

PRESCRIBING PROTECTION: LEVERAGING A COMPARATIVE SYNTHESIS OF CURRENT GOOD SAMARITAN OVERDOSE LAWS TO SAVE LIVES

Aly Richardson*

ABSTRACT

This Article examines the importance of eliminating unnecessary restrictions and ambiguities within Good Samaritan Overdose Laws (GSOLs) to ensure their effectiveness in saving lives. This Article encourages states to amend their statutes to adopt a Model GSOL, which focuses on clear and inclusive immunity for all individuals involved in responding to drug overdoses. This Article advocates for removing restrictive criteria and encourages states to prioritize saving lives rather than criminal punishment. Through a series of proposed reforms, this Article argues that GSOL statutes should be amended to prevent confusion and exclusion, and ultimately, to improve the public's ability to respond effectively in overdose situations.

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* J.D. with a Certificate in Restorative Justice from Vermont Law & Graduate School; B.A. in Social Sciences with concentrations in Political Science, Psychology, and Comparative Ethnic Studies from Washington State University. The author would like to thank her husband, Joe Richardson, for his endless support, patience, and encouragement.

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INTRODUCTION

When a heroin overdose killed 17-year-old Michael York, his friends abandoned his lifeless body face-down next to a dumpster.¹ Michael's mother describes him as a loving kid who liked to skateboard, draw, and play chess.² He had struggled with a substance use disorder since his early teens, but he was sober for 18 months prior to his death.³ Michael's friends briefly revived him from the overdose, but Michael refused to visit the hospital.⁴ He was afraid of being punished for using heroin and decided to go to sleep instead.⁵ Michael's friends woke up the next morning to discover that he was already dead.⁶ They were terrified that law enforcement would punish them in connection with Michael's death, so they dumped his body in a secluded alleyway at the foot of a dumpster.⁷ This tragedy is one of countless stories of lives needlessly ended when we prioritize criminal punishment over saving lives during drug overdose emergencies.

1. Bryan Smith, *Trashed: The Death of Michael York and How Heroin Has Invaded the Chicago Suburbs*, CHICAGO (Oct. 22, 2009), <https://www.chicagomag.com/chicago-magazine/november-2009/the-death-of-michael-york-and-how-heroin-has-invaded-the-chicago-suburbs>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

This Article is structured to explore how Good Samaritan Overdose Laws (GSOLs) can be improved to maximize their life-saving potential. Part I provides context for the importance of GSOLs with an overview of the opioid crisis, its root causes, and the path of destruction that it has left behind. Part II conducts a comparative analysis of individual GSOLs to identify the most effective approaches. Finally, Part III provides a Model GSOL that synthesizes these approaches into an inclusive, straightforward statute. This Article demonstrates that amending GSOL statutes to remove unnecessary barriers and ambiguities will encourage more people to seek medical assistance during a drug overdose and ensure broader protection for those that do—ultimately, saving lives.

I. THE OPIOID CRISIS AND BARRIERS TO MEDICAL ASSISTANCE

Solutions to the opioid crisis must be informed by the root causes and development of the crisis itself. This Part will describe the opioid crisis and the trail of bodies left in its wake. Next, it will explain why harm reduction strategies like Good Samaritan Overdose Laws (GSOLs) are effective solutions to save lives during a drug overdose. GSOLs can address these issues by removing unnecessary barriers that prevent people from seeking medical assistance during an overdose.

A. *The Opioid Crisis*

The opioid crisis is a public health epidemic driven primarily by the addictive potential of opioids and an inappropriate focus on crime control rather than on saving lives.⁸ Over the past two decades, the United States has experienced a “precipitous rise” in overdose deaths, with a steep increase over the last decade as fentanyl becomes more prevalent in the illicit opioid supply.⁹ The Centers for Disease Control and Prevention (CDC) estimates that in 2023 alone, 110,037 people were killed by drug-involved overdoses.¹⁰ Those people were parents, friends, teachers, and neighbors—vibrant, loved people who were sacrificed to the ever-growing body count of the opioid crisis.

8. Jennie M. Miller, *Save a Friend's Life or Risk Your Freedom: The Dilemma Too Many People Face when Witnessing an Overdose*, 34 J. CIV. RTS. & ECON. DEV. 351, 363 (2021).

9. Leah Hamilton et al., *Good Samaritan Laws and Overdose Mortality in the United States in the Fentanyl Era*, 97 INT'L J. OF DRUG POL'Y 1, 1 (2021).

10. *Provisional Drug Overdose Death Counts*, NAT'L CTR. FOR HEALTH STAT., <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.html> (last visited Apr. 22, 2025).

Substance Use Disorders (SUDs) are complex mental health disorders that affect almost 10 million Americans over the age of 11.¹¹ SUD is defined as a “treatable mental health disorder that affects a person’s brain and behavior, leading to their inability to control their use of substances like legal or illegal drugs, alcohol, or medications.”¹² Opioids are most commonly used for two reasons: (1) pain relief; or (2) to experience their euphoric side effects.¹³ These side effects may not seem harmful at first glance, but over time they alter the person’s brain chemistry until the opioids become their sole source of relief and pleasure.¹⁴ Over time, as the brain builds a tolerance to the opioids, the person requires a higher dose to maintain the same effects.¹⁵ Without access to the opioid levels that the brain now relies on, the withdrawal is painful and potentially life-threatening.¹⁶ This drives many people to take more potent or affordable opioids, or increase their dosage, but these calculations are incredibly difficult and dangerous without medical assistance.¹⁷

SUDs affect people from every walk of life, regardless of gender, race, age, or socioeconomic status.¹⁸ Even the wealthy are not safe, exemplified by the overdoses of stars like Demi Lovato, Jimi Hendrix, and Janis Joplin.¹⁹ However, life circumstances do affect the survival rate of

11. *Drug Abuse Statistics*, NAT’L CTR. FOR DRUG ABUSE STAT., <https://drugabusestatistics.org> (last visited May 21, 2025).

12. *Substance Use and Co-Occurring Mental Disorders*, NAT’L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health> (last visited May 21, 2025). SUDs are also referred to as addiction, but Substance Use Disorder is the current preferred term. *Words Matter - Terms to Use and Avoid When Talking About Addiction*, NAT’L INST. ON DRUG ABUSE, <https://nida.nih.gov/nidamed-medical-health-professionals/health-professions-education/words-matter-terms-to-use-avoid-when-talking-about-addiction> (last visited May 21, 2025).

13. Ashley Duckworth, *Fighting America’s Best-Selling Product: An Analysis of and Solution to the Opioid Crisis*, 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 237, 245 (2019).

14. *Id.*

15. *How Opioid Use Disorder Occurs*, MAYO CLINIC (July 20, 2024), <https://www.mayoclinic.org/diseases-conditions/prescription-drug-abuse/in-depth/how-opioid-addiction-occurs/art-20360372>.

16. MANSI SHAH & MARTIN R. HUECKER, OPIOID WITHDRAWAL (2023) (describing the symptoms of opioid withdrawal).

17. Kayleen Egan, *The Overdose Prevention Act: A Small Step when New Jersey Needs a Giant Leap*, 12 RUTGERS J.L. & PUB. POL’Y 1, 3–4 (2014).

18. NAT’L INST. OF MENTAL HEALTH, *supra* note 12; Duckworth, *supra* note 13.

19. Shlomo Hoffman, *Celebrities Who Died of Overdose*, AVENUES (May 17, 2023) <https://www.avenuesrecovery.com/blog/celebrity-overdose-deaths>. When Demi Lovato experienced an overdose, bystanders attempted to stop the woman who called 911 due to “wishes to keep the overdose as secret as possible.” *Demi Lovato on Drug Overdose and Addiction in New Docuseries, Dancing with the Devil*, TURNBRIDGE, <https://www.turnbridge.com/news-events/latest-articles/demi-lovato-overdose-dancing-with-the-devil> (last visited May 21, 2025).

those who experience SUDs.²⁰ The largest overdose rates come from occupations that require physical mobility and strength.²¹ Construction and restaurant workers alone made up approximately 20% of overdose deaths in 2020.²² Mental health is another major risk factor, with 28.7% of people who were killed by an overdose in 2023 having at least one formal mental health diagnosis.²³ Other factors like education level, homelessness, and poverty increase the probability that someone with a SUD will be killed by an overdose.²⁴

SUDs also present unique challenges for people without stable housing. People in these circumstances have extremely limited funding that often leaves them with three options: (1) purchase food, but feel the cold of sleeping on the street; (2) pay for a motel room, but feel the pain of hunger; or (3) purchase opioids that will numb the cold, the hunger, and the pain of withdrawal.²⁵ Some unhoused people also use opioids to keep themselves awake to avoid being assaulted or robbed while they sleep.²⁶ Someone using GSOL protection necessarily admits to using controlled substances, which can jeopardize eligibility for public housing.²⁷ Unhoused individuals also risk being cited and punished for trespass if their overdose occurs on private property—an offense that is not covered by any existing GSOLs.²⁸ The opioid crisis affects people from all demographics, but our most vulnerable people face unique consequences that must be addressed.

