

**TESTIMONY IN OPPOSITION TO Criminal Law - Distribution of Heroin or Fentanyl
Causing Serious Bodily Injury or Death (Victoria, Scottie, Ashleigh, and Yader's Law)
(HB1398)**

Submitted by Laura Mitchell to the Maryland House Judiciary Committee

February 14, 2025

Chair Delegate Luke Clippinger and Respected Members of the House Judiciary Committee:

As the mother of a person now in long term recovery from a substance use disorder who stood with the parents of over a dozen of his childhood friends as they buried their children, I urge you to issue an UNFAVORABLE report on HB1398, Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death (Victoria, Scottie, Ashleigh, and Yader's Law).

This well-intentioned bill with a stated goal of prosecuting those who sell drugs purely for profit, does not attain that goal. It does give substantial room for friends and even family to be prosecuted for homicide with consensual use if they share, exchange, or otherwise make available a substance that contains fentanyl, even if they are not aware that fentanyl is present. The sale or possession of fentanyl already has substantial enhanced penalties in COMAR. This bill would add up to 20 additional years to be served consecutively at enormous cost to taxpayers and little to no benefit to the individual or the community.

The Personal Impact

For over fifteen (15) years, we fought for resources and treatment to save my child's life. Really, for over 30 years, when we consider the decade and a half spent trying to get mental health services following multiple suicide attempts at the ages of 7, 9, and again at 11 years old. Despite having good health insurance, the insurance companies' unwillingness to adequately cover mental health treatment kept us from the care he needed. When he was seriously injured at the age of 15 and given a nearly endless supply of opioid pain medication, he quickly learned that these drugs relieved or masked many of the mental health challenges he had struggled with throughout his young life. Despite assurances that the opioids, in their various forms, were not addictive, my child became physically and emotionally dependent.

We developed a plan with a new primary care physician to wean him off the opioids and began physical therapy and other non-opioid pain treatments to relieve his pain. Before that was fully executed, the Prescription Drug Monitoring Program (PDMP) became law, and local physicians were raided and shut down for over prescribing. This sent shock waves through the medical community, and doctors refused to continue his treatment plan. When safe, professionally

manufactured and regulated pharmaceutical opioids were no longer available, the excruciating opioid withdrawal symptoms drove my son to the streets and to heroin. I remember the day I figured out what was happening like I remember 9/11. It is seared in my brain. As his friends fell victim to overdose, we fought with everything we had to save him. Of his 13-person core friend group, he is the only survivor, not to mention the dozens of acquaintances who also fell victim to the highly stigmatized, undertreated disease of substance use disorder. He attributes his survival to our steadfast support and advocacy for equitable and accessible harm reduction, treatment, and recovery supports.

My son now has 9 and a half years in recovery! He is married, owns his home, started his own business as a licensed electrician, has a brand new 15-week-old baby, and a strong relationship with his 18-year-old child. But that dream nearly escaped us all when he was accused of causing the death of another following a relapse in his early recovery.

He was just a few days out of treatment when the local news reported on an overdose fatality. Fearing it was someone he knew in our small Eastern Shore town, he turned to the television only to see the media running a very explicit video of IV drug use, every step of the process up to that actual injection was shown. This triggered the well documented “cravings” caused by how opioids hijack the brain. He left the house soon after and visited the mother of a friend that had recently passed away from an overdose. The person he visited was now using heroin and shared her supply. My son relapsed and used but, after realizing that he didn’t want to retravel that path, he left quickly after. The other person used up her supply, then went for more. When she returned home, she used even more, overdosed and died alone. Because my son was seen entering her home, the police attempted to charge him with her death. They even told me they had a warrant for his arrest as they handcuffed and questioned him at the National Night Out event. Evidence was found that she purchased the original supply that she shared with my son and that she purchased more heroin after he left, when they eventually located her broken down car at a known supplier’s home. Had my son been charged in this case, even if the charges were later dropped, that would remain on his publicly viewable record in Case Search – because they never fall off, even if they aren’t warranted or prosecuted - and the life in he has in recovery would likely be impossible. Stigmatized views of this medical condition and other well-intentioned laws about access to housing, jobs, education and more when a person has a substance use related criminal record are crippling to one’s recovery.

