



Maryland State's Attorneys' Association

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BILL NUMBER: HB 1398

POSITION: Favorable with Amendment

The Maryland State's Attorneys' Association (MSAA) supports House Bill 1398 with the inclusion of three minor amendments that clarify the language used by the bill, harmonize the bill with existing provisions relating to similar conduct, and better tailor the application of the bill to the interests that animated it.

HB 1398 criminalizes the distribution of heroin or fentanyl if such distribution results in the death or serious bodily injury of another, providing an important tool for prosecutors to target and dismantle the drug distribution networks that are destroying our communities. The prosecution of overdose homicide cases is currently governed exclusively by caselaw, by cases like *State v. Thomas*, 464 Md. 133 (2019) and its progeny. Codifying the elements and scope of these offenses clarifies and streamlines their prosecution, while signaling to those that would sell heroin or fentanyl the seriousness with which Maryland takes these offenses.

The first amendment suggested by MSAA is a clarifying one – HB 1398 applies to conduct that results in death or serious bodily injury, without defining the latter term. While this term is defined elsewhere – MD. CODE ANN., TRANSP. § 20-102(c) – MSAA recommends either explicitly defining the term in the statute, linking the term to the definition in the Transportation Article, or using the largely coextensive term “serious physical injury” as defined in MD. CODE ANN., CRIM. LAW § 3-201 (d).

Second, MSAA urges this Committee to revisit the “Good Samaritan” provision, appearing on line 6 of page 3. While MSAA supports the purpose behind this provision – saving a life is and ought to be the priority here – MSAA recognizes that this provision goes far beyond similar provisions in Maryland law. Enacting this as written would create a statutory incongruity, whereby misdemeanor possession offenses would be covered by the existing Good Samaritan provision appearing in MD. CODE ANN., CRIM. PROC. § 1-210, and felony heroin or fentanyl distribution offenses that result in death or serious bodily injury would be covered by the provision in this bill, but every other felony drug offense (including distribution of other drugs that result in death or serious bodily injury) would not be covered.

Finally, MSAA suggests removing the clause that restricts the bill's application to those that distributed the heroin or fentanyl for profit, appearing on line 23 of page 1. The harm caused by the conduct addressed by this bill – the death or serious bodily injury of another – occurs independent of whether the offender sold the drugs or gave them away. Removing this artificial limitation on the bill's applicability ensures the bill accomplishes its objective – holding accountable those whose distribution of heroin or fentanyl kills or seriously injures another.