THE FATAL SHORTCOMINGS OF OUR GOOD SAMARITAN OVERDOSE STATUTES AND PROPOSED MODEL STATUTE

Nicole Schill

TABLE OF CONTENTS

I. INTRODUCTION

Opioid overdose deaths have quadrupled since 1999 . . . It's time to liberate our communities from this scourge. I want the American people to know the government is fighting the opioid epidemic on all fronts.[1]

[1] Yancey Roy, *Opioid Emergency*, NEWSDAY (Oct. 27, 2017), https://www.newsday.com/news/nation/trump-declares-opioids-a-public-health-emergency-

Opioid addiction has become so prevalently widespread across our country that the President recently declared the national opioid epidemic has reached the level of a public health emergency.[2] This declaration was in direct response to the startling, and ever rising, number of fatalities across America caused by opioid overdoses.[3] Opioid deaths have been consistently on the rise with no signs of slowing down anytime in the near future.[4]

In 2014, over 28,600 Americans died from opioid overdoses.[5] A mere one year later, in 2015, that fatality rate had climbed to over 33,000 nationwide,[6] and by the end of 2016, the annual death rate had risen to over 42,000.[7]

According to the Centers for Disease Control and Prevention, more than 140 Americans die every day from opioid overdoses.[8] This is the equivalent of about six deaths each hour or nearly one thousand deaths per week.

To put these numbers into perspective, the current rate of overdose fatalities is equal to a new 9/11 terrorist attack every three weeks.[9] Or, for 2016, in that one year alone, the number of overdose deaths in our country

1.14631756 (quoting President Trump's speech in which he declared the opioid crisis a public health emergency).

2 *Id*.; s*ee also* Alice Park & Paul Moakley, *The Life of An Addict*, TIME, Nov. 20, 2017, at 40, 42 (pointing out that this declaration fell short of declaring the opioid addiction crisis a national emergency which would have resulted in new federal funding to address the crisis. Instead, by declaring it a public health emergency, this only means federal agencies have a period of 90 days to reallocate existing resources to address and combat the public health emergency of opioid addiction.).

3 *Overdose Death Rates*, NAT'L INST. ON DRUG ABUSE, https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates (last updated Aug. 2018) (showing how from 2002-2017 there was a 4.1-fold increase in the total number of opioid related deaths).

4 Erin Brodwin, *Deaths from Opioid Overdoses Have Jumped — And One Age Group is Being Affected at Stark Rates*, BUSINESS INSIDER (Feb. 28, 2017), https://www.businessinsider.com/opioid-overdose-death-statistics-2017-2016 ("[F]atal overdoses involving heroin skyrocketed from 8% in 2010 to 25% in 2015 — essentially tripling.").

5 Corey S. Davis & Derek H. Carr, *The Law and Policy of Opioids for Pain Management, Addiction Treatment, and Overdose Reversal*, 14 IND. HEALTH L. REV. 1, 26 (2017).

6 *Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Overdose Good Samaritan Laws*, NETWORK FOR PUB. HEALTH L., https://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf (last updated July 2017).

7 Jamie Ducharme, *Opioid Overdose Rates in America Are Still Increasing*, TIME (Mar. 36, 2018), http://time.com/5187886/opioid-overdose-rates/.

8 Roy, *supra* note 1; Maggie Fox, *Drug Overdoses Spur Rise in Accidental Deaths, Says Report*, NBC NEWS (June 17, 2015, 2:14 PM), https://www.nbcnews.com/health/health-news/fifty-ways-die-report-finds-accidental-deaths-n377131 (This makes overdose deaths the leading cause of accidental death in the United States, even higher than the threat of motor vehicle accidents).

9 *September 11th Terror Attacks Fast Facts*, CNN, http://www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/ (last updated Sept. 3, 2018, 10:08 PM) (A total of 2,977 people died during the terrorist attacks of September 11, 2001); Park & Moakley, *supra* note 2, at 42-43 (The number of overdose deaths every three weeks across America is the equivalent of the fatalities from the 9/11 terrorist attacks).

surpassed the number of American fatalities over the entirety of the Vietnam War.[10] These numbers are largely driven by opioids with more than three out of every five of these deaths involved an opioid.[11]

The gravity of America's opioid epidemic is clear; the numbers speak for themselves.

But the most tragic part of these numbers is that almost all of these deaths were completely avoidable.[12]

Similar to heart attacks, the chances of surviving an overdose depend greatly on the timely response of medical intervention.[13] However, the key difference between these two health emergencies comes down to the willingness of witnesses to summon medical assistance. Heart attack bystanders will rarely hesitate before dialing 911, but overdose bystanders do hesitate, or even worse fail altogether, to summon that help which could so easily save the overdose victims life.[14] Research shows this hesitation, or complete failure, to dial 911 is due to a fear that is rampant among drug users; a fear of police involvement and an expectation of imminent arrest.[15]

To stop overdoses from becoming needless fatalities, we need addicts to reach out to authorities when faced with an overdose, and to accomplish this, we need to eliminate the fear of legal repercussions.[16]

---

10 Ashley Welch, *Drug Overdoses Killed More Americans Last Year Than the Vietnam War*, CBS NEWS (Oct. 17, 2017, 4:34 PM), https://www.cbsnews.com/news/opioids-drug-overdose-killed-more-americans-last-year-than-the-vietnam-war/ (comparing the 2016 overdose death rate of 64,070, according to the Centers for Disease Control and Prevention, with the 58,200 American lives lost during the Vietnam War).

11 *Overview of an Epidemic: Understanding the Epidemic*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/drugoverdose/data/index.html (last updated July 18, 2017) [hereinafter *Understanding the Epidemic*]; Robert Glatter, *Opioid Overdose Deaths Continue Their Rise in The U.S., CDC Study Finds*, FORBES (Mar. 30, 2018), https://www.forbes.com/sites/robertglatter/2018/03/30/opioid-overdose-deaths-continue-their-rise-in-the-u-s-cdc-study-finds/#4d7e0e28651d ("Opioids were responsible for 66% of all deaths due to drug overdoses in 2016").

12 Kelsey Bissonnette, *Anti-Death Legislation: Fighting Overdose Mortality from a Public Health Perspective*, 23 TEMP. POL. & C.R. L. REV. 451, 452 (2014).

13 *Id*. at 452-453 (describing how most overdoses occur slowly and in the presence of others, making it possible for timely medical intervention, such as with Naloxone, an opioid antagonist which reverses the opioid's effect on receptors and quickly revives the victim); DRUG POL'Y ALLIANCE, *Good Samaritan Fatal Overdose Prevention Laws,* http://www.drugpolicy.org/issues/good-samaritan-fatal-overdose-prevention-laws (last visited Sept. 4, 2018).

14 DRUG POL'Y ALLIANCE, *supra* note 13.

15 DRUG POL'Y ALLIANCE, *supra* note 13*;* Bissonnette, *supra* note 12, at 453-454 (stating that a fear of prosecution is a reason given for why witnesses to an overdose hesitate before calling for medical help, and further stating that this fear of prosecution is justified).

16 Hilary Shenfeld, *'Good Samaritan' Laws and Drug-Overdose Victims*, NEWSWEEK (July 5, 2010, 8:00 PM), http://www.newsweek.com/good-samaritan-laws-and-drug-overdose-victims-74625 (quoting Meghan Ralston of the Drug Policy Alliance as saying, "While there may be a variety of reasons why a person doesn't call for medical attention while witnessing an overdose, research shows that people consistently list "fear of police involvement/fear of arrest" as the leading reason for failing to seek immediate help for someone thought to be overdosing.").

Good Samaritan Overdose Laws[17] (GSOL's) are legislative attempts to solve this problem by granting amnesty from criminal liability for those who summon authorities to the scene of an overdose.[18] As of July 15, 2017, forty states plus the District of Columbia had enacted some version of a Good Samaritan Overdose Law.[19] These statutes were all enacted within the last ten years, starting with New Mexico in 2007,[20] but with only a handful enacted before 2012.[21] The vast majority are extremely new, becoming effective in the last five years as a direct response to the growing opioid epidemic.[22] The purpose of these laws is clear; to encourage addicts to summon authorities during an overdose and hopefully, in doing so, to save a life.[23] Unfortunately though, these statutes offer such limited amnesty and are replete with so many arbitrary restrictions and requirements, that they are simply ineffective at encouraging people to summon help during overdoses.

This note will examine the variations in GSOL legislation across states, illustrate how and why these statutes are ineffective, and propose a model statute designed to more effectively achieve its life saving purpose.

II. BACKGROUND

Opioid related overdose fatalities have been on the rise in recent years.[24] The statistics are startling. Consider, for example, that since 2000, there has been a 200% increase in the rate of opioid overdose deaths,[25] or that from 2002 to 2015, heroin overdose fatalities increased

17 Bissonnette, *supra* note 12, at 451 (Good Samaritan Overdose Laws are also known as '911 Immunity Laws').

18 *See* DRUG POL'Y ALLIANCE, *supra* note 13.

19 NETWORK FOR PUB. HEALTH L, *supra* note 6.

20 N.M. STAT. ANN. § 30-31-27.1 (West 2017) (effective June 15, 2007).

21 *Id*.; WASH. REV. CODE ANN. § 69.50.315 (West 2017) (effective June 10, 2010); ALASKA STAT. ANN. § 12.55.155(d)(19) (West 2017) (effective Sept. 8, 2008) (enacted as Alaska's first attempt at a GSOL, though a later stand-alone, more effective statute was enacted in 2016); N.Y. PENAL LAW § 220.78 (McKinney 2017) (effective Sept. 18, 2011); CONN. GEN. STAT. ANN. § 21a-267 (West 2017) (effective Oct. 1, 2011).

22 NETWORK FOR PUB. HEALTH L, *supra* note 6.

23 Alix C. Michel & David J. Ward, *Counsel's Corner: Provider Strategies to Combat the Prescription Drug Abuse Epidemic—Think Outside the Box!*, 23 HEALTH L. REP. (BNA) No. 8, at 11 (Feb. 20, 2014) ("These laws are designed to encourage people to actually help those in danger of an overdose, as opposed to walking away or not even making the call to 911.").

24 Shalini Wickramatilake, *How States Are Tackling the Opioid Crisis*, 132(2) PUB. HEALTH REP. 171, 172 (2017) (reporting that in 2014 the number of drug overdose deaths were more than the number of automobile accident fatalities, and in the following year, 2015, the number of opioid overdose deaths climbed even higher reaching 33,000).

25 *Using Prescription Drug Monitoring Program Data to Support Prevention Planning*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., https://www.samhsa.gov/capt/sites/default/files/resources/pdmp-overview.pdf (last visited Sept. 7,

six-fold,[26] or that in 2015, over 33,000 Americans died from opioid overdoses.[27]

The opioid crisis currently sweeping our nation has, in part, been fueled by the increased availability of opioid based prescription medications.[28] These prescription medications are a contributing factor in the current epidemic by either directly causing overdoses or indirectly by leading to use of stronger opioid substances, such as heroin.[29] Due to a number of reasons, including but not limited to, the high cost of prescription medications as compared to relatively cheap street heroin and the recent increase in restrictions reducing prescription availability, many who start using prescription opioids will soon find themselves addicted to heroin.[30] Heroin addiction is no longer merely a problem of inner-cities, but has reached all neighborhoods across the nation, affecting all ages, races, and socio-economic statuses.[31]

Regardless, whether it be prescription opioids or street heroin, Americans are dying at tragic rates.[32] In order to take appropriate

2018).

26 Park & Moakley, *supra* note 2, at 42-43.

27 *Opioid Addiction 2016 Facts & Figures*, AM. SOC'Y OF ADDICTION MED., https://www.asam.org/docs/default-source/advocacy/opioid-addiction-disease-facts-figures.pdf (last visited Sept. 7, 2018).

28 *About the Epidemic,* DEP'T OF HEALTH AND HUM. SERVS., https://www.hhs.gov/opioids/about-the-epidemic/index.html (last updated March 6, 2018) ("Increased prescription of opioid medications led to widespread misuse of both prescription and non-prescription opioids before it became clear that these medications could indeed be highly addictive.").

29 Park & Moakley, *supra* note 2, at 42 ("Since 1999, the rate of fatal prescription opioid overdoses in the U.S. has quadrupled."); *Understanding the Epidemic: Prescription Opioid Data*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/drugoverdose/epidemic/index.html (last updated Aug. 30, 2017) (summarizing the prescription epidemic rather succinctly with the statistic that despite no increase in the amount of pain reported by Americans, the number of prescription medications to treat this pain increased substantially, resulting in five times the number of prescription opioid overdose deaths in 2016 than in 1999).

30 Wickramatilake, *supra* note 24, at 171 ("[T]he National Survey on Drug Use and Health estimated that >10 million people in the United States used prescription opioids for nonmedical use in 2014. This finding is a substantial concern because people who misuse prescription opioid painkillers are 40 times more likely to become addicted to heroin than those who do not misuse prescription opioids, and 80% of new heroin users report previously misusing prescription opioids."); Park & Moakley, *supra* note 2, at 42 ("Drugs such as heroin, fentanyl, carfentanil and U-47700 are cheaper and in many cases more harmful than legal opioids because they are synthetic formulations with no FDA standards for safety and quality control."); *see also* Scott Burris et al., *Stopping an Invisible Epidemic: Legal Issues in the Provision of Naloxone to Prevent Opioid Overdose*, 1 DREXEL L. REV. 273, 283-284 (2009).

