

# Legislation Addressing the Illicit Fentanyl Trade

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Legislative Tracker Program, 118th Congress



## EXECUTIVE SUMMARY

Members of Congress on both sides of the aisle agree on the urgent need to respond to the high rates of opioid use disorder and fentanyl poisonings that are devastating American communities. Since the 118th Congress gavelled into session on January 3 of this year, the Center of International Policy has identified **60 bills and resolutions** that have been introduced pertaining specifically to the illicit fentanyl trade. These bills can be viewed on our website's [Legislative Tracker](#) page.<sup>1</sup> Below is a breakdown of the legislation, as well as three takeaways about the ongoing congressional debate about how to address illicit fentanyl trafficking and opioid-use disorder.

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## BACKGROUND ON THE ILLICIT FENTANYL TRADE

The devastating opioid epidemic that has ravaged the United States for decades has become even more deadly in recent years due to the surging supply of fentanyl, a powerful synthetic opioid. Fentanyl, which is 50 times more potent than heroin, is less expensive to produce and transport than poppy-derived opiates.<sup>2</sup> Due to its low production cost and widespread availability, it is increasingly being mixed into the supply of more expensive street drugs, such as heroin, cocaine, and illicitly-manufactured counterfeit prescription pills. Fentanyl's high capacity for physical and psychological dependence and extreme potency has resulted in a precipitous increase in opioid-related overdoses and accidental poisonings.

Today, the United States has the world's highest number of opioid-involved deaths per capita, more than five times the median for other economically-advanced nations.<sup>3</sup> Fentanyl poisoning is a leading cause of death for Americans ages 15-44.<sup>4</sup> More than 100,000 people died of drug overdoses in the United States last year alone, the majority involving fentanyl.<sup>5</sup>

Recently, there has been a sharp rise in teen death rates from poisoning as a result of ingesting counterfeit prescription pills, such as OxyContin, Percocet, Adderall, or Xanax, that were unknowingly laced with fentanyl.<sup>6</sup> Compared to other groups, populations who identify as white or Native American and who are unemployed, disabled, uninsured, incarcerated, or are living in poverty have statistically higher opioid overdose death rates than those who are not.<sup>7</sup>

## SUPPLY CHAIN

Nearly all illicit fentanyl consumed in the United States is manufactured in Mexico by transnational criminal organizations, namely the Sinaloa and the New Generation Jalisco cartels, and smuggled into the U.S. through official ports of entry by American citizens.<sup>8</sup> Data from the U.S. Sentencing Commission shows the overwhelming majority of those convicted of trafficking drugs are American, more than ten times that of immigrants who entered the United States illegally.<sup>9,10</sup>

Virtually all illicit fentanyl made in Mexico relies on precursor chemical ingredients sourced from China. For years, Chinese companies sold both fentanyl and precursor chemicals (which alone are not harmful) to customers in the United States and globally. In 2019, at the request of the U.S. government, China classified fentanyl and certain base chemicals as Schedule I narcotics and outlawed their export.<sup>11</sup> Since then, the supply of fentanyl and related chemicals shipped from China to the U.S. has decreased to nearly zero.<sup>12</sup> However, precursor chemicals are still making their way to Mexico through diversion and smuggling, where it is processed into fentanyl before being trafficked into the United States.



This word cloud was made from the titles of 60 bills CIP is tracking related to illicit fentanyl.

## KEY TAKEAWAYS FROM THE CONGRESSIONAL DEBATE

On How To Address the Illicit Fentanyl Trade and the National Epidemic of Opioid Use Disorder

1. There is a significant partisan divide on how to address the illicit fentanyl trade.
2. There is growing bipartisan agreement that both the Mexican and Chinese governments are not doing enough to address the illicit fentanyl trade or crack down on cartel violence.
3. Regulatory failures that led to the opioid epidemic which is driving the demand for illicit fentanyl today have yet to be addressed.