20. Andrew Van Dam, *The Depressing Relationship Between Your Job and Your Odds of Drug Overdose*, WASH. POST (Oct. 6, 2023), <https://www.washingtonpost.com/business/2023/10/06/jobs-likely-to-overdose/>.

21. *Id.*

22. *Id.*

23. *SUDORS Dashboard: Fatal Drug Overdose Data*, CDC OVERDOSE PREVENTION, <https://www.cdc.gov/overdose-prevention/data-research/facts-stats/sudors-dashboard-fatal-overdose-data.html> (last updated Dec. 12, 2024).

24. *Id.*; Duckworth, *supra* note 13 at 246.

25. Ryan D. Assaf, *Opinion: People Think Drug Use Causes Homelessness. It's Usually the Other Way Around*, L.A. TIMES (Oct. 4, 2023), <https://www.latimes.com/opinion/story/2023-10-04/homelessness-drugs-addiction-encampments-substance-abuse-unhoused-police>; Matt Richtel, *Homeless Advocate Takes On A.C.L.U., and It's Personal*, N.Y. TIMES (Dec. 4, 2023), <https://www.nytimes.com/2023/12/04/health/homeless-boulder-aclu-lawsuit.html>.

26. Assaf, *supra* note 25.

27. Stephen Koester et al., *Why Are Some People Who Have Received Overdose Education and Naloxone Reluctant to Call Emergency Medical Services in the Event of an Overdose?*, 48 INT'L J. OF DRUG POL'Y 115 (2017).

28. *Id.*

B. Harm Reduction Strategies

Laws intended to address the opioid crisis generally fall into two categories: (1) attempts to control the accessibility and desirability of drugs; and (2) attempts to reduce the risk of harm caused by those drugs.²⁹ The second category of laws uses harm reduction strategies that “acknowledge that alcohol and substance misuse occur but put policies in place that attempt to mitigate the negative consequences associated with such misuse.”³⁰ Harm reduction is an evidence-based approach that equips people who use drugs with life-saving tools and information to reduce risks and create positive change in their lives, whatever that looks like for them.³¹ These services can include: preventing overdoses and infectious disease transmission; improving mental, physical, and social wellbeing; offering low-barrier options to access healthcare; and other strategies.³² Harm reduction campaigns have saved countless lives by being accessible and emphasizing the need for humility and compassion toward people who use drugs.³³

Potential solutions to the opioid crisis must address the real needs and experiences of the people who are most affected. However, the principle of harm reduction has been critiqued by people who misunderstand the goals and strategies of harm reduction.³⁴ The most common criticism is the idea that using harm reduction instead of punishment enables people with SUDs to continue using controlled substances.³⁵ Their reasoning is that the reduced risk of death makes drugs more appealing.³⁶ However, the opposite effect is true; the only thing that is enabled is the overdosing individual’s ability to survive their overdose.³⁷ Incarceration for drug offenses has not proven to significantly affect future substance use, and more commonly, the actual result is the mass incarceration of low-income and minority

29. Hamilton, *supra* note 9.

30. Danielle Atkins et al., *Good Samaritan Harm Reduction Policy and Drug Overdose Deaths*, 54 HEALTH SERV. RSCH. 407 (2019).

31. *Harm Reduction*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., <https://www.samhsa.gov/find-help/harm-reduction> (last updated Oct. 29, 2024).

32. *Id.*

33. *Id.*

34. Nicole Schill, *The Fatal Shortcomings of Our Good Samaritan Overdose Statutes and Proposed Model Statute*, 25 CARDOZO J. EQUAL. RTS. & SOC. JUST. 123, 156 (2018).

35. *Id.*

36. *Id.*

37. Samantha Kopf, *Slaying the Dragon: How the Law Can Help Rehab a Country in Crisis*, 35 PACE L. REV. 739, 756–57 (2014) (listing the benefits of GSOLs).

communities.³⁸ The so-called “war on drugs” is clearly not effectively addressing this crisis, so it is time to pivot to a “war on drug-related deaths” instead.

C. Good Samaritan Overdose Laws

GSOLs grant legal immunity to people who call for medical assistance during an overdose.³⁹ This empowers people to save lives during an overdose by removing the threat of criminal punishment.⁴⁰ The most common reason that people do not call for help during an overdose is that they are afraid of police involvement.⁴¹ In 2023, 65.9% of overdose deaths had at least one opportunity for intervention.⁴² When there was a bystander present, 70% provided no overdose response of any form.⁴³ Successfully performed, those interventions could have saved 68 thousand lives.⁴⁴ Timely emergency medical response is critical to prevent an overdose from ending in death, but people involved in illegal activities may delay or decline calling for help due to fear of legal consequences.⁴⁵

Most overdose deaths are not immediate.⁴⁶ Potential callers and bystanders have enough time to seek medical assistance, but not enough to delay calling.⁴⁷ Once an opioid overdose reaction begins, every second counts. At the start of an overdose, the patient stops breathing, which can happen anywhere from minutes to hours after the drug was consumed.⁴⁸ Next, the oxygen starvation stops their heart.⁴⁹ Within 20 seconds, the patient will lose consciousness and begin to sustain brain damage.⁵⁰ Three

38. Emily O'Brien, *A Willful Choice: The Ineffective and Incompassionate Application of Wisconsin's Criminal Laws in Combating the Opioid Crisis*, 2020 WIS. L. REV. 1065, 1083 (2020).

39. Egan, *supra* note 17 at 5.

40. *Id.* at 6; Miller, *supra* note 8 at 372.

41. Miller, *supra* note 8 at 356.

42. CDC OVERDOSE PREVENTION, *supra* note 23.

43. *Id.*

44. *Id.*

45. Atkins et al., *supra* note 30.

46. Daniel I. Rees et al., *With a Little Help from My Friends: The Effects of Good Samaritan and Naloxone Access Laws on Opioid-Related Deaths*, 62 J. LAW & ECON. 1, 7 (2019).

47. *Id.*

48. *Opioid Overdose Basics*, NAT'L HARM REDUCTION COAL., <https://harmreduction.org/issues/overdose-prevention/overview/overdose-basics/what-is-an-overdose/> (last visited May 21, 2025).

49. *Id.*

50. Rod Brouhard, *How Long Does Brain Activity Last After Cardiac Arrest?*, VERYWELLHEALTH, <https://www.verywellhealth.com/brain-activity-after-cardiac-arrest-1298429> (last updated Feb. 17, 2025).

to five minutes later, the patient's organs will fail and end their life.⁵¹ This entire process—from the moment of consumption to the moment of death—can take as little as one to three hours.⁵²

Critics of GSOLs often claim that they prevent law enforcement from solving crimes.⁵³ However, if a state does not offer GSOL protection, the only evidence that police are likely to obtain from the overdose would be the patient's dead body. Can we really say that it is worth someone losing their life just to punish a person for using drugs? People should never be forced to choose between saving a life or saving their freedom.

