

# Exploring the Evidence: The Truth About Drug Overdose Homicide Laws

21<sup>st</sup> Annual NACDL State Justice Network Conference  
Criminal Justice Reform Through a Public Health and  
Community Safety Lens

August 12, 2022

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Northeastern University  
School of Law



# Panelists

- **Morgan Godvin**, Narrative Justice Fellow, Health in Justice Action Lab at Northeastern University School of Law; Oregon Decriminalization Measure 110 Councilmember; and Engagement Editor of American Prison Newspapers, JSTOR Daily
- **Sam Rivera**, Executive Director, OnPoint NYC
- **Taleed El-Sabawi**, Assistant Professor of Law, Florida International University College of Law; Research Scholar, Addiction and Public Policy Initiative at the O'Neill Institute for National and Global Health, Georgetown Law



# HEALTH IN JUSTICE **ACTION LAB**

Health in Justice is an action laboratory guided by a vision of a healthier, more just society. We advance criminal justice reform through a public health lens.

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**CHANGING THE NARRATIVE**

**COVID 19 RESPONSE**

**DRUG INDUCED HOMICIDE**

**DRUG POLICY, A NEW VISION**

**HARM REDUCTION POLICY & PRACTICE**

**IMPROVING CANNABIS REFORM**

**INVOLUNTARY COMMITMENT FOR SUBSTANCE USE**

**POLICING & PUBLIC HEALTH**

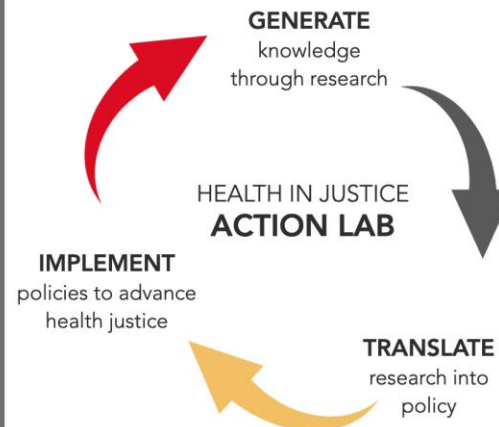
**PRESCRIPTION DRUG MONITORING**

## To Accomplish Our Goals, We:

Generate knowledge through interdisciplinary research;

Translate knowledge into policies and programs; and

Implement policies and programs to advance health and justice





# DRUG-INDUCED HOMICIDE

## DRUG-INDUCED HOMICIDE DEFENSE TOOLKIT



Jeremiah Goulka, Valena E. Beety, Alex D. Kreit, Anne Boustead, Justine Newman,  
and Leo Beletsky

THIRD EDITION  
JULY 2021

[healthinjustice.org](http://healthinjustice.org)

For resources, visit:  
**healthinjustice.org**

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### WHEN ACCIDENTAL OVERDOSE IS TREATED AS MURDER

SEEKING RELIEF FOR DEFENDANTS  
WHY POST-CONVICTION RELIEF IS NECESSARY

MORGAN GOVIN

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
HAMPSHIRE COUNTY NO. SJC-12617  
COMMONWEALTH  
v.  
JESSE CARRILLO

BRIEF OF THE COMMITTEE FOR PUBLIC COUNSEL SERVICES  
AND  
THE HEALTH IN JUSTICE ACTION LAB AT  
NORTHEASTERN UNIVERSITY SCHOOL OF LAW  
JOINED BY  
MASSACHUSETTS ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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January, 2019.

# Responding to the Overdose Crisis: A “Public Health Approach”?

- “We are taking a public health health approach”
- “We can’t arrest our way out of this problem”
- “Evidence-based” policies

- ✓ Naloxone access laws
- ✓ 911 Good Samaritan laws
- ✓ Legalizing harm reduction programs
- ✓ Increasing funding for treatment and harm reduction

- ? **Drug-induced homicide laws and prosecutions**
- ? Prescription drug monitoring programs, limitations on prescribing
- ? Prosecuting prescribers
- ? Involuntary commitment
- ? Drug courts

