

To: New Jersey Law Revision Commission
From: Arshiya Fyazi, Counsel
Re: Overdose Prevention Act
Date: October 5, 2020

Memorandum

Executive Summary

A majority of states and the District of Columbia have enacted some form of “Good Samaritan Laws.” These laws are designed to protect individuals who are suffering an overdose from being arrested and prosecuted. In addition, these laws seek to protect bystanders who witness and report an overdose in good faith.¹

In April 2019, the New Jersey Law Revision Commission (NJLRC) considered a project based on the Appellate Division decision in *State v. W.S.B.*² The Court in *W.S.B.* considered the definition of the term “drug overdose” and the application of the Overdose Prevention Act³ (“OPA” or the “Act”). In that case, the Court determined that the defendant qualified for immunity under the Act.⁴

The Appellate Division in *W.S.B.* also noted that a more detailed explication of what forms of “physical illness” qualified as an “acute condition” under the OPA would result in a more easily applied statute.⁵

Given the lack of legislative history for the OPA, the Commission authorized Staff to conduct additional research to determine whether clarifying the term “acute condition” as used in the OPA might provide a remedy for this statutory deficiency.⁶

Background

N.J.S. 24:6J-3 defines “drug overdose” as “an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled dangerous substance or another substance with which a controlled dangerous substance was combined and that a layperson would reasonably believe to require medical assistance.”⁷

¹ The Network for Public Health Law – Legal Interventions to reduce overdose <https://www.networkforphl.org/wp-content/uploads/2020/01/legal-interventions-to-reduce-overdose.pdf> (last visited 9/24/2020)

² *State v. W.S.B.*, 453 N.J. Super. 206 (App. Div. 2018); see Memorandum from Abhishek Bose, a former Legislative Law Clerk on Overdose Prevention Act to the New Jersey Law Revision Commission (Apr. 8, 2019) (on file with the Commission).

³ N.J.S. 24:6J-3.

⁴ *W.S.B.* at 206

⁵ *Id.* at 225.

⁶ See NEW JERSEY LAW REVISION COMMISSION (2019) ‘Overdose Prevention Act’. *Minutes of NJLRC meeting 18 Apr. 2019*, Newark, New Jersey.

⁷ N.J.S. 24:6J-3 (emphasis added).

In *State v. W.S.B.*, an unidentified third party observed an individual who appeared to be “intoxicated” in the waiting area of a train station and called the police for help.⁸ A police officer responded to the scene and sought medical assistance.⁹ The seemingly intoxicated individual was transported to a hospital where he was treated for an intentional drug overdose that he survived as a result of the treatment.¹⁰ At the hospital, bags of a white powdery substance were discovered in the patient’s backpack that were later confirmed to be heroin.¹¹ The individual was subsequently indicted for heroin possession and moved to dismiss the indictment, pursuant to the OPA.¹²

As the Appellate Division explained at the outset of its opinion in *W.S.B.*,

Among other things, the statute confers immunity upon two categories of qualifying persons from being “arrested, charged, prosecuted, or convicted” for certain enumerated possessory drug offenses. The immunity covers persons: (1) who act in good faith to request medical assistance for individuals perceived to be experiencing a “drug overdose,” as defined by N.J.S.A. 24:6J-3; or (2) who experience a drug overdose and have been the subject of such a good faith request for medical assistance by others, or who have sought such assistance themselves. See N.J.S.A. 2C:35-30 (granting immunity for the persons making such requests for assistance); N.J.S.A. 2C:35-31 (granting immunity for the persons who are the subject of such eligible requests).¹³

The trial court determined that defendant was immune from prosecution under the OPA.¹⁴ The trial court noted that a good faith request for medical assistance had been made under N.J.S. 2C:35-31, involving a person believed to be exhibiting an acute condition, which suggested that he was experiencing a drug overdose as defined in N.J.S. 24:6J-3.¹⁵

On appeal, the State argued that the OPA did not cover “intoxication”.¹⁶ However, the Appellate Division, affirmed the decision of the trial court and held that the definition of a “drug overdose” set forth in OPA was broad and did not depend on the extent of someone’s intoxication but whether specific elements enumerated within the definition of “overdose” had been met.¹⁷ The State did not seek further review by the New Jersey Supreme Court.