The goal when constructing a GSOL is to set clear expectations and procedures for people who use drugs, law enforcement, and legal professionals. This goal is often frustrated by overly lengthy statutes and “legalese” that confuse even seasoned attorneys.⁵⁴ GSOLs are most effective when they are so broad and inclusive that they are easy to apply to any situation where an overdose could occur.⁵⁵ Unnecessary barriers and requirements that are included in current GSOLs reduce their effectiveness by excluding people from protection.⁵⁶ The statutory construction of GSOLs should utilize the most effective state approaches in each statutory component to synthesize a unified model statute that incorporates each state's perspective and knowledge.⁵⁷

The opioid crisis has already claimed thousands of lives, and we must address it before more lives are lost.⁵⁸ This crisis kills parents, neighbors, friends, and children—people with rich lives and loved ones. GSOLs are an effective strategy that empowers people to seek medical assistance during a drug overdose and increases the patient's chances of surviving.⁵⁹ This Article emphasizes that we should treat drug overdoses as medical emergencies, not crime scenes. Saving lives is more important than collecting evidence.

51. NAT'L HARM REDUCTION COAL, *supra* note 48.

52. *Id.*

53. Miller, *supra* note 8 at 352.

54. Anne Trafton, *MIT Study Explains Why Laws Are Written in an Incomprehensible Style*, MIT NEWS, Aug. 19, 2024.

55. Schill, *supra* note 34, at 148.

56. *Id.*

57. *See infra* Part II (describing different approaches to GSOLs and how each approach affects overdose outcomes).

58. *See* MATTHEW F. GARNETT & ARIALDI M. MININO, DRUG OVERDOSE DEATHS IN THE UNITED STATES, 2003–2023, NAT'L CTR. FOR HEALTH STAT. (Dec. 2024).

59. Egan, *supra* note 17, at 6.

II. COMPARATIVE ANALYSIS OF EXISTING GOOD SAMARITAN OVERDOSE LAWS

This Part conducts a comparative analysis of each state's current Good Samaritan Overdose Law (GSOL)⁶⁰ and organizes them into categories of approaches to each component. There are five basic components of a GSOL. First, the statute describes which individuals are immunized from criminal punishment. Second, it explains the method of immunization and how courts will apply the statute to individual cases. Third, it lists the criminal offenses that are immunized under the statute. Fourth, GSOLs typically include restrictions and criteria that people must meet to receive immunity. Finally, the statute defines terms like “drug overdose” and “medical assistance” to clarify the circumstances where GSOL immunity will apply. By analyzing these components, states can learn from the strengths and experiences of other states to remove unnecessary barriers to seeking medical assistance and save their residents' lives.

A. Immunized Individuals

States can be divided into three approaches when defining who is eligible for GSOL immunity. Some states limit immunity to only one person who called for help, excluding the patient experiencing the overdose and all bystanders who could assist them.⁶¹ Many states immunize the caller and patient, but excludes people who helped provide care but did not dial the phone themselves.⁶² The most effective approach is to immunize the caller, the patient, and all bystanders.⁶³ This maximizes the number of people who are willing and able to support the patient and ensure their survival.⁶⁴

1. Model Approach: Immunizing Callers, Patients, and Bystanders

The approach used in the Model GSOL protects callers, patients, and all bystanders present at the scene when medical assistance arrives. This all-inclusive protection encourages everyone at the scene of the overdose to

60. This Article will refer to the District of Columbia as a “state” for clarity and conciseness.

61. See WIS. STAT. § 961.443 (2017); ALA. CODE § 20-2-281 (2015).

62. See MISS. CODE ANN. § 41-29-149.1 (2016); LA. STAT. ANN. § 14:403.10 (2022).

63. See D.C. CODE § 7-403 (2021).

64. *Understanding an Overdose and How to Respond to One*, NAT'L INST. ON DRUG ABUSE, <https://nida.nih.gov/research-topics/parents-educators/lesson-plans> (last visited May 21, 2025) (describing how bystanders can work together to help someone during an overdose).

feel safe in assisting the patient's recovery. When all parties are protected, each person is able to make choices that will give the patient the best chance of survival.⁶⁵ The caller and bystanders can seek immediate medical assistance and care for the patient without the fear of legal consequences threatening their freedom.⁶⁶ The patient can be honest and open with first responders to relay information about their overdose without incriminating themselves.⁶⁷

Some states immunize bystanders, but only those who provide assistance to the patient experiencing the overdose—such as administering CPR or monitoring breathing.⁶⁸ This hinders the goal of GSOLs by excluding anyone who is unable to assist for any reason. For example, if a bystander's disability prevents them from providing aid, they will not be protected.⁶⁹ If someone is under the effects of opioids that prevent them from providing effective aid but is not technically experiencing an overdose, they will not be protected.⁷⁰ The bystander approach utilized in the Model GSOL is effective because it maximizes the number of people who are willing to assist the patient and save their life.⁷¹

2. Caller and Patient Immunity Approach

The most common approach to immunizing individuals is to protect only the caller and patient.⁷² This excludes every other person at the scene from protection, regardless of their efforts to save the patient's life. This issue is exemplified by *State v. Jackson*, where Christine Jackson saved her boyfriend's life but did not make the call to 911 herself.⁷³ When she noticed him overdosing while travelling, she immediately instructed the driver to pull over and call 911.⁷⁴ Christine successfully performed CPR until first responders arrived, which saved her boyfriend's life but prevented her from dialing the phone.⁷⁵ Because she was not the caller, the trial court denied her immunity and convicted her of possession of a controlled substance.⁷⁶

65. NAT'L HARM REDUCTION COAL., *supra* note 48.

66. Schill, *supra* note 34, at 156 n.201.

67. *Id.*

68. See MINN. STAT. § 604A.05 (2024); TENN. CODE ANN. § 63-1-156 (2023).

69. See N.M. STAT. ANN. § 30-31-27.1 (2019).

70. See MD. CODE ANN., CRIM. PROC. § 1-210 (West 2023).

71. NAT'L INST. ON DRUG ABUSE, *supra* note 64.

72. See ARK. CODE ANN. § 20-13-1704 (2024); FLA. STAT. § 893.21 (2024); MONT. CODE ANN. § 50-32-609 (2021); OR. REV. STAT. § 475.898 (2017).

73. 356 So.3d 1063, 1065 (La. 2022).

74. *Id.*

75. *Id.*

76. *Id.*

Dialing the phone does not necessarily mean that a caller provided more assistance than other bystanders—yet the caller is the only person other than the patient who will be immunized under this approach.⁷⁷

3. Caller-Only Immunity Approach

The Caller-Only Approach forces the potential caller to guess whether the incapacitated patient would rather risk criminal punishment or risk death in the hopes that the overdose symptoms subside.⁷⁸ When people seek medical assistance for an overdose, they are generally concerned for the patient as well as themselves.⁷⁹ In many cases, the caller was uninvolved in the overdose situation and was simply concerned for a person they observed experiencing an overdose.⁸⁰ For example, in *State v. Mercier*, three separate people called 911 to report the overdose patient lying unconscious in a roadway.⁸¹ In a state that used the Caller-Only Approach, all three of these callers would be immunized—but not the patient who actually experienced the overdose.⁸² If a patient is not immunized by a GSOL, they can still be punished using any evidence that was found during the overdose event.⁸³

The Model Approach is the most effective because it provides immunity to everyone at the scene—callers, patients, and bystanders—encouraging immediate medical assistance without fear of legal consequences.⁸⁴ This inclusivity maximizes the chances of saving lives by ensuring that all individuals feel safe to act regardless of their ability to assist. Let's return to the story of Michael York, the boy whose friends abandoned him in an alleyway after he experienced an overdose.⁸⁵ The model approach would have immunized Michael and all three of his friends, empowering them to feel safe seeking medical assistance and saving Michael's life.⁸⁶ Immunizing bystanders removes barriers that

77. *Id.*

78. *See generally id.* (describing how Michael Kelly lost consciousness during his overdose before he could ask for help, but his girlfriend chose to put both of their freedoms at risk and seek medical assistance to save his life).

79. Koester, *supra* note 27.

80. *Id.*

81. 349 Ga. App. 536, 537 (2019).

82. *Id.*; *see* OKLA. STAT. tit. 63, § 2-413.1 (2018).

83. *See* H.B. 1694, 87th Leg., Reg. Sess. (Tx. 2021) (describing the consequences of being unprotected by a state's GSOL).

84. MD. CODE ANN., CRIM. PROC. § 1-210 (West 2023) (immunizing anyone who “in good faith, seeks, provides, or assists with the provision of medical assistance”).

