

An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane

A Drug
Policy
Alliance
release.

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health and human rights.

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Table of Contents

2	Executive Summary
5	Background: Overdose Crisis and Response
5	Increasing Rates of Opioid Overdose
6	Response to Opioid Overdose Crisis
8	Drug-Induced Homicide: A Legal Overview
8	Federal and State Laws
9	Legislative History
9	Legal Challenges
11	Drug-Induced Homicide: A Current Snapshot
11	Increasing Prosecutions
15	New Legislation
16	Fentanyl
18	Profile: Michael Millette
20	Regional Trends: Midwest
21	Wisconsin
23	Ohio
26	Illinois
28	Minnesota
29	Regional Trends: The Northeast
30	Pennsylvania
31	New York
32	New Jersey
33	Regional Trends: The South
34	Tennessee
35	Louisiana
36	North Carolina
37	A Parent's Perspective: Peter Brunn in His Own Words
39	Prosecutions of Drug-Induced Homicide Will Not Curb Overdose Deaths
39	Drug-Induced Homicide Prosecutions Will Neither Deter Drug Selling nor Reduce Overdose Death Rates
40	Drug-Induced Homicide Laws Undermine 911 Good Samaritan Laws
41	Drug-Induced Homicide Laws Perpetuate the Harms of Criminalization
41	Drug-Induced Homicide Laws Foster Poor Prosecutorial Discretion
43	Profile: Amy Shemberger
47	Enforcement of Drug-Induced Homicide Laws Has the Potential to Exacerbate Racial Disparities in the Criminal Justice System
48	Profile: James Linder
51	Drug-Induced Homicide Laws Reduce Access to Needed Services
52	Drug-Induced Homicide Prosecutions Waste Resources that Could be Spent on Effective Interventions Proven to Reduce Overdose Deaths
52	Overdose Prevention Education, Good Samaritan, and Naloxone Access
52	Safe Consumption Sites
53	Drug Checking
54	Opioid Agonist Therapy
54	Heroin-Assisted Treatment
54	Promising Research
55	Conclusion
56	Appendix
66	Endnotes

Executive Summary

The country is in the middle of a tragic increase in drug overdose deaths. Countless lives have been lost – each one leaving an irreparable rift in the hearts and lives of their families and friends. These tragedies are best honored by implementing evidence-based solutions that help individuals, families, and communities heal and that prevent additional avoidable deaths. This report examines one strategy that the evidence suggests is intensifying, rather than helping, the problem and calls for leaders to turn towards proven measures to address the increasing rates of overdose deaths.

In the 1980s, at the height of the draconian war on drugs, the federal government and a host of states passed “drug-induced homicide” laws intended to punish people who sold drugs that led to accidental overdose deaths with sentences equivalent to those for manslaughter and murder. For the first 15-20 years, these laws were rarely used by police or prosecutors, but steadily increasing rates of drug overdose deaths across the country have led the law enforcement community to revive them. Currently, 20 states – Delaware, Colorado, Florida, Illinois, Kansas, Louisiana, Michigan, Minnesota, New Hampshire, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, West Virginia, Wisconsin, and Wyoming – have drug-induced homicide laws on the books. A number of other states, while without specific drug-induced homicide statutes, still charge the offense of drug delivery resulting in death under various felony-murder, depraved heart, or involuntary or voluntary manslaughter laws. These laws and prosecutions have proliferated despite the absence of any evidence of their effectiveness in reducing drug use or sales or preventing overdose deaths. In fact, as this report illustrates, these efforts exacerbate the very problem they seek to remediate by discouraging people who use drugs from seeking help and assistance.

Although data are unavailable on the number of people being prosecuted under these laws, media mentions of drug-induced homicide prosecutions have increased substantially over the last six years. In 2011, there were 363 news articles about individuals being charged with or prosecuted for drug-induced homicide, increasing over 300% to 1,178 in 2016.

Based on press mentions, use of drug-induced homicide laws varies widely from state to state. Since 2011, midwestern states Wisconsin, Ohio, Illinois, and Minnesota have been the most aggressive in prosecuting drug-induced homicides, with northeastern states Pennsylvania, New Jersey, and New York and southern states Louisiana, North Carolina, and Tennessee rapidly expanding their use of these laws. Further signaling a return to failed drug war tactics, in 2017 alone, elected officials in at least 13 states – Connecticut, Idaho, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New York, Ohio, South Carolina, Tennessee, Virginia, and West Virginia – introduced bills to create new drug-induced homicide offenses or strengthen existing drug-induced homicide laws.

Prosecutors and legislators who champion renewed drug-induced homicide enforcement couch the use of this punitive measure, either naively or disingenuously, as necessary to curb increasing rates of drug overdose deaths. But there is not a shred of evidence that these laws are effective at reducing overdose fatalities. In fact, death tolls continue to climb across the country, even in the states and counties most aggressively prosecuting drug-induced homicide cases. As just one example, despite ten full-time police officers investigating 53 potential drug-induced homicide cases in Hamilton County, Ohio in 2015, the county still recorded 100 more opioid-related overdose deaths in 2016 than in 2015.

This should be unsurprising. Though the stated rationale of prosecutors and legislators throughout the country is that harsh penalties like those associated with drug-induced homicide laws will deter drug selling, and, as a result, will reduce drug use and related harms like overdose, we have heard this story before. Drug war proponents have been repeating the deterrence mantra for over 40 years, and yet drugs are cheaper, stronger, and more widely available than at any other time in US history. Supply follows demand, so the supply chain for illegal substances is not eliminated because a single seller is incarcerated, whether for drug-induced homicide or otherwise. Rather, the only effect of imprisoning a drug seller is to open the market for another one. Research consistently shows that neither increased arrests nor increased severity of criminal punishment for drug law violations results in less use (demand) or sales (supply). In other words, punitive sentences for drug offenses have no deterrent effect.

Unfortunately, the only behavior that is deterred by drug-induced homicide prosecutions is the seeking of life-saving medical assistance. Increasing, and wholly preventable, overdose fatalities are an expected by-product of drug-induced homicide law enforcement. The most common reason people cite for not calling 911 in the event of an overdose is fear of police involvement. Recognizing this barrier, 40 states and the District of Columbia have passed “911 Good Samaritan” laws, which provide, in varying degrees, limited criminal immunity for drug-related offenses for those who seek medical assistance for an overdose victim. This public health approach to problematic drug use, however, is rendered useless by enforcement of drug-induced homicide laws.

People positioned to save lives are unlikely to call 911 if they fear being charged with murder or manslaughter. Jennifer Marie Johnson called 911 when her husband overdosed after she gave him methadone; she is currently serving six years in Minnesota prison for drug-induced homicide. Erik Scott Brown received an enhanced sentence of 23 years in federal prison partly because he failed to call 911 after a friend, whom he had supplied with one tenth of a gram of heroin, fatally overdosed. According to his testimony, the reason he did not call 911 was because drugs were present at the scene. Prosecutors – by their own admissions – want to make “examples” of these types of cases. But elevating punishments for drug-induced homicide charges has a chilling effect on seeking medical assistance and, as a result, leads to more, not fewer, avoidable overdose fatalities.

This is especially true when police and prosecutors widely abuse their discretion in investigating and prosecuting drug-induced homicide cases. The vast majority of charges are sought against those in the best positions to seek medical assistance for overdose victims – family, friends, acquaintances, and people who sell small amounts of drugs, often to support their own drug addiction. Despite police and prosecutor promises to go after upper echelon drug manufacturers and distributors, that rarely happens. Out of the 32 drug-induced homicide prosecutions identified by the New Jersey Law Journal in the early 2000s, 25 involved prosecution of friends of the decedent who did not sell drugs in any significant manner. After analyzing the 100 most recent cases of drug-induced homicide in southeastern Wisconsin (as of February 2017), Wisconsin’s Fox6 reported that nearly 90% of those charged were friends or relatives of the person who died, or the lowest people in the drug

supply chain, who were often selling to support their own substance use disorder. A *Chicago Tribune* review of drug-induced homicide cases between 2011 and 2014 in various Illinois counties showed that the defendant was typically the last person who was with the person who overdosed. Law enforcement must be held accountable for this appalling misuse of discretion; particularly when it discourages the seeking of medical care and wastes resources that could otherwise be spent on interventions that have actually been proven successful at reducing overdose deaths.

Unchecked police and prosecutorial discretion in drug-induced homicide cases is particularly ominous given the severity of sentences and the racist history of drug war enforcement. Although rates of drug use and selling are comparable across racial lines, black and Latino people are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than are white people. When, in response to the overdose crisis, Maine Governor Paul Le Page states that “black dealers” and “guys with the name D-Money, Smoothie, Shifty” are the root of the problem by bringing drugs from places like Brooklyn into his rural state, he lays it bare. Most elected officials and prosecutors advocating a punishment-oriented approach to a public health crisis are more careful with their language than Le Page – targeting “pushers” and “those people” – but the implication is the same.

Enforcement of drug war policies has historically targeted black and Latino communities, and drug-induced homicide prosecutions appear to follow this pattern. While comprehensive data are not available, the district attorney of one predominantly white suburban county in Illinois with a black population of only 1.6% has charged four black men from Chicago with drug-induced homicide (making up 35% of the total prosecutions), and one prosecutor in Minnesota appears to have charged predominately black people with drug-induced homicide. Though we cannot draw any conclusions from these sparse facts, if law enforcement utilizes drug-induced homicide like it has other tools of the drug war, we can reasonably expect that the result will be future cases like James Linder’s, a black man from Chicago who is serving 28 years in federal prison after being sentenced by an all-white jury in rural Illinois.

Executive Summary, cont.



Unfortunately, the harms of a highly punitive response to drug use and sales expand far beyond the effects of the actual punishment. Indeed, criminalizing people who sell and use drugs, through means like drug-induced homicide charges, amplifies the risk of fatal overdoses and diseases by increasing stigma and marginalization and driving people away from needed medical care, treatment, and harm reduction services. On the other hand, proven strategies are available to reduce the harms associated with drug misuse, treat dependence and addiction, improve immediate overdose responses, enhance public safety, and prevent fatalities. These strategies include expanding access to the life-saving medicine naloxone and training in how to administer it; enacting and implementing legal protections that encourage people to call for medical help for overdose victims; training people how to prevent, recognize, and respond to an overdose; increasing access to opioid agonist treatment such as methadone and buprenorphine, and to other effective, non-coercive drug treatments; authorizing drug checking and safe consumption sites; and improving research on promising drug treatments. Each of these strategies has evidence to support its effectiveness. Drug-induced homicide laws have none.

They have not proven successful at either reducing overdose deaths or curtailing the use or sale of illegal drugs. And yet, ironically, prosecutors and legislators wield this punitive sword with impunity. They are not required to show results in support of their faulty rationale, and they are not held accountable for utterly wasted resources. We simply cannot let our elected officials off the hook that easily anymore. Not when it could be your child, friend or, simply, fellow human being, who dies from a drug overdose or is locked up for murder due to our elected officials' failures to embrace proven, life-saving public health interventions in favor of wasteful, destructive punishments.

Background: Overdose Crisis and Response

Increasing Rates of Opioid Overdose

In 2015 (the most recent year for which complete data are available), drug overdoses accounted for over 52,000 U.S. deaths.¹ Provisional data for 2016 put the number of overdose deaths at over 64,000 – a staggering 22% increase from the year before.² From 2000 to 2015 more than half a million people died from drug overdoses.³ The drug overdose death rate increased significantly from 12.3 per 100,000 people in 2010 to 16.3 in 2015.⁴ Opioids – prescription and illicit – are the main drivers of increases in drug overdose deaths over the past 15 years. Opioids are a class of drugs that include the illicit drug heroin as well as the legal prescription pain medications oxycodone (OxyContin™), hydrocodone (Vicodin™), codeine, morphine and others.⁵ Opioids were involved in more than 33,000 deaths in 2015, accounting for six out of every ten fatal overdoses, and representing over a 200% increase since 2000.^{6,7}

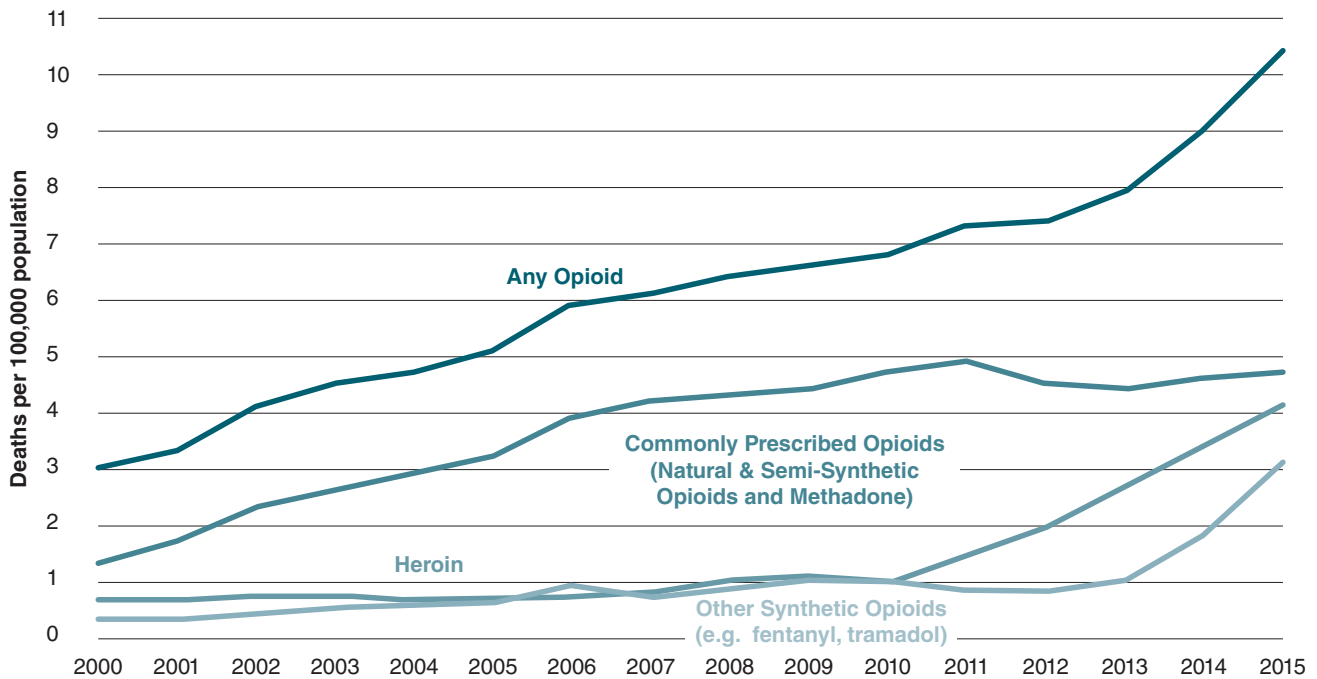
Sales, substance treatment admissions, and overdose death rates related to prescription opioids have increased simultaneously since 1999.⁸ Moreover, from 1999 to 2011, consumption of hydrocodone more than doubled and consumption of oxycodone increased by nearly 500%.⁹ In 2014, almost two million Americans were addicted to prescription opioids.¹⁰ In 2015, more than 15,000 people died from overdoses involving prescription opioids, quadrupling the 1999 rate.¹¹

Beginning in 2010, heroin overdose fatalities began increasing rapidly across the country while fatal overdoses involving prescription opioids began to level off and even declined slightly between 2011 and 2012.¹² Between just 2010 and 2015, the rate of heroin-related overdose deaths more than quadrupled.¹³ From 2014 to 2015 alone, heroin overdose death rates increased by 20.6%, with nearly 13,000 people dying in 2015.¹⁴ It is important to note, though, that 77% of prescription opioid overdose deaths and 67% of heroin overdose deaths are the result of mixing opioids with other drugs or alcohol.¹⁵

The most recent increases in opioid overdose deaths are attributed to illicitly manufactured fentanyl. While pharmaceutical fentanyl is a synthetic opioid approved for treating severe pain,¹⁶ illicitly manufactured fentanyl is often added to heroin to cut costs while increasing potency.¹⁷ The number of overdose deaths involving synthetic opioids, excluding methadone but including fentanyl, increased by 72% from 2014 to 2015.¹⁸ Roughly 9,500 people died from overdoses involving synthetic opioids other than methadone in 2015.¹⁹ Provisional data from 2016 indicates that drug deaths involving fentanyl more than doubled from 2015 to 2016.²⁰ Along with other synthetic opioids (other than methadone), fentanyl overdoses resulted in 20,145 deaths last year, significantly above the 15,446 attributed to heroin or the 14,427 attributed to opioid pills alone.²¹

Background: Overdose Crisis and Response, cont.

Figure 1. CDC Data—Overdose Deaths Involving Opioids, United States, 2000-2015.



Response to Opioid Overdose Crisis

Whereas past opioid epidemics were seen primarily in terms of low-income African Americans developing an addiction to heroin, the current epidemic is perceived as disproportionately affecting white, middle class people who misuse pharmaceutical opioids.²² Moreover, some of the greatest increases in heroin use have occurred in demographic groups with historically low rates: women, the privately insured, and people with higher incomes.²³

The result, the *New York Times* has noted, is a “gentler drug war.”²⁴ Some Republican legislators who long championed punitive drug war policies, for example, now propose more humane responses. There has been a renewed emphasis on treatment, expanded access to the overdose antidote naloxone, the passage of Good Samaritan laws that offer protection to those calling for help during an overdose, and, recently, serious discussions of previously-taboo harm reduction interventions, such as supervised consumption services. Nonetheless, drug war strategies persist. Despite media attention elsewhere, use of the criminal justice system continues to dominate local, state, and federal responses to increasing rates of opioid use and overdose.

The Office of National Drug Control Policy has promoted prescription drug monitoring programs and coordinated federal-state crackdowns on pain physicians, patients, and illicit sellers.²⁵ The Drug Enforcement Administration (DEA) has aggressively investigated and prosecuted pain physicians for prescribing practices viewed as outside the scope of legitimate medical practice.²⁶ The Obama administration prioritized “law enforcement efforts to decrease pill mills, drug trafficking and doctor shopping” beginning in 2011.²⁷ States have mirrored the federal response to combatting prescription opioid misuse. Unsurprisingly, these responses have been wholly ineffective at reducing rates of prescription opioid use or overdose.

Moreover, as people addicted to opioids transition to or enter the illicit heroin market, they are met with the same “arrest and incarcerate” policies that have been widely recognized as ineffective at reducing drug use, causing high rates of relapse, recidivism and re-incarceration.²⁸ Indeed, the criminalization of drug use is a major driver of incarceration in the United States. Each year, U.S. law enforcement makes nearly 1.5 million drug arrests – more arrests than for all violent crimes combined. The overwhelming majority – more than 80% – are for possession only and involve no violent offense.²⁹ In 2015, nearly 40% of drug arrests (more than 570,000 people) were for marijuana possession, and 45% (more than 674,000 people) were for possession of drugs other than marijuana.³⁰ Just 16% of all drug arrests were for sale or manufacture of any drug.³¹ Clearly, the drug war lumbers on notwithstanding widespread disillusionment with its persistent failures at reducing problematic drug use and protecting public health and safety. President Trump and Attorney General Jeff Sessions can be expected to ratchet it up even further.³²

As overdose rates continue to rise, so do the proportion of policy proposals focused on punishment and retribution instead of public health and safety. Elected officials unfamiliar with, or resistant to, harm reduction, prevention, and treatment interventions are introducing punitive, counter-productive legislative measures in a misguided effort to reduce overdose fatalities. Though their rhetoric may be compassionate, their policies are anything but. They are adopting a law and order approach to solve a public health crisis, with devastating consequences.

For instance, before 2004, 29 states had permitted people with substance use disorder to be involuntarily committed to treatment, with most of those laws passing in the 1980s.³³ Since 2004, however, as the overdose crisis started its upswing, an additional eight states³⁴ have passed involuntary commitment laws that permit the institutionalization of people who use drugs without their consent, and states with old laws are reinvigorating their enforcement. Pennsylvania, New Jersey, Alabama, Maryland, New Hampshire, and Washington have either introduced involuntary commitment laws for the first time or are proposing changes to existing laws in order to make commitment less difficult.³⁵ In New Hampshire and Washington, the bills provide for involuntary commitment specifically as applied to opioid use.³⁶ In addition, since just November 2015, 25 states have passed legislation to increase various fentanyl-related penalties.³⁷

Perhaps most draconian of all, prosecutors are increasingly charging people who supply the drug that contributes to an overdose death with murder or manslaughter under decades-old drug-induced homicide laws. Politicians are also introducing legislation to establish new drug-induced homicide laws or to increase penalties for drug-induced homicide laws already on the books, with one federal proposal going so far as to call for the death penalty.³⁸

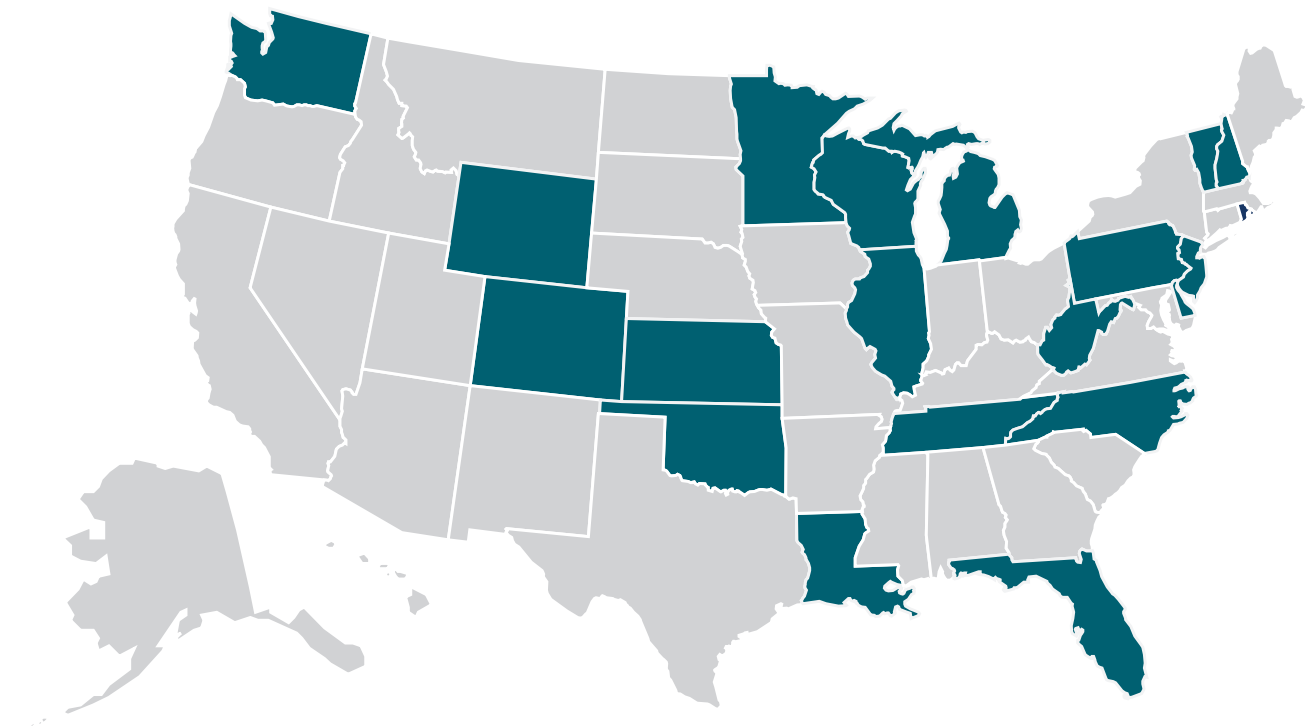
Drug-Induced Homicide: A Legal Overview

Federal and State Laws

“Drug-induced homicide” broadly refers to a criminal offense wherein the illegal manufacture, sale, distribution, or delivery of a controlled substance that causes death results in a specific charge, usually manslaughter or murder. The federal law, passed in 1986 as part of the Controlled Substances Act, provides a penalty of 20 years to life for anyone who dispenses a controlled substance that results in death or serious bodily injury.³⁹ Currently, 20 states⁴⁰ – Colorado, Delaware, Florida, Illinois, Kansas, Louisiana, Michigan, Minnesota, New Hampshire, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Vermont,

Washington, West Virginia, Wisconsin, and Wyoming – also have drug-induced homicide laws on the books that could be used to charge someone who delivers a drug that results in an accidental overdose death (see Appendix A). The Colorado, Rhode Island, and Wyoming laws, however, are limited to those who deliver a controlled substance to a person under the age of 18. State law penalties vary from two years to capital punishment. In six states – Colorado, Florida, Louisiana, Oklahoma, Rhode Island, and West Virginia – the minimum penalty is life in prison. A host of other states, while without specific drug-induced homicide statutes, still charge the offense under various felony-murder, depraved heart, or involuntary or voluntary manslaughter laws (see Appendix A).

