



## LEGAL INTERVENTIONS TO INCREASE ACCESS TO NALOXONE IN KENTUCKY Fact Sheet

# Legal Interventions to Reduce Overdose Mortality in Kentucky

## Background


Fatal drug overdose is a nationwide epidemic that claims the lives of an increasing number of Americans every year – over 47,000 in 2014.<sup>1</sup> The majority of these deaths are caused by opioids, both prescription painkillers and heroin. The overdose crisis is particularly severe in Kentucky, where nearly 1,077 people died of drug-related overdoses in 2014, up from 1,019 in 2013.<sup>2</sup> Kentucky has the fourth highest age-adjusted drug overdose death rate in the country.<sup>3</sup> Tragically, most of these deaths are preventable. Opioids kill by depressing respiration, and this opioid-induced respiratory depression can typically be reversed if a generic, relatively inexpensive medication called naloxone is administered in time.<sup>4</sup>

However, access to naloxone and other emergency treatment has historically been limited by laws that make it difficult for those likely to be in a position to reverse an overdose to access the drug and discourage overdose witnesses from calling for help.<sup>5</sup> State practice laws generally discourage or prohibit the prescription of drugs to a person other than the person to whom they will be administered (a process referred to as third-party prescription) or to a person the physician has not personally examined (a process referred to as prescription via standing order). Additionally, some prescribers are wary of prescribing naloxone because of liability concerns.<sup>6</sup> Likewise, even where naloxone is available, bystanders to a drug overdose may be afraid to administer it because of liability concerns.<sup>7</sup> Finally, overdose bystanders sometimes fail to summon medical assistance for fear of being prosecuted for possession of illegal drugs or similar crimes.<sup>8</sup> In an attempt to reverse the unprecedented increase in preventable overdose deaths, nearly all states have amended their laws to increase access to emergency care and treatment for overdose victims, including the administration of naloxone.<sup>9</sup>

## Increased Access to Naloxone

Kentucky joined those states in 2015 by enacting a law to increase access to naloxone.<sup>10</sup> The law authorizes health care providers acting in good faith to prescribe the medication directly to the individual at risk or by standing order and allows for limited third-party administration of naloxone if “the prescribing instructions indicate the need for the third party administering the drug to immediately notify a local public safety answering point of the situation necessitating the administration.”<sup>11</sup> The law provides immunity from professional misconduct charges to licensed health care providers, including pharmacists, who prescribe or dispense naloxone to an individual that the health care provider determines to be capable of administering the drug for an emergency opioid overdose.<sup>12</sup>

Peace officers, jailers, paramedics, EMTs, firefighters, or school employees authorized to administer medication may receive a naloxone prescription, possess naloxone and any necessary equipment for administration, and administer



naloxone to an individual suffering from an opiate-related overdose.<sup>13</sup> These individuals and laypersons are immune from civil and criminal liability from the naloxone administration, except for personal injury arising from gross negligence or willful or wanton misconduct.<sup>14</sup> Finally, the Kentucky law increases naloxone access in schools in two ways: 1) by allowing a school employee authorized to administer medication to receive, possess, and administer naloxone; and 2) allowing governing bodies of public, private, and parochial schools to permit retention and administration of naloxone on school premises.<sup>15</sup>

As authorized by the 2015 law, the Kentucky Board of Pharmacy has issued regulations governing the dispensing of naloxone by a pharmacist pursuant to a physician-approved protocol.<sup>16</sup> These regulations require the pharmacist to apply for certification to dispense naloxone, to follow the protocol, complete mandatory education and training, and provide education to the individual receiving the naloxone prescription.<sup>17</sup>

In addition, Kentucky passed a 2015 law with provisions designed to encourage people who witness overdoses to seek medical assistance for those individuals. As explained below, this law provides limited criminal immunity for drug and drug paraphernalia possession for individuals who seek help in an overdose, as well as the overdose victim.

