



Families Against Fentanyl

A compilation of existing federal statutes and agency authorities that pertain to a Weapon of Mass Destruction Designation

Federal Statutes Applicable to Chemical Weapons

- [18 US. Code 2332a](#)

- “Federal statutes make anyone who uses, threatens, attempts or conspires to use a weapon of mass destruction a crime punishable by life imprisonment, and if death results, by death (See 18 US. Code 2332a.) Fentanyl and its analogues (particularly carfentanil) are such weapons defined by the statutes: They are toxins consisting of synthetic molecules capable of causing death or other biological malfunction in humans.” (*Landay, J. (2019, August 2) Reuters article “Trump accuses China’s Xi of failing to halt fentanyl exports to US.”*)
- “A person, without lawful authority, uses, threatens, attempts or conspires to use a weapon of mass destruction. . . . Shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life”

- [18 U.S. Code Chapter 11B](#) - Criminal Procedure 229

- [18 USC 229](#) - *prohibited activities*

- **(a) Unlawful Conduct.**—Except as provided in subsection (b), it shall be unlawful for any **person** knowingly—
 - **(1)** to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any **chemical weapon**; or
 - **(2)** to assist or induce, in any way, any **person** to violate paragraph (1), or to attempt or conspire to violate paragraph (1).

- [18 USC 229A](#) - *Penalties*

- **(a) Criminal Penalties.**—

- **(1) In general.**— Any **person** who violates **section 229 of this title** shall be fined under this title, or imprisoned for any term of years, or both.
- **(2) Death penalty.**— Any **person** who violates **section 229 of this title** and by whose action the death of another **person** is the result shall be punished by death or imprisoned for life.

- **(b) Civil Penalties.**—

- **(1) In general.**— The Attorney General may bring a civil action in the appropriate **United States** district court against any **person** who violates

[section 229 of this title](#) and, upon proof of such violation by a preponderance of the evidence, such [person](#) shall be subject to pay a civil penalty in an amount not to exceed \$100,000 for each such violation.

- **(2)Relation to other proceedings.**— The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the [United States](#) or any other [person](#).

- [18 USC 229E](#) - *Military Assistance to Enforce Prohibitions*

- The Attorney General may request the Secretary of Defense to provide assistance under [section 382 of title 10 \[1\]](#) in support of Department of Justice activities relating to the enforcement of [section 229 of this title](#) in an emergency situation involving a [chemical weapon](#). The authority to make such a request may be exercised by another official of the Department of Justice in accordance with [section 382\(f\)\(2\) of title 10.\[1\]](#)

- [22 USC 5605](#) - *Sanctions Against Use of Biological or Chemical Weapons* - **(a) Initial sanctions**

If, at any time, the President makes a determination pursuant to [section 5604\(a\)\(1\)](#) of this title with respect to the government of a foreign country, the President shall forthwith impose the following sanctions:

- **(1) Foreign assistance**

- **(2) Arms sales**

- **(3) Arms sales financing**

- **(4) Denial of United States Government credit or other financial assistance -**

(5) Exports of national security-sensitive goods and technology

- **(b) Additional sanctions if certain conditions not met**

- **(1) Presidential determination** Unless, within 3 months after making a determination pursuant to [section 5604\(a\)\(1\)](#) of this title with respect to a foreign government, the President determines and certifies in writing to the Congress that-

- (A) that government is no longer using chemical or biological weapons in violation of international law or using lethal chemical or biological weapons against its own nationals,

- (B) that government has provided reliable assurances that it will not in the future engage in any such activities, and

- (C) that government is willing to allow on-site inspections by United Nations observers or other internationally recognized, impartial observers, or other reliable means exist, to ensure that that government is not using chemical or biological weapons in violation of international law and is not using lethal chemical or biological weapons against its own nationals, then the President, after consultation with the Congress, shall impose on that country the sanctions set forth in at least 3 of subparagraphs (A) through (F) of paragraph (2).

- **(2) Sanctions** The sanctions referred to in paragraph (1) are the following: -

(A) Multilateral development bank assistance

- **(B) Bank loans**
- **(C) Further export restrictions**
- **(D) Import restrictions**
- **(E) Diplomatic relations**