Map 1. DIH Laws



Legislative History

Evidence of the legislative intent behind these statutes is scarce. From the legislative history that does exist, however, we know that some state legislatures emphasized the importance of punishing major drug suppliers. The Vermont statute penalizing the sale or dispensation of a drug resulting in death, for instance, explicitly states: “Many people who become addicted to illegal drugs resort to small-scale sale of drugs to support their addiction. This act is not directed at those people, but rather at the entrepreneurial drug dealers who traffic in large amounts of illegal drugs for profit.”⁴¹ The New Jersey statute was similarly intended to penalize so-called drug “kingpins”:

*[The statute] must target for expedited prosecution and enhanced punishment those repeat drug offenders and upper echelon members of organized narcotics trafficking networks who pose the greatest danger to society. In order to ensure the most efficient and effective dedication of limited investigative, prosecutorial, judicial and correctional resources, it is the policy of this State to distinguish between drug offenders based on the seriousness of the offense, considering principally the nature, quality and purity of the controlled substance and the role of the actor in the overall drug distribution network. It is the intention of the legislature to provide for the strict punishment, deterrence and incapacitation of the most culpable and dangerous drug offenders, and to facilitate the rehabilitation of drug dependent persons.*⁴²

Other states more explicitly focused on the potential deterrent factor of the law, whether applied to “upper echelon” manufacture and distribution or low-level exchanges. In Michigan, one argument in support of the legislation posited that “perhaps friends, acquaintances, and drug dealers alike would think twice about selling or providing drugs to another if faced with life imprisonment should that friend, acquaintance, or customer die.”⁴³

Legal Challenges

Opponents of drug-induced homicide statutes have argued that such laws are unconstitutional, primarily because they are vague with respect to whom the law is intended to cover, the required mental state of the defendant when committing the prohibited act, and the tenuous connection between the delivery of the controlled substance and the host of other factors that often contribute to death. Courts have rejected these challenges, however, largely in efforts to avoid determining the constitutionality of the law. The case of *People v. Boand*⁴⁴ is illustrative.

The defendant in *Boand* first argued the drug-induced homicide statute was unconstitutionally vague because the legislature intended the statute “to stop drug traffickers, the professional drug dealers,” but the law held liable anyone who delivered a controlled substance, even the lowest-level person in a drug supply chain.⁴⁵ The court responded that the plain language of the statute criminalized the “delivery” of drugs and defined “delivery” to include any transfer of a controlled substance whatsoever, so the law was not unconstitutionally vague – the law gave citizens notice that any drug transfer could potentially incur liability.⁴⁶

The defendant next argued the statute was unconstitutionally vague because it did not specify what mental state was required to incur liability (most criminal laws specify a mental state a defendant must have when performing the prohibited act in order to incur liability).⁴⁷ The court responded that the drug-induced homicide statute imposed liability when a death occurred as a result of someone violating the Illinois Controlled Substances Act, and that because that Act prohibited the *knowing* delivery of a drug, the drug-induced homicide statute incorporated the “knowing” mental state as well.⁴⁸ Drug-induced homicide statutes that impose strict liability – that expressly state a defendant will be held liable for the conduct regardless of mental state (even if the conduct was done unintentionally or unwittingly) – have also widely been upheld.⁴⁹

Drug-Induced Homicide: A Legal Overview, cont.

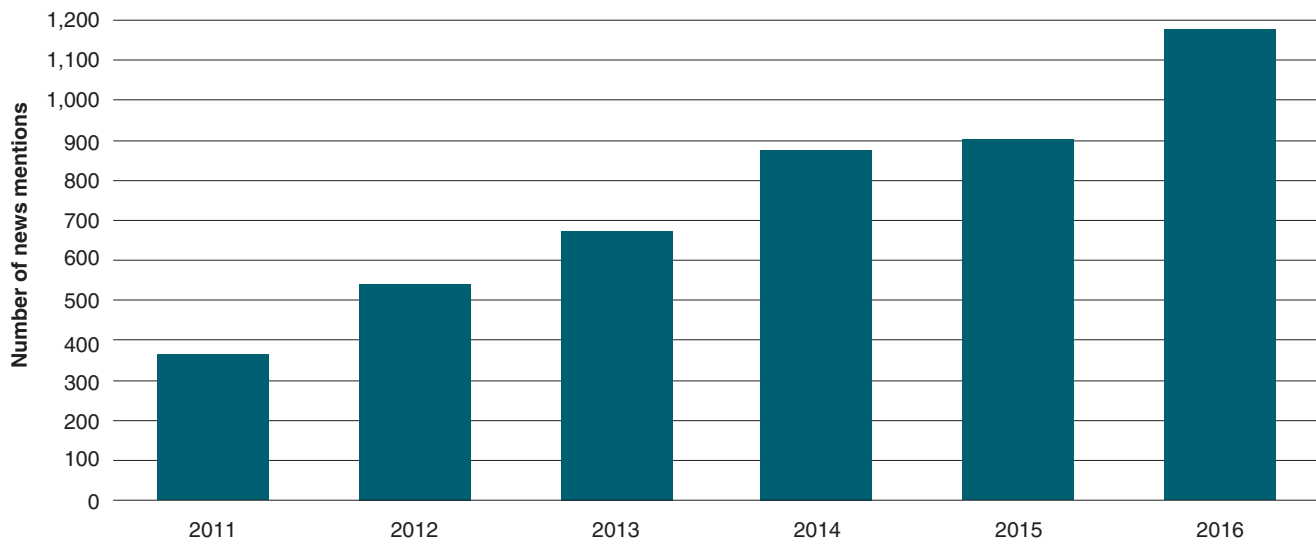
Finally, the defendant argued the statute was unconstitutionally vague because it did not specify how directly the drug delivery had to cause the death in order for the defendant to be held liable.⁵⁰ In other words, the defendant argued that the statute was too vague because a person would not know whether he or she would be held liable for delivery of drugs that were remotely related to a death – say, if the defendant delivered drugs to someone who used them, decided to partake in a dangerous activity while intoxicated, and then died from the activity rather than the drugs themselves.

The court, in response, imputed the causality requirement from the similar felony-murder statute into the drug-induced homicide statute, and held that liability would only be imposed if the delivery of the drugs “proximately caused” the death.⁵¹ Felony murder is a legal doctrine that imposes murder liability for a death that occurs in the commission of a felony, even if the killing is unintentional. Under both felony murder and drug-induced homicide, “proximate cause” refers to an action or event that results directly and foreseeably in a result, sufficiently enough that it can legally be considered the cause of that result. The argument that “proximate cause” is lacking in drug-induced homicide cases is the strongest of the vagueness claims, but the widespread acceptance of the felony-murder doctrine – which often requires a minimal showing of proximate cause, if any – suggests courts would likely not overturn drug-induced homicide statutes on these grounds.⁵²

Though legal challenges like *Boand* and others have been unsuccessful, their failure is not due to meritless arguments. Rather, the doctrine of constitutional avoidance largely shields these statutes from judicial intervention. Under the doctrine of constitutional avoidance, a court faced with an ambiguous statute must read the law to be constitutional if any such interpretation is reasonably plausible, *even if the most natural interpretation is unconstitutional*.⁵³ The *Boand* court, for instance, invoked constitutional avoidance in considering the causation challenge. Even though the most natural reading of the statute contained no proximate cause requirement, the court adopted a less natural, but constitutionally permissible reading instead. Ultimately, courts will try to avoid the constitutional question in deference to the legislature. Judicial review, accordingly, is unlikely to provide wide-scale relief. Instead, legislators will need to focus their efforts on repealing or amending the statutes, prosecutors should not misuse their discretion in charging drug-induced homicide cases, and both should be held accountable if they do not.

Drug-Induced Homicide: A Current Snapshot

Figure 2. News Mentions of Drug-Induced Homicide Prosecutions (2011-2016)



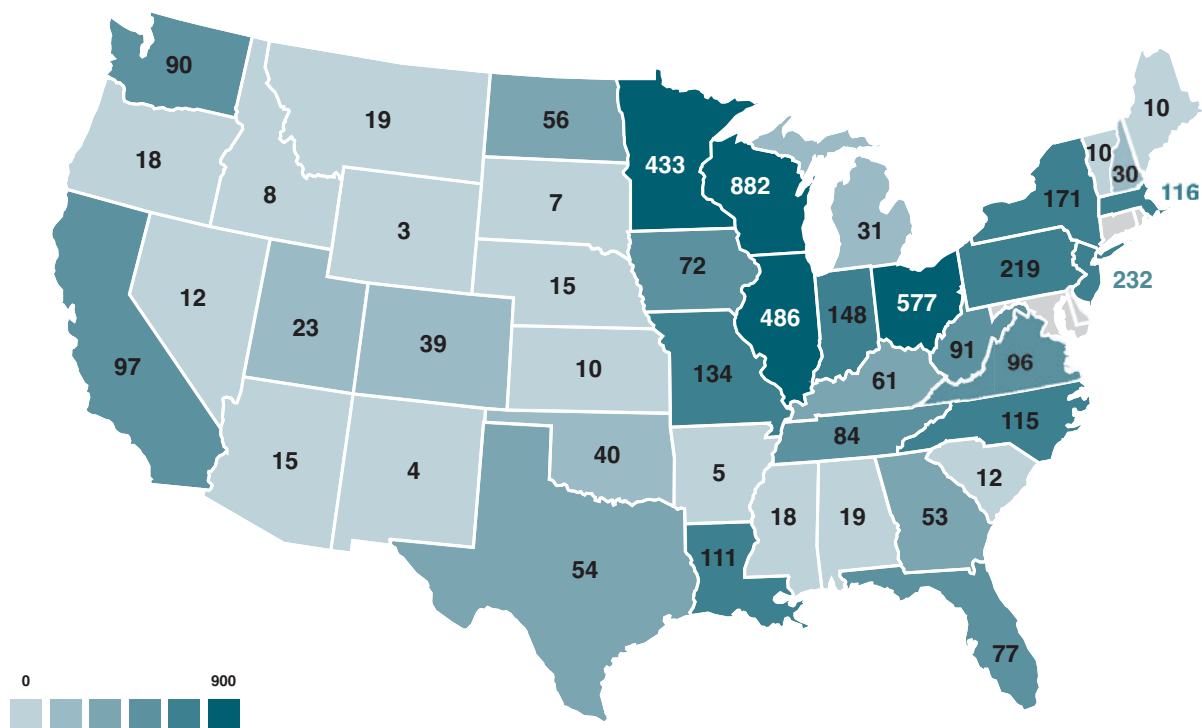
Increasing Prosecutions

Though many drug-induced homicide laws have sat idly on the books since their enactment decades ago, prosecutors are now reinvigorating them with a rash of drug-induced homicide charges in the wake of increasing overdose deaths. Although data are unavailable on the number of people prosecuted under these laws, the Drug Policy Alliance was able to track media mentions of drug-induced homicide prosecutions between 2011 and 2016.⁵⁴ In 2011, there were 363 news articles about individuals charged with or prosecuted for drug-induced homicide, increasing over 300% to 1,178 in 2016.

Based on press mentions, use of drug-induced homicide laws varies widely from state to state. Since 2011, midwestern states Wisconsin, Ohio, Illinois, and Minnesota have been the most aggressive in prosecuting drug-induced homicides, with northeastern states Pennsylvania, New Jersey, and New York and southern states Louisiana, North Carolina, and Tennessee rapidly expanding their use of these laws since 2013.

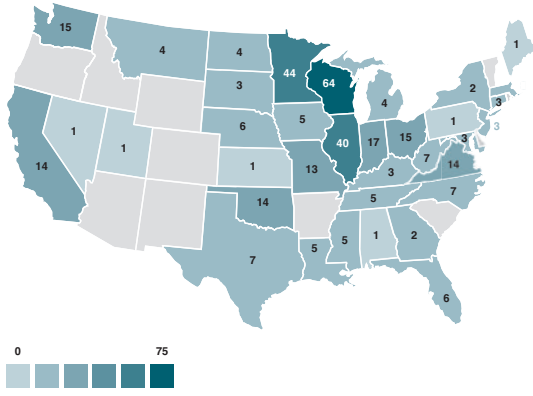
Drug-Induced Homicide: A Current Snapshot, cont.

Map 2. New Mentions of Drug-Induced Homicide Prosecutions by State (2011-2016)

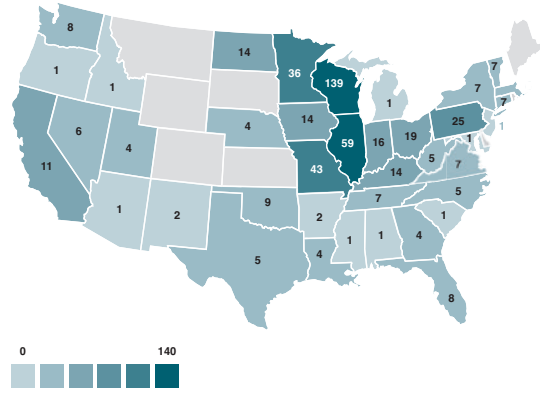


Alabama	19	Iowa	72	Nebraska	15	Rhode Island	N/A
Arizona	15	Kansas	10	Nevada	12	South Carolina	12
Arkansas	5	Kentucky	61	New Hampshire	30	South Dakota	7
California	97	Louisiana	111	New Jersey	232	Tennessee	84
Colorado	39	Maine	10	New Mexico	5	Texas	54
Connecticut	N/A	Maryland	N/A	New York	171	Utah	23
Delaware	N/A	Massachusetts	116	North Carolina	115	Vermont	10
Florida	77	Michigan	31	North Dakota	56	Virginia	96
Georgia	53	Minnesota	433	Ohio	577	Washington	90
Idaho	8	Mississippi	18	Oklahoma	40	West Virginia	91
Illinois	486	Missouri	134	Oregon	18	Wisconsin	882
Indiana	148	Montana	19	Pennsylvania	219	Wyoming	3

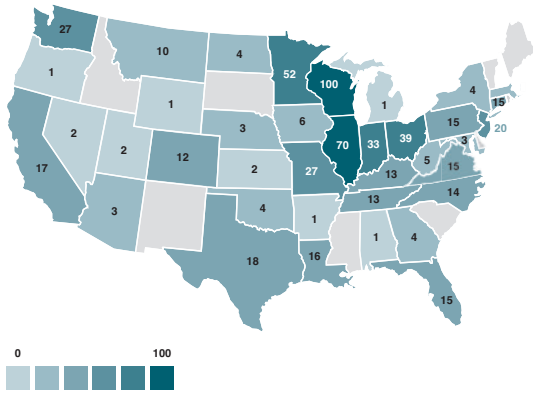
2011



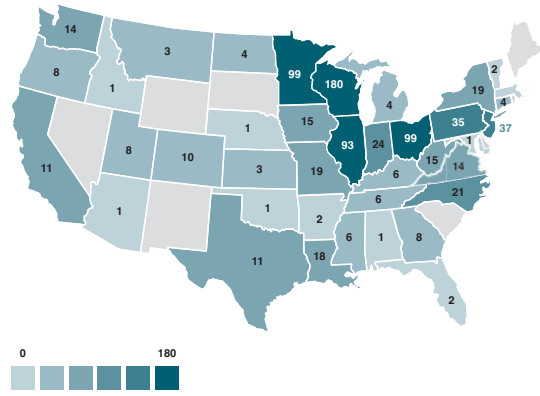
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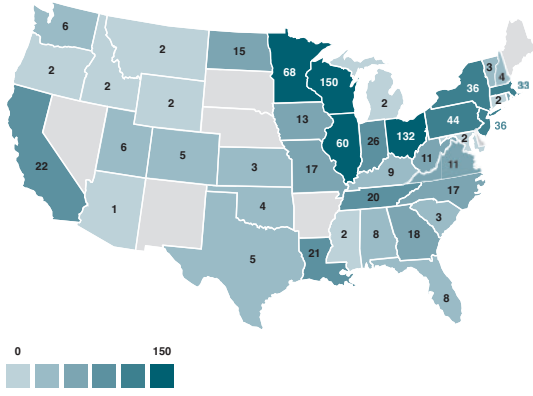
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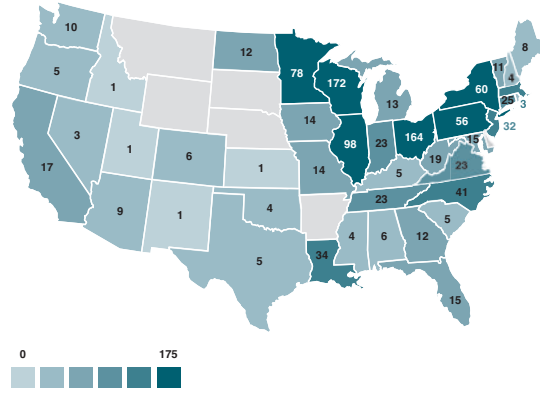
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2015



2016



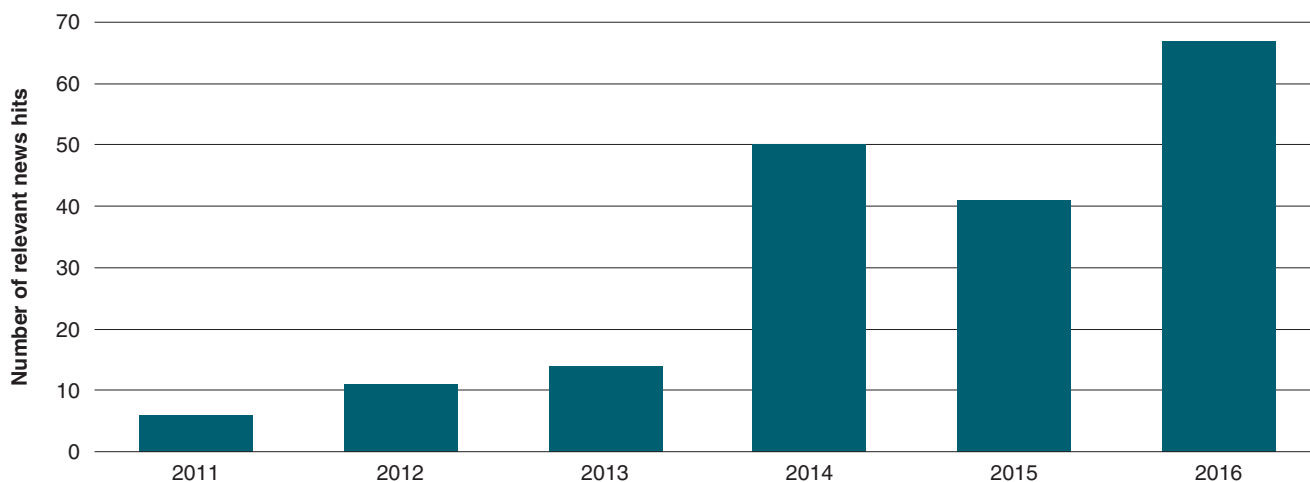
Drug-Induced Homicide: A Current Snapshot, cont.

Prosecutors and other law enforcement officials have also explicitly broadcast their intentions to use drug-induced homicide laws more aggressively. Earlier this year, for example, Lake County, Florida Sheriff Peyton Grinnell recorded a viral video aimed at people who sell drugs in which he warned, “We’re coming for you.”⁵⁵ Throughout the country, law enforcement officials have increasingly spoken about their commitment to using these laws whenever they can connect a seller or provider to a specific overdose death. In New York, Erie County District Attorney John Flynn said, “If I can prove it, I will charge a drug dealer with murder,”⁵⁶ while Sue Burggraf of the Minnesota Bureau of Criminal Apprehension told a local newspaper, “We’re treating these overdose deaths as homicide investigations...When we find those drug dealers, we intend to charge them with third-degree murder.”⁵⁷ Since 2011, the number of news articles about law enforcement officials’ general intentions to pursue drug-induced homicide charges has increased from six in 2011 to 67 in 2016.

