

Department of Public Safety

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Written notes with endnotes

- The purpose of my comments is to help policymakers develop consensus on the nature, scope and severity of some of the public safety challenges the state is facing right now. Some of these comments I've mentioned in other forums recently and you may have heard part of them before.
- First, drugs. As the pandemic and the backlog clear, the underlying drivers of the trends in crime and overdose fatalities are still present. The pandemic and the court backlog appear to be an exacerbating factor, but not the underlying drivers of these trends.
- One of those drivers is the so-called third wave of the opioid crisis, fentanyl, and fentanyl is now in every glassine bag in Vermont.
 - 100% of substances in glassine bags tested positive for fentanyl or a fentanyl analogue at the Vermont Forensic Lab in 2022. Fentanyl is replacing heroin in the illicit market, with heroin only being found in less than half of tested glassine bags in 2022. The fentanyl/heroin balance has flipped since 2018. In 2018, only 43% of glassine bags contained fentanyl and 100% contained heroin. Additionally, 2023: 56% of heroin/fentanyl cases also contained xylazine, up from 12% in 2021.ⁱ
- Fentanyl is up to 50 times stronger, and often cheaper, than heroin. Highly potent and inexpensive—demand is high and driving the supply. According to the 2022 report from the Federal Commission on Combating Synthetic Opioid Trafficking, “the pull of demand continues to drive the supply of synthetic opioids.” Additionally, according to the same report, “synthetic opioids offer economic and tactical advantages that allow criminals to vastly outpace enforcement efforts.”ⁱⁱ
- We know that the forces of supply and demand in the illicit opioid market account for some portion of the crime trends we are seeing. For example, according the recent statistics from the Vermont Intelligence Center, prior to 2022, the rate of drug-involved violence remained below 25%. Since then, the Vermont Intelligence Center indicates that the rate of drug-involved violence has increased significantly, with drugs being identified as the primary motivating factor in 44% of homicides investigated by the Vermont State Police in 2023. Statistics from the narcotics investigation unit are up in 2023. Sale cases increased 17% from the year before, arrests increased 30%, and firearm seizures increased 57%.ⁱⁱⁱ

- And there is no indication that the destructive force of fentanyl is going to abate this decade. In the first two decades of the 2000s, up to 2020, about 600,000 people died from an opioid overdose in the United States. A model developed for the Stanford-Lancet Commission on the North American Opioid Crisis projects that this decade, from 2020 to 2029, opioid deaths will total 1.2 million people in the U.S. if no new action is taken to address the epidemic. Twice as many deaths are anticipated in half the time.^{iv}
- We are in now the middle of that decade. Obviously this is a significant policy issue across the country. Because demand is driving supply, we have been focused recently on the best public policy response to that demand. I will share with you some of the framing questions I proposed at a recent panel discussion on this topic of the governmental response to demand. Those questions include:
 - Is there policymaker consensus that addiction results in significant harm to individuals and significant harm to communities? For some the answer is self evident. I mention this because the disease model of addiction is helpful in many ways, but it does not account for the harm to communities caused by addiction and it does not provide the public policy answers to that harm.
 - Is there policymaker consensus that external pressure, including legal pressure, for individuals to end problematic drug use and obtain treatment is appropriate and necessary when individuals engage in behavior that undermines public safety due to an untreated substance use disorder? Put another way, should government policy on providing opportunity for treatment be fundamentally passive in nature, or proactive? Under what circumstances, if any, should treatment be mandated?
 - For any given public policy, does that policy advance the goal of actually reducing the size of the addicted population?
- Second observation. One of the persistent issues that communities are experiencing is repeat criminal behavior that does not necessarily rise to the level of felony crimes of violence but persists after apprehension and arraignment, and repeats in a pattern, sometimes dozens of times, causing significant harm to a community, and in violation of court orders, and that individual does not face a meaningful risk of detention for that behavior until their cases are adjudicated 12, 18, 24 months later. Is there policymaker consensus on the nature and scope of this problem? Is the status quo governmental response a tenable public policy for you as policymakers?

