

Testimony

of

Bridget G. Brennan
Special Narcotics Prosecutor

Before

The New York City Council Committee on the Justice System

Addressing the Opioid Crisis in Criminal Court

June 21st, 2018
Council Chambers
City Hall

OFFICE OF THE SPECIAL NARCOTICS PROSECUTOR

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As Special Narcotics Prosecutor for the City of New York, I appreciate the opportunity to address the New York City Council's Committee on the Justice System under Chairperson Rory Lancman on the critically important question of how we can best address the opioid crisis.

Drug overdoses are claiming more lives in New York City than ever before. Over the past two years, more than 2,800 New Yorkers died from overdoses and thousands more survived overdoses only as a result of emergency medical intervention. Opioids are responsible for 80% of fatal overdoses, with the synthetic opioid fentanyl and fentanyl analogues present in nearly half of these deaths. Roughly 50 times more potent than heroin, fentanyl is saturating the city's black market for narcotics. The appearance of new fentanyl analogues, which are chemically similar variations of fentanyl, is escalating.

The Office of the Special Narcotics Prosecutor (SNP) coordinates with the city's five District Attorneys, the New York City Police Department, the Mayor's Office of Criminal Justice, the U.S. Drug Enforcement Administration and other local, state and federal agencies, in efforts to rein in this epidemic. My office advocates a four-pronged approach: reduce supply, increase treatment, promote sensible harm reduction and expand prevention efforts.

As set forth in the Mayor's HealingNYC initiative, the city is seeking to reduce overdose deaths by 35% from 2016 levels by 2022, largely through harm reduction efforts. This goal is far too modest, particularly given that the rate of overdose deaths rose by nearly 50% between 2015 and 2016. I believe

with a more robust, balanced approach New York City can achieve far better results.

The most significant trend is the emerging prevalence of fentanyl analogues. Towards that end, I bring an urgent request to today's hearing. Last autumn, Gov. Andrew M. Cuomo proposed adding 11 fentanyl analogues to the schedule of controlled substances. These analogues are closely related to fentanyl, with slightly different chemical compositions, and can be even more deadly. Yet shockingly the state legislature approved the scheduling of just two of the 11.

A new analysis by my office has determined that four of the substances rejected by the state legislature were responsible for at least 48 deaths in Brooklyn South and Staten Island last year, nearly 20% of overdoses, and we are continuing to review and refine our data. We are expanding this analysis to include an examination of toxicology reports for overdose deaths in Brooklyn North and other regions of New York City, where we anticipate seeing a similar impact. The availability of fentanyl analogues is increasing at an alarming rate. It defies logic that the same state legislature that effectively banned dangerous synthetic cannabinoids would fail to control these highly lethal opioids even as an historic epidemic engulfs the state. By refusing to add them, the legislature hampers our ability to use tools like search warrants and wiretaps to identify the source and remove the deadly supply. I ask for the City Council to support our ability to protect New Yorkers by advocating to add deadly fentanyl analogues to the list of controlled substances.

Bridget G. Brennan
Special Narcotics Prosecutor
for the City of New York

Overview of Narcotic Enforcement in New York City

Saving lives and protecting public safety by stemming the flow of lethal narcotics into New York City is the top priority for my office and our law enforcement partners in addressing the opioid epidemic. My office has citywide jurisdiction over felony narcotics cases and our overall strategy has been to focus on high-volume suppliers of the most potent, deadly drugs and drug trafficking groups involved in violence. Working in coordination with the District Attorneys' offices, SNP is supervising an increasing number of wiretap investigations and recovering skyrocketing quantities of heroin and highly-potent fentanyl.

At each stage of the opioid epidemic, from prescription drug abuse to heroin, fentanyl and now chemically similar fentanyl analogues, my office has tracked emerging trends and developed new strategies to address each manifestation of the crisis.