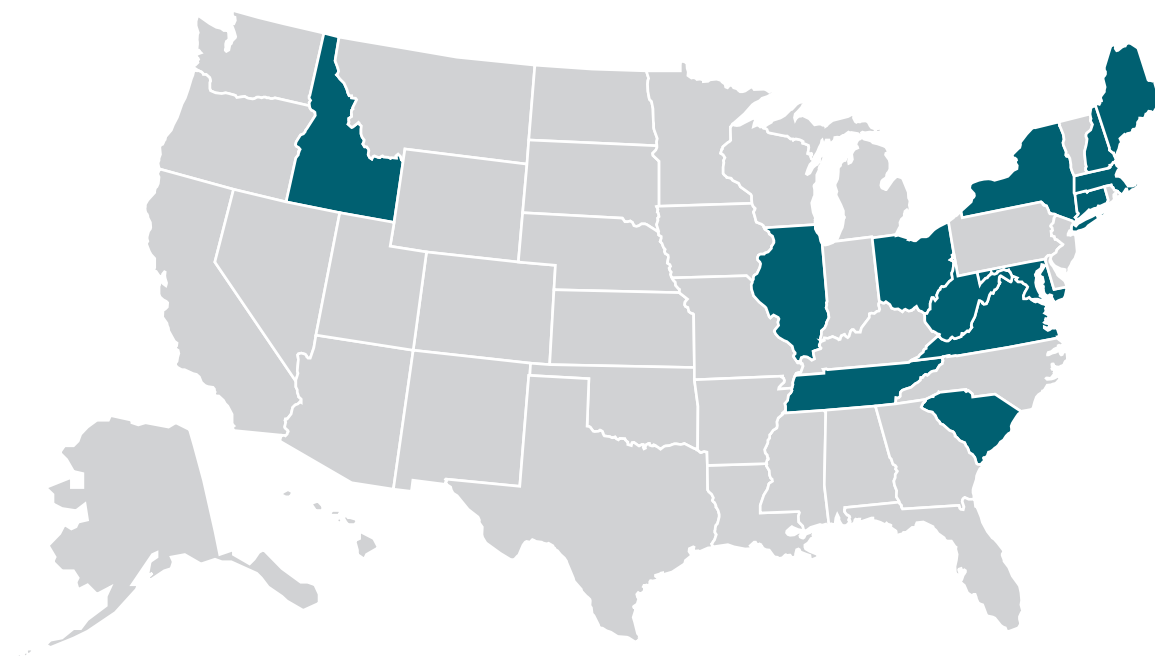


In a recent YouTube public service announcement, Lake County, Fla. Sheriff Peyton Grinnell warns heroin suppliers they could be charged with murder if their buyers overdose.

Figure 3. News Mentions of Law Enforcement Intent to Use Drug-Induced Homicide Laws



Map 3. Pending Legislation



New Legislation

In addition to the increasing frequency of media mentions of prosecutions for drug-induced homicide, elected officials are introducing legislative proposals for the creation of new drug-induced homicide laws or to strengthen those already on the books. Though the bills have not yet passed, in 2017 alone, legislators in Connecticut, Idaho, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New York, Ohio, South Carolina, Tennessee, Virginia, and West Virginia all introduced bills to create or increase penalties for a drug-induced homicide offense (see Appendix A).

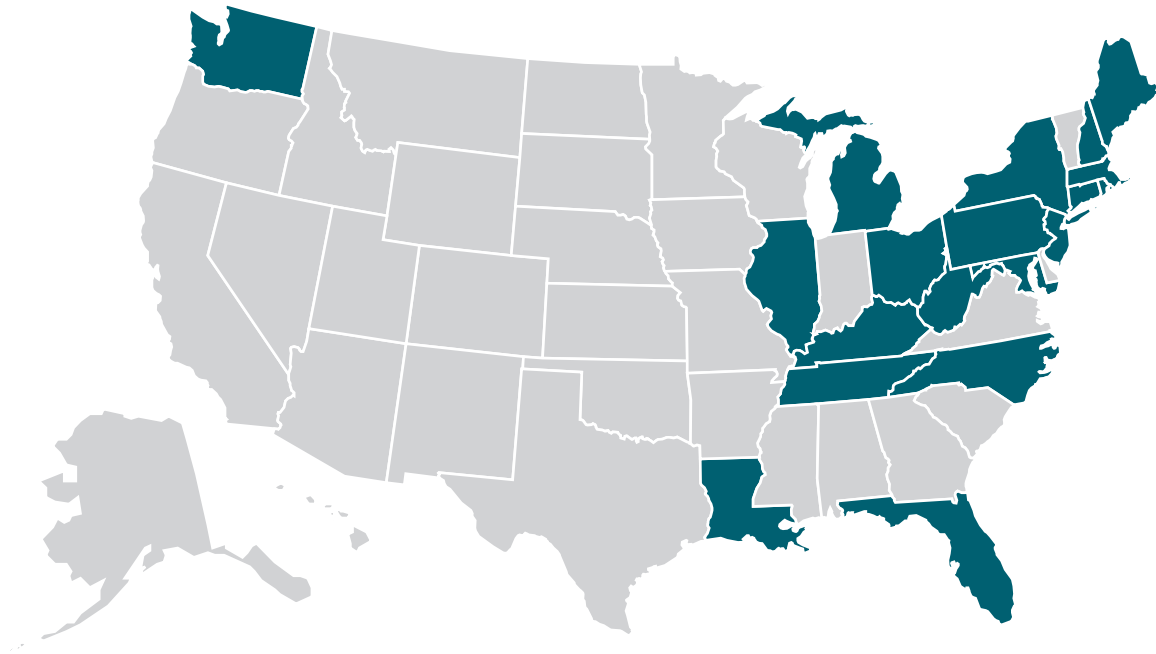
It is unsurprising that nine out of the 13 states that introduced legislation saw a statistically significant increase in the number of overdoses from 2014 to 2015 (again, the most recent year for which we have complete data). Policymakers are understandably alarmed at the overdose crisis with which they are now confronted. The public is calling for help and

solutions. The rationale for these laws is misguided, however, and the laws themselves offer little hope for actually reducing overdose deaths.

Indeed, the intent of these proposed laws, though couched as a “response” to the overdose crisis,⁵⁸ is similar to that articulated for those already on the books: deterrence and incapacitation. In support of Senate Bill 639 in Illinois, which expands the current offense of drug-induced homicide to include delivery of a controlled substance outside the state if the resulting death occurs in Illinois, State Senator Bill Haine stated: “This measure is about deterrence and making it clear we will not stand for illicit drug dealers providing lethal narcotics in our state.”⁵⁹ Referring to H.B. 5367 in Connecticut, Representative Kurt Vail said, “I want to deter people from selling... and taking advantage... Because [dealers are] the ones bringing it into the streets. And then maybe when we get one dealer, we can get someone above them.” Representatives Robert Elliot and Gary Azarian of New Hampshire also focused on deterrence in their support

Drug-Induced Homicide: A Current Snapshot, cont.

Map 4. Statistically Significant Drug Overdose Death Rate Increases 2014-2015



of H.B. 153, stating, respectively: “[people who sell drugs] will face a more serious penalty instead of a slap on the wrist” and “we need to send a strong message to these people.” Senator Tom O’Mara of New York similarly said, “[W]e shouldn’t hesitate to throw the book at the pushers and suppliers of this deadly drug.” Representative John Gannon, in support of H. 178 in Idaho, put it simply: “We want to get the drug dealers. That is what this bill is designed to do.”⁶⁰ In press for H.B. 1666 in Pennsylvania, Representative James R. Santora referred to people who sell drugs as “purveyors of death” and Upper Darby Police Superintendent Michael Chitwood characterized them as “murderers.”⁶¹ Senator Scott Cyrway, in support of L.D. 42 in Maine, took it a step further by comparing people who sell drugs to terrorists: “What I’d like to say is there’s no difference between these people and ISIS. It’s just a different method. They need to be stopped...”⁶² It is clear that these legislators have taken a page from the drug war playbook – villainize and criminalize people who sell drugs and package it as a response to the harms of drug addiction.

Fentanyl

Many of the recent drug-induced homicide bills and prosecuted cases appear to be driven by the increasing rates of fentanyl-related overdose deaths. Pharmaceutical fentanyl is a synthetic opioid pain reliever typically used for treating advanced cancer pain.⁶³ Though the number of prescriptions for fentanyl has remained stable, the number of law enforcement fentanyl encounters more than doubled from 5,343 in 2014 to 13,882 in 2015.⁶⁴ The number of states reporting 20 or more fentanyl confiscations every six months is increasing.⁶⁵ From July to December 2014, 18 states reported 20 or more fentanyl drug confiscations.⁶⁶ By comparison, only six states reported 20 or more fentanyl drug confiscations from the same time period in 2013.⁶⁷ The Centers for Disease Control and Prevention has accordingly concluded that most of the increases in fentanyl deaths do not involve prescription fentanyl, but instead are related to illicitly-made fentanyl that is mixed with or sold

as heroin or increasingly as counterfeit prescription opioid pills.⁶⁸ Increased fentanyl use, either intentionally or without the user's knowledge, is most common in areas where white powder heroin is prevalent – particularly across the eastern United States – because fentanyl is often mixed with or disguised as white powder heroin.⁶⁹ Black tar heroin, on the other hand, is distributed to the west coast and is more difficult to cut with fentanyl.

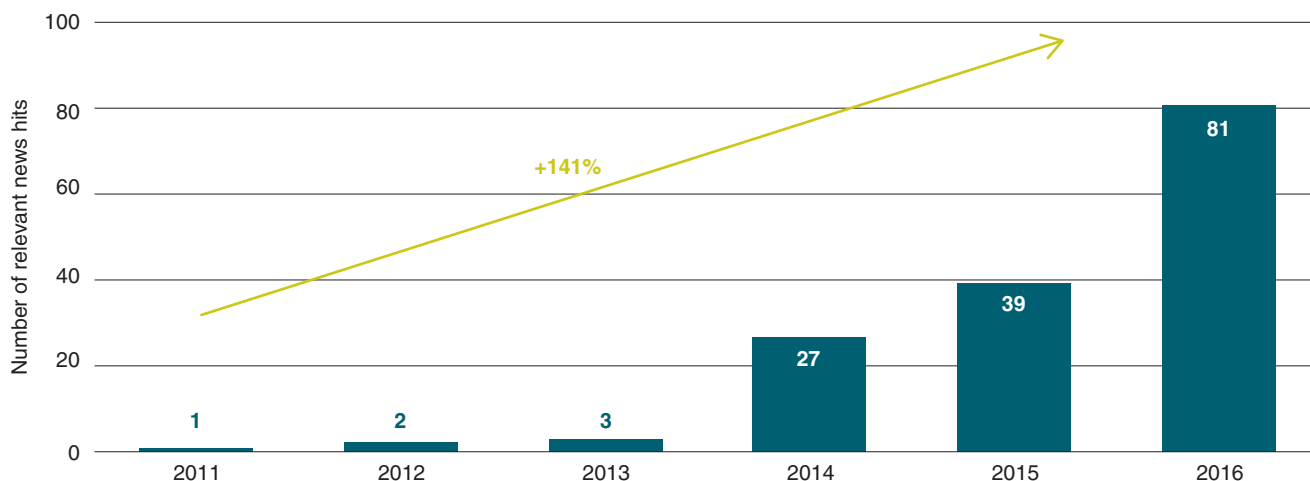
Legislative efforts to address the harms of fentanyl via drug-induced homicide prosecutions are ramping up. Florida, for instance, expanded their drug-induced homicide law to also include fentanyl in 2017.⁷⁰ In late 2016, U.S. Representative Tom Reed of New York introduced the Help Ensure Lives are Protected Act in order to specifically allow federal prosecutors to seek capital punishment or life imprisonment for people linked to an overdose death caused by heroin laced with fentanyl.⁷¹ Underlying these efforts are fundamental misperceptions about fentanyl distribution; namely, that the people selling it are aware that they are selling it and are purposefully poisoning those they sell it to.

In reality, the vast majority of street-level heroin sellers, as well as the family, friends, and acquaintances who share their heroin supplies, likely do not know when heroin has had fentanyl added to it. Fentanyl is generally manufactured in China and imported directly to Mexico, where it is mixed with heroin before distribution to the United States.⁷² DEA spokesman Rusty Paine has stated: “China is by far the

most significant manufacturer of illicit designer synthetic drugs. There is so much manufacturing of new drugs, [it's] amazing what is coming out of China. Hundreds of [versions], including synthetic fentanyl and fentanyl-based compounds.”⁷³ Louis Milione, who runs the DEA Diversion Control Center, confirms that “China is the primary source of fentanyl.”⁷⁴ The DEA is also aware of illicit labs in Mexico producing fentanyl from precursors manufactured in China.⁷⁵

While there is some limited evidence that fentanyl is being obtained through cryptomarkets from China and pressed into counterfeit opioid pills in the United States,⁷⁶ the DEA has not found any fentanyl labs operating in the United States⁷⁷ and has found, according to a spokesperson, “little evidence” that fentanyl is added to heroin domestically.⁷⁸ Even if fentanyl were added to heroin in the United States, it would likely be done at the top of the distribution chain. Low-level sellers, who are most likely unaware and have no reliable way to determine the makeup of their product and its potency, are vilified and prosecuted with murder if their supply results in an overdose death. Recent epidemiological research on the changing nature of the heroin market confirms that people at the bottom of the distribution chain and end users are often unaware of the product they are selling or consuming.⁷⁹

Figure 4. News Mentions of Drug-Induced Homicide Prosecutions Involving Fentanyl



Michael Millette

Edward Martin, III. Edward, who was 28 years old at the time, used to buy $\frac{1}{4}$ to $\frac{1}{2}$ of a gram of heroin every couple of days. They would meet at Littleton Park, at one of the footbridges, and walk the circle around the park. As they walked, they would confide in each other. "I became pretty good friends with him," Michael explained. "I sold to him off and on for a year, but it was always small amounts. I wasn't making any money, and he wasn't selling to anybody else."

Edward used Michael's ear for support and understanding. The very last time they circled Littleton Park, Edward and Michael talked about their addiction together. "We were both tired of being sick, and we talked about wanting to get help," Michael remembered. "Edward was going to talk to his dad about getting straight, and I was going to talk to my kids again." Edward still wanted a small amount to help with the withdrawals and Michael sold it to him. Michael knew what it was like to be addicted to opioids. "If you're dope sick, it is torture," Michael explained. "He needed it."

When Michael sold the heroin to Edward, he warned him of the strength. "I told him, 'Listen, this stuff is really good, just do a tiny line, it's very strong,'" Michael recalled. Edward took it and agreed, promising he'd only do a little at a time. They separated at the park and Edward took the heroin to a nearby gas station, going straight to the bathroom to inject. Michael did not know Edward used needles; if he had, he would never have sold to him. "I had a rule that I wouldn't sell to anyone who used needles, because I did not believe in it," Michael said.

Edward died alone in the gas station bathroom with the needle and spoon still out. It turned out that the heroin Michael sold him was actually fentanyl. The investigation conducted by the Littleton Police Department and the New Hampshire Attorney General's Drug Task Force led to Michael being charged with Sale of a Controlled Drug Resulting in Death. He was also charged with Possession of a Controlled Drug with Intent to Sell. When he learned of Edward's death, Michael

was overcome with emotion. He felt awful. "I have to live with knowing something I sold killed someone," Michael said. "And not just anyone, a friend. That's a hard thought to have, I think about it every day."

The police investigation zoomed in on the fact Michael sold Edward fentanyl and portrayed him as a substantial drug "dealer" in the area. "I didn't know it was fentanyl or even what fentanyl was," Michael responded. "Somebody told me it was heroin, and I'm not a chemist, I have a 9th grade education, I can't test this stuff and say this is or it isn't heroin."

Like Edward, Michael also used drugs. He began using pain-pills after a logging accident twenty years before. A tree landed right on his head, leaving him with a concussion, cuts, and some broken ribs. "When that tree dropped on me, I started taking pills every day, every time the pill started to wear off and the pain came back, I took another one," Michael remembered. It took him six months to return to logging, but even after he went back, he continued taking Percocets. He depended on them. "I would eat them like M&Ms," he said. "At first, they made me drowsy, but the more I took them, the more I couldn't get up without them," he said.

When he could not get a doctor to prescribe him any more pills, he would buy them on the street. He would spend a quarter of his paycheck on pills sometimes. One pill was as much as \$50. "I ended up selling my motorcycle and my snow machine and other items one at a time as I needed," he explained. "It all started slowly trickling away."

As the money dwindled, Michael looked for alternatives to pills. "Somebody introduced me to a line of heroin," he recalled. "Once I started doing heroin, I went downhill fast. The heroin sucked the life out of me." His children were all grown up by then, and if he ran into them downtown, he would walk the other way to avoid seeing them. He had lost almost 100 pounds by then.

Michael stopped working around this time. To supply his heroin addiction, he began selling small amounts to friends and people he knew. "I wasn't no huge drug dealer like they cracked

me up to be in the newspaper,” Michael said. “If I sold a few grams, I might get a gram for myself.” He used to get high, pass out, and then wake up and go hustle and try to get some more to sell and use, then get high and pass out again. “By the end, I might have had enough to buy a pack of cigarettes and a lighter and something to eat, but I never made any money,” Michael explained. “I was homeless and lived on a friend’s couch.”

Toward the time Edward died, Michael had been snorting heroin for almost three years. “When I didn’t have dope, I felt like I could almost commit suicide,” Michael described. “Everything smelled weird when it really didn’t,” he added. “I’d be sweating, my legs wouldn’t hold still, I’d be freezing, shaking, even hallucinating.”

Michael’s addiction could also be connected to early childhood tragedy. He came from a big, working-class family in New Hampshire. His stepfather had his own rubbish business, and Michael used to go out with him on rubbish pick-ups right after school. One afternoon, his stepfather was doing a run, and Michael could not make it back from school in time to help. His sister ended up going out with his stepfather instead. “When I came up over the bank, I heard all these sirens,” Michael recounted. “I saw my sister was dead in the street. She had fallen out of my stepfather’s rubbish truck, and he had run her over.” Michael was 12-years-old when she died. To this day, he still experiences frequent nightmares.

Michael never did well in school and dropped out at 16-years-old to work in the woods as a lumberjack. He got trained in selective cutting. Everything was done by hand back then, and it was hard work, but he loved being outdoors. He was married and a father by 17-years-old. “I went from being a kid to raising a family, when I was still just a kid myself,” Michael recalled. He worked hard and made enough money to eventually buy a house. But he played hard on the weekends too. He started drinking and dabbling in cocaine almost right away, but it was not until his logging injuries that he became addicted to controlled substances. There was the big injury, when the tree fell on him, but he also experienced numerous other ones: he broke fingers, knuckles,

more ribs, sprained his back and neck, and broke his nose in eight places. With each new accident, he was prescribed more pain pills. This went on for decades until prescriptions became more and more difficult to obtain and he had switched to heroin.

When Michael was arrested and jailed for Edward’s death in November of 2014, his addiction to on heroin was severe. He immediately started experiencing intense withdrawals. “I shook and shivered with hot and cold chills,” he recalled. “I couldn’t sleep, and was vomiting and having diarrhea. It was the worst thing in the world. I wanted to die it got so bad.” Unlike in a hospital, the jail staff did not give Michael anything to ease the detox.

Michael spent almost a year in jail before he pled guilty on October 26, 2015 to selling fentanyl that resulted in Edward’s death. He was sentenced to prison for 10 to 30 years, with 2 ½ years off the minimum sentence if he does not have any disciplinary violations while at the state prison. Inside, he has signed up for as many classes and programs as available to him: he completed a year-long drug program and is in a relapse prevention drug program now; he is also enrolled in high school classes and in tech programs, like computer skills and transportation technology. “I never got my high school diploma,” Michael said, “but I’m only six classes away from getting the diploma here.”

Despite the classes and programs, prison has been difficult for Michael. “This place has more drugs in it than the street. It’s no place for someone who wants to be clean, when it’s waved in front of your face every day,” Michael explains. He stays busy with school and programs to avoid the temptation. If he gets out, and he’s not too old, he hopes to work with programs that help young people like Edward work toward recovery. “If only there were more places that [people who use drugs] could go and get the help they need, and get into facilities where they could get eased down off drugs, and then into a program,” he says.

Regional Trends: Midwest

Combined, **Wisconsin, Ohio, Illinois, and Minnesota** make up approximately 50% of drug-induced homicide media stories every year, with Wisconsin alone accounting for approximately 20%. Though Wisconsin, Illinois, and Minnesota have made use of their drug-induced homicide statutes with relative consistency since 2011, Ohio's share of media mentions for drug-induced homicide prosecutions increased by over 60% in the same time period.

Wisconsin

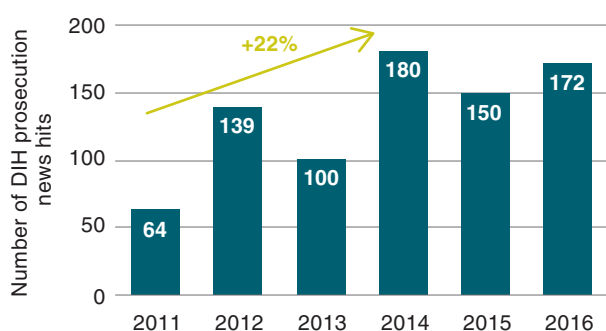
Wisconsin holds the title of most drug-induced homicide prosecution media mentions in the country and though Wisconsin's numbers started high in comparison to other states, they have still increased by over 20% since 2011.

