



TESTIMONY IN OPPOSITION TO SB 906

Distribution of Heroin or Fentanyl Causing Death or Serious Bodily Injury

TO: Members of the Judicial Proceedings Committee
FROM: Center for Criminal Justice Reform, University of Baltimore School of Law
DATE: February 27, 2026

The University of Baltimore School of Law’s Center for Criminal Justice Reform (“the Center”) is dedicated to supporting community-driven efforts to improve public safety and address the harm and inequities caused by the criminal legal system. **The Center strongly opposes Senate Bill 906.**

This bill creates a new criminal offense for distributing heroin, fentanyl, or a chemical analogue, “the use of which results in the death or serious bodily injury of another.” The new offense is a felony, which carries a sentence of up to 20 years. Senate Bill 906 will undermine public health and safety efforts, and unnecessarily intrude on judicial discretion by depriving judges of the ability to craft appropriate sentences based on the unique facts and circumstances of each individual case.

Several criminal laws and penalties exist in Maryland that prosecutors may use when someone dies or experiences serious bodily injury after purchasing heroin, fentanyl, or their analogues. Under Md. Code, Crim. Law § 5-602, a person guilty of manufacturing, possessing with intent to distribute, or distributing a controlled substance is guilty of a felony and is subject to imprisonment not exceeding 20 years or a fine not exceeding \$25,000 or both. Under Md. Code, Crim. Law § 5-608.1, additional carceral penalties already exist when heroin, fentanyl, or their analogues are involved. Section 5-608.1 creates a separate criminal offense for individuals found guilty of possessing, distributing, or possessing with the intent to distribute heroin, fentanyl, or their analogues. Under § 5-608.1, individuals are subject to imprisonment for up to 10 years, to be served consecutively to any other sentence. Therefore, without Senate Bill 906, an individual who sells heroin to another person may be sentenced to serve 30 years in prison under current law. Senate Bill 906 would allow that individual to serve up to 50 years in prison if the person who purchased the heroin experienced serious bodily injury or death. Notably, Senate Bill 605 would force judges to impose a consecutive sentence, regardless of the unique circumstances of the individual and the other crimes for which they may have been convicted.

The Center recognizes the devastation and gravity of the pernicious harms of substance abuse, addiction, and overdose in Maryland, particularly those relating to fentanyl and heroin. Like all states, Maryland has seen countless lives lost and families destroyed. It is because of this devastation, and not in spite of it, that the Center opposes this bill. The Center joins the proponents of Senate Bill 906 in agreeing that we must take action to confront these compounding public health crises. However, it is overwhelmingly clear that Senate Bill 906 is

not the answer. Senate Bill 906 will not only fail to make our communities safer, but it will profoundly and disparately exacerbate the harms of the criminal justice system, and distract policymakers from needed investments in treatment and more effective responses.

The Center strongly opposes Senate Bill 906 for four primary reasons: (1) Senate Bill 906's vague and overly broad language will result in variable and extreme enforcement, (2) no research exists to indicate that laws like this one reduce opioid-related harms, including severe bodily injury and death, (3) this law will needlessly cost Maryland more money when cost-effective and empirically proven interventions exist, and (4) this law will exacerbate racial disparities in drug-related prosecutions. Appropriately, much has been said about the urgent need for a public health response to substance abuse, addiction, and overdose. Instead, Senate Bill 906 doubles down on the failures of the war on drugs and runs counter to evidence and the lived realities of communities suffering from the burden of addiction. We cannot afford to and should not make these same mistakes again.

I. SENATE BILL 906 IS SUSCEPTIBLE TO BROAD AND VARIABLE INTERPRETATION, RESULTING IN DISPARATE AND EXTREME ENFORCEMENT

The vague, conflicting text of Senate Bill 906 will produce variable and extreme enforcement of its provisions. First, this is especially true because Senate Bill 906 does not define "serious bodily injury." Federal law and other sections of the Maryland code corroborate these concerns. Under 21 U.S.C. § 802(25), "serious bodily injury" is defined as a bodily injury that involves "(a) A substantial risk of death; (b) Protracted and obvious disfigurement; or (c) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty." Here, the federal definition is instructive. Anyone who distributes controlled substances in Maryland resulting in serious bodily injury or death is already subject to enhanced federal penalties, including a 20-year mandatory term of imprisonment. Federal law confirms that the definition of "serious bodily injury" is extraordinarily broad. Despite the fact that legislation like Senate Bill 906 is often referred to as a "drug-induced *homicide*" law, the reality is that SB 906 would enhance criminal liability and penalties when one friend sells heroin to another friend who experiences a non-fatal overdose or who experiences extended kidney, liver, or respiratory failure.

