

2023 SENATE JUDICIARY

SB 2248

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2248
1/30/2023

A bill relating to a mandatory term of imprisonment for manufacturing or delivering fentanyl and fentanyl reporting; relating to the disposition of cases involving confidential informants.
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2:38 PM Chairman Larson opened the hearing.

Present are Chairman Larson and Senators Luick, Myrdal, Estenson, Sickler, Paulson and Braunberger.

Discussion Topics:

- Mandatory sentences
- Overdoses
- Addiction
- Deterrence

2:39 PM Senator Hogue introduced the bill and offered some proposed amendments in Christmas Tree format #17957, 17958, 17959, 17960.

3:02 PM Ladd Erickson, McLean and Sheridan County States Attorney spoke in favor of the bill with proposed amendments.

3:18 PM Jonathan Beyers, lobbyist for North Dakota State's Attorney's Association spoke in favor of the bill.

3:30 PM Travis Finck, North Dakota Legal Counsel for Indigents, testified opposed to the bill and provided written testimony #17916.

3:21 PM Chairman Larson closed the public hearing.

3:22 PM Senator Myrdal moved to adopt amendment LC 23.0573.03003. Motion seconded by Senator Estenson.

3:22 PM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passes 7-0-0.

3:24 PM Senator Myrdal moves to Do Pass the bill as amended. Motion seconded by Senator Sickler.

3:24 PM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Larson will carry the bill.

This bill does not affect workforce development.

3:26 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

January 30, 2023

DR
172
1-30-2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, line 1, replace "sections 19-03.1-23.5" with "a new section to chapter 19-03.1"

Page 1, line 1, after the second "and" insert "section"

Page 1, line 2, remove "a mandatory term of imprisonment for manufacturing or"

Page 1, line 3, replace "delivering fentanyl" with "a special penalty for death or injury through distribution of illegal drugs"

Page 1, line 3, remove "to amend and reenact subsection 2 of section"

Page 1, remove line 4

Page 1, line 5, remove "confidential informants;"

Page 1, line 5, replace "for application" with "an appropriation"

Page 1, replace lines 7 through 21 with:

"SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Distribution of illegal drugs - Special penalty for death or injury.

1. As used in this section:
 - a. "Consume" means to inject, ingest, or inhale a controlled substance.
 - b. "Controlled substance" includes derivatives or analogs to a scheduled controlled substance.
 - c. "Injury" means an overdose that puts an individual's life at immediate risk.
 - d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to supply or deliver a controlled substance.
2. An individual is guilty of causing death or injury by distributing a controlled substance if the individual willfully supplies another to deliver a controlled substance to an individual who consumes the controlled substance and that individual dies or is injured from overdosing after consuming a portion of the controlled substance.
 - a. A violation of this section is a class A felony.
 - b. This section does not limit a conviction under chapter 12.1-16, but an individual may not be found guilty of this section and an offense under chapter 12.1-16 if the conduct arises out of the same course of conduct.
3. Venue for an offense under this section is in the county where the death or injury occurred or any county where the controlled substance was directly or indirectly obtained by the deceased or injured individual.

- BR
272
1-30-2023
- a. An individual may not be convicted in more than one county for the death or injury of the same individual who overdosed on a controlled substance.
 - b. Notwithstanding chapter 29-03, an individual outside the state may be prosecuted within the state under this section.
 - c. The charging document for a violation of this section must list an overt act in which the individual engaged to violate this section.
 - d. Injury or death by an overdose may be proven by direct or circumstantial evidence.
4. An individual may not be charged under this section if the individual supplied or administered a controlled substance as part of a medical procedure or the individual was in a lawful position to dispense a medication prescription.
- a. An individual may not be charged under this section if the individual complied with section 19-3.1-23.4.
 - b. It is not a defense to this section that the deceased or injured individual had other controlled substances or alcohol in the individual's system which the defendant did not supply at the time of an overdose."

Page 2, line 2, replace ", "law" with ":

- a. "Health care provider" means a person licensed or certified by the state to provide health care services. The term includes emergency service personnel, a medical hospital, and a medical clinic.
- b. "Law"

Page 2, line 6, after "agency" insert "and a health care provider"

Page 2, line 7, after "agency" insert "or the provider"

Page 2, line 7, after "by" insert ", suspected to have been caused by."

Page 2, line 7, after "or" insert "is"

Page 2, line 13, after "agencies" insert "and health care providers"

Page 2, line 14, after "agency" insert "or health care provider"

Page 2, replace lines 22 through 29 with:

"SECTION 3. APPROPRIATION - ATTORNEY GENERAL - FENTANYL AWARENESS EXPANSION. There is appropriated out of any moneys from opioid-related lawsuit settlement proceeds, not otherwise appropriated, the sum of \$1,500,000, or so much of the sum as may be necessary, to the attorney general for the purpose of providing and expanding statewide awareness of the fentanyl drug and overdose epidemic, for the biennium beginning July 1, 2023, and ending June 30, 2025."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2248: Judiciary Committee (Sen. Larson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2248 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, replace "sections 19-03.1-23.5" with "a new section to chapter 19-03.1"

Page 1, line 1, after the second "and" insert "section"

Page 1, line 2, remove "a mandatory term of imprisonment for manufacturing or"

Page 1, line 3, replace "delivering fentanyl" with "a special penalty for death or injury through distribution of illegal drugs"

Page 1, line 3, remove "to amend and reenact subsection 2 of section"

Page 1, remove line 4

Page 1, line 5, remove "confidential informants;"

Page 1, line 5, replace "for application" with "an appropriation"

Page 1, replace lines 7 through 21 with:

"SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Distribution of illegal drugs - Special penalty for death or injury.

1. As used in this section:
 - a. "Consume" means to inject, ingest, or inhale a controlled substance.
 - b. "Controlled substance" includes derivatives or analogs to a scheduled controlled substance.
 - c. "Injury" means an overdose that puts an individual's life at immediate risk.
 - d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to supply or deliver a controlled substance.
2. An individual is guilty of causing death or injury by distributing a controlled substance if the individual willfully supplies another to deliver a controlled substance to an individual who consumes the controlled substance and that individual dies or is injured from overdosing after consuming a portion of the controlled substance.
 - a. A violation of this section is a class A felony.
 - b. This section does not limit a conviction under chapter 12.1-16, but an individual may not be found guilty of this section and an offense under chapter 12.1-16 if the conduct arises out of the same course of conduct.
3. Venue for an offense under this section is in the county where the death or injury occurred or any county where the controlled substance was directly or indirectly obtained by the deceased or injured individual.

- a. An individual may not be convicted in more than one county for the death or injury of the same individual who overdosed on a controlled substance.
 - b. Notwithstanding chapter 29-03, an individual outside the state may be prosecuted within the state under this section.
 - c. The charging document for a violation of this section must list an overt act in which the individual engaged to violate this section.
 - d. Injury or death by an overdose may be proven by direct or circumstantial evidence.
4. An individual may not be charged under this section if the individual supplied or administered a controlled substance as part of a medical procedure or the individual was in a lawful position to dispense a medication prescription.
- a. An individual may not be charged under this section if the individual complied with section 19-3.1-23.4.
 - b. It is not a defense to this section that the deceased or injured individual had other controlled substances or alcohol in the individual's system which the defendant did not supply at the time of an overdose."

Page 2, line 2, replace ", "law" with ":

- a. "Health care provider" means a person licensed or certified by the state to provide health care services. The term includes emergency service personnel, a medical hospital, and a medical clinic.
- b. "Law"

Page 2, line 6, after "agency" insert "and a health care provider"

Page 2, line 7, after "agency" insert "or the provider"

Page 2, line 7, after "by" insert ", suspected to have been caused by."

Page 2, line 7, after "or" insert "is"

Page 2, line 13, after "agencies" insert "and health care providers"

Page 2, line 14, after "agency" insert "or health care provider"

Page 2, replace lines 22 through 29 with:

"SECTION 3. APPROPRIATION - ATTORNEY GENERAL - FENTANYL AWARENESS EXPANSION. There is appropriated out of any moneys from opioid-related lawsuit settlement proceeds, not otherwise appropriated, the sum of \$1,500,000, or so much of the sum as may be necessary, to the attorney general for the purpose of providing and expanding statewide awareness of the fentanyl drug and overdose epidemic, for the biennium beginning July 1, 2023, and ending June 30, 2025."

Renumber accordingly

2023 SENATE APPROPRIATIONS

SB 2248

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Red River Room, State Capitol

SB 2248
2/6/2023

Relating to a special penalty for death or injury through distribution of illegal drugs and fentanyl reporting; to provide a penalty; and to provide an appropriation.
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10:09 AM Chairman Wanzek called the meeting to order.
Senators Wanzek, Erbele, Roers, Dwyer, and Vedaa were present.

Discussion Topics:

- Overdose deaths
- Mandatory minimum sentence
- Public education
- MHA Nation deaths
- Demand reduction
- Opioid settlement
- Fentanyl lethality
- Fentanyl universality
- Reporting system
- Proposed amendment
- HB 1447 effect
- Opioid settlements

10:09 AM Senator Hogue testified affirmatively. (No written testimony)

10:22 AM Recess

10:30 AM Reconvene

10:30 AM Becky Keller, Finance Director of the Attorney General's Office, testified.
(No written testimony)

10:35 AM Danielle Presky, ND Association of Counties, and Executive Director of the ND Sheriffs' Association testified affirmatively. (No written testimony)

10:37 AM Sheila Sandness, Legislative Council, Senior Fiscal Analyst, testified neutrally. (No written testimony)

10:40 AM Chairman Wanzek closed the meeting.

Carol Thompson, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Red River Room, State Capitol

SB 2248
2/9/2023

Relating to a special penalty for death or injury through distribution of illegal drugs and fentanyl reporting; to provide a penalty; and to provide an appropriation.
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4:04 PM Senator Wanzek called the meeting to order.

Senators Wanzek, Erbele, Roers, Dwyer, and Vedaa were present.

Discussion topics:

- Opioid fund
- Committee action

4:05 PM Senator Dwyer moved a Do Pass recommendation for SB 2248.
Senator Roers seconded the motion.

Senators	Vote
Senator Terry M. Wanzek	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Jim P. Roers	Y
Senator Shawn Vedaa	Y

Motion passed, 5-0-0

Senator Dwyer will carry SB 2248.

4:07 PM Chairman Wanzek closed the meeting.

Carol Thompson, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2248
2/15/2023

Relating to a special penalty for death or injury through distribution of illegal drugs, fentanyl reporting, and an opioid settlement fund; to provide a penalty; and to provide an appropriation.

10:46 AM Chairman Bekkedahl opened the hearing.

Members present: **Senators Bekkedahl, Burckhard, Davison, Dever, Dwyer, Erbele, Kreun, Meyer, Roers, Schaible, Sorvaag, Vedaa, Wanzek, Rust, Mathern; Krebsbach**

Discussion Topics:

- Committee action

10:48 AM Senator Dwyer moved to adopt Amendment 23.0573.05001.

10:48 AM Senator Wanzek seconded.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Jim P. Roers	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	Y

Motion passed 16-0-0

10:50 AM Senator Dwyer moved a Do Pass as Amended.

10:50 AM Senator Vedaa seconded.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Jim P. Roers	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	Y

Motion passed 16-0-0

10:54 AM Senator Dwyer will carry.

10:55 AM Chairman Bekkedahl closed the meeting.

Nathan Liesen on behalf Kathleen Hall, Committee Clerk

February 14, 2023

DR
191
2-15-23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2248

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "19-03.1-23.6" insert ", and a new section to chapter 50-06"

Page 1, line 3, replace the first "and" with a comma

Page 1, line 3, after "reporting" insert ", and an opioid settlement fund"

Page 3, after line 17, insert:

"**SECTION 3.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Opioid settlement fund.

There is created in the state treasury an opioid settlement fund. The fund consists of opioid litigation funds received by the state. Moneys received by the state as a result of opioid litigation must be deposited in the fund. Moneys in the fund may be used as authorized by legislative appropriation. The legislative assembly shall consult with the governor in determining the use of the moneys in the fund. As used in this section, "opioid litigation" means civil litigation, demand, or settlement in lieu of litigation alleging unlawful conduct related to the marketing, sale, or distribution of opioids in this state or other alleged illegal actions that contributed to the excessive use of opioids."

Page 3, line 18, replace "ATTORNEY GENERAL" with "DEPARTMENT OF HEALTH AND HUMAN SERVICES"

Page 3, line 19, remove "opioid-related lawsuit settlement"

Page 3, line 20, replace "proceeds" with "the opioid settlement fund"

Page 3, line 21, replace "attorney general" with "department of health and human services"

Re-number accordingly

REPORT OF STANDING COMMITTEE

SB 2248, as engrossed: Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (16 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2248 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "19-03.1-23.6" insert ", and a new section to chapter 50-06"

Page 1, line 3, replace the first "and" with a comma

Page 1, line 3, after "reporting" insert ", and an opioid settlement fund"

Page 3, after line 17, insert:

"SECTION 3. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Opioid settlement fund.

There is created in the state treasury an opioid settlement fund. The fund consists of opioid litigation funds received by the state. Moneys received by the state as a result of opioid litigation must be deposited in the fund. Moneys in the fund may be used as authorized by legislative appropriation. The legislative assembly shall consult with the governor in determining the use of the moneys in the fund. As used in this section, "opioid litigation" means civil litigation, demand, or settlement in lieu of litigation alleging unlawful conduct related to the marketing, sale, or distribution of opioids in this state or other alleged illegal actions that contributed to the excessive use of opioids."

Page 3, line 18, replace "**ATTORNEY GENERAL**" with "**DEPARTMENT OF HEALTH AND HUMAN SERVICES**"

Page 3, line 19, remove "opioid-related lawsuit settlement"

Page 3, line 20, replace "proceeds" with "the opioid settlement fund"

Page 3, line 21, replace "attorney general" with "department of health and human services"

Renumber accordingly

2023 HOUSE JUDICIARY

SB 2248

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2248
3/13/2023

Relating to a special penalty for death or injury through distribution of illegal drugs, fentanyl reporting, and an opioid settlement fund; to provide a penalty; and to provide an appropriation.

10:00 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter.

Discussion Topics:

- Overdose deaths vs. Highway deaths.
- Minors as drug mules.
- Fentanyl statewide.
- Informing parents.
- Fentanyl testing.
- Amendments.

Senator Hogue: Introduced the bill. Testimony #24196

Donnell Preskey, ND Association of Counties. No written testimony.

Ladd Erickson, McLean County State's Attorney: Testimony #23742

Kodi Pinks, Director of Surveillance & Data Management Unit, DHHS: Testimony # 23935, #23934, #23936

The hearing closed at 10:46 AM

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2248
3/20/2023

Relating to a special penalty for death or injury through distribution of illegal drugs, fentanyl reporting, and an opioid settlement fund; to provide a penalty; and to provide an appropriation.

3:21 PM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. Karls, Rep. Bahl, Rep. Roers-Jones and Rep. Satrom

Discussion Topics:

- Committee action
- Amendments

Rep. Christensen moved an amendment 23.0573.06001; Testimony #27123
Seconded by Rep. Vetter

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 10 Yes 0 No 3 Absent; Motion carried

Rep. Schneider moved an amendment; Testimony #27122
Seconded by Rep. Henderson

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 9 Yes 0 No 4 Absent; Motion carried

Rep. Vetter moved amendment 23.0573.06004
Testimony #27121
Seconded by Rep. Christensen

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 9 Yes 0 No 4 Absent; Motion carried.

Rep. Christensen moved to amendment by removing Section 3, on the opioid settlement fund; page 3;
Seconded by Rep. VanWinkle

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 9 Yes 0 No 4 Absent

Rep. Christensen moved a Do Pass as Amended; referred to appropriations;
Seconded by Rep. VanWinkle

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Landon Bahl	A
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 9 Yes 0 No 4 Absent; Motion carried
Carrier: Rep. Cory

The meeting closed at 3:42 PM

Delores Shimek, Committee Clerk

March 20, 2023

AK
3-20-23
(1-2)

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2248

Page 1, line 1, after the first comma insert "and"

Page 1, line 1, remove the second comma

Page 1, line 2, remove "and a new section to chapter 50-06"

Page 1, line 3, after the first comma insert "and"

Page 1, line 3, remove ", and an opioid"

Page 1, line 4, remove "settlement fund"

Page 1, line 4, after the first semicolon insert "to amend and reenact section 19-03.1-23.4 of the North Dakota Century Code, relating to overdose prevention and immunity;"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.4. Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, and 19-03.1-22.5, subsection 7 of section 19-03.1-23, section 2 of this Act, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual seeks medical assistance for another individual in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search."

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"

Page 2, remove lines 23 through 30

Page 3, remove lines 1 through 12

Page 3, line 13, remove "d."

Page 3, line 13, replace "attorney general" with "department of health and human services"

Page 3, line 16, remove "The attorney general shall"

Page 3, remove lines 17 through 28

Renumber accordingly

AG
3-20-23
(22)

REPORT OF STANDING COMMITTEE

SB 2248, as reengrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (9 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Reengrossed SB 2248 was placed on the Sixth order on the calendar.

Page 1, line 1, after the first comma insert "and"

Page 1, line 1, remove the second comma

Page 1, line 2, remove "and a new section to chapter 50-06"

Page 1, line 3, after the first comma insert "and"

Page 1, line 3, remove ", and an opioid"

Page 1, line 4, remove "settlement fund"

Page 1, line 4, after the first semicolon insert "to amend and reenact section 19-03.1-23.4 of the North Dakota Century Code, relating to overdose prevention and immunity;"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.4. Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, and 19-03.1-22.5, subsection 7 of section 19-03.1-23, section 2 of this Act, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual seeks medical assistance for another individual in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search."

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"

Page 2, remove lines 23 through 30

Page 3, remove lines 1 through 12

Page 3, line 13, remove "d."

Page 3, line 13, replace "attorney general" with "department of health and human services"

Page 3, line 16, remove "The attorney general shall"

Page 3, remove lines 17 through 28

Renumber accordingly

2023 HOUSE APPROPRIATIONS

SB 2248

2023 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Brynhild Haugland Room, State Capitol

SB 2248
3/30/2023

Relating to a special penalty for death or injury through distribution of illegal drugs, and fentanyl reporting; to amend and reenact section 19-03.1-23.4 of the North Dakota Century Code, relating to overdose prevention and immunity

11:02 AM Chairman Vigesaa Called the meeting to order and roll call was taken-

Members present; Chairman Vigesaa, Representative Kempenich, Representative B. Anderson, Representative Bellew, Representative Brandenburg, Representative Hanson, Representative Kreidt, Representative Martinson, Representative Mitskog, Representative Meier, Representative Monson, Representative Nathe, Representative J. Nelson, Representative O'Brien, Representative Pyle, Representative Richter, Representative Sanford, Representative Schatz, Representative Schobinger, Representative Strinden, Representative G. Stemen and Representative Swiontek.

Members not Present- Representative Mock

Discussion Topics:

- Fentanyl Reporting Requirements
- Opioid Settlement Fund

Representative Klemin- Introduces the bill and its purpose.

11:12 AM Chairman Vigesaa Closed the meeting for SB 2248:

Risa Berube, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Brynhild Haugland Room, State Capitol

SB 2248
4/5/2023

Relating to a special penalty for death or injury through distribution of illegal drugs, and fentanyl reporting; to amend and reenact section 19-03.1-23.4 of the North Dakota Century Code, relating to overdose prevention and immunity

11:41 AM Chairman Vigesaa Called the meeting to order and roll call was taken-

Members present; Chairman Vigesaa, Representative Kempenich, Representative B. Anderson, Representative Bellew, Representative Brandenburg, Representative Hanson, Representative Kreidt, Representative Martinson, Representative Mitskog, Representative Meier, Representative Mock, Representative Nathe, Representative J. Nelson, Representative O'Brien, Representative Pyle, Representative Richter, Representative Sanford, Representative Schatz, Representative Schobinger, Representative Strinden, Representative G. Stemen and Representative Swiontek.

Members not present: Representative Monson

Discussion Topics:

- Verbal Amendment
- Committee action

Chairman Vigesaa Proposes a verbal amendment to remove section 4

Representative Pyle Moves to amend by removing section 4

Representative G. Stemen seconds the motion

Roll call vote:

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	Y
Representative Bert Anderson	Y
Representative Larry Bellew	Y
Representative Mike Brandenburg	Y
Representative Karla Rose Hanson	Y
Representative Gary Kreidt	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative Corey Mock	Y
Representative David Monson	AB
Representative Mike Nathe	Y

Representative Jon O. Nelson	Y
Representative Emily O'Brien	Y
Representative Brandy Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Mike Schatz	Y
Representative Randy A. Schobinger	Y
Representative Greg Stemen	Y
Representative Michelle Strinden	Y
Representative Steve Swiontek	Y

Motion Carries 22-0-1

Representative Pyle Moves for a do pass as amended

Representative Stemen seconds the motion

Roll call vote:

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	Y
Representative Bert Anderson	Y
Representative Larry Bellew	Y
Representative Mike Brandenburg	Y
Representative Karla Rose Hanson	Y
Representative Gary Kreidt	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative Corey Mock	Y
Representative David Monson	AB
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Emily O'Brien	Y
Representative Brandy Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Mike Schatz	Y
Representative Randy A. Schobinger	Y
Representative Greg Stemen	Y
Representative Michelle Strinden	Y
Representative Steve Swiontek	Y

Motion Carries 22-0-1 Representative Stemen will carry the bill.

11:46 AM Chairman Vigesaa Closed the meeting for SB 2248.

Risa Berube, Committee Clerk

DR
171
4-6-23

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2248

In addition to the amendments adopted by the House as printed on pages 1309 and 1310 of the House Journal, Reengrossed Senate Bill No. 2248 is further amended as follows:

Page 1, line 4, after the first semicolon insert "and"

Page 1, line 4, remove "; and to provide an appropriation"

Page 3, remove lines 29 through 31

Page 4, remove lines 1 through 3

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2248 - DHHS - Other - House Action

	Base Budget	Senate Version	House Changes	House Version
Fentanyl awareness		\$1,500,000	(\$1,500,000)	
Total all funds	\$0	\$1,500,000	(\$1,500,000)	\$0
Less estimated income	0	1,500,000	(1,500,000)	0
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

Department 325 - DHHS - Other - Detail of House Changes

	Removes Appropriation for Fentanyl Awareness ¹	Total House Changes
Fentanyl awareness	(\$1,500,000)	(\$1,500,000)
Total all funds	(\$1,500,000)	(\$1,500,000)
Less estimated income	(1,500,000)	(1,500,000)
General fund	\$0	\$0
FTE	0.00	0.00

¹ The appropriation for fentanyl awareness is removed.

REPORT OF STANDING COMMITTEE

SB 2248, as reengrossed and amended: Appropriations Committee (Rep. Vigesaa, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (22 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2248, as amended, was placed on the Sixth order on the calendar.

In addition to the amendments adopted by the House as printed on pages 1309 and 1310 of the House Journal, Reengrossed Senate Bill No. 2248 is further amended as follows:

Page 1, line 4, after the first semicolon insert "and"

Page 1, line 4, remove "; and to provide an appropriation"

Page 3, remove lines 29 through 31

Page 4, remove lines 1 through 3

ReNUMBER accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

Senate Bill No. 2248 - DHHS - Other - House Action

	Base Budget	Senate Version	House Changes	House Version
Fentanyl awareness		\$1,500,000	(\$1,500,000)	
Total all funds	\$0	\$1,500,000	(\$1,500,000)	\$0
Less estimated income	0	1,500,000	(1,500,000)	0
General fund	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

Department 325 - DHHS - Other - Detail of House Changes

	Removes Appropriation for Fentanyl Awareness ¹	Total House Changes
Fentanyl awareness	(\$1,500,000)	(\$1,500,000)
Total all funds	(\$1,500,000)	(\$1,500,000)
Less estimated income	(1,500,000)	(1,500,000)
General fund	\$0	\$0
FTE	0.00	0.00

¹ The appropriation for fentanyl awareness is removed.

2023 CONFERENCE COMMITTEE

SB 2248

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2248
4/21/2023
Conference Committee

A bill relating to a mandatory term of imprisonment for manufacturing or delivering fentanyl and fentanyl reporting; relating to the disposition of cases involving confidential informants.
--

4:05 PM Chairman Sickler opened the meeting.

Chairman Sickler and Senators Larson, Myrdal, and Representatives Cory and Stemen are present. Representative Klemin is absent.

Discussion Topics:

- Good Samaritan law
- Opioid Settlement Fund
- Overdoses
- Amendments

4:05 PM The committee has discussion on the bill and amendments LC 23.0573.06008, #27805.

4:06 PM Pam Sagness, Director, Behavioral Health Division, North Dakota Department of Health, and Human Services, provided oral testimony.

4:17 PM Senator Myrdal moved to Recede from House amendments and further amend LC 23.057306008, #27805. Motion is seconded by Senator Larson.

4:17 PM Roll call vote was taken. Motion carries 5-0-1.

Senator Sickler will carry the bill for the Senate.

Representative Stemen will carry the bill for the House.

4:19 PM Chairman Sickler closed the meeting.

*Note that the action taken at this meeting was reconsidered as Representative Klemin was absent from this meeting and wanted to be present when the committee action was taken.

Rick Schuchard, Committee Clerk

April 21, 2023

OK
172
4-21-23

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2248

That the House recede from its amendments as printed on page 1536 of the Senate Journal and page 1749 of the House Journal and that Reengrossed Senate Bill No. 2248 be amended as follows:

Page 1, line 1, remove "a new section to chapter 19-03.1,"

Page 1, line 1, remove the second comma

Page 1, line 2, remove "and a new section to chapter 50-06"

Page 1, line 2, remove "a special"

Page 1, line 3, remove "penalty for death or injury through distribution of illegal drugs,"

Page 1, line 3, remove ", and an opioid"

Page 1, line 4, remove "settlement fund"

Page 1, line 4, after the first semicolon insert "to amend and reenact subdivision d of subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to the increased penalty for delivering or selling a controlled substance resulting in a substantial injury or death; and"

Page 1, line 4, remove "; and to provide an appropriation"

Page 1, remove lines 6 through 23

Page 2, replace lines 1 through 19 with:

"SECTION 1. AMENDMENT. Subdivision d of subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

d. The defendant sells, distributes, delivers, or conspires to deliver a controlled substance to an individual which results in the substantial injury or death of the individual due to the use of that controlled substance and the substantial injury or death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4.

(1) Venue for an offense under this subdivision is in the county where the death or substantial injury occurred or any county where the controlled substance was directly or indirectly obtained by the deceased or injured individual.

(a) An individual may not be convicted in more than one county for the death or substantial injury of the same individual who overdosed on a controlled substance.

(b) Notwithstanding chapter 29-03, an individual outside the state may be prosecuted within the state under this subdivision.

- DR
2/2
4-21-23
- (c) The charging document for a violation of this subdivision must list an overt act in which the individual engaged to violate this subdivision.
 - (d) Substantial injury or death by an overdose may be proven by direct or circumstantial evidence.
- (2) As used in this subdivision:
- (a) "Results" means the substantial injury or death would not have occurred but for the conduct of the defendant operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the defendant clearly insufficient.
 - (b) "Substantial injury" means an overdose that puts an individual's life at immediate risk of death."

Page 2, line 22, after "**management**" insert "**- Fentanyl awareness campaign**"

Page 2, line 23, remove "As used in this section:"

Page 2, remove lines 24 through 30

Page 3, remove lines 1 through 12

Page 3, line 13, remove "d."

Page 3, line 13, replace "attorney general" with "department of health and human services"

Page 3, line 16, after "year" insert ", including the county in which the deaths occurred and the age and gender of the deceased individuals"

Page 3, line 16, remove "The attorney general shall"

Page 3, line 17, replace "make the report available on the attorney general's website" with:

- "2. The department of health and human services shall make the data reported under subsection 1 available to the public by:
 - a. Making the information easily accessible on the department's government website;
 - b. Publishing easily comprehensible printed materials on fentanyl awareness, information, and resources;
 - c. Placing visible billboards in high-traffic areas to inform the public of the dangers of fentanyl; and
 - d. Developing a media and social media campaign to expand statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic occurring within the state"

Page 3, remove lines 18 through 31

Page 4, remove lines 1 through 3

Renumber accordingly

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2248
4/24/2023
Conference Committee Report

A bill relating to a mandatory term of imprisonment for manufacturing or delivering fentanyl and fentanyl reporting; relating to the disposition of cases involving confidential informants.
--

10:29 AM Chairman Sickler opened the meeting.