Wisconsin's drug-induced homicide statute "wasn't used very often in the '80s," said Janine Geske, a former Wisconsin Supreme Court Judge.⁸⁰ "But... certainly now that we have this crisis of this heroin use prosecutors are looking to use it more."⁸¹ A FOX6 investigation found that more than 500 people have been charged with drug-induced homicides in Wisconsin since 2000.⁸² More than half of the 500 cases were filed in just the past four years.⁸³ Fifty-two of the state's seventy-two counties have filed at least one drug-induced homicide case.⁸⁴ In Milwaukee County alone, there were 255 overdose deaths in 2015, 16 of which resulted in drug-induced homicide prosecutions.⁸⁵ In Waukesha County, there were 44 overdose deaths in 2015, five of which resulted in drug-induced homicide charges.⁸⁶ There were 41 overdose deaths in Kenosha County in 2015, with three drug-induced

homicide cases.⁸⁷ Sheboygan County saw 22 overdose deaths in 2015 with one case leading to drug-induced homicide charges.⁸⁸ Of the counties that have charged at least ten drug-induced homicide cases since 2000, Ozaukee County handed out the lengthiest sentences with an average of 11 years in prison.⁸⁹ Even in the most "lenient" jurisdiction, Manitowoc County, where drug-induced homicide cases are often reduced to a lesser charge, the average sentence for those originally charged with drug-induced homicide is still three years in prison.⁹⁰

The practices of investigating and charging drug-induced homicide in Wisconsin are so prevalent that Patricia Daugherty, Assistant District Attorney at the Milwaukee County District Attorney's Office and Nick Stachula, Detective with the West Allis Police Department, gave a nearly 100-page presentation at a national conference on opioid use on how to investigate and prosecute drug-induced homicide cases, including detailed instructions on tactics for undercover investigations, controlled buys with the potential suspect using confidential informants, using the cell phone of the person that overdosed, and building cases against other drug users in an attempt to get them to flip on their supplier, among others.⁹¹

Wisconsin in the News



The rationale for this level of enforcement echoes that advanced by elected officials introducing new legislation. "The whole purpose of the [drug-induced homicide] law itself is to deter the drug traffickers..." said Milwaukee County District Attorney John Chisholm. The Jefferson County District's Attorney's Office said in a written statement: "It is important that we hold offenders like [defendant] accountable; and it is important that others who might think about following in her footsteps know that they are traveling down a path filled with death and imprisonment."⁹²

And, in furtherance of deterrence, prosecutors are ignoring criminal culpability and blindly charging anyone they can identify. "A person died, so it doesn't matter to me whether the person who delivered it is a fellow junkie, is a friend, didn't sell it but actually gave it to them," said Sheboygan County District Attorney Joe DeCecco.⁹³ And, yet, despite this wide net enforcement, the increase in overdose deaths remains unabated. The total number of drug overdose deaths in Wisconsin increased nearly 70% from 2005 to 2015.⁹⁴



Samantha's Story

In September 2016 in Jefferson County, Wisconsin, 21-year old Samantha Molken then pleaded no contest to first-degree reckless homicide by delivery of heroin for the overdose death of her good friend Dale Bjorklund. Samantha and Dale were in a group of friends who regularly bought and shared heroin together. In fact, tragically, two other friends in the group died of heroin overdoses shortly after Dale did. Samantha herself overdosed in 2014, but survived. Jefferson County Circuit Court Judge Randy Koschnick acknowledged Samantha's limited role in Dale's death: "You're guilty of reckless homicide because you delivered heroin to another human being, he used it and he died. But in the range of heroin deliverers, you are at the lower end of the scale." But, Judge Koschnick wanted to make an example of Samantha: "Deterrent effect of a sentence in this

case should be something given significant weight. Hopefully, people who are involved in giving heroin to others, at least in Jefferson County, learn that giving heroin to someone else carries with it the significant risk that the person will die and that the person who delivered the heroin will then be arrested and prosecuted and if convicted, punished." Ultimately, Samantha was sentenced to a total of 15 years imprisonment, consisting of nine years of initial confinement and six years extended supervision. She also found out she was pregnant while in custody and had to give her child up for adoption given her confinement.⁹⁵

Ohio

Ohio, which ranks second for the most media mentions of drug-induced homicide prosecutions in the entire country, does not actually have a specific drug-induced homicide law, but rather uses its involuntary manslaughter law to the same effect or relies on U.S. attorneys to prosecute drug-induced homicide in the state based on the federal law. Bills to create a specific drug-induced homicide law in Ohio, however, were introduced in 2015 and 2017 (see Appendix A).

Ohio's rate of nearly 30 deaths per 100,000 people ranks fourth highest in the nation.⁹⁶ Despite this, Ohio prides itself as having “one of the most aggressive and comprehensive approaches in the country to fighting the opioid epidemic.”⁹⁷ Drug-induced homicide is increasingly becoming one of the main weapons in its fight and multiple task forces have been established for the primary purpose of investigating overdose deaths as homicides.

The Heroin Overdose Prevention & Education (HOPE) Task Force in Franklin County, Ohio, for instance, designates overdose scenes as crime scenes: “Experienced narcotics and homicide detectives working on the HOPE Task Force are treating [opioid] overdose scenes as crime scenes; investigating the source of the supply that caused the overdose.”⁹⁸ “Our job is to continue to try to cut down on supply,” Franklin County Sheriff Scott said. “But, we are going to actually go after the supplier too. The amount of drugs they’ve been bringing in. We’re still going to do everything we’ve been doing but we’re just going to add another tool to our tool belt on this one.”

The HOPE Task Force was initially comprised of one sergeant and two investigators from the Franklin County Sheriff's Office, which received special funding for the positions through the county commissioners. It has now grown to include active partnerships with seven local police agencies who have agreed to follow the HOPE model of overdose investigations.⁹⁹ Prosecutor Ron O'Brien announced in 2015 that his office would work with HOPE to scrutinize every overdose death in the county and assigned Prosecutor Carol Harmon and Assistant Prosecutor Jamie Sacksteder to work with the Task Force.¹⁰⁰ The Task Force has also partnered with Homeland Security Investigations to investigate and prosecute cases under federal law.¹⁰¹

Since the HOPE Task Force's inception in late 2015, it has investigated a total of 186 fatal and non-fatal overdoses – 111 in 2016 and 75 so far in 2017 as of August.^{102,103}

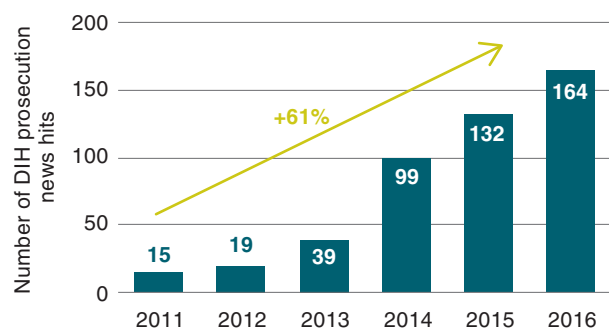
Demonstrating the difficulty of prosecuting these cases and the wasted investigation resources, as of April 2017, according to the county prosecutor's office, only 13 (a mere 6%) of these 186 cases have actually resulted in a manslaughter charge in connection with an overdose death.¹⁰⁴ Moreover, the enforcement of the drug-induced homicide law in Franklin County has done nothing to curb overdose. Indeed, 353 people in Franklin County died from drug overdoses in 2016, a 10% increase over the 321 who died in 2015.¹⁰⁵

The Hamilton County Drug Task Force similarly focuses its resources on drug-induced homicide:

The Hamilton County Heroin Task Force was established in early 2015 by the Hamilton County Association of Chiefs of Police for the purpose of investigating all source dealers of heroin that lead to overdoses and overdose deaths, and ultimately prosecute the source dealer on applicable State of Ohio and Federal charges. ...

*Our Task Force has formal partnerships with the Hamilton County Coroner's Office, Hamilton County Prosecutor's Office, The Drug Enforcement Administration Cincinnati RO, U.S. Attorney's Office in the Southern District of Ohio, Ohio Attorney General's Office and all 44 police agencies in Hamilton County.*¹⁰⁶

Ohio in the News





Hamilton County, Ohio Association of Police Chiefs "Not in My Neighborhood" campaign billboard

In recognizing the first case investigated by the Hamilton County Heroin Task Force, acting U.S. Attorney Benjamin Glassman said: "It demonstrates that cooperation between agencies produces significant results that help us track deadly drugs back to the source."¹⁰⁷ Ten full-time officers are currently investigating heroin overdose deaths as part of the Task Force.¹⁰⁸ At an average cost of \$57,850 per officer,¹⁰⁹ over half a million dollars is being spent per year on personnel alone. In addition, the Task Force reports that nearly \$100,000 is spent to provide county space and equipment for the investigators.¹¹⁰ In coordination with the Task Force, the Hamilton County Association of Police Chiefs also launched an \$100,000 per year campaign dubbed "Not in My Neighborhood." The campaign tries "to empower communities to report heroin-related issues" by setting up anonymous tip lines advertised on billboards, posters, bumper stickers, and materials that the police circulate directly.¹¹¹ "We're looking for the predators, the dealers, with the Heroin Coalition Task Force investigating deaths," said Sheriff Jim Neil.¹¹²

In 2015, the Task Force investigated 53 overdoses as potential drug-induced homicides (again, just in its single county).¹¹³ In the first four months of 2016 alone (the most recent period for which there appears to be publically available information), the Task Force had already investigated 34 cases.¹¹⁴ While the results of these investigations are unremarkable, the cost is exorbitant. The evidence collected was sufficient to prosecute a mere nine of the 53 cases.¹¹⁵ This single county spent – *at minimum* – over \$750,000 per year to investigate and enforce drug-induced homicide cases. This, of course, does not include prosecution costs at the county or federal level, or eventual incarceration expenditures. Moreover, the number of overdose deaths in Hamilton County has nearly doubled over the last four years, jumping from 204 in 2012 to 403 in 2016, according to data from the Hamilton County Coroner's Office.¹¹⁶ The coroner's office recorded 100 more opioid-related overdose deaths in 2016 than 2015.¹¹⁷

As in Hamilton and Franklin counties, overdose death rates in Lorain County, Ohio continue to rise, with fatalities more than doubling from 2015 to 2016.¹¹⁸ In response, Lorain County is sinking considerable resources into the prosecution of drug-induced homicide, particularly in conjunction with federal agencies. The Lorain County Drug Task Force added new staff as part of a collaborative effort

with the DEA's Cleveland office.¹¹⁹ The DEA announced in August 2017 that it would be shifting three agents to Lorain County to help with investigations, and has been providing overtime pay to local law enforcement officers involved in the collaboration as well.¹²⁰ The U.S. Attorney's Office for the Northern District of Ohio is also prosecuting cases investigated by the Lorain County Drug Task Force: "We will continue to aggressively prosecute those who profit from the sale of drugs that have caused so much death and pain in our community," then U.S. Attorney David A. Sierleja said in a statement.¹²¹

The Northern District of Ohio U.S. Attorney's Office also established its own task force to address increasing rates of opioid use and overdose in Ohio with various approaches and in connection with various partners. The U.S. Attorney's Heroin and Opioid Task Force, chaired by then U.S. Attorney Carole Rendon, was awarded the Attorney General's award in 2016 (the highest honor given by the Justice Department) for their development of community partnerships designed to address public safety.¹²² The Task Force counts as one of its successes "the creation of a heroin-involved death investigation team... with the goal of filing enhanced criminal charges for dealers when appropriate."¹²³ The "Heroin Involved Death Investigation initiative" was deployed in Cuyahoga County in response to the high number of deaths.¹²⁴ The Cuyahoga County Sheriff, Prosecutor and Medical Examiner, the Cleveland Division of Police, and the United States Attorney's Office work together on heroin overdose death investigations.¹²⁵ The goal is "to prosecute, where appropriate, responsible heroin traffickers for manslaughter in state court or to seek mandatory minimum sentences based on a death enhancement at the federal level."¹²⁶

The Task Force developed specific protocols to treat fatal heroin overdoses as crime scenes, with investigators and prosecutors going to every scene to gather evidence.¹²⁷ Between 2013 and May 2016, the Task Force filed nearly 30 federal "death specification" indictments, with defendants sentenced to between 13 and 30 years in prison.¹²⁸ The Task Force reports that dozens more manslaughter indictments were filed in state court.¹²⁹ Unsurprisingly, these indictments have had no impact on overdose death rates in Cuyahoga County, with fatalities steadily increasing from 340 in 2013 when the Task Force was initiated, to 353 in 2014, to 370 in 2015,¹³⁰ and to a startling 666 in 2016.¹³¹ As of August 2016, the Medical Examiner was estimating 818 overdose deaths in 2017 in Cuyahoga County, Ohio.¹³² And, yet, police and prosecutors are not held accountable for their failed tactics or wasted resources.

Lindsay's Story

On a Friday in February 2016, at a motel in Columbus, Ohio, 27-year-old Lindsay Newkirk shot a small amount of heroin into her own arm, then shot some into her father's. She then passed out. When she woke up, her father was dead due to overdose. Lindsay told authorities that she and her father were both addicted to heroin, but, facing up to 11 years on involuntary manslaughter plus additional years under a corrupting another with drugs charge, she pled guilty to involuntary manslaughter and was sentenced to three years in prison with other charges dropped. "It can't be any worse than what you suffered in the loss of your father," Franklin County Common Pleas Judge Kimberly Cocroft told Lindsay during her sentencing hearing.¹³³ It may not be worse, but there is no doubt serving three years in prison will compound her pain and grief.

Illinois

Illinois saw a statistically significant 7.6% increase in overdose deaths from 2014 to 2015.¹³⁴ In response to increasing rates of overdose fatalities, primarily suburban and rural counties in Illinois are using drug-induced homicide charges with increasing frequency to ensnare people who use and supply controlled substances. Media mentions of drug-induced homicide prosecutions in Illinois have increased by over 20% since 2011.

Records from 2013 to 2016 show that during that period, Lake County charged 17 drug-induced homicide cases, Will County charged 15, and DuPage County charged 14.¹³⁵ As of July 2017, Kane County had charged 13 people¹³⁶ and McHenry County had charged 11.¹³⁷ Prosecutors in these counties are focused on “sending a message” with the filing of drug-induced homicide charges.

Franklin County State’s Attorney Evan Owens, who prosecuted a case of drug-induced homicide that eventually made its way into federal court and resulted in a sentence of 23 years in federal prison, explained that he hopes the prosecution sends a message to others who distribute drugs.¹³⁸ Madison County State’s Attorney Thomas Gibbons similarly stated: “We intend to absolutely make an example of these people in public. I want to scare people from getting into this. I want to give them the fear of becoming the soulless people addicts become.”¹³⁹ Former U.S. Attorney for the Southern District of Illinois Stephen Wigginton, like Gibbons, wants people to be afraid: “If users know they can get a minimum prison sentence of twenty years if their drugs lead to someone else’s overdose, that would be a huge deterrent.” DuPage County State’s Attorney Robert Berlin said in a written statement: “The filing of charges against [defendants] sends the message to these poison peddlers that there is a price to pay for supplying these dangerous drugs, and that price could be up to 30 years of freedom.”¹⁴⁰

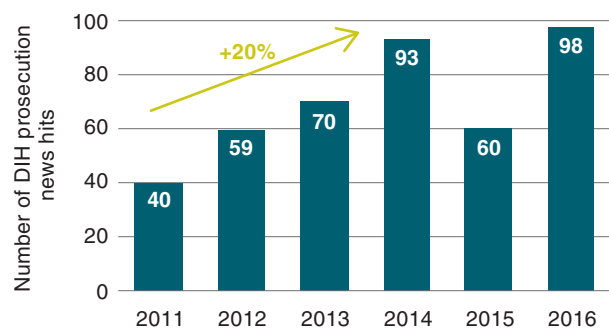
Notably, however, prosecutors in Illinois are indiscriminate in their choices of who to prosecute. Franklin County State’s Attorney Evan Owens noted that distribution does not have to mean that money has changed hands, and can apply to a person who supplies it even if they do so free of charge.¹⁴¹ Kane County State’s Attorney Joe McMahan also does not reserve the charge of drug-induced homicide for people who are particularly culpable, but, rather, anyone in any part of the supply chain. That could include someone buying the drugs, administering the dose, handing someone drugs, driving the car to get the drugs. “It can mean a lot of different things,” he stated. McMahan also recognized that often the

people who are charged with drug-induced homicide had a relationship with the person who died: “Sometimes... the person who was charged was close emotionally to the person who died.”¹⁴²

As long as you provided or simply shared the drug that resulted in an overdose death – even if that person is your friend, even if there is no money involved – you will be held accountable according to then U.S. Attorney for the Southern District of Illinois Stephen Wigginton. “You’ll be treated as a drug dealer, prosecuted as a drug dealer and may spend the rest of your life in prison,” he has said.¹⁴³ Madison County State’s Attorney Thomas Gibbons echoed the assertion that people will be prosecuted regardless of whether they “sold” the drugs or knew the person who overdosed: “You are part of a drug-distribution network the moment you give another person the drug, just like the dealer. You’re no different or better.”¹⁴⁴

As in Ohio and Wisconsin, these enforcement and prosecutorial strategies, including the rampant abuse of prosecutorial discretion, have done nothing to stem the tide of deadly overdose, with fatality rates in Illinois steadily increasing from 12.1 per 100,000 people in 2013, to 13.1 in 2014, and to 14.1 in 2015.¹⁴⁵

Illinois in the News





Erik's Story

Erik Scott Brown, 27 years old, is serving a 23-year sentence in federal prison on a charge of distribution of heroin resulting in death¹⁴⁶ for supplying Steven Keith Scott with one tenth of a gram of heroin.¹⁴⁷ According to Erik, Steven had been using bath salts the day of his death.¹⁴⁸ While partying with Erik in a motel room, Steven asked to exchange a quarter gram of bath salts for one tenth of a gram of heroin and Erik obliged.¹⁴⁹ Erik drew up the syringe but Steven's cousin Danielle purportedly injected Steven.¹⁵⁰ After Steven passed out, Erik and the others present tried to revive him, but then Erik left the motel room.¹⁵¹ According to his testimony to police, Erik stated that no one called 911 because drugs were

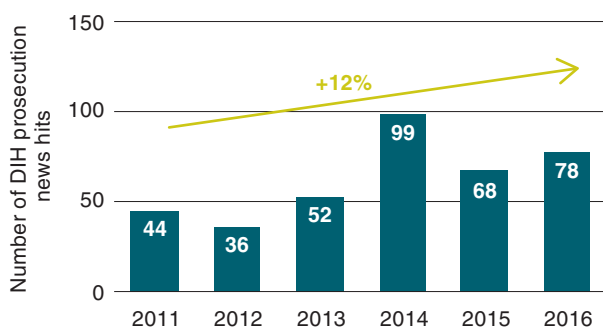
present so they feared they would get into trouble, and they thought that Steven would wake up on his own anyway.¹⁵² Erik was an admitted long-time heroin user who had had a difficult childhood – his mother died when he was a young child and his father overdosed in front of him when he was six.¹⁵³ Jim Porter, then U.S. Attorney for the Southern District of Illinois, stated that Erik's failure to call 911 was a major factor in seeking to charge him.¹⁵⁴ Ironically, it is treating the scene of overdose as a crime scene rather than the scene of a medical emergency that causes people in Erik's situation to not call for help.

Minnesota

Media mentions of drug-induced homicide prosecutions increased 12% between 2011 and 2016. Records from the Minnesota Sentencing Guidelines Commission show that 23 people were sentenced for drug-induced homicide (third-degree murder) between 2001 and 2014 in the state.¹⁵⁵ The frequency of sentencing has been increasing – in 2011, two people were sentenced under Minnesota’s drug-induced homicide law compared to seven people in 2016.¹⁵⁶ The majority of the drug-induced homicide prosecutions in Minnesota appear to originate with a single prosecutor –

Hennepin County Attorney Mike Freeman – who has charged 11 people with third-degree murder in the last three years, after not filing any cases between 2008 and 2010.^{157 158} The Washington County prosecutor has charged four people in the same period and the Ramsey County prosecutor has pursued one case.¹⁵⁹ But despite aggressive prosecution targeting what Freeman believes to be the “source” of the overdose fatalities, Hennepin County saw a nearly 60% jump in opioid-related deaths from 2015 to 2016.¹⁶⁰

Minnesota in the News



Jennifer’s Story

Jennifer Marie Johnson is currently behind bars on a third-degree murder charge for the overdose death of her husband, Denis Parmuat, in March 2013 in Washington County, Minnesota. After a night of drinking, Denis asked Jennifer for some of her prescribed liquid methadone to help him fall asleep, which she gave him. He then took more without asking her permission. When Denis started to have difficulty breathing, Jennifer yelled to her daughter to call 911, and tried to revive him while they waited for help. Jennifer was arrested soon after her husband’s death, and was eventually sentenced to six years in prison. “I think my biggest punishment was losing the person I loved more than anything. He was such a good person, he would do anything for anyone. And I will never have him again,” Jennifer said. “To make an example out of me, when the case is that I lost my husband, I think is really a disgusting thing to do personally.” The shock has not worn off. “The thing that goes through my head and has gone through my head every day since March 30th of 2013 when this happened, I feel like I’m in a nightmare, is this really happening to me?” she stated. “I just can’t believe this is my life. Still, after two and a half years [in prison], I can’t believe it.”¹⁶¹

Regional Trends: The Northeast

Northeastern states **Pennsylvania, New York, and New Jersey** accounted for just 2% of all national drug-induced homicide media stories in 2011, but increased their share to 14% by 2016. Moreover, the individual state increases in drug-induced homicide prosecution media mentions is staggering – between 2011 and 2016, there was a 124% increase for Pennsylvania, a 97% increase for New York, and a 61% increase for New Jersey.

Pennsylvania

Pennsylvania had the sixth highest overdose death rate in the country in 2015 at 26.3 overdose fatalities per 100,000 people.¹⁶² Media mentions of drug-induced homicide prosecutions have increased most significantly in Pennsylvania – a whopping 124% increase between 2011 and 2016. In this short six-year span, the news mentions jumped from a *single* mention in 2011, indicating the charge was virtually unused, to 56 mentions in 2016. Actual drug-induced homicide prosecutions surpassed media mentions in 2016—charges were brought against 77 people last year in Pennsylvania.¹⁶³

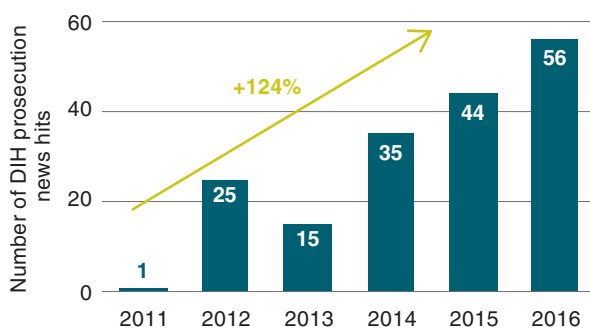
John Peck, Westmoreland County District Attorney, hinted that he believes punishing drug suppliers for users’ deaths has a deterrent effect: “I think people understand... that dealing in drugs resulting in a drug death can have serious consequences for the seller.”¹⁶⁴ And Kevin Steele, District Attorney for Montgomery County, has stated: “Dealers peddling their poison – delivering right to the victim’s door – and preying upon those suffering from the disease of addiction should think twice about doing so in Montgomery County.”¹⁶⁵

Drug-induced homicide prosecutions vary by county, and information on them is scarce. Allegheny County had a sobering 613 overdose deaths in 2016,¹⁶⁶ with one person

prosecuted for drug-induced homicide between 2011 and 2016, despite multiple investigations.¹⁶⁷ When questioned about this statistic, District Attorney Stephen Zappala stated that an appellate court had only recently ruled on the standard of proof necessary for the charge.¹⁶⁸ Likewise, Adams County saw its first such charge in 2017.¹⁶⁹ “This is the first time that an Adams County investigation could provide sufficient evidence to warrant this very serious charge,” said Assistant District Attorney Roy Keefer.¹⁷⁰ In Montgomery County, on the other hand, four such charges were filed from January to July 2017 alone.¹⁷¹

Pennsylvania counties have also seen increased federal actions brought against drug suppliers. York County had 70 heroin overdose deaths in 2016¹⁷² and is one of the leading counties where the DEA has brought federal charges of drug-induced homicide.¹⁷³ Former U.S. Attorney David Hickton, who charged fifteen people under the federal statute in York County and other Western Pennsylvania counties, stated that he saw no difference between supplying someone with drugs that result in death and shooting a person with a gun.¹⁷⁴ And, yet, as in the Midwest, overdose death rates have not dropped as a result of drug-induced homicide charges. In 2016, overdose deaths in Pennsylvania increased by 37%.¹⁷⁵

Pennsylvania in the News



Carly’s Story

In 2013, Carly Stevenson bought a thirty-dollar supply of heroin, which she gave to her boyfriend, Brandon Cron. Brandon died of an overdose from the heroin. Carly was charged with drug delivery resulting in death.¹⁷⁶ Facing up to 40 years in prison, Carly pled guilty to a lesser charge of involuntary manslaughter and was sentenced to time in a county jail and six years of probation.¹⁷⁷ In the course of the proceedings, Assistant District Attorney Lauren McNulty used evidence of Carly’s opioid use disorder to actually argue for stronger sentencing: “There is nothing in any of the evaluations that indicate Carly Stevenson is ready for rehabilitation. She wants to continue using. She wants to move to other states that are more lenient. Carly Stevenson is a manipulator. She has not one shred of empathy.”¹⁷⁸ The District Attorney’s line of reasoning demonstrates a fundamental misunderstanding of opioid use disorder.