### Limited Immunity for Possession of Drugs and Drug Paraphernalia

In many cases, overdose bystanders may fail to summon medical assistance because they are afraid that doing so may put them at risk of arrest and prosecution for drug-related crimes.<sup>18</sup> The 2015 law attempts to address this problem by providing limited immunity from criminal charges and prosecution for controlled substance and drug paraphernalia possession for a person acting in good faith who seeks medical or emergency assistance from a public safety answering point, emergency medical services, a law enforcement officer, or a health practitioner for an individual experiencing a drug overdose.<sup>19</sup>

The individual must request emergency assistance for himself or another person, act in concert with another person to request emergency assistance, or appear to be in need of emergency assistance himself and be the individual for whom the request was made.<sup>20</sup> To receive immunity, the person requesting assistance must also remain at the scene until the requested assistance is provided and the evidence obtained for the charge or prosecution must arise from the drug overdose and need for medical assistance.<sup>21</sup> There is no immunity for seeking medical assistance during the course of the execution of a search warrant, an arrest warrant, or a lawful search.<sup>22</sup> Any available contact information for the individual requesting assistance is required to be reported to the local health department to make appropriate referrals regarding substance abuse treatment.<sup>23</sup>

Law enforcement officers who make arrests in contravention of this limited immunity are not civilly or criminally liable for false arrest or false imprisonment if the arrest was based upon probable cause.<sup>24</sup> The law extends the immunity from criminal charge and prosecution only to possession of a controlled substance or drug paraphernalia.<sup>25</sup> There is no protection provided for other crimes such as the sale of illegal drugs.

### Conclusion

Kentucky has joined the majority of states that have taken legislative action to increase access to emergency medical care for drug overdose.<sup>26</sup> While it is too early to tell whether these changes will reduce overdose deaths, initial data from other states are encouraging. A recent evaluation of a naloxone distribution program in Massachusetts, which trained over 2,900 potential overdose bystanders, reported that opioid overdose death rates were significantly reduced in communities in which the program was implemented compared to those in which it was not.<sup>27</sup> Initial evidence from Washington State, which passed an overdose Good Samaritan law in 2010, is positive, with 88 percent of people who use drugs surveyed indicating that they would be more likely to summon emergency personnel during an overdose as a result of the legal change.<sup>28</sup>

