

STATEMENT OF
Eric E. Sterling, J.D.¹
SUBMITTED TO
THE MARYLAND HOUSE OF DELEGATES
JUDICIARY COMMITTEE
HON. J. SANDY BARTLETT, CHAIR
HON. DEBRA DAVIS, VICE CHAIR
MARCH 10, 2026

IN OPPOSITION TO HB 1386
Criminal Law – Distribution of Heroin or Fentanyl Causing Death or
Serious Bodily Injury
(Victoria, Scottie, Ashleigh, and Yader’s Law)

Chair Bartlett, Vice Chair Davis, Distinguished Delegates, I oppose HB1386 and urge you to give it an unfavorable report.

I have spent my career studying, drafting, and reforming drug laws, starting as Assistant Counsel to the U.S. House Judiciary Committee (1979-1989), where I played a key role in crafting federal drug statutes. I have worked to develop strategies to save the lives of people who use drugs, to reduce the crime associated with drug use and drug trafficking, to reduce and eliminate the power of organized crime and cartels. In Montgomery County, I served on our county’s Alcohol and Other Drug Abuse Advisory Council for 10 years, including 3 years as chair. I have been a founding board member of the Tree of Hope, a Maryland organization that supports people in recovery by creating sober social environments and career opportunities. I helped co-found the Maryland Harm Reduction Action Network. To improve our criminal justice system, in 1989 I co-founded the Criminal Justice Policy Foundation that I led until my retirement in 2020. To address the problem of excessively long sentences, I co-founded FAMM (formerly Families Against Mandatory Minimums) in 1990. As the chair of the Policy Committee of the Maryland Medical Cannabis Commission, appointed by Gov. Martin O’Malley, I was the principal author of the regulations that lay the foundation for Maryland’s cannabis industry. And recently I served on and chaired the Advisory Commission on Policing in Montgomery County, MD (2020-2024).

Background regarding HB1386. 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 for a variety of drugs, *including fentanyl*. *Forty years ago*, in 1986, Congress

recognized that fentanyl was a particularly lethal opioid. As the mandatory minimum law was applied across the country, the U.S. Sentencing Commission in numerous studies reported the sentences were being imposed disproportionately against the lowest-level offenders and people of color. 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.

Just as importantly, these laws have been completely ineffective. They have not stopped the distribution of dangerous drugs. They have not made drugs scarcer. They have not saved lives – the death toll has continued to grow despite these prosecutions and long sentences. These laws have resulted in countless cases of unjust excessive incarceration, devastating lives, families and communities and wasting tens of billions of dollars. HB 1386 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; it is likely to increase the number of fatalities from overdoses.
2. The bill is unnecessary to adequately punish the distributors of fentanyl. To obtain a conviction under this bill an accused must be convicted of distribution. Three provisions of law provide enhanced punishment for distributing fentanyl. If distribution under those provisions cannot be proven, it can't be proven here.
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. Compared to other penalties involving homicides other than murder, the proposed penalty in HB 1398 is completely out of line and unduly harsh.
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 call 9-1-1 for this person who is overdosing the cops will have my voice, my phone number, my location, and a connection to drugs. If I stick around to do CPR and try to revive this person and they die or suffer serious bodily injury, I am going to be arrested. I will likely be charged with distribution causing their death that could send me to prison for 20 years. I hope they make it, but I better clear out!”

The “sharing without remuneration” exclusion in this bill is too subtle and ambiguous and will not 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 unnecessary from a law enforcement or punishment perspective. The crime in proposed section 5-602.1 is “distribution of heroin or fentanyl.” The “distribution of heroin or fentanyl” is already heavily punished 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).