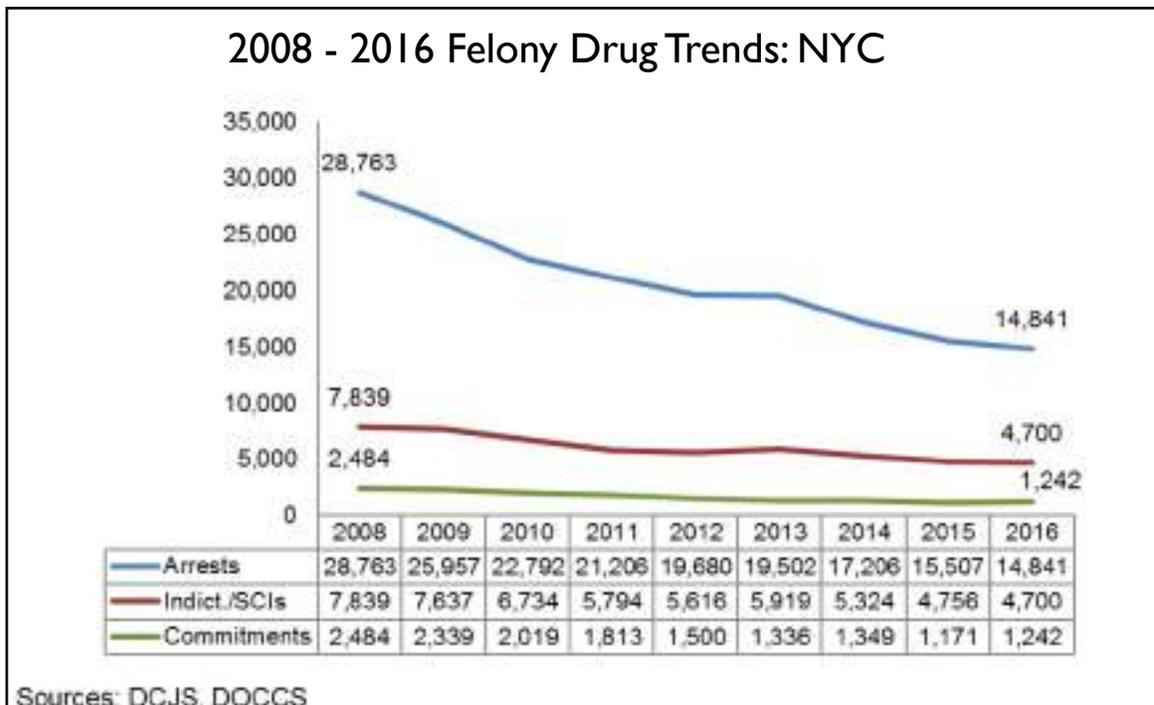
The overprescribing of opioid painkillers by doctors and false advertising by pharmaceutical companies in the U.S. created an appetite for opioids on a scale never before seen. Criminal narcotics enterprises quickly seized the opportunity to divert pricey pills onto the black market. Mexican cartels capitalized on the crisis by flooding the streets with highly pure

heroin, followed by cheaper synthetics.

Because New York City has historically served as a major hub for narcotics distribution on the East Coast, we were a prime target for international drug cartels. Much of the heroin and fentanyl recovered here tracks back to Mexico. Precursor chemicals for fentanyl – and increasingly fentanyl analogues – are produced in overseas laboratories in China and then sold to the Mexican cartels or directly to U.S. customers through the dark web, fueling a multi-billion dollar international industry.

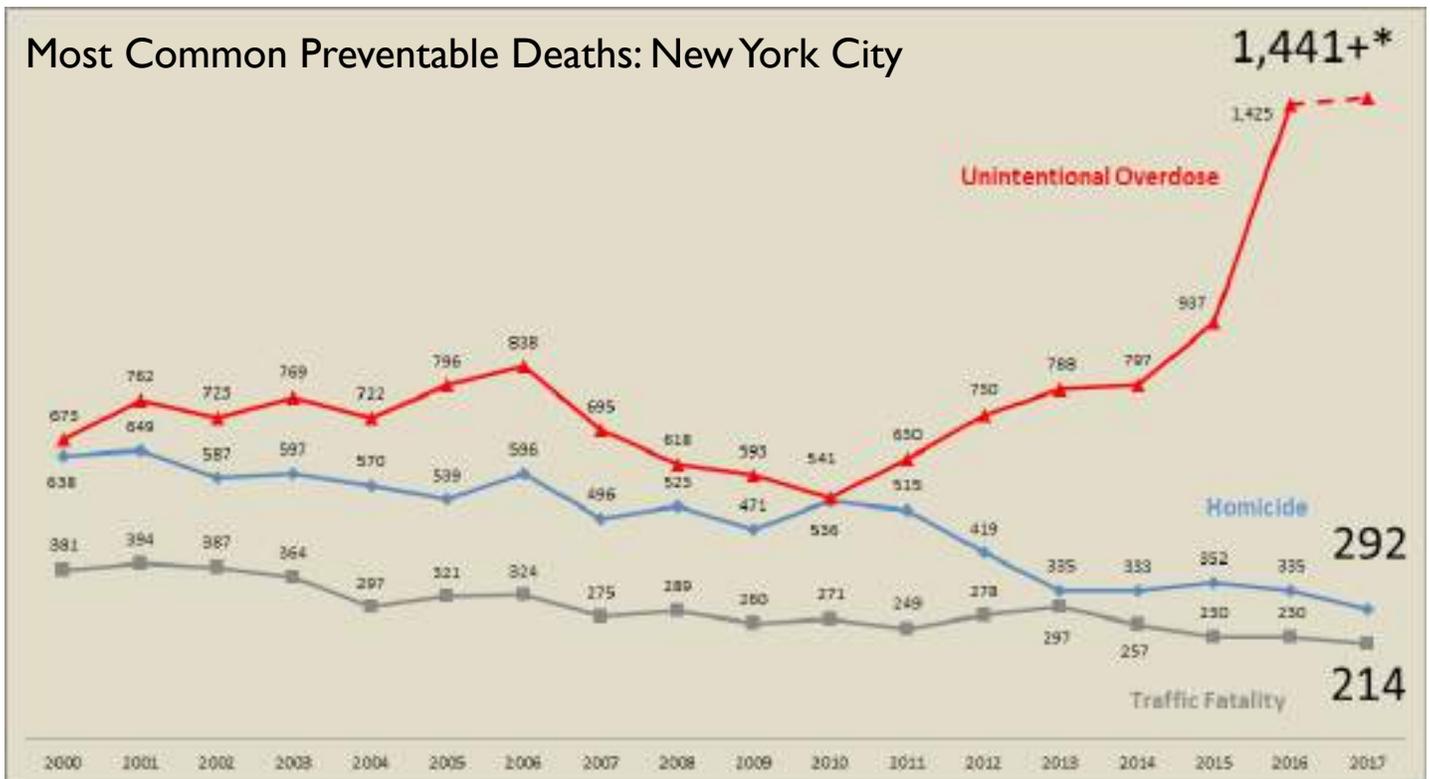
In response, I created specialized units, including the Prescription Drug Investigation Unit and the Heroin Interdiction Team, and reorganized the office to devote additional resources and staffing to the Investigation Division.

