



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 423 (as enrolled)  
House Bill 4673 (as enrolled)  
Sponsor: Senator Jud Gilbert, II (S.B. 423)  
Representative Phillip Pavlov (H.B. 4673)  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 168 of 2005**  
**PUBLIC ACT 167 of 2005**

Date Completed: 2-28-06

**RATIONALE**

Prosecutors in Michigan have expressed frustration about the difficulty of holding a person responsible for a death when he or she supplies illicit drugs to another who dies as a result of consuming the drugs. The Public Health Code's controlled substances delivery proscriptions do not include graduated or enhanced sentences based on injury to or the death of the person receiving and/or consuming the drugs; delivery of small amounts of drugs is not a predicate offense in Michigan's "felony murder" provision, under which a death occurring in the perpetration of certain felonies (including a "major controlled substance offense") can be prosecuted as first-degree murder; and it is difficult to prove the intent element of second-degree murder. Federal law, however, provides for a sentence of 20 years to life in prison if death or serious bodily injury results from the use of a major controlled substance (21 USC 841). It was suggested that a prison sentence of any term of years, or life, should be available under Michigan law for a death caused by the delivery and consumption of certain controlled substances.

The bills were tie-barred and took effect on January 1, 2006.

**House Bill 4673**

Under the bill, a person who violates the Public Health Code by delivering a Schedule 1 or 2 controlled substance, other than marihuana, to another person is guilty of a felony punishable by imprisonment for life or any term of years if the substance is consumed by the person to whom it was delivered or any other person and causes the death of the person who consumed it.

(Schedule 1 includes controlled substances that have a high potential for abuse and have no accepted medical use in treatment in the United States or lack accepted safety for use in treatment under medical supervision. Schedule 2 includes controlled substances that have a high potential for abuse; have currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and the abuse of which may lead to severe psychic or physical dependence.)

**CONTENT**

**House Bill 4673 and Senate Bill amended the Michigan Penal Code and the Code of Criminal Procedure, respectively, to establish a criminal penalty of up to life in prison for the delivery of a Schedule 1 or 2 controlled substance that causes the death of a person who consumed the substance.**

**Senate Bill 423**

The bill included the felony enacted by House Bill 4673 in the sentencing guidelines. Under the Senate bill, delivery of a controlled substance causing death is a Class A felony against a person, with a statutory maximum sentence of imprisonment for life.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Several years ago, an Eastern Michigan University student died after two men with a history of dealing in illicit drugs supplied her with cocaine and heroin. The woman reportedly was in great distress as a result of using the drugs, but the men who supplied her with them did nothing to assist her until after she stopped breathing. The Washtenaw County prosecuting attorney's office determined that, although the men could be charged with delivery of a small amount of controlled substances, there was no criminal offense in Michigan law for causing the death of another by delivery of drugs.

Reportedly, in a similar case in Ingham County a few years earlier, a young girl suffering from an overdose died after being left outside a hospital emergency room. According to the Ingham County prosecutor, no criminal charge in State law was adequate to punish the girl's drug suppliers. The prosecutor evidently was able to transfer the case to the Federal court, which may impose a penalty of 20 years to life in prison if death or serious bodily injury results from the use of certain controlled substances.

In yet another case, in St. Clair County, some people apparently coerced another into taking fentanyl (a highly potent pharmaceutical analgesic), while downplaying the potentially serious effects of the drug. Because this incident occurred at a party that was videotaped, prosecutors reportedly believed they could prove intent and were pursuing a second-degree murder charge.

Just as the Michigan Vehicle Code includes criminal penalties for causing a death due to drunk driving, someone who causes another person's death by supplying him or her with a Schedule 1 or 2 controlled substance should be subject to severe criminal penalties. An offender should not be punished lightly with drug delivery charges;

cases should not have to be tried in Federal court; and prosecutors should not have to prove intent in order to secure a murder verdict. The bills will ensure that those who commit such an act are punished appropriately, and they may deter some people from providing major controlled substances to others.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of delivery of a controlled substance causing death. The felony is a Class A offense with a sentencing guidelines minimum sentence range from 21-35 months to 270 months-life. Local units of government incur the cost of incarceration in a local facility, which varies by county. The State incurs the cost of felony probation at an average annual cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of approximately \$30,000. Depending on the length of sentence, age at incarceration and life expectancy, the total cost of incarceration for each offender convicted and sentenced to prison could total anywhere from \$52,500 to \$1.8 million.

Fiscal Analyst: Lindsay Hollander

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