The Financial Impact

The fiscal note on the legislation is, in my opinion, grossly understates the financial impact on taxpayers. The 2024 cost to incarcerate one individual in Maryland was \$61,320 (including overhead). The cost (present value in 2024 dollars) to incarcerate an individual for an additional 20 years is \$1,226,400. That does not include inflation or the cost to build more prisons. Of the 2,300 overdose deaths in Maryland last year, 1,600 involved fentanyl. If one person in the supply chain from one half of those cases (800) were sentenced to the maximum sentence under this law, the cost would be a minimum of \$1 Billion. It is my expectation that law enforcement would charge more than one person in most overdose fatality cases, so I consider this a conservative cost estimate.

The Bill Provisions

There are several problematic provisions contained within this bill, which I describe below.

- **5-602.1. 22 (A) IN THIS SECTION, “DISTRIBUTE” DOES NOT INCLUDE THE SHARING OF HEROIN OR FENTANYL OR A CHEMICAL ANALOGUE OF HEROIN OR FENTANYL WITHOUT REMUNERATION OR THE EXCHANGE OF GOODS OR SERVICES.**
 - Having sex, giving a ride, giving food, buying a soda, allowing the use of a phone, or exchanging substances (trading an Adderall for a Xanax) could be considered "remuneration" and subject a person to this law.
- **(B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT DISTRIBUTE HEROIN OR FENTANYL OR A CHEMICAL ANALOGUE OF HEROIN OR FENTANYL WITHOUT THE LAWFUL AUTHORITY TO DO SO, THE USE OF WHICH RESULTS IN THE DEATH OR SERIOUS BODILY INJURY OF ANOTHER.**
 - This phrasing could exempt those who have the legal authority to prescribe from being subject to this provision, regardless of whether they over prescribed.
- **(C) THIS SECTION APPLIES REGARDLESS OF WHETHER:**
 - **(1) THE DEATH OR SERIOUS BODILY INJURY TO ANOTHER OCCURRED AS A RESULT OF USING HEROIN OR FENTANYL OR A CHEMICAL ANALOGUE OF HEROIN OR FENTANYL BY ITSELF OR COMBINED WITH ANY COMPOUND, MIXTURE, DILUENT, OR OTHER SUBSTANCE;**
 - Polysubstance use is extremely common. A person who supplies or shares Fentanyl, knowingly or unknowingly, could not reasonably know, or be expected to know, that someone was going to also ingest alcohol, for instance, to a level that would cause death by alcohol poisoning. Yet, at autopsy, the substance with the highest toxicity, fentanyl/carfentanyl, would likely be listed as the primary cause of death, subjecting a person who shared their supply to a 20-year sentence enhancement.
 - **(2) THE HEROIN OR FENTANYL OR THE CHEMICAL ANALOGUE OF 11 HEROIN OR FENTANYL IS MIXED OR COMBINED WITH ANY COMPOUND, MIXTURE, DILUENT, OR OTHER SUBSTANCE AFTER THE VIOLATION OF SUBSECTION (A) OF THESE SECTIONS OCCURS; OR**
 - A person who shares, or even sells, a single counterfeit pill that, unknown to them, is laced with fentanyl could be charged under this legislation.
- **(3) THE DISTRIBUTION OF HEROIN OR FENTANYL OR THE CHEMICAL ANALOGUE OF HEROIN OR FENTANYL IS MADE DIRECTLY TO THE PERSON WHO DIES OR SUFFERS SERIOUS BODILY INJURY.**
 - **(D) IF POSSESSION OF HEROIN OR FENTANYL OR A CHEMICAL ANALOGUE OF HEROIN OR FENTANYL IS TRANSFERRED MORE THAN ONCE PRIOR TO THE OCCURRENCE OF THE DEATH OR SERIOUS BODILY INJURY, EACH PERSON WHO DISTRIBUTED OR DELIVERED THE HEROIN, FENTANYL, OR THE CHEMICAL**

ANALOGUE OF HEROIN OR FENTANYL SHALL BE CONSIDERED TO HAVE VIOLATED THIS SECTION.

