In re Special Investigation Misc. 1064, No. 20, September Term, 2020. Opinion by Getty, J.

HEALTH-GENERAL – OVERDOSE MAPPING STATUTE – PROHIBITION ON LAW ENFORCEMENT INVESTIGATION AND PROSECUTION – GRAND JURY SUBPOENA – Court of Appeals held that HG § 13-3602(e) is not a blanket prohibition on the grand jury subpoena of overdose records reported to overdose mapping application programs by emergency medical services providers.

ILLEGAL SEARCH AND SEIZURE – GENERAL WARRANT – GRAND JURY SUBPOENA – Court of Appeals held a grand jury subpoena that requested particularized information pertaining to overdose incidents was not akin to a general warrant and therefore not a violation of the Fourth Amendment to the United States Constitution or Article 26 of the Maryland Declaration of Rights.

GRAND JURY SUBPOENA – GENERAL TEST FOR REASONABLENESS – Court of Appeals held that a grand jury subpoena requesting certain information pertaining to overdose incidents over the course of eighteen months was reasonable because it commanded only the production of materials relevant to an investigation into drug distribution networks, specified the materials to be produced with reasonable particularity such that there was no confusion as to what documents were being asked for, and commanded production of materials covering only a reasonable period of time in light of the large-scale investigation.

GRAND JURY SUBPOENA – CONSTITUTIONAL BALANCING TEST FOR DISCLOSURE OF MEDICAL RECORDS – Court of Appeals held that a grand jury subpoena requesting medical records pertaining to overdose incidents over the course of eighteen months was constitutional because the State's compelling interest in obtaining the records, in light of the opioid epidemic, outweighed the overdose victims' privacy interests.

Circuit Court for Baltimore City
Misc. No. 1064
Argued: December 7, 2020

IN THE COURT OF APPEALS
OF MARYLAND

No. 20

September Term, 2020

IN RE: SPECIAL INVESTIGATION
MISC. 1064

Barbera, C.J.,
McDonald
Watts
Hotten
Getty
Booth
Biran

JJ.

Opinion by Getty, J.

Filed: June 10, 2021

In this case,[1] we address numerous challenges to a grand jury subpoena requesting medical data collected by first responders at opioid overdose incidents. We first consider whether a statute enacted in 2018 at the recommendation of the Governor's Heroin and Opioid Emergency Task Force created an absolute bar to the grand jury subpoena. After considering the plain language and legislative history of the statute, we hold that the statute does not preclude a subpoena issued by a grand jury. We next turn to whether the subpoena is akin to a general warrant in violation of the Fourth Amendment to the United States Constitution and Article 26 of the Maryland Declaration of Rights and hold that the subpoena requested overdose information with particularity and is therefore dissimilar to a general warrant. We finally analyze whether the subpoena satisfies two separate tests for reasonableness articulated in Maryland caselaw and hold that the subpoena is reasonable under both the general test for all grand jury subpoenas and the specialized balancing test for subpoenas seeking private medical records at the request of a government actor. Accordingly, we affirm the Court of Special Appeals on each of these issues.

[1] Due to the secretive nature of grand jury proceedings, the Court of Special Appeals sealed the record, oral argument, and its opinion in this case pursuant to Maryland Rule 4-642 and an order of that court dated October 3, 2019. In this Court, the proceedings have been under seal pursuant to Maryland Rule 4-642, Maryland Rule 8-123 and this Court's order related to oral argument dated August 26, 2020. Pursuant to a second order of this court dated May 13, 2021, the record, oral argument, and opinion will remain under seal for a time period of one year from the time of the order, unless otherwise ordered by this Court.

BACKGROUND

A. Grand Jury Subpoena and Motion to Quash the Subpoena.

On June 27, 2018, at the request of the State's Attorney for Baltimore City, a Baltimore City grand jury issued a subpoena *duces tecum* to the Baltimore City Fire Department ("Fire Department"). The subpoena requested production of records "captured, maintained, or in the possession of" the Fire Department pertaining to opioid related overdose incidents from January 1, 2017 to June 1, 2018. Specifically, the subpoena sought nine pieces of information relating to each overdose incident: the date of the incident; the location of the incident, represented in address and/or latitude and longitude coordinates; the patient's date of birth; the patient's gender; the patient's name; whether naloxone or any other opioid antagonist was administered and, if so, the number of units administered; the phone number associated with the patient and/or caller requesting service; the responding unit identifier; and the report number.

In response, the Mayor and City Council of Baltimore (collectively "the City") filed a motion to quash the subpoena and for a protective order in the Circuit Court for Baltimore City. The City argued that the Fire Department, acting as a medical provider through its licensed paramedics and emergency technicians, was bound to maintain confidentiality of its medical records pursuant to § 4-302(a)(1) of the Health-General Article ("HG") of the Maryland Code which provides "a health care provider shall . . . [k]eep the medical record of a patient or recipient confidential[.]"[2] Recognizing the general power of the grand jury

[2] Md. Code (1990, 2019 Repl. Vol.), HG § 4-302(a)(1).

to subpoena otherwise confidential medical records under a separate statutory provision, HG § 4-306(b)(7),[3] the City nonetheless argued the subpoena was not reasonable or relevant to an investigation of any specific person or crime, and therefore the blanket request for records spanning over an eighteen-month period amounted to nothing more than an arbitrary fishing expedition. Moreover, the City argued that the subpoena was contrary to both the City's interest and the State's overarching public policy to combat the opioid epidemic. The City reasoned that once individuals became aware that medical records were being used to investigate and track drug users, then those individuals would avoid medical treatment in order to avoid contact with law enforcement.

In any case, the City noted that a recently enacted statute, HG § 13-3602(e)[4]—which provides "[o]verdose information reported by an emergency medical services provider . . . or by the Maryland Institute for Emergency Medical Services Systems . . . may not be used for a criminal investigation or prosecution"—explicitly prohibits the use of overdose information reported by an emergency medical services provider for criminal investigation or prosecution. Thus, the City argued the subpoena was merely "operating as a back door to obtain information that is otherwise shielded from . . . the Grand Jury . . . as a matter of statute."

The State filed a written opposition to the City's motion to quash the grand jury subpoena. The State refuted the City's argument that the subpoena amounted to a fishing expedition, contending that the subpoena was reasonable. In supporting its claim of

[3] Md. Code (1990, 2019 Repl. Vol.), HG § 4-306(b)(7).
[4] Md. Code (2018, 2019 Repl. Vol.), HG § 13-3602(e).

reasonableness, the State argued that the information requested was relevant to a criminal investigation into the distribution of heroin and fentanyl; was identified with specificity such that the City was made aware of what documents to produce; and spanned a reasonable length of time in light of the extensive scope of the City's public health epidemic and the "unwavering carnage" left in its wake.

In response to the City's public policy arguments, the State pointed out that the City, as a grand jury witness, was not entitled to set limits on the grand jury investigation on the basis of its own policy interests. Moreover, the State maintained that the public policy interests articulated by the City were consistent with the grand jury investigation and subpoena because Maryland's Good Samaritan law codified at § 1-210 of the Criminal Procedure Article ("CP") of the Maryland Code does not provide immunity for the crimes under grand jury investigation, namely drug distribution crimes. Thus, overdose victims and individuals that seek help on their behalf ("Good Samaritans") would not face criminal prosecution as a result of the grand jury investigation.

Lastly, the State contended that HG § 13-3602, when read in its entirety, provides a mechanism for medics to report overdose information to mapping application programs without eliminating the well-established power of a grand jury to obtain that same information by subpoena. Instead, the State maintained that subsection (e) of HG § 13-3602 merely prevents law enforcement officers from circumventing normal protocol in the course of investigation, which would be to seek a subpoena, by access to the compiled product of the mapping application program.

B. Circuit Court Hearing on Motion to Quash the Subpoena.

On November 1, 2018, the Circuit Court for Baltimore City held a hearing on the City's motion to quash the subpoena. At the hearing, the State defended the reasonableness of the subpoena, noting the City had previously complied with two nearly identical subpoenas.[5] The State asserted that each individual involved in an overdose incident was likely a witness to a crime, specifically to the crime of illegal opioid distribution, and thus the requested names of individuals were relevant to the grand jury's "multiple investigations into large scale distribution networks throughout the city" and the "multiple criminal organization syndicates that continue to poison these neighborhoods." The State argued it had knowledge of where the organizations operated—that is where they sold drugs—and what drugs they sold. The State acknowledged its primary challenge was successfully linking smaller drug networks together to expose a larger distribution scheme and argued that because the subpoena sought information to assist in this aim, it was reasonable.

For its part, during the course of the hearing, the City largely reiterated the arguments presented in its motion to quash the subpoena, maintaining that the subpoena was a "fishing expedition . . . of the most profound type" and "shocking in its breadth."

[5] At the circuit court hearing on the motion to quash the subpoena, the Assistant State's Attorney remarked, " . . . but for the addition of two things, which I believe is the name of the patient and the telephone number of the person that called for service, [the subpoena at issue] is the exact replica of two prior subpoenas that had been complied with." Later at the same hearing the Assistant State's Attorney reiterated that "the Fire Department had already complied with an almost identical subpoena, twice in fact, with a larger scope of time." In its brief to this Court, the City emphasizes that the previous subpoenas did not ask for patient names or other identifying information.

The City emphasized that the State did not have any knowledge of the overdose victims' identities. Thus, the notion that the State would discover witnesses to drug sales that occurred eighteen months prior simply by learning the identity of overdose victims or Good Samaritans was implausible.

Furthermore, in light of the lack of investigative specificity and the lengthy time period covered, the City argued that "[t]he unreasonableness of the request crie[d] out from the very [s]ubpoena itself." The City again focused the court's attention on the public policy impact of the subpoena, noting the practical implication of complying with the subpoena would be "to scare off people from calling for help[.]" Lastly, recognizing that HG § 13-3602 related to the disclosure of medical records to an overdose mapping application program, the City nevertheless reasserted its position that subsection (e) prohibits the use of the information sought by the subpoena in a criminal investigation or prosecution.

In response, the State distinguished the subpoena from a fishing expedition, pointing out that the present case was unlike a situation in which the State had "no idea" what records would be disclosed under the subpoena. Instead, the State maintained that it was certain the subpoena would produce records containing witnesses to the drug distribution crimes under investigation even if the State did not know the identities of the witnesses yet. The State further refuted the policy concerns expressed by the City by arguing that victims of violent crimes, such as stabbings and shootings, still called for emergency medical help despite the routine issuing of subpoenas for medical records in connection to those crimes. Addressing any conflict between the subpoena and the Good Samaritan law,

the State again emphasized its intent to prosecute the "people that poison" the overdose victims, not the victims themselves. Lastly, the State turned to the City's arguments surrounding HG § 13-3602(e), noting that "[t]here is absolutely nothing, either in the language or the legislative history that limits the Grand Jury from seeking this information for an active investigation."