Chairman Sickler and Senators Larson, Myrdal, and Representatives Klemin, Cory and Stemen are present.

Discussion Topics:

- Appropriations
- Overdose deaths
- Constitutional challenges

10:29 AM The committee discusses the bill and amendments 23.0573.06010, #27836, 27837.

10:36 AM Jeremy Ensrud, Assistant Attorney General, North Dakota Attorney General's Office, spoke neutral on the bill.

10:42 AM Ladd Erickson, McLean County State's Attorney's Office, spoke to amendments #27834, 27835.

10:56 AM Chairman Sickler closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2248
4/24/2023
Conference Committee

A bill relating to a mandatory term of imprisonment for manufacturing or delivering fentanyl and fentanyl reporting; relating to the disposition of cases involving confidential informants

2:29 PM Chairman Sickler opened the meeting.

Chairman Sickler and Senators Larson, Myrdal and Representatives Klemin, Cory and Stemen are present.

Discussion Topics:

- Legal definitions
- Opium awareness programs
- Opium prevention programs

2:29 PM The committee has discussion on the bill.

2:38 PM Senator Larson moved to reconsider action taken on the bill at a previous meeting. Motion is seconded by Senator Myrdal.

2:38 PM Roll call vote was taken. Motion carries 6-0-0.

2:44 PM Representative Klemin moved the House Recede from House amendments and further amend #27836, LC 23.0573.06011. Motion is seconded by Senator Myrdal.

2:46 PM Roll call vote is taken. Motion carries 6-0-0.

Senator Sickler will carry the bill for the Senate.

Representative Klemin will carry the bill for the House.

2:47 PM Chairman Sickler closed the meeting.

Rick Schuchard, Committee Clerk

April 24, 2023

OK
172
4-24-23

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2248

That the House recede from its amendments as printed on page 1536 of the Senate Journal and page 1749 of the House Journal and that Reengrossed Senate Bill No. 2248 be amended as follows:

Page 1, line 1, after the comma insert "and"

Page 1, line 2, remove "and a new section to chapter 50-06,"

Page 1, line 3, replace the first comma with "and"

Page 1, line 3, remove ", and an opioid"

Page 1, line 4, remove "settlement fund"

Page 1, line 4, after the first semicolon insert "to provide a statement of legislative intent regarding fentanyl awareness expansion; and"

Page 1, line 4, remove "; and to provide an appropriation"

Page 2, line 22, after "management" insert "- Fentanyl awareness campaign"

Page 2, line 23, remove "As used in this section:"

Page 2, remove lines 24 through 30

Page 3, remove lines 1 through 12

Page 3, line 13, remove "d."

Page 3, line 13, replace "attorney general" with "department of health and human services"

Page 3, line 16, after "year" insert ", including the county in which the deaths occurred and the age and gender of the deceased individuals"

Page 3, line 16, remove "The attorney general shall"

Page 3, line 17, replace "make the report available on the attorney general's website" with:

"2. The department of health and human services shall make the data reported under subsection 1 available to the public by:

a. Making the information easily accessible on the department's government website;

b. Publishing easily comprehensible printed materials on fentanyl awareness, information, and resources;

c. Placing visible billboards in high-traffic areas to inform the public of the dangers of fentanyl; and

d. Developing a media and social media campaign to expand statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic occurring within the state"

Page 3, remove lines 18 through 28

Page 3, line 29, remove "APPROPRIATION -"

Page 3, line 30, remove "There is appropriated out of any moneys from the"

Page 3, remove line 31

Page 4, remove lines 1 and 2

Page 4, line 3, replace "the biennium beginning July 1, 2023, and ending June 30, 2025" with "Best practices relating to fentanyl drug overdose by the department of health and human services as provided in section 3 of House Bill No. 1447, as approved by the sixty-eighth legislative assembly, includes providing and expanding statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic, communication strategies and campaigns, access to naloxone, and other strategies as provided under section 2 of this Act, for the biennium beginning July 1, 2023, and ending June 30, 2025"

Renumber accordingly

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4-24-23

**2023 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2248 as re engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments**
 - SENATE accede to House Amendments and further amend**
 - HOUSE recede from House amendments**
 - HOUSE recede from House amendments and amend as follows**
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Klemin Seconded by: Myrdal

Senators		4/24		Yes	No	Representatives		4/24		Yes	No
Sickler		P		X		Klemin		P		X	
Larson		P		X		Cory		P		X	
Myrdal		P		X		Stemen		P		X	
Total Senate Vote				3	0	Total Rep. Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Sickler House Carrier Klemin

LC Number 23.0573 . 06011 of amendment

LC Number 23.0573 . 10000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Adoption of amendment LC 23.0573.06011

REPORT OF CONFERENCE COMMITTEE

SB 2248, as reengrossed: Your conference committee (Sens. Sickler, Larson, Myrdal and Reps. Klemin, Cory, Stemen) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1536, adopt amendments as follows, and place SB 2248 on the Seventh order:

That the House recede from its amendments as printed on page 1536 of the Senate Journal and page 1749 of the House Journal and that Reengrossed Senate Bill No. 2248 be amended as follows:

Page 1, line 1, after the comma insert "and"

Page 1, line 2, remove "and a new section to chapter 50-06,"

Page 1, line 3, replace the first comma with "and"

Page 1, line 3, remove ", and an opioid"

Page 1, line 4, remove "settlement fund"

Page 1, line 4, after the first semicolon insert "to provide a statement of legislative intent regarding fentanyl awareness expansion; and"

Page 1, line 4, remove "; and to provide an appropriation"

Page 2, line 22, after "**management**" insert "**- Fentanyl awareness campaign**"

Page 2, line 23, remove "As used in this section:"

Page 2, remove lines 24 through 30

Page 3, remove lines 1 through 12

Page 3, line 13, remove "d."

Page 3, line 13, replace "attorney general" with "department of health and human services"

Page 3, line 16, after "year" insert ", including the county in which the deaths occurred and the age and gender of the deceased individuals"

Page 3, line 16, remove "The attorney general shall"

Page 3, line 17, replace "make the report available on the attorney general's website" with:

- "2. The department of health and human services shall make the data reported under subsection 1 available to the public by:
 - a. Making the information easily accessible on the department's government website;
 - b. Publishing easily comprehensible printed materials on fentanyl awareness, information, and resources;
 - c. Placing visible billboards in high-traffic areas to inform the public of the dangers of fentanyl; and
 - d. Developing a media and social media campaign to expand statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic occurring within the state"

Page 3, remove lines 18 through 28

Page 3, line 29, remove "**APPROPRIATION -**"

Page 3, line 30, remove "There is appropriated out of any moneys from the"

Page 3, remove line 31

Page 4, remove lines 1 and 2

Page 4, line 3, replace "the biennium beginning July 1, 2023, and ending June 30, 2025" with "Best practices relating to fentanyl drug overdose by the department of health and human services as provided in section 3 of House Bill No. 1447, as approved by the sixty-eighth legislative assembly, includes providing and expanding statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic, communication strategies and campaigns, access to naloxone, and other strategies as provided under section 2 of this Act, for the biennium beginning July 1, 2023, and ending June 30, 2025"

Renumber accordingly

Reengrossed SB 2248 was placed on the Seventh order of business on the calendar.

TESTIMONY

SB 2248

SB 2248
68th Legislative Assembly
Senate Judiciary Committee
January 30, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, members of the committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for delivery of public defense services in North Dakota. The Commission has several concerns with SB 2248 as it is currently written.

First off, as we have testified previously, minimum mandatory sentences have no empirical evidence or proof of effectiveness. Much of the research provides these mandatory sentences don't curb the behavior. Further research provides longer prison sentences do not decrease crime, rather it increases crime as incarceration is inherently criminogenic. Thus, many have been moving away from mandatory minimums. Even Congress, in a bipartisan legislation under President Trump, passed the first step act in 2018 which made it easier for judges to depart from federal sentencing laws that contain minimum mandatory sentences. We seem to be going backwards this session. Because mandatory minimums don't work, the Commission has concern about the cost to our agency, courts, and jails.

Secondly, this bill, as currently written prohibits plea agreements calling for the dismissal of the fentanyl charge. This could lead to outright dismissals of the whole case or lead to prosecutors not bringing the charge at all. Charges are brought when an individual is arrested. Often there is more investigation taking place that may change the evidence a prosecutor has. This bill, as currently written would prohibit a plea agreement dismissing that charge forcing a prosecutor to trial on a losing case.

Lastly, the bill as currently written significantly hampers the investigation powers of law enforcement. I know it sounds different that I would be concerned about the powers of law enforcement. Law enforcement often uses low level possession with intent and low-level dealers to serve as confidential informants to get to bigger fish. Additionally, defense attorneys often advise their clients of these possibilities. However, if the client can no longer receive a deferred sentence, the allure of providing state evidence is weakened.

Madam Chair Larson, members of the Senate Judiciary, for the reasons stated herein, the Commission on Legal Counsel urges a DO NOT PASS recommendation as this bill is currently written.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Travis W. Finck", is written over a horizontal line.

Travis W. Finck

Executive Director, NDCLCI

23.0573.03003

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2248

Introduced by

Senators Hogue, Larson, Luick

Representatives Klemin, Louser

1 A BILL for an Act to create and enact ~~sections 19-03.1-23.5~~ a new section to chapter 19-03.1
2 and section 19-03.1-23.6 of the North Dakota Century Code, relating to ~~a mandatory term of~~
3 ~~imprisonment for manufacturing or delivering fentanyl~~ a special penalty for death or injury
4 through distribution of illegal drugs and fentanyl reporting; ~~to amend and reenact subsection 2~~
5 ~~of section 29-29.5-08 of the North Dakota Century Code, relating to the disposition of cases~~
6 ~~involving confidential informants; to provide a penalty; and to provide for application~~ an
7 appropriation.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 ~~SECTION 1. Section 19-03.1-23.5 of the North Dakota Century Code is created and~~
10 ~~enacted as follows:~~

11 ~~19-03.1-23.5. Mandatory term of imprisonment for manufacturing or delivering~~
12 ~~fentanyl.~~

13 ~~1. An individual arrested for manufacturing, delivery, or possession with intent to~~
14 ~~manufacture or deliver fentanyl or fentanyl derivatives may not enter a plea agreement~~
15 ~~dissolving the individual's arrest related to manufacturing, delivery, or possession with~~
16 ~~intent to manufacture or deliver fentanyl or fentanyl derivatives.~~

17 ~~2. Notwithstanding section 19-03.1-23, an individual who has been arrested for, or pled~~
18 ~~guilty or nolo contendere to, or has been found guilty of manufacturing, delivery, or~~
19 ~~possession with intent to manufacture or deliver fentanyl or fentanyl derivatives must~~
20 ~~be sentenced to a minimum sentence of one year imprisonment.~~

21 ~~3. The court may not defer imposition of sentence or suspend any part of the specified~~
22 ~~minimum mandatory term under subsection 2 either at the time of or after the~~
23 ~~imposition of the sentence.~~

1 **SECTION 1.** A new section to chapter 19-03.1 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Distribution of illegal drugs - Special penalty for death or injury.**

4 1. As used in this section:

5 a. "Consume" means to inject, ingest, or inhale a controlled substance.

6 b. "Controlled substance" includes derivatives or analogs to a scheduled controlled
7 substance.

8 c. "Injury" means an overdose that puts an individual's life at immediate risk.

9 d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to
10 supply or deliver a controlled substance.

11 2. An individual is guilty of causing death or injury by distributing a controlled substance if
12 the individual willfully supplies another to deliver a controlled substance to an
13 individual who consumes the controlled substance and that individual dies or is injured
14 from overdosing after consuming a portion of the controlled substance.

15 a. A violation of this section is a class A felony.

16 b. This section does not limit a conviction under chapter 12.1-16, but an individual
17 may not be found guilty of this section and an offense under chapter 12.1-16 if
18 the conduct arises out of the same course of conduct.

19 3. Venue for an offense under this section is in the county where the death or injury
20 occurred or any county where the controlled substance was directly or
21 indirectly obtained by the deceased or injured individual.

22 a. An individual may not be convicted in more than one county for the death or
23 injury of the same individual who overdosed on a controlled substance.

24 b. Notwithstanding chapter 29-03, an individual outside the state may be
25 prosecuted within the state under this section.

26 c. The charging document for a violation of this section must list an overt act in
27 which the individual engaged to violate this section.

28 d. Injury or death by an overdose may be proven by direct or circumstantial
29 evidence.

- 1 4. An individual may not be charged under this section if the individual supplied or
2 administered a controlled substance as part of a medical procedure or the individual
3 was in a lawful position to dispense a medication prescription.
4 a. An individual may not be charged under this section if the individual complied
5 with section 19-3.1-23.4.
6 b. It is not a defense to this section that the deceased or injured individual had other
7 controlled substances or alcohol in the individual's system which the defendant
8 did not supply at the time of an overdose.

9 **SECTION 2.** Section 19-03.1-23.6 of the North Dakota Century Code is created and
10 enacted as follows:

11 **19-03.1-23.6. Fentanyl reporting - Report to legislative management.**

- 12 1. As used in this section, "law:
13 a. "Health care provider" means a person licensed or certified by the state to
14 provide health care services. The term includes emergency service personnel, a
15 medical hospital, and a medical clinic.
16 b. "Law enforcement agency" means a nonfederal public agency authorized by law
17 or by a government agency or branch to enforce the law and to conduct or
18 engage in investigations or prosecutions for violations of law. The term includes a
19 multijurisdictional task force.
20 2. Annually, a law enforcement agency and a health care provider shall provide to the
21 attorney general a completed case report form for every death the agency or the
22 provider encounters which is caused by, suspected to have been caused by, or is
23 related to fentanyl consumption.
24 a. The data and report compiled under this section are open records.
25 b. The attorney general may require the reporting of additional information not
26 specified in this section. The attorney general shall develop standard forms,
27 processes, and deadlines for annual submission of fentanyl data by law
28 enforcement agencies and health care providers.
29 c. If a law enforcement agency or health care provider fails to file a report within
30 thirty days after the report is due, the attorney general may compel compliance
31 by any means until the report is filed.

1 d. By November first of each year, the attorney general shall submit to the
2 legislative management and the governor a written report summarizing the
3 number of deaths that occurred in the state caused by or related to fentanyl
4 consumption during the preceding calendar year. The attorney general shall
5 make the report available on the attorney general's website.

6 — **SECTION 3. AMENDMENT.** ~~Subsection 2 of section 29-29.5-08 of the North Dakota~~
7 ~~Century Code is amended and reenacted as follows:~~

8 — ~~2. After~~~~Except for a sentence imposed under section 19-03.1-23.5, after consideration of~~
9 ~~an informant agreement, a court may defer imposition of sentence or suspend a~~
10 ~~portion of a minimum mandatory sentence when a confidential informant has~~
11 ~~substantially complied with an informant agreement.~~

12 — **SECTION 4. APPLICATION.** ~~Section 3 of this Act applies to an informant agreement~~
13 ~~entered after the effective date of this Act.~~

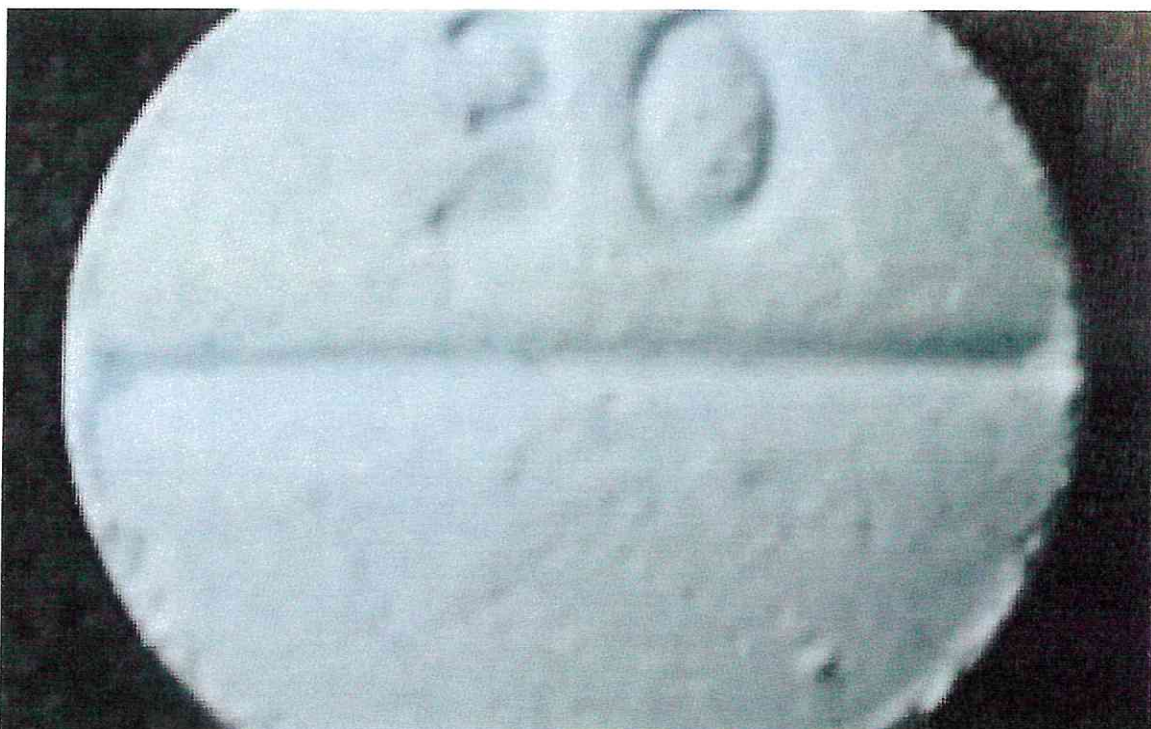
14 **SECTION 5. APPROPRIATION - ATTORNEY GENERAL - FENTANYL AWARENESS**

15 **EXPANSION.** There is appropriated out of any moneys from opioid-related lawsuit settlement
16 proceeds, not otherwise appropriated, the sum of \$1,500,000, or so much of the sum as may be
17 necessary, to the attorney general for the purpose of providing and expanding statewide
18 awareness of the fentanyl drug and overdose epidemic, for the biennium beginning July 1,
19 2023, and ending June 30, 2025.

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.

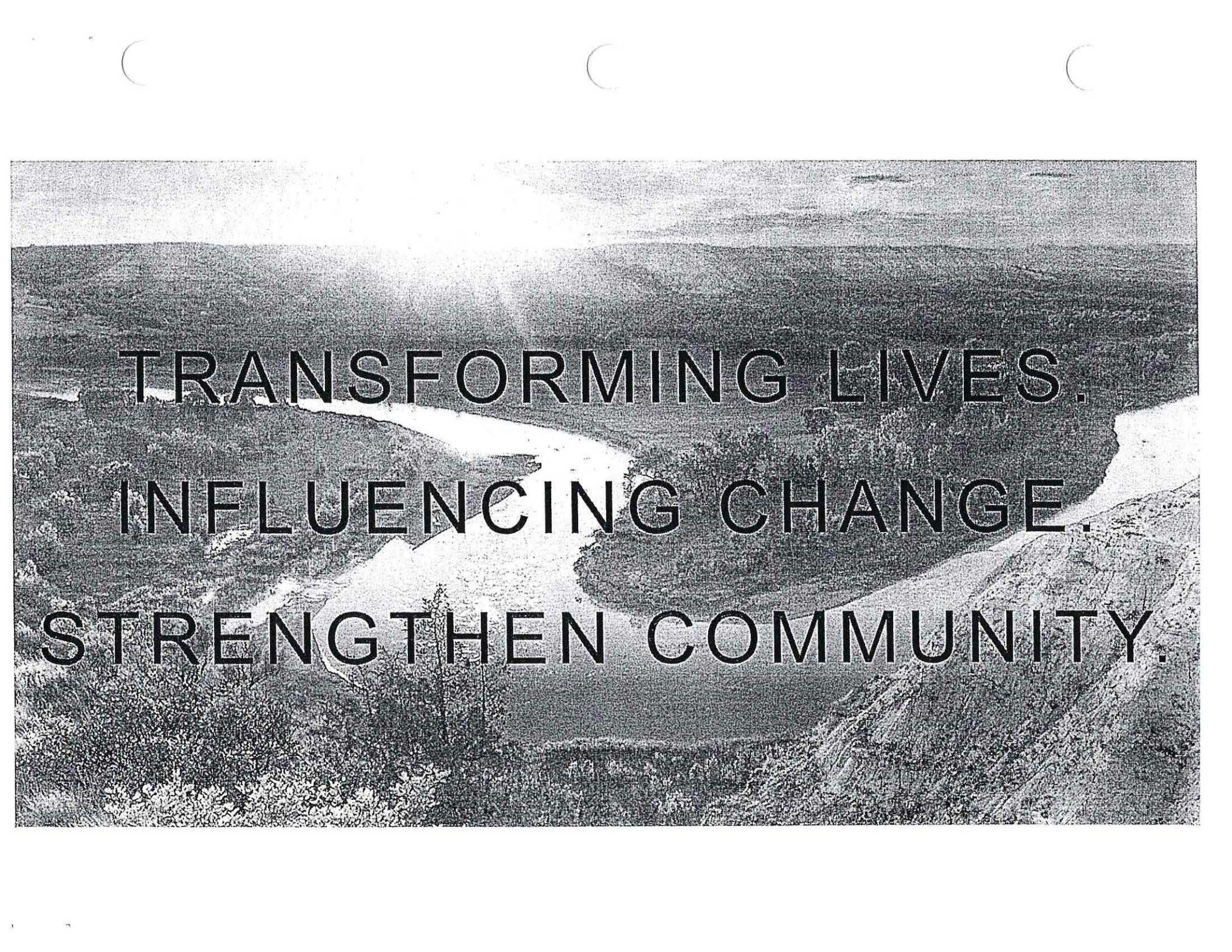
“There’s a lot of people that don’t have jobs that come through court, but they have large amounts of cash on them, and that’s from selling drugs,” Hager said.

“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		
CAUSE_OF_DEATH	Total	Percent
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		
CAUSE_OF_DEATH	Total	Percent
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		
CAUSE_OF_DEATH	Total	Percent
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%

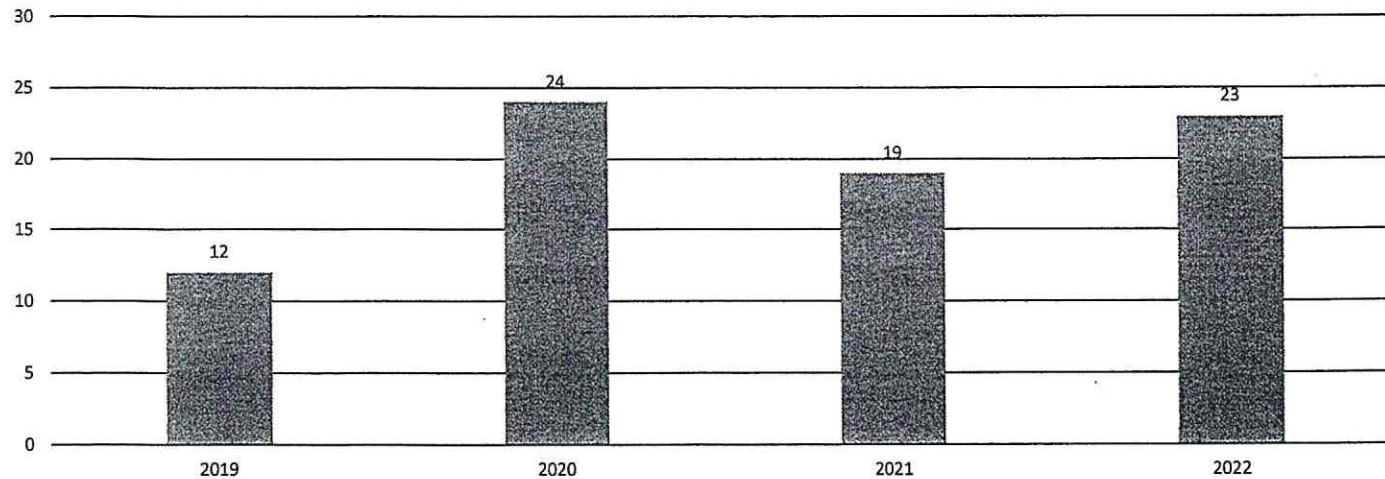
2022 P/P Cause of Death		
CAUSE_OF_DEATH	Total	Percent
Automobile Crash	6	8%
Homicide	4	5%
Long Term Alcohol or Drug Use	1	1%
Natural Causes/Accident	18	24%
Other	3	4%
Overdose	23	31%
Suicide	5	7%
Unknown	14	19%
Grand Total	74	100%
Total Behavioral Health	29	39%

* Cause of death collection in Docstars started in 2019

Deaths on Supervision-Overdose

- All adults under community supervision.

P/P Supervised Adult Overdose Deaths

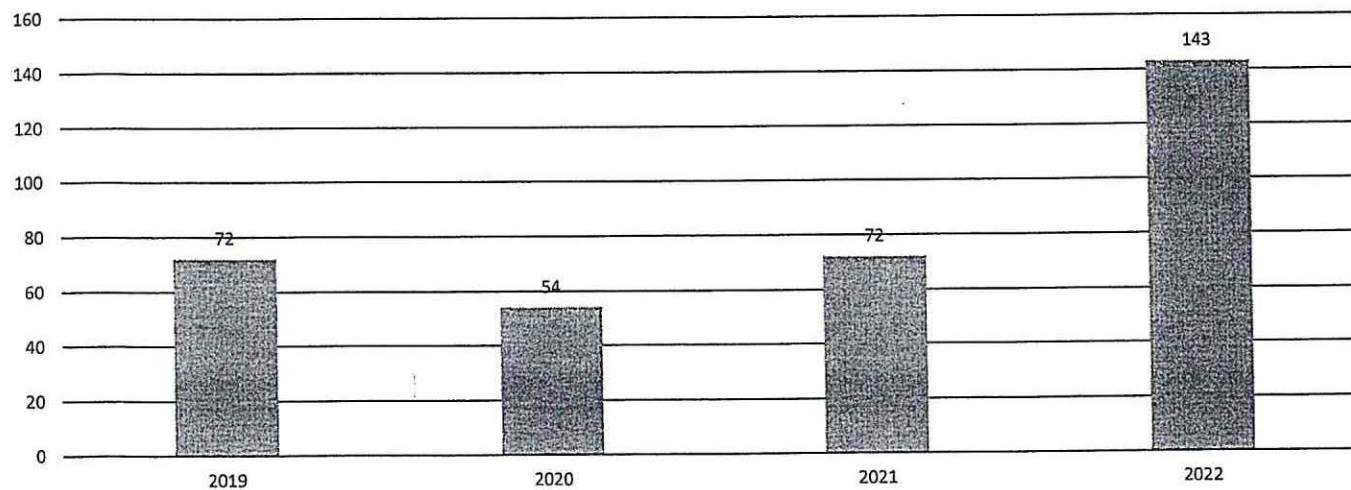


* Cause of death collection in Docstars started in 2019

Supervision Admissions – All Opiate/Fentanyl Offenses

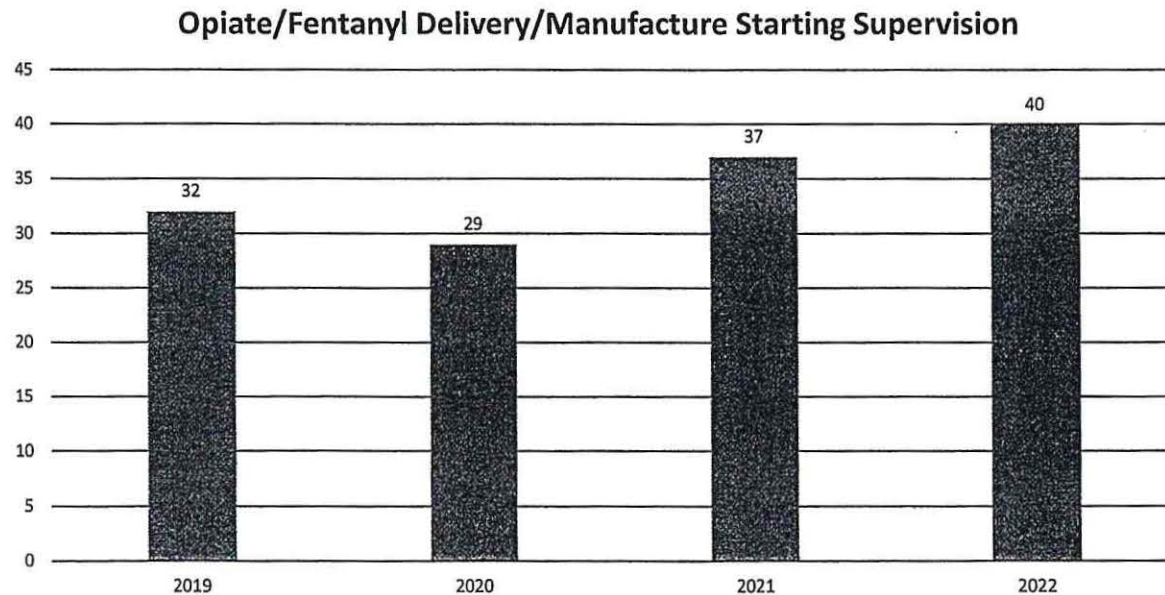
- Adults under probation supervision who had “opiate” or “fentanyl” in the offense description, by case start date.

