

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1386
Judiciary

(Delegate Tomlinson, *et al.*)

Criminal Law - Distribution of Heroin or Fentanyl Causing Death or Serious Bodily Injury (Victoria, Scottie, Ashleigh, and Yader's Law)

The bill prohibits the distribution (without the lawful authority to do so) of heroin or fentanyl, or a chemical analogue of heroin or fentanyl, the use of which results in the death or serious bodily injury of another. However, a person may only be prosecuted for this offense if the person has previously been convicted of a violation of § 5-602 (distribution of a controlled dangerous substance (CDS)) or § 5-603 (manufacturing a CDS) of the Criminal Law Article. A violator is guilty of a felony and on conviction is subject to imprisonment for up to 20 years in addition to any penalty imposed for a conviction under § 5-602 or § 5-603. A sentence imposed for such a violation must be consecutive to and not concurrent with another sentence imposed under any other provision of law. A prosecution under the bill may be brought in the county where the violation occurred or the county where the death or serious bodily injury occurred.

Fiscal Summary

State Effect: Potential significant increase in cumulative general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) in the out-years, as discussed below. General fund expenditures for the Office of the Public Defender (OPD) may increase, as discussed below. Revenues are not materially affected.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: A person may not “distribute” heroin or fentanyl, or a chemical analogue of either of those substances, without the lawful authority to do so, the use of which results in the death or serious bodily injury of another. “Distribute” does not include the sharing of heroin or fentanyl, or an analogue of either of those substances, without remuneration.

The prohibition applies regardless of whether:

- the death or serious bodily injury occurs as a result of using the substance by itself or combined with any compound, mixture, diluent, or other substance;
- the substance is mixed or combined with any compound, mixture, diluent, or other substance after the prohibited distribution; or
- the distribution of the substance is made directly to the person who dies or suffers serious bodily injury.

If possession of the substance is transferred more than once prior to the occurrence of the death or serious bodily injury, each person who distributed or delivered the substance is considered to have violated the bill’s prohibition.

Current Law: CDS are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

Unless specifically exempted, or listed on another schedule, specified opium derivatives, including their salts, isomers, and salts of isomers, whenever their existence is possible within the specific chemical designation, are deemed Schedule I CDS. Heroin is an opium derivative and is listed as a Schedule I CDS. Fentanyl is a Schedule II opioid. Both substances are narcotics.

Under Title 5, Subtitle 6 of the Criminal Law Article, a person may not:

- distribute, dispense, or possess with the intent to distribute a CDS;
- manufacture a CDS or manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a CDS with the intent to use it to produce, sell, or dispense a CDS;
- create, distribute, or possess with the intent to distribute a counterfeit substance;

- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance (any place resorted to for the purpose of illegally administering CDS or where such substances or controlled paraphernalia are illegally manufactured, distributed, dispensed, stored, or concealed); or
- pass, issue, make, or possess a false, counterfeit, or altered prescription for a CDS with the intent to distribute the CDS.

Exhibit 1 shows the applicable sentences for these crimes.

Specifically, § 5-602 of the Criminal Law Article prohibits a person from distributing, dispensing, or possessing with the intent to distribute or dispense a CDS. Section 5-608.1 of the Criminal Law Article prohibits a person from knowingly violating § 5-602 with (1) a mixture of CDS that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl or (2) fentanyl or any analogue of fentanyl. A violator is guilty of a felony and is subject to imprisonment for up to 10 years in addition to any other penalty imposed for a violation of § 5-602. A sentence imposed for a violation of this prohibition must be served consecutively to any other sentence imposed. Section 5-603 of the Criminal Law Article prohibits a person from manufacturing a CDS (other than cannabis) or manufacturing, distributing, or possessing a machine, equipment, or device that is adapted to produce a CDS (other than cannabis) with the intent to use it to produce, sell, or dispense a CDS.

State Expenditures: Cumulative general fund incarceration expenditures may increase significantly in the out-years. **Exhibit 2** displays the violations and convictions for relevant offenses in fiscal 2025 (while violations for these offenses may be charged in either the District Court or the circuit courts, any cases that proceed to trial are exclusively heard in the circuit courts).

The bill applies to an individual previously convicted under § 5-602 or § 5-603 of the Criminal Law Article who distributes (without the lawful authority to do so) heroin or fentanyl, or a chemical analogue of heroin or fentanyl, the use of which results in the death or serious bodily injury of another. Section 5-608.1 of the Criminal Law Article prohibits a person from knowingly violating § 5-602 with fentanyl or a mixture of heroin and fentanyl. It is unclear how the increased penalty under § 5-608.1 of the Criminal Law Article and the increased penalty established under the bill will interact for sentencing purposes. It is also unclear to what extent prosecutors will charge a person solely with the offense established under the bill or in addition to violations of § 5-602 or § 5-603. To the extent an individual is also charged with a violation of § 5-602 or § 5-603, the individual is subject to a penalty of imprisonment for up to 20 years that must run consecutively to any sentence imposed under § 5-602 or § 5-603. Because heroin and fentanyl are Schedule I or II narcotics, those individuals are already facing a 20-year maximum

sentence (or more depending on their complete criminal record) under § 5-602 or § 5-603. Given these additional potential charges and penalties, this estimate assumes that the fiscal impact of the bill occurs in the out-years and beyond the 5-year scope of this fiscal and policy note.

