

## ARIZONA JUDICIAL COUNCIL

### Request for Council Action

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**Date Action Requested:**

June 27, 2023

**Type of Action Requested:**

- Formal Action/Request  
 Information Only  
 Other

**Subject:**

FENTANYL AND TOXIC EVIDENCE TASK FORCE - FINAL REPORT

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**FROM:**

Jerry Landau, Chair of the Fentanyl and Toxic Evidence Task Force

**DISCUSSION:**

Mr. Landau will report on the deliberations and recommendations from the Task Force as well as the status of the proposed rule regarding hazardous evidence in the courtroom.

**RECOMMENDED COUNCIL ACTION:**

Recommend that the Council approve the adoption of the report and recommendations as well as the adoption of an Administrative Order regarding the presence of hazardous evidence in judicial facilities.



Task Force to Create  
Guidelines for the Handling of  
Fentanyl Evidence and Other  
Toxic Evidence in the  
Courthouse

*Final Report*

**EVIDENCE**

# FTETF - Fentanyl and Toxic Evidence Task Force

## Membership List

### Chair

Jerry Landau  
Special Projects Consultant  
Administrative Office of the Courts  
Judge Pro-Tem

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David Rhodes  
Sheriff  
Yavapai County

Judge Timothy M. Wright  
Presiding Judge  
Superior Court of Gila County

### Members

Jenny Black  
Court Services Administrator  
Clerk of Court  
Superior Court of Maricopa County

Sharon Yates  
Court Administrator  
Superior Court of Coconino County

Tom Zaworski  
Legal Advisor  
Scottsdale Police Department

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Vince Figarelli  
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Jaime Hindmarch  
Deputy Director  
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Brian McIntyre  
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Donna McQuality  
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Judge Frank Moskowitz  
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### Staff

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# Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse

## Final Report

### *Background*

The Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse (“Task Force”) was established by Administrative Order 2022-62,<sup>1</sup> and later extended by AO 2022-161.<sup>2</sup> Task Force members included a court administrator, a clerk of court, the Department of Public Safety crime laboratory director, a county chief deputy legal advocate, a county attorney, judicial officers from three different county Superior Courts, a sheriff, and a legal advisor from a city police department.

The originating A.O. mandated six minimum guidelines that the Task Force must address regarding fentanyl and carfentanil, and other toxic substances in the courthouse. Subsequently, the Task Force was asked to expand its discussion to include more broader “hazardous substances.” The minimum guidelines are as follows:

- a. Whether these drugs should be inspected and approved by designated court personnel before being allowed into a courthouse.
- b. Whether these packaged drugs must always remain in the exclusive possession of law enforcement personnel, except by approval of the court, and whether these drugs should be given to, or handled by, court personnel or others involved in judicial proceedings, including attorneys, witnesses, court clerks, and jurors.
- c. The protocols that should be adopted for handling of the packaging for these drugs.

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<sup>1</sup> Appendix A

<sup>2</sup> Appendix B

## Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse



- d. Whether these drugs should remain in a courthouse or court-related facility during non-business hours. If court rules pertaining to the handling of exhibits prevent removal from the courthouse, policies on secure and safe storage should be established.
- e. Whether courthouse personnel should be trained to address possible exposure to fentanyl and other toxic evidence and to properly identify opioid toxicity; and identify what, if any, training is currently available.
- f. Whether naloxone should be kept in courthouses and other court-related facilities for emergencies and whether court administration or court security should be trained on the administration of naloxone in the event of opioid toxicity.

There has been a significant rise in the United States of overdoses due to fentanyl, carfentanil, and their analogs with a corresponding rise in criminal cases involving these drugs that are filed in state courts. Accordingly, there is the potential risk that these drugs and other toxic evidence in these cases will need to be handled in the courthouse.

Clerks and other court personnel may come into contact with fentanyl and its analogs in similar manners to emergency responders. Jurors would most certainly come into contact with the evidence if it were to be treated as any other evidence in any other trial. The CDC's National Institute for Occupational Safety and Health (NIOSH) identified emergency responders, healthcare workers, and other hospital/clinic personnel as "at-risk groups for exposure to fentanyl and its analogues". NIOSH states that illicit fentanyl and its analogues pose a unique threat to healthcare workers, as opposed to pharmaceutical fentanyl, due to the potential hazard of coming "into contact with these drugs in the course of their work..."<sup>3</sup>

The American College of Medical Toxicology and American Academy of Clinical Toxicology created a combined report to address the possibility of accidental fentanyl exposure. While the report acknowledges that accidental absorption is unlikely, the study still recommends precautions be taken if exposure to fentanyl is expected.<sup>4</sup> Due to the increase in fentanyl related criminal cases, the incidence of clerks, jurors and other court personnel having to handle illicit fentanyl has undoubtedly increased and thus precautionary measures should be taken.

Other jurisdictions, in one form or another, have attempted to deal with fentanyl and other hazardous substances in courthouses. For instance:

The Executive Office of the Trial Court for Massachusetts created policy specifically targeting fentanyl and carfentanil, banning it entirely from entering the courthouse.<sup>5</sup> The Task Force does not recommend a complete ban and does not stop at fentanyl and carfentanil. Other forms of evidence, defined

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<sup>3</sup> Appendix C

<sup>4</sup> Appendix D

<sup>5</sup> Appendix E

## Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse



by this Task Force as “hazardous evidence,” pose substantial risk to all court participants, and there have not been adequate safeguards to address such evidence until the recommendations of the Task Force.

Washington state, in its General Rules, addressed “hazardous exhibits” and the inclusion of them in evidence. Hazardous exhibits are defined by the rule as “...an exhibit that unreasonably threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics.”<sup>6</sup> Unlike the Rule recommended by this Task Force, the Washington Rule does not require hazardous exhibits to be admitted digitally, but rather allows them to be.

In 2019, the Second Judicial District of Minnesota implemented its own local policy governing the handling of potentially hazardous exhibits. In this policy, the party requesting to bring in the hazardous evidence must notify the court on its intention one week prior to the related proceeding. The Minnesota policy appears to be more lenient on the specifics of admitting the physical hazardous exhibits and allows the court to take a number of actions as opposed to mandating those actions. While this Task Force recommends court staff not be involved in the retention of the physical hazardous evidence, the Minnesota policy does the opposite and requires court administration staff to be the ultimate custodian.<sup>7</sup>

California has additional requirements when admitting potentially toxic evidence; it is required that evidence deemed toxic by nature be submitted as a photograph and have a “written chemical analysis certified by competent authority.”<sup>8</sup>

Closer in concept to the Task Force’s Rule Petition is the United States District Court District of New Hampshire’s local rule addressing hazardous evidence. This local rule states that hazardous exhibits shall not be presented in the courtroom without “prior leave of court.” Unlike this Task Force’s Rule Petition, however, the District Court’s local rule does not specifically address the use of digital evidence in lieu of the physical hazardous evidence.<sup>9</sup> To avoid confusion, the Task Force has linked the two concepts together, providing direction for the court and its participants.

These examples show that other states have addressed the issue of hazardous evidence in the past and continue to address it now. Under current Arizona Rule, bombs, radioactive material, unstable chemicals, and all other forms of hazardous evidence could conceivably be allowed into the courthouse and courtroom. With the advancement of digital evidence technology, and by implementing the Task Force’s recommendations, our courts are better able to protect all court participants by limiting exposure to hazardous evidence.

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<sup>6</sup> Appendix F

<sup>7</sup> Appendix G

<sup>8</sup> Appendix H

<sup>9</sup> Appendix I





## Executive Summary

For the protection of the public, parties, attorneys, victims, judicial officers, court staff, and jurors, it is incumbent upon the court to ensure the handling and storage of potentially dangerous substances in the courthouse, judicial facility<sup>10</sup> and in the courtroom. Uniform statewide procedures for the handling and safekeeping of hazardous evidence and substances will benefit all concerned.

The Task Force's goal is to address concerns of hazardous evidence and substances entering the courtroom, courthouse and other judicial facilities while still ensuring due process and fairness to the parties and, in a criminal case, to victims. To accomplish this mission, the Task Force is recommending an amendment to the Arizona Rules of Evidence, the consideration by the Chief Justice for an Administrative Order, and a recommendation to the State Bar for a jury instruction. The Task Force voted 8-3 to make these recommendations. The minority opinion was to address most of what is included in the rule proposal through an Administrative Order.

In formulating its recommendations, the Task Force heard from Task Force members, court security personnel, judges, lawyers, and other court staff, personnel, and stakeholders. As an example, Summer Dalton, the Administrative Office of the Courts' e-court services manager, presented on the use of the digital evidence portal. Richard Tracy, court security manager for Pima County Superior Court, and Danny Cordova, former state court security manager, discussed the court security officer's role related to the storing and usage of Naloxone and Narcan®. The Task Force also heard from two Superior Court Judges representing the Supreme Court's Advisory Committee on Rules of Evidence as to the placement of the rule and a representative from the Maricopa County Attorney's Office. A representative from AZ HIDTA presented on the rise of fentanyl in Arizona.

The Task Force filed Rule Petition R-2023-0025 requesting the Supreme Court to amend Rule 611 of the Rules of Evidence,<sup>11</sup> requiring that hazardous evidence not be admitted in the courtroom without a court order and instead be admitted digitally.<sup>12</sup> The proposed rule sets parameters for the judge to permit physical evidence inside the courtroom.

The Administrative Order sets parameters for the handling of hazardous substances in the courthouse and judicial facilities and the requirements for custody and storage of those substances while in the courthouse or judicial facility. The proposed Administrative Order also requires Naloxone or Narcan® be available in courthouses and judicial facilities, as well as associated training in the ability to recognize signs and symptoms of drug overdose and the proper administration and risks associated with

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<sup>10</sup> A judicial facility may, as an example, include a probation office or clerk's office.

<sup>11</sup> Appendix J

<sup>12</sup> After hearing a presentation by the Arizona Supreme Court's Advisory Committee on Rules of Evidence, the Task Force opted to take that Committee's recommendation to place the Rule in the Rules of the Supreme Court, as Rule 124.



the use of Naloxone or Narcan®. It is also recommended by the Task Force that the related training for Naloxone and Narcan® be added to the Court Security Officer Academy. For jurisdictions that do not have court security officers, other persons in the court must be trained. Lastly, the Task Force recommends a jury instruction be created to provide direction to jurors regarding the substitution of digital evidence for physical evidence.

