

## **Enforce G.S. 14-17(b)(2) Action Plan**

### Purpose:

To define the statutory requirements for the successful prosecution of G.S. 14-17(b)(2) AND to identify the potential challenges in the prosecution of drug related overdoses.

### G.S. 14-17(b)(2):

Defines as second degree murder, a murder that was proximately caused by the unlawful distribution of opioids, cocaine or its derivatives, or methamphetamine, if the ingestion of that substance caused the user's death. Second degree murder under this theory is punished as a Class B2 felony.

To establish a defendant's guilt under G.S. 14-17(b)(2), the State must prove the below four elements beyond a reasonable doubt:

1. The victim's death was caused by ingesting opium, cocaine, or one of their derivatives, or methamphetamine;  
*and*
2. The defendant intentionally and unlawfully distributed the specified substance;  
*and*
3. The defendant's unlawful distribution of the substance was a proximate cause of the victim's death;  
*and*
4. The defendant acted with malice.

### Potential Challenges With Enforcement:

1. Society's mindset toward those who suffer addiction:
  - a) Most view addiction as a choice rather than a disease.
  - b) Most blame the victim for their death instead of the person distributing the drugs.
  - c) Most fail to view overdose deaths as a crime or the deceased as a victim.
2. Prosecutors/Law Enforcement:
  - a) Share the mindsets of society and/or recognize the mindset of society
  - b) Believe it would be too difficult a task to assemble jurors who would render a guilty verdict.
  - c) Jurors instructions require the jurors to find evidence of "malice" in order to render a "guilty" verdict.
    - 1) Most prosecutors and those in law enforcement are of the opinion the only way to present evidence of "malice" is to prove the defendant

- mixed the drug for the purpose of or distributed the drug with the intent to kill the deceased.
- d) Investigating, enforcing and prosecuting cases based G.S. 14-17(b)(2) is uncharted territory.
  - e) Law enforcement officers are very inexperienced in these cases, conducting crime scene investigations, obtaining evidence, understanding what evidence is admissible and what is not, though the law has existed it has not been exercised, thus the vast majority are inexperienced and uninformed.
  - f) Since the law has not been exercised and enforced, there is very little case history to base these cases on. Most prosecutors are intimidated by the risks involved in taking these cases because a case lost by a prosecutor establishes criteria to benefit the defense, and no prosecutor wants to be defined among their colleagues as the one who chartered into unexplored territory and benefited the opposition.
  - g) Because these cases have not been prosecuted historically and there is little case history, most prosecutors are uninformed and must be made aware of the law and existing case history regardless of how limited.

### Strategy to Overcome Challenges:

- 1) Change mindsets of society, law enforcement and prosecutors to end the stigma of addiction through awareness and education.
- 2) Write District Attorney's in each district making them aware of cases such as State V. Parlee and State V. Pritchard in which convictions withstood the appeal process based on evidence of malice after it was determined the State had presented sufficient evidence of malice in the fact the defendants knew the substances distributed were inherently dangerous substances.
  - a) In each of these cases the substances distributed were Morphine and Opana (Schedule II Substances).
  - b) Neither defendant mixed the drugs for the purpose of or with the intent to kill the victims.
  - c) In each of these cases there was only one witness who stated the defendants provided the drugs.
  - d) In each case the witnesses participated in the consumption of the drugs which refutes the claim that a witness who participates in the consumption of the drugs are not a credible witness.
- 3) Follow media coverage of districts which are prosecuting these cases and submit to other media outlets to enhance coverage areas and spread awareness.
  - a) Submit these stories to law enforcement and prosecutors

- 4) Endorse District Attorneys in future elections who will make it a priority to prosecute these cases.
- 5) Meet with District Attorneys to discuss steps we can take to encourage the enforcement of this law as well as gain understanding of the malice element and avenues to ascertain malice for law enforcement.
- 6) Repeat #3(a) with cases that are being prosecuted by US Attorneys.
- 7) Meet with US Attorney's Office to determine what is required for them to review a case to determine if they will prosecute.
- 8) Review United States v. Elton Wayne Walston as a baseline for federal prosecution in heroin toxicity overdose cases.
- 9) Communities must take a stand and remain steadfast and persistent in encouraging our prosecutors to explore this uncharted territory, and be the trailblazers who take these cases, win these cases, and pave the way for others who are intimidated by them.
- 10) We cannot give up, go home and grieve our losses in silence. We must unite, get loud, be heard, and remain persistent in our efforts of providing prosecutors information. As they say, the squeaky wheel gets attention.
- 11) We must also reach out to our various law enforcement agencies to encourage them to research the law and work with their officers to change mindsets and end stigma regarding overdose deaths and to train their officers in investigating, obtaining evidence, understanding evidence, and enforcing the law.