

1 HOUSE BILL NO. 333

2 INTRODUCED BY F. GARNER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE HELP SAVE LIVES FROM OVERDOSE ACT;
5 AUTHORIZING THE PRESCRIBING, DISPENSING, DISTRIBUTING, AND ADMINISTERING OF OPIOID
6 ANTAGONIST MEDICATION TO ELIGIBLE RECIPIENTS; PROVIDING TRAINING AND INSTRUCTION
7 REQUIREMENTS FOR DISPENSING OR DISTRIBUTING OPIOID ANTAGONIST MEDICATION; PROVIDING
8 DEFINITIONS; PROVIDING DISCIPLINARY, CIVIL, AND CRIMINAL IMMUNITY; PROVIDING RULEMAKING
9 AUTHORITY; AMENDING SECTIONS 37-2-104, 45-5-626, 45-9-102, 45-9-107, AND 45-10-103, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
11

12 WHEREAS, according to data from the United States Centers for Disease Control and Prevention (CDC),
13 more than 28,000 deaths in the United States in 2014 involved opioid-related overdoses. In 2015, nationwide
14 overdose deaths involving opioids rose to more than 33,000. The CDC also reports that deaths involving heroin
15 have more than tripled since 2010, with more than 10,500 persons dying in 2014 and almost 13,000 dying in
16 2015. More than 60% of the opioid-related overdose deaths in 2015 were attributed to primarily illicit opioids,
17 including heroin, to synthetic opioids other than methadone, or to a mixture of the two. The CDC calls
18 opioid-related deaths a national epidemic; and

19 WHEREAS, many opioid-related overdose deaths could be prevented by the timely administration of an
20 opioid antagonist, such as naloxone hydrochloride. Naloxone is a prescription medication that, when administered
21 to a person experiencing an opioid-related overdose, restores the person to consciousness and normal breathing.
22 Naloxone has been in use for more than 30 years and is virtually always effective when administered correctly.
23 Furthermore, naloxone is nonaddictive and has no potential for abuse; and

24 WHEREAS, treatment of a suspected opioid-related drug overdose must be performed by someone other
25 than the person overdosing, and, for this reason, the United States Food and Drug Administration labels naloxone
26 for third-party administration. Naloxone can be successfully administered outside of a clinical setting or facility
27 by friends, family members, or bystanders who have received minimal training in overdose recognition and
28 naloxone administration; and

29 WHEREAS, it is common for a family member or friend to be the first one to find a person who is
30 experiencing a drug overdose. It is also common for first responders, such as law enforcement officers or

1 firefighters, to be among the first persons on the scene of a reported drug overdose. Studies show widespread
2 success in preventing deaths from opioid-related overdoses through timely administration of naloxone. It is
3 imperative, therefore, that persons who are in a position to render timely assistance to an overdose victim have
4 immediate access to naloxone when it is needed; and

5 WHEREAS, overdose education and naloxone distribution programs that train family members, friends,
6 and others in a position to assist someone experiencing an opioid-related overdose can effectively reduce opioid
7 overdose death rates. Moreover, naloxone distribution for administration by nonmedical experts can be highly
8 cost-effective; and

9 WHEREAS, an opioid-related overdose is a medical emergency. After the administration of naloxone,
10 it is critical to summon emergency medical assistance. However, persons who witness an overdose are
11 sometimes reluctant to call 9-1-1 for fear of being arrested and prosecuted for a crime. Thirty-six states and the
12 District of Columbia have passed laws providing limited immunity to persons who call for help when someone has
13 experienced an opioid-related overdose; and

14 WHEREAS, numerous state and national public health and other organizations support increased access
15 to naloxone, including the American Medical Association, the American Society of Addiction Medicine, the
16 American Pharmacists Association, the United States Conference of Mayors, the National Governors Association,
17 the federal Office of National Drug Control Policy, the American Public Health Association, the Harm Reduction
18 Coalition, the National Association of State Alcohol and Drug Abuse Directors, the American Association of
19 Poison Control Centers, and state and local law enforcement and other organizations representing first
20 responders.

