

# North Carolina Good Samaritan and Naloxone Access Laws

Promptly responding to a suspected drug or alcohol overdose can save lives. However, some individuals may be reluctant to call for emergency help out of fear of being charged for a crime. Likewise, fear of legal risk may also prevent some people from administering naloxone to someone who has experienced an opioid overdose. To encourage individuals to take action after witnessing an overdose, the North Carolina General Assembly passed Good Samaritan and naloxone access legislation in 2013.<sup>1</sup>

## What are North Carolina's Good Samaritan laws?

North Carolina has two different laws that protect witnesses and overdose survivors from prosecution for certain crimes under limited circumstances. One law applies when someone seeks emergency medical help during an overdose resulting from the use of a controlled substance or another substance with which a controlled substance was combined.<sup>2</sup> The other law applies when help is sought for an alcohol overdose involving underage drinkers.<sup>3</sup>

## What legal protections do Good Samaritan laws grant?

### *Drug Overdose.*

When help is sought for a drug overdose, the law grants immunity from prosecution for the following offenses:

- Misdemeanor possession of a controlled substance<sup>4</sup>
- Felony possession of less than one gram of any controlled substance<sup>5</sup>
- Possession with intent to use drug paraphernalia<sup>6</sup>

### *Alcohol overdose.*

When help is sought for an alcohol overdose, the law grants individuals under 21 years of age immunity from prosecution for underage possession or consumption of alcohol.<sup>7</sup>

Additionally, if a person is arrested for an offense for which he or she is immune to prosecution, the arrest will not be deemed a violation of a condition of pretrial release, probation, parole, or post-release.<sup>8</sup>

## What conditions must be met to qualify for immunity from prosecution?

To qualify for protections granted under North Carolina's Good Samaritan laws, an overdose survivor and the witness who seeks help for the survivor must satisfy several conditions.

### **A WITNESS WILL BE GRANTED PROTECTION ONLY IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

1. The person sought medical assistance for an individual experiencing an overdose by contacting 911, a law enforcement officer, or emergency medical services personnel.<sup>9</sup>
2. The person acted in good faith when seeking medical assistance, upon a reasonable belief that he or she was the first to call for assistance.<sup>10</sup>
3. The person provided his or her own name to the 911 system or to a law enforcement officer upon arrival.<sup>11</sup>
4. The person did not seek medical assistance during the execution of an arrest warrant, search warrant, or other lawful search.<sup>12</sup>
5. The evidence for prosecution of any of the offenses listed above was obtained as a result of the person seeking medical assistance for the overdose.<sup>13</sup>

The circumstances under which overdose survivors qualify for protection are less clear. The law provides that immunity from prosecution extends to the overdose survivor "if all of the requirements and conditions listed in...(1), (2), (4), and (5)...are satisfied." However, this provision does not state who must satisfy these conditions. As such, it is unclear whether the overdose survivor is eligible if he or she is the subject of a witness's call for help and the witness satisfies (1), (2), (4), and (5); or if the survivor is required to satisfy such conditions, including being the first person who seeks medical assistance on his or her own behalf.<sup>14</sup>

## What do the Good Samaritan laws NOT do?

- Protect individuals from being detained, arrested, or prosecuted for offenses that are not listed above (e.g., intent to distribute controlled substances, child abuse).<sup>15</sup> Any evidence lawfully obtained in the investigation and prosecution of such other crimes will not be barred.<sup>16</sup>
- Protect everyone at the scene of a drug-related overdose.<sup>17</sup> Only the overdose survivor and the first person who reasonably believes he or she is the first to seek help may qualify for protection from prosecution.
- Clearly and unambiguously grant immunity from prosecution to overdose survivors. Given how the conditions for immunity are worded in the Good Samaritan laws, it is unclear whether the individual experiencing an overdose must be the first person who calls for help on his or her own behalf to qualify for protection. Efforts to amend the Good Samaritan laws to clarify this issue have failed.<sup>18</sup>

