

PowerPost Analysis

The Health 202: Obscure provision in House opioids' bill could restart war on drugs

By Colby Itkowitz

THE PROGNOSIS

Criminal justice reform has long made for strange bedfellows. It's an issue that unites progressives and conservatives, that created a "bromance" between Sens. Cory Booker (D-N.J.) and Rand Paul (R-Ky.) and that found Sens. Chuck Schumer (D-N.Y.) and Mike Lee (R-Utah) [cosponsoring](#) the same bill.

Now the issue is once again bringing together the far left and the far right over a slice of Congress's opioid legislation.

The issue in question is a change that has been mostly under the radar as lawmakers move a package of dozens of bills to address the public-health crisis. **In the House version of a package to address the opioid crisis, but not the Senate one, is a provision that gives the attorney general power to create a special category for synthetic drugs, like the highly toxic fentanyl, and set penalties for those who make or sell them, giving the nation's chief law enforcement new authority to enact harsh penalties.**

What critics hear is: War on Drugs redux.

"They're dusting off the old drug war playbook," said Michael Collins of the Drug Policy Alliance. "This is only going to increase the prison population and repeat the mistakes of the 1980s."

The issue is one of the sticking points as lawmakers rush to reconcile the opioids' package [the Senate passed](#) Monday with [the one approved by the House](#) in June with the goal of having a final bill to President Trump's desk before the November midterms.

Left-leaning groups such as the American Civil Liberties Union and the Human Rights Watch have partnered with the right's FreedomWorks and American Conservative Union in opposition to the proposal, which they say expands ineffective drug policy.

"Look, opioids are a very real problem and Congress is right to try to deal with it," Jason Pye, vice president of legislative affairs for FreedomWorks, told me. "But let's face it, in the vast majority of instances people who

deal drugs either they have an addiction problem or lack economic opportunity and that's where Congress should be focused instead of doubling down on a 40-year failed approach to the issue."

After President Nixon first declared a war on drugs in the 1970s, the prison population exploded with people serving long sentences for drug offenses. Yet [research has shown](#) the decades-long federal crackdown on drug distribution and possession did little to reduce drug use or illegal trafficking. So in recent years, there's been a push to find new drug policies that focus on prevention and rehabilitation rather than incarceration.

"These kinds of penalties don't deter people from selling," said [John Carnevale](#), president and CEO of Carnevale Associates, which consults on drug policy issues. "I would encourage anybody moving in this direction to consult the research before putting a schedule together."

Carnevale worked in the White House Office of National Drug Control Policy (ONDCP) for more than decade, serving under three administrations. He saw up close how tough drug laws did nothing to keep drugs off the street. The best way to deal with drug epidemics is through treatment programs, he told me, and to head them off through intervention programs before they become epidemics.

The desire to create a new law-enforcement category for currently unregulated chemical compounds is a response to the growing use of fentanyl in drugs like heroin and cocaine. Often users don't know their drugs are laced with the incredibly potent and lethal narcotic. It's resulted in tens of thousands of overdose deaths.

If passed as written into the House bill, the new law "would create a new schedule, Schedule A, for substances that are chemically similar to already-regulated drugs. The attorney general would be able to place new compounds in Schedule A for a period of up to five years. Critics say this amounts to giving the attorney general the power to unilaterally write federal drug policy," our Post colleague Christopher Ingraham [explained in a June 2017 article](#) when the idea was first considered.

"We don't want any attorney general to have this kind of power," said Jasmine Tyler, advocacy director for the Human Rights Watch US Program. "But I think specifically when we have an attorney general who is so out of touch with this century's expert thinking on these issues, there should be red flags for that."

Complicating the issue for advocates is **Attorney General Jeff Sessions**, who has been openly hostile to criminal justice reform efforts, upending Obama administration changes to minimize mass incarceration of low-level drug offenders. His tough-on-crime approach to drug policy has put him in direct opposition to **Jared Kushner**, Trump's son-in-law and a White House adviser who has been focusing on criminal justice reform. But in August Trump [reportedly decided](#) not to back any such legislation until after the midterms.

So what will lawmakers do when they try to hammer out the differences in the opioids' package?

4/28/2019 The Health 202: Obama provision in House opioid bill could restrict use of drugs The Washington Post
Sen. Chuck Grassley (R-Iowa), chairman of the Judiciary Committee, sponsored a similar bill to strengthen punishments for currently unregulated drugs, but ultimately backed off bringing it to a vote in his committee or adding it to the larger opioids' package after advocates pointed out it conflicted with his efforts to pass criminal justice reform. But Rep. Bob Goodlatte (R-Va.), chairman of the House Judiciary Committee, pushed a bill through his panel by voice vote, which was then added to the lower chamber's opioids' package.

Neither Grassley's nor Goodlatte's committee spokespeople returned requests for comment. **The Drug Policy Alliance is bringing together the coalition of left and right groups to send a joint letter to lawmakers urging them not to include the provision in the final opioids' package.**

But some are worried the issue could get lost in the mix of others being debated in backroom negotiating.

"This is a disconcerting bill because we've seen this before, we've done a great deal of work to rectify this issue," Tyler said. "To take that same process and apply it to synthetic drugs is problematic. I feel confident we've been effective in the Senate where there's been a robust conversation about best practices, but I do not feel comfortable in general when bills are being conferenced behind closed doors."