Before I describe these efforts in detail, I would like to address some misconceptions, beginning with the notion that individuals with substance abuse issues are being sent to prison for low level drug possession. This simply is not the case. Felony drug arrests and prison commitments declined by 50% over the past decade in New York City, from 28,763 in 2008 to 13,352 in 2017.



Mere possession of small amounts of opioids is not a felony unless there is evidence that a suspect is selling narcotics, and even then the individual could potentially be a candidate for placement in treatment. A defendant without prior felony convictions must possess a significant amount of narcotics before facing a charge that carries a mandatory prison sentence. For example, an individual must possess between 2,000 and 10,000 glassine envelopes of heroin in order to reach the four-ounce threshold for an A level felony. Similarly, a defendant in possession of oxycodone 30 mg would have to be carrying 1,200 pills to meet the A level felony threshold. Prosecutors would face the additional burden of proving the medication was obtained illegitimately, rather than through a legitimate prescription. Contrary to these frequent misconceptions, the majority of those sent to prison for drug crimes possessed distribution-levels of narcotics, were in possession of a weapon or had a history of violence.

Recent media coverage has highlighted manslaughter prosecutions in other jurisdictions targeting individuals purported to have used drugs with victims of fatal overdoses. In New York City, I am aware of just four manslaughter cases having been brought by local prosecutors in connection with overdose deaths. My office indicted two doctors on manslaughter, reckless endangerment and hundreds of criminal sales of prescriptions. One of these cases is pending and the other resulted in a conviction and prison sentence of more than 10 years. In each of these cases, the doctor allegedly prescribed medications that led to the deaths of multiple patients. The other two local manslaughter prosecutions that I am aware of are being handled by another office, but also do not appear to fit the fact pattern described in recent media coverage of “co-user” prosecutions.



