

1 **TESTIMONY OF DAVID HOGUE IN SUPPORT OF SB 2248**

2 **HOUSE JUDICIARY COMMITTEE**

3 **MARCH 13, 2023**

4
5 Good morning Chairman Klemin and members of the House Judiciary
6 Committee. My name is David Hogue. I am a North Dakota state senator representing
7 District 38, which includes northwest Minot and the city of Burlington. I appear before
8 your committee to seek support for Senate Bill 2248.

9 SB 2248 is a criminal justice reform bill that seeks to address the growing and
10 alarming problem of overdose deaths related to ingestion of fentanyl and other illicit
11 drugs in North Dakota. You no doubt have heard anecdotal evidence about the scourge
12 of fentanyl drug abuse in our communities.

13 SB 2248 seeks to address this growing and persistent problem by enhancing a
14 criminal sanction for intermediate suppliers of fentanyl, introducing a reporting
15 requirement for overdose deaths in North Dakota, and providing funding for public
16 education of the dangers of fentanyl.

17 Let me share some data with you. Overdose deaths in North Dakota exceed
18 deaths related to motor vehicle fatalities for 2022. I attach to my testimony a Grand
19 Forks Herald article that details the alarming rise in overdose deaths.

20 I also attach to my testimony the analysis of the North Dakota Department of
21 Corrections related to probationers that are under its supervision. The analysis looks at

the overdose deaths within the small population of individuals who are under supervision with DOCR.

The fentanyl epidemic is overwhelming many components of our criminal justice system. We could not possibly have places for all of the juveniles from out of state that traffic fentanyl. Often these youth are members of a gang from a distance metropolitan area that come to North Dakota to make a delivery. As DOCR representatives will likely opine, there is no room for fentanyl dealers in existing facilities when you begin to attach mandatory minimum sentences to dealers. We are now learning that fentanyl is incorporated into almost every illicit drug that is sold on our streets. Incorporation of fentanyl as a component of any illicit drug is designed to foster addiction and dependence. This cold but calculated technique ensures that the sellers will have a loyal supply of buyers, but it also ensures that we as a state will have a difficult social and criminal justice issue well into the future. I admit the task of addressing this problem is overwhelming from a policy maker's perspective.

Since introduction of this bill, I have visited several state's attorneys, criminal defense attorneys, and jailers. They have provided valuable input in terms of modifying this bill. SB 2248 started off as a mandatory minimum sentence for those who sell or distribute fentanyl. I did offer amendments that would modify the objective of SB 2248 by creating a harsher criminal sanction for those whose selling or distributing of fentanyl leads to death or serious injury.

Under section 1 of the bill as amended, I do eliminate the mandatory minimum in favor of a new provision that creates an enhanced sentencing provision for dealers who

1 cause death or serious life injury. The enhanced sentence is a class A felony. The
2 objective is to target those dealers whose sales lead to loss of life or injury. My rationale
3 for the change relates to deterrence. The foot soldiers will not be deterred because
4 there is a seemingly endless supply of their ranks.

5 Under section 1 of SB 2248, we criminalize the conduct of "willfully" supplying
6 fentanyl to another who supplies or sells fentanyl to the user who in turn has an "Injury."
7 The bill attempts to reach the fentanyl supplier up the supply chain. Subsection 3
8 importantly authorizes venue for the criminal offense where the victim is injured or
9 where the injured individual obtained the drug, directly or indirectly.

10 I have also added funding for public education. I think we can have the greatest
11 impact when we reduce demand for this insidious substance. One way to reduce
12 demand is through public education. North Dakota and other states have recently
13 entered into settlement agreements with manufacturers of opioids. Those settlements
14 provide for direct payments to the states for the impacts of opioid addiction of our
15 citizens. I think an appropriate use of those funds is to provide public education about
16 both the danger and prevalence of fentanyl drugs in our communities.

17 Our public campaigns against driving under the influence of alcohol have a
18 promising track record of effectively reducing DUI arrests, and I remain confident that a
19 similar expenditure for highlighting the perils of fentanyl use will make progress and
20 reduce fentanyl prevalence as well.

21 From the time this bill was introduced and passed in the Senate, I am saddened
to report that Minot experienced the loss of a young man from fentanyl overdose. The

1 young man thought he was consuming a drug to keep him alert so that he could study
2 for a college exam but the drug was laced with fentanyl. The young man died from
3 consuming the fentanyl laced drug.

