

## **Oppose SB 414- Preserve Judicial Discretion to Pursue Justice in Tragic Overdoses**

**Bill Summary:** SB 414 would create a mandatory minimum sentence of not less than 10 years for any persons who manufactures, sells, or dispense any schedule I or II controlled drug resulting in a death. Such a crime, commonly referred to as a crime of “death resulting,” is a strict liability crime requiring no proof of the accused’s intent or knowledge of the true nature of the drug that caused the death.

### **A majority of Individuals Accused Under Death Resulting Laws are Non-Dealers.**

Largely because the legal elements of death resulting crimes require demonstrating a close relationship with the deceased, and a national analysis of death resulting charges concluded that a majority of the individuals accused of death result crimes are non-dealers.<sup>i</sup> In fact, in many of these cases the individuals are friends or family of the deceased, who themselves are struggling with a drug use disorder.

### **SB 414’s Mandatory Minimum Deprives Judges of Discretion to Consider the Facts of a Given Case.**

The decision regarding what level of incarceration will serve public safety is best left in the hands of judges, who have more of an incentive to balance public safety needs against the facts in an individual case. This is why New Hampshire currently has few mandatory minimums in our state statutes, and it is particularly true for a strict liability crime like death resulting, which often ensnares friends and families of the deceased who had no intent to cause harm to their loved one.

### **There is no evidence that long sentences in Death Resulting Cases Reduce Opioid Deaths.**

There is no empirical evidence that drug-induced homicide laws reduce overdose rates.<sup>ii</sup> In fact, analyses of drug-induced homicide practices in jurisdictions in New Jersey, Tennessee, North Carolina, Illinois, Louisiana, and New York, found that despite dramatic growth in drug-induced homicide prosecutions, all of the jurisdictions experienced significant increases in overdose deaths, ranging from 7.6% to 20.1% in a single year.<sup>iii</sup> Moreover, one paper claiming to support the notion that death resulting prosecutions are correlated to a reduction in opioid deaths was recently retracted because of serious methodical flaws.<sup>iv</sup>

### **There is no evidence that long sentences in Death Resulting Cases Reduce Opioid Sales.**

Study after study shows that hard sentencing laws do not deter drug selling.<sup>v</sup> This consistent evidence has led to consensus among criminology and criminal justice scholars that increasing the severity of sentences fails to reduce drug use or sales.<sup>vi</sup>

### **New Hampshire should focus on building on its overdose prevention successes.**

Drug overdose deaths in New Hampshire peaked at 490 in 2017.<sup>vii</sup> Fortunately, the New Hampshire legislature made naloxone available in 2015, which is an FDA approved medication that temporarily reverses an opioid overdose to provide crucial time for medical intervention.<sup>viii</sup> According to the New Hampshire Drug Monitoring Initiative, the availability of naloxone “very likely contributed to a decline in both overdose deaths and EMS provided Narcan administration through 2019.”<sup>ix</sup> Between November and October 2023, the most current New Hampshire Drug Monitoring Initiative Drug Environment Report available, naloxone administered by EMS saved 764 lives.<sup>x</sup> Instead of focusing on mandatory minimums, which are unproven to reduce overdose deaths, New Hampshire should expand data-supported harm reduction tools.

### **Mandatory Minimums in General Bear No Relationship to Crime Reduction or Deterrence.**

There is no statistical evidence to demonstrate a significant relationship between mandatory minimum penalties and reductions in crime. In 2016, the U.S. DOJ published a paper saying that long prison sentences and general increasing of the severity of punishment do not deter future crime.<sup>xi</sup> In fact, mandatory minimums may actually increase the likelihood of recidivism because harsh mandatory minimum penalties serve to increase the length of time in prison and studies have noted there is a relationship between longer stays and recidivism.<sup>xii</sup>

## Oppose SB 414 – And support empirically proven ways to reduce overdose deaths instead.

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

<sup>ii</sup> Godvin, Morgan, When Accidental Overdoes Is Treated As Murder, NORTHEASTERN UNVIERSITY SCHOOL OF LAW, (2021) available at

[https://www.healthinjustice.org/files/ugd/3bbb1a\\_9a50168a658e4ab29461d2d887e707d0.pdf](https://www.healthinjustice.org/files/ugd/3bbb1a_9a50168a658e4ab29461d2d887e707d0.pdf)

<sup>iii</sup> Fair and Justice Prosecution, Drug-Induced Homicides, 2022, available at <https://fairandjustprosecution.org/wp-content/uploads/2022/07/FJP-Drug-Induced-Homicide-Brief.pdf>.

<sup>iv</sup> See Retraction Notice, Sage Journals, available at

<https://journals.sagepub.com/doi/abs/10.1177/00220426211037614?journalCode=joda>. See also, Carol, J.

Jennifer, et. al., *A discussion of critical errors in a longitudinal study on the deterrent effect of drug-induced homicide laws on opioid-related mortality across 92 counties and the District of Columbia in the United States*, WORLD MEDICAL AND HEALTH POLICY, available at

<https://onlinelibrary.wiley.com/doi/epdf/10.1002/wmh3.570>.

<sup>v</sup> Public Safety Performance Project, Pew Analysis Finds No Relationship Between Drug Imprisonment and Drug Problems, T. PEW CHAR. TRUSTS (2017); Roger Przybylsk, Correctional and sentencing reform for drug offenders. CO. CRIM. JUST. REF. CLTN (2009), available at

[http://www.cjrc.org/wpcontent/uploads/2016/02/Correctional\\_and\\_Sentencing\\_Reform\\_for\\_Drug\\_Offenders.pdf](http://www.cjrc.org/wpcontent/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf)

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

<sup>vii</sup> New Hampshire Drug Monitoring Initiative, October 2022 Report, available at

<https://www.dhhs.nh.gov/sites/g/files/ehbemt476/files/documents2/dmi-october2022.pdf>.

<sup>viii</sup> *Id.*

<sup>ix</sup> *Id.*

<sup>x</sup> New Hampshire Drug Monitoring Initiative, October 2023 Report, available at

<https://www.dhhs.nh.gov/sites/g/files/ehbemt476/files/documents2/dmi-oct2023.pdf>.

<sup>xi</sup> U.S. Department of Justice, Office of Justice Programs, Five Things About Crime Deterrence,

<https://www.ojp.gov/pdffiles1/nij/247350.pdf>

<sup>xii</sup> Length of Incarceration and Recidivism, United States Sentencing Commission, June 2022.

[https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220621\\_Recidivism-SentLength.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220621_Recidivism-SentLength.pdf).