**Senate Judiciary Subcommittee on Crime and Terrorism Hearing:**
**"Defeating Fentanyl: Addressing the Deadliest Drugs Fueling the Opioid Crisis"**

**Response to the Questions for the Record**
**Submitted by**
**Kenneth C. Miller, Chief of Police, Greenville South Carolina**

**Question from Senator Ben Sasse**

1. Since the emergence of fentanyl, have you noticed increased awareness among at-risk populations of the dangers posed by adulteration of different drugs with fentanyl?

**Response:** Yes. The information I have from my officers and detectives, as well as treatment and medical personnel in my community, is that the craving for an opiate/opioid is so intense, that users understand the risks, but purchase and consume the drug in spite of those risks.

It is important to add that some users of adulterated drugs may not be aware that such drugs could contain fentanyl. In my oral and written testimony, I referenced a high school couple who believed they were taking Xanax pills to get high at a party. The pills contained fentanyl, causing each person to experience respiratory arrest. Both required naloxone for revival, but the young lady, 18, required four doses of Naloxone to prevent her death.

I am aware of numerous news articles that report marijuana and cocaine being adulterated with fentanyl, and we have seen adulterated cocaine in Greenville, South Carolina.

**Questions from Senator Christopher Coons**

1. *The News Journal*, Wilmington's main newspaper, reported that between Friday, April 6, 2018, and Monday, April 9, 2018, 36 Delawareans overdosed statewide. In 2016 alone, 154 Delawareans died from opioid-related overdoses, which is a rate of 16.9 deaths per 100,000 persons and higher than the national rate. Delaware is not alone in facing this epidemic. Based on your experience in combatting the spread of opioids, what are some best practices Delaware can implement?

**Response:** With 616 opioid deaths in South Carolina in 2016, which is a rate of 12.4 deaths per 100,000 persons and twice the rate reported by the CDC, I certainly understand your concern for Delaware. *Nationally, the proportion of death attributed to the opioid crisis ranks on both scales as national emergency and national security concerns.*

The recent bi-partisan Presidential Commission report for addressing this crisis does provide a number of sensible approaches which can help in every state. From a practitioner at the local level, I believe that there are, and can be, many strong practices that involve prevention, intervention and enforcement.

*Prevention-*

- Awareness. Awareness of fentanyl risks can be created at the local, state and national levels, through a host of mediums and forums that create awareness around risks associated with the consumption of any drug not specifically prescribed to a person, who can be affected, how excess medications should be secured, monitored and disposed, physician shopping, and more.
- Prescription Drug Management Programs (PDMP). *Implementing a secure PDMP that incorporates direct physician to pharmacy electronically encrypted prescriptions, combined with electronic patient health records can be beneficial in reducing prescription fraud, doctor-shopping, and life-endangering prescription medication conflicts.* Further, and much like police Early Intervention Systems can do to identify problem officers, such systems can be designed to identify physicians who may be overprescribing opioid medications at the risk of the communities they serve. Maximum effectiveness would require a system networked nationally.
- Expansion of Drug Take-Back facilities. Secure drug take-back boxes should be expanded at pharmacies nationwide to enhance accessibility and promote safe disposal of excess medications.
- Alternative Medications. Greenville Health System has begun using Ketamine as a general anesthetic in some surgeries and aftercare. My understanding is that, while it may possess addictive qualities as opioids, it does not pose the same risks as opioids on multiple levels.
- Limit Opioid Prescription Quantities. Recently, as a result of a Gubernatorial Executive Order establishing an emergency response team to address the opioid crisis in South Carolina, its two largest insurers (Blue Cross/Blue Shield and South Carolina Medicaid) have limited the prescription supply of short acting opioids to seven and five days, respectively. Limiting opioid supplies and requiring follow-up physician visits can help reduce dependency, and reduce availability of excess medications that can be illegally diverted.

*Intervention-*

- Enhance Naloxone Availability. Naloxone is a life-saving drug that appears to have no serious or lasting side-effects. Securing supplies for all first responders, but particularly law enforcement officers because they are most often first to arrive, is essential for an effective intervention strategy. This drug should also be dispensed to families of opioid addicts –and perhaps drug addicts in general given the adulteration of non-opioid drugs.
- Emergency Room Initiated Support Services. Engaging overdose survivors when they are most vulnerable to gain treatment commitment is a strategy that Greenville Health System (GHS) is embracing. In partnership with the University of South Carolina Medical School on its campus, and Faces And Voices Of Recovery (FAVOR), GHS provides intervention peer counseling services to overdose patients and their families.
- Implementation of Drug Courts. Greenville County has supported a drug treatment court for more than 20 years. In my prior jurisdictions of Guilford and Mecklenburg Counties, North Carolina, both had established drug treatment courts. These courts are another important factor in recovery, particularly for those who need additional motivation to and accountability for engaging in

treatment services. Since 2016, the Greenville County drug court has served seventy-one (71) participants. Forty-one percent (41%) have graduated, twenty-two percent (22%) have been terminated from the program and thirty-seven percent (37%) remain active.

