

ASSEMBLY, No. 1554

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 12 (Burlington, Middlesex, Monmouth and Ocean)

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District 37 (Bergen)

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District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Establishes Overdose Fatality and Near Fatality Review Board.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 10/26/2020)

1 **AN ACT** concerning overdose fatalities and near fatalities and
2 supplementing Title 24 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. As used in this act:

8 “Board” means the Overdose Fatality and Near Fatality Review
9 Board.

10 “Controlled substance” means any substance so classified under
11 subsection (6) of section 102 of the "Controlled Substances Act"
12 (21 U.S.C. s.802), and includes all substances listed on Schedules I
13 through V of 21 C.F.R. s.1308, or under P.L.1970, c.226 (C.24:21-1
14 et seq.) as they may be revised from time to time. The term,
15 wherever it appears in this act or administrative regulation
16 promulgated pursuant to this act, shall include controlled substance
17 analogs.

18 "Controlled substance analog" means a substance that has a
19 chemical structure substantially similar to that of a controlled
20 dangerous substance and that was specifically designed to produce
21 an effect substantially similar to that of a controlled dangerous
22 substance. The term shall not include a substance manufactured or
23 distributed in conformance with the provisions of an approved new
24 drug application or an exemption for investigational use within the
25 meaning of section 505 of the Federal Food, Drug and Cosmetic
26 Act (21 U.S.C. s.355).

27 “Near fatality” means a case in which a person is in serious or
28 critical condition, as certified by a physician, caused, in whole or in
29 part, by the consumption or use of a controlled substance or
30 controlled substance analog.

31 “Overdose fatality” means a death caused, in whole or in part, by
32 the consumption or use of a controlled substance or controlled
33 substance analog.

34

35 2. a. There is established the Overdose Fatality and Near
36 Fatality Review Board. For the purposes of complying with the
37 provisions of Article V, Section IV, paragraph 1 of the New Jersey
38 Constitution, the board is established within the Department of
39 Human Services, but notwithstanding the establishment, the board
40 shall be independent of any supervision or control by the
41 department or any board or officer thereof.

42 b. The purpose of the board is to review overdose fatalities and
43 near fatalities in New Jersey and to identify their causes, their
44 relationship to governmental support systems, and methods of
45 prevention. The board shall identify trends and patterns of overdose
46 fatalities and near fatalities in New Jersey; identify risk factors and
47 their prevalence for overdose fatalities and near fatalities; evaluate
48 the responses of governmental systems in preventing overdose

1 fatalities and near fatalities and to offer recommendations for
2 improvement in those responses; promote cooperation and
3 coordination among agencies involved in investigations of overdose
4 fatalities and near fatalities and treating persons with problems
5 associated with substance use disorder; and characterize risk groups
6 in terms that are compatible with the development of public policy
7 to reduce the incidences of substance abuse and prevent overdose
8 fatalities and near fatalities.

9
10 3. a. The board shall consist of 13 members as follows: the
11 Commissioners of Health and Human Services, the Attorney
12 General, and the Superintendent of State Police, or their designees;
13 the State Medical Examiner, and the Executive Director of the
14 Governor's Council on Alcoholism and Drug Abuse, who shall
15 serve ex-officio; and seven public members appointed by the
16 Governor, one of whom shall be a representative of the New Jersey
17 Prosecutors Office, one of whom shall be a representative of the
18 Facing Addiction Task Force, one of whom shall be a representative
19 of The Partnership for a Drug Free New Jersey, one of whom shall
20 be a representative of New Jersey Prevention Network, one of
21 whom shall be a representative of the National Council on
22 Alcoholism and Drug Abuse New Jersey, one of whom shall be a
23 physician with expertise in drug addiction and substance use
24 disorder treatment, and one of whom shall be a substance use
25 disorder counselor.

26 b. The public members shall serve for three-year terms. Of the
27 public members first appointed, four shall serve for a period of two
28 years, and three shall serve for a term of three years. Vacancies in
29 the membership of the board shall be filled in the same manner as
30 the original appointments were made. The public members shall
31 serve without compensation but may be reimbursed for necessary
32 and reasonable expenses incurred in the performance of their
33 official duties.

