

June 8, 2016

Mitch McConnell
Majority Leader
United States Senate
317 Russell Building
Washington, D.C. 20510

Harry Reid
Minority Leader
United States Senate
522 Hart Building
Washington, D.C. 20002

Cc: Sens. Ayotte, Reed, Durbin, Cornyn, Leahy, Grassley

Dear Leaders McConnell and Reid,

On behalf of a coalition of groups working toward criminal justice reform, representing a nationwide, bipartisan-supported movement to achieve effective and just policy, we write to urge you to oppose S. AMDT. 4082 and S. AMDT. 4083 to S. 2943, the National Defense Authorization Act for FY 2017 (“NDAA”). These amendments that are sponsored by Sen. Kelly Ayotte (R-NH), and would widen the net of persons who could receive a mandatory minimum sentence for possessing or distributing the substance fentanyl. The Ayotte Amendments seek to increase the mandatory minimum sentencing requirement for the substance fentanyl, by decreasing the threshold amount for which mandatory sentences are triggered. Our country has begun to change course on its criminal justice policy, recognizing that mandatory minimum sentencing requirements have done little to protect the health of American citizens or promote the safety of our communities. Instead, mandatory minimum sentences have resulted in persons convicted of nonviolent drug offenses receiving disproportionate prison sentences, including life sentences. We believe the Ayotte Amendments represent a step backward toward ineffective policy that fails to direct resources wisely, and their passage must be prevented.

Fentanyl is a synthetic, rapid-acting opiate analgesic, commonly added to heroin to increase its potency. Because fentanyl is hundreds of times more powerful than heroin,¹ individuals high on the international supply chain of heroin trafficking are incentivized to strengthen a diluted product.² This process, whereby fentanyl is added to heroin, most often occurs before the product

¹ Center for Disease Control and Prevention, “Fentanyl: Incapacitating Agent,” last modified November 20, 2014, http://www.cdc.gov/niosh/ersbdb/EmergencyResponseCard_29750022.html

² Fred Bever, “Illicit Version Of Painkiller Fentanyl Makes Heroin Deadlier,” NPR, last modified August 26, 2015, <http://www.npr.org/sections/health-shots/2015/08/26/434618809/illicit-version-of-painkiller-fentanyl-makes-heroin-deadlier>.

reaches the United States.³ When this occurs, street-level sellers (and consequently buyers) are often unaware of the makeup of their product and its potency.⁴

The Ayotte Amendments, in their attempt to extend punishments to low-level users and sellers, would subject individuals who suffer from opioid use disorders to lengthy sentences originally intended for large-scale traffickers. Under these amendments, a mere 0.5-20 grams of a mixture or substance containing fentanyl or an analogue of fentanyl would trigger mandatory minimum sentences of 5, 10, 20 years or even life without parole. These small amounts could be intended for personal use and possession rather than trafficking – increasing fentanyl penalties would result in the perpetuation of a public health crisis and the reversal of the work that has been done thus far in shifting our nation’s response to drug use toward public health instead of harsh incarceration.

We recognize the growing challenges around heroin in many communities, with an increasing number of overdose deaths attributed to the presence of fentanyl.⁵ The government must indeed respond to this crisis; however, in order to truly save lives and promote public safety, this response must be rooted in evidence-based practices. Mandatory minimum sentences have existed for heroin and fentanyl since 1986,⁶ yet these sentencing policies have done nothing to prevent or address the current crisis. The Ayotte Amendments would commit a grave error by allocating further resources toward sentencing requirements that have proven to be ineffective.

Fentanyl punishments are already harsher than those for heroin – current law requires far less fentanyl than heroin to trigger the mandatory minimum sentences designated in 21 U.S.C. §841. The Ayotte Amendments would exacerbate an already tenuous policy – the drug quantities for both heroin and fentanyl outlined in §841 are not themselves based in science or expert testimony, but rather were picked at random in an election year during an era of lawmakers being “tough-on-crime.”

Senator Ayotte has expressed the desire to “improve efforts to get this drug off the streets and appropriately prosecute those individuals and organizations who are profiting off of it.”⁷ The Ayotte Amendments would not achieve this, but would rather incarcerate low-level distributors and individuals who struggle with addiction. In a time when nearly 1 in 100 Americans is incarcerated⁸ and populations of color continue to be disproportionately affected by convictions

³ Brian MacQuarrie, “DEA Details Path of Deadly Heroin Blend to N.E.,” Boston Globe, June 29, 2014, <https://www.bostonglobe.com/metro/2014/06/28/fentanyl-laced-heroin-makes-journey-new-england-that-starts-colombia-and-mexico-dea-says/hVHvjvBE9cvV9lkKLV3cN/story.html>.

