



Public Health Law

Office for State, Tribal, Local and Territorial Support
Centers for Disease Control and Prevention

Menu of State Laws Related to Prescription Drug Overdose Emergencies

The United States is in the midst of an unprecedented epidemic of prescription drug overdose deaths.¹ More than 38,000 people died of drug overdoses in 2010, and most of these deaths (22,134) were caused by overdoses involving prescription drugs.² Three-quarters of prescription drug overdose deaths in 2010 (16,651) involved a prescription opioid pain reliever (OPR), which is a drug derived from the opium poppy or synthetic versions of it such as oxycodone, hydrocodone, or methadone.³ The prescription drug overdose epidemic has not affected all states equally, and overdose death rates vary widely across states.

States have the primary responsibility to regulate and enforce prescription drug practice. Although state laws are commonly used to prevent injuries, and their benefits have been demonstrated for a variety of injury types,⁴ there is little information on the effectiveness of state statutes and regulations designed to prevent prescription drug abuse and diversion.⁵ By creating an inventory of state legal strategies, this assessment accomplishes the first step in evaluating the effectiveness of prescription drug-related emergency laws.

Introduction

The emergency laws included in this assessment grant either immunity from prosecution or mitigation in prosecution or at sentencing for people who call 911 in the case of an overdose emergency.⁶ These laws were

¹ For the purpose of this document, “overdose death” refers to death resulting from either intentional overdose or accidental overdose, which could be caused by a patient being given the wrong drug, taking the wrong drug in error, or taking too much of a drug inadvertently. The CDC’s Injury Center also refers to overdose as a drug poisoning, which may or may not result in death.

² Centers for Disease Control and Prevention, Wide-ranging Online Data for Epidemiologic Research (WONDER) Database (2012) <http://wonder.cdc.gov> [hereinafter *WONDER Database 2012*].

³ *Id.*

⁴ R.A. Schieber, J. Gilchrist & D.A. Sleet, *Legislative and Regulatory Strategies to Reduce Childhood Injuries*, 10 *FUTURE CHILD*. 1, 111–36 (2000).

⁵ For the purposes of this document, “prescription drug abuse” refers to the use of prescription drugs such as opioid analgesics, sedatives, and stimulants either without a prescription or for the feeling the drugs can cause. “Diversion” occurs when prescription drugs are dispensed, stolen, sold, or given to people who use them for nonmedical reasons.

⁶ All the emergency laws collected in this section are statutes, unlike other categories of laws related to prescription drug overdose that encompass statutes and regulations. The first effective dates of the specific provisions referenced herein are cited as “[legal citation] (eff. [year]).” Where dates were either not provided within the laws or were unclear due to multiple

researched because of their potential to eliminate barriers to appropriate overdose treatment, which can reduce the case-fatality rate when overdoses occur. Several studies have shown that while there is usually time for overdose intervention, both those who consume drugs and those who witness their use often do not call 911 for fear of being arrested and charged with drug-related crimes.⁷

Immunity from Prosecution

The laws in this sub-category grant immunity to an individual seeking help for himself or for another person experiencing an overdose and can facilitate the receipt of emergency medical assistance by people experiencing prescription drug overdoses.⁸ All nine states with this type of statute apply the law to the person experiencing the overdose and to persons seeking help for the person experiencing the overdose.⁹ The laws in these nine states specify that the immunity applies to prosecution for *possession* of a controlled substance during the overdose incident. A **Connecticut** statute, for example, sets out the penalties for illegal drug possession and provides that:

[The penalties] shall not apply to any person (1) who in good faith, seeks medical assistance for another person who such person reasonably believes is experiencing an overdose from the ingestion, inhalation or injection of . . . any drug or substance, (2) for whom another person, in good faith, seeks medical assistance, reasonably believing such person is experiencing an overdose from the ingestion, inhalation or injection of . . . any drug or substance, or (3) who reasonably believes he or she is experiencing an overdose from the ingestion, inhalation or injection of . . . any drug or substance and, in good faith, seeks medical assistance for himself or herself, if evidence of the possession or control of a controlled substance in violation of . . . this section was obtained as a result of the seeking of such medical assistance.¹⁰

Four states¹¹ further specify that the immunity granted will not extend to prosecution under other criminal charges. Statutes in **Florida** and **Washington** state that protection from prosecution for possession shall not be

revisions, this fact is cited as “[legal citation] (eff. date unclear, [estimated year]).” This section includes laws that were enacted prior to September 30, 2012.

