

HOUSE BILL REPORT

HB 1796

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to drug-related overdose prevention and treatment.

Brief Description: Addressing drug-related overdose prevention and treatment.

Sponsors: Representatives Goodman, Green and Ormsby.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/4/09, 2/18/09 [DPS].

Brief Summary of Substitute 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 in connection therewith 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: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Appleton, Goodman and Kirby.

Minority Report: Do not pass. Signed by 3 members: Representatives Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Ross.

Staff: Kyle Gotchy (786-7119) and 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.

National Opioid Overdose Trends.

In the United States, the prevalence of heroin and other opioid use has increased dramatically during the past decade. This trend, as it pertains to heroin, has been commonly attributed to the drug's increasing purity and declining street price. Increased heroin consumption has been accompanied by a parallel rise in incidence of fatal overdose. A study published in 2000 found that the number of overdose deaths per 100,000 population in 25 United States cities increased from 8.7 in 1988 to 13.8 in 1997. Fatal overdose is currently the leading cause of death among those who misuse illicit drugs, exceeding mortality from AIDS, hepatitis or homicide.

Between 58 percent and 86 percent of heroin-related overdoses occur in the company of others, and death typically occurs within one to three hours. Both of these factors provide a window of opportunity for medical intervention. Studies indicate that companions often delay or resist contacting emergency services because they fear that notifying authorities of their drug use may lead to interrogation or arrest. Consequently, the majority of overdoses are handled by laypersons. Few injection drug users have been trained in cardiopulmonary resuscitation, and therefore their attempts at resuscitation are often unsuccessful.

Drug Caused Deaths in Washington.

In 2006 there were 961 drug-induced deaths in Washington. The annual number of such deaths has almost doubled since 1996, when there were 499 such deaths. In King County, meanwhile, there were 151 deaths caused by prescription type opiates in 2007. This statistic represents an almost seven-fold increase within the past decade. More than half of King County's 2007 drug caused deaths occurred in the decedent's home rather than a healthcare facility, a pattern consistent with most other metropolitan areas in the United States.

911 Good Samaritan Legislation.

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:

1. 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
2. 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.

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.

According to a 1999 study published in the *Annals of Internal Medicine*, Naloxone has no effect on non-opioid users, rarely produces serious adverse side-effects, and has no potential for abuse. Naloxone may be administered either intravenously for fastest action or via an intranasal spray. 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.

Effectiveness of Naloxone Intervention.

Data from a forthcoming study in the *American Journal of Public Health* demonstrates that laypersons are consistently successful in safely administering Naloxone and reversing opioid overdose. Although Naloxone precipitates unpleasant symptoms of withdrawal in opioid users, no studies suggest lay administration of the drug constitutes a significant health risk. Unpublished data made available by Dr. Alex Kral of the Research Triangle Institute describes the impact of Naloxone programs in certain domestic metropolitan areas. In Chicago, where more than 9,000 people have been trained to administer the drug, 745 reversals have been reported. In New Mexico more than 2,337 people have been trained and at least 451 reversals have been reported.

In a 2003 survey of 82 injection drug users from the San Francisco Bay Area of California, 87 percent were strongly in favor of participating in an overdose management training program to receive take-home Naloxone. If provided Naloxone, 35 percent predicted that they might feel comfortable using greater amounts of heroin, 62 percent might be less inclined to call 911 for an overdose, 30 percent might leave an overdose victim after Naloxone resuscitation, and 46 percent might not be able to dissuade the victim from using heroin again to alleviate withdrawal symptoms induced by Naloxone. In contrast to the responses described in the San Francisco study, other research demonstrates a statistically significant decline in the frequency of heroin injection for users who have received training and a prescription for Naloxone.

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.

It is Not Legal to Prescribe or Dispense Naloxone to Recipients to Give or Administer to Third Parties Who Have Not Been Prescribed the Drug by a Licensed Professional.

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 Substitute Bill:

Exemption From Prosecution, Seizure, and Forfeiture.

1. *Witnesses*: A person who believes he or she is witnessing a drug-related overdose and seeks medical assistance for the person experiencing the overdose will not be prosecuted for a violation of the Uniform Controlled Substances Act (Act), or have property that is not contraband seized or forfeited on the basis of a violation the Act, if the evidence of the violation was obtained as a result of *seeking* medical assistance.
2. *Persons Receiving Medical Attention*: A person who experiences a drug-related overdose and receives medical assistance in connection to a drug overdose will not be prosecuted for a violation of the Act, or have property that is not contraband seized or forfeited on the basis of a violation of the Act, if the evidence of the violation was obtained as a result of having *received* medical assistance.