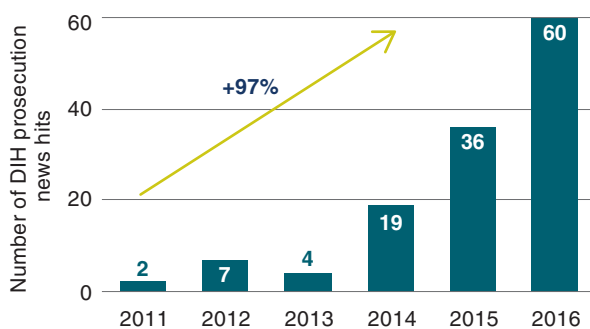
New York

In 2016, nearly 2,300 people died from drug overdoses in New York.¹⁷⁹ Prosecutions for drug-induced homicide, as evidenced by media mentions, increased by 97% since 2011, jumping from a scant two prosecution mentions to 60 in 2016.

As in other states, law enforcement's stated purpose is to punish drug suppliers for user deaths, with hopes that this will "send a message" and deter the sale of drugs in New York. "We wanted to set a precedent... Hopefully, it sends out a message to drug dealers that we're going to do what we can to stop this," stated Lori Rieman, Cattaraugus County District Attorney.¹⁸⁰ One police official echoed this sentiment, stating that it will "hopefully send a message and deter others from selling."¹⁸¹ And in a tweet, Mark Assini, Gates Town Supervisor, wrote, "Message to heroin dealers operating in Gates. Today we declare war. Gates PD will use all its weapons to bring you down. No mercy. No rest."¹⁸² In June 2017, Erie District Attorney John J. Flynn made his first drug-induced homicide indictment: "I believe this is the first time our office has charged anyone for a homicide-related offense in a fatal drug overdose, and I hope it is the first of many. Let this be a message to drug dealers that if you sell drugs and the person dies, I am coming after you."¹⁸³

New York City Mayor Bill De Blasio assigned 84 narcotics and homicide investigators to "Overdose Response Squads" to work with federal authorities in charging people who sell drugs. These squads are modeled after a program piloted in Staten Island and eventually expanded to all five boroughs. The squads conducted 381 investigations, though information regarding arrest numbers and charges has not been disclosed.¹⁸⁴ Local New York law enforcement has also cooperated with the DEA to bring federal drug delivery charges against people who sell drugs. Regarding the recent indictment of a heroin and fentanyl drug seller in Buffalo, acting U.S. Attorney James P. Kennedy, Jr., stated, "We're out to get [sellers]. We will remove you as a threat."¹⁸⁵ Despite aggressive enforcement, however, New York overdose death rates increased over 20.1% between 2014 and 2015.¹⁸⁶

New York in the News



Richard's Story

Richard Gaworecki physically shook as the judge arraigned him on August 1, 2017 for criminally negligent homicide following the overdose death of his friend, Nicolas McKiernan. A video of the visibly shaken Richard was posted on numerous media outlets, presumably released by the law enforcement community to publically shame him.¹⁸⁷ He was remanded to the Broome County Jail without bail. Richard was a heroin user himself, but that did not matter to Broome County District Attorney Steve Cornwell: "Whenever we can, we separate out dealers and users. That's the goal. But when someone is selling drugs that kill somebody, then they can expect to be charged. We're going to find those people and target that investigation to get to the root of the crime."¹⁸⁸ Nicolas is facing up to four years in prison.

New Jersey

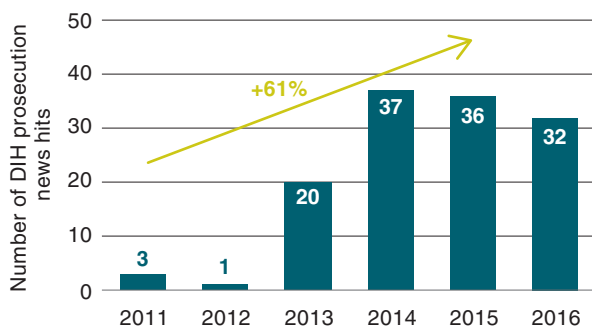
In 2013, New Jersey recorded a heroin overdose death rate that was triple the national average, as reported by the Centers for Disease Control and Prevention.¹⁸⁹ The number of overdose deaths has increased each year since.¹⁹⁰ The number of new drug-induced homicide prosecution media mentions in New Jersey has increased by 61% since 2011.

The bulk of these prosecutions appear to be in Ocean County, where overdose deaths totaled more than 200 for 2016.¹⁹¹ While the average number of drug-induced homicide arrests in New Jersey in the 28 years since the law was passed has been fewer than six per year, Ocean County alone has had 18 arrests using the charge between April 2013 and March 2015.¹⁹² The county prosecutor, Joseph Coronato, has emerged as a vocal proponent of investigating drug-induced homicide; veteran staff in his office remember only one drug-induced homicide arrest before Coronato arrived.¹⁹³ Al Della Fave, spokesman for the Ocean County prosecutor's office, stated that Coronato calls drug-induced homicide his "checkmate statute," because a quickly-mobilized homicide

unit can collect evidence sufficient to support strict liability charges.¹⁹⁴ "In every case we've adjudicated to date... all defendants have plead out and have been receiving sentences... on average, from six to eight years," Della Fave said.¹⁹⁵

Coronato views drug-induced homicide as an effective tool for combatting the overdose crisis: "I want to send a signal loud and clear – we have a problem here of epidemic proportions of all the people dying of overdoses and that's my challenge."¹⁹⁶ Coronato characterizes his efforts as creating a "No Dealer Zone."¹⁹⁷ Yet despite his claim that this message will be heard loud and clear, overdose death rates in Ocean County, as in the rest of New Jersey, have been steadily increasing. Coronato has been county prosecutor since 2013¹⁹⁸ but, regardless, New Jersey saw a shocking 16.4% increase in overdose deaths from 2014 to 2015.¹⁹⁹ And, in Ocean County, Coronato himself admits that overdose deaths continue "to spiral out of control," as they have steadily increased since 2012.²⁰⁰

New Jersey in the News



Matthew's Story

In 2013, Matthew Weisholz, a self-professed "full-blown addict," was sentenced to five years for drug-induced death under New Jersey's strict liability law.²⁰¹ Weisholz had supplied Erin Idone, a former girlfriend, with heroin and a needle, and Idone had taken the heroin in his presence.²⁰² Idone later died. In ruling on the matter, Superior Court Judge Stuart Minkowitz stated: "[Weisholz] knew the dangers and he knew it would feed [Idone's] addiction."²⁰³

Regional Trends: The South

Between 2011 and 2016, **Tennessee, North Carolina, and Louisiana** each saw more than 40% increases in drug-induced homicide prosecution media mentions, though their combined share of mentions increased only from 5% to 7%.

Tennessee

Among southern states, Tennessee saw the sharpest increase in drug-induced homicide media mentions at 61%.

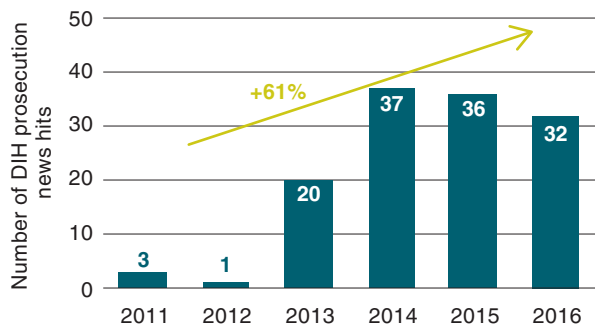
In 2015, at least 1,450 Tennesseans died from drug overdose.²⁰⁴ Law enforcement officials in Tennessee hope to use the charge of second-degree murder to catch major drug suppliers. Memphis Police Department Col. Mitchell Hardy stated: “We’re trying to build cases, not just on your local dealers or the people going to Chicago and bringing it down here, but trying to prosecute it all the way up the chain.”²⁰⁵ Prosecutors have stated that more resources than ever are being dedicated to building heroin cases.²⁰⁶

In Knox County, with a population of roughly 450,000,²⁰⁷ 153 deaths in 2015 were attributed to overdose.²⁰⁸ That put the rate of overdose death at 34 for every 100,000 people. Sean McDermott, Assistant District Attorney General in

Knox County, claims that charging suppliers with murder is leverage for bigger drug busts: “Heroin is not something that can be locally grown or manufactured. It’s coming in from somewhere else, and so we’re trying to use our prosecutions to go after the bigger fish whenever we can.”²⁰⁹ Knox County District Attorney General Charme Allen believes that this measure would “go a long way in getting these folks off our streets.”²¹⁰

Other officials, however, have endorsed a less discerning approach. “It doesn’t matter the size or amount of drugs. If you’ve caused harm in the community and people are dying or overdosing as a result of your conduct, we will be there for you,” stated Jack Smith, then U.S. Attorney for Middle Tennessee.²¹¹ “We also want to send the message that if you deal drugs there’s a tremendous penalty to pay.”²¹² Those penalties, however, have not quelled the increasing rates of overdose. Indeed, Tennessee saw a statistically significant increase in overdose deaths from 2014 to 2015 at 13.8%.²¹³

Tennessee in the News



Brittany’s Story

In 2015, Brittany Ball traded some of her legally-prescribed methadone pills to her friend, Amanda Beasley. When Beasley overdosed and died, Ball was charged with her murder. Belying statements by some law enforcement officials that murder charges in overdose cases would be used chiefly to go after big-time drug sellers, McMinn County Sheriff Joe Guy said, “We’re going to take a stand on it... When we find [illegal prescription drugs], we’re going to prosecute those [who supplied them] to the fullest extent of the law.”²¹⁴

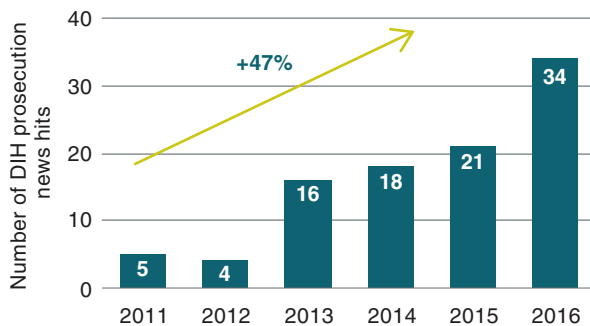
Louisiana

Louisiana has the 19th highest overdose death rate in the country at 19 fatalities per 100,000 people.²¹⁵ Louisiana's media mentions of drug-induced homicide prosecutions have increased by almost 50% since 2011.

In New Orleans in 2016, the number of deaths from overdose surpassed those from murder. With 211 deaths attributable to overdose,²¹⁶ the 2016 rate was greater than 50 per 100,000 people. The Louisiana drug-induced homicide statute carries a life sentence without the possibility of parole. Law enforcement officials consider it a deterrent for individuals who are considering selling drugs. "Folks got to be prepared for the consequences when they deal dope,"

West Baton Rouge Assistant District Attorney Tony Clayton has said.²¹⁷ Alexandria Police Chief Loren Lampert has stated: "You will wake up every day and spend every waking moment wondering if the dope you sold yesterday resulted in somebody's death because, if it did, we're coming after you... You will go to sleep at night wondering if we're about to kick in your door because the dope you sold that day resulted in the death of someone."²¹⁸ However, despite this promised deterrence, the death rate in Louisiana increased by over 12% from 2014 to 2015.²¹⁹

Louisiana in the News



Jarret's Story

Jarret McCasland is currently serving a life without the possibility of parole (LWOP) sentence in Angola Prison in Louisiana for the overdose death of his girlfriend "Cathy" Flavia Cardenias in 2013. The night before she died, Jarret said that Flavia purchased drugs from her seller and asked Jarret to carry them in his pocket. He took her home, where they both used heroin, and where Jarret injected her with cocaine. He left around 2 a.m. as he had to work the following day. Flavia was pronounced dead from a "soup" of narcotics the next day. Though they painted Jarret as a "depraved drug dealer" at his trial, police and prosecutors agreed that the drugs came from other sellers, but indicated that they felt no obligation to pursue those people. "I can't go all the way back to Mexico," protested the detective on the stand. After less than three days of evidence, which was hotly contested by Jarret, and a 45-minute deliberation, a jury found 27-year old Jarret guilty of second-degree murder. Unless his appeals are successful, he will spend the rest of his life behind bars. "It's a life sentence for all of us," Jarret's sister said. In Angola, Jarret tried to take college classes, but was rejected from the program because LWOP inmates are not allowed to join education programs.²²⁰

North Carolina

North Carolina drug-induced homicide prosecution media mentions have been steadily growing, with an increase of more than 40% since 2011. Though North Carolina's rate of overdose deaths, at 15.8 per 100,000 people, puts it in the middle of the pack, more than 1,500 individuals died from overdose in North Carolina in 2015.²²¹ In 2016, overdose deaths related to fentanyl increased by 93%.²²²

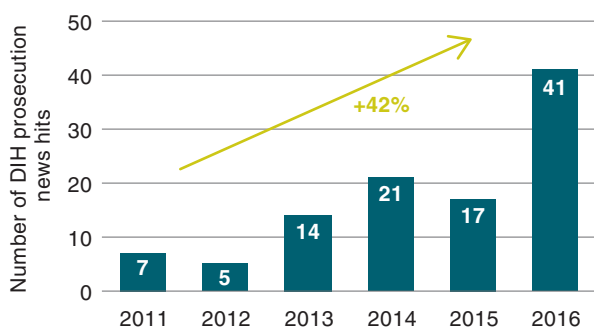
Like other jurisdictions, North Carolina has dusted off its drug-induced homicide statute in response to overdose deaths. When officials charged Aquan De'Shae Richardson under the drug-induced homicide statute in 2016, for example, it marked the first time in 17 years that such a charge was pursued in New Hanover County. Less than a year later, the same charge was brought against both a drug seller and the boyfriend of Alexandra Hammitt, a woman who died of a heroin overdose.²²³

Law enforcement officials pursuing second-degree murder charges place the blame for overdose deaths not on lack of drug prevention education, treatment, and harm reduction services, but on the person who sold the drugs.

Seth Edwards, district attorney for North Carolina's Second Prosecutorial District, has stated: "These drug dealers know what they are doing."²²⁴ Greenville Chief of Police Mark Holtzman sees people who sell drugs as the root of the problem: "[I]t is critical to our mission and to the public safety of our citizens to try to identify... the dealers who are supplying this poison and who are the root of this opioid epidemic and hold them accountable for the havoc they are creating."²²⁵

The familiar refrain of deterrence is also present. "Hopefully this tool will show people we are as serious as we can be in getting a grip on this problem in some way, shape or form... I hope it makes them think," said Dare County Sheriff Doug Doughtie.²²⁶ Law enforcement officials purport that this is an effective approach to the overdose crisis. Greenville Police Chief Mark Holtzman stated: "This is an offense that the Greenville Police Department will pursue, whenever possible, to help stop the spread of this crisis."²²⁷ However, like other jurisdictions, the crisis is only worsening in North Carolina with a statistically significant increase of 14.5% in overdose deaths from 2014 to 2015.²²⁸

North Carolina in the News



Zoe's Story

Zoe Peterson started using intravenous drugs at 17, and spent her 18th birthday in a hospital for treatment of opioid withdrawal. Her mother, Trinlie Yeaman, hampered by financial and insurance constraints, was not able to get Zoe into treatment in the weeks before her death. Three years after her daughter's death, Trinlie found out there was a bed opening at a facility Zoe had been on the waitlist for. And, yet, Zoe's death was blamed on 19-year old Austin Thomas White, who was charged with second-degree murder for supplying her the heroin. After being told by the judge that he could face life without parole if convicted, Austin pled guilty to the lesser charge of involuntary manslaughter, and was sentenced to serve a suspended sentence of 16 months minimum and 29 months maximum. Before being released to the supervision of a probation officer, Austin will serve an active term of six months in the North Carolina Division of Adult Corrections. The prosecutors accepted the lower sentence in part because Trinlie agreed to the plea negotiation. Trinlie is hoping that other youth can get something her daughter could not: treatment.²²⁹

A Parent's Perspective: Peter Brunn in His Own Words



Peter listening to Sean speak.

My daughter, Elisif Janis Bruun, at age 24, died of a drug overdose on February 11, 2014, while attending CooperRiis, a healing community in North Carolina. She attained the drugs by contacting Sean Harrington, a friend living in a cardboard box under a freeway overpass in Philadelphia, and convincing him to mail her heroin upon her sending him a money order. Sean, addicted himself and not knowing Elisif was “in rehab,” did as he was asked.

Elisif, who had been at CooperRiis for three months and seemed to be thriving, had earned privileges of independence, so it was not difficult for the greeting card containing heroin to get through to her. She received the drugs, used, and died.

The police authorities in North Carolina easily built a case tracing the distribution of the lethal dose of drugs to Sean Harrington: there were text messages, the money order record, and the greeting card itself. Per North Carolina law (and through persistent efforts of the District Attorney’s prosecutorial offices), Sean was arrested, charged with second degree murder, and extradited to Polk County, North Carolina, to face charges with a maximum penalty of 52 years in prison.

After spending nearly two years in jail awaiting trial, Sean was released. The prosecutors elected not to move forward with charges because they did “not have the cooperation of the victim’s family.”

We – my wife and two daughters and I – are the “victim’s family,” and we certainly did not cooperate with the prosecution. Instead, we established a relationship with Sean and his family, and, as expected, found we had much more in common with them – their suffering, their compassion – than with the District Attorney in Polk County.

I fundamentally believe homicide charges around drug distribution misplaces blame: the disease²³⁰ is the culprit in almost all cases, not the provider. Sean, and so many like him, are more often than not fully victims themselves, not perpetrators. The Seans of the world need — and benefit from — treatment, not shame and blame. Yes, everyone needs to be held accountable for his or her actions, even with addiction at play, but the action Sean ought to have been held accountable for (and arguably was, with nearly two years in jail) was illegal distribution through the mail, and certainly not murder. Sean has so much to offer as a citizen, not despite what he has been through, but because of what he has been through.

Elisif died of her disease. Blaming is such a toxic slippery slope, and such a misguided path. As a slippery slope, why stop the blame at Sean? Why not blame the healing community Elisif was in for not effectively screening mail? Why not blame their psychiatrist for not embracing medication assisted recovery (no Suboxone prescriptions for Elisif)? Why not blame me, for knowing Elisif had phone numbers in her phone, and trusting (despite her illness) she was safe from using those numbers in the recovery program she herself sought? I blame none, for all did what we judged best before a dastardly illness. Judgment, our judgment — all of ours — is flawed, but not legally so, just humanly so. We do our best; the disease kills.

We want to throw blame around, and there is ostensibly plenty to go around – and it’s so easy to blame a young man suffering from addiction and living in a cardboard box under a freeway who in his illness thought he was helping a fellow hurting soul (having no idea she was in rehab). We want to blame people because the disease is so ugly, and we so powerless. We don’t want to look at that, at it, because there’s so little we can do about it, but we can punish a person. So we do.

A Parent's Perspective: Peter Brunn in His Own Words, cont.



Peter listening to Sean speak, and a self-portrait by Elisif (last drawing she made) on display.

That's called scapegoating. It's misguided, and does not one iota set the world aright: it compounds pain, and limits opportunity to offer healing to so many. Sean is empowered to offer healing through sharing his story (I have seen that already), and he wants to be a force for good. He deserves that opportunity. We deserve the opportunity to have him in our midst.

Locking him up deprives us. It deprives me of a beautiful kind of redemption: Sean as a force for good... Sean just having the opportunity to have a life...that's a redemption in the face of something no degree of punishment can ever return: my daughter.

My daughter, who would have been the very first to lay culpability at her own illness-driven behavior; she had more sense about what's real than the prosecutors in that regard. Elisif was ill, and so is Sean. They both deserve(d) life. Neither deserve(d) blame.

Sean, in the meantime, rather than seeing his own life destroyed by a lifetime of incarceration, has demonstrated through his own behaviors the value of a compassionate approach to those in his circumstances. In my own activism since Elisif's death, I have engaged in an effort to use arts programming and public engagement to challenge stigma associated with mental illness and substance use, making the world a more healing place. In early 2017, I had the opportunity

to hold an event where Sean spoke, offering his own story as testimony of another way (besides punitive and scapegoating incarceration). Here is what Sean said about his learning of our family's attitude, as he concluded his remarks that evening to an audience of more than 100 people:

"When I learned of Peter and his family's stance, I couldn't believe it. I thought that this man had to hate me, and rightfully should hate me, because that was easier for me to understand. Yet he didn't, because he knew that I held no malice towards his daughter, he understood intimately the way addiction ruins the lives of the sick and suffering. His compassion has made it possible for me to have a future, and for that I am eternally grateful. As a result of these events, I'm able to be coming up on 3 years off of drugs, and that is something I never imagined being able to say. I owe that to Peter, and Elisif, and the rest of their family, because they were responsible for giving me a second chance, when I was at a point in life where I didn't think I deserved one. Yet this has helped to give me a purpose. I hope that the experiences that have affected me, my family, Elisif, Peter, and the Bruun family, could be used to help prevent more families from enduring the pain and hardship that we have endured. I hope that Elisif's story, and my story, can be carried to those people that are still sick and suffering and be used as a source of strength, hope and experience, so that those people can one day find a way out of addiction. I feel like that is the best way to help keep the memory of Elisif alive. Thank you for giving me this chance."

