

The Illusion of Victimhood

In Overdose Deaths

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Abstract

(198 words)

The expansion of drug-induced homicide prosecutions represents a significant shift in the legal and social response to overdose deaths in the United States. Once treated primarily as unintended consequences of substance use disorders, overdose fatalities are increasingly prosecuted as homicides, often exposing low-level participants in informal drug networks to severe criminal liability. This article examines the legal, doctrinal, and policy implications of this transformation. Drawing on criminal law theory, addiction scholarship, public health research, and federal case analyses—including *United States v. Ingino* and *United States v. Hancock*—the article argues that contemporary drug-induced homicide frameworks frequently minimize the agency of overdose decedents while expanding liability in ways that weaken traditional distinctions among intent, recklessness, negligence, culpability, and strict liability. Particular attention is given to *mens rea*, causation, foreseeability, and the role of shared participation in substance use. The article further examines how emotionally charged narratives surrounding overdose deaths may encourage outcome-based punishment that is inconsistent with foundational principles of proportionality and individualized culpability. Finally, the article considers the broader public health consequences of drug-induced homicide enforcement and argues for a more restrained, culpability-centered approach that better aligns criminal liability with both legal doctrine and contemporary addiction research.

Keywords: Drug-Induced Homicide, Culpability, Overdose Deaths, Mens Rea, Drug Policy, Addiction, Criminal Law

The Illusion of Victimhood In Overdose Deaths

Introduction

For decades, overdose deaths in the United States were generally treated as tragic consequences of substance use disorders rather than as homicides. Although drug distribution and possession were criminal offenses (supply-side), overdose fatalities were not typically understood as the product of criminal intent by another individual (demand-side). This approach reflected a broader recognition that addiction is a complex behavioral and medical condition and that overdose deaths, while foreseeable, often arise from voluntary but risk-laden conduct by the deceased.¹

That framework changed dramatically with the rise of opioid-related fatalities, particularly those involving fentanyl and other synthetic opioids. In response to mounting public anxiety and political pressure, prosecutors increasingly relied on *drug-induced homicide* (DIH) statutes to pursue homicide charges in overdose cases.² Without significant statutory reform, overdose deaths were increasingly reinterpreted through a criminal lens—not as accidental fatalities, but as prosecutable homicides. It is as if lawmakers cannot decide whether to target the supply or demand side of the market.

This article challenges that approach. It argues that the prevailing tendency to portray overdose decedents as entirely blameless is both empirically incomplete and legally problematic. Drawing on criminal law doctrine, addiction scholarship, and case analysis—including *United States v.*

¹ National Institute on Drug Abuse. (2020). *Drugs, brains, and behavior: The science of addiction*. National Institutes of Health, U.S. Department of Health and Human Services.

² Valena E. Beety, *The Overdose/Homicide Epidemic*, 34 Ga. St. U. L. Rev. 983, 984–87 (2018).

Ingino and *United States v. Hancock*—this article examines how DIH prosecutions increasingly depart from traditional principles of *mens rea*, proportionality, and causation, particularly in light of *Burrage v. United States*.³

Ultimately, this article contends that the expansion of DIH liability reflects a broader shift toward outcome-based punishment that often conflicts with foundational principles of criminal law and is counterproductive from a public health perspective.⁴

From Accident to Homicide

Prior to 2008, overdose deaths were generally understood within the legal system as a tragic but unintended consequence of drug use rather than as homicides. Although the possession and distribution of controlled substances were criminal offenses, fatal overdoses were not typically treated as homicides attributable to suppliers. This approach reflected an implicit recognition of both causation and individual autonomy: suppliers contributed to drug availability, but the ultimate act of ingestion—and the resulting risk—was understood to rest with the user.⁵

This framework began to shift with the emergence of fentanyl and other synthetic opioids. Fentanyl's extreme potency—up to 50 times greater than heroin—has substantially increased the lethality of the illicit drug supply.⁶

³ *United States v. Hancock*, No. 4:19-cr-00146-SRC-1 (E.D. Mo.); *United States v. Ingino*, 845 F. App'x 135 (3d Cir. 2021); *Burrage v. United States*, 571 U.S. 204 (2014).

⁴ Herbert L. Packer, *The Limits of the Criminal Sanction* (Stanford Univ. Press 1968).

⁵ Brandon Morrissey, Taleed El-Sabawi & Jennifer J. Carroll, *Prosecuting Overdose: An Exploratory Study of Prosecutorial Motivations for Drug-Induced Homicide Prosecutions in North Carolina*, 125 Int'l J. Drug Pol'y 104344 (2024).

⁶ Centers for Disease Control & Prevention, *The Facts About Fentanyl* (Sept. 27, 2021)

The low cost of fentanyl also altered illicit drug distribution practices. Suppliers increasingly mixed fentanyl into heroin and other substances to increase potency at lower cost, often exposing users to heightened overdose risk without their knowledge or consent. As overdose deaths rose, public concern intensified, and policymakers sought visible responses to the growing crisis. Prosecutors increasingly turned to DIH statutes—many of which had existed for decades but had rarely been used—to pursue homicide charges in overdose cases.⁷

By the early 2010s, DIH prosecutions had expanded substantially. Friends, family, and fellow users—often individuals struggling with addiction themselves—were increasingly charged with offenses carrying severe mandatory minimum sentences.⁸ This development marked a significant shift in prosecutorial and judicial understandings of overdose liability: overdose deaths were no longer treated primarily as accidental fatalities but as grounds for homicide liability.

Notably, this transformation occurred without any major statutory reform. Instead, it emerged through evolving prosecutorial strategies and judicial interpretations, frequently justified by deterrence-based arguments. Yet the deterrence rationale is difficult to reconcile with the realities of addiction.⁹

The expansion of DIH liability has also encouraged a simplified framework of responsibility in which the deceased is treated primarily as a victim and the surviving participant as the primary culpable actor. This framing obscures the reciprocal nature of many drug transactions, where

⁷ Valena E. Beety, *The Overdose/Homicide Epidemic*, 34 Ga. St. U. L. Rev. 983, 984–87 (2018).

⁸ Leo Beletsky et al., *Public Health and Police: Building Ethical and Equitable Opioid Responses*, 118 Proc. Nat'l Acad. Sci. e2118235118 (2021).

⁹ Jennifer J. Carroll et al., *Drug Induced Homicide Laws May Worsen Opioid Related Harms: An Example from Rural North Carolina*, 97 Int'l J. Drug Pol'y 103406 (2021).

both parties knowingly participate in conduct involving substantial risk. In many cases, the deceased exercised significant agency in obtaining and consuming the drugs, including decisions regarding dosage, method of ingestion, and polysubstance use.