21

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23

24 NEW SECTION. **Section 1. Short title.** [Sections 1 through 11] may be cited as the "Help Save Lives
25 from Overdose Act".

26

27 NEW SECTION. **Section 2. Purpose.** The purposes of [sections 1 through 11] are to:

28 (1) save the lives of persons who have experienced an opioid-related drug overdose by providing the
29 broadest possible access to lifesaving opioid antagonist medication;

30 (2) facilitate the availability and use of opioid antagonist medication by providing professional, civil, and

1 criminal immunity to persons who prescribe, dispense, distribute, or administer an opioid antagonist; and
2 (3) encourage persons to seek medical treatment in an opioid-related drug overdose situation by
3 providing immunity from prosecution for certain criminal offenses for persons who seek or receive the medical
4 treatment.

5
6 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 11], the following definitions
7 apply:

8 (1) "Administer" means to apply an opioid antagonist to the body of another person by injection,
9 inhalation, ingestion, auto-injector, or another means.

10 (2) "Department" means the department of public health and human services provided for in 2-15-2201.

11 (3) "Dispense" or "dispensing" has the meaning provided in 37-7-101.

12 (4) "Distribute" has the meaning provided in 37-7-101.

13 (5) "Eligible recipient" means:

14 (a) a person who is at risk of experiencing an opioid-related drug overdose;

15 (b) a family member, friend, or other person who is in a position to assist a person who is at risk of
16 experiencing an opioid-related drug overdose;

17 (c) a first responder or a first responder entity;

18 (d) a harm reduction organization or its representative;

19 (e) the Montana state crime laboratory or its representative;

20 (f) a person who, on behalf of or at the direction of a law enforcement agency or officer, may process,
21 store, handle, test, transport, or possess a suspected or confirmed opioid;

22 (g) a probation, parole, or detention officer; or

23 (h) a county or other local public health department or its representative.

24 (6) "First responder" means a paid or volunteer firefighter, law enforcement officer, or other authorized
25 person who responds to an emergency in a professional or volunteer capacity. The term does not include an
26 ECP, also known as an emergency care provider, as defined in 37-3-102.

27 (7) "Harm reduction organization" means an organization that provides direct assistance and services,
28 including but not limited to counseling, screening, and drug treatment, to persons at risk of experiencing an
29 opioid-related drug overdose.

30 (8) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-202 or any other

1 agent of a criminal justice agency as defined in 44-5-103.

2 (9) "Medical practitioner" has the meaning provided in 37-2-101.

3 (10) "Opioid antagonist" means a drug that binds to opioid receptors and blocks or inhibits the effects of
4 opioids acting on those receptors. The term includes naloxone hydrochloride and any other similarly acting drug
5 approved by the United States food and drug administration.

6 (11) "Opioid-related drug overdose" means an acute condition evidenced by symptoms, including but not
7 limited to physical illness, pinpoint pupils, coma, decreased level of consciousness, or respiratory depression,
8 resulting from the consumption or use of an opioid or another substance with which an opioid is combined.

9 (12) "Standing order" means a written document prepared by a medical practitioner that authorizes an
10 eligible recipient to acquire, distribute, or administer medication without a person-specific prescription.

11 (13) "State medical officer" means a physician licensed to practice medicine under Title 37, chapter 3,
12 who is employed by the department to, among other things, provide advice and expertise to the department on
13 medical policy and issues of public health importance.

14
15 **NEW SECTION. Section 4. Statewide standing orders for opioid antagonist.** (1) The state medical
16 officer may prescribe on a statewide basis an opioid antagonist by one or more standing orders to eligible
17 recipients.

18 (2) A standing order must specify, at a minimum:

- 19 (a) the opioid antagonist formulations and means of administration that are approved for dispensing;
20 (b) the eligible recipients to whom the opioid antagonist may be dispensed;
21 (c) any training that is required for an eligible recipient to whom the opioid antagonist is dispensed;
22 (d) the circumstances under which an eligible recipient may distribute or administer the opioid antagonist;

23 and

24 (e) the timeline for renewing and updating the standing order.