## *Proposed Rule*

The proposed rule provides requirements and guidance to the court and parties on the handling and storage of “hazardous evidence” in the Courtroom. The rule contains multiple provisions as noted below.

- Defines “hazardous evidence” as “any physical evidence that a party seeks to bring into the courtroom that may create a substantial and serious risk of harm if ingested or absorbed, or if otherwise determined by the court to create a substantial and serious risk of harm.”
- To best address the potential for risk and injury from hazardous evidence being present in the courtroom, it requires that hazardous evidence not be permitted inside the courtroom, except as otherwise provided in the rule.
- A party seeking to bring hazardous evidence in the courtroom must file a written motion.
- The court may order that hazardous evidence be permitted in the courtroom only if it finds that the petitioning party has demonstrated that the need for the physical evidence substantially outweighs the potential health risks associated with its presence in the courtroom.
- Relevant factors for the court to consider in making the determination include:
  - the rights of the parties; and
  - the sufficiency and effectiveness of presenting digital representations of hazardous evidence in lieu of the hazardous evidence.
- If hazardous evidence is permitted in the courtroom, an order granting admission of the hazardous evidence must provide that a digital representation is admitted in lieu of the hazardous evidence. This, for example, could be a video, picture, or other digital form.
- At no time may the jury take custody of the hazardous evidence, but the jury is permitted to view hazardous evidence in the courtroom.



## Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse



- The clerk of the court may not accept any hazardous evidence, even if that hazardous evidence is physically being presented in the courtroom and admitted into evidence. Absent court order, a digital copy must be admitted in lieu of the physical form.
- Since the clerk of the court cannot accept the physical evidence, it is the custodian's (in most cases, law enforcement) duty to retain such evidence during the pendency of the case, any post-verdict proceedings, and appeals. All evidence tags issued by the clerk, other identifying markings, and packaging must remain in place and not be disturbed.

Even if hazardous evidence is brought into the courtroom, the physical hazardous evidence itself may still not be admitted in the sense that it is not turned over to the clerk nor given to the jury when deliberations commence. In this manner, the risk to the clerk and the jury is greatly reduced, protecting them from any potential harm the substance may pose.

### *Administrative Order*

The Task Force recommends that an Administrative Order be proposed to the Chief Justice setting forth requirements for the handling of “hazardous substances” in the courthouse and judicial facilities. In essence, the proposed Administrative Order replicates the Rule Petition in that hazardous substances shall not be allowed in the courthouse unless a court order authorizes it to be. “Hazardous substance” holds the same definition as “hazardous evidence” in the Rule Petition.

The Administrative Order also requires all courthouses and other judicial facilities have available Naloxone and Narcan®. The Task Force recommends that judicial facilities be included in the Administrative Order but understands there may be some logistical issues where there is not court security present, such as probation offices. It also provides for training of court security officers and other staff. The proposed Administrative Order requires that, at a minimum, the presiding judge of each appellate, superior, justice and municipal court, and the presiding disciplinary judge, implement the following policies:<sup>13</sup>

- Hazardous substances are not permitted in the courthouse or judicial facility, absent a court order.
- Hazardous substances should be inspected and approved by designated court personnel or judicial personnel when a person brings them into a courthouse.
- If a hazardous substance is brought into the courthouse or judicial facility by a law enforcement officer, the custody of the substance shall remain with the law enforcement officer. If the substance is brought into the courthouse or judicial facility by anyone other

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<sup>13</sup> Appendix K

## Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse



than a law enforcement officer, either a court security officer or a law enforcement officer shall take custody.

- Court security or other appropriate judicial employee(s) shall be responsible for the safe storage of hazardous substances, if required.
- Hazardous substances shall not be stored by a Clerk of Court.
- Naloxone Hydrochloride or Narcan® shall be available in all courthouses and judicial facilities. (This recommendation is aimed at specifically tackling the increasing overdoses, injuries and fatalities as well as the increases in fentanyl and toxic substances cases, which could in turn increase the prevalence of fentanyl and other toxic substances in the courthouse and judicial facilities).
- All court security officers shall be trained on identifying signs of opioid toxicity and on the administration and risks associated with the treatment of Naloxone Hydrochloride or Narcan®.
- Training on identifying signs of opioid toxicity and on the administration and risks associated with the treatment of Naloxone Hydrochloride or Narcan® shall be provided by the Court Security Officer Academy.
- Courts and other judicial facilities without full-time court security officers are encouraged to provide training to designated employees on the administration and risks associated with the treatment of Naloxone Hydrochloride or Narcan®.

The Task Force discussed an alternative approach to recommending the enactment of one rule and an administrative order, that being recommending the enactment of two rules and an administrative order. The second rule would, in essence, contain what is included in the first five bullet points above. The administrative order would cover what is included in the last four bullet points above. This proposal would be patterned after the current Rules of the Supreme Court, Rules 122 and 122.1 having to do with the use of recording devices in the courtroom and courthouse. Ultimately, the Task Force chose the one rule, one administrative order approach. The Task Force was of the opinion that while proposing enactment of two rules and an administrative order was certainly viable, having three reference points would be cumbersome and more difficult for practitioners.

### *Jury Instruction*

The Task Force recommends the applicable Arizona State Bar Committees on Jury Instructions to consider a jury instruction(s) be developed for cases in which digital evidence is introduced in lieu of physical hazardous evidence. The goal of the jury instruction would be to inform jurors that the digital evidence that was shown must be seen without bias and held to an equal standard of any physical evidence that may have been presented.



## *Conclusion*

In order to protect all participants in the judicial system from the effects of hazardous substances, the Task Force issues its findings and recommendations. The Rule petition implements the recommendations for the handling and storage of hazardous evidence in the courtroom. The proposed Administrative Order implements the recommendations for handling and storage of hazardous substances in a courthouse and judicial facility. The referral to the applicable State Bar Committee for consideration of jury instructions is designed to ensure a fair and unbiased presentation of evidence consistent with due process.

Requiring Naloxone or Narcan® to be available in a courthouse and providing the necessary training associated with the administration of the drug and identifying opioid overdose promotes a higher level of safety required in judicial facilities. It is the Task Force’s belief that the Rule Petition and Administrative Order enhance the ability to ensure the safety of all court participants while still promoting fair justice.

## *Prologue*

As Chair of the Task Force, I wish to personally thank all the members of the Task Force and especially thank Sam Davis, the Administrative Office of the Courts Legislative Assistant, and Amanda McQueen, the Legal Services paralegal, for their extensive work and time devoted to the Task Force meetings and deliberations. The Task Force greatly benefited from their participation.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
ESTABLISHMENT OF A TASK FORCE	)	Administrative Order
TO CREATE GUIDELINES FOR THE	)	No. 2022 - <u>62</u>
HANDLING OF FENTANYL EVIDENCE	)	
AND OTHER TOXIC EVIDENCE	)	
IN THE COURTHOUSE	)	
_____	)	

There has been a significant rise in the United States of overdoses due to fentanyl, carfentanil, and their analogs and a corresponding rise in criminal cases involving these drugs that are filed in state courts. Accordingly, there is the potential risk that the drug evidence and other toxic evidence in these cases will need to be handled in the courthouse.

The Center for Disease Control’s National Institute for Occupational Safety and Health has identified emergency responders and healthcare workers as at-risk groups for exposure to fentanyl and its analogs. Guidance that contains standard operating procedures, training, personal protective equipment, and other relevant information for preventing occupational exposure to fentanyl and its analogs has already been developed for these identified groups. There has been little guidance, however, issued for court personnel who may have to handle packaged evidence of fentanyl, carfentanil, their analogs, or other toxic evidence. In 2019, the National Judicial Opioid Task Force released a briefing on the subject stating, “it is important for personnel who work in courthouses and other court-related facilities to accurately understand what this evidence is, what risks it presents, and to understand the policies and precautionary measures adopted by courts.”

In arriving at appropriate guidelines for the handling of fentanyl, carfentanil, their analogs and other toxic evidence, the court must balance the safety concerns for personnel who may have to handle these drugs, and the public who may be exposed to these drugs during a judicial proceeding, against the rights of parties, and where applicable the victim in judicial proceedings to due process and a fair trial.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED:

1. ESTABLISHMENT: The Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse is established.

2. PURPOSE: The Task Force shall, using the guidelines of the National Judicial Opioid Task Force, develop guidelines for handling these drugs when they are presented as evidence

during judicial proceedings. In determining the appropriate guidelines for Arizona courts, the Task Force must always weigh the rights of the parties, and where applicable, the victim, against the safety interests of court personnel and the public.

The guidelines developed by the Task Force should address, at a minimum, the following:

- a. Whether these drugs should be inspected and approved by designated court personnel before being allowed into a courthouse.
- b. Whether these packaged drugs must always remain in the exclusive possession of law enforcement personnel, except by approval of the court, and whether these drugs should be given to, or handled by, court personnel or others involved in judicial proceedings, including attorneys, witnesses, court clerks, and jurors.
- c. The protocols that should be adopted for handling of the packaging for these drugs.
- d. Whether these drugs should remain in a courthouse or court-related facility during non-business hours. If court rules pertaining to the handling of exhibits prevent removal from the courthouse, policies on secure and safe storage should be established.
- e. Whether courthouse personnel should be trained to address possible exposure to fentanyl and other toxic evidence and to properly identify opioid toxicity; and identify what, if any, training is currently available.
- f. Whether naloxone should be kept in courthouses and other court-related facilities for emergencies and whether court administration or court security should be trained on the administration of naloxone in the event of opioid toxicity.

3. **REPORT AND RECOMMENDATIONS:** The Task Force shall submit a report and recommendations to the Arizona Judicial Council by December 31, 2022. The Task Force may present findings and recommendations as each area is addressed rather than waiting until guidelines for all areas have been developed.

4. **MEMBERSHIP:** The individuals listed in Appendix A are appointed as members of the Task Force effective upon signature of this Order and ending on December 31, 2022. The Chief Justice may appoint additional members as necessary.

5. **MEETINGS:** Task Force meetings shall be scheduled at the discretion of the Chair. All meetings shall comply with the Arizona Code of Judicial Administration § 1-202: Public Meetings.

6. **STAFF:** The Administrative Office of the Courts shall provide staff for the Task Force and shall assist the Task Force in developing recommendations and preparing any necessary reports.

