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SENATE DRS15063-ML-3B (09/17)

Short Title: Clarifying the Good Samaritan Law.

(Public)

Sponsors: Senator Bingham (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY HOW THE LIMITED IMMUNITY FROM PROSECUTION FOR CERTAIN DRUG- OR ALCOHOL-RELATED OFFENSES COMMITTED BY AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE AND AN INDIVIDUAL WHO SEEKS MEDICAL ASSISTANCE FOR AN INDIVIDUAL EXPERIENCING A DRUG- OR ALCOHOL-RELATED OVERDOSE OPERATES, TO PROVIDE ADDITIONAL REQUIREMENTS AND CONDITIONS THAT MUST BE MET BEFORE THE LIMITED IMMUNITY IS ESTABLISHED, TO PROVIDE THAT A PERSON SHALL NOT BE SUBJECT TO SANCTIONS FOR A VIOLATION OF A CONDITION OF RELEASE, PROBATION, OR PAROLE IF BASED OFF AN INCIDENT FOR WHICH THE PERSON RECEIVED IMMUNITY, TO PROVIDE THAT A LAW ENFORCEMENT OFFICER OR PROSECUTING ATTORNEY SHALL NOT BE SUBJECT TO CIVIL LIABILITY FOR ARRESTING, CHARGING, OR PROSECUTING A PERSON ENTITLED TO IMMUNITY IF THE LAW ENFORCEMENT OFFICER OR PROSECUTING ATTORNEY ACTED IN GOOD FAITH, TO PROVIDE THAT A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST UPON RECEIVING A PRESCRIPTION ISSUED IN ACCORDANCE WITH G.S. 90-106.2, AND TO PROVIDE THAT A PHARMACIST WHO DISPENSES AN OPIOID ANTAGONIST IN ACCORDANCE WITH G.S. 90-106.2 IS IMMUNE FROM CERTAIN CIVIL OR CRIMINAL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-96.2 reads as rewritten:

"§ 90-96.2. Drug-related overdose treatment; limited immunity.

(a) ~~As used in this section, "drug-related overdose" means an~~Definitions. – The following definitions apply in this section:

(1) Drug-related overdose. – An acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

(2) Good faith. – The term does not include seeking medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(b) ~~A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose shall not be prosecuted for (i) 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~~



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1 of cocaine, (iii) a felony violation of G.S. 90-95(a)(3) for possession of less than one gram of
2 heroin, or (iv) a violation of G.S. 90-113.22 if the evidence for prosecution under those sections
3 was obtained as a result of the person seeking medical assistance for the drug-related
4 overdose. Limited Immunity for Samaritan. – A person shall not be prosecuted for any of the
5 offenses listed in subsection (c3) of this section if all of the following requirements and
6 conditions are met:

- 7 (1) The person sought medical assistance for an individual experiencing a
8 drug-related overdose by contacting the 911 system, a law enforcement
9 officer, or emergency medical services personnel.
- 10 (2) The person acted in good faith when seeking medical assistance, upon a
11 reasonable belief that he or she was the first to call for assistance.
- 12 (3) The person provided his or her own name to the 911 system or to a law
13 enforcement officer upon arrival.
- 14 (4) The evidence for prosecution of the offenses listed in subsection (c3) of this
15 section was obtained as a result of the person seeking medical assistance for
16 the drug-related overdose.

17 (c) ~~A person who experiences a drug-related overdose and is in need of medical~~
18 ~~assistance shall not be prosecuted for (i) a misdemeanor violation of G.S. 90-95(a)(3), (ii) a~~
19 ~~felony violation of G.S. 90-95(a)(3) for possession of less than one gram of cocaine, (iii) a~~
20 ~~felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin, or (iv) a~~
21 ~~violation of G.S. 90-113.22 if the evidence for prosecution under those sections was obtained~~
22 ~~as a result of the drug-related overdose and need for medical assistance.~~ Limited Immunity for
23 Overdose Victim. – The immunity described in subsection (b) of this section shall extend to the
24 person who experienced the drug-related overdose if all of the requirements and conditions
25 listed in subdivisions (1), (2), and (4) of subsection (b) of this section are satisfied.

26 (c1) Probation or Release. – A person shall not be subject to any sanction for a violation
27 of a condition of pretrial release, condition of probation, or condition of parole, if the sanction
28 is based on an incident for which the person would receive immunity under subsection (b) or
29 (c) of this section.