After hearing arguments, the circuit court judge ruled from the bench and granted the City's motion to quash the subpoena on the grounds of unreasonableness. The court concluded that the subpoena was unreasonable after determining the information it requested was too broad because the request was made too early in the State's investigation. The court explained that the State needed to demonstrate more specificity such as knowledge of a certain organization selling in a certain location with a tainted product. The circuit court judge admonished the State, "you have to know where you're going before I would say the Grand Jury can do this intrusive of a procedure."

The State noted a timely appeal to the Court of Special Appeals.

C. Appeal and Opinion of the Court of Special Appeals.

On April 20, 2020, the Court of Special Appeals filed an unreported opinion, under seal, reversing the circuit court's ruling on the motion to quash the subpoena. Emphasizing the broad scope of authority possessed by the grand jury in the investigation of crime, the intermediate appellate court held that the circuit court erred in quashing the subpoena on reasonableness grounds.

First, the court determined that the relevance and particularity requirements for a reasonable subpoena were met. The court held that the subpoena: (1) sought records from

a reasonable period of time, noting that this Court had previously held a three-year time span to be reasonable; (2) sought records with reasonable particularity, meaning the City had no question as to what records needed to be produced in order to comply with the subpoena; and (3) sought the identity of overdose victims which were relevant to the State's investigation into drug trafficking. The Court of Special Appeals concluded that the circuit court's ruling on the motion "transformed the requirements for relevance and particularity into a demand that a grand jury investigation be sufficiently tailored in scope, even at the outset of proceedings[,]" which "improperly curtailed the grand jury's broad power to investigate." *In re Special Investigation Misc. 1064*, No. 3463, Sept. Term, 2018 (filed April 20, 2020), slip op. at 9, 11.

Next, the Court of Special Appeals considered the City's policy-oriented argument that future victims would avoid calling for emergency medical assistance if they were aware the information would be shared with a grand jury. The court pointed out that "the City appears, in effect, to be invoking the Fourth Amendment privacy rights of any (as yet unknown and unnamed) overdose victims." *Id.* at 11. The court rejected the City's argument, noting that the individual calling for emergency assistance was calling the government and therefore did not have a "blanket privacy expectation in government records arising from that call." *Id.* at 12. Likewise, the court found persuasive the State's argument that medical records in other violent crimes were routinely requested by subpoena without negatively impacting the community's trust and use of emergency medical services.

Lastly, the Court of Special Appeals addressed the parties' competing statutory interpretations of HG § 13-3602(e). The court agreed with the State's interpretation of the statute, concluding that subsection (e) must be read in the greater context of the statute in its entirety and to ignore that context "would result in such an expansive reading of the statute" it would produce "absurd results." *Id.* at 15 (citing *Kilmon v. State*, 394 Md. 168, 177 (2006)). The court concluded that the General Assembly did not intend "for this ambiguous provision to abrogate a grand jury's broad common law investigatory power, by making it impossible to subpoena relevant overdose information that might be possessed by *any* state or local government agency." *Id.* at 16–17 (emphasis in original) (citations omitted). Thus, the court held HG § 13-3602(e) did not prohibit the State's subpoena in this case.

The City timely petitioned this Court for Writ of Certiorari, which we granted on July 13, 2020. The City presents several questions for our review, which we have consolidated and rephrased:[6]

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[6] The City's Petition for Writ of Certiorari phrases the questions as follows:

1) Does the State conduct an unreasonable search, in violation of the Fourth Amendment of the United States Constitution and/or Article 26 of the Maryland Declaration of Rights, when it issues a grand jury subpoena *duces tecum* for personal medical records of an entire city without any individualized suspicion that the records will be relevant to a particular criminal investigation but rather in the mere hope that such records may generally assist the State with an entire category of unspecified criminal investigations?

2) Did the Court of Special Appeals err when it held that the Circuit Court for Baltimore City abused its discretion in finding the grand jury subpoena *duces tecum* here unreasonable when the State did not proffer the existence of a particular criminal investigation it furthered?

> 1) Did the Court of Special Appeals err in holding HG § 13-3602(e) does not prohibit the State from issuing a subpoena for certain reported overdose information for use in a criminal investigation?
>
> 2) Did the Court of Special Appeals err in holding that the Circuit Court for Baltimore City abused its discretion in quashing the grand jury subpoena at issue in this case on grounds of unreasonableness?

For the reasons more fully stated below, we affirm the Court of Special Appeals and hold that the grand jury subpoena requesting reported overdose information for use in a criminal investigation was not prohibited by the language of HG § 13-3602(e). Additionally, we hold that the grand jury subpoena did not violate the Fourth Amendment of the United States Constitution or Article 26 of the Maryland Declaration of Rights because it was unlike a general warrant. Finally, we hold that the subpoena is constitutional under both the general reasonableness test for grand jury subpoenas provided in *In re Special Investigation No. 281*, 299 Md. 181 (1984), and the multi-factor, specialized balancing test for subpoenaed medical records articulated in *United States v. Westinghouse Electric Corp.*, 638 F.2d 570 (3d Cir. 1980), and adopted by this Court in *Jane Doe v. Maryland Board of Social Work Examiners*, 384 Md. 161 (2004).

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3) Did the Court of Special Appeals err when it held that the language of Maryland Code, Health-General Article § 13-3602(e) that states that reported overdose information "may not be used for a criminal investigation" does not prohibit the State from subpoenaing reported overdose information for use in a criminal investigation?

STANDARD OF REVIEW

This Court reviews a trial court's decision to quash a subpoena under an abuse of discretion standard. *Unnamed Attorney v. Attorney Grievance Comm'n*, 409 Md. 509, 520 (2009) (citing *WBAL-TV Div., Hearst Corp. v. State*, 300 Md. 233, 247 (1984)). "[A]n abuse of discretion occurs where no reasonable person would take the view adopted by the circuit court." *Montague v. State*, 471 Md. 657, 674 (2020) (quoting *Williams v. State*, 457 Md. 551, 563 (2018)). A trial court's interpretation and application of Maryland statutory law is reviewed for legal correctness under a *de novo* standard. *Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 72 (2004) (quoting *Walter v. Gunter*, 367 Md. 386, 392 (2002)). Additionally, a trial court's interpretation of the United States Constitution and the Maryland Declaration of Rights is a question of law independently reviewed under a *de novo* standard. *See DRD Pool Serv., Inc. v. Freed*, 416 Md. 46, 62 (2010).

DISCUSSION

A. Does HG § 13-3602(e) Create a Blanket Prohibition on the Disclosure of Overdose Records Reported to Overdose Mapping Application Programs by Emergency Medical Services Providers?

As a threshold issue, we first address whether HG § 13-3602(e) precludes the State's ability to reach the information requested by the grand jury subpoena under any circumstance—that is, whether the language of HG § 13-3602(e) creates a blanket prohibition on the use of overdose records reported to a mapping application program for the purpose of all criminal investigations or prosecutions. We begin our discussion at this juncture because, as the City argues, if this statutory provision creates an absolute bar on the use of the overdose records in this case for any criminal investigation, then there is no

need to address the remaining issues before us. However, for the reasons below, we hold that HG § 13-3602(e) does not create a blanket prohibition on a grand jury issuing a subpoena for overdose records reported to mapping application programs by emergency medical services providers.

1. Plain Language Analysis of HG § 13-3602.

Our primary goal in conducting a statutory analysis is to "ascertain the purpose and intention of the General Assembly when they enacted the statutory provisions." *Town of Forest Heights v. Maryland-Nat'l Capital Park and Planning Comm'n*, 463 Md. 469, 478 (2019) (citing *Washington Gas Light Co. v. Maryland Pub. Serv. Comm'n,* 460 Md. 667, 682 (2018)). We begin our analysis by considering the plain language of the statute, and the "ordinary, popular understanding of the English language dictates interpretation of its terminology." *In re S.K.*, 466 Md. 31, 49 (2019) (quoting *Blackstone v. Sharma*, 461 Md. 87, 113 (2018)). If the "words of a statute are ambiguous and subject to more than one reasonable interpretation, or where the words are clear and unambiguous when viewed in isolation, but become ambiguous when read as part of a larger statutory scheme, a court must resolve the ambiguity by searching for legislative intent in other indicia[.]" *Id.* at 49–50. Additionally, "we consider the common meaning and effect of statutory language in light of the objective and purposes of the statute and [l]egislative intent." *Id.* at 50.

HG § 13-3602 is an overdose reporting statute enacted in 2018 in response to the state's opioid crisis. *See* Bill File to H.B. 359, Testimony – Written Statement of the Governor's Legislative Office in support of H.B. 359 (2018). The statute authorizes emergency medical services providers to share information pertaining to overdose

incidents with mapping application programs for the purpose of identifying overdose spikes and allocating resources to address the crisis in real time. *Id.*

The plain language of HG § 13-3602 begins by authorizing first responders to report overdose incidents to local, state, or federal mapping application programs. Subsection (a) provides:

> (a) An emergency medical services provider or a law enforcement officer who treats and releases or transports to a medical facility an individual experiencing a suspected or an actual overdose may report the incident using an appropriate information technology platform with secure access, including the Washington/Baltimore High Intensity Drug Trafficking Area overdose detection mapping application program, or any other program operated by the federal government or a unit of State or local government.

HG § 13-3602(a).

The statute then details what information must be included in the overdose incident report and how quickly first responders should send the report to mapping application programs. Subsection (b) and (c) provide:

> (b) A report of an overdose made under this section shall include:
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> (1) The date and time of the overdose;
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> (2) The approximate address where the overdose victim was initially encountered or where the overdose occurred;
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> (3) Whether an opioid overdose reversal drug was administered; and
>
> (4) Whether the overdose was fatal or nonfatal.
>
> (c) If an emergency medical services provider or a law enforcement officer reports an overdose under this section, the emergency medical services provider or law enforcement officer making the report shall make best efforts to make the report within 24 hours after responding to the incident.

HG § 13-3602(b)–(c).

While subsection (e) contains the language at issue in this case, a quick review of subsections (d) and (f) is useful to our analysis. Subsection (d) requires Maryland Institute

for Emergency Medical Services Systems ("MIEMSS") to report overdose incident information to an appropriate local, state, or federal mapping application program, and subsection (f) grants criminal immunity for first responders who make good faith reports under this statute. Subsections (d) and (f) provide:

> (d) On receipt of a patient care report that indicates an overdose, the Maryland Institute for Emergency Medical Services Systems shall report the information listed under subsection (b) of this section to an appropriate information technology platform with secure access, including the Washington/Baltimore High Intensity Drug Trafficking Area overdose detection mapping application, or any other program operated by the federal government or a unit of State or local government.
>
> (f) An emergency medical services provider or a law enforcement officer who in good faith makes a report under this section shall be immune from criminal liability for making the report.

HG § 13-3602(d), (f).