## KEY TAKEAWAYS FROM THE CONGRESSIONAL DEBATE

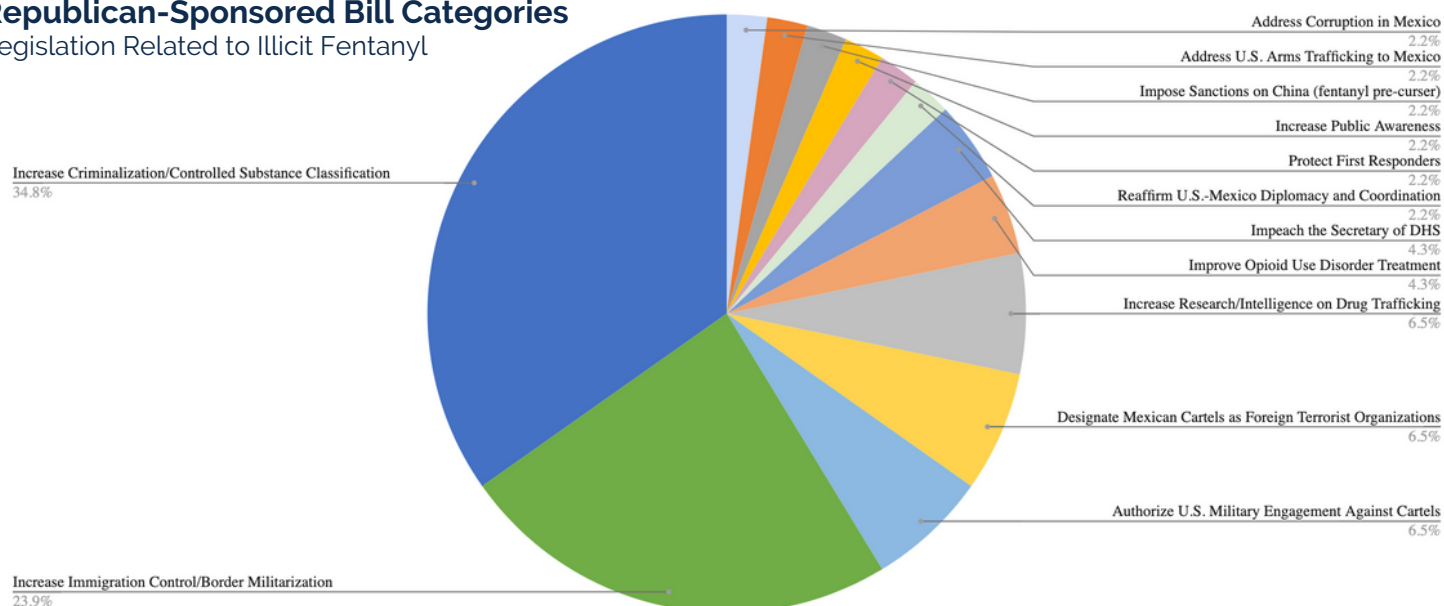
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Despite strong bipartisan interest in helping American families and communities, there is a significant partisan divide within Congress on how to address and prevent illicit fentanyl poisonings in the U.S.

Republican legislators generally frame the illicit fentanyl trade as an attack on the United States, or as Senator Bill Hagerty (R-TN) stated in a recent congressional hearing, “a war on our youth.”<sup>13</sup> An analysis of the bills they have introduced on this issue show they favor a ‘law and order’ approach that seeks to eliminate the supply of fentanyl in the United States by preventing it from crossing the border from Mexico. This entails deterrence-oriented policies such as enhancing criminal prosecutions, increasing mandatory minimum sentencing, and permanently placing illicitly produced fentanyl-related substances into Schedule I of the Controlled Substances Act, which signifies they have no acceptable medical or research uses and are characterized as “street drugs.”<sup>14</sup> (Medical-grade fentanyl will remain classified as a Schedule II narcotic, prescribed to treat severe pain.)

