

## General Assembly Creates New Crime of Death by Distribution

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Back in 2017, I [wrote about](#) murder charges premised on the unlawful distribution of drugs and what the State must prove to establish a defendant's guilt. One element the State must prove is malice.

This legislative session the General Assembly created two new crimes penalizing the distribution of certain drugs resulting in a person's death: death by distribution and aggravated death by distribution. [S.L. 2019-83](#) (H 474). A distinguishing feature of the new crimes is that they require no proof of malice.

**Death by distribution.** New G.S. 14-18.4(b) creates the new offense of death by distribution of certain controlled substances. A person commits this offense if the following elements are satisfied:

- The person unlawfully sells at least one "certain controlled substance;"
- The ingestion of the certain controlled substance or substances causes the death of the user;
- The sale of the certain controlled substance is the proximate cause of the victim's death; and
- The person did not act with malice.

A "certain controlled substance" is any of the following:

- Any opium, opiate, or opioid;
- Any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, or opioid;
- Cocaine or any other substance described in [G.S. 90-90\(1\)\(d\)](#);
- Methamphetamine;
- A depressant described in [G.S. 90-92\(a\)\(1\)](#); or
- A mixture of one or more of these substances.

**Aggravated death by distribution.** New G.S. 14-18.4(c) creates the new offense of aggravated death by distribution. A person commits this offense if he or she commits death by distribution and has a qualifying previous conviction under any of the following statutory provisions:

- G.S. 14-18.4 (death by distribution and aggravated death by distribution);
- [G.S. 90-95\(a\)\(1\)](#) (manufacture, sale or delivery, or possession with intent to manufacture, sell or deliver, a controlled substance);
- [G.S. 90-95.1](#) (engaging in a continuing criminal enterprise);
- [G.S. 90-95.4](#) (employing or intentionally using a minor to commit a drug law violation);
- [G.S. 90-95.6](#) (promoting drug sales by a minor);
- [G.S. 90-95\(h\)](#) (drug trafficking); or
- A conviction in federal or state court that is substantially similar to an offense listed.

To qualify, the prior conviction must have occurred within seven years of the death by distribution offense. In calculating the seven-year period, any period of time during which the person was incarcerated is excluded.

**Punishment.** Death by distribution is a Class C felony. The maximum punishment for a Class C felony is 231 months (more than 19 years) of imprisonment. Aggravated death by distribution is a Class B2 felony, which may be punished by as much as 484 months (more than 40 years) of imprisonment. Thus, the same punishment that applies to second degree murder based on the unlawful distribution of opioids, cocaine or its derivatives, methamphetamine, and certain depressants, see [G.S. 14-17\(b\)\(2\)](#), applies to a conviction of aggravated death by distribution.

**Effective date.** S.L. 2019-83 is effective December 1, 2019 for offenses committed on or after that date.

**Exclusions.** New G.S. 14-18.4(f) provides that nothing in the statute “shall be construed to restrict or interfere with the rights and immunities in [G.S. 90-96.2](#),” the statute that provides limited immunity for a person who seeks medical assistance for an individual experiencing an overdose as well as for an overdose victim. Death by distribution is not, however, among the offenses for which a Samaritan or an overdose victim is immune from prosecution.

And new G.S. 14-18.4(g) provides that the statute does not apply to the following acts:

- Issuance of a valid prescription for a controlled substance for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice; or
- Dispensation, delivery, or administration of a controlled substance pursuant to a prescription by a permitted pharmacy, a pharmacist, or an individual practitioner.

**Policy choice.** Not everyone agrees that pursuing murder charges (or their equivalent) against the seller of the drug that results in a user’s death is warranted or that it will reduce the sale of potentially deadly drugs. Josh Shaffer thoughtfully and thoroughly [reported for the News and Observer](#) last fall on NC prosecutions of opioid dealers and on differing perspectives regarding the practice. The General Assembly made its position clear in the prefatory language in S.L. 2019-83, stating that it was enacting the legislation in response to a drastic increase in opioid-related deaths, that the number of such deaths was unlikely to be reduced so long as the drug was unlawfully sold by dealers, and that its intent was to “strengthen the laws to act as a greater deterrent to persons who want to illegally distribute opioids and further exacerbate the opioid epidemic.”