



HOUSE BILL 474: Death by Distribution.

2019-2020 General Assembly

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| Committee: | Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate | Date: | June 19, 2019 |
| Introduced by: | Reps. Arp, D. Hall, C. Smith, Faircloth | Prepared by: | Jennifer Bedford* |
| Analysis of: | Third Edition | | Staff Attorney |

OVERVIEW: House Bill 474 would create new criminal offenses for death by distribution, and aggravated death by distribution, of "certain controlled substances" without malice.

CURRENT LAW: Second-degree murder is the unlawful killing of another human being *with malice*, but without premeditation or deliberation,¹ including murder that was proximately caused by the unlawful distribution of any opium, opiate or opioid or any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, opioid; cocaine, or other substance described in G.S. 90-90(1)d; methamphetamine; depressant described in G.S. 90-92(a)(1), and ingestion of the substance caused the death of the user. *State v. Parlee*, 209 N.C. App.144, 146-147 (2011); G.S. 14-17(b)(2). A violation of G.S. 14-17(b)(2) is punishable as a **Class B2 felony** (94-484 months of incarceration).

Malice is defined as an inherently dangerous act done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief. G.S. 14-17(b)(1).

BILL ANALYSIS: House Bill 474 would:

- Create the crime of Death by Distribution, a **Class C felony** (44-231 months incarceration) if a person unlawfully sells "one certain controlled substance" that proximately causes the victim's death if the substance is ingested, and the person acted *without malice*.
- Create Aggravated Death by Distribution, a **Class B2 felony** (94-484 months incarceration) if a person satisfies the elements of Death by Distribution, and the person has a previous conviction for one of a list of certain controlled substance violations, within 7 years of the date of offense.
- Define "Certain Controlled Substances" as any substance referenced in G.S. 14-17(b)(2).
- Make Death by Distribution a lesser included offense of Aggravated Death by Distribution.
- Clarify that nothing in this section restricts or limits rights and immunities under the Good Samaritan law (G.S. 90-96.2).
- Clarify that a valid prescription for a controlled substance dispensed to an individual by a practitioner or pharmacist in the usual course of practice is lawful distribution.

EFFECTIVE DATE: This act becomes effective December 1, 2019, and applies to offenses committed on or after that date.

¹ State v. Page, 346 N.C. 689 (1997).

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Legislative Analysis
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House Bill 474

Page 2

BACKGROUND:

Defined Terms – State law.

- **Dispense** – prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. G.S. 90-87(8).
- **Pharmacist** – a person licensed to practice pharmacy. G.S. 90-85.3(p).
- **Practitioner** – physician, dentist, optometrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense ... or administer a controlled substance. G.S. 90-87(22).

Defined Terms – Federal law.

- **Dispense** – prescribing and administering a controlled substance. 21 USC § 802(10).
- **Individual practitioner** – physician, dentist, veterinarian, or other individual licensed, registered or permitted...by the jurisdiction in which the person practices to dispense a controlled substance in the usual course of practice, but does not include a pharmacist or institutional practitioner. 21 CFR 1300.01.
- **Institutional practitioner** – hospital or other person licensed, registered, or otherwise permitted by...the jurisdiction in which it practices, to dispense a controlled substance in the usual course of business. 21 CFR 1300.01.
- **Pharmacist** – any pharmacist licensed by a State to dispense controlled substances. 21 CFR 1300.01.

**Shawn Middlebrooks, Staff Attorney, substantially contributed to this summary.*