All Opiate/Fentanyl Offenses Starting Supervision



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.

Case terminations CY 2019

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

Case terminations CY 2020

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

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 CY 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 CY 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 63% to successfully complete

DOCR Adult Facility Admissions

DOCR ADULT FACILITY ADMISSIONS

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

	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
2019										
Male	1220	2.88	635	348	200	2	211	42	255	3.44
Female	310	2.12	151	81	74	0	66	6	72	2.89
Total	1530	2.73	786	429	274	2	277	48	327	3.32
2020										
Male	738	3.18	410	171	127	2	135	22	159	3.61
Female	198	2.29	96	69	22	1	43	8	52	2.11
Total	936	2.99	506	240	149	3	178	30	211	3.24
2021										
Male	1205	3.02	738	266	180	21	185	44	250	3.45
Female	286	2.32	103	110	38	1	67	6	74	2.39
Total	1491	2.89	841	376	218	22	252	50	324	3.21
2022										
Male	1149	3.16	574	345	190	46	158	32	236	3.17
Female	302	2.27	133	118	31	14	50	2	66	2.50
Total	1451	2.98	707	463	221	60	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, Methylphenadate, Modafinil, Psilocybin, Xanax

Prepared 1/8/2023

Questions?

F.N. at ^{least} 40 years
\$7 million

391 on parole presently

7 million in treatment

63% are not being revoked
lack of services

TESTIMONY OF DAVID HOGUE IN SUPPORT OF SB 2248

2 SENATE JUDICIARY COMMITTEE

3 JANUARY 30, 2023

4
5 Good morning Madam Chair Larson and members of the Senate 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. Let me share some data with you.

13 Overdose deaths in North Dakota exceed deaths related to motor vehicle
14 fatalities for 2022. I attach to my testimony a Grand Forks Herald article that details the
15 alarming rise in overdose deaths.

16 I also attach to my testimony the analysis of the North Dakota Department of
17 Corrections related to probationers that are under its supervision. The analysis looks at
18 the overdose deaths within the small population of individuals who are under
19 supervision with DOCR.

20 The fentanyl epidemic is overwhelming many components of our criminal justice
21 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

1 area that come to North Dakota to make a delivery. As DOCR representatives will likely
2 opine, there is no room for fentanyl dealers in existing facilities when you begin to attach
3 mandatory minimum sentences to dealers. We are now learning that fentanyl is
4 incorporated into almost every illicit drug that is sold on our streets. Incorporation of
5 fentanyl is designed to foster addiction and dependence. This cold but calculated
6 technique ensures that the sellers will have a loyal supply of buyers, but it also ensures
7 that we as a state will have a difficult social and criminal justice issue well into the
8 future. I admit the task of addressing this problem is overwhelming from a policy
9 maker's perspective.

10 Since introduction of this bill, I have visited several state's attorneys, criminal
11 defense attorneys, and jailers. They have provided valuable input in terms of modifying
12 this bill. That is why I will be offering amendments that seek to target the principals of
13 the fentanyl drug distribution network, rather than the users and distributors of small
14 amounts.

15 Under section 1 of the bill as amended, I do eliminate the mandatory minimum in
16 favor of a new provision that creates an enhanced sentencing provision for dealers who
17 cause death or serious life injury. The enhanced sentence is a class A felony. The
18 objective is to target those dealers whose sales lead to loss of life or injury. My rationale
19 for the change relates to deterrence. The foot soldiers will not be deterred because
20 there is a seemingly endless supply of their ranks.

21 I have also added funding for public education. I think we can have the greatest
impact when we reduce demand for this insidious substance. One way to reduce

1 demand is through public education. North Dakota and other states have recently
2 entered into settlement agreements with manufacturers of opioids. Those settlements
3 provide for direct payments to the states for the impacts of opioid addiction of our
4 citizens. I think an appropriate use of those funds is to provide public education about
5 both the danger and prevalence of fentanyl drugs in our communities.

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

10 Madam Chair Larson and members of the Senate Judiciary Committee, I urge
11 your support of SB 2248.

12

13

14

15



A Proud Past – A Promising Future

McLean County

STATE OF NORTH DAKOTA

Ladd R. Erickson
McLean County State’s Attorney
Service: 28sa@nd.gov

712 5th Avenue
P.O. Box 1108
Washburn, ND 58577-1108
701.462.8541
www.mcleancountynd.gov

March 13, 2023

Mr. Chairman and members of the committee, my name is Ladd Erickson and I am the McLean County State’s Attorney. I appear in support of SB2248, which is intended to address the epidemic of fentanyl related overdose injuries and deaths in North Dakota.

Fentanyl has created a global health emergency that transcends all borders. While the significant harms fentanyl is causing can only materially be reduced through more effective national immigration policy; international trade and extradition policy; and more effective national enforcement, treatment, and deterrence measures – SB2248 represents policy that we have control over.

What other states are doing to cope with the fentanyl epidemic center mostly on using their existing plant-based drug laws and adding mandatory minimum sentences to those for fentanyl deaths. We have already done that here also, and those laws are not impacting the fentanyl problem.

SB 2248 is intended to take a new approach, as it solves for two obstacles in existing laws:

Venue: Fentanyl is obtained in a county or another state, perhaps sold through multiple levels of dealers in other counties, before being consumed and killing someone. Many times the deceased may not have known there was fentanyl in the drugs they had received because it has become commonplace to lace many illicit drugs with fentanyl – and tiny quantities can be lethal, particularly for people that aren’t conditioned to consuming it. SB2248 solves for this venue issue by allowing charges to be filed in the county the overdose occurred, or the county the drugs were obtained all the

way back up the supply chain as far as the evidence takes the investigators – which in some cases could lead to a high-volume dealer responsible for multiple deaths.

Cause of Death: Traditional homicide cases do not have an issue with cause of death, because for example, there is an autopsy showing a gunshot killed the person. Overdose deaths are generally not getting autopsies because resources lack for doing those and medical examiners have to issue subjective opinions in overdose cases. Therefore, SB2248 addresses this problem by including the phrase “injury or death” and “direct or circumstantial” evidence. There will be evidence such as toxicology from the deceased drawn by a county coroner; residual drugs at the death scene that can be tested; evidence in cell phones and witness statements; interviews with a person that overdosed but was saved by an officer administering Narcan; search warrants executed on supplier locations; etc. All of these investigative techniques will be used to prove these cases beyond a reasonable doubt.

For the foregoing reasons, please support SB2248.

Ladd R. Erickson
McLean County State’s Attorney

North Dakota Drug Overdose Death Reporting

Data Notes: Finalized Data for 2019 and 2020

*Preliminary Data for 2021 and 2022

Numbers represent both ND residents and Out-of-State residents where the initial injury occurred in ND

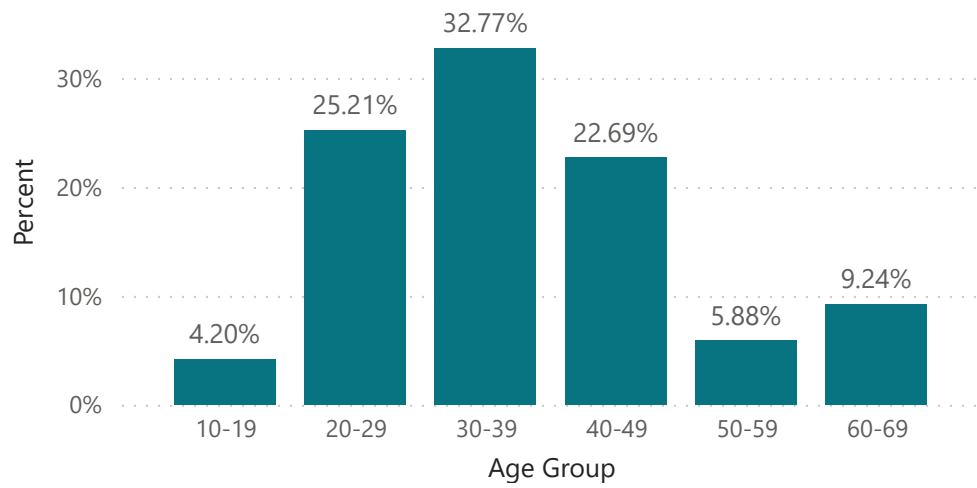
Data Source: ND Department of Health & Human Services

