

Senate Bill No. 18

(By Senators Stollings, Laird, Plymale, Kirkendoll and Kessler)

[Introduced January 14, 2015; referred to the Committee on Health and Human Resources; and

then to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-46-1, §16-46-2 and §16-46-3, all relating to creating the Overdose Prevention Act; stating legislative findings; defining terms; providing immunity from citation, arrest or prosecution of certain offenses for certain persons who seek appropriate medical attention upon an overdose of drugs or alcohol; prohibiting seeking appropriate medical attention from constituting violation of condition of pretrial release, probation, furlough or parole; requiring certain action from persons seeking appropriate medical attention; providing that seeking medical attention is a mitigating factor at sentencing of any offense arising from request for medical attention; allowing persons to plead guilty to certain exempted offenses if desired; providing certain exceptions to immunity for evidence found from independent source; and providing immunity to law-enforcement officers who cite or arrest a person who receives immunity under this section unless the officer acted recklessly or intentionally.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §16-46-1, §16-46-2 and §16-46-3, all to read as follows:

3 **ARTICLE 46. OVERDOSE PREVENTION ACT.**

4 **§16-46-1. Legislative findings.**

5 The Legislature finds that West Virginia benefits from policies that encourage citizens to
6 seek potentially life-saving medical assistance for others without worry of certain disciplinary or
7 punitive action in cases of overdose.

8 **§16-46-2. Definitions.**

9 As used in this article:

10 “Medical assistance” means the professional services provided to a person experiencing an
11 overdose by a health care professional licensed, registered or certified under chapter thirty or chapter
12 sixteen of this code, acting within his or her lawful scope of practice.

13 “Overdose” means an acute condition including, but not limited to, physical illness, coma,
14 mania, hysteria or death, which is the result of the consumption or use of a controlled substance or
15 alcohol.

16 **§16-46-3. Immunity from certain citation, arrest or prosecution.**

17 (a) A person who, in good faith and in a timely manner, seeks medical assistance for another
18 person who is experiencing an overdose may not be cited, arrested or prosecuted for a violation of:

19 (1) Purchasing, consuming, selling, serving or possessing alcoholic liquor by someone under
20 age twenty-one or enabling someone under age twenty-one to consume alcohol, as prohibited by
21 section twenty-two-a, article three, chapter sixty of this code, section twenty-four, article three-a,
22 chapter sixty of this code, section twelve or twelve-a, article seven, chapter sixty of this code or

1 section twenty-a, article eight, chapter sixty of this code;

2 (2) Drinking in public places or possessing alcoholic liquor, as prohibited by section nine,
3 article six, chapter sixty of this code;

4 (3) Possessing a controlled substance or imitation controlled substance without a prescription,
5 as prohibited by subsection (c) or (d), section four hundred one, article four, chapter sixty-a of this
6 code;

7 (4) Possessing or selling illegal drug paraphernalia, as prohibited by section four hundred
8 three-a, article four, chapter sixty-a of this code; and

9 (5) Obtaining a prescription drug from a person or entity other than those authorized to
10 distribute prescription drugs, as prohibited by section six, article eight, chapter sixty-a of this code.

11 (b) The person described in subsection (a) of this section, if physically capable, shall:

12 (1) Provide his or her own full name if requested by emergency medical assistance personnel
13 or law-enforcement officers;

14 (2) Provide any other relevant information requested by the emergency medical assistance
15 personnel or law-enforcement officer that is known to such person;

16 (3) Remain with the individual who reasonably appears to be in need of medical assistance
17 due to an overdose until professional emergency medical assistance is provided; and

18 (4) Cooperate with emergency medical assistance personnel and law-enforcement officers.

19 (c) A person who acts pursuant to subsection (a) of this section may not be subject to any
20 sanction for a violation of a condition of pretrial release, probation, furlough or parole.

21 (d) The act of seeking medical assistance for or by someone who is experiencing an overdose
22 shall be considered a mitigating circumstance at sentencing for a conviction of any offense arising

1 from the act of seeking medical assistance.

2 (e) Notwithstanding any other provision of this section to the contrary, a person who acts
3 pursuant to subsection (a) of this section and is charged with an offense not exempted by subsection
4 (a) of this section may still enter a plea of guilty to an offense exempted by subsection (a) of this
5 section if the person, after consultation with his or her attorney, so desires.

6 (f) The immunity provisions of this section apply only to the use and derivative use of
7 evidence gained as a proximate result of the person seeking medical assistance for an overdose, and
8 do not preclude prosecution of the person on the basis of evidence obtained from an independent
9 source.

10 (g) Except in cases of reckless or intentional misconduct, law enforcement is immune from
11 liability for citing or arresting a person who is later determined to qualify for immunity under this
12 section.

NOTE: The purpose of this bill is to provide immunity from certain offenses for a person who seeks health care for someone or for himself or herself who is experiencing an overdose.

This article is new; therefore, strike-throughs and underscoring have been omitted.