

HOUSE BILL REPORT

ESB 5516

As Passed House:
February 28, 2010

Title: An act relating to drug overdose prevention.

Brief Description: Addressing drug overdose prevention.

Sponsors: Senators Franklin, Kline, Kohl-Welles, Regala, Fraser, Kauffman and Shin.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/17/10, 2/23/10 [DP].

Floor Activity:

Passed House: 2/28/10, 57-39.

Brief Summary of Engrossed Bill

- Exempts a person who seeks medical assistance for a person suffering from a drug-related overdose from certain prosecution under the Uniform Controlled Substances Act (Act).
- Exempts a person who experiences a drug-related overdose and receives medical assistance from certain prosecution under the Act.
- Authorizes any person to administer, dispense, prescribe, purchase, acquire, possess, or use Naloxone, given the fulfillment of certain requirements.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 6 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Appleton, Goodman, Kirby and Ross.

Minority Report: Do not pass. Signed by 2 members: Representatives Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member.

Staff: Yvonne Walker (786-7841).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Generally, it is illegal for a person to possess various controlled substances. Under the Uniform Controlled Substances Act (Act), the degree of restriction exercised over a controlled substance is dependent on the potential for abuse and the degree to produce psychic or physical dependency which may be caused by the substance. Controlled substances are placed in five different schedules to reflect the amount of control necessary, with Schedule I being the most controlled, and Schedule V being the least restricted. The penalty for violations involving a controlled substance varies depending on the schedule on which the substance is placed.

Exemption from Prosecution.

Several states have introduced legislation that would provide limited immunity for witnesses who report a drug overdose. These states include: Maryland, New Jersey, Illinois, Rhode Island, and New Mexico. The only state that has enacted such a law is New Mexico. Under New Mexico's law, a person may not be charged or prosecuted for possession of illegal drugs if he or she:

- in good faith, seeks medical assistance for someone experiencing a drug-related overdose if the evidence of the charge of possession was gained as a result of the seeking of medical assistance; or
- experiences a drug-related overdose and is in need of medical assistance if the evidence for the charge of possession was gained as a result of the overdose and the need for medical assistance.

The New Mexico law also provides that the act of seeking medical assistance for someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution. The scope of immunity provided by the New Mexico statute is limited in several ways. Although the statute protects overdose victims and witnesses to an overdose from drug possession charges when calling 911 for help, the law does not protect people from prosecution for other offenses, including possessing paraphernalia or drug trafficking charges. Additionally, the law does not protect those with outstanding warrants or those on probation or parole.

Mitigating Circumstances.

Generally, the standard sentencing range is presumed to be appropriate for the typical felony case. However, the law provides that in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the standard range (with a mitigating circumstance) or above the range (with an aggravating circumstance). The Sentencing Reform Act provides a list of factors that a court may consider in deciding whether to impose an exceptional sentence outside of the standard range for a felony offense involving controlled substances.

Naloxone.

Naloxone is a drug used to counteract the effects of opioid overdose. Opioids — such as heroin and morphine — work by binding to opioid receptors found principally in the central nervous system and the gastrointestinal tract. Activation of these receptors is associated with several actions, including euphoria and respiratory depression. Naloxone, a competitive inhibitor, exhibits a high affinity for a principle class of opioid receptor. When Naloxone is introduced to an opioid user's system, it blocks opioid molecules from binding to the aforementioned receptors, thereby precipitating acute withdrawal symptoms. Naloxone's

counteractive effects typically manifest around two minutes after the drug is administered. Classified as a legal, unscheduled drug, Naloxone is routinely used by paramedics and medical personnel. A Naloxone kit may be prescribed to an opioid drug user and typically costs around \$9.50.

Physicians May Legally Prescribe Naloxone to an Opiate Drug User.

The practice of medicine in Washington is governed by both law and rule. The Washington State Medical Quality Assurance Commission (Commission) has authority to license physicians and to punish licensed physicians who behave in ways that violate the law or fall beneath the standards of good faith and regular practice of medicine. Case law authorizes the Commission to set limits on allowable prescription practices, either by enacting specific regulations banning certain prescription practices, or through the disciplinary process.