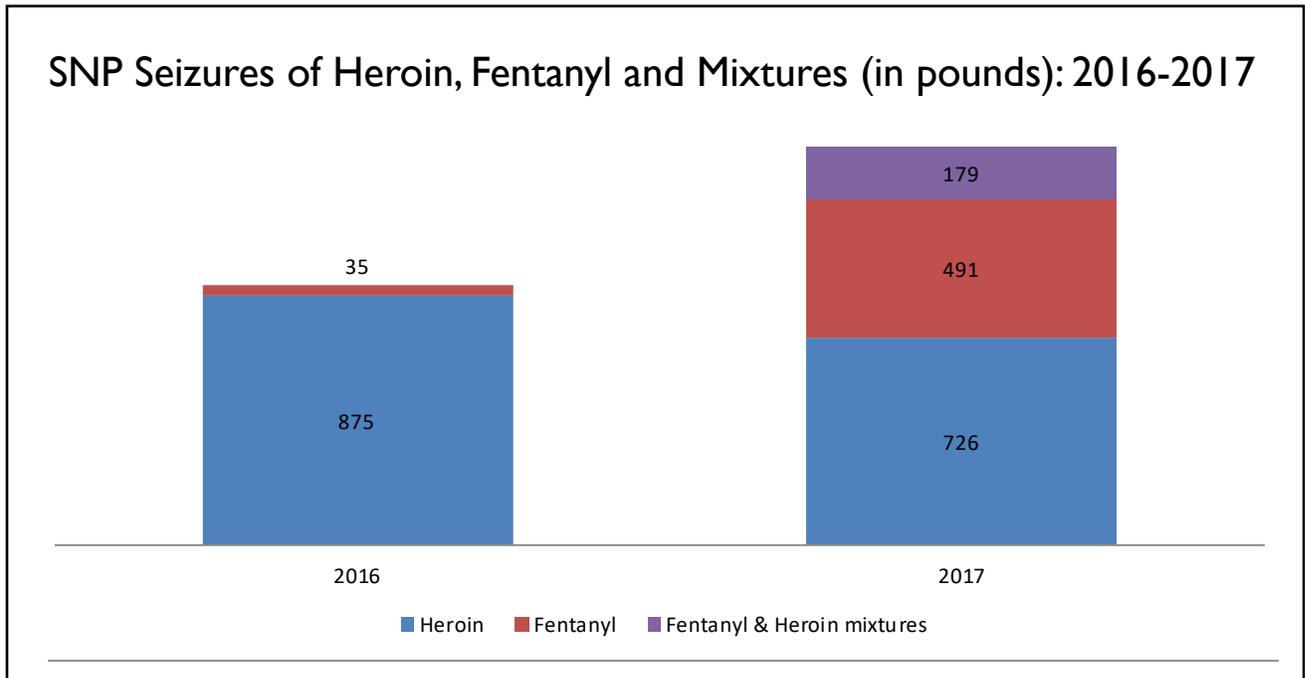
*Numbers for 2017 are provisional.

Supply Reduction: Illicit Opioids

As we have observed with prescription painkiller addiction, supply leads to demand. The focus of my office is tracking the source of supply to the highest level possible through the use of wiretaps, surveillance, confidential sources and other investigative techniques. Targeted enforcement enables us to make the best use of our resources and to have the greatest possible impact. Startling increases in the amounts of heroin and fentanyl we have seized over the past year are a cause for grave concern as they suggest the opioid epidemic is continuing to escalate in New York City and throughout the region. In 2017 our cases led to the seizure of 1,300% more

fentanyl than in 2016. So far in 2018, my office participated in the seizure of an estimated 350 pounds of suspected heroin and fentanyl in New York City, Suffolk County, Westchester County, New Jersey, Boston and California (with laboratory analysis still pending on some seizures). The narcotics seized outside of the city were either intended for distribution here or sourced here. Fentanyl is frequently found mixed with heroin and an array of other substances, or pressed into counterfeit pills and sold as oxycodone, Xanax and other types of prescription drugs.

Fentanyl Seizures Increase by 1,300%



In 2016, SNP investigations yielded 35 pounds of fentanyl. One year later, these seizures had ballooned to 491 pounds of fentanyl, plus 179 pounds of mixtures containing fentanyl and/or heroin. Additionally, we continue to recover large amounts of heroin. While these substances vary widely in potency, they are sold almost interchangeably on the black market.

In our large seizures we have recovered fentanyl alongside a host of other narcotics, such as heroin, other synthetic opioids and cocaine. This was the case in an investigation last year that led agents to a stash apartment in Kew Gardens, Queens. A total of 214 pounds of narcotics were recovered, including more than 140 pounds of pure fentanyl and over 48 pounds of fentanyl mixed with heroin and other narcotics. Additional quantities of heroin and cocaine were also present. This marked the largest single seizure of fentanyl on record in the nation. A dose of fentanyl weighing between two and three milligrams can be lethal. The load recovered in this case could have yielded more than 30 million lethal doses.

In another emblematic case currently being prosecuting by my office, a Mexico-based fentanyl supplier and members of two related drug distribution groups operated out of a Central Park West apartment and a trendy Bronx hotel. The supplier was arrested in New York City in the vicinity of Penn Station after he agreed to travel here from Mexico in order to collect an alleged payment for narcotics. More than 35 pounds of fentanyl were recovered in the case, with the majority found inside a duffel bag on top of a vending machine in a publicly accessible hallway of the Bronx hotel.