Last Updated: February 9, 2023



ND Drug Overdose Death Demographics

Drug Overdose Deaths by Age Group

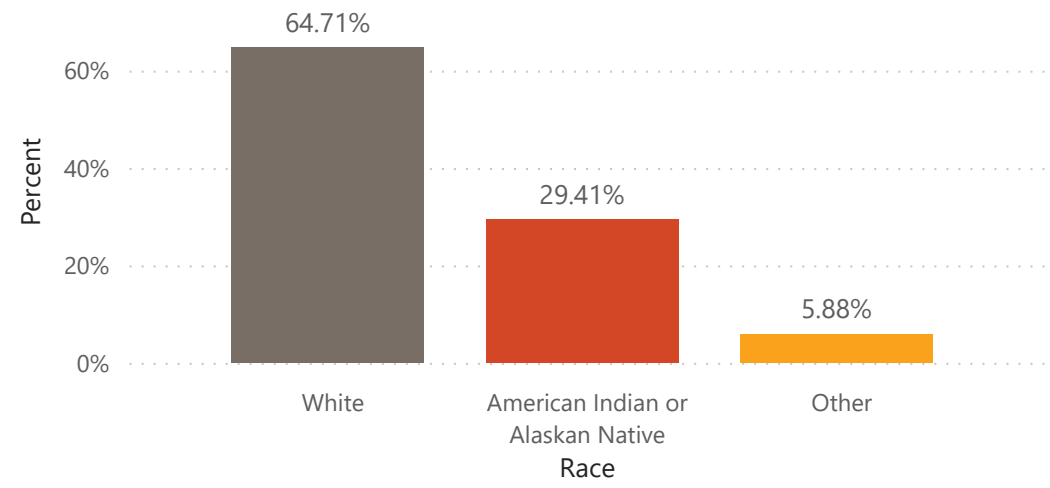


Year

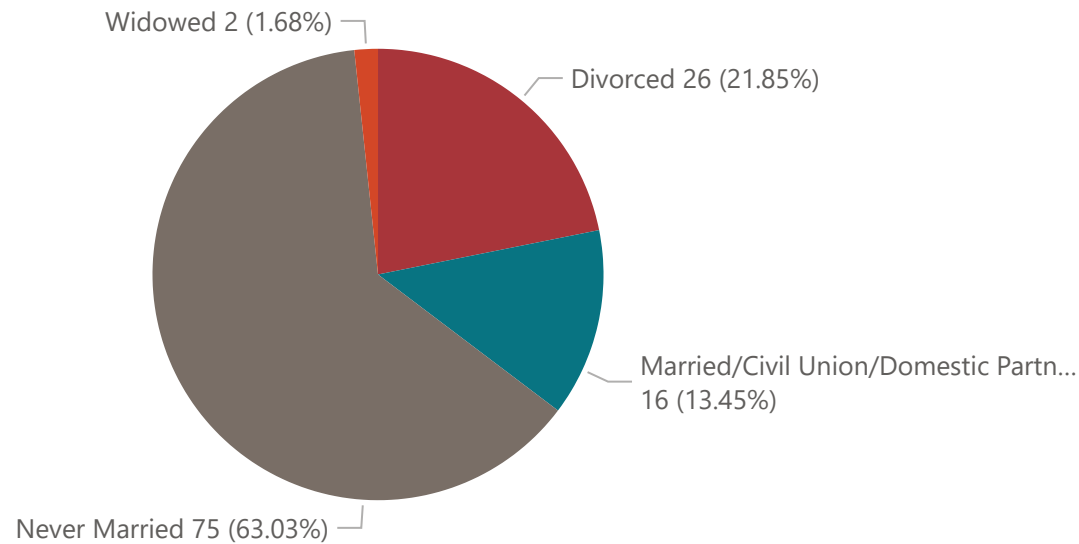
119
Drug Overdose Deaths

37
Average Age

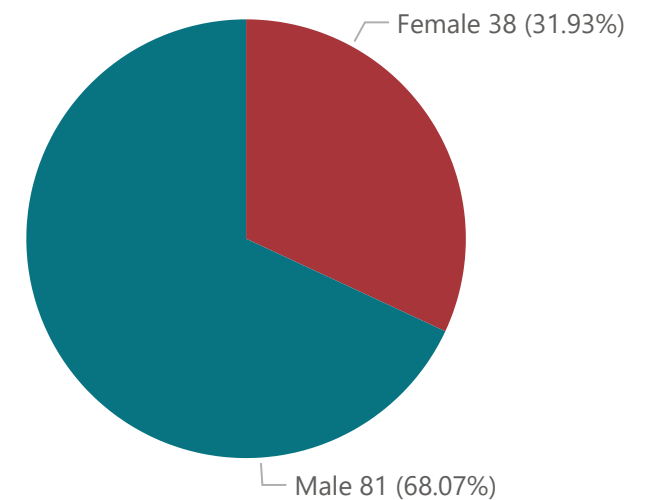
Drug Overdose Deaths by Race



Drug Overdose Deaths Marital Status

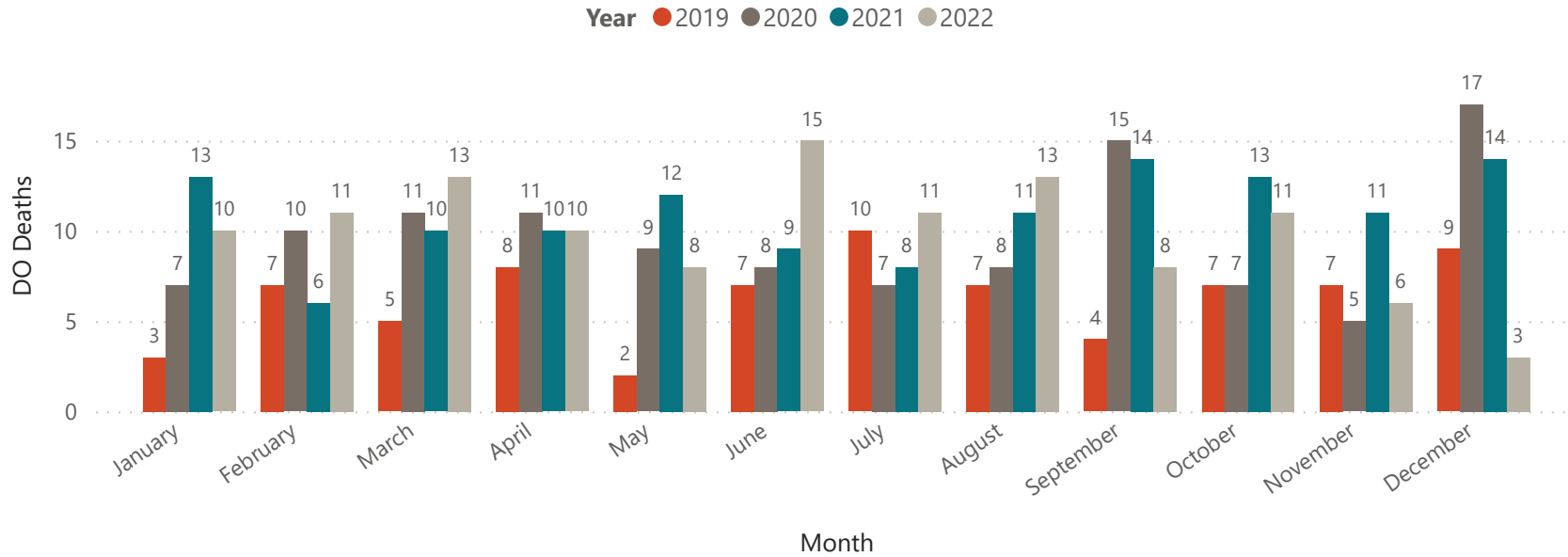


Drug Overdose Deaths Gender

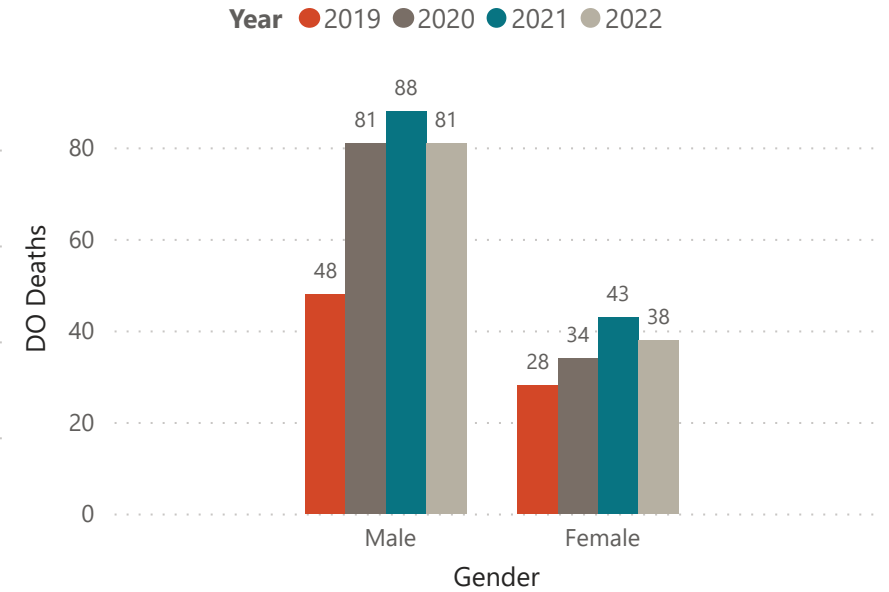


ND Drug Overdose Death Trends

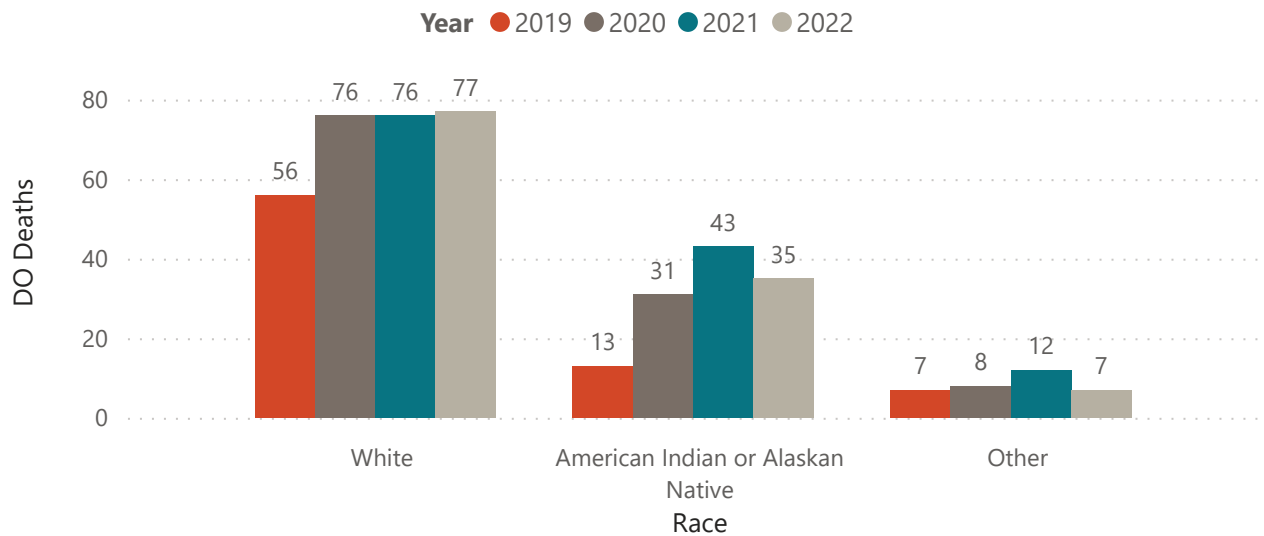
North Dakota Drug Overdose Deaths



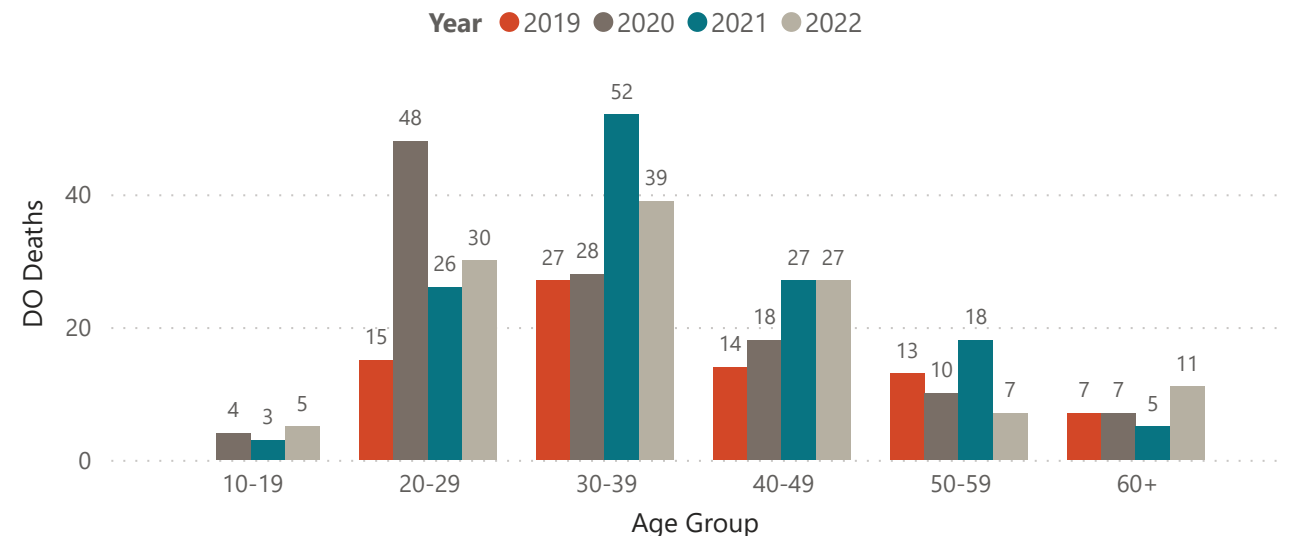
Drug Overdose Deaths Gender



Drug Overdose Deaths by Race



Drug Overdose Deaths by Age Group

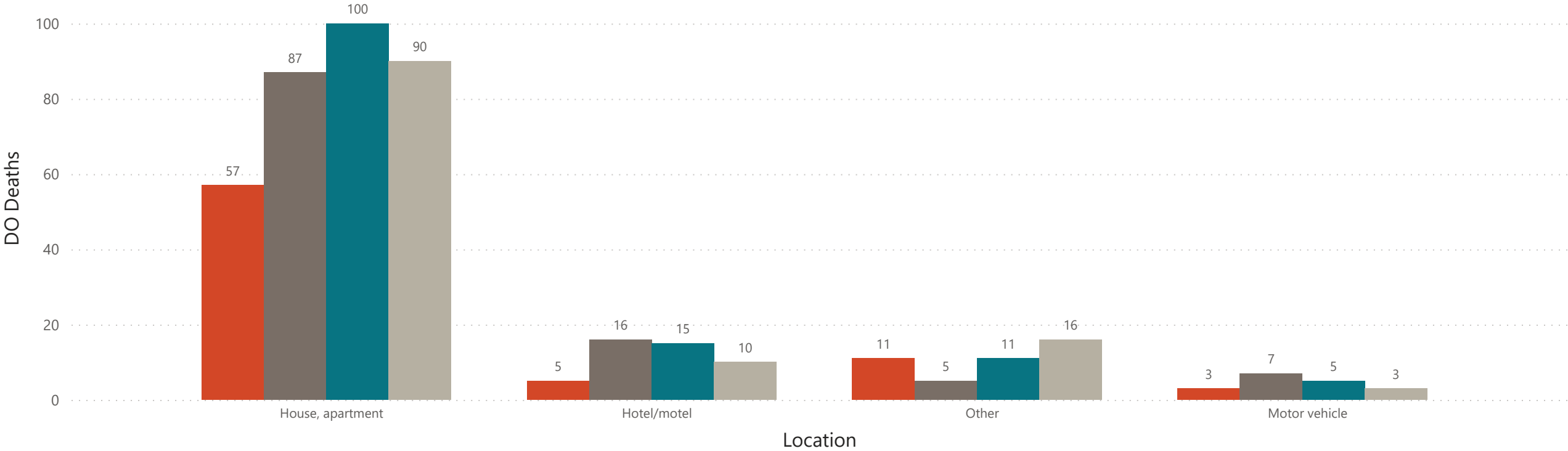


ND Drug Overdose Death Injury Location Type

County

Drug Overdose Deaths by Location Where Injury Occurred

Death Year ● 2019 ● 2020 ● 2021 ● 2022



Race

- Select all
- American Indian or Alaskan Native
- Other
- White

Sex

- Select all
- Female
- Male

Age Group

- Select all
- 10-19
- 20-29
- 30-39
- 40-49
- 50-59
- 60+

ND Drug Overdose Death Location

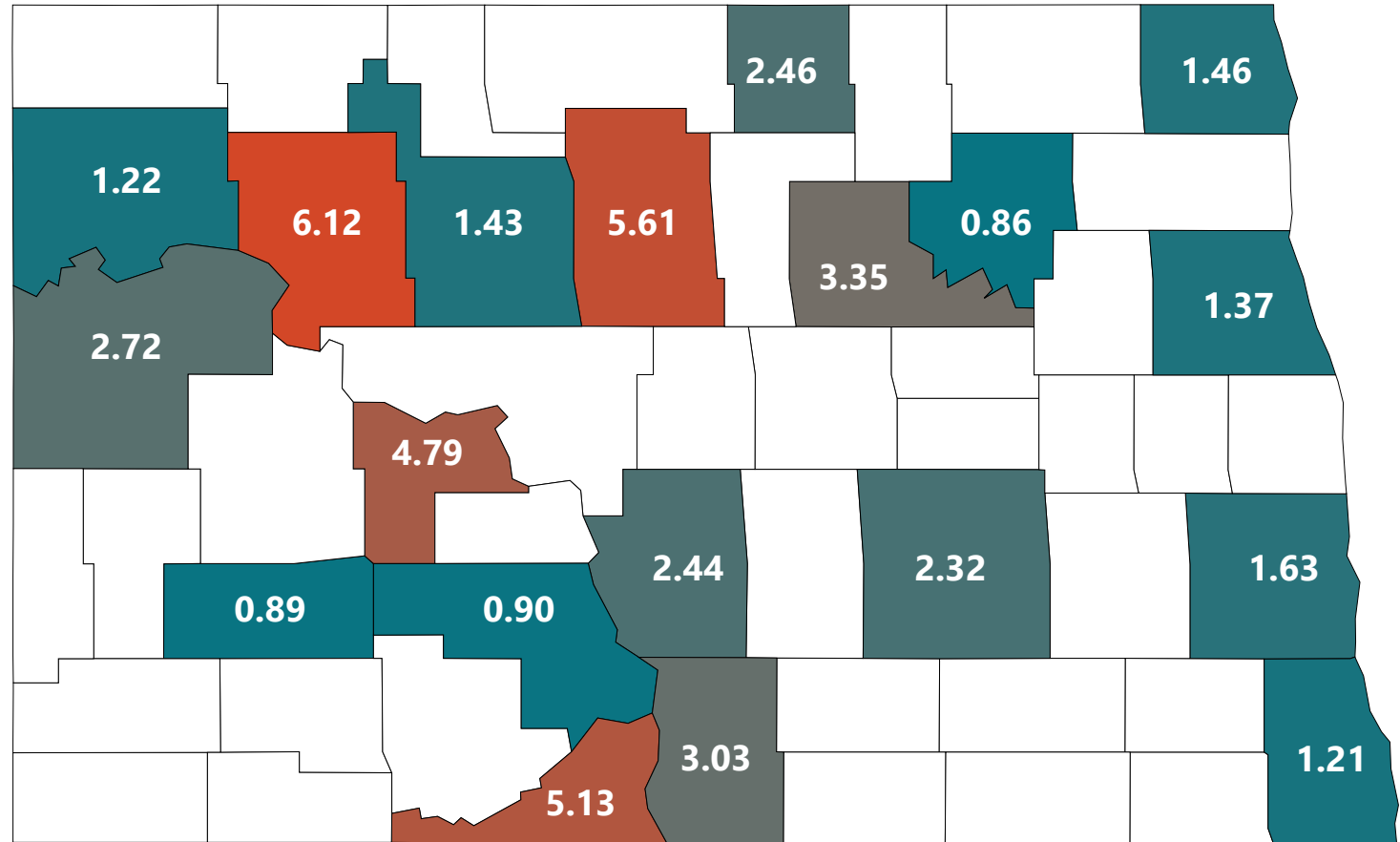
Year

119
Drug Overdose Deaths

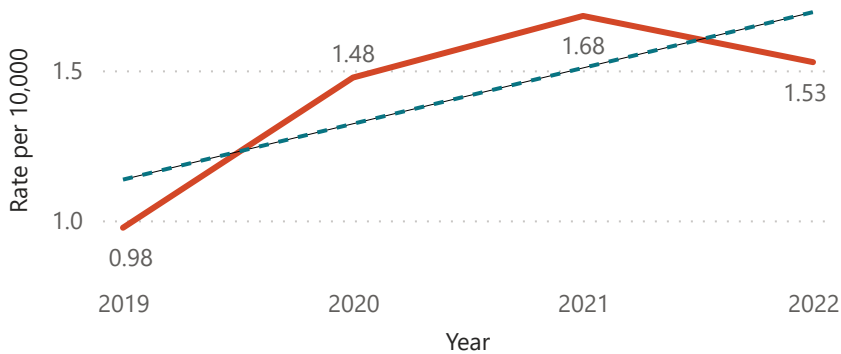
779,094
Population

1.53
Drug Overdose Death Rate per 10,000

Drug Overdose Death Rate per 10,000 by County Where Injury Occurred



Drug Overdose Death Rate per 10,000



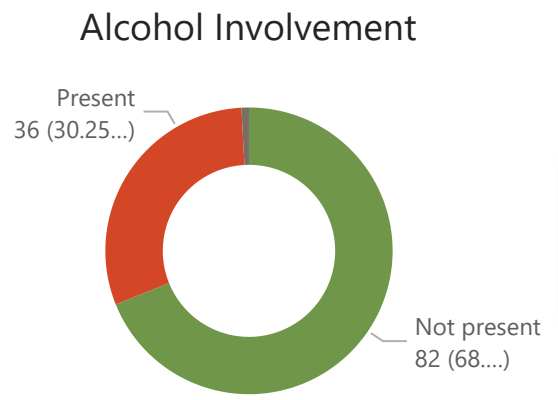
ND Drug Overdose Death Toxicology

0.02
Min of Alcohol BAC

0.44
Max of Alcohol BAC

0.10
Median of Alcohol BAC

0.02%: This is the lowest level of intoxication with some measurable impact on the brain and body.
0.05%: At this level behavior will become exaggerated with impaired judgement and reduction in coordination. Inhibitions will be lowered causing one to potentially engage in risky behaviors.
0.08%: This is the current legal limit in the ND that it is considered illegal and unsafe to drive.
0.10%: At this level, reaction time and control will be reduced, speech slurred, thinking and reasoning are slower and coordination of arms and legs is poor.
0.15%: This is a very high level with much less control over balance and voluntary muscles so walking and talking are difficult. May fall and vomiting begins.
0.20%: Stupor, confusion, feeling dazed and disorientation are common. Standing and walking may require help and sensations of pain decrease. Blackouts begin at this level as well as choking/aspiration on vomit.
0.30%: At this level, you may be unconscious and potential for death increases along with loss of understanding, increased heart rate, loss of bladder control.
0.40% and over: This level may put you in a coma or cause sudden death because your heart or breathing will suddenly stop.



Year

Toxicology Trends

82
Fentanyl Present

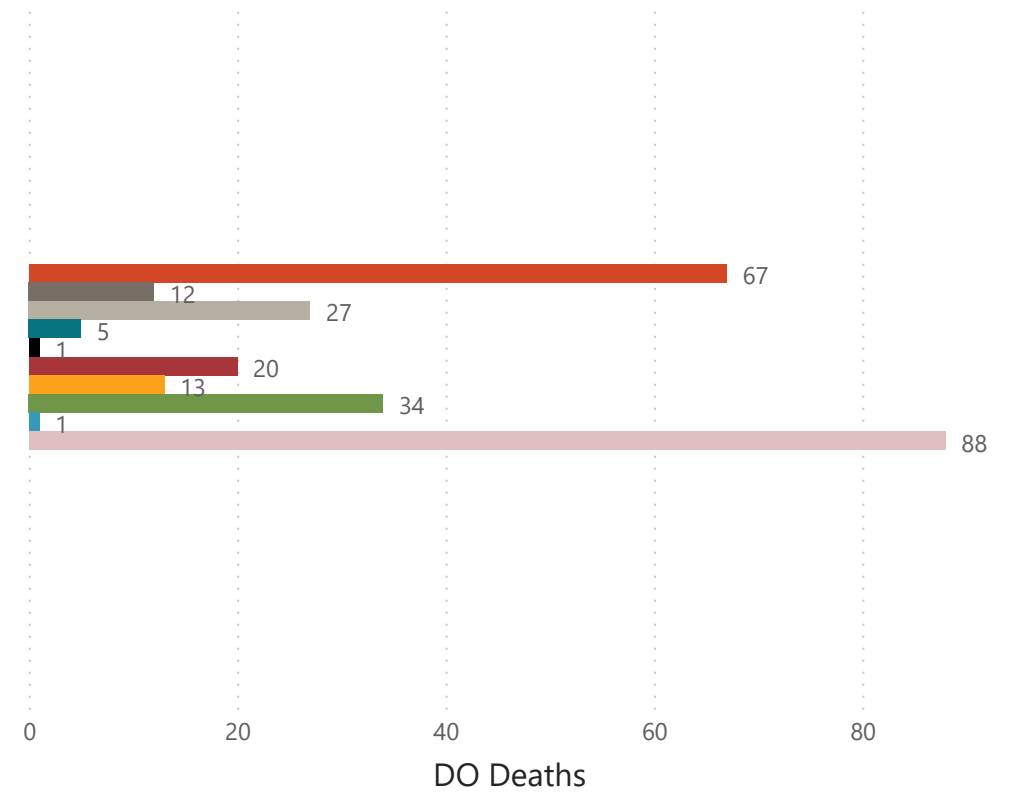
29
Fentanyl & Meth Present

1
Xylazine Present

119
Drug Overdose Deaths

Toxicology Present in Drug Overdose Deaths

- Amphetamines
- Anticonvulsants
- Antidepressants
- Antipsychotics
- Barbiturates
- Benzodiazepines
- Cocaine
- Marijuana
- Muscle Relaxants
- Opiates



Race

Select all American Indian or Alaskan Native Other White

Sex

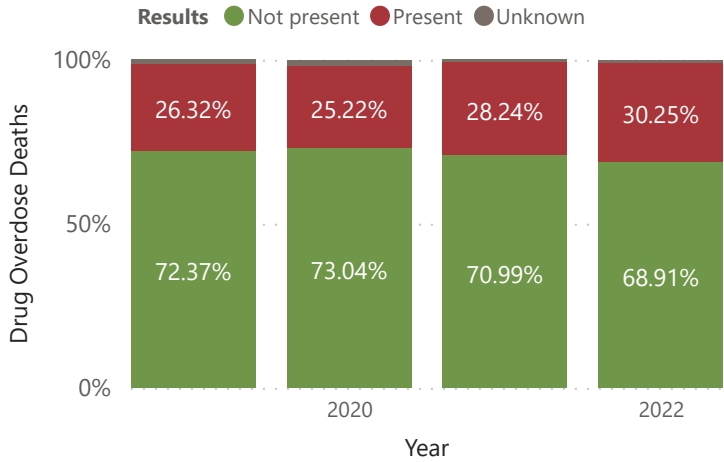
Select all Female Male

Age Group

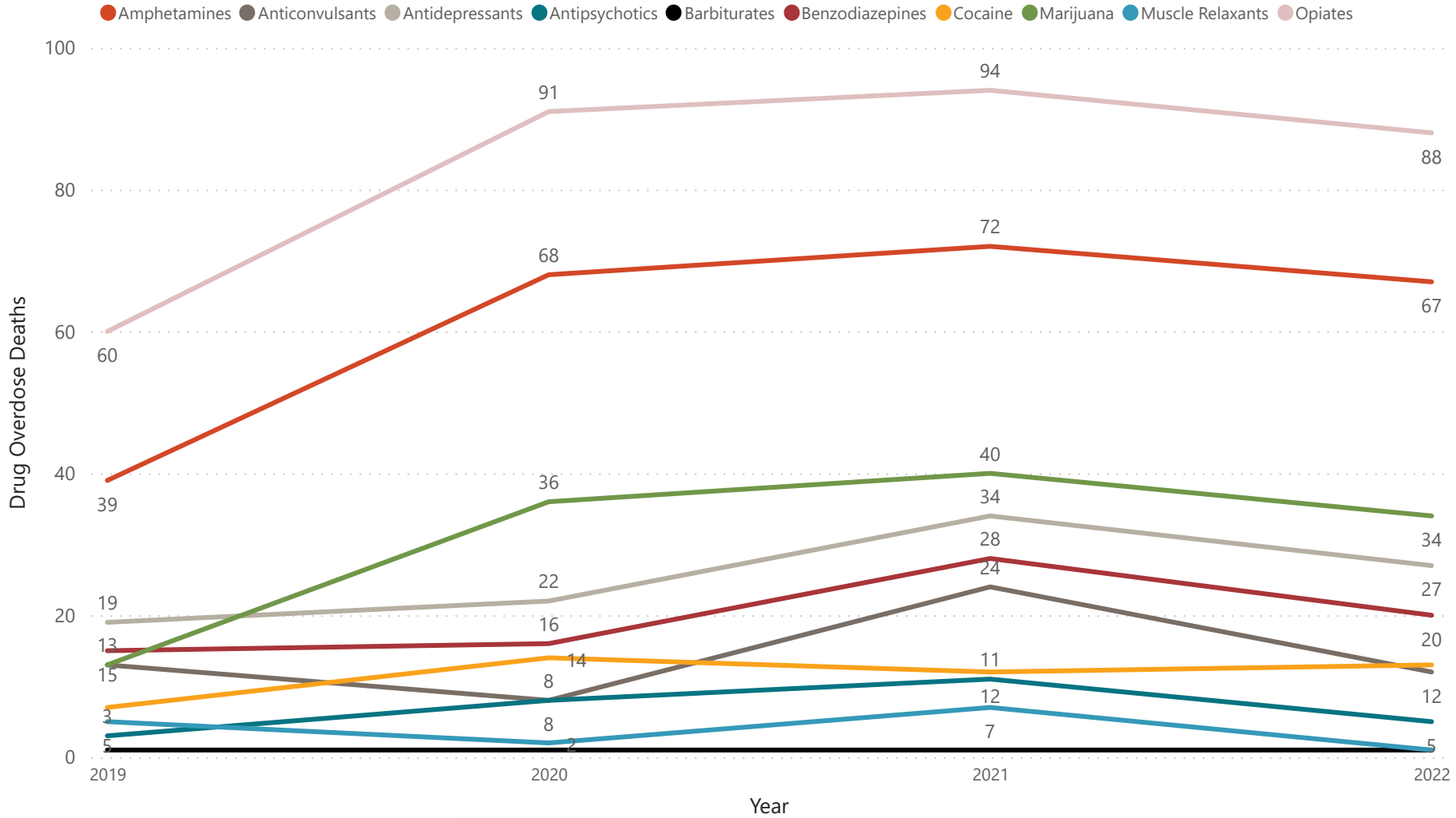
Select all 10-19 20-29 30-39 40-49 50-59 60+

ND Drug Overdose Death Toxicology Trends

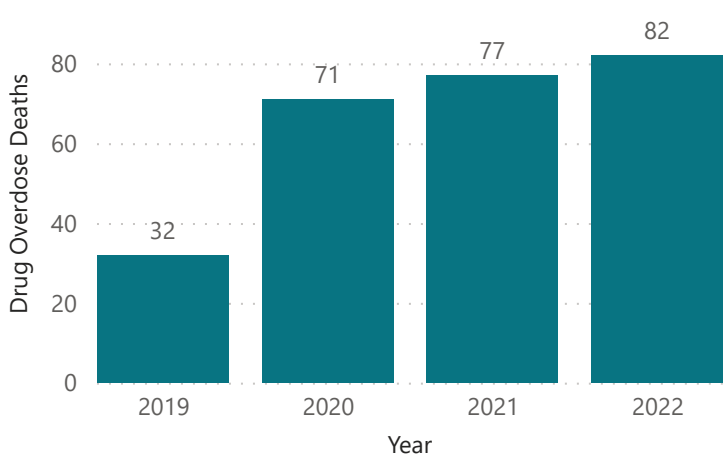
Alcohol Involvement by Year



Toxicology Present in Drug Overdose Deaths



Fentanyl Related Deaths by Year



Race

- Select all
- American Indian or Alaskan Native
- Other
- White

Sex

- Select all
- Female
- Male

Age Group

- Select all
- 10-19
- 20-29
- 30-39
- 40-49
- 50-59
- 60+

North Dakota ESSENCE Data Information

The Electronic Surveillance System for the Early Notification of Community-Based Epidemics (ESSENCE), captures syndromic surveillance data from hospitals in the State. This includes data from all acute care and critical access hospitals. This data consists of emergency department, urgent care and walk-in-clinic visit information. The purpose is to capture and analyze health-indicator data to identify abnormal health conditions, events, and enable early detection of outbreaks.

The data provided on the "Attempts" page was obtained from the ND ESSENCE. Please note the caveats of this data:

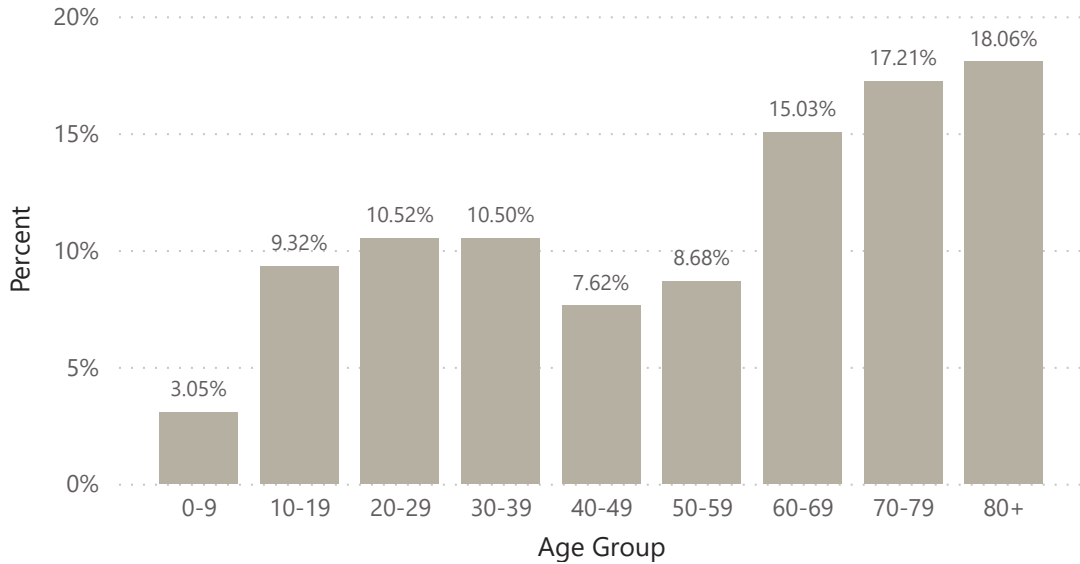
1. These numbers represent a syndrome definition that utilizes both ICD-10 codes and chief complaint which looks for key words. These **should not** be considered a true "number of cases." Syndromes may also contain "noise" meaning that the syndrome data may count actual non-related events.
2. NOT every hospital submits both ICD and chief complaint so some visits may be missing.
3. Some hospitals only submit data on ND residents. Transient populations may not be included; therefore, underestimating the impact.
4. Increase in number may be due to actual increases or it may be due to increase in number of facilities participating.



