

911 Good Samaritan: Explaining New York's Fatal Overdose Prevention Law

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This issue brief explains New York's new 911 Good Samaritan Law that went into effect on September 18, 2011. Enclosed is background information about overdose deaths in New York, details about the new law which seeks to prevent accidental overdose fatalities, and recommendations for ensuring effective implementation of the new law.

Background on the Accidental Overdose Crisis in New York

Accidental overdose deaths are the leading cause of accidental death in New York State, exceeding even motor vehicle accidents. In 2008, 900 people died from accidental drug overdoses in New York.^{1,2}

In New York City, accidental drug overdose is the 4th leading cause of early death, after heart disease, cancer and HIV/AIDS. It is also the third leading cause of all death among NYC residents ages 25 to 34.³ Between 1999 and 2008, more than 7,600 people died from drug overdoses in New York City alone.⁴ On Long Island, over three hundred and fifty people died from drug-related overdose last year – that's one person nearly every day.⁵

Accidental Overdose Deaths are Preventable

Most accidental drug overdoses occur in the home and in the presence of others. Fatal drug overdoses can be prevented if emergency services are contacted quickly. Multiple studies demonstrate that death rarely occurs immediately from a drug-related overdose, and most deaths occur 1 to 3 hours after the overdose. Immediately calling for medical help greatly reduces the victim's chances of death or permanent damage.

But most people witnessing a drug overdose don't call for emergency assistance. Why? Studies have found that for those witnessing a drug overdose, *the majority hesitate to call emergency services due to fear of police arrest or criminal prosecution for drug possession.*⁶

New York's New 911 Good Samaritan Law

On September 18th, 2011, New York's 911 Good Samaritan law went into effect. This policy seeks to encourage people to call 911 when witnessing or experiencing an alcohol or other drug overdose by providing a limited shield from **charge and prosecution** for possession of narcotics, marijuana, and, for minors, alcohol. The policy also provides limited immunity from *arrest* when the witness(es) who call 911 or the overdose victim possess residual or very small amounts of drugs. Other states with a 911 Good Samaritan law to prevent overdose fatalities include Connecticut, Illinois, New Mexico and Washington.

What Does the 911 Good Samaritan Law Do?

The bill includes immunity protections from *charge and prosecution* for possession of drugs up to and including an A2 felony offense (possession of up to 8 oz of a controlled substance); alcohol (for underage drinkers); marijuana (any amount); paraphernalia offenses; and *sharing* of drugs (in NY sharing constitutes a “sales” offense).

There are some specific drug charges for which there are NO PROTECTIONS: People in possession of A1 felony amounts of narcotics (NOT marijuana) – this means possessing 8 oz or more of a controlled substance – are NOT protected from charge and prosecution. An A1 felony is the most serious of all felony charges.

Does the law protect against arrest?

In limited circumstances, yes. The new 911 Good Samaritan law protects against *arrest* for misdemeanor amounts of controlled substances (very small and residual amounts), but *not* misdemeanor amounts of marijuana.⁷ For example, possessions up to 3.5 grams of cocaine and up to 3.5 grams of heroin are misdemeanor drug possession offenses.

The original version of the bill proposed protections from arrest for felony narcotic drug possession – but this provision was reduced to only misdemeanor amounts of narcotic drugs in the final negotiations around the legislation.

Does the law’s protection extend to an open warrant for my arrest or for a parole or probation violation?

Unfortunately, the law does not provide protection from arrest for an open warrant. There is also no specific protection for a parole or probation violation.

What happens if I’m accused of selling drugs when I call 911 during an overdose?

The bill includes affirmative defense *for sales of a controlled substance or marijuana* when the defendant seeks medical help during an overdose situation. This means that if a person is accused of a drug sales crime or a marijuana sales crime because of evidence discovered at the scene of an overdose, they can be acquitted if they prove that they called for medical help during the overdose.

What isn’t Covered Under this Law?

Exclusions from this provision: A1 and A2 sales offenses, but the act of seeking medical help during an overdose is included as a **mitigating factor** for these offenses during sentencing. This means that, in the court proceedings, the defendant can ask the judge to consider, during sentencing, the fact that the defendant called 911 in order to save a life.

Also excluded: the individual cannot be previously convicted for an A1, A2, or B drug felony sales or attempted sales offense.

Who Supports this Law?