- Chemical Weapons Convention - Organization for the Prohibition of Chemical Weapons -
Carfentanil is already banned in the battlefield under the Chemical Weapons Convention - Under the
OPCW definition - fentanyl could qualify as a chemical weapon
- The general purpose criterion still holds to the extent that chemicals considered
CNS-acting meet the definition of toxic chemicals
 - Items with peaceful civilian uses, when used or intended for chemical
weapons use (dual-use items)
 - **While providing for the prevention of production or
stockpiling of chemical weapons, the definition of chemical
weapons does not result in restrictions of any State Party's right
to produce and use chemicals for peaceful purposes or to acquire
and retain conventional weapons and their associated delivery
systems
 - ***but if the stockpiling of synthetic fentanyl and its
analogs were to exceed the quantity necessary for its
intended use, the CWC would likely be able to require
that State parties destroy the excess
 - Moreover, a number of toxins are also synthetic dual-use
chemicals, meaning that under the CWC they can be produced in
the quantities required for legitimate activities
- Info included below is from the 22nd session of OPCW in Dec. 2017
 - Three main issues of concern addressed in the session, one of which addressing
“central nervous system-acting chemicals” which includes fentanyl
 - CNS drugs, specifically fentanyl, pose a serious threat to the Chemical
Weapons convention and “if first responders in the U.S. are at risk when
encountering illicit fentanyl - how can our unsuspecting populations be
safe when fentanyl is aerosolized and used as a law enforcement tool?”
 - Labeling it a WMD could potentially lead to greater enforcement by the
OPCW and could lead to it being included as a threat to the CWC
 - Could also employ CWC article VII
 - “Comprehensive penal and export control legislation at the national
level.”
 - Would not only deter those who would use chemical weapons,
but also those who would support them or provide materials,
knowledge or safe haven.

Agency by Agency Breakdown

The list below was compiled by studying how various agencies are already addressing WMDs, and how those procedures could potentially apply to illicit fentanyl if it were to be designated a WMD. For the agencies that have already established a set of standards specific to illicit fentanyl (and its analogues), we simply considered how those standards could be expanded upon.

- **CBP**
 - Current responsibilities related to terrorists & weapons of terror:
 - Detect, respond to, and interdict terrorists who are entering, or have recently entered, the United States
 - Develop and implement screening and targeting capabilities
 - *Air and Marine Operations*
 - Serve as the law enforcement office within the U.S. Customs and Border Protection with primary responsibility to detect, interdict, and prevent acts of **terrorism** and the unlawful movement of people... across the borders of the United **States** in the air and maritime environment
 - *Office of Field Operations*
 - Coordinate the enforcement activities of CBP to deter and prevent terrorists and terrorist weapons from entering the United States at land, air, and sea ports of entry
 - *Office of Intelligence*
 - Establish intelligence sharing relationships with federal, state, local, and tribal agencies
- **CDC**
 - Environmental Hazards and Health Effects Program
 - Providing medical toxicological expertise and clinical guidance to local, state, and federal agencies during national and international chemical-terrorism events. For example, after the intentional placement of ricin in a threatening letter found in the Greenville, South Carolina, postal system in October 2003, medical toxicologists from EHHE
 - traveled to the scene and assisted state and county officials with the epidemiologic investigation;
 - assisted the National Institute for Occupational Safety and Health with environmental sampling; o developed ricin-specific documents—including fact sheets and case definitions for public health surveillance—for the general public, clinicians, and public health officials;
 - published results of the investigation (MMWR Nov. 21, 2003;52[46]:1129-31; <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5246a5.htm>); and

- posted a Web cast, titled “Recognition, Management and Surveillance of Ricin-Associated Illness,” at <http://www.phppo.cdc.gov/phtn/webcast/ricin/default.asp>.
 - Cooperating with states and other partners, including the American Red Cross and the Interstate Chemical Terrorism Conference, to develop communication strategies
- *DEA*
 - Give them the ability to intervene in online sales of illicit fentanyl
 - To enforce the CSA if sellers of controlled substances do not comply with inspection requirements - and if they do not register through DEA form 452
 - If fentanyl is declared WMD by executive order, or by legislative action, the intelligence program could be given additional resources to:
 - Implement immediate enforcement plans
 - Provide analytical support to investigations and prosecutions to dismantle criminal organizations and gain resources
- *DOD*
 - More resources detection - interdiction getting the intercepting disrupting international trafficking supply
 - The defense of nuclear, chemical and biological programs (NCB) has already taken measures to ensure the security of nuclear weapons and nuclear command and control facilities... labeling fentanyl a WMD could similarly lead to an increase in security around its manufacturing
 - Share the cost of research and development and improve the interoperability of systems and processes to improve response to WMD threats
- *DHS*
 - increase resources both at the border and the science technology directorate (develop fentanyl detection technology at borders, including AI - currently x-ray and human detects anomalies)
 - CWMD department
 - Anticipate, identify, and assess current and emerging WMD threats.
 - Strengthen detection and disruption of CBRN threats to the homeland.
 - Synchronize homeland counter-WMD and health security planning and execution.
 - allows them to study and interrupt the supply chain as they do with other WMDs
 - Just this year, the DHS CWMD has awarded around \$88 million to contractors, the U.S. Coast Guard and to DHS partners in order to provide them with nuclear and radiological detection equipment
 - If fentanyl became recognized as a serious chemical weapons threat, would allow some of that money to go towards chemical weapons threat reduction

