



LAW ENFORCEMENT ACTION PARTNERSHIP

ADVANCING JUSTICE AND PUBLIC SAFETY SOLUTIONS

SB906
OPPOSE

STATEMENT OF
Eric E. Sterling, J.D.¹
On Behalf of the
Law Enforcement Action Partnership
SUBMITTED TO
THE MARYLAND SENATE
COMMITTEE ON JUDICIAL PROCEEDINGS
HON. WILLIAM C. SMITH, JR., CHAIR
HON. JEFF WALDSTREICHER, VICE CHAIR
MARCH 3, 2026

IN OPPOSITION TO SB 906
Criminal Law – Distribution of Heroin or Fentanyl Causing Death or
Serious Bodily Injury
(Victoria, Scottie, Ashleigh, and Yader’s Law)

Chair Smith, Vice Chair Waldstreicher, Distinguished Senators, we oppose SB906 and urge you to give it an unfavorable report.

On behalf of the Law Enforcement Action Partnership (LEAP), I appreciate the opportunity to testify today regarding SB 906. LEAP is a nonprofit group of police, prosecutors, judges, and other criminal justice professionals who speak from firsthand experience. Our mission is to make communities safer by focusing law enforcement resources on the greatest threats to public safety, promoting alternatives to arrest and incarceration, addressing the root causes of crime, and working toward healing police-community relations. I have spent my career studying, drafting, and reforming drug sentencing laws, both as Assistant Counsel to the U.S. House Judiciary Committee (1979-1989), where I played a key role in crafting federal drug statutes, and as a lifelong advocate for more just and effective sentencing policies. I co-founded Families Against Mandatory Minimums (FAMM) and led the Criminal Justice Policy Foundation, organizations dedicated to correcting the injustices created by excessively punitive sentencing laws. Recently I served on and chaired the Advisory Commission on Policing in Montgomery County, MD.

Background. In 1986, as Assistant Counsel to the U.S. House Judiciary Committee, I wrote the Federal law that punishes drug dealers if death results from the drug they distributed. That summer, as Congress and the nation became acutely aware of the deadliness of crack cocaine, a well-intentioned goal of the bills I drafted was to protect urban communities and especially young Black men (like the athletes who died, Len Bias and Don Rogers) by giving the U.S. Justice Department the ability to seek much longer sentences and mandatory minimum sentences. As the law was applied – disproportionately to low-level offenders – the consequences of those prosecutions and lengthy sentences have been devastating to Black families and communities. The methamphetamine mandatory minimums have been disproportionately applied to the Hispanic population. Most importantly, these laws have been completely ineffective. They have not stopped the distribution of dangerous drugs. They have not made drugs more scarce. They have not saved lives. They have resulted in countless cases of unjust excessive incarceration, devastating lives, families and communities and wasting tens of billions of dollars. SB 609 is likely to be as ineffective, unjust and wasteful, but only on a smaller scale.

I have five points to make:

1. This bill won't save lives.
2. The bill is wholly unnecessary to adequately punish the distributors of fentanyl.
3. We can fairly anticipate that its harsh penalties will be applied in a racially disproportionate manner as are other Maryland and federal drug laws.
4. The harsh penalties, if imposed as conceived, are unjust when compared to other offenses with similar culpability for taking life unlawfully.
5. And finally, this bill is almost certainly going to be extraordinarily expensive and could easily cost Maryland over \$50 million in 10 years.

Analysis:

1. This bill won't save lives – it is likely to increase overdose deaths. In a drug overdose epidemic, the primary goal of public policy and legislation should be to save lives and reduce suffering. The Maryland Department of Health has extensive efforts to reach the community of drug users to help save lives. This bill will reach drug users very differently. How will this bill be understood by a person who uses opioids, cocaine, heroin and fentanyl? “If I am around someone who is having an overdose and they die or suffer serious bodily injury, I am going to be arrested and could be charged with distribution that could send me to prison for 20 years. If I call 9-1-1 for this overdosing person the cops will have my voice, my phone number, my location.” The “sharing without remuneration” exclusion is too subtle and ambiguous to be meaningful on the street. People who are overdosing and helpless are not going to get life-saving support from the people around them! More people are going to die.

2. This bill is wholly unnecessary from a law enforcement or punishment perspective. The crime in proposed section 5-602.1 is “distribution” of heroin or fentanyl. Distribution is already a heavily punished crime in THREE other sections of the law:
 - a. Md. Crim Law § 5-602. Distributing, possessing with intent to distribute (Penalty of up to 20-years imprisonment for distribution of a narcotic, § 5-608(a), and sentences of up to 25 years and 40 years for subsequent convictions).

