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House Bill (HB) 1245 & Senate Bill (SB) 1075

Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death (Victoria¹ and Scottie's² Law)

DATE : March 1, 2024
COMMITTEE: House Judiciary & Senate Judicial Proceedings
POSITION: FAVORABLE
PURPORTED PURPOSE:

HB1245 and SB1075 creates a separate crime for dealing heroin or fentanyl or drugs laced with either that results in the death or serious bodily injury to another. These Bills would make it a felony to deal these deadly drugs and impose a penalty of up to 20 years imprisonment.

CURRENT STATE OF THE LAW REGARDING DEATH FROM DRUG DEALING

In *State v. Thomas*, 464 Md. 133 (2019), Maryland's highest court held a distributor of heroin may be convicted of gross negligence involuntary manslaughter if there is sufficient evidence to prove that the distributor's conduct was both the actual and legal cause of a buyer's fatal overdose. The Court further held that the evidence must be reviewed on a case-by-case basis to determine the degree of gross negligence required and whether a sufficient causal connection exists between such gross negligence and the fatal overdose of a buyer. *Id.* at 211. In order to convict a dealer under *Thomas*, a prosecutor has to prove that the dealer's actions were wanton and reckless because of the dangers inherent in the distribution and consumption of heroin of unknown potency carrying with it a high degree of risk to human life. *Id.* at 164-65, 169, 211.

The standard set forth in *Thomas* is an unreasonable standard. The factual scenario set forth in *Thomas* does not represent the vast majority of overdose deaths resulting from heroin and fentanyl distribution. Given the deadly nature of the threat of fentanyl, a legislative fix is needed, so pushers of this poison can be charged with more than mere drug distribution. Every time dealers sell heroin or fentanyl; they are playing Russian Roulette with the lives of their victims.

¹ On May 25, 2022, Victoria Garofolo, of Hampstead, died of an overdose of drugs laced with fentanyl at the age of 18.

² On April 12, 2019, Scott D. "Scottie" Broadfoot, Jr., of Taneytown, died of a fentanyl overdose at the age of 21.

FENTANYL FACTS

- According to the federal Drug Enforcement Administration (DEA), 2 milligrams (mgs) or 0.00007 ounces is enough to kill you; the average housefly weighs 12 milligrams.³
- Illicit fentanyl, primarily manufactured in foreign clandestine labs and smuggled into the United States through Mexico, is being distributed across the country and sold on the illegal drug market. Fentanyl is being mixed in with other illicit drugs to increase the potency of the drug, sold as powders and nasal sprays, and increasingly pressed into pills made to look like legitimate prescription opioids.⁴
- DEA analysis has found counterfeit pills ranging from .02 to 5.1 milligrams (more than twice the lethal dose) of fentanyl per tablet, and 42% of pills tested for fentanyl contained at least 2 mg of fentanyl, a potentially lethal dose.⁵
- According to the CDC, synthetic opioids (like fentanyl) are the primary driver of overdose deaths in the United States. Between January 31, 2020 and January 31, 2021 overdose deaths involving opioids rose 38.1%, and overdose deaths involving synthetic opioids (primarily illicitly manufactured fentanyl) rose 55.6%.⁶
- In Maryland last year there were 2,586 deadly overdoses and fentanyl was involved in nearly 80% of them.⁷
- Naloxone (Narcan), a medication designed to rapidly reverse the effects of an opioid overdose, however, higher doses of naloxone are needed to combat the new era of overdoses due to the more potent synthetic opioids such as fentanyl. In the past 4 mgs, or one dose, reversed the effects of an opioid during an overdose, now it can take up to 32 mgs, or 8 doses, to reverse a fentanyl overdose.

PROVISIONS OF THE BILLS

- Provides a separate 20-year penalty for directly dealing heroin or fentanyl or drugs mixed with them or synthetic versions of heroin or fentanyl that results in death or serious bodily injury.
- The Bills provide no mandatory minimum, but in a recent Gonzales poll, 83% of Marylanders supported a 10-year mandatory sentence for such conduct.⁸
- Provides that anyone in the distribution chain may be prosecuted.
- Enables prosecution where the death or injury occurred or where the drugs were dealt.
- Contains a “Good Samaritan” provision for those who seek treatment for someone who is experiencing an overdose.

³ <https://www.jacksoncountycombat.com/818/Get-The-Fentanyl-Facts#seeit> (last visited February 26, 2024).

⁴ <https://www.dea.gov/resources/facts-about-fentanyl#:~:text=Two%20milligrams%20of%20fentanyl%20can%20be%20lethal%20depending,mg%20of%20fentanyl%2C%20considered%20a%20potentially%20lethal%20dose> (last visited February 26, 2024)

⁵ *Id.*

⁶ *Id.*

⁷ <https://foxbaltimore.com/news/local/carroll-county-states-attorney-wants-to-get-tougher-on-drug-dealers> (last visited February 26, 2024).

⁸ <https://htv-prod-media.s3.amazonaws.com/files/gonzales-poll-part-1-maryland-statewide-february-2024-65cb9fcf5b1e3.pdf> (last visited February 26, 2024).

HB1245 and SB1075 provide an additional tool to deter and prosecute the purveyors of deadly poison in the State of Maryland and I respectfully request a favorable report on both.

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