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DELAWARE STATE SENATE  
148th GENERAL ASSEMBLY

SENATE BILL NO. 174

AN ACT TO AMEND TITLES 16 AND 29 OF THE DELAWARE CODE WITH RESPECT TO DRUG OVERDOSE FATALITIES.

1           WHEREAS, an unacceptable number of Delawareans are dying every year from overdoses of prescription opiates,  
2 fentanyl and heroin; and

3           WHEREAS, the state should take every opportunity to examine the underlying facts and causes of deaths resulting  
4 from overdoses of prescription opiates, fentanyl and heroin, in order to develop evidenced-based reforms to reduce the rate  
5 of such overdoses in Delaware; and

6           WHEREAS, the creation of a Drug Overdose Fatality Review Commission will build on the successful model that  
7 the state has employed in the past to examine the deaths of children and domestic violence victims.

8           BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

9           Section 1. Amend Title 16 of the Delaware Code by making deletions as shown by strike through and  
10 insertions as shown by underline as follows:

11           “Subchapter VIII: Drug Overdose Fatality Review Commission

12           § 4799A Definitions

13           For purposes of this subsection, the following definitions shall apply:

14           (a) “Controlled substance” means a drug, substance or immediate precursor in Schedules I through V of  
15 subchapter II of Title 16, Chapter 47 of the Delaware Code.

16           (b) “Opiate” means any controlled substance having an addiction-forming or addiction-sustaining liability  
17 similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining  
18 liability.

19 (c) "Overdose death" means a death caused, in whole or in part, by the consumption or use of heroin or  
20 the consumption or use of a prescribed opiate, or the consumption or use of fentanyl.

21 (d) "Prescribed" means given an order for medication by authorized personnel which is dispensed to or  
22 for an ultimate user.

23 (e) "Fentanyl" shall have the meaning ascribed to it by Title 16, Section 4716(c)(6) of the Delaware Code  
24 or its successor provision.

25 § 4799B Organization and Composition

26 (a) The following persons, or their designees, shall be members of the Drug Overdose Fatality Review  
27 Commission ("the Commission) by virtue of position:

28 (1) The Delaware Attorney General

29 (2) The Secretary of the State Department of Health and Social Services

30 (3) The Delaware Medical Examiner

31 (4) The Secretary of Safety and Homeland Security

32 (5) The Director of the Delaware Division of Public Health

33 (b) The following persons shall be appointed by the Governor as members of the Commission:

34 (1) Two representatives of the Medical Society of Delaware

35 (2) A representative of the Delaware Nurses Association

36 (3) A representative of the Police Chiefs Council of Delaware who is an active law enforcement  
37 officer

38 (4) A representative of the Delaware Fraternal Order of Police who is an active law enforcement  
39 officer.

40 (5) Two advocates from statewide non-profit organizations

41 (c) The chairperson of each regional Review Team established pursuant to subsection (g) shall also serve  
42 as a member of the Commission.

43 (d) The term of members appointed by the Governor shall be three years and shall terminate upon the  
44 Governor's appointment of a new member to the Commission. The members of the Commission and regional  
45 Review Teams shall serve without compensation. The Commission shall be staffed by the Delaware Department  
46 of Justice.

47 (e) The Commission shall, by affirmative vote of a majority of all members of the Commission, appoint a  
48 chairperson from its membership for a term of one year.

49 (f) Meetings of the Commission and regional Review Teams shall be closed to the public.

50 (g) The Commission shall by resolution passed by a majority of its members establish three regional  
51 Review Teams authorized to review overdose deaths involving prescribed opiates, fentanyl and/or heroin.  
52 Members of the Commission shall appoint representatives to each Review Team such that the Review Team  
53 reflects the disciplines of the Commission.

54 § 4799C Powers and Duties

55 (a) The Commission shall investigate and review the facts and circumstances of all overdose deaths  
56 involving prescribed opiates, fentanyl or heroin which occur in Delaware. The review of deaths involving  
57 criminal investigations will be delayed until the later of the conclusion of such investigation, or the adjudication of  
58 related criminal charges, if any. The Commission shall make recommendations to the Governor and General  
59 Assembly, at least annually, regarding those practices or conditions which impact the frequency of overdose  
60 deaths involving prescribed opiates, fentanyl or heroin, and steps that can be taken to reduce the frequency of such  
61 overdose deaths. All recommendations made pursuant to this subsection shall comply with applicable state and  
62 federal confidentiality provisions, including but not limited to those enumerated in § 4799D of this Title.  
63 Notwithstanding any provision of this subchapter to the contrary, no recommendation shall specifically identify  
64 any individual or any nongovernmental agency, organization or entity.

65 (b) Reviews conducted by the Commission and regional Review Teams shall in all cases include a review  
66 of the medical records of the deceased.

67 (c) In connection with any review, the Commission and regional Review Teams shall have the power and  
68 authority to:

69 (1) Administer oaths; and

70 (2) Compel the attendance of witnesses whose testimony is related to the overdose death under  
71 review and the production of records related to the death, through the use of process issued the  
72 Department of Justice pursuant to Title 29, Section 2508 of the Delaware Code.

