

Congress of the United States
Washington, DC 20510

December 14, 2020

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue Northwest
Washington, D.C. 20530

Attorney General Barr,

We write to request information from the Department of Justice (DOJ) regarding the use of ketamine and other sedatives or chemical restraints on individuals during their arrest or detention by law enforcement. Though data on this practice is scarce, several recent and highly publicized incidents make clear the potential dangers of administering sedatives during an arrest. We request the Department's assistance in gathering information about the use of ketamine and other chemical restraints during arrests or detentions by federal, state, local, and Tribal law enforcement agencies, as well as any regulations or guidance the Department has issued regarding this practice.

As policymakers, we are deeply concerned about both the ability of law enforcement officers to make arrests safely and protecting the health, safety, and civil rights of individuals who may be subject to arrest. Recent reporting indicates that use of sedatives during arrest may be more common than is currently understood – in particular the death of Elijah McClain in Colorado and the medical emergency of Max Johnson in Minnesota. Given evidence that the administration of ketamine for law enforcement purposes carries significant risks of death or permanent harm, we are seeking information about this practice in order to aid our consideration of future oversight and regulatory efforts.

Law enforcement medics or paramedics typically administer ketamine to incapacitate individuals who are demonstrating “excited delirium,” a term not found in the Diagnostic and Statistical Manual of Mental Disorders and without a widely accepted medical definition.¹ However, according to the American Society of Anesthesiologists, ketamine can cause side effects that “can end in death when administered in a non-health care setting without appropriately trained medical personnel and necessary equipment.”² The organization's president

¹ Solomon, Rae, and Michael de Yoanna. "Medics in Colorado Dosed 902 People with Ketamine for "excited Delirium" in 2.5 Years, including Elijah McClain." *The Colorado Sun*, July 23, 2020.

<https://coloradosun.com/2020/07/23/ketamine-use-paramedics-elijah-mclain/>;

Vilke, Gary M., and J. Jason Payne-James. "Excited Delirium Syndrome." Wiley Online Library. August 19, 2016. <https://onlinelibrary.wiley.com/doi/10.1002/9781118456026.ch6>.

² "Use of Ketamine for a Non-medical Purpose: Statement from the American Society of Anesthesiologists." Newswise. July 15, 2020. <https://www.newswise.com/articles/use-of-ketamine-for-a-non-medical-purpose-statement-from-the-american-society-of-anesthesiologists>.

separately noted that ketamine “should not be given for purely law enforcement purposes.”³ Administering ketamine without ascertaining an individual’s medical history is especially dangerous, as ketamine may cause serious adverse interactions with certain medical conditions or medications; yet when an individual demonstrates symptoms associated with excited delirium, it is understandably difficult to ascertain that person’s medical history or underlying conditions. Of the 902 people who were administered ketamine during their arrest or detention in Colorado since 2017, seventeen percent experienced a serious complication, including hypoxemia, or low oxygen levels in the blood, a potentially life-threatening complication.⁴

We are concerned that ketamine and other sedatives are being used to help effectuate arrests without a full appreciation of the health risks and potential liability involved. For instance, in a 2018 report conducted by the City of Minneapolis, investigators described a situation in which an Emergency Medical Services (EMS) provider was not aware that people with asthma can suffer fatal consequences from ketamine, but administered it to an asthmatic individual who then stopped breathing.⁵ In Mr. Johnson’s case, EMS first treated him for low blood sugar to address diabetic shock, but then law enforcement treated Mr. Johnson as if he exhibited drug-induced behavior. The 500 milligrams of ketamine administered to Mr. Johnson during this event sent him into the Intensive Care Unit for two days.⁶ Federal standards for EMS only mention sedatives as a potential cause of delirium, not as a treatment for it.⁷ However, an EMS trade publication identified ketamine as the “primary treatment” for excited delirium and recommended a “low threshold” for employing this treatment, in contrast to the warning from the American Academy of Anesthesiologists.⁸ The lack of a clear, consistent policy for this chemical restraint is very concerning.

Situations in which law enforcement personnel and EMS interact pose complex jurisdictional questions, as they occur in the field under varying and perhaps competing federal, state, and local policies. Furthermore, departmental policies may address their own employee’s behavior in the field, but they may not address collaboration or interaction with other emergency responders.⁹ The 2018 Minneapolis report found that law enforcement officers encouraged EMS

³ Sidner, Sara, and Julia Jones. "Two Strangers, with the Same First Name, and a Terrifying Story about Ketamine in Policing." *CNN*, September 1, 2020. <https://www.cnn.com/2020/08/31/us/ketamine-use-in-police-stops/index.html>.

⁴ Mayo Clinic Staff. "Hypoxemia (low Blood Oxygen)." Mayo Clinic. December 01, 2018.