The legislation received unusual bi-partisan support across New York. The legislation passed the New York Senate unanimously, and passed the Assembly with only 2 “no” votes. The bill sponsors and co-sponsors range from the most conservative to the most progressive legislators in the state. Particularly strong support for the legislation came from Long Island, New York City and the Syracuse area. This means that these legislators – Republicans and Democrats alike – want to support strategies to prevent fatal overdoses and are allies on overdose prevention.

Law enforcement largely opposed the legislation.

Governor Cuomo supported it. Some law enforcement officials expressed concern with the bill and opposed its passage. In his message approving the legislation, Governor Cuomo outlined why a health-based approach was needed. “The benefit to be gained by the bill – saving lives – must be paramount,” he wrote. In essence, saving lives requires prioritizing a health-based approach over a criminal justice approach. The governor also took a step toward effective implementation, instructing the Division of Criminal Justice Services to conduct training so law enforcement officials understand the new law. This is similar to such implementation practices included in the syringe access bill enacted last year.

What Does this Mean for Preventing Fatal Overdoses in New York?

This new law creates an important opportunity to save lives. But it also will foster increased discussion about effective measures to prevent fatal drug overdoses. For this law to work, people have to know about it. They have to understand that they should call 911 in an emergency. Service providers must understand what the law does and doesn't do, and be able to share that information with their clients. Defense attorneys must understand the law and the protections it provides their clients. And – crucially – law enforcement officials must understand that the New York State Legislature and Governor Andrew Cuomo have made it very clear that saving lives is more important than arrest and prosecution for simple drug or alcohol possession. In short, for this law to work, implementation must be taken up by harm reduction practitioners, treatment providers, advocates, government agencies and community members.

Making Sure 911 Good Samaritan is Implemented Effectively – and Works

The original version of the bill protected against arrest for alcohol or any drug possession. This bill does not, but it is more far-reaching than similar laws in New Mexico or Washington – only in New York is a person protected against arrest when holding a *residual* amount of drugs, and only in New York is a person protected against charge and prosecution for “sharing” drugs (charged as a sales offense). But as of now, there are no states that protect against arrest for possession of small amounts of drugs.

To make this work, we need buy-in from two key stakeholders: the witnesses of overdose and law enforcement. If witnesses of an overdose are afraid to call for medical help or don't know that they should call for emergency services immediately, then a life could be lost. And if law enforcement officials don't understand the new law, they'll continue arresting and prosecuting folks at an overdose scene, leading to legitimate fear of calling 911 in an overdose situation, which will lead to more unnecessary deaths. Thus meetings with police and prosecutors are an urgent priority – as is more robust public education efforts for preventing overdose fatalities.

What You Can Do

- Make sure your clients know to call 911 in the event of an overdose!
- Contact your local Health Department to find out if they know about the new law and discuss its implementation.
- Reach out to local law enforcement, including your District Attorney's office and police precinct, to discuss the new law and its implementation. They will likely welcome hearing from experts in preventing overdose fatalities who can educate them about accidental drug overdose and policies to save lives such as the 911 Good Samaritan law and naloxone.
- Join the Purple Ribbons for Overdose Prevention campaign on Facebook:
<http://www.causes.com/causes/209554>

To learn more about the new 911 Good Samaritan law and how to get involved with its implementation, or if you've been in an overdose situation and think you qualify for limited immunity, contact Evan Goldstein of the Drug Policy Alliance at egoldstein@drugpolicy.org, or 212.613.8038

¹ New York State Department of Health. *2010 Report on Opioid Poisoning/Overdose in New York State*. Table 1: Drug-Related Deaths in New York State: 2004-2008. Albany, NY: 2010.

² Paone D, Heller D, Olson C, Kerker B. Illicit Drug Use in New York City. NYC Vital Signs 2010, 9(1); 1–4. Department of Health of the State of New York. . Unintentional Drug Poisoning Deaths: 1999-2008. Bureau of Biometrics and Health Statistics. March 1, 2010.

³ Paone D, Heller, et al. page 3.

⁴ Paone D, Heller, et al. page 3.

⁵ Keith Herbert, “Deadly Drug's toll in black and white; Scourge shifts to white areas; Government reaction debated,” *Newsday*, January 3, 2010, final decision.

⁶ Strang, J. Kelleher, M. Best, D. Mayet, S. Manning, V. “Preventing opiate overdose deaths with emergency naloxone: medico-legal consideration of new potential providers and contexts.” Submitted to *British Medical Journal* 3 (16 September 2005).

⁷ Private possession of up to 25 grams of marijuana is a violation, *not* a criminal offense