

SUBJECT: Creating defense to prosecution for those who call 911 for drug overdoses

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson
0 nays

WITNESSES: For — Amy Granberry, Association of Substance Abuse Programs; Robin Peyson, Communities for Recovery; Cate Graziani, Mental Health America of Texas; Scott Henson, Texas Criminal Justice Coalition; Kate Murphy, Texas Public Policy Foundation; Richard Greene; (*Registered, but did not testify*: Marsha Stone, Benchmark Recovery Center; Mathew Gorman, Eudaimonia Recovery Homes; Eric Woomer, Federation of Texas Psychiatry; Mark Bennett, Harris County Criminal Lawyers Association; Holly Deshields, Kaleo Pharmaceuticals; Fred Shannon, National Safety Council; Kristin Etter, Texas Criminal Defense Lawyers Association; Michelle Romero, Texas Medical Association; Krista Crockett, Texas Pain Society; Cynthia Humphrey, Texas Recovery Network)

Against — None

BACKGROUND: The Texas Controlled Substances Act (Health and Safety Code, ch. 481) contains criminal enforcement provisions and penalty groups relating to the possession, manufacture, and delivery of controlled substances.

- Penalty Group 1 includes cocaine, heroin and other opiates.
- Penalty Group 1-A includes LSD.
- Penalty Group 2 includes amphetamines, MDMA (“ecstasy”), PCP and mescaline.
- Penalty Group 2-A includes synthetic marijuana.
- Penalty Group 3 includes certain stimulants, barbiturates, preparations containing certain amounts of codeine and morphine, peyote, certain anabolic steroids, and salvia divinorum.

- Penalty Group 4 includes certain mixtures of codeine, opium and other narcotics.

DIGEST: CSHB 225 would create a defense to prosecution for certain drug offenses for individuals seeking medical assistance for themselves and others and would allow the use of opioid antagonists in certain situations.

Defense to prosecution. CSHB 225 would create a defense to prosecution for the first individual who requested emergency medical assistance in response to a possible overdose of that person or another person, remained on the scene until medical assistance arrived, and cooperated with medical assistance and law enforcement personnel if that individual was in possession of:

- less than one gram of a substance in Penalty Group 1;
- fewer than 20 units of a substance in Penalty Group 1-A;
- less than one gram of a substance in Penalty Group 2;
- up to four ounces of a substance in Penalty Group 2-A;
- less than 28 grams of a substance in Penalty Group 3;
- less than 28 grams of a substance in Penalty Group 4;
- controlled substances listed in a schedule by an action of the commissioner of DSHS but not listed in a penalty group;
- up to four ounces of marijuana;
- drug paraphernalia;
- a dangerous drug without a prescription; or
- abusable volatile chemicals with the intent to inhale, ingest, or apply the chemical in a manner contrary to directions and designed to produce intoxication.

Opioid antagonists. The bill would allow a health care professional, directly or by standing order, to prescribe, dispense or distribute drugs that block the effects of an opioid (“opioid antagonists”) to a person at risk of experiencing an opioid-related overdose or to someone in a position to assist that person, including a friend or family member. It would shield a health care professional who, with reasonable care, prescribed, dispensed

or distributed opioid antagonists from any criminal or civil liability or professional disciplinary action. It also would shield from criminal prosecution or civil liability an individual from any outcome resulting from the administration of an opioid antagonist to another person with reasonable care.

The bill would allow people or organizations under a standing order issued by a health care professional to store and dispense opioid antagonists as long as they did not request or receive compensation for the antagonists. It also would allow any person to possess opioid antagonists without a prescription.

A pharmacist who provided opioid antagonists to a person would be required to offer counseling to that person about overdose recognition and prevention and the administration of opioid antagonists, patient responses, and potential side effects.

Any entity that provided opiate antagonists to emergency services personnel would be required to provide those personnel with a course of instruction about overdose recognition and prevention and the administration of opioid antagonists, patient responses, and potential side effects.

The bill would allow the Health and Human Services Commission (HHSC) and the Criminal Justice Division of the governor's office to issue grants for drug overdose prevention; recognition and response education for individuals, family members, and emergency services personnel; and opioid antagonist prescription or distribution projects.