- This problem is not regarding those individuals who are compliant and willing to engage with Pretrial risk assessments and needs screenings and follow recommendations under 13 V.S.A. § 7554c. We are talking about the individuals who do not comply with any court order.
- What is the backstop when people simply don't comply and continue to engage in behavior that undermines public safety in a community during the pendency of their cases? Right now, a violation of a condition of release is treated as another offense to add to the list of offenses to be addressed at the ultimate disposition of the case maybe months or years later.
- The three constitutional standards on withholding, imposing, and revoking bail in Vermont are narrowly prescribed and well established, so we live within them. Preventive detention of potentially dangerous people is unconstitutional in Vermont.
- For purposes of public policy discussion, some other jurisdictions that do not have these same limitations handle violations of conditions of release in different ways. As you consider this issue this session, I want to draw your attention to the federal scheme for sanctions for violations of release conditions in 18 USC 3148. This differs from how Vermont handles violations of conditions of release and the Vermont constitutional scheme for imposing, withholding, and revoking bail, including the constitutional limitations on revocation bail overlaying 13 VSA 7575.
- The question becomes, in light of Vermont's constitutional standards for withholding, imposing, and revoking bail, what other constitutionally permissible legal mechanisms exist that can be used to quickly intervene and stop behavior that undermines public safety in a community and ensures compliance with court orders, well before a criminal adjudication occurs. How do we quickly to apply legal pressure for behavioral change to repeat violations of conditions of release?

ⁱ Data provided by the Vermont Forensic Lab.

2021: 12.5% of heroin/fentanyl cases contained xylazine (partial year)

2022: 43% of heroin/fentanyl cases contained xylazine (full year)

2023: 55.8% of heroin/fentanyl cases contained xylazine (up to 12/22/2023)

Year	2015	2016	2017	2018	2019	2020	2021	2022
% Cases containing Heroin	100	100	100	100	100	100	58.65	44.32
% Cases containing Fentanyl	8.48	9.75	25.39	42.74	59.48	76.97	98.65	100

ⁱⁱ Commission on Combating Synthetic Opioid Trafficking, Final Report at xii and xiii, available at https://www.rand.org/pubs/external_publications/EP68838.html

ⁱⁱⁱ Vermont Intelligence Center & Vermont State Police Narcotics Investigation Unit, Vermont Drug Environment & Gun Violence – Overview of Trends (December 15 2023) (“The rate of drug-involved violence has increased drastically as drugs were identified as the primary motivating factor in 42% of homicides in Vermont in 2022 and 44% of homicides in 2023. Prior to 2022, the rate of drug-involved violence remained below 25%.”).

Additionally:

NIU Statistics	2021	2022	2023
Sale cases	154	222	260 (17% increase from 2022, through Dec. 13)
Arrests	64	61	79 (30% increase from 2022, through Dec. 13)
Firearms Seized	24	28	44 (57% increase from 2022, through Dec. 13)

Casey Daniell, director of the Narcotics Investigation Unit, clarified that the homicide statistics relate to investigations by the Vermont State Police regarding “individuals with a drug nexus.”

iv Stanford-Lancet report calls for sweeping reforms to mitigate opioid crisis (February 2, 2022), <https://med.stanford.edu/news/all-news/2022/02/stanford-lancet-report-opioid-crisis.html>. Stanford-Lancet Commission on the North American Opioid Crisis report available for download at <https://opioids.stanford.edu/publications-and-media>.

Additional information: National Incident Based Reporting System (NIBRS) Data, Number of Incidents by Year, Selected Offenses, 2018-2022

Vermont, Number of Incidents by Year, Selected Offenses						
	2018	2019	2020	2021	2022	Increase from 2018 to 2022
Motor Vehicle Theft	269	308	276	470	595	121%
Year to year change		14%	-10%	70%	27%	
Shoplifting	1661	2010	1607	1679	2416	45%
		21%	-20%	4%	44%	
Larceny - Theft	6505	7485	6675	7400	9408	45%
		15%	-11%	11%	27%	
Theft from Motor Vehicle	1163	1379	1500	1829	2419	108%
		19%	9%	22%	32%	
Aggravated Assault	633	770	722	801	969	53%**
		22%	-6%	11%	21%	
Homicide	11	12	14	8	22	100%
		9%	17%	-43%	175%	

Source: Crime Data Explorer, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/home>

**On January 5 in Senate Judiciary I indicated that the number of aggravated assaults increased 73%, not 53% as indicated above. This was an error because I accidentally used the number of reported NIBRS “offenses” that year, not the number or reported NIBRS “incidents” used throughout the dataset.