

§ 254. Defenses: Overdose.

(a) A person charged with possession of less than 5 grams of a controlled substance, acting in good faith who seeks medical assistance for a drug-related overdose shall be able to raise an affirmative defense to the charge of possession of a controlled substance pursuant to this article, if the evidence for the charge of possession of a controlled substance was obtained as a result of the person seeking medical assistance.

(b) The protection in this section from prosecution for possession of a controlled substance shall not apply, regardless of the weight, to any other criminal charges.

Source: PL 23-11, § 2 (Nov. 7, 2023)

Commission Comment: *Legislative Findings.*—In addition to severability and savings clause provisions, PL 23-11 included the following Findings and Purposes section:

Section 1. Findings and Purposes. The Legislature intends to save lives by increasing timely medical attention to drug overdose victims through the establishment of limited immunity from prosecution for people who seek medical assistance in a drug overdose situation. Drug overdose is the leading cause of unintentional injury death in the United States, ahead of motor vehicle-related deaths. Drug deaths in the United States, which fell for the first time in 25 years in 2018, rose to record numbers in 2019 and are continuing to climb, a resurgence that is being complicated and perhaps worsened by the coronavirus pandemic.

Nearly 72,000 Americans died from drug overdoses in 2019, according to preliminary data released Wednesday by the Centers for Disease Control and Prevention — an increase of 5 percent from 2018. Drug deaths have risen an average of 13 percent so far this year over last year, according to mortality data from local and state governments collected by The New York Times as of July 2020, covering 40 percent of the U.S. population.

The Legislature finds that many drug overdose fatalities occur because peers delay or forego calling 911 for fear of arrest or police involvement, which researchers continually identify as the most significant barrier to the ideal first response of calling emergency services. Moreover, many victims of drug overdose also fear arrest and refuse to call 911 or seek medical assistance during an overdose. The Legislature finds that lives can be saved by providing limited immunity during drug overdose situation. Accordingly, the purpose of this legislation to protect against drug possession charges if the evidence for the charge of possession of a controlled substance was obtained as a result of the person experiencing the overdose or a peer seeking medical assistance for someone else.