# DIH Law Proliferation 2009-2019

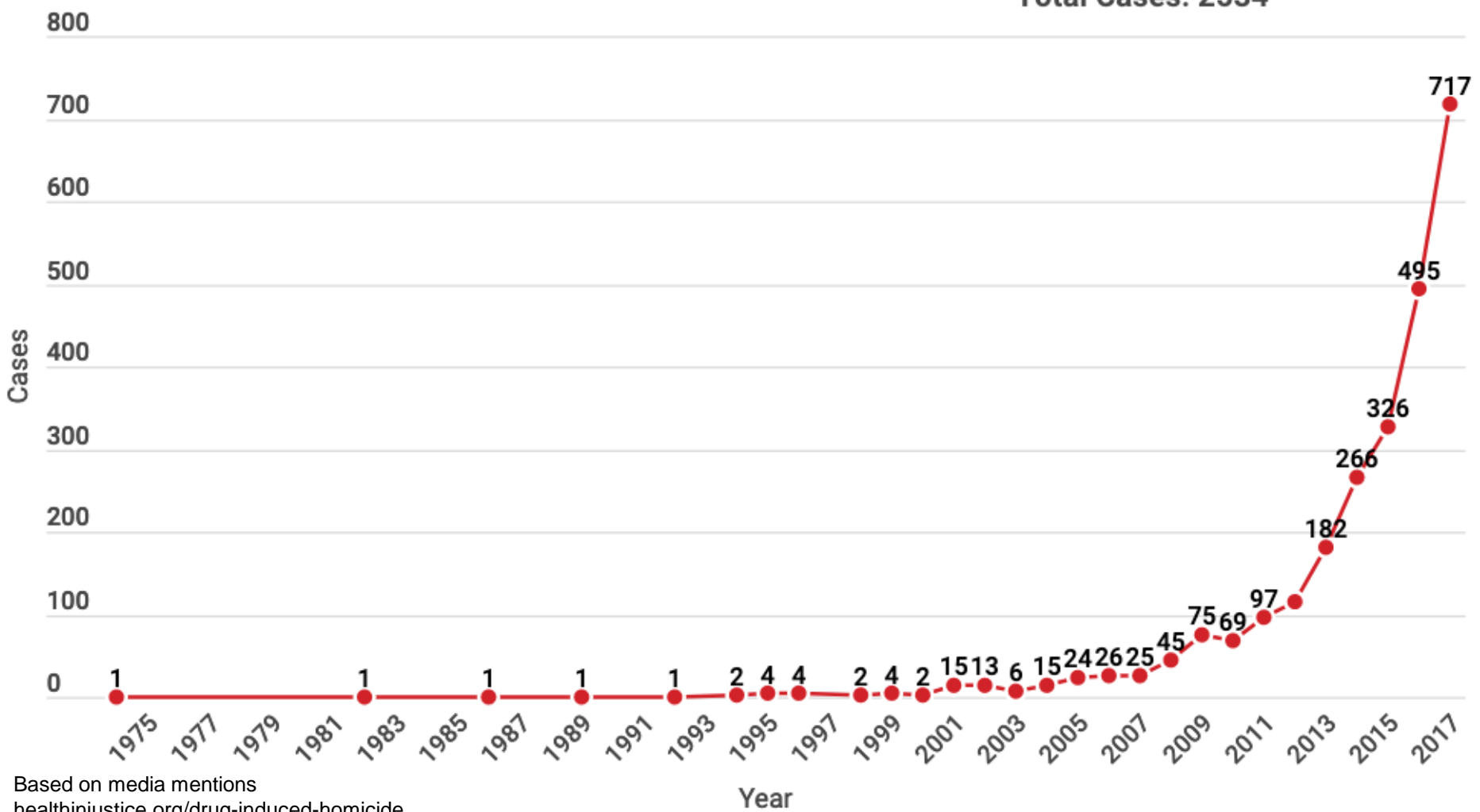


# Surge of DIH Charges

## DIH Charges by Year (1974-2017)



Total Cases: 2534



Based on media mentions  
healthinjustice.org/drug-induced-homicide

# But Does It Work?

**CNN** health Life, But Better Fitness Food Sleep More

Audio Live TV 

## US drug overdose deaths reach another record high as deaths from fentanyl surge

By Deidre McPhillips, CNN

 Updated 3:11 PM ET, Wed March 16, 2022

## Drug Overdose Deaths in the U.S. Top 100,000 Annually

### For Immediate Release: November 17, 2021

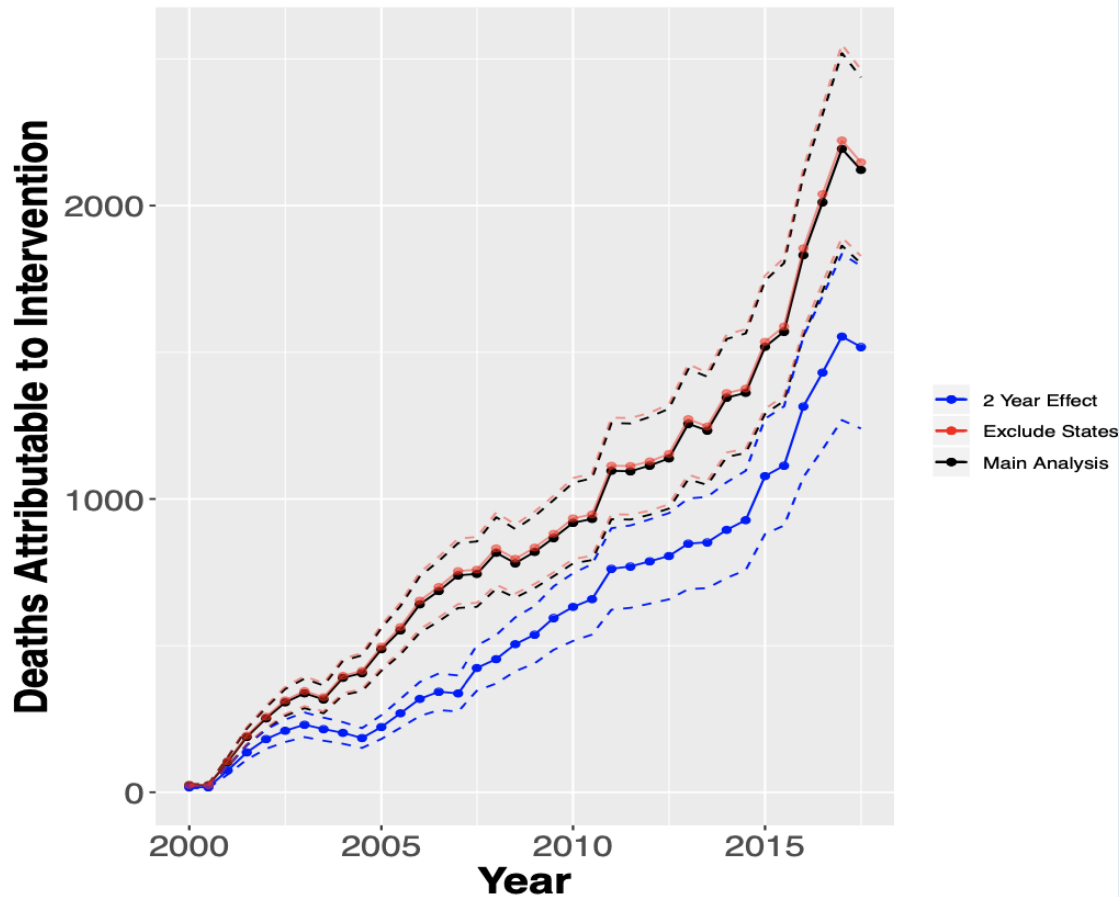