Naloxone is labeled for administration to reverse opiate overdose in clinical settings, such as hospitals, but is often administered by first responders acting on standing orders of physicians in the field. Federal and state law affords physicians broad discretion to prescribe drugs for off-label uses, and such prescriptions are a routine part of medical practice. Naloxone is not a controlled substance under state or federal law. Therefore, a prescription for Naloxone must meet the same standards as a prescription for any other drug. A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. The medical board is authorized to punish physicians whose prescription practices constitute unprofessional conduct.

Physicians have broad discretion about dosage of non-controlled drugs, and may decide to prescribe whatever amount of the agent they reasonably deem necessary to meet the patient's needs. A prescription for Naloxone to an opiate drug user is consistent with the standard for a valid prescription under laws governing the physician's authority to prescribe.

Provided that the healthcare provider has followed the prescription guidelines, certified practitioners may dispense Naloxone. If a program decides to dispense Naloxone on premises, it must follow standard dispensation rules, which include the requirements for record keeping and proper labeling of the agent, including the patient's name and other essential information.

Illegal to Prescribe or Dispense Naloxone to Recipients to Give or Administer to Third Parties.

A legal prescription requires a specific patient who has been examined and found to have a medical indication for the drug. Before the drug can properly be dispensed, the patient must be given information about the indications for the drug, its proper use, and its risk and benefits. It would be improper to prescribe Naloxone to a person who was not an opium drug user at risk of overdose, even if that person promised to give it to or use it on a person in need. Although a physician may prescribe multiple doses to a patient for whom they are indicated, the physician may not prescribe extra Naloxone to a patient with explicit instructions to give it to or use it on a person in need.

A licensed professional who improperly distributes Naloxone in the way described above could be subject to charges of professional misconduct and be subject to fines. The patient or

volunteer who distributed or administered Naloxone to recipients who were not prescribed this agent could be charged with practicing medicine without a license. Finally, the unauthorized recipient of the drug could be charged with illegal possession of a prescription (legend) drug, subject to imprisonment and fine.

Summary of Bill:

Exemption from Prosecution.

A person witnessing a drug-related overdose and seeking medical assistance for the person experiencing the overdose cannot be charged or prosecuted for a violation of the Act, if the evidence of the violation was obtained as a result of seeking medical assistance. A person who experiences a drug-related overdose and needs medical assistance cannot be charged or prosecuted for a violation of the Act, if the evidence of the violation was obtained as a result of having received medical assistance. The statutory protection from prosecution for possession crimes in either case is not grounds for suppression of evidence in other criminal charges.

Mitigating Circumstances.

A court may consider the act of making a good faith effort to seek medical assistance for someone experiencing a drug-related overdose as a mitigating circumstance to justify an exceptional sentence below the standard sentence range.

Distribution and Use of Naloxone.

Any person who administers, dispenses, prescribes, purchases, acquires, possesses, or uses Naloxone does not violate any law or constitute unprofessional behavior if his or her action results from a good faith effort to assist:

- a person experiencing, or likely to experience, an opiate-related overdose; or
- a family member, friend, or other person in a position to assist a person experiencing, or likely to experience, an opiate-related overdose.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will work to save lives. Young lives have been taken over the years and something needs to be done. Drug overdoses are ranked second to motor vehicle accidents in causing deaths. In 1999 there were 403 unintentional overdoses in Washington and by 2006 there were 707 overdoses. Most overdose deaths are preventable. Normally there is a fear about calling for help for someone that overdoses and this bill provides that immunity so that those people that need help can get the assistance they need without the fear of being prosecuted.

Several members and entities met over the summer to review and discuss this bill. Even the members of the Washington Association of Sheriffs and Police Chiefs had discussions surrounding the substance of this bill and it was the campus law enforcement that stated that it would be worth taking the risk to support the bill and passing on a simple possession charge as many lives in the end could be saved.

(Opposed) None.

Persons Testifying: Senator Franklin, prime sponsor; Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.