



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 14 and 15 (as introduced 1-13-21)
Sponsor: Senator Dale W. Zorn
Committee: Judiciary and Public Safety

Date Completed: 3-3-21

CONTENT

Senate Bill 14 would amend Section 317a of the Michigan Penal Code to allow a violation for delivery of a controlled substance causing death to be prosecuted in the county in which the controlled substance was delivered or consumed, or in which the death occurred.

Senate Bill 15 would amend the Code of Criminal Procedure to specify that a violation of Section 317a of the Penal Code could be prosecuted in the same venues as described in Senate Bill 14.

The bills are tie-barred, and each bill would take effect 90 days after its enactment. Senate Bill 14 is described in more detail below.

Section 317a of the Penal Code specifies that a person who delivers to another person a Schedule 1 or 2 controlled substance, other than marihuana, in violation of Section 7401 of the Public Health Code, that is consumed by that person or any other person and that causes the death of that person is guilty of a felony punishable by imprisonment for life or any term of years.

Under the bill, a violation of Section 317a could be prosecuted in the county in which any of the following occurred:

- The county in which the controlled substance was made.
- The county in which the controlled substance was consumed.
- The county in which the death caused by the delivery of the controlled substance occurred.

(Section 7401 of the Public Health Code prohibits a person from manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver certain controlled substances. Penalties for a violation vary, depending on the substance and/or the amount of the substance.)

MCL 750.317a (S.B. 14)
Proposed MCL 760.5a (S.B. 15)

BACKGROUND

In a 2019 case, *People v. McBurrows* (504 Mich 308), the Michigan Supreme Court ruled that in the prosecution of cases involving the delivery of a controlled substance causing death

under Section 317a of the Penal Code, venue is proper only in the county in which the controlled substance was delivered, and not in the county where the death occurred.

The *McBurrows* case arose from the opioid-related overdose of a Monroe County resident, Nicholas Abraham. On December 12, 2016, Abraham contacted William Ingall about procuring some heroin. Abraham and Ingall drove to Detroit to purchase heroin from the Defendant, Romon Berry McBurrows. After obtaining the heroin from the Defendant, Abraham dropped Ingall off at Ingall's house, and returned home where he and his wife used some of the heroin, after which his wife passed out. When she regained consciousness, she discovered that Abraham was not breathing and tried to resuscitate him. He was pronounced dead later that same day. An autopsy was performed on Abraham, and it was determined that his death was caused by fentanyl toxicity. (Fentanyl is a synthetic opioid pain reliever that has a high likelihood of abuse, habituation, or addiction. According to the Centers for Disease Control and Prevention, fentanyl is 50-100 times as potent as morphine, and hundreds of times more potent than heroin.)

The Defendant was charged with one count of delivery of a controlled substance causing death. Following his preliminary examination, the Defendant was bound over in Monroe County Circuit Court. He moved to dismiss the case, arguing that the trial court lacked jurisdiction over the case since the only act he allegedly committed, the delivery of the fentanyl, occurred in Wayne County. The trial court denied the Defendant's motion to dismiss, ruling that the Defendant could be tried in either Wayne County or Monroe County because elements of the charged offense occurred in both counties.

Defendant filed an application for leave to appeal with the Michigan Court of Appeals. The Court of Appeals granted leave and stayed the trial court proceedings pending the appeal. Ultimately, the Court of Appeals reversed the trial court's ruling that venue was improper in Monroe County.

On appeal, the Michigan Supreme Court affirmed the judgment of the Court of Appeals and remanded the case further proceedings. The Supreme Court explained that "the statute punishes 'an individual's role in placing the controlled substance in the stream of commerce, even when that individual is not directly linked to the resultant death.' That consequences are felt elsewhere is immaterial, even if those consequences are required elements of the offense."¹ Therefore, in a prosecution for delivery of a controlled substance causing death, venue is proper in the county in which the delivery, not the death, occurred.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

¹ *McBurrows*, at 317 (quoting *People v. Plunkett*, 485 Mich 50, 60 (2010)).

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.