## SUPPORTERS



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## REFERENCES

- <sup>1</sup> R. Rudd et al., *Increases in Drug and Opioid Overdose Deaths – United States, 2000-2014*, 64 MORBIDITY AND MORTALITY WEEKLY REPORT 1378 (2015).
- <sup>2</sup> *Id.*
- <sup>3</sup> *Id.*
- <sup>4</sup> See C. Baca, et al., *Take-home Naloxone to Reduce Heroin Death*, 100 ADDICTION 1823; Centers for Disease Control and Prevention, *Community-Based Opioid Overdose Prevention Programs Providing Naloxone – United States*, 2010, 61 MORBIDITY AND MORTALITY WEEKLY REPORT 101 (2012).
- <sup>5</sup> See Davis CS, Webb D, Burris S. *Changing Law from Barrier to Facilitator of Opioid Overdose Prevention*, 41 JOURNAL OF LAW, MEDICINE AND ETHICS 33 (2013).
- <sup>6</sup> See L. Beletsky, et al., *Physicians' Knowledge of and Willingness to Prescribe Naloxone to Reverse Accidental Opiate Overdose: Challenges and Opportunities*, 84 Journal of Urban Health 126 (2007).
- <sup>7</sup> For an excellent review of the ways in which law and law enforcement hinder access to naloxone, see Scott Burris, et al, *Stopping An Invisible Epidemic: Legal Issues In The Provision Of Naloxone To Prevent Opioid Overdose*, 1 DREXEL LAW REVIEW 273 (2009).
- <sup>8</sup> Karin Tobin, et al., *Calling Emergency Medical Services During Drug Overdose: An Examination of Individual, Social and Setting Correlates*, 100 ADDICTION 397 (2005); Robin A. Pollini, et al., *Response to Overdose Among Injection Drug Users*, 31 AMERICAN JOURNAL OF PREVENTIVE MEDICINE 261 (2006). They may, of course, fear arrest for other reasons (such as existing warrants or non-drug crimes) as well, but the immunity provided in most of the recently enacted laws is limited to drug (and in some cases, alcohol) crimes.
- <sup>9</sup> For a comprehensive list of other state efforts, see NETWORK FOR PUBLIC HEALTH LAW, LEGAL INTERVENTIONS TO REDUCE OVERDOSE MORTALITY: NALOXONE ACCESS AND GOOD SAMARITAN LAWS (2015), available at [http://www.networkforphl.org/\\_asset/qz5pvn/network-naloxone-10-4.pdf](http://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf).
- <sup>10</sup> Ky. Rev. Stat. Ann. § 217.186 (2015).
- <sup>11</sup> Ky. Rev. Stat. Ann. § 217.186(2) (2015). It is not clear from the statute exactly what this requires; presumably the legislative intent is to ensure the naloxone administrator is aware of the need to call for emergency assistance in addition to administering naloxone.
- <sup>12</sup> Ky. Rev. Stat. Ann. § 217.186(4) (2015).
- <sup>13</sup> Ky. Rev. Stat. Ann. § 217.186(3) (2015).
- <sup>14</sup> Ky. Rev. Stat. Ann. § 217.186(4) (2015).
- <sup>15</sup> Ky. Rev. Stat. Ann. § 217.186(3) (2015); Ky. Rev. Stat. Ann. § 217.186(6)(a) (2015).
- <sup>16</sup> 201 Ky. Admin. Regs. 2:360 (2015).
- <sup>17</sup> *Id.*
- <sup>18</sup> Karin Tobin, et al., *Calling Emergency Medical Services During Drug Overdose: An Examination of Individual, Social and Setting Correlates*, 100 ADDICTION 397 (2005); Robin A. Pollini, et al., *Response to Overdose Among Injection Drug Users*, 31 AMERICAN JOURNAL OF PREVENTIVE MEDICINE 261 (2006).
- <sup>19</sup> Ky. Rev. Stat. Ann. § 218A.133(2)(a) (2015).
- <sup>20</sup> *Id.*
- <sup>21</sup> Ky. Rev. Stat. Ann. § 218A.133(2)(b)&(c) (2015).
- <sup>22</sup> Ky. Rev. Stat. Ann. § 218A.133(1)(b) (2015).
- <sup>23</sup> Ky. Rev. Stat. Ann. § 218A.133(4) (2015).
- <sup>24</sup> Ky. Rev. Stat. Ann. § 218A.133(5) (2015).
- <sup>25</sup> Ky. Rev. Stat. Ann. § 218A.133(3) (2015).
- <sup>26</sup> For a comprehensive list of other state efforts, see NETWORK FOR PUBLIC HEALTH LAW, LEGAL INTERVENTIONS TO REDUCE OVERDOSE MORTALITY: NALOXONE ACCESS AND GOOD SAMARITAN LAWS (2015), available at [http://www.networkforphl.org/\\_asset/qz5pvn/network-naloxone-10-4.pdf](http://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf).
- <sup>27</sup> Alex Walley, et al., *Opioid Overdose Rates and Implementation of Overdose Education and Nasal Naloxone Distribution in Massachusetts: Interrupted Time Series Analysis*, 346 BMJ f174 (2013).
- <sup>28</sup> Banta-Green, C. Washington's 911 Good Samaritan Overdose Law: Initial Evaluation Results (Nov. 2011), available at <http://adai.uw.edu/pubs/infobriefs/ADAI-IB-2011-05.pdf>.