

**HOUSE . . . . . No. 2372**

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The Commonwealth of Massachusetts

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Senate, July 23, 2012.

BILL #: H04160

BILL STATUS: Favorable with Amendment

DISSENTERS:

None

ACCOMPANIED BILLS:

None

For the committee,

FREDERICK E. BERRY

# SENATE . . . . . No. 2372

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The committee on Ethics and Rules to whom was referred the House Bill relative to certain controlled substances (House, No. 4160), reports, recommending that the bill be amended by striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2372; and that it be Placed in the Orders of the Day for the next session.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve

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1 SECTION 1. Chapter 94C of the General Laws is hereby amended by inserting after  
2 section 7 the following section:-

3 Section 7A. Prior to obtaining or renewing a registration under section 7, a practitioner  
4 who prescribes controlled substances shall register as a participant in the prescription monitoring  
5 program established in section 24A. For the purposes of this section, a practitioner shall not  
6 include a veterinarian.

7 SECTION 2. Section 15 of said chapter 94C, as appearing in the 2010 Official Edition,  
8 is hereby amended by adding the following paragraph:-

9 If a person registered to manufacture, distribute, dispense or possess controlled  
10 substances discovers a theft or loss of controlled substances that requires the filing of a DEA  
11 Form 106 with the federal Drug Enforcement Administration, the person shall simultaneously  
12 file a copy of that form with the police department in the city or town wherein the theft or loss is  
13 alleged to have occurred and to the department of state police.

14 SECTION 3. Section 18 of said chapter 94C, as so appearing, is hereby amended by  
15 striking out, in line 36, the word “controlled” and inserting in place thereof the following word:-  
16 nonnarcotic.

17 SECTION 4. Said section 18 of said chapter 94C, as so appearing, is hereby further  
18 amended by inserting after subsection (d) the following subsection:-

19 (d ½) A prescription for a narcotic substance contained in Schedule II of section 3 may  
20 also be issued by a physician who is licensed to practice medicine and registered in a contiguous  
21 state wherein he resides or practices, if required, and registered under federal law to write  
22 prescriptions. A registered pharmacist filling a prescription under this subsection shall determine,  
23 in accordance with professional standards and personal judgment, that such prescription is  
24 authentic and valid and shall verify the prescription by telephonic or other means. A pharmacist  
25 shall not fill a prescription for which a verification cannot be obtained. A pharmacist shall not be  
26 liable for refusing to fill a prescription for which a verification cannot be obtained provided that  
27 documented good faith efforts were made to determine the authenticity and validity of such  
28 prescription. This subsection shall only apply to authorizations for the filling of prescriptions  
29 within the commonwealth, issued within the preceding 5 days, and shall not authorize such  
30 practitioner to possess, administer or dispense controlled substances as provided in section 9 or  
31 to practice medicine within the commonwealth. A prescription issued under this subsection shall  
32 be issued in the manner provided in section 22 and all relevant provisions of this chapter shall  
33 apply to any such practitioner and any such prescription. In the case of a prescription for a  
34 Schedule II substance filled pursuant to this subsection, a pharmacist shall, within 30 days after  
35 filling such prescription, deliver to the department a copy of each such Schedule II prescription;  
36 provided, however, that such copy shall not include the name and address of the patient for

37 whom the prescription was issued; and provided further, that such copy and the information  
38 contained therein shall not be a public record within the meaning of section 7 of chapter 4 and  
39 shall be subject to the restrictions set forth in section 2 of chapter 66A. Nothing in this section  
40 shall authorize a mail-order pharmacy.

41 SECTION 5. Section 19 of said chapter 94C, as so appearing, is hereby amended by  
42 adding the following subsection:-

43 (d) Naloxone or other opioid antagonist may lawfully be prescribed and dispensed to a  
44 person at risk of experiencing an opiate-related overdose or to a family member, friend or other  
45 person in a position to assist a person at risk of experiencing an opiate-related overdose. For the  
46 purposes of this chapter and chapter 112, a naloxone prescription issued pursuant to this  
47 subsection shall be deemed to have been issued for a legitimate medical purpose in the usual  
48 course of professional practice.