Back

ESSENCE Data - All Drugs

All Drug Overdoses by Age Group



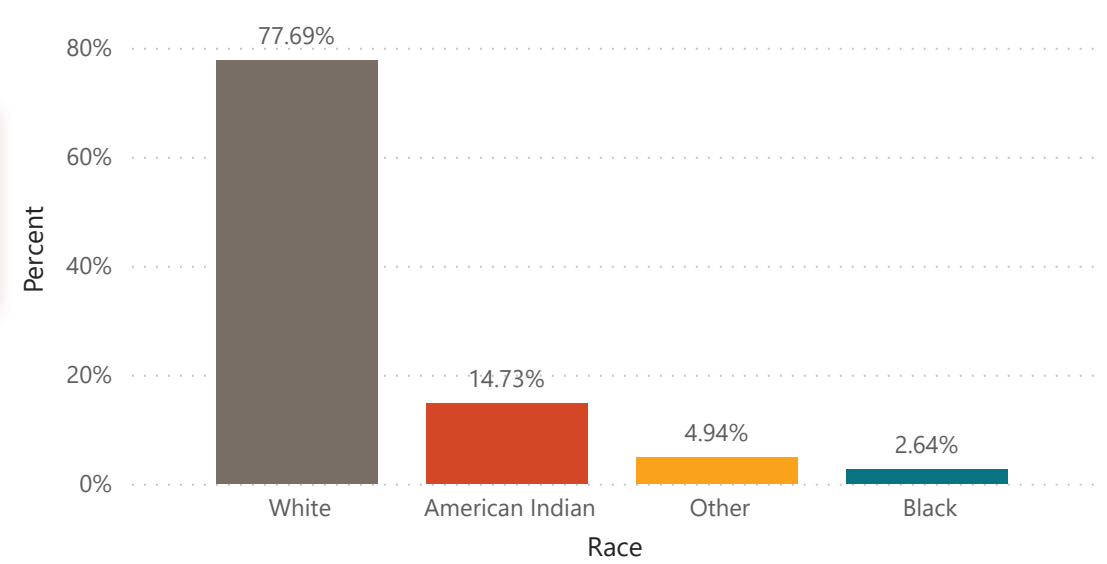
Year

All Drug
4733
Overdoses

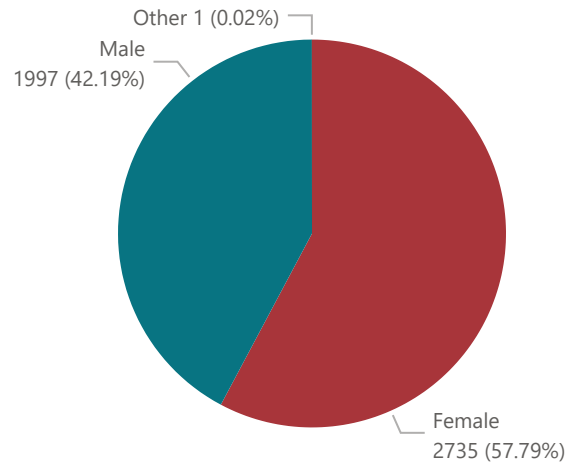
54
Average Age

Information

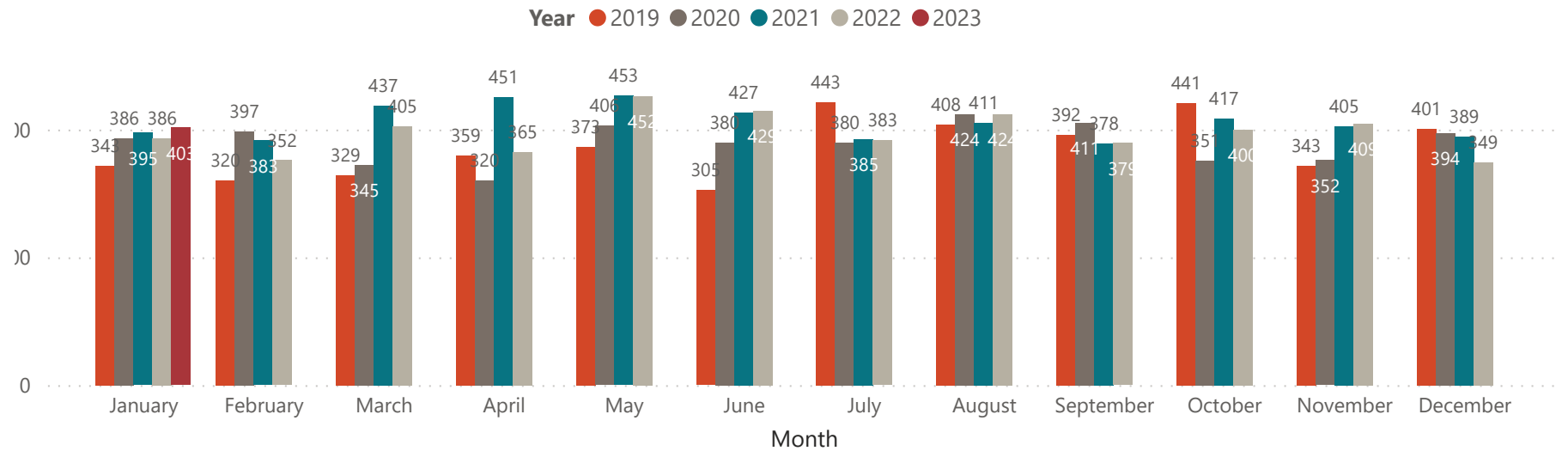
All Drug Overdoses by Race



All Drug Overdoses Gender

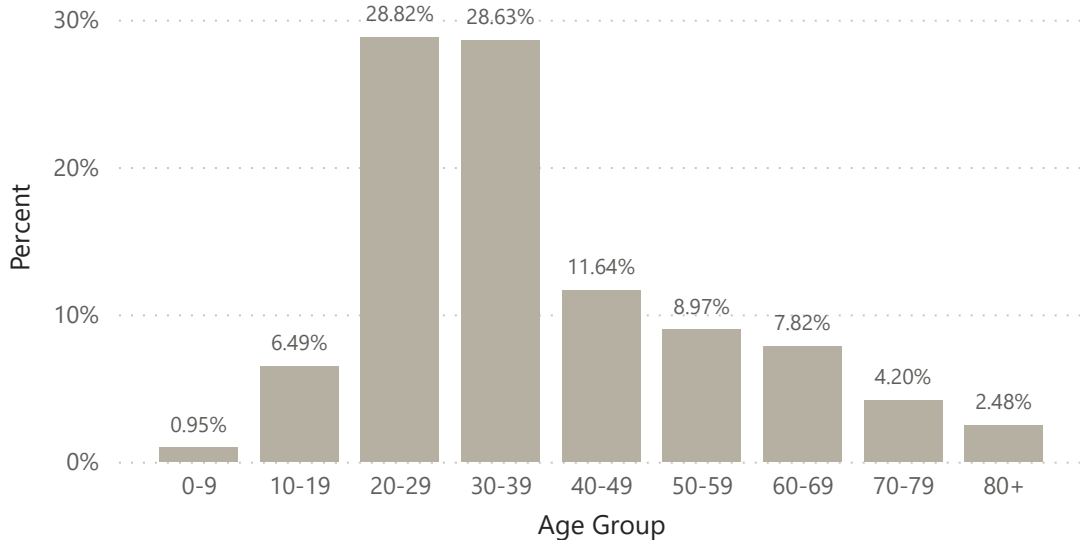


All Drug Overdoses



ESSENCE Data - Opioids

Opioid Overdose by Age Group



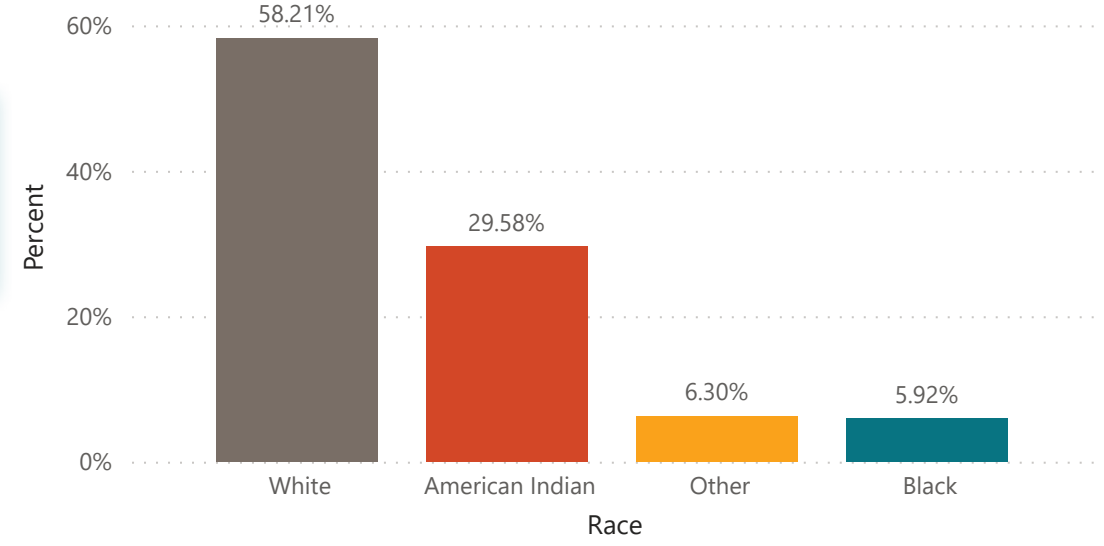
Year

Opioid
524
Overdoses

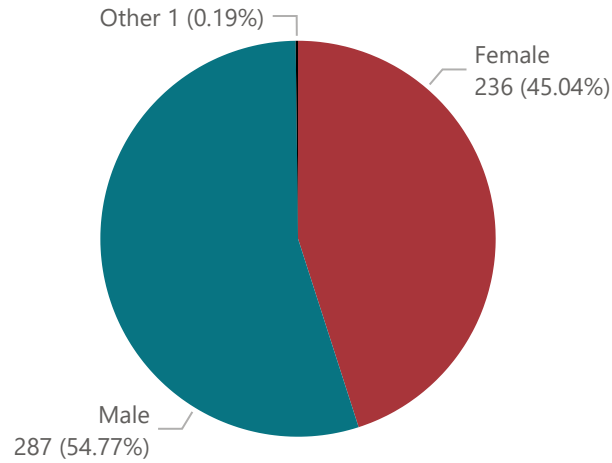
38
Average Age

Information

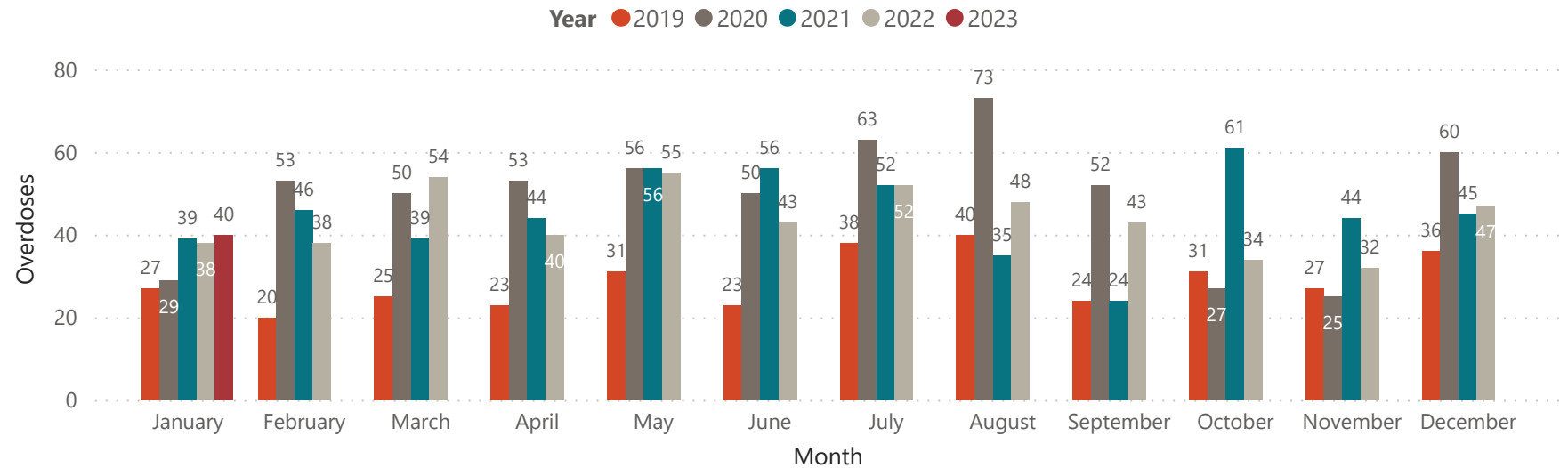
Opioid Overdose by Race



Opioid Overdose Gender

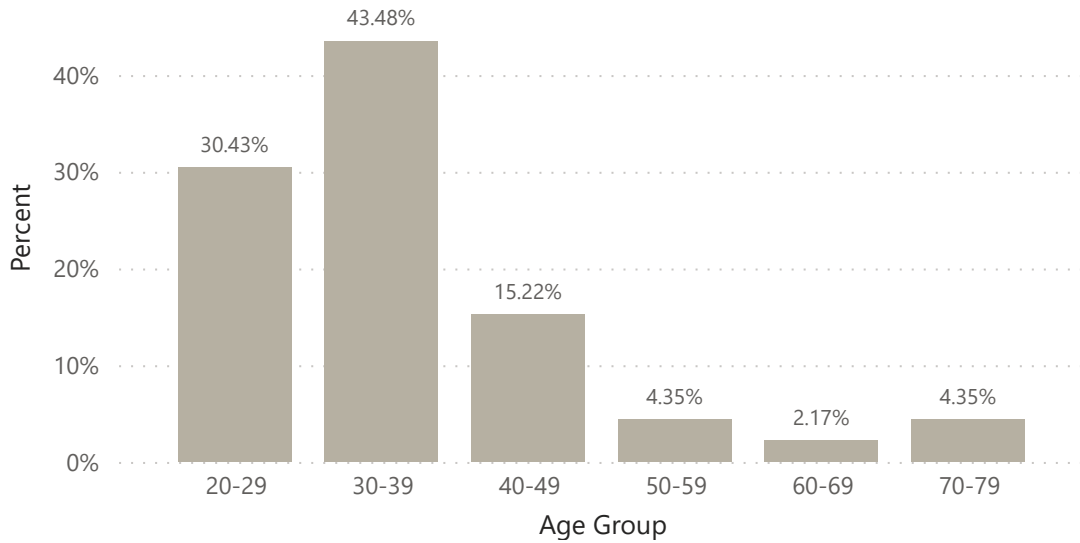


Opioid Overdoses



ESSENCE Data - Heroin

Heroin Overdose by Age Group



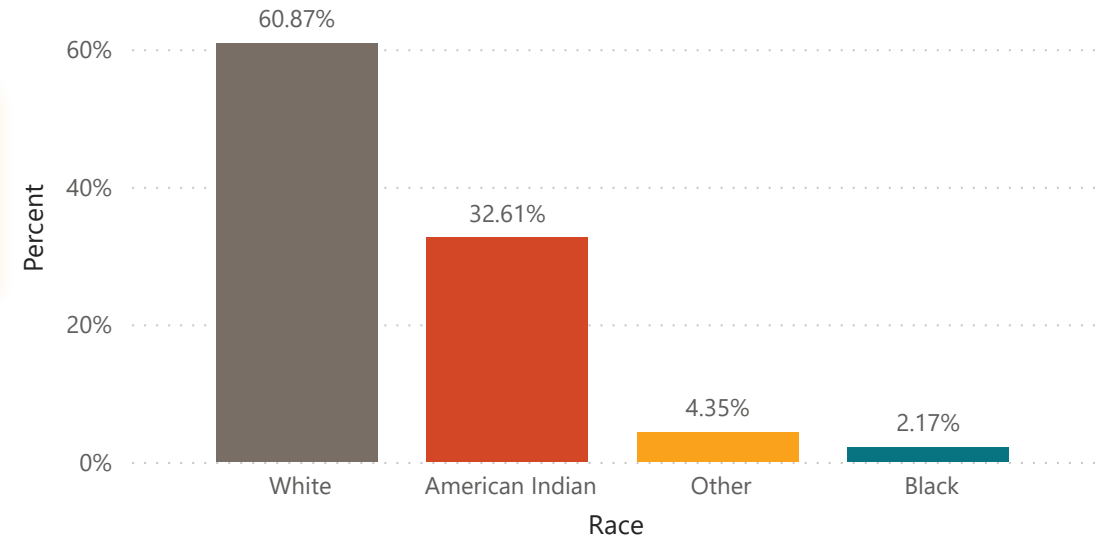
Year
2022

Heroin
46
Overdoses

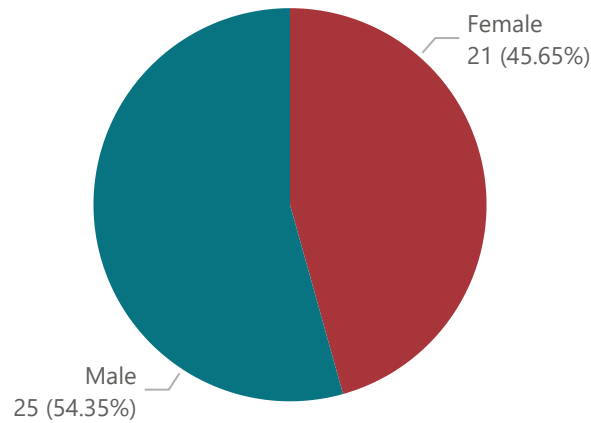
36
Average Age

Information

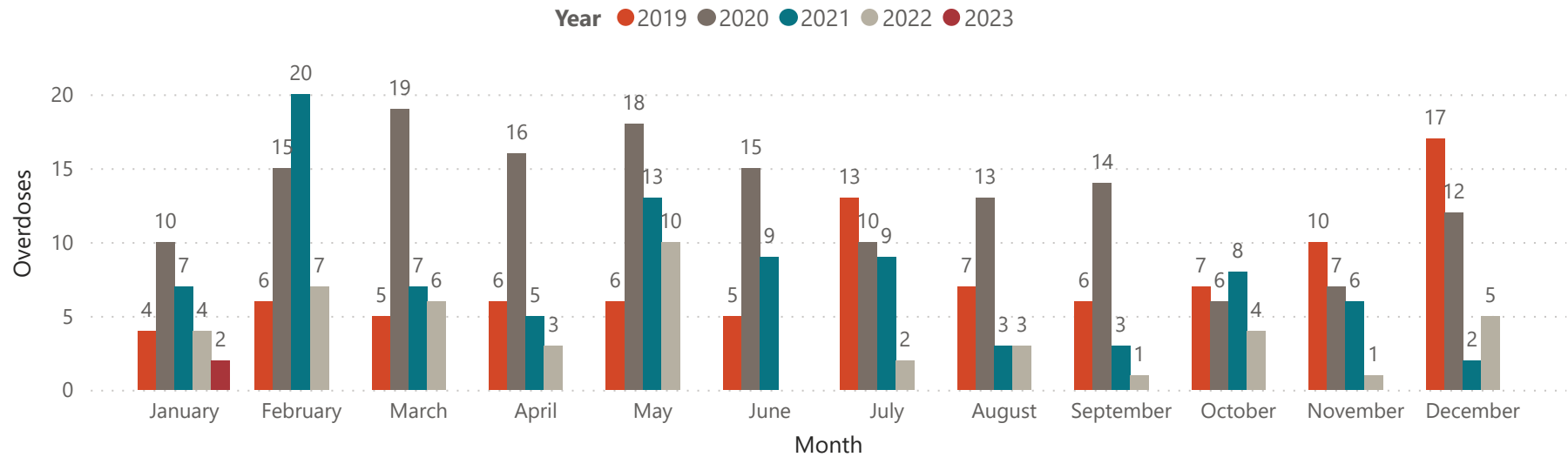
Heroin Overdose by Race



Heroin Overdose Gender

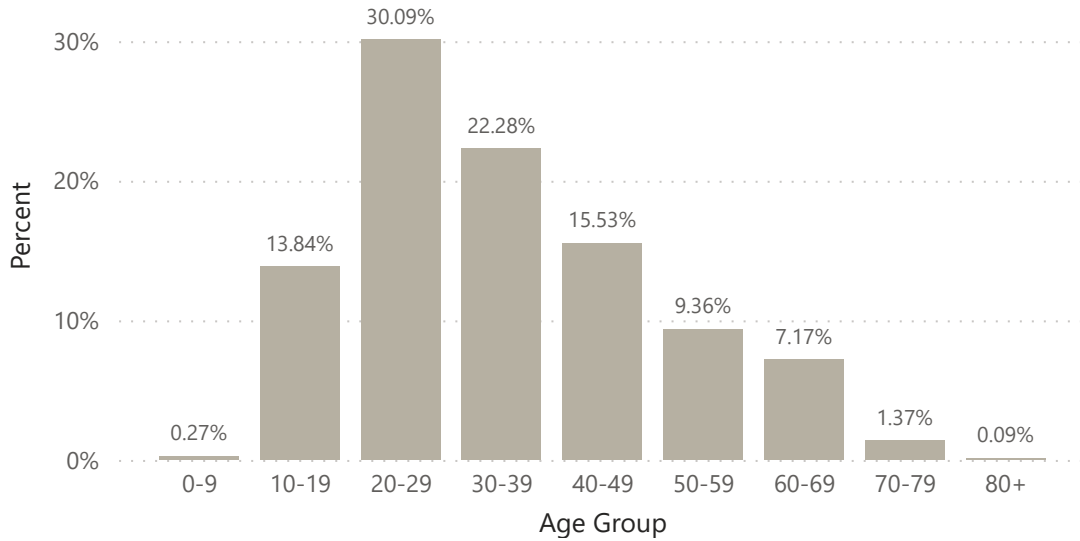


Heroin Overdoses



ESSENCE Data - Marijuana

Marijuana Overdose by Age Group



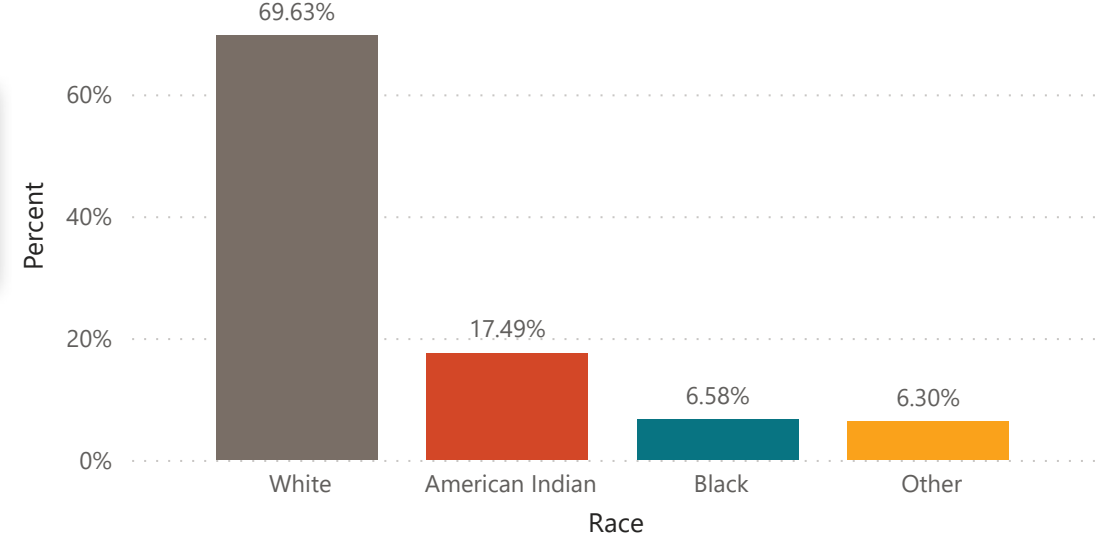
Year

Marijuana
2190
Overdoses

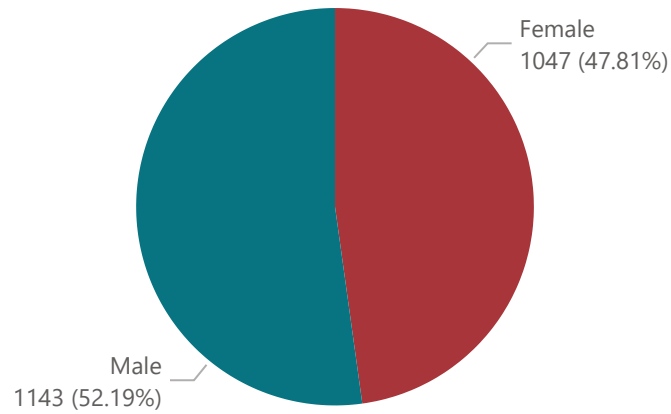
35
Average Age

Information

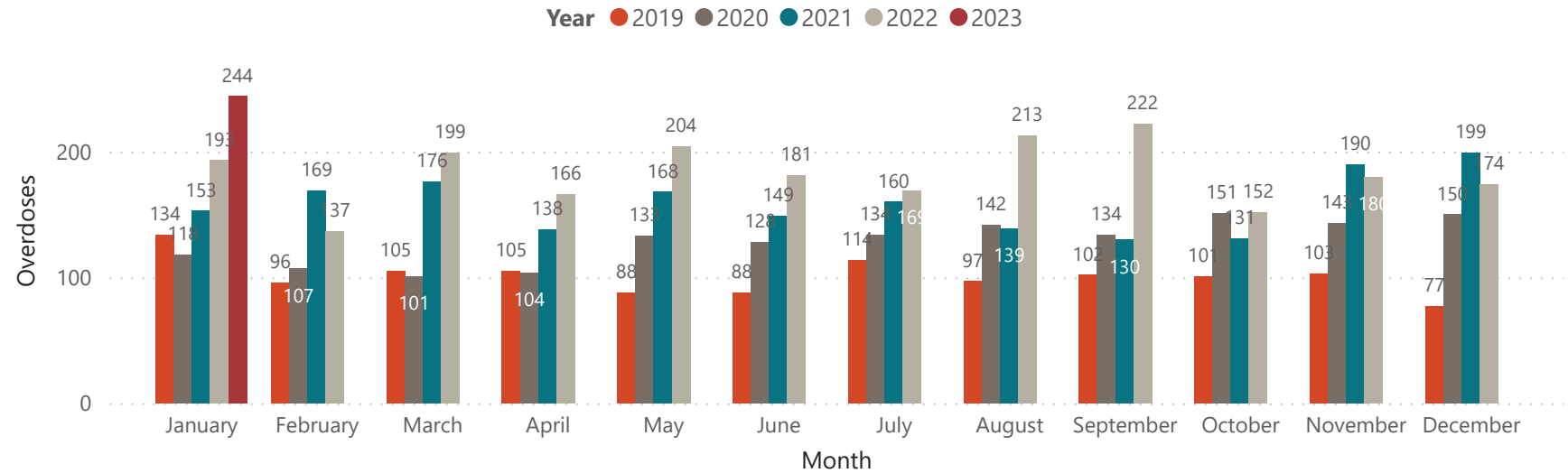
Marijuana Overdose by Race



Marijuana Overdose Gender

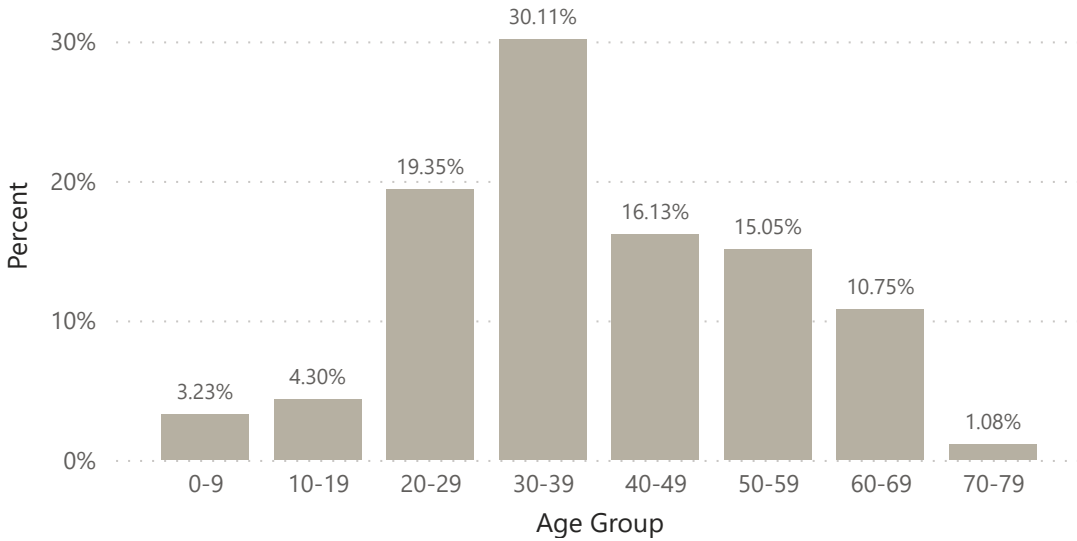


Marijuana Overdoses



ESSENCE Data - Stimulants

Stimulant Overdose by Age Group



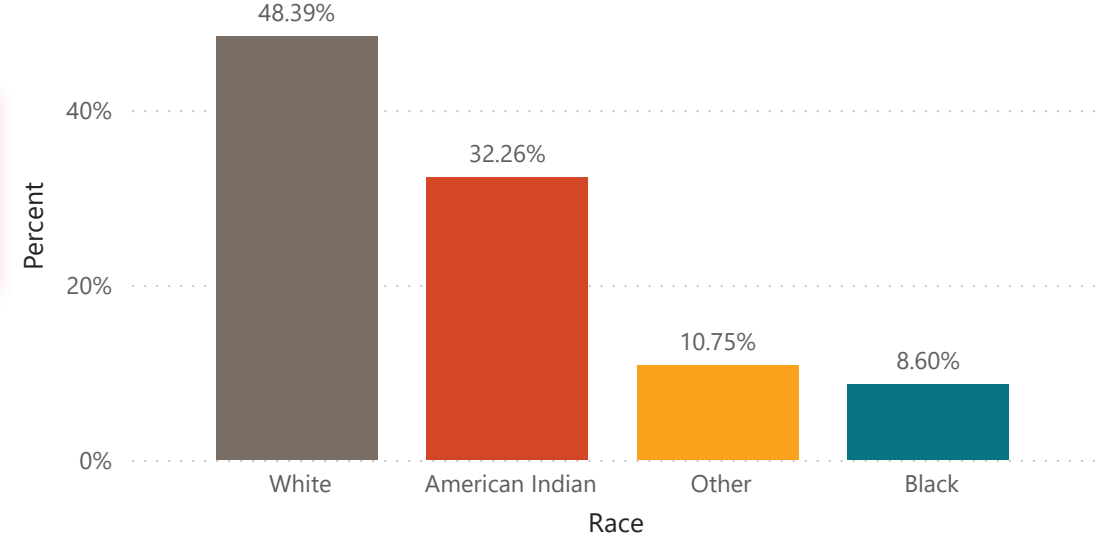
Year

Stimulant
93
Overdoses

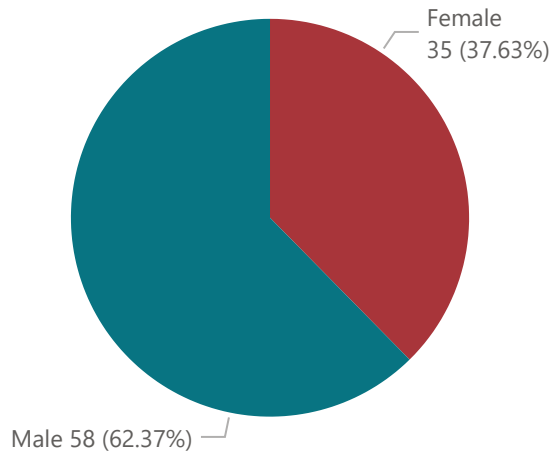
Average Age
34

Information

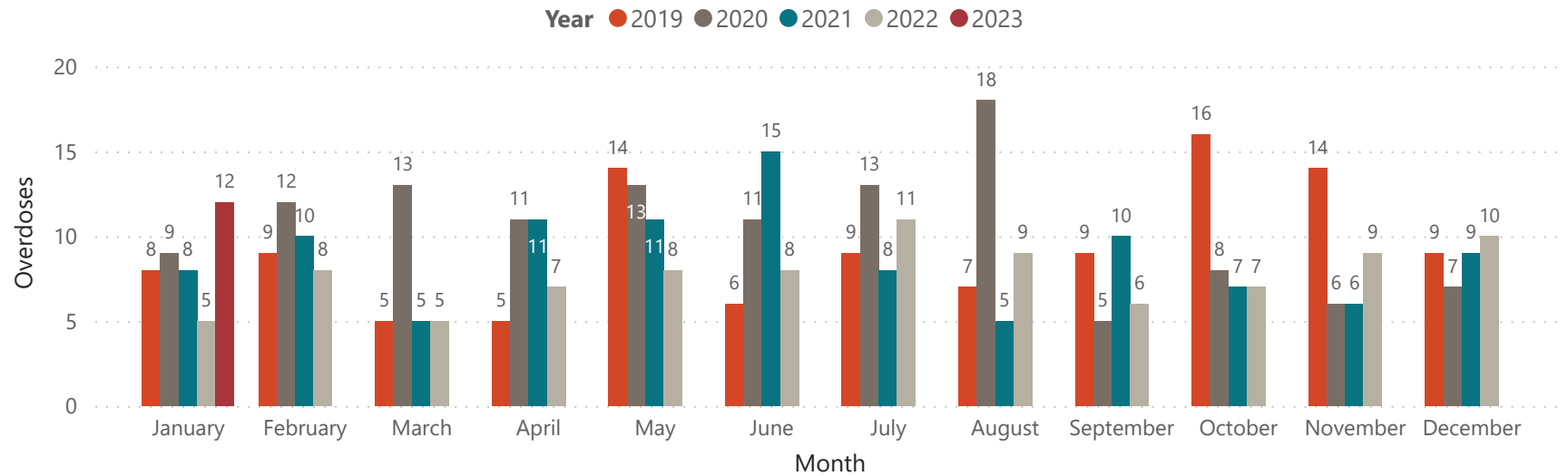
Stimulant Overdose by Race



Stimulant Overdose Gender

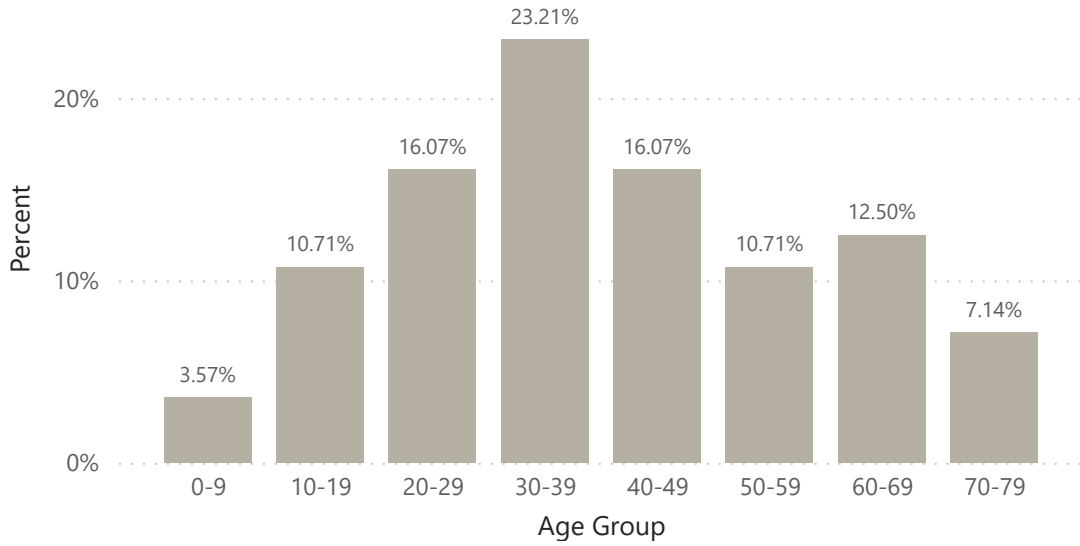


Stimulant Overdoses



ESSENCE Data - Benzodiazepines

Benzodiazepine Overdose by Age Group



