The Network
for Public Health Law

Ideas. Experience. Practical answers.

LEGAL INTERVENTIONS TO REDUCE OVERDOSE MORTALITY IN NORTH CAROLINA

Fact Sheet

Background

Fatal drug overdose is a nationwide epidemic that claims the lives of over 36,000 Americans every year.[1] The overdose crisis is particularly severe in North Carolina, where unintentional poisoning deaths have more than tripled from 297 in 1999 to 1,085 in 2013.[2] This increase is mostly driven by prescription opioids such as OxyContin and hydrocodone, which now account for more overdose deaths than heroin and cocaine combined.[3] Opioid overdose can be reversed by administering naloxone, a medication that reverses the effects of opioids.[4] 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.[5] In an attempt to reverse the unprecedented increase in preventable overdose deaths, the majority of states have amended those laws to increase access to emergency care and treatment for overdose victims, including the administration of naloxone.[6]

In 2013, North Carolina joined their ranks. Senate Bill 20, “Good Samaritan Law/Naloxone Access,” was passed by overwhelming majorities in the state House and Senate and was signed by the Governor on April 9, 2013. The law went into effect immediately. In 2015, the Governor signed Senate Bill 154, which slightly modified SB20, mainly to expand its protections.[7] These bills are similar to those passed by other states. As explained in more detail below, they provide limited immunity from prosecution for certain crimes for individuals who experience a drug or alcohol overdose and are in need of medical care and for those who seek medical care in good faith for a person experiencing an overdose. The laws also permit medical professionals to prescribe naloxone not only to their own patients, but also to others who may be in a position to assist in the event of an overdose. Finally, they permit naloxone to be prescribed via standing order and provide limited immunity for medical professionals who prescribe naloxone as well as laypeople who administer it to a person suspected of suffering from an opioid overdose.

To qualify for immunity under the laws, a caller must have sought medical assistance for someone experiencing an overdose in good faith, on a reasonable belief that he or she was the first to call for assistance.[8] The caller must also provide their name to either 911 or to a law enforcement officer who arrives onscene. Finally, the immunity is not available if the call is made during the course of the execution of an arrest warrant, search warrant, or during a lawful search. For the victim to qualify for immunity, all of the above requirements must have been met except the requirement that the caller provide his or her name to 911 or law enforcement.[9]

Furthermore, the law provides that a person who qualifies for immunity under the law “shall not be.. subject to arrest or revocation of pretrial release, probation, parole, or post-release if the arrest or revocation is based on an offense for which the person is immune from prosecution” under the law. The law also provides immunity for a law enforcement officer who, acting in good faith, arrests or charges a person who is thereafter determined to be entitled to immunity under the law.[10]

Limited Immunity for Possession of Certain Drugs

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.[11] The Good Samaritan law attempts to address this problem by providing limited immunity from arrest and prosecution for possession of certain drugs for both a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose and the person suffering from the overdose where the evidence for prosecution was obtained as a result of the seeking of medical assistance. The law provides immunity from possession and alcohol-related charges only; it provides no protection for other crimes such as the sale of illegal drugs.

Mainly because of how the state Controlled Substances Act is written, the drugs and quantities covered by the law are slightly complicated.[12] We provide below a complete list of the drugs and quantities for which a person may not be prosecuted if the requirements described above are met, and an incomplete list of drugs and quantities for which the bill does not grant immunity.

Complete List of Drugs and Quantities Covered by the Law

- Less than one gram of cocaine
- Less than one gram of heroin
- Less than one gram of Methylenedioxypyrovalerone (MDPV)
  - *This is one of the drugs commonly known as "bath salts"*
- Less than 100 tablets, patches or other dosage units of most, but not all Schedule II, III, or IV drugs13
  - *This includes most common prescription drugs including Vicodin, Percocet, OxyContin, Opana, Suboxone, methadone and other opioid pain relievers except hydromorphone drugs such as Dilaudid and Exalgo (see below); Ritalin, Adderall, and some other stimulants (see below); Xanax, Klonopin, Valium and other benzodiazepines; Ambien, Lunesta, Sonata and other sleep aids; and testosterone steroids.*
- Four or fewer "tablets, capsules, or other dosage units or equivalent quantity" of hydromorphone
  - *Brand names Dilaudid and Exalgo*
- Any quantity of a Schedule V drug
  - *These are generally non-prescription drugs that can only be sold by a pharmacist, such as cough syrup with codeine*
- One and one-half ounces or less of marijuana
- 21 grams or less of a synthetic cannabinoid or any mixture containing a synthetic cannabinoid
  - *These are synthetic marijuana products, such as those sold as "Spice" or "K-2"*
- Three-twentieths of an ounce or less of hashish

If a drug and quantity is not in the above list, the new law does not provide immunity for its possession. A non-exclusive list of the drugs and quantities for which immunity is not granted follows.