### Republican-Sponsored Bill Categories

Legislation Related to Illicit Fentanyl



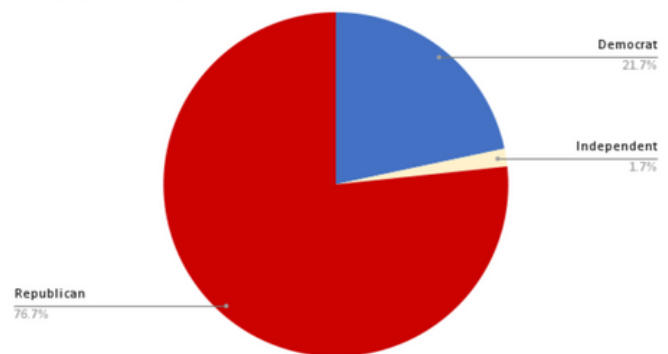
Many Republican legislators attribute the uptick in illicit fentanyl trafficking to irregular and undocumented migration - particularly illegal border crossings. Nearly a quarter of the Republican-sponsored bills call for enhanced immigration control and increased funding to “secure the border” between the U.S. and Mexico to prevent fentanyl from entering the United States. However, fentanyl-related deaths continue to increase despite the implementation of more restrictive border and immigration policies and despite the number of unauthorized immigrants residing within the U.S. remaining level or even decreasing in recent years.<sup>15,16</sup> Moreover, data shows that 90% of recovered fentanyl was smuggled into the U.S. by American

citizens through official border crossings.<sup>17</sup> Funding for immigration and border control agencies increased exponentially over the last three decades; the annual budget of the U.S. Border Patrol has increased more than ten-fold from \$363 million in 1993 to nearly \$5 billion today.<sup>18</sup> Since the creation of the Department of Homeland Security (DHS) in 2003, the federal government has spent an average of nearly \$17 billion each year on border agencies that carry out immigration enforcement.<sup>19</sup> However, increasing budget allocations for resources and personnel at U.S. border agencies to reduce illegal border crossings has not resulted in corresponding decreases in drug trafficking. This strategy has not been effective in preventing or reducing illicit opioids and fentanyl from reaching the United States.<sup>20</sup>

Additional Republican bills call for categorizing certain Mexican cartels as foreign terrorist organizations, increasing research and intelligence on traffickers, and directing the President to use military force against the cartels through a congressional authorization for the use of military force (AUMF). In addition to legislation directed specifically at Mexico, at least one bill (H.R. 1171, the Stop CCP Fentanyl Act) was introduced that would place sanctions on Chinese officials until the diversion of precursor chemicals from China to Mexico is “more meaningfully addressed.”

#### All CIP-tracked Bills Related to Illicit Fentanyl

Party Sponsorship



*Republicans have introduced more than three times as many bills on the topic of illicit fentanyl than Democrats and Independents combined.*

*“The Mexican cartels have taken advantage of the weak border enforcement to surge a flow of fentanyl to the U.S... until the Biden Administration takes action to secure our southern border to stop the flow of illegal migration and drugs, I’m afraid this is going to be a bigger problem in the future.”<sup>21</sup>*

-Senator Pete Ricketts  
(R-NE)

*“We should start a war against these cartels because they are at war with us.”<sup>22</sup>*

-Representative Dan Crenshaw  
(R-TX-02)

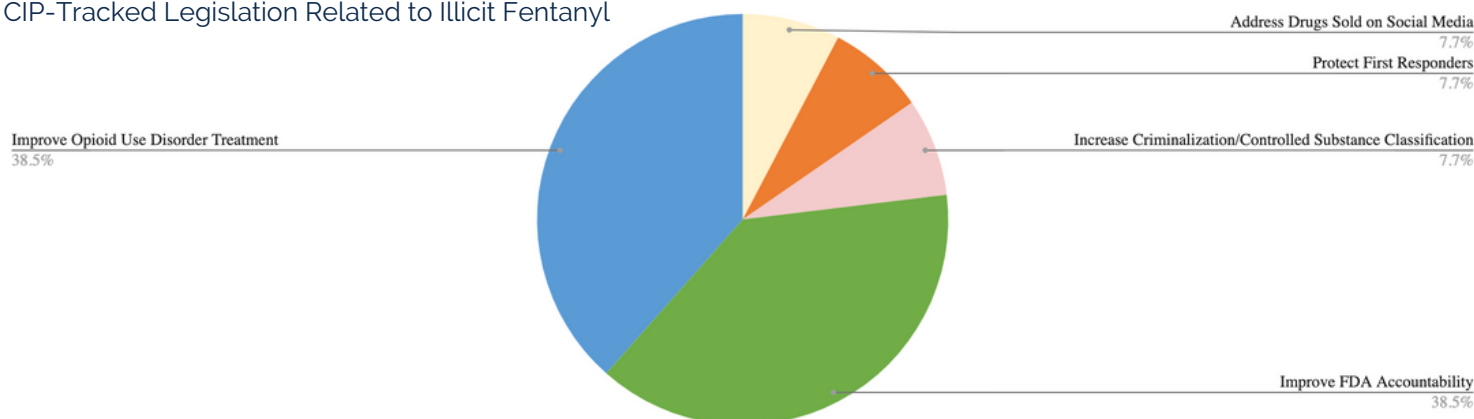
*“...give the military the authority to go after these organizations wherever they exist. Not to invade Mexico. Not to shoot Mexican airplanes down. But to destroy drug labs that are poisoning Americans.”<sup>23</sup>*

