

CANDACE MCLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD HOWIE
Deputy Attorney General



ANTHONY G. BROWN
Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

PETER V. BERNS
General Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

WRITER'S DIRECT DIAL NO
(410) 576-6581

March 1, 2024

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Jared Albert, Assistant Attorney General
Deputy Division Chief, Criminal Division, Office of the Attorney General

RE: HB 1245 – Criminal Law – Distribution of Heroin or Fentanyl Causing
Serious Bodily Injury or Death (Victoria and Scottie's Law) – **SUPPORT**

The Office of the Attorney General supports House Bill 1245 and urges a favorable report. This bill creates a new criminal offense for distributing heroin or fentanyl, or a chemical analogue of those, "the use of which results in the death or serious bodily injury of another." The offense is a felony which carries a sentence of up to 20 years which must be consecutive to any other sentence.

This bill would be an important tool in how we address the opioid epidemic. As of 2019, according to data from the Prescription Drug Abuse Policy System, 24 states and the federal government have laws which punish the distribution or delivery of drugs which result in a death. See <https://pdaps.org/datasets/drug-induced-homicide-1529945480-1549313265-1559075032>.

The most recent overdose data from the Maryland Department of Health is from 2021. See https://health.maryland.gov/vsa/Documents/Overdose/2021_AnnualIntoxDeathReport.pdf. That data shows that in 2021, there were 2,507 opioid-related overdose deaths in Maryland. This number is more than four times higher than the number of overdose deaths in 2012 (which was

648). The major driving force in this increase is the proliferation of fentanyl. Indeed, in 2021, of the 2,507 opioid-related deaths, 2,344, or 93.5%, involved fentanyl.

This bill allows Maryland to join 24 states and the federal government, including neighbors such as Pennsylvania, Delaware, and the District of Columbia, in making it illegal to distribute heroin or fentanyl, or a chemical analogue of those, the use of which results in the death or serious bodily injury of another. It should be noted that the federal version is punishable by a 20-year mandatory minimum. *See* 21 U.S.C. § 841(b).

In light of the severity of the opioid epidemic in Maryland, we need another tool at our disposal to seek justice for those who die from fatal overdoses. Most of the time, there is insufficient evidence to determine who distributed the drugs that the victim took which resulted in his/her death. However, when we are able to pinpoint who sold the drugs that led to the victim losing his/her life, the person who distributed those drugs should be subject to punishment above and beyond the ordinary punishment for selling drugs or possessing drugs with the intention to distribute them. This bill will bring greater accountability to those who sell these poisons within our communities and would provide a justified enhancement of the maximum sentence for those whose drug-distribution results in the death or serious bodily injury of another.

In *State v. Patrick Joseph Thomas*, 464 Md. 133, 180 (2019), the Supreme Court of Maryland, in a 4-3 opinion, affirmed a conviction for manslaughter for a Worcester County man who distributed heroin which caused a fatal overdose. However, in light of the narrow holding in *Thomas*, and in light of the limited 10-year penalty for manslaughter, *see* Maryland Annotated Code, Criminal Law Article, Section 2-308, this bill provides a sorely needed new avenue to seek justice for fatal overdose victims.

For these reasons, the Office of the Attorney General urges a favorable report on House Bill 1245.

cc: Committee Members