

“DEATH BY DELIVERY”

I.C. 37-2734D

A LEGAL DEPARTURE FROM STANDING IDAHO MURDER CRIMINAL OFFENSES

Idaho

Idaho’s Proposed New Criminal Statute: I.C. 37-2734D DRUG-INDUCED HOMICIDE (aka “Death by Delivery”): Legislators in Idaho are preparing to introduce a new criminal statute to be known as I.C. 37-2734D which would create a new felony with a mandatory minimum punishment of 15 years and up to life imprisonment against anyone who manufactures, delivers, or possess with intent to manufacture or deliver a controlled substance to another person that results in the death of the person who injected, inhaled, ingested or by any other means the delivered drug. In conjunction with this bill, legislators propose to add fentanyl to the prescribed list of illegal drugs that already require mandatory minimum sentencing.

The “Death by Delivery” proposed statute is draconian and represents a huge legal departure from other Idaho murder criminal offenses. This proposal would create the most serious fixed penalty for a murder crime in Idaho (excluding the death penalty) AND it does so without including any specific intent language that all Idaho murder statutes currently include.

A. THE NEW PROPOSED CRIME IS TOO HARSH IN COMPARISON TO FIRST DEGREE MURDER IN IDAHO WHICH IS THE MOST SERIOUS CRIMINAL OFFENSE AND REQUIRES SPECIFIC INTENT ON BEHALF OF THE BAD ACTOR.

1. First Degree Murder is defined as an unlawful killing of a human being and is punishable by the Death Penalty IF the prosecutor files notice of intent, the jury convicts the defendant, and the jury finds the requisite aggravating factors to support the death penalty. Otherwise, the sentence carries an indeterminate life sentence and 10-year mandatory minimum sentence.

- i. Unlawful killing of a human being;
- ii. With malice aforethought
 - 1. Expressed or implied malice:
 - a. Expressed: deliberate intention to take the life of another
 - b. Implied: killing is done with “abandoned and malignant heart”
 - iii. or intentional application of torture or poison

2. Second Degree Murder in Idaho carries the same 10-year minimum sentence as First Degree Murder, excepting the death penalty, and up to life in prison.

B. THE NEW PROPOSED CRIME CONFLICTS WITH MANSLAUGHTER IN IDAHO.

1. Manslaughter is defined as the unlawful killing of another person:

- i. Voluntary: sudden quarrel or passion
- ii. Involuntary: in the perpetration of or attempt to perpetrate any unlawful act

Under the new proposed law, the delivery of a controlled substance is an unlawful Act and arguably conflicts the new proposed statute that defines unlawful conduct.

iii. The penalty for involuntary murder includes maximum 10 year incarceration.

NOTE: Assisting Suicide: provides the physical means by which another person commits or attempts to commit suicide the penalty is not to exceed 5 years. This argument is worth pursuing because the issue of accidental overdose vs. suicide is a major concern in Idaho. Certainly, not all overdose deaths are considered "suicide" and there is a major legal distinction between the two. However, should a person deliver a proscribed illegal substance to another, not otherwise knowing of that person's intent to simply ingest the drug for a perceived effect or if the person taking the drug was doing so in an attempt to take his/her life is an open question. However, the proscribed penalty for such conduct is so disparate that it causes not only constitutional questions of legal procedure and due process but legal causation questions as well.

ADDITIONAL CONCERNS:

- The new proposed law does not provide/nor encourage any good Samaritan actions to save the life of another. It, in fact, discourages anyone from calling for help or talking to police because of the criminal implications.
- No one can deter an accidental overdose that no one intended to happen - - no matter how strict the penalty is. Individuals who have drug issues and addictions are themselves engaging in illegal acts.
- Causation issues abound: medical examiners can tell us what illegal substances a person had in their system when they died but a medical examiner cannot in most cases state what drug actually caused the death when there are several drugs identified. How do we charge the last person to give drugs with murder when other illicit drugs are also identified and have contributing causes?

C. THE NEW PROPOSED CRIME WILL NOT STOP/TARGET THE MAJOR PLAYERS IN TRAFFICKING

1.) This law will unduly compound tragedy upon tragedy with such draconian penalties and without the specific intent requirements. It will be used, and perhaps exploited on college campuses between users who are "friends" - - both of whom engage in illegal acts, both of whom may share addiction /substance abuse issues.

2.) Losing a loved one to an overdose is tragic and painful for all families and friends of the deceased. The loss is very personal and painful. Tragically, most lives lost to overdose have personal histories with significant substance abuse issues and those issues are readily known to families and friends. In many instances, the loss comes even after there has been interdiction. There is understandable agony and desire to "make someone pay" for the loss of life.

3.) In this bill, there is NO "innocent" victim. Anyone who is buying these proscribed drugs is doing so knowing that he/she is committing a serious crime. The penalty of 15 years fixed to the person who delivered the drug far exceeds other very serious crimes in Idaho against truly innocent victims.

NOTE: Lewd Conduct of a Child Under 16 has no mandatory minimum. A person who sexually abuses a child or children for years does not face any mandatory minimum charge. Even a repeat offender does not automatically face a mandatory minimum sentence: Idaho only has an enhancement provision for certain convicted sex offenders.

NOTE: Ritualized Abuse of Children, which is the closest we have to a state "trafficking charge", there is no minimum requirement to imprisonment. It carries up to life. Ritualized abuse of a child includes the "ingestion, injection or other application of any narcotic, drug, hallucinogen or anesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity." (potentially, a person could deliver cocaine, fentanyl, weed - - knock a child out for the purpose of sexual assault - - and again, not face a 15 year mandatory minimum).