- *DOJ*

- Article detailing how DOJ responds to WMDs
 - 2010 report - How DOJ responds to WMDs
 - *as of 2010 (potentially out of date info - use with caution) “the Department and ATF have not made personnel assignments to manage these activities, and ATF has not developed a catalog of law enforcement resources – people and equipment – available to be deployed in the event of a WMD incident.”
 - If this is still true, with additional funding - could designate personnel assignments to manage the coordination of law enforcement and safety of the public.
 - “” could also develop a catalog of law enforcement resources that could be used if necessary
 - assigned by ESF-13 to coordinate law enforcement activities in response to a WMD, to ensure public safety and security in the event it overwhelms law enforcement ■ Would give them the ability to designate more intelligence, law enforcement and legal action against folks manufacturing and distributing illicit fentanyl
 - Through resource allocation
 - The new legal designation would give them more room to come down on fentanyl networks, to prosecute those involved in accordance with 18 US. Article 2332a, and to target the means of transport to protect the safety of the American public

- *DNI*

- more intelligence collection on international manufacturing and trafficking organizations

- *DTRA*

- Mission:
 - DTRA provides cross-cutting solutions to enable the Department of Defense, the United States Government, and international partners to Deter strategic attack against the United States and its allies; Prevent, reduce, and counter WMD and emerging threats; and Prevail against WMD-armed adversaries in crisis and conflict.

- *FBI*

- Already has a WMD response program managed by FBI’s WMD Directorate
 - Give them more power to:
 - Manage investigations
 - Intervene in the online sales and USPS shipment of illicit fentanyl from abroad through
 - hacking and/or seizing websites selling the drug

- “*Law Enforcement*” - (NSA, CIA, FBI, DEA, and/or CSA)
 - Could allow them to intervene in the online selling and purchasing of illicit fentanyl.
 - Specifically hack or seize websites found to be selling the drug.
 - Create fake “fishing” websites that offer fentanyl and its analogues but that fail to deliver it thus creating distrust among buyers.
 - Could give them the ability to monitor the purchasing and shipping of:
 - Precursor materials needed to manufacture illicit fentanyl
 - The ordering of punches and dies for legitimate pharmaceutical products via the internet by private individuals
 - Importation of large quantities of binding agents such as microcrystalline cellulose and magnesium stearate

- [OCDETF](#) - Organized Crime Drug Enforcement Task Forces (relevant to illicit drug trafficking - not necessarily WMD)
 - Independent component of the U.S. Department of Justice. Established in 1982, OCDETF is the centerpiece of the Attorney General’s strategy to combat transnational-organized-crime and to reduce the availability of illicit narcotics in the nation by using a prosecutor-led, multi-agency approach to enforcement.
 - OCDETF is the largest anti-crime task force in the country. Led by an Executive Office and accountable for over 500 federal prosecutors, 1,200 federal agents, and some 5,000 state/local police, OCDETF implements a nationwide strategy combining priority targeting, coordination, intelligence sharing, and directed resourcing to have the greatest impact disrupting and dismantling command and control elements of criminal organizations.

- *State Department*
 - non-proliferation
 - The Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) advises the President, Secretary of State, and other agencies within the U.S. Government on the development of policies and programs to combat international narcotics and crime.
 - INL's counter-narcotics and anti-crime programs also complement the war on terrorism, both directly and indirectly, by promoting modernization of and supporting operations by foreign criminal justice systems and law enforcement agencies charged with the counter-terrorism mission.
 - INL administers a number of comprehensive international enforcement training programs in collaboration with DEA and CBP, providing assistance to law enforcement and customs and other border security agencies in countries considered to pose a threat to the United States in terms of narcotics production or movement, organized crime, and terrorist activity.
 - Direct State to use INL to support programs attacking fentanyl as a WMD
 - According to the OPCW Dec. 2017 session, the State Dept. already committed to

providing up to 15M USD in chemical weapons threat reduction equipment and training to medical personnel and first responders