Over time, another important development emerged: some users began actively seeking fentanyl itself. Individuals with long-term opioid dependence often develop increasing *tolerance*, requiring progressively stronger substances to achieve the same effects. Over time, another important development emerged: some users began actively seeking fentanyl itself.¹⁰ Repeated opioid exposure can produce tolerance, and individuals with opioid dependence may seek substances capable of producing stronger effects. Although fentanyl exposure is frequently involuntary, research demonstrates that some individuals with opioid use disorder knowingly seek and prefer fentanyl despite its substantially greater overdose risk.¹¹

Hochstatter (2022) studied 250 people with opioid use disorder entering buprenorphine treatment who tested positive for fentanyl.¹² Fifty-two percent reported preferring either fentanyl alone or fentanyl mixed with heroin: 21% preferred fentanyl alone and 31% preferred a fentanyl-heroin mixture. Participants who preferred fentanyl were also more likely to describe its high as stronger and better than heroin.

¹⁰ Adelya A. Urmanche, Nisha Beharie & Alex Harocopos, *Fentanyl Preference Among People Who Use Opioids in New York City*, 237 Drug & Alcohol Dependence 109519 (2022).

¹¹ Karli R. Hochstatter et al., *Characteristics and Correlates of Fentanyl Preferences Among People with Opioid Use Disorder*, 240 Drug & Alcohol Dependence 109630 (2022); Siena C. Napoleon et al., *Correlates of Fentanyl Preference Among People Who Use Drugs in Rhode Island*, 21 Harm Reduction J. 169 (2024).

¹² Karli R. Hochstatter et al., *Characteristics and Correlates of Fentanyl Preferences Among People with Opioid Use Disorder*, 240 Drug & Alcohol Dependence 109630 (2022).

These considerations raise important questions regarding culpability and proportionality. Traditional homicide law calibrates punishment according to mental state: intentional killings are punished more severely than reckless or negligent conduct. DIH prosecutions, however, frequently impose severe penalties without requiring proof that the defendant intended, anticipated, or consciously disregarded a substantial risk of death.

The resulting framework is a form of *strict liability* in an area of law traditionally grounded in *mens rea*. As the Supreme Court emphasized in *Morrisette v. United States*, requiring a culpable mental state serves as a fundamental safeguard against unjust punishment.¹³ Scholars have increasingly criticized this approach on both legal and public health grounds. Research provides little evidence that DIH laws reduce overdose mortality and suggests that such laws will undermine overdose-prevention efforts by increasing fear of arrest or prosecution and discouraging individuals from seeking emergency assistance during an overdose.¹⁴

The reclassification of overdose deaths from accidental fatalities to prosecutable homicides, therefore, represents more than a shift in enforcement priorities. It reflects a broader transformation in how culpability, causation, and agency are understood in the context of addiction.

Intent, Culpability, and Overdose

¹³ *Morrisette v. United States*, 342 U.S. 246 (1952).

¹⁴ Saba Rouhani et al., *Perceived Vulnerability to Overdose-Related Arrests Among People Who Use Drugs in Maryland*, 98 Int'l J. Drug Pol'y 103426 (2021); Chandler McClellan et al., *Good Samaritan Laws and Overdose Mortality in the United States in the Fentanyl Era*, 97 Int'l J. Drug Pol'y 103294 (2021).

Understanding culpability in overdose deaths requires careful attention to intent, particularly in the context of self-harming conduct. Criminal law traditionally distinguishes among degrees of culpability based on the actor's mental state, including purposeful, knowing, reckless, and negligent conduct.¹⁵ Overdose deaths, however, often resist clear categorization because they occupy an ambiguous space between voluntary risk-taking and unintended fatality.

Self-harm encompasses a broad range of behaviors in which individuals knowingly expose themselves to harm without necessarily intending death. This framework often includes addiction. Scholars have long distinguished *non-suicidal self-injury* (NSSI) from suicide based on intent.¹⁶ NSSI is generally understood as deliberate self-destructive behavior undertaken without suicidal intent. This distinction is particularly relevant in overdose cases, where individuals may knowingly engage in dangerous conduct despite lacking suicidal intent.

Drug use frequently involves awareness of substantial risk. Individuals who consume illicit substances make decisions regarding dosage, method of ingestion, polysubstance use, and whether to use alone. These decisions are often made with at least some awareness of overdose risk, particularly in the context of fentanyl and other highly potent synthetic opioids.¹⁷ Yet awareness of risk does not necessarily equate to an intent to die. Many individuals use drugs to alleviate withdrawal, psychological distress, or emotional pain rather than to seek death itself.

¹⁵ Model Penal Code § 2.02.

¹⁶ Matthew K. Nock, *Why Do People Hurt Themselves? New Insights into the Nature and Functions of Self-Injury*, 18 *Current Directions Psych. Sci.* 78, 78–83 (2009); Brianna J. Turner, *Detecting and Managing Non-Suicidal Self-Damaging Behaviors*, 21 *World Psychiatry* 461, 461–62 (2022).

¹⁷ Centers for Disease Control and Prevention. (2023). *Polysubstance overdose facts*.

Research on self-harm and suicide complicates rigid distinctions between intentional and unintentional death. Scholars have observed that self-destructive behaviors often exist along a continuum shaped by addiction, psychiatric illness, socioeconomic instability, and psychological distress. As Shneidman argued, self-destructive behavior does not necessarily reflect an intention to die.¹⁸ This distinction is particularly important in overdose deaths. Individuals may knowingly consume potentially lethal substances, combine drugs, or otherwise engage in conduct carrying a substantial risk of death without intending that death to occur. Research involving opioid overdose survivors demonstrates considerable variation in attitudes toward the possibility of death, ranging from an affirmative desire to survive, to indifference toward death, to explicit suicidal intent.¹⁹ The absence of suicidal intent therefore does not necessarily imply an absence of knowledge, choice, or risk-taking by the individual who consumed the drugs.

Recognizing these dynamics is important because current overdose prosecutions frequently ignore the agency of the deceased. The decedent chose the drugs, decided how much to take, picked the ingestion method, and opted whether to mix substances. These decisions are central to the causal chain leading to overdose, yet they are often treated as legally irrelevant once a fatal outcome occurs.