73 (d) Notwithstanding any provision of this subchapter to the contrary, no person identified by the  
74 Department of Justice as a potential witness in any criminal prosecution arising from an overdose death shall be  
75 questioned, deposed or interviewed by or for the Commission in connection with its investigation and review of  
76 such death until the completion of such prosecution.

77 § 4799D Confidentiality of Records and Immunity From Suit

78           (a) The records of the Commission and of all regional Review Teams, including original documents and  
79 documents produced in the review process with regard to the facts and circumstances of each death, shall be  
80 confidential and shall not be released to any person except as expressly provided in this subchapter. Such records  
81 shall be used by the Commission, and any regional Review Team, only in the exercise of the proper function of the  
82 Commission or Review Team, and shall not be public records and shall not be available for Court subpoena or  
83 subject to discovery. Subject to constitutional requirements, statements, records or information shall not be  
84 subject to any statute or rule that would require those statements to be disclosed in the course of a criminal trial or  
85 associated discovery. Aggregate statistical data compiled by the Commission or regional Review Teams,  
86 however, may be released at the discretion of the Commission or regional Review Teams.

87           (b) Members of the Commission and regional Review Teams, and their agents and employees, shall not  
88 be subject to, and shall be immune from, claims, suits, liability, damages or any other recourse, civil or criminal,  
89 arising from any act, proceeding, decision or determination undertaken or performed or recommendation made,  
90 provided such persons acted in good faith and without malice in carrying out their responsibilities authority,  
91 duties, powers and privileges of the offices conferred by this law upon them or any other provisions of the  
92 Delaware law, federal law or regulations, or duly adopted rules and regulations of the Commission or its regional  
93 Review Teams. Complainants shall bear the burden of proving malice or a lack of good faith to defeat the  
94 immunity provided herein.

95           (c) No person in attendance at a meeting of the Commission or regional Review Team shall be required to  
96 testify as to what transpired thereat. No organization, institution or person furnishing information, data, reports or  
97 records to the Commission or any regional Review Team with respect to any subject examined or treated by such  
98 organizations, institution, or person, by reason of furnishing such information, shall be liable in damages to any  
99 person or subject to any other recourse, civil or criminal.”

100           Section 2. Amend Title 29, Chapter 47 of the Delaware Code by making deletions as shown by strike through and  
101 insertions as shown by underline as follows:

102           § 4706 Investigation of deaths.

103           (a) When any person shall die in this State, as a result of violence, by suicide or by casualty if such  
104 occurred not longer than 1 year and 1 day prior to death, while under anesthesia, by abortion or suspected abortion,  
105 by poison or suspicion of poison, by overdose death as defined at § 4799A of Title 16 or suddenly when in  
106 apparent health or when unattended by a physician or in any prison or penal institution or when in police custody  
107 or from a disease resulting from employment including disease related to injury or from an undiagnosed cause

108 which may be related to a disease constituting a threat to public health or in any suspicious or unusual manner or if  
109 there is any unclaimed body or if anybody is to be cremated, it shall be the duty of the person having knowledge of  
110 such death or of the person issuing a permit for cremation under § 3162 of Title 16 immediately to notify the Chief  
111 Medical Examiner, an Assistant Medical Examiner or a Deputy Medical Examiner, as the case may be, who in  
112 turn shall notify the Attorney General of the known facts concerning the time, place, manner and circumstances of  
113 such death. Any person who shall wilfully neglect or refuse to report such death or who shall refuse to make  
114 available prior medical or other information pertinent to the death investigation or who, without an order from the  
115 Division of Forensic Science, shall wilfully touch, remove or disturb the clothing or any article upon or near the  
116 body shall upon conviction be subject to imprisonment for not more than 1 year or pay a fine of not more than  
117 \$1,000, or both.

118 (b) Immediately upon receipt of such notification, the Medical Examiner shall take charge of the dead  
119 body if either the Medical Examiner or the Attorney General shall deem it necessary. The Division of Forensic  
120 Science shall promptly notify a relative or close acquaintance of the deceased, if known, of such action.

121 (c) The Medical Examiner shall fully investigate the essential facts concerning the medical causes of  
122 death and may take the names and addresses of as many witnesses as may be practicable to obtain and shall reduce  
123 such facts as the Medical Examiner may deem necessary to writing and file the same in the Division of Forensic  
124 Science. The essential facts concerning the medical causes of death of any person who has died from an overdose  
125 death as defined at § 4799A of Title 16 shall be communicated to the Delaware Department of Justice.

#### SYNOPSIS

This legislation creates a Drug Overdose Fatality Review Commission, similar to commissions that the state has in place to review child deaths and the deaths of domestic violence victims. The purpose of the Commission is to examine the facts and circumstances of deaths resulting from prescription opioid, fentanyl and heroin overdoses and make recommendations to the state based on those examinations as to how to prevent future overdose deaths.

Author: Senator Hall-Long