If any provision in CSHB 225 relating to opioid antagonists conflicted with any other law, the subchapter added by the bill would prevail.

The bill would take effect on September 1, 2015, and would apply only to conduct that occurred on or after that date.

SUPPORTERS CSHB 225 would reduce drug overdose-related deaths in Texas, which

SAY: have increased by 78 percent since 1999. Most of these deaths can be prevented with quick and appropriate medical treatment. However, fear of arrest and prosecution often prevents people who witness an overdose from calling 911.

This bill would encourage people best positioned to seek emergency care to help those in danger of an overdose. In another state that passed a similar law, a survey found that 88 percent of prescription painkiller users indicated that once they were aware of the law, they would be more likely to call 911 during future overdoses.

The bill would ensure that only those who made a good-faith effort to help the victim were protected from prosecution by limiting the protection to the first person who called and stayed with the victim. Under the bill, drug dealers and individuals in possession of large quantities of controlled substances would not be protected.

Once emergency responders are called, one of the most effective ways to prevent drug overdose is through the use of an opioid antagonist such as naloxone. Administration of naloxone counteracts life-threatening depression of the central nervous system and respiratory system, allowing an overdose victim to breathe normally. Although naloxone is a prescription drug, it is not a controlled substance and has no abuse potential. It can also be administered by a minimally trained layperson. In the vast majority of cases, naloxone has no significant negative side effects, even if administered to someone not suffering from an overdose.

In states that have allowed the use of naloxone, the drug has been provided to more than 50,000 people and has led to more than 10,000 overdose reversals. Allowing the use of naloxone could prevent numerous overdoses in Texas.

OPPONENTS
SAY: Because law enforcement officers rarely make arrests for possession of small amounts of controlled substances when responding to overdose calls, CSHB 225 is unnecessary and would not significantly change the way these cases are handled.

By making the antidote so easily available, the bill could make addicts less likely to seek treatment. It could give people a false sense of security that the opioid antagonist was a “silver bullet” against overdose. Putting the antidote in the hands of individuals rather than restricting its use to medical professionals and emergency services personnel could dissuade addicts from seeking treatment.

The bill should not authorize non-medical emergency services personnel to administer opioid antagonists. This would place a burden on law enforcement officers who already carry extensive responsibilities in these high-stress situations. Although the bill would not require police to carry the opioid antagonists, law enforcement entities could face pressure to begin carrying and administering them. This pressure could lead to administrative problems regarding the storage and transportation of opioid antagonists and complicated situations where officers without proper medical training were required to diagnose and inject potential victims. Major issues could arise if officers failed to properly diagnose an overdose and victims suffered serious injury.

OTHER
OPPONENTS
SAY:

CSHB 225 would not provide sufficient protection from prosecution for overdose victims who do not call 911 themselves, potentially resulting in preventable deaths. Individuals hesitate to call 911 not only for fear of their own prosecution but also the victim's, so without adequate protection for the overdose victim, bystanders might hesitate or fail to call for help.

Granting a defense to prosecution only to the first person to request emergency medical assistance would create a disincentive for people to make these requests. If multiple people witness someone at risk overdosing, all of them should have an incentive to seek help.

The bill also should provide a defense to probation or parole violations, making it more likely prevent serious injury or death. As it is, people on probation or parole still would be discouraged from seeking help in the event of an overdose.

NOTES: The committee substitute differs from the bill as introduced in that CSHB 225 would:

- allow the use of opioid antagonists in certain situations by individuals and emergency service personnel;
- shield individuals, emergency service personnel and medical professionals from criminal and civil liability for certain uses of opioid antagonists;
- allow possession of an opioid antagonist without a prescription;
- require pharmacists who provide opioid antagonists to a person to offer counseling;
- require providers of opioid antagonists to provide instruction on their use;
- allow HHSC and the Criminal Justice Division of the governor's office to issue grants;
- establish that conduct occurring before the effective date would not be governed by this bill; and
- establish that if the provisions in the bill relating to opioid antagonists conflicted with any other law, the subchapter added by the bill would prevail.

The companion bill, SB 1921 by Watson, was referred to the Senate Criminal Justice Committee on March 25.