If the distribution is of fentanyl, a mixture of fentanyl, or fentanyl analogues, **in addition** to the § 5-608 penalties, an additional penalty of up to 10 years may be imposed now, § 5-608.1(b) Penalties — Distribution of fentanyl and fentanyl mixtures.
 - b. If the distribution is of more than 28 grams (g) of heroin (or other natural opioid), more than 5 g of fentanyl or any analogue of fentanyl, or 28 g of a mixture containing a “detectable” amount of fentanyl or analogue, the sentence must be a minimum of 5 years imprisonment. § 5-612. Manufacture, distribution of specified amounts.
 - c. If the distributor of the heroin or fentanyl is “an organizer, supervisor, financier, or manager who acts as a coconspirator in a conspiracy to manufacture, distribute, dispense, transport in, or bring into the State” the heroin or fentanyl, then they are subject to imprisonment of up to 20 years in addition (the crime cannot merge with the object of the conspiracy), § 5-613. Drug kingpin.
3. Huge unwarranted racial disparity in prosecutions and sentences in drug enforcement has been the rule at the Federal level and here in Maryland. It is highly probable this new statute will be enforced in a similarly racially disproportionate manner. In Maryland, this is well established and documented by the 2023 report of the Maryland State Commission on Criminal Sentencing Policy, “An Assessment of Racial Differences in Maryland Guidelines-Eligible Sentencing Events.” **According to the report, 77.6 percent of the persons sentenced for felony narcotics offenses were Black, and 19.7% were White** (figure 9, p. 26). **For drug offenses that carry a mandatory minimum sentence, Black defendants were 89.5% and White defendants were 7.9%** (figure 20, p. 38).

In other states with separate prosecutions of “drug-induced homicide” the data reveals that *the fact that the person who died was white was the primary determinant whether a prosecution for drug-induced homicide is brought.* In the data compiled from media sources by The Action Lab at Northeastern University, no instance was identified in which the deceased victim in a prosecution was a person of color.

<https://www.healthinjustice.org/drug-induced-homicide> (accessed Feb. 27, 2026).

4. This bill will lead to injustice.
 - a. Consider the question of culpability and state of mind. This new law is silent on state of mind. The distributor does not need to *know* that the substance is heroin or fentanyl, simply to be reckless to distribute it with that possibility.
 - b. If a person drives a motor vehicle and while driving is impaired by a controlled dangerous substance (CDS) and KILLS another person, the maximum sentence is 5 years imprisonment. Md. Crim. Law sec. 2-506. The recklessness of distributing CDS with heroin or fentanyl that kills another person is no more culpable than the reckless of driving while impaired. Comparing the punishment for these two offenses involving death highlights the likely injustice of a sentence of 20 years of punishment consecutive to other punishment for distribution.
 - c. If a person commits manslaughter by operating a vehicle or vessel in a “criminally negligent manner” and KILLS another person, the maximum sentence is up to 3 years imprisonment. Md. Crim. Law sec. 2-210(c). “Criminally negligent” means with respect to a result or circumstance that the person should be aware, but fails to perceive, that the person’s conduct creates a substantial and unjustifiable risk that such result will occur and the failure to perceive constitutes a gross deviation from the standard or care that would be exercised by a reasonable person. (Md. Crim. Law sec. 2-210(c)). That failure to perceive a *substantial and unjustifiable risk that a fatal result will occur* sounds like the situation with lower-level distributors of fentanyl – people who don’t have actual knowledge that there is fentanyl. Isn’t another way to describe the crime in SB 906 is “distributing CDS in a ‘criminally negligent manner’ resulting in death or serious bodily injury.” Three years imprisonment if the killing is with a vehicle or vessel versus 20 years if the death is the result of the deceased voluntarily making the reckless act of ingesting a dangerous drug well-known to cause serious and often fatal overdoses. Compared to the 3-year penalty for manslaughter by vehicles, this bill’s 20-years imprisonment on top of other punishment is unjustly harsh. Even manslaughter involving a vehicle or vessel involving “gross negligence” only yields imprisonment of up to 10-years imprisonment. (Md. Crim. Law sec. 2-209(d)).
5. This bill will generate tens of millions of dollars of expense in the future. If its enactment is no more than a political performance to assuage the aggrieved families of victims that the death of their loved one is going to be especially punished, then it is going to be extraordinarily expensive!
 - a. As of Feb. 27, 2026, no fiscal note was prepared for this bill. However, a fiscal note was prepared on Feb. 11, 2025, for HB 1398 (2025 General Session), a nearly identical bill to SB 906. The reported total annual cost of incarceration was \$64,068 per prisoner. Because the punishment of up to 20 years under SB 906 is *consecutive to other sentences*, the cost begins to accrue only after other sentences

have been served – thus whenever these sentences are served, the annual cost of imprisonment is certain to be higher than \$64,068 per prisoner due to inflation.

