

## ***Does This Law Apply to Me? An Examination of States' Good Samaritan Overdose Laws and a Policy Proposal for a Uniform Approach to Combatting the Opioid Epidemic***

*Labiba Salim\**

I. INTRODUCTION.....	750
II. BACKGROUND ON THE PAIN REVOLUTION AND AN INTRODUCTION TO GSOLS .....	752
A. Brief History of the U.S. Opioid Epidemic.....	752
B. Responses to the Drug Overdose Epidemic .....	754
C. Emergence of Good Samaritan Overdose Laws (GSOLS) ...	756
III. ANALYZING COMPONENTS OF STATES' GSOLS .....	759
A. Drug Possession Offenses .....	759
B. Drug Paraphernalia Offenses .....	761
C. Probation or Parole Violations .....	762
D. Underage Alcohol Offenses .....	763
E. Eligibility for Immunity .....	764
F. Treatment Requirement for Immunity .....	764
G. Recovery Coach Dispatch.....	765
H. Limitations on Frequency One Can Receive Immunity .....	766
I. Mitigation Provisions.....	767
IV. POLICY RECOMMENDATIONS FOR A MODEL GSOL .....	768
A. Eligibility.....	769
B. Types of Protection .....	769
C. No Limits on Number of Times One can Receive Protection .....	769
D. Mitigation .....	770
E. No Treatment Requirement.....	770

---

\* J.D. Candidate, Class of 2024, Seton Hall University School of Law; Symposium Editor, Vol. 48, Seton Hall Journal of Legislation and Public Policy. I would like to thank Professor Tara Ragone for her guidance and thoughtful feedback throughout the Comment-drafting process. I would also like to thank the editors of Vol. 48 for their work in preparing this Comment for publication. This Comment is inspired by the work of my former colleagues at the Burlington County Prosecutor's Office and the Drug Enforcement Administration- thank you to Melissa O'Mara, Rich Alexander, the Operation Helping Hand team, and Gary Bloore for your tireless commitment in addressing the opioid epidemic on state, local, and national levels.

750

SETON HALL JLPP

[Vol. 48:3

F. Recovery Services .....	771
V. CONCLUSION .....	771

### I. INTRODUCTION

Imagine that two friends and lifelong Utah residents, Mark and Christy, cross the border to Wyoming to purchase and use drugs in Wyoming. Upon securing and using the drugs with needles in Wyoming, Christy overdoses. Mark, who was using drugs with her, does not know what to do—should he call for help and risk the possibility of getting arrested and prosecuted for drug possession or leave the scene? Mark is vaguely aware of the existence of Good Samaritan Overdose Laws (“GSOL”) and calls 9-1-1, seeking help for his unconscious, overdosing friend. Generally, a GSOL encourages people to call for medical assistance in the event of an overdose by providing immunity from prosecution for drug-related offenses.<sup>1</sup> A “Good Samaritan” is defined as “a person who helps other people and especially strangers when they have trouble.”<sup>2</sup> Little does Mark know that unlike Utah and most other states, Wyoming does not have a GSOL.<sup>3</sup> This means both Mark and Christy are still vulnerable to getting arrested, charged, prosecuted, and convicted for drug possession,<sup>4</sup> regardless of whether medical assistance was sought for the purpose of saving Christy’s life.<sup>5</sup>

Although a GSOL could protect Mark and Christy, Utah’s GSOL, for example, does not protect either Mark or Christy from arrest, charge, prosecution, and conviction for offenses such as drug possession and/or drug paraphernalia possession.<sup>6</sup> To illustrate, if Mark and Christy were found in Utah possessing drug paraphernalia, such as syringes or

<sup>1</sup> See *Drug Overdose Immunity and Good Samaritan Laws*, NAT’L CONF. OF STATE LEGISLATURES (June 5, 2017), <https://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx> [<https://web.archive.org/web/20221217211157/https://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx>].

<sup>2</sup> *Good Samaritan*, THE BRITANNICA DICTIONARY, <https://www.britannica.com/dictionary/Good-Samaritan> (last accessed Mar. 24, 2024) [hereinafter GOOD SAMARITAN] [<https://perma.cc/KS94-9SCD>].

<sup>3</sup> *Good Samaritan Fatal Overdose Prevention and Drug-induced Homicide: Summary of State Laws*, LEGIS. ANALYSIS & PUB. POL’Y ASS’N 121 (Dec. 2022), <http://legislativeanalysis.org/wp-content/uploads/2022/09/Good-Samaritan-Fatal-Overdose-Prevention-and-Drug-Induced-Homicide-State-Laws.pdf> [hereinafter SUMMARY OF STATE LAWS] [<https://perma.cc/W7GN-ZTFE>].

<sup>4</sup> Mark and Christy are not only vulnerable to consequences involving drug possession offenses, but also other offenses, including drug paraphernalia, and probation/parole violations.

<sup>5</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 121.

<sup>6</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 108–09.

2024]

SALIM

751

possessing 30 grams of heroin, they could very well be arrested, charged, and prosecuted for these offenses. However, under Utah's GSOL, Mark's good-faith 9-1-1 call would only be considered a mitigating factor in sentencing.<sup>7</sup> Contrast this with another neighboring state to Wyoming and Utah—Colorado. If the overdose occurred in Colorado and Mark, in good faith, called 9-1-1 for medical assistance, both Mark and Christy would be afforded immunity from drug possession offenses such as possessing a few grams of heroin because Colorado's GSOL has broader protections than that of Wyoming and Utah.<sup>8</sup> If the overdose occurred instead in Wyoming, Mark and Christy would be vulnerable to being arrested, charged, prosecuted, and convicted for possessing heroin because Wyoming does not have any GSOL.<sup>9</sup> This example illustrates the stark contrast between neighboring states in situations involving calls for medical assistance in the event of an overdose. One state (Wyoming) does not have a GSOL; meanwhile, in a neighboring state (Utah), there is a GSOL—but that GSOL does not protect callers from prosecution, it just provides a mitigating factor in sentencing in the event prosecution follows from the 9-1-1 call.<sup>10</sup> And in the third neighboring state (Colorado), its GSOL affords broad protections.<sup>11</sup> These scenarios highlight how different GSOLs are in different states. Some states' GSOLs afford more protections than others, while other states completely lack a GSOL.<sup>12</sup>

States with GSOLs have lower rates of overdose deaths than states without GSOLs, and the purpose of GSOLs is to encourage people to call for help in the event of an overdose without fear of arrest or prosecution.<sup>13</sup> However, this goal is obscured by the fact that many, if not most, drug users are unaware of the existence of GSOLs.<sup>14</sup> The varying degree of states' GSOLs further complicates the goal. This purpose of saving lives is controverted when each state has different requirements for its GSOL because it is unlikely that drug users will know the requirements of the GSOLs in their own state, let alone

---

<sup>7</sup> SUMMARY OF STATE LAWS, *supra* note 3.

