

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 419**

4 (By Senators Stollings, Laird, Boley, M. Hall, Kirkendoll,
5 Miller, Palumbo, Plymale, Prezioso, Tucker, Walters, Yost,
6 Jenkins, Cookman, Barnes and Fitzsimmons)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 20, 2014.]
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11
12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new article, designated §16-46-1, §16-46-2
14 and §16-46-3, all relating to creating the Overdose Prevention
15 Act; stating legislative findings; defining terms; providing
16 immunity from citation, arrest or prosecution of certain
17 offenses for certain persons who seek appropriate medical
18 attention upon an overdose of drugs or alcohol; prohibiting
19 seeking appropriate medical attention from constituting a
20 violation of a condition of pretrial release, probation,
21 furlough or parole; requiring certain action from persons
22 seeking appropriate medical attention; providing that seeking
23 medical attention is a mitigating factor at sentencing of any
24 offense arising from the request for medical attention;
25 allowing persons to plead guilty to certain exempted offenses
26 if desired; providing certain exceptions to immunity for

1 evidence found from an independent source; and providing
2 immunity to law-enforcement officers who cite or arrest a
3 person who receives immunity under this section unless the
4 officer acted recklessly or intentionally.

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

6 That the Code of West Virginia, 1931, as amended, be amended
7 by adding thereto a new article, designated §16-46-1, §16-46-2 and
8 §16-46-3, all to read as follows:

9 **ARTICLE 46. OVERDOSE PREVENTION ACT.**

10 **§16-46-1. Legislative findings.**

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

15 **§16-46-2. Definitions.**

16 As used in this article:

17 (1) "Overdose" means an acute condition including, but not
18 limited to, physical illness, coma, mania, hysteria or death, which
19 is the result of the consumption or use of a controlled substance
20 or alcohol.

21 (2) "Medical assistance" means the professional services
22 provided to a person experiencing an overdose by a health care
23 professional licensed, registered or certified under chapter thirty
24 or chapter sixteen of this code, acting within his or her lawful
25 scope of practice.

1 **§16-46-3. Immunity from certain citation, arrest or prosecution.**

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

6 (1) Purchasing, consuming, selling, serving or possessing
7 alcoholic liquor by someone under age twenty-one or enabling
8 someone under age twenty-one to consume alcohol, as prohibited by
9 section twenty-two-a, article three, chapter sixty of this code,
10 section twenty-four, article three-a, chapter sixty of this code,
11 section twelve or twelve-a, article seven, chapter sixty of this
12 code or section twenty-a, article eight, chapter sixty of this
13 code;

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

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

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

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

1 code.

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

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

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

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

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

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

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

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

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

6 (g) Except in cases of reckless or intentional misconduct, law
7 enforcement is immune from liability for citing or arresting a
8 person who is later determined to qualify for immunity under this
9 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 2014 legislative session by the Joint Committee on Health.)