



MDDCSAM is the Maryland state chapter of the American Society of Addiction Medicine whose members are physicians and other health providers who treat people with substance use disorders.

Also testifying on behalf of MedChi, the Maryland State Medical Society

HB 1398

Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death (Victoria, Scottie, Ashleigh, and Yader's Law)

House Judiciary Committee

Feb 18, 2025

UNFAVORABLE

Greetings, Chairman Clippinger, Vice-Chair Bartlett, and members of the committee.

The treatment and prevention of addiction and overdose in Maryland is at a crossroads. One path leads to increased penalties and incarceration despite decades of ineffectiveness and harms of these measures.

These deterrence-focused measures may seem sensible, but when they apply to people with addictions, who are not “dealers” per se, they are not compatible with evidence-based measures needed to reduce overdose.

Each life cut short by overdose is a tragedy. No parent should have to experience this.

This is why we oppose this bill.

Some parents will advocate for SB 604 believing that it will save lives through long mandatory sentences, for those who distribute drugs resulting in death. The strong desire to take action after such a devastating loss is completely understandable. And it may seem to make sense that incarcerating drug dealers in large enough numbers, for decades, may reduce the drug supply.

Unfortunately, at least half of people sentenced under similar Drug-Induced Homicide (DIH) laws elsewhere are not drug dealers, but **friends and family of the decedent who also suffer from addiction**. It would be impossible to incarcerate enough people to make any difference. Each person incarcerated would be immediately replaced, since **sharing and exchanging drugs is very common, almost universal, among the population of drug users**.

The great majority of people with addictions share and exchange drugs with others to help them avoid intolerable withdrawal symptoms, or to avoid these symptoms themselves. **The drug-related death of a friend or family member is unpredictable. Drug potency changes. Using illicit opioids is inherently dangerous. The drug supply will always meet the demand.**

Other parents who have lost loved ones to overdose are opposed to this bill because the evidence indicates that it **is more likely to increase, not decrease, overdose.**

Long sentences may be appropriate for professional drug dealers, but not if large numbers of people who use drugs are also caught up, by chance, by this law, simply for behavior common in this population.

Advocates of long sentences often point to cases of individuals who “got clean” while incarcerated. Yet, decades of incarceration are devastating to individuals, their chances of recovery, and to their families. Many of the lifesaving programs and providers that treat substance use disorders become unavailable to those incarcerated.

The futility of mass incarceration is clear when we consider that people with addiction have already lost everything: jobs, relationships, finances, and health – yet continue to use drugs until they get the appropriate help.

ANNOTATED BIBLIOGRAPHY:

“Half of those charged with drug-induced homicide were not, in fact, “dealers” in the traditional sense, but friends and partners to the deceased” . . . There is a “broad misclassification of friends, partners, family members, and others as ‘dealers.’ ”

Leo Beletsky (Northeastern University) “America’s Favorite Antidote: Drug-induced Homicide In The Age Of The Overdose Crisis,” 2019. Utah Law Review 833 (2019). Volume 2019 | Number 4 Article 4
<https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1219&context=ulr>

“There is not a shred of evidence that [DIH] laws are effective at reducing overdose fatalities.”

“Drug war proponents have been repeating the deterrence mantra for over 40 years, and yet drugs are cheaper, stronger, and more widely available than at any other time in US history.

“Research consistently shows that neither increased arrests nor increased severity of punishment for drug law violations reduces either use or sales.

“The only behavior that is deterred by drug induced homicide prosecutions is the seeking of life-saving medical assistance. The most common reason people cite for not calling 911 in the event of an overdose is fear of police involvement, notwithstanding ‘Good Samaritan laws’ which are undermined by DIH laws.”

An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane. Drug Policy Alliance November 2017. <https://perma.cc/U2PT-MXYV>

"Unduly long prison terms are counterproductive for public safety. . ."

"The excessive nature of punishment in the U.S. is not based on a rational analysis of incarceration and the fundamental objectives of sentencing policy. Moreover, unduly long prison terms are counterproductive for public safety."

IBID: An Overdose is Not Murder, Drug Policy Alliance.

Report: Long-Term Sentences: Time to Reconsider the Scale of Punishment. November 5, 2018.

The Sentencing Project. (The article appears in the UMKC Law Review, Vol. 87:1.)

<https://www.sentencingproject.org/reports/long-term-sentences-time-to-reconsider-the-scale-of-punishment/>

"According to deterrence theory, [incarceration] ought to have had a deterrent effect, but, instead, the recidivism rate for drug offenders between 2005 and 2010 was 76.9% within five years of release."

