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February 14, 2025

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Jared Albert
Deputy Chief, Criminal Division, Office of the Attorney General

RE: House Bill 1398 - Criminal Law - Distribution of Heroin or Fentanyl
Causing Serious Bodily Injury or Death (Victoria, Scottie, Ashleigh, and
Yader's Law) – **Support with Amendments**

The Office of the Attorney General (OAG) supports **House Bill 1398** - Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death (Victoria, Scottie, Ashleigh, and Yader's Law) and urges the Committee to issue a favorable with amendments report. **House Bill 1398** creates a new criminal offense for distributing heroin or fentanyl, or a chemical analogue of those, "the use of which results in the death or serious bodily injury of another." The offense is a felony which carries a sentence of up to 20 years which must be consecutive to any other sentence.

This bill would be an important tool in how we address the opioid epidemic. As of 2019, according to data from the Prescription Drug Abuse Policy System, 24 states and the federal government have laws which punish the distribution or delivery of drugs which result in a death. See <https://pdaps.org/datasets/drug-induced-homicide-1529945480-1549313265-1559075032>.

The Maryland Department of Health has published preliminary data from 2024. See <https://health.maryland.gov/dataoffice/Pages/mdh-dashboards.aspx>. That data shows that in 2024, there were 1,553 total overdose deaths. The major driving force in this increase is the proliferation of fentanyl. Of the 1,553 total overdose deaths, 1,189 (approximately 76%) involved fentanyl.

House Bill 1398 allows Maryland to join 24 states and the federal government, including neighbors such as Pennsylvania, Delaware, and the District of Columbia, in making it illegal to distribute heroin or fentanyl the use of which results in the death or serious bodily injury of another. The federal version is punishable by a 20-year mandatory minimum. *See* 21 U.S.C. § 841(b).

In light of the severity of the opioid epidemic in Maryland, prosecutors need another tool at our disposal to seek justice for those who die from fatal overdoses. Most of the time, there is insufficient evidence to determine who distributed the drugs that the victim took which resulted in their death. However, when we are able to pinpoint who sold the drugs that led to the victim losing their life, the person who distributed those drugs should be subject to punishment above and beyond the ordinary punishment for simply selling drugs or possessing drugs with the intention to distribute them. This bill will bring greater accountability to those who sell fentanyl within our communities and would provide a justified enhancement of their maximum possible sentence.

In *State v. Thomas*, 464 Md. 133, 180 (2019), the Supreme Court of Maryland, in a 4-3 opinion, affirmed a conviction for manslaughter for a man who distributed heroin which caused a fatal overdose. However, in light of the narrow holding in *Thomas*, and in light of the limited 10-year penalty for manslaughter, *see* Maryland Annotated Code, Criminal Law Article, Section 2-308, this bill provides a sorely needed new avenue to seek justice for fatal overdose victims.

While the OAG supports the majority of the bill, **House Bill 1398** contains two provisions not present in last year's bill that the OAG believes should be removed. First, **House Bill 1398** only applies if the distribution was done for "remuneration or the exchange of goods or services." It seems the purpose of this provision is to not to include friends who "share" fentanyl with one another. However, this addition would create an unnecessary hurdle to conviction and would be overinclusive. For example, just last month, OAG prosecuted a fatal overdose where the fentanyl was given to the decedent for free as a "tester" from the drug dealer. Exempting that type of conduct simply because the decedent did not pay for the drugs would lead to anomalous results.

House Bill 1398 also contains a Good Samaritan amnesty provision, subsection (g) of proposed § 5-602.1, which says that if the drug dealer calls 911 or otherwise "assists with the provision of medical assistance," then the drug dealer cannot be charged "if the evidence for the criminal prosecution was obtained solely as a result of the person seeking, providing, or assisting with the provision of medical assistance." OAG believes this provision should be removed. When someone overdoses and dies, the person who distributed drugs to them should be held accountable, regardless of whether that person also tried to get them medical help. Furthermore, the existing Good Samaritan law in Section 1-210 of the Criminal Procedure Article does not cover drug distribution under Criminal Law 5-602. It would be inconsistent to add Good Samaritan amnesty for this more serious offense. Finally, under Section 1-210(a)(2) of the Criminal Procedure Article, someone who helps during an overdose already is already able to argue that it is a "mitigating factor," making this additional protection unnecessary.

For the foregoing reasons, the Office of the Attorney General urges a favorable with amendments report on **House Bill 1398**.

cc: Judicial Proceedings Committee Members