Dated this 15th day of June, 2022.

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ROBERT BRUTINEL  
Chief Justice



IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
EXTENSION OF THE TERM OF THE	)	Administrative Order
TASK FORCE TO CREATE	)	No. 2022 - <u>161</u>
GUIDELINES FOR THE HANDLING	)	(Affecting Administrative
OF FENTANYL EVIDENCE AND	)	Order No. 2022-62)
OTHER TOXIC EVIDENCE IN THE	)	
COURTHOUSE	)	
_____	)	

On June 15, 2022, this Court entered Administrative Order No. 2022-62 which established the Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse. The purpose of the Task Force is to develop guidelines for handling these drugs when they are presented as evidence during judicial proceedings.

The Chair has requested the Court to further extend the time for filing the Task Force’s report and recommendations. Therefore,

IT IS ORDERED that the Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse shall submit a report and recommendations to the Arizona Judicial Council no later than March 31, 2023.

IT IS FURTHER ORDERED that the Task Force members appointed by Administrative Order No. 2022-62 shall continue their service during the period of this extension. Their terms will end on March 31, 2023.

Dated this 16<sup>th</sup> day of November, 2022.

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ROBERT BRUTINEL  
Chief Justice

# Preventing Occupational Exposure to Fentanyl

## Preventing Occupational Exposure to Healthcare Personnel in Hospital and Clinic Settings

Illicit fentanyl and its analogues (for the purpose of this document, referred to as illicit fentanyl) pose a potential hazard to healthcare personnel who could come into contact with these drugs in the course of their work in hospital and clinic settings. This potential risk, which is related to external sources of fentanyl (i.e., originating in the community), is distinct from the hazards posed by diversion of pharmaceutical fentanyl (which is used in many healthcare settings as part of routine patient care; [see for information](#) related to drug diversion).

Healthcare personnel who could potentially be exposed to illicit fentanyl include nurses, nursing assistants, physicians, technicians, therapists, phlebotomists, pharmacists, students, and trainees. Healthcare personnel not directly involved in patient care, but who could be potentially be exposed to illicit fentanyl in the healthcare setting, include clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, and volunteer personnel. Possible exposure routes to illicit fentanyl vary based on the source and form of the drug. Healthcare personnel might be exposed when the patient or their personal items are contaminated with illicit fentanyl, which may be present in powder, tablet, or liquid forms. While the clinical findings for a person presenting with fentanyl (or other opioid overdose) may be wide-ranging, respiratory depression or arrest, disorientation or stupor, and pinpoint pupils (miosis) generally suggest severe opioid toxicity.

Potential exposure routes of greatest concern include inhalation of powders or aerosols, mucous membrane contact, ingestion, or exposure secondary to a break in the skin (for example a needlestick). Any of these exposure routes can potentially result in a variety of symptoms that can include the rapid onset of life-threatening respiratory depression. Skin contact is also a potential exposure route, but is not likely to lead to overdose unless exposures are to liquid or to a powder over an extended period of time. Brief skin contact with illicit fentanyl is not expected to lead to toxic effects if any visible contamination is promptly removed.

The Centers for Disease Control and Prevention (CDC) has no occupational exposure data on illicit fentanyl for workers potentially exposed in the course of their job duties. There are no established federal or consensus occupational exposure limits for illicit fentanyl. These recommendations are based on the reported toxicity and the chemical and physical properties of illicit fentanyl; CDC's National Institute for Occupational Safety and Health (NIOSH) guidance for other similar chemicals (or in the same family); recommendations from previous NIOSH health hazard evaluation reports about law enforcement personnel exposures to other drugs and chemicals; and the basic principles of industrial hygiene. As new research becomes available, these recommendations will be updated.

### Work Practices<sup>1</sup>

The following work practices should be established and followed when illicit fentanyl is known or potentially present on patients presenting for healthcare with or without symptoms of opioid exposure. These work practices are recommended along with decontamination procedures and use of personal protective equipment (PPE) noted below.

1. Healthcare facilities that receive victims from EMS responses should work with EMS providers to coordinate communication of information about the response. Information including details related to potential contamination of

the victims and providers can help the healthcare facility better assess whether decontamination is necessary and coordinate medical evaluation and treatment.

2. When first encountering a patient, the healthcare personnel should assess the risk for hazards, and determine whether the presence of illicit fentanyl is suspected. Gathering relevant information from the patient, emergency medical transport staff, or other persons accompanying the patient is important when possible.
3. Healthcare personnel should follow established work practices as well as these recommendations:
  - Staff should recognize when they are entering and leaving potentially contaminated areas.
  - Do not eat, drink, smoke, or use the bathroom while working in an area with known or suspected illicit fentanyl.
  - Do not touch the eyes, mouth, or nose after touching any surface potentially contaminated with illicit fentanyl.
  - Wash hands (or other unprotected skin) with soap and water immediately after a potential exposure and after leaving an area where illicit fentanyl is known or suspected to be present to avoid potential exposure and cross contamination. Do not use alcohol-based hand rubs to clean contaminated skin in situations where exposure to illicit fentanyl is suspected. Use of such hand rubs could increase absorption through the skin.
  - Avoid performing tasks (such as shaking potentially contaminated clothing or bedding) that might aerosolize illicit fentanyl that is present on the patient or in the environment because it might increase risk of exposure to healthcare personnel. Activities that aerosolize illicit fentanyl require the use of higher levels of PPE as recommended below and should be conducted by appropriately trained personnel in accordance with facility policies and procedures.
  - Removal or changing of a patient's clothes or bedding might be necessary during the care of a patient that is suspected or confirmed to have used or been exposed to illicit fentanyl. These materials should be handled in a manner which minimizes contact with the materials, dispersion of any illicit fentanyl which may be present, and production of any aerosols from the materials. If powder or dust is identified on clothing, a wet wipe should be used while wearing the PPE as recommended below to remove it. The materials should be carefully placed in labeled durable 6 mil polyethylene bags and segregated from other laundry until they are laundered.
  - Notify other healthcare personnel involved with the care of the patient of the potential for illicit fentanyl contamination until the patient, room, work surfaces, and laundry are decontaminated.
  - Launder clothes worn by healthcare personnel caring for a patient that is suspected or confirmed to have used or been exposed to illicit fentanyl at the healthcare facility if in-house laundry facilities are available. Clothing should be carefully placed in labeled durable 6 mil polyethylene bags and segregated from other laundry until they are laundered. If a healthcare facility does not have in-house laundry facilities, the potentially contaminated linens or uniforms should be segregated and identified when sent for laundering.
  - If collection of unknown substances suspected to be illicit fentanyl is needed in the healthcare setting, develop a specific plan to perform those types of collections in accordance with the policies and procedures of the facility and applicable law enforcement. Personnel specifically trained to perform such collections should do so while using the PPE recommended below. Never handle illicit fentanyl without using the appropriate PPE.

## Training

Personnel in healthcare facilities who perform jobs where illicit fentanyl is reasonably anticipated to be present should receive special training in how to conduct a risk assessment and demonstrate an understanding of the following elements. Whether as part of a [formal or informal triage process](#), healthcare personnel should incorporate the following training elements into the initial part of the patient assessment process to help guide subsequent actions related to minimizing potential exposure to illicit fentanyl:

- Potential exposure routes for illicit fentanyl.
- How to recognize the signs and symptoms of opioid exposure (applicable to patients and other healthcare personnel).
- How to recognize potential illicit fentanyl contamination in patients.
- When to use PPE; what PPE is necessary; how to properly put on, use, take off, dispose of, and maintain PPE; and the limitations of PPE.
- When and how to decontaminate a patient.

# Personal Protective Equipment (PPE)

Healthcare personnel may be at increased risk of exposure to illicit fentanyl if small amounts of fentanyl products are visible on the patient, clothing, or possessions. In this case, healthcare personnel would use the following PPE:

- At least an N100, R100, or P100 disposable filtering facepiece respirator<sup>2</sup> or a respirator that provides a higher level of protection
- Face and eye protection that may include goggles or a faceshield when wearing a filtering facepiece respirator<sup>3</sup>
- Powder-free nitrile gloves<sup>4</sup>
- Wrist/arm protection, such as sleeve covers, that would cover skin which may not be covered by usual clothing or uniform such as gowns or coveralls

It is important to recognize that the healthcare personnel's potential for exposure may change during the patient encounter or stay in a healthcare facility, and PPE for these purposes should be adjusted accordingly. For situations in which no fentanyl products are visible on the patient, clothing, or possessions, the PPE noted above would not be recommended. Additionally, the PPE noted above would no longer be recommended if decontamination was performed as recommended below.

In all cases, employers should identify hazards to which their personnel might be exposed and provide appropriate PPE to protect them. All PPE should be used in accordance with the Occupational Safety and Health Administration (OSHA) PPE standard ([29 CFR 1910.132](#) [↗](#)). When required, respirator use should be in the context of a comprehensive respiratory protection program in accordance with the OSHA Respiratory Protection Standard ([29 CFR 1910.134](#) [↗](#)) and other requirements. Healthcare personnel who need to wear respirators should be medically cleared, trained, and fit-tested for respirator use. Detailed information on respiratory protection programs, including fit-testing procedures, can be accessed in [OSHA's Respiratory Protection eTool](#) [↗](#) .

## Decontamination

Patients who may be contaminated<sup>5</sup> and healthcare personnel who come into contact with illicit fentanyl should immediately remove clothing and use soap and water to thoroughly wash and rinse potentially contaminated skin. They should avoid breaking the skin during the decontamination process and they should cover all open wounds. Do not use alcohol-based hand rubs or bleach solutions to clean contaminated skin. All contaminated clothing should be removed, segregated from other laundry, and laundered at the healthcare facility when possible, being careful not to disturb any areas of contamination. Employers should establish policies and staffing to ensure that healthcare personnel shower and change clothing immediately after a potential exposure.

Decontamination of reusable PPE and equipment should be done according to the manufacturer's recommendations. Contaminated single use PPE should be placed in labeled durable 6 mil polyethylene bags and disposed of appropriately.

Laundering (laundry may include bed sheets and blankets, towels, personal clothing, patient apparel, uniforms, scrubs, and gowns) should be done in a manner that minimizes disturbance of any areas of contamination and segregates contaminated laundry, allowing it to be handled safely. Laundering in a healthcare facility should be done in accordance with the Laundry and Bedding section in the [CDC Guidelines for Environmental Infection Control in Health-Care Facilities](#).

