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“Good Samaritan” Drug Overdose Immunity Laws

Introduction

In an attempt to encourage people to seek medical attention if they experience or witness someone else experiencing a drug overdose, 40 states and the District of Columbia have enacted “Good Samaritan” laws, which provide some form of immunity for low priority controlled substance possession and paraphernalia offenses.¹ Although the requirements of each law vary among the states, immunity is generally granted to a person who is experiencing or witnesses an opiate-related overdose and calls 911, or seeks some other form of medical attention for themselves or the overdose victim.² The list of offenses and violations that are protected by Good Samaritan immunity provisions varies by state. While some states have opted for immunity from a small range of low priority crimes, others provide immunity from a wider range of drug related offenses.³ These laws generally require that the individual reporting the overdose emergency have a reasonable belief that a drug overdose is occurring and acts in good faith. Many laws also include rules governing the discovery of evidence; some also require that the individual reporting the overdose cooperate with emergency responders and law enforcement. Finally, while many states independently grant immunity to the victim, some make a victim's immunity contingent on the witness being granted immunity and/or limit the number of individuals who can be granted immunity.

Federal Policy

The enactment of immunity laws related to drug overdose response is not directly in response to federal policy, but growing implementation may be due in part to a priority shift in federal drug policy and law enforcement policy. From 2008 to 2016, federal policy began shifting from prosecution of low-level drug offenders toward treatment for substance misuse, as well as consideration of the rising opioid epidemic as a public health crisis.⁴ From 2013 to 2017, the number of jurisdictions with drug overdose immunity or sentencing mitigation laws increased from eight states to 40 states and the District of Columbia.⁵ Though a return to hard line law enforcement has been suggested at the federal level, this shift may not result in corresponding changes to state laws.⁶ As the language of state laws leaves ample room for prosecutors to curtail immunity protections, reemphasizing prosecution of overdose-related offenses may limit the effectiveness of state Good Samaritan laws.

Pennsylvania Policy and the National Landscape

Pennsylvania’s current Good Samaritan drug overdose immunity law is largely similar to the Good Samaritan laws in 40 other states and the District of Columbia. All Good Samaritan laws grant immunity from some drug violations to the person who reports the overdose; however, Louisiana’s law does not grant immunity to the person reporting the overdose if that person provided or sold the drugs that caused the overdose.⁷ The majority of states with these laws also grant immunity to the overdose victim, though four states (Alabama, New Jersey, West Virginia and Wisconsin) do not grant such immunity.⁸ Of the states that do grant immunity to the victim, only seven grant immunity if the victim

reported the overdose themselves and two (Pennsylvania and Colorado) make the immunity of the victim contingent on the immunity of the person reporting the overdose.⁹ The issue of contingent immunity has been litigated within Pennsylvania, resulting in some confusion among law enforcement.¹⁰

The large majority of the laws, including Pennsylvania's, require that the person reporting the overdose be acting in good faith. Pennsylvania and 13 other states require the person reporting to have a reasonable belief that the victim is suffering an overdose;¹¹ in contrast, 21 states require an overdose to have actually occurred for immunity to be granted. Of the 21 laws that have this requirement, 10 have been implemented after Pennsylvania's law was enacted. Pennsylvania does not explicitly require that the suspected overdose be reported in a timely manner, but three other states do. Likewise, four jurisdictions require that the person reporting the overdose be the first to report it (*i.e.*, prior to any other witnesses), or to reasonably believe that they are the first to report. Pennsylvania does not have such a requirement.

Along with 12 other states, Pennsylvania requires that the person reporting the overdose remain with the victim and cooperate with police in order for either party to be granted immunity. All recently enacted Good Samaritan laws have followed suit. Pennsylvania and 24 other states only grant immunity for some crimes that are discovered from evidence found during the process of receiving medical attention.¹² If evidence of a crime is discovered after the fact, or in any other way indirectly connected to the overdose, then immunity will not be granted. Finally, six jurisdictions allow for immunity in any medical emergency or in any drug related medical emergency (not limited to an overdose).¹³ While Pennsylvania does not require an actual overdose to have occurred, immunity is not extended unless an overdose was reasonably believed to be occurring.

States have commonly granted immunity for controlled substance possession and drug paraphernalia charges. Pennsylvania grants immunity from charge and prosecution for both, but does not grant immunity from arrest.¹⁴ Twenty-two states and D.C. grant immunity from arrest for possession of a controlled substance charge, and 14 states and D.C. grant immunity from arrest for drug paraphernalia charges. Twenty-nine states (including Pennsylvania) and D.C. grant immunity from charging for possession of a controlled substance, while 18 offer immunity from drug paraphernalia charges. Every state with immunity laws grants immunity from prosecution for possession of a controlled substance, while only 16 grant immunity from arrest for such charges.

Several states opt to extend immunity protection to other violations and crimes. Eight states grant immunity for violations of protective and restraining orders that occur in connection with the reporting of a drug overdose. Likewise, Pennsylvania, 16 other states and D.C. grant immunity from pretrial, parole and probation violations that occur during the reporting of a drug overdose. Pennsylvania, nine other states and D.C. have also granted immunity for other lesser drug related crimes, all of which vary by jurisdiction. Finally, four states have included immunity from civil forfeiture in their Good Samaritan laws, and 17 states not including Pennsylvania have stipulated that reporting a drug overdose can serve as a mitigating factor in the sentencing of other crimes for which immunity has not been granted.

