

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]; 1/29/10 [DP2S].

Brief Summary of Second 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 requests and receives such 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: The second substitute bill be substituted therefor and the second substitute bill 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) and Kyle Gotchy (786-7119).

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.

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 there were 151 deaths caused by prescription type opiates in 2007. More than half of King County's 2007 drug caused deaths occurred in the decedent's home rather than a healthcare facility.

Charging, Prosecuting, and Immunity.

Generally, it is illegal for a person to possess various controlled substances. Under the Uniform Controlled Substances Act, the degree of restriction exercised over a controlled substance is dependent on the potential for abuse and the degree of 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.

Recently, 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.

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. 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.

Mitigating Circumstance.

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.

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. 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. 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.

Physicians May Legally Prescribe Naloxone to an Opiate Drug User. 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. Provided that the healthcare provider has followed the prescription guidelines, certified practitioners may dispense Naloxone. Before the drug can properly be dispensed, the patient must be given information about the indications for the drug, its proper use, and its risks 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 Second Substitute Bill:

Charging, Prosecuting, and Immunity.

Witness: A person, acting in good faith, who believes he or she is witnessing a drug-related overdose, and seeks medical assistance for the person experiencing the overdose, will not be charged or prosecuted for possession of a controlled substance, if the evidence of the violation was obtained as a result of *seeking* medical assistance.

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 charged or prosecuted for possession of a controlled substance, if the evidence of the violation was obtained as a result of having *received* medical assistance.

Mitigating Circumstance.

In the prosecution of an offense, 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 sentencing range.

Naloxone.

The act of any practitioner or person administering, dispensing, prescribing, purchasing, acquiring, possessing, or using Naloxone does not violate any law or constitute unprofessional conduct 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.

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

Second Substitute Bill Compared to Original Bill:

A provision is added to state that a practitioner or person administering, dispensing, prescribing, purchasing, acquiring, possessing, or using Naloxone does not violate any law or constitute unprofessional conduct if his or her action results from a good faith effort to assist a person experiencing an opiate-related overdose. The provision that allows for a departure from the sentencing guidelines with a mitigating circumstance is clarified to provide the courts with the option of considering the act of seeking medical assistance for someone experiencing a drug-related overdose is justification for an exceptional sentence below the standard sentencing range.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

See House Bill Report in 2009.

Persons Testifying: See House Bill Report in 2009.

Persons Signed In To Testify But Not Testifying: See House Bill Report in 2009.