- This is problematic as someone who supplies a substance that is not tainted, but is subsequently adulterated with fentanyl, could be subject to the additional 20-year sentence. It is unlikely that one could prove, or that law enforcement would investigate, at what point and by whom fentanyl was added to the substance.
- **(E) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND, IN ADDITION TO ANY OTHER PENALTY IMPOSED FOR A VIOLATION OF § 5–602 OF THIS SUBTITLE, ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.**
 - 2024 cost to incarcerate one individual in Maryland was \$61,320 (including overhead).
 - The (present day/in 2024 dollars) cost to incarcerate an individual for an additional 20 years is \$1,226,400. That does not include inflation or the cost to build more prisons.
 - Of the 2,300 overdose deaths in Maryland last year, 1,600 involved fentanyl. If one person from half of those cases were sentenced under this law, the cost would be a minimum of \$1 Billion.
- **(F) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE TO AND NOT CONCURRENT WITH ANOTHER SENTENCE IMPOSED UNDER ANY OTHER PROVISION OF LAW.**
 - “Concurrent” sentencing would guarantee additional costs greater than existing enhancements that surpass the estimated costs reflected in the Fiscal Note.
- **(G) A PERSON WHO, IN GOOD FAITH, SEEKS, PROVIDES, OR ASSISTS WITH 31 THE PROVISION OF MEDICAL ASSISTANCE FOR A PERSON EXPERIENCING A MEDICAL EMERGENCY AFTER USING HEROIN OR FENTANYL OR A CHEMICAL ANALOGUE OF HEROIN OR FENTANYL SHALL BE IMMUNE FROM CRIMINAL PROSECUTION FOR A VIOLATION OF THIS SECTION IF THE EVIDENCE FOR THE CRIMINAL PROSECUTION 1 WAS OBTAINED SOLELY AS A RESULT OF THE PERSON SEEKING, PROVIDING, OR 2 ASSISTING WITH THE PROVISION OF MEDICAL ASSISTANCE.**
 - The term “Solely” is problematic. If law enforcement develops any other lead - such as syringes on seen with fingerprints or DNA of a person who called 911, they could be charged under this law, as that would not be "solely" from the call for assistance.
 - This would severely jeopardize public confidence in the protection of the Good Samaritan Law. Eroding trust in that safety net would mean fewer calls for lifesaving assistance and a needless increase in overdose deaths. The opposite of what we want.
- **VIOLATION OF THIS SECTION IF THE EVIDENCE FOR THE CRIMINAL PROSECUTION 1 WAS OBTAINED SOLELY AS A RESULT OF THE PERSON SEEKING, PROVIDING, OR 2 ASSISTING WITH THE PROVISION OF MEDICAL ASSISTANCE.**

While this legislation is well intentioned, seeking to stem the sales of fentanyl, it is dangerous and misguided and would cost many people their lives and livelihood, even if they survive their substance use disease. I understand the instinct to want justice for a lost loved one. However, the prosecution of a decedent's friends and sometimes family members under this statute would cause additional family trauma and do nothing to change the realities of having lost a loved one or to stem the sales of fentanyl to others. Community education, awareness, and equitable access to treatment is the better pathway. I urge you to put the funding that would be required to fund this legislation toward community education, treatment, and recovery supports.

For all the reasons cited above, I urge you to issue an **UNFAVORABLE** report on **HB1398**.

Respectfully Submitted,

Laura Mitchell, MBA

Co-Founder of Montgomery Goes Purple Community Coalition, Appointed Member, Montgomery County Alcohol and Other Drug Addiction Advisory Council (AODAAC); Liaison to the Montgomery County Mental Health Advisory Committee; Member, Montgomery County Overdose Fatality Review Team (OFRT); Vice President of Administration & Chair & Substance Use Prevention Committee, Montgomery County Council of PTAs (MCCPTA), Award Winning Volunteer Advocate for Mental Health and Substance Use Prevention & Treatment.