This treatment sits uneasily with broader principles of criminal law. Recklessness is ordinarily defined as conscious disregard of a known risk and is sufficient to establish culpability in many

¹⁸ Edwin S. Shneidman, *Further Reflections on Suicide and Psychache*, 28 *Suicide & Life-Threatening Behav.* 245, 245–50 (1998).

¹⁹ Rachel E. Gicquelais et al., *Links Between Suicidal Intent, Polysubstance Use, and Medical Treatment After Non-Fatal Opioid Overdose*, 212 *Drug & Alcohol Dependence* 108041 (2020); Marc A. Britton et al., *Suicidal Motivations Among Opioid Overdose Survivors: Replication and Extension*, 235 *Drug & Alcohol Dependence* 109437 (2022).

legal contexts.²⁰ In overdose prosecutions, however, the conduct and risk awareness of the deceased often receive comparatively limited consideration, while the surviving participant bears nearly exclusive responsibility for the outcome.²¹

Culpability has long served as a foundational principle of criminal law, ensuring that punishment reflects both the seriousness of the offense and the accused's mental state. Homicide law reflects this principle by distinguishing among killings according to degrees of culpability. Although statutory classifications vary by jurisdiction, murder generally requires a more culpable mental state than manslaughter, while distinctions among purposeful, knowing, reckless, and negligent conduct reflect the law's broader commitment to calibrating criminal liability according to culpability.²²

DIH prosecutions increasingly blur these distinctions. In many cases, defendants face severe penalties without proof that they intended to cause death, intended serious bodily harm, or possessed knowledge regarding the specific dangers posed by the substance involved. Some DIH statutes impose liability for the resulting death without requiring proof of any *mens rea* as to that death, producing a framework that resembles strict liability in an area of law traditionally grounded in culpability.²³

The Supreme Court has repeatedly emphasized *mens rea* as a safeguard against unjust punishment. In *Morrisette v. United States*, the Court reaffirmed that criminal liability ordinarily

²⁰ Model Penal Code § 2.02(2)(c).

²¹ Hessick, C. B. (2006). Motive's role in criminal punishment. *Southern California Law Review*, 80-89.

²² Wayne R. LaFare, *Substantive Criminal Law* §§ 5.1, 14.1–4 (3d ed. 2018); Model Penal Code § 2.02 (Am. L. Inst. 1985).

²³ Jennifer D. Oliva & Taleed El-Sabawi, *The “New” Drug War*, 110 Va. L. Rev. 1103, 1137–40 (2024); Shanda Stepp, *Drug-Induced Homicide: A Harsh Weapon in the War on Drugs*, 65 B.C. L. Rev. 2937, 2953–58 (2024).

requires proof of a culpable mental state, particularly where severe penalties are involved.²⁴

Although strict liability offenses exist in limited regulatory contexts, their application to homicide-level punishment raises significant concerns about proportionality and fairness.²⁵

Questions of causation further complicate overdose prosecutions.

In *Burrage v. United States*, the Supreme Court held that a defendant may be held liable for a drug-related death only where the distributed substance constitutes a “*but-for*” cause of death.²⁶

Yet overdose fatalities frequently involve polysubstance use, tolerance variability, and complex pharmacological interactions. Toxicological evidence commonly reveals the presence of multiple substances, including alcohol, benzodiazepines, prescription medications, and illicit drugs, all of which may contribute to respiratory depression and overdose risk.²⁷

These complexities raise important questions regarding foreseeability. Individuals supplying drugs often lack knowledge of the decedent’s tolerance, prior consumption, or concurrent substance use. In such circumstances, assigning singular criminal responsibility for a fatal outcome is difficult to reconcile with traditional principles that limit liability to reasonably foreseeable harms.²⁸

Collectively, these developments strain traditional principles of proportionality in criminal law.

Individuals who neither intended nor anticipated a fatal outcome may nevertheless face penalties

²⁴ *Morrisette v. United States*, 342 U.S. 246 (1952),

²⁵ Douglas Husak, *Strict Liability, Justice, and Proportionality*, in *The Philosophy of Criminal Law: Selected Essays* 152, 152–74 (2010).

²⁶ *Burrage v. United States*, 571 U.S. 204 (2014).

²⁷ Centers for Disease Control & Prevention, *Polysubstance Overdose*, Overdose Prevention (May 8, 2024).

²⁸ Model Penal Code § 2.03.

comparable to those imposed for intentional killings. A more coherent framework would restore *mens rea*, foreseeability, and individualized culpability as central considerations in overdose cases while allowing courts to distinguish between mutually shared drug use and conduct involving conscious disregard for human life.

Federal Cases

The following federal prosecutions illustrate how DIH statutes operate in practice and how courts navigate questions of causation, foreseeability, and culpability.

Abstract discussions of culpability and intent become clearer when examined through individual prosecutions. The following cases illustrate how DIH statutes are frequently applied to individuals operating within informal networks of shared drug use rather than traditional trafficking organizations. Both cases also highlight how outcome-based reasoning can overshadow questions of intent, foreseeability, and proportionality.

United States v. Vincent Ingino

United States v. Ingino illustrates the kind of low-level dealer that contemporary DIH prosecutions target.²⁹ Vincent Ingino (“Vinnie”) was not a high-level trafficker or organized distributor. Rather, he operated within a small network of users in his Pennsylvania neighborhood, supplying heroin on a limited and informal basis among acquaintances connected through shared addiction and social relationships.

²⁹ *United States v. Ingino*, No. 2:19-cr-00289 (W.D. Pa.).

Like many low-level participants in illicit drug markets, Ingino's conduct emerged less from organized criminal enterprise than from participation in a localized network of mutual drug use in which the distinction between user, intermediary, and distributor was often fluid. The individuals involved were not anonymous customers but friends and acquaintances who regularly interacted within the same social environment.

Ingino and two associates reportedly followed a common informal safety practice by testing new batches of heroin before broader distribution. Although rudimentary, such practices reflect attempts within illicit drug markets to assess potency and reduce immediate overdose risk in the absence of regulated supply. In this instance, however, the heroin had been contaminated with fentanyl without Ingino's knowledge.

All three men consumed the same batch. Two died from overdose; Ingino survived. The differing outcomes likely reflected individualized factors such as tolerance, dosage, polysubstance use, or method of ingestion rather than differences in the drug supply itself. This variability underscores a central difficulty in overdose prosecutions: fatal outcomes are often shaped by individualized physiological and behavioral factors rather than by a single clearly identifiable causal act.

Following the deaths, investigators focused on Ingino as the most identifiable participant within the distribution chain. He was charged under federal DIH statutes and ultimately convicted after trial. The prosecution relied heavily on toxicological evidence and the causal framework articulated in *Burrage v. United States*, treating the presence of fentanyl and Ingino's role in the distribution chain as sufficient to establish liability.