85. Smith, *supra* note 1.

86. *Id.*

discourage seeking medical assistance and prioritizes survival over potential legal risks.⁸⁷

B. Method of Immunization

There are three general approaches that states use when defining their GSOL's method of immunization. Many states provide immunity limited to certain stages of the criminal process, which can cause confusion, delays, and reduced trust in GSOLs.⁸⁸ Some states decriminalize specified offenses for people who meet statutory criteria, which is easier for laypeople to understand but is limited to offenses explicitly outlined in the GSOL.⁸⁹ The Model Approach excludes all evidence authorities obtained as a result of seeking medical assistance.⁹⁰ This ensures that the GSOL is applied effectively and evenly across all circumstances to protect everyone who needs immunity.

1. Model Approach: Exclusion of Evidence

The Model GSOL's immunization method renders any evidence obtained as a result of seeking medical assistance for the overdose as inadmissible in any legal proceedings.⁹¹ If there is no admissible evidence to support initiating the proceeding, then there are no offenses that can be proven beyond a reasonable doubt.⁹² This is different from a Fourth Amendment exclusion analysis.⁹³ GSOLs “ask a different question: why were officers at the scene in the first place? If they were there solely as a result of a call for emergency medical assistance, the caller and recipients(s) of assistance are immune . . . whatever evidence might properly have been seized.”⁹⁴

Iowa uses this approach and even prosecutors who argue against extending immunity support it.⁹⁵ One man in Iowa saved his wife's life

87. CDC OVERDOSE PREVENTION, *supra* note 23 (listing the most common reasons that bystanders did not intervene during a fatal overdose).

88. N.C. GEN. STAT. § 90-96.2 (2023); ARK. CODE ANN. § 20-13-1704 (West 2024); N.J. STAT. ANN. § 2C:35-30 (West 2013).

89. MICH. COMP. LAWS § 333.7403 (2017); NEB. REV. STAT. § 28-472 (2017).

90. *See infra* Part II.B.4.

91. *See* IOWA CODE ANN. § 124.418 (West 2018).

92. *In re Winship*, 397 U.S. 358, 362 (1970) (establishing that a person cannot be convicted unless the evidence proves guilt beyond a reasonable doubt).

93. *Gerety v. State*, 249 Md. App. 484, 505 (Md. Ct. Spec. App. 2021).

94. *Id.*

95. Tyler J. Davis, *This Has the Potential to Save Lives': Experts Seek Awareness of Iowa's Good Samaritan Overdose Law*, DES MOINES REG.,

during her overdose by performing CPR and directing a bystander to call 911.⁹⁶ Law enforcement used this overdose as an opportunity to obtain a warrant to search their home, where officers discovered controlled substances and arrested the man for possession with intent to deliver.⁹⁷ When the court granted him immunity and suppressed the evidence, the county prosecutor stated in an interview that although her office lost the case, “this shows the law is working as intended.”⁹⁸ This approach is an effective way to inform people that their state’s GSOL fully protects any information and observations that they share with first responders.

2. Criminal Stage Immunity Approach

The most common method of protection is to immunize certain stages of the criminal process. Six states only immunize prosecution, so even protected people can still be arrested and charged.⁹⁹ Other states offer combinations of stages; immunizing arrest, charge, prosecution, or conviction.¹⁰⁰ Only four states immunize all stages.¹⁰¹ The primary issue with the Criminal Stage Immunity Approach is that it will confuse many potential callers, frustrating the goals of an effective GSOL.¹⁰² The average person likely does not understand the differences between these stages of the criminal process.¹⁰³ These terms and processes are confusing, and trying to understand them delays seeking medical assistance in a situation where every second counts.¹⁰⁴

The most common reason people delay or refuse to seek medical assistance during an overdose is fear of criminal punishment and police involvement.¹⁰⁵ Arrest is the most visible stage of the criminal process to

<https://www.desmoinesregister.com/story/news/crime-and-courts/2019/08/25/meth-in-iowa-drug-use-opioids-good-samaritan-law-ashley-shafer-oskaloosa-department-public-health/2078020001> (last updated Aug. 27, 2019).

96. *Id.*

97. *Id.*

98. *Id.*

99. See ALA. CODE § 20-2-281 (2015); ALASKA STAT. § 11.71.311 (2019); N.C. GEN. STAT. § 90-96.2 (2023); TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West 2023); WIS. STAT. § 961.443 (2017).

100. See FLA. STAT. § 893.21 (2024) (immunizing the arrest, charging, and prosecution stages); N.D. CENT. CODE § 19-03.1-23.4 (2019) (immunizing the charging and prosecution stages).

101. MO. REV. STAT. § 195.205 (2017); NEV. REV. STAT. § 453C.150 (2019); N.J. STAT. ANN. § 2C:35-30 (West 2013); OHIO REV. CODE ANN. § 2925.11 (West 2023).

102. Schill, *supra* note 34, at 123.

103. *Id.* at 149.

104. Rees, *supra* note 46, at 7.

105. Miller, *supra* note 8, at 356.

the general public, so it is vital to handle it delicately.¹⁰⁶ If bystanders see immunized people still being arrested during an overdose, they are unlikely to trust or use a GSOL in the future.¹⁰⁷ States that immunize against arrest achieved 10% lower rates of opioid overdose deaths only two years after enactment.¹⁰⁸ In the same study, GSOLs that immunized only against charge, prosecution, or sentence mitigation “were not associated” at all with overdose mortality within those two years.¹⁰⁹ These results suggest that immunizing against arrest “may be more effective in reducing fear about contacting emergency medical services and may facilitate salutatory interactions” with first responders.¹¹⁰ Immunizing certain stages of the criminal process can also lead to unnecessary litigation, wasted resources, and reduced trust in the GSOL’s protection.¹¹¹

3. Decriminalization Approach

Decriminalization removes the possibility of criminal punishment for committing a crime.¹¹² This means that the offense remains unlawful, but the criminal justice system will not punish an immunized person for violating that specific statute.¹¹³ Because the offense is decriminalized, there is no basis for law enforcement to commence the criminal process.¹¹⁴ This approach is an effective way to ensure that a person will not be punished for the specific crime, but it is necessarily limited to the specific offenses that have been decriminalized.¹¹⁵ GSOLs that use this approach must explicitly list every offense that may be decriminalized.

In *People v. Meeker*, the court used this approach when Thomas Meeker experienced an overdose and his mother called 911.¹¹⁶ When law enforcement arrived, they found a controlled substance in his possession and charged him with possession of methamphetamine.¹¹⁷ The court granted Thomas immunity by ruling that under the circumstances of

106. Hamilton, *supra* note 9, at 8.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 9.

111. Egan, *supra* note 17, at 13.

112. *The Difference Between the Decriminalization and Legalization of Substances*, ACLU WASH. (Feb. 3, 2023), <https://www.aclu-wa.org/story/difference-between-decriminalization-and-legalization-substances%C2%A0>.

113. *Id.*

114. *Id.*

115. See MONT. CODE ANN. § 50-32-609 (2021); W. VA. CODE § 16-47-5 (2018).

116. 986 N.W. 2d 622, 624 (Mich. App. 2022).

117. *Id.*

Thomas's overdose, the offense was decriminalized and he did not violate the law.¹¹⁸ The Decriminalization Approach effectively immunized Thomas against his charged offense, but his state's GSOL only decriminalizes the possession of a controlled substance.¹¹⁹ Thomas could have still been criminally punished for purchasing the controlled substance, being under its influence, or any other offense. This approach can be an effective method of immunizing the crimes that are included, but people will only be immunized against offenses that the legislature has identified and listed in their statute.

