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March 10, 2026

TO: The Honorable J. Sandy Bartlett
Chair, Judiciary Committee

FROM: Jared Albert
Deputy Chief, Criminal Division, Office of the Attorney General

RE: House Bill 1386 - Criminal Law - Distribution of Heroin or Fentanyl
Causing Death or Serious Bodily Injury (Victoria, Scottie, Ashleigh, and
Yader's Law) – **Support with Amendments**

For the third consecutive year, the Office of the Attorney General (OAG) supports **House Bill 1386** - Criminal Law - Distribution of Heroin or Fentanyl Causing Death or Serious Bodily Injury (Victoria, Scottie, Ashleigh, and Yader's Law) and urges the Committee to issue a favorable with amendments report. **House Bill 1386** creates a new criminal offense for distributing heroin or fentanyl, or a chemical analogue thereof, "the use of which results in the death or serious bodily injury of another." The new offense would be a felony with a maximum sentence of up to 20 years.

This bill would be an important tool in how we address the opioid epidemic. As of 2019, according to data from the Prescription Drug Abuse Policy System, 24 states and the federal government have laws which punish the distribution or delivery of drugs which result in a death. See <https://pdaps.org/datasets/drug-induced-homicide-1529945480-1549313265-1559075032>.

The Maryland Department of Health has published preliminary data for February 2025-January 2026 on its public dashboard. See <https://health.maryland.gov/dataoffice/Pages/mdh-dashboards.aspx>. In this 12-month period, there were 1,266 total overdose deaths in Maryland. Though fortunately this number is lower than in recent years, the role of opiates in the death toll remains significant. Of the 1,266 overdose deaths between February 2025-January 2026, 986 (77.8%) were related to opioids, and 872 (66.9%) were specifically related to fentanyl.

House Bill 1386 allows Maryland to join 24 states and the federal government, including neighbors such as Pennsylvania, Delaware, and the District of Columbia, in making it illegal to distribute heroin or fentanyl, the use of which results in the death or serious injury of another.

In light of the severity of the opioid epidemic in Maryland, prosecutors need another tool at our disposal to seek justice for those who die from fatal overdoses. Most of the time, there is insufficient evidence to determine precisely who distributed the drugs that the victim took which resulted in their death. However, when we are able to pinpoint exactly who sold the drugs that led to the victim losing their life, the person who distributed those drugs should be subject to potential punishment above and beyond the ordinary punishment for simply selling drugs. Under current law, the maximum penalty for selling drugs is the same regardless of whether a death occurs. This bill will bring greater accountability to those who sell fentanyl within our communities and would provide a justified potential enhancement of their maximum possible sentence when someone dies.

It would also provide comfort to the victim's family by creating a charge which acknowledges, rather than ignores, the resulting death. Under current law, available charges such as involuntary manslaughter (maximum 10-year penalty) and reckless endangerment (maximum 5-year penalty) carry less time than ordinary drug distribution (maximum 20-year penalty). So, without this bill, distributions resulting in death are often prosecuted as mere distributions, denying the victim's family public recognition that the distribution resulted in the loss of their loved one.

Importantly, **House Bill 1386** provides only a maximum possible penalty with no mandatory minimum. So, in the event of conviction, the judge would still retain full discretion to fashion an appropriate sentence anywhere in the sentencing range. Even with this bill, the judge will still consider all relevant circumstances related to the facts and the defendant's background.

In *State v. Thomas*, 464 Md. 133, 180 (2019), the Supreme Court of Maryland, in a 4-3 opinion, affirmed a conviction for manslaughter for heroin distribution caused a fatal overdose. However, in light of that narrow holding, and the limited 10-year penalty for manslaughter, this bill provides a sorely needed way to seek justice for victims and promote public safety.

While the OAG supports the majority of the bill, **House Bill 1386** contains one provision that was not present in 2024's version that the OAG believes should be removed. **House Bill 1386** only applies if the distribution was done for "remuneration or the exchange of goods or services." It seems the purpose of this provision is to not to cover friends who "share" fentanyl with one another. However, this addition would create an unnecessary hurdle to conviction and would be overinclusive. For example, just last year, OAG prosecuted a fatal overdose where the drug dealer gave away the fentanyl for free to the victim as a "tester." Exempting that type of conduct simply because the victim did not pay for the drugs would lead to anomalous results and provides an unnecessary extra element that the State would have to prove beyond a reasonable doubt. Additionally, the proposed "previously been convicted of" language could cause confusion and should be amended to mirror the Senate bill's "who is convicted" language.

For these reasons, the OAG urges a **favorable with amendments** report.

cc: Judiciary Committee Members