

HOUSE BILL 1378

E1
HB 337/19 – JUD

0lr0542

By: **Delegates Reilly, Anderton, Arian, Buckel, Cox, Griffith, Hornberger, Impallaria, Jacobs, Krebs, Long, Malone, Mautz, McComas, and Szeliga**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Opioids – Distribution Causing Death of Minor**

3 FOR the purpose of prohibiting the distribution of a certain opioid or opioid analogue, the
4 use of which causes the death of a minor; establishing a penalty for a violation of this
5 Act; clarifying that certain conduct constitutes distribution under this Act; providing
6 that certain conduct does not establish a defense under this Act; providing a certain
7 defense under this Act; providing immunity for certain conduct under this Act;
8 providing that a sentence imposed under this Act shall be consecutive to and not
9 concurrent with a certain other sentence; defining certain terms; and generally
10 relating to the distribution of opioids.

11 BY repealing and reenacting, without amendments,
12 Article – Criminal Law
13 Section 5–402(c) and 5–403(b)(1) and (3) and (c)
14 Annotated Code of Maryland
15 (2012 Replacement Volume and 2019 Supplement)

16 BY adding to
17 Article – Criminal Law
18 Section 5–602.1
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2019 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 That the Laws of Maryland read as follows:

23 **Article – Criminal Law**

24 5–402.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(c) Unless specifically excepted under this subtitle or listed in another schedule, any of the following opium derivatives, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation, are substances listed in Schedule I:

- (1) acetorphine;
- (2) acetyldihydrocodeine;
- (3) benzylmorphine;
- (4) codeine methylbromide;
- (5) codeine–N–oxide;
- (6) cyprenorphine;
- (7) desomorphine;
- (8) dihydromorphine;
- (9) drotebanol;
- (10) etorphine (except hydrochloride salt);
- (11) heroin;
- (12) hydromorphenol;
- (13) methyl-desorphine;
- (14) methyldihydromorphine;
- (15) morphine methylbromide;
- (16) morphine methylsulfonate;
- (17) morphine–N–oxide;
- (18) myrophine;
- (19) nicocodeine;
- (20) nicomorphine;
- (21) normorphine;

1 (22) pholcodine; and

2 (23) thebacon.

3 5–403.

4 (b) (1) Unless the substance is listed in another schedule and except as
5 provided in paragraph (2) of this subsection, opium and opiate, and a salt, compound,
6 derivative, or preparation of opium or opiate is a substance listed in Schedule II, including:

7 (i) raw opium;

8 (ii) opium extracts;

9 (iii) opium fluid extract;

10 (iv) opium fluid;

11 (v) powdered opium;

12 (vi) granulated opium;

13 (vii) tincture of opium;

14 (viii) codeine;

15 (ix) dextropropoxyhene bulk (nondosage form);

16 (x) dihydroetorphine;

17 (xi) ethylmorphine;

18 (xii) etorphine hydrochloride;

19 (xiii) hydrocodone;

20 (xiv) hydromorphone;

21 (xv) metopon;

22 (xvi) morphine;

23 (xvii) oripavine;

24 (xviii) oxycodone;

25 (xix) oxymorphone; and

1 (xx) thebaine.

2 (3) Substances listed in Schedule II also include:

3 (i) except for the isoquinoline alkaloids of opium, a salt, compound,
4 derivative, or preparation that is chemically equivalent or identical to a substance listed in
5 paragraph (1) of this subsection;

6 (ii) opium poppy, poppy straw, and poppy straw concentrate;

7 (iii) coca leaf;

8 (iv) cocaine, its salts, optical and geometric isomers, and salts of
9 isomers;

10 (v) ecgonine, its derivatives, their salts, isomers, and salts of
11 isomers; and

12 (vi) a compound, mixture, or preparation that contains any of the
13 substances listed in this section.