Routine cleaning of work surfaces and rooms in healthcare facilities should be done in accordance with the Principles of Cleaning and Disinfecting Environmental Surfaces section of the [CDC Guidelines for Environmental Infection Control in Health-Care Facilities](#). Surfaces suspected or know to be contaminated with illicit fentanyl that are able to be cleaned (such as hard, non-porous surfaces) should first be washed with soap and water as outlined in the Cleaning Housekeeping Surfaces section before using a disinfectant (such as bleach). Any activity which could result in making an unknown contaminant airborne (such as dry sweeping or vacuuming with a standard vacuum) should not be performed. A high-efficiency particulate air (HEPA) filter vacuum should be used when sweeping or vacuuming is required.

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## References

[1] Standard precautions are used for all patient care (<https://www.cdc.gov/infectioncontrol/basics/standard-precautions.html>). Standard precautions are intended to protect healthcare personnel from infection and prevent the spread of infection from patient to patient.

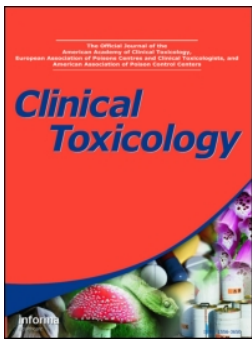
[2] N: not resistant to oil, P: oil proof, R: resistant to oil.

[3] Faceshields are recommended when additional protection is needed to protect against possible body fluid splashes when wearing filtering facemasks.

[4] Powder-free nitrile gloves should be worn with a minimum thickness of 5 +/- 2 mil (i.e. 0.127 +/- 0.051 millimeters; 1 mil=0.0254 millimeters), unless manufacturer provides performance breakthrough data for thinner gloves.

[5] If patient is incapacitated, this should be done for the patient by the healthcare personnel.

Page last reviewed: April 23, 2018



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To cite this article: Michael J. Moss , Brandon J. Warrick, Lewis S. Nelson, Charles A. McKay, Pierre-André Dubé , Sophie Gosselin , Robert B. Palmer & Andrew I. Stolbach (2017): ACMT and AACT position statement: preventing occupational fentanyl and fentanyl analog exposure to emergency responders, *Clinical Toxicology*, DOI: [10.1080/15563650.2017.1373782](https://doi.org/10.1080/15563650.2017.1373782)

To link to this article: <http://dx.doi.org/10.1080/15563650.2017.1373782>



Published online: 05 Sep 2017.



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POSITION STATEMENT



## ACMT and AACT position statement: preventing occupational fentanyl and fentanyl analog exposure to emergency responders

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The position of the American College of Medical Toxicology (ACMT) and American Academy of Clinical Toxicology (AACT) is as follows:

Fentanyl and its analogs are potent opioid receptor agonists, but the risk of clinically significant exposure to emergency responders is extremely low. To date, we have not seen reports of emergency responders developing signs or symptoms consistent with opioid toxicity from incidental contact with opioids. Incidental dermal absorption is unlikely to cause opioid toxicity. For routine handling of drug, nitrile gloves provide sufficient dermal protection. In exceptional circumstances where there are drug particles or droplets suspended in the air, an N95 respirator provides sufficient protection. Workers who may encounter fentanyl or fentanyl analogs should be trained to recognize the signs and symptoms of opioid intoxication, have naloxone readily available, and be trained to administer naloxone and provide active medical assistance. In the unlikely event of poisoning, naloxone should be administered to those with objective signs of hypoventilation or a depressed level of consciousness, and not for vague concerns such as dizziness or anxiety. In the absence of prolonged hypoxia, no persistent effects are expected following fentanyl or fentanyl analog exposures. Those with small subclinical exposures and those who awaken normally following naloxone administration will not experience long-term effects. While individual practitioners may differ, these are the positions of American College of Medical Toxicology and American Academy of Clinical Toxicology at the time written, after a review of the issue and scientific literature.

### Background

Fentanyl and fentanyl analogs are potent opioid receptor agonists. Fentanyl and its analogs are increasingly implicated in overdose and death in North America among illicit opioid users. The reported mortality from synthetic opioids rose 72.2% (to 9850) from 2014 to 2015 [1]. Due to limitations in identifying analogs, this figure likely underrepresents death

from these drugs. Fentanyl analogs are distributed in North America both as substituted/adulterated powdered heroin and pressed into counterfeit tablet forms of opioids and other medications [2–4]. Authorities in the United States have reported seizures of a variety of these products including fentanyl, fentanyl precursors (e.g., N-phenyl-1-(2-phenylethyl) piperidin-4-amine), and different fentanyl analogs such as acetylfentanyl, butyrylfentanyl, and furanylfentanyl [4]. Other analogs, such as alfentanil, remifentanil, and sufentanil, are used in clinical practice.

Fentanyl is 50–100 times more potent than morphine at the mu-opioid receptor [5–8]. Carfentanil, an opioid developed for veterinary use, is 10,000 times more potent than morphine in animals, although it produces less apnea when dosed therapeutically [6,9]. Despite its improved therapeutic index compared to morphine, very small errors in carfentanil dosing not unexpected with illicitly distributed drugs will result in lethal doses. There are limited pharmacological data on other analogs found in the illicit drug supply.

To date, there has been limited guidance for emergency responders. In June 2016, DEA published a warning to law enforcement on the dangers of fentanyl cautioning against field testing suspected fentanyl and recommending the use of gloves and a mask when such testing is conducted [10].

The US National Institute for Occupational Safety and Health (NIOSH, Centers for Disease Control) published a bulletin addressing potential danger to law enforcement, public health workers, and first responders who may be exposed to fentanyl or its analogs [11]. Citing an absence of empirical evidence, the NIOSH bulletin recommended use of a P100-rated respirator, nitrile gloves, and eye protection. For personnel performing tasks that may aerosolize fentanyl, the NIOSH bulletin recommended dermal protection such as coveralls or protective sleeves.

Given the prevalence of synthetic opioids, law enforcement and emergency medical services (EMS) agencies have become increasingly concerned about potential exposures while responding to medical calls, crime scenes, or during

drug raids [10,12,13]. Reports of emergency responders developing symptoms after contact with these substances have described nonspecific findings such as “dizziness” or “feeling like body shutting down”, “dying” without objective signs of opioid toxicity such as respiratory depression [10]. Law enforcement and EMS must balance safety with mobility and efficiency when entering and securing potential scenes where drugs are used, distributed, or produced. We aim to address the risks of occupational exposures to ultra-potent opioids and the role of various types of personal protective equipment to reduce those risks.

## Methodology

Our initial recommendations are based on the opinion and clinical experience of a task force of our members. In addition, the authors performed a literature search and drafted this position statement. This document was reviewed and approved by the ACMT Position Statement and Guidelines Committee, was sent to the ACMT Board of Directors, and then sent to the entire College membership for review. After revision by the task force, final approval was made by the ACMT Board of Directors and AACT Board of Trustees.

## Inhalation exposure risk for fentanyl and fentanyl analogs

Inhalation is an exposure route of concern if drug particles are suspended in the air. Fentanyl has potentially high bioavailability (12–100%) by inhalation [14,15]. It is highly suspected that weaponized aerosolized carfentanil and remifentanyl were used to subdue hostage takers of a Moscow theater in 2002. One hundred and twenty-five died as a result of this weaponized aerosolized exposure [16]. Although an optimized airborne dispersal device is unlikely to be encountered in a local event, we considered such a scenario for respiratory protection.

Industrial producers of fentanyl use time-weighted average occupational exposure limits (OEL-TWA) for alfentanil (1 mcg/m<sup>3</sup>), fentanyl (0.1 mcg/m<sup>3</sup>), and sufentanil (0.032 mcg/m<sup>3</sup>) to limit exposure [17]. At the highest airborne concentration encountered by workers, an unprotected individual would require nearly 200 min of exposure to reach a dose of 100 mcg of fentanyl. The vapor pressure of fentanyl is very low ( $4.6 \times 10^{-6}$  Pa), suggesting that evaporation of standing product into a gaseous phase is not a practical concern [18].

## Dermal exposure risk for fentanyl and fentanyl analogs

Fentanyl is amenable to transdermal absorption because of its low molecular weight and lipophilicity [19,20]. Depending on the specific product, transdermal delivery systems (“patches”) take 3–13 h to produce a therapeutic serum fentanyl concentration and 35 h to reach peak concentration [21–24]. Absorption of liquid or aqueous fentanyl increases with larger surface area of application, duration of

application, broken skin, and heat. The physical properties of fentanyl analogs are similar to fentanyl, suggesting potential for dermal absorption. In a small volunteer study, sufentanil citrate applied to the forearm and covered in an occlusive dressing was absorbed comparably to fentanyl, although exact bioavailability was not determined [25].

However, incidental dermal absorption is unlikely to cause opioid toxicity. If bilateral palmar surfaces were covered with fentanyl patches, it would take ~14 min to receive 100 mcg of fentanyl (using a body surface area of 17,000 cm<sup>2</sup>, palm surface area of 0.5% [26], and fentanyl absorption of 2.5 mcg/cm<sup>2</sup>/h [24]). This extreme example illustrates that even a high dose of fentanyl prepared for transdermal administration cannot rapidly deliver a high dose.

The above calculation is based on fentanyl patch data, which overestimates the potential exposure from drug in tablet or powder form in several ways. Drug must have sufficient surface area and moisture to be efficiently absorbed. Medicinal transdermal fentanyl utilizes a matrix designed to optimize delivery, whereas tablets and powder require dissolution for absorption. Relatedly, powdered drug sits on the skin, whereas patches have adhesive to hold drug in close proximity to the skin allowing both to remain moist. Finally, the above quoted figure 2.5 mcg/cm<sup>2</sup>/h represents delivery at steady state after drug has penetrated the dermis, which overestimates the amount of absorption in the first few minutes of dermal exposure. This initial period is of most relevance in unintentional exposure, because fentanyl that is observed on skin can be rapidly removed by mechanical (brushing) means or cleansing with water. Therefore, based on our current understanding of the absorption of fentanyl and its analogs, it is very unlikely that small, unintentional skin exposures to tablets or powder would cause significant opioid toxicity, and if toxicity were to occur, it would not develop rapidly, allowing time for removal.