31 Glatter, *supra* note 11 ("'From 2015-2016, opioid-involved deaths increased in males and females and among persons aged > 15 years, whites, blacks, Hispanics and Asians/Pacific Islanders . . . Deaths involving synthetic opioids increased in every subgroup examined.'"); *see also* Park & Moakley, *supra* note 2, at 42 ("It is an epidemic without boundaries, touching every corner of the nation, every income group and virtually every age, including a baby born in opioid withdrawal every 25 minutes.").

32 Burris et al., *supra* note 30, at 277 ("Unlike many of the other leading causes of death, death

remedial action, we need to understand the social and legal issues surrounding American addiction.

A. The Criminalization of Addiction and Its Stigmatizing Effect on Addicts

Since the 1980s, America has aggressively pursued a policy of drug law enforcement known as the 'War on Drugs'.[33] As a direct result of this criminalization of drugs and drug use,[34] the lives of addicts are fraught with illegal behavior and lived on the fringes of law abiding society.[35] Unlike other diseases, addiction is inherently marked by continual law breaking.[36] The resultant fear of both authorities and legal consequences serves only to perpetuate the addiction epidemic by causing addicts to hide their disease and avoid treatment.[37] Sadly, it also often dictates behavior at overdose scenes resulting in many stories of people who fled from an overdose victim rather than summon assistance.

Two men in the Chicago suburbs did not want to call police for an overdosing friend and instead left him on a park bench, where he was found dead. Another man injected his pal with heroin and then left him in a bedroom after he started overdosing. After discovering the friend had

from opioid overdose is almost entirely preventable, and preventable at a low cost.").

33 Barry Goetz & Roger E. Mitchell, *Pre-Arrest/Booking Drug Control Strategies: Diversion to Treatment, Harm Reduction and Police Involvement*, 33 CONTEMP. DRUG PROBS. 473, 474 (2006) (Harsher criminal penalties were seen as a solution to the problem of drug use and its accompanying criminal behavior. However, as today's rates of addiction show, such policies have had little deterrent effect. In fact, the only clear result has been a large increase in the number of people incarcerated for drug offenses); *see also* Amanda D. Latimore & Rachel S. Bergstein, *"Caught with a Body" Yet Protected by Law? Calling 911 for Opioid Overdose in the Context of the Good Samaritan Law*, INT'L J. OF DRUG POL'Y 82, 88 (2017).

34 Charles E. Faupel & Carl B. Klockars, *Drugs-Crime Connections: Elaborations from the Life Histories of Hard-Core Heroin Addicts*, 34 SOC. PROBS. 54, 64 (1987) ("Since the passage of the Harrison Act in 1914, drug law enforcement has been dominated by the "criminal model" of drug use. While variously articulated, this model understands drug use as primarily a *criminal* issue addressed by imposing criminal sanctions on both users and dealers, and by taking steps to prevent the import and distribution of heroin. Insofar as there is a relationship between drug use and other criminal behavior, the narcotics user is understood to be a criminal, first and foremost, whose drug using behavior is an important and contributing component in an extensive pattern of related criminal behavior.").

35 *See id*. at 54-55 (describing two theories for the correlations between drug addiction and criminality: criminal behavior is an indirect consequence of high costs involved in supporting an addiction and the subculture of addiction being one labeled as criminal by our legal structure and society thus perpetuating the delinquent, criminal identification of addicts themselves).

36 REBECCA TIGER, JUDGING ADDICTS 37 (Jeff Ferrell ed., 2013).

37 Justin Peters, *When Junkies Deserve a Pass*, SLATEGROUP (AUG. 18, 2015, 3:16 PM), http://www.slate.com/articles/news_and_politics/crime/2015/08/good_samaritan_drug_laws_they_save_lives_and_more_states_should_pass_them.html ("In theory, the threat of incarceration is supposed to deter people from using and selling drugs. In practice, it often deters users from seeking treatment or medical assistance for fear of punishment.").

died, the man helped dump his body in an alley. A woman in Washington stood by and did nothing for a sixteen-year-old pal even as the teen vomited, wet her pants, and suffered a seizure and eventually died after a night of partying. Two Utah residents dumped a friend's body outdoors after refusing to call for help as she overdosed.[38]

As these and similar stories show,[39] our criminal laws are becoming increasingly counterproductive in effecting the changes and public health policies needed to fight back against today's deadly opioid epidemic.[40] The fear of arrest is so rampant among drug users that even though most overdoses occur in the presence of others, data tells us help is summoned to, at most, only half of these emergencies[41] or even to as few as 21%.[42] As low as these numbers are, it should be noted they do not differentiate between the timely, more effective summoning of medical assistance and that which was delayed, ineffective medical intervention. It can clearly be inferred then that the immediate summoning of assistance to an overdose occurs at even smaller rates.

Justin Pearlman is just one example of an addict who experienced firsthand America's War on Drugs. Fortunately, he was able to save his life one evening by dialing 911 while experiencing an overdose on heroin.[43] But, as a result of that call for help, Justin served six months in jail for possession (during which he received no drug treatment). Justin now openly states that if faced with another overdose in the future, he

38 Shenfeld, *supra* note 16.

39 Christine Byers, *Proposed Missouri Law Aimed at Saving Lives After Drug Overdoses*, ST. LOUIS POST-DISPATCH (Mar. 5, 2013), http://www.stltoday.com/news/local/crime-and-courts/proposed-missouri-law-aimed-at-saving-lives-after-drug-overdoses/article_f5b3290c-1ee0-5c7c-9836-450885ec4214.html ("David Gears used heroin and, while he still could, asked two acquaintances to take him to a hospital. They refused, fearing prosecution for getting high themselves, according to a police report. Instead, the pair told police, they put Gears into the bathtub of their hotel room in north St. Louis County to let him sleep it off while they finished using the drugs they had bought on the city's south side. Hours later, they did call for help. But Gears, of Belleville, was dead, at age 23."); Brennon Gurley, *Missouri Passes Good Samaritan Law*, OZARKS FIRST (May 18, 2017, 5:55 AM CDT), http://www.ozarksfirst.com/news/missouri-passes-good-samaritan-law/716254814 (telling the story of Cindi Byersmith. "[H]er son died because when he overdosed, his friends didn't call 911 because they were worried they'd get in trouble when police showed up. As she explains, "Nobody called. He was dead an hour before anybody thought to pick up the phone and call for help."").

40 Byers, *supra* note 39. (quoting Kathie Kane-Willis, director of the Illinois Consortium on Drug Policy at Roosevelt University, in Chicago, "We know from research that the biggest fear for calling 911 was fear of police involvement." [T]he phenomenon of "body dumping," with overdose victims dropped off at hospital doorsteps or abandoned in trash bins "is a reaction of fear and disregard."); Samantha Kopf, *Slaying the Dragon: How the Law Can Help Rehab a Country in Crisis*, 35 PACE L. REV. 739, 741 (2014).

41 Bissonnette, *supra* note 12, 453-454; Meghan Ralston, *Bipartisan Support as California Legislature Passes Bill to Help Prevent Drug Overdose Deaths*, DRUG POL'Y ALLIANCE (Aug. 26, 2012). http://www.drugpolicy.org/news/2012/08/bipartisan-support-california-legislature-passes-bill-help-prevent-drug-overdose-deaths.

42 Latimore & Bergstein, *supra* note 33, at 82.

43 Shenfeld, *supra* note 16.

would not call for help since he "wouldn't want to be prosecuted . . . it's so horrible to go to jail."[44]

Due to the priority that was placed on the criminal prosecution of Justin, he has learned, and has likely informed his friends as well, that calling 911 for an overdose will result in legal consequences. In light of all the many lives that may be endangered in the future as a result of this one experience, was that conviction for possession really worth it? Now consider that situation occurring multiple times every hour across our country.

It becomes increasingly apparent that the fear addicts have of criminal prosecution is not unfounded; it is a direct result of America's choice to zealously punish drug use.[45] This choice has not only contributed to the current epidemic by criminalizing addiction, but also by its stigmatization of addicts.

Those suffering from addiction are too often viewed as weak or morally corrupt, instead of as ill and in need of treatment.[46] To truly make a dent in today's epidemic, we must cast aside the stigma that has accompanied addiction for decades and recognize that all lives matter, even addicted lives.[47] Our "'[c]ommunities must change their perception of drug abuse . . . [t]hese drug-addicted persons are worth something.' We have to tell them, 'you aren't trash. You are a human being, and you are deserving of this community's respect, and we're going to help

---

[44] *Id*.

[45] Rebecca McCray, *Staten Island Law Enforcement Won't Stop Fighting the War on Drugs*, VILLAGE VOICE (June 18, 2018), https://www.villagevoice.com/2018/06/18/staten-island-law-enforcement-wont-stop-fighting-the-war-on-drugs/ (describing how instead of encouraging drug users to get help, our policies instead frighten them away from accessing treatment by seeking to arrest and prosecute even those drug users who are patients at treatment centers. "Staking out methadone clinics for arrests is common nationwide: In a methadone Reddit thread, clinic patients around the country report routinely seeing police sitting in the parking lots of treatment centers."); *see, e.g*., *Live PD*: *Episode 23* (A&E television broadcast Jan. 5, 2018) (In this particular episode police were summoned to the scene of an opiate overdose. Upon their arrival the young man was lying lifeless on the sidewalk, unconscious and blue in the face. Police tried unsuccessfully to revive the man and searched his pockets where drugs were found. EMS arrived shortly after with Narcan which was administered to the overdose victim, resulting in a rapid turnaround in his condition. Viewers were later informed that after the Narcan saved the man's life, he was facing charges of possession for the drugs found inside his pocket.); *see also, Live PD: Episode 70* (A&E television broadcast July 20, 2018) (On yet another episode of the popular show, as the film crew followed officers in Pinal County, AZ, a 911 call came in from a neighbor who reported an unresponsive male on the sidewalk. Police arrived on scene and immediately searched the pockets of this unresponsive male for illegal drugs. IV Narcan was then administered at which time the male began to come to out of the overdose. He was then promptly placed under arrest.).

[46] PETER J COHEN, DRUGS, ADDICTION AND THE LAW; POLICY, POLITICS, AND PUBLIC HEALTH 59 (2004) (explaining how addiction is not a matter of weak will, but rather one of brain disease).

[47] NETWORK FOR PUB. HEALTH L, *supra* note 6 ("A comprehensive solution that includes reductions in inappropriate opioid prescribing, increased access to evidence-based treatment and de-stigmatization and de-criminalization of addiction is likely necessary to create large-scale, lasting change.").

you.'"[48]

American society and public health policy have been negatively impacted for too long by the public opinion of the addict is a defective, broken person.[49] This association is so pervasive it can be seen even in our use of language by such terms as 'meth freaks', 'crackheads', or 'dirty' urines.[50] This stigmatization contributes to the fatality of addiction by ostracizing and disregarding the addicted population which leads addicts to avoid treatment and authorities while at the same time causing society to dismiss their lives as unworthy of saving.[51]

Breakthroughs in science and medical treatment have shown us that this addiction stigma is, at best, misplaced, and at worst, perpetuating a fatal problem.[52] And yet, the stigma prevails despite growing recognition that addiction is a physiological disease,[53] similar to many other treatable diseases.[54] Through treatment, many addicts can put their addiction behind them and go on to lead drug-free, productive lives.[55]

But, a fatal overdose in the midst of active addiction will, of course,

48 Kelly K. Dineen, *Addressing Prescription Opioid Abuse Concerns in Context: Synchronizing Policy Solutions to Multiple Complex Public Health Problems*, 40 L. & PSYCHOL. REV. 47, 73 (2016) (quoting Dr. David Wheeler in a speech about the importance of harm-reduction policies).

49 *Id*. at 78 ("The public health will only improve when we embrace a system that incentivizes care and treatment for all patients, especially those with behaviors and characteristics long subject to cultural and societal based biases and exclusion. This will take deliberate and difficult individual and group action that incentivizes outreach over out-grouping and thoughtful consideration of our underlying assumptions about pain, addiction, and mental illness.").

50 Richard Juman, *The Deadly Stigma of Addiction*, THE FIX (Dec. 5, 2012), https://www.thefix.com/content/professional-voices-addiction-stigma-lethal70023.

51 *Id*. ("The idea that those with addictive disorders are weak, deserving of their fate and less worthy of care is so inextricably tied to our zeitgeist that it's impossible to separate addiction from shame and guilt. Addiction comes with a second punch in the gut: the burden of being treated like a second-class citizen and expected to act accordingly.").

52 *Id*.

53 Chevy Chase, *ASAM Releases New Definition of Addiction,* EUREKALERT! (Aug. 15, 2011), https://www.eurekalert.org/pub_releases/2011-08/asoa-arn072111.php (discussing the American Society of Addiction Medicine's new definition of addiction as "highlighting that addiction is a chronic brain disorder and not simply a behavioral problem involving too much alcohol, drugs, gambling or sex . . . The new definition also describes addiction as a primary disease, meaning that it's not the result of other causes such as emotional or psychiatric problems . . . Research shows that the disease of addiction affects neurotransmission and interactions within reward circuitry of the brain, leading to addictive behaviors that supplant healthy behaviors, while memories of previous experiences with food, sex, alcohol and other drugs trigger craving and renewal of addictive behaviors. Meanwhile, brain circuitry that governs impulse control and judgment is also altered in this disease, resulting in the dysfunctional pursuit of rewards such as alcohol and other drugs.").

54 *SAMHSA: Opioid Addiction is a Disease*, AM. MENTAL WELLNESS ASS'N. (Jan. 12, 2017), https://www.americanmentalwellness.org/samhsa-opioid-addiction-disease/ ("Opioid addiction is a chronic disease, like heart disease or diabetes. A chronic disease is a medical condition for life. It cannot be cured, but it can be managed").