Incomplete List of Drugs and Quantities Not Covered by the Law

- One gram or more of cocaine
- One gram or more of heroin
- One gram or more of methylenedioxypyrovalerone (MDPV)
- Any quantity of any Schedule I drug *except* heroin or MDPV, for which immunity is granted for quantities less than one gram (see above)
  - *Schedule I drugs are those that cannot be prescribed for any purpose. They include LSD, MDMA/Ecstasy, and ibogaine, among others*
- Any quantity of methamphetamine
- Any quantity of amphetamine[14]
- Any quantity of phencyclidine (PCP)
- Any salt, isomer, salts of isomers, compound, derivative, or preparation of methamphetamine, amphetamine, phencyclidine, or cocaine
- Any quantity of coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves
- Any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana

Limited Immunity for Possession of Drug Paraphernalia

The law also provides immunity from arrest and prosecution for possession of drug paraphernalia for both the person who seeks medical assistance in good faith for a person experiencing an overdose and the person in need of help if the evidence for the charge was obtained as a result of the call for medical assistance. Drug paraphernalia includes syringes, baggies, cookers, and similar instruments used or intended to be used with activities that violate the Controlled Substances Act.[15]

Limited Immunity for Possession and Consumption of Alcohol

Under the terms of the law, a person under the age of 21 who seeks medical assistance for another "shall not be prosecuted" for unlawful possession or consumption of alcohol if he or she acts in good faith and upon a reasonable belief that he or she was the first to call for assistance. As with the protections for drug-related crimes, a person may not be arrested for an offense for which he is immune from prosecution, and calling for or needing help cannot be used to violate a person's probation, parole, or post-release if the person is granted immunity under the law.

Additionally, Both Duke and Elon universities have written policies that encourage alcohol overdose bystanders to seek medical assistance by providing limited immunity from sanction under university alcohol rules for underage students who seek medical help for a person experiencing an alcohol overdose.[16] As the Elon policy notes, "[t]he university's main concern is getting the proper care for the student in need."[17]

Increased Access to Naloxone

The law also takes several steps to make it easier for those likely to be in the position to save a life to do so by administering naloxone, the standard treatment for opioid overdose. First, the bill authorizes a medical professional otherwise permitted to prescribe naloxone to prescribe the drug to a person at risk of experiencing an overdose as well as a family member, friend, or other person "in a position to assist a person at risk of experiencing an opiate-related overdose." These changes should help increase access to the drug, since in general prescriptions are not permitted to be written for persons the practitioner has not personally examined, even though the friends and family members of a person at high risk for overdose are often the ones to seek help from a trusted practitioner.

In March, 2013 the North Carolina Medical Board modified its Position Statement on drug overdose prevention to note that it is "encouraged by programs that are attempting to reduce the number of drug overdoses by making available or prescribing an opioid antagonist such as naloxone to someone in a position to assist a person at risk of an opiate-related overdose." In the Statement, the Board encourages "its licensees to cooperate with programs in their efforts to make opioid antagonists available to persons at risk of suffering an opiate-related overdose."[18] That same month the Board modified its position statement on third party prescription to note that prescribing to a patient that the practitioner has not personally examined is permitted in certain instances, including "prescribing an opiate antagonist to someone in a position to assist a person at risk of an opiate-related overdose."[19]

Further, the bill permits physicians to prescribe the drug via standing order, so that persons operating under the direction of a prescriber can offer the drug where clinically indicated even where the recipient was not examined by the prescriber. It also clarifies that a pharmacist may dispense a naloxone prescription authorized by the law. Since it can often be difficult to access a professional with prescribing privileges, this change can be expected to increase access as well. Finally, the bill authorizes a person who receives naloxone under the terms of the bill to administer it to another person in the event of an overdose, so long as they exercise reasonable care in doing so.[20]

Practitioners who prescribe the drug and pharmacists who dispense it as authorized by the law as well as laypeople who administer it are immune from any civil or criminal liability for those actions.

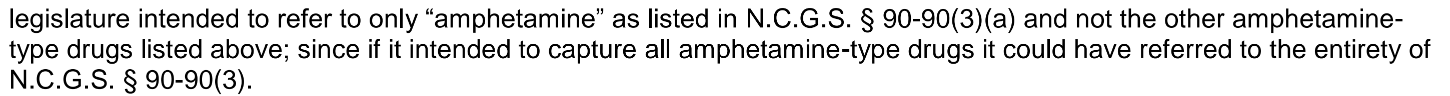
SUPPORTERS
The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.