⁴ Barry Leonard, *National Drug Threat Assessment 2008* (Darby: Diane Publishing, 2009).

⁵ Donna Leinwand Leger, “DEA: Deaths from fentanyl-laced heroin surging,” USA Today, last modified March 18, 2015, <http://www.usatoday.com/story/news/2015/03/18/surge-in-overdose-deaths-from-fentanyl/24957967/>.

⁶ “21 U.S. Code § 841 – Prohibited acts A,” Legal Information Institute, Cornell University Law School, <https://www.law.cornell.edu/uscode/text/21/841>.

⁷ “Ayotte Introduces Bill to Reform Fentanyl Trafficking Penalties,” Kelly Ayotte, Senator for New Hampshire, Sept. 10, 2015, https://www.ayotte.senate.gov/?p=press_release&id=2174.

⁸ Adam Liptak, “1 in 100 U.S. Adults Behind Bars, New Study Says,” New York Times, Feb. 28, 2008, <http://www.nytimes.com/2008/02/28/us/28cnd-prison.html>.

and harsh sentences,⁹ we must embrace a public-health approach to combatting the harmful effects of fentanyl and other opioids. For these reasons, we strongly urge you to oppose the Ayotte Amendments, S. AMDT. 4082 and S. AMDT. 4083, to the NDAA.

Please contact Michael Collins – mcollins@drugpolicy.org – if you have any questions.

Sincerely,

American Civil Liberties Union (ACLU)

AIDS Alabama

Amity Foundation

Bend the Arc Jewish Action

CAN-DO Foundation

Charles Hamilton Houston Institute for Race and Justice

Chicago Recovery Alliance

The CHOW Project

Church of the Brethren, Office of Public Witness

Church of Scientology National Affairs Office

Citizens United for Rehabilitation of Errants (CURE)

Civic Trust Public Lobbying Company

Colorado Criminal Justice Reform Coalition

Corporation for Supportive Housing (CSH).

#cut50

The Daniel Initiative

Disciples Center for Public Witness

Drug Policy Alliance

Drug Policy Forum of Hawai'i

Drug Truth Network

Ella Baker Center for Human Rights

Exodus Foundation.org

Families Against Mandatory Minimums (FAMM)

Families for Sensible Drug Policy

⁹ “Racial Disparities in Sentencing,” ACLU, Oct. 27, 2014, https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.

FedCURE

Federal Public and Community Defenders

Friends Committee on National Legislation

The Global Justice Institute

Help Not Handcuffs

Housing Works

Human Rights Watch

Humboldt Institute for Harm Reduction

Illinois Consortium on Drug Policy

International Council of Community Churches

Law Enforcement Against Prohibition

The Leadership Conference on Civil and Human Rights

Life for Pot

Los Angeles Regional Reentry Partnership

Metropolitan Community Churches

Michigan NORML

Mommieactivist and Sons

Moms United to end the War on Drugs

NAACP

The NAACP Legal Defense and Educational Fund, Inc

National Alliance for Medication Assisted Recovery

The National Assn of County Behavioral Health and Developmental Disability Directors
(NACBHDD)

National Council of Jewish Women

The National Assn for Rural Mental Health (NARMH)

National Association of Social Workers

The National Federation of Families for Children's Mental Health

NACDL

The National Council of Churches

National LGBTQ Task Force Action Fund

National Organization for Women

National Register of Health Service Psychologists
National Urban League
NETWORK Lobby for Catholic Social Justice
New Orleans Harm Reduction Network
A New PATH
One Million Americans, Ltd
Peace Alliance
The Presbyterian Church (U.S.A.)
Public Justice Center
The Real Cost of Prisons Project
Reentry Central
Remove Intoxicated Drivers
Sensible Colorado
The Sentencing Project
St. Ann's Corner of Harm Reduction
StoptheDrugWar.org
Student Peace Alliance
Treatment Communities of America
T'ruah: The Rabbinic Call for Human Rights.
Trystereo
Unitarian Universalist Association
United Church of Christ, Justice and Witness Ministries.
United Methodist Church, General Board of Church and Society
Union for Reform Judaism
Virginians Against Drug Violence
VOCAL New York
Women Who Never Give Up
334 East 92nd Street Tenant Association