



# Northeastern University

## School of Law

May 13, 2019

Hon. Roy Cooper  
Governor  
State of North Carolina  
Office of the Governor  
20301 Mail Service Center  
Raleigh, NC 27699-0301

*By e-mail*

RE: To tackle its opioid crisis, Gov. Cooper should veto the expensive and counterproductive "Death by Distribution" bill, focusing instead on balanced, evidence-based, and cost-effective strategies.

Dear Gov. Cooper:

North Carolina is making significant strides towards bending the curve on the opioid crisis that is devastating communities around the state and the nation. To build on these important gains, I urge you to support evidence-based harm reduction policies and sentencing reform, and to veto the counterproductive and costly strategies included in the "Death by Distribution" bill.

As a professor of Law and Health Sciences and an expert on criminal justice responses to substance use, I am writing to share several concerns about the gravely flawed House Bill 474 that is currently on your desk for your consideration. This bad law and bad policy will not help reduce opioid overdose deaths in North Carolina but will instead take the state backward.

### **I. Harsh New Drug Sentences Take the State Backwards**

North Carolina does not need a new law to enable state prosecutors to charge drug dealers for bodily injury or death in drug users. It already has a law on the books.<sup>1</sup> According to a study

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<sup>1</sup> N.C. Gen. Stat. Ann. § 14-17(b)(2).

we conducted at the Health in Justice Action Lab at Northeastern University, North Carolina ranks in the top third of states nationwide that have most actively brought such prosecutions.<sup>2</sup>

The new law would, among other things, add an additional decade of maximum penalty. This is on top of an existing arsenal of drug distribution, conspiracy, involuntary manslaughter, and other drug-related prosecutorial tools already on the books. Individuals charged or convicted on drug-related provisions—many serving long sentences—already dominate North Carolina's prisons and jails. Therefore, North Carolina's overdose crisis is not a result of disempowered prosecutors or insufficiently harsh drug laws, and this new law will do little to stem overdose deaths in the state.

### **Five Reasons “Drug-induced Homicide” Laws are Counterproductive**

1. Study after study shows that **harsh sentencing laws do not deter drug selling**.<sup>3</sup> This consistent evidence has led to consensus among criminology and criminal justice scholars that increasing the severity of sentences fail to reduce drug use or sales.<sup>4</sup>
2. Contrary to the conventional wisdom that taking drug sellers “off the street” and locking them up will reduce the supply of illicit drugs, raise their prices, and lead to lower overdose rates, or other trends these policies are intended to produce, the evidence instead suggests that aggressive prosecutions **inadvertently produce higher levels of drug-related violence, unpredictable prices, and dangerous adulteration in street drug supplies**.<sup>5</sup>
3. As applied, “drug-induced homicide” and similar charges too often ensnare friends, partners, or other individuals whose role in an overdose event cannot be

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<sup>2</sup> Health in Justice Action Lab, *Drug-Induced Homicide Charges by State*, NORTHEASTERN UNIVERSITY SCHOOL OF LAW (2017), available at <https://www.healthinjustice.org/drug-induced-homicide>.

<sup>3</sup> Public Safety Performance Project, *Pew Analysis Finds No Relationship Between Drug Imprisonment and Drug Problems*, T. PEW CHAR. TRUSTS (2017), available at <http://www.pewtrusts.org/en/research-and-analysis/speeches-and-testimony/2017/06/pew-analysis-finds-no-relationship-between-drug-imprisonment-and-drug-problems>; Roger Przybylski, *Correctional and sentencing reform for drug offenders*. CO. CRIM. JUST. REF. CLTN (2009), available at [http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional\\_and\\_Sentencing\\_Reform\\_for\\_Drug\\_Offenders.pdf](http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf)

<sup>4</sup> Michael Tonry, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings*, 38 CRIME & JUSTICE 65 (2009).

<sup>5</sup> Harold Pollack & Peter Reuter, *Does tougher enforcement make drugs more expensive?*, 109 ADDICTION 1959 (2014), available at [http://faculty.publicpolicy.umd.edu/sites/default/files/reuter/files/pollack\\_and\\_reuter.pdf](http://faculty.publicpolicy.umd.edu/sites/default/files/reuter/files/pollack_and_reuter.pdf). Dan Werb et al., *Effect of drug law enforcement on drug market violence: A systematic review*. 22 INT. J. OF DRUG POL. 87 (2011), available at <http://www.sciencedirect.com/science/article/pii/S0955395911000223>.

characterized as a dealer.<sup>6</sup> Largely because the legal elements of these crimes require a close relationship with the deceased and an uninterrupted chain of custody, our national analysis suggests that **a majority of the individuals accused of these crimes are non-dealers.**<sup>7</sup> Therefore, these types of laws instead serve as yet another way to incarcerate even more drug users. In addition, research has demonstrated that removing trusted sellers from the community actually increases the risk of overdose. People who use drugs have reported that when their usual seller is incarcerated, they are forced to buy their supply from someone they do not know and trust—increasing their risk of purchasing drugs that are contaminated.