49 SECTION 6. Section 21 of said chapter 94C, as so appearing, is hereby amended by  
50 adding the following paragraph:-

51 The department of public health shall produce and distribute to pharmacies pamphlets for  
52 consumers relative to controlled substances that includes educational information about: (i)  
53 misuse and abuse by adults and children; (ii) risk of dependency and addiction; (iii) proper  
54 storage and disposal; (iv) addiction support and treatment resources; and (v) the telephone  
55 helpline operated by the bureau of substance abuse services established in section 18 of chapter  
56 17. A pharmacist shall distribute the pamphlet when dispensing a controlled substance contained  
57 in Schedule II or III.

58 SECTION 7. Said chapter 94C is hereby further amended by inserting after section 21A  
59 the following section:-

60 Section 21B. (a) For the purposes of this section, the following words shall have the  
61 following meanings unless the context clearly requires otherwise:

62 “Lock box”, a box with a locking mechanism that cannot be tampered with or opened  
63 without extreme force.

64 “Pharmacy”, a facility under the direction or supervision of a registered pharmacist which  
65 is authorized to dispense controlled substances; provided, however, that “pharmacy” shall not  
66 include an institutional pharmacy or a pharmacy department except as otherwise provided in 247  
67 CMR.

68 “Prescription drug”, a drug which, under federal law, is required, prior to being dispensed  
69 or delivered, to be labeled with the statement “Caution, federal law prohibits dispensing without  
70 prescription” or a drug which is required by applicable federal or state law or regulation to be  
71 dispensed pursuant only to a prescription drug order.

72 (b) A pharmacy registered in the commonwealth to dispense schedule II, III, IV or V  
73 prescription drugs shall make available prescription lock boxes for sale at each store location.  
74 Pharmacies shall make customers aware of the availability of the lock boxes by displaying a sign  
75 on or near the pharmacy counter that: (i) is at least 4 inches by 5 inches; and (ii) includes the  
76 following statement in legibly printed font: “Lock boxes for securing your prescription  
77 medications are available at this pharmacy.”

78 SECTION 8. Section 23 of said chapter 94C, as appearing in the 2010 Official Edition,  
79 is hereby amended by inserting after the word “means”, in line 25, the following words:- on a  
80 secure form.

81 SECTION 9. Subsection (c) of section 24A of said chapter 94C, as so appearing, is  
82 hereby amended by adding the following paragraph:-

83 The department shall promulgate rules and regulations relative to the use of the  
84 prescription monitoring program by registered participants that shall include requiring  
85 participants to utilize the prescription monitoring program prior to the issuance of a prescription  
86 for a narcotic drug contained in Schedule II or III to a patient for the first time. The department  
87 may require participants to utilize the prescription monitoring program prior to the issuance to a  
88 patient for the first time of benzodiazepines or any other schedule IV or V commonly abused  
89 prescription drug that may lead to physical or psychological dependence or that patients with a  
90 history of substance dependence have been shown to experience significant addictive  
91 symptoms. The regulations shall specify the circumstances under which such narcotics may be  
92 prescribed without first utilizing the prescription monitoring program. The regulations may also  
93 specify the circumstances under which licensed support staff may use the prescription  
94 monitoring program on behalf of a registered participant. When promulgating the rules and  
95 regulations, the department shall also require that pharmacists be trained in the use of the  
96 prescription monitoring program as part of the continuing education requirements mandated for  
97 licensure by the board of registration in pharmacy, pursuant to section 24A of chapter 112 of the  
98 General Laws. The department shall also study the feasibility and value of expanding the  
99 prescription monitoring program to include Schedule VI prescription drugs.