4. Additional Protection for Penalization and Other Legal Proceedings

Many GSOLs include language about penalization for additional types of legal proceedings, including parole violations, protective orders, outstanding warrants, and others. These legal proceedings can carry heavy consequences for violations, and present additional barriers to GSOL immunity.¹²⁰ A study of Colorado's GSOL found that even people who received overdose response training "would rarely call for emergency assistance because they felt that they would end up arrested based on other reasons" such as outstanding warrants and violations of probation.¹²¹ When people are functionally excluded from using the protection of a GSOL, that protection is essentially useless.¹²²

States have taken varied approaches to immunizing against penalization for additional legal proceedings, even within analogous cases. A man in Maryland who was found experiencing an overdose was arrested on separate outstanding warrants. During the arrest, officers discovered controlled substances in his possession.¹²³ The Maryland court held that "because the police were present at the scene and discovered the evidence supporting the charges 'solely as a result' of a call for medical assistance" the defendant was immune.¹²⁴ However, a man in Florida was denied immunity under the same circumstances, because "[o]nly after they had arrested him did they find the contraband. In our view, the outstanding warrant was an intervening, superseding cause severing any causal

118. *Id.*

119. MICH. COMP. LAWS § 333.7403 (2017).

120. *Noble v. State*, 189 A.3d 807, 809–10, 819 (MD. App. 2018) (vacating defendant's probation revocation related to his overdose).

121. *Hamilton*, *supra* note 9.

122. *State v. Waiters*, 347 So. 3d 533, 540 (Fl. Dist. Ct. App. 2022) (refusing immunity to an overdose victim because he had an outstanding warrant).

123. *Gerety v. State*, 249 Md. App. 484, 494 (Md. Ct. Spec. App. 2021).

124. *Id.* at 492.

connection to Mr. Waiters' seeking medical assistance."¹²⁵ Limiting immunity against penalizations for legal proceedings to certain circumstances and legal statuses reduces the number of potential callers who feel safe to seek medical assistance during an overdose.¹²⁶ For states that utilize the Criminal Stage Immunity or Decriminalization Approaches, expanding their GSOL to include additional legal proceedings will remove these barriers.

The Model Approach of excluding evidence is the most effective because it eliminates the root concern—fear of legal consequences—by rendering evidence obtained as a result of the overdose as inadmissible in court.¹²⁷ This ensures comprehensive protection for everyone involved and fosters trust in the GSOL's intent to prioritize saving lives over punishment. If Michael York's overdose occurred in a state that used the Model Approach, his friends could have had confidence that they were fully protected from criminal punishment and felt safe seeking medical assistance.¹²⁸ Unlike approaches that rely on complex legal distinctions or partial immunity, the Model Approach provides clear, all-encompassing safeguards that encourage people to act without hesitation in overdose emergencies.

C. Immunized Offenses

There are three approaches states use to determine which offenses are immunized by the GSOL, and which offenses must still result in criminal punishment. Most states list specific immunized offenses, excluding all other offenses from protection.¹²⁹ For example, Maine instead lists specific offenses that are *excluded* from GSOL immunity, with all others immunized.¹³⁰ Some states offer sentence mitigation for additional offenses, which allows for some protection for unforeseen circumstances not listed in the statute.¹³¹ However, the Model GSOL's exclusion of evidence outlined above eliminates this need for lists of included or excluded offenses.

125. *Waiters*, 347 So. 3d at 540.

126. Hamilton, *supra* note 9.

127. Miller, *supra* note 8, at 356 (explaining why GSOLs are necessary).

128. See Smith, *supra* note 1.

129. See ALA. CODE § 20-2-281 (2015); IDAHO CODE § 37-2739C (2018); KAN. S.B. NO. 419 (2023).

130. ME. STAT. tit. 17, § 1111-B (2024).

131. See VT. STAT. ANN. tit. 18, § 4254 (West 2017).

1. Model Approach: Exclusion of Evidence

The Model GSOL's immunization method of excluding evidence renders this component unnecessary.¹³² This exclusion of evidence applies to all offenses equally, so it is not necessary to define a list of included or excluded offenses. This is an efficient and effective way to communicate that the immunized person is fully protected from punishment.

2. Inclusive List Approach

Most GSOLs include a list of specific offenses that may be immunized by the statute.¹³³ This inclusive list approach makes it explicitly clear which offenses are immunized in each state. However, it is difficult to predict and include every offense that might arise during an overdose. This can exclude people from being protected by their state's GSOL if an offense is not explicitly listed in the statute. Some courts have attempted to address this by adding additional offenses that they deem appropriate.¹³⁴ While this is a valiant effort to protect the people in their state, it also causes additional confusion about which offenses the GSOL immunizes.

When people are unsure which offenses they can be punished for, they are likely to err on the side of caution and hide evidence.¹³⁵ This occurred in *Pope v. State*, where Thomas Pope saved his friend's life when she overdosed, but was scared to interact with the first responders.¹³⁶ When Ashley began to overdose, Thomas immediately called 911 and cooperated with the operator over the phone.¹³⁷ After hanging up, Thomas moved Ashley to the front porch and attempted to hide the controlled substances and paraphernalia within the home.¹³⁸ When first responders arrived, he

132. See IOWA CODE ANN. § 124.418 (West 2018).

133. See HAW. REV. STAT. § 329-43.6 (2015); UTAH CODE ANN. § 58-37-8 (West 2024); KY. REV. STAT. ANN. § 218A.133 (West 2024).

134. *Shuey v. State*, No. 0117, 2016 WL 3613391 at *8 (Md. Ct. Spec. App. 2016) (immunizing the possession of drug paraphernalia because “plainly, C.P. § 1-210 cannot be given full effect if Shuey’s prosecution under C.L. § 5-620 for possession of paraphernalia—conduct identical to that immune from prosecution under C.L. § 5-619—is upheld”).

135. *City of Akron v. Pari*, No. 29029, 29030, 2019 WL 1387882 at *3 (Ohio Ct. App. 2019) (Teodosio, J., concurring) (“as written and enforced [Ohio’s GSOL] deters individuals from immediately calling 911 when confronted with an overdose situation. It also results in delayed reporting, because in order to avoid prosecution the caller is compelled to first remove any paraphernalia from the scene.”).

136. 246 So. 3d 1282, 1282–83 (Fla. Dist. Ct. App. 2018).

137. *Id.* at 1283.

138. *Id.*

refused to let them inside and even denied knowing Ashley.¹³⁹ Thomas met all of his state's criteria to receive immunity, yet he still felt the need to protect himself further and hide evidence.¹⁴⁰ It is difficult to predict and list every offense that may arise during a drug overdose, and equally difficult to predict the nuances behind prosecuting each unique case.¹⁴¹ This approach only provides immunization for offenses that the legislature has predicted and approved, and leaves all other offenses unprotected.

3. Exclusive List Approach

Maine takes a unique approach to immunizing offenses. Maine's GSOL lists a group of *excluded* crimes that are not immunized by the state, and immunizes every other offense connected with the overdose.¹⁴² This exclusive list approach effectively communicates that Maine's GSOL immunizes the vast majority of offenses. Ideally, a potential caller will quickly skim the list to confirm that they are not committing any excluded offenses, and then will seek medical assistance. Maine's list of excluded offenses all involve causing intentional and significant harm to another person, including offenses like assault, child endangerment, and sexual crimes.¹⁴³

There are several issues with this exclusive list approach. First, as discussed with the inclusive list approach, it is impossible to predict every offense that might arise during an overdose and how that offense might affect the outcome. Second, even these excluded offenses can present GSOL issues. Overdose death rates for pregnant and postpartum people "soared significantly" between 2018–2021.¹⁴⁴ Disclosing drug use as a parent "might result in your child being taken away, so there is a lot of stigma beyond just the standard amount of stigma you get."¹⁴⁵

Excluded offenses can also result in victims of the crime being withheld from treatment to protect the perpetrator. This exact scenario resulted in the brutal killing of a 17-year-old girl who was sexually assaulted during her overdose.¹⁴⁶ After raping her, the defendant refused to

139. *Id.*

140. *Id.*

141. *See id.*

142. ME. STAT. tit. 17, § 1111-B (2024).

143. *Id.*

144. Sabrina Malhi, *Overdose Deaths Have Soared Among Pregnant People, Study Reveals*, WASH. POST (Nov. 22, 2023), <https://www.washingtonpost.com/health/2023/11/22/overdose-pregnancy-opioids>.