4. Illicit drug use often occurs in peer groups, blurring the line between “users” and “dealers.” With their money pooled, one user may purchase drugs for use by the others. If one were to overdose, the drug purchaser—not a “dealer”—can face a murder charge. **Arresting or charging a person who has substance use disorder (SUD) with second degree murder undermines the state's public health policies and scares people away from calling 911, which will lead to more overdoses, not less.**
5. Our recent analysis further suggests that drug induced-homicide charges are deployed unevenly. In our national dataset, **more than half of all charges brought using such provisions involved a person of color as a dealer and a white person as victim.**<sup>8</sup> This clashes with established evidence that drug users typically buy drugs from members of their own race, class, and peer group.<sup>9</sup> These data underscore the danger that, as has been the case with other harsh penalties for drug-related crimes, the application of drug-induced homicide charges is catalyzed by racial stereotypes, can exacerbate existing disparities in sentencing and incarceration, and may expose North Carolina to constitutional challenges.

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<sup>6</sup> Zachary Siegel, *Despite ‘public health’ messaging, law enforcement increasingly prosecutes overdoses as homicides*. INJUST. TODAY (2017), available at <https://injusticetoday.com/despite-public-health-messaging-law-enforcement-increasingly-prosecutes-overdoses-as-homicides-84fb4ca7e9d7>.

<sup>7</sup> Health in Justice Action Lab, *Relationship Between Accused and Victim*, NORTHEASTERN UNIVERSITY SCHOOL OF LAW (2017), available at <https://www.healthinjustice.org/drug-induced-homicide>.

<sup>8</sup> Health in Justice Action Lab, *Race of Accused (Buyer) and Victim (Dealer)*, NORTHEASTERN UNIVERSITY SCHOOL OF LAW (2017), available at <https://www.healthinjustice.org/drug-induced-homicide>.

<sup>9</sup> Carl Hart, *The Real Opioid Emergency*, NY TIMES (2017), available at [https://www.nytimes.com/2017/08/18/opinion/sunday/opioids-drugs-race-treatment.html?\\_r=0](https://www.nytimes.com/2017/08/18/opinion/sunday/opioids-drugs-race-treatment.html?_r=0).

## II. Drug-induced Homicide Prosecutions Undermine the Public Health Response to Overdose

From the Public Health perspective, I am especially concerned with the potential collateral detriment that can result from the enactment of this and similar drug induced-homicide provisions. Research suggests that many witnesses to overdose events are reluctant to call 911 during overdose events because of the fear of legal consequences.<sup>10</sup> Many states, including North Carolina's 2017 HOPE Act, have passed Good Samaritan Laws designed to send a supportive message. These laws carve out limited criminal amnesty for overdose victims and witnesses who call for help and encouraging drug users not to use alone. This sensible policy has been widely heralded and supported by public health, law enforcement, and family stakeholders across the state.

Prosecuting overdose witnesses for murder **sends the *opposite* message, creating a documented chilling effect** among those who may seek life-saving help.<sup>11</sup> Prosecutors often seek broad press coverage when these charges are brought and a conviction is secured. Our national analysis suggests that media coverage of these prosecutions has increased dramatically since 2008.<sup>12</sup>

The bottom line is that by acting at cross-purposes with public health messaging and Good Samaritan Laws encouraging people to call 911, these prosecutions risk lives. There are many ways to reduce overdose mortality; this is not one. The General Assembly's bill on drug-induced homicides will therefore exacerbate the very problems it purports to solve, and I strongly urge you to reject it and any similar proposals.

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<sup>10</sup>Amanda Latimore & Rachel Bergstein, "Caught with a body" yet protected by law? Calling 911 for opioid overdose in the context of the Good Samaritan Law, 50 INT. JOUR. OF DRUG POL. 82 (2017), available at <http://www.sciencedirect.com/science/article/pii/S0955395917302888?via%3Dihub>. See also Lindsay LaSalle, *An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane*, DRUG POL. ALLI. 40 (2017), available at [https://www.drugpolicy.org/sites/default/files/dpa\\_drug\\_induced\\_homicide\\_report\\_0.pdf](https://www.drugpolicy.org/sites/default/files/dpa_drug_induced_homicide_report_0.pdf) (summarizing studies).

