

ENROLLED
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 523

(By Senators Cole (Mr. President)
and Kessler,
By Request of the Executive)

[Passed March 14, 2015; in effect ninety days from passage.]

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 and Drug Overdose Prevention and
2 Clemency Act.

3 §16-47-2. Legislative findings.

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

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

11 §16-47-3. Definitions.

1 As used in this article:

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

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

8 **§16-47-4. Limited immunity from prosecution.**

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

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

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

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

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

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

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

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

16 (8) Purchasing nonintoxicating beer through misrepresentation of age, presenting or offering
17 any written evidence of age which is false, fraudulent or not actually one's own or illegally
18 attempting to purchase nonintoxicating beer as prohibited by subsection (b), section nineteen, article
19 sixteen, chapter eleven;

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

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

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

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

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

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

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

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

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

21 (3) Cooperates with and provides any relevant information requested by emergency medical
22 assistance personnel or law-enforcement officers needed to treat the person reasonably believed to

1 be experiencing an overdose.

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

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

12 (f) The limited immunity provided by this section does not preclude claims asserted in a civil
13 action based on violation of the statutes set forth in subsection (a) of this section, even if immunity
14 is provided in a criminal proceeding.

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

17 **§16-47-5. Immunity, alternative sentencing and clemency options for a person for whom**
18 **emergency medical assistance was sought.**

19 (a) The immunity provisions in subsection (a), section four of this article extend to the person
20 for whom emergency medical assistance was sought if, subsequent to receiving emergency medical
21 assistance, the person participates in, complies with and completes a substance abuse treatment or
22 recovery program approved by the court. Alternatively, a court may consider the following

1 alternative sentencing and clemency options:

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

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

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

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

9 (A) Probation;

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

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

13 (b) Notwithstanding any other provision of this section to the contrary, a person who may
14 seek immunity or clemency pursuant to subsection (a) of this section and is charged with an offense
15 not exempted by subsection (a), section four of this article may enter a plea of guilty to an offense
16 exempted by subsection (a), section four of this article if the person, after consultation with his or
17 her attorney, so desires.

18 **§16-47-6. Limited law-enforcement personnel immunity.**

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