**HB 771**

# Department of Legislative Services

Maryland General Assembly
2018 Session

## FISCAL AND POLICY NOTE
**First Reader**

House Bill 771 (Delegates Cassilly and Szeliga)
Health and Government Operations and Judiciary

**Public Health - Opioid Overdoses - Prohibition and Rehabilitation Order**

This bill prohibits an individual from overdosing on an opioid and, as a consequence, requiring and receiving the administration of an opioid overdose reversal drug by a first responder. Violation is subject to a civil penalty of up to $50. If a first responder successfully administers an opioid overdose reversal drug to an individual, the first responder must provide the individual with a referral to receive further treatment and issue the individual a rehabilitation order. The order must direct the individual to obtain treatment and include specified information, including the amount of the civil penalty that may be imposed. The District Court must waive the civil penalty for a first or second violation or if the individual obtains treatment. The District Court may use its contempt power to enforce an order to pay the civil penalty. An individual who is held in contempt for failing to pay the civil penalty or obtain treatment is subject to imprisonment for a minimum of 30 days.

## Fiscal Summary

**State Effect:** General fund expenditures increase by $70,660 in FY 2019 only. Potential significant increase in revenues beginning in FY 2019.

**Local Effect:** Potential significant increase in revenues beginning in FY 2019. Expenditures are not materially affected.

**Small Business Effect:** Potential minimal.

## Analysis

**Bill Summary:** The District Court must transfer any money collected from civil penalties under the bill to the State, the local jurisdiction, or any other entity as restitution for the cost of administering an opioid overdose reversal drug to the individual.

A rehabilitation order issued by a first responder must include (1) the name and address of the individual charged; (2) the nature of the violation; (3) the location, date, and time that the violation occurred; (4) the amount of the civil penalty imposed and the date by which the individual must pay the civil penalty; (5) a notice that states that the individual must pay the full amount of the civil penalty or request a hearing; and (6) the first responder's signature.

"First responder" has the same meaning as under § 18-213.2 of the Health-General Article and, thus, means a firefighter, emergency medical technician (EMT), rescue squad member, law enforcement officer, correctional officer, or sworn member of the State Fire Marshal's Office.

"Opioid overdose reversal drug" has the same meaning as under § 13-3501 of the Health-General Article and, thus, means naloxone or a similarly acting and equally safe drug that is approved by the federal Food and Drug Administration for the treatment of a known or suspected opioid overdose.

**Current Law/Background:** For information on the State's opioid crisis, please refer to the **Appendix – Opioid Crisis**.

*Overdose Response Program*

Naloxone (also known as Narcan®) is an opioid antagonist long used in emergency medicine to rapidly reverse opioid-related sedation and respiratory depression. Chapter 299 of 2013 established the Overdose Response Program within the Maryland Department of Health (MDH) to authorize certain individuals (through the issuance of a certificate) to administer naloxone to an individual experiencing, or believed to be experiencing, opioid overdose to help prevent a fatality when medical services are not immediately available. Chapter 356 of 2015 expanded the program to authorize standing orders for naloxone and provided additional legal protections for prescribers and those administering naloxone.

Chapters 571 and 572 of 2017 (also known as the Heroin and Opioid Prevention Effort (HOPE) and Treatment Act of 2017) made several changes to the Overdose Response Program, including repealing the requirement that specified health care providers may only prescribe or dispense naloxone to a program certificate holder and related certification

requirements. An individual is no longer required to obtain specified training and education in order for a pharmacist to dispense naloxone to the individual. An individual may (1) receive a prescription for naloxone and the necessary supplies for its administration from any licensed health care provider with prescribing authority; (2) possess the prescribed naloxone and necessary supplies for its administration; and (3) in an emergency situation when medical services are not immediately available, administer naloxone to an individual experiencing or believed to be experiencing an opioid overdose.

*First Responder Administration of Naloxone*

Effective October 1, 2017, the Maryland Institute for Emergency Medical Services Systems (MIEMSS) authorizes emergency medical responders (EMRs) to administer naloxone statewide. Prior to this date, authorization was limited to a few jurisdictions that participated in an optional supplemental protocol. EMRs are required to complete approved training before administering naloxone. According to an October 2017 MIEMSS report, in calendar 2016, there were (1) 2,759 administrations of naloxone by emergency medical services (EMS) personnel that resulted in no subsequent transport to treatment facilities and (2) 10,400 naloxone administrations by EMS that did result in transport. Between January and June 2017, there were (1) 1,912 naloxone administrations by EMS that did not result in transport and (2) 5,559 naloxone administrations by EMS that did result in transport.

