

February 18, 2025

House Judiciary Committee
TESTIMONY IN OPPOSITION

HB 1398 Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death
(Victoria, Scottie, Ashleigh, and Yader's Law)

Dear Honorable Senators:

My name is John Griffin. I would like to share my thoughts regarding the upcoming consideration of House Bill 1398 with you. I oppose passage of the proposed bill because I believe it will not solve the problem of narcotics distribution like heroin and fentanyl in Maryland. Instead it will target the wrong people, those who are mid-level street dealers who in many cases don't even know that what they are selling contains heroin or fentanyl, and not the "kingpin" manufacturers and distributors. Consequently, passage of this bill will only exacerbate an already overwhelming problem with the practice of over-prosecution and mass-incarceration that is so prevalent in Maryland.

I spent 15 1/2 years in Maryland prison convicted of a crime that I did not commit. While that is a story outside the context of this testimony, during my prison time I studied Maryland law extensively to see how it works. I also got to know a lot of drug users and street dealers. I myself am not a street dealer, nor am I a drug user. But my observation of street dealers and drug users in prison is that the vast majority of them do not possess the intent to kill—they do not have murderous hearts. Most often they come from very broken families and desperate economic circumstances, and they turn to selling drugs in an effort to make easy money to try to get ahead in life. It's all they know. Most of them have dreams and aspirations to become productive citizens, they just don't know how to get there and there are no positive role models in their homes and neighborhoods to show them how.

Many of these street dealers sell crack cocaine, not heroin or fentanyl. They have no intention to sell heroin or fentanyl. They often do not know that fentanyl is present in the crack they're selling because they are not part of the "cutting" process that is used to dilute the pure crack into sellable doses. The manufacturers and distributors do that and they use fentanyl to cut the crack cocaine into smaller doses, but they often don't tell the dealers what substances they're using to cut the crack. Additionally, the clientele of street dealers are drug users, and more often than not drug users indulge in multiple drugs and purchase them from multiple dealers. Therefore, it is entirely possible that a scenario like the following could occur: a drug user purchases heroin/fentanyl from dealer A and then purchases crack cocaine from dealer B in a separate transaction unrelated to dealer A, consumes both purchases on the same day and then dies of an overdose, and dealer B gets caught. When the toxicology report reveals the presence of fentanyl in the decedent and dealer B gets charged and convicted under this new bill, he is going to prison with an enhanced penalty for a death that was not his fault based on an improper presumption of intent to distribute fentanyl, a level of intent which he didn't actually possess.

I am not an attorney, but in my opinion allowing such a scenario to occur will most definitely perpetuate mass incarceration and undermine the "Good Samaritan" law. Plus, it will give prosecutors a tool which will allow them to circumvent due process and convict people unfairly without a proper burden of proof. More specifically, I believe that the way this bill is written will violate the constitutional rights to due process of law because the required level of *mens rea* will be simply presumed upon a defendant as opposed to being properly determined by evidence in court, and possibly double jeopardy as well, should it pass into law. If this bill is passed, I think that it will set up an unfair legal precedent where the intent to distribute heroin/fentanyl will be presumed upon a defendant, if those substances are found in the victim, even though the defendant may have not known heroin/fentanyl was present. Very often street

dealers are not aware of all the chemicals that are present in the drugs they are selling, because they are not told what substances the manufacturer used to "cut" the drugs. Yes it is true that a street dealer is already breaking the law by selling illicit drugs in the first place, and that criminal act should not be excused or condoned in any way. But to presume the intent to distribute fentanyl just because it was found in the victim to support a conviction with an enhanced penalty without due process is wrong.

Furthermore, targeting average dealers with DIH prosecutions will not slow the sale of drugs. For every drug dealer that is caught and imprisoned, there are two more ready in the wings to step in and take his place. Consequently, the flow of drug money will not slow. If the Maryland Legislature wants to get serious about ebbing the flow of drugs—especially heroin and fentanyl—into the State, then it needs to draft legislation that targets the manufacturers and the distributors who import the drugs into Maryland. If we support bills that stop the flow of drugs before they get to the dealers, then the money flow will be interrupted sufficiently to make drug dealing far less lucrative. Plus, if police agencies are appropriately funded so they can provide the street coverage necessary to deter drug sales (especially in Baltimore City), then street dealers will lose interest because the money is not there to outweigh the legal risk of performing that kind of work.

I believe that as a society our legal resources are much better spent on pushing for legislation that specifically targets the drug manufacturers and distributors who utilize fentanyl in their distribution process, with the goal of stopping the flow of fentanyl into the State. If the local dealers lose access to the drugs they're selling, then they will lose interest in selling them because the money isn't there. We as a society need to invest more resources into programs like peer recovery support (I am a Certified Peer Recovery Specialist, and in my experience peer recovery support works very well to reeducate drug users/dealers and help them with recovery), community health outreach, medication assisted treatment for opioid use disorder, and naloxone distribution. Drug users and dealers need to see that there is hope for them to break the otherwise endlessly repeating cycle of the drug lifestyle. We as a society have a moral obligation to stop pursuing legislation and laws that unfairly target marginalized people as a band-aid towards creating a "better society". The "tough on crime politic" simply doesn't work if the legislation it produces is misguided. That fact has been proven time and again. We are smarter than that, better than that. So we need to pursue common sense legislation, not emotionally driven legislation designed to exact retribution on the wrong people.

Sincerely yours,

John Griffin