Second, Senate Bill 906 contains no *mens rea* requirement. A defendant need not know that the controlled substance contained fentanyl or heroin to be criminally liable under this bill. Under Senate Bill 906, a high school student who had stolen what he believed to be an Adderall pill from his parents' medicine cabinet and sold that pill to his classmate could be subject to 50 years in prison if that pill actually contained heroin or fentanyl and his classmate overdosed or died as a result.

Third, despite purported protections in Senate Bill 906, this legislation would inevitably be used to prosecute the friends, family, and partners of people who experience serious bodily injury or death as a result of their substance use. Senate Bill 906 fundamentally misunderstands the nature of drug use, sharing, and transactions among people who use or abuse drugs, including those suffering from substance use disorder. Frequently, friends or family members who use drugs will pool their money and have one person go buy drugs. Later on, they meet and divide

the drugs. Often, the person who gives someone the drugs that lead to an overdose is not a drug dealer but rather a fellow user.

Fourth, the purported “sharing exception” in the bill is undermined by the drafting of subsection (D). On the one hand, the proposed bill language provides that sharing heroin or fentanyl without remuneration or exchange of goods is exempt from prosecution. At the same time, subsection (D) states that if possession of heroin, fentanyl, or their analogues “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 their analogues] shall be considered to have violated this section.” (emphasis added). By including “deliver[y],” subsection (D) could result in those who shared drugs by *delivering* them in the chain of distribution without remuneration or exchange of goods being subject to two more decades of prison time.

Finally, the removal of the Good Samaritan clause from Senate Bill 906 will profoundly alter the manner in which friends and family, who may also be users, respond to individuals experiencing medical emergencies or overdoses. Decades of research and experience suggest a holistic approach to managing overdoses and drug-related emergencies. A 2021 study found that states with broader legal protections, such as Good Samaritan laws, generally experienced a reduction in overdose fatalities.¹ By removing this protection from the current legislation, Senate Bill 906 not only exposes concerned loved ones seeking to assist their relatives to potential legal repercussions, but may actually deter individuals from seeking medical or emergency assistance for someone experiencing an acute overdose.

II. NO RESEARCH EXISTS TO INDICATE THAT LEGISLATION LIKE SENATE BILL 906 REDUCES OPIOID-RELATED HARMS, INCLUDING SEVERE BODILY INJURY AND DEATH

The existing research suggests there is no proof that furthering criminalization reduces opioid use or its related harms, including serious bodily injury, and death.”² In fact, research shows that criminalization only increases drug-related harms.³ Alarmingly, a 2023 study in Colorado found that “increasingly punitive drug possession policies for fentanyl possession... could lead to increased deaths from opioid overdose.”⁴ Additionally, an analysis of the impact of a conviction in an opioid-related death prosecution in Haywood, North Carolina in 2018, indicates

¹ Leah Hamilton et al., *Good Samaritan Laws and Overdose Mortality in the United States in the Fentanyl Era*, 97 Int’l J. Drug Pol’y 103294 (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9529169/>

² See, Alexandra Savinkina, et. al., *Mortality, Incarceration and Cost Implications of Fentanyl Felonization Laws: A Modeling Study*, 121 INT’L J. DRUG POLICY, 1, 7 (2023) (noting, criminalization has not been proven to reduce drug use or its sequelae); See also, *More Imprisonment does Not Reduce State Drug Problems*, The Pew Charitable Trusts, Mar. 8, 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems#:~:text=More%20Imprisonment%20Does%20Not%20Reduce%20State%20Drug%20Problems%20%7C%20The%20Pew%20Charitable%20Trusts> (last visited Feb. 4, 2025); See also, Nora D. Volkow, *Addiction Should be Treated, Not Penalized*, 46 NEUROPSYCHOPHARMACOLOGY, 2048 (2021); See also, Jeffrey P. Bratberg, et. al., *Support Don’t Punish: Drug Decriminalization is Harm Reduction*, 63 J. AMER. PHARMACISTS ASSOC. 442-229 (2023).

³ Bratberg, et. al., *supra* note 1.