- Mental Health and Addiction Treatment Services. Treatment providers for addiction and mental health intervention services seem to be underfunded and overextended. Funding support and facility capacity for qualified treatment providers is, in my opinion, essential in addressing the opioid crisis. I also do not believe that the crisis can be fully addressed without more funding support for mental health intervention services.

*Enforcement-*

- Enhance Multijurisdictional Task Forces in DEA, HIS and FBI. The majority of multijurisdictional task forces are small in size, which affects effectiveness. The current federal funding approach of providing overtime and some equipment funding leaves many local agencies unable to afford participation and diminishes effectiveness. The better method would be to cost-share the officer salary. Because local officers are generally less expensive than federal officers, 2-3 task force officers could be hired at the cost of one federal agent, if the salaries and benefits were split. This would enable task forces to expand and broaden interdiction investigations and success.
- Sanctions. Progress has been made with China and Mexico regarding the manufacturing and distribution of fentanyl into the United States. However, imposing strong sanctions for fentanyl, produced or processed by either country and distributed into the United States, is necessary to slow the volume of fentanyl flowing into our country.
- Equipment Grants. As fentanyl and its analogues are increasingly more deadly, there are increasing risks to first responders. In particular, police and their canine partners are at risk of exposure on a number of levels. Ensuring that first responders have field-operable equipment systems that enable them to instantly identify the drug compound is essential for safety. In Greenville, for instance, we have purchased two laser scanning devices to protect our officers and canines. These devices, which identify the compounds of over 400 drug types without requiring physical contact, cost over $25,000 each, which makes them unaffordable for many police agencies across our country.
- Prosecutorial/Judicial Resource Needs. Any enhanced enforcement and/or reduced minimum quantities of fentanyl triggering federal mandatory minimum sentencing guidelines, will result in more users and traffickers identified for prosecution, which will further burden prosecutorial resources, locally and federally alike. Additionally, many communities could feel the pressure to add capacity to existing courts and drug treatment courts.
- Cellphone Encryption. Currently, it is extraordinarily difficult or impossible to access information on some cellphone brands, due to encryption that prevents unauthorized access. Requiring all manufacturers/providers to enable access to encrypted data on cellphones is essential to effective drug and criminal enterprise interdiction and investigations. It will help police identify and apprehend suppliers of fentanyl more rapidly, enabling them to prevent additional deaths

associated with continued product distribution.

- Dark Web Investigations and Computer Forensic Analytical Tools. Many local agencies can support their interdiction efforts with expert training in conducting Dark Web investigations. Federal enforcement agencies possess the greatest expertise in this area, and can be helpful in growing the expertise with other agencies.

  Mining data from computers and other digital media devices seized as evidence requires sophisticated tools and training that have high recurring costs. Yet mining data from these devices is essential today in disrupting criminal enterprises, identifying parties involved in illegal drug distribution and other illegal and predatory behavior. With respect to the opioid and fentanyl crises, access to these skills and equipment at the local level directly correlates to saving lives. *The faster we can identify a person distributing fentanyl or its analogues, the more people we can protect from a near certain fate.*

2. According to a report on alcohol, drugs, and health by the Surgeon General, "[i]mplementation of evidence-based interventions . . . can have a benefit of more than $58 for every dollar spent; and studies show that every dollar spent on substance use disorder treatment saves $4 in health care costs and $7 in criminal justice costs." How would you recommend allocating funding to best combat the scourge of opioids and specifically fentanyl?

   **Response:** In my opinion and experience, addressing the opioid and, particularly, the fentanyl crises, requires resources be expended in each of prevention, intervention and enforcement areas. *Omnibus legislation is needed to adequately address needs in all three areas, and it can be more effective than piecemeal legislation.* Funded programs ought to establish best practices or mirror them, and there ought to be a demonstrable financial or service need within a jurisdiction to ensure every dollar is spent in a manner that ensures its best use.

3. In 1997, Delaware Superior Court introduced the first statewide drug court in the United States. Before that, the Drug Court Program started in New Castle County. Defendants began to enter the program in April 1994. Now, in part because of successes in states like Delaware, there are over 3,000 drug courts nationwide.
   a. In your experience, how do drug courts help to address the opioid crisis?
   b. What are some best practices for drug courts that you would recommend replicating?
   c. What unique challenges does fentanyl present for a drug court?