And lest one question the value beyond the private exchange between my family and the Harrington's, a typical response from a member of the audience is evidenced in an email I received from someone who had been a friend of Elisif's, who was in attendance that evening and who works at a treatment center in Baltimore, who wrote of the event that it "will stick with me forever. The enormity of your forgiveness and the transcendent love were tangible and profound. It was a gift to everyone present."

Nobody would have been happier at this outcome than Elisif, and none of it possible if Sean were in prison.

Prosecutions of Drug-Induced Homicide Will Not Curb Overdose Deaths

Drug-Induced Homicide Prosecutions Will Neither Deter Drug Selling nor Reduce Overdose Death Rates

As has been made clear by the history of drug-induced homicide legislation, as well as by the public rationales of legislators introducing new bills and prosecutors initiating new cases, the primary intent of prosecuting those who supply drugs on charges like murder or manslaughter, which carry incredibly weighty sentences, is to deter others from supplying drugs that could lead to overdose. The theory of deterrence holds that the threat of punishment will discourage people from committing crimes. The theory relies on a range of assumptions: that people, both those who commit crimes and those who do not, are aware of the law and its penalties; that they assess the likely consequences of their actions before deciding whether to commit crimes; and that their circumstances allow them to make rational decisions. These assumptions, however, often fall short of reality.²³¹

Empirical evidence finds little support for the idea that sentence severity has a deterrent effect. One evaluation of the data concluded that “existing evidence does not support any significant public safety benefit of the practice of increasing the severity of sentences by imposing longer prison terms” and that “research findings imply that increasingly lengthy prison terms are counterproductive.”²³² Only the certainty of punishment – meaning the degree to which a person feels convinced that they will absolutely be punished for their specific crime – seems to have any impact at all on crime rates.²³³ And, even when deterrent effects are found, they are small.²³⁴

Yet, in the context of the war on drugs, deterrence theory has played a major role in justifying the draconian sentencing schemes enacted throughout the country.²³⁵ During the 1970s, ‘80s, and ‘90s, politicians played up the importance of sentence severity in deterring drug crimes; the results were the catastrophic “three strikes” and “mandatory minimum” policies, among others.²³⁶

The massive increase in the United States’ prison population over the last 30 years belies the deterrence theory on which drug war policies are based. The number of people incarcerated for drug-related offenses rose from 40,900 in 1980 to 469,545 in 2015, and sentence lengths increased from an average of 22 months in 1986 to 62 months by 2004.²³⁷ According to deterrence theory, this ought to have had a deterrent effect, but, instead, the recidivism rate for drug offenders between 2005 and 2010 was 76.9% within

five years of release.²³⁸ A 2010 study found that variations in prison and probation time had no detectable effects on rates of re-arrest, and suggested that, at least among those with drug-related charges, incarceration and supervision seemed not to deter subsequent illegal behavior.²³⁹

Other scholars have noted that increased arrests may actually be counterproductive if the goal is deterrence: the collateral consequences of criminal convictions, such as difficulty finding legal employment and ineligibility for public assistance, exacerbate family destabilization with the result that children of parents who are convicted of drug-related crimes are more likely to be arrested for drug-related crimes.²⁴⁰ Put simply then, punitive sentences for drug offenses have no deterrent effect.

Indeed, a large body of evidence demonstrates that neither increased arrests nor increased severity of criminal punishment for drug-related offenses have resulted in less use (demand) or fewer sales (supply). In 2011, for instance, researchers found that “[c]hanges in hard drug arrest rates did not predict changes in [injection drug use] population rates.”²⁴¹ A recent 50-state study also found no relationship between state drug imprisonment rates and drug use or overdose deaths.²⁴² In addition, the Office for National Drug Control Policy has found that, despite the increase in sentences and sentence severity for drug-related crimes, the rates of current use of controlled substances has continued to increase among Americans age 12 and older, from 6.7% reporting use in 1990 to 9.2% in 2012.²⁴³

Moreover, supply follows demand, not the other way around. Numerous studies have found that the incarceration of people who sell drugs results in a “replacement effect,” in which the market responds to the demand for drugs by replacing drug sellers sent to prison with either new recruits or by increased drug selling by actors already in the market.²⁴⁴ One study concluded that the main effect of imprisoning people who sell drugs “is merely to open the market for another seller.”²⁴⁵ Even law enforcement recognize as much. Sgt. Tom Nimon of the Lorain police narcotics bureau in Ohio, which, as noted above, is a state aggressively targeting people who supply drugs, has stated: “Unfortunately as one supplier goes down, another one rises to take its spot.”²⁴⁶

Drug-induced homicide laws, then, might fulfill an instinct for retribution and offer a *purported* solution to the increasing rates of overdose, but they do nothing to reduce demand or deter selling. Accordingly, future deadly drug overdoses will not be prevented.

Prosecutions of Drug-Induced Homicide Will Not Curb Overdose Deaths, cont.



Drug-Induced Homicide Laws Undermine 911 Good Samaritan Laws

Unfortunately, the only behavior actually deterred by drug-induced homicide laws is the seeking of life-saving medical assistance. The most common reason people cite for not calling 911 is fear of police involvement. A 1997-2000 San Francisco survey of 709 young injection drug users reported that only 53% of those who witnessed an overdose sought medical help upon doing so.²⁴⁷ A 2002 study in Albuquerque found that only six out of 95 bystanders who witnessed an overdose called 911 as their first response; another 36 reported seeking medical assistance, but only after an average delay of just over 18 minutes.²⁴⁸ Nearly half of the witnesses cited “police” as the primary reason for not calling 911.²⁴⁹ Similarly, in a 2003-2004 study in Baltimore, two thirds (63.4%) of the 644 study participants called 911, but more than half delayed the call by five or more minutes; one of the most common reasons for delaying the 911 call was fear of police involvement.²⁵⁰ Among those who did not call 911, 50% cited fear of police.²⁵¹ In a 2004 Chicago evaluation of 34 people who had witnessed an overdose, all of them reported fear of police and arrest as a factor they considered when thinking about calling 911.²⁵²

Reducing barriers to calling 911 has the potential to save victims of overdose from severe injury and death. In recognition of this, 40 states and the District of Columbia have passed some form of “Good Samaritan” law, which

provides people who seek medical assistance in the event of an overdose with limited immunity from drug-related offenses.²⁵³ Drug-induced homicide laws, on the other hand, discourage people from seeking help for fear of prosecution for manslaughter or murder. The only states that provide immunity for drug-induced homicide if a person seeks medical assistance are Vermont and Delaware.²⁵⁴ No other state provides immunity from drug-induced homicide even if they do have Good Samaritan laws, and, what little protection is offered by Good Samaritan laws in those states is being undermined by new legislation introducing harsh new criminal penalties for use, possession, and delivery. In fact, key informant interviews in Illinois have revealed that many people who use drugs are scared to call 911 in counties where drug-induced homicide prosecutions are more common, which may be increasing the fatal overdose rate in these counties.²⁵⁵ Ultimately, rather than reduce fatalities, drug-induced homicide laws only result in additional overdose deaths due to people failing to summon medical help for overdoses out of fear of prosecution.

This is clear from the number of drug-induced homicide cases that are prosecuted as a result of failure to seek medical assistance.²⁵⁶ Prosecutors argue that this failure makes a defendant especially culpable. But, in fact, this “failure” is a known and expected consequence of policies, like drug-induced homicide laws, that prioritize punishment over public health. Rather than prevent deaths, these laws only cause more.

Drug-Induced Homicide Laws Perpetuate the Harms of Criminalization

Drug-Induced Homicide Laws Foster Poor Prosecutorial Discretion

Discretionary power plays a role at many points in the U.S. criminal justice system: police exercise discretion at arrest, prosecutors at charging, judges at sentencing, guards, mental health specialists, and other prison staff throughout incarceration, and parole boards at release. Prosecutors yield an especially unmitigated amount of discretionary power. Prosecutors can subjectively decide, for instance, whether or not to file charges, which charges to file, and how many counts to charge. They can decide whether to divert cases entirely, such as through referral to a treatment or other program. They can offer lenience in exchange for guilty pleas, or pursue more aggressive charges when defendants do not “cooperate.” And, in conjunction with mandatory minimum laws, they can actively shape sentences through the charges that they bring.

Drug-induced homicide laws are additional avenues through which prosecutors can exercise their already sweeping discretion. Unfortunately, prosecutors abuse this discretion by going after cases in which the defendant is often no more culpable than the person who died. Many of the drug-induced homicide laws already in existence as well as those currently being proposed are touted as targeting so-called “professional” drug sellers who profit from their drug-using clients’ addictions. But the distinction between “seller” and “user” is an artificial one, and as the cases above illustrate, many people being prosecuted are friends or family of the deceased, with whom they were sharing drugs.

Though data evaluating the drug use history of people who sell drugs are scant, a 2004 Bureau of Justice report found that 70% of people incarcerated for drug trafficking in state prison used drugs themselves in the month prior to the offense.²⁵⁷ A 2017 report by the Bureau of Justice Statistics similarly found that nearly 75% of people in state prison and serving sentences in jail regularly used drugs, more than half of people serving sentences in jail for a drug crime used drugs at the time of the offense, and more than 20% of people in state prison and serving sentences in jail committed

the offense for which they were incarcerated in order to get money for drugs.²⁵⁸ It is widely understood among experts who study drug markets that many sellers are suffering from a substance use disorder and are selling to support their own drug use.²⁵⁹ As a result, more often than not, the people who get punished are the very ones that the drug-induced homicide laws are actually intended to protect – people at risk of death due to a substance use disorder.

This should be unsurprising. Drug-induced homicide cases are difficult to prove and win, primarily because of questions of intent (or, rather, lack thereof) and causation. Even those investigating and prosecuting these cases have recognized as much. Ocean County, New Jersey prosecutor Joseph Coronato admits that “there’s a lot of pitfalls and some heavy lifting and you’re not successful in a lot of instances.”²⁶⁰ Jake Wark, spokesman for the Suffolk County, Massachusetts District Attorney’s office, stated that prosecuting such cases is an “uphill battle.”²⁶¹ Similarly, Brockton, Massachusetts police Lt. Kenneth Legrice admitted that “it’s extremely hard to tie drugs that somebody consumed to a particular person that sold them.”²⁶² Mitch Librett, a criminal justice professor at Bridgewater State University and a former New York police officer, stated that successfully charging drug suppliers for user deaths requires a “perfect storm of circumstances.”²⁶³

Under pressure to enforce drug-induced homicide laws, the Chicago Police Department issued the following statement in July 2017: “Over the last year, CPD has met with suburban jurisdictions to explore criminal charging of murder for those who illegally distribute these lethal narcotics but these cases are exceptionally difficult to prosecute as detectives need to prove beyond a reasonable doubt that drug dealers’ had criminal intent to commit murder.”²⁶⁴ Cook County Assistant State’s Attorney Patrick Coughlin, the office’s deputy chief of narcotics, also stated: “We do get requests [for prosecution] from parents and relatives of people who have died of an overdose. It’s a matter of explaining to them that because of the lack of evidence, it’s extremely difficult to prove.”²⁶⁵ U.S. Attorney James P. Kennedy similarly acknowledged the challenges of drug-induced homicide cases: “... [I]t is dependent heavily on scientific evidence, toxicology reports, pharmacological reports and the like.”²⁶⁶ Wisconsin State’s Attorney Tom Gibbons said in a press release: “These can be some of the most difficult cases to prove...”²⁶⁷

Drug-Induced Homicide Laws Perpetuate the Harms of Criminalization, cont.

Because prosecutors need to prove that a defendant “caused” the death of the person who overdosed, charges become more difficult the higher up the distribution chain one goes. As a result, the cases that are charged are usually against the last person to touch the drugs prior to their ingestion – that is, the lowest person in the hierarchy of the distribution chain of command, and sometimes a person who had no intention to sell at all, but was merely sharing drugs or simply the last person to see the deceased alive.

New Jersey’s law proves illustrative. There, as mentioned previously, the legislature specifically intended for the law to be applied to “upper echelon” drug dealers or “kingpins” in the organized drug trade.²⁶⁸ In the majority of cases, however, the law has been used to “prosecute minors with no record or evidence of prior drug dealing, family members who engaged in drug use ‘recreationally,’ and ‘small time users,’ who the legislature stated should be rehabilitated, not incapacitated.”²⁶⁹ In fact, out of the 32 drug-induced homicide prosecutions identified by the *New Jersey Law Journal* in the early 2000s, 25 involved prosecutions of friends of the decedent who did not deal drugs in any significant manner.²⁷⁰

Wisconsin’s Fox6, after analyzing the 100 most recent cases in southeastern Wisconsin (as of February 2017), reported that just 11 defendants were at least one step removed from the direct sale or delivery of drugs to a victim.²⁷¹ The other nearly 90% of those charged were friends or relatives of the person who died, or people low in the supply chain who were often selling to support their own drug use.²⁷² A *Chicago Tribune* review of drug-induced homicide cases between 2011 and 2014 in Cook, DuPage, Kane, Lake, McHenry and Will counties shows that the person charged in these cases is typically the last person who was with the person who overdosed.²⁷³ As evidenced in the jurisdictional and individual profiles throughout this report, other examples of the abuse of prosecutorial discretion in the context of drug-induced homicide abound.

Moreover, because prosecutors are misusing their discretion and because the potential penalties are so harsh (minimum of life in prison in six states), many people resort to pleading guilty to a lesser offense to avoid risking a murder conviction, even if there is little proof and weak causation.



Amy Shemberger



On August 10, 2014, Amy Shemberger did what people who use drugs do every day: she took a ride to buy heroin for herself and her boyfriend, Peter Kucinski. Peter sent Amy with another friend, Benjamin Camunias, to get the heroin. Benjamin bought the heroin and then drove Amy back to Lockport, Illinois where she and Peter lived with their five-year-old son, Noah.

On the ride home, Amy snorted one of the bags of heroin. When she got back, Peter asked for his portion. He was having severe alcohol withdrawal and needed the heroin to feel better. "When his arm was around me, I could feel him shaking," Amy remembered of his withdrawal. "His heart would race and he'd have cold sweats. And the coughing would get so bad, he'd start gagging." She had just been released from jail a few days earlier, after having been arrested for drug possession for the first time, and, in her absence, Peter's drinking had worsened. "He used alcohol and drugs to escape his emotional and mental pain," Amy explained, and now he needed heroin to manage the withdrawal symptoms.

After Amy gave Peter his bag of heroin, they went downstairs to the bathroom together. To keep the drugs out of Noah's sight, they always did drugs behind the closed bathroom door. "I asked him multiple times how much he had drank that day, because we hadn't snorted in awhile, but he insisted he hadn't drank that much," Amy recalled. "He then snorted one \$10 bag – the same amount I snorted in the car," she said. Noah started knocking on the door, so Peter walked out to meet him and Amy stayed to clean up. When she walked out, Peter was asleep and softly snoring and Noah was in his room playing. She wasn't alarmed.

"Peter would pass out and not wake up for three or four hours sometimes," Amy explained. "I wouldn't really think anything of it, because that was what he would do over and over throughout all the years I knew him." She walked to Noah's room and started tidying up his toys and putting them back in the toy box.

A friend of theirs, Sandra, who was staying with Peter and Amy at the time, and who also used heroin that day, noticed Peter wasn't breathing first. She screamed to Amy and Amy, in disbelief, ran from Noah's room and dropped to the floor to help him. "I didn't even think about it. I just went to try and take care of him and do whatever I could," Amy said. "I just felt so much fear." She did a few rescue breaths and then called for help. "The house phone was sitting on the dresser right behind him, so I grabbed the house phone and I called 911," Amy remembered, "[and] they walked me through CPR..."

When the paramedics and police arrived, Amy told them Peter had been drinking a lot of alcohol and had inhaled heroin. They administered a Narcan injection en route to the hospital, but were unsuccessful and Peter was pronounced dead shortly after.

Amy wanted to go to the hospital to join him but had to stay with Noah at the house. "While I waited," Amy remembered, "I believed Peter was going to make it and come home and be okay." When Peter's mom arrived with the news, "I broke down crying," Amy recalled. "I couldn't believe what was happening, my boyfriend of 18 years had died, I was a mess."

Amy Shemberger, cont.

That same day, Amy also lost guardianship of their son, Noah. “In one day, I lost everything,” she remembered. “Having Noah ripped from me, after losing Peter, was heart-wrenching,” she said. Grief stricken, Amy moved back to her parents’ house and immediately started attending Narcotics Anonymous meetings. She needed help and did not know what else to do, except go to as many meetings as she could.

It was not until two months later – in November of 2014 – that Amy was charged with drug-induced homicide. Her bail was set at one million dollars. “I didn’t know that I had even done anything wrong,” Amy explained. “I had no idea that I actually performed a delivery,” she said. “I didn’t know that simply handing your friend something was a delivery or handing [something to] your boyfriend.” Her co-defendant, Benjamin Camunias, the guy who gave her a ride, was also indicted on the same charge.

Amy’s parents, Patricia and Tony Shemberger, begged and borrowed from everyone they knew and took out a mortgage on their home to scrape together \$75,000 to pay for a lawyer and get Amy out on bond. They hired Michael Johnson, a Chicago-based lawyer, to represent her. Right away, he viewed the case against Amy as wrong. “Amy’s case should not have been a homicide,” he said. “It’s not as though she held him down and stuck a needle in his arm or gave him, without him knowing, an amount of drugs that could cause death or great bodily harm...an adult, who is already involved in drugs, who has been a heroin addict, taking a dose that he’s probably been taking for many years, isn’t a homicide and shouldn’t be considered a homicide.”

Peter had not only used heroin for years, but he had used alcohol and cocaine for longer. He and Amy met when Amy was in eighth grade and he in ninth, and by the time he finished high school and started work, he was a heavy drug user. “I was all about trying to save this man and push him into a healthy direction,” Amy recalled. “I wanted to have a good life with him.” But with more and more problematic substance use, Amy says his behavior changed. “He would get physical with me and punch the wall next to my head or grab my arms and leave bruises all over my body but not my face,” she remembers.

She would leave him for weeks but always returned. “He would be so persistent,” Amy’s mother remembered, “he’d be texting her hundreds of times a day, calling her, calling the house day or night, knocking on our door at 12 o’clock or 1 o’clock in the morning. It was constant, he wouldn’t go to work.” No matter how bad it got, Amy would go back to him. “We connected,” Amy explained. “Peter was a deeper person and provided me a love I was searching for and couldn’t find elsewhere. We connected on a deeper level emotionally.”

After Amy graduated from college, she and Peter moved in together. He worked at laying marble floor, and she got a job at the Illinois Department of Motor Vehicles. Peter’s drug use continued, and when things got really bad, Amy would go home and stay with her parents for days or weeks at a time. The circumstances were anything but ideal, so when she learned she was pregnant, her heart sunk. It brought her sadness to bring a child into the situation. “I knew the struggles that lay ahead,” she said. “I knew, from his past behavior, that no magic wand was going to be waved and that things weren’t going to be different.”

As Amy feared, Peter’s problematic substance use continued. On the day of their son’s birth, Peter was outside using when the newborn was wheeled in, and when she begged him to spend the first night with them in the hospital, he went home to use instead.



It wasn't until after Noah's birth, when Amy wanted to lose her pregnancy weight and injured her back in a fitness class, that she ended up becoming addicted to opioids as well. She went to a doctor, who diagnosed her with two herniated disks and sent her to a pain clinic for medication. The doctor prescribed heavy narcotic medication of increasing quantities. "I counted it up once," Amy says, "and I was prescribed, when I added it all up, four hundred different pills in a month by my doctor." With the painkillers, she believed she could get everything done. "I felt like I could be supermom on the pills," she recalled. Noah was a colicky baby and did not sleep, and the pills helped her with her back pain, but they also helped her take care of him at night and still work during the day.

Within a year, Amy had developed a severe opioid addiction and began to experience physical withdrawal in between refills. She'd never experienced withdrawal before, and didn't recognize the symptoms. "I woke up at our house, with Noah, and I remember feeling like I had the flu," Amy said. "I called Peter, because he was familiar with heroin, and asked him, 'Why do I feel so horrible?'" He explained she was "dope sick."

The withdrawal worsened over time, and she began to experience extreme hot and cold flashes, nausea, and diarrhea. She would throw up as many as 20 times in a row. The physical symptoms were accompanied by acute anxiety and restlessness. "It's a horrible combination, like a living hell," she remembered.

At work, the withdrawal became too much to bear. To avoid them, she and Peter would buy Norco pills off the street until the next prescription became available. When pills became too expensive, and her withdrawal too intense, she turned to heroin. "I was so scared," Amy remembered. "It was like something that was taboo to me, and I didn't want to do it, but because of the physical withdrawal, I gave in."

The withdrawal symptoms were not the only reason she switched to snorting heroin; her depression and anxiety were acute and she needed relief. "I was struggling emotionally and feeling alone like everything was on my shoulders," Amy recalled. "I didn't know how else to alleviate the suffering." She still worried what taking it would do to her. "I knew what it had done to Peter," she explained. "It was this heavy-duty drug that wasn't the direction I was looking to go in my life."

Amy Shemberger, cont.

Surprisingly to her, heroin at first wasn't at all like she expected. "The first time I snorted heroin, I was only able to get my sick off," Amy recalled. "I was not even able to get high off of it, because I had such a high tolerance off legally prescribed painkillers. It just got me to the point of feeling normal."

She continued to take pills and ingest heroin up until her job transfer to a Department of Motor Vehicles office further away. The new commute was three hours each way, and the withdrawal from snorting heroin more extreme. "To hold off the withdrawal," Amy said, "I started to shoot it, so I wouldn't have to worry about it while I was at work." She and Peter would take turns getting the drugs – both of them going late at night sometimes to buy them in the streets of West Chicago. More often, Peter used to send her.

Over time, heroin became her and Peter's drug of choice. It was cheaper and easier to get than pills. "At first it was kind of slow, and we were only doing it when we needed to," Amy explained, "but then it became our first choice. It was about escaping the mental pain we felt as much as the withdrawal."

Amy's addiction ultimately resulted in her losing her job and in her first arrest: police found empty bags of heroin in her car, and she spent seven weeks in jail. She had only been out of jail for six days when Peter overdosed and died.

Unlike other drug-induced homicide cases, she received a seven-year sentence instead of one in the double digits. She could have received up to 30 years, according to the Illinois statute, but because she pled guilty and testified against her co-defendant, she received fewer. "It was hard to testify against him," Amy said, "but I had to follow what my lawyer told me to do." Her co-defendant, Benjamin Camunias, was sentenced to twelve years in prison.

For Amy, being in prison, far away from her son, is difficult. "I have not seen or talked to or been able to write my son since he was five," Amy said. "That's three years ago, he's eight now." She added: "It's horrible how much I miss him." She continues to fight in family court for access to him, and for her parental rights to be returned, but the proceedings are moving slowly. "I hold onto hope and faith," Amy said, "that I'll at least be able to have contact with him soon."

