

City and County
of San Francisco



Board of Supervisors,
District 6

MATT DORSEY

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NEWS RELEASE

Dorsey seeks to withdraw sanctuary protections from fentanyl-dealing undocumented immigrants

Felony convictions for trafficking fentanyl would be added alongside two existing exceptions in 'Due Process For All' law, for violent or serious felony convictions

SAN FRANCISCO (Feb. 14, 2023) — Supervisor Matt Dorsey today proposed legislation to create a new exception to San Francisco’s sanctuary city policies for adults who have been convicted of a fentanyl-dealing felony in the prior seven years, and then held to answer for another fentanyl-dealing felony, a violent felony, or a serious felony subsequently. The change would allow local law enforcement officials to honor civil immigration detainers from federal authorities in narrow circumstances to reflect the gravity of a crime that currently claims more than nine times as many lives as homicide in San Francisco, and that has been solely responsible for nearly three-fourths of all drug overdose deaths citywide since 2020.

“If San Francisco is to make progress on its overdose prevention strategy, supply-side interventions must be part of it,” Dorsey said. “It is time to withdraw the protection of sanctuary from undocumented immigrants trafficking fentanyl on our streets. My legislation is a harm-reduction approach. It draws a hard line on the most lethal street drug San Francisco has ever faced, while preserving the status quo for less lethal drugs. Statistically, even heroin is many times safer than fentanyl. My proposal is a common-sense update to existing exceptions in our sanctuary policies. It will help save the lives of those struggling with substance use disorders, who deserve the same chance at recovery I had.”

Dorsey's proposal defines fentanyl-dealing felony convictions as those for the sale, possession for sale, or transport for sale of fentanyl, as defined in sections 11351 and 11352 of the California Health and Safety Code. Simple possession of fentanyl without a prescription, as defined in section 11350 of the California Health and Safety Code, is not included.

If enacted, Dorsey's legislation would make fentanyl-dealing felony convictions the third exception in San Francisco's sanctuary city policies, joining two others that were adopted in the last decade as the Due Process For All Ordinance. Under existing local law, San Francisco denies sanctuary protections to undocumented immigrants held to answer when a magistrate determines probable cause for their guilt in a violent felony or a serious felony, provided they were previously convicted of a violent felony in the prior seven years, or serious felony in the prior five years. Dorsey's proposal will add defendants held to answer if a magistrate determines probable cause for their guilt in a fentanyl-dealing felony, provided they were previously convicted of a fentanyl-dealing felony or violent felony in the prior seven years, or a serious felony in the prior five years.

Existing San Francisco law currently defines the violent felonies ineligible for sanctuary protections as any of the more than two-dozen crimes identified in California Penal Code Section 667.5(c), which includes murder, voluntary manslaughter, mayhem, rape, robbery, arson, attempted murder, kidnapping, carjacking, or threats to victims or witnesses. Other currently disqualifying felony convictions are for human trafficking, felony assault with a deadly weapon, or crimes involving the use of a firearm, assault weapon or machine gun. Existing San Francisco law also defines serious felonies that are ineligible for sanctuary protection, which include most violent felonies as well as rape, exploding a destructive device with intent to injure, assault on a person with caustic chemicals or flammable substances, or shooting from a vehicle at a person outside the vehicle or with great bodily injury.

"Black San Franciscans face an overdose death risk more than five times higher than the citywide average, according to SFDPH, and fentanyl is driving most of it," said **Cedric Akbar**, a director of several abstinence-based drug treatment facilities in San Francisco. "Supervisor Dorsey is proposing a common-sense amendment that deserves to be a key part of San Francisco's Overdose Prevention Plan."

"Our community is under attack from this illicit drug, and something has to be done on all sides of the table," said **Cregg Johnson**, director of TRP Academy and founder of Positive

Directions Equals Change. “Nothing changes if nothing changes, and Supervisor Dorsey is proposing a change that can help get fentanyl off our streets and hopefully save lives.”

“Mothers Against Drug Addiction and Deaths fully supports Supervisor Dorsey’s legislation to draw the line on some of San Francisco’s deadly fentanyl dealing,” said **Jacqui Berlinn**, one of MADAD’s co-founders. “Street drugs are far more addictive and lethal than ever before and countless lives are at stake. City leaders must heed the voices of those of us with loved ones struggling with addiction. We value the leadership Supervisor Dorsey brings as someone who’s a recovering addict himself, and who knows the promise recovery holds for those with substance use disorders.”