<sup>8</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 26–27.

<sup>9</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 121.

<sup>10</sup> See UTAH CODE ANN. § 76-3-203.11 (West 2022).

<sup>11</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 26–27.

<sup>12</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5.

<sup>13</sup> U.S. GOV'T. ACCOUNTABILITY OFF., GAO-21-248, DRUG MISUSE: MOST STATES HAVE GOOD SAMARITAN LAWS AND RESEARCH INDICATES THEY MAY HAVE POSITIVE EFFECTS 2 (Mar. 29, 2021) [hereinafter DRUG MISUSE].

<sup>14</sup> *Id.* at 2.

another state.<sup>15</sup> There is a need for an effective and uniform approach that all states should adopt to help achieve and further the purpose of these GSOLs.

This Comment, in Part II, explains how GSOLs were created in response to the proliferation of opioids in healthcare, evolving into an epidemic plaguing the country.<sup>16</sup> Part III analyzes different factors of the GSOLs and highlights the benefits and drawbacks of various GSOL provisions from several states. Part IV will propose policy considerations for a model GSOL for states to adopt so that the purpose of the GSOL can be realized. This Comment will conclude in Part V by noting additional related issues that, while beyond the scope of this Comment, warrant an academic and policy focus.

## II. BACKGROUND ON THE PAIN REVOLUTION AND AN INTRODUCTION TO GSOLs

### A. *Brief History of the U.S. Opioid Epidemic*

Thousands of Americans die from drug overdoses each year.<sup>17</sup> For the year 2021, drug overdose deaths were estimated at 107,622, which is about a 15% increase from the 2020 drug overdose death estimate.<sup>18</sup> To put this number in perspective, it is roughly equivalent to a sold-out, packed football game at the University of Michigan's Michigan Stadium—the largest stadium in the United States.<sup>19</sup> The number of

---

<sup>15</sup> See, e.g., Kristin E. Schneider, et al., *Knowledge of Good Samaritan Laws and Beliefs About Arrests Among Persons Who Inject Drugs a Year After Policy Change in Baltimore, Maryland* 135(3) PUB. HEALTH REPS. 394, 397 (2020) [<https://doi.org/10.1177/0033354920915439>]. Numerous studies show that most people with substance use disorder/people who inject drugs are unaware of the existence of a Good Samaritan Overdose Law. In this Maryland-based study, it was determined that people who inject drugs did not understand what the Maryland GSOL entails despite having heard of it.

<sup>16</sup> New Mexico was the first state to pass GSOL legislation in 2007. Daniel Rees, et al., *With a Little Help From My Friends: The Effects of Naloxone access and Good Samaritan Laws on Opioid-Related Deaths*, CATO INSTITUTE 1 (June 2017), [<https://www.cato.org/sites/cato.org/files/pubs/pdf/research-brief-78.pdf>] [<https://perma.cc/NT4J-4UW8>].

<sup>17</sup> *Drug Overdose: Death Rate Maps & Graphs*, CDC, [<https://www.cdc.gov/drugoverdose/deaths/index.html>] [<https://web.archive.org/web/20240324030706/https://www.cdc.gov/drugoverdose/deaths/index.html>].

<sup>18</sup> *National Center for Health Statistics: U.S. Overdose Deaths in 2021 Increased Half as Much as in 2020 - But Are Still Up 15%*, CDC, [[https://www.cdc.gov/nchs/pressroom/nchs\\_press\\_releases/2022/202205.htm](https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/202205.htm)] [<https://perma.cc/S8UP-4XMK>].

<sup>19</sup> *Michigan Stadium*, ANNARBOR.ORG, [<https://www.annarbor.org/university-of-michigan/michigan-stadium/>] [<https://perma.cc/X4C3-W9CZ>].

2024]

SALIM

753

drug overdoses per year has grown so rapidly that in 2017, President Trump declared the opioid crisis a “public health emergency.”<sup>20</sup>

Opioids are a class of drugs used to treat pain that have a high potential for abuse and can be addictive.<sup>21</sup> The beginning of the opioid crisis can be traced back to the mid-1990s, when Purdue Pharma (“Purdue”) promoted OxyContin, a prescription pain killer, fueling doctors’ prescribing practices and pain management procedures.<sup>22</sup> By providing doctors and prescribers with expenses-paid attendance at pain management conferences and symposia, Purdue influenced prescribers’ habits to prescribe more opioids as a pain-management practice.<sup>23</sup> While marketing OxyContin to prescribers, Purdue misled and underplayed its potential for addiction.<sup>24</sup> The proliferation of Substance Use Disorder (“SUD”), instigated by the combination of Big Pharma and health care professionals’ prescribing practices has in part helped fuel a nationwide opioid epidemic.<sup>25</sup>

Starting in the late 1980s, Russell Portenoy, a pain specialist and neurologist, perpetuated the idea that doctors should treat pain, and that leaving patients’ complaints of pain untreated would amount to negligence.<sup>26</sup> During the 1990s, pain was medically considered a fifth vital sign that necessitated opioid treatment.<sup>27</sup> Fearing legal retaliation for inadequately treating patients’ pain, doctors made sure to address pain symptoms by prescribing opioids.<sup>28</sup>

While healthcare providers have opened the door to addiction through their opioid prescribing practices, heroin and fentanyl consumption between 2010 and 2020 has caused an exponential increase in overdose deaths.<sup>29</sup> Opioids are not limited to prescription

---

<sup>20</sup> *Ongoing Emergencies & Disasters*, CENTERS FOR MEDICARE & MEDICAID SERVICES, <https://www.cms.gov/about-cms/agency-information/emergency/epro/current-emergencies/ongoing-emergencies#> [<https://perma.cc/J7QA-3MAZ>].

<sup>21</sup> *Opioid Medications*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/drugs/information-drug-class/opioid-medications> (last visited Mar. 24, 2024).

<sup>22</sup> See Art Van Zee, *The Promotion and Marketing of Oxycontin: Commercial Triumph, Public Health Tragedy*, 99 AM. J. PUB. HEALTH 221, 221 (2009) [<https://doi.org/10.2105/AJPH.2007.131714>].

<sup>23</sup> *Id.* at 221–22.

<sup>24</sup> *Id.* at 223.

<sup>25</sup> See Arthur H. Gale, *Drug Company Compensated Physicians Role in Causing America’s Deadly Opioid Epidemic: When Will We Learn?* 113 MO. MED. 244, 245 (2016), [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6139931/pdf/ms113\\_p0244.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6139931/pdf/ms113_p0244.pdf).

<sup>26</sup> *Id.* at 244.