Bureau of Justice Statistics, "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010" (2014).

[https://bjs.ojp.gov/library/publications/recidivism-prisoners-released-30-states-2005-patterns-2005-2010-update#:~:text=Supplemental%20Tables%20\(Most%20serious%20commitment,\(CSV\)%20have%20been%20added.&text=About%20two%20thi,reds%20\(67.8%25\),were%20arrested%20within%205%20years.](https://bjs.ojp.gov/library/publications/recidivism-prisoners-released-30-states-2005-patterns-2005-2010-update#:~:text=Supplemental%20Tables%20(Most%20serious%20commitment,(CSV)%20have%20been%20added.&text=About%20two%20thi,reds%20(67.8%25),were%20arrested%20within%205%20years.)

"... at least among those with drug-related charges, incarceration and supervision seemed not to deter subsequent illegal behavior."

"A 2010 study found that variations in prison and probation time had no detectable effects on rates of recidivism; meaning that changing the length of someone's prison or probation sentence did not noticeably impact their likelihood of committing another crime after release."

Donald Green and Daniel Winik, "Using Random Judge Assignments to Estimate the Effects of Incarceration and Probation on Recidivism among Drug Offenders," *Criminology* 48, no. 2 (2010): 357–387, doi: 10.1111/j.1745-9125.2010.00189.x/abstract

A large body of evidence demonstrates that neither increased arrests nor increased severity of criminal punishment for drug-related offenses have resulted in less use (demand) or fewer sales (supply). In 2011, for instance, researchers found that changes in hard drug arrest rates did not predict changes in [injection drug use] population rates.

Samuel R. Friedman et al., "Drug Arrests and Injection Drug Deterrence," *American Journal of Public Health* 101, no. 2 (2011): 344-249, doi: 10.2105/ AJPH.2010.191759. 242. Pew Charitable Trusts,

A recent 50-state study found no relationship between state drug imprisonment rates and drug use or overdose deaths.

Pew Charitable Trusts, "Letter to The President's Commission on Combating Drug Addiction and the Opioid Crisis RE: The Lack of a Relationship between Drug Imprisonment and Drug Problems" (June 2017), <http://www.pewtrusts.org/en/research-and-analysis/speeches-and-testimony/2017/06/www.pewtrusts.org/~media/assets/2017/06/the-lack-of-a-relationshipbetween-drug-imprisonment-and-drug-problems.pdf>.

"Numerous scholars of drug policy assert that the incarceration of drug offenders ... has little or no impact on drug distribution." According to "the replacement effect, the market responds to the demand for drugs by replacing drug sellers sent to prison with either new recruits or by the increased drug selling of dealers already in the market. As a result, the incapacitation effect found for some other offenses is largely nullified in the case of drug dealing. In fact, there is indirect evidence that the incarceration of drug dealers has actually contributed to an increase in crime."

Roger K. Przybylski Correctional and Sentencing Reform for Drug Offenders Research Findings on Selected Key Issues September 2009. RKC Group. Lakewood, Colorado.

Funded by the Colorado Criminal Justice Reform Coalition

https://www.ccjrc.org/wp-content/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf

". . . The main effect of imprisoning people who sell drugs "is merely to open the market for another seller."

Anne Morrison Piehl, Bert Useem and John J. DiIulio, Jr., "Right-Sizing Justice: A Cost Benefit Analysis of Imprisonment in Three States," Center for Civic Innovation at the Manhattan Institute, Civic Report No. 8 (1999),

https://www.manhattan-institute.org/pdf/cr_08.pdf.

"The major reason for 911 calls being delayed or not made at all was concern over police presence."

Baca CT et al. What Heroin Users Tell Us About Overdose, Journal of Addictive Diseases 26, no. 4 (2008): 63-68, doi:10.1300/J069v26n04_08

In Baltimore, one of the most common reasons for delaying the 911 call was fear of police involvement.

Robin A. Pollini et al., "Response to Overdose Among Injection Drug Users," American Journal of Preventive Medicine 31, no. 3 (2006): 261-264, doi: 10.1016/j.amepre.2006.04.002

"As people addicted to opioids transition to or enter the illicit heroin market, they are met with the same "arrest and incarcerate" policies that have been widely recognized as ineffective at reducing drug use, causing high rates of relapse, recidivism and re-incarceration.

Global Commission on Drug Policy website, <http://www.globalcommissionondrugs.org/>

Respectfully, Joseph A. Adams, MD, FASAM