Findings in Dorsey’s legislation include statistics from toxicology analyses by San Francisco’s Office of the Chief Medical Examiner, or OCME, establishing that fentanyl “is overwhelmingly responsible for drug overdose deaths in San Francisco, accounting for 451 of the 620 fatal overdoses reported in 2022 (73 percent); 477 of the 640 fatal overdoses reported in 2021 (75 percent); and 519 of the 725 fatal overdoses reported in 2020 (72 percent).”

Deaths in San Francisco, 2020–2022			
YEAR	BY HOMICIDE	BY HEROIN	BY FENTANYL
2020	48	93	519
2021	55	70	477
2022	55	59	451
TOTAL	158	222	1,447

Sources: City and County of San Francisco, Office of the Chief Medical Examiner; and San Francisco Police Department.

Dorsey’s legislative findings also note that street-level drug dealing drives “a staggering proportion of San Francisco’s fentanyl supply,” with the San Francisco Police Department’s tally of seizures from arrests of street-level drug dealers in the Tenderloin Police District in 2022 reaching 65.37 kilograms of fentanyl — or more than 144 pounds. “With just two milligrams of fentanyl estimated to be a lethal overdose for most people, SFPD’s drug seizure haul from street-level drug dealers in 2022 represents enough fentanyl to kill every adult in California,” the legislation’s findings also note.

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For immediate release:

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LEGISLATIVE DIGEST

[Administrative Code – Fentanyl Sales and ICE Notification Requests]

Ordinance amending the Administrative Code to permit law enforcement officials to respond to a federal immigration officer's request for voluntary notification that a person will be released from local custody, for adults who have been convicted of a felony for the sale, possession for sale, or transport for sale, of Fentanyl, and been held to answer for a felony for the sale, possession for sale, or transport for sale, of Fentanyl.

Existing Law

Existing law generally prohibits law enforcement officials' cooperation with a federal immigration officer's request for voluntary notification that a person will be released from local custody. Existing law allows law enforcement officials to cooperate with voluntary notification requests when the subject of the request has a prior conviction for a serious or violent felony and has been held to answer, meaning a court has found evidence sufficient to require the person to stand trial, for a serious or violent felony.

Amendments to Current Law

This ordinance would permit law enforcement officials to also respond to a federal immigration officer's request for voluntary notification that a person will be released from local custody, for adults who have been convicted of a felony for the sale, possession for sale, or transport for sale of Fentanyl, a Schedule II controlled substance under the California Health and Safety Code, and also held to answer for a felony for the sale, possession for sale, or transport for sale of Fentanyl.

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[Administrative Code – Fentanyl Sales and ICE Notification Requests]

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NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

(a) San Francisco’s persistently lethal drug overdose crisis remains the worst public health calamity the City has faced since the deadliest days of the AIDS Crisis. From January 2020 through December 2022, the Office of the Chief Medical Examiner (OCME) found that accidental drug overdoses claimed 1,985 lives in San Francisco — nearly twice the number of lives lost to COVID-19 during the same time period.

(b) The Department of Public Health’s Overdose Prevention Plan has highlighted that “profound inequities exist” in our City’s drug overdose crisis, and that “Black/African Americans in San Francisco are disproportionately affected, with an opioid overdose death rate that is more than five times higher than the citywide rate.”

1 (c) OCME's toxicology analyses establish that Fentanyl is overwhelmingly responsible
2 for drug overdose deaths in San Francisco, accounting for 451 of the 620 fatal overdoses
3 reported in 2022 (73%); 477 of the 640 fatal overdoses reported in 2021 (75%); and 519 of
4 the 725 fatal overdoses reported in 2020 (72%).

5 (d) Street-level drug dealing drives a staggering proportion of San Francisco's fentanyl
6 supply, with the Police Department's tally of seizures from arrests of street-level drug dealers
7 in the Tenderloin Police District in 2022 reaching 65.37 kilograms of fentanyl — or more than
8 144 pounds. With just two milligrams of fentanyl estimated to be a lethal overdose for most
9 people, SFPD's drug seizure haul from street-level drug dealers in 2022 represents enough
10 fentanyl to kill every adult in California.

11 (e) Former District Attorney Chesa Boudin has estimated that a significant percentage
12 of people selling drugs in San Francisco, perhaps as many as half, are undocumented
13 immigrants.