-Senator Lindsey Graham  
(R-SC)

Democratic lawmakers are more focused on addressing the demand for illicit fentanyl and treating the opioid epidemic as a public health crisis. Rather than punitive approaches to fentanyl use, Democrats voiced support for improved opioid use disorder treatment in alignment with the Department of Health and Human Services' 2021 Overdose Prevention Strategy, which aims to combat addiction through drug use prevention programs, evidence-based treatment, harm reduction strategies, and recovery support.

### Democrat-Sponsored Bills Categories

CIP-Tracked Legislation Related to Illicit Fentanyl



*“There is a ten billion pound gorilla in the middle of the room, and that is - sadly, tragically - the United States of America is the most extraordinary market for drugs. We have an insatiable appetite for drugs in our country.”<sup>26</sup>*

- Representative Anna Eshoo  
(D-CA-16)

Democrats are less likely to support permanently classifying fentanyl-related substances as Schedule I narcotics, as doing so may inhibit scientific research on new fentanyl-related substances and lead to increasing criminalization of low-level drug users, further inhibiting effective addiction treatment and recovery. In addition, there is not sufficient evidence that permanent placement would effectively deter traffickers or users; the amount of fentanyl and fentanyl-related substances seized by Customs and Border Control at U.S. ports of entry grew by 200% between 2018-2020 after they were temporarily placed on the Schedule I list.<sup>24</sup> Fentanyl-related drug overdoses have also continued to increase since 2018.<sup>25</sup>

*“We cannot incarcerate our way out of this.”<sup>27</sup>*

- Representative Sheila Jackson Lee  
(D-TX-18)

A number of Democratic bills aimed at reforming the Food and Drug Administration's (FDA) regulation of opiates were introduced with bipartisan support. Democrats also generally favor stricter gun regulations that do more to prevent U.S. firearms from reaching Mexican cartels, who rely on illegally-trafficked U.S. weapons to operate the illicit fentanyl trade. (Note: bills related to gun legislation are not included in the tracker or this fact sheet.)



*“Substance use disorder is a disease, and it needs to be treated as such... The focus is on the drug cartels moving drugs over, but how about those who have the disease of addiction who are fueling that through the enormous demand on our side?”<sup>28</sup>*

- Representative Raul Ruiz (D-CA-25)

*“It’s important to understand the circular trade that happens at the Mexican border with these cartels. It’s American guns going south, and it’s Chinese and Mexican drugs coming north... We are fueling the cartel’s ability to run this trade by allowing these guns to be bought in the United States through back- ground-checks exceptions and sent down to Mexico.”<sup>29</sup>*

- Senator Chris Murphy (D-CT)

2

**There is growing bipartisan agreement that both the Mexican and Chinese governments are not doing enough to address the illicit fentanyl trade or crack down on cartel violence.**

Both Democratic and Republican lawmakers have expressed frustration about the U.S. not having a “reliable partner” to work with in Mexico to combat the illicit fentanyl trade. While Republicans are more outspoken on the issue, both parties are concerned about the role of diverted Chinese precursor chemicals in the production of illicit fentanyl in Mexico and would like China to do more to improve their oversight of chemical exports and address illegal smuggling. The growing dissatisfaction is evident in rhetoric suggesting that without progress, Congress may consider approving more aggressive actions in the future.