At the heart of this case, subsection (e) of the statute prohibits the overdose records reported by emergency medical services providers and MIEMSS to mapping application programs under subsection (a) or (d) of the statute to be used for criminal investigation or prosecution. HG § 13-3602(e) provides:

> (e) Overdose information reported by an emergency medical services provider under subsection (a) of this section or by the Maryland Institute for Emergency Medical Services Systems under subsection (d) of this section may not be used for a criminal investigation or prosecution.

HG § 13-3602(e).

The crux of the present issue is the parties' competing interpretations of the meaning of subsection (e). The City contends that subsection (e) prohibits the use of information gathered by the Fire Department's medics in connection with an overdose incident and then

reported to a mapping application program from later use in a criminal investigation or prosecution. The City argues this prohibition is an absolute bar on the overdose information regardless of whether the records are being requested from the Fire Department or the mapping application program and regardless of whether the State is attempting to obtain the records by grand jury subpoena or some other means. Thus, the City maintains that because the State is admittedly attempting to reach the overdose information for the purpose of criminal investigation, the request is prohibited irrespective of any other point of debate in the case, including the reasonableness of the grand jury subpoena or the particular contours of the grand jury investigation.

To support this interpretation of the plain language of subsection (e), the City begins by pointing out that the statute explicitly addresses both emergency medical services providers and law enforcement officers in the preceding and subsequent subsections. *See* HG § 13-3602(a), (c), and (f). Yet, the prohibition on the use of the overdose information in criminal investigation and prosecution appearing in subsection (e) exclusively applies to records reported to mapping application programs by emergency medical services providers without mention of records reported by law enforcement officers. The City argues this notable absence is indicative of the Legislature's intent to permit law enforcement officers to continue using overdose information gathered in the course of

police work for criminal investigation and prosecution while instituting a robust safeguard for similar information reported by emergency medical services providers from police use.[7]

Next, the City points out that subsection (e) prohibits the use of information "reported by" an emergency medical services provider to a mapping application program as opposed to information "obtained from" such programs. The City maintains that the only reasonable reading of the plain language is that information gathered and reported by medics, whether in the hands of the medics or the mapping application program, has been set apart and excluded from law enforcement access. The City argues that to limit the scope of subsection (e)'s "prohibition to the use of the program's end-product"—referring to the compiled overdose information in the hands of the mapping application program—"renders the statute's distinction between medic-reported and officer-reported information not just impractical, but meaningless."

By contrast, the State asserts that the language of subsection (e) is clear but arrives at the opposite interpretation. The State contends that if a state or local agency, such as the Fire Department, chooses to report overdose information to a mapping application program, then that information—"that is, the information uploaded and incorporated into the mapping application [program]"—is prohibited from use in criminal investigation and prosecution. Therefore, the State maintains the "end-product" is exactly what the

[7] The City goes on to argue that this distinction was a result of policy concerns shared among legislators and stakeholders as evidenced by the legislative history of HG § 13-3602. We have devoted a later subsection of this opinion entirely to the legislative history of HG § 13-3602. This policy argument is addressed in that subsection. *See infra*, Section A(2).

Legislature intended to remove from law enforcement access, not the underlying overdose information. Accordingly, the statute does not address the ability of law enforcement to obtain the same reported information in another way such as issuing a subpoena for the information from the reporting agency.

We agree with the State's plain language interpretation. We do not find the statute to be ambiguous. The prohibition against use of overdose information for criminal investigation or prosecution in subsection (e), in relevant part, applies to information reported by emergency medical services providers "under subsection (a)" of the statute. Subsection (a) authorizes emergency medical services providers to report overdose information to a secure information technology platform, i.e. an overdose mapping application program. Thus, it is apparent that the prohibition on law enforcement use of the overdose information was intended to be directly contingent upon the consolidation of that overdose information within a mapping application program, not merely a result of the information's general existence.

Therefore, we conclude that subsection (e) was not intended to provide a blanket prohibition against all law enforcement use of medic-generated, medic-reported overdose information. Instead, subsection (e) was written in contemplation of the compiled end-product of the mapping application programs and in furtherance of ensuring the mapping application programs remained a tool for public health intervention, not law enforcement initiatives. Accordingly, subsection (e) does not preclude the State from issuing a subpoena for the same underlying overdose information that was reported to a mapping application program from the reporting agency, here the Fire Department.

2. Legislative History of HG § 13-3602.

"In addition to the plain language, the modern tendency of this Court is to continue the analysis of the statute beyond the plain meaning to examine extrinsic sources of legislative intent in order to check our reading of a statute's plain language through examining the context of a statute, the overall statutory scheme, and archival legislative history of relevant enactments." *Johnson v. State*, 467 Md. 362, 375 (2020) (quoting *In re S.K.*, 466 Md. at 50)) (cleaned up). "Archival legislative history includes legislative journals, committee reports, fiscal notes, amendments accepted or rejected, the text and fate of similar measures presented in earlier sessions, testimony and comments offered to the committees that considered the bill, and debate on the floor of the two Houses [of the General Assembly] . . . ." *Id.* (quoting *State v. Phillips*, 457 Md. 481, 488 (2018)). Thus, as a check on our plain language analysis we now turn to the legislative history of HG § 13-3602.

In January 2018, Governor Lawrence J. Hogan announced a legislative package to combat Maryland's growing opioid crisis. *See* Bill File to H.B. 359 (2018). House Bill 359, and the bill cross-filed in the Senate, Senate Bill 309, were part of the Governor's initiative and were intended to enable cross-jurisdictional tracking of overdose information for the purpose of rapid allocation of public health and safety resources. *Id.* By allowing emergency responders to input real-time overdose data into a secure mapping application program with the use of a mobile device, overdose "spikes" could be identified and a coordinated response could be quickly implemented. *Id.*

Both House Bill 359 and Senate Bill 309 were introduced on first reader early in the legislative session. Between the two cross-filed bills, a total of four bill hearings were held—one hearing for each bill in both the House of Delegates Health and Government Operations Committee and the Senate Finance Committee. In its brief to this Court, the City provided transcripts of each of the four hearings as support for its interpretation of the legislative intent of HG § 13-3602(e). Because we disagree with the City's interpretation, we address the testimony given at each bill hearing separately.

a. Senate Finance Committee Hearing on Senate Bill 309.

The hearing for Senate Bill 309 was held on February 8 in the Senate Finance Committee.[8] The testimony of the proponents of Senate Bill 309 was organized by the Governor's Legislative Office. Representatives of the Governor's Legislative Office, the Opioid Operational Command Center, the Washington/Baltimore High Intensity Drug Trafficking Areas Program ("HIDTA"), and the Maryland Chapter of the National Council on Alcoholism and Drug Dependence all testified in support of the bill.

At the start of the hearing, Cara Sullivan, the Governor's Deputy Legislative Officer, made introductory remarks about the bill on behalf of the Administration. In her introduction of the bill, she addressed the prohibition on criminal investigation and prosecution at HG § 13-3602(e), relating the prohibition back to the protection of overdose

[8] Video recordings of legislative bill hearings are archived on the Maryland General Assembly's website. The recording of the February 8 Senate Finance Committee hearing on Senate Bill 309 is available at: https://mgahouse.maryland.gov/mga/play/ca09c435-f46e-4fa0-8b1b-0a46d3ad48e5/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=136000.

victims from criminal investigation and prosecution. In response to a legislator's inquiry regarding concerns expressed about the privacy of overdose victims and law enforcement use of the reported overdose information, Ms. Sullivan stated, "[t]he legislation explicitly says that information reported by emergency medical services providers or through MIEMSS cannot be used in a criminal investigation or prosecution, so we believe that that's an important safeguard to prevent undermining of the Good Samaritan law and other measures that this body has put forward to protect that."

Echoing similar remarks, a representative of the Maryland Chapter of the National Council on Alcoholism and Drug Dependence testified in support of the bill, stating that questions "related to our Good Samaritan [l]aw" were answered, and "[w]e feel like there are protections here. That's one of our number one concerns that we don't want to inadvertently deter people from calling 911 to save lives."

The final witness, a representative for the Maryland Association for Justice, testified in favor of the bill if it was amended to exclude the civil and criminal immunity for good faith reporters at HG § 13-3602(f). The Maryland Association for Justice representative testified, "there should be a mechanism to hold those people who intentionally use this database in a way that is not in accordance with their policies and procedures . . . accountable."

In addition to the witness testimony, each of the above-mentioned proponents of the bill submitted written testimony. *See* Bill File to S.B. 309 (2018). Other proponents that submitted written testimony in favor of the bill, but that did not testify in person, included the Governor's Office of Crime Control & Prevention, the Office of the County Executive

of Anne Arundel County, the Maryland Hospital Association, the Maryland Chiefs of Police Association, and the Maryland Sheriffs' Association. Notably, in the testimony provided by the Governor's Legislative Office, Ms. Sullivan wrote, "Senate Bill 309 prohibits *information uploaded* by an emergency medical services provider or MIEMSS from being used in a criminal investigation or prosecution." *Id.* (emphasis added).

Moreover, the Maryland Association of Counties submitted written testimony in favor of the bill with amendments, asking that the language at HG § 13-3602(a) be altered to make the reporting requirement for first responders mandatory, to the extent practicable. Initially, the committee adopted this amendment but a later floor amendment by the committee chairman struck this language to instead add a statement of legislative intent at Section 2 of the bill as described *infra* at page 24–25.

No witnesses testified in opposition to Senate Bill 309, but a single piece of written opposition testimony was submitted from the American Civil Liberties Union of Maryland ("ACLU"). The ACLU acknowledged the need to "target the State's growing opioid crisis" but expressed distrust of HIDTA and took issue with the "amount and specificity of information . . . authorized to be reported by this bill." Bill File to S.B. 309, Testimony – Written Statement of the American Civil Liberties Union of Maryland in opposition of S.B. 309 (2018). Refuting the assertion that HIDTA does not collect personally identifying information, the ACLU included a screenshot of the reporting mobile application[9] showing

[9] Commonly referred to as an "app," a mobile application is a software or web-based program that is designed to run on a mobile device, such as a smart phone, as an interface for a particular task. *See App*, Merriam-Webster (2021), https://www.merriam-webster.com/dictionary/app [https://perma.cc/ZP4A-ZFAM].

the collection of specific addresses of overdose incidents. The ACLU noted that "not only would an exact address be shared with law enforcement, but doing so will make people, understandably, less likely to actually report it." *Id.*

In response to concerns presented by the Maryland Association for Justice, the Maryland Association of Counties, and the ACLU, a committee amendment to remove the civil and criminal immunity provision was adopted. This amendment altered subsection (f) of HG § 13-3602. Other changes to the bill language were debated in committee and on the floor, but ultimately the bill as introduced was intact—except for the civil and criminal immunity provision—on third reader. On March 21, the bill passed the Senate unanimously.

b. Health and Government Operations Committee Hearing on House Bill 359.

On February 13, the Health and Government Operations Committee held a hearing on House Bill 359.[10] This hearing shared many similarities with the Senate Finance Committee hearing on Senate Bill 309. Much of the same written testimony that had been provided to the Senate Finance Committee in support or opposition to Senate Bill 309 was provided to the Health and Government Operations Committee. The ACLU again provided the single piece of opposition testimony in identical form to the testimony submitted to the Senate Finance Committee. *See* Bill File to H.B. 359 (2018).