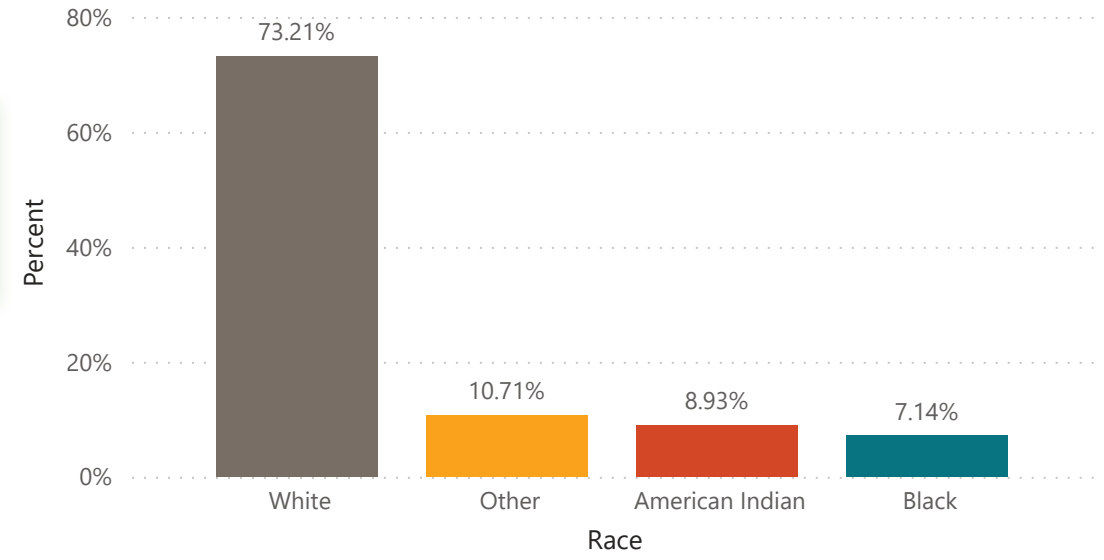
Year

Benzodiazepine
56
Overdoses

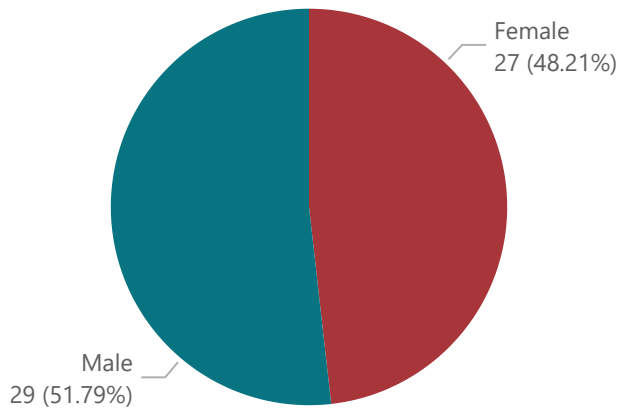
40
Average Age

Information

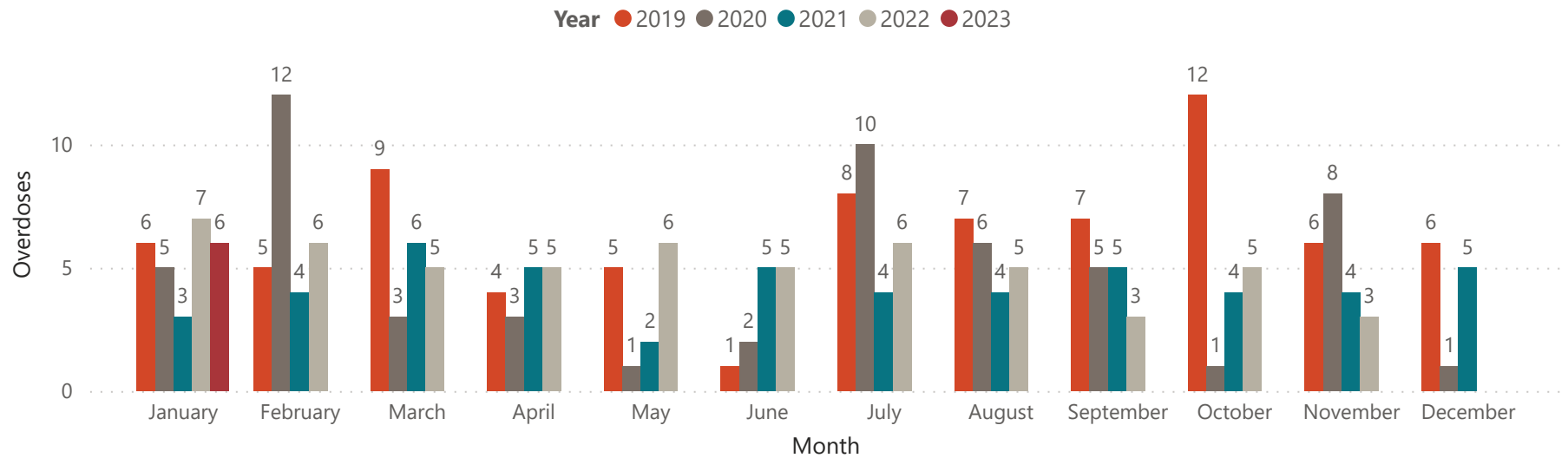
Benzodiazepine Overdose by Race



Benzodiazepine Overdose Gender

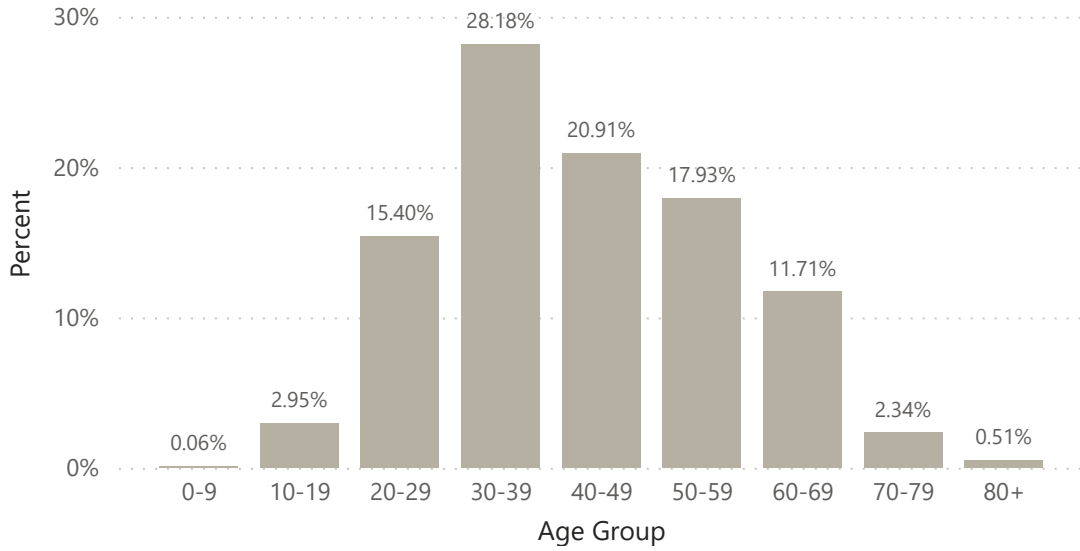


Benzodiazepine Overdoses



ESSENCE Data - Alcohol

Alcohol Overdose by Age Group



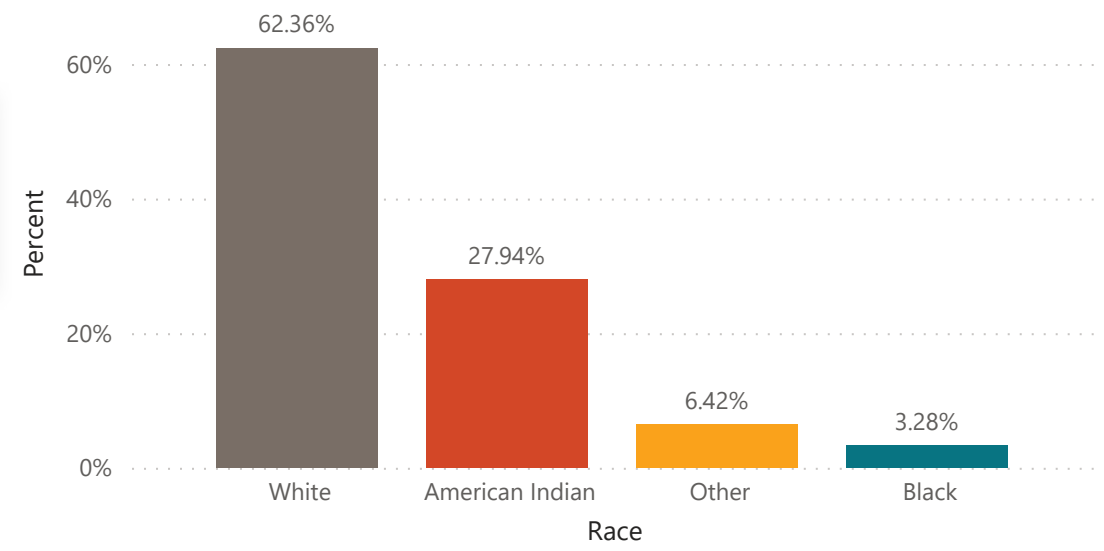
Year
2022

Alcohol
8072
Overdoses

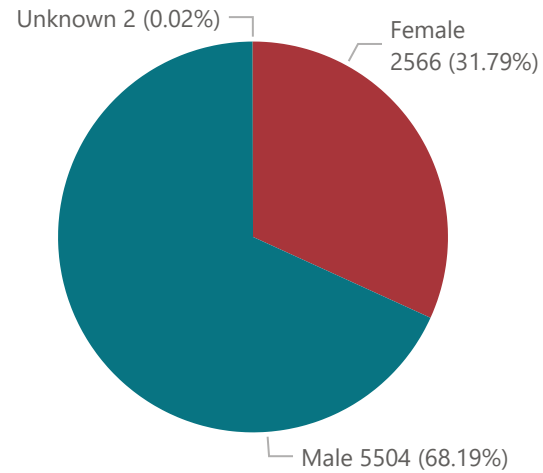
43
Average Age

Information

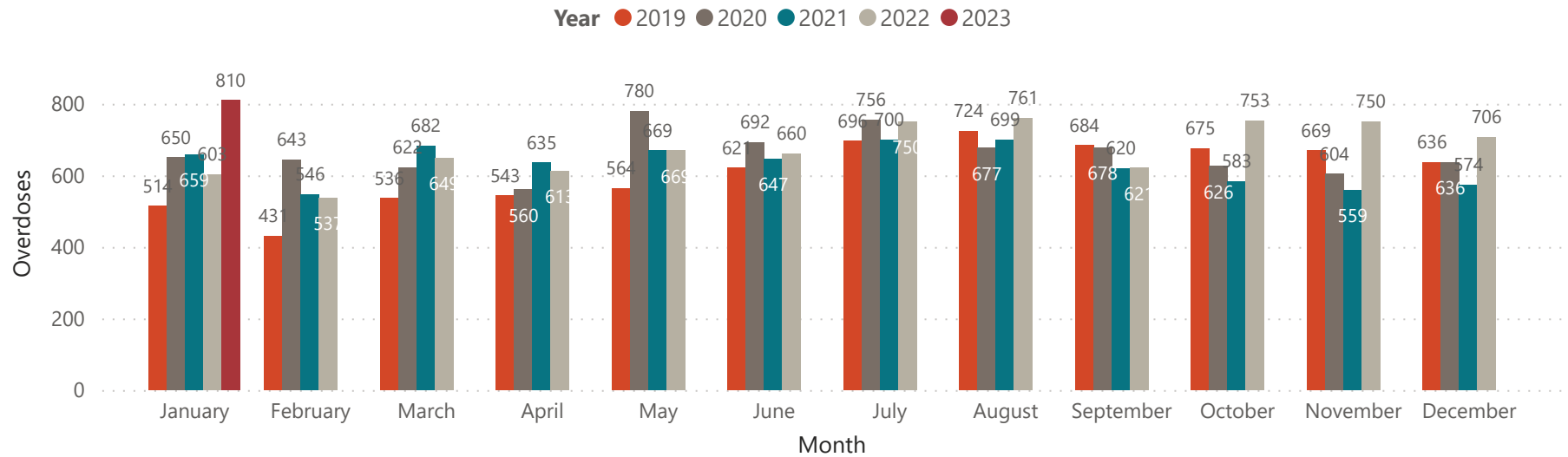
Alcohol Overdose by Race



Alcohol Overdose Gender

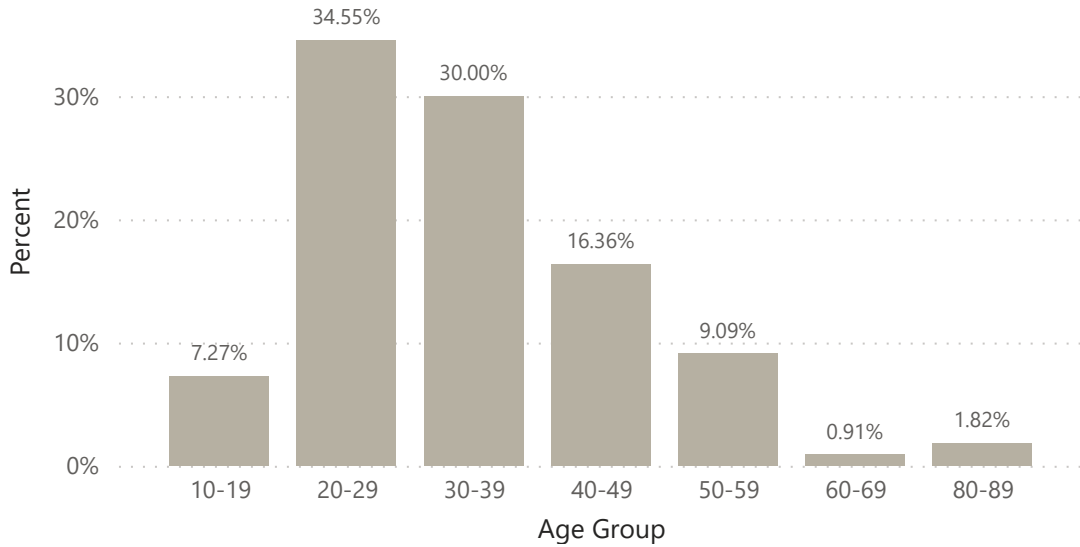


Alcohol Overdoses



ESSENCE Data - Fentanyl

Fentanyl Overdose by Age Group



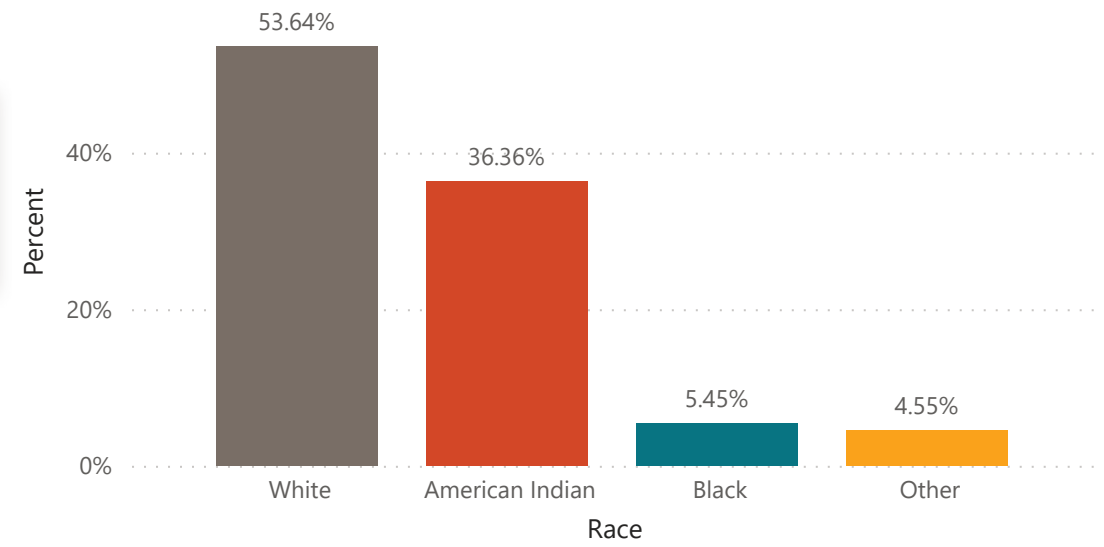
Year

Fentanyl
110
Overdoses

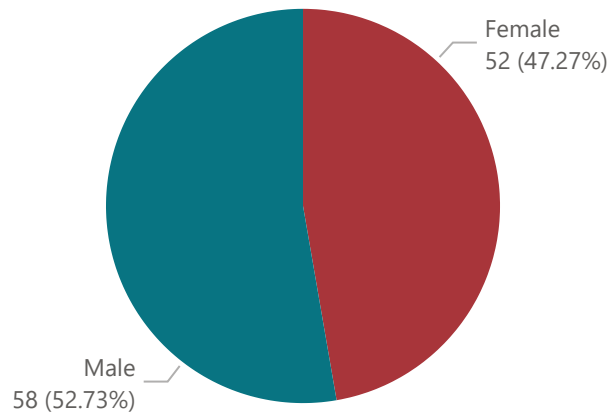
34
Average Age

Information

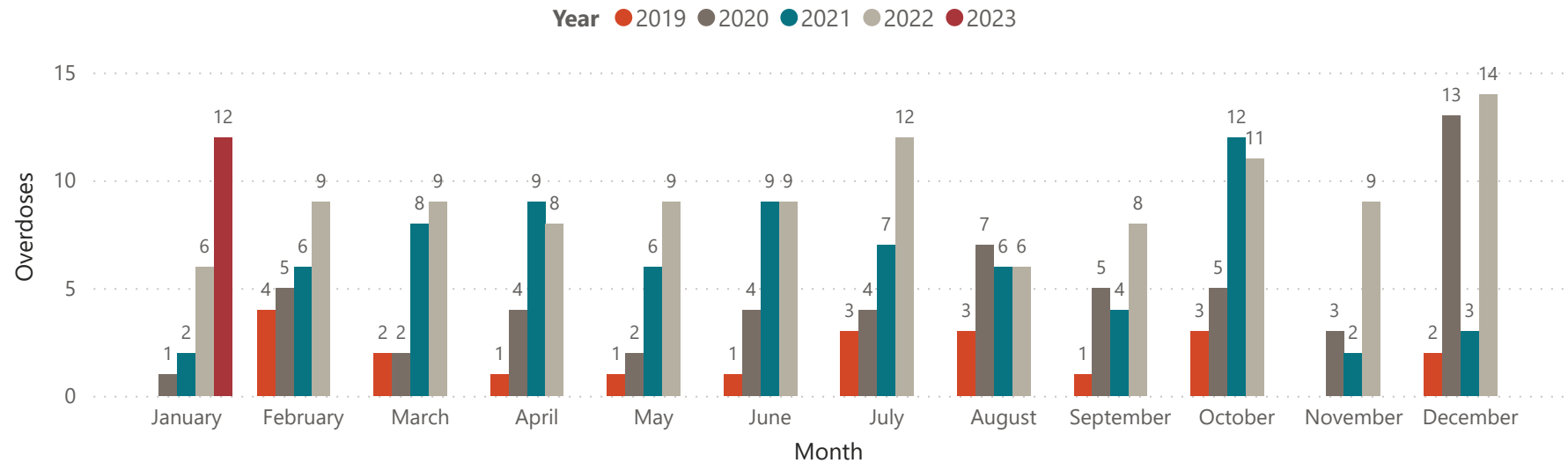
Fentanyl Overdose by Race



Fentanyl Overdose Gender



Fentanyl Overdoses



ESSENCE - Map All Drugs

Select below to see other maps.

- ➔ All Drugs
- Opioids
- Heroin
- Marijuana
- Stimulants
- Benzodiazepines
- Alcohol
- Fentanyl

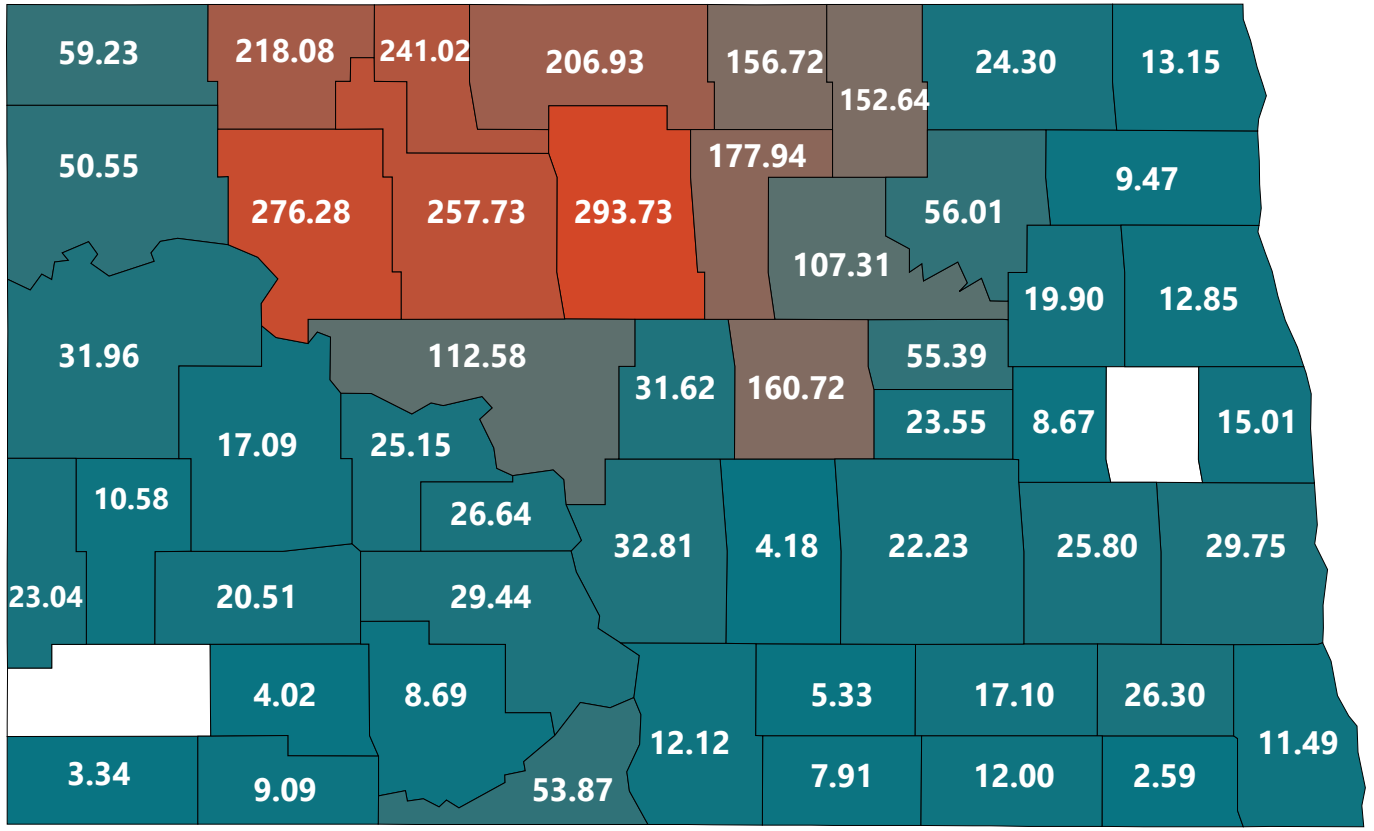
Year: 2022

4733 All Drug Overdoses

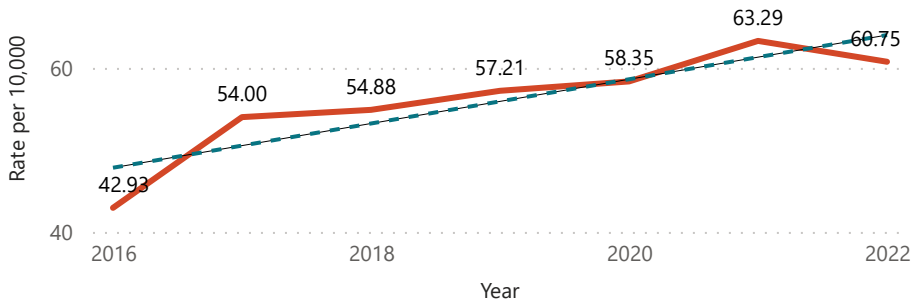
779,094 Population

60.75 All Drugs Rate per 10,000

All Drug Overdose Rate per 10,000 by County Where Patient Lives



All Drug Overdose Rate per 10,000



ESSENCE - Map Opioids

Select below to see other maps.

- All Drugs
- Opioids**
- Heroin
- Marijuana
- Stimulants
- Benzodiazepines
- Alcohol
- Fentanyl

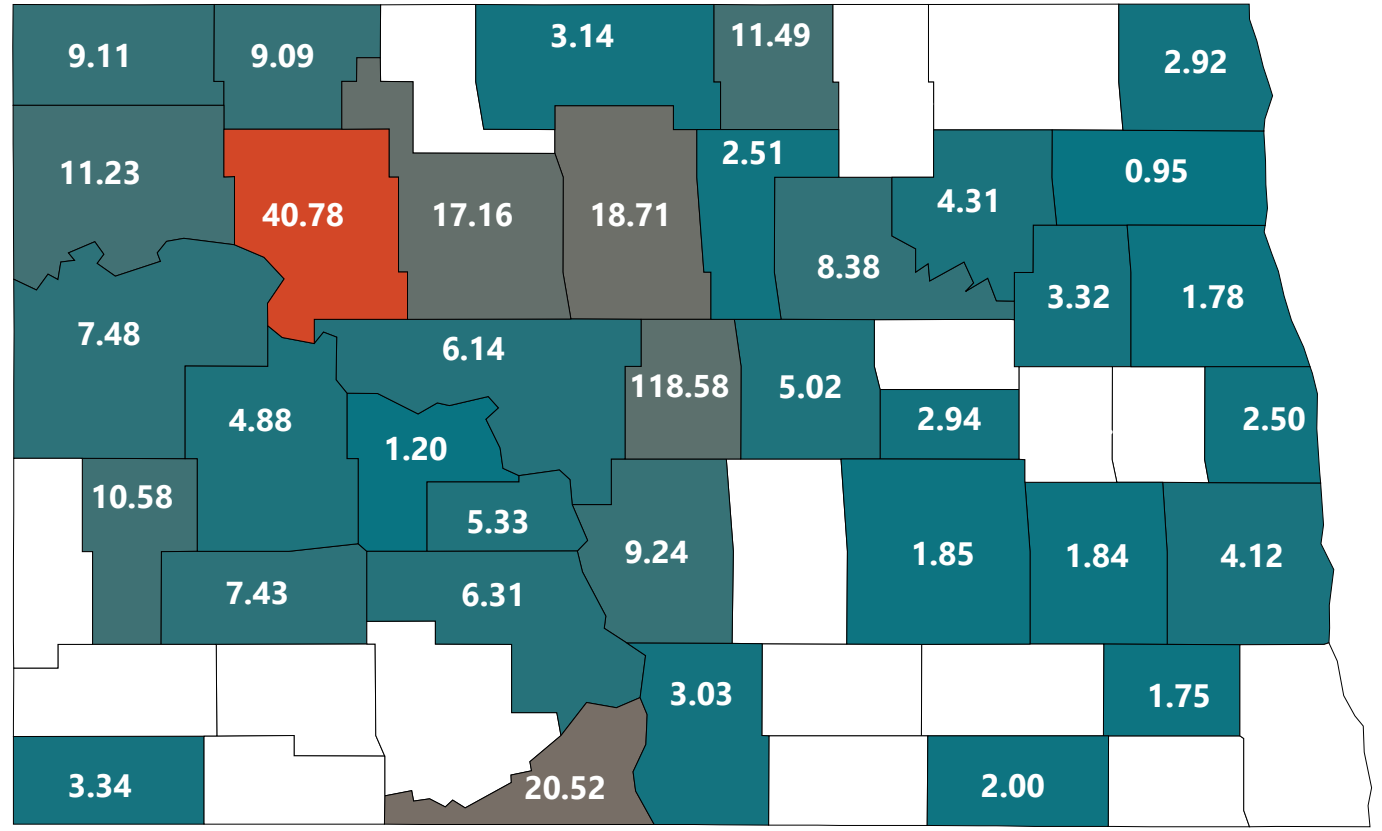
Year: 2022

524 Opioid Overdoses

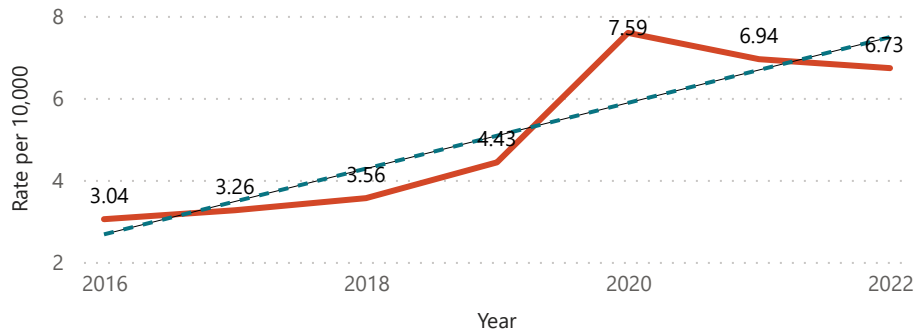
779,094 Population

6.73 Opioid Rate per 10,000

Opioid Overdose Rate per 10,000 by County Where Patient Lives



Opioid Overdose Rate per 10,000



ESSENCE - Map Heroin

Select below to see other maps.