**Contact:** CDC, National Center for Health Statistics, Office of Communication (301) 458-4800

**E-mail:** [paoquery@cdc.gov](mailto:paoquery@cdc.gov)

Provisional data from CDC's National Center for Health Statistics indicate that there were an estimated 100,306 drug overdose deaths in the United States during 12-month period ending in April 2021, an increase of 28.5% from the 78,056 deaths during the same period the year before.



# DIH Enforcement Kills



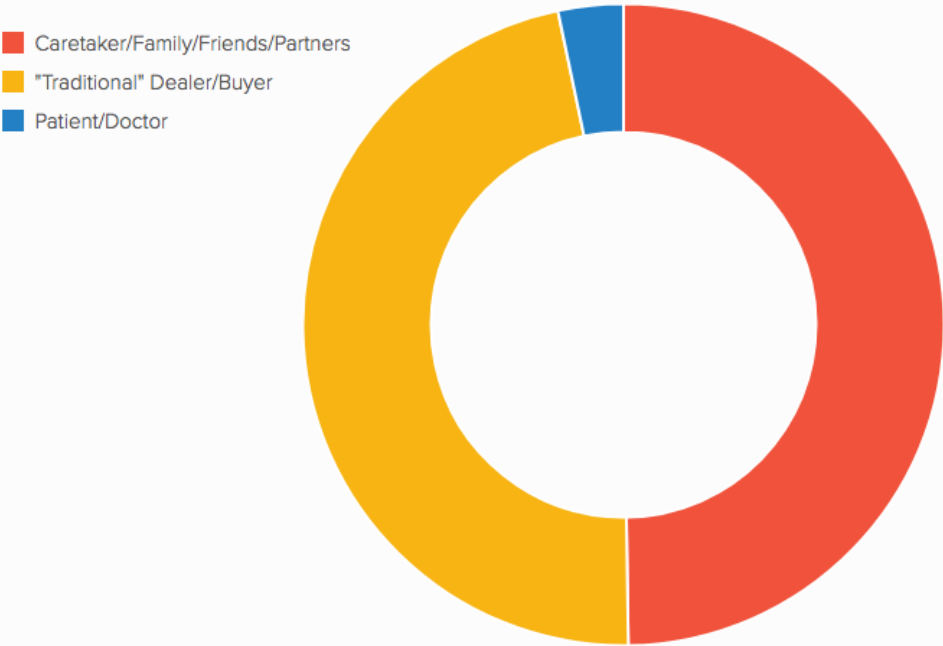
Estimated 32,224  
excess deaths  
attributable to DIH  
prosecutions  
nationwide  
(2000 to 2017)

