

February 18, 2025

House Judiciary Committee
TESTIMONY IN OPPOSITION

HB 1398 - Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death

Behavioral Health System Baltimore (BHSB) is a nonprofit organization that serves as the local behavioral health authority (LBHA) for Baltimore City. BHSB works to increase access to a full range of quality behavioral health (mental health and substance use) services and advocates for innovative approaches to prevention, early intervention, treatment and recovery for individuals, families, and communities. Baltimore City represents nearly 35 percent of the public behavioral health system in Maryland, serving over 100,000 people with mental illness and substance use disorders (collectively referred to as “behavioral health”) annually.

Behavioral Health System Baltimore strongly opposes HB1398 - Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death. This bill would add a penalty enhancement of up to 20 additional years to the existing penalty of up to 30 years in prison for distributing fentanyl in the event of a fatal overdose. Imposing even longer prison sentences will not achieve justice or prevent overdose. The General Assembly should work to support evidence-based overdose prevention interventions instead of diverting scarce state resources to longer prison sentences for drug offenders.

The overdose epidemic has been devastating to families and communities across Maryland. About 2,500 people died of fatal overdose in the state each year from 2018-2023, including close to 1,000 who died in Baltimore City.¹ This tremendous heartache understandably leads families to seek answers and accountability. BHSB shares this concern and is firmly committed to doing everything we can to prevent overdose and reduce the prevalence of fentanyl on our streets. We must ensure, however, that the actions we take do not cause more harm than good. HB1398 does not pass that test.

This legislation would not prevent overdose, reduce drug use, deter drug dealing, or change the composition of the drug supply in Maryland. The long prison sentences in the bill would instead cost Maryland millions when the state can least afford it. The Department of Legislative Services estimates one year in state prison costs \$80,000 and that eight prosecutions under HB1398 would occur each year. Distribution of fentanyl currently results in a nine-year prison sentence on average, so if SB604 led to eight individuals receiving a twenty-year average sentence, that would be more than \$12 million added to state prison costs every year.²

HB1398 would also worsen the racial disparities that exist in Maryland and Baltimore’s criminal justice system. There is significant prosecutorial discretion in bringing charges through a bill like HB1398. This has resulted in significant disparities regarding who is prosecuted in other states. Approximately half of all prosecutions are of Black individual while they make up much less than half of the population. There were also almost no reported cases of a prosecutor seeking a drug-induced homicide charge when the decedent was Black.³ This is very troubling when the rates of overdose in the Black community have been skyrocketing. The Baltimore area has seen White overdose rates decline 21% since 2017 while Black rates rose 63%. More Black Marylanders died of overdose than White ones in 2023.⁴ BHSB worries that disparities in who is charged and whose deaths are investigated would perpetuate racial injustice.

Lastly, BHSB worries that HB1398 could increase the number of fatal overdoses in our state by undermining our Good Samaritan law. This law provides limited protection for those seeking medical assistance in good faith. If HB1398 were to pass, there would undoubtedly be stories that would circulate of individuals prosecuted for the death of someone who overdosed. The experience of other states shows that family and friends are most frequently prosecuted under these sorts of laws. These prosecutions also frequently garner press coverage. Coverage and stories of friends and family receiving harsh penalties and liability for an overdose would discourage people who use drugs from reporting overdoses. This is true regardless of the protections provided under HB1398. Good Samaritan protections and HB1398 are simply incompatible. Maryland must prioritize saving lives and encourage vulnerable individuals to report overdoses.

Maryland is beginning to see a reduction in overdoses thanks to our investments in public health interventions. We should stay the course and resist the temptation to return to levying harsher penalties to attempt to address intractable problems like addiction. Such approaches may be satisfying but they are counterproductive. **BHSB urges the House Judiciary Committee to oppose HB1398.**

For more information, please contact BHSB Policy Director Dan Rabbitt at 443-401-6142

Endnotes:

¹ MDH Overdose Data Portal. Accessed January 2025 at <https://health.maryland.gov/dataoffice/Pages/mdh-dashboards.aspx>

² Maryland State Commission on Criminal Sentencing Policy. Average Sentences for Common Offenses (FY23). Available at <https://msccsp.org/Files/Reports/AvgSentencesFY23.pdf>

³ Health in Justice Action Lab. Analysis of Drug-Induced Homicide Charges Dataset. Accessed January 2025 at <https://www.healthinjustice.org/drug-induced-homicide>.

⁴ MDH Overdose Data Portal. Accessed January 2025 at <https://health.maryland.gov/dataoffice/Pages/mdh-dashboards.aspx>