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See Tara Law, *Why Overdose Deaths Skyrocketed After Opioid Prescriptions Dropped*, TIME (Sept. 19, 2022).

drugs, but also include illicit drugs such as heroin and fentanyl.<sup>30</sup> Heroin is a schedule I drug that cannot be medically prescribed and has a high potential for abuse.<sup>31</sup> While healthcare providers can medically prescribe fentanyl for pain management and end-of-life care, it also has a high potential for abuse that can lead to addiction.<sup>32</sup>

Certain opioids, when consumed, have a higher likelihood of causing overdose deaths. Opioids bought on the street carry an extra danger of being laced with fentanyl.<sup>33</sup> Fentanyl is a synthetic opioid that is more potent than heroin.<sup>34</sup> About 2,600 overdose deaths involved synthetic opioids each year in 2011 and 2012.<sup>35</sup> The number of deaths per year has continued to increase, with over 68,000 synthetic opioid-related deaths in 2021.<sup>36</sup> Fentanyl is commonly sold as a powder or in fake tablets in combination with other drugs, such as heroin, to increase the drug's potency.<sup>37</sup> These forms are deceiving because those who purchase drugs on the street often believe that they are purchasing a drug such as heroin or a prescription pill.<sup>38</sup> The consumption of these fentanyl-laced drugs leads to accidental overdose deaths.<sup>39</sup> As a result, there were more accidental overdose deaths in 2021 alone than in the twenty years from 1979 to 1998.<sup>40</sup>

#### B. Responses to the Drug Overdose Epidemic

Several programs and initiatives have developed in response to the rising drug overdose rates. However, some of these initiatives have inadvertently contributed to overdose deaths. For example, to address prescription drug diversion and abuse, Prescription Drug Monitoring Programs ("PDMPs") have emerged as a tool that professional licensing

---

<sup>30</sup> U.S. DRUG ENF'T ADMIN., DRUG FACT SHEET: NARCOTICS (2020), <https://www.dea.gov/sites/default/files/2020-06/Narcotics-2020.pdf> (last visited Mar. 24, 2024).

<sup>31</sup> U.S. DRUG ENF'T ADMIN., DRUG SCHEDULING, <https://www.dea.gov/drug-information/drug-scheduling#> (last visited Mar. 24, 2024).

<sup>32</sup> *Id.*

<sup>33</sup> U.S. DRUG ENF'T ADMIN., DRUG FACT SHEET: FENTANYL (2022), <https://www.dea.gov/sites/default/files/2022-12/Fentanyl%202022%20Drug%20Fact%20Sheet.pdf> (last visited Mar. 24, 2024).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> See Geoff Mulvihill, *As Fentanyl Drives Overdose Deaths, Mistaken Beliefs Persist*, ASSOCIATED PRESS (Oct. 28, 2022), <https://apnews.com/article/health-opioids-synthetic-government-and-politics-8f64b776b82d6e8bc2e324b732e4b6e2> [<https://perma.cc/3DYC-CEUD>].

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

2024]

SALIM

755

boards and law enforcement can use to identify cases of controlled substance diversion, but have also had an unintended effect on opioid overdose.<sup>41</sup> Unfortunately, PDMPs have inadvertently increased heroin use along with the potential for drug overdose.<sup>42</sup> When medical professionals use PDMPs, opioid prescribing habits are generally reduced because prescribers are aware that their prescribing habits are being monitored.<sup>43</sup> However, while PDMP use can lead to a reduction in prescribing opioids, this reduction can negatively impact chronic prescription opioid users.<sup>44</sup> For example, if doctors are aware that PDMPs are monitoring their prescribing habits, they are likely to discontinue prescribing opioids to a patient who has developed SUD.<sup>45</sup> As a result, the SUD-afflicted patient will usually try to seek prescriptions from out-of-state providers, purchase diverted prescriptions, or secure illicit opioids in the form of heroin on the street.<sup>46</sup> While hospitalizations due to prescription opioid overdoses decreased by seven percent upon the use of a PDMP between 1999 and 2017, hospitalizations from heroin overdoses increased by eight percent.<sup>47</sup> The decrease in prescription opioid overdose hospitalizations and the increase in heroin overdose hospitalizations illustrate the prevalence of heroin use resulting from prescription opioids.<sup>48</sup>

Along with the implementation of PDMPs, states have enacted other measures such as Naloxone Access Laws, prescription drop boxes, and Good Samaritan Overdose Laws (GSOLs) to curb and prevent opioid overdose deaths.<sup>49</sup> Naloxone Access Laws (“NALs”) are laws that make it easier for first responders and the public to obtain Naloxone, an opioid

---

<sup>41</sup> Office of National Drug Control Policy, *Fact Sheet: Prescription Drug Monitoring Programs* (2011), <https://www.ojp.gov/pdffiles1/ondcp/pdmp.pdf> [<https://perma.cc/YT9Q-3HQG>].

<sup>42</sup> Julia Dickerson-Gomez, et. al., *Effects of Implementation and Enforcement Differences in Prescription Drug Monitoring Programs in 3 States: Connecticut, Kentucky, and Wisconsin*, 15 *SUBSTANCE ABUSE: RSCH. & TREATMENT* 9–10 (2021), <https://journals.sagepub.com/doi/10.1177/1178221821992349>.

<sup>43</sup> Office of National Drug Control Policy, *Fact Sheet: Prescription Drug Monitoring Programs* (2011), <https://www.ojp.gov/pdffiles1/ondcp/pdmp.pdf> [<https://perma.cc/YT9Q-3HQG>].

<sup>44</sup> *Intended and Unintended Health Effects of Prescription Drug Monitoring Programs*, NAT'L BUREAU ECON. RSCH. (Mar. 2022), <https://www.nber.org/bh-20221/intended-and-unintended-health-effects-prescription-drug-monitoring-programs> [<https://perma.cc/622S-F539>].

<sup>45</sup> *See id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *See id.*

<sup>49</sup> DRUG MISUSE, *supra* note 13, at 2.

overdose reversal medication, for use in the event of an overdose.<sup>50</sup> The administration of Naloxone on an overdosing person reverses the effects of the opioid overdose by displacing opioids from the opioid receptors in the brain, thereby restoring breathing and heart rates.<sup>51</sup> NALs encourage people to access and administer Naloxone to individuals who are overdosing by protecting them from civil or criminal liability.<sup>52</sup>

In a similar vein, prescription drop boxes are available in several states as a way for people to safely dispose of their unused or expired medications.<sup>53</sup> By encouraging the disposal of unused medications in drop boxes, this initiative minimizes potential overdose situations.<sup>54</sup> While prescription drop boxes effectively allow for the removal of prescription opioids to prevent the abuse of and overdose from opioids, this in itself is not enough to prevent opioid overdose deaths.<sup>55</sup>

### C. *Emergence of Good Samaritan Overdose Laws (GSOLs)*

Another response to drug addiction and overdoses is states' implementation of GSOLs. When people with SUD use drugs and someone overdoses, there can be hesitance or reluctance to call 9-1-1 because the person debating whether to call fears that they themselves and their friend may be arrested and charged for drug possession and other drug-related offenses. Sometimes, this fear is warranted. For example, in 2017, Christopher Williams was charged with manslaughter in Florida after calling 9-1-1 to seek help for his overdosing friend, who later died.<sup>56</sup> Understanding that people may be reluctant to summon emergency assistance in fear of arrest and prosecution for drug offenses, forty-eight states and the District of Columbia have enacted

---

<sup>50</sup> *Naloxone: Summary of State Laws*, LEGIS. ANALYSIS & PUB. POL'Y ASS'N (July 2022) <http://legislativeanalysis.org/wp-content/uploads/2022/09/Naloxone-Access-Summary-of-State-Laws.pdf> [<https://perma.cc/NV2W-J3F4>].