The broader context received comparatively limited attention. There was no evidence that Ingino knew the heroin contained fentanyl, intended harm, or anticipated a fatal outcome.³⁰ To the contrary, his own participation in testing the batch suggests an expectation—however misguided—that the drugs were survivable. Nevertheless, the fatal outcome became the primary basis for assigning criminal responsibility.

The case raises broader questions regarding proportionality and gradations of culpability within overdose prosecutions. Traditional criminal law distinguishes among negligent, reckless, and intentional conduct, reserving the harshest penalties for actors who knowingly or consciously disregard substantial risks to human life. Yet DIH prosecutions may impose similarly severe penalties on low-level participants whose conduct lacks traditional indicators of homicidal culpability.³¹

The case also illustrates the extent to which overdose prosecutions can depend on outcome-based reasoning. Had Ingino died from the same contaminated supply, he likely would have been categorized as another overdose victim. His survival instead positioned him as the legally responsible actor.³² In this respect, blame turned less on differences in conduct than on differences in outcome.

³⁰ Telephone Conversation by Author with Vincent Ingino (June 12, 2022).

³¹ Wayne R. LaFare, *Substantive Criminal Law* §§ 14.1–4 (3d ed. 2017); Alyssa Mallgrave, *Purely Local Tragedies: How Prosecuting Drug-Induced Homicide in Federal Court Exacerbates the Overdose Crisis*, 13 Drexel L. Rev. 233 (2021).

³² Telephone Conversation by Author with Vincent Ingino (October 6, 2024).

None of this diminishes the tragedy of the deaths involved. Rather, the case highlights the difficulty of fitting overdose fatalities into conventional homicide frameworks. The individuals involved participated in a shared environment of addiction and risk exposure, yet the criminal law ultimately assigned responsibility exclusively to the surviving participant. *United States v. Ingino*, therefore, illustrates how DIH statutes can expand homicide liability beyond traditional conceptions of culpability, particularly in cases involving shared drug use, uncertain causation, and ambiguous levels of culpability.

United States v. Hancock

Where *Ingino* illustrates the role of contaminated supply and outcome asymmetry, *Hancock* highlights the DOJ's approach to severe opioid addiction, shared addiction, informal procurement, and foreseeability.

United States v. Hancock further illustrates the complex relationship among addiction, agency, and criminal liability in overdose prosecutions.³³ Like *Ingino*, the case diverges substantially from the conventional image of a profit-driven trafficker distributing drugs for commercial gain. Instead, it involved informal exchanges among individuals with substance use disorders operating within overlapping social networks.

Scott Hancock began using opioids following a prescription for painful kidney stones at ages 16 and 17.³⁴ His addiction grew as did his tolerance, so that within ten years he had developed dependencies on heroin and fentanyl. His involvement with the deceased, TG, arose through his

³³ *United States v. Hancock*, No. 3:21-cr-00009 (N.D. Fla.).

³⁴ Telephone Conversation by Author with Scott Hancock (May 27, 2022).

relationship with KT, who was also struggling with addiction. Before entering a long-term treatment program, KT asked Hancock to “*take care of TG*” because TG was reluctant to interact directly with drug dealers.

Over time, TG’s requests became more frequent as her dependence intensified. Hancock reportedly encouraged her to establish independent contacts, yet he continued to facilitate occasional purchases through their shared social network. The arrangement reflected an informal pattern of shared drug use rather than organized trafficking or large-scale distribution. On October 19, 2018, TG contacted Hancock requesting 5 fentanyl capsules. Hancock obtained the drugs through a usual supplier, BZ. Before TG arrived, Hancock tested the capsules by injecting three capsules; the batch appeared unusually potent. According to the record, he warned TG about the potency both in person and through text messages.³⁵

TG later purchased five capsules for \$20 and returned home, where she consumed at least part of the fentanyl intranasally. She died from fentanyl toxicity later that evening. Toxicological evidence also revealed the presence of multiple substances in her system.³⁶ Following TG’s death, investigators focused primarily on Hancock as the most identifiable participant in the transaction.³⁷ Although text messages identified BZ as the supplier, Hancock became the primary focus of the prosecution and was ultimately charged in connection with the overdose death.

³⁵ Text Messages Between Gary Scott Hancock and T.G. (Dec. 9, 2021) (on file with author).

³⁶ National Institute on Drug Abuse. *Fentanyl drug facts*. (2021).

³⁷ In-person Interview by Author with Scott Hancock (Feb. 26, 2019).

The facts suggest significant culpability on both sides. TG exercised substantial agency throughout the transaction: she initiated contact, traveled 25 miles to obtain the drugs, paid for them, and independently determined the quantity and method of ingestion. These decisions occurred outside Hancock's direct control and formed a significant part of the causal chain leading to her death.

The case also highlights broader difficulties surrounding foreseeability and causation in overdose prosecutions.³⁸ Hancock was aware that fentanyl carried a substantial risk, as evidenced by his warning regarding potency. However, the evidence did not show that he intended harm or anticipated a fatal outcome. The presence of multiple substances further complicated assessments of causation, tolerance, and overdose risk.³⁹

More broadly, the case illustrates how addiction can blur traditional distinctions among victim, user, intermediary, and distributor. Both Hancock and T.G. participated in the same broader environment of addiction and substance use, yet the legal framework placed criminal responsibility for the fatal outcome on the surviving participant. This framework risks obscuring the deceased individual's agency in obtaining and consuming the substance and reducing a complex interaction between two participants to a conventional victim-perpetrator model.⁴⁰ As

³⁸ St. Louis Cnty. Med. Exam'r, Toxicology Report for T.G., at USAO-HANCOCK-001245-48 (Oct. 2018), produced in discovery in *United States v. Hancock*, No. 4:19-cr-00146-SRC-1 (E.D. Mo.) (on file with author).

³⁹ Centers for Disease Control & Prevention, *Polysubstance Overdose*, Overdose Prevention (May 8, 2024)

⁴⁰ Leo Beletsky et al., *Public Health and Police: Building Ethical and Equitable Opioid Responses*, 118 Proc. Nat'l Acad. Sci. e2118235118 (2021); Taleed El-Sabawi, Jennifer J. Carroll & Morgan Godvin, *Drug-Induced Homicide Laws and False Beliefs About Drug Distributors: Three Myths That Are Leaving Prosecutors Misinformed*, 60 Am. Crim. L. Rev. 1385 (2023).

with many DIH prosecutions, the fatal outcome itself became the principal basis for enhanced criminal liability.⁴¹

United States v. Hancock, therefore, underscores the extent to which overdose prosecutions may shift criminal law away from individualized assessments of culpability and toward outcome-driven forms of liability that may weaken traditional distinctions among intent, recklessness, and shared causal responsibility.