4 Chairman Klemin and members of the House Judiciary Committee, I urge your
5 support of SB 2248.

6

7

8

9

February 28, 2023

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2248

Page 1, line 17, remove "supplies another to deliver a controlled substance to an"

Page 1, line 18, replace "individual who consumes the controlled substance and that" with "delivers a controlled substance, or supplies another to deliver or consume a controlled substance, and an"

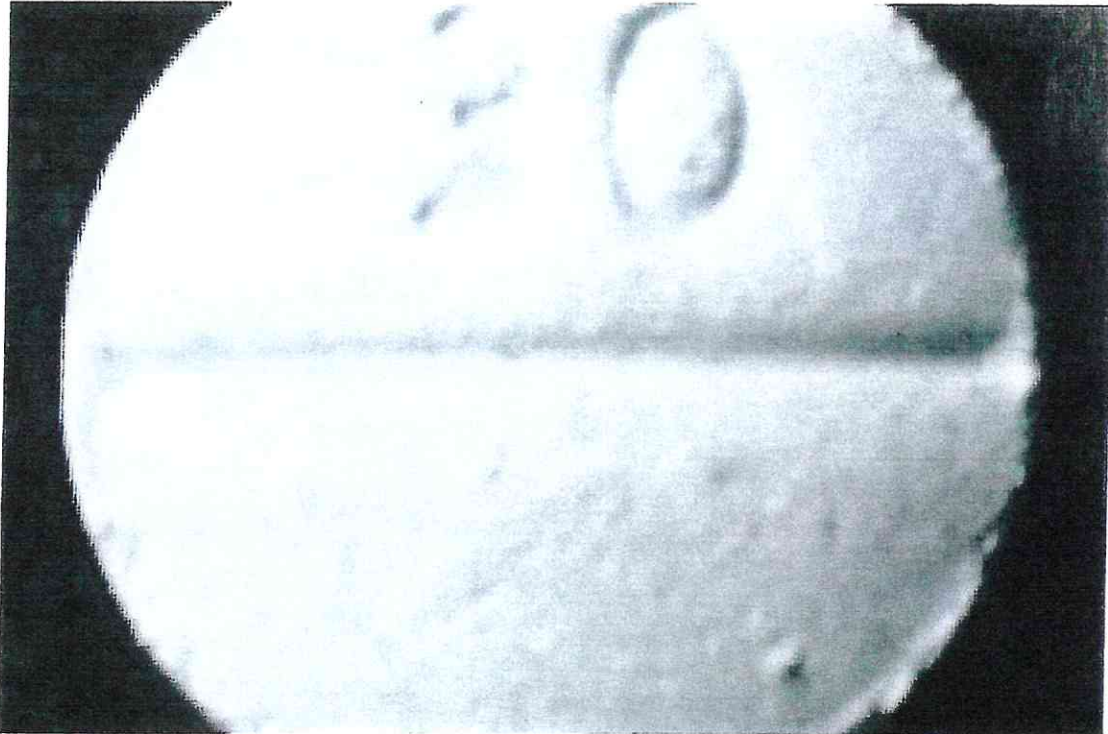
Page 1, line 19, replace "the" with "that"

Renumber accordingly

NEWS | LOCAL | News reporting

'There's no demographic that's safe' as fentanyl use increases across North Dakota


There were 131 drug overdose deaths statewide last year. The number has risen considerably from the 76 overdose deaths in North Dakota in 2019.



Example of a counterfeit M30 pill containing fentanyl analogues. This image, provided by the city of Grand Forks, was obtained from the internet and does not represent a locally recovered substance, although similar pills have been found in the community.

By Sav Kelly

December 02, 2022 01:02 PM

 We are part of The Trust Project. >

GRAND FORKS – There were 131 drug overdose deaths in North Dakota last year. That's more than the state's 101 traffic deaths in 2021.

The 2021 total of overdose deaths is up from 76 in 2019 and approximately 116 in 2020.

“There’s no demographic that’s safe,” said Col. Brandon Solberg of the North Dakota Highway Patrol. “There are middle-schoolers, for example, who have experienced an overdose.”