<sup>51</sup> DRUG MISUSE, *supra* note 13, at 6.

<sup>52</sup> *Naloxone: Summary of State Laws*, *supra* note 50, at 3.

<sup>53</sup> See U.S. Food & Drug Administration, *Drug Disposal: Drug Take Back Locations* (Oct. 27, 2022), <https://www.fda.gov/drugs/disposal-unused-medicines-what-you-should-know/drug-disposal-drug-take-back-locations>.

<sup>54</sup> See *id.*

<sup>55</sup> See Jeffrey Gray, et. al., *Prescription Disposal Practices: A 2-Year Ecological Study of Drug Drop Box Donations in Appalachia*, 105 AM. J. PUB. HEALTH e89 (Sept. 2015) [<https://doi.org/10.2105/AJPH.2015.302689>].

<sup>56</sup> German Lopez, *He Helped His Overdosing Friend by Calling 911. Police Slapped Him with a Manslaughter Charge.*, Vox (May 24, 2017), <https://www.vox.com/policy-and-politics/2017/5/24/15684664/opioid-epidemic-manslaughter-overdose-charge> [<https://perma.cc/YJC6-M5FH>].



2024]

SALIM

757

GSOLs.<sup>57</sup> These GSOLs encourage people to call for medical assistance when they observe someone overdosing by providing legal protections.<sup>58</sup>

GSOLs generally offer some type of protection to people who call for medical assistance during an overdose.<sup>59</sup> This includes protection<sup>60</sup> from arrest and prosecution of controlled substance possession offenses, drug paraphernalia offenses, underage alcohol offenses, and other violations.<sup>61</sup> States' GSOLs provide protection from certain offenses and violations, and further, can entitle either the overdose victim and/or the caller to these protections.<sup>62</sup> States' GSOLs detail who is eligible for protection and what requirements need to be met to be afforded protection.<sup>63</sup> Some GSOLs have mitigation provisions and can also impose limitations on the number of times an individual can receive protections.<sup>64</sup>

However, these immunities vary by state, with some states offering absolutely no protections.<sup>65</sup> As of June 2022, two states (Kansas and Wyoming)<sup>66</sup> do not have a GSOL.<sup>67</sup> Two states' (Utah and Texas) GSOLs only afford limited protection: calls for medical assistance in the event of a drug overdose will allow both the victim and the Good Samaritan to use the call as an affirmative defense to prosecution for drug offense charges.<sup>68</sup> An affirmative defense allows a defendant to be excused from liability, even if the government can establish the elements of the charged offense beyond a reasonable doubt, as long as he can properly

---

<sup>57</sup> See Corey Davis, *Overdose "Good Samaritan Laws" Should Protect, Not Punish*, NETWORK FOR PUB. HEALTH L. (Jan. 26, 2020), <https://www.networkforphl.org/news-insights/overdose-good-samaritan-laws-should-protect-not-punish/> [<https://perma.cc/RT57-P9V8>]; SUMMARY OF STATE LAWS, *supra* note 3, at 3.

<sup>58</sup> *Id.*

<sup>59</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 5.

<sup>60</sup> For our purposes, "immunity" refers to protection from either arrest, charge, prosecution, and/or conviction.

<sup>61</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 6–7. GSOL protections vary by state.

<sup>62</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 9.

<sup>63</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 9–10, 12.

<sup>64</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 13.

<sup>65</sup> Prescription Drug Policy Abuse System, *Good Samaritan Overdose Prevention Laws*, PDAPS, <https://pdaps.org/datasets/good-samaritan-overdose-laws-1501695153> (last accessed Mar. 24, 2024).

<sup>66</sup> When states' GSOLs are referred to throughout this Comment, Kansas and Wyoming are not included because those states do not have a GSOL.

<sup>67</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 3.

<sup>68</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5.

establish the defense.<sup>69</sup> All of the other states' GSOLs protect against one or more of the arrest, charge, prosecution, or conviction of the drug possession offense(s).<sup>70</sup> Even among the remaining states' GSOLs that have these protections, states vary as to who is eligible for protection, the extent of the protection, whether there are protections from drug paraphernalia offenses, whether there are protections from probation/parole violations, whether there is a treatment requirement for protection, whether there is a limitation as to how many times an individual can receive these protections, and whether there is mitigation for certain offenses.<sup>71</sup> The differing statutory schemes will be discussed in Part III.<sup>72</sup>

Opioid overdose deaths have increased from 21,089 deaths in 2010 to 80,411 deaths in 2021, and the trend is increasing.<sup>73</sup> The increasing number of deaths resulting from drug overdoses is a cause for concern, and one way to combat this issue is by addressing the weaknesses of states' GSOLs. Before dissecting the GSOLs of different states, it is important to first understand the timing of criminal immunity and the trial and sentencing protections in these laws.<sup>74</sup> Various GSOLs provide immunities that range from protection against arrest to protection from prosecution for certain offenses.<sup>75</sup> Immunity from arrest prevents officers from arresting an individual and therefore eliminates any possibility of being prosecuted.<sup>76</sup> Immunity from prosecution does not protect an individual from getting arrested or charged, but it does protect against prosecution, as any charge will be dropped before trial.<sup>77</sup> Several states' GSOLs include affirmative defenses to offenses charged, which is different from immunity because affirmative defenses to

---

<sup>69</sup> *Affirmative Defense*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/affirmative\\_defense](https://www.law.cornell.edu/wex/affirmative_defense) [https://perma.cc/5QZB-H3EV].

<sup>70</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5.

<sup>71</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5-7, 9-10, 12-13.

<sup>72</sup> Part III discusses the following components of GSOLs: immunity type (whether the GSOL provides protection for arrest, charge, prosecution, and conviction of (1) drug possession offenses, (2) drug paraphernalia offenses, (3) parole/probation violations, (4) underage alcohol offenses); eligibility for GSOL protections, and treatment requirements.