- All Drugs
- Opioids
- Heroin**
- Marijuana
- Stimulants
- Benzodiazepines
- Alcohol
- Fentanyl

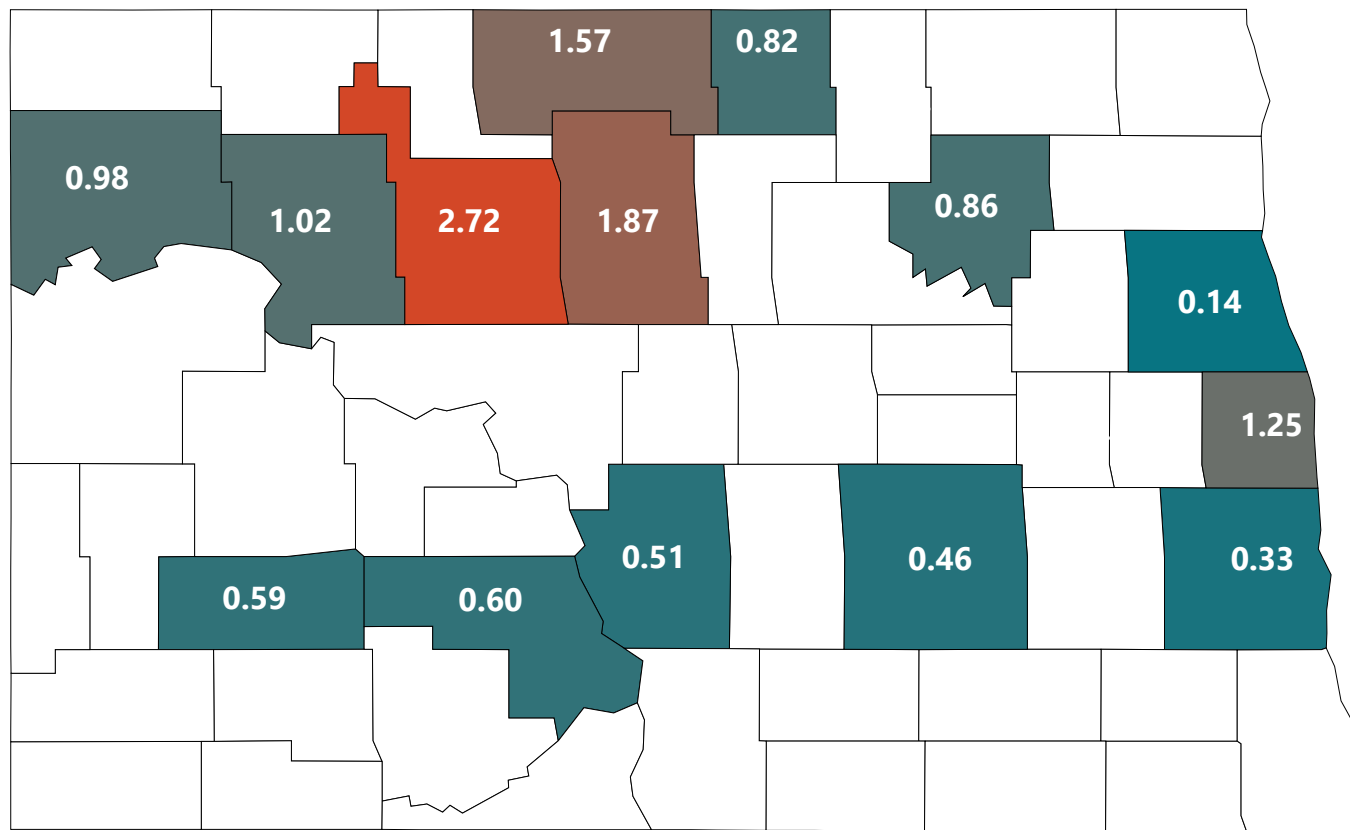
Year: 2022

46 Heroin Overdoses

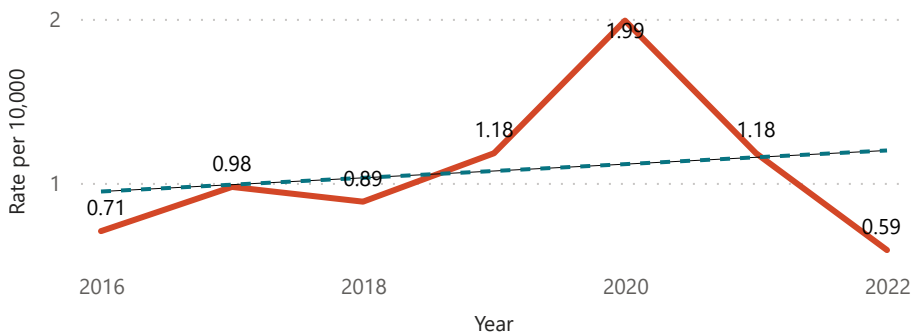
779,094 Population

0.59 Heroin Rate per 10,000

Heroin Overdose Rate per 10,000 by County Where Patient Lives



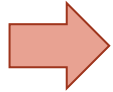
Heroin Overdose Rate per 10,000



ESSENCE - Map Stimulants

Select below to see other maps.

- All Drugs
- Opioids
- Heroin
- Marijuana
- Stimulants**
- Benzodiazepines
- Alcohol
- Fentanyl



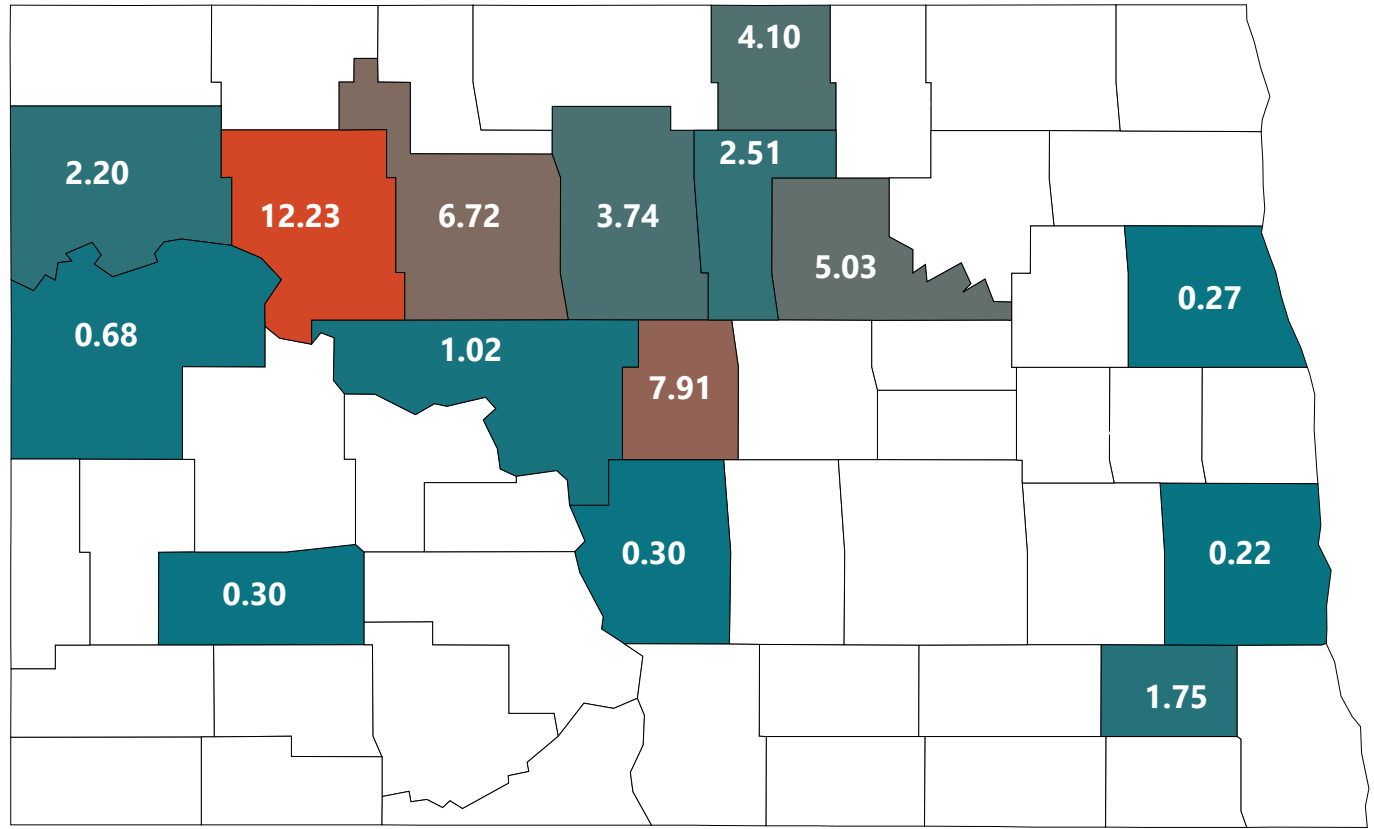
Year: 2022

93 Stimulant Overdoses

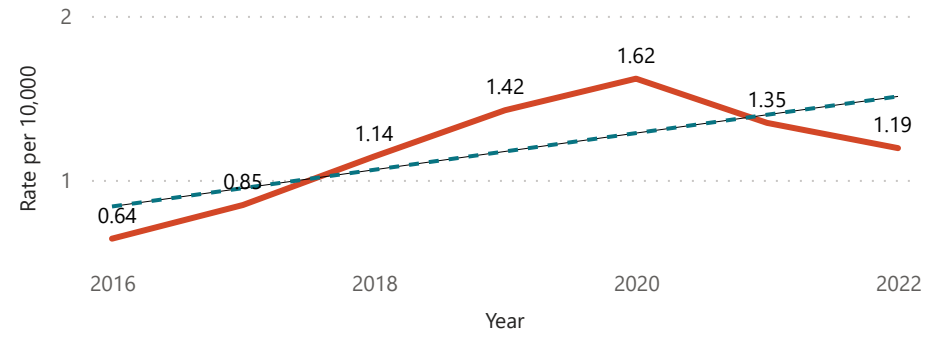
779,094 Population

1.19 Stimulant Rate per 10,000

Stimulant Overdose Rate per 10,000 by County Where Patient Lives



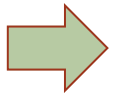
Stimulant Overdose Rate per 10,000



ESSENCE - Map Benzodiazepines

Select below to see other maps.

- All Drugs
- Opioids
- Heroin
- Marijuana
- Stimulants
- Benzodiazepines**
- Alcohol
- Fentanyl



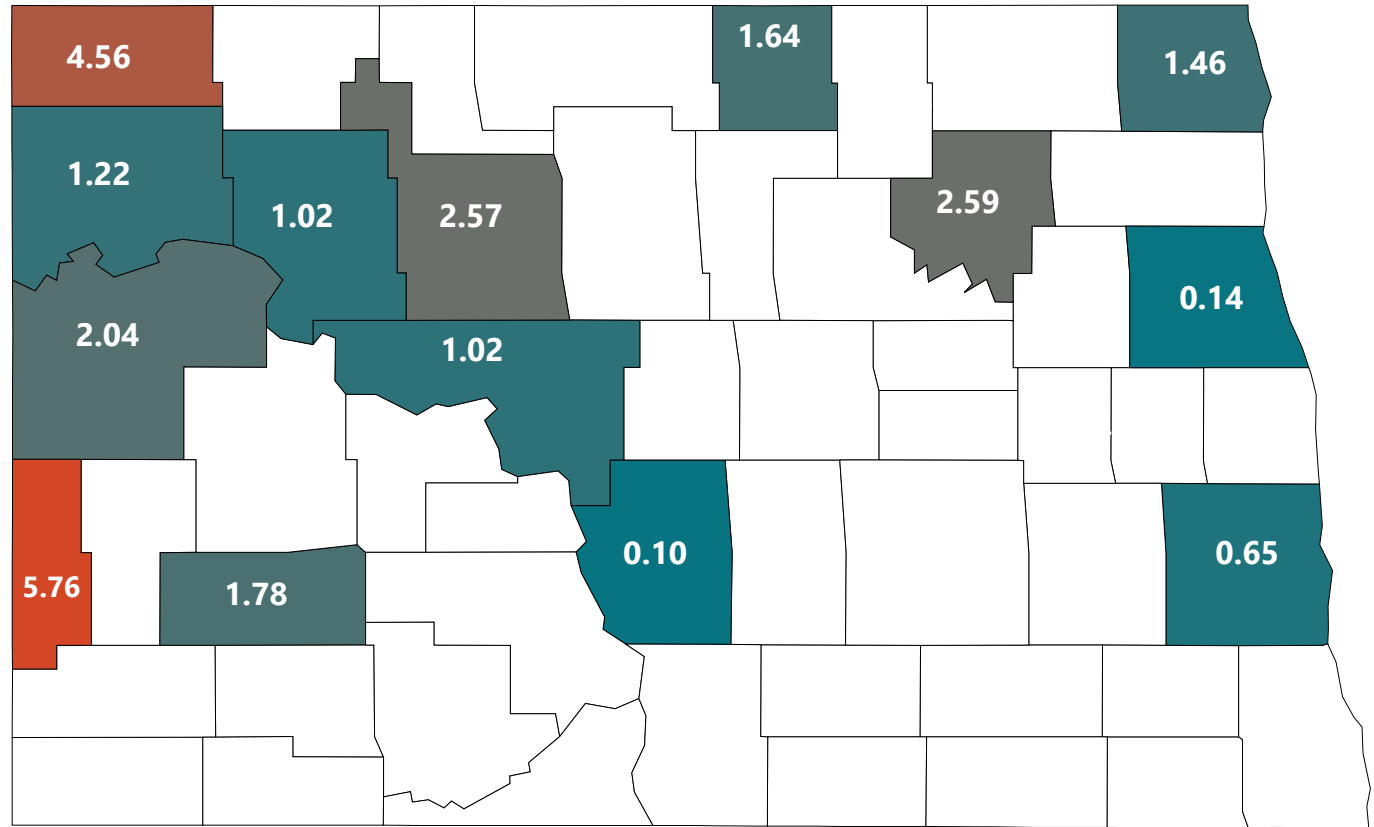
Year: 2022

56 Benzodiazepine Overdoses

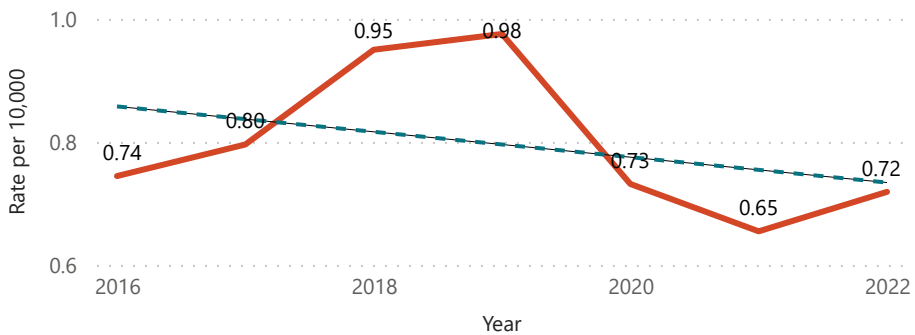
779,094 Population

0.72 Benzodiazepine Rate per 10,000

Benzodiazepine Overdose Rate per 10,000 by County Where Patient Lives



Benzodiazepine Overdose Rate per 10,000



ESSENCE - Map Alcohol

Select below to see other maps.

All Drugs

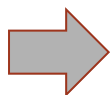
Opioids

Heroin

Marijuana

Stimulants

Benzodiazepines



Alcohol

Fentanyl

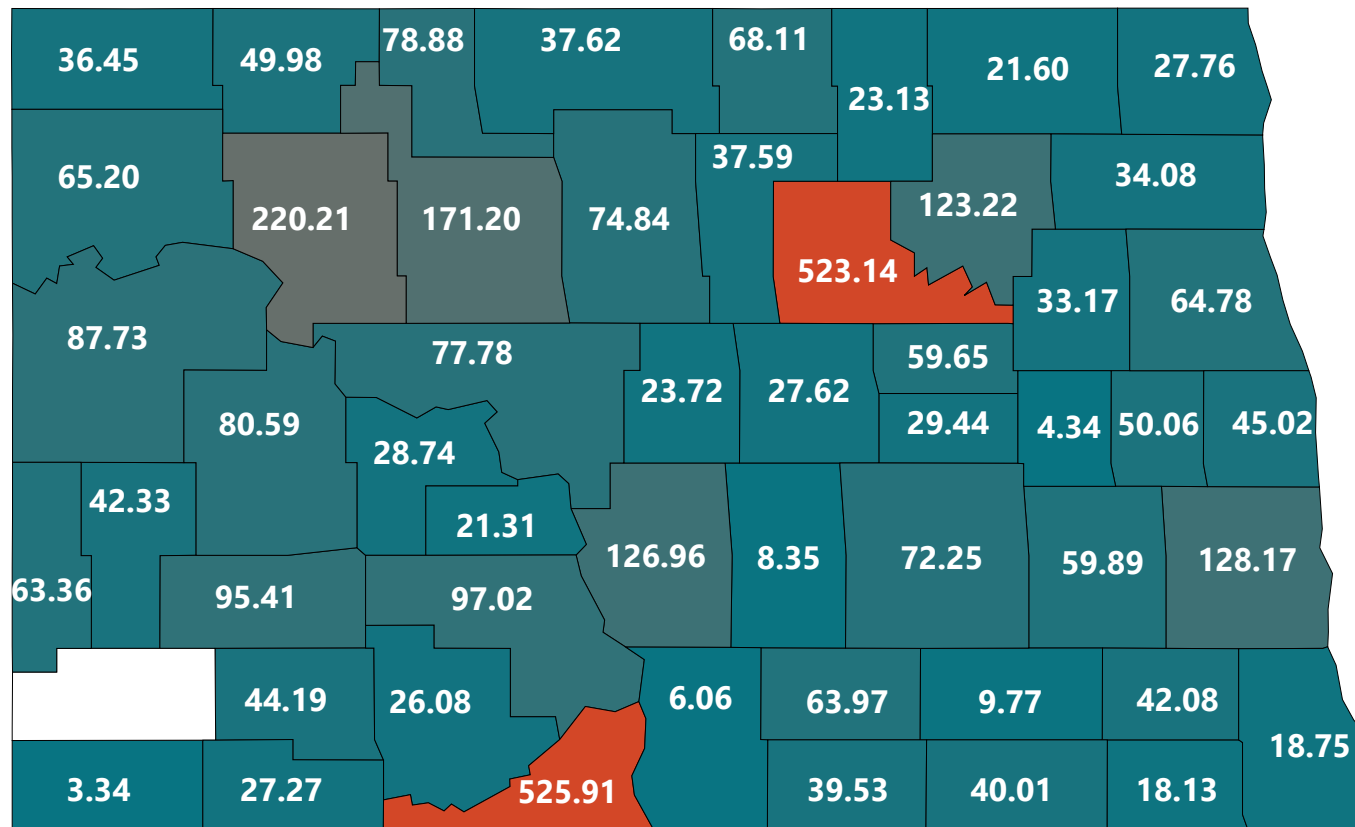
Year
2022

8072
Alcohol Overdoses

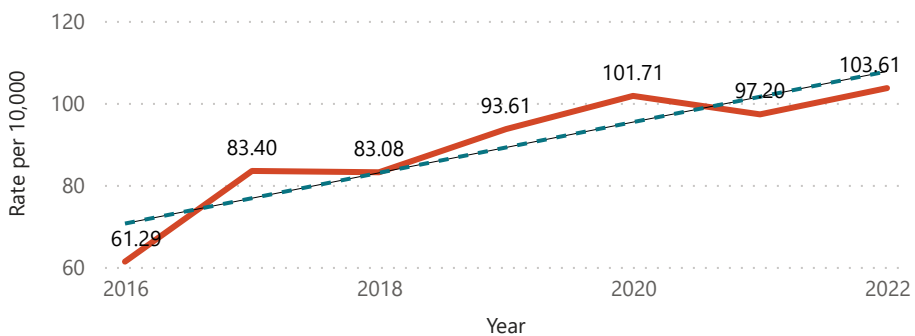
779,094
Population

103.61
Alcohol Overdose Rate per 10,000

Alcohol Overdose Rate per 10,000 by County Where Patient Lives



Alcohol Overdose Rate per 10,000



ESSENCE - Map Fentanyl

Select below to see other maps.

All Drugs

Opioids

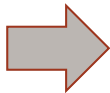
Heroin

Marijuana

Stimulants

Benzodiazepines

Alcohol



Fentanyl

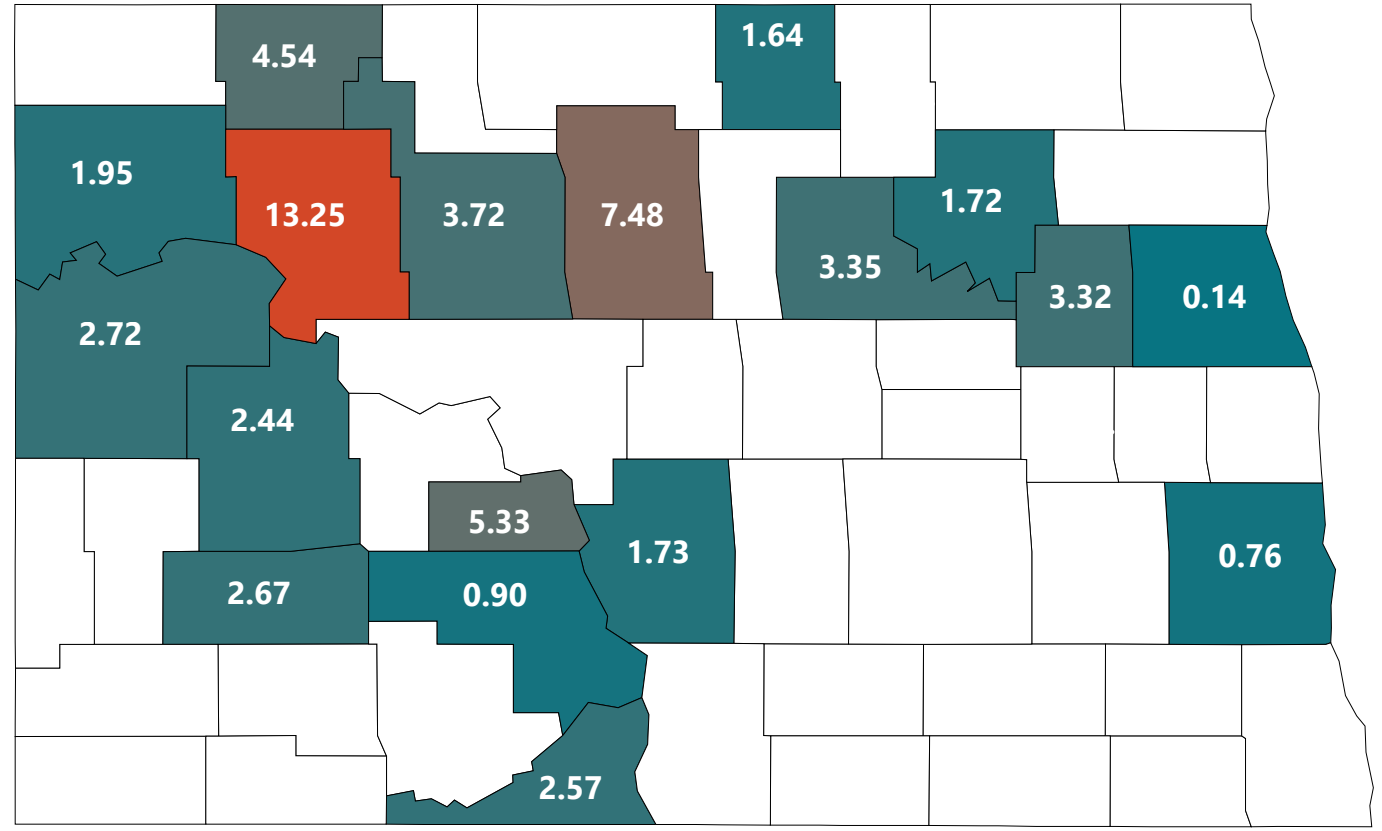
Year
2022

110
Fentanyl Overdoses

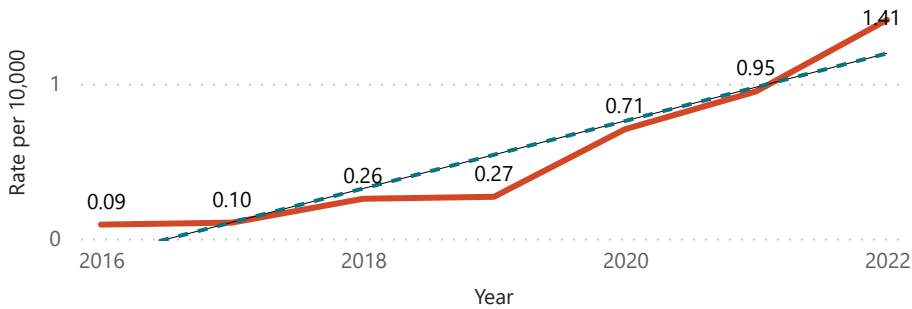
779,094
Population

1.41
Fentanyl Overdose Rate per 10,000

Fentanyl Overdose Rate per 10,000 by County Where Patient Lives



Fentanyl Overdose Rate per 10,000



Testimony
Engrossed Senate Bill No. 2248
House Judiciary Committee
Representative Klemin, Chairman
March 13, 2023

Chairman Klemin and members of the House Judiciary Committee, I am Kodi Pinks, Director of the Surveillance & Data Management Unit with the Department of Health and Human Services, Public Health Division (Department). I am here to provide neutral testimony regarding Engrossed Senate Bill 2248. The Bill as amended requires on an annual basis, law enforcement agencies and health care providers to provide to the attorney general a completed case report form for every death the agency or the provider encounters which is caused by, suspected to have been caused by, or is related to fentanyl consumption.

The Department spoke to Senator Hogue recently regarding Section 2 of the Bill. We shared with him that much of this data is currently collected by the Department as part of the North Dakota Violent Death Reporting System program (NDVDRS). NDVDRS collects data on select violent deaths, including drug overdoses, through a variety of primary data sources. The data sources include death certificates, coroner/medical examiner reports, law enforcement reports, crime laboratory reports, and toxicology results.

We currently provide the attached report to our partners in Law Enforcement, Governor's Office, ND Department of Emergency Services, community action groups, tribal government, medical examiners/county coroners, etc., in an effort to provide timely data, identify gaps, and improve prevention efforts.

The Department is proposing Amendments to Section 2, indicating that reporting of deaths should be submitted to the Department. Additionally, the Department will provide annual reports to legislative management, the governor, the Attorney General's office, local public health as well as participating partners. In our discussions, Senator Hogue was comfortable with the Department working with the committee on this amendment.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2248

Page 2, remove lines 23 through 30.

Page 3, remove lines 1 through 12

Page 3, line 13, replace "attorney general" with "department of health and human services"

Page 3, lines 16 and 17, remove "The attorney general shall make the report available on the attorney general's website."

