

CRIME & JUSTICE

A double-edged sword: North Carolina expands the fight against fentanyl

Changes to a North Carolina law make it easier to prosecute people who distribute drugs, including fentanyl, if the drug user dies

by **Mehr Sher** • November 22, 2023



Cassandra Carter stands for a portrait next to a photo of her son, Chase, on Oct. 31, 2023. Chase died from fentanyl poisoning in 2022. James Kiefer/Carolina Public Press

Overview:

Carolina Public Press interviewed six parents of children who died and the partner of a man who did as well. Fentanyl, a powerful narcotic painkiller, was involved in each death. Often, those close to the victims reported, prosecutors declined to bring charges for death by distribution, saying the evidence was not strong enough.

Under a state [law](#) that takes effect next month, anyone who provides certain drugs to a person who dies after taking them may be prosecuted for second-degree murder — whether they received money for the drugs or shared them freely.

“[Death by distribution](#)” first became a crime in North Carolina in [2019](#). Originally, the law applied only to people who got paid for drugs that later proved fatal. In September, legislators [expanded](#) the law’s reach to include anyone who provides certain drugs, including fentanyl, when those drugs result in an overdose death.

Carolina Public Press interviewed six parents of children who died and the partner of a man who died as well. Fentanyl, a powerful [narcotic painkiller](#), was involved in each death. Most of the families reported that prosecutors declined to bring charges for death by distribution, saying that the evidence was not strong enough.

The family members, as well as people who study drug use or work to combat it, are divided over whether the law’s approach is good or bad. Those in favor described death by distribution charges as essential to bring justice in fentanyl death cases. Critics argued that the strategy could unjustly [criminalize and disproportionately affect](#) substance users and people of color.

When **Cassandra Carter** returned to Durham on May 18 after an anniversary trip with her husband last year, she couldn’t reach her 29-year-old son. She tried for days, the 56-year-old mother said, finally asking police to make a welfare check at his apartment in Durham on May 20. Officers found **Gregory Chase Carter**, or “Chase” as he was known to his family, dead on the floor. He had been dead for more than 24 hours, the family was told.

Items found in the apartment included “a scale with white powder” and “a substance thought to be marijuana,” according to the report of the N.C. Office of the Chief Medical Examiner. The Carter family requested an autopsy and a toxicology analysis.

The family buried Chase, a 2011 graduate of the Durham School of the Arts, without knowing what caused his death. When the toxicology report arrived four months later, it showed cocaine laced with 22 nanograms per milliliter of fentanyl. The drug, which is highly **addictive**, is 100 times stronger than morphine and 50 times stronger than heroin as a painkiller, according to the **U.S. Drug Enforcement Administration**, or DEA.



Carter said she tried to unlock Chase's phone and it took her two months to eventually get in. When she did, she found his last text message exchange with his drug dealer and a transaction for "a bag

of sand” — another term for cocaine, she said.

Carter gave this information to law enforcement and reached out to the Durham County District Attorney’s Office. Assistant District Attorney **Daniel Spiegel**, according to Carter, told her there was a slim chance of prosecuting the dealer for death by distribution, she said. A text message was not enough evidence, Spiegel explained, according to Carter.

“It can be difficult to prove a direct link between the alleged seller, the drugs and the victim’s death,” **Sarah Willets**, the communications specialist for Spiegel’s office, said in a statement to CPP. Prosecutors must devote their limited resources to cases that will have the broadest impact on the community, Willets said, especially in jurisdictions such as Durham that experience significant gun violence and larger-scale drug activity.

Those considerations didn’t satisfy the grieving mother.

“My son had plans for that day; even after getting the drugs from the dealer he was planning to go to another friend’s place. He wasn’t planning to die, and the drug dealer should have been held accountable for selling drugs that cost someone’s death.”

— Cassandra Carter

Chase’s death was just one of thousands [in the state](#) linked to fentanyl. In the past nine years, more than [13,000 North Carolinians](#) have died from fentanyl overdoses.