- RR: 1.076 (95% CI: (1.064, 1.089))

Source: Kelly Kung, Leo Beletsky, et al. (2020)

# Enforcement Discretion: Who is being prosecuted?

RELATIONSHIP BETWEEN ACCUSED AND VICTIM



RELATIONSHIP BETWEEN ACCUSED AND VICTIM

Majority of cases represent charges being filed against individuals who cannot be defined as "drug dealers," but are instead family members, partners, or other actors.

Source: Online News Articles (2000-2017)

# Consequences of Enforcement: Less Helpseeking, More Using Alone

International Journal of Drug Policy 50 (2017) 82–89

Contents lists available at ScienceDirect

International Journal of Drug Policy

journal homepage: [www.elsevier.com/locate/drugpo](http://www.elsevier.com/locate/drugpo)



Research paper

“Caught with a body” yet protected by law? Calling 911 for opioid overdose in the context of the Good Samaritan Law



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JOURNAL OF CRIME AND JUSTICE, 2016

<http://dx.doi.org/10.1080/0735648X.2016.1215932>



Contents lists available at ScienceDirect

International Journal of Drug Policy

journal homepage: [www.elsevier.com/locate/drugpo](http://www.elsevier.com/locate/drugpo)



Research paper

Why are some people who have received overdose education and naloxone reticent to call Emergency Medical Services in the event of overdose?



Stephen Koester<sup>a,b,\*</sup>, Shane R. Mueller<sup>b,c,d</sup>, Lisa Raville<sup>e</sup>, Sig Langegger<sup>f</sup>,  
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“If you[’re] the one that’s with them when they go out, you’re possibly going to be **CHARGED WITH THEIR DEATH.** So that’s the main reason why a lot of people don’t call [911].”

Source: Latimore and Bergstein, *IJDP* (2017)

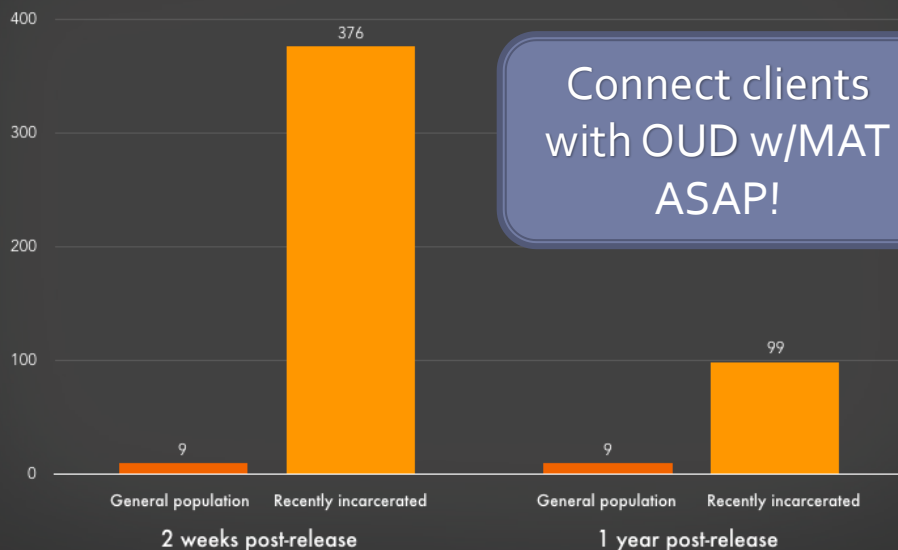
# Enforcement Gets Media Exposure



# Fatal Reentry

Recently incarcerated people are over 40 times more likely to die from an opioid overdose

Number of opioid overdose deaths per 100,000 recently incarcerated people in North Carolina compared to rate among the general population in North Carolina



Data Source: "Opioid Overdose Mortality Among Former North Carolina Inmates: 2000-2015" Table 1

PRISON  
POLICY INITIATIVE

Why?