*“And then we have our next-door neighbor who- [illicit fentanyl] is a critical issue and I just don’t see [adequate effort] happening. And I have to be honest with you, if the good overtures to try to get them to act is not working, then there has to be other considerations.”<sup>30</sup>*

**Senator Bob Menendez (D-NJ)**

Senate Foreign Relations Committee Chairman



*“I want to associate myself with the remarks of the Chairman... I think the Chairman has laid out very clearly that there does need to be something done differently [in Mexico], or there’s going to have to be other action taken.”<sup>31</sup>*

**Senator James Risch (R-ID)**

Senate Foreign Relations Committee Ranking Member



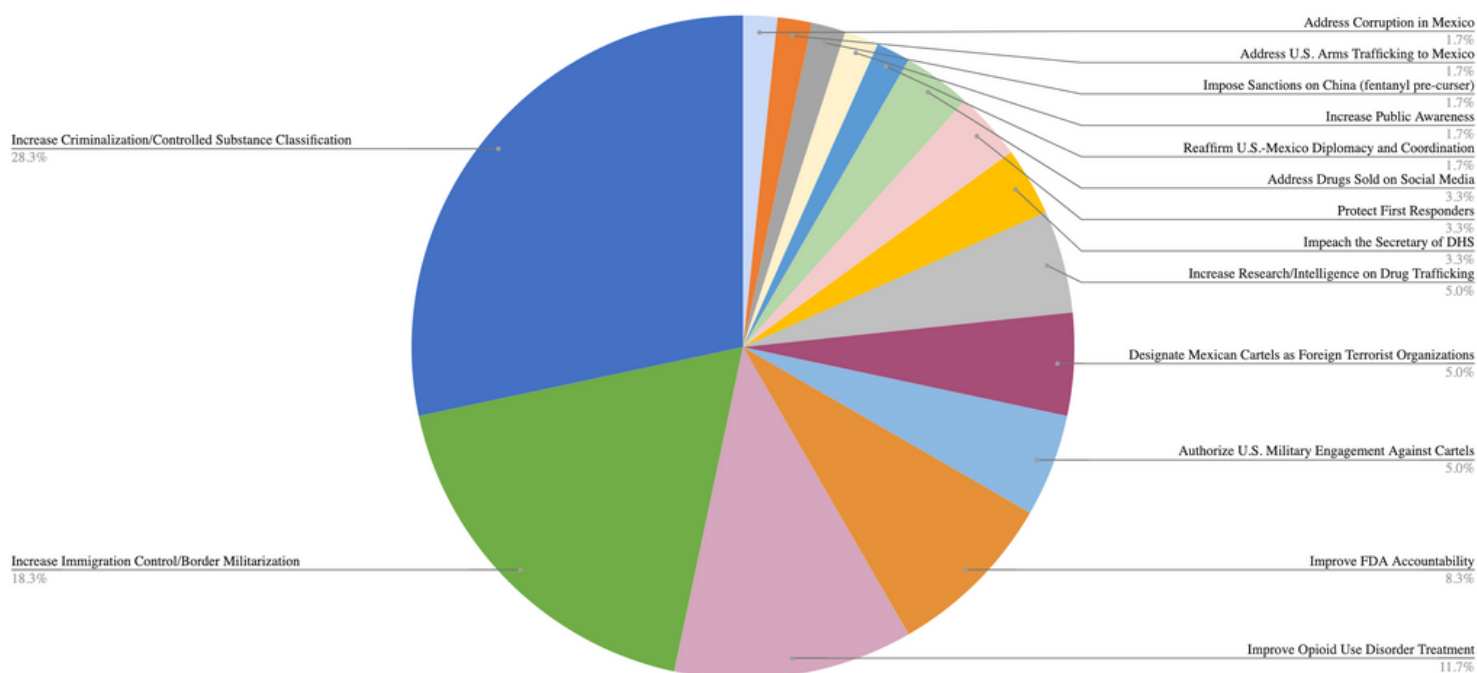
## 3

**Regulatory failures that significantly contributed to the opioid epidemic which is driving the demand for illicit fentanyl today have still not been addressed.**

