

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 225  
By: Guillen et al. (Watson)  
Criminal Justice  
4/29/2015  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Drug overdoses pose a serious threat to Texans. They are the number one accidental killer of Americans ages 25 to 64, surpassing even traffic deaths. Furthermore, the drug overdose death rate more than doubled from 1999 to 2013. In short, as a state we need to take proactive steps to counteract this trend.

Death from drug overdose usually occurs over a period of hours, allowing time for bystander intervention. Among drug users who have had an overdose, as many as 85 percent report that at least one person was present at the time of their last overdose. Despite this opportunity to intervene, fewer than 50 percent of overdoses result in a call for help. Fear of police involvement is the most cited reason for not calling 911 during an overdose.

Current Texas law exacerbates this problem because it leaves victims and bystanders in danger of being arrested if they call 911 to report an overdose when they were illegally using controlled substances. H.B. 225 addresses this problem by granting drug overdose victims and bystanders who call for help a defense to prosecution for minor drug-related offenses under limited circumstances.

H.B. 225 also seeks to combat drug overdose deaths by promoting the access to opioid antagonists. Opioid antagonists can be used to treat opioid overdose, as they effectively block opioid receptors. Lastly, H.B. 225 authorizes the Health and Human Services Commission to issue grants related to drug overdose prevention and response.

C.S.H.B. 225 amends current law relating to the prescription, administration, and possession of certain opioid antagonists for the treatment of a suspected overdose and a defense to prosecution for certain offenses involving controlled substances and other prohibited drugs, substances, or paraphernalia for defendants seeking assistance for a suspected overdose.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 481.115, Health and Safety Code, by adding Subsections (g), (h), and (i), as follows:

(g) Provides that it is a defense to prosecution for an offense punishable under Subsection (b) (relating to a state jail felony for possession of a substance weighing less than one gram) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) Provides that the defense to prosecution provided by Subsection (g) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(i) Provides that the defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

SECTION 2. Amends Section 481.1151, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense punishable under Subsection (b)(1) (relating to a state jail felony for possession of a substance less than twenty abuse units) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 3. Amends Section 481.116, Health and Safety Code, by adding Subsections (f), (g), and (h), as follows:

(f) Provides that it is a defense to prosecution for an offense punishable under Subsection (b) (relating to a state jail felony for possession of a substance weighing less than one gram) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) Provides that the defense to prosecution provided by Subsection (f) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(h) Provides that the defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

SECTION 4. Amends Section 481.1161, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense punishable under Subsection (b)(1) or (2) (relating to an offense under this penalty group being a Class A or Class B misdemeanor) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 5. Amends Section 481.117, Health and Safety Code, by adding Subsections (f), (g), and (h), as follows:

(f) Provides that it is a defense to prosecution for an offense punishable under Subsection (b) (relating to an offense under this section being a Class A misdemeanor if the amount of the controlled substance is by weight less than 28 grams) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) Provides that the defense to prosecution provided by Subsection (d) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(h) Provides that the defense to prosecution provided by Subsection (d) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (d) is not available.

SECTION 6. Amends Section 481.118, Health and Safety Code, by adding Subsections (f), (g), and (h), as follows:

(f) Provides that it is a defense to prosecution for an offense punishable under Subsection (b) (relating to an offense under this section being a Class B misdemeanor if the amount of the controlled substance is by weight less than 28 grams) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) Provides that the defense to prosecution provided by Subsection (f) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(h) Provides that the defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

SECTION 7. Amends Section 481.119, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense under Subsection (b) (relating to a person committing an offense if the person knowingly or intentionally possesses a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 8. Amends Section 481.121, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense punishable under Subsection (b)(1) (providing that an offense is a Class B misdemeanor if the amount of marihuana possessed is two ounces or less) or (2) (providing that an offense is a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for

emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 9. Amends Section 481.125, Health and Safety Code, by adding Subsections (g), (h), and (i), as follows:

(g) Provides that it is a defense to prosecution for an offense punishable under Subsection (a) (providing that a person commits an offense if the person knowingly or intentionally uses or possess certain drug paraphernalia) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) Provides that the defense to prosecution provided by Subsection (g) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(i) Provides that the defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

SECTION 10. Amends Section 483.041, Health and Safety Code, by adding Subsections (e), (f), and (g), as follows:

(e) Provides that it is a defense to prosecution for an offense punishable under Subsection (a) (providing that a person commits an offense if the person possesses a dangerous drug unless the person obtains the drug from a pharmacist acting in a manner set forth) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(f) Provides that the defense to prosecution provided by Subsection (e) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in

the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(g) Provides that the defense to prosecution provided by Subsection (e) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (e) is not available.