## Ocular-facial exposure risk for fentanyl and fentanyl analogs

Mucous membranes present opportunity for absorption of fentanyl and its analogs. Fentanyl, for example, exhibits greater than 30-fold absorption across mucous membranes when compared to skin and is available in a formulation that utilizes transmucosal administration [27]. A healthy male veterinarian was splashed in the eyes and mouth with contents of a dart containing 1.5 mg of carfentanil and 50 mg xylazine. Despite immediately washing his face with water, he became drowsy within 2 min; he responded promptly to the administration of naltrexone [28]. It is not clear to what extent these effects were a result of carfentanil exposure. Although facial contact with liquid or powder opioids is unlikely, OSHA-rated splash protection would be sufficient to prevent mucous membrane exposure.

## Naloxone

Naloxone, a mu-opioid receptor antagonist, administered by parenteral, or intranasal routes, reverses opioid-related

respiratory depression. The effective dose of naloxone depends on the patient's weight, amount of opioid to be reversed, and relative binding affinities at the mu receptor [8,29]. There is scant information on human and animal naloxone reversal of fentanyl analogs. Despite anecdotal reports that higher-than-usual doses may be necessary [30], animal data suggest that standard doses of naloxone should be sufficient to reverse carfentanil [31]. While a detailed discussion of dosing and administration of naloxone is beyond the scope of this guideline, if a patient does not respond to 10 mg of naloxone, it is unlikely additional naloxone will be of value [29]. For patients who are hypoventilating and unresponsive to initial doses of naloxone, promptly assisting ventilation and oxygenation are recommended.

## Recommendations

The American College of Medical Toxicology and American Academy of Clinical Toxicology recognize the challenges in issuing recommendations where available data are incomplete. We believe that recommendations should be protective of emergency responders, but not result in unnecessary delays in care to patients with time-sensitive conditions. We also recognize that PPE can interfere with task performance by emergency responders and law enforcement officials. Due to the limited available data, the following recommendations primarily represent consensus expert opinion.

### General Precautions and Management of Exposure

- Workers who may encounter fentanyl or fentanyl analogs should be trained to recognize the symptoms and objective signs of opioid intoxication, have naloxone readily available, and be trained to administer naloxone.
- For opioid toxicity to occur, the drug must enter the blood and brain from the environment. Toxicity cannot occur from simply being in proximity to the drug.
- Toxicity may occur in canines utilized to detect drug. The risks are not equivalent to those in humans given the distinct contact that dogs, and not humans, have with the local environment.

### Dermal precautions

- Incidental dermal absorption is very unlikely to cause opioid toxicity. For routine handling of drug, nitrile gloves provide sufficient dermal protection.
- In situations where an enclosed space is potentially heavily contaminated with a highly potent opioid, water-resistant coveralls should be worn.
- Incidental dermal exposures should immediately be washed with water. Alcohol-based hand sanitizers should not be used for decontamination as they do not wash opioids off the skin and may increase dermal drug absorption.

### Respiratory precautions

- In the unusual circumstance of significant airborne suspension of powdered opioids, a properly fitted N95

respirator or P100 mask is likely to provide reasonable respiratory protection.

### Mucous Membrane/Splash Exposure

- OSHA-approved protection for eyes and face should be used during tasks where there exists possibility of splash to the face.

### Naloxone Administration and Airway Management

- Naloxone should be administered to those with objective signs of hypoventilation from opioid intoxication.
- If hypoventilation persists following initial naloxone dose and personnel with advanced airway training are not available, repeat naloxone until reversal is seen or 10 mg is administered.
- Personnel with advanced airway training should provide airway support for patients who are in extremis or those who do not improve with naloxone.

### Long-term Sequelae of Exposure

- In the absence of prolonged hypoxia, no persistent effects are expected following fentanyl or fentanyl analog exposures. Those with small subclinical exposures and those who awaken normally following naloxone administration will not experience long-term effects.

## Acknowledgments

The authors would like to acknowledge the following for contributions to the statement: Jeffrey Brent, Robert N.E. French, Howard Greller, and Adam Rowden.

## Disclosure statement

The authors report no financial conflicts.

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## References

- [1] Rudd RA, Seth P, David F, et al. Increases in drug and opioid-involved overdose deaths – United States, 2010–2015. *MMWR Morb Mortal Wkly Rep.* 2016;65:1445–1452.
- [2] Miller JM, Stogner JM, Miller BL, et al. Exploring synthetic heroin: accounts of acetyl fentanyl use from a sample of dually diagnosed drug offenders. *Drug Alcohol Rev.* 2017. [Epub ahead of print].
- [3] Diaz Bode A, Singh M, Andrews J, et al. Fentanyl laced heroin and its contribution to a spike in heroin overdose in Miami-Dade County. *Am J Emerg Med.* 2017. [Epub ahead of print].
- [4] Drug Enforcement Agency [Internet]. DEA intelligence brief. Counterfeit prescription pills containing fentanyls: a global threat.

2016. [cited 2017 Aug 1]. Available from: <http://www.dea.gov/docs/Counterfeit%20Prescription%20Pills.pdf>
- [5] Higashikawa Y, Suzuki S. Studies on 1-(2-phenethyl)-4-(N-propionylanilino)piperidine (fentanyl) and its related compounds. VI. Structure-analgesic activity relationship for fentanyl, methyl-substituted fentanyls and other analogues. *Forensic Toxicol.* 2008;26:1–5.
- [6] Janssen PA. Potent, new analgesics, tailor-made for different purposes. *Acta Anaesthesiol Scand.* 1982;26:262–268.
- [7] Mather LE. Clinical pharmacokinetics of fentanyl and its newer derivatives. *Clin Pharmacokinet.* 1983;8:422–446.
- [8] Volpe DA, McMahon Tobin GA, Mellon RD, et al. Uniform assessment and ranking of opioid Mu receptor binding constants for selected opioid drugs. *Regul Toxicol Pharmacol.* 2011;59:385–390.
- [9] Wax PM, Becker CE, Curry SC. Unexpected “gas” casualties in Moscow: a medical toxicology perspective. *Ann Emerg Med.* 2003;41:700–705.
- [10] Drug Enforcement Agency [Internet]. DEA warning to police and public: fentanyl exposure kills. 2016. [cited 2017 Aug 1]. Available from: <http://www.dea.gov/divisions/hq/2016/hq061016.shtml>
- [11] National Institute for Occupational Safety and Health [Internet]. Fentanyl: preventing occupational exposure to emergency responders. 2016. [cited 2017 Aug 1]. Available from: <http://www.cdc.gov/niosh/topics/fentanyl/risk.html>
- [12] McDaniels A. [Internet]. Deputy, two EMS providers treated for overdose symptoms responding to call. Baltimore (MD): The Baltimore Sun. 2017. [cited 2017 Aug 1]. Available from: <http://www.baltimoresun.com/health/bs-md-harford-opioid-exposure-20170523-story.html>
- [13] Greenslade B. [Internet]. 3 Winnipeg police officers possibly exposed to fentanyl, self-administer naloxone. *Global News.* 2017. [cited 2017 Aug 1]. Available from: <http://globalnews.ca/news/3471506/3-winnipeg-police-officers-possibly-exposed-to-fentanyl-self-administer-naloxone/>
- [14] Hung OR, Whynot SC, Varvel JR, et al. Pharmacokinetics of inhaled liposome-encapsulated fentanyl. *Anesthesiology.* 1995;83:277–284.
- [15] Mather LE, Woodhouse A, Ward ME, et al. Pulmonary administration of aerosolised fentanyl: pharmacokinetic analysis of systemic delivery. *Br J Clin Pharmacol.* 1998;46:37–43.
- [16] Riches JR, Read RW, Black RM, et al. Analysis of clothing and urine from Moscow theatre siege casualties reveals carfentanil and remifentanyl use. *J Anal Toxicol.* 2012;36:647–656.
- [17] Van Nimmen NFJ, Poels KLC, Veulemans HAF. Identification of exposure pathways for opioid narcotic analgesics in pharmaceutical production workers. *Ann Occup Hyg.* 2006;50:665–677.
- [18] Gupta PK, Ganesan K, Gutch PK, et al. Vapor pressure and enthalpy of vaporization of fentanyl. *J Chem Eng Data.* 2008;53:841–845.
- [19] Pastore MN, Kalia YN, Horstmann M, et al. Transdermal patches: history, development and pharmacology. *Br J Pharmacol.* 2015;172:2179–2209.
- [20] Nelson L, Schwaner R. Transdermal fentanyl: pharmacology and toxicology. *J Med Toxicol.* 2009;5:230–241.
- [21] Duthie DJ, Rowbotham DJ, Wyld R, et al. Plasma fentanyl concentrations during transdermal delivery of fentanyl to surgical patients. *Br J Anaesth.* 1988;60:614–618.
- [22] Gourlay GK, Kowalski SR, Plummer JL, et al. The transdermal administration of fentanyl in the treatment of postoperative pain: pharmacokinetics and pharmacodynamic effects. *Pain.* 1989;37:193–202.
- [23] Miguel R, Kreitzer JM, Reinhart D, et al. Postoperative pain control with a new transdermal fentanyl delivery system. A multicenter trial. *Anesthesiology.* 1995;83:470–477.
- [24] Product Information: Duragesic (Fentanyl Transdermal System) for transdermal administration [Internet]. Janssen Pharmaceuticals. 2016. [cited 2017 Aug 1]. Available from: [http://www.janssenmd.com/pdf/duragesic/duragesic\\_pi.pdf](http://www.janssenmd.com/pdf/duragesic/duragesic_pi.pdf)
- [25] Sebel PS, Barrett CW, Kirk CJC, et al. Transdermal absorption of fentanyl and sufentanil in man. *Eur J Clin Pharmacol.* 1987;32:529–531.
- [26] Rhodes J, Clay C, Phillips M. The surface area of the hand and the palm for estimating percentage of total body surface area: results of a meta-analysis. *Br J Dermatol.* 2013;169:76–84.
- [27] Roy SD, Flynn GL. Transdermal delivery of narcotic analgesics: pH, anatomical, and subject influences on cutaneous permeability of fentanyl and sufentanil. *Pharm Res.* 1990;7:842–847.
- [28] George AV, Lu JJ, Pisano MV, et al. Carfentanil-an ultra potent opioid. *Am J Emerg Med.* 2010;28:530–532.
- [29] Boyer EW. Management of opioid analgesic overdose. *N Engl J Med.* 2012;367:146–155.
- [30] Gussow L. Who said the opioid crisis couldn't get any worse? *Emerg Med News.* 2016;38:1–29.
- [31] Moresco A, Larsen RS, Sleeman JM, et al. Use of naloxone to reverse carfentanil citrate-induced hypoxemia and cardiopulmonary depression in Rocky Mountain wapiti (*Cervus elaphus nelsoni*). *J Zoo Wildl Med.* 2001;32:81–89.