55 *Drugs, Brains, and Behavior: The Science of Addiction*, NAT'L INST. ON DRUG ABUSE, https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery (last updated July 2018).

ruin any chance at possible recovery.[56]

B. Naloxone's Potential to Save Lives

Sixty-three percent of all fatal drug overdoses are the result of opioid based substances,[57] but due to a medication called Naloxone, that means sixty-three percent of these deaths can now be prevented.[58]

Opioids cause a relatively slow manner of death by gradually depressing the user's respiratory rate.[59] Fortunately, this means there is usually ample time to effectively intervene and prevent the overdose from becoming fatal.[60] Naloxone (or Narcan),[61] is an inexpensive medication which, if administered in time,[62] has the power to prevent opioid related deaths by immediately stopping the opioid's effect on the body.[63]

If administered in a timely manner,[64] Naloxone stops an opioid overdose's progression on the body, immediately reversing the effects of the overdose and preventing it from becoming fatal.[65] Naloxone's efficacy comes from it being a pure opioid antagonist, meaning it binds to the same receptors as opioids, but unlike opioids, Naloxone does so without activating them.[66] The key to this medication's success is that it has a higher affinity for these receptors than all commonly used opioids.[67] Thus, when administered to an overdose victim, the Naloxone attaches to victim's opioid receptors in effect 'bumping' the harmful opioid off,

56 Byers, *supra* note 39 (quoting Kathie Kane-Willis, director of the Illinois Consortium on Drug Policy at Roosevelt University, in Chicago, studies addiction-related legislation as saying, "When someone dies, we cannot get them into treatment, and we can't prosecute them . . . [I]t's about redirecting people to the services they need and making sure people do not continue to die.").

57 Park & Moakley, *supra* note 2, at 42.

58 NETWORK FOR PUB. HEALTH L, *supra* note 6.

59 Susan G. Sherman et al., *A Qualitative Study of Overdose Responses Among Chicago IDUs*, 5 HARM REDUCTION J. 1, 2 (2008) http://www.harmreductionjournal.com/content/5/1/2 (Opioid deaths occur gradually over a period of one to three hours); *see also* Burris et al., *supra* note 30, at 277.

60 Burris et al., *supra* note 30, at 277.

61 *Naloxone (Rx)*, MEDSCAPE, https://reference.medscape.com/drug/narcan-naloxone-evzio-343741 (last visited Sept. 8, 2018) (Narcan is a brand name for the naloxone hydrochloride medication commonly known as Naloxone).

62 *Narcan,* DRUGS.COM, https://www.drugs.com/pro/narcan.html (last reviewed July 1, 2018) ("Administer Narcan . . . as quickly as possible because prolonged respiratory depression may result in damage to the central nervous system or death.").

63 Davis & Carr, *supra* note 5, at 27 (explaining how Naloxone is the standard treatment for opioid overdoses); Burris et al., *supra* note 30, at 277.

64 *Illinois' 911 Good Samaritan Overdose Law: All About Narcan,* STOPOVERDOSEIL.ORG, http://stopoverdoseil.org/narcan.html (last visited Sept. 8, 2018) (The medication can be administered intramuscularly by injection or through a nasal spray device.) [hereinafter *Illinois*].

65 NETWORK FOR PUB. HEALTH L, *supra* note 6; Davis & Carr, *supra* note 5, at 28 (describing how time is of the essence in the administration of Naloxone to an overdose victim).

66 Davis & Carr, *supra* note 5, at 27.

67 *Id*.

thereby stopping the opioid's effect on the body and restoring a normal respiratory rate.[68]

Naloxone's ability to save lives is undeniable.[69]

In recognition of its life-saving potential, recent changes in state laws have made this medication increasingly available.[70] As a result, Naloxone has become increasingly accessible in recent years, among both lay persons[71] and first responders, including police, firefighters, and paramedics.[72] Naloxone has the ability to save countless lives across the nation, and is currently available to, and carried by, most first responders.

The question then becomes why are there are still so many fatal overdoses? The answer is that the fear of legal consequences causes drug users to either hesitate before calling 911 to an overdose, or to not even call at all.[73]

C. Other Harm Reduction Policies Offering Similar Legal Amnesty

In recognition of the fear addicts have of legal consequences and the role this fear plays at overdose scenes, legislatures have recently taken action by enacting Good Samaritan Overdose laws in the vast majority of states.[74] In the hopes of saving lives, Good Samaritan Overdose Laws

68 *Id*.

69 *Id*. at 27-28 (By mid-2014, community-based Naloxone programs had provided the medication to more than 150,000 lay-people participants, and these 150,000 kits were reported to have saved 26,000 lives by reversing potentially fatal overdoses).

70 NETWORK FOR PUB. HEALTH L, *supra* note 6 ("By July 15, 2017, all 50 states and the District of Columbia had passed legislation designed to improve layperson naloxone access.").

71 *Id*. (Naloxone is not a controlled substance, has no abuse potential, and can be administered by ordinary citizens, including addict and their friends and family, with no formal training required); Burris et al., *supra* note 30, at 277 ("A growing number of harm reduction organizations in the United States are offering overdose prevention programs that provide injection drug users with resuscitation training and take-home doses of naloxone."); Park & Moakley, *supra* note 2, at 42 (reporting how in October of 2017, in recognition of the severity of the nationwide opioid crisis, Walgreens pharmacy will begin offering Narcan over the counter); Illinois, *supra* note 64 ("Recently the American Medical Association endorsed the training of lay people in the use of Narcan (naloxone) to prevent overdoses.").

72 Davis & Carr, *supra* note 5, at 27; *see also* Park & Moakley, *supra* note 2, at 42 (commenting on how even firefighters now are expected to carry the life-saving medication so it can be administered to overdose victims).

73 Bissonnette, *supra* note 12, at 453-454 (stating how most overdoses occur in the presence of others, but unfortunately, bystanders often hesitate to summon help and one of the consistently reported reasons for this hesitation is a fear of police).; *see also* Latimore & Bergstein, *supra* note 33, at 82 (putting the percentage of overdose bystanders who summon help as low as 21%, and citing fear of police involvement as the primary reason for this statistic).

74 Latimore & Bergstein, *supra* note 33, at 83 ("Between 2010 and 2017, an additional 40 states passed [Good Samaritan Laws], with the greatest number in 2015 (n = 10) and 2016 (n = 8)."); Meghan Ralston, *California's New 'Good Samaritan' Overdose Prevention Law Goes into Effect January 1,* 2013, DRUG POL'Y ALLIANCE (Dec. 16, 2012),

offer some degree of amnesty to those who dial 911 or otherwise summon authorities to the scene of an overdose.[75] While highly controversial,[76] these statutes are not the first time amnesty has been offered for the greater good of saving lives. At least twelve states have similar laws on the books pertaining to underage drinking and alcohol related emergencies.[77] Underage alcohol amnesty policies are also in place on many university campuses as well.[78]

Nevertheless, we see perhaps the most comparable amnesty related harm reduction policy in needle exchange programs, or NEP's.[79] In the mid to late 90s, recognition of the increasing fatality rates associated with the AIDS epidemic and the correlation of AIDS to intravenous drug use, many states either enacted state-run needle exchange programs or allowed for privately funded programs.[80] The goal of these programs was to provide safe, clean needles to addicts in exchange for used needles in the hope that this would reduce the number of needles being shared and therefore, greatly slow the spread of the AIDS virus as well as other blood borne infections.[81]

Despite apparent widespread success in reducing blood borne infections including AIDS and in increasing the number of IV drug users seeking treatment,[82] these programs still faced an uphill battle in their acceptance even as late as 2002,[83] almost fifteen years after their first appearance.[84] Needle exchange programs have continually dealt with

http://www.drugpolicy.org/news/2012/12/californias-new-good-samaritan-overdose-prevention-law-goes-effect-january-1-2013 [hereinafter *California's New*].

75 Latimore & Bergstein, *supra* note 33, at 83.

76 Chrissie Thompson, *Ohio Reconsiders Good Samaritan Heroin Law*, CINCINNATTI.COM (June 2, 2015), https://www.cincinnati.com/story/news/politics/2015/06/02/ohio-reconsiders-good-samaritan-heroin-law-overdose-painkiller-opioid-opiate/28355517/ (In Ohio, for example, the GSO bill was initially rejected by the General Assembly session because lawmakers feared it would encourage drug use).

77 Bissonnette, supra note 12, at 461-462; *see, e.g.*, TEX. ALCO. BEV. CODE ANN. §§ 106.04(e), 106.059(d) (West 2017); *see also* N.C. GEN. STAT. ANN. § 18B-302.2(a) (West 2017).

78 Bissonnette, *supra* note 12, at 461-462.

79 Burris et al., *supra* note 30, at 816 (also known as syringe exchange programs, or SEP's).

80 Mary Ann Dempsey, *A Shot in the Arm: Legal & Social Obstacles to United States Needle Exchange Programs,* 17 B.C. THIRD WORLD L. J. 31, 38-41 (1997); Steven R. Salbu, *Needle Exchange, HIV Transmission, and Illegal Drug Use: Informing Law and Public Policy with Science and Rational Discourse*, 33 HARV. J. ON LEGIS. 105, 110 (1996).

81 *See, e.g.*, Dempsey, *supra* note 80, at 32-33.

82 *Id*. at 38; Burris et al., *supra* note 30, at 813-814.

83 *See, e.g.*, *Institutional Reform Litigation Needle Exchange Program; Addicts May Lawfully Carry Needles,* 9 CITY L. 15 (2003) (summarizing the 2002 New York case *Roe v. City of New York* in which several Lower East Side Needle Exchange participants, after being arrested for possessing syringes despite their participation in the exchange program, sued the City of New York asking that all syringe exchange participants be declared exempt from criminal liability for needle possession).

84 Burris et al., *supra* note 30, at 817 (the first syringe exchange program in the United States was began in 1988 in Tacoma, Washington).

several legal, political, and social obstacles in their implementation,[85] many of which now confront Good Samaritan Overdose Laws.

In a nation that has likened the public health concern of drug abuse to fighting a war,[86] it is of little surprise that opponents saw these programs as being 'soft' on drugs and against our nation's zero-tolerance policy, and in turn, they feared such programs and policies would actually promote drug use.[87] The government's funding of such programs was seen as complacency towards, and a condoning of, drug abuse.[88] The general consensus was that such programs encouraged drug use and addiction, and therefore, would also result in higher crime rates and increasing numbers of used needles on the streets.[89] Both politically and legally, syringe exchange programs faced opposition from public opinion, prescription needle laws, and drug paraphernalia laws.[90] After all, these programs were providing known drug users with syringes that would otherwise have be unavailable,[91] that would be used to inject illegal drugs, and that were illegal to possess.[92]

Despite the controversial nature of syringe exchange programs, they continue to exist today, and this is because the positive effects of these programs outweigh their perceived drawbacks.[93] The current reduced rate

85 *See generally* Dempsey, *supra* note 80.

86 *War on Drugs*, WIKIPEDIA, https://en.wikipedia.org/wiki/War_on_drugs (last edited Sept. 8, 2018) (explaining how President Nixon first coined the phrase in 1971 when he declared drugs to be America's "public enemy number one", but the phrase has maintained its popularity both in the media and the public since then).

87 Burris et al., *supra* note 30, at 814; Dempsey, *supra* note 80, at 43.

88 Richard T. Andrias & Robert E. Stein, *Sterile Syringes and Needle Exchange Programs: On the Frontline in the Battle to Stop the Spread of HIV*, 24 HUM. RTS. 8, 9 (1997).

89 Burris et al., *supra* note 30, at 814.

90 Dempsey, *supra* note 80, at 50-51; *see also* Burris et al., *supra* note 30, at 814-816 (describing how syringe access is regulated at the state level).

91 Dempsey, *supra* note 80, at 37-38 (The unavailability of clean, unused syringes did not mean addicts did not inject their drugs. Rather, it only meant addicts were forced out of necessity to share used needles, naively believing that flushing the syringe with water a few times or heating the cooker would kill any contaminants).

92 Burris et al., *supra* note 30, at 816, 828 (explaining how drug paraphernalia laws, including those for hypodermic syringes, came to be in the 1970s as states rapidly passed laws criminalizing devices used to ingest drugs); Goetz & Mitchell, *supra* note 33, at 520 ("In 1994, with increasing public concern over the prevention exchange of AIDS, Maryland passed a law allowing the City of Baltimore to implement a pilot needle exchange program. Baltimore's program would distribute to any intravenous drug user specially designated syringes plus and identification card verifying participation . . . Upon a detention or search by law enforcement, officers were not to confiscate program needles or prosecute clients who possessed them, provided that there were no banned substances present.").

93 Roe v. City of New York, 232 F. Supp. 2d 240, 256 (S.D.N.Y. 2002) (quoting the New York State's Commissioner's statement regarding the adoption of the public health law sanctioning needle exchanges, "Studies conducted in the United States and abroad have shown that needle exchange programs, as part of a comprehensive AIDS prevention strategy, can help IDU's to significantly reduce HIV risk behaviors. The research has also shown that the programs do not increase the rate of injection drug use. Needle exchange programs have demonstrated an ability to bring hard-to-reach IDU's into health and social services and can act as a bridge to drug treatment.

of HIV transmission is due, in part, to the clean needles provided at these exchanges.[94] Statistics have shown that these programs do not encourage drug use nor do they encourage the injecting of drugs.[95] In fact, these programs often work to reduce overall addiction rates by acting as a referral source for treatment programs and even providing drug counseling.[96]

Similar to the Good Samaritan Overdose laws, the effectiveness of syringe programs depends on the amnesty being provided to program participants for the possession of illegal syringes.[97] States allowed these programs and supported this amnesty for what would otherwise be a criminal act simply because of the potential this amnesty had to save lives.[98]

Needle exchange programs, like GSOL's, are polices of harm reduction. Harm reduction programs recognize the severity of a public health issue while also acknowledging the inability to eliminate the problem through programs of complete abstinence or zero tolerance.[99] Instead of wasting time and resources on programs aimed at completely eradicating a negative behavior, by acknowledging the behavior will likely continue for the near future, harm reduction programs can propose a strategy to at least curtail the harm being done in the meantime.[100]

In addition, the programs can reduce the risk of public exposure to HIV by reducing the number of needles that are disposed of in public places.").