MIEMSS also reports that it has partnered with MDH's Behavioral Health Administration (BHA) and the Governor's Opioid Operational Command Center to reimburse emergency system operational programs (EMSOPs) for the cost of naloxone. The program is funded with a $200,000 grant from BHA, which is used to reimburse EMSOPs for naloxone administrations in which the individual was not transported or refused transport to a hospital. The funding formula is based on an estimated cost of $40 per unit of 2 mg/2 ml Luer-Jet prefilled syringe of naloxone. MIEMSS has also partnered with BHA to allow jurisdictions to purchase naloxone in bulk through a State contract.

*Court-ordered Substance Use Treatment*

Under § 8-505 of the Health-General Article, before or during a criminal trial, sentencing, or a term of probation, a court may order MDH to evaluate a defendant for an alcohol or drug dependency if it appears to the court that the defendant has an alcohol or drug abuse problem or the defendant alleges an alcohol or drug dependency.

Additionally, under § 8-507 of the Health-General Article, a court is authorized to refer an individual to substance abuse treatment as an alternative to incarceration. A court that finds in a criminal case that a defendant has an alcohol or drug dependency may commit the defendant to MDH for a drug or alcohol treatment program. The commitment may be

made as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment. Before committing a defendant to MDH, the court must (1) offer the defendant the opportunity to receive treatment; (2) obtain the written consent of the defendant to receive treatment and to have information reported back to the court; (3) order an evaluation of the defendant under § 8-505 or § 8-506 of the Health-General Article; (4) consider the report on the defendant's evaluation; and (5) find the treatment that MDH recommends as appropriate and necessary.

A court may not order that the defendant be delivered for treatment until (1) any detainer based on an untried indictment, information, warrant, or complaint for the defendant has been removed and (2) any incarceration sentence for the defendant is no longer in effect. A commitment must be for at least 72 hours but no more than one year. The court may extend the time period in increments of six months for good cause shown. If the defendant withdraws consent to treatment, MDH must promptly notify the court and have the defendant returned to the court within seven days for further proceedings.

Chapter 515 of 2016 (also known as the Justice Reinvestment Act) requires that, effective October 1, 2017, before imposing a sentence for a violation of laws prohibiting the possession of controlled dangerous substances or 10 grams or more of marijuana, a court is authorized to order MDH, or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment. MDH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant's sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require MDH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order the Division of Correction within the Department of Public Safety and Correctional Services or a local correctional facility to facilitate the medically appropriate level of treatment.

When ordered by a court, MDH must (1) conduct an assessment regarding whether, by reason of drug or alcohol abuse, a defendant is in need of and may benefit from treatment as specified and (2) provide the name of a program *immediately* able to provide the recommended treatment to the defendant.

In addition, MDH must facilitate the *immediate* treatment of a defendant following a court order committing the defendant, under § 8-507 of the Health-General Article, to substance abuse treatment as an alternative to incarceration. If the court finds exigent circumstances, the court may delay a commitment order to MDH for no longer than 30 days. If a defendant is not placed in treatment within 21 days of the order, the court may order MDH to appear to explain the reason for the lack of placement.

**State Revenues:** General fund revenues increase, potentially significantly, from the collection of civil penalties and the transfer of such penalties to cover the cost of State administrations of naloxone.

**State Expenditures:** General fund expenditures for the Judiciary increase by $70,660 in fiscal 2019 for programming changes to meet the bill's requirements.

The Judiciary notes several concerns regarding bill implementation: (1) if the bill's rehabilitation order is considered a "citation," it must be approved by the Chief Judge of the District Court and must comply with requirements for charging documents; (2) as the District Court is case based, the court cannot determine whether a violation is a first or second violation by an individual and it is unclear who must make this determination; (3) the bill does not specify how the court is notified about noncompliance with a rehabilitation order if a person pays the penalty and does not request a trial date (currently, payment of a citation automatically closes the case); and (4) the bill does not specify a mechanism for a court to verify completion of treatment.

The Judiciary also notes that the bill requires first responders, including firefighters and EMTs, to issue rehabilitation orders after administering an opioid overdose reversal drug. The Department of State Police (DSP) advises that first responders cannot issue orders for rehabilitation; such orders must be issued by a court. DSP also notes that civil penalties must be imposed through a District Court Civil Violation form.

The bill also requires rehabilitation orders to include detailed information, including the individual's name and address. MIEMSS advises that such information is considered confidential under State and federal law, and so EMS are prohibited from releasing such information. Further, MIEMSS advises that the bill may require EMS to spend more time with individuals who have overdosed in order to issue the required rehabilitation orders, as such individuals are likely not immediately in an appropriate state of mind to receive and understand such an order. Thus, the bill may have an operational impact on EMS personnel and services.

