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STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
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No. **2025-0013**

January 13, 2025

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirty-Third Legislature
State Capitol, Room 409

The Honorable Nadine K. Nakamura
Speaker and Members of the House of
Thirty-Third Legislature
State Capitol, Room 431

Dear President Kouchi, Speaker Nakamura, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Department of Law Enforcement (DLE)'s Annual Report on a Study to Determine if Xylazine Test Strips Should Be Excluded from the State's Definition of Drug Paraphernalia to the 2025 Legislature. In accordance with Section 93-16, Hawaii Revised Statutes, this report will be posted on DLE's website for ease of public viewing on the internet.

Sincerely,

A handwritten signature in black ink, appearing to read "Jordan Lowe".

Jordan Lowe
Director



DEPARTMENT OF LAW ENFORCEMENT
REPORT TO THE 2025 LEGISLATURE

A STUDY TO DETERMINE IF XYLAZINE TEST STRIPS SHOULD
BE EXCLUDED FROM THE STATE'S DEFINITION OF DRUG
PARAPHERNALIA

DEPARTMENT OF LAW ENFORCEMENT REPORT TO THE 2025 LEGISLATURE

A STUDY TO DETERMINE IF XYLAZINE TEST STRIPS SHOULD BE EXCLUDED FROM THE STATE'S DEFINITION OF DRUG PARAPHERNALIA

INTRODUCTION

The 2024 House of Representatives resolved that the Department of Law Enforcement is requested to conduct a study to determine if xylazine test strips should be excluded from the State's definition of drug paraphernalia; and further resolved that the Department of Law Enforcement submit a report of its study, including findings and recommendations, and any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2025.

This report hereafter outlines the Department of Law Enforcement's study. In preparing this report, the Department of Law Enforcement (DLE) reviewed and studied data regarding fentanyl, xylazine, and overdose deaths from both a national and Hawaii standpoint. Additionally, the DLE held a discussion on the feasibility of legalizing xylazine test strips with the Hawaii High Intensity Drug Trafficking Area (HIDTA) Executive Board at its November 2024 meeting. The Hawaii HIDTA is part of the White House Office of National Drug Control Policy and its executive board is comprised of agency leaders of Hawaii based federal, state and local law enforcement agencies and prosecuting attorneys.

FENTANYL

In studying the issue of xylazine testing strips, the DLE first reviewed national overdose death data. According to the DEA's 2024 National Drug Threat Assessment Report, "fentanyl manufactured by the Mexican cartels is the main driver behind the ongoing epidemic of drug poisoning deaths in the United States". Additionally, the DEA's Assessment said the following about fentanyl:

- Further complicating the fentanyl threat is the addition of the dangerous veterinary tranquilizer xylazine to the fentanyl to create what is known as "tranq."
- Fentanyl is also being hidden in other powder drugs such as cocaine and heroin and, to a lesser extent, methamphetamine.
- Users often take these drugs without knowing they contain fentanyl, which greatly increases the risk of poisoning.
- Fake prescription pills containing fentanyl present an extreme danger. Most of these fake pills are made to look nearly identical to real prescription pills, such as oxycodone (M30, Percocet); hydrocodone

(Vicodin); or alprazolam (Xanax) – the fentanyl content in these fake pills is known only after laboratory analysis.