<sup>73</sup> NAT'L INST. ON DRUG ABUSE, *Drug Overdose Death Rates*, Fig. 3, <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates> [https://perma.cc/5Q62-6WJ5].

<sup>74</sup> See DRUG MISUSE, *supra* note 13, at 12.

<sup>75</sup> For example, New Jersey's GSOL provides immunity against arrest, charge, and prosecution from drug possession offenses and drug paraphernalia offenses. DRUG MISUSE, *supra* note 13, at 12.

<sup>76</sup> DRUG MISUSE, *supra* note 13, at 12.

<sup>77</sup> DRUG MISUSE, *supra* note 13, at 12.

2024]

SALIM

759

sentencing still allow the possibility of an individual being subject to arrest, prosecution, and conviction. Lastly, several states' GSOLs provide mitigating factors instead of directly providing immunity. Mitigating factors are considered at the sentencing phase of trial— they allow an individual who has been convicted of a non-immunized offense to request a reduced sentence.<sup>78</sup>

### III. ANALYZING COMPONENTS OF STATES' GSOLS

This section will analyze the various components of states' GSOLs and illustrate how different states' GSOLs are from each other. The GSOL components analyzed will be the types of offenses that are protected (drug possession, drug paraphernalia possession, parole/probation violations, and underage alcohol offenses), treatment requirements, limitations on the number of times an individual can receive protection, and mitigation provisions.

#### *GSOL Protections*

##### A. *Drug Possession Offenses*

This subsection will focus on the protections GSOLs provide relating to drug possession offenses. As mentioned earlier, states vary as to the extent to which GSOLs afford immunity, if any. GSOLs do not exist in Kansas and Wyoming, so as mentioned in the earlier hypothetical with Mark and Christy, if both Mark and Christy were in either Kansas or Wyoming, they would not be protected from being arrested for or prosecuted for drug possession, despite Mark calling for medical help to save Christy's life.<sup>79</sup> Because Kansas and Wyoming do not have GSOLs nor provide protections to those who are trying to save others from drug overdose deaths, those states fail to give Good Samaritans an incentive to try and prevent drug overdose deaths by calling for help.<sup>80</sup>

While Kansas and Wyoming do not have GSOLs, three states (Iowa, Utah, and Texas) do have GSOLs that either only provide an affirmative defense to drug possession offenses or preclude entering certain evidence into trial.<sup>81</sup> This means if Mark is in either Iowa, Utah, or Texas, and calls 9-1-1 for medical assistance to save Christy from overdosing, both Mark and Christy are vulnerable to arrest and prosecution for drug

---

<sup>78</sup> DRUG MISUSE, *supra* note 13, at 12.

<sup>79</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 3.

<sup>80</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 3.

<sup>81</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5.

possession offenses.<sup>82</sup> However, though Mark and Christy are vulnerable to arrest and prosecution for drug possession offenses resulting from seeking medical attention in Utah and Texas, these states' GSOLs will allow Mark's good faith report about Christy's overdose as an affirmative defense to drug possession charges, and if in Iowa, the good faith report will preclude evidence obtained resulting from the call from being used to support probable cause or from being admitted into evidence.<sup>83</sup>

The remaining<sup>84</sup> states' GSOLs have greater protections than just affording an affirmative defense, but the extent of those protections varies by state.<sup>85</sup> About half of the remaining states' GSOLs protect from prosecution but not arrest, and the rest<sup>86</sup> of the states' GSOLs offer protection from *both* arrest (and, by implication) prosecution.<sup>87</sup> While the difference between protection from either arrest or prosecution may seem inconsequential, it can greatly impact the lives of those affected. For example, if Mark and Christy were arrested and charged with drug possession, but those charges ended up getting dropped, the collateral consequences of the arrest could linger and permeate in areas of employment and housing.<sup>88</sup> Criminal records include arrests, and regardless of the arrest's disposition, the criminal record resulting from an arrest will be available to employers and leasing agents conducting background checks, and can negatively impact the ability to obtain a job or housing.<sup>89</sup> So when some states' GSOLs protect against prosecution, but not arrest, the failure to protect against arrest can negatively impact those affected by the law.<sup>90</sup> And while the extent of GSOL protections

---

<sup>82</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5.

<sup>83</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 49, 106, 109.

<sup>84</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5. Forty-five states and the District of Columbia have protections greater than availability of an affirmative defense.

<sup>85</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5.

<sup>86</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5. Eighteen states' GSOLs protect an individual from prosecution only, and twenty-eight states' GSOLs protect an individual from both prosecution and arrest.

<sup>87</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 5.

<sup>88</sup> *The Impacts of Arrest: Lessons from Research*, International Association of Chiefs of Police, [https://www.theiacp.org/sites/default/files/Research%20Center/Impacts%20of%20Arrest%20\(infographic\).pdf](https://www.theiacp.org/sites/default/files/Research%20Center/Impacts%20of%20Arrest%20(infographic).pdf)

[[https://web.archive.org/web/20240102075433/https://www.theiacp.org/sites/default/files/Research%20Center/Impacts%20of%20Arrest%20\(infographic\).pdf](https://web.archive.org/web/20240102075433/https://www.theiacp.org/sites/default/files/Research%20Center/Impacts%20of%20Arrest%20(infographic).pdf)].

<sup>89</sup> Tina Rosenberg, *Have You Ever Been Arrested? Check Here*, N.Y. TIMES (May 24, 2016), <https://www.nytimes.com/2016/05/24/opinion/have-you-ever-been-arrested-check-here.html>.

<sup>90</sup> *Id.*

varies, the types of offenses protected vary as well and will be discussed below.

*B. Drug Paraphernalia Offenses*

The extent of the immunities granted by GSOLs is usually not only limited to drug possession offenses. In fact, most states' GSOLs also provide protection from drug paraphernalia offenses.<sup>91</sup> Drug paraphernalia are "equipment that is used to produce, conceal, and consume illicit drugs" that include, but are not limited to, bongs, pipes, and miniature spoons.<sup>92</sup> Drug paraphernalia is typically used in conjunction with consuming drugs— for example, the drug heroin can be consumed by using needles, caps, or burnt spoons.<sup>93</sup> Setting aside the states that do not have a GSOL (Kansas and Wyoming) and states where drug paraphernalia is not criminalized (Alaska, Massachusetts, Michigan, New Hampshire, Vermont, Washington, and West Virginia), three states' (Arkansas, Ohio, and South Dakota) GSOLs do not protect against drug paraphernalia offenses, while the rest of the states do provide protection from drug paraphernalia offenses.<sup>94</sup> If drug paraphernalia is used to consume drugs, then it seems likely that drug paraphernalia is frequently found at drug overdose scenes.<sup>95</sup> As a result, overdosing individuals encountered through good Samaritan calls would necessarily get slapped with a drug paraphernalia offense.

