

Legislative Analysis



GOOD SAMARITAN DRUG OVERDOSE REPORTING LAW

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5649 as introduced
Sponsor: Rep. Al Pscholka

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

House Bill 5650 as introduced
Sponsor: Rep. Sam Singh

Committee: Criminal Justice
Complete to 5-16-16

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.

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 for himself or herself; 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.

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.

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.

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.