



Office of the Deputy Attorney General  
Washington, D.C. 20530

February 22, 2024

The Honorable Carlton W. Reeves, Chair  
United States Sentencing Commission  
One Columbus Circle, NE  
Suite 2-500, South Lobby  
Washington, DC 20002-8002

Dear Judge Reeves:

As the Commission considers the various proposed guideline amendments published for public comment in December, I write to supplement our written comments on these proposals and to highlight for the Commission two critically important public safety issues that are cutting short far too many lives in communities across our country: fentanyl poisoning and firearms violence. Fentanyl contributed to the deaths of about 73,600 Americans in the year leading up to September 2023.<sup>1</sup> In all of 2023, nearly 19,000 Americans died of firearms violence.<sup>2</sup>

The Department identified these issues in our July 31, 2023, letter to the Commission, and we raise them again now so the Commission will keep them front of mind in the coming months as you consider and vote on the pending amendment proposals. While we appreciate that sentencing policy alone cannot solve these national crime problems, we believe the Commission has a vital role to play in addressing them.

Fentanyl poisoning and firearms violence both disproportionately affect youthful individuals. Fentanyl is one of the leading causes of death for Americans between the ages of 18 to 45,<sup>3</sup> and firearm injuries are among the leading causes of death among children and teens.<sup>4</sup>

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<sup>1</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, *Provisional Drug Overdose Death Counts*, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (synthetic opioids, September 2022 to September 2023) (last accessed Feb. 21, 2024).

<sup>2</sup> Chip Brownlee, *Gun Violence by the Numbers in 2023*, THE TRACE, Dec. 31, 2023, <https://www.thetrace.org/2023/12/data-gun-violence-deaths-america/> (last accessed Feb. 21, 2024).

<sup>3</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, *U.S. Overdose Deaths In 2021 Increased Half as Much as in 2020 – But Are Still Up 15%*, [https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2022/202205.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm) (Synthetic opioids caused 71,238 deaths in 2021, up from 57,834 the year before.); Centers for Disease Control and Prevention, “Data Analysis & Resources” (last accessed Feb. 21, 2024), <https://www.cdc.gov/opioids/data/analysis-resources.html> (last accessed Feb. 21, 2024). Fentanyl appears to be the leading cause of death amongst 18- to 45-year-olds in 2019 and 2020, but not among all America adults. See Nusaiba Mizan, *Fact-check: Is fentanyl the leading cause of death among American adults?*, EL PASO TIMES (Feb. 2, 2023), <https://www.elpasotimes.com/story/news/2023/02/02/fentanyl-overdose-cause-of-death-among-adults-greg-abbott/69867350007/> (last accessed Feb. 21, 2024).

<sup>4</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, *Summary of Initial Findings from CDC-Funded Firearm Injury Prevention Research*, [Summary of Initial Findings from CDC-Funded Firearm](#)



I urge you to consider what effect the changes you are considering now will have on reducing violent crime and helping address fentanyl poisoning and firearms violence.

**The Fentanyl Epidemic.** Fentanyl is cheap to make, easy to disguise, and all too often, deadly to those who take it. Fueling the problem is the ease with which fentanyl can be produced, bought, and sold, as cartels use the dark web and social media to market “to unsuspecting children, young adults, and members of the public who think they are getting legitimate prescription drugs” but are actually purchasing potentially fatal doses of fentanyl.<sup>5</sup> Making matters worse, fentanyl mixed with xylazine is appreciably deadlier. Xylazine can render lifesaving medications, like naloxone, less effective in treating overdoses.

The Department thanks the Commission for the initial steps it took last amendment cycle to address these issues, but substantial work remains. As we more fully explain in our letter commenting on the amendment proposals, we recommended that the Commission adopt a new base offense level and enhancements – lower than those applicable when a mandatory minimum is charged but higher than that applicable to drug distribution that does not result in death – for cases involving death or serious bodily injury but in which the particular circumstances suggest it may be inappropriate to pursue charges carrying a 20-year mandatory term of imprisonment.<sup>6</sup> It is the policy of this Administration that the mandatory minimum penalties set forth in 21 U.S.C. §§ 841 and 960 should be applied cautiously and only in cases that merit them.<sup>7</sup> We also recognize that fentanyl and other controlled substances have led to an unprecedented number of overdose and drug poisoning deaths, especially involving young people, and that traffickers should be held accountable when death or serious bodily injury results from their conduct.

The Department has recommended other amendments intended to combat these problems. *First*, we recommended an enhancement applicable to all distributions of controlled substances to children and young adults under 21. *Second*, we recommended that the Commission expand application of the existing enhancements in §2D1.1(b)(7) to apply to drug traffickers who use direct private communications associated with interactive computer services and to provide further enhancements for those who use anonymizing technologies to avoid

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[Injury Prevention Research | Violence Prevention | Injury Center | CDC](#) (last accessed Feb. 21, 2024). Taking into account all types of firearm injuries, including homicides, suicides, and unintentional injuries, firearm injuries were the leading cause of death among children and teens ages 1 to 19 in 2020 and 2021.