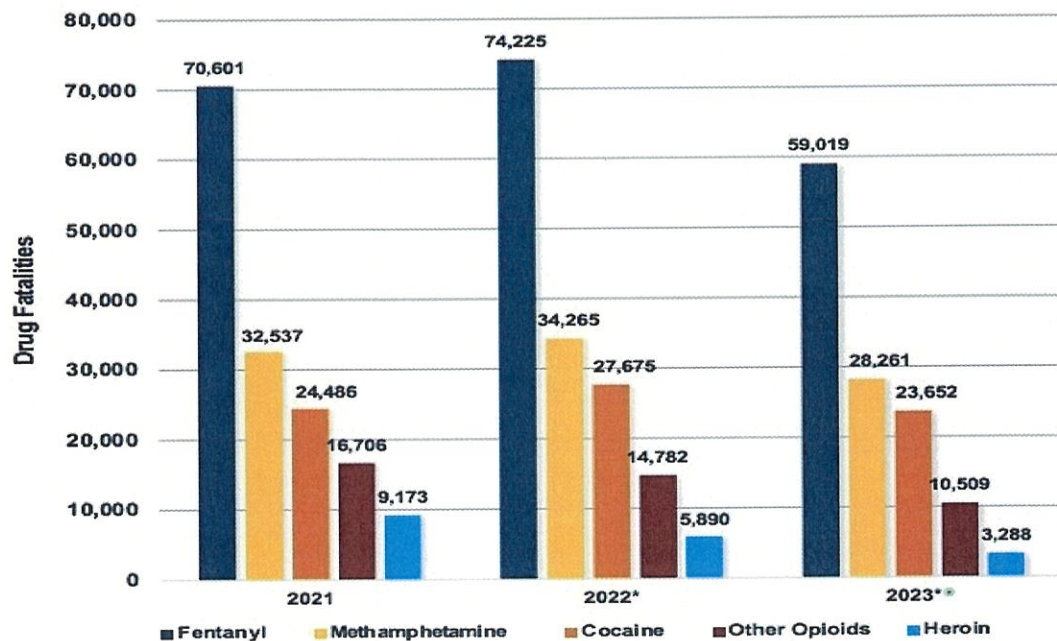
- In 2023, DEA forensic laboratory analysis showed that approximately 7 in 10 fake pills contain a potentially deadly dose of fentanyl (approximately 2 milligrams).

Top Cause of Drug Deaths:

According to the Centers for Disease Control (CDC) study of “Top 5 Drug Causes of Death in the United States between 2021-2023”, Fentanyl was the leading drug that caused death with fatalities caused by fentanyl more than double the amount as compared to methamphetamine, cocaine and heroin.

Figure 6: Top 5 Drugs Responsible for U.S. Fatalities

CDC 2021-2023 TOP 5 DRUG CAUSES OF DEATH



*provisional data | *CDC continues to receive 2023 data

Source: National Center for Health Statistics, Centers for Disease Control and Prevention

Note: Deaths involving more than one substance are reflected in the totals for all substances cited in the decedent's toxicology report.

Hawaii Overdose Data:

Hawaii related data from the HIDTA National Emerging Threat Initiative showed that while overdose deaths in Honolulu County were the highest in the state, when compared to deaths per 100,000 people, rural Kauai County led the state with 20 deaths per 100,000 people.

Hawaii	Hawaii	Hawaii	110	10.87	552
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HIDTA	State	County	Deaths	Rate	Rank
Hawaii	Hawaii	Honolulu	822	16.71	428
Hawaii	Hawaii	Kauai	71	19.55	375

Source: 2023 HIDTA Counties Average Annual Overdose Deaths 2018-2022

XYLAZINE:



According to the DEA's 2024 National Drug Threat Assessment, Xylazine is not a synthetic opioid, but its growing prevalence in fentanyl mixtures complicates the reversal of opioid overdoses with naloxone and is responsible for widespread reports of injection site infections and necrosis (soft tissue death) resulting in amputations. [Note: Xylazine is a sedative, not an opioid. It is used as an anesthetic in veterinary medicine, primarily on large animals, and is approved by the U.S. Food and Drug Administration (FDA) only for veterinary use.] The DEA said the following about fentanyl:

- Xylazine is being added to fentanyl by drug traffickers, a mixture known as "tranq" in illicit drug markets, increasing the risk of death from fentanyl poisoning.