Nation's largest fentanyl seizure in Kew Gardens, Queens



An investigation by SNP, the DEA and the NYPD led to the seizure of 214 pounds of narcotics, including more than 140 pounds of fentanyl and 48 pounds of fentanyl mixtures. Agents observed a suspected drug transaction at a New Jersey Walmart and tracked a couple in a Mercedes to a residential building in Kew Gardens, Queens. Inside the apartment, investigators found an enormous cache of narcotics. Packages contained a variety of narcotics and bore different wrappings.

Supply Reduction: Prescription Drugs

My office's Prescription Drug Investigation Unit, which was formed in 2011, has successfully prosecuted numerous members of prescription drug diversion rings and corrupt medical practitioners.

Most recently, we brought manslaughter and reckless endangerment charges against a physician who operated a medical practice in Flushing, Queens, which he abandoned last year upon learning he was under investigation. Dr. Lawrence Choy was arrested in Wisconsin in March and arraigned in Manhattan Supreme Court earlier this month. Manslaughter charges stem from the deaths of three patients to whom Choy allegedly prescribed opioid drugs and other controlled substances in high dosages and dangerous combinations for no legitimate medical purposes.

Once a legitimate medical provider, Choy's practices allegedly underwent a dramatic shift that coincided with financial difficulties associated with failure to pay taxes. The number of prescriptions Choy wrote for controlled substances shot up. Some of Dr. Choy's patients had never before been prescribed opioid drugs before seeing him and quickly became addicted. The doctor is alleged to have continued prescribing to patients he knew had suffered overdoses and engaged in treatment services.

Previously, in 2014, we secured the conviction of another doctor, Dr. Stan XuHui Li, on manslaughter and reckless endangerment charges related to patients' deaths. An anesthesiologist at a hospital in New Jersey, Li operated a weekend clinic in Flushing, Queens which drew patients from a wide geographic area.



Bridget G. Brennan, left, the special narcotics prosecutor for New York, and James J. Hunt of the DEA, announced the charges.

Queens Doctor Charged in the Overdose Deaths of 3 Patients

By TYLER BUNT-WELSH
One day in 2013, Elliot Castillo, a 35-year-old clothing store worker and father of two, walked out of his doctor's office in Flushing, Queens, with a prescription for Xanax.

Three days later, he was found on his mother's couch in Jamaica, Queens, dead of an overdose of that drug and oxycodone. His doctor's name was on a prescription bottle for Percocost nearby: Dr. Lawrence Choy.

That same name would appear on pill bottles found near two other fatal overdoses in 2014 and 2016, authorities said.

In 2007, after a lengthy investigation, the police arrived at Dr. Choy's office and found it in shambles, with folders, papers and garbage strewn across the floor. The doctor was gone.

Investigators would eventually find him nearly 1,000 miles away in Sheboygan, Wis. At a news conference in Manhattan on Thursday, the authorities released an indictment charging Dr. Choy, 65, in the deaths of three patients.

Dr. Choy was indicted on 231 counts, including manslaughter in the second degree in the deaths of Mr. Castillo and Michael Res, 38, from Hauppauge, Long Island. He also faces charges of reckless endangerment in the second degree related to eight surviving patients and to the death of Daniel Barry, 45, a chef from Suffolk County who overdosed on Jan. 11, 2016, eight days after he got his last prescription from Dr. Choy. He was arraigned Thursday in Manhattan Supreme Court.



Dr. Lawrence Choy of Queens was indicted Thursday on 231 counts, including manslaughter and reckless endangerment.

Mr. Castillo, the store worker, first visited Dr. Choy's office in March 2012 seeking treatment for minor chronic pain. By June, Mr. Castillo was being prescribed as

many as 688 oxycodone pills per month, the indictment said.

The charges come as prescription drug addiction continues to be rampant across New York and the rest of the nation. In New York State alone, 2,026 people overdosed on painkillers in 2016, the

most recent year for which data is available.

Dr. Choy had been a licensed physician since 1983. His prescribing habits abruptly changed in 2013, according to Bridget G. Brennan, New York City's special narcotics prosecutor, after the filing of federal and state tax warrants against him totaling more than \$1 million.

Dr. Choy's prescriptions were filed at pharmacies in New York City, upstate New York, Long Island and New Jersey. But a criminal investigation did not begin, ac-

Prescribing hundreds of pills a month for minor chronic pain.

therians said, until the Pennsylvania attorney general's office became suspicious of prescriptions being filled at pharmacies in that state licensed to Dr. Choy's name.

In March 2016, the Drug Enforcement Administration obtained a search warrant for Dr. Choy's office, seizing records and computer equipment. The search frightened Dr. Choy, and he fled to stay with family, Ms. Brennan said.

When the police executed a second search warrant on his office in August 2017, it was empty. He was arrested in Wisconsin in March.

New York Times, June 8, 2018.