The illicit fentanyl trade is a legacy of regulatory failures within the Food and Drug Administration (FDA) dating back to the 1990s. The FDA is a federal agency of the U.S. Department of Health and Human Services responsible for protecting public health by requiring drug manufacturers to demonstrate that their products are both safe and effective for consumption before allowing them to be marketed to the public. Due to conflicts of interest, the FDA did not properly evaluate or classify Purdue Pharma's drug application for extended-release oxycodone, known as OxyContin, as an addictive narcotic in 1995.<sup>32</sup> Purdue Pharma was therefore legally allowed to aggressively - and inaccurately - market OxyContin, a highly addictive prescription opioid, as a non-addictive painkiller to doctors and their patients throughout the country. Purdue made billions in profits from these dubious OxyContin sales.

### Category Breakdown of All CIP-tracked Bills Related to Illicit Fentanyl

According to the legislation CIP is tracking, increasing criminalization, border security, and treatment currently dominate the conversation about solutions to the deadly fentanyl epidemic.



*"Opioid prescribing increased as a result of aggressive promotion efforts by pharmaceutical companies. Clinical norms also began to emphasize assessing patients' pain and treating it with prescription opioids. In addition, oversight and reimbursement incentives in the health care system encouraged opioid prescribing."*<sup>33</sup>

- Congressional Budget Office

It wasn't until 2001 that the FDA began to revise their regulatory labeling of OxyContin and review prescribing practices following a stark rise in reported cases of opioid-related overdoses.<sup>34</sup> However, the demand for opioids had been established. The first wave of the prescription opioid crisis gave way to the heroin epidemic of the 2000s. Today, the opioid epidemic is in its third wave. Drug cartels are taking advantage of depressed economic conditions in Mexico, the enormous demand for opioids in the United States, and the cheap production costs and low barrier to entry in the market for synthetic drugs to operate the highly lucrative illicit fentanyl trade.<sup>35</sup>

Between 2016 and 2018, three federal laws were enacted to improve treatment and reform subscribing policies of opioids. However, to this day, the FDA has never been held accountable for its regulatory errors and negligence that created this ongoing public health crisis.<sup>36</sup> While criminalization, border security, and treatment currently dominate the conversation about solutions to the deadly fentanyl epidemic, since the 118th Congress began, five bipartisan bills were introduced that seek to improve regulatory oversight of the FDA.<sup>37</sup>

***“Yes, kids got addicted because of Big Pharma... and Big Pharma never got held accountable, because it's all about the money. Now, the cartels and China are the focus of our problem...”***<sup>38</sup>

- Derek Maltz, Special Agent in Charge,  
DEA's Special Operations Division  
Congressional Testimony

Bill Number	Bill Title	Sponsors
HR1375	Ensuring the FDA Fully Examines Clinical Trial Impact and Vitalness before Endorsement (EFFECTIVE) Act	David Trone (D)*, Daniel Meuser (R)
S603	FDA Accountability for Public Safety Act	Joseph Manchin (D)*, Mike Braun (R), Angus King (I)
S604	Changing the Culture of the FDA Act	Joseph Manchin (D)*, Mike Braun (R)
S606	Protecting Americans from Dangerous Opioids Act	Joseph Manchin (D)*, Mike Braun (R)
S607	Ensuring the FDA Fully Examines Clinical Trial Impact and Vitalness before Endorsement (EFFECTIVE) Act	Joseph Manchin (D)*, Mike Braun (R)

The Center for International Policy's (CIP) Legislative Tracker Program hosts a free public database tracking legislation pertaining to certain U.S. foreign policy issues in the 118th Congress. Please note: these trackers are for educational purposes only and do not signify the Center's endorsement of any specific legislation or policy. These lists may not be comprehensive or up-to-date; the bill sheets are updated weekly. All information is publicly available and searchable on the Library of Congress website, [www.congress.gov](http://www.congress.gov). We hope these trackers are useful to your research, educational, or advocacy efforts. Feel free to contact [hhomestead@internationalpolicy.org](mailto:hhomestead@internationalpolicy.org) with any questions, concerns, or suggestions.

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## END NOTES

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