

December 11, 2023

Speaker Mike Johnson
H-232, The Capitol
Washington, DC 20515

House Majority Leader Steve Scalise
2049 Rayburn H.O.B.
Washington, DC 20515

House Minority Leader Hakeem Jeffries
2433 Rayburn H.O.B.
Washington, DC 20515

Chair Cathy McMorris Rodgers
House Energy & Commerce Committee
2188 Rayburn H.O.B.
Washington, DC 20515

Ranking Member Frank Pallone
House Energy & Commerce Committee
2107 Rayburn H.O.B.
Washington, DC 20515

Chair Jim Jordan
House Judiciary Committee
2056 Rayburn H.O.B.
Washington, DC 20515

Ranking Member Jerrold Nadler
House Judiciary Committee
2132 Rayburn H.O.B.
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CC: Senate Majority Leader Chuck Schumer; Minority Leader Mitch McConnell; Chair Bernie Sanders, U.S. Senate Committee on Health, Education, and Labor; Ranking Member Bill Cassidy, U.S. Senate Committee on Health, Education, and Labor; Chair Dick Durbin, U.S. Senate Judiciary Committee; and Ranking Member Lindsey Graham, U.S. Senate Judiciary Committee

Re: Opposition to Placing Xylazine on Schedule III of the CSA (Sec. 203, Title II of H.R. 4531)

Dear Speaker Johnson, Majority Leader Scalise, Minority Leader Jeffries, Chair McMorris Rodgers, Ranking Member Pallone, Chair Jordan, Ranking Member Nadler, and Honorable Members of Congress:

We, the undersigned public health, drug policy, criminal justice, and civil and human rights groups urge you to oppose placing xylazine on the Controlled Substances Act (CSA), as found in Sec. 203, Title II of the Support for Patients and Communities (SUPPORT) Reauthorization Act (H.R. 4531).

This provision of the legislation criminalizes xylazine, including simple possession, by placing the substance on Schedule III of the Controlled Substances Act (CSA). We are concerned that by placing xylazine on the CSA, Congress is setting a dangerous precedent.

1. Congress is circumventing the necessary scientific and medical evaluations that are typical in the drug scheduling process, thus undermining the established decision-making process for scheduling drugs and applying criminal penalties.
2. Congress is inadvertently creating research restrictions at a time when we need *more* research to understand xylazine's effects on humans.

3. Placing xylazine on the CSA will result in the disproportionate prosecution and sentencing of people with substance use disorder, including people who may not know xylazine is in their drug supply.

Rather than punitive responses to drug use, Congress should invest in xylazine research to find medical solutions to xylazine harm. It should also scale-up harm reduction services and evidence-based public health interventions for people who use drugs.

Science and Research Must Lead the Way

We are concerned Congress is preemptively placing xylazine on the CSA before scientific studies have been completed. Experts agree that there is a need for *further* research to better understand overdose risk and response, pathophysiology, patterns of xylazine use, clinical treatment and withdrawal management, wound treatment and management, harm reduction response, regulation, and potential racial disparities in drug enforcement, among other research topics.¹

Preliminary research on xylazine shows that xylazine is in fact an agonist at kappa opioid receptors.² Several notable kappa opioid agonists FDA-approved for human use include: pentazocine (Schedule IV), butorphanol (Schedule IV), and nalbuphine (not scheduled). Given the range in scheduling for similar drugs, it is unclear how one could justify placing it as Schedule III without further research.

Previous action by Congress has used molecular similarity to schedule fentanyl analogues. Xylazine challenges this paradigm. We call attention to dexmedetomidine which is nearly identical to xylazine, and is unscheduled. Dexmedetomidine is widely used as a medicine in hospital intensive care units and for treating mental health disorders. Scheduling dexmedetomidine would be massively disruptive, but by establishing the precedent with xylazine scheduling, this disruption is almost inevitable.

Drug User Health and Criminal Justice

We all want our loved ones and communities to be safe, but scheduling xylazine does not prevent overdose deaths. For example, a ban on xylazine in Florida illustrates that criminalizing the substance does not reduce overdose deaths. Florida placed xylazine on

¹ Harvey, Leah H., Traci C. Green, Ju Nyeong Park, and Josiah D. Rich. "Xylazine in the Drug Supply: A Research Agenda." *International Journal of Drug Policy* 120 (October 2023): 104190. <https://doi.org/10.1016/j.drugpo.2023.104190>.

² Bedard, Madigan L., Jackson G. Murray, Xi-Ping Huang, Alexandra C. Nowlan, Sara Y. Conley, Sarah E. Mott, Samuel J. Loyack, et al. "Xylazine Is an Agonist at Kappa Opioid Receptors and Exhibits Sex-Specific Responses to Naloxone Administration." Preprint. *Neuroscience*, September 9, 2023. <https://doi.org/10.1101/2023.09.08.556914>.