# Massachusetts Policy Regarding Fentanyl and Carfentanil

# E

## **SUBJECT: SAFETY ADVISORY AND PROTOCOLS FOR FENTANYL AND CARFENTANIL**

### **PURPOSE**

This policy 1) discusses the toxicity and lethality of the drugs fentanyl, carfentanil, and their derivatives; 2) establishes a general ban on the entry of these substances into courthouses, including a ban on the entry of such substances in evidence; and 3) outlines protocols to reduce the potential for accidental exposure and for response to incidents where the presence of these substances in the courthouse environment is suspected.

This policy was drafted after taking into account the risks posed to the public by the admission of fentanyl and carfentanil into the courthouse environment, the public's interest in the fair resolution of cases, the rights of defendants, and judicial resources.

### **SCOPE**

This policy applies to all Trial Court staff and judicial officers.

### **FENTANYL AND CARFENTANIL**

Fentanyl and carfentanil are extremely potent and toxic synthetic opioids that are being used as adulterants in heroin and other controlled substances or passed off as pure heroin. The Massachusetts State Police Laboratory has confirmed the presence of both fentanyl and carfentanil in drug evidence tested by the lab. Fentanyl can be up to fifty times as potent as heroin and carfentanil can be up to 5,000 times as potent. Both substances can come in a variety of forms, including powder, pills, capsules, liquid, or can be contained on blotter paper. The substances can be absorbed into the body orally, through mucous membranes, inhaled, or through the skin or eyes. It has been determined that approximately 2-3 milligrams of fentanyl – the equivalent of five to seven individual grains of table salt – can induce respiratory depression, arrest, and possibly death. In the event that a person has ingested fentanyl or carfentanil and is suffering from an opioid overdose, naloxone, commonly known as “Narcan,” if immediately administered, can reverse an opioid overdose. Depending on the drug's purity and potency, multiple doses of naloxone may be required to stabilize the victim.

### **POLICY**

Given the danger that even a small amount of these substances poses, the following policy measures are effective immediately:

1. Substances containing any amount of fentanyl or carfentanil are banned from entry into the courthouse, except as provided in paragraphs 2 and 3 hereof. This includes substances that have been collected as evidence and which would otherwise be entered in evidence at a hearing or trial. Parties who seek to present the appearance of a substance containing fentanyl or carfentanil to a fact finder must do so through means other than introduction of the actual substance, such as a stipulation, photographs, video, or witness testimony.

2. Persons who have a valid prescription for a medication containing fentanyl and who have a medical need to use such medication during the court day, will be permitted to bring their medication into the courthouse. Court staff taking notice of a prescription medication containing fentanyl will take precautions to avoid contact and exposure.
3. Deviation from the general ban on fentanyl or carfentanil from being entered as evidence may occur when a judge determines that admission of the substance as evidence is necessary for the Commonwealth to prove its case or to protect a defendant's constitutional right to a fair trial. . If a judge determines it necessary that a party be permitted to bring such substances into a courtroom, the substances shall be packaged and handled in the manner approved by the Drug Enforcement Administration (DEA); shall be handled while in the courthouse – including presentation of the substances in a courtroom – only by individuals who have been trained to handle fentanyl and carfentanil; shall not be permitted to be handled by jurors, but, even during jury deliberations, shall be presented to deliberating jurors for observation by an individual trained to handle fentanyl and carfentanil; and shall not under any circumstances be accepted for safekeeping by a clerk of the court, but shall immediately be returned after presentation in the courtroom to the officer or agent of the law enforcement agency that has custody of the substances. Determination that fentanyl, carfentanil, or its derivatives will be permitted to enter a courthouse shall be made in advance of the hearing or trial at which the substance will be presented. Court security shall be notified in advance of the date on which the substance will be entering the courthouse, the name of the case for which it is being brought into the courthouse, how the substance will be transported and who will be transporting it the courtroom in which the substance will be presented, and when the substances has been taken out of the building.
4. Because fentanyl and carfentanil take many different forms and appear as common street-level controlled substances, any controlled substance that a party intends to introduce in evidence at a hearing or trial will not be permitted into a courthouse unless the substance has been chemically analyzed and determined not to contain fentanyl or carfentanil. A judge shall not permit a controlled substance to enter a courthouse until he or she has reviewed the certificate of analysis and is satisfied that the substance does not contain fentanyl or carfentanil.
5. Given the potency and potential lethality of fentanyl and carfentanil, any contact with these substances must be treated as a hazardous material (HAZMAT) situation and should be assessed only by individuals who have been trained to handle hazardous materials.
6. Because the potential exists that in-custody defendants or members of the public entering a court house could introduce fentanyl and carfentanil into the courthouse environment, and because fentanyl and carfentanil can appear as white or brown powder, all Trial Court personnel must be extremely cautious of any white powder and consider it a hazardous material. Any Trial Court staff member observing unidentified white powder should take immediate action to avoid personal exposure, limit public exposure, and isolate the substance from other court personnel or members of the public. Court security



personnel should then be notified immediately. Court officers shall immediately notify the appropriate local first responder agency by calling 911. Court officers will also isolate the substance and avoid personal exposure. Only persons with appropriate personal protective equipment (PPE) shall be allowed in proximity to the suspect material. Court Officers will be prepared to administer first aid to those suspected of exposure to fentanyl or carfentanil.

## **EXPOSURE PROTECTION AND RESPONSE PROTOCOL**

1. DO NOT HANDLE ANY UNIDENTIFIED WHITE POWDER; ASSUME IT TO BE HAZARDOUS MATERIAL (HAZMAT).
2. Notify a Court Officer immediately when an unidentified substance is encountered. Take immediate action to avoid exposure and isolate the substance.
3. All Trial Court personnel should understand the following:
  - a. small amounts of fentanyl and especially carfentanil can be lethal.
  - b. exposure can occur through air with inhalation into the lungs, or absorption through the skin and mucous membranes of the eyes, mouth and nose. Therefore, do not disturb or touch any unidentified substance and move safely away from its location
  - c. recognize the symptoms of an opioid overdose: confusion, lethargy, pinpoint pupils, diminished breathing, or not breathing at all. Immediately call for Security.
  - d. Naloxone is effective in treating the effects of a fentanyl or carfentanil overdose. Time is of the essence in these matters, so get help from a court officer immediately. Court officers are able to administer naloxone and CPR.
4. All Court officers/Security staff should understand and be prepared to do the following:
  - a. implement Fentanyl/HAZMAT response protocols by notifying first responders via “911” call.
  - b. take measures to protect against personal exposure to the substance and protect court users and staff from it.
  - c. provide first aid to persons suspected of exposure, including performing CPR and administering naloxone. Emergency medical service will be notified via “911” where personal exposure to suspected fentanyl, carfentanil or a derivative is possible.

# Washington State Rule Regarding Hazardous Exhibits

# F

## GR 20 SECURITY IN HANDLING COURT EXHIBITS

**(a) Hazardous, Valuable, and Bulky Exhibits.** Upon petition of the clerk or any party and order of the court, a hazardous exhibit, money, an item of negotiable value, or an item deemed to be excessively bulky may be admitted and then withdrawn upon the substitution of photograph(s), videotape(s), samples or other facsimile representations as provided by the order. The photograph(s), videotape(s), samples or other facsimile representations may be used to demonstrate the existence, quantity, and physical characteristic of the evidence. The order shall direct the disposition of the original evidence and shall state whether the evidence shall be further documented by a descriptive certificate issued by an authorized agency.

**(b) Controlled Substances.** When controlled substances or samples thereof are presented in court, such items shall be presented under sealed evidence tape in containers whose labels describe their contents. Sealed controlled substances presented as exhibits shall be unsealed in open court and, upon completion of the action for which unsealing was ordered, the item shall be sealed again.

**(c) Original Exhibit.** When a photograph, videotape, or other facsimile representation is substituted, the original exhibit must be retained by the presenting party or agency until at least sixty (60) days following case completion and must produce the original exhibit upon the court's direction. Case completion is defined as the date of filing of the judgment of acquittal, final judgment, or dismissal, or the date the judgment becomes final after appeal.

**(d) Appeal.** Exhibits handled under these rules shall have the same standing for purposes of appeal as would the original exhibits.

**(e) Hazardous Exhibits.** For purposes of this rule, "hazardous exhibit" means an exhibit that unreasonably threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics. Nonexclusive examples of hazardous exhibits include firearms, knives and other weapons, live ammunition, controlled substances, bodily fluid samples, and bloody clothing.

[Adopted effective September 1, 1997; Amended effective September 1, 2000.]



Second Judicial District  
Judicial Policies

Policy No.  
**P 15.03**

## HANDLING OF POTENTIALLY HAZARDOUS EXHIBITS

**Purpose:** The purpose of this policy is to ensure the safe receipt, handling, use, and storage of potentially dangerous exhibits in order to protect the safety of the public, litigants, attorneys, court staff, jurors and judges. Compliance with this policy is mandatory for all attorneys and parties. A copy of this policy shall be available for public access in hard copy and on the Second Judicial Court website: <http://www.mncourts.gov/Find-Courts/Ramsey.aspx>

### **I. Pre-Trial Notice of Intent to Use Potentially Hazardous Materials in a Court Proceeding**

- A. Potentially hazardous materials include but are not limited to the following items: flammable, explosive, and reactive materials; ammunition; narcotics, drugs, and controlled substances; used hypodermic needles or other contaminated objects; bodily fluids and items containing bodily fluids; and any other item listed in or analogous to the items listed in the Minnesota Judicial Branch Policy 507.
- B. At least one week before the commencement of trial or other proceeding, the proponent of a potentially hazardous exhibit must notify the Court of its intention to offer the item into evidence.
- C. The proponent's pre-trial notice shall state the basis for requesting the admission of the hazardous item itself instead of using photographic or video representations of the item.

