

PRESCRIPTION DRUG OVERDOSES: EXEMPT CERTAIN MINORS FROM PENALTIES

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House Bill 4843 as introduced
Sponsor: Rep. Al Pscholka
Committee: Criminal Justice
Complete to 9-28-15

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

SUMMARY:

The bill creates a Good Samaritan exemption from criminal penalties for certain drug offenses for minors who present themselves or another person for medical assistance for a prescription drug overdose.

House Bill 4843 amends the Public Health Code. 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 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 bill would exempt *an individual less than 21 years of age* from criminal prosecution under Sections 7403 and 7404 in the following circumstances involving a prescription drug that is a controlled substance or controlled substance analogue:

- ❖ The individual (person under 21) 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 prescription 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 (person under 21) in good faith attempts (1) to procure medical assistance for another individual (the bill does not specify an age for this person) 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 prescription 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 to a health facility or agency.

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 defined 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" includes, but is not 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.

Further, a health facility or agency would be required to develop a process for notification of the parent or parents, guardian, or custodian of a minor under the age of 18 who is not emancipated and who voluntarily presents himself or herself, or is presented by another individual if he or she is incapacitated, to a health facility or agency for emergency medical treatment as provided under the bill. A health facility or agency would be prohibited from providing notification to a parent or parents, guardian, or custodian under the bill for nonemergency treatment without obtaining the minor's consent.

MCL 333.7404 and 333.7404

FISCAL IMPACT:

Depending on the number of people under 21 years of age that would no longer be charged if the bill were passed, the bill could result in a decrease in costs for the state and local units of government. Reduced felony charges could result in reduced costs related to the state correctional system, and reduced misdemeanor charges could 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 \$34,800 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,760 per supervised offender per year. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. There could also be a decrease in penal fine revenues which would decrease funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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