100 SECTION 10. Paragraph (e) of Class C of section 31 of said chapter 94C, as so  
101 appearing, is hereby amended by adding the following 16 clauses:-

102 (17) 3, 4 - methylenedioxy-methcathinone, MDMC

103 (18) 3, 4 - methylenedioxy-pyrovalerone, MDPV

104 (19) 4 - methylmethcathinone, 4-MMC

105 (20) 4 - methoxymethcathinone, bk-PMMA, PMMC

106 (21) 3, 4 - fluoromethcathinone, FMC

107 (22) Napthylpyrovalerone, NRG-1

108 (23) Beta-keto-N-methylbenzodioxolylpropylamine

109 (24) 2-(methylamino)-propiofenone; OR alpha-(methylamino) propiofenone

110 (25) 3-methoxymethcathinone

111 (26) 4-methyl-alpha-pyrrolidinobutyrophenone

112 (27) 2-(methylamino)-1-phenylpropan-1-one

113 (28) 4-ethylmethcathinone

114 (29) 3,4-Dimethylmethcathinone

115 (30) alpha-Pyrrolidinopentiophenone

116 (31) beta-Keto-Ethylbenzodioxolylbutanamine

117 (32) 3,4-methylenedioxy-N-ethylcathinone.

118 SECTION 11. Said chapter 94C is hereby further amended by inserting after section 34  
119 the following section:-

120 Section 34A. (a) A person who, in good faith, seeks medical assistance for someone  
121 experiencing a drug-related overdose shall not be charged or prosecuted for possession of a  
122 controlled substance pursuant to section 34 if the evidence for the charge of possession of a  
123 controlled substance was gained as a result of the seeking of medical assistance.

124 (b) A person who experiences a drug-related overdose and is in need of medical  
125 assistance shall not be charged or prosecuted for possession of a controlled substance pursuant to  
126 section 34 if the evidence for the charge of possession of a controlled substance was gained as a  
127 result of the overdose and the need for medical assistance.

128 (c) The act of seeking medical assistance for someone who is experiencing a drug-related  
129 overdose may be used as a mitigating factor in a criminal prosecution under this chapter.

130 (d) A person who, in good faith, seeks medical assistance for someone experiencing a  
131 drug-related overdose shall not be charged or prosecuted pursuant to section 35 if the evidence  
132 for the charge under said section 35 was gained as a result of the seeking of medical assistance.

133 (e) A person who experiences a drug-related overdose and is in need of medical  
134 assistance shall not be charged pursuant to section 35 if the evidence for the charge under section  
135 35 was gained as a result of the overdose and the need for medical assistance.

136 (f) Nothing in this section shall preclude a person from being charged with trafficking,  
137 distribution or possession of a controlled substance with intent to distribute.

138 (g) A person acting in good faith may receive and possess a naloxone prescription, and  
139 may administer naloxone to an individual appearing to experience an opiate-related overdose.

140 SECTION 12. Chapter 112 of the General Laws is hereby amended by inserting after  
141 section 12E the following section:-

142 Section 12E½. The department of public health shall produce a pamphlet with contact  
143 information for its bureau of substance abuse services, including its telephone helpline number,  
144 and with information on the benefits and availability of addiction treatment and on the  
145 prevention of future overdoses. A physician, nurse practitioner or hospital that treats a person  
146 under 18 years of age for a drug or alcohol overdose, as defined by regulations of the  
147 department, shall: (i) notify the minor's parent, legal guardian or other person having custody or  
148 control of a minor child of the overdose as part of the discharge planning process; (ii) provide the  
149 pamphlet to the parent, legal guardian or other person having custody or control of a minor child  
150 and to the minor child; and (iii) provide access to a social worker, if available.

151 SECTION 13. Chapter 118E of the General Laws is hereby amended by inserting after  
152 section 54 the following section:-

153 Section 56. The division shall establish a controlled substance management program for  
154 MassHealth enrollees who use excessive quantities of prescribed drugs. Those enrollees shall be  
155 restricted to obtaining prescription drugs only from the provider that the division designates as  
156 the enrollee's primary pharmacy. The division shall promulgate rules and regulations relative to  
157 the program, including criteria for participation, service restriction, responsibilities of the  
158 primary pharmacy, change in the primary pharmacy and participation status, utilization review  
159 and enforcement.