To put this idea into context, let us go back to the hypothetical involving Mark and Christy. If Mark and Christy were in one of the three states (Arkansas, Ohio, South Dakota) that do not offer protections from drug paraphernalia offenses, such as drug paraphernalia possession, Mark and Christy could both be charged for drug paraphernalia offenses—considering the fact that a needle was used to consume the drug that caused Christy's overdose.<sup>96</sup> On the other hand, if Mark and Christy were in any other state (besides Kansas and Wyoming because they do not have GSOLs), they would be afforded protection from drug

---

<sup>91</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 6.

<sup>92</sup> NAT'L DRUG INTEL. CTR., DRUG PARAPHERNALIA FAST FACTS: QUESTIONS AND ANSWERS, <https://www.justice.gov/archive/ndic/pubs6/6445/6445p.pdf> [hereinafter DRUG PARAPHERNALIA] [<https://perma.cc/ZZB7-BB38>].

<sup>93</sup> Jason C. Lozano, et. al., *The Prevalence of Paraphernalia Found at the Scene of Drug-Related Deaths*, 62 J. FORENSIC SCI. 691, 691 (May 2017) [<https://doi.org/10.1111/1556-4029.13329>].

<sup>94</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 6.

<sup>95</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 6.

<sup>96</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 6; Lozano, *supra* note 60, at 691.

paraphernalia offenses because these states' laws recognize how drug paraphernalia are necessary incidents to drug use.<sup>97</sup>

### C. Probation or Parole Violations

GSOLs are split on whether good Samaritans who call for medical assistance in cases of drug overdose should be liable for probation and parole violations. Probation is a court-ordered sanction that allows a person to remain in the community while under the supervision of a probation officer.<sup>98</sup> If an individual violates the conditions of his probation, then he may be incarcerated.<sup>99</sup> Parole is a conditional release of an inmate prior to completing his sentence.<sup>100</sup> Similar to probation, if the conditions of parole are violated, then the individual violating his parole may be incarcerated.<sup>101</sup> Conditions of probation or parole can vary by individual. For example, a condition of probation or parole for those with a history of drug-related offenses would likely involve restrictions on drug use.<sup>102</sup> To illustrate, if Christy is on probation for a prior drug-related offense, and one of the terms of her probation is that she cannot possess any controlled substances, then this means Christy will be found in violation of the terms of her probation as a result of Mark's good-faith call for help. Twenty-five states recognize protection for probation or parole violations, while the rest do not.<sup>103</sup> For those states' GSOLs that do not protect probation or parole violations, fears of violating parole or probation are a common reason why individuals refrain from calling 9-1-1 in the event of an overdose.<sup>104</sup>

For instance, if Mark and Christy were in a state where there is no protection for probation and parole violations resulting from medical assistance for drug overdoses, and a term of their parole/probation was

<sup>97</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 6.

<sup>98</sup> Probation, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/probation#:~:text=A%20court%2Dimposed%20criminal%20sentence,her%20to%20jail%20or%20prison> [https://perma.cc/C5X6-HWJL].

<sup>99</sup> What is Probation? CRIMINALJUSTICEDEGREEHUB.COM, [criminaljusticedegreehub.com/what-is-probation/](https://www.criminaljusticedegreehub.com/what-is-probation/) (last accessed Mar. 24, 2024) [hereinafter PROBATION] [https://perma.cc/525Y-4USJ].

<sup>100</sup> Parole, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/parole> [hereinafter PAROLE] [https://perma.cc/AJ5L-AGRV].

<sup>101</sup> *Id.*

<sup>102</sup> PROBATION, *supra* note 99; see PAROLE *supra* note 100.

<sup>103</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 7.

<sup>104</sup> Stephen Koester, et. al., *Why Are Some People Who Have Received Overdose Education and Naloxone Reluctant to Call Emergency Medical Services in the Event of Overdose?*, 48 INT'L J. DRUG POL. 115-16 (2017) [https://doi.org/10.1016/j.drugpo.2017.06.008].

2024]

SALIM

763

to refrain from drug use, then Mark and Christy would have violated the terms of their parole/probation as soon as they started using drugs.<sup>105</sup> Understanding they violated the terms of their parole or probation, Mark would be placed in a difficult situation if he was in a state whose GSOL does not provide immunity from probation or parole violations based on conduct related to calling 9-1-1. Upon Christy's overdose, Mark's options would either be to call 9-1-1 and risk going to jail upon being found violating the conditions of his parole/probation, or flee the scene, protecting himself from incarceration but exposing Christy to the likely possibility of death.

On the other hand, if Mark and Christy were in a state whose GSOL offers protection from parole or probation violations, the outcome could look different.<sup>106</sup> In this instance, Mark and Christy would not be vulnerable to prosecution from violating a condition of their parole or probation because the state they are in affords immunity from parole and probation violations.<sup>107</sup>

By not protecting parole or probation violations resulting from Good Samaritan overdose calls, individuals who could help save lives from overdose deaths are being disincentivized from doing so.

#### D. Underage Alcohol Offenses

Because there are situations where minors consume alcohol and drugs, some states' GSOLs protect underage alcohol offenses that coincide with drug overdose.<sup>108</sup> These states are Alabama, Delaware, Florida, Maryland, Missouri, New York, North Carolina, Rhode Island, South Carolina, Virginia, Vermont, and Washington.<sup>109</sup> The remaining majority of states' GSOLs do not protect underage alcohol offenses.<sup>110</sup> However, the protections afforded by GSOLs that address underage alcohol offenses differ.<sup>111</sup> For example, if Mark and Christy were under 21 years old and in New York, a state that affords protection from underage alcohol offenses, then Mark and Christy would be immune from charges of underage alcohol possession if they were found with

---

<sup>105</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 7.

<sup>106</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 7.

<sup>107</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 7.

<sup>108</sup> *Good Samaritan Laws*, Foundation for Advancing Alcohol Responsibility, <https://www.responsibility.org/wp-content/uploads/2020/01/Good-Samaritan-Laws-2020.pdf> [<https://perma.cc/R6B2-UGLB>]; SUMMARY OF STATE LAWS, *supra* note 3, at 8.

<sup>109</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 8.

<sup>110</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 8.

