

## **PRESCRIPTION DRUG OVERDOSES: EXEMPT CERTAIN MINORS FROM PENALTIES**

Phone: (517) 373-8080  
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**House Bill 4843 as reported without amendment**  
**Sponsor: Rep. Al Pscholka**  
**Committee: Criminal Justice**  
**Complete to 10-14-15**

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

*(Enacted as Public Act 220 of 2015)*

### **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

## **BRIEF DISCUSSION OF THE ISSUES:**

The bill seeks to address the growing problem of teenagers overdosing on prescription drugs, considered by some to be an epidemic. Often the family medicine cabinet or mom's or grandma's purse can provide easy access to a wide range of medications that include narcotic painkillers such as Vicodin or anti-anxiety medications such as Xanax or Prozac. Some of these drugs make their way to the streets, others may be taken to and shared at "pharm" or "skittles" parties where attendees bring whatever prescription medications they can obtain from any sources and dump them in a communal bowl. Partygoers then scoop one or more pills from the bowl, not knowing exactly what they are taking. Whether ingesting a single pill or multiple pills, often washed down with alcohol, there is a risk for injury or death due to an adverse reaction, a drug interaction, or an overdose.

That happened to 16-year-old Mason Mizwicki who died of a methadone overdose after taking the prescription drug at a News Year's Eve party. The Southwest Michigan high school junior and honor student died despite asking repeatedly for help from others at the party. Reportedly, his pleas were ignored because the other teens present feared they would get in trouble if they tried to get help for Mason. Another reason given is that many teens

aren't aware that prescription drugs can be dangerous. Since they are prescribed by doctors, many believe the drugs are safe and so may ignore the pleas of a friend asking for help.

The bill addresses the issue by creating a Good Samaritan exemption similar to what is in place for minors assisting a person in danger of dying from alcohol intoxication. Under House Bill 4843, a person 20 years old and younger (minor) would not be prosecuted for the personal possession or use of a controlled substance prescribed for someone else if the minor sought or presented himself or herself for emergency assistance, if someone else sought or presented the minor for emergency assistance, or if the minor sought or presented another individual for emergency assistance.

Though the bill may not prevent a young person from experimenting with a prescription controlled substance or yielding to peer pressure at a "skittles" party, it is hoped that by removing the fear of "getting in trouble," that more teens and young adults will seek immediate help for their friends who need emergency medical care from an overdose of a narcotic pain killer, sleep aid, anti-depressant, or anti-anxiety drug and that lives, like Mason's, will be saved. By applying the exemption only to possession of an amount considered to be for personal use, the bill will not protect drug dealers.

Some, however, feel the bill is too narrow and should be expanded to apply to all ages and also to nonprescription controlled substances, such as heroin and cocaine, according to a September 1, 2015, article in the *Bridge*, entitled "In Michigan heroin epidemic, deciding whose lives are worth saving." Michigan is currently experiencing a rise in heroin use and a corresponding rise in heroin deaths. Many more lives could be saved if the bill applied to any controlled substances and to users of any age in the throes of a drug overdose. For instance, if the intent of the bill package is to save the lives of teens from dying of accidental overdoses of prescription controlled substances, what if the teen is in the company of friends 21 and over? Or, even if with other minors, overdosed on heroin? There would be no similar incentive for the friends to obtain the needed emergency assistance.

## **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.

## **POSITIONS:**

A representative of the Michigan Department of Health and Human Services testified in support of the bill. (9-29-15)

A representative of the Berrien County Health Department testified in support of the bill. (9-29-15)

Representatives of the following entities indicated support for the bill on 9-29-15:

The Michigan Probate Judges Association  
The Michigan Pharmacists Association  
The ACLU of Michigan  
National Association of Social Workers-Michigan  
Michigan Sheriff's Association  
Department of State Police  
Prosecuting Attorneys of Michigan  
Michigan Association of Treatment Court Professionals

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Robin Risko

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