- Tolerance falls fast
- Cravings continue: Most jails & prisons do **NOT** provide MAT or connect with MAT upon reentry
- Drug supply unsettled
- Reentry is very stressful
- Return to use is predictable

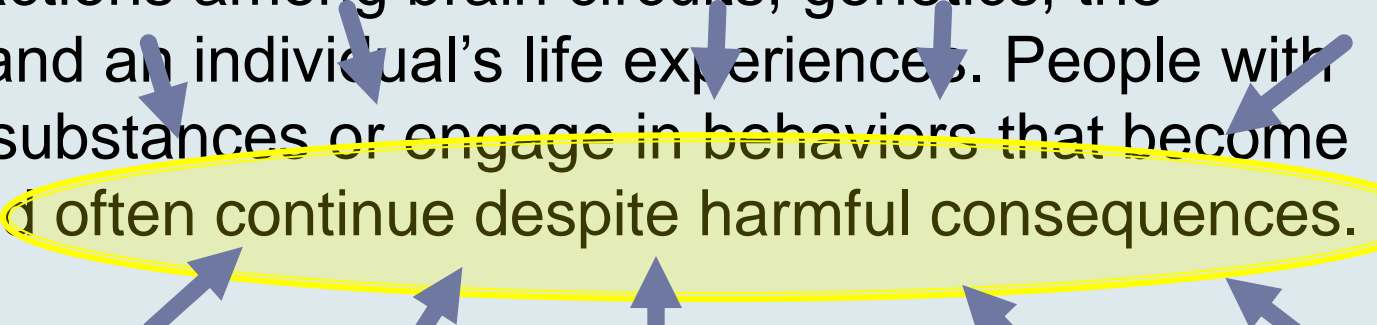
Note: Similar risks seen in people departing inpatient rehab/detox that don't offer MAT

***Denial of MAT may violate ADA, Rehabilitation Act, and 8<sup>th</sup> Amendment***

(Smith v. Aroostook Cty., 2019; DOJ investigation 2/2/22)

# A Definition of Addiction

Addiction is a treatable, chronic medical disease involving complex interactions among brain circuits, genetics, the environment, and an individual's life experiences. People with addiction use substances or engage in behaviors that become compulsive and often continue despite harmful consequences. ([ASAM](#), 2021)

A diagram consisting of several blue arrows pointing towards the text. Four arrows point downwards to the words 'brain circuits', 'genetics', 'the environment', and 'life experiences'. Five arrows point upwards to the words 'substances', 'engage in behaviors', 'become compulsive', 'and often continue', and 'despite harmful consequences'. A yellow oval highlights the entire sentence: 'People with addiction use substances or engage in behaviors that become compulsive and often continue despite harmful consequences.'

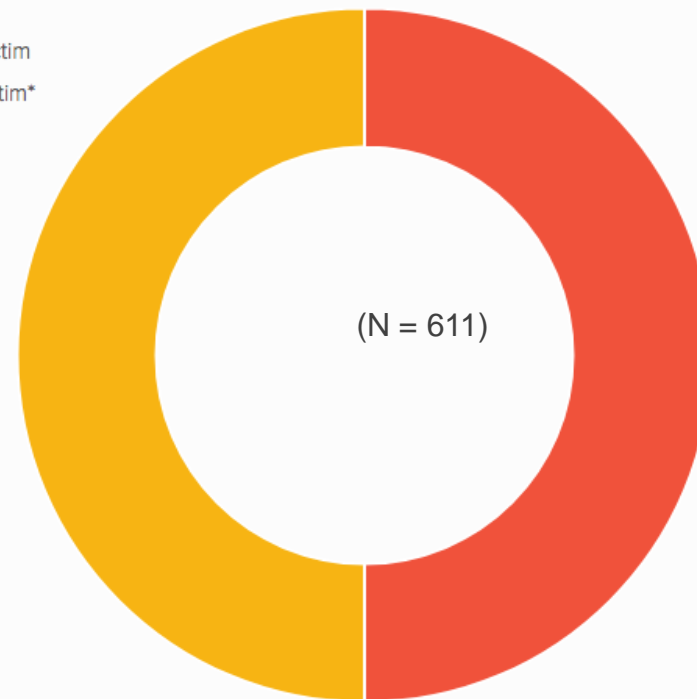
# Racial Disparities

## RACE OF ACCUSED (DEALER) AND VICTIM (BUYER)

Near majority of cases involving alleged dealers represent a person of color "dealer"- white "victim" dyad, confirming that this trend is squarely rooted in the racist implementation of drug laws

