



House Bill (HB) 1398 & Senate Bill (SB) 604
Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death
(Victoria, Scottie, Ashleigh, and Yader's Law)

DATE : February 12, 2025
COMMITTEE: House Judiciary & Senate Judicial Proceedings
POSITION: **FAVORABLE**

Dear Chairman and Committee Members:

PURPORTED PURPOSE: HB1398 and SB604 create a separate crime for dealing heroin and/or fentanyl or drugs laced with either that results in the death or serious bodily injury to another. These Bills would make it a felony to deal these deadly drugs when there is a fentanyl overdose or poisoning death and impose a penalty of up to 20 years imprisonment.

CURRENT STATE OF THE LAW

Currently, case law hampers the ability to prosecute drug dealers who cause a death. In *State v. Thomas*, 464 Md. 133 (2019), Maryland's highest court held that a distributor of heroin may be convicted of gross negligence involuntary manslaughter if there is sufficient evidence to prove that the distributor's conduct was both the actual and legal cause of a buyer's fatal overdose. The Court further held that the evidence must be reviewed on a case-by-case basis to determine the degree of gross negligence required and whether a sufficient causal connection exists between such gross negligence and the fatal overdose of a buyer. *Id.* at 211. In order to convict a dealer under *Thomas*, a prosecutor has to prove that the dealer's actions were wanton and reckless because of the dangers inherent in the distribution and consumption of heroin of unknown potency carrying with it a high degree of risk to human life. *Id.* at 164-65, 169, 211.

The standard set forth in *Thomas* is an extremely difficult standard to prove and given the deadly nature of the threat of fentanyl, which these days is cut into almost every illegal drug. Therefore, a legislative fix is needed, so pushers of poison who kill can be charged with more than mere drug distribution. *Thomas* also does not deal with cases where someone might not die from an overdose, but instead, suffers serious bodily injury – this statute does.

FENTANYL FACTS

- According to the federal Drug Enforcement Administration (DEA), 2 milligrams or 0.00007 ounces is enough to kill you; the average housefly weighs 12 milligrams.¹

¹ <https://www.jacksoncountycombat.com/818/Get-The-Fentanyl-Facts#seeit> (last visited February 7, 2025).

- Illicit fentanyl, primarily manufactured in foreign clandestine labs and smuggled into the United States through Mexico, is being distributed across the country and sold on the illegal drug market. Fentanyl is being mixed in with other illicit drugs to increase the potency of the drug, sold as powders and nasal sprays, and increasingly pressed into pills made to look like legitimate prescription opioids.²
- DEA analysis has found counterfeit pills ranging from .02 to 5.1 milligrams (more than twice the lethal dose) of fentanyl per tablet, and 42% of pills tested for fentanyl contained at least 2 mg of fentanyl, a potentially lethal dose.³
- According to the CDC, synthetic opioids (like fentanyl) are the primary driver of overdose deaths in the United States. Comparison between 12 months-ending January 31, 2020 and the 12 months-ending January 31, 2021 during this period: overdose deaths involving opioids rose 38.1 percent, and overdose deaths involving synthetic opioids (primarily illicitly manufactured fentanyl) rose 55.6 percent and appear to be the primary driver of the increase in total drug overdose deaths.⁴
- In Maryland in 2023 there were 2,586 deadly overdoses and Fentanyl was involved in nearly 80% of them.⁵

PROVISIONS OF THE BILLS

- Provides a separate 20-year penalty for directly dealing heroin or fentanyl or drugs mixed with them or synthetic versions of heroin or fentanyl that results in death or serious bodily injury.
- The Bills provide no mandatory minimum, but in a 2024 Gonzales poll, 83% of Marylanders supported a 10-year mandatory sentence for such conduct.⁶
- Provides that anyone in the distribution chain may be prosecuted.
- Enables prosecution where the death or injury occurred or where the drugs were dealt.
- Contains a “Good Samaritan” provision for those who seek treatment for someone who is experiencing an overdose.

HB1398 and SB604 provide an additional tool to deter and prosecute the purveyors of deadly poison in the State of Maryland, and I respectfully request a favorable report on both.

Haven N. Shoemaker, Jr.
Carroll County State’s Attorney

² <https://www.dea.gov/resources/facts-about-fentanyl#:~:text=Two%20milligrams%20of%20fentanyl%20can%20be%20lethal%20depending,mg%20of%20fentanyl%2C%20considered%20a%20potentially%20lethal%20dose> (last visited February 7, 2025)

³ *Id.*

⁴ *Id.*

⁵ <https://foxbaltimore.com/news/local/carroll-county-states-attorney-wants-to-get-tougher-on-drug-dealers> (last visited February 7, 2025).

⁶ <https://htv-prod-media.s3.amazonaws.com/files/gonzales-poll-part-1-maryland-statewide-february-2024-65cb9fcf5b1e3.pdf> (last visited February 7, 2025).