

Senate Bill No. 230

(By Senators Stollings, Laird, Cole (Mr. President), Kirkendoll,
Miller, Palumbo, Plymale, Prezioso, Walters, Yost, Boley, M. Hall and Unger)

**Interim
Bill**

[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 and §16-46-2, all relating to creating the Overdose Prevention Act; 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 a violation of a 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 the request for medical attention; allowing persons to plead guilty to certain exempted offenses if desired; providing certain exceptions to immunity for evidence found from an independent source; and providing immunity to law-enforcement officers who cite or arrest a person who receives immunity

1 unless the officer acted recklessly or with intentional misconduct.

2 *Be it enacted by the Legislature of West Virginia:*

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

5 **ARTICLE 46. OVERDOSE PREVENTION ACT.**

6 **§16-46-1. Definitions.**

7 As used in this article:

8 "Overdose" means an acute condition that is the result of the consumption or use of a
9 controlled substance or alcohol.

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 **§16-46-2. Medical Immunity.**

14 (a) A person who, in good faith and in a timely manner, seeks medical assistance for someone
15 or for himself or herself who appears to be experiencing an overdose may not be cited, arrested, or
16 prosecuted for a violation of:

17 (1) Underage drinking as provided in: subdivision (1), subsection (a), section nineteen, article
18 sixteen, chapter eleven of this code; subsection (b), section nineteen, article sixteen, chapter eleven
19 of this code; section twenty two-a, article three, chapter sixty of this code; subdivision (1), subsection
20 (a), section twenty-four, article three-a, chapter sixty of this code; subsection (b), section
21 twenty-four, article three-a, chapter sixty of this code; subsection (a) or (b), section twelve-a, article

1 seven, chapter sixty of this code; or subsection (a) or (b), section twenty-a, article eight, chapter sixty
2 of this code.

3 (2) Section nine, article six, chapter sixty of this code concerning drinking in public places
4 and possessing of alcoholic liquor.

5 (3) Subsections (c) and (d), section four hundred one, article four, chapter sixty-a of this code
6 concerning delivering or possessing a controlled substance.

7 (4) Section four hundred three-a, article four, chapter sixty-a of this code concerning
8 prohibiting the possession or selling of illegal drug paraphernalia;

9 (5) Section four hundred six, article four, chapter sixty-a of this code concerning distributing
10 a controlled substance to persons under the age of eighteen by persons over the age of twenty-one
11 and distributing by persons eighteen or over in or on, or within one thousand feet of, school or
12 college.

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

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

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

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

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

21 (c) A person who acts pursuant to subsection (a) of this section is not subject to any sanction

1 for a violation of a condition of pretrial release, probation, furlough or parole.

2 (d) The act of seeking medical assistance for or by someone who is experiencing an overdose
3 shall be considered a mitigating circumstance at sentencing for a conviction of any offense arising
4 from the act of seeking medical assistance.

5 (e) Notwithstanding any other provision of this section to the contrary, a person who acts
6 pursuant to subsection (a) of this section and is charged with an offense not exempted by that
7 subsection may still enter a plea of guilty to an offense exempted by that subsection if he or she, after
8 consultation with an attorney, so desires.

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

13 (g) Except in cases of reckless or intentional misconduct, law-enforcement officers are
14 immune from liability for citing or arresting a person who is later determined to qualify for immunity
15 under this 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. .

This bill is recommended for passage during the 2015 legislative session by the Joint Committee on Health.