- Law enforcement mainly encounters xylazine in mixtures with fentanyl or other opioids, like heroin, but it has also been seen alone and in mixtures with cocaine and other illicit drugs.
- DEA forensic laboratories report that the number of heroin and fentanyl exhibits adulterated with xylazine is increasing and spreading outside traditional white powder heroin and fentanyl markets in the eastern United States, where xylazine has been present for several years. Xylazine is most prevalent in drug samples seized in New Jersey, Virginia, Ohio, Maryland, and Florida, but has been identified in seized drug samples in every U.S. state, plus the District of Columbia and Puerto Rico

Furthermore, in a study of fentanyl samples submitted for analysis by the DEA Laboratory, the DEA found that number of fentanyl samples containing xylazine generally showed an upward trend with samples submitted increasing (especially in powdered fentanyl samples). Furthermore, the DEA commented in its March 2023 Public Safety Alert that “Xylazine is making the deadliest drug threat our country has ever faced, fentanyl, even deadlier.”

Figure 13: DEA Fentanyl Profiling Program Analysis of Xylazine Content in Fentanyl Samples, 2021-2023

FORM	YEAR	NUMBER OF FENTANYL SAMPLES CONTAINING XYLAZINE	PERCENTAGE OF TOTAL FENTANYL SAMPLES CONTAINING XYLAZINE
 PILL	2021	162	4.4
	2022	452	7.7
	2023	332	5.2
 POWDER	2021	1,241	19.0
	2022	1,847	24.3
	2023	2,067	27.3

Source: DEA Special Testing and Research Laboratory, query date April 26, 2024



Xylazine is making the deadliest drug threat our country has ever faced, fentanyl, even deadlier.

DEA Public Safety Alert March 2023

Hawaii Xylazine Deaths:

Drug Deaths by Category	2018	2019	2020	2021	2022	2023
Fentanyl	9	19	28	48	79	107
Heroin	15	19	21	19	12	14
Opioid	44	34	26	38	38	32
Meth	162	182	201	207	210	222
THC	12	14	0	2	26	24
Xylazine						4
Cocaine	18	16	16	16	30	29
Other Rx	47	62	49	52	60	59
Non-Rx	10	5	9	16	23	22
Ethanol	19	33	22	22	28	35

Hawaii Xylazine death data showed that only four (4) deaths related to xylazine occurred in Hawaii in 2023. This was the lowest amount in drug deaths by category of drug with fentanyl and methamphetamine listed as the leading causes of drug deaths in Hawaii in 2023. However, it is important to note that the Hawaii Department of Health recognized in its Hawaii Opioid Action Plan that,

“Hawaii often experiences a delayed impact in relationship to national trends in substance use. It would be a mistake to assume the difference in trend patterns between Hawaii and the contiguous U.S. means that there is no need to be vigilant.”

Consequently, under this perspective, Hawaii can expect that Xylazine related deaths will likely rise in the future.

DISCUSSION WITH HIDTA EXECUTIVE BOARD MEMBERS:

Second, the DLE studied the temperature of law enforcement and criminal justice officials on their temperature over the legalization of xylazine testing strips in Hawaii. On November 12, 2024, a discussion occurred on the topic of Xylazine test strips at the Hawaii HIDTA Executive Board meeting. This meeting was attended by the local heads of local, state, and federal law enforcement and prosecuting attorneys.

During the meeting, law enforcement and criminal justice leaders asked about the effectiveness of fentanyl testing strips that were made legal in Hawaii during

the 2023 legislative session. Leaders understood that xylazine testing strips could save a person's life, but also conceded that this harm reduction proposal was neither a replacement for the need for treatment nor the equally important need for accountability and consequences when drug users break the law. Additionally, leaders asked what the effectiveness or accuracy of the testing strips were. Moreover, leaders also recommended that a potential future legislative proposal might be made better, if language that immunize those who import and/or distribute xylazine testing strips be included in the bill to immunize those acting in good faith from future lawsuits.

If the legislature were to consider immunizing those who act in good faith with xylazine testing strips to be immune from a lawsuit, then the legislature could consider the similar language in section 329E-2 (b) Immunity dealing with administration of naloxone or opioid antagonists which provides:

(b) A health care professional or pharmacist who, acting in good faith and with reasonable care, prescribes, dispenses, or distributes an opioid antagonist pursuant to this chapter shall not be subject to any criminal or civil liability or any professional disciplinary action for:

(1) Prescribing, dispensing, or distributing the opioid antagonist;
and

(2) Any outcomes resulting from the eventual administration of the opioid antagonist.