Additional Research

Research suggests that signs and symptoms of an overdose will vary depending on a multiplicity of factors. Some of these factors include: the substance the person ingested; the person

⁸ *W.S.B.* at 219.

⁹ *Id.* at 220.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 219.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 221.

who has overdosed; the time that elapsed since they consumed the substance; and, whether the drug was taken in combination with other substances - controlled or not.¹⁸

Figure 1 sets forth some signs and symptoms of drug overdose enumerated by the Centers for Disease Control and Prevention (CDC) and the American Addiction Centers for certain types of drugs:¹⁹

Fig. 1

Drugs	Signs of Overdose
Central nervous system (CNS) depressants	Shallow breathing, weak pulse, clammy skin, coma, and death from respiratory arrest.
Hallucinogens	Psychotic features, agitation, and delirium.
Inhalants	Loss of consciousness, stupor or coma, arrhythmia, and sudden death.
Marijuana	Profound drowsiness, unsteady gait, vomiting, tachycardia, agitation, and psychosis.
Opioids	Depressed level of consciousness, respiratory depression/arrest, cold/clammy skin, bluish skin, choking or gurgling sounds, markedly constricted pupils, and dilated pupils if an anoxic brain injury has occurred.
Stimulants	Hyperthermia, tachycardia, hypertension, arrhythmia, agitation, hallucinations and other psychotic features, seizures, and cardiovascular emergencies.

50 State Survey of “Drug Overdose and “Acute Conditions”

The term “acute condition” is utilized in N.J.S. 24:6J-3 to specify the severity of signs and symptoms of drug overdose. The statute, however, does not specify what other types of “acute conditions” would be attributed to an overdose. A fifty-state survey was conducted by the Staff to ascertain whether other jurisdictions define or elaborate on the term “acute conditions” as related to drug overdose.

¹⁸ Recognizing the signs and symptoms of a drug overdose (2019); <https://www.mainlinehealth.org/blog/2019/08/08/overdose-signs-and-symptoms> (last visited 9/24/2020); *See also* Overdose - <https://americanaddictioncenters.org/overdose> (2020) (last visited 9/24/2020).

¹⁹ Overdose - <https://americanaddictioncenters.org/overdose> (2020) (last visited 9/24/2020); *See also* www.cdc.gov/drugoverdose (last visited 9/24/2020).

To this time, two states do not have either overdose immunity or a Good Samaritan law similar to the OPA.²⁰ Ten states do not define the term “drug overdose” in either their overdose immunity or Good Samaritan statutes.²¹ There are sixteen states that define the term “drug overdose” but do not use the term “acute condition” in their definition.²² New Jersey along with twenty-three states, employ the term “acute condition” in their overdose prevention laws.²³ These states define the term “drug overdose” broadly, as New Jersey does, so that it may encompass the perspective of a layperson calling for medical assistance, and these states define the term in a manner similar to the New Jersey statutes.

N.J.S. 24:6J-3 defines “drug overdose” as “an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from...”²⁴ In addition to the symptoms mentioned in the OPA, the symptoms included in other state statutes include “decreases level of consciousness, respiratory depression, ceasing of respiratory or circulatory function, seizure, cardiac arrest and pinpoint pupils.”²⁵

Pending Legislation

In the current legislative session, there are nine pending bills that seek to amend N.J.S. 24:6J-3.²⁶ None of them seek to clarify the term “drug overdose” or elaborate on the term “acute condition”.

²⁰ Survey indicates that currently Alabama and Indiana do not have overdose immunity or “Good Samaritan” laws in place.

²¹ Ariz. (§13-3423); Conn. (§21a-267); Idaho (§37-2739C); Mass. (94C § 34A); N.M. (§ 30-31-27.1); N.D. (§ 19-03.1-23.4); Ohio. (§ 2925.11); Okla. (T. 76 § 5); Wash. (69.50.315).