   **Response: (a)** In my experience, drug courts help those with opioid addictions in the same manner as they help people with any addiction. Many addicts simply are not fully motivated to address their addictions, creating a recovery gap that ordinary treatment protocols cannot fully address. Drug courts essentially utilize a carrot-and-stick approach to address that gap, through an intensive program that motivates a participant through benevolence and fear of incarceration. Because of the intensively addictive nature of opioids, drug court expansion and proliferation can be helpful in addressing the

problem while keeping families and employment intact.
**(b)** Drug courts follow a largely formulaic approach to their work, but components that appear to be most beneficial include the routine oversight of participants, weekly drug testing, and communication with a judge when court directed provisions are not met. The program is intensive for a durable period of time, with the average graduation period being approximately two years in Greenville, SC.
**(c)** The greatest challenge fentanyl and its analogues create for drug courts is the intensely addictive nature of it. The impact of that fact alone may reduce the effectiveness of drug courts. Since 2016, Greenville's drug court has served seventy-one (71) participants. Forty-nine (49) participants—or sixty-nine percent (69%), used opiates/opioids.

4. How effective is naloxone in treating opioid overdoses when administered by a layperson, and would training on the use of naloxone increase its effectiveness?

   **Response:** It is clear to any person who has administered—or witnessed the administration of naloxone that it is a drug that works miracles in bringing people back from the brink of death. Naloxone is as easy to administer as a daily nasal spray, has no known serious or lasting side effects, and requires little more than an understanding of what it does and does not do to aid in the care of an opiate/opioid overdose victim.

5. Would you recommend making naloxone more readily available, for example, over-the- counter at pharmacies?

   **Response:** I do not understand why such a drug is not already more widely available to those who need it and to the families who worry for the safety of their loved ones. I believe that additional lives would be spared if naloxone were more readily available.

6. Senator Hoeven and I introduced the Illegal Synthetic Drug Safety Act (S.658) to stop synthetic drugs from being sold in the United States. The legislation amends the Controlled Substances Act in order to close a loophole that enables companies to circumvent the law. Currently, some producers alter the molecular structure of fentanyl and other controlled drugs to create analogues, which are technically different but have the same dangerous risks as the original drug. Under the current law, analogues of controlled substances that are "intended for human consumption" are to be considered Schedule I substances. However, companies that produce analogue substances label their products as "not for human consumption," even though the drugs are purchased for that exact purpose, and as such, exploit a loophole in current law. Our bill would close this loophole by removing the "intended for human consumption" language from the Controlled Substance Act. If enacted, do you believe that this law would help combat the opioid epidemic?

   **Response:** I am unfamiliar with all aspects of this legislation. With respect to closing a loophole, no analogue of *any* drug on the Controlled Substances Act Schedule

(Schedule) should be legally produced, sold, possessed or consumed without properly aligning or registering that drug on the Schedule. A determination of human consumption should not be required. In my professional opinion, the legislation, as structured in Question 6, above, would be helpful in addressing some of the threatening behaviors of drug companies and others who might exploit the "not for human consumption" loophole.

7. According to a 2017 Drug Enforcement Administration briefing guide for first responders, "[t]here is a significant threat to law enforcement personnel, and other first responders, who may come in contact with fentanyl and other fentanyl-related substances through routine law enforcement, emergency or life-saving activities."
   a. Based on your experience and knowledge, what happens to an individual who comes in contact with trace amounts of fentanyl (for instance, when a person, such as a first responder, uses his/her bare hands to brush fentanyl remnants off his/her clothes)?
   b. What steps would you recommend that first responders take to protect themselves from health risks associated with fentanyl contact?
   c. Would personal protective equipment reduce the risk to officers in these situations?

   **Response: (a)** I have not led an officer who was exposed with direct contact to fentanyl or its analogues. My understanding is that symptoms range from mild non-debilitating effects, to the more serious and potentially life-threatening effects that the drug can have on a user, depending upon the quantity and strength of the compound to which the first responder is exposed.

   **(b)** Our policy, training and practice has been to wear nitrile gloves, which we issue, as a barrier when conducting searches of persons or property where controlled substances are known, or thought to be, present. In one residence, where we believed that a substantial amount of fentanyl had been processed over a period of two years, entry was delayed until those conducting the search suited with full-body protective gear and breathing apparatus. Finally, we would have medical personnel available for treatment, administer naloxone, or transport directly to a hospital or clinic, in any situation where we thought an employee was exposed.

   **(c)** All first responder agencies should have policies, training and provisions for issuing and using personal protective equipment (PPE) among their field-operational staffs. The training should also help responders understand when more substantial, not widely issued, PPE is appropriate and the steps necessary to ensure safety of all responders. Any agency receiving federal funding for the purpose of addressing the opioid crisis should be required to have approved PPE policies and training, and should issue basic PPE to their field-operational personnel.