

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 523

(SENATORS COLE (MR. PRESIDENT) AND KESSLER,
BY REQUEST OF THE EXECUTIVE)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-47-1, §16-47-2, §16-47-3, §16-47-4, §16-47-5 and §16-47-6, all relating to obtaining emergency medical assistance for persons who may be experiencing alcohol or drug overdose; establishing short title; stating legislative findings; defining terms; providing immunity from prosecution in limited circumstances for persons who call for emergency medical assistance for person who reasonably appears to be experiencing drug or alcohol overdose; specifying required actions to be eligible for immunity from prosecution for certain misdemeanor offenses; providing seeking emergency medical assistance may be raised as mitigating factor at sentencing in certain criminal proceedings; providing limited immunity does not preclude civil claims based on violations of exempted misdemeanor criminal statutes; providing option of limited immunity from prosecution; providing deferred prosecution, pretrial diversion,

adjudication in drug court and other clemency options for the court to consider for persons who experienced drug or alcohol overdose for whom emergency medical assistance was sought; allowing persons to plead guilty to certain exempted criminal offenses if desired; and providing law-enforcement personnel limited civil immunity in arresting or issuing citations, except in cases of willful, wanton and reckless misconduct.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-47-1, §16-47-2, §16-47-3, §16-47-4, §16-47-5 and §16-47-6, all to read as follows:

ARTICLE 47. ALCOHOL AND DRUG OVERDOSE PREVENTION AND CLEMENCY ACT.

§16-47-1. Short title.

1 This article is known as and may be cited as the Alcohol
2 and Drug Overdose Prevention and Clemency Act.

§16-47-2. Legislative findings.

1 (a) West Virginia currently has the highest drug overdose
2 mortality rate in the United States. Since 1999, the number of
3 drug overdose deaths in West Virginia has increased by over
4 six hundred percent. Similarly, the age-adjusted death rate from
5 alcohol-related overdoses has significantly increased in West
6 Virginia, and throughout the United States, in the past ten years.

7 (b) The Legislature finds it is in the public interest to
8 encourage citizens to intervene in drug and alcohol overdose
9 situations by seeking potentially life-saving emergency
10 medical assistance for others without fear of being subject to
11 certain criminal penalties.

§16-47-3. Definitions.

1 As used in this article:

2 (1) “Overdose” means an acute condition, including, but
3 not limited to, life-threatening physical illness, coma, mania,
4 hysteria or death, which is the result of the consumption or
5 use of a controlled substance or alcohol.

6 (2) “Emergency medical assistance” means medical
7 services provided to a person who may be experiencing an
8 overdose by a health care professional licensed, registered or
9 certified under chapter thirty or chapter sixteen of this code
10 acting within his or her lawful scope of practice.

§16-47-4. Limited immunity from prosecution.

1 (a) Subject to the requirements of subsection (c) of this
2 section, a person who, in good faith and in a timely manner,
3 seeks emergency medical assistance for a person who
4 reasonably appears to be experiencing an overdose may not
5 be held criminally responsible for a violation of the
6 following:

7 (1) Purchasing, consuming or possessing wine or other
8 alcoholic liquor by someone under age twenty-one as
9 prohibited by subsection (a), section twenty-a, article eight,
10 chapter sixty of this code;

11 (2) Purchasing wine or other alcoholic liquors from a
12 licensee through misrepresentation of age, presenting or
13 offering any written evidence of age which is false,
14 fraudulent or not actually one’s own, or illegally attempting
15 to purchase wine or other alcoholic liquors as prohibited by
16 subsection (b), section twenty-a, article eight, chapter sixty of
17 this code;

18 (3) Purchasing, consuming or possessing alcoholic liquor
19 by someone under age twenty-one as prohibited by
20 subdivision (1), subsection (a), section twenty-four, article
21 three-a, chapter sixty of this code;

22 (4) Purchasing liquor from a retail licensee through
23 misrepresentation of age, presenting or offering any written
24 evidence of age which is false, fraudulent or not actually
25 one's own or illegally attempting to purchase liquor from a
26 retail licensee as prohibited by subsection (b), section
27 twenty-four, article three-a, chapter sixty of this code;

28 (5) Ordering, paying for, sharing the cost of, purchasing,
29 consuming or possessing nonintoxicating beer, wine or
30 alcoholic liquor by someone under age twenty-one as
31 prohibited by subsection (a), section twelve-a, article seven,
32 chapter sixty of this code;

33 (6) Purchasing nonintoxicating beer, wine or alcoholic
34 liquors from a licensee through misrepresentation of age,
35 presenting or offering any written evidence of age which is
36 false, fraudulent or not actually one's own or illegally
37 attempting to purchase nonintoxicating beer, wine or
38 alcoholic liquors from a licensee as prohibited by subsection
39 (b), section twelve-a, article seven, chapter sixty of this
40 code;

41 (7) Purchasing, consuming or possessing nonintoxicating
42 beer by someone under age twenty-one as prohibited by
43 subdivision (1), subsection (a), section nineteen, article
44 sixteen, chapter eleven of this code;

45 (8) Purchasing nonintoxicating beer through
46 misrepresentation of age, presenting or offering any written
47 evidence of age which is false, fraudulent or not actually
48 one's own or illegally attempting to purchase nonintoxicating