Opioids and amphetamines were the most common drugs in 2021 overdose deaths, according to Highway Patrol press release. The NDHP has been organizing opioid roundtable discussions in response to the increase of drug overdose deaths. The department brings together public health and public safety agencies across the state to explore the depth of the issue as well as potential solutions. Overdose statistics provided at the opioid roundtable discussion in Grand Forks were collected by the Department of Health and Human Services.

However, the number of overdoses is likely much higher than statistics show because many overdose deaths are not reported, according to Northeast Central Judicial District Presiding Judge Donald Hager.

“We have a lot of unreported overdoses in this community, and we see them as judges,” Hager said.

When the cause of someone’s death is undetermined, judges may sign warrants for drug tests, blood tests and other related searches. Of the overdose deaths Hager has seen in recent years, “all of them, pretty much, are fentanyl-related.”

“I call it the drug of death,” Hager said.

Though fentanyl (a synthetic opioid) has been “prevalent” in North Dakota “for a number of years now,” Grand Forks County State’s Attorney Haley Wamstad said “it has become much more accessible.”

In Grand Forks County, overdose deaths are rising as well, from six in 2019 to 12 in 2021.

Fentanyl is a powder and can be injected intravenously. However, the drug is commonly manufactured into a pill that resembles M30s (oxycodone). The pills make ingesting fentanyl much easier.

“They don’t need needles or, you know, anything like that,” Wamstad said.

Counterfeit M30 pills have become commonplace in recent years and, thus, law enforcement can typically identify the pills as fentanyl. However, counterfeits often went undetected when fentanyl pills were new to the drug market.

Recently, “rainbow fentanyl” – fentanyl pills of various colors – has been found in North Dakota.

“Enough time has passed where individuals realize that most of these pills are counterfeit, so now [manufacturers are] starting to get into the business of mixing up their variety and options and colors,” Solberg said.

“They’re starting to make them look like Smarties,” said Hager, referring to a type of candy. “It’s kind of dangerous for kids, if these get passed along.”

Recently, fentanyl has also been found laced into marijuana.

“That’s a scary part,” said Hager, “and an argument, I guess, for people who want [marijuana] legalized and controlled.”

A major concern with counterfeit M30 pills is users’ inability to determine the quantity of fentanyl in any pill they come across. The U.S. Drug Enforcement Administration considers two milligrams of fentanyl to be a potentially lethal dose – for someone who has not built up a tolerance to the drug.

“In order to put that into perspective,” said Solberg, “I usually share that a sugar packet weighs four grams, so the residue left behind after dumping out the sugar crystals could be two milligrams.”

According to Solberg, the absence of quality control in the manufacture of counterfeit M30s results in vastly different fentanyl doses per pill.

The process does not take place “in multimillion dollar controlled lab facilities” such as prescription pills tend to, Solberg said.

“These might be individuals ... using a bullet to mix up, and so one pill might have an extremely potent amount of fentanyl, and one pill might be light,” Solberg said.

“They’re just taking a chance, whether they know it or not,” said Hager. “It’s like playing Russian Roulette.”

A significant contributor to fentanyl’s increasing presence in North Dakota is the substantial amount of money to be made by selling drugs in smaller communities.

Hager and Solberg both said one fentanyl pill can be sold for \$80 (or even \$90, Hager said) on Native American reservations in North Dakota, where the supply of fentanyl and other illicit drugs is minimal.

The market value of fentanyl in Grand Forks, though not as high as on reservations, is significant compared to large metropolitan areas.

As a judge, Hager sees many defendants from out of state who have no ties to Grand Forks County – professional or personal.

“There’s a lot of people that don’t have jobs that come through court, but they have large amounts of cash on them, and that’s from selling drugs,” Hager said.

“There’s disposable income in our state,” said Solberg, “heavy ag, heavy energy – and the criminal element is just responding to that. They’re trying to meet that demand and provide an adequate supply.”

READ MORE

Mandatory Term of Imprisonment for Fentanyl!

January 13, 2023



TRANSFORMING LIVES.
INFLUENCING CHANGE.
STRENGTHEN COMMUNITY.

Overview

- Considerations being given to creating a bill for mandatory one-year imprisonment terms for manufacturing or delivering fentanyl.
- Following is community supervision data for suspended or deferred sentence types (i.e. "probation") sentenced in North Dakota.
 - Because of how the data is entered, we included all offense descriptions that contained words "opiate, opium, and fentanyl" and a separate analysis to capture delivery and manufacture-related offenses.
 - Due to the difficulty to discern, individuals who have a probation sentence after imprisonment are included in the data.