[10] The recording of the February 13 Health and Government Operations Committee hearing on House Bill 359 is available at: https://mgahouse.maryland.gov/mga/play/906555b8-b029-4174-9946-ca51186f5f85/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=104000.

Additionally, many of the same proponents testified at the hearing. Speaking in support of the bill were representatives of the Governor's Legislative Office, the Opioid Operational Command Center, HIDTA, the Maryland Chapter of the National Council on Alcoholism and Drug Dependence, and the Maryland State Medical Society. Speaking in support of the bill with clarifying amendments were representatives of the Maryland Association of Justice, the Maryland Association of Counties, and the Professional Fire Fighters of Maryland.

Representing the Administration, Ms. Sullivan again introduced the bill to the committee at the start of the hearing. Relevant to this case, in her remarks she stated, "this is a key intent of the legislation . . . House Bill 359 prohibits *information uploaded* by emergency medical services personnel, or MIEMSS, for being used for criminal investigation or prosecution. The intent of this is not to identify people who are using drugs and arrest them." (Emphasis added.)

Also of significance to this case, a representative of the Maryland Chapter of the National Council on Alcoholism and Drug Dependence testified before the committee and stated, "[w]e are supportive of this bill in part because it specifically prohibits the information in the system to be used by law enforcement. We believe that it is important . . . we are not unintentionally undermining our Good Samaritan [l]aw that the [G]eneral [A]ssembly passed to encourage people to call for help when someone is overdosing."

Likewise, a representative for the Maryland State Medical Society testified in front of the House committee in support of House Bill 359 stating, "the Good Samaritan protection is a very, very big deal for the medical community and [we] know the

importance of making sure that's protected. So when we first read this bill that's where most of our questions were focused, making sure there was not anything about this bill that undermined that. And we're very comfortable that the protections are in there."

In an even more germane exchange, the deputy director of the Washington/Baltimore HIDTA Program, Jeff Beeson, who sat on the Administration's panel of witnesses, answered a privacy question posed by a legislator in the House committee with the following explanation:

> The specific point of this legislation is for fire and EMS responders. Law enforcement who throughout the normal course of their day who are called to a scene do have the ability to collect evidence. So we're not restricting them from doing that and there would be concern if we put restrictive language in this bill that it may negatively impact law enforcement who are doing that good work outside of this legislation in any way, shape, or form.
>
> Anne Arundel County, for instance. Law enforcement in Anne Arundel County are called to every overdose scene. Again, Good Samaritan [l]aw. They're not there necessarily to arrest, but they may wish to initiate some type of an investigation to go upstream to target the drug trafficking organization bringing that poison into our communities.

On March 28, the Health and Government Operations Committee voted House Bill 359 out of committee after adopting three substantive committee amendments. The first committee amendment prohibited law enforcement agencies from publicly publishing the exact address of an overdose location except in the case of a valid public safety concern by adding new language at HG § 13-3603. The second committee amendment added language to specifically state the intent of the Legislature as Section 2 of the bill. Section 2 provided:

> SECTION 2. AND BE IT FURTHER ENACTED, That, unless overdose information is otherwise reported through the Maryland Institute for Emergency Medical Services Systems as required under Section 1 of this Act, **it is the intent of the General Assembly** that emergency medical

> service providers and law enforcement officers report, to the extent possible, overdose information via an appropriate information technology platform with secure access **for the purpose of making decisions regarding the allocation of public health and educational resources**.

(Emphasis added.) The third committee amendment added a reporting requirement as Section 3 of the bill. Section 3 provided:

> SECTION 3. AND BE IT FURTHER ENACTED, That:
> (a) On or before January 1, 2019, the Opioid Operational Command Center shall provide a comprehensive report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article, regarding the reporting of overdose information using an information technology platform as authorized under Section 1 of this Act.
> (b) The report required under subsection (a) of this section shall include information regarding:
> (1) the number of overdoses reported and the approximate locations where the overdoses occurred, including any clusters of overdoses;
> (2) who made the reports;
> (3) how the reports were used for public health and public safety responses, the outcomes of the public health and public safety interventions, and the impact on affected communities; and
> (4) **when, if ever, an exact address of an overdose location was publicly published and the reason for publishing the address**.

(Emphasis added.) House Bill 359 passed third reader on April 3 with no additional floor amendments.

c. Health and Government Operations Committee Hearing on the Cross-filed Senate Bill 309.

On March 20, the Health and Government Operations Committee held a hearing on the cross-filed bill, Senate Bill 309, more than a month after they held a hearing, but had

not yet voted on, House Bill 359.[11] The Senate amendments that removed the immunity language at HG § 13-3602(f) proved to be the key distinction between the two bills addressed at this hearing.

The House hearing on the Senate cross-filed bill was a sponsor-only bill hearing.[12] Since this was an Administration bill, Ms. Sullivan, representing the Administration, appeared solely to testify about changes made to the legislation in the opposite chamber. She began by asking the committee to restore the immunity provision the Senate had removed. She indicated the immunity provision was necessary to encourage first responders to voluntarily report the overdose information, and thus a key part of the bill. Likewise, she addressed the other Senate amendment that created the statement of legislative intent providing the purpose of the bill was for the allocation of public health and educational resources. Unlike the first amendment to the immunity provision, Ms. Sullivan did not ask for this amended language to be altered.

Moreover, Ms. Sullivan testified that in response to the ACLU's concern about the mobile application collecting specific addresses of overdose incidents, her panel of

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[11] The recording of the March 20 Health and Government Operations Committee hearing on Senate Bill 309 is available at: https://mgahouse.maryland.gov/mga/play/550aa461-e6be-41a8-a1f7-d3d5c522e3e8/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=982000.

[12] A sponsor-only bill hearing occurs when bills are cross-filed in the Senate and the House and the original chamber has already held a full hearing on the bill. In a sponsor-only hearing on the cross-file, testimony is limited so as to not duplicate the testimony heard already. The testimony is limited to the sponsor of the bill who describes what changes were made to the bill in the opposite chamber. *See Maryland Resources*, Georgetown Law Library (March 3, 2021), https://guides.ll.georgetown.edu/c.php?g=275830&p=7536953 [https://perma.cc/A7WT-GMZE] (describing the Maryland legislative process).

witnesses had been able to conduct "an actual walkthrough of the platform with the House Opioid Workgroup and it was explained there that even though the exact address can be input into the system, that's the only time it's ever being seen. It's translated into some code . . . and then . . . seen . . . [as] an approximate address or area" to other users.

Central to this case, Ms. Sullivan noted, "[i]mportant to the intent of the legislation, the legislation explicitly prohibits *information input* by emergency medical services personnel from being used for criminal investigation and prosecution." (Emphasis added.)

Although they could not testify, the same proponents that testified at the original February 13 hearing on House Bill 359 provided written testimony at this hearing on the bill. These original proponents wanted the Health and Government Operations Committee to restore Senate Bill 309 to its original language on immunity. Maryland Chiefs of Police Association, Maryland Sheriffs' Association, the Governor's Office of Crime Control & Prevention, and the National Council on Alcoholism and Drug Dependence all submitted written testimony expressing the need for the immunity provision to be reinserted in order to ensure protection of good faith reporters.

Following the hearing, the committee amended the bill to conform with House Bill 359, which in effect reinstated the immunity provision and added the additional language prohibiting law enforcement publication of exact addresses of an overdose incident at HG § 13-3603.

Senate Bill 309 was voted out of the Health and Government Operations Committee on March 30. On the same day it passed second reader with no further floor amendments. On April 5 it passed third reader in the House on a vote of 134-1. The bill was assigned to

a conference committee to resolve the differences in the Senate and the House versions of the bill.[13] Ultimately, Senate Bill 309 died in conference committee because the Senate Finance Committee decided to use the House bill as the vehicle for final passage of the statute.

d. Senate Finance Committee Hearing on the Cross-filed House Bill 359.

On the last day of the legislative session, April 9, the Senate Finance Committee held a sponsor-only bill hearing for House Bill 359.[14] The bill file does not contain any written testimony and Ms. Sullivan was the sole witness at the hearing. The Chairman of the Senate Finance Committee noted the most significant difference in House Bill 359 and Senate Bill 309 was the reinstatement of the immunity provision. In discussing the status of the conference committee for Senate Bill 309, Ms. Sullivan stated, "I've seen the language from [the Health and Government Operations Committee] counsel . . . we are amenable to that." The Chairman replied, "Okay. We'll just scratch civil. That's all it takes."

[13] When a bill passes out of both chambers in two non-identical forms, a conference committee consisting of three members from each chamber is appointed to resolve the differences. The conference committee produces a report, which both chambers must then adopt before voting for final passage of the bill. *See Maryland General Assembly Legislative Lingo*, Department of Legislative Services, http://dls.maryland.gov/pubs/prod/NoPblTabLibResDocs/2019LegisLingo.pdf [https://perma.cc/HMV3-7E3M].

[14] The recording of the April 9 Senate Finance Committee hearing on House Bill 359 is available at: https://mgahouse.maryland.gov/mga/play/5c5b666c-973b-41b7-98f2-18744365c07d/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c&playfrom=3236000.

The Senate adopted a committee amendment to remove civil liability from the immunity provided to good faith reporters and voted the bill out of committee quickly. House Bill 359 then went on to pass second and third reader in the Senate on the same day. The House concurred with the Senate amendments on the bill, and following one last floor vote, House Bill 359 made it through both chambers. Governor Hogan signed House Bill 359 on April 24, 2018 with an effective date of July 1, 2018. The legislation is codified at HG §§ 13-3601 to 13-3603.

e. Legislative History Analysis.

We find this legislative history to be a compelling confirmation of our plain language analysis of HG § 13-3602(e). In its brief to this Court, the City cited to specific testimony from the four committee hearings in support of its argument that stakeholders and legislators alike shared a heightened concern with ensuring the overdose information remained out of reach of criminal investigation and prosecution. Specifically, the City maintains a "number of legislators and advocacy groups expressed concern about the bill's effect on privacy, its potential to turn medical records into a law enforcement tool, and the effect it could have on discouraging overdose victims from calling 911." The City argues that in response to these concerns, the Legislature created a robust safeguard to limit all law enforcement access to the information by including the language at HG § 13-3602(e).

By contrast, the State refutes this argument by pointing out that the language of subsection (e) of HG § 13-3602 was included to protect the Good Samaritan law and ensure that the compiled product of the mapping application programs would not be used to track, investigate, and prosecute overdose victims themselves. The State contends "[n]othing in

the legislative history indicates an intent to prevent law enforcement" from issuing a subpoena for identical information "from other sources in order to investigate drug trafficking."