94 Burris et al., *supra* note 30, at 816, 854 ("Despite variations between programs, a recent international comparison showed that in 29 cities with established SEPs [Syringe Exchange Programs], HIV prevalence decreased on average by 5.8% per year, but increased on average by 5.9% per year in 52 cities without SEPs."); Elizabeth A. Bowen, *Clean Needles and Bad Blood: Needle Exchange as Morality Policy*, 39 J. SOC. & SOC. WELFARE 121, 126 (2012).

95 Andrias & Stein, *supra* note 88, at 8; Bowen, *supra* note 94, at 126.

96 Andrias & Stein, *supra* note 88, at 8.

97 *Id*. at 9 ("Among the specific legal changes that have been found to be effective in facilitating the establishment of successful needle exchange programs are: exempting needle exchange programs from criminal and public health laws restricting the sale, distribution and possession of drug paraphernalia; . . . and modification of drug paraphernalia laws to remove syringes from the scope of such laws."); Roe, 232 F. Supp. 2d at 257-258 ("The very name, needle exchange, reveals the centrality of returning used needles and syringes to the program. It would be bizarre to conclude that the Legislative intent was to permit the creation of needle exchange programs in order to remove dirty needles, while at the same time frustrating that goal by making the essential steps of participation criminal . . . The unrebutted evidence presented indicates that criminalization makes HIV/AIDS reduction far less probable as addicts will simply reuse and share needles for fear of arrest.").

98 *See generally* Roe, 232 F. Supp. 2d 240 (This case reconciled New York's criminal possession laws with the state's Public Health Law sanctioning exchange program participants to possess both clean and dirty syringes and did so by a thorough examination of the Legislature's overall intent behind these contradictory laws, recognizing the immediate need to save lives by reducing the transmission of HIV/AIDS.).

99 Harold Pollack, *Moral, Prudential, and Political Arguments about Harm Reduction*, 35 CONTEMP. DRUG PROBS. 211, 231-233 (2008); *see also* Bissonnette, *supra* note 12, at 475-76 (2014) (commenting on how America's zero tolerance policy towards illegal drug use and underage drinking has had little effect on preventing either).

100 Pollack, *supra* note 99, at 218 ("Needle/syringe distribution programs (NSPs)-such as

Similar to needle exchange programs, Good Samaritan Overdose Laws hope to accomplish the harm reduction goal of saving lives in essentially the same manner: by excusing criminal liability for certain crimes. The opioid epidemic has shown no signs of slowing down, and there is no easy solution to the problem.[101] But, in the meantime, we can at least take steps to prevent the epidemic from being so fatal. By choosing to not prosecute for minor crimes commonly committed at overdose scenes, and by publicizing the policy so it reaches the target population, the hope is that we can encourage addicts to immediately dial 911 upon witnessing an overdose.[102]

Lives should matter more than criminal convictions.[103]

Notwithstanding their life-saving potential, these laws are surrounded by controversy, similar to that which accompanies needle exchange programs.[104] To succeed in getting Good Samaritan Overdose Bill passed into law, compromises are often made to ensure the law is not too lenient on criminal behaviors or drug use.[105] Unfortunately, these

syringe exchanges-are the paradigmatic examples of micro harm reduction . . . there is a strong consensus that these programs reduce HIV incidence. Many types of evidence ethnographic and survey data, mathematical modeling based upon HIV testing of syringes indicate that the provision of sterile injection equipment reduces behavioral risk and HIV incidence among program participants.").

101 *Provisional Counts of Drug Overdose Deaths, as of August 6, 2017*, CTRS. FOR DISEASE CONTROL AND PREVENTION,https://www.cdc.gov/nchs/data/health_policy/monthly-drug-overdose-death-estimates.pdf (last visited Sept. 9, 2018); Steve Birr, *Heroin Use Spikes as Drug Deaths Are Expected to Top 70,000 This Year*, THE DAILY CALLER (Sept. 11, 2017, 2:08 PM), http://dailycaller.com/2017/09/11/heroin-use-spikes-as-drug-deaths-are-expected-to-top-70000-this-year/.

102 Shenfeld, *supra* note 16 ("No national figures exist for how often callers are arrested, but users are attuned to the stories that show up in the media with some regularity, says Meghan Ralston of the Drug Policy Alliance, pointing to a recent case in which an overdosing woman and a man who called an ambulance for her were both arrested. "That sends a chilling, disturbing message to all people who will one day witness an overdose," Ralston says. "It says, 'Don't call 911 because you and the victim will be arrested.'").

103 Peters, *supra* note 37 (explaining how the fear of criminal sanctions does little to combat drug use, and instead, "often deters users from seeking treatment or medical assistance for fear of punishment.").

104 Stephen Young, *Governor Abbott to Drug Overdosers: Drop Dead*, DALLAS OBSERVER (June 3, 2015, 9:01 AM), http://www.dallasobserver.com/news/trumps-goofed-up-condolence-tweets-do-not-help-10428050 (Texas Governor Greg Abbott vetoed House Bill 225, which was a proposed GSOL saying, "HB 225 has an admirable goal, but it does not include adequate protections to prevent its misuse by habitual drug abusers and drug dealers." As of the writing of this note, Texas remains one of the few states without a GSOL).

105 Jessie Balmert & Terry Demio, *Will Good Samaritan Bill Save Lives or Risk Them?*, CINCINNATI.COM (May 26, 2016, 3:04 PM), https://www.cincinnati.com/story/news/politics/2016/05/26/heroin-overdose-bill-good-samaritan-bad-samaritan-911-call/84928604/ (explaining how in order to get Ohio's GSOL enacted, the bill was amended to include such provisions as a limit on the number of times one can receive its immunity and a requirement that first responders to notify law enforcement of the names and addresses of anyone for whom they administer Naloxone. The requirement to notify law enforcement was seen by lawmakers as a way to get information from drug users about who provided the drugs with the goal in mind of going after drug dealers).

compromises have resulted in the passing of wholly ineffective GSOLs,[106] and ineffective GSOLs mean lives continue to be lost.

III. PROBLEMS WITH EXISTING GOOD SAMARITAN OVERDOSE LAWS

Daniel Raymond, policy director of the Harm Reduction Coalition, put the failings of our current Good Samaritan Laws best when he was quoted in a recent article as saying,

'I've been talking to our colleagues across the country, and the sad reality is we're not seeing the promise of these Good Samaritan laws materializing on the ground yet.' Even the laws themselves are a 'patchwork of carve-outs. When we try to educate users about Good Samaritan laws, there are so many loopholes that we have to say, "If the police want to arrest you, they will find a way."'[107]

Legislatures passed these statutes in response to the rapid increase in opioid overdose deaths across the nation[108], and did so under the pretext that saving lives mattered more than criminal convictions.[109] However, at some point during the legislative process, the goal of providing effective amnesty was lost among the various exclusion provisions and legal loopholes for prosecutors.[110]

The purpose of these statutes is to incentivize drug users to call 911 by offering some form of legal protection from criminal consequences with the hope that lives will be saved as a direct result.[111] The three basic

106 *Id*. (In response to the many amendments tacked on to Ohio's GSOL, national groups responded by calling the statute a "Bad Samaritan" bill because "limiting the number of times a person can receive immunity from prosecution and sharing the names and addresses of those who overdose will scare off people who might otherwise call 911 for a friend.").

107 *Good Samaritan Laws Undercut by Prosecutions*, ALCOHOLISM & DRUG ABUSE WKLY., Jan. 18, 2006, at 4 [hereinafter *Undercut by Prosecutions*].

108 Bissonnette, *supra* note 12, at 451 ("Drug overdose deaths in the United States have been on the rise since the 1970s; they have reached unprecedented levels in recent years. Opioids are involved in most overdose deaths. Many of these deaths could be prevented with the prompt administration of an opioid antagonist, namely, naloxone. Legislative intervention can help curb this increase in preventable deaths.").

109 *Id*. ("911 immunity laws" have been a popular method of legislating against drug deaths . . . The idea behind these laws is that sometimes people do not call 911 when they observe an overdose because they are afraid that they will be taken to jail or face other legal consequences as a result.").

110 California's New, *supra* note 74 (upon the passage of California's GSOL, it was described as "the range of the protections provided under the new law is very limited and very specific.").

111 H.R. 28-369, 2nd Sess., at 2:14:16 PM (Alaska 2014) (Committee Report quoting a Rep. Lance Pruitt, a sponsor of the proposed Good Samaritan Overdose legislation, as saying "The passage of this bill can reduce the number of overdose deaths by granting this limited immunity to a person who seeks in good faith emergency medical services for another individual experiencing a life-threatening drug overdose."); ARK. CODE ANN. § 20-13-1702 (West 2017) (stating Arkansas's legislative intent behind its own Good Samaritan Overdose Statute as "The State of Arkansas must take steps to combat the increase of drug overdoses in the state and protect the health

levels of protection offered from criminal liability are immunity, affirmative defense, and mitigating circumstance, and these three protections are all seen in the various state Good Samaritan Overdose Statutes.[112] Some states have even done combination statutes, offering greater protection (i.e., immunity) for lesser offenses, and weaker protection for more serious offenses.[113] Other variations among these statutes are in the people to whom the protection applies, the offenses covered by the protection, and several other conditional requirements in order to receive the protection.

A. Type of Protection Offered from Criminal Liability

Black's Law Dictionary defines a mitigating circumstance as one that, if true, would reduce the severity of the offense, but not result in an acquittal.[114] By definition, a mitigating factor only comes into play after a guilty conviction, in the sentencing phase of a criminal trial to reduce the sentence imposed on the convicted person.

Indiana's GSOL offers protection by giving permission to count the summoning of medical help as a mitigating circumstance.[115] The statute does not even stand on its own, but instead was added as an amendment clause to Indiana's statute on criminal sentencing and judgements.[116]

and safety of its citizens."); A.B. 2063, 2011 Leg., 234th Sess. (N.Y. 2011) (stating New York's legislative intent as "[i]t is the intent of the legislature to encourage a witness or victim of a drug or alcohol related overdose to call 911 or seek other emergency assistance in order to save the life of an overdose victim . . . ").

112 IND. CODE ANN. § 35-38-1-7.1(b)(12) (West 2017) (including it as a mitigating factor); VA. CODE ANN. § 18.2-251.03 (West 2017) (offering it as an affirmative defense); N.H. REV. STAT. ANN. § 318-B:28-b (West 2017) (giving immunity from criminal liability).

113 *See* UTAH CODE ANN. § 58-37-8(16)(a)(West 2017) (as an affirmative defense for possession of a controlled substance, paraphernalia, or imitation controlled substance); *see also* UTAH CODE ANN. § 76-3-203.11 (West 2017) (allowing it as a mitigating factor for other violations of the controlled substance law such as the manufacture or distribution of illicit substances); N.Y. PENAL LAW § 220.78 (giving immunity for possession of a controlled substance or marijuana except for if it is in the case of a sale for "benefit or gain", and allowing it as an affirmative defense for sales of a controlled substance that do not qualify for immunity and are not felonies in the first degree).

114 *Defense*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defining mitigating circumstance as "[a] criminal defendant's claim that, if true, reduces the severity of the offense without eliminating criminal liability altogether."); 24 C.J.S. *Criminal Procedure and Rights of Accused* § 2347; Anders Kaye, *Article: Excuses in Exile*, 48 U. MICH. J.L. REFORM 437, 442-46 (2015).

115 IND. CODE ANN. § 35-38-1-7.1(b)(12) ("(b) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation . . . (12) The person was convicted of a crime relating to a controlled substance and the person's arrest or prosecution was facilitated in part because the person: (A) requested emergency medical assistance; or (B) acted in concert with another person who requested emergency medical assistance; for an individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled substance.").

116 IND. CODE ANN. § 35-38-1-7.1 (statute is entitled "Considerations on Imposing Sentence"

Calling 911 to the scene of an overdose in Indiana is merely part of a list of factors that "[t]he court may consider . . . as mitigating circumstances or as favoring suspending the sentence and imposing probation"[117] This 'protection' does not prevent the addict or overdose bystander from being arrested, prosecuted, or convicted. In truth, because it is a mitigating circumstance at sentencing, the defendant in Indiana would actually need to be convicted before the GSOL's protection could even be asserted. This is made even clearer by Indiana's title to the legislation where this clause is found: "Considerations on Imposing Sentence."[118] Even worse, the weight given to a mitigating factor is at the discretion of the one imposing the sentence[119], and since Indiana's statute reads "[t]he court may consider" it as a mitigating factor, it leaves open the possibility that the sentencer has the option to disregard as inconsequential that the defendant is only in trouble as a result of calling 911.[120] In light of the minor, or even nonexistent, role a mitigating factor plays in criminal punishment, it is hard to see how a mitigating factor could offer any encouragement to addicts to summon authorities.

Affirmative defense is a slightly better form of protection seen in Good Samaritan Overdose Statutes. Unlike mitigating circumstances which may possibly lessen a criminal punishment, affirmative defenses provide the defendant with a justification or excuse that relieves them of criminal liability.[121] However, an affirmative defense has its own weaknesses.