### **II. Court Order Regulating Handling of Potentially Hazardous Materials During Trial or Other Proceeding**

- A. The Court shall regulate the admission, handling, and use of the proffered exhibit. In doing so, the Court may take one or more of the following steps:

Page 1 of 3	Attachments: None
Date of Adoption:	April 24, 2015
Effective Date:	April 24, 2015
Revisions:	February 20, 2019

1. Require the proponent of the exhibit to obtain approval from Court Security Officers for the manner in which the item is to be stored, secured, and handled at least twenty-four hours prior to bringing the item into the Courthouse;
  2. Limit the proponent of the exhibit to introducing a photograph or video depiction of the proffered exhibit in lieu of either transporting the jury to view the exhibit or bringing the exhibit into the Courthouse or Courtroom;
  3. Restrict the manner in which the exhibit will be presented or published to a jury during trial and the manner in which the exhibit will be given to the jury during deliberations;
  4. Appoint an expert to handle the exhibit;
  5. Restrict the amount of the exhibit to be viewed or brought into the courthouse;
  6. Limit the duration of time for which the exhibit may be inside the courthouse or courtroom;
  7. Require that the exhibit be contained and/or stored in an approved container, lock box, and/or other storage bag to prevent breakage and contain spillage;
  8. Require that the exhibit container clearly identify its contents, contain markings with appropriate hazardous warnings, and otherwise comply with all applicable labeling regulations;
  9. Require that any flammable, explosive, or reactive materials be rendered non-explosive and non-reactive;
  10. Regulate the storage and custody of the exhibit after its admission and pending the disposition of the exhibit; and
  11. Any other step necessary to safeguard the public.
- B. The Court may conduct a hearing to determine what safeguards must be met before permitting the proponent to bring the proffered exhibit into the Courthouse and before the permitting proponent to introduce the exhibit into evidence.

Page 2 of 3	Attachments: None
Date of Adoption:	April 24, 2015
Effective Date:	April 24, 2015
Revisions:	February 20, 2019

- C. Absent exceptional circumstances set forth in a Court Order to the contrary, Authorized Court Administration Staff will be responsible for storing hazardous exhibits that have been offered and admitted into evidence during trial or any other court proceeding. When not in use during the court proceeding, the admitted exhibit will be stored in a secured location for the duration of the proceeding.
1. The Law Clerk or Court Reporter involved in the court proceeding shall notify the District Court Records Division when it is necessary to store the admitted exhibit.
  2. Court Security Officers will accompany Authorized Court Administration Staff when transporting admitted exhibits. Court Security Officers shall ensure direct and uninterrupted transportation of the admitted exhibit to and from the courtroom and the secured storage location.
  3. Authorized Court Administration Staff must maintain a log of all exhibits being stored in the secured storage location. The log must include the following information for each admitted exhibit: (a) name of the Authorized Court Administration Staff member storing, retrieving, or returning the admitted exhibit into the storage location; (b) name of the Court Security Officer accompanying the Authorized Court Administration Staff member; (c) name of the presiding judge and Court File Number; and (d) date and time of the storage, retrieval, or return of the admitted exhibit.
  4. To ensure timely retrieval from the secured storage location, the Law Clerk or Court Reporter involved in the court proceeding shall inform the District Court Records Division when the admitted exhibit will be needed.
  5. When the exhibit is in use, or during short recesses, court security shall secure the exhibit at the direction of the judge.

**III. Procedures Regulating Disposition and Handling of Potentially Hazardous Materials After Trial or Other Proceeding.**

The procedures related to the handling and ultimate disposition of evidence is governed by the Minnesota Judicial Branch Policy 507 (IV).

Page 3 of 3	Attachments: None
Date of Adoption:	April 24, 2015
Effective Date:	April 24, 2015
Revisions:	February 20, 2019

## § 1417.3

At any time prior to the final determination of the action or proceeding, exhibits offered by the state or defendant shall be returned to the party offering them by order of the court when an exhibit poses a security, storage, or safety problem, as recommended by the clerk of the court. If an exhibit by its nature is severable the court shall order the clerk to retain a portion of the exhibit not exceeding three pounds by weight or one cubic foot by volume and shall order the return of the balance of the exhibit to the district attorney. The clerk, upon court order, shall substitute a full and complete photographic record of any exhibit or part of any exhibit returned to the state under this section. The party to whom the exhibit is being returned shall provide the photographic record.

Exhibits toxic by their nature that pose a health hazard to humans shall be introduced to the court in the form of a photographic record and a written chemical analysis certified by competent authority. Where the court finds that good cause exists to depart from this procedure, toxic exhibits may be brought into the courtroom and introduced. However, following introduction of the exhibit, the person or persons previously in possession of the exhibit shall take responsibility for it and the court shall not be required to store the exhibit.

*Location:* [https://california.public.law/codes/ca\\_penal\\_code\\_section\\_1417.3](https://california.public.law/codes/ca_penal_code_section_1417.3)

*Original Source:* Section 1417.3, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=1417.3](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=1417.3). (last accessed Jun. 6, 2016).



**United States District Court  
District of New Hampshire  
Relevant Rules**

**I**

**7.3 Hazardous Pleadings and Exhibits**

No party may file any hazardous pleading or exhibit without prior leave of court. For purposes of this rule “hazardous pleading or exhibit” includes, but is not limited to, narcotics, controlled substances, firearms, ammunition, explosives, poisons, dangerous chemicals, blood, blood residue, body waste, urine, human or animal tissue or infectious material. Any hazardous exhibit filed without prior leave of court will not be handled by court personnel and will either be returned to the filer undocketed or destroyed without prior notice to the filer at the discretion of the clerk or judge.

**83.14 Exhibits and Witness List**

(a) **Premarking.** No later than one week before a case is set for trial or hearing, counsel shall furnish to the clerk:

(1) an original of a typed descriptive list of all exhibits to be offered. Each listing shall indicate whether the exhibit shall be admitted into evidence by agreement of parties or marked for identification;

(2) the original exhibits, marked, that will be used in the proceeding; and

(3) no hazardous exhibit as defined in LR 7.3 shall be presented for premarking, premarked, introduced into evidence or maintained in the custody of the court without prior leave of court. At the commencement of the proceeding, all exhibits agreed to will be offered and received into evidence. Those marked for identification will remain so until ruled upon during the proceeding or in the court’s opinion or otherwise.



(b) **Custody.** All exhibits received or offered in evidence at any proceeding shall be delivered to the clerk, who shall keep them in custody except that any sensitive exhibits or other exhibits which, because of their size or nature, require special handling shall remain in the possession of the party introducing same during the pendency of the proceedings and any appeal.

(c) **Disposition.** At the conclusion of the proceeding, all exhibits shall be retained by the clerk until the expiration of any appeal period or the conclusion of any appeal, whichever occurs later. The court may, however, order that some or all exhibits be maintained by an attorney or party or otherwise stored at an off-site facility at the parties' expense during the pendency of any appeal.

After the conclusion of any appeal or, if no appeal is taken, after the expiration of the appeal period, the clerk may notify the parties that the exhibits should be removed within a specified period of time. If the exhibits are not removed or another arrangement made with the clerk within the time allowed, the exhibits may be destroyed or otherwise disposed of without further notice.

(d) **Appeals.** It shall be the duty of the clerk, or any attorney or party having possession of an exhibit pursuant to these rules or a court order, to promptly send such exhibit(s) to the office of the clerk of the court of appeals to which the appeal has been taken. If the exhibits are unusually voluminous, the court in its discretion may require the parties to arrange for transmission of the same to the clerk of the court of appeals.

Pursuant to Fed. R. App. P. 11(b)(2), documentary exhibits of unusual bulk or weight and physical exhibits other than documents need not be transmitted to the clerk of the court of appeals unless directed to do so by the clerk of the court of appeals. Pending transmission of such exhibits to the court of appeals and/or final disposition of any appeal, if any exhibits are in the custody of a party or attorney pursuant to subsection (b) of this rule, they shall remain in the custody such attorney or party unless otherwise ordered by the court and available for inspection by any other party upon request. If the clerk of the court of appeals requests such exhibits be transmitted, the attorney or party in possession of the exhibits shall promptly make arrangements for the immediate transmission of them to the court

of appeals. If such exhibits are in the custody of the court, the court in its discretion may require the parties to arrange transmission to the court of appeals.

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J

**IN THE SUPREME COURT**

**STATE OF ARIZONA**

In the Matter of

PETITION TO AMEND RULE 611  
ARIZONA RULES OF EVIDENCE

Supreme Court No. R-23- 0025

RULE 28 PETITION

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse (“Task Force”) respectfully petitions this Court to amend Rule 611, Rules of Evidence for Courts in the State of Arizona, by adding a new subsection (d) concerning hazardous evidence in the courtroom.

**I. Introduction and Background**

The Center for Disease Control’s National Institute for Occupational Safety and Health has identified emergency responders and healthcare workers as at-risk groups for exposure to fentanyl and its analogs. Guidance on standard operating procedures, training, personal protective equipment, and other relevant information

for preventing occupational exposure to fentanyl and its analogs has already been developed for these identified groups. However, little guidance has been issued for court personnel who may have to handle packaged evidence of fentanyl, carfentanyl, their analogs, or other toxic evidence. For the judicial branch, the “first responders” are the judges, clerks of court, jurors, parties, witnesses, and the public. In 2019, the National Judicial Opioid Task Force released a briefing on the subject stating, “it is important for personnel who work in courthouses and other court-related facilities to accurately understand what this evidence is, what risks it presents, and to understand the policies and precautionary measures adopted by courts.”

Established on June 15, 2022, by Administrative Order 2022-62, and extended by Administrative Order 2022-161, the Task Force was asked to create guidelines for handling Fentanyl and other toxic substances when they are presented as evidence in the courthouse. The Task Force members are comprised of court administrators, a clerk of court, the Department of Public Safety crime laboratory director, a county deputy legal advocate director, a county attorney, judicial officers from three different counties, a sheriff, and a legal advisor from a city police department. The policy questions presented to the Task Force were:

1. Whether these drugs should be inspected and approved by designated court personnel before being allowed into a courthouse.
2. Whether these packaged drugs must always remain in the exclusive possession of law enforcement personnel, except by approval of the court, and whether these drugs should be given to, or handled by,

- court personnel or others involved in judicial proceedings, including attorneys, witnesses, court clerks, and jurors.
3. The protocols that should be adopted for handling of the packaging for these drugs.
  4. Whether these drugs should remain in a courthouse or court-related facility during non-business hours. If court rules pertaining to the handling of exhibits prevent removal from the courthouse, policies on secure and safe storage should be established.
  5. Whether courthouse personnel should be trained to address possible exposure to fentanyl and other toxic evidence and to properly identify opioid toxicity; and identify what, if any, training is currently available.
  6. Whether naloxone should be kept in courthouses and other court-related facilities for emergencies and whether court administration or court security should be trained on the administration of naloxone in the event of opioid toxicity.

