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Frosh: Charge dealers in ODs

Attorney general wants
more manslaughter
cases for drug fatalities

By PHIL DAVIS

Maryland's top lawyer says local prosecutors should consider manslaughter charges for more dealers and suppliers whose drugs cause fatal overdoses after the state's highest court has swept away legal doubts.

Attorney General Brian Frosh said he believes some dealers who sell particularly deadly drugs should face charges if someone dies from an overdose.

"The distribution of dangerous drugs like heroin runs a risk of killing people," Frosh said in an interview with The Baltimore Sun. While he would not recommend homicide charges in every fatal overdose case, he said prosecution is warranted when someone supplies drugs "in a way that's grossly negligent."



Frosh

Nearly 1 000 people died from fentanyl in

DEALERS

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drug dealing,” said Brian Saccenti, head of the appellate division of Maryland’s Public Defender’s Office. “But the bigger concern is that it will deter people from calling 911 to report a potential overdose because you threaten people with decades in prison if they happen to be caught there.”

The debate comes after Maryland’s Court of Appeals ruled 4-3 in June that a Worcester County man was rightly convicted of manslaughter in connection with another man’s heroin overdose death in 2015. The court overturned a lower court ruling that had invalidated the conviction.

The opinion could encourage similar prosecutions throughout Maryland, as attorneys from across the state say it establishes a more concrete standard for such cases.

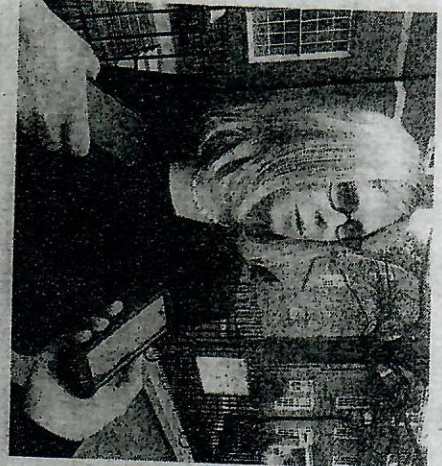
Over the past two years, Maryland prosecutors have brought assorted homicide charges against alleged drug dealers — ranging from manslaughter to second-degree depraved heart murder. Potential sentences range from 10 to 40 years under Maryland law.

Federal prosecutors have also charged alleged drug dealers with homicide, as U.S. law allows them to charge dealers with drug distribution “in relation to death.”

Authorities charged Narada Walls, 39, of Salisbury, with the federal offense in October after prosecutors say his girlfriend, Stacy Lynn Figgs, died from a fentanyl overdose while cleaning a blender in Walls’ kitchen that contained traces of the drug.

In 2012, Gov. Larry Hogan praised St. Mary’s County State’s Attorney Richard Fritz for bringing second-degree murder charges against eight alleged drug dealers. At the time, the Republican governor called it “the level of tough prosecution that we need in order to turn the tide in this deadly fight.”

But in June 2018, Maryland’s second-highest court, the Court of Special Appeals, ruled that Patrick Joseph Thomas, 57, of Berlin, was improperly convicted in Worcester County in the overdose death of Colton Lee Maltrey.



ALEX MANN/BSMG 2018
Anne Arundel County State’s Attorney Ann Colt Leitess takes reporters’ questions.

After that ruling, St. Mary’s County prosecutors started to see similar cases being affected as defense attorneys’ and judges began to cite the Thomas case.

“They were prohibiting us from prosecuting really big cases,” said Jaymi Sterling, a senior assistant state’s attorney in St. Mary’s County.

Citing the ruling, a judge acquitted one of the eight charged in the county, Mark Steven Garner, of involuntary manslaughter in 2018. Prosecutors said he sold a fatal dose of heroin to a 31-year-old woman in 2016, but the judge determined the Court of Special Appeals opinion dictated he be found not guilty.

As a result, Fritz and Sterling helped the Attorney General’s Office build its appeal to Maryland’s highest court, the Court of Appeals.

Frosh said the June ruling by that court clears “a cloudy issue” and allows “state’s attorneys to enforce what we believe the law to be.”

“The rule ought to be what the Court of Appeals [found] ... that there are some circumstances that someone can be charged with manslaughter,” Frosh said.

A 2017 Baltimore Sun review found prosecutors in fewer than a third of Maryland’s counties had charged drug suppliers with homicide, and prosecutors said the cases were difficult to prove. Yet the tactic of charging dealers and

other providers has drawn criticism from some groups that point to years of similar tactics in other states even as the country’s drug overdose rate continued to climb.

The Drug Policy Alliance found in a 2017 report that 20 states have drug-induced homicide laws. Some states — including Wisconsin, Minnesota, Ohio and Illinois — have prosecuted hundreds of such cases from 2011 to 2016.

In Wisconsin, which prosecuted 882 such cases from 2011 to 2016, the number of fatal drug overdoses doubled from 2011 to 2017. The state’s growth in overdoses outpaced the national increase of 75% during that period reported by the National Institute on Drug Abuse.

Critics compare the prosecutions to failed policies born out of the “War on Drugs” era of the 1980s and 1990s, which saw prison populations skyrocket as a result of minimum mandatory sentences for drug dealers.

“Drug-induced homicide laws, then, might fulfill an instinct for retribution and offer a purported solution to the increasing rates of overdose, but they do nothing to reduce demand or deter selling,” according to the Drug Policy Alliance’s report.

“Accordingly, future deadly drug overdoses will not be prevented,” it continued. Saccenti echoed the group’s points, adding that such prosecutions could inhibit the state’s push to get more people into treatment.

While prosecutors could target high-level drug dealers, Saccenti said, they also could charge street dealers and people who are addicted themselves who sell or give some of a drug to someone who then dies of an overdose.

“What do we want when people are overdosing?” he said. “Trying to solve the opioid crisis with criminal penalties actually gets in the way of medical treatment.”

While some county and municipal jails offer medically-assisted treatment to those who are incarcerated, a bill that would have required state prisons to follow suit was halted in the General Assembly this year after corrections officials expressed concerns over cost.

In Anne Arundel County, then-State’s Attorney Wes Adams began prosecuting



Thomas

fentanyl and that DelValle was himself addicted to heroin and did some of the drugs himself.

“It’s important for people to know ... the state presents these people who sell drugs, or give drugs to their friends as a monolithic population of people out there not caring about what happens to their friends,” she said at the time. “He ingested from exactly the same substance.”

Citing the lower appeals court’s ruling, an Anne Arundel County circuit judge ruled last year that DelValle could not be convicted of the manslaughter charge.

Adams’ Democratic successor, Anne Arundel County State’s Attorney Anne Colt Leitess, said she sees homicide charges as appropriate in some cases. “We have to prove that the facts support a disregard for human life,” she said.

For example, Colt Leitess continues to prosecute Jason Patton Baker, who was charged by Adams with drug distribution and manslaughter in the death of Josiah Christopher Klases, a 16-year-old Glen Burnie resident who is the county’s youngest fatal overdose victim since police started keeping records in 2014. Baker’s trial is scheduled for November.

Frosh, meanwhile, pushed back on the notion that prosecuting suppliers mirrors failed policies of the past. “It’s not a mandatory minimum or automatic charge,” he said.

But he said given the state’s dire situation, it’s a tactic he wants to see employed as a measure of retributive punishment.

“We’ve had cases where you have a very dangerous drug on the street and people are overdosing like crazy,” Frosh said. “When that person keeps selling the drug, it seems appropriate to hold them accountable.”