We agree. Our careful review of the legislative history of HG § 13-3602 demonstrates that the various concerns highlighted by the City were not raised by legislators and stakeholders in furtherance of a blanket prohibition of all law enforcement access to the overdose data, but instead with a strong emphasis on ensuring Maryland's Good Samaritan law was not undermined.

In the context of the opioid epidemic, Maryland's Good Samaritan law immunizes individuals who call for medical assistance for a drug overdose from criminal prosecution for certain minor drug offenses based on evidence collected in connection with the call for medical assistance. Md. Code (2009, 2018 Repl. Vol.), CP § 1-210. The statute was repeatedly referenced in connection with House Bill 359 and Senate Bill 309. Across the board in the various bill hearings, when legislators voiced concerns about patient privacy, law enforcement overstep, or community reluctance to call for help, the Administration and various stakeholders continually reiterated that the language of the bills adequately safeguarded protections given under the Good Samaritan law. Thus, it is apparent that the concerns shared by legislators and stakeholders hinged on an intent to preserve criminal immunity for overdose victims and the Good Samaritans assisting them.

It is equally apparent that there is no indication in the legislative history of HG § 13-3602 that the Legislature intended to create a heightened immunity from investigation and prosecution for all third parties, such as drug suppliers or distributors, implicated by

the drug overdose data collected by medics at overdose calls. In fact, the legislative history demonstrates legislators and stakeholders alike were satisfied with the language prohibiting investigation and prosecution at subsection (e) of HG § 13-3602.

Instead, the primary amendment offered by legislators altered the immunity provision for good faith reporters at subsection (f), and the ACLU's concerns of overdose victims' privacy and the untrustworthiness of HIDTA were addressed by a demonstration of the mobile application. Significantly, the language at subsection (e) of HG § 13-3602 was not altered from its initial introduction in either the House or Senate at any point in the long legislative process. Also important to our analysis, the amendment creating Section 2 of the bill, which articulates pure legislative intent, demonstrates that the express purpose of the overdose mapping legislation was for the allocation of health and educational resources—not to prohibit criminal investigations from occurring with regard to overdose information. Lastly, the reporting requirement included in Section 3 of the bill demonstrates the legislators' focus on privacy issues because an exact address could not be released by law enforcement to the public, and in the event an exact address was released, the reporting requirement mandated an explanation.[15]

[15] Subsequently, the mandated legislative report was submitted to the General Assembly. With regard to public disclosure of exact addresses, the report concluded, "[t]he sharing of EMS information authorized through HB359 has never resulted in the exact addresses of overdose locations being published publicly by MIEMSS, the W/B HIDTA, the OOCC, or other participating agencies." Steve Schuh, Maryland Opioid Operational Command Center, *Report on HB 359 Health – Reporting of Overdose Information* (Dec. 21, 2018), HB359Ch149(3)_2018.pdf (state.md.us) [https://perma.cc/2FZA-HB7Y].

Moreover, as we emphasized above, the Administration's key representative described the legislation's prohibition on criminal investigation and prosecution several times in both verbal and written testimony. She frequently referred to the prohibited information with a qualifier, such as "information input" or "information uploaded." These qualifying phrases support our earlier plain language analysis conclusion that subsection (e) of HG § 13-3602 is not a blanket prohibition on all overdose information collected by emergency medical services providers. Instead, the prohibition on use for criminal investigation and prosecution relates to the compiled product of the mapping application program—that is the overdose information uploaded into a mapping application program and consolidated for ease of use.

Additionally, the Administration and many other stakeholders noted the legislation's preservation of the protections afforded by the Good Samaritan law in connection with the language at subsection (e) of HG § 13-3602. The stakeholders agreed that the overdose victims, or those who called for help on their behalf, were in fact protected from criminal investigation and prosecution under HG § 13-3602(e), just as they would be under the Good Samaritan law.

Lastly, testimony given by the deputy director of the Washington/Baltimore HIDTA Program, Jeff Beeson, in the February 13 Health and Government Operations Committee hearing on House Bill 359 is uniquely relevant to this case. *See supra* page 24. As noted above, Mr. Beeson testified that the legislation was not intended to hinder law enforcement officers from collecting evidence or impacting their work "in any way, shape, or form." Mr. Beeson noted that law enforcement involvement in drug overdose incidents may not

be for the purpose of arrest due to Maryland's Good Samaritan law, but nevertheless law enforcement "may wish to initiate some type of an investigation to go upstream to target the drug trafficking organization bringing that poison into our communities."

This statement in particular, made by a primary stakeholder, is revealing of the legislative intent of HG § 13-3602(e). The type of investigation contemplated in the statement—that is, an investigation "upstream to target the drug trafficking organization" supplying lethal drugs—is precisely what we are considering in this case. Moreover, whether the Legislature intended to hinder law enforcement from conducting this type of investigation is at issue here. It is apparent to us, by virtue of Mr. Beeson's testimony, that the Legislature was aware of the distinction between the investigation and prosecution of individual overdose victims and larger law enforcement efforts to investigate and prosecute distribution networks. Furthermore, the testimony given by Mr. Beeson directly refutes the City's argument that the Legislature intended to prevent large-scale police investigations into crimes of distribution.

As demonstrated by these remarks and the extensive efforts of legislators to work with stakeholders to improve the legislation through amendments, it is evident that concerns of law enforcement's use of overdose information, community reluctance to call 911, and privacy concerns were all resolved by the stakeholders' confidence that the protections provided in the Good Samaritan law were not weakened by the proposed bill language. Because the Good Samaritan law exclusively provides protections to victims and those who assist victims, the stakeholders' demand and the Legislature's intent to preserve these same protections did not extend to third parties. Therefore, we do not find

the City's argument that the Legislature intended to prohibit all law enforcement investigation and prosecution of drug distribution networks through the inclusion of subsection (e) in HG § 13-3602 to be persuasive. Consequently, we conclude that the legislative history of HG § 13-3602 further confirms our plain language analysis above.

3. Our Reading of HG § 13-3602 in Context of HG § 4-306(b)(7).

As this Court has often noted, we decline to "read statutory language in a vacuum" and we do not "confine . . . our interpretation of a statute's plain language to the isolated section alone." *Johnson*, 467 Md. at 372 (quoting *Washington Gas Light Co.*, 460 Md. at 685). Instead, the plain language of a statute "must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim or policy of the Legislature in enacting the statute." *Id.* (quoting *State v. Johnson*, 415 Md. 413, 421 (2010)). Finally, "[w]e presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope." *Id.* (quoting *Johnson*, 415 Md. at 421–22).

Here, we find further support for our plain language analysis by considering the statutory scheme presented by the Heath-General Article of the Maryland Code. While HG § 13-3602 is a relatively new statute enacted in response to a unique crisis, the opioid epidemic, another older provision within the Health-General Article, § 4-306(b)(7), deals more broadly with a grand jury's power to subpoena medical records. Md. Code (1991, 2019 Repl. Vol.), HG § 4-306(b)(7). It provides:

> (b) A health care provider shall disclose a medical record[16] without the authorization of a person in interest:
>
> > (7) Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307 of this subtitle, to grand juries, prosecution agencies, law enforcement agencies or their agents or employees to further an investigation or prosecution, pursuant to a subpoena, warrant, or court order for the **sole purposes of investigating and prosecuting criminal activity**, provided that the prosecution agencies and law enforcement agencies have written procedures to protect the confidentiality of the records[.]

HG § 4-306(b)(7) (emphasis added).

The State argues that the language of HG § 4-306(b)(7), constituting an express mandate for disclosure of medical records pursuant to a subpoena, requires the City's compliance with the grand jury subpoena in this case. The City disputes this contention by asserting that HG § 13-3602(e) provides a specific, unambiguous statutory exception to the general rule of HG § 4-306(b)(7). To support its assertion, the City points to the language in HG § 4-306(b)(7) that mandates compliance with a grand jury subpoena only for the "sole purposes of investigating and prosecuting criminal activity" and notes that the mirroring language of HG § 13-3602(e) explicitly prohibits use of overdose information for criminal investigation and prosecution. Thus, in its reply brief to this Court, the City concludes, "the General Assembly chose to contract the universe of medical records that grand juries could obtain via subpoena . . . by one particular type of medical record when it created [HG] § 13-3602(e)" because "[i]nformation obviously cannot be obtained for the

[16] The definition for "medical record" is provided in HG § 4-301(j). Neither party disputes that the records requested by the grand jury subpoena in this case fall under this definition.

sole purpose of furthering criminal investigation and prosecution if there is a legal prohibition against using that information for a criminal investigation or prosecution." (Emphasis omitted.)

We disagree. In the past, the Legislature has limited the scope of the grand jury's powers to subpoena certain medical records by including an express exception within the same statutory scheme that grants the grand jury powers to subpoena medical records in the first place. *See* Md. Code (1990, 2019 Repl. Vol.), HG §§ 4-301 to 4-309. Here, the City argues the Legislature intended to aggressively limit the scope of the grand jury's power to subpoena certain medical records by including a broad prohibition on criminal investigation and prosecution within an overdose mapping bill codified elsewhere in the Health-General Article. We find this to be an illogical argument.

The statute authorizing a grand jury to subpoena medical records was enacted in 1990. It is codified at §§ 4-301 to 4-309 of the Health-General Article of the Maryland Code and is known as the Maryland Confidentiality of Medical Records Act ("Confidentiality Act"). The intent of the Confidentiality Act was "to protect the privacy of patients and to maintain the confidentiality of medical records, while establishing clear and certain rules for disclosure of those records." *Warner v. Lerner*, 348 Md. 733, 742 (1998) (Raker, J., concurring). Of relevance to this case, subsection (b)(7) of HG § 4-306 was enacted under Senate Bill 545 in the 1997 legislative session of the Maryland General Assembly to "require[] a health care provider to disclose a medical record, under certain circumstances . . . to grand juries." Dep't Legis. Servs., *Fiscal and Policy Note*, *Senate Bill 545* (1997 Session). Significantly, in 2000 the Legislature added an exception limiting

the disclosure of a particular type of medical record—mental health records—in HG § 4-307 and amended HG § 4-306(b)(7) to reflect this new limitation on a grand jury's subpoena power. 2000 Md. Laws, ch. 270.

Here, the prohibition against criminal investigation and prosecution in HG § 13-3602(e) that the City heavily relies upon does not mention the grand jury's subpoena power or link the mapping statute to the Confidentiality Act in any manner. Instead, HG § 13-3602(e), in relevant part, references a prohibition of investigation and prosecution on information reported to a mapping application program by an emergency medical services provider under subsection (a) of the same statute. Therefore, this prohibition not only lacks any tie to the Confidentiality Act, but it is directly referencing the mapping application program at the center of the bill. Consequently, it is apparent that the Legislature intended, by way of subsection (e), to prohibit the availability of information compiled by a mapping application program under subsection (a) from criminal investigation and prosecution as a safeguard against the inadvertent creation of a shortcut for law enforcement efforts.