<sup>5</sup> Press Release, Drug Enforcement Administration, *Fentanyl Deaths Climbing, DEA Washington Continues the Fight* (Feb. 16, 2022), <https://www.dea.gov/stories/2022/2022-02/2022-02-16/fentanyl-deaths-climbing-dea-washington-continues-fight> (last accessed Feb. 21, 2024); Press Release, Drug Enforcement Administration, *Fentanyl distributor who used the dark web and crypto currency sentenced to 30 years in federal prison* (Oct. 3, 2019), <https://www.dea.gov/press-releases/2019/10/03/fentanyl-distributor-who-used-dark-web-and-crypto-currency-sentenced-30> (last accessed Feb. 21, 2024).

<sup>6</sup> In instances where death or serious bodily injury results, the “safety valve” would not provide a remedy to avoid application of the mandatory minimum sentences. 18 U.S.C. § 3553(f); USSG §5C1.2.

<sup>7</sup> The Attorney General has instructed prosecutors that “charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges would not sufficiently reflect the seriousness of the defendant’s criminal conduct, danger to the community, harm to victims and such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation.” Memorandum for All Federal Prosecutors from Merrick Garland, Attorney General, Regarding Additional Department Policies Regarding Charges, Pleas, and Sentencing in Drug Cases (Dec. 16, 2022), <https://www.justice.gov/media/1265321/dl?inline> (last accessed Feb. 21, 2024) (alterations and internal quotation marks omitted).



detection. *Third*, we explained that the Commission should consider amending the Guidelines to account for convictions involving fentanyl that is adulterated with xylazine. *Finally*, we recommended that the Commission consider an enhancement for possession of especially dangerous firearms or quantities of firearms, including three or more firearms, a semiautomatic firearm capable of accepting a large capacity magazine, or a firearm as described in 26 U.S.C. § 5845.<sup>8</sup> We look forward to renewing these proposals—and identifying additional ones—that would help us turn the corner in our campaign to overcome the fentanyl epidemic.

**Firearms Violence.** Far too many Americans continue to die from firearms violence, and current anomalies in §2K1.1 continue to result in sentences that do not reflect the severity and dangerousness of that conduct. “Glock switches,” which convert “an already dangerous firearm into an extremely dangerous machinegun,”<sup>9</sup> remain a significant concern in our communities and for our law enforcement officers. And defendants with prior misdemeanor domestic-violence convictions or prior firearm-related convictions who then commit additional firearms offenses do not currently qualify for the recidivism enhancement in §2K2.1. Regrettably, the presence of a firearm substantially increases the lethality of domestic-violence offenses.<sup>10</sup> Moreover, as the Commission has observed, firearms offenders recidivate at a higher rate than non-firearms offenders. For these reasons, as we more fully explain in our letter commenting on the pending amendment proposals, we urge the Commission to preserve application of the existing four-level enhancement for “altered or obliterated serial numbers” even where the serial number remains legible despite the alteration.

The Department has submitted other recommendations addressing firearms violence. *First*, the Department recommended that the Commission amend the definition in Application Note 1 to make clear that it includes firearms under both § 5845(a) and § 921(a)(3). *Second*, we urged the Commission to treat prior misdemeanor crimes of domestic violence and prior firearm-related convictions as qualifying predicates for §2K2.1’s recidivism enhancement. *Finally*, to reduce the complexity of the calculation and allow the type of offense to dictate the base offense level, the Department recommended converting the base offense levels for dangerous firearms and prior serious crimes into specific offense characteristics. Simplifying the base offense level structure will also make it easier for the Commission to research and analyze §2K2.1 sentencing data to better inform future amendments.

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<sup>8</sup> Consistent with the current Guidelines, we do not propose that this enhancement be used in conjunction with violations of 18 U.S.C. § 924(c). USSG §2K2.4, comment. n.4.

<sup>9</sup> *United States v. Hixson*, 624 F. Supp. 3d 930, 940 (N.D. Ill. 2022) (“The dangerousness manifests itself not only in the sheer number of bullets that can be emptied from the magazine in the blink of an eye but also in the resulting lack of control of the firearm when discharging it.”).

<sup>10</sup> DEP’T OF JUSTICE, *Firearms and Domestic Violence: The Intersections* (Dec. 13, 2016), <https://www.justice.gov/archives/ovw/blog/firearms-and-domestic-violence-intersections> (last accessed Feb. 21, 2024).

We appreciate the opportunity to reaffirm the importance of these requests. We look forward to continuing our collaboration and to renewing these requests and addressing them more substantively during the next amendment cycle.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa Monaco", with a stylized, flowing script.

Lisa Monaco  
Deputy Attorney General