14 (c) (1) These opiates are substances listed in Schedule II:

15 (i) alfentanil;

16 (ii) alphaprodine;

17 (iii) anileridine;

18 (iv) bezitramide;

19 (v) carfentanil;

20 (vi) dihydrocodeine;

21 (vii) diphenoxylate;

22 (viii) dronabinol (in oral solution);

23 (ix) fentanyl;

24 (x) isomethadone;

25 (xi) levoalphacetylmethadol;

26 (xii) levomethorphan;

- 1 (xiii) levorphanol;
- 2 (xiv) metazocine;
- 3 (xv) methadone;
- 4 (xvi) methadone – intermediate, 4-cyano-2-dimethylamino-4,
5 4-diphenyl butane;
- 6 (xvii) moramide – intermediate, 2-methyl-3- morpholino-1,
7 1-diphenyl-propane-carboxylic acid;
- 8 (xviii) pethidine;
- 9 (xix) pethidine – intermediate – A,
10 4-cyano-1-methyl-4-phenylpiperidine;
- 11 (xx) pethidine – intermediate – B,
12 ethyl-4-phenylpiperidine-4-carboxylate;
- 13 (xxi) pethidine – intermediate – C,
14 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 15 (xxii) phenazocine;
- 16 (xxiii) piminodine;
- 17 (xxiv) racemethorphan;
- 18 (xxv) racemorphan;
- 19 (xxvi) remifentanil;
- 20 (xxvii) sulfentanil;
- 21 (xxviii) tapentadol; and
- 22 (xxix) thiafentanil.

23 (2) Unless specifically excepted under this subtitle, an isomer, ester, ether,
24 or salt of an opiate and a salt of an isomer, ester, or ether is a substance listed in Schedule
25 II if the existence of the isomer, ester, ether, or salt is possible within the specific chemical
26 designation.

27 **5-602.1.**

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "OPIOID" MEANS A CONTROLLED DANGEROUS SUBSTANCE LISTED IN § 5-402(C) OR § 5-403(B)(1) OR (3) OR (C) OF THIS TITLE.

(3) (I) "OPIOID ANALOGUE" MEANS A SUBSTANCE THAT:

1. HAS A CHEMICAL STRUCTURE SIMILAR TO THE CHEMICAL STRUCTURE OF AN OPIOID; AND

2. HAS A STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM THAT IS SUBSTANTIALLY SIMILAR TO OR GREATER THAN THE STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT OF AN OPIOID ON THE CENTRAL NERVOUS SYSTEM.

(II) "OPIOID ANALOGUE" DOES NOT INCLUDE:

1. A CONTROLLED DANGEROUS SUBSTANCE LISTED IN SCHEDULE I OR SCHEDULE II;

2. A SUBSTANCE FOR WHICH THERE IS AN APPROVED NEW DRUG APPLICATION; OR

3. A SUBSTANCE APPROVED FOR INVESTIGATIONAL USE UNDER § 506 OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT DISTRIBUTE AN OPIOID OR AN OPIOID ANALOGUE, THE USE OF WHICH CAUSES THE DEATH OF A MINOR.

(C) A PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS.

(D) THE SHARING OF AN OPIOID OR AN OPIOID ANALOGUE BY AN ADULT CONSTITUTES DISTRIBUTION UNDER THIS SECTION.

(E) (1) IT IS NOT A DEFENSE UNDER THIS SECTION THAT THE DEFENDANT DID NOT DISTRIBUTE THE OPIOID OR OPIOID ANALOGUE DIRECTLY TO THE DECEDENT.

(2) IT IS A DEFENSE UNDER THIS SECTION THAT THE DEFENDANT WAS

1 AN ACTIVE USER OF AN OPIOID OR AN OPIOID ANALOGUE AT THE TIME OF THE
2 DISTRIBUTION THAT CAUSED THE DEATH OF THE DECEDENT.

3 (F) A PERSON WHO, IN GOOD FAITH, SEEKS, PROVIDES, OR ASSISTS WITH
4 THE PROVISION OF MEDICAL ASSISTANCE FOR A PERSON EXPERIENCING A MEDICAL
5 EMERGENCY AFTER USING AN OPIOID OR AN OPIOID ANALOGUE IS IMMUNE FROM
6 CRIMINAL PROSECUTION FOR A VIOLATION OF THIS SECTION IF THE EVIDENCE FOR
7 THE CRIMINAL PROSECUTION WAS OBTAINED SOLELY AS A RESULT OF THE
8 PERSON'S SEEKING, PROVIDING, OR ASSISTING WITH THE PROVISION OF MEDICAL
9 ASSISTANCE.

10 (G) A SENTENCE IMPOSED UNDER THIS SECTION SHALL BE CONSECUTIVE
11 TO AND NOT CONCURRENT WITH ANY OTHER SENTENCE IMPOSED FOR ANY CRIME
12 BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2020.