Narratives of Culpability

Although criminal law aspires to doctrinal precision, culpability in overdose prosecutions is often shaped by narrative framing. DIH cases are frequently presented in a simplified structure featuring an innocent victim and a homicidal dealer. In practice, however, overdose deaths arise under widely varying circumstances involving differing levels of agency, intent, knowledge, and participation. Some cases involve exploitative or highly reckless conduct, while others emerge from shared addiction, informal social exchange, and mutual participation in substance use.⁴² The following narratives illustrate the broad spectrum of conduct encompassed within contemporary DIH prosecutions and the difficulties of applying a single framework of criminal liability to fundamentally different factual circumstances.⁴³

⁴¹ 21 U.S.C. § 841(b)(1)(C).

⁴² Peter Leasure, *Perceived Culpability in Drug-Induced Homicide Scenarios*, Ohio State Legal Studies Research Paper No. 828, at 1–3, 21–27 (Feb. 27, 2024).

⁴³ Brandon Morrissey, Taleed El-Sabawi & Jennifer J. Carroll, *Prosecuting Overdose: An Exploratory Study of Prosecutorial Motivations for Drug-Induced Homicide Prosecutions in North Carolina*, 125 Int'l J. Drug Pol'y 104344 (2024).

Causation and Strict Liability

A central challenge in DIH prosecutions involves the attribution of causation in overdose deaths. Under the federal death-resulting enhancement, *Burrage v. United States* requires proof that the drug distributed by the defendant was a ‘*but-for*’ cause of death, at least where the drug was not independently sufficient to cause death.⁴⁴

Toxicological analyses frequently reveal the presence of multiple substances in the decedent’s system, including combinations of opioids, benzodiazepines, alcohol, antidepressants, and other prescription or illicit drugs. Polysubstance exposure can complicate attribution of a fatal outcome to any single substance, while combinations of opioids with other central nervous system depressants may compound respiratory depression and fentanyl overdose. Fentanyl further complicates this analysis because of its extraordinary potency and its interaction with a wide range of other substances.⁴⁵

The scientific uncertainty surrounding overdose deaths presents significant challenges for criminal attribution. Toxicologists must interpret postmortem drug concentrations affected by tolerance, metabolism, polysubstance use, and postmortem redistribution.⁴⁶ Moreover, postmortem fentanyl concentrations do not provide a simple threshold separating fatal from nonfatal exposure; concentrations associated with toxicity may overlap with concentrations

⁴⁴ *Burrage v. United States*, 571 U.S. 204, 210–19 (2014).

⁴⁵ Centers for Disease Control & Prevention, *Increases in Fentanyl Drug Confiscations and Fentanyl-Related Overdose Fatalities*, 65 Morbidity & Mortality Wkly. Rep. 837, 839–40 (2016).

⁴⁶ Craig N. Chatterton & Michael Scott-Ham, *The Distribution and Redistribution of Fentanyl & Norfentanyl in Post Mortem Samples*, 284 Forensic Sci. Int’l 146, 146–52 (2018).

observed under other circumstances, and their significance depends on tolerance, physiology, circumstances of use, and other case-specific factors.⁴⁷

The problem is not merely scientific but doctrinal. Criminal law has traditionally limited liability to harms that are reasonably foreseeable consequences of a defendant's conduct.⁴⁸ In overdose prosecutions, however, the causal analysis may narrow its focus to the presence of a distributed substance while minimizing the role of intervening variables, including the decedent's own decisions regarding dosage, method of ingestion, and polysubstance use.

This tension raises broader concerns about strict liability in DIH prosecutions. Traditional homicide law generally predicates liability and punishment on both the prohibited conduct and the actor's degree of culpability.⁴⁹ Yet many DIH laws permit severe penalties without requiring proof that the defendant intended harm, anticipated a fatal outcome, or consciously disregarded a known risk of death.⁵⁰

The resulting framework risks collapsing distinctions among negligent, reckless, and intentional conduct that traditionally structure homicide law. Defendants whose conduct lacks conventional indicators of homicidal intent may nevertheless face severe penalties ordinarily associated with homicide. This concern is particularly significant in cases involving low-level participants operating within shared environments of addiction rather than organized criminal enterprises.⁵¹

⁴⁷ Robert B. Palmer, *Fentanyl in Postmortem Forensic Toxicology*, 48 *Clinical Toxicology* 771, 771–84 (2010).

⁴⁸ Model Penal Code § 2.03.

⁴⁹ *Morissette v. United States*, 342 U.S. 246, 250–63 (1952).

⁵⁰ *Burrage v. United States*, 571 U.S. 204, 208–19 (2014); 21 U.S.C. § 841(b)(1)(C).

⁵¹ Lindsay LaSalle, Drug Pol'y All., *An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane* 8–15, 22–28 (2017).

The expansion of DIH liability has also generated broader public health concerns. Research suggests that fear of criminal prosecution may discourage individuals from seeking emergency assistance during overdose events, thereby undermining Good Samaritan protections and other harm-reduction strategies intended to reduce overdose mortality.⁵²

None of these concerns preclude criminal liability in cases involving clear recklessness or conscious disregard for human life. Rather, they suggest that overdose prosecutions require a more nuanced approach to causation and culpability than current DIH frameworks permit. A more coherent model would preserve the central role of *mens rea*, foreseeability, and individualized responsibility while recognizing the scientific and behavioral complexities that characterize overdose deaths.

The following narratives illustrate the range of conduct encompassed within contemporary DIH enforcement.

Narratives of Culpability

Although criminal law aspires to doctrinal precision, DIH cases are frequently framed through simplified narratives featuring an innocent victim and a murderous dealer. In practice, however, overdose deaths arise under widely varying circumstances involving differing levels of agency, intent, and culpability. The following narratives illustrate the range of conduct encompassed within contemporary DIH enforcement.

⁵² Jakubowski, A., Kunins, H. V., Huxley-Reicher, Z., & Siegler, A. (2018). Knowledge of the 911 Good Samaritan Law and 911-calling behavior of overdose witnesses. *Substance Abuse*, 39(2), 233-238.

Grief and Retribution

The death of a loved one from overdose often produces an immediate desire to assign blame.

