Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Public Safety & Emergency Preparedness Committee

HB 1796

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

Sponsors: Representatives Goodman, Green and Ormsby.

Brief Summary of Bill

- Exempts persons who seek medical assistance for a person suffering from a drug-related overdose from prosecution for possession of a controlled substance.
- Exempts persons who experience a drug-related overdose from prosecution for drug possession where the evidence was obtained as a result of the overdose and the need for medical assistance.
- Authorizes any person to administer, dispense, prescribe, purchase, acquire, possess, or use Naloxone, given the fulfillment of certain requirements.
- Authorizes any person to administer Naloxone to a qualifying third party.

Hearing Date: 2/4/09

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Background:

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.

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.

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, sedation 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 Research Triangle Institute describes the impact of Naloxone programs in certain United States 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 Bill:

<u>Exemption From Prosecution for Possession</u>

1. ***Witnesses***: A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose is exempt from prosecution for possession of a controlled substance if the evidence for the charge of possession was gained as a result of *seeking* medical assistance.

2. ***Persons Receiving Medical Attention***: A person who experiences a drug-related overdose and is in need of medical assistance cannot be charged or prosecuted for possession of a controlled substance if the evidence for the charge of possession was gained as a result of the overdose and the *need* for medical assistance.

<u>Possible Mitigating Factors</u>
A good faith 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 for a violation of the Uniformed Controlled Substances Act.

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.

Appropriation: None.

Fiscal Note: Available.

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