



## **TESTIMONY ON HB1386**

### **Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death**

#### **House Judiciary Committee**

**March 6, 2026**

### **TESTIMONY IN OPPOSITION**

Submitted by: **Rebecca Blair, Senior Policy Advisor & Lisa Hamer, Senior Policy & Advocacy Counsel, Fair and Just Prosecution**

Honorable Chair Bartlett & Members of the House Judiciary Committee:

I write on behalf of Fair and Just Prosecution (FJP) to express our opposition to HB1386 - Criminal Law - Distribution of Heroin or Fentanyl Causing Serious Bodily Injury or Death. This bill would hold individuals suffering from addiction liable for overdose deaths they did not intend to cause and are not aware have even occurred, and it will do nothing to improve public safety.

FJP, a project of the Tides Center, is a national organization that brings together elected prosecutors as part of a nonpartisan network of leaders committed to a justice system grounded in fairness, compassion, and fiscal responsibility. The leaders we work with hail from over 60 jurisdictions — urban, suburban, and rural alike — and they collectively represent nearly 20% of our nation's population. We support measures that provide healthcare and services to those suffering from addiction, instead of those that seek longer and longer periods of incarceration for victims of a public health crisis.

The research is clear that laws criminalizing drug-induced homicide (DIH), like HB1386, fail to deter drug use or distribution, prevent overdose victims from accessing medical help, and intensify distrust of law enforcement within drug-impacted communities. This bill is glaringly misaligned with decades of public health research and has the potential to exacerbate the devastating effects of the opioid epidemic on Maryland communities.

Although we are aware that proponents of this bill have stated that it is intended to target high-level drug distributors, it is written so broadly as to allow prosecutors to secure decades-long prison sentences against individuals who bear no meaningful culpability for an overdose death. The law defines distribution so broadly as to include any sharing of drugs for which money is exchanged, without any requirement that the prosecution demonstrate mens rea or even knowledge on the part of the distributor, which would all but ensure that it is weaponized against vulnerable individuals who have played no part in driving, and have seen no profit from,

the opioid crisis. For example, if two friends agree to split an order of fentanyl, and one of them reimburses the other for her half of the transaction before going on to overdose, the survivor could be prosecuted under this law. A low-level courier who delivers a package containing a drug that leads to an overdose could face decades in prison, even if he had no way of knowing what was inside the package. Someone who picks up and pays for a package containing drugs as a favor for a family member, and then accepts reimbursement for the expense, could face prosecution under this law if anyone goes on to experience an overdose as a result of using those drugs.

Unfortunately, decades of research has made clear that such scenarios are not remotely far-fetched: although DIH laws are almost always framed around the intent to prosecute entrepreneurial drug sellers or “kingpins,” they are in practice almost exclusively used to prosecute and imprison low-level dealers or friends and family of the deceased.<sup>1</sup> When legislatures fail to narrowly tailor DIH laws to apply only to high-level distributors, the most vulnerable inevitably bear the brunt of the law’s impact, regardless of legislative intent.

Rather than meaningfully reducing the supply of opioids in Maryland, this law is far more likely to discourage overdose bystanders from seeking emergency help. Most overdose deaths are preventable with timely medical intervention, and any effort to address the opioid crisis should prioritize expanding access to such treatment. Instead, this law—which does not even provide basic Good Samaritan protections to those who seek medical help for an overdose—will force many people witnessing active overdoses, who have the ability to summon life-saving assistance, to weigh the threat of a life-ruining prison sentence before calling 911. Marylanders will undoubtedly die preventable deaths as a result.

Moreover, this bill seeks to solve a non-existent problem; Maryland’s existing criminal statutes already provide ample mechanisms for prosecutors to hold accountable those who truly prey on and profit from individuals with opioid use disorder. For example, Maryland’s drug trafficking laws allow prosecutors to seek long prison sentences for large-scale drug distributors, and many jurisdictions in Maryland already seek manslaughter charges for traffickers whose drug sales result in deaths. In Maryland, distributing fentanyl already carries a penalty of up to 30 years in prison. If harsh punishments were sufficient to solve the opioid crisis, they would have worked by now.

The “war on drugs” has actually been a war on families, communities, and resources. As laid out in our [issue brief](#), laws criminalizing drug-induced homicide do not advance public safety or improve outcomes for those suffering from substance use disorder. As an organization committed to evidence-based solutions to this public health crisis, after listening to our network of prosecutors, we have found that research supports the following:

---

<sup>1</sup> See, e.g., Beletsky, L. (2019), *America's Favorite Antidote: Drug-Induced Homicide, Fatal Overdose, and the Public's Health*, Utah Law Review, 2019(4), 833, <https://dc.law.utah.edu/ulr/vol2019/iss4/4/>; Edwards, J. (2002), *Making Friends into Felons*, New Jersey Law Journal, 1, <https://www.law.com/njlawjournal/almID/900005371745/Making-Friends-Into-Felons/>; Davis, S. and Polcyn, B. (2017), *High-Level Drug Dealers Rarely Charged with Drug-Related Homicides as Wisconsin Death Toll Reaches 10k*, Fox 6 Now Milwaukee, <https://www.fox6now.com/news/high-level-drug-dealers-rarely-charged-with-drug-related-homicides-as-wisconsin-death-toll-reaches-10k>.