- Protect a caller whose actions are not objectively reasonable or done in good faith (e.g., calling for emergency medical services while police are executing a search or arrest warrant or conducting a lawful search).<sup>19</sup>
- Protect an underage drinker or underage witness from prosecution for possession of drugs or drug paraphernalia when an overdose involves only alcohol (i.e., no controlled substance was involved). The Good Samaritan law that applies when help is sought for a drug overdose is distinct from the law that applies when help is sought for an alcohol overdose. Therefore, to qualify for immunity for possession of certain drugs or drug paraphernalia, an overdose must result “from the consumption or use of a controlled substance, or another substance [such as alcohol] with which a controlled substance was combined.”<sup>20</sup>
- Limit the authority of a probation officer to conduct drug testing of persons on pretrial release, probation, or parole.<sup>21</sup>

## How does North Carolina’s naloxone access law protect someone who responds to an opioid overdose?

The law grants immunity from civil and criminal liability for administering naloxone that was lawfully prescribed or distributed, so long as the individual has a good faith belief that another person is experiencing a drug overdose and exercises reasonable care in administering the medication.<sup>22</sup>

### References

1. S.B. 20, Sess. 2013 (N.C. 2013). North Carolina’s Good Samaritan statutes were amended in 2015 and 2023. See S.B. 154, Sess. 2015 (N.C. 2015) and S.B. 189, Sess. 2023, (N.C. 2023). The naloxone access statute was amended in 2017. See H.B. 235, Sess. 2017 (N.C. 2017).
2. N.C. GEN. STAT. § 90-96.2 (2023).
3. N.C. GEN. STAT. § 18B-302.2 (2023).
4. N.C. GEN. STAT. § 90-96.2(c3)(1) (2023). Unauthorized possession of a controlled substance is a violation of N.C. GEN. STAT. § 90-95(a)(3). A possession violation can be either a misdemeanor or a felony depending on the specific substance possessed, the amount of such substance possessed, or both. See N.C. GEN. STAT. § 90-95(d) (2023).
5. N.C. GEN. STAT. § 90-96.2(c3)(2) (2023).
6. N.C. GEN. STAT. § 90-96.2(c3)(4) (2023). See also N.C. GEN. STAT. § 90-113.22 (2023).
7. N.C. GEN. STAT. § 18B-302.2; § 18B-302 (2023).
8. N.C. GEN. STAT. § 90-96.2(c1); § 18B-302.2(c) (2023).
9. N.C. GEN. STAT. § 18B-302.2(a)(1); § 90-96.2(b)(1) (2023).
10. N.C. GEN. STAT. § 18B-302.2(a)(1a); § 90-96.2(b)(2) (2023).
11. N.C. GEN. STAT. § 18B-302.2(a)(2); § 90-96.2(b)(3) (2023).
12. N.C. GEN. STAT. § 18B-302.2(a)(4); § 90-96.2(b)(4) (2023).
13. N.C. GEN. STAT. § 18B-302.2(a)(5); § 90-96.2(b)(5) (2023).
14. See N.C. GEN. STAT. § 18B-302.2(c); § 90-96.2(c) (2023).
15. See N.C. GEN. STAT. § 90-96.2(d)(3) (2023). See also, *State of N.C. v. Shelley Anne Osborne*, 372 N.C. 619, 634 n.7 (N.C. 2019) (explaining that “defendant was also convicted of two counts of misdemeanor child abuse based on the fact that her two children under the age of sixteen were in the hotel room at the time she overdosed. The [Good Samaritan] statute does not provide immunity from prosecution for those offenses...”).
16. See N.C. GEN. STAT. § 90-96.2(d)(1)(i) (2023).
17. See N.C. GEN. STAT. § 90-96.2(d)(1)(ii) (2023).
18. See, e.g., H.B. 852, Sess. 2021 (N.C. 2021).
19. See N.C. GEN. STAT. §§ 90-96.2(a), (b)(4) (2023).
20. N.C. GEN. STAT. § 90-96.2(a) (2023).
21. See N.C. GEN. STAT. § 90-96.2(d)(4) (2023).
22. N.C. GEN. STAT. § 90-12.7 (2023).

