

July 18, 2023

Senate Majority Leader Chuck Schumer
322 Hart Bldg.
Washington, DC 20510

Senate Minority Leader Mitch McConnell
317 Russell Bldg.
Washington, DC 20510

Speaker Kevin McCarthy
2468 Rayburn Bldg.
Washington, DC 20515

House Majority Leader Steve Scalise
2049 Rayburn Bldg.
Washington, DC 20515

House Minority Leader Hakeem Jeffries
2433 Rayburn Bldg.
Washington, DC 20515

Cc: Senate Judiciary Chair Dick Durbin, Senate Judiciary Ranking Member Lindsay Graham, Senate HELP Committee Chair Bernie Sanders, Senate HELP Committee Ranking Member Bill Cassidy, House Judiciary Committee Chair Jim Jordan, House Judiciary Ranking Member Jerry Nadler, House Energy and Commerce Chair Cathy McMorris Rodgers, and House Energy and Commerce Ranking Member Frank Pallone

Re: Oppose the Combating Illicit Xylazine Act (H.R. 1839/S. 993)

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker McCarthy, Majority Leader Scalise, Minority Leader Jeffries, and Honorable Members of Congress:

We, the undersigned public health, drug policy, criminal justice, and civil and human rights groups urge you to oppose the Combating Illicit Xylazine Act (H.R. 1839/S. 993). This legislation criminalizes human use and distribution of xylazine by imposing Schedule III criminal penalties on an unscheduled substance, thus circumventing the necessary scientific and medical evaluations inherent in the drug scheduling process, and undermining the established decision-making process for scheduling drugs and applying criminal penalties. Moreover, we fear that this legislation 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, our government should invest in harm reduction services and evidence-based public health interventions for people who use drugs, particularly given the dangerous state of the illicit drug supply.**

Because xylazine is a commonly-used veterinary anesthetic, the Combating Illicit Xylazine Act does not advocate for scheduling xylazine under the Controlled Substances Act (CSA). Rather, it applies Schedule III criminal penalties without labeling xylazine as a controlled substance. This approach is concerning as it criminalizes xylazine without subjecting it to the standard 8-factor scientific and medical evaluation required by the Secretary of Health and Human Services

(HHS) for CSA placement.¹ **By circumventing the comprehensive HHS analysis necessary for drug scheduling, this legislation obstructs the development of evidence-based regulations.** It establishes a troubling precedent by disregarding expert analysis on abuse potential and medical use in favor of reactionary politics. Consequently, the anti-science nature of the Combating Illicit Xylazine Act undermines the credibility of U.S. drug policy and paves the way for future bills to do the same.

Further, we have strong concerns that this legislation will disproportionately impact people with substance use disorder and those involved at the lowest level of the drug distribution chain^{2 3} - 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.⁴ Imposing severe penalties on these individuals without addressing the root causes of problematic drug use perpetuates social disparities. Moreover, sending people with substance use disorder into the criminal justice system makes them more vulnerable to overdose. Data shows that people recently released from incarceration are twenty-seven times more likely to experience an overdose in their first two weeks of release than the general public.⁵

Most people who use drugs are not actively seeking out xylazine.⁶ This means that criminalization will impact many people who do not know they possess the substance. Additionally, **xylazine is predominantly found in conjunction with fentanyl, for which criminal penalties already exist.**⁷ In fact, 99.5% of xylazine-involved deaths in 2021 also involved illicitly manufactured fentanyl or fentanyl analogues,⁸ substances that are already criminalized.

¹ United States, C. (1970). *Controlled Substances Act 21 USC 811*. 21 USC 811: Authority and criteria for classification of substances. <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title21-section811&num=0&edition=prelim>

² 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.

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

⁴ 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/>

⁵ 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>

⁶ 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>.

⁷ 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>

⁸ Office of National Drug Control Policy, W. H. (2023, July). FENTANYL ADULTERATED OR ASSOCIATED WITH XYLAZINE RESPONSE PLAN. <https://www.whitehouse.gov/wp->

Beyond these concerns, criminalizing xylazine will not keep people safe. **Historical evidence shows that prohibiting substances does not reduce overdose rates.^{9 10} 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.¹¹ Now, xylazine is appearing¹² as a consequence of the crackdown on fentanyl,¹³ and it follows that criminalizing xylazine will only lead to the emergence of other - potentially more potent substances - in the illicit drug supply. 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.

To prevent overdoses and mitigate the harms of the illicit drug supply, **Congress must prioritize science-based decision-making and harm reduction strategies, as well as comprehensive public health approaches to the overdose epidemic.** Instead of hastily criminalizing xylazine as if it were 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. 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 medications that treat xylazine withdrawal.

Given these objections, we strongly urge Congress to oppose the Combating Illicit Xylazine Act (H.R. 1839/S.993). These bills are reactionary extensions of the War on Drugs, and will only exacerbate the harms of the illicit drug supply.

[content/uploads/2023/07/FENTANYL-ADULTERATED-OR-ASSOCIATED-WITH-XYLAZINE-EMERGING-THREAT-RESPONSE-PLAN-Report-July-2023.pdf](https://www.fda.gov/oc/2023/07/fentanyl-adulterated-or-associated-with-xylazine-emerging-threat-response-plan-report-july-2023.pdf)

⁹ Lalander, P. and Salasuo, M., eds. 2005. *Drugs and Youth Cultures: Global and Local Expressions*. Helsinki: Nordic Council for Alcohol and Drug Research.

¹⁰ 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.

¹¹ 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>

¹² 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>

¹³ 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>

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
AIDS Leadership Foothills-Area Alliance (ALFA) (The Farm) (NC)
Ashley Shukait Consulting, LLC (MI)
Brad Ray Research Consulting
Brave Technology Co-Op
Bronx Móvil (NY)
Brooklyn Community Pride Center (NY)
CAN-DO Foundation
Center for Housing & Health (IL)
Center for Law and Social Policy (CLASP)
Community Education Group
Drug Policy Alliance
Due Process Institute
Faith in Harm Reduction
Florida Harm Reduction Collective (FL)
Fruit of Labor Action Research & Technical Assistance, LLC (Southern Appalachia)
GoodWorks: North Alabama Harm Reduction (AL)
Illinois Harm Reduction & Recovery Coalition (IL)
Justice Strategies
JustLeadershipUSA
Keene Serenity Center (NH)
LatinoJustice PRLDEF
Law Enforcement Action Partnership
Lighthouse Learning Collective (NY)
Los Angeles Community Action Network (CA)
NASTAD
National Association of Criminal Defense Lawyers
National Council on Alcoholism and Drug Dependence-Maryland Chapter (MD)
National Harm Reduction Coalition
National Health Care for the Homeless Council
Pennsylvania Harm Reduction Network (PA)
Port City Harm Reduction (NC)
Public Health Awakened (MI)
Queer Folk®, Inc. (MI)
Rebel Recovery Jax (FL)
Reframe Health and Justice

R Street Institute
SOL Collective (PA)
Southern Colorado Health Network (CO)
Students for Sensible Drug Policy
Students for Sensible Drug Policy at the University of Michigan (MI)
Sunrise Community for Recovery and Wellness (NC)
The Ali Forney Center (NY)
The Porchlight Collective SAP (IL)
Tia Hart Community Recovery Program (NC)
Toadhenge Consulting
Twin City Harm Reduction Collective (NC)
Vera Institute of Justice
Victory Programs, Inc. (MA)
Vital Strategies
VOCAL-NY (NY)
Washington Office on Latin America
Yale School of Public Health