One mother described learning that her nineteen-year-old daughter had died from a drug overdose and initially directing her grief and anger toward the individual who supplied the drugs. She recalled waking before dawn to repeated phone calls and loud knocking at the door, only to learn that her daughter had died after using heroin likely contaminated with fentanyl. Her first reaction was rage. She wanted the person who supplied the drugs to suffer punishment regardless of whether the individual was a boyfriend, friend, or acquaintance.⁵³

Over time, however, her perspective became more nuanced. Although she continued to mourn her daughter's death, she came to reject the idea that a single individual was solely responsible. Instead, she attributed the overdose crisis to broader structural forces, including prohibition-based drug policy, inadequate treatment access, and the stigma surrounding substance use.⁵⁴ She also acknowledged the role of personal agency, explaining that as someone who had herself struggled with substance use, she understood addiction as a condition involving both compulsion and personal decision-making.

Her reflections illustrate the tension between emotional responses to loss and the more difficult legal question of culpability. Overdose deaths often generate understandable demands for accountability, particularly among grieving families and communities. Socio-legal scholarship

⁵³ Louise Vincent, *Reframing the Blame for the War on Drugs*, Open Soc'y Found's. (May 10, 2019); Louise Vincent, *The Rage of Overdose Grief Makes It All Too Easy to Misdirect Blame*, Filter (Dec. 5, 2018).

⁵⁴ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* 131–75 (Univ. of Chi. Press 2001).

has long observed that emotionally charged harms frequently produce pressure for symbolic punishment and expanded criminal liability.⁵⁵ Yet emotional reactions do not necessarily resolve the legal question of how responsibility should be allocated in cases involving shared risk-taking, addiction, and voluntary substance use.

The narrative also demonstrates how perceptions of culpability may evolve over time. Initial impulses toward retribution may eventually give way to more complex understandings of addiction, agency, and systemic failure. In this respect, the story highlights the extent to which overdose prosecutions are often shaped not only by legal doctrine but also by grief, fear, and public narratives surrounding blame.

Restorative Responses

A contrasting response emerged following the overdose death of Elisif Janis Bruun, a twenty-four-year-old woman participating in residential treatment. Elisif obtained drugs through Sean Harrington, a friend who was also struggling with addiction and homelessness. According to Elisif's father, she contacted Harrington from the treatment facility, asked him to mail her heroin, and sent him a money order for the purchase. Harrington, who was himself addicted to heroin and reportedly did not know that Elisif was in treatment, complied with her request. Elisif subsequently used the drugs and died from an overdose.⁵⁶

⁵⁵ Monica S. Krawczyk et al., *A Critical Review of the Social and Behavioral Contributions to the Overdose Epidemic*, 46 Ann. Rev. Pub. Health [pagination] (2021).

⁵⁶ Lindsay LaSalle, Drug Pol'y All., *An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane* 36–37 (2017); Daniel Denvir, *Heroin, Murder, and the New Front in the War on Drugs*, Vice (Sept. 28, 2015).

Authorities traced the transaction through text messages, the money order, and the package in which the drugs had been mailed. Harrington was arrested, charged with second-degree murder, and extradited from Pennsylvania to North Carolina. He remained incarcerated for nearly two years while awaiting resolution of the case. Elisif's family, however, refused to support the murder prosecution. The second-degree murder charge was ultimately abandoned, and Harrington pleaded guilty to involuntary manslaughter. After receiving credit for the 667 days he had already served, he was released.⁵⁷

Rather than viewing Harrington primarily as the person responsible for Elisif's death, the Bruun family came to regard him as another individual affected by the same addiction that had contributed to their daughter's death. Peter Bruun expressly rejected assigning sole responsibility to Harrington, explaining that his daughter had actively sought the drugs and that both young people were struggling with addiction. The family refused to cooperate with the homicide prosecution and instead developed a relationship with Harrington and his family.⁵⁸

That relationship continued after Harrington's release. Harrington and Peter Bruun eventually appeared together publicly to discuss Elisif, addiction, recovery, and the role that compassion had played in Harrington's efforts to rebuild his life.⁵⁹

The case illustrates how overdose deaths can produce fundamentally different understandings of culpability depending on whether addiction is framed primarily through punishment or through

⁵⁷ Jason Nark, *Addiction, Loss and Grace*, Phila. Daily News (Oct. 17, 2016).

⁵⁸ LaSalle, *supra*, at 36–37; Denvir, *supra*.

⁵⁹ Jason Nark, *South Philly Man Meets the Father of the Woman His Package of Coke and Heroin Killed*, Phila. Inquirer (Feb. 10, 2017).

shared vulnerability and recovery. It is also particularly relevant to questions of agency: Elisif initiated the transaction, selected the person from whom she wished to obtain the drugs, provided the money, received the drugs, and ultimately chose to consume them. None of those facts diminishes the tragedy of her death, but they complicate a legal narrative in which the deceased is treated solely as a passive victim and the surviving participant as the exclusive cause of the fatal outcome. The Bruun family's response demonstrates that some families reject that binary understanding of responsibility and instead favor approaches emphasizing treatment, recovery, and shared human vulnerability.

Mutual Participation

Many overdose prosecutions arise from circumstances involving mutual participation in substance use rather than conventional drug trafficking. One such case involved Amy Shemberger and Peter Kucinski, a longtime couple who regularly used heroin together.⁶⁰ Peter had struggled with heroin and other substances for years, while Amy developed opioid dependence following treatment with prescription pain medication for a back injury. Over time, heroin became their drug of choice, and the couple routinely obtained and consumed drugs together.⁶¹

On the day of Peter's death, Amy traveled to Chicago with Benjamin Camunias to obtain heroin. Amy consumed one bag during the return trip and later gave Peter his portion. According to Amy, she questioned Peter about how much alcohol he had consumed before he used the heroin.

⁶⁰ *In re Estate of Kucinski*, 2025 IL App (3d) 240328-U, ¶ 4.

⁶¹ Kaitlin S. Phillips, *From Overdose to Crime Scene: The Incompatibility of Drug-Induced Homicide Statutes with Due Process*, 70 Duke L.J. 659, 686–88 (2020); Lindsay LaSalle, *An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane* Drug Pol'y All., 40–43 (2017).