Deaths on Supervision

- All adults under community supervision.

2019 P/P Cause Of Death	Total	Percent
CAUSE OF DEATH		
Automobile Crash	2	5%
Homicide	2	5%
Long Term Alcohol or Drug Use	4	9%
Natural Causes/Accident	8	18%
Overdose	12	27%
Suicide	8	18%
Unknown	8	18%
Grand Total	44	100%
Total Behavioral Health	24	55%

2020 P/P Cause of Death	Total	Percent
CAUSE OF DEATH		
Automobile Crash	5	6%
Homicide	4	5%
Long Term Alcohol or Drug Use	4	5%
Natural Causes/Accident	22	27%
Other	1	1%
Overdose	24	29%
Suicide	7	8%
Unknown	17	20%
Grand Total	83	100%
Total Behavioral Health	35	42%

2021 P/P Cause of Death	Total	Percent
CAUSE OF DEATH		
Automobile Crash	11	14%
Homicide	2	3%
Long Term Alcohol or Drug Use	4	5%
Natural Causes/Accident	16	20%
Other	7	9%
Overdose	19	24%
Suicide	8	10%
Unknown	12	15%
Grand Total	79	100%
Total Behavioral Health	31	39%

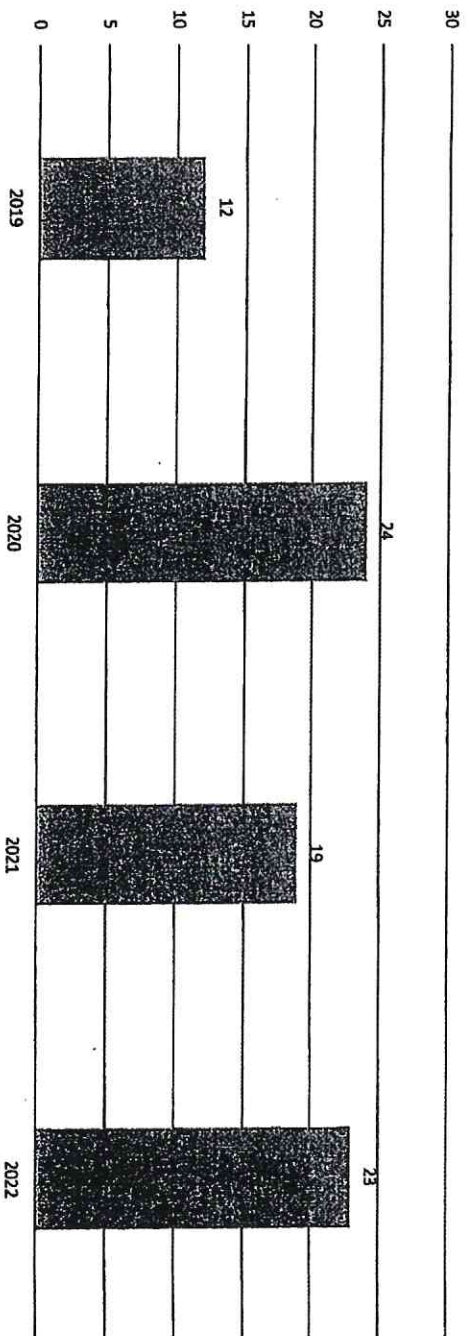
2022 P/P Cause of Death	Total	Percent
CAUSE OF DEATH		
Automobile Crash	6	8%
Homicide	4	5%
Long Term Alcohol or Drug Use	1	1%
Natural Causes/Accident	18	24%
Other	3	4%
Overdose	23	31%
Suicide	5	7%
Unknown	14	19%
Grand Total	74	100%
Total Behavioral Health	29	39%

* Cause of death collection in Docstars started in 2019

Deaths on Supervision-Overdose

- All adults under community supervision.