Once again, as was the case with a mitigating factor protection, an affirmative defense will not prevent an arrest or prosecution. It may help prevent a guilty conviction, but the defendant must raise an affirmative defense, and prove its requirements are met in order to get the affirmative defense instruction given to the jury at the close of the trial.[122] This is one of the rare occasions in criminal procedure when the burden shifts from the prosecution to the defense.[123] The implications of this burden shift are that in a state offering this protection in their GSOL, such as Virginia, the defendant must raise and prove the defense by presenting sufficient evidence to establish the prosecution's case rests solely on evidence

and is part of Indiana's Criminal Law and Procedure under Article 38: Proceedings Following Dismissal, Verdict, or Finding).

117 IND. CODE ANN. § 35-38-1-7.1(b).

118 IND. CODE ANN. § 35-38-1-7.1.

119 15 IND. L. ENCYC. *Homicide* § 70 (2018) ("The significance of a mitigating factor varies from case to case, and a sentencing court need not weigh or credit the mitigating factors in the same manner as a defendant suggests").

120 IND. CODE ANN. § 35-38-1-7.1(b) (emphasis added).

121 AM JUR 2D *Criminal Law* § 177 (2018).

122 75A AM JUR 2D *Trial* § 697 (2018).

123 1- NY CLS DESK ED. GILBERT'S CRIMINAL PRACTICE Annual Division 2, Penal Law, § 25 *Defenses; Burden of Proof,* 34-35; John Calvin Jeffries, Jr. & Paul B. Stephan III, *Defenses, Presumptions, and Burden of Proof in the Criminal Law*, 88 YALE L.J. 1325, 1334–35 (1979).

"obtained as a result of the individual seeking or obtaining emergency medical attention" in good faith, that the defendant remained "at the scene of the overdose" until help arrived, "identifie[d] himself to the law-enforcement officer who respond[ed]", and finally that the defendant "substantially cooperate[d] in any investigation of any criminal offense" related to the overdose situation.[124] If the defense meets the evidentiary threshold necessary to get the affirmative defense instruction read to the jury, then there is a chance that the defendant will be found not guilty and excused from criminal liability. However, as with any affirmative defense, the prosecution has the opportunity to rebut the defendant's claim by proving that the defendant does not meet the requirements for the affirmative defense to apply.[125]

The inherent risk then with an affirmative defense protection is that in order to raise it, the defendant must admit guilt to the underlying crime and hope that the affirmative defense will counteract criminal liability.[126] It is an admission of guilt, but with the assertion that the defendant should not be held liable due to an external reason, namely that the defendant was arrested because he invited authorities to the scene to medically treat, and possibly save the life of, an overdose victim. The clear risk in this type of protection then is that if the defense counsel relies on the affirmative defense to relieve the defendant of criminal liability, but does not prove the requirements sufficiently for the instruction to be given or, in the alternative, the prosecution is able to disprove the defense requirements, then the defendant has in essence, helped to prove their own guilt of the underlying crime meaning conviction would be almost certain.[127]

The third, and most effective, form of protection seen in Good Samaritan Overdose Statutes is immunity from criminal liability.[128] This protection is most in line with the stated intent of these statutes—to relieve the fear of possible arrest and other legal consequences.[129]

124 VA. CODE ANN. § 18.2-251.03 ("It shall be an affirmative defense to prosecution of an individual . . . if: 1. Such individual, in good faith, seeks or obtains emergency medical attention for himself, if he is experiencing an overdose, or for another individual, if such other individual is experiencing an overdose . . . 2. Such individual remains at the scene of the overdose . . . until a law-enforcement officer responds . . . 3. Such individual identifies himself to the law-enforcement officer who responds to the report of the overdose; 4. . . . [S]uch individual substantially cooperates in any investigation of any criminal offense reasonably related to the controlled substance, alcohol, or combination of such substances that resulted in the overdose; and 5. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of the individual seeking or obtaining emergency medical attention.").

125 Am Jur 2d, *supra* note 121.

126 *Id*.

127 Gilbert's, *supra* note 123, at 35.

128 *See, e.g*., FLA. STAT. ANN. § 893.21 (West 2017); *see also* 35 PA. STAT. ANN. § 780-113.7 (West 2017).

129 *See, e.g*., N.Y. A.B. 2063 (stating New York's intent behind enacting the state's Good Samaritan Statute as "the intent of the legislature to encourage a witness or victim of a drug or

However, even those states that promise immunity to those who summon authorities to a drug overdose scene have found various ways to limit this grant of immunity. For example, in North Carolina, the statute offers limited immunity from prosecution only, meaning there is no immunity from arrest nor for charge of a criminal offense.[130] This implies that someone who someone who calls 911 in North Carolina will be arrested and charged, but will at some point be released without ever being prosecuted for the offense.

Montana, on the other hand, is an example of a state offering immunity from arrest, charge, and prosecution.[131] In such states offering immunity from arrest and charge, as well as prosecution, there will be no arrests at the scene of an overdose for the included offenses. In these states, addicts can rest comfortably knowing that dialing 911 will not result in police custody, and therefore, the fear of possible arrest should not cause an addict to hesitate before calling medical assistance.

B. Other Problematic Clauses Within Good Samaritan Overdose Statutes

In addition to the false promises of legal protections against criminal responsibility, there are various other requirements states have imposed which restrict the application of these statutes.

One such restriction which effectively creates an ineffective GSOL is a provision limiting who the statute's protection applies to. Illinois, for example, provides immunity from arrest and prosecution for those who are experiencing an overdose and summon authorities as well as for those who witness an overdose and summon authorities.[132] But, as the Illinois case of People v. Teper shows, this immunity will not protect a victim of an overdose if the overdose was reported by another person.[133] In other words, in order for the overdose victim to qualify for Illinois's GSOL

alcohol related overdose to call 911 or seek other emergency assistance in order to save the life of an overdose victim . . . ").

130 N.C. GEN. STAT. ANN. § 90-96.2(c)(3) (West 2017) ("A person shall have limited immunity from prosecution . . . ").

131 MONT. CODE ANN. § 50-32-609 (West 2017); *see also* TENN. CODE ANN. § 63-1-156 (West 2017); GA. CODE ANN. § 16-13-5 (West 2017).

132 720 ILL. COMP. STAT. ANN. 570/414 (West 2017) (section (b) states "A person who, in good faith, seeks or obtains emergency medical assistance for someone experiencing an overdose shall not be charged or prosecuted . . . " and section c stating "A person who is experiencing an overdose shall not be charged or prosecuted . . . ").

133 *See* People v. Teper, 74 N.E.3d 1011 (Ill. App. Ct. 2016) (holding in the case where a third party alerted police of the overdosing defendant that since the defendant had not actively obtained medical assistance as required by the Good Samaritan Statute, and instead was a passive, unresponsive recipient of medical assistance sought by others, she was not eligible to receive the immunity of the statute and her conviction would be upheld).

immunity, the victim must be the one to dial 911. If, instead, it is a bystander friend who reports the overdose to authorities, there is a likelihood the overdose victim will face criminal consequences.

Virginia offers a similar restriction as seen by the holding in Broadous v. Commonwealth which stated that Broadous did not qualify for any protection under the state's GSOL since it was her boyfriend who called 911 and not Broadous, even though Broadous was suffering an overdose at the time.[134] The court in Broadous v Commonwealth held that "pursuant to the plain meaning of the phrase 'obtains emergency medical attention for himself,' Broadous was required to have actively planned and taken steps to actually gain medical treatment" in order to qualify under Virginia's Good Samaritan statute.[135]

This arbitrary restriction almost guarantees there will be an arrest at an overdose scene, excluding those rare occasions when, in the midst of the medical emergency, the overdose victim manages to dial 911. Both bystanders and victims will learn that summoning authorities to an overdose will result in arrest, thereby perpetuating among drug users the fearful connection between help and criminal consequences. Needless to say, by eliminating such a key player as the overdose victim from a GSOL's parameters, it effectively defeats the GSOL's goal of eliminating the fear of arrest and in truth, accomplishes the exact opposite of the stated statutory intent.[136]

Another problematic provision in Good Samaritan Overdose Statutes is seen in clauses restricting the crimes for which the statute applies. Many of these statutes fail to include the most relevant of crimes, those which would naturally be expected to be present at the scene of an overdose.[137] For example, West Virginia's statute relieves criminal responsibility for eight variations of crimes dealing with minors and alcohol, possession of controlled substance and public intoxication, but fails to include any offense related to paraphernalia possession.[138] Yet, possession of paraphernalia goes hand in hand with drug use and is a typical offense one would expect to be present at the scene of a drug overdose.[139] This is not only common sense, it is evidenced by the large

134 Broadous v. Commonwealth, 67 Va. App. 265 (Ct App. 2017).

135 *Id*. at 267 (in which the court upheld the overdose victim/defendant's conviction for possession since "[s]imply benefiting from such treatment while unconscious is not sufficient to bring her within the ambit of the affirmative defense provided by [Virginia's GSOL].").

136 *Id*. ("The General Assembly has obviously made a policy determination that encouraging others, who may themselves be guilty of violating the laws involving controlled substances, to call 911 in an effort to save a life is more important than their prosecution.").

137 Undercut by Prosecutions, *supra* note 107, at 5 (quoting the director of the Illinois Consortium on Drug Policy at Roosevelt University, Kathie Kane-Willis, Ph.D. as saying "The Good Samaritan laws are not really providing immunity. It's hard to communicate the message that it's safe to call 911.").

138 W. VA. CODE ANN. § 16-47-4 (West 2017).

139 Scott Burris et al., *Lethal Injections: The Law, Science, and Politics of Syringe Access for*

number of Good Samaritan Overdose Laws which list paraphernalia offenses within the included offenses.[140]

Nevada, on the other hand, offers immunity for both possession of controlled substances and paraphernalia, pursuant to how paraphernalia is defined elsewhere in Nevada's statutory code.[141] At a preliminary glance, this seems to cover the most relevant offenses, but upon closer inspection, Nevada's definition of paraphernalia specifically excludes hypodermic syringes, a form of paraphernalia extremely common to opioid addiction and opioid overdoses.[142] The possession of hypodermic syringes is clearly a relevant offense when referring to addicts, and it is a mistake to omit this offense from a GSOL. This exact issue was recently contemplated by a Maryland court which held it would be counter-intuitive to the legislative intent of Maryland's GSOL to exclude syringes from the scope of the statute.[143]

Although Nevada has omitted syringes from its included offenses, at least it saw fit to grant its GSOL protection for offenses related to violations of probation, parole, or restraining orders.[144] Since opioid addicts are addicted to illegal substances, they are often trapped in lives of continual illegal behavior, and as such, these infractions would be extremely relevant to the addict population.[145] Unfortunately, many states offer a Good Samaritan Overdose Statute that does not include these offenses. Colorado is one example of such a state in that it expressly limits its protection to only those listed offenses, thereby effectively excluding violations of both supervisory release and orders of protection

Injection Drug Users, 37 U.S.F. L. REV. 813, 829 (2003) ("Paraphernalia laws were broadly written to criminalize sale or possession of any item intended to be used to facilitate illegal drug use. In theory, items that are used in drug injection—like cotton and small vessels used to dissolve drugs ("cookers") and even bleach kits—are legally indistinguishable . . . ").

140 *See, e.g.*, CAL. HEALTH & SAFETY CODE § 11376.5 (West 2017); s*ee also* N.J. STAT. ANN. § 2C:35-30(a)(6) (West 2017) (shall not be "arrested, charged, prosecuted, or convicted for using or possessing with intent to use drug paraphernalia pursuant to N.J.S.2C:36-2 or for having under his control or possessing a hypodermic syringe, hypodermic needle, or any other instrument adapted for the use of a controlled dangerous substance or a controlled substance analog pursuant to subsection a. of N.J.S.2C:36-6").

141 *See* NEV. REV. STAT. ANN. § 453C.150 (West 2017) (stating they "may not be arrested, charged, prosecuted or convicted . . . or be otherwise penalized for violating: (1) Drug paraphernalia, including, without limitation, NRS 453.554 to 453.566, inclusive; . . . ").

142 NEV. REV. STAT. ANN. § 453.554(2) (West 2017) (defining paraphernalia as a term which "does not include any type of hypodermic syringe, needle, instrument, device or implement intended or capable of being adapted for the purpose of administering drugs by subcutaneous, intramuscular or intravenous injection.").

143 *See* Shuey v. State, 2016 WL 3613391 (Md. Ct. Spec. App. 2016).

144 NEV. REV. STAT. ANN. § 453C.150 ("may not be arrested, charged, prosecuted or convicted . . . or be otherwise penalized for violating: . . . (c) A restraining order; or (d) A condition of the person's parole or probation . . . ").

145 Tiger, *supra* note 36 ("[T]he disease of addiction . . . compels people toward criminal behavior as a result of and to sustain the addiction.").

from the statute's protection.[146] New Jersey is another example of a state which limited its GSOL's application to these types of offenses. The New Jersey GSOL states that the summoning of medical authorities may not be used to revoke parole or probation supervision but may be grounds to alter the conditions of said supervision.[147] Unfortunately, as many states have already realized,[148] for addicts whose lives are wrought with criminal behavior, to not provide effective protection from these offenses is a mistake if we want to encourage addicts to dial 911.