<sup>111</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 8.

alcohol upon Mark's call for help.<sup>112</sup> However, if Mark and Christy were under 21 years old while in possession of alcohol, and in a state, such as Arkansas, that does not offer protection from underage alcohol offenses, they would both be vulnerable to arrest and prosecution for alcohol possession.<sup>113</sup>

*E. Eligibility for Immunity*

Just as states vary as to the *type* of immunity GSOLs provide, states also differ as to *who* is eligible for immunity. Because Wyoming and Kansas do not have any GSOLs, those states do not afford anyone protection when one seeks medical attention in instances of overdose.<sup>114</sup> Five states' (Alabama, Indiana, Maine, Oklahoma, and Wisconsin) GSOLs only protect individuals who seek medical attention for another and not the overdose victim himself, whereas the rest of the states' GSOLs protect both the person seeking medical attention and the overdose victim.<sup>115</sup> If Mark and Christy were in Alabama, Indiana, Maine, Oklahoma, or Wisconsin when Christy's overdose occurred, Christy would not be protected from arrest or prosecution related to drug possession offenses.<sup>116</sup>

*F. Treatment Requirement for Immunity*

Most states' GSOLs do not require entry into treatment to receive GSOL protections, while few do require drug treatment as a prerequisite to immunity.<sup>117</sup> Specifically, two states' (Ohio and West Virginia) GSOLs require entry into treatment for protection.<sup>118</sup> In Ohio, the individual who sought help or for whom help was sought must be screened for and enter treatment within thirty days of the incident.<sup>119</sup> However, in West Virginia, only the individual for whom help was sought must enter and comply with a court-approved treatment program.<sup>120</sup> And if Mark and Christy were in Ohio, then both Mark and Christy would be required to enter treatment in order to protect themselves from arrest and prosecution for drug-related offenses.<sup>121</sup> But if Mark and Christy were in West Virginia instead, only Christy would be required to enter

---

<sup>112</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 8.

<sup>113</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 8.

<sup>114</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 9.

<sup>115</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 9.

<sup>116</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 9.

<sup>117</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 10.

<sup>118</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 10.

<sup>119</sup> OHIO REV. CODE ANN. § 2925.11(B)(2) (West 2022).

<sup>120</sup> W. VA. CODE ANN. §§ 16-47-5 (West 2022).

<sup>121</sup> See OHIO REV. CODE ANN. § 2925.11(B)(2) (West 2022).



2024]

SALIM

765

treatment for protection from arrest and prosecution because she was the person for whom assistance was sought.<sup>122</sup> While the West Virginia treatment requirement would not extend to Mark, Mark would still be eligible for limited protections from certain drug-related offenses.<sup>123</sup>

There are two other states' (Kentucky and Missouri) GSOLs where treatment is not a requirement for protection, instead, substance use-related treatment information must be provided by the first responder when possible.<sup>124</sup> Unlike most GSOL provisions, this type of provision places a requirement on law enforcement, first responders, or health departments to provide the overdose survivor(s) with treatment information. Kentucky's GSOL requires that if information is available for the help-seeker, then that individual's information must be reported to the local health department, who will then contact the individual to try to connect him with substance use treatment resources.<sup>125</sup> Missouri's GSOL states that "any police officer who is in contact with any persons in need of emergency medical assistance under this section must provide appropriate information and resources for substance-related assistance."<sup>126</sup>

The remaining states' GSOLs do not expressly mention treatment, which means providing treatment information and entry are not required to receive GSOL protection.<sup>127</sup>

### G. Recovery Coach Dispatch

While no states' GSOLs mention requiring the dispatch of a recovery coach in response to Good Samaritan calls, this initiative is similar to the treatment section discussed directly above. Recovery coaches are individuals in recovery who are trained to provide support to those who are struggling with substance use disorder.<sup>128</sup> Some communities adopt an initiative to dispatch recovery coaches to overdose scenes, where the recovery coach can provide the overdose

---

<sup>122</sup> See W. VA. CODE ANN. §§ 16-47-5 (West 2022).

<sup>123</sup> See W. VA. CODE ANN. § 16-47-4 (West 2022). West Virginia does not impose a treatment requirement on the caller/help-seeker.

<sup>124</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 10.

<sup>125</sup> KY. REV. STAT. ANN. § 218A.133 (West 2022).

<sup>126</sup> MO. ANN. STAT. § 195.205 (West 2022).

<sup>127</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 10.

<sup>128</sup> SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., PEERS SUPPORTING RECOVERY FROM SUBSTANCE USE DISORDERS, [https://www.samhsa.gov/sites/default/files/programs\\_campaigns/brss\\_tac/peers-supporting-recovery-substance-use-disorders-2017.pdf](https://www.samhsa.gov/sites/default/files/programs_campaigns/brss_tac/peers-supporting-recovery-substance-use-disorders-2017.pdf) [https://perma.cc/QE8Y-FLRU].

survivor with resources and a path to treatment.<sup>129</sup> By dispatching recovery coaches, states can help prevent more overdoses from individuals with SUD because some individuals will end up entering treatment and recovery.

*H. Limitations on Frequency One Can Receive Immunity*

While most states' GSOLs do not mention a limit on the number of times a person can receive protections, six states (Iowa, Ohio, South Carolina, South Dakota, Tennessee, and Texas) do.<sup>130</sup> In Iowa, a person who is suffering a drug-related overdose can only receive immunity once, so subsequent calls seeking medical assistance for the same individual will render the individual undergoing an overdose ineligible to receive protection from arrest and prosecution.<sup>131</sup> The issue here is that generally, there would be no way for the help-seeker to know that someone else has already sought medical attention, so this provision is unfair to the overdose victim and may leave a sense of guilt in the good-faith help-seeker. South Dakota's and Tennessee's GSOL also permit the overdose victim to qualify for immunity once.<sup>132</sup> In Ohio, the grant of immunity to either the individual for whom help is sought or to the person calling for help is limited to two times.<sup>133</sup> Instead of imposing a strict number on the times a person can seek medical assistance in order to receive immunity, South Carolina's GSOL states that courts can "consider the circumstances of the prior incidents and the related offenses to determine whether to grant the person calling for medical assistance immunity from prosecution."<sup>134</sup> In comparison, Texas' GSOL only allows for the use of an affirmative defense, and the affirmative defense can only be used once by the individual calling for medical assistance.<sup>135</sup> So if Mark's call for medical assistance in the event of Christy's overdose was the second instance of Mark calling for help, then

---

<sup>129</sup> The Operation Helping Hand program that is run out of the Burlington County Prosecutor's Office provides individuals in Burlington County, New Jersey who have been revived from their overdose with assistance from recovery coaches to help get these individuals into treatment. "BCPO Operation Helping Hand Provides 24/7 Substance Use Support During Covid-19 Pandemic," Office of The Burlington County Prosecutor, <https://burlpros.org/bcpo-operation-helping-hand-provides-24-7-substance-use-support-during-covid-19-pandemic/> (May 3, 2020) [<https://perma.cc/6PZ3-QB9D>].

<sup>130</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 12.

<sup>131</sup> See IOWA CODE ANN. § 124.418 (2022).

<sup>132</sup> S.D. CODIFIED LAWS § 34-20A-113 (2022); see also TENN. CODE ANN. § 63-1-156 (2022).

<sup>133</sup> See OHIO REV. CODE ANN. § 2925.11(B)(2)(e) (2022).

