



MEMORANDUM

TO: New York State Law Enforcement Agencies

FROM: Gina L. Bianchi *Gina L. Bianchi*
Deputy Commissioner and Counsel

DATE: January 28, 2013

SUBJECT: Good Samaritan 911 Law

As you know, pursuant to Chapter 154 of the Laws of 2011, a person who in good faith seeks health care for himself or another, or is the subject of a good faith request, and who is experiencing a drug or alcohol overdose or other life threatening medical emergency, shall not be charged or prosecuted for a controlled substance or marihuana offense, or possession of alcohol or drug paraphernalia if the controlled substance, marihuana, alcohol or paraphernalia was obtained as a result of the person seeking or receiving health care. In his approval message, Governor Cuomo directed that the Division of Criminal Justice Services work with law enforcement to ensure that appropriate training and guidance is provided to law enforcement personnel who may be expected to determine whether someone was suffering from an overdose and whether the person who sought aid acted in good faith since failure to promptly seek medical care or assistance for overdoses can result in avoidable loss of life. The intent of this law is to encourage people, who otherwise may refuse to do so for fear of criminal prosecution, to seek medical attention.

It should be noted that the immunity from being charged and prosecuted does not apply to drug offenses involving sales for consideration or other benefit or gain,¹ or class A-I drug felonies, such as Penal Law §220.21, criminal possession of a controlled substance in the first degree; Penal Law §220.43, criminal sale of a controlled substance in the first degree; and Penal Law §220.77, operating as a major trafficker.² Additionally, the protections do not extend to outstanding warrants, probation or parole violations, or other non-drug crimes. The law also makes it clear that evidence recovered in a situation involving seeking health care for an overdose victim may be admitted into evidence against a person who does not qualify for the exemption and, for the person who does qualify, evidence may be admitted in the prosecution of a non-covered crime. Finally, the law established an affirmative defense to a criminal sale of a controlled substance or marihuana offense when the defendant, in good faith, seeks health care for someone, or for him or herself, who is experiencing a drug or alcohol overdose or other life

¹ For instance, criminal sale of a controlled substance offense or criminal sale of marihuana offense.

² There are A-I felonies in Penal Law Article 220, which pertains to controlled substances offenses, but there are no class A-I felonies in Penal Law Article 221, which pertains to offenses involving marihuana.

threatening medical emergency; and the defendant has no prior conviction for the commission or attempted commission of a class A-I, A-II or B felony.³ However, the affirmative defense cannot be used for class A-I or A-II felonies.

The law is not intended to interfere with the protocols of law enforcement to secure the scene of an overdose and the law does not prevent the detention of a person while police investigate the facts of the particular case to determine if the person should be charged and prosecuted.⁴ Although the statute does not provide how long a person may be detained, the United States Supreme Court has held that where an agent diligently pursued his investigation and no delay unnecessary to the investigation was involved, a 20-minute detention of a suspect met the Fourth Amendment's standard of reasonableness (U.S. v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568 [1985]). As noted, the law requires that medical attention be sought “in good faith.” As such, criminals who attempt to use this law to manipulate the exemptions to avoid prosecution when such prosecution is warranted can be charged and prosecuted.

In sum, if an overdose or life threatening emergency exists, and health care for this condition is sought in good faith, then the “Good Samaritan” or victim shall not be charged or prosecuted for a controlled substance or marijuana offense, or possession of alcohol or drug paraphernalia. However, because this law was recently enacted, there has been no judicial interpretation of its provisions. Thus, application of this law may raise questions and create challenges for the law enforcement community which must be determined on a case-by-case basis and will depend on the unique facts of each particular case. Therefore, law enforcement agencies should consult their local prosecutors with respect to specific enforcement questions.

If you require additional information, please contact the Division of Criminal Justice Services’ Office of Legal Services at (518) 457-8413.

³This pertains to Penal Law Article 220; there are no class A-I, A-II, or B felonies in Penal Law Article 221.

⁴As Governor Cuomo stated in his approval memo, “removal of the word ‘arrest’ from an earlier version of this bill was meant to give these responding officers the ability to detain individuals who may or may not be entitled to the statutory exemption from prosecution conferred by this bill in order to investigate all the facts and circumstances of any criminal conduct and seek guidance from the appropriate officials.”