30 (c2) Civil Liability for Arrest, Charges, or Prosecution. – In addition to any other
31 applicable immunity or limitation on civil liability, a law enforcement officer or prosecuting
32 attorney who, acting in good faith, arrests, charges, or prosecutes a person who is thereafter
33 determined to be entitled to immunity under this section shall not be subject to civil liability for
34 the arrest, filing of charges, or prosecution.

35 (c3) Covered Offenses. – A person shall have limited immunity from prosecution under
36 subsections (b) and (c) of this section for only the following offenses:

- 37 (1) A misdemeanor violation of G.S. 90-95(a)(3).
- 38 (2) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram
39 of cocaine.
- 40 (3) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram
41 of heroin.
- 42 (4) A violation of G.S. 90-113.22.

43 (d) ~~Nothing~~ Construction. – Nothing in this section shall be construed to ~~bar~~ do any of
44 the following:

- 45 (1) Bar the admissibility of any evidence obtained in connection with the
46 investigation and prosecution of (i) other crimes committed by a person who
47 otherwise qualifies for limited immunity under this section, section or (ii) any
48 crimes committed by a person who does not qualify for limited immunity
49 under this section.
- 50 (2) Limit any seizure of evidence or contraband otherwise permitted by law.

(3) Limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense other than an offense listed in subsection (c3) of this section.

(4) Limit or abridge the authority of a probation officer to conduct drug testing of persons on pretrial release, probation, or parole."

SECTION 2. G.S. 18B-302.2 reads as rewritten:

"§ 18B-302.2. Medical treatment; limited immunity.

(a) Limited Immunity for Samaritan. – Notwithstanding any other provision of law, a person under the age of 21 shall not be prosecuted for a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages if law enforcement, including campus safety police, became aware of the possession or consumption of alcohol by the person solely because the person was seeking medical assistance for another individual. This section shall apply if, when seeking medical assistance on behalf of another, the person did all of the following: all of the following requirements and conditions are met:

(1) The person sought medical assistance for an individual experiencing an alcohol-related overdose by contacting the 911 system, a law enforcement officer, or emergency medical services personnel.

(1a) ~~Acted~~The person acted in good faith, faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance. The term "good faith" has the same meaning as in G.S. 90-96.2.

(2) ~~Used~~The person provided his or her own name when contacting authorities to the 911 system or to a law enforcement officer upon arrival.

(3) ~~Remained with the individual needing medical assistance until help arrived.~~

(4) The evidence for prosecution of a violation of G.S. 18B-302 for the possession or consumption of alcoholic beverages was obtained as a result of the person seeking medical assistance for the alcohol-related overdose.

(b) Limited Immunity for Overdose Victim. – The immunity described in subsection (a) of this section shall extend to the person who needed medical assistance if the requirements in subdivisions (1), (1a), and (4) of subsection (a) are satisfied.

(c) Probation or Release. – A person shall not be subject to any sanction for a violation of a condition of pretrial release, condition of probation, or condition of parole, if the sanction is based on an incident for which the person would receive immunity under subsection (a) or (b) of this section.

(d) Civil Liability for Arrest, Charges, or Prosecution. – In addition to any other applicable immunity or limitation on civil liability, a law enforcement officer or prosecuting attorney who, acting in good faith, arrests, charges, or prosecutes a person who is thereafter determined to be entitled to immunity under this section shall not be subject to civil liability for the arrest, filing of charges, or prosecution."

SECTION 3. G.S. 90-106.2 reads as rewritten:

"§ 90-106.2. Treatment of overdose with opioid antagonist; immunity.

...
 (b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe an opioid antagonist to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. As an indicator of good faith, the practitioner, prior to prescribing an opioid under this subsection, may require receipt of a written communication that provides a factual basis for a reasonable conclusion as to either of the following:

(1) The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose.

(2) The person other than the person who is at risk of experiencing an opiate-related overdose, and who is seeking the opioid antagonist, is in relation to the person at risk of experiencing an opiate-related overdose:

- a. A family member, friend, or other person.
- b. In the position to assist a person at risk of experiencing an opiate-related overdose.

(b1) A pharmacist may dispense an opioid antagonist to a person described in subsection (b) of this section pursuant to a prescription issued in accordance with subsection (b) of this section. For purposes of this section, the term "pharmacist" is as defined in G.S. 90-85.3.

...

(d) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section:

- (1) Any practitioner who prescribes an opioid antagonist pursuant to subsection (b) of this section.
- (2) Any pharmacist who dispenses an opioid antagonist pursuant to subsection (b1) of this section.
- ~~(2)~~(3) Any person who administers an opioid antagonist pursuant to subsection (c) of this section."

SECTION 4. This act is effective when it becomes law and applies to offenses committed on or after that date.