160 SECTION 14. Section 16 of chapter 211B of the General Laws, as appearing in the 2010  
161 Official Edition, is hereby amended by adding the following paragraph:-

162 The institute, in consultation with the bureau of substance abuse services within the  
163 department of public health, shall provide substance abuse training to personnel that helps  
164 personnel identify substance abuse treatment resources for persons charged with or convicted of  
165 a crime or adjudicated delinquent who could benefit from those resources.

166 SECTION 15. Section 4 of chapter 211D of the General Laws, as so appearing, is hereby  
167 amended by adding the following paragraph:-

168 The committee, in consultation with the bureau of substance abuse services within the  
169 department of public health, shall provide substance abuse training to attorneys that helps  
170 attorneys identify substance abuse treatment resources for persons charged with or convicted of a  
171 crime or adjudicated delinquent who could benefit from those resources.

172 SECTION 16. Section 11 of chapter 283 of the acts of 2010 is hereby repealed.

173 SECTION 17. The first paragraph of section 14 of said chapter 283 is hereby amended  
174 by adding the following 2 sentences:- The study shall also include a cost estimate for a pilot  
175 substance abuse education program in 5 school districts that have surrounding communities with  
176 high rates of opioid drug abuse. The pilot program shall include evidence-based curricula to  
177 decrease experimentation and provide skills for using prescription drugs appropriately.

178 SECTION 18. The second paragraph of said section 14 of said chapter 283 is hereby  
179 amended by striking out the words “December 31, 2011” and inserting in place thereof the  
180 following words:- April 1, 2012.

181 SECTION 19. The commissioner of public health shall promulgate regulations to  
182 implement section 5 not later than January 1, 2013.

183 SECTION 20. The department of public health shall promulgate rules and regulations as  
184 required by section 6 not later than January 1, 2013.

185 SECTION 21. The department of public health shall, not later than January 1, 2013,  
186 notify pharmacists of the opportunity to use the prescription monitoring program established in  
187 section 24A of chapter 94C of the General Laws when conducting a prospective drug review, as  
188 required by sections 21A of said chapter 94C.

189 SECTION 22. The director of Medicaid shall promulgate regulations as required by  
190 section 10 not later than January 1, 2013.

191 SECTION 23. The commissioner of public health shall convene a joint policy working  
192 group to investigate and study best practices, including those in education, screening, tracking,  
193 monitoring and treatment to promote safe and responsible prescribing practices for opioids and  
194 other harmful commonly abused prescription drugs, as determined by the commissioner of  
195 public health, prescribing practices for acute and chronic pain with the goal of reducing  
196 diversion, abuse and addiction. The working group shall consist of 14 members and shall include  
197 1 representative from each of the following: the department of public health, the board of  
198 registration in medicine, the board of registration in nursing, the board of registration in  
199 dentistry, the board of registration in podiatry, the board of registration in pharmacy, the  
200 Massachusetts Medical Society, the Massachusetts Dental Society, the Massachusetts  
201 Association of Physician Assistants, the Massachusetts Coalition of Nurse Practitioners, the  
202 Massachusetts Pharmacists Association, a physician specializing in pain management appointed

203 by the commissioner of public health, an individual specializing in substance abuse counseling  
204 and therapy appointed by the bureau of substance abuse services and the Massachusetts Podiatric  
205 Medical Society. The policy working group shall submit a report of its findings, along with  
206 recommendations, if any, to the commissioner and a copy of the report to the general court by  
207 filing it with the clerks of the senate and house of representatives, the joint committee on mental  
208 health and substance abuse and the joint committee on public health not later than six months  
209 after the effective date of this act.

210           The commissioner shall promulgate rules and regulations relative to safe and responsible  
211 prescribing practices for opioids and other harmful commonly abused prescription drugs, as  
212 determined by the commissioner of the department of public health, prescribing practices with  
213 the goal of reducing diversion, abuse and addiction not later than six months after the joint policy  
214 working group releases its report.

215           SECTION 24. The commissioner of public health or a designee shall work with a  
216 nationally-recognized entity specializing in prescription monitoring programs to establish  
217 interstate compacts between the commonwealth and other states that have programs and with  
218 those states that do not to securely share prescription data to improve public health and safety.