⁷ See S. Darke & W. Hall, *Heroin Overdose: Research and Evidence-Based Intervention*, 80 J. URBAN HEALTH: BULLETIN NEW YORK ACADEMY OF MEDICINE 2, 189–200 (2003); CENTERS FOR DISEASE CONTROL AND PREVENTION, *Heroin Overdose Deaths: Multnomah County, Oregon, 1993–1999*, 49 MORBIDITY AND MORTALITY WEEKLY REPORT (MMWR), 633–36 (JULY 21, 2000), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm4928a1.htm>; K.E. Tobin, M.A. Davey & C.A. Latkin, *Calling Emergency Medical Services During Drug Overdoses: An Examination of Individual, Social, and Setting Correlates*, 2004 ADDICTION 100, 397–404 (2004).

⁸ While the focus of this assessment are laws that address overdoses from prescription drugs in particular, the immunity and mitigation laws collected in this section commonly apply to overdoses from either prescription controlled substances and illicit substances.

⁹ Colorado, Connecticut, Florida, Illinois, Massachusetts, New Mexico, New York, Rhode Island, and Washington. See COLO. REV. STAT. ANN. § 18-1-711 (eff. 2012); CONN. GEN. STAT. ANN. § 21a-279 (eff. 2011); FLA. STAT. ANN. § 893.21 (eff. 2012); 720 ILL. COMP. STAT. ANN. 570/414 (eff. 2012); MASS. GEN. LAWS ANN. ch. 94C, § 34 (eff. 2012); N.M. STAT. ANN. § 30-31-27.1 (eff. 2007); N.Y. PENAL LAW §§ 220.03, 220.78 (eff. 2011); R.I. GEN. LAWS ANN. § 21-28.8-4 (eff. 2012); WASH. REV. CODE ANN. § 69.50.315 (eff. 2010).

¹⁰ CONN. GEN. STAT. ANN. § 21a-279.

¹¹ Colorado, Florida, Massachusetts, and Washington. See COLO. REV. STAT. ANN. § 18-1-711; FLA. STAT. ANN. § 893.21; MASS. GEN. LAWS ANN. ch. 94C, § 34; WASH. REV. CODE ANN. § 69.50.315.

“grounds for suppression of evidence” in other criminal charges and prosecutions.¹² A **Colorado** statute declares that:

Nothing in this section shall be interpreted to prohibit the prosecution of a person for an offense other than an offense listed in . . . this section or to limit the ability of a district attorney or a law enforcement officer to obtain or use evidence obtained from a report, recording, or any other statement provided pursuant to . . . this section to investigate and prosecute an offense other than an offense listed [herein].¹³

The **Massachusetts** immunity law, by comparison, is more specific and provides that “[n]othing contained in this section shall prevent anyone from being charged with trafficking, distribution or possession of a controlled substance with intent to distribute”¹⁴

Mitigation in Prosecution or at Sentencing

Mitigation laws can encourage emergency treatment of people experiencing drug overdoses by making the act of seeking help in an overdose a mitigating factor in a prosecution or at sentencing.¹⁵ The mitigation could be extended to an individual seeking help for herself or for another person experiencing an overdose.

Of the eight states that have this type of law,¹⁶ five specify that the mitigation will apply only to prosecution or sentencing pursuant to a controlled substances act.¹⁷ **Illinois**, for example, provides that several “grounds shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment,” including whether “[t]he defendant sought or obtained emergency medical assistance for an overdose and was convicted of a Class 3 felony or higher possession, manufacture, or delivery of a controlled, counterfeit, or look-alike substance or a controlled substance analog under the Illinois Controlled Substances Act”¹⁸ **New Mexico** similarly states that “The act of seeking medical assistance for someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substances Act.”¹⁹ **Massachusetts** provides in its Controlled Substances Act states that “The act of seeking medical assistance for someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution under the Controlled Substances Act...”²⁰

¹² FLA. STAT. ANN. § 893.21; WASH. REV. CODE ANN. § 69.50.315.

¹³ COLO. REV. STAT. ANN. § 18-1-711.

¹⁴ MASS. GEN. LAWS ANN. ch. 94C, § 34A.

¹⁵ Most states that have both immunity and mitigation emergency laws enacted them in separate statutes, though two, Massachusetts and New Mexico, contain their immunity and mitigation provisions in the same statute. See MASS. GEN. LAWS ANN. ch. 94C, § 34A; N.M. STAT. ANN. § 30-31-27.1 (eff. 2007).