- b. How many offenders are likely to be sentenced under this bill? The Department of Legislative Services (DLS) reported that in FY 2023, 5,305 “violations” of narcotics distribution offenses were filed in Maryland’s Circuit Courts, including 396 alleging violations of sec. 5-608.1 relating to distribution of fentanyl. In 2022-2023, there were a little more than 2000 fatal overdoses involving fentanyl each year, or roughly 2000 in FY 2023. The data does not compare the fentanyl distribution cases with the fentanyl fatalities. **DLS estimated that only 8 persons per year would be sentenced under the 2025 bill. Is that number realistic?** Is that what the sponsors or the aggrieved families expect? Is that how the State’s Attorneys, the Police Chiefs and the Sheriffs expect to use this new bill?
- c. It is fair to say that the DLS estimate of only 8 persons statewide being sentenced in one year will prove to be an enormous underestimate if SB 906 is enacted. In 1986, when the U.S. House Judiciary Committee reported the bill I helped write to create mandatory minimum drug sentences, the Congressional Budget Office similarly underestimated the likely impact,

“Enactment of this legislation [the Narcotics Penalties and Enforcement Act of 1986, H.R.5394, enacted in the Anti-Drug Abuse Act of 1986, P.L. 99-570, Oct. 27, 1986] could result in both additional costs and additional revenues because of the mandatory sentencing and fine provisions. **However, these potential costs or collections are not likely to be substantial because prosecutions and conviction under this statute are not likely to be frequent.**” (CBO letter to Rep. Peter W. Rodino, Jr., Chairman, House Judiciary Committee, Sep. 12, 1986, in H. Rept. 99-845, Part 1, at p. 25).

In the ensuing years, hundreds of thousands of men and women were sentenced under these provisions. The U.S. Bureau of Prisons population grew from approximately 46,000 in 1986 to over 200,000 by 2007 – a period of 21 year, and reached a high of almost 220,000 by 2013, largely driven by drug sentencing. (https://www.bop.gov/about/statistics/population_statistics.jsp accessed Feb. 27, 2026)

- d. Even the DLS estimate of a mere 8 persons sentenced per year quickly adds up. In the first year, the cost in 2025 dollars would be \$512,544. The cost for that cohort accumulates to \$2,562,720 after 5 years. Illustration of rising costs of adding ONLY 8 prisoners each year:

Annual cost of first 8 sentenced in year one	\$ 512,544
Annual cost year two (16 sentenced)	\$1,025,088
Annual cost year three (24 sentenced)	\$1,537,632

Annual cost year four (32 sentenced)	\$2,050,176
Annual cost year five (40 sentenced)	\$2,562,720
Annual cost year ten (80 sentenced)	\$5,125,440

e. But the cumulative cost is growing as well:

The cumulative cost after 5 years of the original 8 prisoners, plus the 8 added each year in years 2, 3, 4 and 5 means that Maryland would have spent: **\$7,688,160 (2025 dollars)**

And after ten years, adding just 8 prisoners a year, the cumulative cost of imprisoning this number would have been **\$28,189,920 (2025 dollars)** even though the annual cost in year ten is \$5,125,440 (2025 dollars).

f. Assume instead of only 8 persons per year, the total statewide is 16 persons per year. The annual cost of each cohort of 16 prisoners would be \$1,025,088 (2025 dollars), thus the annual cost would increase each year by about \$1,025,088 (2025 dollars). What would the cumulative cost look like?

After 5 years, the cumulative cost for 16 offenders/year would be \$15,376,320.

After 10 years, the cumulative cost for 16 offenders/year would be \$56,379,840.

This bill, if enacted and used very modestly, will soon result in huge costs to the state for its additional punishment.

It should also be noted that if the bill is used as infrequently as DLS estimates, the prosecutions and sentences using its provisions would be unjust in the sense that the law would be applied at random to those in the class of offenders eligible to be sentenced. Random application of the law is arbitrary and unjust.

For all these reasons, we urge an unfavorable report.

¹ Eric E. Sterling was Executive Director of the Criminal Justice Policy Foundation (1989-2020). He has lived in Maryland 34 years and the 18th legislative district over 27 years. From 1979 to 1989 he was Assistant Counsel, U.S. House of Representatives Committee on the Judiciary responsible for drug abuse matters among many other issues. From 2013 to 2017, on the appointment of Gov. Martin O’Malley, he served on the Maryland Medical Cannabis Commission and chaired its Policy Committee. In Montgomery County, he served for 10 years on the Alcohol and Other Drug Abuse Advisory Council including three years as chair. From 2022 to 2024, he was Chair the Montgomery County Advisory Commission on Policing. He received a B.A. from Haverford College in 1973, and a J.D. from Villanova University Law School in 1976.