219           SECTION 25. The department of public health, in collaboration with the department of  
220 correction and the Massachusetts Sheriffs Association, shall investigate and study the use of  
221 United States Food and Drug Administration-approved medication-assisted treatments, including  
222 nonnarcotic, opioid antagonist therapies, for opioid-dependent offenders leaving correctional  
223 facilities and transitioning to community-based treatment programs. In conducting the study, the  
224 department of public health shall ensure access to United States Food and Drug Administration's

225 nonnarcotic, opioid antagonist therapies for the participants in the same manner as access to any  
226 other United States Food and Drug Administration-approved medication-assisted treatment. The  
227 department shall report its findings, along with its recommendations, if any, to the general court  
228 by filing the same with the clerks of the senate and house of representatives, the house and senate  
229 committees on ways and means and the joint committee on mental health and substance abuse  
230 not later than July 1, 2013.

231         If the department determines that the use of any United States Food and Drug  
232 Administration-approved medication-assisted treatment for opioid-dependent offenders leaving  
233 correctional facilities and transitioning to community-based treatment programs is likely to be  
234 effective in improving treatment outcomes and reducing recidivism, the department may enter  
235 into pilot programs to provide voluntary treatment for opioid-dependent offenders with sheriffs'  
236 offices that choose to participate.

237         SECTION 26. Notwithstanding subsection (a1/2) of section 2 of chapter 94C of the  
238 General Laws, the commissioner of public shall, not later than January 1, 2013, reschedule the  
239 controlled substance hydrocodone combination product <15 mg/du (DEA Number 9806) from  
240 schedule III to schedule II.

241         SECTION 27. The department of public health, in collaboration with the department of  
242 correction and the Massachusetts Sheriffs Association, shall investigate and study the treatment  
243 programs and services available within the Massachusetts correctional system for offenders  
244 dealing with substance abuse and opioid dependency issues. The study shall focus on the  
245 accessibility and adequacy of those programs and services that currently exist within the  
246 department of corrections, and shall attempt to identify any gaps within the existing system and

247 ways to improve upon the delivery and effectiveness of these treatment programs and services,  
248 including, but not limited to, the use of United States Food and Drug Administration-approved  
249 medication-assisted treatments. The department shall complete the study and submit a report,  
250 along with its recommendations, if any, to the general court by filing the same with the clerks of  
251 the senate and house of representatives, the house and senate committees on ways and means and  
252 the joint committee on mental health and substance abuse not later than 180 days after the  
253 effective date of this act.

254           SECTION 28. The executive office of elder affairs, in conjunction with the bureau of  
255 substance abuse services in the department of public health, shall investigate and study  
256 prescription drug abuse among seniors. The study shall include an examination of programs and  
257 services offered in the commonwealth and other states that address this issue and steps that may  
258 be taken to reduce prescription drug abuse among seniors. The report of its findings, along with  
259 its recommendations, if any shall be submitted to the general court, by filing the same with the  
260 clerks of the senate and house of representatives, the house and senate committees on ways and  
261 means, the joint committee on mental health and substance abuse and the joint committee on  
262 elder affairs not later than January 31, 2013.

263           SECTION 29. Notwithstanding any general or special law to the contrary, a practitioner,  
264 identified by the prescription monitoring program established in section 24A of chapter 94C of  
265 the General Laws as within the top 30 per cent of prescribers of controlled substances in the  
266 preceding 12 months shall register as a participant in the prescription monitoring program not  
267 later than January 1, 2013. For the purposes of this section, a “practitioner” shall not include a  
268 veterinarian.

269 SECTION 30. Section 5 shall take effect on July 1, 2013.

270 SECTION 31. Sections 17 and 18 shall take effect as of December 31, 2011.

271 SECTION 32. Sections 19 to 22, inclusive, and section 29 shall take effect upon their  
272 passage.

273 SECTION 33. Except as otherwise specified, this act shall take effect on January 1,  
274 2013.