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

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

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

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

WHEREAS, it is common for a family member or friend to be the first one to find a person who is

experiencing a drug overdose. It is also common for first responders, such as law enforcement officers or firefighters, to be among the first persons on the scene of a reported drug overdose. Studies show widespread success in preventing deaths from opioid-related overdoses through timely administration of naloxone. It is imperative, therefore, that persons who are in a position to render timely assistance to an overdose victim have immediate access to naloxone when it is needed; and

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

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

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

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

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

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

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

(2) facilitate the availability and use of opioid antagonist medication by providing professional, civil, and criminal immunity to persons who prescribe, dispense, distribute, or administer an opioid antagonist; and

(3) encourage persons to seek medical treatment in an opioid-related drug overdose situation by providing immunity from prosecution for certain criminal offenses for persons who seek or receive the medical treatment.

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

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

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

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

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

(5) "Eligible recipient" means:

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

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

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

(d) a harm reduction organization or its representative;

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

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

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

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

(i) a veterans' organization or its representative.

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

(7) "Harm reduction organization" means an organization that provides direct assistance and services, including but not limited to counseling, screening, and drug treatment, to persons at risk of experiencing an

opioid-related drug overdose.

(8) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-202 or any other agent of a criminal justice agency as defined in 44-5-103.

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

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

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

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

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

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

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

(a) the opioid antagonist formulations and means of administration that are approved for dispensing;

(b) the eligible recipients to whom the opioid antagonist may be dispensed;

(c) any training that is required for an eligible recipient to whom the opioid antagonist is dispensed;

(d) the circumstances under which an eligible recipient may distribute or administer the opioid antagonist; and

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

**Section 5. Prescribing and dispensing authority for opioid antagonist.** A medical practitioner may prescribe, directly, by a standing order, or by a collaborative practice agreement, or dispense, as permitted under 37-2-104, an opioid antagonist to an eligible recipient. The medical practitioner shall document the reasons for

which the opioid antagonist was prescribed or dispensed.

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

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

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

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

(b) develop protocol for:

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

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

**Section 7. Authorization for possession and administration of opioid antagonist -- reporting.** (1) An eligible recipient to whom an opioid antagonist is prescribed, dispensed, or distributed pursuant to [sections 4 through 6] and who has received the instruction and information provided for in [section 6] may do any of the following:

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

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

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

(5)(b)].

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

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

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

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

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

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

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

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

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

(b) a person who experiences a drug-related overdose and is in need of medical assistance if the

evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.

(2) A person's pretrial release, probation, furlough, supervised release, or parole may not be revoked based on an incident for which the person would be immune from arrest, charge, or prosecution under this section.

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

(4) This section may not be construed to:

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

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

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

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

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

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

(2) This section does not prohibit <u>any of the following</u>:

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

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

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

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

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

(h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this subsection (2)(h) must meet the labeling requirements of the board of pharmacy.

(i) a medical practitioner from dispensing an opioid antagonist as provided in [section 5]."

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

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

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

(3) An offender convicted of violation of an order of protection shall be fined not to exceed $500 or be

imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense. Upon conviction for a second offense, an offender shall be fined not less than $200 and not more than $500 and be imprisoned in the county jail not less than 24 hours and not more than 6 months. Upon conviction for a third or subsequent offense, an offender shall be fined not less than $500 and not more than $2,000 and be imprisoned in the county jail or state prison for a term not less than 10 days and not more than 2 years."

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

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

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

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

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101, shall be imprisoned 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 $50,000, except as provided in 46-18-222.

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

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

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a

residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed $50,000.

(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.

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

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

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

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

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

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

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

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

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

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

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

**"45-9-107. Criminal possession of precursors to dangerous drugs.** (1) ~~A~~ Except as provided in

[section 9], a person commits the offense of criminal possession of precursors to dangerous drugs if:

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

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

(ii) piperidine in conjunction with cyclohexanone;

(iii) ephedrine;

(iv) lead acetate;

(v) methylamine;

(vi) methylformamide;

(vii) n-methylephedrine;

(viii) phenylpropanolamine;

(ix) pseudoephedrine;

(x) anhydrous ammonia;

(xi) hydriodic acid;

(xii) red phosphorus;

(xiii) iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus;

(xiv) lithium in conjunction with anhydrous ammonia; or

(b) the person knowingly possesses anhydrous ammonia for the purpose of manufacturing dangerous drugs.

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

**Section 16.** Section 45-10-103, MCA, is amended to read:

**"45-10-103. Criminal possession of drug paraphernalia.** Except as provided in [section 9] or Title 50, chapter 46, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be

imprisoned in the county jail for not more than 6 months, fined an amount of not more than $500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

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

**Section 18. Two-thirds vote required.** Because [this act] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

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

- END -

I hereby certify that the within bill,

HB 0333, originated in the House.

Speaker of the House

Signed this _____ day

of _____, 2017.

Chief Clerk of the House

President of the Senate

Signed this _____ day

of _____, 2017.

HOUSE BILL NO. 333

INTRODUCED BY F. GARNER, J. HAMILTON, J. KARJALA, A. OLSZEWSKI

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