

# SENATE BILL REPORT

## SB 5516

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As of February 10, 2009

**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.

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### SENATE COMMITTEE ON JUDICIARY

**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 Bill:** A person will not be prosecuted under the Uniform Controlled Substances Act if: (1) that person believes he or she is witnessing a drug-related overdose and seeks medical attention for that person; or (2) a person experiences a drug-related overdose and receives medical assistance for the overdose. Persons will not be subject to having property, that is not contraband, seized or forfeited under these circumstances. These provisions do not apply, however, if the prosecution is brought pursuant to: (1) a controlled substance homicide, where the witness is the drug provider; (2) the manufacture of, or possession with intent to manufacture, a controlled substance; and (3) the delivery, or possession with intent to deliver, a controlled substance where delivery was intended to be a sale for profit. The court can consider the act of seeking medical assistance as a mitigating circumstance to justify an exceptional sentence below the standard range.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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*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.*

**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.