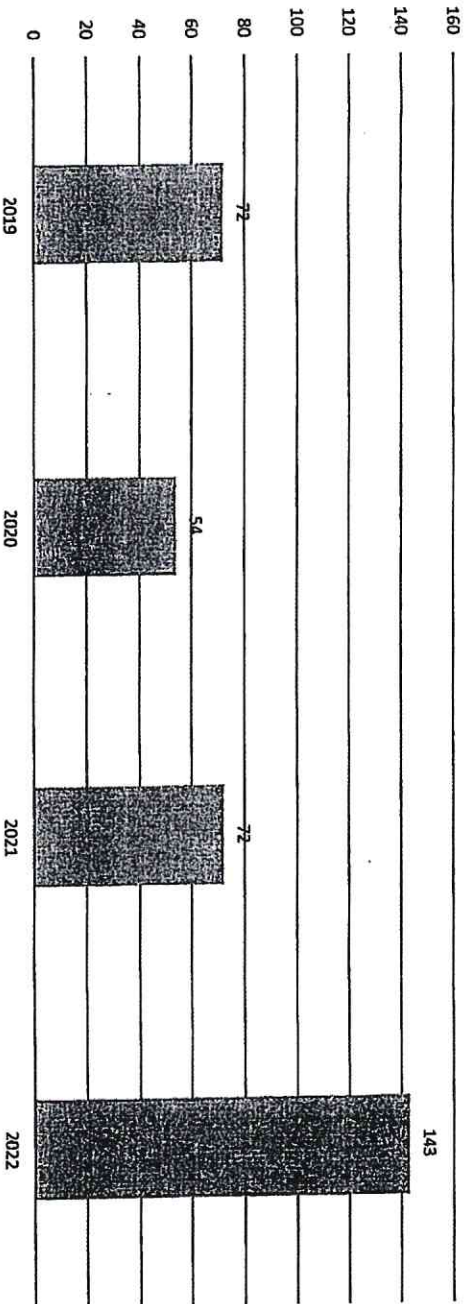
P/P Supervised Adult Overdose Deaths



* Cause of death collection in Docstars started in 2019

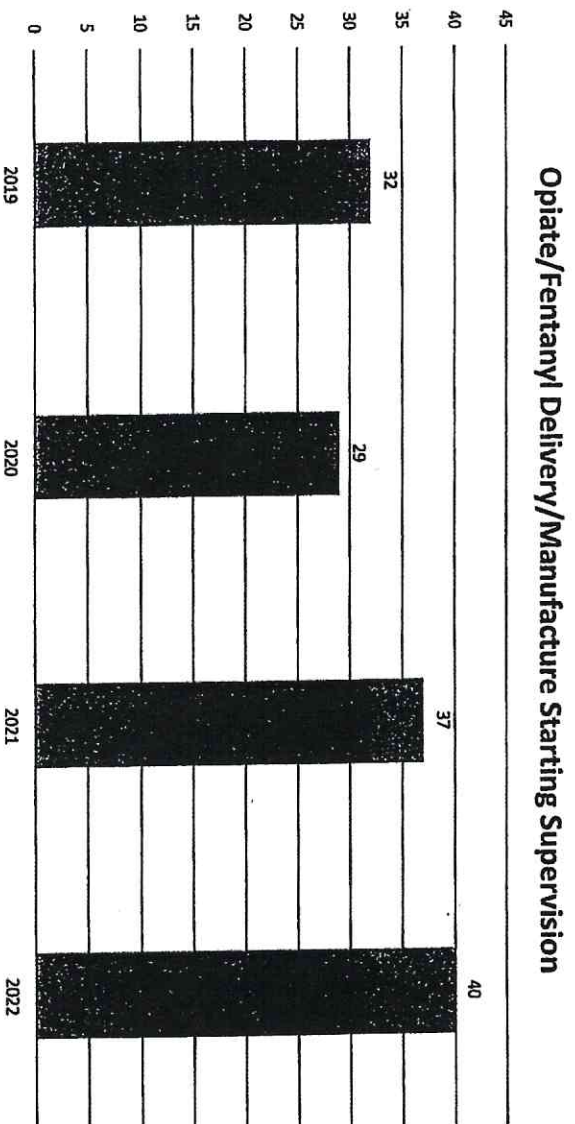
Supervision Admissions – All Opiate/Fentanyl Offenses

- Adults under probation supervision who had “opiate” or “fentanyl” in the offense description, by case start date.



Supervision Admissions – Delivery/Manufacture

- Adults under probation community supervision who had “opiate” or “fentanyl” in the offense description, along with delivery, manufacture, and related offenses.



Supervision Terminations-Delivery/Manufacture

- Adults under community supervision who had "opiate" or "fentanyl" in the offense description and delivery/manufacture and related offenses, by case termination date, who completed supervision without revocation or death.