She uses her time inside as best she can: she seeks out as many counseling opportunities as are available to her. She teaches a religious class now, as well. Her type of charge limits her work and program opportunities inside, often leaving her with the impression prison is warehousing her, not helping her, but she doggedly pursues the few resources offered.

When she finally gets out in three years, she'll be in her thirties, and have a Class X felony – the most serious offense other than first-degree murder. Her lawyer, Michael Johnson, described the challenges she will face: "[For] anyone with a felony conviction [it] is going to be difficult, because almost any application you get today for a job is going to ask you about your criminal history, especially a Class X offense and it's going to show up as a homicide."

Despite these barriers ahead, and the stigma Amy anticipates experiencing, she is committed to getting Noah back and to starting over. "It's a little bit scary, though," she says, "because for the first time in my life, I'm basically on my own, I don't have Peter by my side for the first time since I was twelve." With the opportunity to start over, she wants to use Peter's death and her experience to help other people with addiction. "I want to be a drug counselor in addiction and prevention," she said, "because I think people will really connect to my story in a meaningful way." More than anything, though, she wants to be a mother to Noah again. "I just want to be there for him," she said.

Drug-Induced Homicide Laws Perpetuate the Harms of Criminalization, cont.

Enforcement of Drug-Induced Homicide Laws Has the Potential to Exacerbate Racial Disparities in the Criminal Justice System

Discriminatory enforcement of drug war policies has produced profound racial and ethnic disparities at all levels of the criminal justice system. Although rates of reported drug use do not differ substantially among people of different races and ethnicities, black people are far more likely to be criminalized for drug possession and use than white people.²⁷⁴ African Americans experience discrimination at every stage of the criminal justice system and are more likely to be stopped, searched, arrested, convicted, harshly sentenced and saddled with a criminal record. These dynamics have clear outcomes. Black people comprise 13% of the U.S. population.²⁷⁵ But black people comprise 29% of those arrested for drug law violations,²⁷⁶ nearly 35% of those incarcerated in state or federal prison for any drug law violations,²⁷⁷ and roughly 35% of those incarcerated in state prison for possession only.²⁷⁸

National-level data on arrests of Latinos are incomplete (what data are available are often inaccurate, because Latinos are routinely undercounted in national criminal justice statistics, or are categorized as white).²⁷⁹ Yet among drug arrest incidents in 2015 for which ethnicity was reported, more than 20 percent of those arrested were Latino.²⁸⁰ Where available, state and local level data also show that Latinos are disproportionately arrested and incarcerated for drug possession violations.²⁸¹ Disparities are less stark for Latinos than for black people, but they clearly exist. And it has been demonstrated that likelihood of arrest is associated with skin tone.²⁸²

These racially disparate outcomes can be expected as a result of police and prosecutor enforcement of drug-induced homicide laws as well. Though it was not possible to determine the race of the people being investigated and charged with drug-induced homicide from the concatenated results of the media search, if history is any indicator, black and brown people will be disproportionately targeted both as friends and family of people who died, but, more ominously, as the demonized “pushers,” “dealers,” and “peddlers” – all racially coded language.

Indeed, even without comprehensive data, there are hints of potentially problematic enforcement. In McHenry County, Illinois, a county that has a black population of under 2%, prosecutors have brought cases against four black men from Chicago, which totals 35% of their 11 drug-induced homicide cases.²⁸³ James Linder’s case, profiled below, is indicative of the racial dynamics at play. In Minnesota, Hennepin County Attorney Mike Freeman has been outspoken in his support for enforcement of the drug-induced homicide law and has brought 11 charges,^{284,285} the most in the state: “We are aggressively prosecuting. We want to send a statement.”²⁸⁶ He only appears to be sending that statement, however, to a particular demographic. Though unable to identify all 11 drug-induced homicide cases that Freeman has prosecuted via news outlets, the eight cases that could be identified were all against black defendants.²⁸⁷ *At the very least*, then, 72% of Freeman’s prosecutions have been against black people despite a black population of 13% in the county in 2016.²⁸⁸ It is critical that we curb the use of drug-induced homicide charges if we do not want to perpetuate the already appalling racial disparities resulting from drug law enforcement.

James Linder



Jobs for people with felonies are hard to come by, so when 36-year-old James Linder lost his job in June of 2014 at a local bakery in Lake County, Illinois, his employment opportunities felt especially bleak. James had recently been released from prison and was on a 60-day imposed house arrest. When his parole officer incorrectly wrote down James' work schedule, he had to stay home until the error was corrected. Otherwise, he would have violated parole and been sent back to prison.

In the time it took for his parole officer to fix the mistake, the bakery had found someone else to replace him. "The bakery was going to get me on a different shift, but I didn't have a ride to get there to the new shift," James explained. "The bakery was forty-five minutes away, and I was stuck right there at home." Without a job, James could not contribute financially to raising his thirteen-year-old son, Jakeice, or help his sister, Ebony, with her rent. Ebony had supported him while in prison and now she was letting him stay with her and her children. James felt hopeless after losing the bakery job: "When I got the job, I was excited. I was like I can get my son some stuff for his birthday coming up. When I lost it, I was real mad. It was a decent job, I mean at \$12.75 per hour, it was a good job for having just got out of the penitentiary."

James applied for more jobs but no one hired him or only hired him until his background check came through. "[He] would go fill out applications a week straight, a month straight sometimes. I would tell him don't give up, just don't give up," his sister, Ebony, remembered. "He would get a job for a week, and then they'd fire him because his background came in. That happened three or four times. He [would get] very discouraged," she explained. He needed money and turned to the only option he knew: selling small amounts of drugs. He did it infrequently but made enough to take his son for a haircut and help out his sister.

Cody Hillier and his girlfriend, Danielle Barzyk, had been in out-patient and in-patient treatment and had relapsed in August of 2014 shortly after completing in-patient treatment. They were using crack cocaine or heroin daily leading up to Danielle's death on January 30, 2015. Cody testified that the day Danielle died, they drove to Lake County and he purchased three packets of heroin from James.

While Cody purchased the drugs, Danielle stayed in the car. She never met James. Cody testified that he asked for two halves, one for him and one for Danielle, and then a third packet just for himself. He split the three packets of heroin and put it in contact lens cases and then returned to the car. The State's attorney argued the total weight was over a gram, but James' attorney challenged this at trial, saying the total weight was less than a gram.

Cody and Danielle then drove to neighboring Deerfield, where Danielle had a job interview. While she was in the interview, Cody used "a bump" of the heroin. "A bump" of heroin is a tenth of a gram. Then she came back to the car and, while they were driving, she did "a bump" of it too. Cody drove her to his house, where they took another "bump," and then he drove her back to her house in McHenry County. She stayed home for awhile where it's assumed she did another "bump" by herself. Cody went back later to pick her up and they went to Chipotle and returned to watch a movie. Afterwards, they each did one last "bump" of heroin.

Danielle began having difficulty breathing and asked that Cody take her for help. When responders arrived, and asked Cody if his girlfriend had taken any drugs, he lied and told them she was having an asthma attack. Police did not administer naloxone. They attempted to give her rescue breaths but, in the end, she was transported to a hospital in Kane County where, again, she was not given her naloxone (presumably because they thought she was having an asthma attack as Cody had said), and was pronounced dead there.

The next day, working with the McHenry County Task Force, Cody arranged to purchase heroin in Lake County that evening. Cody allegedly bought more from James under police surveillance. A few blocks from the alleged sale, James was pulled over and arrested. He was taken to the police station in Lake County and questioned about Danielle Barzyk's death. He was confused and told the police, "I don't know what you're talking about. I don't know any woman by that name. Besides I don't sell drugs to women."

From there, he was transferred to McHenry County and charged with drug-induced homicide. Instead of being prosecuted in Lake County, the county in which James allegedly sold the drugs, or in Kane County, the county where Danielle was pronounced dead, his case was prosecuted in McHenry County, the county where Danielle resided and ingested a portion of the heroin. For James, his incarceration at the county jail was the first time he had ever been to McHenry county, a predominantly white, farming county an hour away from where he grew up and lived with his sister. McHenry county's population is 93.5% white and 1.6% black.

James' lawyer sought to dismiss the drug-induced homicide charge based on the fact that the murder statute allows the State to proceed to trial where the murder takes place or where the person dies and the body is found. He argued that in James' case, the alleged delivery of heroin took place in Lake County, the heroin ingestion in Cook County and McHenry County, and the victim's death in Kane County, concluding that McHenry County was not the right jurisdiction. James' lawyer emphasized that James' actions began and ended

in Lake County and, as such, Lake County was the only proper place of trial. The judge disagreed and refused to dismiss the case.

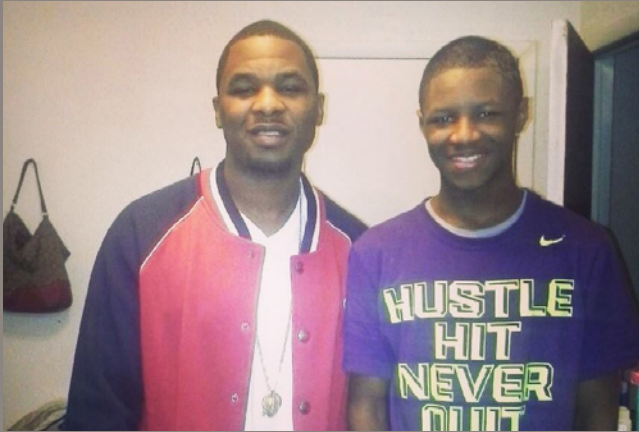
Awaiting trial, James sat in the McHenry county jail for over two years. When it came time for his lawyer and the State to select a jury, there were no black jurors available to serve. In a motion for new trial, James' attorney, Henry Sudgen, sought to change the venue in James' case due to the fact that out of all three counties he could have been prosecuted in, McHenry County "is the least likely of the three counties in which he would be able to get a jury of his peers." The judge denied the motion and, at the end of the trial, the all white jury returned with a guilty verdict after approximately only two and a half hours of deliberation.

The drug-induced case was not James' first contact with the criminal justice system. When he was 16-years-old, he was sentenced to 11 years for armed robbery and aggravated vehicular hijacking. Nobody was physically hurt, but it was the 90s and the height of the punitive responses to youth crime – particularly against black youth from marginalized communities. James was the running back for his high school freshman football team, and had never been in trouble until then. He was in learning disability classes, and when his classmates started skipping school, he did too. He started hanging out with a teenage crowd that was getting into trouble and ended up making a mistake with some other boys that he would never cease paying for.

He was sent to a juvenile facility plagued by chronic over-crowding. The violence inside was extreme – young people hitting, stabbing, and stealing from each other. He had to learn how to adjust and protect himself. When he was transferred from juvenile detention to adult prison, he recalls: "I was a young guy. I was scared to go from juvie to prison. I didn't have hair on my face, not a lick of hair on my face. Everybody was calling me shorty." James stayed in prison until he was released at 21-years-old.

He'd grown up in prison, and now returned to the world branded as a criminal and felon. He moved in with his parents, but lived under

James Linder, cont.



parole-imposed house arrest and wore a band on his leg. He applied to jobs, checking the box asking if he had ever been convicted of a felony. But no one called back. “Everybody looks at you all crazy, because you just got out of the penitentiary, and you’re 21-years-old,” James explained. “People see you as a criminal.” Eventually, he just stopped applying for jobs. Then one evening, while still on house arrest, he stayed over at his girlfriend’s house, violating his parole for not going home. He was sent back to prison for ten months. While in prison, his mother died. It was really hard for James, his sister, Ebony, recalled. “[Our] mom passed away in Memphis, Tennessee and [James] couldn’t come to her funeral, because it was too much money to ship him down. It was like \$3,500, and [our] dad didn’t have the money. So he didn’t get to see [our] mom get buried.”

When James got out, he went back to live with his father until he met a girl and moved in with her. He looked for jobs again, but with each re-entry back into society, he found himself yet again without access to employment, housing, or public benefits. The challenges associated with mere survival on the outside led to more prison time: he was arrested and sent to prison for charges including fleeing a police officer, drug possession, and possession of a firearm.

James had been out almost a year before he was re-arrested and charged with drug-induced homicide. During that year, he insisted on spending as much time with his son, Jakeice, as possible. He used to go and get Jakeice after school every day. They would play video games

and basketball and listen to music together. “With his dad back around, Jakeice was happy,” Jakeice’s mother said, “but when James went back to jail, it was like a dark spell over my son. He misses his dad a lot.” Now Jakeice is lost, says his mom, and getting in more trouble. Even though James calls Jakeice from prison, she says it’s still hard. “Every boy needs his father,” she explained.

When the State’s attorney offered James a plea deal for the drug-induced homicide charge, he turned it down. He felt strongly that his only crime was delivery. During his sentencing, James apologized to Danielle’s family, and acknowledged his participation in her death, but challenged the State’s position that he killed her. He told the judge, “I contributed to this young lady’s death [but] I didn’t kill her.” After his testimony concluded, the judge sentenced him to 28 years. She pointed to his criminal history, including his juvenile conviction from when he was 16, as justification for the nearly three decade long sentence she imposed. After listening to the judge refer back to his early criminal record, James told his lawyer, “I was a juvenile back then; she can’t do that.”

James’ 28-year sentence is 55% greater than the greatest sentence in McHenry County since 2011 for the same charge. Out of the eleven drug-induced homicide cases in McHenry County, there have only been four that actually went forward as drug-induced homicide. One of those was dismissed by the State, and the other three include sentences of eight years, ten years, and six years. All the other charges, other than one that was not guilty by a bench trial, were amended to lesser charges.

Meanwhile, Danielle’s boyfriend, Cody, who had purchased the drugs for her, and then lied to medical responders when there was a chance her life could have been saved with naloxone had he told them she ingested heroin, was charged with delivery, not drug-induced homicide. Cody testified for the State in James’ trial and received probation and time-served. From prison, James explained,

“If you’re black and coming to McHenry County, you’re screwed. The county gives probation to white boys with class x felonies and sends black guys with the same class x felony to the joint.”

Drug-Induced Homicide Laws Perpetuate the Harms of Criminalization, cont.



Drug-Induced Homicide Laws Reduce Access to Needed Services

Rather than diminishing the harms of drug misuse, criminalizing people who sell and use drugs amplifies the risks of fatal overdoses and diseases, increases stigma and marginalization, and drives people away from needed addiction treatment and other medical and harm reduction services.²⁸⁹ Aggressive law enforcement practices and harsh criminal penalties for drug possession force many users into environments where risks of contracting or transmitting HIV and hepatitis C are greatly elevated, and away from testing, prevention, treatment and other effective public health services.²⁹⁰

Criminalization of drug use and sales promotes and reinforces stigma against people who use drugs and who struggle with drug addiction.²⁹¹ In turn, stigma can bar people who use drugs from accessing a wide range of opportunities and exercising their rights, often with devastating consequences.

People who are stigmatized for their drug involvement may endure social rejection, labeling, stereotyping and discrimination, including denial of employment, housing or treatment²⁹² – even in the absence of any concrete negative consequences associated with their drug use. Stigma is a major factor preventing individuals from seeking and completing drug treatment²⁹³ and from utilizing harm reduction services, such as syringe access programs²⁹⁴ – although the social exclusion created by stigma often increases the need for such services.²⁹⁵

In addition, social isolation can itself be a driver of problematic drug use, so further isolating problematic drug users is counter-productive to decreasing their use. In short, people who use drugs, including people who sell drugs to support their addiction, already suffer from stigma in ways that have material consequences; criminalization of drugs and people who use and sell them greatly exacerbates that problem. Reducing the role of the criminal justice system is therefore critical to ensuring that people who use drugs can

Drug-Induced Homicide Prosecutions Waste Resources that Could be Spent on Effective Interventions

access vital treatment and harm reduction services. There is no evidence that drug-induced homicide charges are effective at reducing overdose deaths or curtailing the use or sale of controlled substances. And yet, a significant outpouring of resources is required to enforce, prosecute, and incarcerate people on these charges. As noted previously, a *single county* in Ohio is spending at least three-quarters of a million dollars *annually* on police investigations related to drug-induced homicide charges alone (not including prosecution or incarceration costs). It will cost approximately one million dollars to incarcerate James Linder for 28 years in federal prison,²⁹⁶ over \$265,000 to incarcerate Amy Shemberger for seven years in Illinois state prison,³⁹⁷ and between \$340,000 and over one million dollars to incarcerate Mike Millette for ten to 30 years in New Hampshire state prison.³⁹⁸

The cost of locking up these three individuals for drug-induced homicide equates to approximately 100,000 doses of naloxone²⁹⁹ – 100,000 potential saved lives for the price of three ruined ones.

Proven overdose prevention strategies, like naloxone, which immediately reverses an overdose and restores normal breathing within two to three minutes of administration (without any potential for misuse or abuse), however, are underutilized and underfunded as a result of pinpointing the “cause” of an overdose death on the point of sale. This law-and-order response ignores that there are a host of factors that directly contribute to an overdose death, including tolerance, poly-drug use, circumstances of consumption, and familiarity with the substance – none of which can be controlled by the person who supplied the drugs nor are addressed by drug-induced homicide charges. As just one example, 77% of prescription opioid overdose deaths and 67% of heroin overdose deaths are caused by the mixing of opioids with other drugs or alcohol.³⁰⁰

Moreover, the host of societal factors that indirectly contribute to an overdose death – including prohibition, criminalization, and stigmatization which make seeking and obtaining treatment and other health services more difficult – are exacerbated by drug-induced homicide laws. When this complex multitude of causes is ignored, so are the interventions that have the potential to address them. These

strategies include, but are not limited to, educating people on how to prevent, recognize and respond to an overdose, expanding access to the life-saving medicine naloxone, enacting legal protections that encourage people to call for help for overdose victims, implementing safe consumption services, allowing people to test what is in drugs so that they are aware of what they are consuming and how potent it is, increasing access to opioid agonist therapy, such as methadone and buprenorphine, and prioritizing novel treatment research.

Overdose Prevention Education, Good Samaritan, and Naloxone Access

Increased funding for overdose education programs that can provide trainings on, for instance, the dangers of mixing substances, is urgently needed. And, while progress has been made to increase access to the opioid overdose antidote naloxone,³⁰¹ it remains woefully inaccessible and unaffordable. In order to make a dent in the increasing rates of overdose fatalities, naloxone must be available from as many access points as possible (including via prescription, over-the-counter at a pharmacy, at community overdose prevention and syringe exchange programs, in jails and prisons, and at hospitals), insurance coverage of naloxone must be increased, and dedicated funding for community-based naloxone distribution and overdose prevention and response education must be provided. Finally, states need to improve protection for people who seek medical help for overdoses. The 40 states plus the District of Columbia which do have Good Samaritan laws on the books vary widely in the access and protections they actually provide.³⁰² They must expand their protections beyond immunities for simple possession, to include drug-induced homicide and other potential legal consequences.

Safe Consumption Sites (SCS)

States and/or municipalities should permit the establishment and implementation of safe consumption sites. Safe consumption sites are legally sanctioned facilities that provide a hygienic space for people who use drugs to consume pre-obtained drugs under the supervision of trained staff. There are approximately 100 such programs operating in 66 cities around the world, in nine countries (Switzerland, Germany, the Netherlands, Norway, Luxembourg, Spain, Denmark, Australia and Canada).³⁰³ Safe consumption sites have



been proven to reduce overdose deaths and transmission of infectious diseases, provide an entry to treatment and even abstinence, and improve public order by reducing discarded syringes in public places and public injecting all while not encouraging additional drug use or increasing crime in the areas where the facilities are located.³⁰⁴ Notably, there has not been a single overdose fatality at any SCS operating worldwide.³⁰⁵ When an overdose does occur, which is not uncommon, staff are immediately available to respond with emergency treatment, including administering naloxone and oxygen and calling for ambulance support.

California,³⁰⁶ Maryland,³⁰⁷ Massachusetts,³⁰⁸ New York,³⁰⁹ Vermont,³¹⁰ and Maine³¹¹ have introduced legislation to establish safe consumption sites. In addition, the City of Ithaca, New York has included a proposal for a safe consumption site in their widely-publicized municipal drug strategy.³¹² And, in a region of Washington State that includes Seattle, the King County Heroin and Prescription Opiate Addiction Task Force has recommended the establishment of at least two pilot supervised consumption sites as part of a community health engagement program designed to reduce stigma, “decrease risks associated with substance use disorder[,] and promote improved health outcomes.”³¹³

Drug Checking

Increasingly, one of the risks of opioid and/or heroin use is that people who use these substances will unknowingly acquire a drug that has been adulterated with far more potent synthetic opioids such as fentanyl.³¹⁴ While more common in heroin, there have been cases of counterfeit Xanax and Oxycodone tablets adulterated with fentanyl.³¹⁵ Adulterated substances lead to higher numbers of hospitalizations and fatal overdoses.³¹⁶ Technology exists to test heroin and opioid products for adulterants, but it has so far been widely unavailable at a public level in the U.S. (aside from a mail-in service run by Ecstasydata.org). Making these services available in the context of a community outreach service or, at the very least, as a pilot project or research study, would lower the number of deaths and hospitalizations and also allow for real-time tracking of local drug trends.

Drug-Induced Homicide Prosecutions Waste Resources that Could be Spent on Effective Interventions, cont.

Opioid Agonist Therapy

Nearly 80% of people experiencing opioid use disorder do not receive treatment because of limited treatment capacity, financial obstacles, social stigma, and other barriers to care.³¹⁷ Opioid agonist therapy (OAT), widely recognized as the most effective treatment for opioid use disorder, refers to treatment with prescription opioid agonist medications, such as methadone and buprenorphine (Suboxone™), which block the effects of opioid use and prevent or relieve withdrawal symptoms and cravings.³¹⁸ Scientific research has established that OAT is a cost-effective intervention that increases patient retention in treatment and decreases drug use, transmission of infectious diseases, criminal activity, and overdose deaths.³¹⁹ And, yet, a scant 12% of individuals with opioid use disorder receive methadone,³²⁰ and only nine percent of substance use treatment facilities in the United States offer specialized treatment of opioid use disorder with OAT.³²¹ In order to meaningfully address increasing rates of opioid use disorder and overdose, insurance coverage for OAT must be increased, additional access points for OAT must be established (such as in correctional settings and hospitals), and regulatory and other barriers must be removed.