SECTION 11. Amends Section 485.031, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense punishable under Subsection (a) (providing that a person commits an offense if the person commits certain acts using certain abusable volatile chemicals) that the actor:

(1) requested emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if, at the time the request for emergency medical assistance was made, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 12. Amends Chapter 483, Health and Safety Code, by adding Subchapter E, as follows:

#### SUBCHAPTER E. OPIOID ANTAGONISTS

Sec. 483.101. DEFINITIONS. Defines "emergency services personnel," "opioid antagonist," "opioid-related drug overdose," and "prescriber."

Sec. 483.102. PRESCRIPTION OF OPIOID ANTAGONIST; STANDING ORDER. (a) Authorizes a prescriber to, directly or by standing order, prescribe, dispense, or distribute an opioid antagonist to:

(1) a person at risk of experiencing an opioid-related drug overdose; or

(2) a family member, friend, or other person in a position to assist a person described by Subdivision (1).

(b) Provides that a prescription issued under this section is considered as issued for a legitimate medical purpose in the usual course of professional practice.

(c) Provides that a prescriber who, acting with reasonable care, prescribes or does not prescribe an opioid antagonist is not subject to any criminal or civil liability or any professional disciplinary action for:

(1) prescribing or failing to prescribe the opioid antagonist; or

(2) if the prescriber chooses to prescribe an opioid antagonist, any outcome resulting from the eventual administration of the opioid antagonist.

Sec. 483.103. DISPENSING OF OPIOID ANTAGONIST. (a) Authorizes a pharmacist to dispense an opioid antagonist under a valid prescription to:

(1) a person at risk of experiencing an opioid-related drug overdose; or

(2) a family member, friend, or other person in a position to assist a person described by Subdivision (1).

(b) Provides that a prescription filled under this section is considered as filled for a legitimate medical purpose in the usual course of professional practice.

(c) A pharmacist who, acting in good faith and with reasonable care, dispenses or does not dispense an opioid antagonist under a valid prescription is not subject to any criminal or civil liability or any professional disciplinary action for:

(1) dispensing or failing to dispense the opioid antagonist; or

(2) if the pharmacist chooses to dispense an opioid antagonist, any outcome resulting from the eventual administration of the opioid antagonist.

Sec. 483.104. DISTRIBUTION OF OPIOID ANTAGONIST; STANDING ORDER. Authorizes a person or organization acting under a standing order issued by a prescriber to store an opioid antagonist and to distribute an opioid antagonist, provided the person or organization does not request or receive compensation for storage or distribution.

Sec. 483.105. POSSESSION OF OPIOID ANTAGONIST. Authorizes any person to possess an opioid antagonist, regardless of whether the person holds a prescription for the opioid antagonist.

Sec. 483.106. ADMINISTRATION OF OPIOID ANTAGONIST. (a) Provides that a person who, acting in good faith and with reasonable care, administers or does not administer an opioid antagonist to another person whom the person believes is suffering an opioid-related drug overdose is not subject to criminal prosecution, sanction under any professional licensing statute, or civil liability, for an act or omission resulting from the administration of or failure to administer the opioid antagonist.

(b) Provides that emergency services personnel are authorized to administer an opioid antagonist to a person who appears to be suffering an opioid-related drug overdose, as clinically indicated.

Sec. 483.107. GRANTS. Authorizes the Health and Human Services Commission to issues grants for:

(1) drug overdose prevention;

(2) recognition and response education for individuals, family members, and emergency services personnel; and



(3) opioid antagonist prescription or distribution projects.

Sec. 483.108. CONFLICT OF LAW. Provides that to the extent of a conflict between this subchapter and another law, this subchapter controls.

SECTION 13. (a) Provides that the change in law made by this Act relating to conduct that is grounds for imposition of a disciplinary sanction applies only to conduct that occurs on or after September 1, 2015.

(b) Provides that conduct that occurs before September 1, 2015, is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 14. (a) Provides that the change in law made by this Act relating to conduct that is the basis for civil liability applies only to conduct that occurs on or after September 1, 2015.

(b) Provides that conduct that occurs before September 1, 2015, is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 15. (a) Provides that the change in law made by this Act relating to conduct that constitutes a criminal offense applies only to an offense committed on or after September 1, 2015.

(b) Provides that purposes of this section, an offense is committed before September 1, 2015, if any element of the offense occurs before that date.

(c) Provides that an offense committed before September 1, 2015, is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

SECTION 16. Effective date: September 1, 2015.