Peter nevertheless snorted one \$10 bag—the same amount Amy had consumed earlier. He subsequently stopped breathing, and emergency assistance was summoned. Peter died from the overdose.⁶²

Despite the shared nature of the conduct, prosecutors charged Amy with a drug-induced homicide, and she was ultimately sentenced to twenty years in prison. The fatal outcome transformed the legal status of the participants: Peter became the victim, while Amy became the homicidal dealer. Yet both individuals had voluntarily participated in the same conduct and shared similar histories of addiction and risk exposure.⁶³

Cases like this illustrate the difficulty of assigning unilateral blame in relationships marked by reciprocal participation in risky conduct. The causal chain leading to overdose often includes decisions by both individuals regarding procurement, dosage, method of ingestion, and continued substance use. Nevertheless, overdose prosecutions frequently collapse these complexities into simplified narratives featuring an innocent victim and a homicidal dealer.⁶⁴

This asymmetry reflects a broader tendency within DIH prosecutions to allocate responsibility primarily on the basis of outcome rather than comparative culpability. The distinction between victim and offender may ultimately depend less on differences in conduct than on whether one participant survived while the other did not.

⁶² LaSalle, *supra*, at 40–43.

⁶³ Lindsay LaSalle, Drug Pol'y All., *An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane* 40–43 (2017).

⁶⁴ Phillips, *supra*, at 686–88.

Depraved Indifference

Not all overdose prosecutions involve shared addiction or mutual participation. Some cases involve conduct more closely aligned with traditional forms of criminal recklessness and therefore present stronger justifications for severe criminal liability. Aaron Broussard illustrates this distinction.⁶⁵

According to evidence presented at trial, Broussard ordered large quantities of what he believed to be a controlled substance analog from suppliers in China.⁶⁶ Instead, the shipment contained nearly pure fentanyl. Broussard subsequently distributed the substance to customers throughout the United States who believed they were purchasing a stimulant-like analog resembling Adderall or MDMA.

Although Broussard claimed he did not initially realize the shipment contained fentanyl, prosecutors presented evidence that he continued distributing the drugs after learning that individuals had become seriously ill and died following ingestion.⁶⁷ Evidence also indicated that a similar incident had occurred previously and that Broussard had been repeatedly warned to test his products but had failed to do so. Ultimately, multiple overdose deaths were linked to the fentanyl he distributed.

Unlike many DIH cases involving friends, family members, or fellow users, Broussard's conduct involved commercial distribution to numerous customers who did not know they were receiving

⁶⁵ *United States v. Broussard*, 80 F.4th 1167 (8th Cir. 2023).

⁶⁶ *United States v. Broussard*, 80 F.4th 1167, 1169–72 (8th Cir. 2023).

⁶⁷ U.S. Attorney's Office, Dist. of Minn., *Hopkins Man Sentenced to Life in Prison for Distributing Fentanyl that Caused Eleven Overdose Deaths* (Sept. 12, 2022).

fentanyl. More significantly, evidence at trial demonstrated that he continued distributing the substance after learning that customers had experienced severe adverse reactions. His conduct therefore exhibited substantially stronger indicators of conscious risk-taking and disregard for human life than cases arising from shared addiction or social sharing.

Cases of this nature align more closely with traditional concepts of depraved indifference and reckless homicide. Therefore, they provide a stronger basis for severe criminal liability than prosecutions arising from shared addiction and mutual participation. The distinction matters because contemporary DIH frameworks often treat fundamentally different conduct similarly, despite major differences in intent, knowledge, foreseeability, and culpability.

Taken together, these narratives demonstrate that culpability in overdose cases exists along a spectrum rather than within a single categorical framework. Conduct involving mutual drug use and shared acquisition differs substantially from commercial distribution to unwitting consumers, particularly where a distributor continues supplying a substance after becoming aware of serious injuries. A coherent approach to overdose liability should recognize these differences and permit criminal responsibility to reflect variations in intent, knowledge, participation, foreseeability, and conscious disregard of risk. The central difficulty with many DIH frameworks is therefore not the imposition of criminal liability itself, but their limited capacity to distinguish among conduct reflecting fundamentally different degrees of blameworthiness.

Policy and Reform

The expansion of DIH prosecutions reflects a broader punitive response to the opioid crisis centered on deterrence, incapacitation, and symbolic accountability. Yet the effectiveness of this approach is inadequate, particularly in light of addiction research and continuing overdose mortality.

Policy Limitations

DIH enforcement rests largely on the assumption that severe criminal penalties deter drug distribution and thereby reduce overdose deaths. This rationale is difficult to reconcile with the realities of addiction, where behavior is frequently shaped less by rational cost-benefit analysis than by dependence, withdrawal avoidance, and compulsive behavior.

Empirical research has found limited evidence that increasingly punitive drug enforcement reduces overdose mortality. By contrast, several studies suggest that aggressive criminalization may produce unintended harms, including reluctance to seek emergency assistance during overdose events out of fear of arrest or prosecution.⁶⁸ Although Good Samaritan laws were enacted to encourage emergency intervention, their effectiveness has been undermined by the arrest and incarceration of bystanders in overdose situations.

DIH prosecutions also tend to focus on the most identifiable participants within local drug networks rather than on large-scale traffickers or manufacturers. In practice, defendants are often friends, family members, or fellow users of the deceased—individuals who themselves may be

⁶⁸ Leo Beletsky & Corey S. Davis, *Today's Fentanyl Crisis: Prohibition's Iron Law, Revisited*, 46 Int'l J. Drug Pol'y 156, 156–59 (2017).

struggling with addiction. This focus can reinforce cycles of incarceration and social instability within already vulnerable communities while doing comparatively little to address broader structural drivers of the overdose crisis.⁶⁹

The expansion of homicide-based frameworks into overdose policy may also reinforce stigmatizing distinctions between “*victims*” and “*perpetrators*” in circumstances where both parties often participated in the same conditions of addiction and risk exposure.⁷⁰ More broadly, punitive responses to overdose deaths may substitute symbolic accountability for interventions more consistent with public health evidence, including treatment access, harm reduction, and overdose prevention strategies. Policies emphasizing treatment access, naloxone distribution, and harm reduction may ultimately provide more effective responses to overdose mortality than increasingly expansive homicide liability.⁷¹

Restoring Mens Rea

The preceding analysis does not suggest that criminal liability is never appropriate in overdose cases. Rather, it suggests that existing DIH frameworks fail to distinguish adequately among different forms of conduct and varying levels of culpability.

⁶⁹ Taleed El-Sabawi, Jennifer J. Carroll & Morgan Godvin, *Drug-Induced Homicide Laws and False Beliefs About Drug Distributors: Three Myths That Are Leaving Prosecutors Misinformed*, 60 Am. Crim. L. Rev. 1381 (2023).