Heroin-Assisted Treatment

Heroin-assisted treatment (HAT) refers to the administering or dispensing of pharmaceutical-grade heroin to a small and previously unresponsive group of chronic heroin users under the supervision of a physician in a specialized clinic. Permanent HAT programs have been established in Canada, Switzerland, the Netherlands, Germany, and Denmark, with additional trial programs having been completed or currently taking place in Spain, Belgium, and the United Kingdom.³²² Yet no research has been conducted in the U.S. Findings from randomized controlled studies of HAT in these other countries have yielded unanimously positive results, including: 1) HAT reduces illicit drug use; 2) HAT reduces overdose deaths; 3) retention rates in HAT surpass those of conventional treatment; 4) HAT can be a stepping stone

to other treatments and even abstinence; 5) HAT improves health, social functioning, and quality of life; 6) HAT does not pose nuisance or other neighborhood concerns; 7) HAT reduces crime; and 8) HAT can reduce the illicit market for heroin.³²³

Promising Research

Additional research is needed on alternative treatments for opioid use disorder and their potential to reduce overdose risk. Using marijuana as a substitute for opioids has the potential to have profound harm reduction impacts. *JAMA Internal Medicine* documents a relationship between medical marijuana laws and a significant reduction in opioid overdose fatalities: “[s]tates with medical cannabis laws had a 24.8% lower mean annual opioid overdose mortality rate compared with states without medical cannabis laws.”³²⁴ Another working paper from the RAND Health and Behavior Center for Health Economics notes that “states permitting medical cannabis dispensaries experienced a 15 to 35 percent decrease in substance abuse admissions and opioid overdose deaths.”³²⁵ There is also some emerging evidence that marijuana has the potential to treat opioid addiction, but additional research is needed.³²⁶

There are a number of other proven and potential tools to stop the alarming rate of overdose deaths—for a complete list, please see the Drug Policy Alliance’s publication “A Public Health and Safety Approach to Problematic Opioid Use and Overdose,” available at http://www.drugpolicy.org/sites/default/files/Opioid_Response_Plan_041817.pdf.

Conclusion

Drug-induced homicide laws serve no purpose

– they do not deter drug use or sales; they do not prevent overdose fatalities, and, in fact, contribute to preventable deaths; they perpetuate the harms of criminalization, including misuse of prosecutorial discretion and further stigmatization of people who use or sell drugs, as well as potentially exacerbate racial disparities; and they waste resources that could be spent on proven treatment and harm reduction interventions. Elected officials and prosecutors must be held accountable and not be permitted to wield this punitive drug war sword – one that could carry up to a lifetime in prison, but, in any event, carries a lifetime of collateral consequences – with impunity.

Appendix A

Jurisdictions with Specific Drug-Induced Homicide Laws

Jurisdiction	Year Enacted	Statute	Charge	Potential Punishment
Federal	1986	(a) Unlawful acts. Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance. (b) Penalties. Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced . . . to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. 21 U.S.C.A. § 841.		Twenty (20) years to life. 21 U.S.C.A. § 841.
Colorado	1990	(1) A person commits the crime of murder in the first degree if . . . [h]e or she commits unlawful distribution, dispensation, or sale of a controlled substance to a person under the age of eighteen years on school grounds as provided in section 18-18-407(2), and the death of such person is caused by the use of such controlled substance. Colo. Rev. Stat. Ann. § 18-3-102(1)(e).	Murder in the First Degree.	Life-death penalty. Colo. Rev. Stat. Ann. § 18-1.3-401.

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Jurisdiction	Year Enacted	Statute	Charge	Potential Punishment
Delaware	2016	<p>(a) A person is guilty of drug dealing resulting in death when the person delivers a Schedule I or II controlled substance in Tier 1 or greater quantity to another person in violation of this chapter, and said controlled substance thereafter causes the death of another person who uses or consumes it.</p> <p>(b) It is not a defense to a prosecution under this section that the defendant did not directly deliver the controlled substance to the decedent.</p> <p>(c) It is an affirmative defense to a prosecution under this section that the defendant made a good faith effort to promptly seek, provide, or obtain emergency medical or law-enforcement assistance to another person who was experiencing a medical emergency after using a Schedule I or II controlled substance, and whose death would otherwise form the basis for criminal liability under this section.</p> <p>(d) Any person who violates subsection (a) of this section is guilty of a class B felony.</p> <p>16 Del. C. § 4752B.</p>	Class B Felony.	<p>2-25 years.</p> <p>11 Del. C. § 4205.</p>
Florida	1972 (heroin only, initially); 1987; 2017 (fentanyl added)	<p>The unlawful killing of a human being... Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances, when such substance or mixture is proven to be the proximate cause of the death of the user:</p> <p>a. A substance controlled under s. 893.03(1);</p> <p>b. Cocaine as described in s. 893.03(2)(a)4.;</p> <p>c. Opium or any synthetic or natural salt, compound, derivative, or preparation of opium;</p> <p>d. Methadone;</p> <p>e. Alfentanil, as described in s. 893.03(2)(b)1.;</p> <p>f. Carfentanil, as described in s. 893.03(2)(b)6.;</p> <p>g. Fentanyl, as described in s. 893.03(2)(b)9.;</p> <p>h. Sufentanil, as described in s. 893.03(2)(b)29.;</p> <p>i. A controlled substance analog, as described in s. 134 893.0356, of any substance specified in sub-subparagraphs a.-h.</p> <p>is murder in the first degree.</p> <p>Fla. Stat. § 782.04(1)(a)(3)-(4).</p>	First-degree murder.	<p>Life-death penalty.</p> <p>Fla. Stat. Ann. § 775.082; Fla. Stat. Ann. § 782.04.</p>

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Appendix A, cont.

Jurisdiction	Year Enacted	Statute	Charge	Potential Punishment
Illinois	1989	A person who violates Section 401 of the Illinois Controlled Substances Act or Section 55 of the Methamphetamine Control and Community Protection Act by unlawfully delivering a controlled substance to another, and any person's death is caused by the injection, inhalation, absorption, or ingestion of any amount of that controlled substance, commits the offense of drug-induced homicide. 720 Ill. Comp. Stat. 5/9-3.3.	Drug-induced homicide.	15-30 years or an extended term of not less 30-60 years. 720 Ill. Comp. Stat. 5/9-3.3.
Kansas	2013	(b) Distribution of a controlled substance causing death is distributing a controlled substance in violation of K.S.A. 21-5705, and amendments thereto, when death results from the use of such controlled substance. (c)(2) Distribution of a controlled substance causing death is a nondrug severity level 1, person felony. Kan. Stat. Ann. § 21-5430.		190 months. Kan. Stat. Ann. § 21-6804.
Louisiana	1987	A second degree murder is the killing of a human being... when the offender unlawfully distributes or dispenses a controlled dangerous substance listed in Schedules I through V of the Uniform Controlled Dangerous Substances Law, 1 or any combination thereof, which is the direct cause of the death of the recipient who ingested or consumed the controlled dangerous substance. La. Rev. Stat. Ann. § 14:30.1(3).	Second-degree murder.	Life imprisonment without parole. La. Rev. Stat. Ann. § 14:30.1(3).
Michigan	2006	A person who delivers a schedule 1 or 2 controlled substance, other than marihuana, to another...that is consumed by that person or any other person and that causes the death of that person or other person is guilty of a felony. Mich. Comp. Laws Ann. § 750.317a.		Life imprisonment or term of years. Mich. Comp. Laws Ann. § 750.317a.
Minnesota	1987	Whoever, without intent to cause death, proximately causes the death of a human being by, directly or indirectly, unlawfully selling, giving away, bartering, delivering, exchanging, distributing, or administering a controlled substance classified in Schedule I or II, is guilty of murder in the third degree... Minn. Stat. § 609.195(b).	Third-degree murder.	Up to 25 years, or fine up to \$40,000, or both. Minn. Stat. § 609.195(b).
New Hampshire	2006	Any person who manufactures, sells, or dispenses methamphetamine, lysergic acid, diethylamide phencyclidine (PCP) or any other controlled drug classified in schedules I or II, or any controlled drug analog thereof... is strictly liable for a death which results from the injection, inhalation or ingestion of that substance. N.H. Rev. Stat. Ann. § 318-B:26(IX).		Life imprisonment or term of years. N.H. Rev. Stat. Ann. § 318-B:26(IX).

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Jurisdiction	Year Enacted	Statute	Charge	Potential Punishment
New Jersey	1987	<p>Any person who manufactures, distributes or dispenses methamphetamine, lysergic acid diethylamide, phencyclidine or any other controlled dangerous substance classified in Schedules I or II, or any controlled substance analog thereof, in violation of subsection a. of N.J.S. 2C:35-5, is strictly liable for a death which results from the injection, inhalation or ingestion of that substance, and is guilty of a crime of the first degree.</p> <p>N.J. Stat. Ann. § 2C:35-9.</p>	First-degree strict liability for a drug-induced death charge.	<p>10-20 years.</p> <p>N.J. Stat. Ann. § 2C:43-6.</p>
North Carolina	1994	<p>A person who commits second degree murder shall be punished as a Class B2 felon in either of the following circumstances... (2) The murder is one that was proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., or methamphetamine, and the ingestion of such substance caused the death of the user.</p> <p>N.C. Gen. Stat. Ann. § 14-17(b)(2).</p>	Second-degree murder.	<p>125-157 months.</p> <p>N.C. Gen. Stat. Ann. § 15A-1340.17.</p>
Oklahoma	1996	<p>A person also commits the crime of murder in the first degree, regardless of malice, when that person or any other person takes the life of a human being during, or if the death of a human being results from... unlawful distributing or dispensing of controlled dangerous substances or synthetic controlled substances, trafficking in illegal drugs, or manufacturing or attempting to manufacture a controlled dangerous substance.</p> <p>Okla. Stat. Ann. tit. 21, § 701.7.</p>	First-degree murder.	<p>Death or life imprisonment.</p> <p>Okla. Stat. Ann. tit. 21, § 701.9.</p>
Pennsylvania	1989	<p>A person commits a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.</p> <p>18 Pa. Cons. Stat. Ann. § 2506.</p>	First-degree felony.	<p>Up to 40 years.</p> <p>18 Pa. Cons. Stat. Ann. § 2506.</p>
Rhode Island	1981	<p>Any person convicted of the sale, delivery or distribution of a controlled substance, the sale of which would constitute a felony under chapter 28 of title 21, to a minor, or of knowingly providing a controlled substance for sale, delivery or distribution to a minor and death has resulted to the minor because of the ingestion orally, by injection, or by inhalation of the controlled substance, shall be imprisoned for life.</p> <p>R.I. Gen. Laws § 11-23-6.</p>		<p>Life imprisonment.</p> <p>R.I. Gen. Laws § 11-23-6.</p>

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Appendix A, cont.

Jurisdiction	Year Enacted	Statute	Charge	Potential Punishment
Tennessee	1989/1990	Second-degree murder [Class A felony] is... a killing of another that results from the unlawful distribution of any Schedule I or Schedule II drug, when the drug is the proximate cause of the death of the user. Tenn. Code Ann. § 39-13-210(a)(2).	Second-degree murder.	15-60 years. Tenn. Code Ann. § 40-35-111.
Vermont	2003	If the death of a person results from the selling or dispensing of a regulated drug to the person in violation of this chapter, the person convicted of the violation shall be imprisoned not less than two years nor more than 20 years. Vt. Stat. Ann. tit. 18, § 4250.		2-20 years. Vt. Stat. Ann. tit. 18, § 4250.
Washington	1987	(1) A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(2) (a), (b), or (c) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide. Wash. Rev. Code Ann. § 69.50.415.	Controlled substances homicide.	Up to 10 years and/or fine up to \$20,000. Wash. Rev. Code Ann. § 9A.20.021.
West Virginia	1991 or 1987	Murder by...a felony offense of manufacturing or delivering a controlled substance...is murder of the first degree. W. Va. Code Ann. § 61-2-1.	First-degree murder.	Life imprisonment. W. Va. Code Ann. § 61-2-2.
Wisconsin	2017	Whoever causes the death of another human being... (a) [b]y manufacture, distribution or delivery, in violation of s. 961.41, of a controlled substance included in schedule I or II under ch. 961, of a controlled substance analog of a controlled substance included in schedule I or II under ch. 961 or of ketamine or flunitrazepam, if another human being uses the controlled substance or controlled substance analog and dies as a result of that use... (b) By administering or assisting in administering a controlled substance included in schedule I or II under ch. 961, a controlled substance analog of a controlled substance included in schedule I or II of ch. 961 or ketamine or flunitrazepam, without lawful authority to do so, to another human being and that human being dies as a result of the use of the substance. Wis. Stat. § 940.02(2)(a), (b).	First-degree reckless homicide (Class C).	Up to 40 years and/or up to \$100,000 fine. Wis. Stat. Ann. § 939.50.
Wyoming	1995	A person is guilty of drug induced homicide if: (i) He is an adult or is at least four (4) years older than the victim; and (ii) He violates W.S. 35-7-1031(a)(i) or (ii) or (b)(i) or (ii) by unlawfully delivering a controlled substance to a minor and that minor dies as a result of the injection, inhalation, ingestion or administration by any other means of any amount of that controlled substance. Wyo. Stat. Ann. § 6-2-108.	Drug-induced homicide.	Up to 20 years. Wyo. Stat. Ann. § 6-2-108.

States with Generic Manslaughter/Felony Murder Laws that are Used to Charge Drug-Induced Homicide*

* Since nearly every state has a manslaughter or felony-murder statute that could potentially be used to charge "drug-induced homicide," the states listed below are those that had over 10 media mentions of prosecutions since 2011. Since many of these generic statutes date back hundreds of years, year enacted is not included.

Jurisdiction	Statute	Charge	Potential Punishment
California	<p>Manslaughter is the unlawful killing of a human being without malice. It is of three kinds...</p> <p>(b) Involuntary-in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.</p> <p>Cal. Penal Code § 192.</p>	Involuntary manslaughter.	<p>2-4 years.</p> <p>Cal. Penal Code § 193.</p>
Connecticut	<p>A person is guilty of manslaughter in the second degree when: (1) He recklessly causes the death of another person; or (2) he intentionally causes or aids another person, other than by force, duress or deception, to commit suicide.</p> <p>Conn. Gen. Stat. Ann. § 53a-56.</p>	Manslaughter in the second degree.	<p>1-10 years.</p> <p>Conn. Gen. Stat. Ann. § 53a-35a.</p>
Georgia	<p>(a) A person commits the offense of involuntary manslaughter in the commission of an unlawful act when he causes the death of another human being without any intention to do so by the commission of an unlawful act other than a felony. A person who commits the offense of involuntary manslaughter in the commission of an unlawful act, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.</p> <p>Ga. Code Ann. § 16-5-3.</p>	Involuntary manslaughter.	<p>1-10 years.</p> <p>Ga. Code Ann. § 16-5-3.</p>
Indiana	<p>A person who recklessly kills another human being commits reckless homicide, a Level 5 felony.</p> <p>Ind. Code Ann. § 35-42-1-5.</p>	Reckless homicide.	<p>1-6 years.</p> <p>Ind. Code Ann. § 35-50-2-6.</p>
Iowa	<p>1. A person commits involuntary manslaughter punishable as:</p> <p>a. A class "D" felony when the person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony or escape.</p> <p>Iowa Code Ann. § 707.5.</p>	Involuntary manslaughter.	<p>Up to 5 years.</p> <p>Iowa Code Ann. § 902.9.</p>

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Appendix A, cont.

Jurisdiction	Statute	Charge	Potential Punishment
Kentucky	A person is guilty of reckless homicide when, with recklessness he causes the death of another person. Ky. Rev. Stat. Ann. § 507.050.	Reckless homicide.	1-5 years. Ky. Rev. Stat. Ann. § 532.060.
Maryland	(a) A person who commits manslaughter is guilty of a felony and on conviction is subject to: (1) imprisonment not exceeding 10 years; or (2) imprisonment in a local correctional facility not exceeding 2 years or a fine not exceeding \$500 or both. Md. Code Ann., Crim. Law § 2-207.	Involuntary manslaughter.	Up to 2 years. Md. Code Ann., Crim. Law § 2-207.
Massachusetts	Whoever commits manslaughter shall, except as hereinafter provided, be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars and imprisonment in jail or a house of correction for not more than two and one half years. Whoever commits manslaughter while violating the provisions of sections 102 to 102C, inclusive, of chapter 266 shall be imprisoned in the state prison for life or for any term of years. Mass. Gen. Laws Ann. Ch. 265 § 13.	Manslaughter.	Up to 20 years.
Missouri	1. A person commits the offense of involuntary manslaughter in the first degree if he or she recklessly causes the death of another person. 2. The offense of involuntary manslaughter in the first degree is a class C felony. Mo. Ann. Stat. § 565.024.	Involuntary manslaughter.	3-10 years. Mo. Ann. Stat. § 558.011.
Nevada	[I]nvoluntary manslaughter is the killing of a human being, without any intent to do so, in the commission of an unlawful act, or a lawful act which probably might produce such a consequence in an unlawful manner, but where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense is murder. N.R.S. § 200.070.	Involuntary manslaughter.	1-4 years, fine of up to \$5000. Nev. Rev. Stat. Ann. § 193.130.
New York	A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person. Criminally negligent homicide is a class E felony. N.Y. Penal Law § 125.10.	Criminally negligent homicide.	Up to 4 years. N.Y. Penal Law § 70.00.

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Jurisdiction	Statute	Charge	Potential Punishment
New York	A person is guilty of manslaughter in the second degree when: 1. He recklessly causes the death of another person... N.Y. Penal Law § 125.15.	Manslaughter in the second degree.	3.5-15 years. N.Y. Penal Law § 70.02.
North Dakota	A person is guilty of manslaughter, a class B felony, if he recklessly causes the death of another human being. N.D. Cent. Code Ann. § 12.1-16-02.	Manslaughter.	Up to 10 years. N.D. Cent. Code Ann. § 12.1-32-01.
Ohio	No person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony. Ohio Rev. Code Ann. § 2903.04.	Involuntary manslaughter.	3-11 years. Ohio Rev. Code Ann. § 2929.14.
Texas	A person commits an offense if he: (3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual. Tex. Penal Code Ann. § 19.02.	Felony murder.	5-99 years. Tex. Penal Code Ann. § 12.32.
Virginia	The killing of one accidentally, contrary to the intention of the parties, while in the prosecution of some felonious act other than those specified in §§ 18.2-31 and 18.2-32, is murder of the second degree and is punishable by confinement in a state correctional facility for not less than five years nor more than forty years. Va. Code Ann. § 18.2-33.	Second-degree murder.	5-40 years. Va. Code Ann. § 18.2-33.

Appendix A, cont.

Recently Introduced Specific Drug-Induced Homicide Legislation

Jurisdiction	Year Introduced	Statute	Charge	Potential Punishment
Connecticut	2017	HB 5367	Homicide.	
	2017	HB 5546	Homicide by sale of an opiate controlled substance.	
	2017	HB 5979	Homicide by sale of an opioid controlled substance.	
	2017	HB 5996	Homicide.	
	2017	HB 6657	Homicide by sale of an opiate substance.	
	2017	SB 1039	Manslaughter.	1-20 years.
	2017	SB 295	Manslaughter.	1-20 years.
	2017	SB 427	Manslaughter.	1-20 years.
Idaho	2017	H 178	Second-degree murder.	10-life.
	2017	<i>HB 2534 (amends schedule)</i>		
	2017	SB 639	Drug-induced homicide.	15-30 years.
Illinois	2017	<i>HB 2534 (amends schedule)</i>		
	2017	SB 639	Drug-induced homicide.	15-30 years.
Maine	2017	L.D. 42 (died between houses)	Manslaughter.	Up to 30 years.
Maryland	2017	<i>HB 687 (amends schedule)</i>		
	2017	HB 612	Felony.	Up to 30 years.
Massachusetts	2017	H 2319	Manslaughter.	Up to 20 years.
	2017	H 975	Homicide by distribution of a controlled substance.	10-20 years.
	2015	H 1472	Manslaughter.	Up to 20 years.

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Jurisdiction	Year Introduced	Statute	Charge	Potential Punishment
New Hampshire	2017	HB 153	Manslaughter.	Up to 30 years.
New York	2017	S2761.	Homicide by sale of an opiate controlled substance.	15-25 years. N.Y. Penal Law § 70.00.
	2017	AB 3398 (Assembly version of S2761)	Homicide by sale of an opiate controlled substance.	15-25 years. N.Y. Penal Law § 70.00.
	2017	SB 4313	Homicide due to criminal sale of a controlled substance in the third degree.	Up to 7 years.
Ohio	2015	HB 270.	Involuntary manslaughter (strict liability).	3-11 years. Ohio Rev. Code Ann. § 2929.14.
	2017	HB 141	Involuntary manslaughter (strict liability).	3-11 years. Ohio Rev. Code Ann. § 2929.14.
South Carolina	2016	S 1287	Drug-induced homicide.	2-30 years.
	2017	HB 3882 (companion bill SB 83)	Involuntary manslaughter.	Up to 5 years.
Tennessee	2017	HB 786	Voluntary manslaughter.	3-6 years.
	2017	SB 1176 (Senate version of HB 786)	Voluntary manslaughter.	3-6 years.
Virginia	2016	HB 102	2nd degree murder	5-40 years.
	2017	HB 1616	2nd degree murder	5-40 years.
	2017	HB 1928	2nd degree murder	5-40 years.
	2016	HB 615	2nd degree murder	5-40 years.
	2017	SB 66	2nd degree murder	5-40 years.
West Virginia	2017	HB 2643	2nd degree murder	10-40 years. W. Va. Code Ann. § 61-2-3 (West)
	2017	HB 2003	Drug delivery resulting in death (felony).	10-40 years.

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- 54 Using a Boolean search with an array of keywords (e.g., "drug related death," "overdose," "manslaughter," "murder," and "homicide"), DPA created a master list of news articles from the Meltwater press database that might be related to drug-induced homicide. Each hit was analyzed to ensure relevance, and syndicated articles were then de-duplicated. The final dataset includes all news articles discussing individuals being charged with drug-induced homicide but does not equate to individual cases as a single prosecution may have been covered by multiple media outlets. DPA also separately tracked press hits in which no charge had been filed but law enforcement officials signaled their intention to increase use of drug-induced homicide.
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About the Drug Policy Alliance

The Drug Policy (DPA) Alliance is the nation's leading organization promoting alternatives to the drug war that are grounded in science, compassion, health, and human rights. For more than 25 years, DPA has served as an advocate for sane and responsible drug policies at local, state, and federal levels that best reduce the harms of both drug use and drug prohibition. Together with our allies, we work to ensure that our nation's drug policies no longer arrest, incarcerate, disenfranchise and otherwise harm millions – particularly young people and people of color who are disproportionately affected by the war on drugs. DPA is headquartered in New York and has offices in California, Colorado, New Mexico, New Jersey, and Washington, D.C.

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