⁴ Savinkina, *supra* note 1 at 7.

that these laws are detrimental to public health.⁵ Another study, El Sabawi et. al. (2023) concluded, while “the number of [drug-induced homicide] charges filed increased exponentially from 2009 to 2016 [this is] in the absence of any meaningful evidence that such charges produced positive public health impacts.”⁶

Significantly, the authors of the only longitudinal quantitative study finding that such laws resulted in a statistically significant reduction in opioid-related deaths⁷ were forced to rescind the publication of their findings in 2023.⁸ A review of this study revealed a host of methodological issues, including problems with the data set, sampling strategies, and modeling decisions.⁹ While research into the causes and outcomes of drug abuse, addiction, and overdose should continue,¹⁰ there is consensus that longer prison sentences, which Senate Bill 906 proposes, have not resulted in a reduction in self-reported drug use, drug overdose deaths, or drug arrests.¹¹

In sum, given all the evidence that these laws do not decrease opioid-related harms, including serious bodily injury and death, Senate Bill 906 is a well-intentioned, yet misguided, remedy to a public health crisis that is devastating the lives of Marylanders and their families. As discussed below, criminalization undermines a host of other empirically proven solutions to reduce opioid-related harms that Maryland should implement or expand.

III. RATHER THAN PURSUING COST-EFFECTIVE SOLUTIONS THAT ARE EMPIRICALLY PROVEN TO WORK, SENATE BILL 906 WILL WASTE MARYLAND’S LIMITED FISCAL RESOURCES

Senate Bill 906 will unequivocally cost Maryland more money without addressing the overdose epidemic and the public health challenges associated with substance use at a time when the State is experiencing a well-documented and unprecedented fiscal crisis. This budgetary

⁵ See Jennifer J. Carroll, et. al. *Drug Induced Homicide Laws May Worsen Opioid Related Harms: An Example from Rural North Carolina* 97 INT’L J. DRUG POLICY, 1-6 (2021).

⁶ El-Sabawi, et. al, *supra* note 5, at 1384.

⁷ Youngeon Lee, et. al., *Longitudinal Study on Deterrent Effect of Drug-Induced Homicide Law on Opioid-Related Mortality Across 92 Counties and the District of Columbia in the U.S.*, 52 J DRUG ISSUES, 131-143 (2022).

⁸ Youngeon Lee, et. al., *Retracted: Longitudinal Study on Deterrent Effect of Drug-Induced Homicide Law on Opioid-Related Mortality Across 92 Counties and the District of Columbia in the U.S.*, 52 J DRUG ISSUES, 131-143 (2022).

⁹ See Jennifer J. Carroll, et. al., *A Discussion of Critical Errors in a Longitudinal Study on the Deterrent Effect of Drug-Induced Homicide Laws on Opioid-Related Mortality Across 92 Counties and the District of Columbia in the United States*, 15 WORLD MED. & HEALTH POLICY, 587-612 (2022).

¹⁰ *Id.* at 5; See also Meghan Peterson, et. al., “One Guy Goes to Jail, Two People are Ready to Take His Spot”: Perspectives on Drug-Induced Homicide Laws Among Incarcerated Individuals, 70 INT’L. J. DRUG POLICY, 47-53 (2019); See also, Taleed El-Sabawai et. al., *Drug Induced Homicide Laws and False Beliefs about Drug Distributors: Three Myths That Are Leaving Prosecutors Misinformed*, 60 AM. CRIM. L. REV., 1381 (2023). See also, Brandon Morrissey, et. al, *Prosecuting Overdose: An Exploratory Study of Prosecutorial Motivations for Drug-Induced Homicide Prosecutions in North Carolina*, 125 INT’L J. DRUG POLICY, (2024).

¹¹ *More Imprisonment does Not Reduce State Drug Problems*, *supra* note 1; See also, Volkow, *supra* note 1.

crisis is further compounded by ongoing uncertainties surrounding the fiscal impact of the federal actions of the current administration. To address the budget crisis, our state is already contending with further proposed cuts to State-funded resources and services.

Senate Bill 906 will only intensify these economic woes. This assertion is not speculation. The fiscal and policy note that accompanied the identical 2025 version of this bill¹² stated, “the cumulative general fund expenditures may increase significantly as a result of the bill’s incarceration penalty due to people being committed to State correctional facilities for longer periods of time.”¹³ Based on last year’s estimates “state costs could increase by \$599,040 for each annual cohort of defendants sentenced under the bill’s increased penalty.”¹⁴ A ten-year projection of costs, based on these estimates, would cost the State more than \$6 million. The increased costs cited in the fiscal policy note support the conclusions of the aforementioned Colorado study, which likewise found that these policies “could lead to... substantially increased costs.”¹⁵

It is worth noting that the prior fiscal and policy note for this legislation supposes that only eight individuals would be prosecuted annually under this provision. There were more than 1,600 fentanyl-related deaths in Maryland from July 2023 through June 2024.¹⁶ There were presumably additional heroin-related deaths during that year and even more serious bodily injuries caused by fentanyl or heroin. The fiscal and policy notes’ financial projection either illustrates the likely arbitrary, minimal enforcement of Senate Bill 906 in less than 1% of fentanyl-related deaths, or seriously underestimates the profound financial impact of the enforcement of this legislation.