Patients lined up to wait for the doctor and paid cash for illegitimate prescriptions. He was sentenced to more than 10 years in prison. The conviction was affirmed last year by the Appellate Division, First Department.

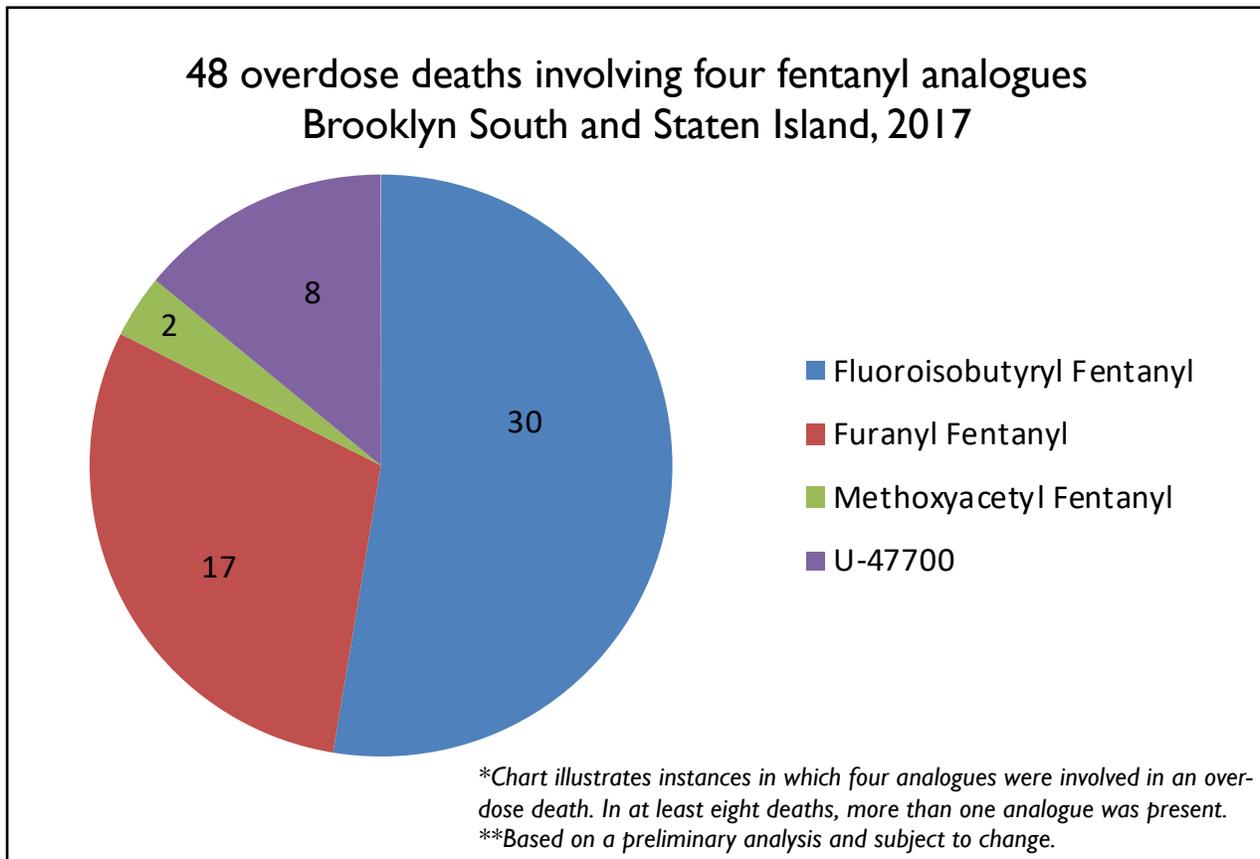
Citywide Narcotics Analysis

SNP and the NYPD are working together to examine narcotics data from a broad citywide perspective in order to identify patterns and larger trends. Information is gleaned from laboratory reports, overdose data, arrests, seizures and community complaints. A detailed understanding of citywide trends and patterns allows SNP to effectively synchronize its work with the five District Attorneys' offices and make the best use of available resources.

Most recently, SNP has used these tools to examine how fentanyl analogues are impacting New York City's black market for narcotics. New types of these analogues are continually emerging, with the majority not currently listed among Schedule I controlled substances in New York State. This is problematic for law enforcement, because we are neither able to obtain search warrants in order to seize the analogues nor initiate wiretap investigations. If someone is arrested selling one of these substances, they cannot be charged. This significantly hampers our efforts.

Even more problematic for drug users, fentanyl analogues are highly potent and linked to numerous fatal overdoses. Through our analysis we have so far identified at least 48 deaths in Brooklyn South and Staten Island that involved four analogues that Gov. Cuomo proposed for inclusion on Schedule I and the state legislature rejected. Of these deaths, 26 were in Brooklyn South and 22 were in Staten Island. These deaths account for nearly 20% of all fatal overdoses in 2017 in those areas of the city.