This document was developed by Corey Davis, J.D., M.S.P.H., at the Network for Public Health Law -- Southeastern Region (cdavis@networkforphl.org) with assistance from Nabarun Dasgupta, Ph.D. at the University of North Carolina at Chapel Hill. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel. This factsheet was updated in 2015 to incorporate changes made by SB154.

[1] MARGARET WARNER, ET AL., NAT'L CTR. FOR HEALTH STATISTICS, DRUG POISONING DEATHS IN THE UNITED STATES, 1980–2008 (2011).
[2] INJURY AND VIOLENCE PREVENTION BRANCH, NORTH CAROLINA DIVISION OF PUBLIC HEALTH, UNINTENTIONAL POISONING DEATHS BY COUNTY: N.C. RESIDENTS, 1999-2013 (2015), *available at* http://www.injuryfreenc.ncdhhs.gov/DataSurveillance/docs/6-UnintentionalPoisoningDeathsbyCounty-1999-2013.pdf.
[3] INJURY AND VIOLENCE PREVENTION BRANCH, NORTH CAROLINA DIVISION OF PUBLIC HEALTH, UNINTENTIONAL PRESCRIPTION OPIOID POISONING DEATHS BY COUNTY: N.C. RESIDENTS, 1999-2013 (2015), *available at* http://www.injuryfreenc.ncdhhs.gov/DataSurveillance/docs/9-UnintentionalPrescriptionOpioidPoisoningDeathsbyCounty-1999-2013.pdf.
[4] *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).
[5] *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).
[6] 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.
[7] The bills are codified at N.C.G.S. § 90-96.2 (Good Samaritan provisions), § 90-106.2 (naloxone access provisions), and § 18B-302.2 (alcohol provisions).
[8] This Issue Brief uses the shorthand, "caller," but the person need not necessarily call 911; under the terms of the law the person must seek medical assistance by " contacting the 911 system, a law enforcement officer, or emergency medical services personnel." N.C.G.S. § 90-96.2(b)(1).
[9] It is not clear why the legislature chose to condition immunity for the victim on actions of the caller, over which he or she has no control. Very few other states have fashioned their laws in this manner.
[10] N.C.G.S. § 90-96.2(c2).
[11] 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).
[12] Immunity is provided for "a misdemeanor violation of G.S. 90-95(a)(3), (ii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) [and] a felony violation of G.S. 90-95(a)(3) for possession of less than

Robert Wood Johnson Foundation

one gram of heroin.."
[13] The 100-dosage unit limit is for all drugs combined.
[14] The relevant section of the state Controlled Substances Act places the following amphetamine and amphetamine-like drugs in Schedule 2: Amphetamine, its salts, optical isomers, and salts of its optical isomers, Phenmetrazine [Preludin, no longer manufactured] and its salts, Methamphetamine, including its salts, isomers, and salts of isomers, Methylphenidate [Ritalin], Phenylacetone [an amphetamine precursor],and Lisdexamfetamine [Vyvanse, and a component of Adderall], including its salts, isomers, and salts of isomers. N.C.G.S. § 90-90(3)(a)-(f). The section of the act prohibiting possession of certain drugs makes it a felony to possess any amount of "amphetamine." N.C.G.S. § 90-95(d)(2). We assume that the



legislature intended to refer to only “amphetamine” as listed in N.C.G.S. § 90-90(3)(a) and not the other amphetamine-type drugs listed above; since if it intended to capture all amphetamine-type drugs it could have referred to the entirety of N.C.G.S. § 90-90(3).

[15] *See* N.C.G.S. § 90-113.21.

[16] See ELON UNIVERSITY, ALCOHOLIC BEVERAGES AND POLICIES, *available at* http://www.elon.edu/e-web/students/handbook/violations/alcohol.xhtml, DUKE UNIVERSITY, ALCOHOL POLICY, *available at* http://studentaffairs.duke.edu/conduct/z-policies/alcohol-policy.

[17] ELON, supra note 13.

[18] NORTH CAROLINA MEDICAL BOARD, DRUG OVERDOSE PREVENTION (2013), *available at* http://www.ncmedboard.org/position_statements/detail/drug_overdose_prevention.

[19] *See* NORTH CAROLINA MEDICAL BOARD, CONTACT WITH PATIENTS BEFORE PRESCRIBING (2013), *available at* http://www.ncmedboard.org/position_statements/detail/contact_with_patients_before_prescribing

[20] Under the terms of the bill, “Evidence of reasonable care shall include the receipt of basic instruction and information on how to administer the opioid antagonist,” but such instruction is not required to be delivered and its receipt is not required to gain the law’s protection.