- White Accused & White Victim
- P.O.C Accused & White Victim\*

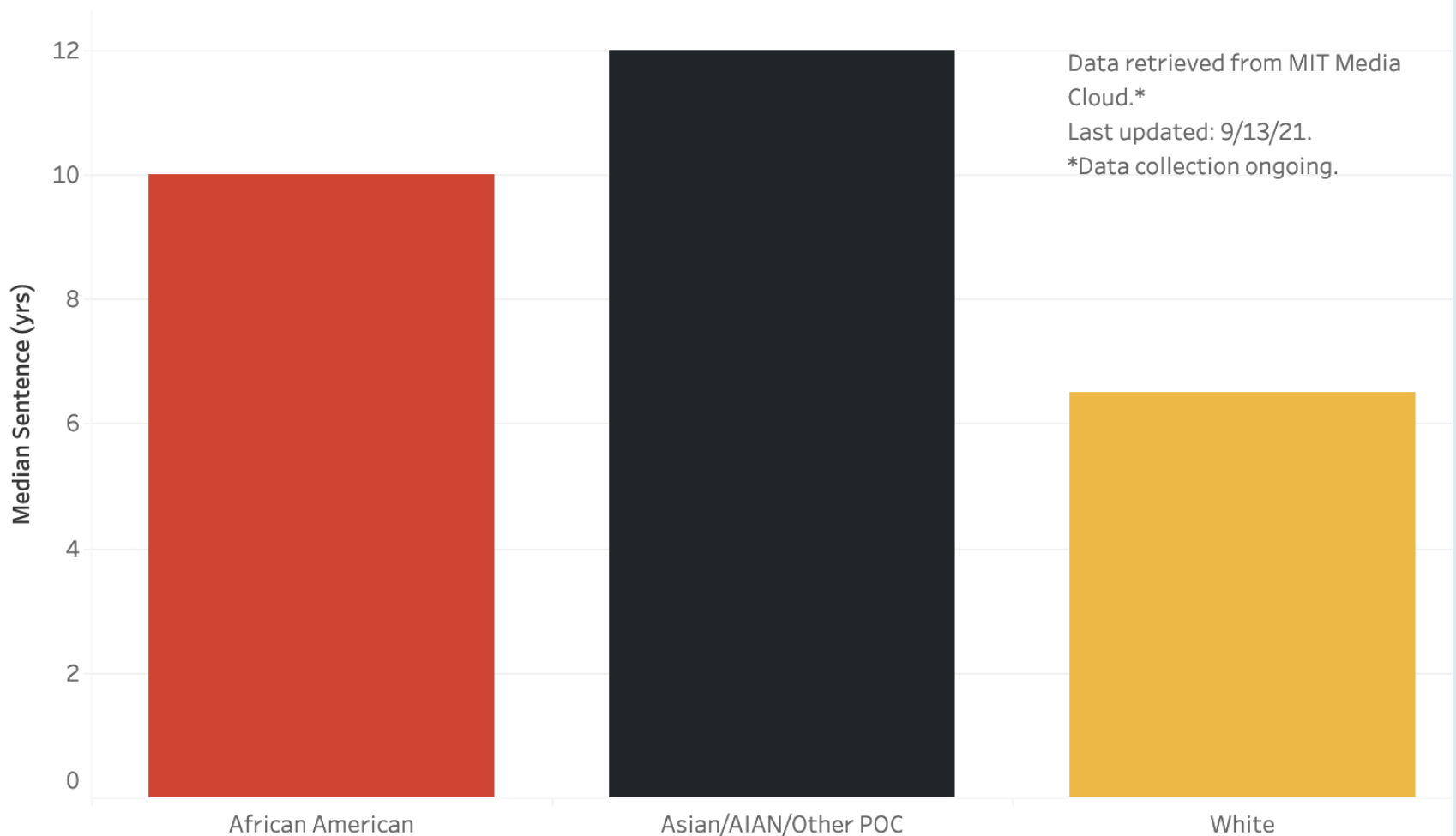
## RACE OF ACCUSED (DEALER) & VICTIM (BUYER)



