



Senate Fiscal Agency  
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Senate Bills 14 and 15 (as passed by the Senate)  
Sponsor: Senator Dale W. Zorn  
Committee: Judiciary and Public Safety

Date Completed: 11-15-21

### **RATIONALE**

The term "venue" refers to the location (county or judicial district) where a lawsuit may be filed or commenced. Each state has different rules determining the proper venue for different types of cases. Generally, in criminal cases, venue is the judicial district or county where the crime was committed. For civil cases, venue typically is the district or county which is the principal residence of a defendant, where a contract was executed or is to be performed, or where an accident took place. Parties to a lawsuit may agree to a different venue or change venue for convenience, pending approval of the court.

Section 317a of the Michigan Penal Code generally prescribes the offense of delivery of a controlled substance causing death. 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, venue is proper only in the county where the drugs were delivered, and not in the county where the death occurred. (For a more detailed summary of the *McBurrows* case, see **BACKGROUND**.)

Some people believe that the *McBurrows* decision limits potential prosecutions for the delivery of a controlled substance causing death, so it has been suggested that these cases should be allowed to be tried in any of the following venues: 1) where the drugs were delivered, 2) where the drugs were consumed, or 3) where the death occurred.

### **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 marijuana, 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**

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."<sup>1</sup> 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.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

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

### **Supporting Argument**

As the State continues to combat the growing opioid epidemic it must develop more aggressive and comprehensive policies to crack down on access to highly addictive illegal drugs. This can be accomplished by giving prosecutors more tools to prosecute drug dealers. The bills would broaden the prosecution of the delivery of a controlled substance causing death by allowing those cases to be tried in three possible venues: 1) where the drugs were delivered, 2) where the drugs were consumed, or 3) where the death occurred. Giving prosecutors the ability to choose which venue to prosecute these cases would save resources. Often, the main group of witnesses to a drug-related crime are located in one location: either where the drugs were delivered or where the overdose or death occurred. If a controlled substance is delivered in one county and the death occurs in another, such as what happened in the *McBurrows* case, and the majority of witnesses are in the county where the death occurred, prosecutors and law enforcement must expend valuable resources transporting those witnesses

### **Opposing Argument**

The bills would unduly prejudice criminal defendants. A criminal defendant is constitutionally entitled to a speedy trial by a jury of their peers. Prosecuting the case in the county where the death occurred instead of the defendant's home county would deprive the defendant of that constitutionally protected right. Additionally, criminal defendants would bear the cost of transporting himself or herself, his or her lay and expert witnesses, and his or her defense team to the county in which he or she was being prosecuted.

**Response:** In the case of an indigent defendant, the Michigan Indigent Defense Fund would cover the costs of the defendant's defense, including hiring expert witnesses. There are rigorous protections already in place for the defendant regardless of where the case is tried.

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

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

Fiscal Analyst: Michael Siracuse

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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.