Death by distribution and the latest legislative changes

Before the 2019 death-by-distribution law, it was much harder to prosecute a dealer for the death of a user, said **Jeff Welty**, a [professor](#) of public law and government at UNC Chapel Hill. Prosecutors had to prove that the dealer “knew or was recklessly ignorant of the risk that those specific drugs would cause harm to the end user,” he said.

The 2019 law no longer required that the people who sold the drug acted with “the intent or reckless state of mind that would motivate them to put someone else’s life in danger,” Welty said.

The [expanded version](#), enacted this year, puts people who freely share a drug that proves lethal in the same category with dealers, as distributors.

CPP requested comments from all main [sponsors](#) of the bill. Only one commented.

“I’ve seen the devastation caused by the overdose epidemic,” state Sen. **Danny E. Britt, Jr.**, R-Hoke, Robeson, Scotland counties, said in a written response. “Families get torn apart and local communities suffer. My colleagues and I garnered support from local law enforcement and district attorneys and passed legislation that attacks the overdose epidemic here on multiple fronts.”

Robeson is among the [10 North Carolina counties](#) with the highest numbers of fentanyl-positive deaths, according to data the state collected from August 2022 to July 2023. The others are Buncombe, Rowan, Davidson, Craven, Richmond, Rutherford, Bladen, Montgomery and Swain.

While the death-by-distribution law applies statewide, different counties, prosecutorial districts or law enforcement agencies may have different approaches to it, Welty said.

“There are likely to be some places in North Carolina where this new, broader death-by-distribution law is not invoked very often because either the police or the prosecutor doesn’t think that this is the best approach to addressing the opioid epidemic,” he said. “Local authorities can make a decision about whether they want to use the law.”

Although linking the death of a person to “a particular distributor can be complex,” things like “text messages or phone geolocation information putting the drug seller and the drug user in the same place at the same time” can be used as evidence, Welty said. “There also are cases where police confront the drug seller and they admit selling the drugs to the person who died, or there are cases where the person who died was with someone else who can testify directly,” he added.

Fentanyl fatalities in NC

More than [11 North Carolinians](#) died from a drug overdose each day in 2022, according to the N.C. Department of Health and Human Services. That pace has not abated.

There were [348 suspected overdose deaths](#) in October 2023, according to the latest [state data](#).

“Fentanyl does not discriminate,” said **Barbara Walsh**, the founder and executive director of [Fentanyl Victims Network of North Carolina](#), a nonprofit organization and statewide advocacy

network for fentanyl victims. Her 24-year-old daughter, **Sophia Walsh**, died after drinking from a bottle of water laced with fentanyl at a friend's home in 2021, she said. The bottle, according to Walsh, contained 8 nanograms per milliliter of dissolved fentanyl, which was detected in the toxicology report she shared with CPP.

“It is colorless, odorless and undetectable in liquids,” Walsh said of the drug. “It’s placed in very unlikely sources ranging from a bottle of water to pressed pills to recreational drugs.”

Comparative Analysis

North Carolina ranks 16th among U.S. states in [drug overdose mortality](#), according to data from the federal [Centers for Disease Control and Prevention](#).

Twenty-three states, including North Carolina, have [drug-induced homicide laws](#), according to [data](#) from the [Prescription Drug Abuse Policy System](#) that was cited in a 2022 [report](#) by [Fair and Just Prosecution](#), a nonprofit organization of elected local prosecutors.

A path to justice for some families

Andrea Scales, 34, a resident of Winston-Salem, lost her 19-year-old son, **Jeremiah Scales**, to what she calls “fentanyl poisoning” in June 2022, not even a full year after he graduated from Parkland High School. Jeremiah, Scales said, had intended on pursuing a professional football career and wanted to go to the NFL.

Scales said she would rather use the term poisoning instead of “overdose” because Jeremiah was deceived into thinking what he was taking was something else, which turned out to be laced with fentanyl.