The exclusion of crimes relating to the supplying of narcotics is another example of a relevant class of crimes often excluded from the scope of a GSOL.[149] Perceived leniency on drug dealers is one of the main points of controversy surrounding these statutes, and it is fact, a large part of why Texas still remains without a Good Samaritan Overdose Law.[150] Most states, however, reach a compromise choosing to enact a GSOL with a provision expressly preventing the statute's protection from applying to these crimes, and a few even include the crime of drug-induced homicide.[151] In Illinois, this was an issue of contention for the legislature, and the statute would not have been enacted into law without an express limiting provision preventing the GSOL from applying to 'drug dealers'.[152] And if the victim survives the overdose thereby eliminating a possible charge of drug-induced homicide, Illinois took the extra step of amending the state's aggravated battery law to include injecting someone with a drug that causes serious bodily harm thus

146 COLO. REV. STAT. ANN. § 18-1-711 (West 2017) ("(4) Nothing in this section shall be interpreted to prohibit the prosecution of a person for an offense other than an offense listed in subsection (3) of this section or to limit the ability of a district attorney or a law enforcement officer to obtain or use evidence obtained from a report, recording, or any other statement provided pursuant to subsection (1) of this section to investigate and prosecute an offense other than an offense listed in subsection (3) of this section.").

147 N.J. STAT. ANN. § 2C:35-30(7) ("subject to revocation of parole or probation based only upon a violation of offenses described in subsection a. (1) through (6) of this section, provided, however, this circumstance may be considered in establishing or modifying the conditions of parole or probation supervision.").

148 *See, e.g.*, MISS. CODE ANN. § 41-29-149.1 (West 2017) (granting immunity for "violation of a permanent or temporary protective order or restraining order" and also for "violation of a condition of pretrial release, condition of probation, or condition of parole"); HAW. REV. STAT. ANN. § 329-43.6 (West 2017); GA. CODE ANN. § 16-13-5.

149 *See, e.g.*, CAL. HEALTH & SAFETY CODE § 11376.5 ("(c) This section shall not affect laws prohibiting the selling, providing, giving, or exchanging of drugs").

150 Young, *supra* note 104.

151 *See, e.g.*, 720 ILL. COMP. STAT. ANN. 570/414(e) ("Nothing in this Section is intended to interfere with or prevent the investigation, arrest, or prosecution of any person for the delivery or distribution of cannabis, methamphetamine or other controlled substances, drug-induced homicide, or any other crime."); *see also* 35 PA. STAT. ANN. § 780-113.7 ("(2) This section may not interfere with or prevent the investigation, arrest, charging or prosecution of a person for the delivery or distribution of a controlled substance, drug-induced homicide or any other crime not set forth in subsection (b).").

152 Undercut by Prosecutions, *supra* note 107, at 3-4.

ensuring there was a criminal offense available even if drug-induced homicide was not.[153]

While understandable controversial, restricting the statute's application from crimes pertaining to supplying drugs severely undermines the purpose of these life-saving laws by excluding more drug users than for-profit dealers from the statute's scope. One reason for this unintended outcome is that the line between dealer and user is usually a blurry one since addicts will often resort to selling or trading substances to support their habit.[154] Another reason is that under these exceptions, anyone who brought the drugs is excluded from the amnesty of the statute, including an addict friend or relative who unfortunately happened to be the one who went to get the drugs on the day of the overdose.[155] After all, addicts are more likely to use in the company of others, usually other addicts. As such, by exempting crimes relating to dealing, sharing, and supplying drugs, these Good Samaritan Overdose Statutes are excluding from their protection the exact people who should receive it, those likely to be in the company of addicts during the time of the overdose.

Another arbitrary constraint seen in the current GSOL's is the requirement that the overdose be a near fatal situation as opposed to a mere medical emergency. For example, Louisiana's Good Samaritan Overdose Statute at first appears to be rather promising in its simplicity, but its application has been limited to only offer protection in overdose situations that would be deadly without medical intervention.[156] In the case of State v. Brooks, a Louisiana appellate court overturned the immunity granted by a lower court because it found that medical intervention was not 'necessary' despite the overdose victim being found unconscious in a vehicle.[157] The same holding and analysis applied to Rafael Brooks's co-defendant, Kevin Jago.[158]

153 720 ILL. COMP. STAT. ANN. 5/12-3.05 (West 2017) ("(g) A person commits aggravated battery when, other than by discharge of a firearm, he or she does any of the following: (1) Violates Section 401 of the Illinois Controlled Substances Act by unlawfully delivering a controlled substance to another and any user experiences great bodily harm or permanent disability as a result of the injection, inhalation, or ingestion of any amount of the controlled substance."); Undercut by Prosecutions, *supra* note 107, at 3-4.

154 Undercut by Prosecutions, *supra* note 107, at 3-4.

155 *Id*.

156 LA. STAT. ANN. § 14:403.10 (West 2017) (offering immunity from arrest, charge and prosecution for possession offenses).

157 State v. Brooks, 210 So.3d 514, 520 (La. Ct. App. 2016) (holding "that for the purposes of La. R.S. 14:403.10 B, an "overdose" must be of a lethal, toxic, or poisonous amount that is capable of causing death or serious injury, rather than one which is merely dangerous, "too great a dose," or causing a lower level of consciousness.').

158 State v. Jago, 209 So.3d 1078, 1083 (La. Ct. App. 2016) (holding that "for the purpose of La. R.S. 14:403.10 B, "overdose" means the use of a lethal, toxic, or poisonous amount which has created a life-threatening condition, or one which is capable of causing death or serious injury. Here, defendant obviously showed signs of drug impairment, i.e., slobbering on himself and

To insist that unconsciousness is insufficient to fall within the scope of a Good Samaritan Overdose Statute and to require that the overdose be one of a "life-threatening condition" draws a random line in the sand between unconsciousness and near-death. Furthermore, it also places an unfair burden on addicts to competently medically assess the severity of an overdose victim's condition. This added restriction in Louisiana is dangerous and serves only to supply another reason for already hesitant addicts to delay even further before dialing 911. It undermines the general purpose of Good Samaritan Statutes—to get timely medical assistance to opioid overdose victims.[159]

Even though most states have passed some version of a GSOL in recent years, the fact that the overwhelming majority of addicts are unaware of the existence of any such statute in their state is another major impediment in the ability of these laws to save lives.[160] New York, for example, was one of the first states to enact a version of a Good Samaritan Overdose Statute.[161] However, despite its early enactment relative to similar state statutes, addicts in New York remained largely unaware, and thus unaffected, by this statute for years after it was enacted, as seen in the 2017 case of People v. Taylor.[162] In this horribly tragic example of ignorance of New York's GSOL, the defendant wasted precious time to get rid of all leftover drugs, as well as syringes, before requesting medical assistance for his girlfriend's heroin overdose.[163] If defendant Taylor had known of New York's GSOL, it is likely he would not have wasted those vitally important minutes to hide all evidence of illegal drug use, and this may have made the difference in life and death for his girlfriend.[164]

unconsciousness, but there was no evidence of use of a lethal, toxic, or poisonous life-threatening amount.").

159 *See, e.g.*, Commonwealth v. Devore, No. CP-09-CR-0000050-2017, 2017 BL 282577 (Pa. Ct. Com. Pl. 2017) ("The stated purpose of the Act is to save lives that may otherwise be lost to heroin/opioid and other dangerous drugs as a result of the failure to promptly get a person in medical distress due to the ingestion of controlled substances to required medical care."); *see also* A.B. 2063, 234th Leg., Reg. Sess. (N.Y. 2011) (Upon approving New York's Good Samaritan law, the Governor issued this explanation in his Approval Memorandum #4: "accidental drug overdose is the fourth leading cause of death among adults in New York. Approximately 85% of overdose events occur in the company of others, but no medical assistance was sought in half of those cases and in only 14% of cases was calling an ambulance the first response to a peer's overdose.").

160 Shenfeld, *supra* note 16 ("[R]esearch shows that people consistently list "fear of police involvement/fear of arrest" as the leading reason for failing to seek immediate help for someone thought to be overdosing . . . ").

161 N.Y. PENAL LAW § 220.78 (New York was the third state to pass a GSOL, following New Mexico and Washington, when it enacted its statute on September 18, 2011).

162 *See generally* People v. Taylor, 57 Misc. 3d. 272 (Yates Cty. Ct. 2017).

163 *Id*. at 280; Mike Hibbard, *Man Takes Plea Deal in Overdose Death*, FINGER LAKES TIMES (Sept. 27, 2017), http://www.fltimes.com/news/man-takes-plea-deal-in-overdose-death/article_a9548e11-ed1e-5887-9bb7-0174d102475a.html.

164 Dineen, *supra* note 48, at 75-76 ("Opioid deaths are almost completely preventable. Timely administration of naloxone can prevent death."); Caleb Banta-Green, *Washington's 911 Good Samaritan Overdose Law: Initial Evaluation Results*, Nov. 2011,

Instead, the Defendant was unaware New York had enacted its GSOL over five years prior, and his 17-year-old girlfriend was later pronounced dead due to acute heroin intoxication.[165]

The restriction that the criminal protection of a GSOL is not available unless the defendant enters drug treatment within 30 days of the overdose situation is yet another statutory requirement that serves to defeat the legislation's purpose.[166] This restriction may at first glance appear to be aligned with the goal of saving lives since it is undisputed that addicts need treatment to stop the progression of addiction.[167] However, the purpose of a GSOL is not to stop the addiction, but rather to stop unnecessary overdose deaths by eliminating the fear of possible legal consequences.[168] A clause requiring one receives treatment before the statute can apply is counter-productive. It is yet another legal consequence imposed upon an addict, and one which will defeat the goal of encouraging addicts to dial 911.

When drafting a Good Samaritan Overdose Statute, the legislature needs to keep at the forefront that the purpose of this legislation is to prevent unnecessary overdose deaths.[169] Unfortunately, many states seem to have lost sight of the end goal as seen by the degree of complexity and numerous restrictions seen in the various Good Samaritan Overdose Statutes. These requirements make the statutes increasingly complex, difficult to understand, and self-defeating. In short, a GSOL full of statutory requirements, complex language, and legal loopholes is an ineffective statute, and an ineffective Good Samaritan statute means more lives will be lost.[170]

http://adai.uw.edu/pubs/infobriefs/ADAI-IB-2011-05.pdf ("Calling 911 during an overdose can mean the difference between life and death . . . "); Burris et al., *supra* note 30, at 278 ("Opioids kill by depressing respiration, a slow mode of death that leaves plenty of time for effective medical intervention. Overdose is rapidly reversed by the administration of a safe and inexpensive drug called naloxone.").

165 Hibbard, *supra* note 163.

166 OHIO REV. CODE ANN. § 2925.11(B)(2)(b) (West 2017) ("[A] qualified individual shall not be arrested, charged, prosecuted, convicted, or penalized pursuant to this chapter for a minor drug possession offense if all of the following apply: . . . (ii) within thirty days after seeking or obtaining the medical assistance, the qualified individual seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a properly credentialed addiction treatment professional.").

167 Michel & Ward, *supra* note 23, at 10 ("The TFAH (Trust for America's Health) noted that in 2011, 21.6 million Americans, age 12 and older, needed treatment for a substance abuse problem.").

168 Bissonnette, *supra* note 12, at 483.

169 *Id*. at 452 ("Most opioid overdose deaths are preventable . . . If emergency assistance is provided in time, most overdose victims will survive.").

170 *Id*. at 483-484 (describing studies done showing the effectiveness of amnesty policies for alcohol overdoses on college campuses by increased reports and decreased fears).

IV. A PROPOSED MODEL GOOD SAMARITAN OVERDOSE STATUTE

The statute that follows purports to correct for the failings seen in the current Good Samaritan Overdose Laws across the nation. In order for a GSOL to be effective, it must, in practice, actually result in amnesty from criminal responsibility including the prevention of arrest through to the prevention of conviction and everything in between. Effective amnesty is key to the success of a GSOL but of equal importance is that the amnesty pertain to crimes relevant to the targeted population and common to overdose situations, and that it includes all relevant players.

The proposed statute is free from arbitrary restrictions or limitations which, in turn, results in a simple, straightforward statute. This simplicity ensures that it will be easier both to spread awareness about the GSOL to the targeted addict population and also to convince addicts of its effectiveness. Awareness of and belief in the offered protections are indispensable attributes of an effective GSOL. If a GSOL fails to reduce or eliminate the fear addicts have of criminal consequences then it has done little or nothing towards encouraging 911 calls at overdoses.

The model Good Samaritan Overdose Law is as follows:

1) A person who, in good faith, seeks medical assistance for a person who is experiencing a drug or alcohol overdose or other medical emergency or who seeks such assistance for himself or herself, or who is the subject of a good faith request for such assistance, may not be arrested, charged, prosecuted or convicted, or have his or her property subjected to forfeiture, or be otherwise penalized for violating any and all non-violent offenses in this state's penal code based upon evidence that was obtained as a result of the seeking of assistance.

2) In the case of the person claiming this immunity being the person who sought assistance for an overdose victim or who sought assistance for his or herself, this immunity will only be available if the person cooperated fully with authorities and provided all requested information. (Nebraska)

3) For any crime not included under the immunity granted in section (1), evidence of seeking emergency medical assistance for a person who reasonably appears to be experiencing an overdose may be considered by a court or jury as a mitigating factor in the sentencing phase of a criminal proceeding, provided that the conditions of section (2) are met, and the evidence used in the criminal proceeding was obtained as a direct result of the seeking of emergency assistance as described in section (1).

V. EXPLANATION OF MODEL STATUTE

The good faith requirement is one seen in nearly all active Good

Samaritan Overdose Statutes.[171] It implies that the caller reports the overdose in a timely manner[172] and does so not for the sake of escaping criminal culpability, but for the honest purpose of getting medical assistance.[173] A few states have sought to expressly define this good faith requirement as excluding those who seek medical assistance in the execution of a warrant or legal search.[174] However, such an express omission is not necessary and serves only to limit the statute's effect. If, for example, someone immediately alerts police to an overdose victim who they would not have been aware of in such a timely manner or perhaps not at all, even if during the execution of a warrant, then the protection of the Good Samaritan Overdose Statute should still apply. The good faith requirement on its own is a sufficient limitation within the purposes of the statute and further restriction is unnecessary.