25
26 **NEW SECTION. Section 5. Prescribing and dispensing authority for opioid antagonist.** A medical
27 practitioner may prescribe, directly, by a standing order, or by a collaborative practice agreement, or dispense,
28 as permitted under 37-2-104, an opioid antagonist to an eligible recipient. The medical practitioner shall document
29 the reasons for which the opioid antagonist was prescribed or dispensed.

30

1 **NEW SECTION. Section 6. Designation of patient -- instruction.** (1) A prescription issued pursuant
2 to [section 4] or [section 5] must designate the eligible recipient as the patient, regardless of the eligible recipient's
3 status as an individual, organization, agency, or other entity. Except as provided in [section 5], the prescription
4 must be dispensed by a licensed pharmacy.

5 (2) A licensed pharmacy or medical practitioner dispensing an opioid antagonist shall provide the patient
6 with basic instruction and information, the content of which must be developed by the department and made
7 publicly available on the department's website, concerning recognition of the signs and symptoms of an
8 opioid-related drug overdose, indications for the administration of an opioid antagonist, administration technique,
9 and the need for immediate and long-term followup to the administration of the opioid antagonist, including calling
10 9-1-1.

11 (3) An eligible recipient described in [section 3(5)(c) through (5)(h)] who distributes an opioid antagonist
12 pursuant to [section 7] shall:

13 (a) fulfill the basic instruction and information requirements set forth in subsection (2); and

14 (b) develop protocol for:

15 (i) instructing and training the eligible recipient's employees or other authorized personnel that is
16 consistent with the instruction and information developed by the department under subsection (2); and

17 (ii) the storage, maintenance, and location of the opioid antagonist.

18
19 **NEW SECTION. Section 7. Authorization for possession and administration of opioid antagonist**

20 **-- reporting.** (1) An eligible recipient to whom an opioid antagonist is prescribed, dispensed, or distributed
21 pursuant to [sections 4 through 6] and who has received the instruction and information provided for in [section
22 6] may do any of the following:

23 (a) possess and store the opioid antagonist. The storage of an opioid antagonist is not subject to
24 pharmacy practice laws or other requirements that apply to the storage of drugs or medications.

25 (b) in good faith, administer or direct another person to administer the opioid antagonist to a person who
26 is experiencing an actual or reasonably perceived opioid-related drug overdose; or

27 (c) distribute the opioid antagonist to a person who is an eligible recipient under [section 3(5)(a) or
28 (5)(b)].

29 (2) An eligible recipient to whom an opioid antagonist is dispensed pursuant to [sections 4 through 6]
30 shall report, if required by the department, information regarding the dispensing, distribution, and administration

1 of the opioid antagonist.

2

3 **NEW SECTION. Section 8. Professional conduct -- immunity.** (1) A prescription issued pursuant to
4 [section 4] or [section 5] is considered to have been issued for a legitimate medical purpose in the usual course
5 of a professional practice.

6 (2) Except for injury or damages arising from gross negligence, willful or wanton misconduct, or an
7 intentional tort:

8 (a) a medical practitioner or licensed pharmacist may not be subject to disciplinary action or civil or
9 criminal liability for injury resulting from the prescribing or dispensing of an opioid antagonist pursuant to [sections
10 4 through 6] to an eligible recipient; and

11 (b) an eligible recipient may not be subject to disciplinary action or civil or criminal liability for injury
12 resulting from distributing an opioid antagonist pursuant to [sections 6 and 7].

13 (3) In accordance with 27-1-714, a medical practitioner, eligible recipient, emergency care provider, or
14 other person is not liable and may not be subject to disciplinary action as a result of any injury arising from the
15 administration of an opioid antagonist to another person whom the medical practitioner, eligible recipient,
16 emergency care provider, or other person believes in good faith to be suffering from an opioid-related drug
17 overdose, unless the injury arises from an act or omission that is the result of gross negligence, willful or wanton
18 misconduct, or an intentional tort.