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AHH, OOF and OUCH

AHH: The Senate passed a short-term spending bill to keep the government running through Dec. 7, hoping to avoid the political fallout from a government shutdown and a fight over Trump's border wall until after the midterm elections in November, our Post colleague [Erica Werner reports](#).

The funding bill, which was approved on a 93-to-7 vote, provides funding for the Department of Health and Human Services, as well as for the Labor and Education departments and Pentagon for 2019.

The House is set to take up the bill next week, though Erica notes "it remains uncertain whether Trump would sign the measure."

"All told, the Pentagon and Labor-HHS spending bills account for more than 60 percent of all discretionary spending, which is the portion of the \$4 trillion federal budget that Congress doles out annually," Erica reports. "That does not include what are called 'mandatory' spending programs, such as Social Security and Medicare, that operate without annual appropriations from Congress."

4/28/2018 The Health 202: Obama provision in House repeal bill could restrict use of drugs The Washington Post
"Funding for the Labor, Health and Human Services, and Education departments would total \$178 billion, a \$1 billion increase from 2018 and almost \$11 billion more than Trump requested in his budget proposal for 2019," she adds. "The Trump administration has objected to the increases in domestic budgets Congress is approving, but that's the price Democrats exacted for agreeing to big military spending increases sought by Republicans and Trump."

OOO: The Food and Drug Administration wants to slow down the teen vaping boom. And its latest efforts will bring an education campaign to high-school bathrooms and social-media feeds, CNN's Sandee LaMotte reports.

"We're in possession of data that shows a disturbingly sharp rise in the number of teens using e-cigarettes in just the last year," FDA Commissioner Dr. Scott Gottlieb warned on Tuesday. "In short, there's no good news."

"The campaign will launch on digital sites and social media platforms popular with young people, such as YouTube, Facebook and Spotify, with videos that show disturbing pictures of damaged lungs and zombie-like students with vaping products glued to their mouths," Sandee reports. "In addition, the campaign will place posters in the bathrooms of at least 10,000 high schools across the country, the first time the FDA has placed ads in bathrooms... In addition, she said, the ads will be on school education platforms such as where teens check their grades or sports scores."

OUCH: HHS is deploying federal disaster medical responders to North Carolina following Hurricane Florence.

The resources include doctors, nurses and paramedics who "activate with the National Disaster Medical system to become intermittent federal responders," per a department news release. "They teamed with medical personnel from the U.S. Public Health Service Commissioned Corps and, for the first time, with volunteers from the North Carolina State Medical Assistance Teams and Medical Reserve Corps to provide care for hundreds of residents with special medical needs who evacuated after Hurricane Florence."

As of yesterday, the death toll as result of the storm rose to 33 across three states, per our Post colleagues [Rachel Siegel](#), [Kristine Phillips](#) and [Mark Berman](#). "Florence, the storm that brought the misery, has gone from a hurricane to a tropical depression to a meandering system that dropped rain over the Mid-Atlantic and southern New England on Tuesday," they write. "It left behind deaths in at least three states and carved an arc of destruction that had not fully become clear, though one preliminary analysis said could cost up to \$20 billion in property losses."

HEALTH ON THE HILL

— Christine Blasey Ford, the woman who has accused Supreme Court nominee Brett M. Kavanaugh of sexually assaulting her when they were both teenagers, is calling on the FBI to investigate her allegations before she testifies before the Senate Judiciary Committee.

4/28/2018 The Health 202: Obama provision in House repeal bill could protect users as drugs The Washington Post
“A VA official said there is a constant concern, as with any other performance-measuring system, that employees will focus on boosting performance—or the appearance of performance—by focusing solely on statistics measured by SAIL,” he adds. “The department needs to make sure that performance reviews don’t have unintended consequences, the official said.”

— **The Trump administration revealed a new strategy to prepare for biological threats, specifically for both deliberate attacks and natural infectious disease outbreaks, the Associated Press’s [Robert Burns reports](#).**

HHS will take the lead in coordinating the actions and assessing the plan’s success. HHS Secretary Alex Azar told reporters such threats are “very real” and “growing” and that the plan includes first addressing naturally occurring threats like the Ebola virus, Robert reports.

“The goal of the strategy, which was required by Congress, is to more effectively prevent, prepare for and respond to biological threats,” he adds.

“Biological threats emanate from many sources, and they know no borders,” the president said in a statement, per the AP. “They have great potential to disrupt the economy, exact a toll on human life, and tear at the very fabric of society.”

STATE SCAN

— **More than half of Maryland residents support a single-payer health-care plan, according to a new poll, a positive sign for Democratic gubernatorial nominee Ben Jealous, who has pushed such a system.**

The Goucher College survey found 54 percent of Maryland residents had a favorable view of “Medicare for all.” But it also found 47 percent of those surveyed said they would rather improve Obamacare over adopting a universal health-care system, which had 29 percent response, our Post colleagues [Rachel Chason and Scott Clement report](#).

Nonetheless, incumbent Republican Gov. Larry Hogan is still a favorite to win in November. “With seven weeks to go until the election, the poll illustrated the uphill battle Jealous faces in his effort to oust [Hogan], who is substantially better funded and has benefited from attack ads paid for by the Republican Governors Association,” they write.

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Sean Sullivan

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Rep. Beto O'Rourke (D-Texas) on Monday called for the state of Texas to expand Medicaid.

The Hill

DAYBOOK

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The FDA holds a [meeting](#) of the Pharmaceutical Science and Clinical Pharmacology Advisory Committee meeting announcement on **Thursday**.

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Colby Itkowitz

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