranks as one of the safest in the nation, but like every community, we have felt the devastating impacts of the fentanyl crisis.

The fentanyl epidemic is one of the most pressing public safety and public health crises to impact our nation. In just a few short years, overdose deaths have skyrocketed nationwide, largely because of the prevalence of fentanyl. While we saw a slight decrease in nationwide fentanyl-related deaths in 2023, the numbers remain alarmingly high, with annual deaths still approaching 100,000.

**Examples of the Problem: Deaths and Seizures**

In California, fentanyl-related deaths have surged from 239 in 2016 to 6,850 in 2023 (*Source: California Department of Public Health*).

Mexico-based cartels, taking advantage of the crisis at our border, have flooded our communities with this deadly drug. This is evident by the drug seizures made by the Orange County Sheriff's Department investigative teams. Over the past four years, these teams have seized a total of 1,551 pounds of fentanyl powder and 3.13 million clandestine produces pills containing fentanyl. What's even more alarming than the sheer volume is the dramatic increase in seizures during that period. In 2021, investigators seized 16,278 pills, whereas in 2024, that number skyrocketed to more than 2 million pills.

The potency and ease of fentanyl production have significantly contributed to its wide distribution. Additionally, traffickers are increasingly using social media platforms to target teens and young adults, creating a dangerous open marketplace for illicit drugs. While not the main focus of this hearing, the use of social media for drug trafficking underscores the urgent need for stronger accountability measures for social media companies to curb illegal activity online.

### **California Challenges**

The fight against the fentanyl epidemic in California is incredibly challenging given our proximity to the border, national drug trends, and our state's permissive drug laws.

One of the most harmful reforms was Proposition 47, a voter approved initiative that passed in November 2014. Despite its misleading title, the "Safe Neighborhoods and Schools Act," Proposition 47 reduced the two most prominent categories of crime, property theft and narcotics violations, from felonies to misdemeanors. This change severely limited our ability to help addicts seek treatment and fully address drug trafficking. Over the past decade, the consequences have been disastrous: drug-related deaths have skyrocketed and quality of life in major urban cities like San Francisco and Los Angeles has been eroded.

Proposition 47 is the most infamous, but not the first deceptive ballot initiative that made our state less safe. In December 1996, one of my predecessors, Sheriff Brad Gates, testified before this same committee following passage of Proposition 215, which decriminalized medicinal marijuana and paved the way for ballot initiatives decriminalizing recreational use of marijuana. Sheriff Gates warned of deceptive drug initiatives and their potential health impacts. Unfortunately, these concerns have proven valid. We know that Proposition 215 and subsequent initiatives have been harmful to the health of Californians, particularly our youth. A study from the *Journal on Studies of Alcohol and Drugs* found that adolescents in California are more likely to use marijuana than they were prior to decriminalization in 2016. The study showed an 18% increase in the likelihood of lifetime use and a 23% increase in past-30-day use.

The emergence of fentanyl in this policy environment is especially tragic, as policies that could have mitigated the crisis were blocked. For example, in 2016 when California experienced 239 fentanyl deaths, my department sponsored a state bill to enhance penalties for trafficking and distribution of fentanyl, making them comparable to those for cocaine and heroin. The bill was introduced annually but failed each time due to the Legislature's resistance to criminal sentences.

In 2018, I testified in support of another bill we sponsored to increase penalties for those trafficking pure fentanyl into our communities. At the time, members of the California State Senate Public Safety Committee dismissed the legislation, claiming that no one was dying from fentanyl and that it was always trafficked mixed with other narcotics, such as heroin and cocaine. Those outlandish statements were wrong then, and they certainly are not true now. Additionally, the California Legislature rejected the bipartisan proposal, Alexandra's Law, which would have required a statewide admonishment to those convicted of selling fentanyl. The proposed

admonishment would have made clear that selling fentanyl leading to death could result in homicide charges.

We also face complications due to California's sanctuary law which limits communication with our federal partners. In 2024, we attempted to pass legislation that would have allowed communication with federal agencies to enforce fentanyl laws. Unfortunately, this proposal was rejected. Given the close ties between the fentanyl crisis and the border crisis, this decision was shortsighted, counterintuitive, and places lives unnecessarily at risk.

### **Orange County Successes in Addressing Fentanyl Overdose Crisis**

While the fentanyl crisis remains a significant challenge, there is reason for hope in Orange County. Fentanyl-related deaths have fallen from 717 in 2021 to 675 in 2022 and 613 in 2023. While the numbers are still too high, we are encouraged by the downward trend. This progress is the result of our ongoing multi-faceted strategy that focuses on both supply and demand for illicit drugs.