Therefore, enacting Senate Bill 906 is a misguided solution, particularly when there are cost-effective and empirically proven solutions to reduce opioid deaths, including increased naloxone access, fentanyl test strip distribution, syringe service programs, and alternative sentencing courts focused on addressing substance abuse and related treatment needs.¹⁷ There are also, as noted above, substantial punitive penalties already on the books. Despite well-documented spikes and prevalence of overdoses and overdose deaths, there are also recent reasons to be hopeful. Maryland saw an approximately 25% decrease in fatal drug overdoses in 2025.¹⁸ We all share an urgent and common goal to reduce opioid-related harms in Maryland.

¹² Md. Dep’t of Legis. Servs., *Fiscal and Policy Note, S.B. 604*, 2025 Reg. Sess. (2025), https://mgaleg.maryland.gov/2025RS/fnotes/bil_0004/sb0604.pdf.

¹³ *Id.* at 6

¹⁴ *Id.*

¹⁵ Savinkina, *supra* note 1 at 7.

¹⁶ United States Drug Enforcement Agency, *U.S. Attorney’s Office and DEA Announce Fentanyl Overdose Task Force*, Oct. 28, 2024, <https://www.dea.gov/press-releases/2024/10/28/us-attorneys-office-and-dea-announce-fatal-fentanyl-overdose-task-force>.

¹⁷ Amir Razaghizad, et. al., *The Effect of Overdose Education and Naloxone Distribution: An Umbrella Review of Systematic Reviews*, 111 AMR. J PUB. HEALTH, 1516, 1517 (2021); *See also, More Imprisonment*, *supra* note 1.

¹⁸ Alizza Zhu, *Drug Overdose Deaths Plummeted in Baltimore, Maryland Again Last Year*; *The Baltimore Banner* (Jan. 22, 2026) <https://www.thebanner.com/community/public-health/drug-overdose-decline-maryland-baltimore-J3PO7BXJAZGRJMBMXEASZLOB6U/>

Given the reality of our limited fiscal resources, our legislative efforts should be directed toward expanding these scientifically proven and impactful solutions that will improve the lives of Marylanders.

IV. SENATE BILL 906 WILL LIKELY EXACERBATE RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM

Discriminatory enforcement of drug-related offenses has produced extreme, well-documented racial disparities throughout the criminal justice system. Despite the fact that Black people comprise 13% of the United States' population, “[they] comprise 29% of those arrested for drug law violations, nearly 35% of those incarcerated in state or federal prison for any drug law violations, and roughly 35% of those incarcerated in state prison for possession only.”¹⁹ Maryland’s racialized enforcement of the War on Drugs is similarly alarming and intolerable. According to a study by the ACLU, “between 2018-2019, 96% of all marijuana possession charges were filed against Black people in Baltimore City, even though Black people only represent around 60% of the city’s population,” and “[e]ven though Black people only made up about 65% of the population [in Prince George’s County],” 90% [of the people charged with possession of marijuana over 10 grams there] were Black.”²⁰

Senate Bill 906, if enacted, is susceptible to broad and variable interpretation, which would allow for disparate enforcement based on geography, race and socioeconomic status of the “dealer” and “purchaser,” or the political whims of individual prosecutors. Enforcement of criminal laws like Senate Bill 906 in other jurisdictions confirms that Maryland should be concerned about racially disparate and discriminatory enforcement under this legislation. For example, “[i]n McHenry County, Illinois, a county that has a [B]lack population of under 2%, prosecutors have brought [drug-induced homicide] cases against four [B]lack men from Chicago, which totals 35% of their 11 drug-induced homicide cases.”²¹ In Hennepin County, Minnesota, “[a]t the very least, [...] 72% of [the county attorney’s drug-induced homicide] prosecutions have been against [B]lack people despite a [B]lack population of 13% in the county in 2016.”²²

For the foregoing reasons, the Center for Criminal Justice Reform urges an unfavorable report on Senate Bill 906.

¹⁹ Drug Policy Alliance, *An Overdose Death is Not Murder: Why Drug-Induced Homicide Laws are Counterproductive and Inhumane*, Nov. 2017, https://drugpolicy.org/wp-content/uploads/2023/05/Overdose_Death_Is_Not_Murder_Report.pdf.

²⁰ Neydin Milian & Yanet Amanuel, *Let’s Not Repeat a Racist Past: The War On Drugs*, ACLU of Maryland, Mar. 18, 2021, <https://www.aclu-md.org/en/news/lets-not-repeat-racist-past-war-drugs>.

²¹ Drug Policy Alliance, *supra* note 21.

²² *Id.*