Hawaii, Mississippi, Nevada and Vermont provide protections from civil forfeiture. Vermont and Mississippi laws state that a bystander seeking medical assistance for a drug overdose will not be subject to forfeiture, unless the possession is prima facie contraband.^{15,16} In Vermont, law enforcement may retain the authority to take any visible drugs. As Vermont does not criminalize the possession of drug paraphernalia, this provision does not clearly authorize law enforcement to seize paraphernalia.¹⁷ In Nevada, a person acting in good faith who “seeks medical assistance for a person who is experiencing a drug or alcohol overdose...or who seeks such assistance for himself or herself...may not be arrested, charged, prosecuted or convicted, or have his or her property subjected to forfeiture.”¹⁸ These protections from arrest, charge and prosecution extend to most drug-related possession, use and paraphernalia offenses, as well as parole/probation violations. However, Nevada’s law does not protect individuals attempting to sell controlled substances. A person seeking medical assistance for a drug overdose in Hawaii is protected from civil forfeiture of property, and from penalty for possession of controlled substances and/or drug paraphernalia.¹⁹

¹ The Network for Public Health Law, “Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Overdose Good Samaritan Laws,” *Ideas. Experience. Practical Answers*, (2017). Available at: https://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf.

² National Conference of State Legislators, “Immunity for Calling 911 or Seeking Emergency Medical Assistance – Good Samaritan Laws,” *Drug Overdose Immunity and Good Samaritan Laws*, June 5, 2017, <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx>.

³ *Ibid.*

⁴ See, Sabrina Siddiqui, “Obama Unveils New Federal Initiative to Combat America’s Heroin Crisis,” *The Guardian*, October 21, 2017, (Accessed July 8, 2017), <https://www.theguardian.com/us-news/2015/oct/21/obama-unveils-federal-initiative-heroin-crisis-opioid>; and Caleb Banta-Green, “Good Samaritan Overdose Response Laws: Lessons Learned from Washington State,” *The White House*, March 29, 2013, (Accessed July 8, 2017), <https://obamawhitehouse.archives.gov/blog/2013/03/29/good-samaritan-overdose-response-laws-lessons-learned-washington-state>.

⁵ The Network for Public Health Law, “Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Overdose Good Samaritan Laws,” *Ideas. Experience. Practical Answers*, (2017). Available at: https://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf.

⁶ Matt Ford, “Jeff Sessions Reinigorates the Drug War,” *The Atlantic*, May 12, 2017 (Accessed July 8, 2017), <https://www.theatlantic.com/politics/archive/2017/05/sessions-sentencing-memo/526029/>.

⁷ See, La. Rev. Stat. Ann. § 14:403.10.

⁸ See, Ala. Code § 20-2-281; N.J. Stat. Ann. § 2C:35-30; W. Va. Code Ann. § 16-47-4; and Wis. Stat. Ann. § 961.443.

⁹ See, Alaska Stat. Ann. § 11.71.311; Ark. Code Ann. § 20-13-1701 et. seq.; Conn. Gen. Stat. Ann. § 21a-267(e) and Conn. Gen. Stat. Ann. § 21a-279(d); N.Y. Penal Law §§ 220.03; 220.78; N.D. Cent. Code Ann. § 19-03.1-23.4; Utah Code Ann. §§ 58-37-8(16) and 76-3-203.11; Va. Code Ann. § 18.2-251.03; Colo. Rev. Stat. Ann. § 18-1-711; and 35 Pa. Cons. Stat. Ann. § 780-113.7 (West 2017).

¹⁰ See. *Commonwealth v. Carontenuto*, 2016 PA Super 197, 148 A.3d 448; *Commonwealth v. Ohm*, 2017 Pa. Super. Unpub. LEXIS 286, *1-10 (Pa. Super. Ct. Jan. 24, 2017); and *Commonwealth v. McClimon*, 2017 Pa. Super. Unpub. LEXIS 1057, *1-4 (Pa. Super. Ct. Mar. 21, 2017)

¹¹ See, Ala. Code § 20-2-281; Alaska Stat. Ann. § 11.71.311; Conn. Gen. Stat. Ann. § 21a-267(e) and Conn. Gen. Stat. Ann. § 21a-279(d); D.C. Code § 7-403; Ga. Code Ann § 16-13-5; Ind. Code Ann. § 35-38-1-7.1(b)(12) and Ind. Code Ann. § 16-42-27-2; Md. Code Ann., Crim. Proc. § 1-210; Mich. Comp. Laws Ann. § 333.7403(3); HB 333 (2017); 35

Pa. Cons. Stat. Ann. § 780-113.7; Tenn. Code Ann. § 63-1-156; Utah Code Ann. §§ 58-37-8(16) and 76-3-203.11; W. Va. Code Ann. § 16-47-4; and Wis. Stat. Ann. § 961.443 (West 2017).

¹² The Network for Public Health Law, “Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Overdose Good Samaritan Laws,” *Ideas. Experience. Practical Answers*, (2017). Available at: https://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ 18 V.S.A. § 4254 (West 2017).

¹⁶ Miss. Code Ann. § 41-29-149.1 (West 2017).

¹⁷ The Network for Public Health Law, “Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Overdose Good Samaritan Laws,” *Ideas. Experience. Practical Answers*, (2017). Available at: https://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf.

¹⁸ Nev. Rev. Stat. Ann. § 453C.150 (West 2017).

¹⁹ Haw. Rev. Stat. § 329-43.6 (West 2017).