

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

**A Drug
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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.

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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.