²² Alaska. (§ 11.71.311); Fla. (§ 401.253); Haw. (§ 329-43.6); Ill. (CH 720 § 570/414); Iowa. (§ 124.418); La. (§ 40:978.1); Me. (T. 22 § 2353); Md. (HEALTH GEN § 13-3601); Mich. (333.7404); Mo. (§ 195.205); Nev. (§ 453C.050); R.I. (§ 16-21-35); Tx. (HEALTH & S § 483.101); Va. (§ 18.2-251.03); Wis. (§ 256.40); Wyo. (§ 35-4-902).

²³ Ark. (§ 20-13-1703); Cal. (HLTH & S 11376.5); Colo. (§ 18-1-711); Del. (TI 16 § 4769); D.C. (§ 7-403); Ga. (§ 16-13-5); Kan. (§ 65-16,127); Ky. (§ 218A.133); Minn. (§ 604A.05); Miss (§ 41-29-149.1); Mont. (§ 50-32-603); Neb. (§ 28-472); N.H. (§ 28-472); N.Y. (NY PENAL § 220.78); N.C. (§ 90-96.2); Or. (§ 475B.393); Pa. (35 P.S. § 780-113.7); S.C. (§ 44-130-20); S.D. (§ 34-20A-109); Tenn. (§ 34-20A-109); Utah (§ 26-55-102); Vt. (T. 18 § 4254); W. Va. (§ 16-47-3).

²⁴ N.J.S. 24:6J-3

²⁵ See Ark. (§ 20-13-1703); Fla. (§ 401.253); D.C. (§ 7-403); Ga. (§ 16-13-5); Haw. (§ 329-43.6); Iowa. (§ 124.418); Kan. (§ 65-16,127); Ky. (§ 218A.133); Me. (T. 22 § 2353); Md. (HEALTH GEN § 13-3601); Mich. (333.7404); Miss (§ 41-29-149.1); Mont. (§ 50-32-603); Nev. (§ 453C.050); R.I. (§ 16-21-35); Tx. (HEALTH & S § 483.101); Utah (§ 26-55-102); Wis. (§ 256.40); Wyo. (§ 35-4-902).

²⁶ A1519, 219th Leg., 1st Sess. (N.J.2020) (Authorizes first responders to obtain, administer, and dispense opioid antidotes, with immunity, pursuant to Statewide standing order issued by State health official); A1059, 219th Leg., 1st Sess. (N.J. 2020) (Requires institutions of higher education to maintain supply of opioid antidotes and permits emergency administration of opioid antidote by campus medical professionals); S85, 219th Leg., 1st Sess. (N.J. 2020) (Amends "Overdose Prevention Act" to clarify that pharmacists and health care practitioners may dispense opioid antidotes pursuant to standing order, and that prescribers may issue such standing order, with immunity from liability); S76, 219th Leg., 1st Sess. (N.J. 2020) (Authorizes school nurses to administer opioid antidotes to overdose victims on school property, with immunity from civil, criminal, and professional liability, pursuant to "Overdose Prevention Act"); A2283, 219th Leg., 1st Sess. (N.J. 2020) (Requires county health departments to maintain reserve stock of opioid antidotes to dispense to certain entities on interim basis to ensure uninterrupted supply); S1073, 219th Leg., 1st Sess. (N.J. 2020) (Authorizes public libraries to maintain supply of opioid antidotes and permits emergency administration

Conclusion

The research suggests that there are many varied signs and symptoms of a drug overdose, and the manifestation of an overdose depends on the person, and the substance they have consumed.

New Jersey, like most states, defined the term “drug overdose” broadly and in a manner that highlights some, but not all, of the physical illnesses attributed to drug overdose.

Staff seeks guidance from the Commission regarding whether to proceed with the project or to suspend or conclude its work in this area.

of opioid antidote by librarian or other trained library employee); A2684, 219th Leg., 1st Sess. (N.J. 2020) (Authorizes public libraries to maintain supply of opioid antidotes and permits emergency administration of opioid antidote by librarian or other trained library employee); S1845, 219th Leg., 1st Sess. (N.J. 2020) (Requires county health departments to maintain reserve stock of opioid antidotes to dispense to certain entities on interim basis to ensure uninterrupted supply); A3288, 219th Leg., 1st Sess. (N.J. 2020) (Requires first responders to transport persons treated for drug overdose to hospital emergency department).