⁷⁰ Taleed El-Sabawi, Jennifer J. Carroll & Morgan Godvin, *Drug-Induced Homicide Laws and False Beliefs About Drug Distributors: Three Myths That Are Leaving Prosecutors Misinformed*, 60 Am. Crim. L. Rev. 1385, 1388–1420 (2023).

⁷¹ Jennifer J. Carroll, Bayla Ostrach, Loftin Wilson, Jesse Lee Dunlap, Reid Getty & Jesse Bennett, *Drug Induced Homicide Laws May Worsen Opioid Related Harms: An Example from Rural North Carolina*, 97 Int’l J. Drug Pol’y 103406 (2021); Jennifer J. Carroll, Traci C. Green & Rita K. Noonan, *Evidence-Based Strategies for Preventing Opioid Overdose: What’s Working in the United States* (Ctrs. for Disease Control & Prevention 2018).

A more coherent approach would restore the role of *mens rea* in overdose prosecutions. At a minimum, homicide-level liability should require a culpable mental state with respect to the resulting death, such as knowledge that death is substantially likely or conscious disregard of a substantial and unjustifiable risk to human life.⁷² Such a framework would better align overdose prosecutions with traditional principles of criminal law and allow greater differentiation between mutually shared drug use and genuinely reckless or deceptive conduct.⁷³

Courts should also consider the deceased's agency when assessing causation and foreseeability. In many overdose cases, the decedent independently determined the dosage, method of ingestion, and polysubstance use—factors that substantially shape overdose risk.⁷⁴ Recognizing these realities would not eliminate criminal liability where appropriate, but it does support a more individualized and proportionate assessment of responsibility.

DIH prosecutions may be more justifiable where aggravating circumstances demonstrate substantially greater culpability, including misrepresenting substance, deceiving recipients regarding its composition, or continuing distribution after becoming aware that the substance has caused serious injury or overdose.⁷⁵ Such circumstances provide stronger evidence of knowledge or conscious disregard of a substantial risk to human life and therefore more closely resemble traditional forms of reckless homicide.

⁷² Wayne R. LaFare, *Substantive Criminal Law* §§ 5.1, 14.1–4 (3d ed. 2017); Model Penal Code § 2.02(2)(b)–(c) (Am. L. Inst. 1985).

⁷³ Anna Beavers, *Drug-Induced Homicide: A Comprehensive Statutory Proposal*, 15 Ne. U. L. Rev. Extra Legal (2023).

⁷⁴ Anna Beavers, *Drug-Induced Homicide: A Comprehensive Statutory Proposal*, 15 Ne. U. L. Rev. Extra Legal (2023).

⁷⁵ *United States v. Broussard*, 80 F.4th 1167, 1169–72 (8th Cir. 2023); Anna Beavers, *Drug-Induced Homicide: A Comprehensive Statutory Proposal*, 15 Ne. U. L. Rev. Extra Legal (2023).

Public Health Alignment

More broadly, overdose policy should align with contemporary public health evidence. Research consistently emphasizes the importance of treatment access, naloxone distribution, overdose education, and harm-reduction strategies in reducing overdose mortality.⁷⁶ Policies that discourage emergency intervention or intensify stigma among individuals with substance use disorders will undermine these objectives.⁷⁷

A more balanced approach would not eliminate accountability in overdose cases but would reserve the most severe criminal sanctions for conduct involving demonstrably heightened culpability. Such an approach would better integrate principles of proportionality, foreseeability, and public health while recognizing the complex social and behavioral realities that characterize overdose deaths.⁷⁸

The preceding analysis therefore suggests the need for a more balanced framework of responsibility in overdose prosecutions—one that recognizes overdose deaths as typically unintentional but highly risk-laden events, acknowledges that multiple participants may contribute to the outcome, reserves the most severe criminal sanctions for conduct involving demonstrably heightened culpability, and ensures that legal doctrine remains consistent with principles of *mens rea*, proportionality, and foreseeability.

⁷⁶ Centers for Disease Control & Prevention, *Opioid Use Disorder: Treating, Overdose Prevention* (Apr. 9, 2024); Centers for Disease Control & Prevention, *Reverse Opioid Overdose to Prevent Death*, Overdose Prevention (May 8, 2024).

⁷⁷ Jennifer J. Carroll, Bayla Ostrach, Loftin Wilson, Jesse Lee Dunlap, Reid Getty & Jesse Bennett, *Drug Induced Homicide Laws May Worsen Opioid Related Harms: An Example from Rural North Carolina*, 97 Int'l J. Drug Pol'y 103406 (2021).

⁷⁸ Stephen J. Morse, *Addiction, Genetics, and Criminal Responsibility*, 69 Law & Contemp. Probs. 165 (2006).

Conclusion

In recent decades, overdose deaths in the United States have increasingly been treated not only as public health tragedies but also as prosecutable homicides. The expansion of DIH prosecutions reflects a significant shift in how criminal law conceptualizes addiction, causation, and responsibility.

This article has argued that many overdose prosecutions rely upon an oversimplified framework of culpability. Overdose deaths frequently involve shared participation, individualized risk factors, and complex pharmacological interactions that do not fit neatly within traditional homicide models. Nevertheless, current DIH practices often assign primary responsibility to the surviving participant while giving comparatively limited attention to the deceased's own decisions regarding drug acquisition, dosage, method of ingestion, and polysubstance use.

The analysis also demonstrates that overdose cases vary substantially in moral and legal character. Some involve conduct approaching traditional forms of recklessness or depraved indifference and may warrant serious criminal sanctions. Others arise from informal exchanges among individuals operating within shared conditions of addiction and risk exposure. Treating these fundamentally different cases as equivalent risks undermines principles of proportionality and individualized culpability that have long structured criminal law.

More broadly, the article highlights tensions between punitive overdose policies and contemporary public health evidence. Research increasingly suggests that aggressive

criminalization may discourage emergency intervention, reinforce stigma, and divert attention from treatment-oriented responses more likely to reduce overdose mortality.

A more coherent legal framework would therefore restore the importance of *mens rea*, foreseeability, and individualized culpability in overdose prosecutions. Doing so would not eliminate criminal liability in all overdose cases, but it would allow courts to distinguish more carefully among varying forms of conduct and differing levels of moral blameworthiness. Ultimately, overdose deaths present challenges that neither criminal law nor public health policy can adequately address through simplified narratives of victimhood and blame. A more nuanced approach—one attentive to addiction, agency, causation, and proportionality—offers a more coherent basis for responding to overdose deaths within both the legal system and broader public policy.