

GOOD SAMARITAN DRUG OVERDOSE REPORTING LAW

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House Bill 5649 as reported without amendment
Sponsor: Rep. Al Pscholka

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5650 as reported without amendment
Sponsor: Rep. Sam Singh

Committee: Criminal Justice
Complete to 5-24-16

BRIEF SUMMARY: Together, the bills create a Good Samaritan exemption from criminal penalties for certain drug offenses for anyone who presents themselves or another person for medical assistance for a drug overdose of a controlled substance or controlled substance analogue, whether the overdose was from a prescription or nonprescription controlled substance.

FISCAL IMPACT: Depending on the number of people that would no longer be charged, the bill would result in a decrease in costs for the state and for local units of government. Reduced felony charges would result in reduced costs related to the state correctional system, and reduced misdemeanor charges would result in reduced costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,200 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,600 per supervised offender per year. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. There would also be a decrease in penal fine revenues which would decrease funding for local libraries, which are the constitutionally-designated recipients of those revenues. Also, the bill would have an effect on caseloads and related administrative costs, impacting local court funding units.

THE APPARENT PROBLEM:

Public Act 220 of 2015 created an exemption from prosecution for drug possession or drug use, but the exemption only applies to an overdose of a prescription controlled substance by a person who is under 21 years of age and who seeks medical assistance; a person under 21 years of age who is presented for medical assistance for an overdose of a prescription controlled substance by another; or a person under 21 years of age who attempts in good faith to procure medical assistance for another or accompanies another person who required medical assistance due to an overdose of a prescription controlled substance.

The act was in response to a tragedy in which 16-year-old Mason Mizwicki died of a methadone overdose after taking the prescription drug at a New Year's Eve party, despite repeated requests for help. Because many teens believe that a prescription drug is safe, or because they are afraid of getting into trouble, a friend's pleas for help may be ignored.

The hope of Public Act 220 was not only to increase public awareness of the danger of prescription drug overdoses, but also to encourage getting medical help for suspected overdoses by providing immunity from criminal prosecution for an underage victim or minor seeking aid for another.

At the time Public Act 220 was enacted, many felt that if the purpose of the legislation was to save lives, the act was too narrow. Michigan, like most of the nation, is in the throes of a resurgence in heroin addiction and experiencing an epidemic of deaths from overdoses of prescription and nonprescription opioids. Now that some time has passed, and now that at least one young life has been saved as a result of Public Act 220, some feel it is time to revisit the issue. If the immunity created by Public Act 220 could be expanded to encompass summoning medical assistance for all drug overdoses, regardless of age or substance consumed, it is reasoned that many more lives could be spared and more given a second chance to get their lives back on track.

THE CONTENT OF THE BILLS:

House Bills 5649 and 5650 amend the Public Health Code, MCL 333.7403 and 333.7404, respectively. Together, the bills expand the applicability of the exemption from criminal prosecution for certain drug offenses to include any person, of any age, who seeks medical assistance for himself or herself, or for another person of any age, who is in the throes of a drug overdose of a controlled substance, whether the substance was obtained lawfully under a prescription or not (for example, heroin).

Generally speaking, Section 7403 of the code makes it a criminal offense to knowingly or intentionally possess a controlled substance or a prescription form unless the controlled substance or prescription form was obtained directly from a practitioner or had been prescribed or ordered by the practitioner. Section 7404 prohibits the use of a controlled substance or controlled substance analogue unless it was obtained directly from a practitioner or under a valid prescription. Criminal penalties range from a misdemeanor to a felony based on elements such as the type of controlled substance and the amount; fines may also be imposed.

The bills would exempt an individual (rather than only *an individual less than 21 years of age*) from criminal prosecution under Sections 7403 and 7404 in the following circumstances involving a controlled substance or controlled substance analogue:

- ❖ The individual seeks (1) medical attention for himself or herself or (2) requires medical assistance and is presented for assistance by another individual. This would apply if the individual is incapacitated because of a drug overdose or other perceived medical emergency arising from the use of a drug that is a controlled substance or analogue that the individual possessed in an amount sufficient only for personal use, and the evidence of the violation of Section 7403 or 7404 is obtained as a result of the individual's seeking or being presented for medical assistance.

