



F19 Legal Theories for Prosecution of Opioid Overdoses Resulting in Death Under State and Federal Law Principles

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Learning Overview: After attending this presentation, attendees will be able to describe the theories of prosecution underlying state and federal investigations, prosecutions, and sentencing of cases involving single and polydrug overdose death cases. Attendees will also be able to explain the “but for” causation legal precepts set out in *Burrage v. United States* and describe how the Burrage case and its progeny apply to the federal, state, and local theories of prosecution.¹

Impact on the Forensic Science Community: This presentation will impact the forensic science community by promoting understanding and discourse on the criminal justice systems’ response to deaths caused by the opioid epidemic at local, state, and federal levels, providing attendees with a foundation to assess the deterrence theory of prosecution against other societal responses.

Per the Centers for Disease Control and Prevention (CDC), the rate of synthetic opioid overdose deaths in the United States rose from 3.1 to 6.2 deaths per 100,000 between 2015 and 2016, marking the first year that synthetic opioids became the most common type of opioid involved in overdose deaths. CDC’s statistics also report that more than 55% of opioid overdose deaths occurring nationally in the 12-month period ending November 2017 involved synthetic opioids, accounting for more than 27,000 overdose deaths. Against this stark tragedy, public health and public safety officials grapple with appropriate responses. Increasingly, federal and state law enforcement agencies and prosecutors have charged distributors of the drugs causing overdoses and overdose deaths. Federal prosecutors, working under *Burrage v. United States* and its progeny, as well as under the United States Sentencing Guidelines, focus investigation and prosecution efforts on death resulting from the distribution of a substance and “but for” causation.¹ State and local prosecutors charge a wide variety of offenses with varying mental states and proximate cause nexus requirements, including but not limited to First, Second, and Third-Degree Murder; Voluntary, Involuntary, and Reckless Manslaughter; Drug-Induced Homicide, Drug Delivery Resulting in Death, with attendant inchoate theories. Amid these decisions, the holding of *Burrage v. United States* stands, but the question of its applicability and limits under the various state charging theories lingers.¹

This presentation will provide a classification overview of state prosecution theories for drug-involved overdose deaths, with particularized discussion of culpable mental states, proximate cause and nexus of drugs to death, and polydrug deaths as interpreted in judicial cases. The overview will enable attendees to argue the factual and legal nuances that cause seemingly irreconcilable outcomes among cases and related legal proceedings. The discussion will then highlight federal cases interpreting the 21 U.S.C. Section 841 “death resulting” enhancement, as well as United States Sentencing Guidelines amendments from 2018 affecting charging theories.² This presentation will conclude with a hypothesis for synthesizing the various theories of prosecution and their respective attendant penalties, allowing participants to assess the propriety of prosecuting overdose deaths in the various levels of the criminal justice system.

Reference(s):

¹ *Burrage v. United States*, 571 U.S. ____ (2014).

² 21 U.S.C. § 841—U.S. Code—Unannotated Title 21. Food and Drugs § 841. Prohibited acts A.

Burrage, Overdose Death, Prosecution