Toxicology reports for deaths in Brooklyn South and Staten Island in 2017 show Fluoroisobutyryl Fentanyl was present in 30 fatal overdoses, including 15 in Brooklyn South and 15 in Staten Island. Furanyl Fentanyl was found in 11 deaths in Brooklyn South and six deaths in Staten Island. Methoxyacetyl Fentanyl was found in two deaths in Brooklyn South. The analogue U-47700 was involved in six deaths in Brooklyn South and two in Staten Island. At least eight of these deaths involved more than one of the four analogues.



Additionally, fentanyl analogues are being seized by the NYPD with alarming frequency. An analysis of NYPD daily invoices for fentanyl analogues for 2017 – 2018 highlights the following:

- **Despropionyl Fentanyl** is appearing in NYPD seizures and invoices with 431% greater frequency in 2018 than in 2017.
- **4-ANPP** is appearing in NYPD seizures and invoices 203% more frequently in 2018 than in 2017.
- **Methoxyacetyl Fentanyl** seizures and NYPD invoices show a significant 82% rate increase in 2018 over 2017.
- **Fluoroisobutryl Fentanyl** seizures and NYPD invoices show a slight rate increase of 6% in 2018 over 2017.

We have observed an overall increase in frequency of fentanyl analogue seizures by the NYPD as compared to seizures of fentanyl. The daily rate of analogue invoices increased by 40% citywide over the last year. Fentanyl invoices increased by 29%. In the Bronx, the daily rate of analogue invoices has doubled, most significantly for Acetyl Fentanyl (+287%) and 4-ANPP (+315%).

Numerous dangerous fentanyl analogues continue to be legal for drug dealers to sell to unsuspecting users. Our research shows that when analogues are controlled either federally or internationally, the result is a decline in the prevalence of those analogues in the New York City drug market. I implore the City Council to strongly advocate for adding the remaining nine fentanyl analogues proposed by Gov. Cuomo to the list of controlled substances.

Fentanyl Analogues - NYPD Lab Invoices

BO	2017-2018 YoY Change based on Daily Rate
Bronx	107%
Brooklyn	-4%
Manhattan	35%
Queens	40%
Staten Island	66%
Total	40%

In the Bronx, analogue invoices have doubled YoY, most significantly for Acetyl Fentanyl (+287% YoY) and 4-ANPP (+315% YoY)

Data is from the NYPD Lab.

Note: Analogue tracking began on 3/26/2016 and is updated as of 5/11/2018

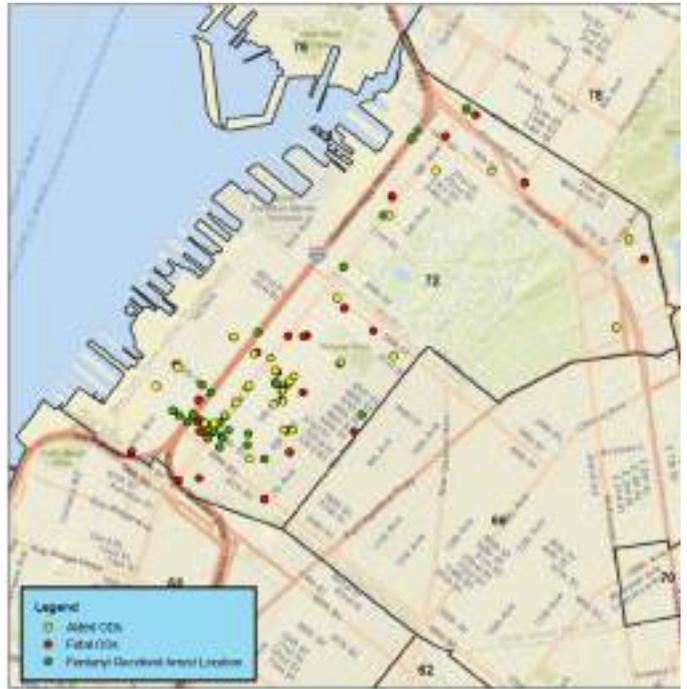
Fentanyl Hot Spots

Our analysis has also led to the identification of high volume drug markets that attract a significant percentage of drug buyers from outside the borough where they reside. By identifying those citywide hubs, law enforcement gains a better understanding of how narcotics move across boroughs and how to focus resources on those drug markets with an outsized influence on the supply of narcotics throughout the city. Similarly, this analysis sheds light on the presence of fentanyl “hot spots” or drug markets across the city where there appears to be a high incidence of fentanyl present in the drugs sold. By cross-referencing these locations with information about overdose deaths and non-fatal overdose reversals, we deepen our understanding of the impact those hot spots have on overdose rates.