Surviving Prosecutions and Non-Suppression of Evidence.

An individual who otherwise qualifies for protection from prosecution is not exempted from a prosecution for:

1. controlled substances homicide;
2. the manufacture of, or possession with the intent to manufacture, controlled substances; or
3. the delivery of, or possession with the intent to deliver, controlled substances where the delivery was, or was intended to be, a sale for profit.

The statutory protection from prosecution for possession crimes is not grounds for suppression of evidence in other criminal charges.

Possible Mitigating Factors.

Whether or not a defendant qualifies for a prosecutorial exemption, a court may consider the act of seeking medical assistance for someone experiencing a drug-related overdose as a mitigating circumstance justifying an exceptional sentence below the standard range.

Distribution and Use of Naloxone.

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

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

Distribution and Use of Naloxone - Third Parties.

Any person acting in good faith may receive a Naloxone prescription; possess Naloxone; and administer Naloxone to an individual suffering from an apparent opiate-related overdose.

Substitute Bill Compared to Original Bill:

The substitute bill:

1. Exempts a reporting witness from having property that is not contraband seized or forfeited on the basis of a violation of the Act, if the evidence of the violation was obtained as a result of *seeking* medical assistance.

2. Exempts a person who experiences an overdose and is in need of medical assistance from having property that is not contraband seized or forfeited on the basis of a violation of the Act, if the evidence of the violation was obtained as a result of having *received* medical assistance.
 3. Increases the number of prosecutorial exemptions that attach to qualifying reporting witnesses and persons who experience an overdose. In addition to the exemption from prosecution for possession, qualifying persons are exempt from prosecution for offenses such as:
 - a. label violation;
 - b. delivery of material in lieu of a controlled substance; and
 - c. maintaining a dwelling for controlled substances.
 4. Provides that the statutory protection from prosecution for possession of a controlled substance is not grounds for suppression of evidence in other criminal charges.
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Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: 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 is animated by the paramount value of human life. If we do not pass this bill, we will fail to appropriately prioritize innocent lives and, consequently, residents of Washington will continue to die preventable deaths. Recently, use of opioids has escalated dramatically, migrating from urban areas to rural sectors and simultaneously penetrating younger populations. Fueling the problem is the fact that the substances that individuals are misusing are not all illegal — many are simply prescription drugs that individuals are using irresponsibly. Clearly, opioid use and abuse is no longer a contained or peripheral problem; it is an issue that demands the Legislature's attention.

The immunity extended by this bill is carefully crafted to address situations where individuals are using opioids together and one experiences an overdose. The bill is tailored in such a way that it only exempts individuals from prosecution under extremely specific and intentional circumstances. Significantly, each portion of the bill targets different portions of the using and non-using population. The Naloxone section alone would have a limited impact in the absence of the Good Samaritan provisions and vice versa. Naloxone, for instance, can only help individuals when it is on hand and when witnesses actually know how to use it. It is therefore important for the Legislature to pass both sections into law if it wishes to achieve maximum efficacy.

Overall, this bill represents a rare and exciting opportunity to save lives without actually spending any money. The Legislature should therefore act swiftly in order to prevent further, needless loss of innocent life.

(With concerns) We believe that this bill will not impact the number of calls made for medical assistance and therefore would not fulfill its intent. If the Legislature believes, however, that this bill will save even one life or would influence someone to call for medical assistance when they would not have otherwise, then the Legislature should pass this bill. Indeed, if we thought that this bill would save lives, we would support it. In any case, immunities should be crafted with hesitancy because, once they are granted, they cannot be rescinded.

(Opposed) There is a basic philosophical problem with this bill: one ought not be relieved of liability where one simply fulfilled the duty that one should have fulfilled anyway. It is important to understand that when people are confronted by an overdose situation, they are not making thoughtful, informed decisions. Whether a person calls for medical assistance will not be influenced by the incentives or protections we create; they either will or will not seek help based on their own moral volition.

If the Legislature does pass this bill, there must be some mechanism for relaying information about Naloxone and the Good Samaritan prosecutorial exemptions to the drug-using community.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Susie Tracy, Washington State Medical Association; Shankar Narayan, American Civil Liberties Union of Washington; Justin and Jason Munning; and Caleb Banta-Green.

(With concerns) Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Don Pierce, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.