Schedule I of the state CSA in 2018.³ In 2018, there were 3,727 opioid overdose deaths in Florida; in 2021 that number had grown to 6,442.⁴

There are a number of potential criminal justice implications of scheduling that do not account for the realities of when and why people use xylazine.

1. **Most people who use drugs are not actively seeking xylazine** because they prefer heroin or other opioid drugs for their effects.⁵ Criminalization will impact many people who do not know they possess the substance and who were not seeking it out.
2. **Xylazine is predominantly found in conjunction with fentanyl, for which severe criminal penalties already exist.**⁶ It is estimated that 99.5% of xylazine-involved deaths in 2021 also involved illicitly manufactured fentanyl or fentanyl analogues,⁷ substances that are already criminalized.
3. Further, we have strong concerns that **criminalizing xylazine will disproportionately impact people with substance use disorder** and those involved at the lowest level of the drug distribution chain^{8 9} - who need help and access to health services. The majority of people at the lowest drug distribution level report using drugs (87.5%) and 43.1% meet the criteria for substance use disorder.¹⁰ Imposing severe penalties on these individuals without addressing the root causes of problematic drug use perpetuates social disparities.
4. Moreover, **sending people with substance use disorder into the criminal justice system makes them more vulnerable to overdose.** Data shows that people recently

³ "CHAPTER 2018-13." Committee Substitute for Committee Substitute for House Bill No. 21, March 19, 2018. https://laws.flrules.org/files/Ch_2018_013.pdf.

⁴ 2021 is the year the most recent complete data for mortality. Florida Department of Health, FL Health Charts, Substance Use Dashboard.

<https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=SubstanceUse.Overdose>

⁵ Los Angeles County Department of Public Health. "Xylazine in Illicit Drugs: Increased Overdose Risks in Los Angeles County." [Online]. June 2023. PDF. Los Angeles County, California. Available at: <http://publichealth.lacounty.gov/sapc/docs/public/overdose-prevention/XylazineLACounty.pdf>.

⁶ DEA Joint Intelligence Report. (2021). The growing threat of xylazine and its mixture with illicit drugs. DEA.gov. <https://www.dea.gov/sites/default/files/2022-12/The%20Growing%20Threat%20of%20Xylazine%20and%20its%20Mixture%20with%20Illicit%20Drugs.pdf>

⁷ Office of National Drug Control Policy, W. H. (2023, July). FENTANYL ADULTERATED OR ASSOCIATED WITH XYLAZINE RESPONSE PLAN. <https://www.whitehouse.gov/wp-content/uploads/2023/07/FENTANYL-ADULTERATED-OR-ASSOCIATED-WITH-XYLAZINE-EMERGING-THREAT-RESPONSE-PLAN-Report-July-2023.pdf>

⁸ Bewley-Taylor, D., Hallam, C., and Allen, R. "The Incarceration of Drug Offenders: An Overview." Beckley Foundation/International Centre for Prison Studies. Accessed April 19, 2011. http://www.idpc.net/php-bin/documents/Beckley_Report_16_2_FINAL_EN.pdf.

⁹ Sevigny, E., and Caulkins, J.P. "Kinpins or Mules? An Analysis of Drug Offenders Incarcerated in Federal and State Prisons." *Criminology and Public Policy* 3, no. 3 (2004): 401-434.

¹⁰ DPA. (2023, June 9). Rethinking and reducing punishment for people in the drug trade. Drug Policy Alliance. <https://drugpolicy.org/issue/rethinking-and-reducing-punishment-of-people-in-the-drug-trade/>

released from incarceration are twenty-seven times more likely to experience an overdose in their first two weeks of release than the general public.¹¹

5. **Criminalizing xylazine will not keep people safe.** Historical evidence shows that prohibiting substances does not reduce overdose rates.^{12 13} Instead, it creates a dangerous cycle that exposes people who use drugs to newer and potentially more dangerous alternatives from unknown sources. In fact, this trend gave rise to xylazine through the criminalization of various opioids. As restrictions were placed on prescription opioids, people turned to the underground heroin supply. Subsequent crackdowns on heroin prompted suppliers to produce fentanyl, and harsh fentanyl penalties fueled an explosion of fentanyl analogs.¹⁴ Now, xylazine is appearing¹⁵ as a consequence of the crackdown on fentanyl,¹⁶ and it follows that **criminalizing xylazine will only lead to the emergence of other - potentially more potent substances - in the illicit drug supply.**

We know that supply-side strategies fail to keep our communities safe. This is precisely why Congress must address demand by investing in harm reduction services and evidence-based public health interventions. Relying on a criminal approach will not yield different results for xylazine.