Thus, we conclude that the statutory context and legislative history confirm our earlier plain language analysis. If the Legislature intended HG § 13-3602(e) to categorically eliminate the ability of a grand jury to subpoena the underlying overdose information from a reporting agency, the logical codification of such limitation would have been in the Confidentiality Act. For all of these reasons, we conclude that the prohibition at HG § 13-3602(e) exclusively applies to the compiled product of overdose data reported to mapping application programs in accordance with HG § 13-3602(a) and (d) and does

not create a blanket prohibition on requesting the underlying overdose records by subpoena.

B. Reasonableness of Grand Jury Subpoena.

Having concluded that HG § 13-3602 does not preclude the State from obtaining the overdose records by means of a grand jury subpoena, we now reach the issue of the reasonableness of the subpoena in this case.

The City advances largely similar arguments to those raised in its original motion to quash the subpoena in the circuit court, contending that the subpoena is unreasonably broad in scope and length of time. Further, it argues that the subpoena unreasonably advances a general category of criminal investigation instead of a particular investigation linked to an individualized suspicion of crime. The City argues that these deficiencies in the grand jury subpoena make it the functional equivalent of a general warrant in violation of the Fourth Amendment of the United States Constitution and Article 26 of the Maryland Declaration of Rights. In addition, the City argues that these deficiencies in the grand jury subpoena make it unreasonable under both the general reasonableness test for grand jury subpoenas found in *In re Special Investigation No. 281*, 299 Md. 181, and the more specialized balancing test for subpoenaed medical records articulated in *Westinghouse Electric Corp.*, 638 F.2d 570, and adopted by this Court in *Maryland Board of Social Work Examiners*, 384 Md. 161.

On the other hand, the State asserts that all of the City's challenges to the grand jury subpoena are meritless, contending that the subpoena was reasonable in time, specific in scope, and relevant to the grand jury's investigation into drug distribution networks

operating within Baltimore City. Thus, the State argues that both tests here—the general reasonableness test for grand jury subpoenas and the more specialized balancing test for subpoenaed medical records—were satisfied. In the same line of reasoning, the State contends the subpoena was not akin to a general warrant. To further strengthen its arguments, the State emphasizes the sweeping investigatory powers possessed by the grand jury and refutes the existence of any requirement that a grand jury subpoena be in furtherance of a specific investigation of a particularized crime.

For the reasons that follow, we ultimately agree with the State on all three issues and conclude that the Court of Special Appeals did not err in holding that the Circuit Court for Baltimore City abused its discretion in quashing the grand jury subpoena on grounds of unreasonableness.

1. General Warrant.

A single consistent argument is at the heart of each of the remaining challenges the City poses to the grand jury subpoena—that is, the City contends the State's incurable misstep was its failure to identify a specific investigation stemming from an individualized or particularized suspicion of crime to justify the grand jury subpoena. Here, the City argues the lack of particularized suspicion is precisely what aligns this grand jury subpoena with a general warrant and inherently makes it unreasonable.

Harkening back to the origin of the Fourth Amendment "as a response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity[,]" the City likens the subpoena here to the abuses of British customs officers. *See*

Carpenter v. United States, 138 S. Ct. 2206, 2213 (2018) (quoting *Riley v. California*, 573 U.S. 373, 403 (2014)). The City maintains the British customs officers were given "prosecutorial access to citizen's [sic] most intimate information without any individualized or particularized suspicion" and without judicial check. Likewise, the City contends the grand jury subpoena here lacks "any individualized, particularized, or non-general suspicion to justify . . . the intrusion into a recognized privacy right" and any judicial check on the grand jury subpoena is being circumvented by this appeal. Consequently, the City urges this Court to consider the subpoena, characterized as a search "over an entire population[] without even a quantum of individualized suspicion" as *per se* unreasonable within the meaning of the Fourth Amendment.

Conversely, the State contends the City's "general warrant argument" is not properly before this Court because the City did not raise it below. Moreover, the State maintains the City does not have standing to litigate the Fourth Amendment rights of individuals who sought its emergency medical services,[17] and, in any case, the subpoena

[17] In asserting that the City has no standing to litigate the Fourth Amendment rights of overdose victims who received medical care from the Fire Department, the State relies on *Rakas v. Illinois*, 439 U.S. 128 (1978). There, the Supreme Court declined to analyze Fourth Amendment issues under the purview of standing, stating that "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." *Id.* at 133–34 (citing *Brown v. United States*, 411 U.S. 223, 230 (1973)). However, in *Rakas*, the Supreme Court further explained, "[i]t should be emphasized that nothing we say here casts the least doubt on cases which recognize that, as a general proposition, the issue of standing involves two inquiries: first, whether the proponent of a particular legal right has alleged 'injury in fact,' and, second, whether the proponent is asserting his own legal rights and interests rather than basing his claim for relief upon the rights of third parties." *Id.* at 139 (citing *Singleton v. Wulff*, 428 U.S. 106 (1976)).

here was issued by a lawfully constituted grand jury pursuant to a grand jury investigation and is "a far cry" from a general warrant.

First turning to the issues of preservation and standing, we note that the City correctly points out that only "the broad issue" and not the particular argument must be preserved for appellate review. *See, e.g.*, *Thompson v. UBS Fin. Servs., Inc.*, 443 Md. 47, 69 n.12 (2015). While the City's particular argument surrounding general warrants may not have been raised below, the broader issue of whether the grand jury subpoena satisfied Fourth Amendment principles was raised. *See In re Special Investigation Misc. 1064*, No. 3463, slip op. at 6 (analyzing whether the subpoena "satisf[ied] Fourth Amendment principles" and "violat[ed] constitutional requirements"). Thus, the City's argument pertaining to general warrants is properly before this Court.

Next, the City contends that, acting as a medical provider through its licensed paramedics and emergency technicians, it has standing to assert the constitutional privacy rights of its patients. We agree. In *Singleton v. Wulff*, 428 U.S. 106 (1976), the Supreme Court acknowledged the general rule that "[o]rdinarily, one may not claim standing . . . to vindicate the constitutional rights of some third party." *Id.* at 114 (quoting *Barrows v. Jackson*, 346 U.S. 249, 255 (1953)). However, the Supreme Court then went on to identify two factual elements to be considered when determining whether the general rule should apply in a particular case. *Id.* at 114–16. The first factual element for consideration is the relationship of the litigant to the third party whose right they seek to assert with an attention to whether "the enjoyment of the right is inextricably bound up with the activity the litigant wishes to pursue," and the second factual element for consideration is the ability of the

third party to assert their own right. *Id.* If there is a genuine obstacle preventing the third party from asserting their own right, then the litigant in court becomes "the right's best available proponent." *Id.* at 116.

Here, both factual elements weigh in favor of allowing the City to assert the privacy rights of its patients. First, the relationship between the City and its patients is confidential in nature and the rights of the patients will likely be diluted if not asserted by the City in this case. *See id.* at 115 (citing *Griswold v. Connecticut*, 381 U.S. 479, 481 (1965)). Thus, the patients' enjoyment of their right to privacy is inextricably bound up with the City's desire to continue providing emergency medical services to its residents. Second and perhaps even more persuasive, the patients themselves are entirely unable to assert their privacy rights here because they have no notice of the secret grand jury subpoena. Therefore, the City is the best, and only, proponent of their privacy rights. Accordingly, we conclude that under the two-element framework in *Singleton*, the City has standing to assert the privacy rights of its patients, here the overdose victims who received emergency medical services.

Having addressed these threshold procedural questions, we now reach the merits of the City's argument that the grand jury subpoena in this case is akin to a general warrant. The Court of Special Appeals has aptly defined a general warrant as:

> one which fails to sufficiently specify the place or person to be searched or the things to be seized, and is illegal since, in effect, it authorizes a random or blanket search in the discretion of the police in violation of the Fourth Amendment to the Federal Constitution, Article 26 of the Maryland Declaration of Rights, and [§1-203 of the Criminal Procedure Article of the Maryland Code] . . . all of which require that search warrants particularly describe the place to be searched and the things to be seized, so as to prevent

> the search of one place, or the seizure of one thing, under a warrant authorizing search of another place, or the seizure of another thing.

Harris v. State, 17 Md. App. 484, 486 (1973) (citing *Stanford v. Texas*, 379 U.S. 476 (1965)).

Here, the records requested by the grand jury subpoena are limited to nine pieces of specific information pertaining to overdose victims who called 911 seeking emergency medical assistance from the Fire Department. Indeed, the subpoena requested the date of the incident; the location of the incident; the patient's date of birth; the patient's gender; the patient's name; whether naloxone or any other opioid antagonist was administered and, if so, the number of units administered; the phone number associated with the patient and/or caller requesting service; the responding unit identifier; and the report number. This level of specificity in describing the requested records is entirely sufficient to distinguish the grand jury subpoena here from a general warrant. We see no indication that the grand jury subpoena is "a random blanket search" or that incorrect records may be searched and seized accidently due to lack of particularity in the subpoena. *See id.*

Furthermore, we note the fundamental hallmarks of a general warrant are simply not present here. In addition to the requested records being identified with particularity, the grand jury subpoena is not at all reminiscent of the actions taken by British customs officers who ransacked personal homes "in an unrestrained search for evidence of criminal activity." *Carpenter*, 138 S. Ct. at 2213. The very particularities of the subpoena set it apart from an unrestrained, entirely blind search for evidence. It is self-evident that issuing

a subpoena for opioid overdose data is a logical and strategic method to discover evidence of illicit drug distribution networks.

Finally, the grand jury subpoena does face a judicial check in the form of a motion to quash. It is illogical to conclude otherwise considering the very subject of this appeal is the reasonableness of the grand jury subpoena in response to the City's motion to quash. Moreover, a court's determination that the subpoena is reasonable and its subsequent denial of a motion to quash does not circumvent this check. Instead, it is merely a natural outcome of placing the subpoena under judicial scrutiny. Accordingly, we conclude that although this issue is properly before us and the City does have standing to litigate it, the grand jury subpoena here is not akin to a general warrant.

2. The General Test for Reasonableness of a Grand Jury Subpoena in In re Special Investigation No. 281.

We now turn to the City's next challenge to the grand jury subpoena—that is, its failure to satisfy the general test for reasonableness of a grand jury subpoena. This Court has articulated a comprehensive framework to assess the reasonableness of a grand jury subpoena in *In re Special Investigation No. 281*, 299 Md. 181 (1984).

We begin by noting "grand juries have been accorded broad powers to investigate whether a crime has been committed" and by whom. *Id.* at 191 (citing *United States v. Dionisio,* 410 U.S. 1, 15 (1973)). Jurors are permitted to "act on tips, rumors, evidence offered by the prosecutor, or their own personal knowledge." *Id.* at 192 (quoting *Dionisio,* 410 U.S. at 15). Similarly, grand juries "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *United States v. R.*

Enters., Inc., 498 U.S. 292, 297 (1991) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642–43 (1950)). Additionally, "no grand jury witness is entitled to set limits to the investigation that the grand jury may conduct" and "a sufficient basis for an indictment may only emerge at the end of the investigation when all the evidence has been received." *In re Special Investigation No. 281*, 299 Md. at 192 (internal citations omitted).

