



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

TRIPLICATE RX, PRISON FOR DRUGS

**House Bill 4698 as enrolled
Second Analysis (7-28-89)**

RECEIVED

SEP 06 1989

**Sponsor: Rep. Sharon L. Gire
House Committee: Public Health
Senate Committee: Health Policy** *Mich. State Law Library*

THE APPARENT PROBLEM:

Public Act 60 of 1988 amended the Public Health Code to require that prescriptions for "Schedule 2" controlled substances (the most addictive of the legally prescribable drugs) be recorded on official, serially numbered triplicate forms. However, when the Department of Licensing and Regulation began planning implementation of the program, a number of technical problems with the act became evident, including the fact that those prescriptions directly administered by licensed practitioners to patients (or to veterinary patients) were inadvertently included under the bill's regulations. At the request of the department, legislation has been proposed to clarify the language of the act and eliminate some unnecessarily burdensome requirements on those falling under the act's provisions.

In the recodification of the Public Health Code in 1978, mandatory minimum prison terms were set for the unauthorized manufacture, delivery, or possession of certain Schedule 1 or 2 drugs (including opium, cocaine, heroin, other opiates and opiate derivatives, and hallucinogens). The length of the mandated minimum prison term depended on the quantity of drugs involved: at least 10 years (but not more than 20 years) for 50 to 225 grams, and at least 20 years (but not more than 30 years) for 225 to 650 grams. In 1987, Public Act 275 (enrolled Senate Bill 277) reduced the mandatory minimum terms of imprisonment for the manufacture or delivery of narcotics or cocaine by half: for amounts between 225 and 650 grams, the minimum term was reduced from 20 to 10 years, while for amounts between 50 and 225 grams, the minimum term was reduced from 10 to 5 years. In 1988, Public Act 47 (enrolled Senate Bill 598) similarly reduced the mandatory minimum prison terms for illegal possession of the same drugs. Some people believe that the original mandatory minimum prison terms should be reinstated.

THE CONTENT OF THE BILL:

The bill would modify the list of prescriptions exempted from the program, adding to the list of prescriptions exempted from the program's requirements those prescriptions directly administered by a licensed practitioner to a patient or veterinary patient. The bill also would double the mandatory minimum prison sentences for the unlawful manufacture, delivery, or possession of between 50 to 650 grams of certain schedule 1 or 2 controlled substances (including opium, cocaine, heroin, and other opiates and opium derivatives).

Exempted prescriptions. Presently, the health code exempts the following prescriptions from the triplicate prescription program requirements:

(a) Prescriptions for people who are admitted to a hospital at the same time the prescription is written and filled at the hospital;

(b) Prescriptions administered to patients on the premises of health facilities or agencies licensed under the health code; and

(c) Prescriptions by out-of-state practitioners who live near the Michigan border and whose practice extends into Michigan but who do not have an office in Michigan.

The bill would add exemptions for prescriptions ordered for and administered to:

- patients in hospitals licensed by the Department of Mental Health (as well as to those in hospitals licensed by the Department of Public Health);
- patients in private practice offices of licensed physicians, dentists and podiatrists;
- animals by licensed veterinarians in a veterinarian office, animal clinic, animal hospital, zoo, or the animal's home.

The bill also would exempt "a commercially prepared, premixed solution of sodium pentobarbital administered to an animal for the purpose of euthanasia."

Minimum mandatory prison terms. The bill would double the current mandatory minimum prison terms for the illegal manufacture, delivery, or possession of between 50 and 25 grams of narcotics or cocaine (in effect, reinstating the minimums required originally by the Public Health Code). For amounts between 225 and 650 grams, the mandatory minimum prison term would be increased from 10 to 20 years; for amounts between 50 and 225 grams, the mandatory minimum prison term would be increased from 5 to 10 years.

MCL 333.7333, 333.7401, and 333.7403

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the prescription exemption part of the bill would have no fiscal implications for the state, but that there always are costs (undetermined at this time) when minimum prison terms are mandated, depending on how many new prisoners are added to the corrections system and whether or not new prisons need to be constructed. (7-17-89)

ARGUMENTS:

For:

The bill would reinstate exemptions for prescriptions that, prior to the enactment of the triplicate prescription act, had not required written form because they were administered directly by licensed health care providers in a clinical setting. The act exempts licensed health facilities and agencies from the act's requirements. However, offices of private practitioners and veterinarians are not within the definition of licensed health facility or agency, which would mean that a practitioner or veterinarian is required to complete a triplicate prescription form every

H.B. 4698 (7-28-89)

OVER

time any amount of a Schedule 2 drug is administered in his or her office. Texas, which has a similar program, developed rules defining "small amounts" of Schedule 2 drugs, to avoid separate triplicate forms each time a dentist, for example, sprayed a patient's throat with cocaine. This created a complex set of additional forms and reporting procedures. Since the intent of the data collection is to identify dispensed as opposed to administered Schedule 2 drugs, practitioners and veterinarians administering such drugs in their offices should not be required to use the triplicate forms. (Practitioners and veterinarians will continue to be required to use the official forms when they dispense these drugs in their offices.)

For:

Presently, the law exempts prescriptions for individuals "admitted to a hospital at the same time the prescription is written and filled at the hospital." There are two problems with this part of the law. First, the existing terminology is confusing, because it could be interpreted as referring to an inpatient medication order or to a prescription that was filled at the hospital pharmacy for consumption on an outpatient basis. Changing the wording to clarify that the exemption applies to orders for inpatient administration of Schedule 2 controlled substances would eliminate this confusion. Secondly, however, the Public Health Code does not include hospitals licensed by the Department of Mental Health. Consequently, the law does not currently exempt mental health hospitals from the triplicate prescription requirements. House Bill 4698 would include these hospitals in the exemption.

For:

The acts (Public Act 275 of 1987 and Public Act 47 of 1988) reducing specified minimum prison terms for illegal manufacture, delivery, or possession of larger quantities of narcotics and cocaine dangerously weakened the law governing controlled substances offenses. The bill would deter drug trafficking by increasing those mandatory minimum prison terms back up to their original levels.

Response: It is doubtful that mandatory minimum prison terms have any deterrent effect on drug trafficking, and a recent study by the National Conference of State Legislatures argues that mandatory sentencing laws are responsible for the current problem of prison overcrowding. The report suggests a number of alternative proposals to simple mandatory sentencing, including tying mandatory sentencing laws to available space, sentencing non-violent offenders to supervised confinement at home or probation, and requiring that mandatory sentencing laws consider costs in terms of new prison space. Sentencing issues are complex and should be addressed comprehensively through the development of carefully considered and internally consistent sentencing guidelines, rather than simply mandating new or longer prison terms and spending enormous amounts of money from limited state budgets on building new prisons.