145. *Id.*

146. *State v. Lisa*, 919 A.2d 145, 147–48 (N.J. Super. Ct. App. Div. 2007).

call 911 for fear of liability and instead tried a myriad of alternative methods to revive his victim.¹⁴⁷ He slapped her, threw water on her, put ammonia under her nose, then finally decided to “prop her up” as she spasmed while he played video games.¹⁴⁸ Twelve hours after the overdose and assault, a bystander finally called 911.¹⁴⁹ First responders were able to briefly revive and transport her to the hospital, where a sexual assault exam revealed “by far the most injuries [the experienced nurse examiner had] ever seen on one person after a report of an assault.”¹⁵⁰ She passed away in the hospital shortly after.¹⁵¹ While it may feel wrong to protect someone who committed sexual assault, it is also wrong to let victims suffer and die at the hands of their abusers.

4. Mitigation for Additional Offenses

Some states offer a mitigating factor during sentencing for offenses that are not immunized by the GSOL.¹⁵² Mitigating factors are used at a court’s discretion to reduce the severity of a sentence, but do not acquit the person completely.¹⁵³ This allows states to extend their GSOL’s protection to immunize additional offenses that are not listed in the statute.¹⁵⁴ This mitigating factor option provides an additional layer of protection that ensures that potential callers feel safe to seek medical assistance for the patient.¹⁵⁵ For states that use the inclusive list approach, offering a mitigating factor is an effective way to protect people from circumstances that the promulgating legislators may not have considered.

The Model Approach, by excluding all evidence obtained as a result of seeking medical assistance, is the most effective approach because it provides comprehensive and unequivocal protection.¹⁵⁶ Unlike the list-based approaches, it eliminates confusion over which offenses are covered and ensures that people feel safe to seek medical assistance. Michael York’s friends would not have needed to worry about which offenses they may

147. *Id.* at 148.

148. *Id.*

149. *Id.* at 149.

150. *Id.*

151. *Id.* at 150.

152. ARIZ. REV. STAT. ANN. § 13-3423 (2018); 21 R.I. GEN. LAWS § 28.9-4 (2018).

153. Schill, *supra* note 34, at 151.

154. *Id.*

155. Danny R. Veilleux, *Construction and Application of ‘Good Samaritan’ Statutes*, 68 A.L.R. 4th 294 (1989).

156. *See supra* Part II.

have committed, or whether all of those offenses are immunized.¹⁵⁷ By focusing on encouraging timely medical intervention without fear of punishment, the Model Approach maximizes life-saving responses and reduces overdose-related fatalities.

D. Restrictions on Immunity Eligibility

Most current GSOLs include restrictions and criteria that limit the people and circumstances that are eligible for immunity.¹⁵⁸ These states exclude potential callers and patients who are fully capable of seeking and obtaining medical assistance.¹⁵⁹ This deters people from saving lives during an overdose, particularly frequent overdose victims and bystanders, undermining the purpose of the GSOL itself.¹⁶⁰ States should amend their GSOL to eliminate these unnecessary restrictions and ensure that the statute fully achieves its purpose of saving lives without creating barriers to seeking medical assistance.

1. Good Faith Requirements

Almost all current GSOLs require the immunized person to act in good faith.¹⁶¹ This means that the person must seek medical assistance with the intention of saving the patient's life and not solely the intention of getting legal immunity for breaking the law.¹⁶² Some states specify that GSOL immunity is not available during the execution of a warrant or lawful search.¹⁶³ This is an example of a restriction that effectively limits any potential abuse of GSOLs without hindering their goal of saving lives.

2. Restrictions that Exclude Potential Callers and Patients

Some states deny immunity to anyone who meets certain criteria. Four states cap the number of times that a person can use GSOL immunity,

157. See Smith, *supra* note 1.

158. See IND. CODE § 16-42-27-2 (2023); TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West 2023).

159. *People v. O'Malley*, 183 N.E.3d 928, 939 (2021) (emphasizing that while multiple bystanders could provide more effective medical assistance by working together, the statute required each person to individually prove their good faith intention).

160. Schill, *supra* note 34, at 138 n.106.

161. E.g., DEL. CODE ANN. tit. 16, § 4769 (2013); GA. CODE ANN. § 16-13-5 (2024).

162. *Good Faith*, BLACK'S LAW DICTIONARY (9th ed. 2009); see *State v. Gill*, 642 S.W. 3d 356, 363 (2022) (denying GSOL immunity for a defendant who delayed seeking medical assistance for hours while he concealed evidence).

163. See MO. REV. STAT. § 195.205 (2017).

regardless of whether they were a patient, caller, or bystander.¹⁶⁴ Texas excludes every person who “at any time during the 18-month period preceding [the overdose] requested emergency medical assistance in response to the possible overdose of the actor or another person.”¹⁶⁵ This forces people to ask whether this overdose is severe enough to relinquish their chance of immunity in the future, especially if calling on another person’s behalf.¹⁶⁶ A 2023 study found that 13.5% of overdose decedents had experienced prior overdoses, with 3.5% occurring within a month of the fatal overdose.¹⁶⁷ GSOLs with use restrictions only serve to exclude the people who need their protection most.

Several states restrict immunity to people who reasonably believe that they are the first to call for medical assistance.¹⁶⁸ In Iowa, only the *actual* first person to seek medical assistance is immunized regardless of their knowledge or belief.¹⁶⁹ This means that a caller could take all of the right steps to save a patient’s life and obtain immunity, but if another person called first then the second caller is not immunized. Restrictions like these diminish the efficacy of a state’s GSOL by needlessly removing people from its protection. All of these excluded people are capable of seeking medical assistance and saving a life, and we should not punish them for doing so.

3. Restrictions that Require Callers to Complete Specific Actions

Many states require people to perform certain actions to be eligible for immunity, such as remaining at the scene until medical assistance arrives.¹⁷⁰ Three require the person to provide their name, contact information, or identification.¹⁷¹ If the person is afraid to have this information on record, sharing the required details could be incriminating. Identification requirements also render the GSOL useless to groups like undocumented

164. See IOWA CODE ANN. § 124.418 (West 2018) (once); OHIO REV. CODE ANN. § 2925.11 (West 2023) (twice); TENN. CODE ANN. § 63-1-156 (2023) (once); TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West 2023) (twice in 18 months).

165. TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West 2023).

166. Schill, *supra* note 34, at 138 n.106.

167. CDC OVERDOSE PREVENTION, *supra* note 23.

168. See ALA. CODE § 20-2-281 (2015); N.C. GEN. STAT. § 90-96.2 (2023).

169. IOWA CODE ANN. § 124.418 (West 2018).

170. *E.g.*, NEB. REV. STAT. § 28-472 (2017); 35 PA. CONS. STAT. § 780-113.7 (2014); VA. CODE ANN. § 18.2-251.03 (2021).

171. *E.g.*, OKLA. STAT. tit. 63, § 2-413.1 (2018); ALASKA STAT. § 11.71.311 (2019); COLO. REV. STAT. § 18-1-711 (2023).

immigrants, who are aware of the likelihood of deportation and other immigration punishments.¹⁷²

Several states restrict immunity unless the person cooperates with first responders, with three requiring them to provide all of the relevant information that they possess.¹⁷³ Disclosing this information to law enforcement requires a level of trust that many people who use drugs do not have.¹⁷⁴ Further, people are not always aware of which drugs they are consuming.¹⁷⁵ In *State v. Borgquist*, a district court denied Christopher Borgquist immunity because he only disclosed two of the three substances that the patient consumed, leaving out the substance that carries the harshest criminal penalties.¹⁷⁶ The district court ruling, which was later overturned, interpreted the GSOL as “compelling immediate disclosure of all known or possibly known intoxicants ingested by the overdose victim.”¹⁷⁷

Two states require the patient who experienced the overdose to receive treatment for a Substance Use Disorder (SUD).¹⁷⁸ Ohio only protects patients who obtain a screening and referral for SUD treatment within 30 days of their overdose.¹⁷⁹ West Virginia is even more strict and requires the patient to participate in, comply with, and complete a SUD treatment or recovery program.¹⁸⁰ The goal of encouraging people to seek treatment is certainly commendable and this requirement is preferable to criminal punishment. However, people may not be willing or able to comply with the requirement to seek treatment.¹⁸¹ For example, Andrew Melms experienced an overdose and met all other requirements to be immunized.¹⁸² However, he had unrelated traffic and civil court issues that

172. See *Hussein v. Att’y Gen. of the U.S.*, 413 F. App’x 431 (2010) (allowing the deportation for possessing drug paraphernalia while under an expired visa).