Jeremiah left to go swimming with some of his friends on the evening of June 2, saying he would be home soon. Scales went to work the third shift at a hospital. She called to check in with him several times that night, but he didn’t answer. Eventually, a friend answered, saying Jeremiah was sleeping. Scales knew something was wrong, she said, and asked a relative to FaceTime Jeremiah. The relative reported back that Jeremiah didn’t look good and called an ambulance.

Scales went to the home where he had been. EMTs and detectives were on the scene. Jeremiah and his friends had all taken tablets of the [opioid pain reliever](#) Percocet, she was told. Everyone survived except Jeremiah.

Scales didn't learn Jeremiah's actual cause of death until the toxicology report arrived the day before Christmas, she said. The report, which she shared with CPP, detected 1 nanogram per milliliter of fentanyl and 6.8 nanograms per milliliter of fluorofentanyl.

"All the friends had ordered and asked for Percocet, which was given to them in a napkin, and they each took one, but Jeremiah's led to his death," she said.

"My son had no criminal record, was educated and had so much going for him, and it's almost as though he doesn't matter," she said. "But it mattered everything to our family, and he mattered."

Scales said she later discovered a \$20 Cash App transaction in Jeremiah's phone. The date was June 3. She informed law enforcement but was told it wasn't enough to hold anyone responsible. She doesn't believe justice has been served.



Portrait of Jeremiah Scales. Courtesy of the Scales family.

"I pray that somebody has a heart and speaks out about who gave it to them, and I hope to pursue death by distribution. If I have to get my own private investigator, then I will do that."

— Andrea Scales

Elizabeth Abernathy, 51, a resident of Concord, was able to get a death-by-distribution charge after her son, **Marshall Abbott**, died from "fentanyl poisoning," a term she would rather use, she said. Marshall didn't suffer from addiction, she said, and the word "overdose" carries stigma.

Marshall's roommate found him dead in his bed the day before his 30th birthday, on June 30, 2022. The Abernathy family rushed to Marshall's home, where law enforcement was on the scene. Officials told the family Marshall passed away in the early morning hours and that they found a small bag of white powder near his bed.

Marshall, Abernathy later learned, had spent time with some friends that night, and the woman he was with had supplied what she thought was methamphetamine, which he used. It turned out to be almost pure fentanyl, she said.



Marshall Abbott on a family trip. Courtesy of the Abernathy family.

Later, a detective told her that Marshall's death was suspicious and would be investigated. "It didn't even register with us that someone was actually responsible for his death and that this was a crime," Abernathy said. Five months later, Abernathy got the toxicology report, which detected a small amount of methamphetamine and 72 nanograms per milliliter of fentanyl.

Last year, the day before Thanksgiving, Marshall's family got a call from law enforcement saying the dealer had been arrested and charged with death by distribution.

"We have met so many families across the state who have not had investigations or had death-by-distribution charges, and we are so grateful to be one of the very few," she said. "But we're also frustrated because we don't understand why other families" didn't get the same result.

Critics: Punishment won't solve the crisis

Although some loved ones say that seeking a conviction for death by distribution gives them a path to justice and accountability, critics, including **Vanessa Ryann**, say such charges are not the solution.

Ryann, 38, a resident of Asheville, is a trauma intensive care unit nurse. Her longtime partner, whom she had known since childhood, **Jared Runyon**, had substance use disorder. He died from a fentanyl overdose on Nov. 18, 2017, when he was 30 years old.

That night, one of the investigating officers told her, “I don’t understand why a nurse would be with a junkie,” she said.

“It was a culmination of the last seven years, where I had been defending Jared’s humanity to doctors, to treatment facilities, his own family, to remind them all that he’s a person.”

— Vanessa Ryann

The Buncombe County Sheriff’s Office charged a suspect, someone Runyon considered a friend, with felonies including second-degree murder in 2018, according to Ryann and local media. That was the year before the state passed the death-by-distribution law.

“Charging him did nothing to honor Jared,” she said. “I don’t think the death-by-distribution law is serving people, and had I been using with Jared that night, I would have been charged in his death,” she said, speaking hypothetically.

