

# Legislative Analysis

---



## CREATE PENALTY FOR ILLEGAL DELIVERY OF CONTROLLED SUBSTANCE CAUSING DEATH

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4673 as enrolled**  
**Public Act 167 of 2005**  
**Sponsor: Rep. Phil Pavlov**

**Senate Bill 423 as enrolled**  
**Public Act 168 of 2005**  
**Sponsor: Sen. Jud Gilbert, II**

**House Committee: Judiciary**  
**Senate Committee: Judiciary**

### **First Analysis (1-10-06)**

**BRIEF SUMMARY:** The bills would establish a criminal penalty of up to life in prison for the delivery of a Schedule 1 or 2 controlled substance that caused the death of a person who consumed the substance.

**FISCAL IMPACT:** The bills would have an indeterminate impact on state and local justice systems. To the extent that the bills increased the numbers of felons sentenced to prison and increased the length of time served, the state would incur increased costs of prison incarceration, which currently average about \$29,000 per prisoner per year. The cost of a sentence to probation also would be borne by the state; felony probation supervision averages \$1,977 per supervised offender per year. Local correctional costs could be affected to the extent that offenders who otherwise would have been sentenced to jail for a lesser offense instead were sentenced to prison. Any increases in collections of penal fines would increase revenues from that source going to local libraries, which are the constitutionally-designated recipients of that revenue.

### **THE APPARENT PROBLEM:**

Several incidents in recent years have led prosecutors and families of crime victims to believe that a serious flaw exists in the state's criminal code. Each incident involved a situation in which a person who had been given drugs illegally died. A 2001 incident involved two men who provided a young woman with cocaine and heroin after she had spent the evening drinking heavily (reportedly, she was despondent over a recent breakup with her boyfriend). Though she went into distress, the men failed to seek medical help until after she had stopped breathing. Though the men were later found to be long-time drug dealers, under Michigan law, the individuals could only be charged with drug delivery and not with causing her death or failing to try to save her when she showed signs of distress. Many were later shocked to learn that one of the men involved received a sentence of only one year in jail.

In another situation, a young woman collapsed after being given cocaine and crack. She was subsequently "dumped" outside of an Ingham County hospital emergency department and later died. After prosecutors found no appropriate charge under state laws, the case was turned over to federal prosecutors who were able, under a federal law, to charge the individuals responsible with providing a controlled substance to another causing that person's death. Eventually, the individuals pled to a charge of involuntary manslaughter (a charge that the local prosecutor would have had difficulty proving).

Some feel that if a person gives a Schedule 1 or 2 controlled substance illegally to another, and that the other person dies as a result, that the person providing the drug should bear responsibility for the death and face a harsher penalty than is currently provided for delivering the controlled substance.

### ***THE CONTENT OF THE BILLS:***

The bills would create a new criminal penalty for delivery of a Schedule 1 or 2 controlled substance (other than marijuana) if the person who consumed the substance died as a result. The bills are tie-barred to each other and would take effect January 1, 2006.

House Bill 4673 would add a new section to the Michigan Penal Code (750.317a) to make it a felony punishable by imprisonment for life or any term of years to deliver a Schedule 1 or 2 controlled substance, other than marijuana, to another person in violation of Section 7401 of the Public Health Code if a death occurred as a result of the person or another person consuming the illegally delivered substance.

[In general, Section 7401(1) prohibits a person from manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver a controlled substance, a prescription form, or a counterfeit prescription form except as authorized by the Public Health Code.]

Senate Bill 423 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.16p) to specify that delivery of a controlled substance causing death would be a Class A felony against a person with a statutory maximum term of imprisonment for life.

### ***BACKGROUND INFORMATION:***

Public Health Code classification of drugs. Following federal law, the Public Health Code classifies controlled substances under one of five "schedules." Scheduled drugs must have the potential for abuse (where, in general, the abuse is "associated with" a stimulant or depressive effect on the central nervous system) and are either (a) illegal and without any medically accepted use in the United States (all schedule 1 drugs), or (b) prescription drugs with medically accepted uses in the United States that have a potential for psychological or physical dependence in addition to the potential for abuse (schedules 2, 3, 4, and 5).

Schedule 1 drugs -- all of which are illegal -- must have a high potential for abuse and no accepted medical use in treatment in the United States or lack accepted safety for use in treatment under medical supervision (MCL 333.7211). In addition to opiates and opium derivatives (including heroin), Schedule 1 includes hallucinogenic drugs (such as LSD and mescaline), GHB, and non-therapeutic uses of marijuana.

Schedule 2 prescription drugs must have a high potential for abuse, a currently accepted medical use in treatment in the United States (or a currently accepted medical use with severe restrictions), and their abuse must have the potential to lead to severe psychic or physical dependence (MCL 333.7213). Schedule 2 includes opium and any of its derivatives (including codeine and morphine), coca leaves and derivatives (including cocaine), other opiates (such as fentanyl, methadone, and pethidine), and substances containing any quantity of such drugs as amphetamine, methamphetamine, methaqualone, amobarbital, pentobarbital, and secobarbital.

### ***ARGUMENTS:***

#### ***For:***

House Bill 4673 is modeled after a federal law and would fill an obvious gap that currently exists in the state's criminal laws. Simply stated, a person who gave a Schedule 1 or 2 controlled substance illegally to another individual would have to bear responsibility if that individual or another individual died after using the drugs. Courts could impose a life sentence, though the person would be eligible for parole after serving a minimum term of years as provided under the sentencing guidelines. Perhaps friends, acquaintances, and drug dealers alike would think twice about selling or providing drugs to another if faced with life imprisonment should that friend, acquaintance, or customer die. Also, perhaps some would be motivated to seek medical assistance immediately upon observing their friend, acquaintance, or customer in obvious physical distress rather than waiting until too late. At the least, the legislation sends a clear message that Michigan has no tolerance for the illegal use and trafficking of controlled substances.

#### ***Against:***

In each of the scenarios presented in committee testimony, the person or persons who gave the victim the drugs also ignored signs that the victim was in need of immediate medical care and either waited too long or failed altogether to seek necessary medical assistance. Yet, the bill as written would not be restricted to such scenarios but is so broad as to apply to every drug deal that eventually results in a person's death. Certainly those who violate the laws regarding controlled substances should be punished appropriately, but what if the victim – when the person who supplied the drugs was no longer present – deliberately or unintentionally took an overdose, or mixed the drugs with alcohol with lethal results?

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Marilyn Peterson

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.