WEST VIRGINIA CODE CHAPTER 16 ARTICLE 47

WV Legislature

§16-47-1. Short title.

This article is known as and may be cited as the Alcohol and Drug Overdose Prevention and Clemency Act.

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§16-47-2. Legislative findings.

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

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

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§16-47-3. Definitions.

As used in this article:

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

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

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

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

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

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

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

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

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

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

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

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

(9) Knowingly or intentionally possessing a controlled substance or imitation controlled substance without a prescription, as prohibited by subsection (c), section four hundred one,

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article four, chapter sixty-a of this code; or

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

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

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

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

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

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

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

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

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

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

(e) Notwithstanding any other provision of this section to the contrary, a person who acts pursuant to subsections (a) and (c) of this section and is charged with an offense not exempted by subsection (a) of this section may nevertheless enter a plea of guilty to an

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offense exempted by subsection (a) of this section if the person, after consultation with his or her attorney, so desires.

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

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

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

(a) The immunity provisions in §16-47-4(a) of this code extend to the person for whom emergency medical assistance was sought if, after receiving emergency medical assistance, the person participates in, complies with, and completes a substance abuse treatment or recovery program approved by the court. Alternatively, a court may consider the following alternative sentencing and clemency options:

(1) Deferred prosecution under §60-6-26 or §60A-4-407 of this code;

(2) Pretrial diversion under §61-11-22 of this code;

(3) Adjudication in drug court under §62-15-1 et seq. of this code or §49-4-703 of this code; or

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

(A) Probation;

(B) Conditional discharge under §60-6-26 of this code; or

(C) The weekend jail program, the work program or the community service program under §62-11A-1a of this code.

(b) Notwithstanding any other provision of this section to the contrary, a person who may seek immunity or clemency pursuant to subsection (a) of this section and is charged with an offense not exempted by §16-47-4(a) of this code may enter a plea of guilty to an offense exempted by §16-47-4(a) of this code if the person, after consultation with his or her attorney, so desires.

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

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

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