Termination Type	Total	Percent	Termination Type
Absconded (Active Petition To Revoke)	1	4%	Absconded (Active Petition To Revoke)
Death	2	8%	Death
Dismissal (Deferred Imp.)	1	4%	Expiration (Susp. Sentence)
Expiration (Susp. Sentence)	7	29%	Revocation
Revocation	9	38%	Termination (Deferred Imp.)
Termination-Positive (Susp. Sent)	4	17%	Termination-Positive (Susp. Sent)
Grand Total	24	100%	Grand Total
Not Revoked, death, or active revocation	12	50%	Not Revoked, death, or active revocation

Termination Type	Total	Percent	Termination Type
Absconded (Active Petition To Revoke)	1	3%	Absconded (Active Petition To Revoke)
Death	5	15%	Death
Expiration (Susp. Sentence)	13	38%	Expiration (Susp. Sentence)
Revocation	13	38%	Revocation
Termination (Deferred Imp.)	1	3%	Termination (Deferred Imp.)
Termination-Positive (Susp. Sent)	1	3%	Termination-Positive (Susp. Sent)
Grand Total	34	100%	Grand Total
Not Revoked, death, or active revocation	15	44%	Not Revoked, death, or active revocation

Supervision Terminations-Delivery/Manufacture

- Adults under community supervision who had "opiate" or "fentanyl" in the offense description and delivery/manufacture and related offenses, by case termination date, who completed supervision without revocation or death.

Case terminations CV 2021

Termination Type	Total	Percent
Absconded (Active Petition To Revoke)	1	3%
Death	1	3%
Expiration (Susp. Sentence)	19	49%
Revocation	11	28%
Termination-Negative (Susp. Sent)	1	3%
Termination-Positive (Susp. Sent)	6	15%
Grand Total	39	100%
Not Revoked, death, or active revocation	26	67%

Case terminations CV 2022

Termination Type	Total	Percent
Absconded (Active Petition To Revoke)	2	4%
Dismissal (Deferred Imp.)	1	2%
Expiration (Susp. Sentence)	20	38%
Other	2	4%
Revocation	17	33%
Termination-Negative (Susp. Sent)	2	4%
Termination-Positive (Susp. Sent)	8	15%
Grand Total	52	100%
Not Revoked, death, or active revocation	33	63%

Current Individual Count

- On January 9, 2023, there were **87** individuals with a probation sentence who have at least one supervised offense with "opiates, opium, or fentanyl" in the offense description and delivery/manufacture and related offenses.

expect 6300 to successfully complete

DOCR Adult Facility Admissions

DOCR ADULT FACILITY ADMISSIONS

Admissions for Manufacture, Delivery, Possession w/Intent to Manufacture or Deliver

Year	CY Admissions	Avg Court-Ordered Sentence in Yrs	New Admission	Probation Revocation	Parole Revocation	Fentanyl			Opiates/Opioids	Other	Total	Avg Court-Ordered Sentence in Yrs
						2	0	2				
2019	1220	2.88	635	348	200	2	0	2	211	42	255	3.44
	310	2.12	151	81	74	0	0	0	66	6	72	2.89
	1530	2.73	786	429	274	2	0	2	277	48	327	3.32
2020	738	3.18	410	171	127	2	1	3	135	22	159	3.61
	198	2.29	96	69	22	1	1	1	43	8	52	2.11
	936	2.99	506	240	149	3	2	4	178	30	211	3.24
2021	1205	3.02	738	266	180	21	1	22	185	44	250	3.45
	286	2.32	103	110	38	1	1	1	67	6	74	2.39
	1491	2.89	841	376	218	22	2	23	252	50	324	3.21
2022	1149	3.16	574	345	190	46	14	60	158	32	236	3.17
	302	2.27	133	118	31	14	14	14	50	2	66	2.50
	1451	2.98	707	463	221	60	14	74	208	34	302	3.04

Opiates/Opioids - Buprenorphine, Heroin, Methamphetamine, Hydrocodone, Hydromorphone, Oxycodone, Suboxone, Tramadol

Other - Alprazolam, Benzodiazepines, Carisoprodol, Cocaine, Gabapentin, LSD, Marijuana, THC, Hashish, Hashish Oil, MDMA, Methylphenidate, Modafinil, Pseudoephedrine, Xanax

Prepared 1/8/2023