However, the investigatory power of the grand jury is not unchecked. The authority of the grand jury is restricted by the Fourth Amendment prohibition against unreasonable search and seizure. *Id.* (citing *Hale v. Henkel*, 201 U.S. 43, 76 (1906)). Germane to this case, "[a] *subpoena duces tecum* issued by a grand jury to a witness must be reasonable and relevant to the investigation." *Id.* (citing *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208 (1946)). Finally, in analyzing the reasonableness of a particular subpoena, this Court must consider three requirements. *Id.* First, the subpoena must "command only the production of materials relevant to the investigation"; second, the subpoena must "specify the materials to be produced with reasonable particularity"; and third, the subpoena must "command production of materials covering only a reasonable period of time." *Id.* at 192–93 (quoting *United States v. Reno*, 522 F.2d 572, 575 (1975)). Taken together, these requirements create a general test for the reasonableness of a grand jury subpoena, and if the subpoena meets the test, "a court will not consider the subpoena to be overbroad on the grounds that it is but a fishing expedition." *Id.* at 193.

In applying the test to the grand jury subpoena here, the parties reach different outcomes. The City contends that if the lack of underlying individualized or particularized suspicion does not make the subpoena *per se* unreasonable as akin to an unconstitutional

general warrant, then it certainly renders the subpoena overbroad and unreasonable under this test. Pointing out that the language of the test refers to "*the* investigation[,]" the City maintains that the State has only proffered a general category of investigation—the investigation of drug distribution networks operating in Baltimore City—and has in fact denied a single, particularized investigation by stating it was "investigating not one, not two, but multiple criminal organizations" at the circuit court hearing to quash the subpoena. *See id.* at 192 (emphasis added). The City argues that without the identification of a singular, specific investigation, this Court does not have sufficient information to adequately determine the relevancy of the materials demanded by the grand jury subpoena here. Likewise, the City contends that the third prong of the test—the reasonableness of the time period—must be measured against an actual, singular investigation instead of a category of investigation spanning a potentially unlimited time period. In light of these shortcomings, the City argues the subpoena here has failed even the "forgiving standards" of this test.

By contrast, the State argues that the records requested by the grand jury in this case do sufficiently meet the three-prong test for reasonableness of a subpoena, denying the existence of a legal requirement for a more specified investigation. The State points out that "the law presumes, absent a strong showing to the contrary, that a grand jury acts within the legitimate scope of its authority." *R. Enterprises*, 498 U.S. at 300. Therefore, the State maintains that this Court must first start with the presumption of reasonableness and the City, which seeks to avoid compliance with the subpoena, has not met its burden of showing the subpoena is unreasonable. *See id.* at 300–01. The State argues this is true

particularly in light of the generous definition given to relevance by the Supreme Court. The Supreme Court defines relevance to be a "reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject of the grand jury's investigation." *Id.* at 301.

Given the breadth of the grand jury's investigatory powers, the State asserts its explanation of the grand jury investigation into large scale drug distribution networks throughout Baltimore City, together with an articulated aim of linking smaller distribution networks to one another, was sufficient to determine the relevancy of the requested documents. We agree.

Justice Sandra Day O'Connor, writing for the majority in *R. Enterprises*, noted:

> The function of the grand jury is to inquire into all information that might possibly bear on its investigation until it has identified an offense or has satisfied itself that none has occurred. As a necessary consequence of its investigatory function, the grand jury paints with a broad brush. "A grand jury investigation 'is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find if a crime has been committed.'"

Id. at 297 (quoting *Branzburg v. Hayes*, 408 U.S. 665, 701 (1972)). Distinguishing a grand jury subpoena from a subpoena issued in the context of a prospective criminal trial, Justice O'Connor pointed out that the "identity of the offender, and the precise nature of the offense, if there be one," ordinarily "are developed at the conclusion of the grand jury's labors, not at the beginning." *Id.* (quoting *Blair v. United States,* 250 U.S. 273, 282 (1919)). She concluded, "[i]n short, the Government cannot be required to justify the issuance of a grand jury subpoena by presenting evidence sufficient to establish probable

cause because the very purpose of requesting the information is to ascertain whether probable cause exists." *Id.* (citing *Hale*, 201 U.S. at 65).

Thus, in light of *R. Enterprises* and *In re Special Investigation No. 281*, it is apparent that the grand jury is afforded broad latitude in investigating potential criminal charges. The State correctly argues that there is no requirement that the grand jury identify a particular offense (or even the precise nature of the offense) or a particular defendant before issuing a subpoena. In fact, the Supreme Court has expressly rejected this notion. *See R. Enterprises*, 498 U.S. at 297.

Having determined that the City's overarching argument that the State must proffer a more specific and particularized investigation in justification of the subpoena fails, we now move onto our analysis of the subpoena under the three-prong test of reasonableness for grand jury subpoenas provided in *In re Special Investigation No. 281*.

Following the same logic of the Court of Special Appeals, we take the requirements of the test in reverse order. Beginning with the third requirement, the Court of Special Appeals observed that this Court has determined a three-year period of time, in the context of a Medicaid fraud investigation, is reasonable. *In re Special Investigation Misc. 1064*, No. 3463, slip op. at 7. Therefore, the Court of Special Appeals reasoned that an eighteen-month time period spanning from January 1, 2017 to June 1, 2018 constituted a reasonable time period for the materials request here. *Id.*

We agree. "The permissible breadth of a subpoena *duces tecum* is to be measured by the scope of the problem under investigation . . . ." *In re Special Investigation 281*, 299 Md. at 192. In the context of a large-scale, city-wide drug distribution investigation, the

eighteen-month period of time is reasonable. Additionally, we note that the City's argument that this particular prong is problematic to the State because it proffers a general category of investigation that could be potentially unlimited in duration is incorrect. The requirement pertains to the length of time covered by the materials requested, not the length of the underlying grand jury investigation. Here, the materials requested span a fixed duration of eighteen months.

Next, the second prong of the test—that the subpoena specifies the materials to be produced with reasonable particularity—is satisfied by the grand jury subpoena here. As the Court of Special Appeals pointed out, "there can be no question on the part of the Fire Department as to which materials the State is seeking, or any uncertainty as to what documents the Department should be looking for when complying with the subpoena." *In re Special Investigation Misc. 1064*, No. 3463, slip op. at 7 (citing *Northrop Corp. v. McDonnell Douglas Corp.*, 751 F.2d 395, 397–98, 403 (D.C. Cir. 1984)).

Finally, we conclude that the first prong of the test—that the subpoena commands only the production of materials relevant to the investigation—is likewise satisfied by the grand jury subpoena here. For the reasons explained above, we operate under the determination that the investigation proffered by the State is sufficient here. Thus, our single outstanding task remains to determine whether the materials requested in the grand jury subpoena are relevant to that investigation. With the *R. Enterprises* definition of relevance in mind, we are certain that they are. The overdose records hold the "reasonable possibility" of "produc[ing] information relevant to the general subject of the grand jury's

investigation" into large-scale drug distribution networks. *See R. Enterprises*, 498 U.S. at 301.

In sum, we conclude that the Court of Special Appeals correctly determined that the grand jury subpoena in this case was not overbroad, irrelevant, or unreasonable under the three-prong test for reasonableness of a grand jury subpoena.

3. The Constitutional Balancing Test for Subpoenaed Medical Records in Westinghouse Electric Corp.

We now arrive at the City's final challenge to the grand jury subpoena. The City argues that the grand jury subpoena in this case seeks disclosure of private medical records[18] and thus must satisfy an additional constitutional balancing test articulated in *Westinghouse Electric Corp.*, 638 F.2d 570. Once again contending that the State has not proffered a specific, particularized investigation, the City argues that the subpoena is unable to satisfy the multi-factor balancing test in *Westinghouse Electric Corp.*, and thus the State is unable to assert a compelling need for the overdose records. In response, the State asserts that this argument is not properly before this Court because it was never raised in any court below, but, regardless, the subpoena meets the requirements of the test set forth in *Westinghouse Electric Corp.* and is therefore constitutional.[19]

[18] As we noted in our analysis of HG § 13-3602, neither party disputes that the overdose records fall within the definition of "medical record" provided in HG § 4-301(j).

[19] We decline to address the State's contention of lack of preservation of the *Westinghouse* factors argument because we have fully addressed that issue in relation to the City's earlier general warrant argument. For the same reasons stated there—namely that Fourth Amendment concerns of privacy invasion were argued before lower courts in this case and only the general issue must be preserved—we conclude the City's *Westinghouse* factors argument is properly preserved for our review.

"It is undisputed that medical records fall within an individual's privacy interests and are protected by the statutory confidentiality provisions under [the Health Insurance Portability and Accountability Act] and the Confidentiality Act" and additionally "fall within the penumbra of privacy rights protected by the Constitution." *Saint Luke Inst., Inc. v. Jones*, 471 Md. 312, 352 (2020) (citing *Maryland Bd. of Soc. Work Exam'rs*, 384 Md. at 183–84). When a government actor seeks disclosure of medical records that fall within the constitutionally protected privacy interest, then the government actor must "show a compelling state interest" before being allowed to infringe on the individual's privacy right. *Id.* (quoting *Maryland Bd. of Soc. Work Exam'rs*, 384 Md. at 183). The multi-factor balancing test in *Westinghouse Electric Corp.* "is the correct standard to use when balancing individual privacy interests in medical records against competing state interests in those records." *Maryland Bd. of Soc. Work Exam'rs*, 384 Md. at 186.

In *Westinghouse Electric Corp.*, the United States Court of Appeals for the Third Circuit adjudicated an employer's challenge to a subpoena *duces tecum* for employee medical records requested by the National Institute for Occupational Safety and Health in connection with a health hazard investigation. *Westinghouse Elec. Corp.*, 638 F.2d at 572–73. The employer refused to comply with the subpoena, arguing that the records were confidential and thus protected from disclosure. *Id.* The National Institute for Occupational Safety and Health filed an action seeking enforcement of the subpoena, which the lower court granted. *Id.* at 573. The employer appealed. *Id.*

In the context of that dispute, the *Westinghouse* court noted where "a court has allowed some intrusion into the zone of privacy surrounding medical records, it has usually

done so only after finding that the societal interest in disclosure outweighs the privacy interest on the specific facts of the case." *Id.* at 578. Thus, the *Westinghous*e court articulated seven factors that should be considered when "engag[ing] in the delicate task of weighing competing interests." *Id.*

> The factors which should be considered in deciding whether an intrusion into an individual's privacy is justified are [1] the type of record requested, [2] the information it does or might contain, [3] the potential for harm in any subsequent nonconsensual disclosure, [4] the injury from disclosure to the relationship in which the record was generated, [5] the adequacy of safeguards to prevent unauthorized disclosure, [6] the degree of need for access, and [7] whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access.

Id.