34 c. The board shall organize as soon as may be practicable after
35 the appointment of its members and shall select a chairperson from
36 among the members. The members shall select a secretary, who
37 need not be a member of the board.

38 d. The board is entitled to the assistance and services of the
39 employees of any State department, board, bureau, commission, or
40 agency as it may require and as may be available for the purposes of
41 reviewing a case pursuant to this act. The board may also seek the
42 advice of experts specializing in the fields of forensic medicine,
43 psychiatry, psychology, social work, law enforcement, family law,
44 or other fields, if the facts of a case warrant additional expertise.

45
46 4. a. The board shall identify all overdose fatalities and near
47 fatalities involving controlled substances or controlled substance
48 analogs that occur in the State of New Jersey and determine which

1 overdose fatalities and near fatalities shall receive full review. The
2 board may establish local or regional community-based teams to
3 review the facts and circumstances surrounding the fatalities and
4 near fatalities identified by the board.

5 b. Each team shall include, at a minimum, a person experienced
6 in prosecution, a person experienced in law enforcement
7 investigation, a person experienced in drug addiction and substance
8 use disorder treatment, a medical examiner, a forensic pathologist,
9 and a physician. As necessary to perform its functions, each team
10 may add additional members or seek the advice of experts in other
11 fields if the facts of a case warrant additional expertise.

12 c. Each team shall submit to the board chairperson a report of its
13 findings and recommendations based upon its review of each
14 overdose fatality or near fatality.

15
16 5. a. The board shall record the following information for each
17 overdose fatality: name; age; date of birth; date of death; place of
18 death; or pronouncement of death; date and time of death; and
19 circumstances surrounding the death in a confidential master file.
20 Similar information shall be recorded for each overdose near
21 fatality reviewed by the board. The file shall serve as the minimum
22 record of the case and shall be the only file that contains the name
23 of the person whose death or near fatality is being reviewed. The
24 master file shall not be subject to discovery, but may be used by the
25 board chairperson to refer a case, including the board's
26 deliberations and conclusions, to the extent necessary for an
27 appropriate agency to investigate or to provide services.

28 b. Except as provided in subsection a. of this section, the
29 deliberations and conclusions of the board and its teams, related to a
30 specific case, shall be confidential. Summary records that are
31 prepared by the board and the teams on each reported case shall be
32 free of information that would identify the person whose death or
33 near fatality is being reviewed.

34 c. The board shall review the reports submitted by each team
35 and issue an annual report to the Governor and, pursuant to section
36 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature on the number
37 of cases reviewed and specific non-identifying information
38 regarding cases of particular significance. The board shall also
39 include in the report recommendations for achieving better
40 coordination and collaboration among State and local agencies and
41 recommendations for system-wide improvements in services to
42 prevent substance use disorder and overdose fatalities and near
43 fatalities.

44
45 6. a. The board may subpoena and review records that pertain to
46 the person whose death or near fatality is being reviewed, except as
47 provided in any statute, regulation, or Executive Order relating to
48 the confidentiality of criminal investigations, criminal investigative

1 files, and medical records concerning any program or activity
2 involving substance use disorder education, prevention, training,
3 treatment, or rehabilitation in accordance with 42 U.S. Code §
4 290dd-2. The records subject to subpoena and review shall include,
5 but are not limited to, school, private medical, hospital, substance
6 use disorder treatment, mental health, and other records which may
7 be deemed pertinent to the review process and necessary for the
8 formulation of a conclusion by the board.

9 b. Records obtained by the board pursuant to subsection a. of
10 this section shall not be subject to subpoena.

11 c. If, at the time of initial notification or during the subsequent
12 review, the board has reasonable cause to believe that the overdose
13 fatality or near fatality is the result of the actions of another person,
14 then the board shall notify or shall verify that notification has been
15 made to the county prosecutor of the county where the fatality or
16 near fatality occurred or was pronounced.

17
18 7. A member of the board shall not be liable for any civil
19 damages as a result of providing in good faith any reports, records,
20 opinions or recommendations pursuant to this act.