Finally, the bill authorizes the District Court to find an individual in contempt for failure to pay the civil penalty or receive required treatment under the bill. An individual found in contempt is subject to imprisonment for a minimum of 30 days. The Department of Legislative Services notes that contempt of court sanctions are normally instituted at a court's discretion; such proceedings are also subject to the Maryland Rules (Title 15, Chapter 200). Regardless, this analysis assumes that a minimal number of individuals are found in contempt under the bill and that State incarceration expenditures are not materially affected.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues increase, potentially significantly, due to the transfer of collected civil penalties to local jurisdictions for the cost of naloxone administrations.

**Local Expenditures:** Again, although failure to pay the civil penalty and/or failure to receive required treatment may result in imprisonment for a minimum of 30 days, this analysis assumes that a minimal number of individuals are found in contempt under the bill and that local incarceration expenditures are not materially affected.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately $40 to $170 per inmate in recent years.

Local jurisdictions also advise that the bill may have an operational impact. For example, the Montgomery County Police Department advises that the bill requires additional staff time to issue specified orders and for court appearances.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Institute for Emergency Medical Services Systems; Montgomery County; City of Bowie; Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Office of the Governor; President's Commission on Combating Drug Addiction and the Opioid Crisis; Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2018
mm/jc

Analysis by: Sasika Subramaniam

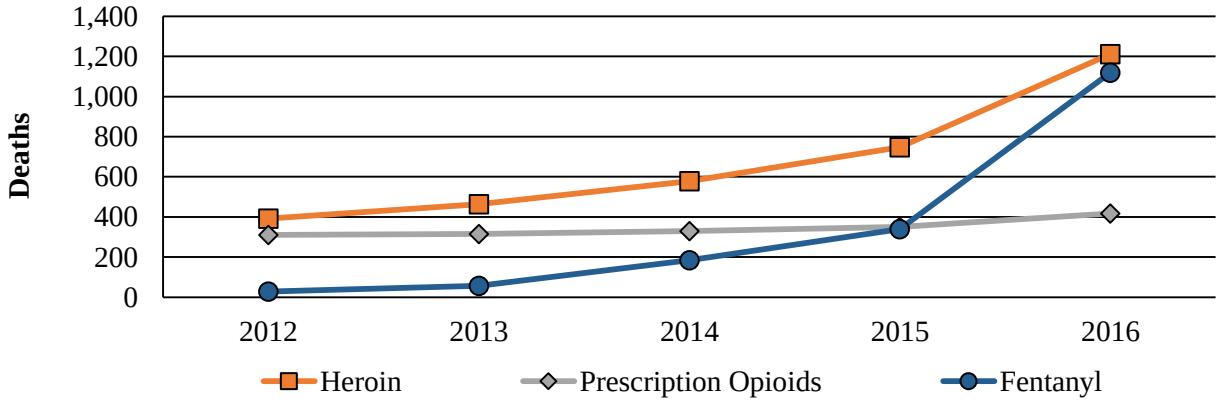
Direct Inquiries to:
(410) 946-5510
(301) 970-5510

# Appendix – Opioid Crisis

*Opioid Overdose Deaths*

The rate of opioid-related deaths continues to rise at an alarming rate. As seen in **Exhibit 1**, between 2015 and 2016, prescription opioid-related deaths in Maryland increased by 19% (from 351 to 418), heroin-related deaths increased by 62% (from 748 to 1,212), and fentanyl-related deaths increased by 229% (from 340 to 1,119). Between January and June 2017, there were 799 deaths related to fentanyl, a 70% increase over the same time period for 2016, and 46 deaths related to carfentanil, a drug used as an elephant tranquilizer, a substance which first appeared as a cause of death in April 2017.

**Exhibit 1**
**Total Number of Drug-related Intoxication Deaths**
**By Selected Substances in Maryland**
**2012-2016**




Source: Maryland Department of Health

*Federal Actions to Address the Opioid Crisis*

In 2016, the Comprehensive Addiction and Recovery Act authorized over $181 million annually, and the 21st Century Cures Act (CURES Act) authorized up to $970 million to be distributed through the State Targeted Response to the Opioid Crisis Grants. The grants are to be used by states to increase access to treatment and reduce unmet treatment needs and opioid-related overdose deaths. In 2017, Maryland received a two-year, $20 million grant for the prevention and treatment of opioid abuse. In March 2017, President Donald J. Trump signed an executive order establishing the President's Commission on Combating Drug Addiction and the Opioid Crisis. The commission issued

a final report in November 2017, with 56 recommendations, including a recommendation for federal block grant funding for state activities relating to opioids and substance use disorders. The full report can be found here: https://www.whitehouse.gov/ondcp/presidents-commission

*Maryland Actions to Address the Opioid Crisis*

The General Assembly passed several comprehensive acts during the 2017 session to address the State's opioid crisis, which addressed prevention, treatment, overdose response, and prescribing guidelines.