14 (f) Existing law generally prohibits law enforcement cooperation with a federal
15 immigration officer's request for voluntary notification that an adult will be released from local
16 custody, but allows cooperation when the person has a prior conviction for a serious or violent
17 felony and a judge has held that person to answer for a serious or violent felony, meaning that
18 a judge has found sufficient evidence of that offense to require the person to stand trial. The
19 devastating lethality of fentanyl in San Francisco's street-level trade elevates the need for
20 exceptions to the prohibition on cooperation with federal immigration authorities for adults who
21 have been convicted of selling fentanyl, and held to answer for offenses involving the felony
22 sale of fentanyl, as necessary additional exceptions within the Due Process For All Ordinance.

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24 Section 2. The Administrative Code is hereby amended by revising Chapter 12I,
25 Sections 12I.1, 12I.2, and 12I.3, to read as follows:

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2 **SEC. 12I.2. DEFINITIONS.**

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4 "Convicted" means the state of having been proved guilty in a judicial proceeding,
5 unless the convictions have been expunged or vacated pursuant to applicable law. The date
6 that an individual is Convicted starts from the date of release.

7 "Fentanyl" means the Schedule II controlled substance listed in California Health and Safety
8 Code 11055(c)(8), as amended from time to time.

9 "Firearm" means a device, designed to be used as a weapon, from which is expelled
10 through a barrel, a projectile by the force of an explosion or other form of combustion as
11 defined in Penal Code Section 16520.

12 * * * *

13 **SEC. 12I.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.**

14 (a) Except as provided in subsection (b), a law enforcement official shall not detain an
15 individual on the basis of a civil immigration detainer after that individual becomes eligible for
16 release from custody.

17 (b) Law enforcement officials may continue to detain an individual in response to a civil
18 immigration detainer for up to 48 hours after that individual becomes eligible for release if the
19 continued detention is consistent with state and federal law, and the individual meets both of
20 the following criteria:

21 (1) The individual has been Convicted of a Violent Felony in the seven years
22 immediately prior to the date of the civil immigration detainer; and

23 (2) A magistrate has determined that there is probable cause to believe the
24 individual is guilty of a Violent Felony and has ordered the individual to answer to the same
25 pursuant to Penal Code Section 872.

1 In determining whether to continue to detain an individual based solely on a civil
2 immigration detainer as permitted in this subsection (b), law enforcement officials shall
3 consider evidence of the individual's rehabilitation and evaluate whether the individual poses
4 a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes,
5 but is not limited to: the individual's ties to the community, whether the individual has been a
6 victim of any crime, the individual's contribution to the community, and the individual's
7 participation in social service or rehabilitation programs.

8 This subsection (b) shall expire by operation of law on October 1, 2016, or upon a
9 resolution passed by the Board of Supervisors that finds for purposes of this Chapter, the
10 federal government has enacted comprehensive immigration reform that diminishes the need
11 for this subsection (b), whichever comes first.

12 (c) Except as provided in subsection (d), a law enforcement official shall not respond
13 to a federal immigration officer's notification request.

14 (d) Law Enforcement officials may respond to a federal immigration officer's
15 notification request if the individual meets both of the following criteria:

16 (1) The individual either:

17 (A) has been Convicted of a Violent Felony in the seven years
18 immediately prior to the date of the notification request; or

19 (B) has been Convicted of a Serious Felony in the five years immediately
20 prior to the date of the notification request; or

21 (C) has been Convicted of three felonies identified in Penal Code
22 sections 1192.7(c) or 667.5(c), or Government Code sections 7282.5(a)(2) or 7282.5(a)(3),
23 other than domestic violence, arising out of three separate incidents in the five years
24 immediately prior to the date of the notification request; ~~and~~or
25

1 (D) has been Convicted of a felony under California Health and Safety Code
2 11351 or 11352, as amended from time to time, involving the sale, possession for sale, or transport for
3 sale, of Fentanyl, in the immediate seven years prior to the date of the notification request; and

4 (2) A magistrate has determined that there is probable cause to believe the
5 individual is guilty of a felony identified in Penal Code sections 1192.7(c) or 667.5(c), or
6 Government Code sections 7282.5(a)(2) or 7282.5(a)(3), other than domestic violence, or
7 guilty of a felony for sale, possession for sale, or transport for sale, of Fentanyl, under California
8 Health and Safety Code 11351 or 11352, as amended from time to time, and has ordered the
9 individual to answer to the same pursuant to Penal Code Section 872.

10 * * * * *

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12 Section 3. Effective Date. This ordinance shall become effective 30 days after
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
15 of Supervisors overrides the Mayor's veto of the ordinance.

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1 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the “Note” that appears under
6 the official title of the ordinance.

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8 APPROVED AS TO FORM:
9 DAVID CHIU, City Attorney

10 By: /S/ Jana Clark
11 JANA CLARK
12 Deputy City Attorney

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