

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

**Position: UNFAVORABLE**

February 14, 2025

The Honorable Luke Clippinger  
Chair, House Judiciary Committee  
100-101 Taylor House Office Building  
Annapolis, MD 21401

Dear Chair Clippinger and members of the House Judiciary Committee,

I am a lifelong resident of Maryland. I have a master's degree in library and information science and, after 40 years as an educator, I am retired. Since my son's fatal overdose in 2017, I have devoted myself to drug policy research and have joined forces with other researchers as well as health care providers, policy analysts, and scientists—all committed to evidence based strategies to address the overdose crisis.

I am not in favor of HB 1398 because public health experts and addiction researchers concur: There is no evidence that increasing punitive measures with blanket minimums will reduce overdose or deter drug distribution. Furthermore, the unintended consequences are dramatic, exacerbating the risk of increased fatalities and worsening racial disparities, at great expense.

We all agree that the tragedy of lost lives, shattered families, and human suffering beg for innovation. Marching orders from every major health organization—including the American Medical Association<sup>1</sup> and the National Academies of Sciences Engineering and Medicine<sup>2</sup>—urge policymakers to move away from the current dominant focus on punishment and embrace policies based on health care.

The movement for comprehensive health-focused reform is gaining momentum and, with it, hope for the breakthrough needed to significantly reduce overdose. In fact, recently reported reductions in overdose fatalities are attributed to increased access to health-focused initiatives<sup>3</sup>. But hope is diminished by new crime bills that call for harsh mandatory minimum sentences—put forth without reliable analysis of their effects on public health—that veer away from evidence and deplete resources proven to save lives.

Experts also warn that such action will not reduce overdose or deter drug distribution, nor has increased imprisonment ever had a positive impact<sup>4</sup> on drug use or drug-related deaths. Jennifer Carroll, a medical anthropologist at North Carolina State University, conducted a recent study that found sweeps of drug

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<sup>1</sup><https://end-overdose-epidemic.org>

<sup>2</sup><https://www.nationalacademies.org/our-work/harm-reduction-services-for-people-who-use-drugs-exploring-data-collection-evidence-gaps-and-research-needs-a-workshop>

<sup>3</sup><https://nursing.jhu.edu/institute-for-policy-solutions-at-the-johns-hopkins-school-of-nursing/latest/declining-us-drug-overdose-deaths-evidence-based-prevention-and-treatment-working/>

<sup>4</sup><https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>

dealer arrests actually drove up overdoses<sup>5</sup>. Dr. Carroll and fellow researchers published an analysis in the *American Criminal Law Review*, detailing their premise that criminalization causes more harm than good<sup>6</sup>.

Jonathan Caulkins, a specialist in systems analysis of problems pertaining to drugs, crime, terror, violence, and prevention at Carnegie Mellon University, concurs, "These laws aren't going to work because they're targeted at the wrong people." Going after people at the lowest end of the supply chain, leaving the original suppliers and drug ring leaders untouched, will result in longer sentences for mostly low-level dealers, particularly people of color, who may be selling to support their addictions.

Fair and Just Prosecution expresses serious concerns that these laws: Exacerbate the risk of fatal overdoses; do not deter drug use or drug sales; often target friends and family rather than large-scale sellers; consume scarce criminal justice resources; and worsen racial disparities. In conclusion they recommend, "that prosecutors cease to seek these charges absent evidence of specific intent to kill," emphasizing the need for health and harm reduction approaches with the potential to save lives<sup>7</sup>.

A new RAND report analyzing America's "opioid ecosystem" addresses concerns about harsh criminal penalties. Because illicit fentanyl is infiltrating so much of the drug supply, they maintain, both sellers and users are often unaware of what contaminants are present, suggesting that drug-related deaths can be the result of ignorance rather than malice.

As recently reported by The Sentencing Project<sup>8</sup>, "there are 2 million people in the nation's prisons and jails—a 500% increase over the last 40 years. Changes in sentencing law and policy, not changes in crime rates, explain most of this increase." As an example, The Anti Drug Abuse Act of 1986, passed without the support of scientific evidence, imposed mandatory minimum sentences. In four years time, the incarcerated population surged from 196,000 to 740,000, landing the U.S. as the world leader in mass incarceration, a distinction that continues today. Knowing that the U.S. also has the highest number of drug overdose fatalities, furthers support for a deeper analysis of the merits of incarceration.

The CATO institute is relentless in making the case for common sense drug policies, emphasizing that "Lawmakers keep shifting the boogeyman for the crisis. First, they blamed doctors for prescribing pain pills. When heroin replaced prescription pain pills, and when fentanyl replaced heroin, they shift the blame... Harsh fentanyl laws are deeply misguided," they maintain and will lead to "further harm in communities that have been hit the hardest."

Today's cry for increasingly harsh sentences without proof of malice is fueled by the intense pain of parents who lost a beloved child. I know their pain; I am one of them. And I, too, am impassioned by a gut-wrenching death that was entirely preventable. But I also know that higher numbers of arrests don't reduce drug use, and that there are people who pass a drug to a friend without any idea of what that drug

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<sup>5</sup><https://ajph.aphapublications.org/doi/10.2105/AJPH.2023.307291>

<sup>6</sup>[https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2023/05/60-4\\_Drug-induced-homicides.pdf](https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2023/05/60-4_Drug-induced-homicides.pdf)

<sup>7</sup>[https://fairandjustprosecution.org/#:~:text=Fair%20and%20Just%20 Prosecution%20\(FJP,%2C%20 compassion%2C%20and%20 fiscal%20 responsibility](https://fairandjustprosecution.org/#:~:text=Fair%20and%20Just%20 Prosecution%20(FJP,%2C%20 compassion%2C%20and%20 fiscal%20 responsibility)

<sup>8</sup>[https://www.sentencingproject.org/research/?gad\\_source=1&gclid=EAlaIqobChMkYy9h\\_KAhAMVgEhHAR3t7ADMEAYASAAEgL7jvD\\_BwE](https://www.sentencingproject.org/research/?gad_source=1&gclid=EAlaIqobChMkYy9h_KAhAMVgEhHAR3t7ADMEAYASAAEgL7jvD_BwE)

contains. Some people do deserve punitive consequences, but blanket mandatory minimum sentences not only hinder the ability of a judge to take individual circumstances into account but also distract from our focus on policies that will make a difference.

I urge another unfavorable response to HB 1398.

Respectfully submitted,

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