Renumber accordingly

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		
CAUSE_OF_DEATH	Total	Percent
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		
CAUSE_OF_DEATH	Total	Percent
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%

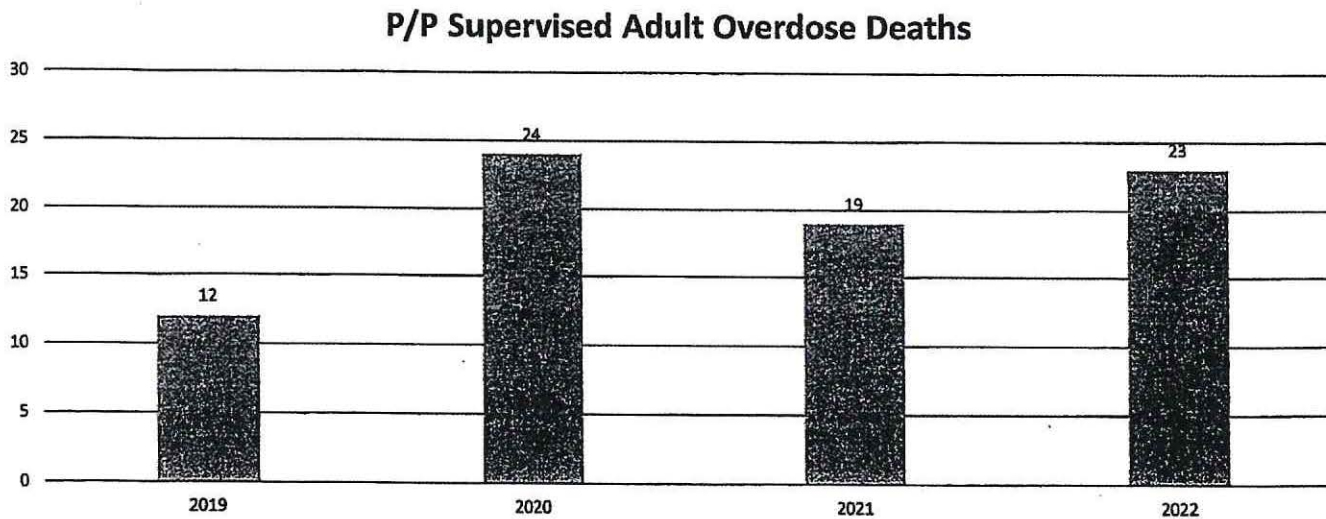
2021 P/P Cause of Death		
CAUSE_OF_DEATH	Total	Percent
Automobile Crash	11	14%
Homicide	2	3%
Long Term Alcohol or Drug Use	4	5%
Natural Causes/Accident	16	20%
Other	7	9%
Overdose	19	24%
Suicide	8	10%
Unknown	12	15%
Grand Total	79	100%
Total Behavioral Health	31	39%

2022 P/P Cause of Death		
CAUSE_OF_DEATH	Total	Percent
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.

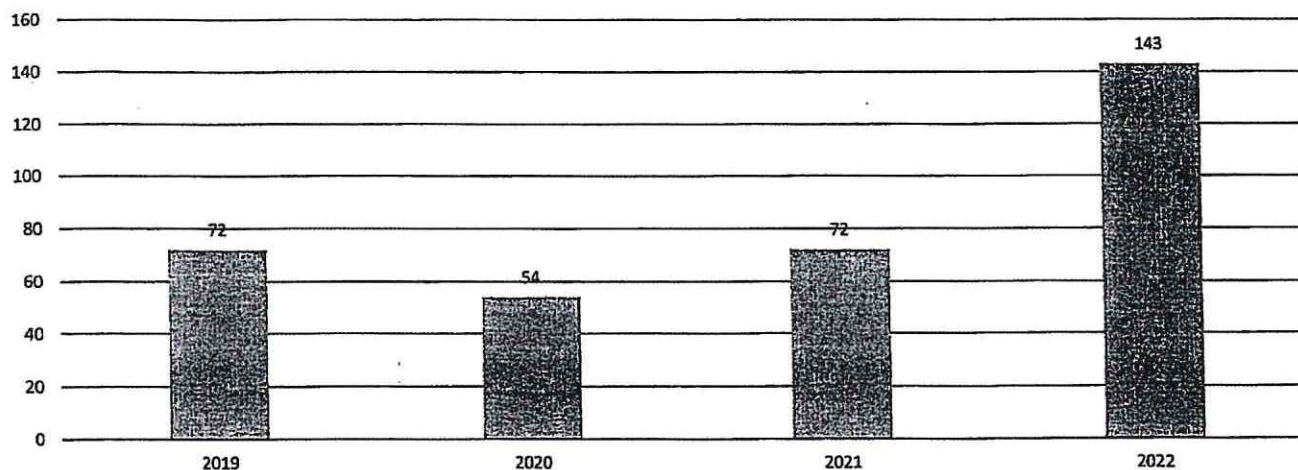


* Cause of death collection in Docstars started in 2019

Supervision Admissions – All Opiate/Fentanyl Offenses

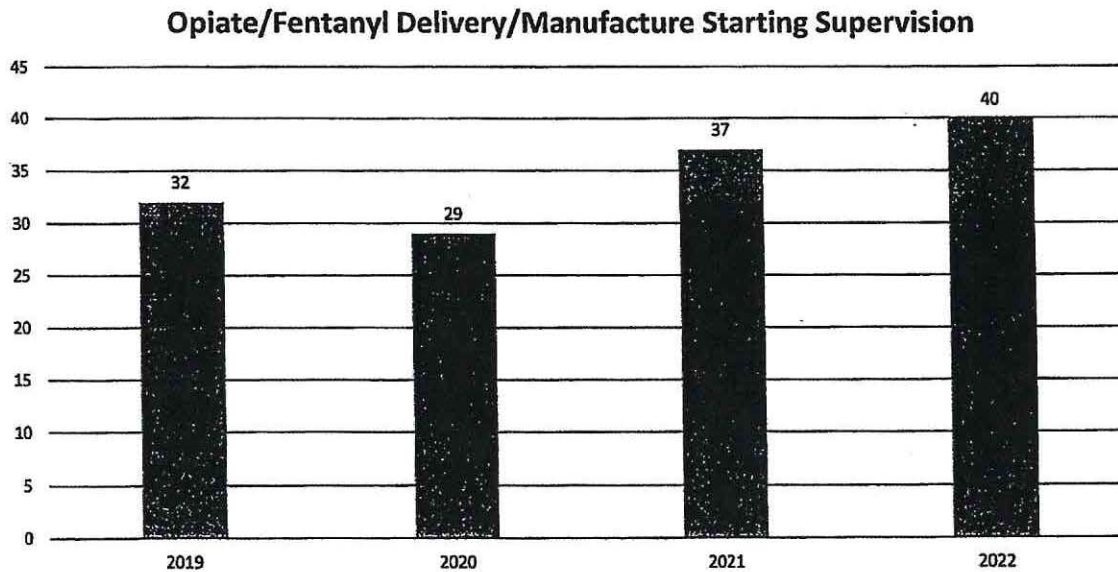
- Adults under probation supervision who had “opiate” or “fentanyl” in the offense description, by case start date.

All Opiate/Fentanyl Offenses Starting Supervision



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.

Case terminations CY 2019

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

Case terminations CY 2020

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

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 CY 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 CY 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 630% 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	
2019	Male	1220	2.88	635	348	200	2	211	42	255	3.44
	Female	310	2.12	151	81	74	0	66	6	72	2.89
	Total	1530	2.73	786	429	274	2	277	48	327	3.32
2020	Male	738	3.18	410	171	127	2	135	22	159	3.61
	Female	198	2.29	96	69	22	1	43	8	52	2.11
	Total	936	2.99	506	240	149	3	178	30	211	3.24
2021	Male	1205	3.02	738	266	180	21	185	44	250	3.45
	Female	286	2.32	103	110	38	1	67	6	74	2.39
	Total	1491	2.89	841	376	218	22	252	50	324	3.21
2022	Male	1149	3.16	574	345	190	46	158	32	236	3.17
	Female	302	2.27	133	118	31	14	50	2	66	2.50
	Total	1451	2.98	707	463	221	60	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, Methylphenadate, Modafinil, Psilocybin, Xanax

Prepared 1/8/2023



Amd # 2 9-0-4
P. m/c/s- DHHS

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2248

Page 2, remove lines 23 through 30.

Page 3, remove lines 1 through 12

Page 3, line 13, replace "attorney general" with "department of health and human services"

Page 3, lines 16 and 17, remove "The attorney general shall make the report available on the attorney general's website."

Renumber accordingly

Amnd #3 9-0-4

23.0573.06003
Title.

Prepared by the Legislative Council staff for
Representative Cory
March 13, 2023

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2248

Page 1, line 4, after the first semicolon insert "to amend and reenact section 19-03.1-23.4 of the North Dakota Century Code, relating to overdose prevention and immunity;"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 19-03.1-23.4 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.4. Overdose prevention and immunity.

An individual is immune from criminal prosecution under sections 19-03.1-22.1, 19-03.1-22.3, and 19-03.1-22.5, subsection 7 of section 19-03.1-23, section 2 of this Act, subsection 3 of section 19-03.2-03, and section 19-03.4-03 if in good faith that individual seeks medical assistance for another individual in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search."

Renumber accordingly

Amf #110-0-3

23.0573.06001
Title.

Prepared by the Legislative Council staff for
Senator Hogue

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

23.0573.06008

SECOND ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2248

Introduced by

Senators Hogue, Larson, Luick

Representatives Klemin, Louser

1 A BILL for an Act to create and enact ~~a new section to chapter 19-03.1,~~ section 19-03.1-23.6,
 2 ~~and a new section to chapter 50-06~~ of the North Dakota Century Code, relating to ~~a special~~
 3 ~~penalty for death or injury through distribution of illegal drugs,~~ fentanyl reporting, ~~and an opioid~~
 4 ~~settlement fund;~~ to amend and reenact subdivision d of subsection 1 of section 19-03.1-23.1 of
 5 the North Dakota Century Code, relating to the increased penalty for delivering or selling a
 6 controlled substance resulting in a substantial injury or death; to provide a penalty; and to
 7 provide an appropriation.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 ~~SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created~~
 10 ~~and enacted as follows:~~

11 ~~**Distribution of illegal drugs - Special penalty for death or injury.**~~

12 ~~1. As used in this section:~~

13 ~~a. "Consume" means to inject, ingest, or inhale a controlled substance.~~

14 ~~b. "Controlled substance" includes derivatives or analogs to a scheduled controlled~~
 15 ~~substance.~~

16 ~~c. "Injury" means an overdose that puts an individual's life at immediate risk.~~

17 ~~d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to~~
 18 ~~supply or deliver a controlled substance.~~

19 ~~2. An individual is guilty of causing death or injury by distributing a controlled substance if~~
 20 ~~the individual willfully supplies another to deliver a controlled substance to an~~
 21 ~~individual who consumes the controlled substance and that individual dies or is injured~~
 22 ~~from overdosing after consuming a portion of the controlled substance.~~

23 ~~a. A violation of this section is a class A felony.~~

1 ~~b. This section does not limit a conviction under chapter 12.1-16, but an individual~~
2 ~~may not be found guilty of this section and an offense under chapter 12.1-16 if~~
3 ~~the conduct arises out of the same course of conduct.~~

4 ~~3. Venue for an offense under this section is in the county where the death or injury~~
5 ~~occurred or any county where the controlled substance was directly or~~
6 ~~indirectly obtained by the deceased or injured individual.~~

7 ~~a. An individual may not be convicted in more than one county for the death or~~
8 ~~injury of the same individual who overdosed on a controlled substance.~~

9 ~~b. Notwithstanding chapter 29-03, an individual outside the state may be~~
10 ~~prosecuted within the state under this section.~~

11 ~~c. The charging document for a violation of this section must list an overt act in~~
12 ~~which the individual engaged to violate this section.~~

13 ~~d. Injury or death by an overdose may be proven by direct or circumstantial~~
14 ~~evidence.~~

15 ~~4. An individual may not be charged under this section if the individual supplied or~~
16 ~~administered a controlled substance as part of a medical procedure or the individual~~
17 ~~was in a lawful position to dispense a medication prescription.~~

18 ~~a. An individual may not be charged under this section if the individual complied~~
19 ~~with section 19-3.1-23.4.~~

20 ~~b. It is not a defense to this section that the deceased or injured individual~~
21 ~~had other controlled substances or alcohol in the individual's system which the~~
22 ~~defendant did not supply at the time of an overdose.~~

23 **SECTION 1. AMENDMENT.** Subdivision d of subsection 1 of section 19-03.1-23.1 of the
24 North Dakota Century Code is amended and reenacted as follows:

25 d. The defendant sells, distributes, delivers, or conspires to deliver a controlled
26 substance to an individual which results in ~~the~~substantial injury or death of the
27 individual due to the use of that controlled substance and the ~~substantial injury or~~
28 death ~~of the individual~~would not have occurred in the absence of the defendant's
29 conduct. This subdivision does not apply to an individual who is immune from
30 prosecution under section 19-03.1-23.4.

1 (1) Venue for an offense under this subdivision is in the county where the death
2 or substantial injury occurred or any county where the controlled substance
3 was directly or indirectly obtained by the deceased or injured individual.

4 (a) An individual may not be convicted in more than one county for the
5 death or substantial injury of the same individual who overdosed on a
6 controlled substance.

7 (b) Notwithstanding chapter 29-03, an individual outside the state may be
8 prosecuted within the state under this subdivision.

9 (c) The charging document for a violation of this subdivision must list an
10 overt act in which the individual engaged to violate this subdivision.

11 (d) Substantial injury or death by an overdose may be proven by direct or
12 circumstantial evidence.

13 (2) As used in this subdivision:

14 (a) "Results" means the substantial injury or death would not have
15 occurred but for the conduct of the defendant operating either alone or
16 concurrently with another cause, unless the concurrent cause was
17 clearly sufficient to produce the result and the conduct of the
18 defendant clearly insufficient.

19 (b) "Substantial injury" means an overdose that puts an individual's life at
20 immediate risk of death.

21 **SECTION 2.** Section 19-03.1-23.6 of the North Dakota Century Code is created and
22 enacted as follows:

23 **19-03.1-23.6. Fentanyl reporting - Report to legislative management - Fentanyl**
24 **awareness campaign.**

25 1. As used in this section:

26 ~~a. "Health care provider" means a person licensed or certified by the state to~~
27 ~~provide health care services. The term includes emergency service personnel, a~~
28 ~~medical hospital, and a medical clinic.~~

29 ~~b. "Law enforcement agency" means a nonfederal public agency authorized by law~~
30 ~~or by a government agency or branch to enforce the law and to conduct or~~

1 ~~engage in investigations or prosecutions for violations of law. The term includes a~~
2 ~~multijurisdictional task force.~~

3 ~~2. Annually, a law enforcement agency and a health care provider shall provide to the~~
4 ~~attorney general a completed case report form for every death the agency or the~~
5 ~~provider encounters which is caused by, suspected to have been caused by, or is~~
6 ~~related to fentanyl consumption.~~

7 ~~a. The data and report compiled under this section are open records.~~

8 ~~b. The attorney general may require the reporting of additional information not~~
9 ~~specified in this section. The attorney general shall develop standard forms,~~
10 ~~processes, and deadlines for annual submission of fentanyl data by law~~
11 ~~enforcement agencies and health care providers.~~

12 ~~c. If a law enforcement agency or health care provider fails to file a report within~~
13 ~~thirty days after the report is due, the attorney general may compel compliance~~
14 ~~by any means until the report is filed.~~

15 ~~d. By November first of each year, the attorney general~~ department of health and
16 ~~human services shall submit to the legislative management and the governor a~~
17 ~~written report summarizing the number of deaths that occurred in the state~~
18 ~~caused by or related to fentanyl consumption during the preceding calendar year,~~
19 ~~including the county in which the deaths occurred and the age and gender of the~~
20 ~~deceased individuals. The attorney general shall make the report available on the~~
21 ~~attorney general's website.~~

22 2. The department of health and human services shall make the data reported under
23 subsection 1 available to the public by:

24 a. Making the information easily accessible on the department's government
25 website;

26 b. Publishing easily comprehensible printed materials on fentanyl awareness,
27 information, and resources;

28 c. Placing visible billboards in high-traffic areas to inform the public of the dangers
29 of fentanyl; and

1 d. Developing a media and social media campaign to expand statewide awareness
2 of fentanyl drug deaths and the fentanyl overdose epidemic occurring within the
3 state.

4 ~~— **SECTION 3.** A new section to chapter 50-06 of the North Dakota Century Code is created~~
5 ~~and enacted as follows:~~

6 ~~— **Opioid settlement fund.**~~

7 ~~— There is created in the state treasury an opioid settlement fund. The fund consists of opioid~~
8 ~~litigation funds received by the state. Moneys received by the state as a result of opioid litigation~~
9 ~~must be deposited in the fund. Moneys in the fund may be used as authorized by legislative~~
10 ~~appropriation. The legislative assembly shall consult with the governor in determining the use of~~
11 ~~the moneys in the fund. As used in this section, "opioid litigation" means civil litigation, demand,~~
12 ~~or settlement in lieu of litigation alleging unlawful conduct related to the marketing, sale, or~~
13 ~~distribution of opioids in this state or other alleged illegal actions that contributed to the~~
14 ~~excessive use of opioids.~~

15 **SECTION 3. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**
16 **FENTANYL AWARENESS EXPANSION.** There is appropriated out of any moneys from the
17 opioid settlement fund, not otherwise appropriated, the sum of ~~\$1,500,000~~\$250,000, or so much
18 of the sum as may be necessary, to the department of health and human services for the
19 purpose of providing and expanding statewide awareness of ~~the~~ fentanyl drug deaths and the
20 fentanyl overdose epidemic, as provided under section 2 of this Act, for the biennium beginning
21 July 1, 2023, and ending June 30, 2025.

After paragraph 4b in section 1 and a new subsection c:

c. If the controlled substance supplied is marijuana, an individual cannot be convicted under this section unless they supplied marijuana knowing it was laced with another controlled substance.



NDME 22-121

STATE FORENSIC MEDICAL EXAMINER
North Dakota Department of Health
2637 East Main Avenue
Bismarck, ND 58501
(701) 328 - 6138

COPY

REPORT OF DEATH

Decedent: [Redacted]
Date of Birth: [Redacted]/1984
Date of Death: [Redacted]/2022
Time of Death: 1802
County: Stark
Place Death Pronounced: Residence
Location Death Pronounced: [Redacted]


Cause of Death: Fentanyl toxicity
Other Significant Conditions: Alcohol use, recent cocaine use
Manner of Death: Accident

Date of Injury: [Redacted] 2022
Time of Injury: Unknown
Place of Injury: Residence
Location of Injury: [Redacted]
How Injury Occurred: Used a lethal amount of fentanyl

Autopsy Performed by: Barrie Miller, MD Date: 07/11/2022 Time: 0840

Death Certificate Signed by: Barrie Miller, MD

Investigating Agencies: Dickinson Police Department, Stark County Coroner



11/18/2022
Date

23.0573.06010

SECOND ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2248

Introduced by

Senators Hogue, Larson, Luick

Representatives Klemin, Louser

1 A BILL for an Act to create and enact ~~a new section to chapter 19-03.1, section 19-03.1-23.6,~~
2 ~~and a new section to chapter 50-06~~ of the North Dakota Century Code, relating to ~~a special~~
3 ~~penalty for death or injury through distribution of illegal drugs, fentanyl reporting, and an opioid-~~
4 ~~settlement fund; to amend and reenact subdivision d of subsection 1 of section 19-03.1-23.1 of~~
5 the North Dakota Century Code, relating to the increased penalty for delivering or selling a
6 controlled substance resulting in a substantial injury or death; and to provide a penalty; and to
7 ~~provide an appropriation.~~

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17 ~~d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to~~
18 ~~supply or deliver a controlled substance.~~

19 ~~2. An individual is guilty of causing death or injury by distributing a controlled substance if~~
20 ~~the individual willfully supplies another to deliver a controlled substance to an~~
21 ~~individual who consumes the controlled substance and that individual dies or is injured~~
22 ~~from overdosing after consuming a portion of the controlled substance.~~

23 ~~a. A violation of this section is a class A felony.~~

1 ~~b. This section does not limit a conviction under chapter 12.1-16, but an individual~~
2 ~~may not be found guilty of this section and an offense under chapter 12.1-16 if~~
3 ~~the conduct arises out of the same course of conduct.~~

4 ~~3. Venue for an offense under this section is in the county where the death or injury~~
5 ~~occurred or any county where the controlled substance was directly or~~
6 ~~indirectly obtained by the deceased or injured individual.~~

7 ~~a. An individual may not be convicted in more than one county for the death or~~
8 ~~injury of the same individual who overdosed on a controlled substance.~~

9 ~~b. Notwithstanding chapter 29-03, an individual outside the state may be~~
10 ~~prosecuted within the state under this section.~~

11 ~~c. The charging document for a violation of this section must list an overt act in~~
12 ~~which the individual engaged to violate this section.~~

13 ~~d. Injury or death by an overdose may be proven by direct or circumstantial~~
14 ~~evidence.~~

15 ~~4. An individual may not be charged under this section if the individual supplied or~~
16 ~~administered a controlled substance as part of a medical procedure or the individual~~
17 ~~was in a lawful position to dispense a medication prescription.~~

18 ~~a. An individual may not be charged under this section if the individual complied~~
19 ~~with section 19-3.1-23.4.~~

20 ~~b. It is not a defense to this section that the deceased or injured individual~~
21 ~~had other controlled substances or alcohol in the individual's system which the~~
22 ~~defendant did not supply at the time of an overdose.~~

23 **SECTION 1. AMENDMENT.** Subdivision d of subsection 1 of section 19-03.1-23.1 of the
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26 substance to an individual which results in ~~the~~substantial injury or death of the
27 individual due to the use of that controlled substance and the substantial injury or
28 ~~death of the individual~~ would not have occurred in the absence of the defendant's
29 conduct. This subdivision does not apply to an individual who is immune from
30 prosecution under section 19-03.1-23.4.

- 1 (1) Venue for an offense under this subdivision is in the county where the death
2 or substantial injury occurred or any county where the controlled substance
3 was directly or indirectly obtained by the deceased or injured individual.
4 (a) An individual may not be convicted in more than one county for the
5 death or substantial injury of the same individual who overdosed on a
6 controlled substance.
7 (b) Notwithstanding chapter 29-03, an individual outside the state may be
8 prosecuted within the state under this subdivision.
9 (c) The charging document for a violation of this subdivision must list an
10 overt act in which the individual engaged to violate this subdivision.
11 (d) Substantial injury or death by an overdose may be proven by direct or
12 circumstantial evidence.
13 (2) As used in this subdivision:
14 (a) "Results" means the substantial injury or death would not have
15 occurred but for the conduct of the defendant operating either alone or
16 concurrently with another cause, unless the concurrent cause was
17 clearly sufficient to produce the result and the conduct of the
18 defendant clearly insufficient.
19 (b) "Substantial injury" means an overdose that puts an individual's life at
20 immediate risk of death.

21 **SECTION 2.** Section 19-03.1-23.6 of the North Dakota Century Code is created and
22 enacted as follows:

23 **19-03.1-23.6. Fentanyl reporting - Report to legislative management - Fentanyl**
24 **awareness campaign.**

25 1. As used in this section:

- 26 ~~a. "Health care provider" means a person licensed or certified by the state to~~
27 ~~provide health care services. The term includes emergency service personnel, a~~
28 ~~medical hospital, and a medical clinic.~~
29 ~~b. "Law enforcement agency" means a nonfederal public agency authorized by law~~
30 ~~or by a government agency or branch to enforce the law and to conduct or~~

- 1 ~~engage in investigations or prosecutions for violations of law. The term includes a~~
2 ~~multijurisdictional task force.~~
- 3 ~~2. Annually, a law enforcement agency and a health care provider shall provide to the~~
4 ~~attorney general a completed case report form for every death the agency or the~~
5 ~~provider encounters which is caused by, suspected to have been caused by, or is~~
6 ~~related to fentanyl consumption.~~
- 7 ~~a. The data and report compiled under this section are open records.~~
- 8 ~~b. The attorney general may require the reporting of additional information not~~
9 ~~specified in this section. The attorney general shall develop standard forms,~~
10 ~~processes, and deadlines for annual submission of fentanyl data by law~~
11 ~~enforcement agencies and health care providers.~~
- 12 ~~c. If a law enforcement agency or health care provider fails to file a report within~~
13 ~~thirty days after the report is due, the attorney general may compel compliance~~
14 ~~by any means until the report is filed.~~
- 15 ~~d. By November first of each year, the attorney general~~ department of health and
16 ~~human services shall submit to the legislative management and the governor a~~
17 ~~written report summarizing the number of deaths that occurred in the state~~
18 ~~caused by or related to fentanyl consumption during the preceding calendar year,~~
19 ~~including the county in which the deaths occurred and the age and gender of the~~
20 ~~deceased individuals. The attorney general shall make the report available on the~~
21 ~~attorney general's website.~~
- 22 2. The department of health and human services shall make the data reported under
23 subsection 1 available to the public by:
- 24 a. Making the information easily accessible on the department's government
25 website;
- 26 b. Publishing easily comprehensible printed materials on fentanyl awareness,
27 information, and resources;
- 28 c. Placing visible billboards in high-traffic areas to inform the public of the dangers
29 of fentanyl; and

1 d. Developing a media and social media campaign to expand statewide awareness
2 of fentanyl drug deaths and the fentanyl overdose epidemic occurring within the
3 state.

4 ~~—SECTION 3. A new section to chapter 50-06 of the North Dakota Century Code is created~~
5 ~~and enacted as follows:~~

6 ~~—**Opioid settlement fund.**~~

7 ~~—There is created in the state treasury an opioid settlement fund. The fund consists of opioid~~
8 ~~litigation funds received by the state. Moneys received by the state as a result of opioid litigation~~
9 ~~must be deposited in the fund. Moneys in the fund may be used as authorized by legislative~~
10 ~~appropriation. The legislative assembly shall consult with the governor in determining the use of~~
11 ~~the moneys in the fund. As used in this section, "opioid litigation" means civil litigation, demand,~~
12 ~~or settlement in lieu of litigation alleging unlawful conduct related to the marketing, sale, or~~
13 ~~distribution of opioids in this state or other alleged illegal actions that contributed to the~~
14 ~~excessive use of opioids.~~

15 **SECTION 3. APPROPRIATION—DEPARTMENT OF HEALTH AND HUMAN SERVICES -**
16 **FENTANYL AWARENESS EXPANSION.** ~~There is appropriated out of any moneys from the~~
17 ~~opioid settlement fund, not otherwise appropriated, the sum of \$1,500,000, or so much of the~~
18 ~~sum as may be necessary, to the department of health and human services for the purpose of~~
19 ~~providing and expanding statewide awareness of the fentanyl drug and overdose epidemic, for~~
20 ~~the biennium beginning July 1, 2023, and ending June 30, 2025~~Best practices relating to
21 fentanyl drug overdose by the department of health and human services as provided in-
22 section 3 of House Bill No. 1447, as approved by the sixty-eighth legislative assembly, includes
23 providing and expanding statewide awareness of fentanyl drug deaths and the fentanyl
24 overdose epidemic, communication strategies and campaigns, access to Naloxone, and other
25 strategies as provided under section 2 of this Act, for the biennium beginning July 1, 2023, and
26 ending June 30, 2025.

23.0573.06010
Title.

Prepared by the Legislative Council staff for
Representative Klemin
April 24, 2023

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2248

That the House recede from its amendments as printed on page 1536 of the Senate Journal and page 1749 of the House Journal and that Reengrossed Senate Bill No. 2248 be amended as follows:

Page 1, line 1, remove "a new section to chapter 19-03.1,"

Page 1, line 1, remove the second comma

Page 1, line 2, remove "and a new section to chapter 50-06"

Page 1, line 2, remove "a special"

Page 1, line 3, remove "penalty for death or injury through distribution of illegal drugs,"

Page 1, line 3, remove ", and an opioid"

Page 1, line 4, remove "settlement fund"

Page 1, line 4, after the first semicolon insert "to amend and reenact subdivision d of subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to the increased penalty for delivering or selling a controlled substance resulting in a substantial injury or death; and"

Page 1, line 4, remove "; and to provide an appropriation"

Page 1, remove lines 6 through 23

Page 2, replace lines 1 through 19 with:

"SECTION 1. AMENDMENT. Subdivision d of subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

d. The defendant sells, distributes, delivers, or conspires to deliver a controlled substance to an individual which results in the substantial injury or death of the individual due to the use of that controlled substance and the substantial injury or death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4.

(1) Venue for an offense under this subdivision is in the county where the death or substantial injury occurred or any county where the controlled substance was directly or indirectly obtained by the deceased or injured individual.

(a) An individual may not be convicted in more than one county for the death or substantial injury of the same individual who overdosed on a controlled substance.

(b) Notwithstanding chapter 29-03, an individual outside the state may be prosecuted within the state under this subdivision.

(c) The charging document for a violation of this subdivision must list an overt act in which the individual engaged to violate this subdivision.

(d) Substantial injury or death by an overdose may be proven by direct or circumstantial evidence.

(2) As used in this subdivision:

(a) "Results" means the substantial injury or death would not have occurred but for the conduct of the defendant operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the defendant clearly insufficient.

(b) "Substantial injury" means an overdose that puts an individual's life at immediate risk of death."

Page 2, line 22, after "management" insert "- Fentanyl awareness campaign"

Page 2, line 23, remove "As used in this section:"

Page 2, remove lines 24 through 30

Page 3, remove lines 1 through 12

Page 3, line 13, remove "d."

Page 3, line 13, replace "attorney general" with "department of health and human services"

Page 3, line 16, after "year" insert ", including the county in which the deaths occurred and the age and gender of the deceased individuals"

Page 3, line 16, remove "The attorney general shall"

Page 3, line 17, replace "make the report available on the attorney general's website" with:

- "2. The department of health and human services shall make the data reported under subsection 1 available to the public by:
 - a. Making the information easily accessible on the department's government website;
 - b. Publishing easily comprehensible printed materials on fentanyl awareness, information, and resources;
 - c. Placing visible billboards in high-traffic areas to inform the public of the dangers of fentanyl; and
 - d. Developing a media and social media campaign to expand statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic occurring within the state"

Page 3, remove lines 18 through 28

Page 3, line 28, remove "**APPROPRIATION -**"

Page 3, line 30, remove "There is appropriated out of any moneys from the"

Page 3, remove line 31

Page 4, remove lines 1 and 2

Page 4, line 3, replace "the biennium beginning July 1, 2023, and ending June 30, 2025" with "Best practices relating to fentanyl drug overdose by the department of health and human services as provided in section 3 of House Bill No. 1447, as approved by the sixty-eighth legislative assembly, includes providing and expanding statewide awareness of fentanyl drug deaths and the fentanyl overdose epidemic, communication strategies and campaigns, access to Naloxone, and other strategies as provided under section 2 of this Act, for the biennium beginning July 1, 2023, and ending June 30, 2025"

Renumber accordingly