*P.O.C Defined as Person of Color. Source: Online News Articles 2000-2017*

# Racial Disparities in Punishment

Median Sentencing by Race for Drug-Induced Homicide (2008-2018)





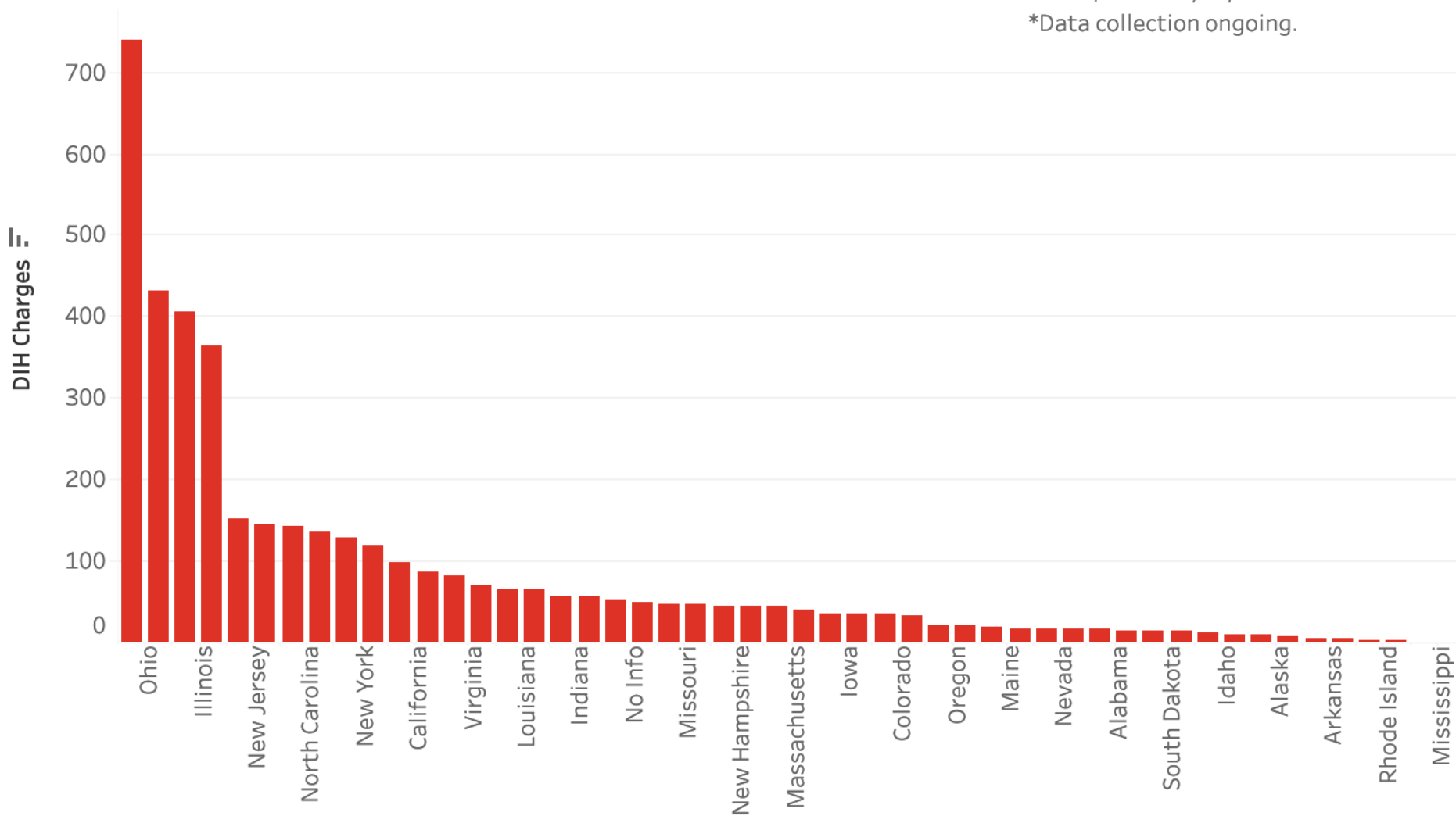
# Uneven Geographic Distribution

DIH Charges by State (1974-2018)

Data retrieved from MIT Media Cloud.\*

Last updated: 9/13/21.

\*Data collection ongoing.