- ❖ The individual in good faith attempts (1) to procure medical assistance for another individual or (2) accompanies another individual who requires medical assistance. This applies if the other individual is experiencing a drug overdose or other perceived medical emergency arising from the use of a drug that is a controlled substance or analogue that the individual possessed in an amount sufficient only for personal use, and the evidence of the violation of Section 7403 or 7404 is obtained as a result of the individual's attempting to procure medical assistance for another individual who requires medical assistance or as a result of accompanying that individual to a health facility or agency for medical assistance.

As is currently provided, the exemptions from prosecution under Sections 7403 and 7404 would not prevent the investigation, arrest, charging, or prosecution of an individual for any other violation of Michigan laws or be grounds for suppression of evidence in the prosecution of any other criminal charges.

"Drug overdose" is currently defined in the act to mean a condition including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, that is the result of consumption or use of a controlled substance or controlled substance analogue, or a substance with which the controlled substance or controlled substance analogue was combined, or that a layperson could reasonably believe to be a drug overdose that requires medical assistance.

"Seeks medical assistance" is currently defined in the act to include, but not be limited to, reporting a drug overdose or other medical emergency to law enforcement, the 9-1-1 system, a poison control center, or a medical provider, or assisting someone in reporting a drug overdose or other medical emergency.

ARGUMENTS:

For:

According to the bill sponsor, at least one young life has been saved as a result of the Good Samaritan Immunity Act, Public Act 220 of 2015. Because of the publicity surrounding the new law, medical assistance was summoned when a minor overdosed on a prescription drug. Yet, there are weaknesses in the legislation. When minutes matter most, Public Act 220 requires a person to guess at the age of the victim, guess whether the overdose was from a prescription drug, and guess if the caller or person overdosing would fit the criteria to receive immunity from prosecution.

The bills address the problem by expanding the immunity from prosecution for the personal possession or use of controlled substances to include an overdose victim or helper of any age and an overdose of any controlled substance. Apparently, youths are not the only ones who fail to call for assistance due to a fear of prosecution, and many deaths are from opioids such as heroin or cocaine, not just unlawfully obtained legal substances. Substance use disorder advocates point out that a call for help when someone overdoses occurs less than 50 percent of the time, resulting in overdoses becoming a leading cause of injury-related

deaths in the state. Sadly, drug overdoses often occur in the presence of others, especially if addictive substances such as opioids are being used or at "skittles parties" where attendees bring prescription medications from home and dump them into a communal bowl. Yet many deaths can be prevented if help is called in time; even opioid-related overdoses can be reversed with medications such as naloxone.

Whether an overdose is associated with "partying" or an addiction, the bills appropriately recognize that the most important piece of the puzzle is simply to save as many people from preventable deaths as possible. Reportedly, a person who knows that a Good Samaritan law will provide immunity is 88 percent more likely to call for medical assistance. This means the bills will have a significant chance of creating more opportunity for the victim of the overdose and/or the person who called for help to be steered into needed services that can break the stranglehold of an addiction or relieve depression, or receive education regarding the dangers of certain drugs, rather than being warehoused in a jail or prison where the underlying cause of the drug overdose is not addressed.

For:

The immunity from criminal prosecution only applies to what is often referred to as simple possession or use, meaning the drugs were for personal use. The bills would not provide immunity for activities associated with the illegal drug trade such as possession with the intent to deliver; thus, the bills are not expected to protect drug dealers from prosecution. The bills would also not protect a person from other unlawful drug-related conduct, such as driving while drugged. Reportedly, at least 20 other states (32 by some accounts) have enacted similar policies. Many believe it is time for Michigan to be similarly proactive.

POSITIONS:

Representatives from various chapters of Students for Sensible Drug Policy testified in support of the bills. (5-17-16)

The Michigan Association of Treatment Court Professionals submitted written testimony in support of the bills. (5-17-16)

The Ozone House submitted written testimony in support of the bills. (5-17-16)

The National Association of Social Workers-MI submitted written testimony in support of the bills. (5-17-16)

Key Development Center, Inc. submitted written testimony in support. (5-17-16)

The Prosecuting Attorneys Association of Michigan indicated support. (5-17-16)

The Michigan Association of Health Plans indicated support for the bills. (5-17-16)

The Criminal Defense Attorneys of Michigan indicated support for the bills. (5-17-16)

The ACLU of Michigan indicated support for the bills. (5-17-16)

The HIV/AIDS Alliance of Michigan indicated support for the bills. (5-17-16)

The Michigan Association of Community Mental Health Boards indicated support for the bills. (5-17-16)

The Michigan Sheriffs' Association supports the concept of the bills. (5-17-16)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.