The Task Force met five times in 2022 to consider these issues. This rule petition is particular to question #2, above. The purpose is to ensure orderly conduct of judicial proceedings by protecting court staff, judicial officers, the parties, jurors, and the public from substantial or serious risk of harm while also preserving the integrity of evidence and the due process of law.

The rule changes sought in this petition are the product of significant study, deliberation, drafting, and revision by the Task Force. In addition, the Task Force heard from Court Security Directors, the Arizona High Intensity Drug Task Force, and the Administrative Office of the Courts specialist who is coordinating the implementation of digital evidence protocols. The Task Force also received various materials relevant to its discussions. All meeting information and materials can be found on the Task Force's website: [Fentanyl and Toxic Evidence Task Force](#)

[azcourts.gov](http://azcourts.gov)). Two draft rule amendment options based upon these discussions were presented to the Task Force, and then to the Superior Court Presiding Judges and the Arizona Judicial Council. *Appendix A* to this petition is the option approved by all three bodies.

It is noted that a minority of the Task Force was of the opinion that a rule to prescribe the handling of hazardous evidence was not necessary and any requirement could be prescribed by Administrative Order. A majority of the Task Force rejected that proposal as did the Superior Court Presiding Judges and the Arizona Judicial Council.

Also discussed was whether a proposed rule should be limited to Fentanyl and Carfentanil, cover other substances that could be absorbed or injected into the body, or should include other hazardous materials. Ultimately, based upon comments received during the various discussions, the Task Force recommends that in order to protect persons of the public, parties, and court staff, the proposed rule should include other hazardous materials.

The Task Force discussed whether the scope of a proposed court rule should be limited to the courtroom during the pendency of a case or should also apply to the entire courthouse at all times. This petition, reflecting the product of these discussions, limits the rule's application to the courtroom. The Task Force's position is that a court rule should govern court cases and proceedings leaving other

courthouse procedures to be addressed by Administrative Order, the Code of Judicial Administrations, or other mechanisms.

## **II. Intentions of the Proposed Rule Amendment.**

### **A. To define and protect.**

The proposed addition of subsection (d) to Rule 611 provides a uniform, statewide definition of hazardous evidence and explicitly states the court's the responsibility to protect all persons from harm when hazardous evidence (i.e. Fentanyl/Carfentanyl, explosives, etc.) is present in a courtroom, which also safeguards the rights of the parties and victims. "Hazardous Evidence" is defined as any physical evidence that a party seeks to bring into the courtroom that may create a substantial and serious risk of harm if ingested or absorbed, or if otherwise determined by the court to create a substantial and serious risk of harm.

### **B. To direct that hazardous evidence not be brought into a courtroom without a court order.**

Rule 611(d)(1), in essence, presumes that hazardous evidence will not be brought into the courtroom unless a court order has been issued. The proposed subsection (d), paragraph (1), considers the rights of the parties and the sufficiency and effectiveness of digital evidence in lieu of the physical evidence.



**C. To protect jurors**

In an effort to protect jurors and others who might come into physical contact with the hazardous evidence, the proposed subsection (d), paragraph (2), of Rule 611 requires a digital representation of the evidence to be admitted in lieu of the hazardous evidence. The jury is not permitted to take custody of the hazardous evidence but may view it in the courtroom.

Online digital evidence portals are being implemented in trial courts throughout the state. Having an online evidence portal available for introducing digital forms of evidence, such as photos and videos that are a sufficient substitute for hazardous evidence, allows the clerk, court staff, and litigants to safely upload, process, and access evidence that could otherwise cause harm if physically brought into the courtroom. Even absent the availability of an online portal in a particular court, there are still mechanisms to process, present, and admit digital evidence. It is noted that the Court of Appeals always uses digital evidence in its case reviews. An online portal typically assists with transferring evidence electronically from a lower court.

**D. To protect clerks.**

The proposed addition of subsection (d), paragraph (3), to Rule 611 prohibits the clerk of the court from accepting possession of hazardous evidence for any purpose. It is contemplated that a clerk will neither handle nor assume custody of

the hazardous evidence when it is admitted by court order. The clerk will prepare the exhibit tag and give it to the custodian of the hazardous evidence, who will then attach it to the evidence under the eye of the clerk. The clerk will not store the hazardous evidence. Instead, the hazardous evidence would be retained by the custodian of that evidence as provided in the proposed Rule 611(d)(4), discussed below.

**E. To uphold the integrity of the evidence.**

Instead of the clerk retaining hazardous evidence, the evidence and chain of custody will remain with the custodian, which will in all likelihood be a law enforcement agency. The custodian will also ensure that all tags, markings and packaging stays secure throughout the entire case, including post-verdict proceedings and appeals.

**III. Summary of the Proposed Rule Changes.**

**A. Amending Rule 611.**

The proposed amendments to Rule 611, Rules of Evidence for Courts in the State of Arizona, are written to ensure the orderly conduct of judicial proceedings by protecting court staff, judicial officers, the parties, jurors, and the public from substantial or serious risk of harm while also preserving the integrity of the evidence and the due process of law. A draft of the proposed amendment is provided in the attached *Appendix A*.



## APPENDIX A

(Additions are shown by underline)

### Article VI. Witnesses

#### Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(a) {No Changes}

(b) {No Changes}

(c) {No Changes}

(d) Hazardous Evidence. Hazardous Evidence is not permitted inside the courtroom, except as provided in this subsection. For the purposes of this rule, “hazardous evidence” means any physical evidence that a party seeks to bring into the courtroom that may create a substantial and serious risk of harm if ingested or absorbed, or if otherwise determined by the court to create a substantial and serious risk of harm.

(1) Presence of Hazardous Evidence in the Courtroom Upon Court Order. A party seeking to have hazardous evidence permitted in the courtroom must file a written motion. The court may order that hazardous evidence be permitted in the courtroom only if the court finds that the petitioning party has demonstrates that the need for the physical evidence substantially outweighs the potential health risks associated with its presence in the courtroom. In making the determination, the court must take into consideration all relevant factors, including:

(a) the rights of the parties; and

(b) the sufficiency and effectiveness of presenting digital representations of hazardous evidence in lieu of the hazardous evidence.

(2) Admitted Hazardous Evidence. If the court orders that hazardous evidence is permitted in the courtroom under (1) and a motion is made to admit such evidence, any order granting admission of the hazardous evidence must provide that a digital representation of the evidence is admitted in lieu of the hazardous evidence. At no time may the jury take custody of the hazardous evidence, but the jury is permitted to view hazardous evidence in the courtroom.

(3) Clerk of Court. Hazardous evidence may not be accepted by or be in the possession of a clerk of the court.

(4) Retention of Hazardous Evidence. Hazardous evidence must be retained by the custodian of the evidence during the pendency of the case, any post-verdict proceedings, and appeals. All evidence tags issued by the clerk, other identifying markings, and packaging must remain in place and not be disturbed.

**DRAFT RECOMMENDATION**

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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K

In the Matter of:	)	
	)	
POLICIES ON PERMITTING AND	)	Administrative Order
CONTROLLING HAZARDOUS	)	No. 2023 - <u>XXX</u>
SUBSTANCES INSIDE A	)	
COURTHOUSE	)	
	)	

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Due to the significant increase in court cases involving fentanyl and other similarly toxic and hazardous substances, The Task Force to Create Guidelines for the Handling of Fentanyl Evidence and Other Toxic Evidence in the Courthouse was established pursuant to Administrative Order No. [2022-62](#). The Task Force filed a petition with the Supreme Court ([R-23-0025](#)) proposing to amend Rule 611, Arizona Rules of Evidence to establish requirements for the handling of hazardous evidence in a courtroom.

The Task Force recommended that hazardous substances shall not be brought into a courtroom without the permission of the judge presiding over the case. The Task Force also issued recommendations regarding the presence of hazardous substances in a courthouse and other judicial facilities.<sup>1</sup> These recommendations are intended to supplement existing administrative orders and policies regarding courthouse security. This order revises, clarifies, and adds to that direction.

In order to protect the health and safety of all persons present in a courthouse or judicial facility, certain limitations and requirements in court practices are necessary for permitting any physical substance that a party seeks to bring into the courthouse that may create a substantial and serious risk of harm if ingested or absorbed, or if otherwise determined to create a substantial and serious risk of harm (“hazardous substances”).

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the presiding judge of each appellate, superior, justice and municipal court, or before the presiding disciplinary judge, shall put into place the following policies:

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<sup>1</sup> A judicial facility may, as an example, include a probation office or clerk’s office.

**DRAFT RECOMMENDATION**

(1) Hazardous substances are not permitted in the courthouse or judicial facility, absent a court order.

(2) Hazardous substances should be inspected and approved by designated court or judicial personnel when a person brings them into a courthouse or judicial facility.

(3) If a hazardous substance is brought into the courthouse or judicial facility by a law enforcement officer, the custody of the substance shall remain with the law enforcement officer. If the substance is brought into the courthouse or judicial facility by anyone other than a law enforcement officer, either a court security officer or a law enforcement officer shall take custody.

(4) Court security or other appropriate judicial employee(s) shall be responsible for the safe storage of hazardous substances, if required.

(5) Hazardous substances shall not be stored by a Clerk of Court.

(6) Naloxone Hydrochloride or Narcan® shall be available in all courthouses and judicial facilities.

(7) Court security officers shall be trained on identifying signs of opioid toxicity and on the administration and risks associated with the treatment of Naloxone Hydrochloride or Narcan®.

(8) Training on identifying signs of opioid toxicity and on the administration and risks associated with the treatment of Naloxone Hydrochloride or Narcan® shall be provided in the court security training academy.

(9) Courts and judicial facilities without full-time security officers are encouraged to provide for training to designated employees on the administration and risks associated with the treatment of Naloxone Hydrochloride or Narcan®.

Dated this XX day of X, 2023.