Exhibit 1

Penalties for Distribution of Controlled Dangerous Substances and Related Offenses

<u>Offense</u>	<u>Current Penalty</u>^{1,2}
CDS (Other Than Schedule I or II Narcotic Drugs and Other Specified CDS)	
First-time Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
Repeat Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
CDS (Schedule I or II Narcotic Drug and Specified Drugs)³	
First-time Offender	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Second-time Offender	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Third-time Offender	Maximum penalty of 25 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)
Fourth-time Offender	Maximum penalty of 40 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)

CDS: controlled dangerous substance

¹ Repeat offenders are subject to twice the term of imprisonment and/or fines that are otherwise authorized. Under Chapter 515 of 2016, effective October 1, 2017, this authorization is made applicable only when the person has also been previously convicted of a crime of violence.

² Chapter 569 of 2017 prohibits a person from knowingly distributing or possessing with the intent to distribute (1) a mixture of CDS that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl or (2) fentanyl or any analogue of fentanyl. In addition to any other penalty imposed, a person is subject to imprisonment for up to 10 years. A sentence imposed for a violation of this prohibition must be served consecutively to any other sentence imposed.

³ For example, cocaine and heroin.

Source: Department of Legislative Services

Exhibit 2
Violations and Convictions Related to the Distribution of Narcotics
Fiscal 2025

	District Court	Circuit Court	
	<u>Violations*</u>	<u>Violations</u>	<u>Convictions</u>
§ 5-602 – Possession with the Intent to Distribute and Distribution of a Narcotic	2,814	3,656	1,029
§ 5-602 – Distribution of a Narcotic	365	780	135
§ 5-603 – Production Equipment – Narcotic	30	75	0
§ 5-603 – Manufacture CDS – Narcotic	27	29	2
§ 5-608.1 – Possession with Intent to Distribute and Distribution of a Fentanyl Mixture			15

* Violations for these offenses may be charged in either court but any cases that proceed to trial are exclusively heard in the circuit courts.

Source: Judiciary (Administrative Office of the Courts); Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

DPSCS advises that during fiscal 2025, the Division of Correction received 585 individuals with one or more offenses under § 5-602 or § 5-603 of the Criminal Law Article. The average sentence for this entire group was 52 months. However, it is unknown (1) how many of these individuals were previously convicted of violating § 5-602 or § 5-603 or (2) if any of these individuals distributed heroin or fentanyl that resulted in the death or serious bodily injury of another.

According to the Maryland Department of Health’s Overdose Data Portal, from February 2025 to January 2026, there were 872 overdose deaths in the State due to fentanyl and 56 overdose deaths due to heroin.

Thus, *cumulative* general fund expenditures *may* increase significantly as a result of the bill’s incarceration penalty due to people being committed to State correctional facilities for longer periods of time. Persons serving a sentence longer than 18 months are

incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,838 per month. Excluding overhead, the average cost of housing a new State incarcerated individual (including health care costs) is about \$1,942 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$324 per month.

For illustrative purposes only, if the increased penalty applies to just 5% of the convictions for distributing a narcotic under § 5-602 in fiscal 2025 (seven individuals) and each of those individuals is sentenced to the maximum consecutive 20-year penalty, the bill may add as much as 140 years of incarceration. Assuming the variable costs for incarcerated individuals of \$324 per month excluding health care, State costs could increase by \$544,320 for each annual cohort of defendants sentenced under the bill's increased penalty. Any impact from these additional incarcerations will likely be realized in the out-years, as individuals conclude incarceration penalties available under existing statute and begin additional incarceration time under the bill.

Office of the Public Defender

OPD advises that, based on known statistics and assumptions regarding applicability of the bill and the required level of effort, additional OPD workloads under the bill require four additional attorneys and one secretary, at a cost of approximately \$458,700 in fiscal 2027 and increasing to approximately \$617,300 by fiscal 2031.

Although the Department of Legislative Services (DLS) agrees that the bill increases OPD's workload for a subset of its existing cases, DLS generally disagrees with the magnitude of OPD's estimate. Any person charged with the new offense established by the bill is also subject to felony charges (and extensive penalties) under existing statute. Accordingly, OPD workloads increase by a minimal additional level of effort in existing cases. Depending on the overall impact of this increased effort on OPD operations, general fund expenditures may increase.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1398 and SB 604 of 2025 and HB 1245 and SB 1075 of 2024.

Designated Cross File: SB 906 (Senators James and Ready) - Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Ralph W. Kettell

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