<https://www.mayoclinic.org/symptoms/hypoxemia/basics/definition/sym-20050930;>

Solomon and de Yoanna, “Medics in Colorado.”

⁵“MPD Involvement in Pre-Hospital Sedation.” City of Minneapolis. July 28, 2018.

[https://lms.minneapolismn.gov/Download/File/1389/Office of Police Conduct Review \(OPCR\) Pre-Hospital Sedation Study Final Report.pdf](https://lms.minneapolismn.gov/Download/File/1389/Office%20of%20Police%20Conduct%20Review%20(OPCR)%20Pre-Hospital%20Sedation%20Study%20Final%20Report.pdf).

⁶ Mannix, Andy. "It Was Hell: Ketamine Shot Sends Minneapolis Man into Intensive Care, Renews Calls for Investigation." *Star Tribune*. August 04, 2020. <https://www.startribune.com/ketamine-shot-sends-man-to-icu-renews-calls-for-probe/571997552/?refresh=true>.

⁷ "National Emergency Medical Services Education Standards." EMS.gov.

https://www.ems.gov/pdf/education/National-EMS-Education-Standards-and-Instructional-Guidelines/Paramedic_Instructional_Guidelines.pdf.

⁸ Ordoobadi Sean M. Kivlehan, Alexander, and Sean Kivlehan. "CE Article: Excited Delirium." *EMS World*. February 24, 2017. <https://www.emsworld.com/216063/ce-article-excited-delirium>.

⁹ Sidner and Jones, “Two Strangers.

to administer ketamine, sometimes despite objections from patients and without a clear reason for doing so.¹⁰ Though department policy now forbids attempts to influence EMS's treatment, at that time the Minneapolis Police Department lacked formal policy regarding the interactions between law enforcement officers and EMS.¹¹ These jurisdictional conflicts are no doubt complex, and this complexity creates confusion. The consequences of ketamine use are too dangerous to allow such confusion to continue.

In a July hearing before the House Judiciary Committee, you did not provide any statistics or information regarding the administration of ketamine in the course of arrests.¹² If the Justice Department does not possess any such information, we believe additional research is needed to help policymakers determine if the practice should be federally regulated or possibly prohibited. Furthermore, we need additional data about whether there are racial disparities in the use of ketamine or other sedatives during arrests. Given existing racial inequities in arrest rates, it seems likely that people of color are subjected to ketamine sedation at disproportionate rates.

In order to protect the health, safety, and civil rights of our constituents, policymakers need additional information about the scope of the practice of administering ketamine and other chemical restraints during arrest. We ask that you respond no later than January 4, 2020 to the following questions:

1. Does the DOJ currently collect data on the use of ketamine and other sedatives during arrest or detention by law enforcement (even if administered by EMS, paramedics, or other medical personnel)? If so, please include this data in your response.
 - a. If yes, does the DOJ disaggregate that data by race, sex, age, or other demographic characteristics? If yes, please provide. If no, please explain why not.
2. Has the DOJ ever developed or issued guidance regarding the use of ketamine, or other sedatives or chemical restraints, by law enforcement agencies during arrests? If so, please include.
3. Has the DOJ ever developed or issued guidance to law enforcement agencies regarding coordinating with EMS, paramedics, and other medical personnel, about the use of ketamine or other sedatives in cases where an individual exhibits signs of excited delirium? If so, please include.

¹⁰ "MPD Involvement in Pre-Hospital Sedation."

¹¹ Collins, Jon. "Mpls. Police Change Policy after Report Says Cops Ordered EMS to Sedate Suspects." *MPR News*, MPR News, 15 June 2018, www.mprnews.org/story/2018/06/15/mps-police-change-policy-after-report-says-cops-ordered-ems-sedate-suspects.

¹² "Attorney General William Barr Testifies on Justice Department Mission and Programs." CSPAN. July 28, 2020. Accessed November 30, 2020. <https://www.c-span.org/video/?473384-1/attorney-general-barr-testifies-justice-department-mission-programs>. At approximately 1:45:39.

4. Has the DOJ ever developed or issued guidance or advisory opinions regarding potential liability for civil rights violations resulting from the use of ketamine or other sedatives and chemical restraints during arrest or detention? If so, please include.
5. Has the DOJ ever developed or issued guidance or advisory opinions regarding whether and when the use of ketamine or other sedatives or chemical restraints during an arrest or detention may be unreasonable under the Fourth Amendment? If so, please include.

Sincerely,



Tina Smith
United States Senator



Karen Bass
Member of Congress



Ron Wyden
United States Senator



Bennie G. Thompson
Member of Congress



Kirsten Gillibrand
United States Senator



Pramila Jayapal
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Chris Van Hollen
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David N. Cicelline
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Catherine Cortez Masto
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