¹⁶ Alaska, Florida, Illinois, Maryland, Massachusetts, New Mexico, New York, and Washington. See ALASKA STAT. ANN. § 12.55.155 (eff. 2008); FLA. STAT. ANN. § 921.0026 (eff. 2012); 730 ILL. COMP. STAT. ANN. 5/5-5-3.1 (eff. 2012); MD. CODE ANN., CRIM. PROC. § 1-210 (eff. 2009); MASS. GEN. LAWS ANN. ch. 94C, § 34A (eff. 2012); N.M. STAT. ANN. § 30-31-27.1 (eff. 2007); N.Y. CRIM. PROC. LAW § 390.40 (eff. 2011); WASH. REV. CODE ANN. § 9.94A.535 (eff. 2010).

¹⁷ Alaska, Illinois, Massachusetts, New Mexico, and New York. See ALASKA STAT. ANN. § 12.55.155; 730 ILL. COMP. STAT. ANN. 5/5-5-3.1; MASS. GEN. LAWS ANN. ch. 94C, § 34A; N.M. STAT. ANN. § 30-31-27.1; N.Y. CRIM. PROC. LAW § 390.40.

¹⁸ 730 ILL. COMP. STAT. ANN. 5/5-5-3.1.

¹⁹ N.M. STAT. ANN. § 30-31-27.1.

²⁰ MASS. GEN. LAWS ANN. ch. 94C, § 34A. Note that this statute cites to the federal Controlled Substances Act, 21 U.S.C. §§ 801-904 (eff. 1973), however, it does not provide guidance as to how it is implemented.

In contrast to the other five states, three states allow the mitigation to extend to prosecution or sentencing for a criminal violation outside of a state's controlled substances statute.²¹ A General Provision of the **Maryland** Criminal Procedure code, for example, states broadly that "[t]he act of seeking medical assistance for another person who is experiencing a medical emergency after ingesting . . . drugs may be used as a mitigating factor in a criminal prosecution."²² A **Washington** statute allows a court to "impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence."²³ One of the mitigating circumstances provided in this statute is that "[t]he defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose."²⁴ Similarly, a **Florida** statute states that "[m]itigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include . . . [that] [t]he defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose."²⁵

Conclusion

This inventory provides a collection of prescription drug overdose emergency laws and corresponding statutory language enacted across states. Additional legal strategies related to prescription drug overdose fall outside the scope of this section. This inventory does not contain a full assessment of all relevant prescription drug laws, which often include provisions setting forth professional licensing penalties or criminal sanctions. Practitioners should consult with legal counsel to become fully informed of the legal landscape concerning prescription drugs and how the laws are implemented and enforced in their state.

This document was written by researchers in the Public Health Law Program in the Office for State, Tribal, Local and Territorial Support,²⁶ with assistance from the Division of Unintentional Injury Prevention in the National Center for Injury Prevention and Control.²⁷ For further technical assistance with this inventory or prescription drug laws, please contact the Public Health Law Program.²⁸ For technical assistance on all other prescription drug topics, please contact the Division of Unintentional Injury Prevention.²⁹

PHLP provides technical assistance and public health law resources to advance the use of law as a public health tool. PHLP cannot provide legal advice on any issue and cannot represent any individual or entity in any matter. PHLP recommends seeking the advice of an attorney or other qualified professional with questions regarding the

²¹ Florida, Maryland, and Washington. See FLA. STAT. ANN. § 921.0026; MD. CODE ANN., CRIM. PROC. § 1-210; WASH. REV. CODE ANN. § 9.94A.535. Note that some have suggested that the effect of emergency laws on overdose prevention could be related to whether such laws extend immunity or mitigation beyond drug-related crimes. See, e.g., COREY DAVIS & SARAH CHANG, THE NETWORK FOR PUBLIC HEALTH LAW, LEGAL INTERVENTIONS TO REDUCE OVERDOSE MORTALITY: NALOXONE ACCESS AND OVERDOSE GOOD SAMARITAN LAWS 32, n.19 (2013).

²² MD. CODE ANN., CRIM. PROC. § 1-210.

²³ WASH. REV. CODE ANN. § 9.94A.535.

²⁴ *Id.*

²⁵ FLA. STAT. ANN. § 921.0026.

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application of law to a specific circumstance. The findings and conclusions in this document are those of the authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention.

This menu includes laws enacted through September 28, 2012.