“I think most people who are seeking drugs are doing so with some informed consent that there is danger related to that,” she said. “Most people who are selling drugs ... are not major distributors of drugs; they’re people who happened to turn to this alternate way for them to survive.”

Broader societal impact and racial disparities

A 2017 report by the [Drug Policy Alliance](#), a New York-based nonprofit, addressed the impact of laws aimed at prosecuting drug suppliers for drug deaths. Data from North Carolina, Illinois, Louisiana, Tennessee, New Jersey and New York — all of which have such laws — indicated that, despite an increase in prosecutions, the states also saw [significant increases](#) in overdose deaths.

“[Arrest and incarcerate policies](#)” aimed at people with opioid addiction have been recognized as “ineffective at reducing drug use, causing high rates of relapse, recidivism and re-incarceration,” the authors wrote.

Such laws can also exacerbate racial disparities in the criminal justice system, the report cautioned. Black and Brown people, according to the [report](#), are likely to be “targeted both as friends and

family of people who died, but, more ominously, as the demonized ‘pushers,’ ‘dealers,’ and ‘peddlers’ — all racially coded language.”

In North Carolina, most victims of fentanyl-positive deaths are male, White and between the ages of 25 and 44, according to [data](#) the state collected from August 2022 to July 2023. However, the [state](#) Department of Health and Human Services found that compared with the previous year, overdose deaths rose more sharply among Black/African American people (139%) and American Indian/Indigenous people (117%) than among White people (53%). The data showed the rise in overdose deaths is “[driven by illegally manufactured fentanyl](#).”

Ainsley Bryce, the organizational director of a Madison County-based nonprofit harm reduction and overdose prevention organization [Holler Harm Reduction](#), said that by punishing people through death-by-distribution laws, “we’re not looking at the larger systems.”

“In my experience, education and support are the answers to these problems. We’re not going to arrest away this overdose epidemic; we’re not going to arrest everybody who uses drugs or sells drugs in our state,” she said. “And if we do that, there’s just going to be more tomorrow.”

Death-by-distribution policies can also affect how people seek care for substance use, said **Michael Baca-Atlas**, an assistant professor in the department of family medicine at UNC Chapel Hill and the medical director of [UNC REACH Enhanced Primary Care](#) in Raleigh. Death-by-distribution charges and punitive measures are “flawed policies,” he said. They can create worse problems for society as a whole and further stigmatize substance use, he said.

“I think it can put a lot of fear into many of the individuals that we serve and deter people from getting care,” he said.

Colin Miller, the community liaison at the [UNC Street Drug Analysis Lab](#), brings a mixture of traditional training and lived experience to his work. The lab tests samples that active drug users send anonymously through community partners, determining what the drugs contain.

Miller said the state has put laws on the books to incarcerate more people for drug crimes instead of treating the fentanyl crisis as a public health issue. “We have chosen to charge people with murder instead of trying to help them get back on their feet,” he said.

But Walsh, who advocates for death-by-distribution charges as a way for families to get justice, said those who favor treatment and those who favor seeking justice through death-by-distribution charges need to collaborate to “win the fight against fentanyl.”

“Whether it’s harm reduction or whether it’s these families needing justice, we have the same goal, which is to save lives,” Walsh said. “We should be joining together.”

Resources

- To learn more about the U.S. fentanyl crisis on the national level, click [here](#).
- For more on the state’s Opioid and Substance Use Action Plan Data, click [here](#).
- For state-tracked data on overdose deaths in North Carolina, click [here](#).
- For more on North Carolina opioid settlements, click [here](#).
- To learn more about harm reduction programs through NC Harm Reduction Coalition, click [here](#).
- To learn more about or submit an anonymous sample to UNC Street Drug Analysis lab, click [here](#).
- For more on the Fentanyl Victims Network of North Carolina, click [here](#).
- For more on Holler Harm Reduction, which offers free and confidential drug overdose prevention services in Western N.C., click [here](#).