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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)*

In 2020, I lost my son, Tyler, to an accidental overdose involving heroin, fentanyl, and xylazine. More laws would have only created more barriers to recovery. Tyler's death was preventable, and I have dedicated my life to removing barriers to wellness and improving health outcomes to ultimately save other parents from living an incredibly painful life without their children. This bill would do the exact opposite.

**Susan Ousterman strongly opposes HB 1398 - Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death (Victoria, Scottie, Ashleigh, and Yader's Law).** This bill would create a new enhanced penalty of up to 20 years in prison for those found liable for a fatal overdose. This approach of using longer and longer prison sentences to address problems related to drug use has been tried before and has failed. We urge the General Assembly to instead focus on proven solutions that prevent overdose like evidence-based treatment and education.

The overdose epidemic has been a tragedy that has cost the lives of thousands of Marylanders. The General Assembly should prioritize preventing overdose and bringing an end to this crisis. Unfortunately, HB1398 is counterproductive despite being well-intended. Laws like HB1398, often called drug-induced homicide (DIH) laws, seek to prevent overdose by using harsh penalties as a deterrent. HB1398 proposes up to 20 additional years for those liable for distributing heroin or fentanyl that results in a fatal overdose. Distributing fentanyl already carries a penalty of up to 30 years in prison. The threat of 50 years in prison will be no more effective of a deterrent than 30 years. While the deterrent effect of HB1398 will be negligible, it will impact mass incarceration and state prison costs.

DIH laws like HB1398 also have unintended consequences. DIH prosecutions will discourage people who use drugs from reporting potentially reversible overdoses for fear of harsh criminal penalties. HB1398 has some protections for those reporting overdoses but they do not apply to all scenarios. If HB1398 passes, it is likely that some who report overdoses will get prosecuted for DIH. That will discourage scores of others who use drugs from reporting overdose, potentially increasing the number of fatalities rather than improving the overdose epidemic.

My son struggled with anxiety, and like many teenagers, he turned to substances in high school to cope. Unlike previous generations, he had easier access to prescription opioids than less addictive substances, which quickly led to dependence. He didn't want to be dependent and sought help. Instead of finding support, he was met with endless barriers—from bed shortages to inadequate healthcare and a punitive legal system that treated him as disposable rather than someone in need of care.

I'll never forget the fear in Tyler's eyes the first time he experienced withdrawal when he realized he was dependent. Desperate for help, he came to me, and on the advice of our family doctor, I took him to the emergency room. Under any other circumstance, what followed would be considered medical

negligence.

As we debated whether to send him to the only facility covered by Tricare, more than 400 miles away, Tyler grew sicker by the minute. Feeling like he had no other option, he purchased heroin to ease his symptoms and crashed his car on the way home. The next morning, he was on a flight to what would be his first of many 30-day rehab stays. The only real tool he was given was a single naltrexone injection, which insurance refused to cover once he returned home.

Tyler attempted to access treatment more than a dozen times over 6 years, only to face barrier after barrier in a system that seemed wholly apathetic to his chance at recovery. He was rarely offered medication, never received the mental health care he desperately needed, and endured excruciatingly long waits for services.

On one occasion, Tyler was denied entry to a detox center because his drug test came back negative. At the time, many facilities did not test for fentanyl, which he had been using. Determined to access care, he left, used drugs to ensure he would test positive, and overdosed in the lobby of the very facility where he had sought help. He was revived with naloxone—yet in another eye-opening display of the institutional flaws preventing his recovery, Tyler was still sent home due to a lack of available beds.

Tyler was even further harmed by a criminal legal system that punishes people who use substances rather than helping them find healthier coping skills. Being labeled a “criminal” only added to his feelings of shame and hopelessness. He was arrested for possession of an unused syringe—an act of harm reduction that should have been encouraged rather than criminalized. Fast forward two years with a few months of sobriety, he was incarcerated for two weeks due to an outstanding bench warrant after missing a probation appointment because he was undergoing open-heart surgery to treat the life-threatening condition he contracted from reusing syringes (Infective endocarditis). As a condition of his release, he was forced into a county-approved recovery house that prohibited medical cannabis, a tool he found helpful in controlling his long-term opioid withdrawal symptoms. Left with no accessible or effective options, he returned to use shortly thereafter. When he attempted detox once again a couple of weeks later, he discovered that his Medicaid had been (unlawfully) terminated due to his incarceration. Because of his medical cannabis status, an incompetent state official, and conflicts between state and federal policies, he was also denied county funding for treatment. In desperation, we paid cash to a treatment facility, only to find out later it was fraudulent, as I now understand a significant portion of them are.

Tyler did not want to use drugs. He wanted to heal and make his family proud. He wanted to be a father. He felt no pleasure or “high” when he used. With hopeless desperation in his eyes, these are the frustrations he voiced to me a week after he was denied help and just an hour before I found him deceased on the floor of a gas station bathroom two blocks from my home.

These are not isolated failures. Tens of thousands of people die unnecessarily each year due to the failures of our medical and legal systems. If we are serious about saving lives, we must shift from punishment to public health, from stigma to science. If you truly value our losses and are committed to saving lives, as many of you have stated, then your voting record must reflect that commitment. I understand you may have heard from grieving parents who support harsher punishments. I have, too. Many blame a dealer, the border, or China for their child’s death. Some say their child was “poisoned by fentanyl.” These beliefs are shaped by decades of failed drug policy that taught parents like me to see our children’s struggles as moral failings rather than health crises. The lack of bereavement services for

families who lose loved ones to overdose leaves many unable to process their grief, and in their pain, they seek vengeance. But once they understand that punitive measures will only lead to more deaths, their views shift.

My heart goes out to families like Laken Riley. I know the unbearable pain of losing a child. But in this country, we have created a hierarchy of victimhood, where some lives are deemed more valuable than others. My child's death was preventable, too—but not at the hands of a "criminal immigrant," not because of bad parenting, and not because he was morally deficient. He, and hundreds of thousands of others, died because lawmakers continue to prioritize punishment over treatment, incarceration over care, and stigma over science.

For decades, the moral failure narrative surrounding drug use has left parents like me questioning whether we did enough. But I no longer question it. I followed the rules society told me to follow, and my son is still dead. My parenting did not fail him. Our policies did.

We need immediate access to detox services and recovery medications, not more incarceration. We need to end discriminatory medical practices against people who use substances, not reinforce stigma. We need to improve the quality of treatment, not impose mandatory minimums and create more barriers to lifesaving research. Above all, we need drug policy rooted in evidence and compassion, recognizing that people use substances for a reason—most often to relieve pain, whether physical or psychological. These laws do not stop big drug dealers or cartels. They prosecute friends and family members who are just trying to survive. They are no different than our kids.

These punitive measures only push people into riskier behaviors, increase the likelihood that someone will die rather than call for help, and make our communities less safe. How many more Americans must die before we finally admit that the War on Drugs was a failure?

The General Assembly should focus on investments in prevention and treatment rather than new harsh penalties. **Susan Ousterman urges the House Judiciary Committee to oppose HB1398.**