



Maryland's Office of Overdose Response

Wes Moore, Governor · Aruna Miller, Lt. Governor · Emily Keller, Special Secretary of Overdose Response

March 10, 2026

The Honorable J. Sandy Bartlett
Chair, House Judiciary Committee
100 Taylor House Office Building
Annapolis, MD 21401

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

Dear Chair Smith:

Maryland's Office of Overdose Response (MOOR) respectfully submits this letter of concern for House Bill (HB) 1386, which creates a felony penalty of up to 20 years imprisonment for the sale of heroin or fentanyl, the use of which results in the death of or serious bodily injury to another.

MOOR is concerned that creating new and harsher criminal penalties for the sale of illicit substances will not enhance the state's efforts to reduce overdose death and treat the overdose crisis as a public health issue. Much research exists to suggest that harsher criminal penalties and longer prison sentences do not reduce substance use, the sale of drugs, or drug overdose.¹ MOOR is also concerned about the risk of criminal charges as a result of this bill being applied to people with substance use disorders rather than to drug traffickers, the vulnerability to substance use disorder and overdose of people who are incarcerated and those leaving incarceration, racial disparities in drug-related criminal charges, and the high financial cost of this bill to the state.

MOOR is concerned that while this bill is intended to target and penalize drug traffickers who are operating at a large scale, the average person with a substance use disorder is at equal risk of being targeted by the new penalties. People with substance use disorders generally need to continue using substances or face withdrawal symptoms. Withdrawal from some substances can be fatal and, at a minimum, can be extremely uncomfortable and increase risk behaviors.² As such, some people who use drugs may also share or sell small amounts of drugs to help people they know stay out of withdrawal. Research shows that roughly half of people who use drugs also sell drugs in order to support their substance use disorder. One study found that, among participants who had used heroin, cocaine, or

¹ <https://www.pew.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>

² <https://doi.org/10.1186/s12954-023-00893-9>

crack cocaine in the last 6 months, 44% were involved in the drug economy, and those who reported daily use of drugs were even more likely to be involved in the drug economy.³ Another study found that 53% of participants, who were people who injected drugs, were engaged in prohibited economies, such as drug selling or sex work.⁴ Of those engaged in these economies, 47% said they would no longer engage in those economies if they didn't need money for drugs. Imprisoning people with substance use disorder who sell a small amount of drugs that inadvertently results in the death of another person with substance use disorder is not in the spirit of this bill. HB 1386 also risks the unintended consequence of discouraging bystanders from calling 911 in the event of an overdose. Maryland's Good Samaritan Law provides legal protections to those seeking medical assistance in the event of an overdose emergency; however, the Good Samaritan Law does not apply to felony charges. Research also indicates that harsher penalties exacerbate fear of arrest and discourage bystanders from calling 911.⁵

MOOR is concerned that imprisonment as a result of this bill would be deleterious to people with substance use disorder. Access to high-quality substance use disorder treatment in prison is limited, and multiple studies have indicated that drug overdose is the leading cause of death after release from incarceration.^{6,7,8} The first two weeks post-release from incarceration is the time of highest risk, with a study from North Carolina showing a 40-fold increased odds of an opioid overdose in that period of time.⁹

MOOR is concerned about the implications of this bill with regard to racial disparities because there are significant racial disparities in drug-related criminal charges. Research shows that, despite reporting using and selling drugs at similar rates to white people, Black people were more likely to be charged with possession or drug selling, while white people were more likely to be charged with lesser crimes related to supporting their substance use disorder, such as theft.¹⁰ Additional data show that in 2019, Black people made up 12% of the US population but accounted for 27% of adult drug arrests.¹¹

MOOR is concerned that HB 1386 also risks incurring significant additional expenses for the state. The Department of Legislative Services' fiscal note for SB 604 of 2025, which imposes a similar penalty as HB 1386, provides for a potential increase of \$599,040 in state expenditures annually related to the costs associated with imprisoning individuals for the new penalty. The fiscal note also indicates that Maryland's Office of the Public Defender highlighted a potential increase in expenditures of over \$1,000,000 for costs related to hiring several new staff members.

MOOR recognizes that this bill is well-intentioned, motivated by the immense pain that too many Marylanders who have lost a loved one to an opioid-related overdose are forced to carry. However, we believe that further penalizing individuals who use drugs will not have the desired outcome of this proposed legislation. Maryland's legal code already has the tools it needs to punish individuals who break the law by selling illicit drugs. As opposed to increasing incarceration rates and the devastating impact that this can have for those seeking substance use recovery, MOOR believes that continuing to

³ [10.1093/jurban/79.2.266](https://doi.org/10.1093/jurban/79.2.266)

⁴ [10.1016/j.drugalcdep.2007.05.003](https://doi.org/10.1016/j.drugalcdep.2007.05.003)

⁵ [https://pure.johnshopkins.edu/en/publications/pwud-experiences-of-criminal-justice-reform-enduring-tensions-but/](https://pure.johnshopkins.edu/en/publications/pwud-experiences-of-criminal-justice-reform-enduring-tensions-but)

⁶ [10.1056/NEJMsa064115](https://doi.org/10.1056/NEJMsa064115)

⁷ [10.1111/j.1360-0443.2010.02990.x](https://doi.org/10.1111/j.1360-0443.2010.02990.x)

⁸ [10.2105/AJPH.2018.304514](https://doi.org/10.2105/AJPH.2018.304514)

⁹ Ibid.

¹⁰ doi.org/10.1177/0022042616678614

¹¹ <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/02/drug-arrests-stayed-high-even-as-imprisonment-fell-from-2009-to-2019>

invest in evidence-based public health strategies will be far more effective in our efforts to sustain the reductions in overdose mortality that Maryland has seen over the last four years.

If you would like to discuss this further, please do not hesitate to contact Benjamin Fraifeld, Associate Director for Policy & Advocacy at MOOR, 443-346-3013.

Sincerely,

A handwritten signature in black ink that reads "Emily Keller". The signature is written in a cursive style with a large, sweeping initial "E".

Emily Keller
Special Secretary of Overdose Response