In order to achieve the desired result of encouraging criminals to call authorities when faced with an opioid overdose, the model GSOL should provide immunity from every facet of criminal liability.[175] In other words, the immunity would apply for arrest, charge, and prosecution. A statute which provides immunity from prosecution only means addicts will see people being taken into custody at overdose scenes. This perpetuates the exact fear that these statutes are attempting to eliminate.[176] Furthermore, as seen in the Wisconsin case of State v. Williams, a state which offers protection only from prosecution can impose a burden on the defendant to prove pre-trial that he is entitled to the protection.[177] In other words, it

171 *See, e.g.*, MASS. GEN. LAWS ANN. ch. 94C, § 34A (West 2017); *see also* 35 PA. STAT. ANN. § 780-113.

172 *See, e.g.*, People v. Taylor, 57 Misc.3d at 280-281 (holding that since defendant took the time to dress the overdose victim and dispose of any evidence of illegal drug use before yelling for his mother to dial 911, he did not act with the requisite good faith).

173 *Good Faith*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defined as "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.").

174 D.C. CODE ANN. § 7-403(i)(1) (West 2017) ("'Good faith'" under subsection (a) of this section does not include the seeking of health care as a result of using drugs or alcohol in connection with the execution of an arrest warrant or search warrant or a lawful arrest or search."); MINN. STAT. ANN. § 604A.05 (West 2017) ("Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search.").

175 DRUG POL'Y ALLIANCE, *supra* note 13 ("[P]rotection from prosecution is not enough to ensure that people will call 911. Many people who use drugs do not understand the difference between arrest and prosecution.").

176 N.Y. A.B. 2063 ("It is the intent of the legislature to encourage a witness or victim of a drug or alcohol related overdose to call 911 or seek other emergency assistance in order to save the life of an overdose victim by establishing a state policy of protecting the witnesses or victim from arrest, charge, prosecution, and conviction . . . "); H.R. 965, 616th Leg., Reg. Session (Ga. 2014) ("This part shall be known and may be cited as the "Georgia 9-1-1 Medical Amnesty Law" . . . WHEREAS, those who were with them did not call 9-1-1 to seek medical assistance, which could have saved their lives, because of a fear of prosecution for the possession and use of illegal drugs . . . ").

177 State v. Williams, 372 Wis.2d 365 (Ct. App. 2016) ("We agree with Williams and the State

may be decided that the defendant is not protected from prosecution, thereby rendering the Good Samaritan Statute entirely ineffective. Additionally, to provide protection only from arrest and prosecution, but not from charging,[178] similarly defeats the intention of eliminating fear of legal repercussions. Therefore, a model statute will provide immunity for arrest, charge, and prosecution for the included crimes.

Regarding the included criminal offenses, the ideal Good Samaritan Overdose Statute should provide this immunity for all controlled substance, alcohol, and paraphernalia offenses, as well as all violations of post or pre-trial supervision and restraining orders.[179] In addition to these offenses, the statute should grant immunity for all nonviolent offenses included in the state's penal code, including but not limited to offenses related to the sharing, supplying, or dealing of drugs. Otherwise, the statute is in essence choosing a conviction for a nonviolent offense over saving a life.

This list of included crimes ought to encompass the offenses most likely to be committed at the scene of a drug overdose and most likely to prevent those present from seeking help.[180] As seen with the existing statutes, once the statute starts to provide immunity that is limited by arbitrary quantities of drugs, for example, or that excludes the more relevant crimes committed by drug users (i.e., sharing drugs, possession of paraphernalia), the statute loses its effectiveness. The true purpose gets lost in the various exclusion provisions and legal loopholes for prosecutors.[181] To stay in line with the policy and have an effective statute that saves lives, the lives must have more value than the convictions would,[182] and as such, the less limited the statute's immunity is, the better.

Additionally, even for those offenses not listed, the model statute offers the protection of a mitigating circumstance. This does not mean that violent offense will be excused, but it at least permits the sentencing

that the question of immunity is to be decided by the circuit court pretrial and that the defendant carries the burden of proving by a preponderance of the evidence his/her entitlement to the immunity.").

178 OR. REV. STAT. ANN. § 475.898 (West 2017).

179 DRUG POL'Y ALLIANCE, *supra* note 13 ("People may also fear consequences beyond a possession charge. Probation and parole violations, immigration and child welfare consequences, outstanding warrants, trespassing, or sales or drug-induced homicide charges can be equal barriers to calling 911.").

180 Latimore & Bergstein, *supra* note 33, at 85 (describing how a Baltimore study which questioned overdose bystanders and found that fear of arrest was a clear deterrent for calling 911, but this included a fear of arrest for crimes ranging from possession of drugs and/or paraphernalia, outstanding warrants, trespassing on abandoned properties, and even involuntary manslaughter for owning the home where the overdose occurred).

181 *See* Undercut by Prosecutions, *supra* note 107, at 4.

182 Broadous v. Commonwealth, 67 Va. App. at 267 ("Assembly has obviously made a policy determination that encouraging others, who may themselves be guilty of violating the laws involving controlled substances, to call 911 in an effort to save a life is more important than their prosecution.").

party to consider the seeking of medical assistance as a mitigating factor that may reduce a criminal punishment. Again, the reason for including this clause is to improve the effectiveness of this statute. Even if amnesty from criminal liability is not provided for, addicts will know that at least if they dial 911 to report an overdose, they may receive a less harsh sentence. It will help spread the word about the statute's protections among addict populations, without allowing violent criminals to escape punishment. This is aligned with the greater purpose of the statute to prevent unnecessary overdose fatalities,[183] and a large part of that is convincing addicts the statute will provide them with protection.

Unlike those states that have excluded passive overdose victims from the protection offered in a Good Samaritan Statute,[184] the model statute should not be limited regarding who at the overdose scene can receive amnesty. The language of this model statute makes it applicable to overdose victims whether the victim or a third party seeks the assistance and is likewise applicable to the witness who reports the overdose. The applicability of the offered amnesty to all involved parties is necessary because it is the only way to guarantee that there are no arrests at an overdose scene or criminal prosecutions later. This, in turn, is the only way to assuage the fear of legal consequences that prevents the summoning of medical assistance. Otherwise, if anyone is arrested at the scene of an overdose, whether it be the overdose victim or a bystander, this will serve only to validate the fear addicts have of possible criminal repercussions.[185]

A clear example of how important it is to include all relevant parties within the scope of these statutes was recently aired nationwide on the January 5, 2018 episode of A&E's television show, Live PD.[186] This program, which airs live, shows the work of police officers from select cities across the nation,[187] and on this particular Friday night, the show was filming as officers from Jeffersonville, Indiana, responded to a 911 call reporting a nonresponsive male at a Burger King parking lot.[188] All

183 Burris et al., *supra* note 30, at 276-277 ("[O]verdose is a public health problem that can be solved. Unlike many of the other leading causes of death, death from opioid overdose is almost entirely preventable, and preventable at a low cost.").

184 *See, e.g.*, VA. CODE ANN. § 18.2-251.03(B)(1) ("Such individual, in good faith, seeks or obtains emergency medical attention for himself, if he is experiencing an overdose, or for another individual, if such other individual is experiencing an overdose, by contemporaneously reporting such overdose.").

185 Dineen, *supra* note 48, at 76 ("Fear of criminal liability for illicit drug use by *bystanders and participants* may also delay or prevent help-seeking behavior or attempts to rescue someone experiencing symptoms of opioid overdose.") (emphasis added).

186 *Live PD*, A&E TV, http://www.aetv.com/shows/live-pd (last visited Sept. 9, 2018).

187 Cynthia Littleton, *A&E Network to Air Live Police Ride-Along Reality Series 'Live PD'*, VARIETY (Oct. 3, 2016, 6:00 AM PT), http://variety.com/2016/tv/news/live-pd-ae-network-police-ride-along-reality-series-1201876060/.

188 *Live PD*: *Episode 23* (A&E television broadcast Jan. 5, 2018).

across the nation, viewers watched as the officers arrived on the scene to find a nonresponsive male laying on the sidewalk, unconscious and blue in the face.[189] With no success using standard revival techniques, the officers, suspecting an overdose, called for Narcan to be brought to the scene and then proceeded to search the pockets of the victim where they located what appeared to be narcotics.[190] EMS arrived shortly after, administered the Narcan, and the victim almost immediately began to respond and come out of the overdose. [191] Viewers were later informed by the officer at the scene that after the Narcan saved his life, the overdose victim was taken for treatment at a local hospital, and a warrant would be issued for the possession charge resulting from the drugs found in his pocket.[192]

This show aired nationwide,[193] will be re-aired at later dates, and will reach millions of people across the nation,[194] spreading the message that there will be legal consequences if authorities are summoned to the scene of an overdose. Indiana has a GSOL on the books, as previously discussed, but its protection is limited to only those who actively participated in making the 911 call, thereby excluding many overdose victims.[195] Tragically, this is a prime example of how this limitation within a Good Samaritan Overdose statute can be so counterproductive to the purpose of these laws. Instead of assuaging the fear of authorities and saving lives, this story instead will serve to affirm the fear that addicts have. validate their reasons for not summoning help, and tragically will do so on a nationwide level. The bottom line is that if anyone is arrested at the scene of an overdose, whether it be the overdose victim or a bystander, it only serves to validate the fear addicts have of possible criminal repercussions which makes the statute ineffective.[196]

The ideal Good Samaritan statute will apply to the victim of an overdose, as well as to all medical emergencies related to overdoses. It is illogical to limit the statute so that it applies only to those overdoses

189 *Id.*

190 *Id.*

191 *Id.*

192 *Id.*

193 *A&E (TV Channel)*, WIKIPEDIA (last edited Sept. 5, 2018), https://en.wikipedia.org/wiki/A%26E_(TV_channel).

194 Alex Welch, *Friday Cable Ratings: 'Live PD' Returns to the Top, 'Mama June From Not to Hot' Ticks Up*, TV BY THE NUMBERS (July 16, 2018), https://tvbythenumbers.zap2it.com/daily-ratings/friday-cable-ratings-july-13-2018/ (putting the show's Friday night ratings at nearly two million viewers).

195 IND. CODE ANN. § 35-38-1-7.1(b)(12) (limiting the protection from legal consequences to only apply if "the person: (A) requested emergency medical assistance; or (B) acted in concert with another person who requested emergency medical assistance; for an individual who reasonably appeared to be in need of medical assistance due to the use of alcohol or a controlled substance.").

196 Dineen, supra note 48, at 76 ("Fear of criminal liability for illicit drug use by *bystanders and participants* may also delay or prevent help-seeking behavior or attempts to rescue someone experiencing symptoms of opioid overdose.") (emphasis added).

which would be fatal without medical intervention. To do so, puts an unfair burden on those at the scene by expecting them to be able to adequately determine the medical severity of the overdose. Not only is this an unfair expectation, it will lead to even further delay and hesitation before dialing 911, and this is directly counterintuitive to the purpose of a Good Samaritan Statute. Therefore, the model statute's immunity will cover both victims and reporters in any overdose for which it is reasonably thought that medical intervention is needed, without expecting either victim or reporter to know for sure that it will be an otherwise fatal overdose.[197]

One of the biggest advantages of the model Good Samaritan Statute is that it is simple and straightforward. Consequently, it is easier to understand, even by laypeople, and conversely easy to explain and educate the targeted population about. Awareness is key in the effectiveness of Good Samaritan Statutes[198], as seen by a survey conducted in Washington state, which found that after becoming aware of Washington's Good Samaritan Statute, "88% of opiate users indicated that now . . . they would be more likely to call 911 during future overdoses."[199] Even more recently, in New York City, the importance of making the Good Samaritan Overdose Statue widely known was recognized, resulting in a New York Police Department's public service campaign in an attempt to increase awareness of the Good Samaritan Law by displaying posters in public transportation hubs.[200]

In order to be effective, the targeted population needs to be convinced that amnesty will be provided for them.[201] In the case of addicts, the statute is targeting a population living on the outskirts of society who are likely mistrusting of others, especially those in

197 This reasonable belief as to the need for medical assistance is included within the good faith requirement stated earlier in the statute. *See Acting in Good Faith*, BLACK'S LAW DICTIONARY (10th ed. 2014) (defined as "[b]ehaving honestly and frankly, without any intent to defraud or to seek an unconscionable advantage.").

198 Peters, *supra* note 37 ("If a prevention measure such as this is to work, then stakeholders must know that it exists. After New York state passed its Good Samaritan law in 2011, for example, the Drug Policy Alliance printed 1 million cards and posters that explained the law and offered basic instructions on how to initially respond to an overdose and worked with various agencies to help distribute these materials to vulnerable populations. Low-tech solutions like these can be effective, inexpensive ways of spreading the word about the law. But states need to budget for this stuff right at the beginning. If they don't, then they're basically setting up their efforts to stumble or fail."); Bissonnette, *supra* note 12, at 484 (2014).

199 Banta-Green, *supra* note 164 ("[D]rug users expressed fear of arrest as a reason they do not call 911 during overdoses. However, drug users now overwhelmingly state that the Good Samaritan law makes them more likely to call 911 in the future.").

200 *NYPD Launches Public Service Announcement to Increase 'Good Samaritan Law' Awareness*, NYPD NEWS (June 21, 2017), http://nypdnews.com/2017/06/nypd-launches-public-service-announcement-to-increase-good-samaritan-law-awareness/.