19 (4) The provisions of [sections 1 through 7] do not establish a duty or standard of care with respect to
20 the decision of whether to prescribe, dispense, distribute, or administer an opioid antagonist.

21

22 **NEW SECTION. Section 9. Good Samaritan protections.** (1) The provisions of 45-5-626, 45-9-102,
23 45-9-107, and 45-10-103 do not apply to:

24 (a) a person who, acting in good faith, seeks medical assistance for another person who is experiencing
25 an actual or reasonably perceived drug-related overdose if the evidence supporting an arrest, charge, or
26 prosecution was obtained as a result of the person's seeking medical assistance for another person; and

27 (b) a person who experiences a drug-related overdose and is in need of medical assistance if the
28 evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and
29 the need for medical assistance.

30 (2) A person's pretrial release, probation, furlough, supervised release, or parole may not be revoked

1 based on an incident for which the person would be immune from arrest, charge, or prosecution under this
2 section.

3 (3) A person's act of providing first aid or other medical assistance to a person who is experiencing an
4 actual or reasonably perceived drug-related overdose may be used as a mitigating factor in a criminal prosecution
5 for which immunity is not provided under this section.

6 (4) This section may not be construed to:

7 (a) bar the admissibility of evidence obtained in connection with the investigation and prosecution of
8 other crimes or violations committed by a person who otherwise qualified for limited immunity under this section;
9 or

10 (b) limit, modify, or remove immunity from liability currently available to public entities, public employees,
11 or prosecutors or by law.

12

13 NEW SECTION. **Section 10. Grants.** The department may apply for and award grants to further the
14 purposes outlined in [sections 1 through 7].

15

16 NEW SECTION. **Section 11. Rulemaking.** The department may adopt rules regarding opioid antagonist
17 instruction, training, and reporting, as provided for in [sections 6 and 7].

18

19 **Section 12.** Section 37-2-104, MCA, is amended to read:

20 **"37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.** (1) Except as
21 otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the
22 dispensing of drugs.

23 (2) This section does not prohibit any of the following:

24 (a) a medical practitioner from furnishing a patient any drug in an emergency;

25 (b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical
26 practitioner;

27 (c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy
28 available to the patient;

29 (d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical
30 practitioner;

- 1 (e) a medical practitioner from dispensing drug samples;
- 2 (f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse
3 employed by a family planning clinic under contract with the department of public health and human services if
4 the dispensing is in accordance with:
- 5 (i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and
6 (ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;
- 7 (g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic.
8 The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance.
9 The contract physician may not delegate the authority to dispense any drug for which a prescription is required
10 under 21 U.S.C. 353(b).
- 11 (h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and
12 verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this
13 subsection (2)(h) must meet the labeling requirements of the board of pharmacy.
- 14 (i) a medical practitioner from dispensing an opioid antagonist as provided in [section 5]."

15

16 **Section 13.** Section 45-5-626, MCA, is amended to read:

17 **"45-5-626. Violation of order of protection.** (1) A Except as provided in [section 9], a person commits
18 the offense of violation of an order of protection if the person, with knowledge of the order, purposely or knowingly
19 violates a provision of any order provided for in 40-4-121 or an order of protection under Title 40, chapter 15. It
20 may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been
21 served with the order before the time of the offense. Service of the order is not required upon a showing that the
22 defendant had knowledge of the order and its content.

23 (2) Only the respondent under an order of protection may be cited for a violation of the order. The
24 petitioner who filed for an order of protection may not be cited for a violation of that order of protection.

25 (3) An offender convicted of violation of an order of protection shall be fined not to exceed \$500 or be
26 imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense. Upon conviction for
27 a second offense, an offender shall be fined not less than \$200 and not more than \$500 and be imprisoned in
28 the county jail not less than 24 hours and not more than 6 months. Upon conviction for a third or subsequent
29 offense, an offender shall be fined not less than \$500 and not more than \$2,000 and be imprisoned in the county
30 jail or state prison for a term not less than 10 days and not more than 2 years."