173. E.g., DEL. CODE ANN. tit. 16, § 4769 (2013); IND. CODE § 16-42-27-2 (2023); S.B. 419, 90th Leg., Reg. Sess. (Kan. 2023); OKLA. STAT. tit. 63, § 2-413.1 (2018); UTAH CODE ANN. § 58-37-8 (West 2024); W. VA. CODE § 16-47-5 (2018).

174. Miller *supra* note 8, at 356.

175. See David Ovalle, *Artist’s Death Spotlights Peril Posed by Xylazine-Fentanyl Mix*, WASH. POST (Apr. 30, 2023) <https://www.washingtonpost.com/health/2023/04/30/xylazine-fentanyl-overdose-deaths> (explaining that new drug mixes are found every few weeks).

176. 7 N.W. 3d 145, 147–48, 152 (2024).

177. *Id.* at 152.

178. OHIO REV. CODE ANN. § 2925.11 (West 2023); W. VA. CODE § 16-47-5 (2018).

179. OHIO REV. CODE ANN. § 2925.11 (West 2023).

180. W. VA. CODE § 16-47-5 (2018).

181. See David Hampton, *Cost of Drug and Alcohol Rehab*, ADDICTIONCTR., <https://www.addictioncenter.com/rehab-questions/cost-of-drug-and-alcohol-treatment/> (last visited May 21, 2025) (listing the average cost and length of SUD treatment).

182. *State v. Melms*, 101 N.E. 3d 747, 751 (2018).

left him incarcerated for 33 days immediately following his overdose.¹⁸³ He began treatment 6 days after he was released, but the court denied immunity stating: “Melms seemingly was an ideal candidate for immunity, but for the clear and unambiguous 30-day window set forth by the legislature.”¹⁸⁴

The Model GSOL avoids unnecessary restrictions to ensure that it fulfills its primary purpose: saving lives. By emphasizing good faith and limiting restrictions that exclude or burden potential callers, the Model GSOL minimizes fear and maximizes the likelihood of timely medical intervention. Requirements like identification and treatment participation introduce legal consequences that deter seeking medical assistance, especially for vulnerable groups.¹⁸⁵ The Model GSOL’s simplicity and focus on intent, not procedural hurdles, creates the most clear and effective path to reducing overdose deaths.

E. Definitions

It is important to explicitly define terms within a GSOL to ensure that the statute covers all potential overdose scenarios and provides clarity for those seeking medical assistance. The definition should use flexible, broad provisions to avoid the pitfalls of unnecessary exclusions that can result from rigid or narrowly defined terms.¹⁸⁶ A flexible definition ensures that people are not inadvertently excluded from protection due to misunderstandings about the cause of an overdose, the qualifications of the person providing medical assistance, or the method used to seek help. Such a definition would foster more immediate, effective responses without fear of legal consequences, ultimately saving lives.

1. Drug Overdose

States typically define drug overdoses based on two criteria: (1) the symptoms that the person is experiencing; and (2) the causation of the medical event.¹⁸⁷ Many states define “drug overdose” by listing symptoms and analyzing whether those symptoms align with the medical event in question.¹⁸⁸ However, analyzing symptoms to make a medical diagnosis is

183. *Id.*

184. *Id.* at 758.

185. See Miller, *supra* note 8, at 356.

186. Trafton, *supra* note 54.

187. See generally *supra* Part II.

188. See GA. CODE ANN. § 16-13-5 (2024); MICH. COMP. LAWS § 333.7403 (2017); NEB. REV. STAT. § 28-472 (2017).

not the same as analyzing factors of a legal test. In *State v. Rowe*, the trial court illustrated this distinction when it refused to grant Qwandarious Rowe immunity because he only experienced two of the six symptoms that the court identified as signs of an overdose.¹⁸⁹ As the appellate court later stated when overturning the decision, “[t]here is no indication that the medical records stated that a person must experience all—or even a majority—of the enumerated symptoms in order to be deemed having suffered an overdose.”¹⁹⁰ The status and severity of an overdose is a medical diagnosis that must be made by medical professionals.

Some states require that the person’s condition is the actual result of using a controlled substance.¹⁹¹ However, not every drug overdose is caused by a controlled substance.¹⁹² Several states attempt to address this by including alcohol,¹⁹³ noncontrolled prescription drugs,¹⁹⁴ dangerous drugs,¹⁹⁵ counterfeit substances,¹⁹⁶ analog controlled substances,¹⁹⁷ or “look-alike” substances.¹⁹⁸ These additions show that limiting the definition of “drug overdose” will exclude people whose consumed drug is not controlled by the state. For example, if someone experienced an overdose of ibuprofen—a popular non-prescription pain relief medication that can cause overdose symptoms similar to opioids—a rigid, limited definition in a GSOL would not protect them.¹⁹⁹

Some states use a more flexible definition by including conditions that a reasonable layperson could believe to be a drug overdose that requires medical assistance.²⁰⁰ This expands the GSOL’s protection to every drug overdose, regardless of which drug caused it. A flexible definition supports the goals of enacting GSOLs because bystanders are unlikely to accurately identify the cause and severity of an overdose; however, they are very likely to understand the danger of being criminally punished if they alert

189. 354 So. 3d 1187, 1196 (La. 2022).

190. *Id.*

191. See e.g., N.Y. PENAL LAW § 220.78 2 (McKinney 2021); TENN. CODE ANN. § 63-1-156 (West 2023).

192. Michael S. Wolf et al., *Risk of Unintentional Overdose with Non-Prescription Acetaminophen Products*, J. GEN. INTERNAL MED., May 16, 2012, at 1588.

193. CAL. HEALTH & SAFETY CODE § 11376.5 (West 2024); MO. REV. STAT. § 195.205 (2017).

194. DEL. CODE ANN. tit. 16, § 4769 (2013).

195. GA. CODE ANN. § 16-13-5 (2024).

196. 720 ILL. COMP. STAT. 570/414 (West 2022).

197. MICH. COMP. LAWS § 333.7403 (2017).

198. 720 ILL. COMP. STAT. 570/414 (West 2022).

199. R.B. Easley & W.A. Altemeier, *Central Nervous System Manifestations of an Ibuprofen Overdose Reversed by Naloxone*, 16 PEDIATRIC EMERGENCY CARE 39, 40–41 (2000).

200. See IOWA CODE ANN. § 124.418 (West 2018); N.H. REV. STAT. ANN. § 318-B:28-b (2021).

law enforcement by calling for medical assistance.²⁰¹ Regardless of the drug that caused the condition, drug overdoses require medical assistance and should be included in a GSOL statute. For these reasons, this is the approach used in the Model GSOL.²⁰²

2. Medical Assistance

Definitions of “medical assistance” often contain two components: (1) the type and scope of service provided and; (2) the qualifications of the person providing it.²⁰³ Two states only require the person to provide some level of “aid,”²⁰⁴ but four require that the person provide “professional services.”²⁰⁵ Arizona’s definition takes the strictest approach for this component by requiring the person to provide “diagnosis, treatment or other medical service[s].”²⁰⁶ Several states additionally require that the person is “acting within his or her lawful scope of practice.”²⁰⁷

Many states require that the person is a licensed, registered, or certified health care professional,²⁰⁸ and some additionally require that the license, registration, or certification be from the state where the overdose occurred.²⁰⁹ In other words, GSOL protections do not extend to situations where medical assistance was provided by someone whose license is from another state or has recently lapsed. Several states require that the person must be capable of providing diagnosis, treatment, or emergency services.²¹⁰ Pennsylvania, for example, increases the availability of medical assistance by including “a trained volunteer or a member of the armed forces of the United States or the National Guard, whose official or assigned responsibilities include performing or directly supporting the performance of emergency medical and rescue services or firefighting.”²¹¹

201. O’Brien, *supra* note 38, at 1066.

202. *See infra* Part III.

203. *See supra* Part II.

204. *See* ARIZ. REV. STAT. ANN. § 13-3423 (2018); GA. CODE ANN. § 16-13-5 (2024); ME. STAT. tit. 17, § 1111-B (2024).