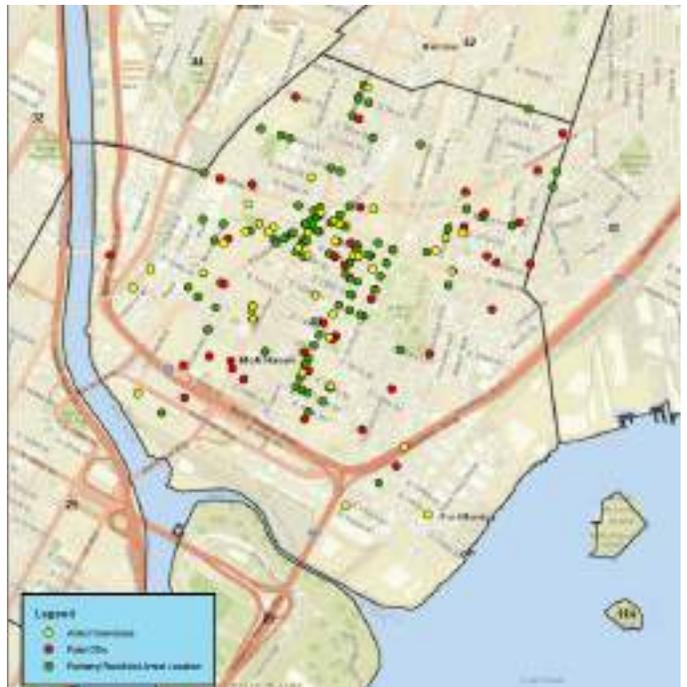
SNP also facilitates early identification of emerging distribution points and focuses on those areas of the city with a high incidence of narcotics seizures of significant weight. By tracking and analyzing large seizures throughout the city on an ongoing basis, the office is able to quickly identify geographical areas which are emerging as significant distribution points.

Ongoing SNP investigations demonstrate that fentanyl analogue trafficking differs from the pattern we have seen with other opioid drugs. Analogues are generally transported in smaller quantities, often through the mail or parcel delivery services. As a result of the dark web, these substances can be acquired directly from international producers by tech-savvy low level narcotics networks. One of our investigations into a fentanyl analogue trafficking organization involves violence. We will continue to monitor whether desperate drug users are recruited to carry out street sales in order to shield ringleaders from exposure to arrest. Threats of violence and assault are used as methods of maintaining control.

*Fentanyl Hot Spots, Fatal Overdoses, and Aided Saves
72nd Precinct, 2016 - 2017*



*Fentanyl Hot Spots, Fatal Overdoses, and Aided Saves
40th Precinct, 2016 - 2017*



Treatment and Prevention

For nearly 30 years, SNP has been a proponent of offering treatment to defendants with substance abuse issues. A pioneer in the field, SNP operated robust Drug Treatment Alternatives to Prison (DTAP) programs that enabled hundreds of individuals to avoid prison and enter into recovery. Criteria considered in determining eligibility frequently include a determination as to whether a defendant sold drugs in order to support his or her own habit. Beginning in 2009, judges were authorized to place defendants into court sponsored diversion programs and the DTAP programs waned. Also in 2009, mandatory prison sentences were abolished or reduced for felony narcotics charges. Since 2011, a substantially lower number of offenders have applied for and been accepted into treatment through the criminal justice system.

I encourage the City Council to examine this issue. We must all seek to understand why people with substance abuse issues are not accessing the treatment they need and how we can entice them to do so. The District Attorneys' offices have developed promising and innovative programs, such as HOPE and OAR, to offer defendants arrested on low level

misdemeanor charges an opportunity to avoid prosecution. However, these programs are not applicable to or appropriate for those charged with more serious felony offenses.

Nationally and in New York State, successful prevention initiatives to address the opioid epidemic rely on collaboration between entities from variety of fields, such as law enforcement, public health, education and treatment. By examining a range of strategies, we can identify approaches suitable to New York City. Education and prevention efforts will undoubtedly pay off by deterring new users from becoming addicted to heroin and fentanyl and diminishing the impact of the opioid epidemic on future generations. I believe we need to do more to inform all New Yorkers, not just chronic users, about the dangers of fentanyl. New York City public schools lack consistent and effective drug education messages. I applaud the City Council for advocating for opioid awareness education for city students to learn about the dangers of opioids. I also encourage the City Council to continue allocating resources towards researching effective prevention campaigns for the general public and age-appropriate educational materials for schools.