1

2 **Section 14.** Section 45-9-102, MCA, is amended to read:

3 **"45-9-102. Criminal possession of dangerous drugs.** (1) Except as provided in section 9 or Title 50,
4 chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any
5 dangerous drug, as defined in 50-32-101.

6 (2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate
7 weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a
8 misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in
9 the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended
10 or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable
11 by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state
12 prison for a term not to exceed 3 years or by both. This subsection does not apply to the possession of synthetic
13 cannabinoids listed as dangerous drugs in 50-32-222.

14 (3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first
15 offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by
16 imprisonment in the county jail for not more than 6 months, or both.

17 (4) A person convicted of criminal possession of an opiate, as defined in 50-32-101, shall be imprisoned
18 in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than
19 \$50,000, except as provided in 46-18-222.

20 (5) (a) A person convicted of a second or subsequent offense of criminal possession of
21 methamphetamine shall be punished by:

22 (i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

23 (ii) commitment to the department of corrections for placement in an appropriate correctional facility or
24 program for a term of not less than 3 years or more than 5 years. If the person successfully completes a
25 residential methamphetamine treatment program operated or approved by the department of corrections during
26 the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not
27 to exceed \$50,000.

28 (b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place
29 the person in a residential methamphetamine treatment program operated or approved by the department of
30 corrections or in a correctional facility or program. The residential methamphetamine treatment program must

1 consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based
2 prerelease center.

3 (c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

4 (i) the person to abide by the standard conditions of probation established by the department of
5 corrections;

6 (ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person
7 if the person is financially able to pay those costs;

8 (iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption
9 on the premises or where gambling takes place;

10 (iv) that the person may not consume alcoholic beverages;

11 (v) the person to enter and remain in an aftercare program as directed by the person's probation officer;

12 and

13 (vi) the person to submit to random or routine drug and alcohol testing.

14 (6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in
15 subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined
16 an amount not to exceed \$50,000, or both.

17 (7) A person convicted of a first violation under this section is presumed to be entitled to a deferred
18 imposition of sentence of imprisonment.

19 (8) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting
20 in the course of a professional practice are exempt from this section."

21

22 **Section 15.** Section 45-9-107, MCA, is amended to read:

23 **"45-9-107. Criminal possession of precursors to dangerous drugs.** (1) ~~A~~ Except as provided in
24 [section 9], a person commits the offense of criminal possession of precursors to dangerous drugs if:

25 (a) the person possesses any material, compound, mixture, or preparation that contains any combination
26 of the following with intent to manufacture dangerous drugs:

27 (i) phenyl-2-propanone (phenylacetone);

28 (ii) piperidine in conjunction with cyclohexanone;

29 (iii) ephedrine;

30 (iv) lead acetate;

- 1 (v) methylamine;
 2 (vi) methylformamide;
 3 (vii) n-methylephedrine;
 4 (viii) phenylpropanolamine;
 5 (ix) pseudoephedrine;
 6 (x) anhydrous ammonia;
 7 (xi) hydriodic acid;
 8 (xii) red phosphorus;
 9 (xiii) iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus;
 10 (xiv) lithium in conjunction with anhydrous ammonia; or
 11 (b) the person knowingly possesses anhydrous ammonia for the purpose of manufacturing dangerous
 12 drugs.

13 (2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in
 14 the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed
 15 \$50,000, or both."

16
 17 **Section 16.** Section 45-10-103, MCA, is amended to read:
 18 **"45-10-103. Criminal possession of drug paraphernalia.** Except as provided in [section 9] or Title 50,
 19 chapter 46, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant,
 20 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze,
 21 pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a
 22 dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be
 23 imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A
 24 person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence
 25 of imprisonment."

26
 27 NEW SECTION. **Section 17. Codification instruction.** [Sections 1 through 11] are intended to be
 28 codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 11].
 29

30 NEW SECTION. **Section 18. Two-thirds vote required.** Because [this act] limits governmental liability,

1 Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of
2 the legislature for passage.

3

4 NEW SECTION. **Section 19. Effective date.** [This act] is effective on passage and approval.

5

- END -