205. *See* DEL. CODE ANN. tit. 16, § 4769 (2013); N.H. REV. STAT. ANN. § 318-B:28-b (2021); N.Y. PENAL LAW § 220.78 2 (McKinney 2021); VT. STAT. ANN. tit. 18, § 4254 (West 2017).

206. ARIZ. REV. STAT. ANN. § 13-3423 (2018).

207. *E.g.*, GA. CODE ANN. § 16-13-5 (2024); MISS. CODE ANN. § 41-29-149.1 (2016); N.Y. PENAL LAW § 220.78 9 (McKinney 2021); VT. STAT. ANN. tit. 18, § 4254 (West 2017).

208. *See* DEL. CODE ANN. tit. 16, § 4769 (2013); N.H. REV. STAT. ANN. § 318-B:28-b (2021).

209. *See* GA. CODE ANN. § 16-13-5 (2024); MISS. CODE ANN. § 41-29-149.1 (2016).

210. *E.g.*, N.H. REV. STAT. ANN. § 318-B:28-b (2021); DEL. CODE ANN. tit. 16, § 4769 (2013).

211. 35 PA. CONS. STAT. § 780-113.7 (2014).

3. Seeking Medical Assistance

Definitions of “seeking medical assistance” can often be broken into three components: (1) the type of communication, (2) the person or entity to contact, and (3) additional actions that meet the definition. For the first component, most states use the language of “reporting” or “contacting” the appropriate source of assistance.²¹² For example, California offers the most broad definition by including “any communication made verbally, in writing, or in the form of data from a health-monitoring device.”²¹³ Restricting the type of communication that will grant immunity only excludes people from protection. If medical assistance is effectively contacted, the method of that communication is irrelevant.

Most states include calling 911—the national emergency call number—in their definition of seeking medical assistance.²¹⁴ However, as addressed by Wisconsin’s GSOL, there are areas where the 911 telephone number is not available.²¹⁵ Many states include contacting law enforcement or poison control,²¹⁶ and some even immunize callers who contact a medical provider or facility directly.²¹⁷ Tennessee, for example, offers the broadest immunity by including “any person or entity” who can provide care.²¹⁸

Many states include the provision of care while awaiting medical assistance within their definition of seeking medical assistance.²¹⁹ Some states include specific actions that qualify as seeking medical assistance, including giving first aid,²²⁰ administering an opioid overdose-reversing medication,²²¹ or transporting the patient to a health care facility.²²² A broad definition of “seeking medical assistance” encourages callers and

212. *E.g.*, MICH. COMP. LAWS § 333.7403 (2017); NEV. REV. STAT. § 453C.150 (2023); OHIO REV. CODE ANN. § 2925.11 (West 2023); TENN. CODE ANN. § 63-1-156 (2023).

213. CAL. HEALTH & SAFETY CODE § 11376.5 (West 2024).

214. *E.g.*, ARIZ. REV. STAT. ANN. § 13-3423 (2018); GA. CODE ANN. § 16-13-5 (2024); MISS. CODE ANN. § 41-29-149.1 (2016).

215. WIS. STAT. § 961.443 (2017); Michael Muldoon, *Rural Emergency Medical Services: Calling 911 and Getting No Answer*, ADDICTIONCTR., <https://www.addictioncenter.com/news/2020/01/rural-emergency-medical-services> (last updated Nov. 6, 2023).

216. *E.g.*, GA. CODE ANN. § 16-13-5 (2024); MISS. CODE ANN. § 41-29-149.1 (2016).

217. *E.g.*, MO. REV. STAT. § 195.205 (2017); ARIZ. REV. STAT. ANN. § 13-3423 (2018).

218. TENN. CODE ANN. § 63-1-156 (2023).

219. *E.g.*, GA. CODE ANN. § 16-13-5 (2024); MISS. CODE ANN. § 41-29-149.1 (2016); N.H. REV. STAT. ANN. § 318-B:28-b (2021).

220. *E.g.*, ME. STAT. tit. 17, § 1111-B (2024).

221. *Id.*; D.C. CODE § 7-403 (2021).

222. *E.g.*, NEV. REV. STAT. § 453C.150 (2023); OHIO REV. CODE ANN. § 2925.11 (West 2023); WIS. STAT. § 961.443 (2017).

bystanders to assist the patient by expanding the number of people who can help.

III. MODEL GOOD SAMARITAN OVERDOSE LAW

This Article's Model Good Samaritan Overdose Law synthesizes the most effective approaches from existing state statutes to create a comprehensive framework that maximizes life-saving protections. While this Article's model act offers a holistic solution, states can adopt individual provisions to strengthen and expand the protections within their existing laws. By integrating these proven approaches, states can better align their statutes with the ultimate goal of Good Samaritan Overdose Laws—saving lives during overdose emergencies.

SECTION 1. Purpose

- The purpose of this Act is to save lives during drug overdoses by removing the disincentives to seek medical assistance when an overdose occurs. This Act will protect individuals who are experiencing an overdose, and individuals who assist them, from legal action related to the overdose event.

SECTION 2. Immunized Individuals

- This Act immunizes the individual who is experiencing a drug overdose and all individuals who act in good faith to seek, provide, or assist with the provision of medical assistance for the individual experiencing the overdose.

SECTION 3. Method of Immunization

- Any evidence obtained as a result of seeking medical assistance for a person experiencing a drug overdose will be inadmissible in court and shall not be considered to support probable cause for any offense.

SECTION 4. Immunized Legal Proceedings

- Immunized individuals under this Act cannot be arrested, charged, prosecuted, convicted, penalized, or forced to forfeit their lawful property based on evidence that was obtained as a result of seeking medical assistance for a drug overdose. This evidence cannot be used in proceedings regarding the conditions of pre-trial release, probation, parole, furlough, protective orders, deferred dispositions, citations, or other legal proceedings. An individual's presence at the overdose cannot be used to complete an arrest warrant or check an individual's immigration status.

SECTION 5. Definitions

- *Drug Overdose*: A condition requiring medical assistance in which a reasonable layperson of average knowledge could reasonably believe was caused by the use of drugs.

- *Medical Assistance*: Medical aid provided by a health care professional who is qualified to provide such services.
- *Seeking Medical Assistance*: Includes, but is not limited to: contacting medical assistance providers, law enforcement, or other sources of medical assistance; providing care while awaiting the arrival of medical assistance; administering an opioid overdose-reversing medication; or transporting the person to a health care facility.

CONCLUSION

If Michael York's friends had been protected by an effective Good Samaritan Overdose Law (GSOL), they could have safely sought medical assistance and saved his life without fearing punishment for using heroin. Instead, the body of this 17-year-old child was discarded at the foot of a dumpster, thrown out like trash by his own friends.²²³ Lindsey, Nathan, and Jordan were all convicted and sentenced for their role in Michael's death.²²⁴ Michael was a "very outgoing, loving kid" who liked skateboarding, drawing, building model hot-rod cars, and fishing.²²⁵ Despite struggling with his academics and mental health, Michael was on track to graduate high school early.²²⁶ He was killed one week before graduation.²²⁷

In conclusion, GSOLs hold tremendous potential to save lives by encouraging people to seek help during overdose emergencies without fear of legal repercussions.²²⁸ However, to fully realize this potential, states must amend their statutes to eliminate restrictive definitions, excessive limitations, and unnecessary exclusions. By embracing a more inclusive and flexible approach, states can ensure that everyone, regardless of the circumstances or substances involved, is protected when they act in good faith to save a life. Removing barriers that discourage people from seeking medical assistance will make GSOLs more effective. Ultimately, simplifying and expanding these laws will foster a safer environment with a clear goal: prioritizing saving lives and preventing unnecessary deaths from drug overdoses. Every life saved during an overdose is a victory, and by

223. Smith, *supra* note 1.

224. *Id.* Lindsey and Jordan plead guilty to obstruction of justice and were each sentenced to two years' probation, drug treatment, and monetary fines. *Id.* Nathan plead guilty to obstruction of justice as well as controlled substance charges for providing Michael with heroin, and was sentenced to four years of incarceration. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. Hamilton, *supra* note 9.

refining GSOLs, we can give people the courage to act and ensure that no one faces the terror of choosing between saving a life or saving themselves.