Chapters 571 and 572 of 2017, the Heroin and Opioid Prevention Effort and Treatment Act, among other things, require (1) the Behavioral Health Administration to establish crisis treatment centers that provide individuals in a substance use disorder crisis with access to clinical staff, requiring at least one center be established by June 1, 2018; (2) the Maryland Department of Health (MDH) to establish and operate a toll-free health crisis hotline; (3) certain health care facilities and systems to make available to patients the services of health care providers who are trained and authorized under federal law to prescribe opioid addiction treatment medications, including buprenorphine; (4) each hospital, by January 1, 2018, to have a protocol for discharging a patient who was treated for a drug overdose or identified as having a substance use disorder; (5) the Governor's proposed budget for fiscal 2019 through 2021 to include specified rate adjustments for community behavioral health providers; (6) the Department of Public Safety and Correctional Services and MDH to develop a plan to increase the provision of substance use disorder treatment, including medication assisted treatment, in prisons and jails; (7) the authorization of the provision of naloxone through a standing order and that MDH establish guidelines to co-prescribe naloxone to high-risk individuals; and (8) the expansion of private insurance coverage for opioid use disorders by prohibiting certain carriers from applying a pre-authorization requirement for a prescription drug when used for treatment of an opioid use disorder and that contains methadone, buprenorphine, or naltrexone.

Chapters 573 and 574 of 2017, the Heroin and Opioid Education and Community Action Act (Start Talking Maryland Act), require (1) the State Board of Education to expand an existing program in public schools to encompass drug addiction and prevention education that specifically includes instruction related to heroin and opioid addiction and prevention and information relating to the lethal effect of fentanyl; (2) each local board of education to establish a policy requiring each public school to obtain and store naloxone and other overdose-reversing medication to be used in an emergency situation; (3) each local board of education or local health department to hire a sufficient number of community action officials or develop and implement a program that provides community relations and education functions that coordinate forums and conduct public relations efforts; and (4) specified institutions of higher education in Maryland to establish a policy that

addresses heroin and opioid addiction and prevention, including awareness training for incoming students, obtaining and storing naloxone, and campus police training.

Chapter 570 of 2017 requires a health care provider, on treatment for pain and based on the provider's clinical judgment, to prescribe the lowest effective dose of an opioid and a quantity that is no greater than that needed for the expected duration of pain severe enough to require an opioid that is a controlled dangerous substance (CDS). The Act establishes that the quantity limitations do not apply to opioids prescribed to treat a substance-related disorder; pain associated with a cancer diagnosis; pain experienced while the patient is receiving end-of-life, hospice, or palliative care services; or chronic pain. A violation of the Act is grounds for disciplinary action by the appropriate health occupations board.

In January 2017, Governor Lawrence J. Hogan issued an executive order establishing an Opioid Operational Command Center (OOCC) to facilitate collaboration between State and local public health, human services, education, and public safety entities to combat the heroin and opioid crisis. OOCC will (1) develop operational strategies to continue implementing the recommendations of the Governor's Heroin and Opioid Emergency Task Force; (2) collect, analyze, and facilitate the sharing of data relevant to the epidemic from State and local sources; (3) develop a memorandum of understanding among State and local agencies that provides for the sharing and collection of health and public safety information and data relating to the heroin and opioid epidemic; (4) assist and support local agencies in the creation of opioid intervention teams; and (5) coordinate the training of and provide resources for State and local agencies addressing the threat to the public health, security, and economic well-being of the State.

In March 2017, Maryland became the first state to declare a state of emergency for the opioid crisis, activating the Governor's emergency management authority and enabling increased and more rapid coordination between the State and local jurisdictions. In conjunction with the declaration, Governor Hogan included a supplemental budget appropriation of $10 million, part of a $50 million, five-year commitment to address the State's heroin and opioid epidemic.

In July 2017, $22 million was appropriated for fiscal 2018, including $10 million in CURES Act funding, to be used for prevention, treatment, and enforcement activities. Prevention efforts include distribution of opioid intervention teams for each jurisdiction, a public awareness campaign, funding to train community teams on overdose response and linking to treatment, a pilot program to create school-based teams for early identification of the problems related to substance use disorders, and distribution of opioid information to health care facilities and providers that offer treatment. Enforcement initiatives include funding to disrupt drug trafficking organizations for the heroin coordinator program and to increase MDH's regulatory oversight of CDS. Treatment funding will be used to expand treatment beds and implement a tracking system to identify available beds; improve access

to naloxone; establish a 24-hour crisis center in Baltimore City; expand use of peer recovery support specialists; expand Screening, Brief Intervention, and Referral to Treatment to hospitals and parole, probation, and correctional facilities; increase access to medication-assisted treatment; expand law enforcement diversion programs; and improve the State's crisis hotline.