- *labeling it a WMD would give them potentially more funds to address fentanyl threat reduction as they have been doing with other chemical weapons
- Office of Weapons of Mass Destruction Terrorism
 - Already:
 - Partners with priority foreign nations in order to improve their ability to respond to a CBRN (chemical, biological, radiological or nuclear) incident
 - Represents the dept. in interagency policy development and implementation, participates as subject matter experts in CBRN consequence management exercises, and assists U.S. embassies in enhancing their consequence management preparedness
 - The GP already allocated more than \$20 billion in funding in efforts to reduce the WMD threat and prevent CBRN terrorism - labeling fentanyl a WMD could direct more of the GP funds towards fentanyl manufacturing and distribution
- Office of Chemical and Biological Weapons Affairs
 - promote the global ban on chemical weapons as embodied in the Chemical Weapons Convention (CWC),
 - develops policies to address emerging chemical weapons issues and challenges, ■ assesses compliance with the CWC and the Biological Weapons Convention (BWC),
 - and serves as the U.S. National Authority overseeing U.S. implementation of the CWC.
- TraCC (Terrorism, Crime and Corruption Center)
 - Gives them the ability to conduct further, and more thorough research on the trade and manufacturing of fentanyl
 - Could look specifically at:
 - Where the fentanyl is being produced (not just generally China)
 - The route that fentanyl takes into the U.S. - is it a straight shot or does it go through other locations first
 - How much illicit fentanyl is currently being stockpiled and by whom
 - How widespread the problem is - does the threat of fentanyl extend outside of the U.S.
 - Could give insight into the nature of the problem
- *Treasury/USTR - OFAC -*
 - could be directed to do more but doing a lot, more financial tools available
 - More resources to OFAC to pursue, counter narcotics sanctions
 - Directing Treasury OFAC to increase sanctions against drug traffickers
 - Freeze and Seize assets → is there an existing language terrorism piece?
- *UN Office on Drugs and Crime (UNODC)*

- Already been addressing the ongoing opioid (specifically synthetic opioid) crisis through a strategy that includes:
 - “Early warning and trend analysis
 - Generating evidence in support of effective policy decisions and operational responses
 - Rational prescribing and access to opioids for medical and scientific use
 - Promotes interagency cooperation in addressing the non-medical use of opioids
 - Prevention and treatment programs
 - Strengthening and supporting prevention and treatment programmes related to opioids
 - International law enforcement operations to disrupt trafficking
 - Enhancing operational activities to prevent the diversion and trafficking of synthetic opioids
 - Strengthening national and international counter narcotic capacity
 - Raising awareness, sharing best practices and promoting international cooperation”
- Various UN frameworks and legal instruments addressing the preparation, handling and response to acts of terrorism focus on nuclear weapons (according to <https://www.un.org/counterterrorism/international-legal-instruments>)
 - Labeling fentanyl as a WMD could potentially shift the UNODC’s response to its manufacturing, distribution and usage from one of a drug epidemic to one of a terrorist threat
 - Currently legal instruments in addressing terrorism include, but are not limited to, the following:
 - “Instrument regarding the nuclear material”
 - “Instrument regarding explosive materials”
 - “Instrument regarding terrorist bombings”
 - “Instrument regarding the financing of terrorism”
 - “Instrument regarding nuclear terrorism”
- [*UN Organisation for the Prohibition of Chemical Weapons*](#)
 - Declarations
 - As a primary step toward meeting destruction obligations, the Convention requires States Parties to submit declarations on their existing chemical weapons, chemicals, materials, equipment, and facilities that could be used to produce such weapons. These declarations provide baseline data to the OPCW for planning inspections and for verifying destruction.
 - Destruction
 - A State Party can select and implement the appropriate destruction technologies for its chemical weapons by which chemicals are converted in an essentially irreversible way to a form unsuitable for production of chemical weapons and which – in an irreversible manner – renders munitions and other devices unusable

as such.

- Verifying destruction
 - All destruction activities undertaken by Member States are required to occur under the watchful eye of the OPCW. The goal of verification activities is to confirm the complete destruction of chemical weapons, to provide confidence to States Parties regarding the integrity of the destruction process and the facility as a whole, and to ensure the non-diversion of chemical weapons.

- *US postal service, FedEx, Amazon, UPS & Customs*
 - The WMD designation could allow the USPS and customs to screen and interdict packages with fentanyl and other opioids before entering the U.S.
 - The U.S. should also close the de minimis loophole which is allowing illicit fentanyl to be shipped amid a record number of shipments from China without adequate data or screening and without tariffs to offset screening costs for CBP.
 - USPS has already notified China that any incoming package that doesn't contain "Advance Electronic Data" (AED) "they may be returned at any time"

- *White House*
 - Current statement on weapons of mass destruction
 - "We resolve to work together to counter the proliferation of weapons of mass destruction and renew global arms control efforts."
 - Focused specifically on nuclear weapons in Iran
 - Has the power to fully establish and authorize Dept. of Homeland Security CWMD's office
 - Which would give the DHS CWMD greater authority to:
 - Anticipate, identify, and assess current and emerging WMD threats.
 - Strengthen detection and disruption of CBRN threats to the homeland.
 - Synchronize homeland counter-WMD and health security planning and execution.
 - Establish a White House Task Force on the fentanyl crisis.
 - Via executive action or legislative action the U.S. should close the de minimis loophole in international shipping, which is allowing illicit fentanyl to be shipped amid a record number of shipments from China without adequate data or screening and without tariffs to offset screening costs for CBP.