In 2004, this Court adopted the multi-factor balancing test for subpoenaed medical records first articulated in *Westinghouse*. *See Maryland Bd. of Soc. Work Exam'rs*, 384 Md. at 184–86 ("We agree with the intermediate appellate court that the balancing test framework described in *Westinghouse* . . . is the correct standard to use when balancing individual privacy interests in medical records against competing state interests in those records."). This Court further stated that "[w]hether a compelling state interest can be shown in order to override an individual's privacy interest is to be determined on a case-by-case basis." *Id.* at 186.

The City directs our focus to the sixth *Westinghouse* factor—the State's degree of need for access to the overdose records—and asserts that the State's inability to proffer a specific, particularized investigation precludes this Court from identifying a compelling state interest that outweighs the privacy rights of the City's patients. Accordingly, the City

maintains the State's need for access—"the beating heart of any assertion that the State has a compelling interest to invade a privacy interest"—"is a complete unknown." (Emphasis omitted.) The City also finds the fourth *Westinghouse* factor—the injury from disclosure to the relationship in which the record was generated—problematic, arguing that overdose victims may be uncomfortable calling for emergency medical services from the Fire Department if they become aware the Fire Department is disclosing the records for the purpose of a grand jury criminal investigation. Lastly, the City contends that HG § 13-3602(e) prevents disclosure of the medical records under these facts and should be considered in connection to the seventh *Westinghouse* factor.

On the other hand, the State directs our focus to the seventh *Westinghouse* factor—whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access—and argues that HG § 4-306(b)(7),[20] which mandates disclosure of medical records without patient consent when requested by

[20] As previously noted, HG § 4-306(b)(7) provides:

> (b) A health care provider shall disclose a medical record without the authorization of a person in interest:
>
> > (7) Subject to the additional limitations for a medical record developed primarily in connection with the provision of mental health services in § 4-307 of this subtitle, to grand juries, prosecution agencies, law enforcement agencies or their agents or employees to further an investigation or prosecution, pursuant to a subpoena, warrant, or court order for the sole purposes of investigating and prosecuting criminal activity, provided that the prosecution agencies and law enforcement agencies have written procedures to protect the confidentiality of the records[.]

a grand jury subpoena, is dispositive. The State maintains that by enacting HG § 4-306(b)(7), the Legislature has already undertaken a balancing test and has determined the compelling interest of a grand jury in investigating crime outweighs the privacy rights patients have in their medical records. The State argues that the balancing test required under *Westinghouse Electric Corp.* has already been decided by a legislative pronouncement in the context of grand jury subpoenas for private medical records.

Although we ultimately agree that the subpoena at issue satisfies the *Westinghouse* balancing test and is therefore constitutional, we decline to accept the State's rationale that, because a statute authorizes disclosure of the records, there is no need to apply the test. As discussed above, the "*Westinghouse* analytical framework . . . applies in circumstances in which a government agency is seeking medical records of a third party, and requires the balancing of several factors when weighing an individual's right to privacy in his or her medical records against the government's competing interest in obtaining access to those records." *Saint Luke Inst.*, 471 Md. at 324 n.5 (citing *Westinghouse Elec. Corp.*, 638 F.2d at 578). Here, a government actor, the State, is seeking disclosure of overdose victims' medical records by grand jury subpoena. Consequently, the *Westinghouse* balancing test requires this Court to consider each of the seven factors. *See id.* Thus, a single factor taken alone, such as an express statutory mandate militating towards access as the State argues, is not dispositive of the constitutionality of a grand jury subpoena requesting access to medical records.

Here, in applying the *Westinghouse* test, we first consider the type of records requested and the information contained in the records. The grand jury subpoena in this

case commanded the Fire Department to produce "records of opioid related overdoses/incidents . . . so classified either by text of call-for service or clinical impression of first responder." As stated, *supra*, the subpoena requested nine specific pieces of information including the patient's name, the patient's date of birth, the location of the incident, and whether an opioid antagonist was administered. Accordingly, the documents requested were medical records containing sensitive and personally identifying information.

Looking to the third and fourth *Westinghouse* factor, we determine the potential for harm in any subsequent nonconsensual disclosure is minimal given the inherent secrecy of grand jury proceedings and, in light of the fifth factor, discussed *infra,* the adequacy of safeguards to prevent the unauthorized disclosure. Likewise, the injury from disclosure to the relationship in which the record was generated—that is the relationship between the City's emergency services and the patients that call for assistance—is minimal. The grand jury proceedings are confidential, and, as the Court of Special Appeals noted, even if those involved in illicit drug use were to learn of the disclosure, it would likely not prevent those individuals from calling for life-saving medical assistance when faced with a medical emergency. *In re Special Investigation Misc. 1064*, No. 3463, slip op. at 13. We agree with the Court of Special Appeals' reasoning that this conclusion is supported by the fact that no similar patterns of reluctance to call for emergency medical services have been observed in victims involved in violent crimes even though it is widely understood by the public that criminal investigations will ensue. *See id.*

Addressing the fifth *Westinghouse* factor, we determine the safeguards to prevent unauthorized disclosure in this case are adequate. The Maryland Rules govern circuit court procedures relating to criminal investigations, including grand jury inquiries into alleged criminal activities. Maryland Rule 4-641; *see also Office of State Prosecutor v. Judicial Watch, Inc.*, 356 Md. 118, 131 (1999). Records obtained by grand jury subpoena are subject to Maryland Rule 4-642,[21] which pertains to grand jury secrecy and provides

[21] Maryland Rule 4-642 provides:

> (a) *Court Records*. Files and records of the court pertaining to criminal investigations shall be sealed and shall be open to inspection only by order of the court.
> (b) *Hearings*. Hearings before the court relating to the conduct of criminal investigations shall be on the record and shall be conducted out of the presence of all persons except those whose presence is necessary.
> (c) *Grand Jury--Who May Be Present.*
>
> (1) *While the Grand Jury Is in Session*. The following persons may be present while the grand jury is in session: one or more attorneys for the State; the witness being questioned; any court reporter appointed pursuant to Code, Courts Article, § 2-503; and, when needed, interpreters, so long as an audio recording is made if the interpreter is present for a witness.
>
> (2) *During Deliberations and Voting*. No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting.
>
> (3) *Appointment, Oath, and Compensation of Interpreter*. If the State's Attorney requests that an interpreter be appointed for a witness or juror in a grand jury proceeding, the court shall appoint an interpreter. Before acting as an interpreter in a grand jury proceeding, the interpreter shall make oath as provided in Rule 1-333(c)(3). Compensation for the interpreter shall be in accordance with Code, Courts Article, § 9-114.
>
> (d) *Motion for Disclosure*. Unless disclosure of matters occurring before the grand jury is permitted by law without court authorization, a motion for disclosure of such matters shall be filed in the circuit court where the grand

extensive protection against unauthorized disclosure. Pursuant to Maryland Rule 4-642(d), the only vehicle for disclosure of grand jury records is filing a motion for disclosure. *See Office of State Prosecutor*, 356 Md. at 132. Furthermore, the moving party has the burden of demonstrating a particularized need for the disclosure by showing: "1) the material they seek is needed to avoid a possible injustice; and 2) the need for disclosure is greater than the need for continued secrecy; and 3) their request is structured to cover only material so needed." *In re Criminal Investigation No. 437 in Circuit Court for Baltimore City*, 316 Md. 66, 85 (1989). Thus, several layers of protection work to safeguard against unwarranted public disclosure of the overdose records at issue in this case.

We next turn to the sixth *Westinghouse* factor, the degree of need for access. This factor is emphasized by the City as a "complete unknown." As mentioned above, the City maintains that without information on a more particularized investigation, this Court is precluded from weighing the State's need for access against the other *Westinghouse* factors. We do not agree with the City's interpretation and instead find that the State's explanation that the records will be used in a large-scale investigation into illicit drug

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> jury convened. If the moving party is a State's Attorney who is seeking disclosure for enforcement of the criminal law of a state or the criminal law of the United States, the hearing shall be ex parte. In all other cases, the moving party shall serve a copy of the motion upon the State's Attorney, the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and such other persons as the court may direct. The court shall conduct a hearing if requested within 15 days after service of the motion.

networks throughout the City does demonstrate a substantial need for access, particularly in light of the rising number of deaths associated with opioid drug use in Baltimore City.[22]

Lastly, as we have previously determined, HG § 13-3602(e) does not provide a blanket exception to HG § 4-306(b)(7). Thus, in our consideration of the last *Westinghouse* factor, we determine that HG § 4-306(b)(7) is an express statutory mandate that militates towards access.

Having examined each factor, we conclude that the State's compelling interest in obtaining access to the records, in light of the alarming opioid epidemic, outweighs the patients' privacy interests. Although the records contain sensitive and personally identifying information, the intrusion on the individuals' privacy interest is minimal. The information contained in the records is limited to nine specific data points, and the grand jury proceedings are confidential. Moreover, the Maryland Rules provide extensive safeguards to prevent unauthorized disclosure, and the relationship between potential opioid victims and the City's emergency medical services providers is unlikely to be hindered by disclosure. Accordingly, the grand jury subpoena is constitutional under the *Westinghouse* balancing test.

[22] In its brief to this Court, the City attached a report generated by a Fentanyl Task Force convened by the Baltimore City Health Department and detailing recommendations to stem the overdose crisis. The report showed a fifty-six percent increase in overdose deaths in 2016 up from 2015. *See Recommendations to the Mayor: City-Wide Fentanyl and Overdose Response Plan*, (Oct. 15, 2016), https://health.baltimorecity.gov/sites/default/files/Baltimore%20City%20Health%20Department%20Fentanyl%20Task%20Force%20Action%20Plan.pdf [https://perma.cc/34LW-YXMM].

CONCLUSION

In summary, for the foregoing reasons, we hold that the grand jury subpoena in this case is not precluded by the prohibition on investigation and prosecution at HG § 13-3602(e). Thus, we answer the first question before us in the negative and affirm the Court of Special Appeals' holding that HG § 13-3602(e) does not prohibit the State from issuing a subpoena for certain reported overdose information for use in a criminal investigation.

Likewise, determining that the grand jury subpoena contains particularized requests for information, we hold it is not akin to a general warrant and thereby does not violate the Fourth Amendment to the United States Constitution or Article 26 of the Maryland Declaration of Rights. Lastly, we hold that the subpoena is both reasonable under the general reasonableness test for grand jury subpoenas provided in *In re Special Investigation No. 281*, 299 Md. 181, and constitutional under the multi-factor, specialized balancing test for disclosure of medical records articulated in *Westinghouse Electric Corp.*, 638 F.2d 570, and adopted by this Court in *Maryland Board of Social Work Examiners*, 384 Md. 161. Thus, we answer the second question before us in the negative and affirm the Court of Special Appeals' holding that the Circuit Court for Baltimore City abused its discretion in quashing the grand jury subpoena on grounds of unreasonableness.

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED. COSTS TO BE PAID BY PETITIONERS.