In addition to the § 5-608 penalty, another section of law provides that if the distribution is of fentanyl, a mixture of fentanyl, or fentanyl analogues, an **additional penalty** of up to 10-years may now be imposed, **Md. Crim Law § 5-608.1(b) Penalties — Distribution of fentanyl and fentanyl mixtures.** These two provisions allow for a sentence of up to 30 years for distribution, and the court certainly would consider the death of someone as a result in imposing a long sentence.
 - b. What kind of distributor, with what state of mind should get long sentences? Should it be the lowest-level distributor who doesn’t repackage or formulate the drugs – or the distributor of quantity or who is a supervisor or manager in the distribution operation? If it is the latter, TWO provisions of Maryland law provide for additional punishment:
 - c. 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, Md. Crim Law § 5-612. Manufacture, distribution of specified amounts.
 - d. 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), **Md. Crim Law § 5-613.** Drug kingpin.
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. 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).

The evidence is that white lives are favored over black lives in these kinds of deaths. In other states with prosecutions of “drug-induced homicide” offenses, the data reveals that *the fact that the person who died was white was the primary determinant whether a prosecution for drug-induced homicide was 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 in several ways.

Consider the question of culpability and state of mind in causing death. Those with the greatest intent and knowledge of the presence of fentanyl have the greatest culpability. Those with lower levels of intent, such as acting recklessly and perhaps indifferent to the possible presence of fentanyl are less culpable. This proposed new law is silent on state of mind. To be convicted, the distributor does not need to *intend or know or have reason to believe* that the substance is contaminated with heroin or fentanyl, simply if he was reckless in distributing it with that possibility.

Compared to other penalties involving homicides other than murder, the proposed penalty in HB 1398 is completely out of line and unduly harsh.

If a person drives a motor vehicle while impaired by a controlled dangerous substance (CDS) and KILLS another person, the maximum sentence is 5 years imprisonment. Md. Crim. Law sec. 2-506. Why is the recklessness of distributing CDS with heroin or fentanyl that kills another being punished so much more severely than the recklessness of driving while impaired by CDS? After all, the victim in the motor vehicle homicide did not do anything to contribute to their death such as ingesting illegal drugs which is itself a highly risky act. Are we concerned with justice for the victims of a homicide or are we grandstanding with harsh punishments because fentanyl is this year’s terrible drug like crack cocaine in 1986? A comparison of these punishments, 5 years versus 20 years *to be served consecutively after other long punishment* – both involving the death of person as a consequence of a criminal recklessness in undertaking two high risk behaviors – driving impaired or distributing drugs illustrates the extreme and unjust character of HB 1386.

In an even more grotesque illustration of the extreme punishment in HB 1386, consider that if a person commits MANSLAUGHTER by operating a vehicle or vessel in a “criminally negligent manner” the maximum sentence is up to 3 years imprisonment. Md. Crim. Law sec. 2-210(c). Analyzing the state of mind here important: “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)). Compare that to distributing fentanyl or heroin. At the retail level, the distributor (who is likely to be a user of these drugs as well) has no intent to kill or injure. The distributor should be aware but fails to perceive a *substantial and unjustifiable risk that a fatal result will occur* if the drugs are ingested. The culpability are roughly equivalent – except in the drug distribution case the deceased took the additional reckless step of ingesting drugs the deceased should have perceived carries a risk of a fatal result. That is, compared to the responsibility for the death, the distributor of the lethally-contaminated drug is less culpable than the criminally negligent driver – but would get a sentence of an additional 20 years (consecutive to other punishment) compared to a maximum of 3 years imprisonment. 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)).

Will this offense be applied to highest level offenders who added fentanyl to a supply of drugs? Will this offense be applied frequently? The Department of Legislative Services estimated only 8 cases statewide per year. That number suggests that the offense will be used randomly, which would be unjust.

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 Mar. 4, 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 HB 1386. The reported total annual cost of incarceration was \$64,068 per prisoner. Because the punishment of up to 20 years under HB 1386 is *consecutive to other sentences*, the costs begin 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 **Md. Crim Law § 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 HB 1386 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 convictions 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, emphasis added).

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 years, 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.

- g. In the instances in which an distributor has caused the death of another is appropriately identified, the State's Attorney **can always** refer these homicide cases to the United States Attorney for prosecution under 21 US..C. 841(b)(1)(A), (B) or (C) and obtain a **mandatory sentence of twenty years imprisonment, up to life imprisonment without parole and at no expense** to State of Maryland and its taxpayers.

For all these reasons, I 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.