

SUBJECT: Criminalizing doctor shopping to obtain controlled substances

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Zedler

0 nays

3 absent — Christian, Y. Davis, Rodriguez

SENATE VOTE: On final passage, March 30 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Krista Crockett, Texas Pain Society; Katrina Daniels, Bexar County District Attorney's Office; Kevin Petroff, Harris County District Attorney's Office)

Against — None

BACKGROUND: The Texas Controlled Substances Act in the Health and Safety Code regulates the use of controlled substances through classification. Each controlled substance is included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V. Schedule I has the highest potential for abuse and has no currently accepted medical use in treatment. The other schedules take into account the potential for abuse, its level of accepted medical use in treatment, and the likely level of dependence resulting from abuse of the substance.

Health and Safety Code, sec. 481.129 establishes the offense of fraud in knowingly possessing, obtaining, or attempting to possess or obtain a controlled substance or an increased quantity of a controlled substance:

- by misrepresentation, fraud, forgery, deception, or subterfuge;
- through use of a fraudulent prescription form; or
- through use of a fraudulent oral or telephonically communicated prescription.

This offense is a:

- second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the controlled substance is listed in Schedule I or II;
- third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the controlled substance is listed in Schedule III or IV; and
- class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the controlled substance is listed in Schedule V.

DIGEST:

SB 158 would amend sec. 481.129 to create an offense for when a person, with the intent to obtain a controlled substance or an amount of controlled substance not medically necessary, obtained or attempted to obtain from a practitioner a controlled substance or a prescription for it by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. Material fact would include whether the person had an existing prescription for a controlled substance issued at the same time by another practitioner.

This offense would be a:

- second-degree felony if the controlled substance was listed in Schedule I or II;
- third-degree felony if the controlled substance was listed in Schedule III or IV; and
- class A misdemeanor if the controlled substance was listed in Schedule V.

The bill would take effect September 1, 2011, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

SB 158 would create a criminal penalty, identical to the current fraud penalty, for patients who visited new doctors to obtain prescription drugs without disclosing that they already received prescription drugs from another doctor. This bill is designed to curb the practice of “shopping” for doctors willing to prescribe medications such as opiates, depressants, and stimulants. A patient may believe that the new drug is medically necessary, for example, for severe back pain, but a doctor can only provide good care when knowing all the relevant health facts. A patient should not

be able to decide what is medically necessary simply to obtain more drugs, and a criminal penalty would help deter this behavior.

It is more likely that most of the people engaging in this behavior know that the drugs are not medically necessary, but suffer from addiction and feel compelled to engage in this fraudulent behavior. In the worst cases, doctor-shopping for prescription drugs is done to illegally sell the prescription drugs on the streets. Some criminals direct groups of homeless individuals to doctor-shop for prescription drugs, and then buy the drugs back to sell on the streets at a high price. SB 158 would deter and, when necessary, punish this criminal behavior.

The abuse of prescription drugs is a serious public health issue that needs to be addressed. Fifteen other states have passed similar legislation to combat this disturbing public health trend. More than 1,900 Texans died of accidental overdose in 2008, 150 percent more than in 2000. Seizures of large quantities of prescription drugs from the illicit drug trade also indicate an increasing problem with the diversion of prescription drugs. In 2010, the Houston Police Department reportedly seized 110,174 grams of hydrocodone, 29,624 grams of Xanax, and 23,261 grams of Soma.

Since this behavior indicates a serious drug addiction, the criminal justice system appropriately sentences people under the current law for fraud related to controlled substances and also would do so for criminal doctor-shopping behavior. The Legislative Budget Board Criminal Justice Impact Statement found that in fiscal 2010 about 234 people were arrested for controlled substance fraud offenses, and fewer than five were sentenced to prison. Most received community supervision, which would have allowed them to get the treatment needed to address their addiction. Sometimes criminalizing behavior is the only way to force people to get the needed treatment. Prosecutors would use their discretion to handle each individual case appropriately.

**OPPONENTS
SAY:**

SB 158 would criminalize behavior indicating a drug addiction that should result in treatment, not prison time. Our criminal justice system already is overburdened, and expensive prison sentences would just increase the burden without helping the drug-addicted individuals.

In addition, the resulting penalties could be too harsh. For instance, a person could receive a prescription from a new doctor for hydrocodone for terrible back pain and not mention the few pills left from a prescription

written a few weeks before by a different doctor. The patient might believe the new pills were medically necessary and would not say anything because the other doctor refused a refill. Since hydrocodone is on Schedule III, that person potentially could go to prison for 10 years under this bill.