

February 18, 2025

House Judiciary Committee
TESTIMONY IN OPPOSITION

HB 1398 - Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death (Victoria, Scottie, Ashleigh, and Yaders Law)

My name is Candy Kerr, I am a Baltimore City resident who has been working in the field of harm reduction for over 7 seven years. I strongly oppose HB 1398 - Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death (Victoria, Scottie, Ashleigh, and Yaders

Law). This bill would create a new enhanced penalty of up to 20 years in prison for those found liable for a fatal overdose. This approach of using longer and longer prison sentences to address problems related to drug use has been tried before and has failed. We urge the General Assembly to instead focus on proven solutions that prevent overdose like evidence-based treatment and education.

The overdose epidemic has been a tragedy that has cost the lives of thousands of Marylanders. The General Assembly should prioritize preventing overdose and bringing an end to this crisis. Unfortunately, HB1398 is counterproductive despite being well-intended. Laws like HB1398, often called drug-induced homicide (DIH) laws, seek to prevent overdose by using harsh penalties as a deterrent.

HB1398 proposes up to 20 additional years for those liable for distributing heroin or fentanyl that results in a fatal overdose. Distributing fentanyl already carries a penalty of up to 30 years in prison. The threat of 50 years in prison will be no more effective of a deterrent than 30 years. While the deterrent effect of HB1398 will be negligible, it will impact mass incarceration and state prison costs. DIH laws like HB1398 also have unintended consequences. DIH prosecutions will discourage people who use drugs from reporting potentially reversible overdoses for fear of harsh criminal penalties. HB1398 has some protections for those reporting overdoses but they do not apply to all scenarios. If HB1398 passes, it is likely that some who report overdoses will get prosecuted for DIH. That will discourage scores of others who use drugs from reporting overdose, potentially increasing the number of fatalities rather than improving the overdose epidemic.

In the work I've done over the years one thing I have learned is that criminalization of people is not a way to solve the larger problem. In this instance, this law is assuming that there is a clear distinction between people selling others drugs and people sharing, as a person who used drugs I also at times sold and bartered drugs to friends and people I used with. I also didn't buy drugs from "king pins" or people running large operations or trafficking drugs, again it was friends who got it from a guy, who got it from a guy.

Knowing that this is how using drugs works, I am certain that this bill will not reach the intended audience of 'king pins' but will scoop up people friends, partners and family members who

use together. We don't have to trade one life for another, adding a larger penalty will only increase harm.

The General Assembly should focus on investments in prevention and treatment rather than new harsh penalties. I urge the House Judiciary Committee to oppose HB1398.