

# HOUSE BILL 337

E1  
HB 649/18 – JUD

9lr0336

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By: **Delegates Reilly, Arikan, Buckel, Hornberger, Rose, and Shoemaker**  
Introduced and read first time: January 28, 2019  
Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Opioids – Distribution Causing Death of Minor**

3 FOR the purpose of prohibiting the distribution of a certain opioid or opioid analogue, the  
4 use of which causes the death of a minor; establishing a penalty for a violation of this  
5 Act; clarifying that certain conduct constitutes distribution under this Act; providing  
6 that certain conduct does not establish a defense under this Act; providing a certain  
7 defense under this Act; providing immunity for certain conduct under this Act;  
8 providing that a sentence imposed under this Act shall be consecutive to and not  
9 concurrent with a certain other sentence; defining certain terms; and generally  
10 relating to the distribution of opioids.

11 BY repealing and reenacting, without amendments,  
12 Article – Criminal Law  
13 Section 5–402(c) and 5–403(b)(1) and (3) and (c)  
14 Annotated Code of Maryland  
15 (2012 Replacement Volume and 2018 Supplement)

16 BY adding to  
17 Article – Criminal Law  
18 Section 5–602.1  
19 Annotated Code of Maryland  
20 (2012 Replacement Volume and 2018 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
22 That the Laws of Maryland read as follows:

23 **Article – Criminal Law**

24 5–402.

25 (c) Unless specifically excepted under this subtitle or listed in another schedule,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 any of the following opium derivatives, including their salts, isomers, and salts of isomers,  
2 whenever the existence of such salts, isomers, or salts of isomers is possible within the  
3 specific chemical designation, are substances listed in Schedule I:

- 4 (1) acetorphine;
- 5 (2) acetyldihydrocodeine;
- 6 (3) benzylmorphine;
- 7 (4) codeine methylbromide;
- 8 (5) codeine-N-oxide;
- 9 (6) cyprenorphine;
- 10 (7) desomorphine;
- 11 (8) dihydromorphine;
- 12 (9) drotebanol;
- 13 (10) etorphine (except hydrochloride salt);
- 14 (11) heroin;
- 15 (12) hydromorphanol;
- 16 (13) methyldesorphine;
- 17 (14) methyldihydromorphine;
- 18 (15) morphine methylbromide;
- 19 (16) morphine methylsulfonate;
- 20 (17) morphine-N-oxide;
- 21 (18) myrophine;
- 22 (19) nicocodeine;
- 23 (20) nicomorphine;
- 24 (21) normorphine;
- 25 (22) pholcodine; and

1 (23) thebacon.

2 5-403.

3 (b) (1) Unless the substance is listed in another schedule and except as  
4 provided in paragraph (2) of this subsection, opium and opiate, and a salt, compound,  
5 derivative, or preparation of opium or opiate is a substance listed in Schedule II, including:

6 (i) raw opium;

7 (ii) opium extracts;

8 (iii) opium fluid extract;

9 (iv) opium fluid;

10 (v) powdered opium;

11 (vi) granulated opium;

12 (vii) tincture of opium;

13 (viii) codeine;

14 (ix) dextropropoxyhene bulk (nondosage form);

15 (x) dihydroetorphine;

16 (xi) ethylmorphine;

17 (xii) etorphine hydrochloride;

18 (xiii) hydrocodone;

19 (xiv) hydromorphone;

20 (xv) metopon;

21 (xvi) morphine;

22 (xvii) oripavine;

23 (xviii) oxycodone;

24 (xix) oxymorphone; and

1 (xx) thebaine.

2 (3) Substances listed in Schedule II also include:

3 (i) except for the isoquinoline alkaloids of opium, a salt, compound,  
4 derivative, or preparation that is chemically equivalent or identical to a substance listed in  
5 paragraph (1) of this subsection;

6 (ii) opium poppy, poppy straw, and poppy straw concentrate;

7 (iii) coca leaf;

8 (iv) cocaine, its salts, optical and geometric isomers, and salts of  
9 isomers;

10 (v) ecgonine, its derivatives, their salts, isomers, and salts of  
11 isomers; and

12 (vi) a compound, mixture, or preparation that contains any of the  
13 substances listed in this section.

