**STATE OF ILLINOIS**

**IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT**

**COUNTY OF DU PAGE**

PEOPLE OF THE STATE OF ILLINOIS )

PLAINTIFF, )

)

) CRIMINAL

VS. ) No. 03 CF 2343

)

)

MARVIN HOWARD )

DEFENDANT. )

**FIRST AMENDED**

**MOTION TO DECLARE THE DRUG-INDUCED**

**HOMICIDE STATUTE UNCONSTITUTIONAL**

NOW COMES the defendant, MARVIN HOWARD, by his attorney, Public Defender Robert A. Miller, and moves this Honorable Court to declare the Drug-Induced Homicide Statute, 720 ILCS 5/9-3.3 unconstitutional for the following reasons:

1. A constitutional challenge to a statute can be raised at any time. People v. Bryant (1989), 128 Ill.2d 448, 539 N.E.2d 1221, 132 Ill.Dec. 415. People v. Zeisler (1988), 125 Ill.2d 42, 125 Ill.Dec. 845, 531 N.E.2d 24.

2. The Statute defining Drug Induced Homicide defines Drug Induced Homicide as "A person who violates Section 401 of the Illinois Controlled Substances Act by unlawfully delivering a controlled substance to another, and any person dies as a result of the injection, inhalation or ingestion of any amount of that controlled substance, commits the offense of drug-induced homicide."

3. The Drug-Induced Homicide Statute is unconstitutional in that it is unduly vague and overbroad .

4. The Drug-Induced Homicide Statute is void for vagueness under the Eighth Amendment to the United State's Constitution, the Due Process clause and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, and Article 1, sections 2 and 11 of the Illinois state Constitution.

5. The Drug-Induced Homicide Statute is unconstitutional as it does not include a mens rea to cause bodily harm.

6. The Drug-Induced Homicide Statute is unconstitutional as it would allow a controlled substance to be delivered to an infinite number of persons, with equal ability to adulterate the controlled substance, and all persons in the chain of delivery would be statutorily guilty of the offense, if any person died as a result of the ingestion of said controlled substance.

7. The Drug-Induced Homicide Statute is unconstitutional as it allows for the existence of co-defendants without requiring said co-defendants to be aware of the others existence.

8. The Drug-Induced Homicide Statute is unconstitutional as it allows for persons in the chain of custody to act with purposeful intent to harm, thereby imputing liability for a resulting death to others who are not otherwise legally accountable.

9. The Drug-Induced Homicide Statute is unconstitutional in that it would treat a wife dispensing a single prescribed tylenol with codeine tablet to her husband, the same as a cocaine dealer supplying a user with cocaine, should the recipient of the respective controlled substance die as a result of the ingestion.

10. The Drug-Induced Homicide Statute is unconstitutional in that prosecutors have the sole discretion against whom to charge with Drug-Induced Homicide Statute, when several potential defendants are identified in the chain of delivery.

11. A penal statute must convey sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. People v. Haywood (1987), 118 Ill.2d 263, 515 N.E.2d 45, 113 Ill.Dec. 236.

12. The statute must provide definite standards, so as to avoid arbitrary and discriminatory enforcement and application by police officers, judges and juries. People v. Haywood (1987), 118 Ill.2d 263, 515 N.E.2d 45, 113 Ill.Dec. 236.

13. A criminal statute violates constitutional requirement of definiteness when it "...fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute" People v. Polk (1973), 10 Ill.App.3d 408, 294 N.E.2d 113.

14. On August 6, 2001, Public Act 92-256 was approved, which amended the Drug-Induced Homicide statute.

15. Prior to the passage of Public Act 92-256, the definition of Drug-Induced Homicide required a specific weight of controlled substance as defined in "subsection (a) or subsection (c) of section 401 of the Illinois Controlled Substances Act.

16. The regular session transcript of the 92nd General Assembly, February 22, 2001, contains the floor discussion of House Bill 126, in the House, which was passed as Public Act 92-256, and effectively amended the Drug-Induced Homicide Statute.

17. The transcript in the House clearly states that the reason for the amendment to the statute removing the weight requirement was to include the drug ecstasy into the definition of Drug-Induced Homicide. The transcript states that HB 126 closes the "loophole" with respect to the drugs." The transcript also contains argument that "drug dealers are pushing the ecstacy much more so than even the cocaine or LSD type drugs.

18. Clearly, the statute prior to amendment was intended to focus upon drug dealers, as the weight requirements exclude casual delivery of less than ten grams of heroin. (Subsection (c) of section 401).

19. The deletion of the threshold weight requirement not only acted to include the typical delivery of tablet ecstacy, but also broadened the statute to include any amount of any controlled substance by any person.

20. The regular session transcript of the 92nd General Assembly, May 10, 2001, contains the floor discussion of House Bill 126, in the Senate, which was passed as Public Act 92-256, and effectively amended the Drug-Induced Homicide Statute.

21. HB 126 dealt with Drug-Induced Homicide, Drug Induced Infliction of Great Bodily Harm, and the Illinois Controlled Substances Act.

22. The floor discussion commingled argument regarding all three statutes in the Senate floor debate.

23. The introduction of HB 126 by Senator Dillard explained that the bill amends the criminal code by providing stronger sentences for the delivery of designer drugs like ecstacy. He then elaborates on the effects and usage of ecstacy.

24. Page 99 of the senate transcript contains a question from Senator Molaro inquiring as to the amount of ecstacy that would trigger the statute. Senator Dillard responded that it would be a delivery of 15 pills or 15 grams. However, no one identified which statute would be triggered by a weight requirement.

25. On page 101 of the Senate Transcript, Senator Molaro references an example of an 18 pill delivery, and a resulting death be punishable from 6-30 years.

26. On page 102 of the Senate Transcript Senator Molaro again references an example of an a person carrying 15 to 18 pills, and a death to be punishable from 6-30 years.

27. The implication from Senator Molaro was that the 15 pill or 15 gram requirement was mirrored in both the Drug-Induced Homicide and the Illinois Controlled Substances Act. This mischaracterization was not correct on the floor.

28. The Amendment was so confusing from its inception that it failed to inform legislators what conduct is forbidden by the statute.

WHEREFORE, the Defendant prays this Court enter an Order declaring the Drug-Induced Homicide Statute, 720 ILCS 5/9-3.3 unconstitutional

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Robert A. Miller, Public Defender Attorney for the Defendant

Robert A. Miller #100121

505 N. County Farm Road

Wheaton, IL 60187

630-682-7180