- DIH laws do not stop overdoses. Analyses of drug-induced homicide practices in jurisdictions in New Jersey, Tennessee, North Carolina, Illinois, Louisiana, and New York, found that despite dramatic growth in drug-induced homicide prosecutions, all of the jurisdictions experienced significant increases in overdose deaths, ranging from 7.6% to 20.1% in a single year.<sup>2</sup>
- DIH laws discourage people who use drugs from reporting potentially reversible overdoses for fear of harsh criminal penalties. The most common reason people cite for not seeking medical attention for an overdose victim is fear of law enforcement involvement.<sup>3</sup>
- So-called “good samaritan” exceptions to DIH laws do not encourage reporting of overdoses, and they are difficult and burdensome for defendants to prove.
- In practice, DIH laws have almost exclusively been used to prosecute and imprison low-level dealers or friends and family of the deceased, many of whom struggle with drug use themselves.<sup>4</sup>
- DIH laws obstruct actual efforts to disrupt large-scale distribution networks. Prosecutors and law enforcement need witness cooperation in order to prosecute trafficking offenses, and these laws push those witnesses further into hiding.
- Racial disparities are already particularly pronounced in the application and enforcement of drug laws, and DIH prosecutions perpetuate those disparities.<sup>5</sup>
- DIH prosecutions can further drain already overburdened and underfunded district attorney and coroner offices, while providing no public safety benefit.<sup>6</sup>

Thousands of Marylanders have lost their lives to this public health crisis, and the tragedy of the overdose epidemic throughout our nation cannot be overstated. The individuals for whom this bill is named deserved an opportunity at treatment, rehabilitation and recovery. Unfortunately, this bill will do nothing to prevent others from succumbing to opioid overdose and death.<sup>7</sup> Under this bill, if any one of the named individuals had traded their drugs to another person, or shared them in exchange for something as small as a soda or cigarette, and the person with whom they shared or traded their drugs then died, they would not have received the treatment they needed to get healthy; they would have been prosecuted and potentially sentenced to up to twenty years in prison. The loss of each of these individuals is tragic beyond measure, but this bill holds only the potential to create more and more tragedies.

---

<sup>2</sup> Drug Policy Alliance (2017), *An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane*, 10, [https://drugpolicy.org/sites/default/files/dpa\\_drug\\_induced\\_homicide\\_report\\_0.pdf](https://drugpolicy.org/sites/default/files/dpa_drug_induced_homicide_report_0.pdf).

<sup>3</sup> Tracy, M. et al. (2005), *Circumstances of Witnessed Drug Overdose in New York City: Implications for Intervention, Drug and Alcohol Dependence*, 79(2), 181-190, <https://www.sciencedirect.com/science/article/abs/pii/S0376871605000505?via%3Dihub>.

<sup>4</sup> Beletsky, L. (2019), *America's Favorite Antidote: Drug-Induced Homicide in the Age of the Overdose Crisis*, *Utah Law Review*, 2019(4), 833-890, <https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1219&context=ulr>.

<sup>5</sup> For example, in an Illinois county with a Black population of under 2%, 35% of their drug-induced homicide defendants are Black, and in a Minnesota county with a Black population of 13%, at least eight of 11 cases (72%) prosecuted were against Black defendants. See Drug Policy Alliance, *supra* note 2 at 47.

<sup>6</sup> For example, Hamilton County, Ohio, reported spending at least \$750,000 per year to investigate drug-induced homicide cases, even as overdose rates in the county nearly doubled between 2012 and 2016. See *Id.* at 24.

<sup>7</sup> There is no empirical evidence that harsher punishment reduces the supply of, or demand for, drugs. See Pew Charitable Trusts (2017), *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*, <https://www.pewtrusts.org/-/media/assets/2017/06/the-lack-of-a-relationship-between-drug-imprisonment-and-drug-problems.pdf>.

When sheriff or police departments recommend charges against individuals who lack any intent to cause harm and had minimal involvement in the trafficking of drugs, local prosecutors are put in an extremely difficult position of having to decline to file charges, an action that can have severe political consequences. If this bill is passed, the legislature will have no ability to curb the prosecutions that result from this law; those prosecutions will undoubtedly be overwhelmingly unjust, drive mass incarceration, and fail to prevent drug-related harms.

**Fair and Just Prosecution urges the House Judiciary Committee to oppose HB1386.** I appreciate your time and consideration of this testimony. Thank you.

Sincerely,

Rebecca Blair, Senior Policy Advisor  
Lisa Hamer, Senior Policy & Advocacy Counsel  
Fair and Just Prosecution