

SB 1075, Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death

Position: UNFAVORABLE

March 4, 2024

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

Dear Senator Smith and members of the Judicial Proceedings Committee,

I am a lifelong resident of Maryland. I have a master's degree in library and information science and, after a forty year career, am now retired. Since my son's fatal overdose in 2017, I have devoted myself to drug policy research and have joined forces with other researchers, health care providers, medical associations, scientists, and advocates – all committed to evidence based strategies to address the surging death toll, which has seen the steepest annual increase since we declared it a crisis.

I am not in favor of SB 1075 because its premise is not supported by any evidence pointing to a positive outcome.

We all agree that the tragedy of lost lives, shattered families, and human suffering begs for change. Marching orders from every human rights and major health organization are clear. A *2023 United Nations Human Rights Report*¹, for example, urges policymakers to, "move away from the current dominant focus on prohibition, repression and punishment, and instead embrace laws, policies and practices anchored in human rights and aimed at harm reduction."

The movement for comprehensive health-focused reform is gaining momentum and, with it, hope for the breakthrough needed to lower the death toll. But hope is diminished by new crime bills that call for harsh mandatory minimum sentences for individuals who sell or deliver a drug that causes or contributes to a death.

Slamming us squarely into the drug war mentality, these laws are put forth without reliable analysis of their effects on the harms of drug use. In fact, public health experts and addiction researchers warn that such action veers away from the evidence and will not reduce overdose or deter drug distribution, nor has increased imprisonment ever had an impact² on drug use or drug-related deaths.

Jennifer Carroll, a medical anthropologist at North Carolina State University, conducted a recent study³ that found sweeps of drug dealer arrests actually drove up overdoses. Believing that criminalization

¹<https://www.ohchr.org/en/press-releases/2023/09/end-overreliance-punitive-measures-address-drugs-problem-un-report>

²<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>

³ <https://ajph.aphapublications.org/doi/10.2105/AJPH.2023.307291>

causes more harm than good, Dr. Carroll and fellow researchers published an analysis in the *American Criminal Law Review* explaining "Three Myths That Are Leaving Prosecutors Misinformed"⁴

Jonathan Caulkins, a specialist in systems analysis of problems pertaining to drugs, crime, terror, violence, and prevention at Carnegie Mellon University, concurs, "These laws aren't going to work because they're targeted at the wrong people." Going after people at the lowest end of the supply chain, leaving the original suppliers and drug ring leaders untouched, will result in longer sentences for mostly low-level dealers, particularly people of color, who may be selling to support their addictions.

Fair and Just Prosecution⁵ expresses serious concerns that these laws: Exacerbate the risk of fatal overdoses; do not deter drug use or drug sales; often target friends and family rather than large-scale sellers; consume scarce criminal justice resources; and worsen racial disparities. In conclusion they recommend, "that prosecutors cease to seek these charges absent evidence of specific intent to kill," emphasizing the need for health and harm reduction approaches with the potential to save lives.

A new RAND report analyzing America's "opioid ecosystem" addresses concerns about harsh criminal penalties. Because illicit fentanyl is infiltrating so much of the drug supply, they maintain, both sellers and users are often unaware of what contaminants are present, suggesting that drug-related deaths can be the result of ignorance rather than malice.

The U.S. is the world leader in mass incarceration. As recently reported by The Sentencing Project⁶, "There are 2 million people in the nation's prisons and jails—a 500% increase over the last 40 years. Changes in sentencing law and policy, not changes in crime rates, explain most of this increase."

An *Inquest* article, Drug-Induced Panic⁷, co-authored by professor of Law and Health Sciences at Northeastern University, Leo Beletsky, states, "Despite all the evidence and the reality that these laws and prosecutions have become the de facto approach to this public health issue—while the actual, proven life-saving responses are ignored or dismissed."

Today's cry for increasingly harsh sentences for anyone who shares or supplies a drug without proof of malice is fueled by the crisis of skyrocketing overdose deaths and the intense pain of parents who lost a beloved child. I know their pain; I am one of them. And I, too, am impassioned by the gut-wrenching loss and a death that was entirely preventable. But I also know that higher numbers of arrests don't reduce drug use, and that there are people who share a drug with a friend without any idea of what that drug contains. Some people do deserve punitive consequences, but blanket laws with mandatory minimum sentences will not stop this crisis and will in fact exacerbate the suffering.

⁴https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2023/05/60-4_Drug-induced-homicides.pdf

⁵[https://fairandjustprosecution.org/#:~:text=Fair%20and%20Just%20Prosecution%20\(FJP,%2C%20compassion%2C%20and%20fiscal%20responsibility.](https://fairandjustprosecution.org/#:~:text=Fair%20and%20Just%20Prosecution%20(FJP,%2C%20compassion%2C%20and%20fiscal%20responsibility.)

⁶https://www.sentencingproject.org/research/?gad_source=1&gclid=EAIaIQobChMIkYy9h_KAhAMVgEhHAR3t7ADMEAYASAAEgL7jvD_BwE

⁷ <https://inquest.org/drug-induced-panic/>

Lastly, let us remember that prohibition brought us the likes of fentanyl and the even more dangerous nitazenes now on our doorstep⁸, and until we come to our senses and end its failed policies, there will be hundreds of thousands more parents who join our ranks.

Respectfully submitted,

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⁸https://www.cato.org/commentary/these-new-synthetic-opioids-could-make-fentanyl-crisis-look-good-old-days?utm_campaign=Cato%20Health%20Newsletter&utm_medium=email&_hsmi=291894099&_hsenc=p2ANqtz-9hPBnOqnqfqRFIHavNOwqcJalyLCD8GiW9bKi4fHT3Fcty8efLVdg3W52lSxypta9J36J9MzRQ2kqAMbbO4ypFVr6lw&utm_content=291894099&utm_source=hs_email