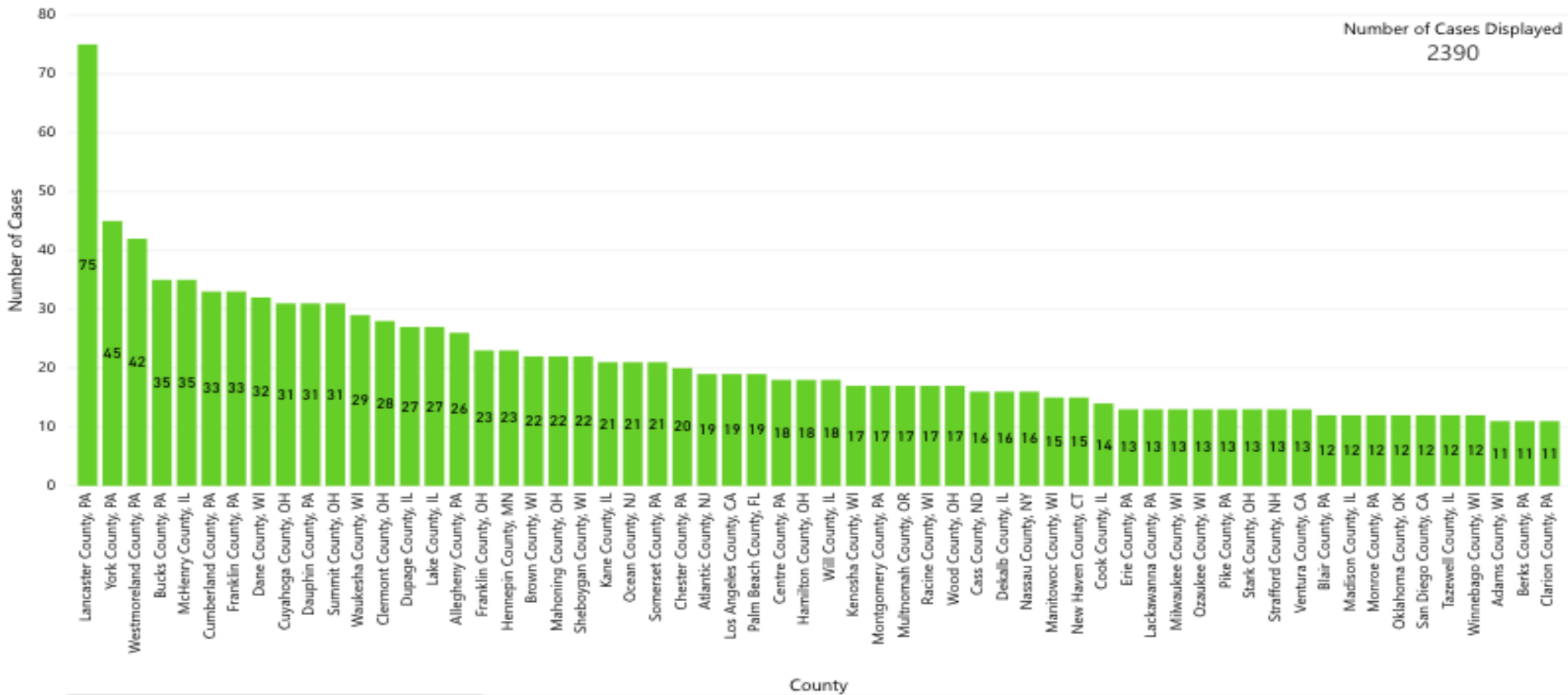


# Uneven Geographic Distribution

MOST ACTIVE COUNTIES IN PURSUING DRUG-INDUCED HOMICIDE CHARGES



Number of Cases Displayed  
2390



\*Data Based on Automated Analysis of Online News Sources

Date Updated: 4/25/2019



# CHANGING THE NARRATIVE

**Changing The Narrative** is a network of reporters, researchers, academics, and advocates concerned about the way media represents drug use and addiction. Our mission is to help journalists and opinion leaders provide accurate, humane, and scientifically-grounded information in this contested terrain. We offer expert sources—including people with lived experience of the issues—and up-to-date, fact-checked, and evidence-based information on news and controversies.

[www.changingthenarrative.news](http://www.changingthenarrative.news)

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# DIH Defense Survey

- Please complete this survey for criminal defenders on DIH
- Please share with your colleagues
- Secure and anonymous



# Supplemental Slides

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# Effect of Reducing Prescription

