

# North Carolina Criminal Law Blog

## Changes to the Death by Distribution Law

September 28, 2023 by [Jeff Welty](#)

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The opioid crisis seems to be getting worse every year. NCDHHS [reports](#) <https://www.ncdhhs.gov/news/press-releases/2023/02/21/north-carolina-reports-22-increase-overdose-deaths> that in 2021, over 4,000 North Carolinians died from opioid overdoses, up 22% from the prior year. Most deaths were related to the consumption of fentanyl.

One strategy for addressing the epidemic is punishing those who distribute deadly drugs. In 2019, the General Assembly enacted [G.S. 14-18.4](#) [https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_14/GS\\_14-18.4.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-18.4.pdf), making it a felony to sell a controlled substance that causes the death of a user. The law is commonly known as the death by distribution law. This session, the General Assembly passed a revised version of the law. This post explains the revisions.

**The original law.** The 2019 law made it a Class C felony to (1) sell a qualifying drug, including an opioid, cocaine, or methamphetamine (2) thereby proximately causing (3) the death of a user. Further, (4) the defendant must have acted “without malice,” perhaps because a person acting with malice could potentially be prosecuted for Class B2 second-degree murder by distribution of drugs under G.S. 14-17(b)(2). The 2019 law also created an aggravated Class B2 felony version of death by distribution for defendants with a qualifying drug conviction within the past seven years.

ABC11 has **this story** <<https://abc11.com/overdose-deaths-nc-death-by-distribution-law-drug-dealers-investigation/13299752/#:~:text=The%20law%20gives%20district%20attorneys,a%20deterrent%20for%20drug%20dealers.>> about the implementation of the 2019 law. It reports that death by distribution has not been charged at all in most counties, while it has been charged regularly in some others. Shea wrote about the original law **here** <<https://nccriminallaw.sog.unc.edu/general-assembly-creates-new-crime-of-death-by-distribution/>>, and Phil wrote about defending death by distribution cases **here** <<https://nccriminallaw.sog.unc.edu/defending-death-by-distribution-cases/>>.

**Status of the revised version.** Last week, the General Assembly passed **S189** <<https://www.ncleg.gov/BillLookUp/2023/s189>> to revise the death by distribution law. It passed the Senate 45-0 and the House 81-20. Governor Cooper has not signed it, but it appears that it will become law without his signature shortly. Obviously, the measure passed by veto-proof majorities in both chambers. Unless something unexpected happens, the law will take effect on December 1, 2023, for offenses committed on or after that date. *[Update: Governor Cooper signed the measure on September 28, 2023. The effective date remains December 1, 2023.]*

**Contents of the revised version.** S189 makes several changes to G.S. 14-18.4:

- It creates new offenses that do not require the sale of a drug, but rather may be predicated on distribution alone. Under the bill, it will be a Class C felony for a defendant to (1) distribute a qualifying drug (2) thereby proximately causing (3) the death of a user. If (4) the defendant acts with malice, the offense will be a Class B2 felony.
- The 2019 offenses that do require sale are retained, but the bill removes the requirement that the defendant did not act with malice, simplifying the State's burden of proof. Under the revised version, the presence or absence of malice is immaterial, just as it is for the new no-sale-required offenses described immediately above. Further, the bill raises the basic sale offense from a Class C felony to a Class B2 felony, and the aggravated sale offense,

where the defendant has a qualifying prior conviction, from a Class B2 felony to a Class B1 felony. ^

- For the aggravated sale offense, the revision extends the look-back period for qualifying prior convictions from seven years to ten years.

S189 also amends several other statutes. It eliminates the provision in G.S. 14-17 reducing second-degree murder to a Class B2 felony when the murder was proximately caused by the unlawful distribution of drugs. It expands the Good Samaritan immunity statute, G.S. 90-96.2, to provide that covered individuals may not be charged with possession of less than one gram of any controlled substance (formerly, only opioids and cocaine were included). It also increases the fine for certain drug trafficking offenses, requires autopsies in death by distribution cases, and creates a new fentanyl/heroin task force.

***New York Times* podcast.** Coincidentally, around the time the General Assembly was passing this bill, the *New York Times* released [this episode](https://www.nytimes.com/2023/09/22/podcasts/the-daily/fentanyl-murder.html) [of its podcast \*The Daily\*](https://www.nytimes.com/2023/09/22/podcasts/the-daily/fentanyl-murder.html). The podcast takes a skeptical look at death by distribution laws. It examines the case of a defendant charged under Oklahoma's death by distribution law after the defendant's friend overdosed on drugs the defendant purchased for the two of them to use together. Interestingly, the defendant likely couldn't have been charged under the 2019 version of North Carolina's law, because he didn't sell the drugs to his friend, but he likely could be charged under the new version, because he did provide the drugs to the decedent. For me, the podcast was a reminder that there are no perfect or easy answers to the opioid crisis. I suspect that the General Assembly will continue to try to wrestle with possible solutions in the years to come.



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