Key solutions we've implemented include:

- We have made a strategic decision to invest in our narcotics teams. We supply 60% of staff for our local High Intensity Drug Trafficking Area (HIDTA) team and local dollars fund 73% of the total budget. While this investment has meant making sacrifices in other public safety priorities, we have made the decision to address the influx of drugs head-on.
- Recognizing deficiencies in state law, we have partnered with the US Attorney's Office to prosecute individuals who sell drugs that result in death of the user. In December 2023, we secured the conviction of a man responsible for supplying fentanyl linked to teenage overdoses. The individual was sentenced to 17 years in federal prison.
- To address demand, we created a new innovative drug education program, *Above the Influence*, which is taught by deputies to 5<sup>th</sup> and 6<sup>th</sup> graders in over 40 schools. The program has been well received by students and educators, reinforcing making healthy life choices and the critical message that "one pill can kill."
- All our deputies and investigative personnel carry naloxone, both in patrol and custody settings. Since its introduction in 2016, we have saved more than 600 lives. We have also worked with healthcare partners to expand naloxone distribution throughout Orange County.
- We have invested in a step-down unit and implemented a Medical Assisted Treatment (MAT) program in the Orange County Jail, where approximately 1,200 people entrusted to our care receive MAT treatment daily.

Furthermore, recent voter approval of Proposition 36 has the potential to improve the state's public policy environment. This measure adds fentanyl trafficking enhancements and creates a pathway for drug users to be compelled into treatment in lieu of felony penalties. Proposition 36 passed with nearly 70% of the vote statewide and gained majority support in all 58 counties.

While there is still much work to be done, these efforts show promising progress in the fight against fentanyl addiction and overdose deaths in Orange County.

### **Action Needed by Congress to Support Local Efforts**

Congress can further support the progress we've made by advancing key initiatives authored and supported by many members of this Committee. The following actions are critical to enhancing our local efforts:

- **Fentanyl Scheduling.** First and foremost, we must permanently schedule fentanyl analogues as Schedule 1 drugs. The temporary scheduling has been vital in saving lives by curbing the emergence of new fentanyl variations designed to bypass the Controlled Substances Act and evade law enforcement and prosecution. In 2016 and 2017, there were 7,058 reports of fentanyl analogue encounters that were not covered by DEA Scheduling. After the temporary class-wide scheduling in 2018, those encounters dropped to 787.

The House is taking up the *HALT Fentanyl Act* this week. Thank you Chairman Grassley and members of the Committee for leading this effort in the Senate.

- **HIDTA Funding.** Over the past five years, funding for the HIDTA program has remained relatively flat, with Orange County receiving approximately \$1.3 million annually. This represents only 17% of the budget for the county's HIDTA program (RNSP). Over the past seven years, staff assigned to RNSP has dropped by nearly 20%, from 43 members in 2017 to a projected 35 in 2025, though the Orange County Sheriff's Department has maintained the majority of personnel, 25.

We appreciate members of this Committee for introducing legislation to reauthorize the HIDTA program and increase resources. An increase would empower us to adopt new strategies to address the fentanyl crisis effectively.

I urge this Committee to reauthorize the HIDTA program at a higher baseline level and ensure that the administration of the program stays within the Office of National Drug Control Policy.

- **Protect Law Enforcement Tools.** MCSA strongly opposes legislation that would restrict or eliminate law enforcement's access to critical data and investigative tools necessary to

investigate fentanyl trafficking organizations. While privacy controls are essential to protect civil liberties, we must ensure these restrictions do not compromise our ability to keep our communities safe.

We also advocate for providing law enforcement with lawful access to encrypted devices, which is crucial for identifying those responsible for distributing lethal fentanyl.

- **Medicaid Inmate Exclusion Policy (MIEP) Reform.** MCSA is prioritizing efforts to eliminate the Medicaid Inmate Exclusion Policy through bipartisan legislation. This includes the *Due Process Continuity of Care Act*, which would enable pre-trial detainees to receive Medicaid benefits and the *Reentry Act*, which would allow Medicaid coverage for services for up to 30 days pre-release. These bills are crucial for addressing substance use disorders (SUDs) within the criminal justice system, ensuring continuity of care, and supporting successful reintegration for individuals returning to their communities.

These measures are essential to strengthening our efforts in combating fentanyl and ensuring that law enforcement and public health systems have the resources and tools they need to address this crisis effectively.

We stand ready to work with the Committee on efforts to address the fentanyl crisis. Many members of this Committee have been actively involved in tackling this issue, and we appreciate your strong commitment to taking meaningful action this year. The new Administration's steps to secure the border will make a significant impact, and the work this Committee leads in 2025 will be crucial in turning the tide against the epidemic. I look forward to your questions.