14 (c) (1) These opiates are substances listed in Schedule II:

15 (i) alfentanil;

16 (ii) alphaprodine;

17 (iii) anileridine;

18 (iv) bezitramide;

19 (v) carfentanil;

20 (vi) dihydrocodeine;

21 (vii) diphenoxylate;

22 (viii) dronabinol (in oral solution);

23 (ix) fentanyl;

24 (x) isomethadone;

25 (xi) levoalphacetylmethadol;

26 (xii) levomethorphan;

- 1 (xiii) levorphanol;
- 2 (xiv) metazocine;
- 3 (xv) methadone;
- 4 (xvi) methadone – intermediate, 4-cyano-2-dimethylamino-4,  
5 4-diphenyl butane;
- 6 (xvii) moramide – intermediate, 2-methyl-3- morpholino-1,  
7 1-diphenyl-propane-carboxylic acid;
- 8 (xviii) pethidine;
- 9 (xix) pethidine – intermediate – A,  
10 4-cyano-1-methyl-4-phenylpiperidine;
- 11 (xx) pethidine – intermediate – B,  
12 ethyl-4-phenylpiperidine-4-carboxylate;
- 13 (xxi) pethidine – intermediate – C,  
14 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 15 (xxii) phenazocine;
- 16 (xxiii) piminodine;
- 17 (xxiv) racemethorphan;
- 18 (xxv) racemorphan;
- 19 (xxvi) remifentanil;
- 20 (xxvii) sulfentanil;
- 21 (xxviii) tapentadol; and
- 22 (xxix) thiafentanil.

23 (2) Unless specifically excepted under this subtitle, an isomer, ester, ether,  
24 or salt of an opiate and a salt of an isomer, ester, or ether is a substance listed in Schedule  
25 II if the existence of the isomer, ester, ether, or salt is possible within the specific chemical  
26 designation.

27 **5-602.1.**

28 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS

1 INDICATED.

2 (2) "OPIOID" MEANS A CONTROLLED DANGEROUS SUBSTANCE  
3 LISTED IN § 5-402(C) OR § 5-403(B)(1) OR (3) OR (C) OF THIS TITLE.

4 (3) (I) "OPIOID ANALOGUE" MEANS A SUBSTANCE THAT:

5 1. HAS A CHEMICAL STRUCTURE SIMILAR TO THE  
6 CHEMICAL STRUCTURE OF AN OPIOID; AND

7 2. HAS A STIMULANT, DEPRESSANT, OR  
8 HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM THAT IS  
9 SUBSTANTIALLY SIMILAR TO OR GREATER THAN THE STIMULANT, DEPRESSANT, OR  
10 HALLUCINOGENIC EFFECT OF AN OPIOID ON THE CENTRAL NERVOUS SYSTEM.

11 (II) "OPIOID ANALOGUE" DOES NOT INCLUDE:

12 1. A CONTROLLED DANGEROUS SUBSTANCE LISTED IN  
13 SCHEDULE I OR SCHEDULE II;

14 2. A SUBSTANCE FOR WHICH THERE IS AN APPROVED  
15 NEW DRUG APPLICATION; OR

16 3. A SUBSTANCE APPROVED FOR INVESTIGATIONAL USE  
17 UNDER § 506 OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

18 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT  
19 DISTRIBUTE AN OPIOID OR AN OPIOID ANALOGUE, THE USE OF WHICH CAUSES THE  
20 DEATH OF A MINOR.

21 (C) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS GUILTY  
22 OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING  
23 30 YEARS.

24 (D) THE SHARING OF AN OPIOID OR AN OPIOID ANALOGUE BY AN ADULT  
25 CONSTITUTES DISTRIBUTION UNDER THIS SECTION.

26 (E) (1) IT IS NOT A DEFENSE UNDER THIS SECTION THAT THE DEFENDANT  
27 DID NOT DISTRIBUTE THE OPIOID OR OPIOID ANALOGUE DIRECTLY TO THE  
28 DECEDENT.

29 (2) IT IS A DEFENSE UNDER THIS SECTION THAT THE DEFENDANT WAS  
30 AN ACTIVE USER OF AN OPIOID OR AN OPIOID ANALOGUE AT THE TIME OF THE

1 DISTRIBUTION THAT CAUSED THE DEATH OF THE DECEDENT.

2 (F) A PERSON WHO, IN GOOD FAITH, SEEKS, PROVIDES, OR ASSISTS WITH  
3 THE PROVISION OF MEDICAL ASSISTANCE FOR A PERSON EXPERIENCING A MEDICAL  
4 EMERGENCY AFTER USING AN OPIOID OR AN OPIOID ANALOGUE IS IMMUNE FROM  
5 CRIMINAL PROSECUTION FOR A VIOLATION OF THIS SECTION IF THE EVIDENCE FOR  
6 THE CRIMINAL PROSECUTION WAS OBTAINED SOLELY AS A RESULT OF THE  
7 PERSON'S SEEKING, PROVIDING, OR ASSISTING WITH THE PROVISION OF MEDICAL  
8 ASSISTANCE.

9 (G) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE  
10 TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED FOR ANY CRIME  
11 BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2019.