201 Bissonnette, *supra* note 12, at 484 (explaining how the effectiveness of these Good Samaritan Overdose Laws depends on convincing the target population that they truly will not be prosecuted for the included offenses).

authority.[202] Therefore, educating this population about the statute and its effect is more difficult than would be with other more mainstream populations. As such, in order to efficiently convince addicts that a Good Samaritan Overdose Statute offers criminal amnesty for them, the simpler the statute is to read and comprehend, the better. By offering simple immunity from criminal liability for all non-violent offenses and for all parties present at the overdose, the statute is simple, meaning it is easy to make addicts aware of it and easy for addicts to understand. The more addicts who are aware of, and convinced by, the promised protection, the more effective the statute will be.[203]

VI. OTHER POTENTIAL IMPLICATIONS

The model statute is designed to successfully accomplish the life-saving goal originally intended by the enactment of the many Good Samaritan Overdose Laws which are currently active nationwide. For the above-mentioned reasons, the proposed GSOL will be a more effective piece of legislation than those statutes currently in existence, and as a result, more lives will be saved. Notwithstanding this intended, and undeniably positive, outcome, it is worth briefly mentioning a few of the other possible consequences which may result from a successful GSOL. Since the Good Samaritan Overdose Laws are all relatively new statutes, their potential secondary outcomes and effects have not fully been realized nor researched.[204] Therefore the section that follows is in not in any way intended to be exhaustive or comprehensive and is intended merely for discussion purposes.

As previously stated, a major point of contention surrounding this legislation is the fear that it will be over-inclusive and result in criminal amnesty for those who do not deserve such protection.[205] This concern mainly regards for-profit drug dealers, as well as those who would be charged with drug-induced homicide (i.e., an acquaintance who bought

202 Peters, *supra* note 37 (describing the effect America's drug policies have had as follows: "In theory, the threat of incarceration is supposed to deter people from using and selling drugs. In practice, it often deters users from seeking treatment or medical assistance for fear of punishment."); Cohen, *supra* note 46, at 57 ("Stigmatization of people with drug dependence persists as a pervasive attitude in today's society.").

203 Andrea Jakubowski et al., *Knowledge of the 911 Good Samaritan Law and 911-Calling Behavior of Overdose Witnesses*, SUBSTANCE ABUSE, Oct. 3, 2017, at 3-5 (Detailing the first study done that demonstrated a relationship between knowledge of the GSL and 911-calling during overdose events. The results showed that "[i]n the events where the overdose witness had correct knowledge of the GSL at the time of the event, the unadjusted odds of 911 being called were over 3 times greater than when the witness had incorrect knowledge of the GSL . . . ").

204 Bissonnette, supra note 12, at 475, 488 (explaining how GSOL's are novel laws and evidence of their effectiveness is still only in preliminary stages).

205 *See, e.g.*, Undercut by Prosecutions, *supra* note 107, at 3-4.

the drugs or a friend who injected the overdose victim with the drugs) were it not for the GSOL.[206] While not intended to relieve responsible third parties from criminal liability for an active role played in an overdose, it is a legitimate possibility and one that is felt hardest among the families of overdose victims.[207]

Without discounting the pain felt by those suffering the loss of a loved one from a fatal overdose, the purpose of a Good Samaritan Overdose Law must be kept in the forefront. These statutes are not designed to stop drug use or prevent overdoses, but rather to reduce the number of fatal overdoses.[208] There is a better chance of survival from an overdose if medical assistance arrives quickly, and this is more likely with an effective GSOL in place. For every one individual who hides under a GSOL to escape deserved punishment, it is a wholly valid expectation that the law will have saved the lives of countless others. A successful Good Samaritan Overdose Law will prevent the pain and grief of many more families than it will contribute to that pain by not holding culpable parties responsible.

Another possible implication regards the belief that such a Good Samaritan Overdose Law will encourage drug abuse. Many who oppose these statutes do so under the pretext that this legislation enables drug users to keep using drugs without suffering criminal consequences or treatment interventions.[209] A seemingly simple solution then would be to include a treatment mandate as a condition of the GSOL amnesty. However, as discussed earlier, a statutory mandate requiring treatment would be counterproductive in that it would impose legal consequences when the goal of a GSOL is to eliminate legal implications.[210] Despite the inability to mandate treatment services, there is no reason to expect that a Good Samaritan Overdose Law will encourage drug abuse. The same fear existed regarding Needle Exchange Programs when they were first introduced, and as time passed, it became clear that these programs did not encourage drug use, but rather had the opposite effect.[211]

In practice, a successful GSOL will actually result in a greater

206 *See, e.g.*, *id*. at 4.

207 Undercut by Prosecutions, *supra* note 107, at 5 (explaining how parents of overdose victims often want whoever sold, or helped provide, their child the drugs to be punished).

208 N.Y. A.B. 2063 (stating New York's legislative intent as "to encourage a witness or victim of a drug or alcohol related overdose to call 911 or seek other emergency assistance in order to save the life of an overdose victim . . . ").

209 *Good Samaritan Bill: Saving Lives in New Jersey*, ALCOHOLISM & DRUG ABUSE WKLY., May 6, 2013, at 8 (describing New Jersey Governor's initial opposition to a New Jersey GSOL due to a fear it would encourage drug use) [hereinafter *Good Samaritan Bill*]; Bissonnette, *supra* note 12, at 488-489; Melissa Klaric, *Life-Saving Controversy: Do Good Samaritan Laws, Narcan Feed Drug Epidemic?*, THE HERALD (July 2, 2017), http://www.sharonherald.com/news/life-saving-controversy/article_a5e14556-817d-5afb-ac10-b9d4dcd57e48.html.

210 NETWORK FOR PUB. HEALTH L, *supra* note 6.

211 Andrias & Stein, *supra* note 88, at 8.

awareness among authorities of who needs help and where they are located. This knowledge can result in targeted outreach programs to reduce drug use through education and/or connection to treatment services, not unlike that done within needle exchange locations. Such programs can be as general as Naloxone education billboards within an area experiencing high rates of overdoses or as specific as individual follow-ups with those present at an overdose scene to offer treatment referrals. Although not its express purpose, a GSOL can be an important tool in the fight against drug addiction by connecting addicts to authorities and increasing awareness among both groups, which in turn has the potential to lead to a greater accessibility of treatment services.

By enabling addicts to live another day and survive an otherwise fatal overdose, Good Samaritan Overdose Laws will result in more intact families[212] and provide the addict with another chance to pursue treatment and recovery. This result is invaluable. After all, it is an undeniable truth that recovery is no longer a possibility after a fatal overdose.

VII. CONCLUSION

Addiction is a disease that is affecting increasing numbers of families nationwide,[213] and it is a disease with a death rate that keeps climbing with no signs of slowing down.[214] Sadly, it is also a disease that has been criminalized in American laws,[215] causing addicts to be stigmatized by and shunned from mainstream, functioning members of society.[216] Unfortunately, this has only served to perpetuate the problem,

212 Park & Moakley, *supra* note 2, at 45 (46% of American adults have a friend or loved one who has or is suffering from drug addiction).

213 Catherine Currin Hammond & Shannon Taylor, *Personal Reflections on the Opioid Epidemic and Legal Responses*, 20 RICH. PUB. INT. L. REV. 111, 175 (2017) ("We hear the stories of those who are in long term recovery, as well as from the mom, the brother, or another family member who talks about the pain when the loved one has died from an overdose. We talk about how we cannot arrest our way out of this problem and that it is a public health crisis."); Ralston, *supra* note 41 (California's Assembly member Kristin Olsen who, upon the passing of the state's Good Samaritan bill, commented on how the disease of addiction affects all types of people in all families and in all communities by remarking how all people make mistakes and expressing concern that she wouldn't want a family member of hers to die from such a mistake.).

214 Understanding the Epidemic, *supra* note 11 (Between 1999 and 016, more than 350,000 Americans died from an opioid related overdose, and by 2016, the fatality rate was about 115 deaths per day); Nadia Koundang, *US Drug Overdose Deaths Reach New Record High,* CNN (Aug. 8, 2017, 10:48 AM), http://www.cnn.com/2017/08/08/health/drug-overdose-rates-2016-study/index.html.

215 Pollack, *supra* note 99, at 212 ("Federal sentencing guidelines consider a 5-gram sale of crack to merit greater penalty than attempted second-degree murder that results in serious injury to the victim. In some cases, nonviolent first-time offenders receive mandatory minimum sentences of 25 years or more that exceed penalties imposed for homicide, attempted hijacking, and other violent offenses.").

216 *See, e.g.*, *id*. at 212-214 (explaining how America's drug policy as being very influential over

leading to the current opioid crisis across our country.[217]

Now more than ever before, it is important that Americans place more emphasis on the illness of addiction[218] and recognize the current epidemic as the public health crisis it is, rather than focus on punishing the symptomatic behaviors of the disease.[219] Punishing drug abuse serves no purpose in combating the addiction problem America currently faces.[220] It is through a recognition of this failing that most state legislatures chose to enact Good Samaritan Overdose Statutes.[221] By placing a priority on saving lives instead of valuing criminal sanctions, the hope is that these statutes will eliminate the fear addicts have of summoning authorities to the scene of an overdose.[222]

However, like other harm reduction strategies, these Good Samaritan Overdose Laws are not without controversy, and unfortunately, this controversy and the resulting legislative compromises have resulted in a body of laws that are ineffective at achieving the desired intent. The current statutes do little to calm the fears of police involvement in the targeted population,[223] and this, in turn, means opioid

American perceptions of drug abuse and addiction, as well as policies aimed at harm-reduction programs); Brent Lang and Harold Rosenberg, *Public Perceptions of Behavioral and Substance Addictions*, 31 PSYCHOL. ADDICTIVE BEHAVS. 79, 83 (2016) (discussing a study of nonaddicted peoples' reactions to those addicted to gambling and substances, and finding that similar to other studies, the results of the current study showed that participants were generally unwilling to affiliate themselves with either type of addict).

217 Wikipedia, *supra* note 86 (comparing America's 'War on Drugs' to Portugal's opposite approach of decriminalizing previously illicit drugs and focusing on rehabilitation, rather than punishment. The result in Portugal has been a drastic reduction in drug use and an 80% decrease in overdose deaths).

218 Cohen, *supra* note 46, at 59 ("[T]here comes a point at which the drug user becomes an addict. At that point, it appears that a figurative "switch" has been thrown and the individual suffers a significant loss of his or her ability to make free choices about continued use of drugs . . . The addict cannot voluntarily move back and forth between abuse and addiction because the addicted brain is, in fact, different in its neurobiology from the non-addicted brain.").

219 Tiger, *supra* note 36 ("[T]he disease of addiction that compels people toward criminal behavior as a result of and to sustain the addiction.").

220 *Id*. at 93 (describing how addicts will always be an easy target to arrest since their addiction renders them incapable of thinking beyond their immediate need to obtain and use drugs); *see* Bissonnette, *supra* note 12, at 487-488.

221 *See, e.g*., *Gov*. *Snyder Signs Legislation Expanding Good Samaritan Law*, MICH. H. REPUBLICANS (Oct. 7, 2016), http://gophouse.org/gov-snyder-signs-legislation-expanding-good-samaritan-law/ ("PA 220 [Michigan's GSOL bill] was introduced after the death of Mason Mizwicki, a Watervliet teen who passed away during a New Year's Eve party because of a prescription drug overdose. His mother, Lori Mizwicki, said many of Mason's friends were present at the party who could have called for help, but didn't because they feared criminal charges . . . 'Mason's legacy will not be his death, but the lives that will be saved by this law,' Rep. Pscholka said.").

222 Burris et al., *supra* note 30, at 278 (describing how laws and law enforcement practices play a significant role in this failure to prevent otherwise avoidable overdose deaths. This relates back to the War on Drugs which has instilled in drug users a fear of calling 911, and unfortunately, has contributed considerably to the opioid epidemic of today. Legislative action is needed then to counteract these damaging legal policies).

223 Kimberly Scott, *Woman Arrested After Reporting Overdose; No Good Samaritan Law*

overdoses continue to be fatal.[224] With Naloxone readily available and carried by most first responders, it is often only a phone call that stands in the way between a life being saved or being lost.[225]

By enacting an effective Good Samaritan Overdose Statute, states can do their part to ensure that phone call is made, and the overdose victim has a fighting chance at living another day.[226] Such a statute is an indispensable part of the fight against the deadly epidemic that is currently ravaging our communities nationwide.[227]

Immunity?, ST. GEORGE NEWS (Sept. 17, 2014), https://www.stgeorgeutah.com/news/archive/2014/09/17/kss-woman-arrested-after-reporting-overdose-no-good-samaritan-law-immunity/#.W52fB-hKjIU (describing Chelsea Hunerlach's story. She called 911 to report her ex-husband's overdose, and because of her phone call, Narcan was administered in time to save his life. However, despite Utah's GSOL, Chelsea was arrested and charged with one third-degree felony for possession of heroin and a class B misdemeanor for possession of drug paraphernalia).

224 Shenfeld, *supra* note 16 ("[d]rug users fear arrest as well, so much so that they would forgo dialing 911 for friends in the midst of medical emergencies, a truth that has sadly been borne out in cases around the country.").

225 Wickramatilake et al., *supra* note 24, at 176.

226 Good Samaritan Bill, *supra* note 208 (Briefly telling the story of Paul Ressler whose son suffered a fatal overdose before New Jersey had enacted its GSOL. Despite suffering the overdose in the company of many friends, these friends later explained their hesitancy to dial 911 as a result of their fear of being arrested due to the quantity of drugs present. After his son's death, Paul Ressler joined many other parents in their fight to get New Jersey to pass a GSOL and stated, "If this law was in effect, potentially my son could be alive today.").

227 *See generally* Bissonnette, *supra* note 12 (discussing how GSOL's and increased access to Naloxone are key legal steps to curbing the opioid fatality rate).