21
22 8. The board may solicit and receive grants and other funds
23 made available for its purposes by a governmental, public, private,
24 nonprofit, or for-profit agency, including funds made available
25 under any federal or State law, regulation or program.

26
27 9. The board shall adopt regulations pursuant to the
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.) concerning the operation of the board, procedures for
30 conducting reviews of cases involving overdose fatalities and near
31 fatalities, and other matters necessary to effectuate the purposes of
32 this act.

33
34 10. This act shall take effect on the first day of the third month
35 next following the date of enactment.

36
37
38 STATEMENT

39
40 The bill establishes the Overdose Fatality and Near Fatality
41 Review Board in, but not of, the Department of Human Services.
42 The purpose of the board would be to review overdose fatalities and
43 near fatalities in New Jersey and to identify their causes, their
44 relationship to governmental support systems, and methods of
45 prevention.

46 Specifically, the 13-member board would consist of the
47 Commissioners of Health and Human Services, the Attorney
48 General, and the Superintendent of State Police, or their designees;

1 the State Medical Examiner, and the Executive Director of the
2 Governor's Council on Alcoholism and Drug Abuse, who shall
3 serve ex-officio; and seven public members appointed by the
4 Governor. The public members would include representatives from
5 the New Jersey Prosecutors Office, the Facing Addiction Task
6 Force, The Partnership for a Drug Free New Jersey, New Jersey
7 Prevention Network, and the National Council on Alcoholism and
8 Drug Abuse New Jersey, a physician with expertise in drug
9 addiction and substance use disorder treatment, and a substance use
10 disorder counselor.

11 The board would identify all overdose fatalities and near
12 fatalities involving controlled substances or controlled substance
13 analogs that occur in the New Jersey and determine which overdose
14 fatalities and near fatalities would receive full review.

15 Under the provisions of the bill, the board would be allowed to
16 establish local or regional community-based teams to review the
17 facts and circumstances surrounding the overdose fatalities and near
18 fatalities identified by the board. The teams would include, at a
19 minimum, members of the medical, law enforcement, forensic
20 pathology, and drug addiction and substance use disorder treatment
21 fields. The teams could add additional members or seek the advice
22 of experts in other fields, according to the facts of a case.

23 Each team would submit a report about its findings and
24 recommendations, based on its review, to the board's chairperson.
25 The board would then to review the reports submitted by each team
26 and issue an annual report to the Governor and the Legislature. The
27 report would include specific information about cases reviewed by
28 the board and recommendations for achieving better coordination
29 and collaboration among State and local agencies and system-wide
30 improvements in services to prevent overdose fatalities and near
31 fatalities.

32 The bill requires the board to maintain a master confidential file
33 containing identifying information and information on an overdose
34 fatality and the circumstances surrounding the fatality. The file
35 would contain similar information for a near fatality reviewed by
36 the board. The file would serve as the minimum record of the case
37 and would not be subject to discovery, but could be used by the
38 board's chairperson to refer a case for an appropriate agency to
39 investigate or to provide services.

40 The board would also be able to subpoena and review school,
41 private medical, hospital, substance use disorder treatment, mental
42 health, and other pertinent records of the person whose overdose
43 death or near fatality is being reviewed, except as provided in any
44 federal or State statute, regulation, or Executive Order relating to
45 the confidentiality of criminal investigations, criminal investigative
46 files, and medical records from programs or activities involving
47 substance use disorder education, prevention, training, treatment, or
48 rehabilitation.

1 If, as a result of a records review, the board believes that an
2 overdose fatality or near fatality is the result of another person's
3 actions, the board would be required to notify or verify that
4 notification has been made to the county prosecutor where the
5 fatality or near fatality occurred or was pronounced.

6 The bill stipulates that board members could not be held liable
7 for any civil damages as a result of providing in good faith any
8 reports, records, opinions, or recommendations pursuant to the
9 provisions of the bill, and allows the board to solicit and receive
10 grants or funds for its purposes made available by governmental,
11 public, private, nonprofit, or for-profit agencies.