Policy Solutions

To prevent overdoses and mitigate the harms of the illicit drug supply, Congress must prioritize science-based decision-making and research, as well as harm reduction strategies and comprehensive public health approaches to the overdose epidemic. **Instead of hastily criminalizing xylazine as a controlled substance, lawmakers should focus on expanding overdose prevention services, Good Samaritan Laws, access to methadone, buprenorphine, and naloxone, and evidence-based drug education and treatment.**

¹¹ Cooper, J.A., Onyeka, I., Cardwell, C. et al. Record linkage studies of drug-related deaths among adults who were released from prison to the community: a scoping review. BMC Public Health 23, 826 (2023). <https://doi.org/10.1186/s12889-023-15673-0>

¹² Lalander, P. and Salasuo, M., eds. 2005. Drugs and Youth Cultures: Global and Local Expressions. Helsinki: Nordic Council for Alcohol and Drug Research.

¹³ Bradley Ray et al. "Spatiotemporal Analysis Exploring the Effect of Law Enforcement Drug Market Disruptions on Overdose, Indianapolis, Indiana, 2020–2021", American Journal of Public Health 113, no. 7 (July 1, 2023): pp. 750-758.

¹⁴ CATO Institute. (2019). Overdosing on Regulation: How Government Caused the Opioid Epidemic. Cato.org <https://www.cato.org/policy-analysis/overdosing-regulation-how-government-caused-opioid-epidemic>

¹⁵ Friedman, Joseph, Fernando Montero, Phillippe Bourgois, Rafik Wahbi, Daniel Dye, David Goodman-Meza, and Chelsea Shover. 2022. "Xylazine spreads across the US: A growing component of the increasingly synthetic and polysubstance overdose crisis." Drug and Alcohol Dependence, Volume 233. <https://www.sciencedirect.com/science/article/abs/pii/S037687162200117X>

¹⁶ Montero, Fernando, Philippe Bourgois, and Joseph Friedman. 2022. "Potency-Enhancing Synthetics in the Drug Overdose Epidemic: Xylazine ("Tranq"), Fentanyl, Methamphetamine, and the Displacement of Heroin in Philadelphia and Tijuana." Journal of Illicit Economies and Development. <https://jied.lse.ac.uk/articles/10.31389/jied.122>

Additionally, efforts should be made to study and collect data on the presence and distribution of xylazine, expand access to xylazine test strips, and research potential medications that treat xylazine withdrawal and wounds.

Given the concerns outlined in this letter, **we strongly urge Congress to oppose temporarily or permanently placing xylazine on Schedule III of the CSA.** This is a reactionary extension of the War on Drugs, and will only exacerbate the harms of the illicit drug supply.

Thank you for your time and attention to this matter. Please contact Maritza Perez Medina, Director of the Office of Federal Affairs of the Drug Policy Alliance, at mperez@drugpolicy.org for questions about this letter or to further discuss this matter.

Sincerely,

AIDS Foundation Chicago (IL)
AIDS United
American Civil Liberties Union
Any Positive Change Inc (CA)
CASJ (NY)
Center for Housing & Health (IL)
Chicago Women's AIDS Project (IL)
Connecticut Harm Reduction Alliance (CT-HRA) (CT)
DanceSafe
Dream.org
Doctors for Drug Policy Reform
Drug Policy Alliance
Due Process Institute
Faith in Harm Reduction
Federal Public and Community Defenders
Fruit of Labor Action Research & Technical Assistance, LLC (NC)
Harm Reduction Works-HRW
HealthRight360 (CA)
HIPS (DC)
Housing Works (NY)
Immigrant Justice Network
IOAD NC Raleigh (NC)
JustLeadersipUSA
LatinoJustice (PRLDEF)
Law Enforcement Action Partnership
The Leadership Conference on Civil and Human Rights
Los Angeles Community Action Network (CA)
Miami Valley Harm Reduction Ohio (OH)
MoNetwork (MO)
NASTAD

National Association of Criminal Defense Lawyers
National Black Justice Coalition
National Employment Law Project
National Harm Reduction Coalition
National Pain Advocacy Center
NETWORK Lobby for Catholic Social Justice
New York Recovery Alliance (NY)
NHHRC (NH)
Pennsylvania Harm Reduction Network (PA)
Prison Policy Initiative
Scioto Connect (OH)
SOL Collective (PA)
SOOAR (MI)
Southern Tier AIDS Program (NY)
The Ali Forney Center (NY)
The Gubbio Project (CA)
The Hepatitis C Mentor and Support Group – HCMSG (NY)
The Porchlight Collective SAP (IL)
The Sentencing Project
The Sidewalk Project
The SOAR Initiative (OH)
Twin City Harm Reduction Collective (NC)
Vera Institute of Justice
Victory Programs, Inc. (MA)
Vivent Health
VOCAL-NY (NY)
Washington Office on Latin America (WOLA)