49 beer as prohibited by subsection (b), section nineteen, article
50 sixteen, chapter eleven;

51 (9) Knowingly or intentionally possessing a controlled
52 substance or imitation controlled substance without a
53 prescription, as prohibited by subsection (c), section four
54 hundred one, article four, chapter sixty-a of this code; or

55 (10) Appearing in a public place in an intoxicated
56 condition; drinking alcoholic liquor in a public place;
57 drinking alcoholic liquor in a motor vehicle on a highway,
58 street, alley or in a public garage; tendering a drink of
59 alcoholic liquor to another person in a public place; or
60 possessing alcoholic liquor which was manufactured or
61 acquired in violation of the provisions of chapter sixty of this
62 code, as prohibited by subdivisions (1), (2), (3), (4) and (6),
63 subsection (a), section nine, article six, chapter sixty of this
64 code.

65 (b) The immunity provided in subsection (a) of this
66 section shall not apply to the following offenses:

67 (1) Selling or serving wine or other alcoholic liquor by
68 someone under age twenty-one as prohibited by subsection
69 (a), section twenty-a, article eight, chapter sixty of this code;

70 (2) Selling or serving alcoholic liquor by someone under
71 age twenty-one as prohibited by subdivision (1), subsection
72 (a), section twenty-four, article three-a, chapter sixty of this
73 code; or

74 (3) Selling or serving nonintoxicating beer by someone
75 under age twenty-one as prohibited by subdivision (1),
76 subsection (a), section nineteen, article sixteen, chapter
77 eleven of this code.

78 (c) A person may only be eligible for immunity under
79 subsection (a) of this section if he or she:

80 (1) Remains with the person who reasonably appears to
81 be in need of emergency medical assistance due to an
82 overdose until such assistance is provided;

83 (2) Identifies himself or herself, if requested by
84 emergency medical assistance personnel or law-enforcement
85 officers; and

86 (3) Cooperates with and provides any relevant
87 information requested by emergency medical assistance
88 personnel or law-enforcement officers needed to treat the
89 person reasonably believed to be experiencing an overdose.

90 (d) Evidence of seeking emergency medical assistance for
91 a person who reasonably appears to be experiencing an
92 overdose may be considered by a court or jury as a mitigating
93 factor in the sentencing phase of a criminal proceeding in a
94 prosecution for which immunity is not granted in subsection
95 (a) of this section: *Provided*, That the criminal proceeding
96 was instituted based on conduct or evidence obtained as the
97 result of the defendant seeking emergency medical assistance
98 as described in subsections (a) and (c) of this section.

99 (e) Notwithstanding any other provision of this section to
100 the contrary, a person who acts pursuant to subsections (a)
101 and (c) of this section and is charged with an offense not
102 exempted by subsection (a) of this section may nevertheless
103 enter a plea of guilty to an offense exempted by subsection
104 (a) of this section if the person, after consultation with his or
105 her attorney, so desires.

106 (f) The limited immunity provided by this section does
107 not preclude claims asserted in a civil action based on

108 violation of the statutes set forth in subsection (a) of this
109 section, even if immunity is provided in a criminal
110 proceeding.

111 (g) A person who seeks assistance pursuant to subsection
112 (a) of this section is not subject to any sanction for a violation
113 of a condition of pretrial release, probation, furlough or
114 parole.

**§16-47-5. Immunity, alternative sentencing and clemency options for a
person for whom emergency medical assistance was sought.**

1 (a) The immunity provisions in subsection (a), section
2 four of this article extend to the person for whom emergency
3 medical assistance was sought if, subsequent to receiving
4 emergency medical assistance, the person participates in,
5 complies with and completes a substance abuse treatment or
6 recovery program approved by the court. Alternatively, a
7 court may consider the following alternative sentencing and
8 clemency options:

9 (1) Deferred prosecution under section twenty-six, article
10 six, chapter sixty of this code or under section four hundred
11 seven, article four, chapter sixty-a of this code;

12 (2) Pretrial diversion under section twenty-two, article
13 eleven, chapter sixty-one of this code;

14 (3) Adjudication in drug court under article fifteen,
15 chapter sixty-two of this code or under section two-b, article
16 five, chapter forty-nine of this code; or

17 (4) Any other appropriate form of alternative sentencing
18 or rehabilitation permitted by this code, including, but not
19 limited to:

20 (A) Probation;

21 (B) Conditional discharge under section twenty-six,
22 article six, chapter sixty of this code; or

23 (C) The weekend jail program, the work program or the
24 community service program under section one-a, article
25 eleven-a, chapter sixty-two of this code.

26 (b) Notwithstanding any other provision of this section to
27 the contrary, a person who may seek immunity or clemency
28 pursuant to subsection (a) of this section and is charged with
29 an offense not exempted by subsection (a), section four of
30 this article may enter a plea of guilty to an offense exempted
31 by subsection (a), section four of this article if the person,
32 after consultation with his or her attorney, so desires.

§16-47-6. Limited law-enforcement personnel immunity.

1 Except in cases of willful, wanton or reckless misconduct,
2 law-enforcement personnel are immune from civil liability
3 for citing or arresting a person who is later determined to
4 qualify for immunity under this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2015.

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Governor