(c) Notwithstanding any other law to the contrary, any person may lawfully possess an opioid antagonist.

(d) A person who, acting in good faith and with reasonable care, administers an opioid antagonist to another person whom the person believes to be suffering an opioid-related drug overdose shall be immune from criminal prosecution, sanction under any professional licensing law, and civil liability for acts or omissions resulting from the administration.

[§329-XX] Immunity.

(b) A ~~health care professional or pharmacist~~ person who, acting in good faith and with reasonable care, ~~prescribes, dispenses, or distributes an opioid antagonist~~ xylazine testing strip pursuant to this chapter shall not be subject to any criminal or civil liability or any professional disciplinary action for:

(1) ~~Prescribing, dispensing, or distributing the opioid antagonist~~ xylazine testing strip; and

(2) Any outcomes resulting from the ~~eventual administration of the opioid antagonist~~ xylazine testing strip.

(c) Notwithstanding any other law to the contrary, any person may lawfully possess an opioid antagonist xylazine testing strip.

~~(d) A person who, acting in good faith and with reasonable care, administers an opioid antagonist to another person whom the person believes to be suffering an opioid-related drug overdose shall be immune from criminal prosecution, sanction under any professional licensing law, and civil liability for acts or omissions resulting from the administration.~~

HARM REDUCTION

According to the North Carolina Harm Reduction Coalition, “Harm reduction is a way of preventing disease and promoting health that “meets people where they are” rather than making judgments about where they should be in terms of their personal health and lifestyle. Accepting that not everyone is ready or able to stop risky or illegal behavior, harm reduction focuses on promoting scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors, including condom distribution, access to sterile syringes, medications for opioid dependence such as methadone and buprenorphine, and overdose prevention.”

The legalization of test strips for drug use minimizes potential harm from drug use by allowing drug users to test their drugs before using them. Ultimately, allowing the user a choice whether to use the drug, or even reduce the dosage. This allows the user to know what they are taking beforehand and informs their decision to use the drug.

PAST LEGALIZATION OF FENTANYL TEST STRIPS

In 2023, the 2023 Session of the Legislature acted to pass Senate Bill 671 and sent the measure to Governor Green for approval. Subsequently, on June 11, 2023, Act 111 was passed into law legalizing fentanyl test strips to be used in Hawaii by excluding fentanyl test strips from the definition of drug paraphernalia in the Uniform Controlled Substances Act and defining a fentanyl test strip. Act 111 (2023) was lauded as a harm reduction measure.

Xylazine test strips are similar in appearance and use. Moreover, if the Legislature wanted to act to make Xylazine test strips legal for use in Hawaii, it could similarly do the same with Xylazine test strips by amending chapter 329, HRS, as follows:

First define a Xylazine Test Strip:

"Xylazine Test Strip " means a small strip of paper that can detect the presence of xylazine in:

- (1) Different kinds of drugs, including cocaine, methamphetamine, heroin; and
- (2) Different drug forms, such as pills, powder, and injectable drugs.

Then exclude Xylazine Test Strips from the definition of "Drug Paraphernalia" in section 329-1, HRS.

"Drug paraphernalia" does not include fentanyl and xylazine test strips.

CONCLUSION

The DLE's study shows that national and local fentanyl overdoses are increasing. However, with Xylazine specific deaths in 2023 were low (4).

According to the DOH, Hawaii normally sees national trends in drug use at a point in time later than that of the rest of the United States. Consequently, it would make sense to prepare for an increasing trend in xylazine deaths in Hawaii now, in anticipation that the national trend will imminently reach Hawaii.







2025-0013 Xylazine Testing Strips Annual Report to 2025 Legislature

Final Audit Report

2025-01-13

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