<sup>11</sup>Amanda Latimore & Rachel Bergstein, "Caught with a body" yet protected by law? Calling 911 for opioid overdose in the context of the Good Samaritan Law, 50 INT. JOUR. OF DRUG POL. 82 (2017), available at <http://www.sciencedirect.com/science/article/pii/S0955395917302888?via%3Dihub>; See also Meghan Peterson et al., "One guy goes to jail, two people are ready to take his spot": Perspectives on drug-induced homicide laws among incarcerated individuals, \_\_ INT. JOUR. OF DRUG POL. \_\_ (2019), available at <https://www.sciencedirect.com/science/article/pii/S0955395919301173?dgcid=author>.

<sup>12</sup> Health in Justice Action Lab, *Drug-Induced Homicide Charges (2000-2017)*, NORTHEASTERN UNIVERSITY SCHOOL OF LAW (2017), available at <https://www.healthinjustice.org/drug-induced-homicide>.

### III. Public Health Policies and Interventions will Save Lives and Resources

Severe penalties such as mandatory minimums for drug-induced homicide will force North Carolina to waste finite public resources on lengthy investigations and decades-long prison sentences, crowding out investments urgently needed to support proven interventions, such as naloxone distribution, expansion of substance use treatment, and public education about overdose risk and response. Instead of doubling down on failed mandatory minimum approaches, the state has an opportunity to lead the nation on two important criminal justice reform fronts:

Sensible reform in mandatory minimum sentences for minor drug crimes. In view of the evidence cited above, such reductions are both pragmatic and just. By shifting the approach away from legal interventions and prosecutorial strategies that have not produced results, the state has an opportunity to return critical discretion to its judges and encourage innovation.<sup>13</sup> Such reforms also free up critical resources for reinvestment in approaches that have much more promise of positive impact.

Providing evidenced-based addiction treatment for opioid addiction during incarceration would present such an opportunity. It is designed to scale up access to substance use treatment behind bars, with specific focus on opioid substitution therapy. Such an effort potentiates a number of benefits and cost savings:

1. It is estimated that **up to 60% of people behind bars suffer from SUD**, with a significant percentage of those affected specifically by opioid use disorder (OUD).<sup>14</sup> Not taking the opportunity to provide adequate treatment in custody or under community supervision threatens health and can result in life-threatening events, including death.
2. Since many individuals in custody are forced to undergo unmanaged withdrawal from opioids and other drugs, **failure to provide treatment also creates a stressful work environment for correctional staff**, who suffer from elevated rates of depression and other stress-related conditions, resulting in burn-out and high turn-over.
3. Paucity of appropriate care behind bars and lack of linkages to care after release also means that **SUD-affected individuals are placed at an extraordinarily high risk of overdose death upon re-entry**. In fact, a recent study by UNC researchers

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<sup>13</sup> Leo Beletsky & Jeremiah Goulka, *The Opioid Crisis: A Failure of Regulatory Design and Action*, 34 ABA CRIMINAL JUSTICE MAGAZINE (forthcoming summer 2019).

<sup>14</sup> *New Casa Report Finds: 65% Of All U.S. Inmates Meet Medical Criteria For Substance Abuse Addiction, Only 11% Receive Any Treatment*, NTNL. CNTR. ON ADDTN. AND SUB. ABUSE (2010), available at <https://www.centeronaddiction.org/newsroom/press-releases/2010-behind-bars-II>.

using Department of Public Safety data demonstrated that in the first-year post-release from prison individuals were up to 40 times more likely to die of an opioid overdose and 74 times more likely to die of a heroin-related overdose.<sup>15</sup> Therefore, providing such treatment is a clear opportunity to reduce the overall community burden of overdose morbidity and mortality in our state.

4. Opioid substitution therapy has been shown to substantially decrease criminal justice involvement.<sup>16</sup> Therefore, initiating OST in correctional settings and linking individuals to care upon release is **almost certain to reduce recidivism and cut law enforcement and correctional costs.**

Provision of OST in correctional settings is not new. Such treatment is broadly and successfully deployed in most peer countries and is an established international best practice. It is also available in selected facilities in several states and is increasingly being deployed by states across the nation. By expanding the roll-out of this lifesaving therapy, the Great North State has an opportunity to invest in a proven approach that promotes public health and public safety.

Sincerely,



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<sup>15</sup> Shabbar I. Ranapurwala, et al., *Opioid Overdose Mortality Among Former North Carolina Inmates: 2000–2015*, 108 AMERICAN J. OF PUBLIC HEALTH 1207 (2018), available at <https://doi.org/10.2105/AJPH.2018.304514>.

<sup>16</sup> Peter Friedmann et al., *Medication-assisted treatment in Criminal Justice Agencies Affiliated with the Criminal Justice-Drug Abuse Treatment Studies (CJ-DATS): Availability, Barriers & Intentions*. 33 SUBST. ABUSE 9 (2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3295578/>.