



**BROOKLYN  
DEFENDER  
SERVICES**

## **MEMORANDUM OF OPPOSITION**

### **Expansion of Penalties for Drug Offenses Involving Opioids or Synthetic Marijuana**

**March 26, 2018**

**Brooklyn Defender Services (BDS) strongly opposes any proposal to increase penalties for offenses involving opioids or so-called synthetic marijuana (also known as K2), or any other expansion of the War on Drugs.** We understand all such provisions are under serious consideration for inclusion in the budget and we urge policymakers not to pursue them.

#### **CRIMINALIZATION DOES NOT WORK**

Criminalizing the sale of synthetic cannabinoids, concentrated cannabis, and controlled substance analogues does little to curb use and nothing to increase public health and safety in New York State. Likewise, BDS recognizes the danger that fentanyl poses and the need for a comprehensive response rooted in evidence-based public health strategies, but the package of provisions in the Senate budget bill doubles down on the long-discredited punitive approach and would not reduce the distribution of fentanyl nor prevent overdoses. Instead, it could undermine current efforts to address the opioid overdose crisis.

The real effect of criminalization is to punish and stigmatize people who use drugs, and ultimately prevent many from seeking or obtaining the treatment they need. Convictions also interfere with someone's ability to move on with their life if they do eventually receive treatment, as they will stay on their record for a long time. These outcomes are particularly pronounced for those who are most often targeted by police, namely low-income people and people of color.

## **CRIMINALIZATION CAUSES IMMENSE HARM**

When we incarcerate people for distribution of drugs we often lock up people who use drugs and suffer from the disease of addiction. A Bureau of Justice report found that 70% of people incarcerated for drug trafficking at state prisons used drugs prior to the offense.<sup>i</sup> These individuals often distribute drugs, not for profit, but as a way to support their own substance use disorder. United States Sentencing Commission data, for instance, demonstrates that a majority of defendants sentenced for federal fentanyl offenses are low-level dealers.<sup>ii</sup> People are at extremely high risk of overdose upon release.<sup>iii</sup>

The imposition of harsh penalties for distribution could also undermine New York's Good Samaritan law, which encourages people to contact emergency services in case of an overdose.<sup>iv</sup> The threat of police involvement and prison makes people hesitant to call emergency services, or causes them to run from the scene rather than help the victim.

We also strongly oppose legislation expanding involuntary treatment or detention of people who suffer from problematic drug use, as proposed in the Senate budget bill. Involuntary treatment methods are ineffective with a large majority of people placed in these programs continuing their drug use afterward.<sup>v, vi</sup> Coerced treatment goes against what we know works – treatment on demand and treatment based on empathy, respect, and kindness. It is also a dire infringement upon people's liberty.

## **WE ALREADY KNOW WHAT REALLY WORKS**

A much more effective approach to reducing overdoses due to fentanyl-laced drugs would be to offer drug checking services and distribute testing strips as they do in Europe and as is also being piloted around the country including in San Francisco and Baltimore. The authorization of safe consumption services, such as that proposed by A.8534 (Rosenthal), would also prevent fatal fentanyl-related overdoses. Because fentanyl overdoses occur in a matter of minutes, using drugs in a supervised setting would allow for the immediate provision of medical assistance in the event of an overdose, in addition to a wide array of targeted services to help people turn their lives around.

Drug war tactics are widely opposed across the board, from recovery groups like Friends of Recovery to parents groups like Families for Sensible Drug Policy, faith leaders like NYS Council of Churches and Jews for Racial & Economic Justice to civil rights groups like National Action Network, Latino Justice, and Color of Change and criminal justice reformers like the New York Civil Liberties Union, Legal Action Center, and many other defender organizations around the state, in addition to public health researchers. The overdose epidemic is all the more reason to listen to these experts.

Sincerely,

Lisa Schreibersdorf, Executive Director  
Brooklyn Defender Services

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<sup>i</sup> Bureau of Justice, *Drug Use and Dependence*, State and Federal Prisoners, 2004. Available at: <http://www.bjs.gov/content/pub/pdf/dudsf04.pdf>.

<sup>ii</sup> USSC, *Public Data Presentation for Synthetic Cathinones, Synthetic Cannabinoids, and Fentanyl and Fentanyl Analogues Amendments* (Jan. 2018). (showing that a majority of defendants sentenced for fentanyl offenses are low-level dealers; of the 51 persons convicted of a fentanyl-related offense in FY 2016, 29 served “street-level dealer” “courier/mule” and “employee/worker” functions).

<sup>iii</sup> Binswanger IA, Blatchford PJ, Mueller SR, Stern MF. Mortality After Prison Release: Opioid Overdose and Other Causes of Death, Risk Factors, and Time Trends From 1999 to 2009. *Ann Intern Med*. 2013;159:592–600. doi: 10.7326/0003-4819-159-9-201311050-00005

<sup>iv</sup> See Assembly Bill 472 (Ammiano 2012) found at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0451-0500/ab\\_472\\_bill\\_20120917\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0451-0500/ab_472_bill_20120917_chaptered.pdf)

<sup>v</sup> Szalavitz, Maia (2015). *TIME Magazine*. Should States Let Families Force Addicts Into Rehab? October 2012.

<sup>vi</sup> James A. Inciardi, “Some Considerations on the Clinical Efficacy of Compulsory Treatment: Reviewing the New York Experience,” at 126-138 in National Institute on Drug Abuse, Research Monograph Series 86, *Compulsory Treatment of Drug Abuse: Research and Clinical Practice* (1988).