

SENATE BILL REPORT

ESB 5516

As Passed Senate, February 5, 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: Judiciary: 2/10/09, 2/17/09 [DP, w/oRec].

Passed Senate: 2/05/10, 47-1.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Hargrove and Kohl-Welles.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Juliana Roe (786-7438)

Background: In 2003 the death rate from drug use was 9.9 deaths per 100,000 Washington residents. This rate has increased from 1992, when it was 5.6 deaths per 100,000 residents. Concern exists that some people who witness drug overdoses may be reluctant to summon assistance because they fear being charged with a drug offense.

Summary of Engrossed Bill: A person will not be charged or prosecuted for possession of a controlled substance under the Uniform Controlled Substances Act if: (1) that person believes that he or she is witnessing a drug-related overdose and seeks medical assistance for that person in good faith; or (2) that person experiences a drug-related overdose and is in need of medical assistance. A person will also not be charged if the evidence for the charge of possession of a controlled substance under RCW 69.50.4013, or penalty under RCW 69.50.4014, was obtained as a result of that person seeking or receiving medical assistance. However, that person remains liable for charges of manufacturing or sale of a controlled substance. This protection does not apply to suppression of evidence in other criminal charges.

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.

A person acting in good faith may receive, possess, and administer naloxone to an individual suffering from an apparent opiate-related overdose. Health practitioners or persons who administer, dispense, prescribe, purchase, acquire, possess, or use naloxone in a good faith effort to assist a person experiencing or likely to experience an opiate-related overdose will not be in violation of professional conduct standards or provisions.

A court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence, including but not limited to, a defendant's good faith effort to obtain or provide medical assistance for someone experiencing a drug-related overdose.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This legislation is brought forth in an attempt to save lives. Persons who witness drug overdoses are often reluctant to report overdoses or call 911 for fear of prosecution, jail, and outstanding warrants. This legislation is not about immunizing persons from providing drugs to those who overdose or excusing people from committing crimes, it's about saving lives. It is better to save a life and rehabilitate than have to deal with a dead body.

Drug overdoses are second only to motor vehicle accidents as a leading cause of death. In 1999 there were 403 unintentional overdoses in Washington State. That number rose to 707 in 2006. That amounts to almost two deaths every day. The increase in deaths at one time was due to heroin, but now prescription opiate deaths have taken their place. Most overdose deaths are preventable with timely medical attention. Only fear of prosecution prevents people from seeking help. The Legislature has the opportunity to remove that barrier. No one should die because someone was too afraid to call 911.

New Mexico is the only other state that has passed this type of legislation. It was passed in 2007; however, there is no data thus far from that state. This kind of legislation has grown out of college campuses where colleges that have enacted an immunity on campus has lead to persons calling for help in a timely manner.

There is also an amendment that the committee should consider, included in HB 1796, that authorizes any person to administer Naloxone, a drug that has an immediate, life saving reaction for those overdosing on opiates, to a third party in drug overdose situations.

CON: There is no guarantee that this legislation will lead to a change in behavior in drug overdose situations. With no budget to advertise this kind of change, people will not be aware of the immunity and, therefore, will continue not to call 911. If this bill were likely to cause more people to call 911 in these situations, then that is supportable legislation.

However, it is not likely. All this legislation will do is complicate prosecutions due to evidentiary issues.

Persons Testifying: PRO: Senator Franklin, prime sponsor; Shankar Narayan, ACLU of Washington; Thomas Martin, Susie Tracy, Washington State Medical Association.

CON: Tom McBride, Washington Association of Prosecuting Attorneys.