<sup>134</sup> S.C. CODE ANN. § 44-53-1920 (2022).

<sup>135</sup> See TEX. HEALTH & SAFETY CODE ANN. § 481.115(g) (2022).

2024]

SALIM

767

immunity would be available to both Mark and Christy if they were in Ohio, but protection would not be available to either of them if they were in Iowa, South Dakota, and Tennessee.<sup>136</sup>

*I. Mitigation Provisions*

Several states' GSOLs have mitigation provisions for offenses where protection is not offered.<sup>137</sup> These mitigation provisions vary by state.<sup>138</sup> For example, a few states<sup>139</sup> that do not protect against arrest or prosecution of criminal offenses explicitly mention that requesting medical assistance is a factor considered at sentencing for those offenses.<sup>140</sup> The GSOL mitigation provisions for criminal offenses further vary— twelve states allow for only mitigation of drug offenses; ten states allow for mitigation for any criminal offense; and Florida is the only state that applies mitigation to any non-capital felony offense.<sup>141</sup> The remaining states do not have any mitigation provisions.<sup>142</sup>

Consider if Mark and Christy were in Tennessee— but instead of just consuming drugs, they consumed alcohol (for this scenario's purpose, Mark and Christy are younger than 21 years and therefore have committed an underage alcohol offense). If Christy starts to overdose, and Mark calls for medical assistance to prevent Christy from dying of overdose, then Mark and Christy will be vulnerable to prosecution for the underage alcohol offense because Tennessee's GSOL does not protect from underage alcohol offenses.<sup>143</sup> However, Mark's act of seeking medical assistance for Christy will be considered a mitigating circumstance at sentencing for the underage alcohol offense.<sup>144</sup> Similar outcomes will apply in Montana, Minnesota, South Dakota, Iowa, West Virginia, and Louisiana because these states' GSOLs do not protect from underage alcohol offenses and therefore are eligible for mitigation at

---

<sup>136</sup> See IOWA CODE ANN. § 124.418 (2022); OHIO REV. CODE ANN. § 2925.11(B)(2) (2022); S.D. CODIFIED LAWS § 34-20A-113 (2022); TENN CODE ANN. § 63-1-156 (2022).

<sup>137</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 13.

<sup>138</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 13.

<sup>139</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 5, 13 (Iowa and Utah are among states that fall into this category).

<sup>140</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 13.

<sup>141</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 13.

<sup>142</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 13.

<sup>143</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 8; TENN. CODE ANN. § 63-1-156 (2022).

<sup>144</sup> TENN. CODE ANN. § 63-1-156(c)(1) (2022).

sentencing.<sup>145</sup> However, if this scenario took place in other states,<sup>146</sup> then Mark and Christy's underage alcohol possession charge, assuming the charge has been prosecuted and both were found guilty, would not be subject to mitigation at sentencing, even though Mark called for help when Christy was overdosing.<sup>147</sup> Now that the variance between different states' GSOLs and the range of protections GSOLs afford have been demonstrated, this Comment will move on to proposing GSOL policy recommendations that states' should consider when either drafting or re-drafting their states' GSOL.

#### IV. POLICY RECOMMENDATIONS FOR A MODEL GSOL

Policy recommendations for GSOLs are being proposed instead of a model statute because it is more feasible for states to understand and implement policy proposals into their GSOLs than to expect all states to adopt a model GSOL statute. Instead of relying on all states to adopt a model GSOL, there should be a focus on educating communities about GSOLs to ensure its effectiveness. One large impediment to the success of GSOLs is the lack of awareness of GSOLs' existence.<sup>148</sup> Another barrier to the GSOL's success is the lack of first responders' awareness of their states' GSOLs. An evaluation of the GSOL in Washington state found that some police officers in the state were unaware of Washington's GSOL and whom the statute protects.<sup>149</sup> Although there is limited research, studies show that public awareness of the GSOL may influence people's willingness to seek medical attention during an overdose.<sup>150</sup>

In addition to educating people about states' GSOLs, there are a number of policy recommendations that states should consider implementing to their states' GSOL. The GSOL policy recommendations

---

<sup>145</sup> SUMMARY OF STATE LAWS, *supra* note 3, at 8.

<sup>146</sup> *E.g.*, Oregon, Idaho, California, North Dakota, Colorado, Nebraska, Texas, Oklahoma, Arkansas, Mississippi, Georgia, Pennsylvania, New Jersey, Connecticut, New Hampshire, and Maine. See SUMMARY OF STATE LAWS, *supra* note 3, at 8, 13.

<sup>147</sup> See SUMMARY OF STATE LAWS, *supra* note 3, at 8, 13.

<sup>148</sup> See Koester, *supra* note 104, at 116; 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, 50 INT'L J. DRUG POL. 82-83 (2017) [<https://doi.org/10.1016/j.drugpo.2017.09.010>]. A study conducted in Baltimore, Maryland found that about two-thirds of the study's participants were unaware that a GSOL existed. Similarly, all of the participants in a study conducted six months after Pennsylvania's passage of their GSOL were unaware such a law existed.

<sup>149</sup> University of Washington Alcohol & Drug Abuse Institute, *Info Brief: Washington's 911 Good Samaritan Drug Overdose Law: Initial Evaluation Results* (last accessed Mar. 3, 2024), <https://adai.uw.edu/pubs/infobriefs/adai-ib-2011-05.pdf> [<https://perma.cc/Y2CN-69N9>].

<sup>150</sup> DRUG MISUSE, *supra* note 13, at 25.

2024]

SALIM

769

below will cover the following: who is eligible for protection, what types of protections should be afforded, when mitigation provisions should apply, the number of times an individual is eligible for protection, and treatment measures.

A. *Eligibility*

States' GSOLs should not limit protection to either the caller or overdose victim, but rather extend protection to both parties who seek medical assistance in good faith. Otherwise, states' GSOLs that do not protect both the good-faith caller and the overdosing victim risk the possibility that individuals will refrain from calling for help because the overdosing victim will still be susceptible to arrest and prosecution.

B. *Types of Protection*

GSOLs should protect from drug possession offenses, drug paraphernalia offenses, underage alcohol offenses, and parole/probation violations because otherwise, the purpose of GSOLs to encourage people to seek medical attention for overdoses and reduce overdose deaths would be contravened. In states whose GSOLs do not protect from the offenses mentioned above, Mark's options would either be to call 9-1-1 and risk going to jail upon being found violating the conditions of his parole/probation, or he could flee the scene, protecting himself from incarceration but exposing Christy to the likely possibility of death. To avoid individuals in Mark's circumstance from being stuck between a rock and a hard place while encouraging people to call for assistance in cases of overdose, it is good policy to protect Good Samaritans from incidental offenses and violations.

C. *No Limits on Number of Times One can Receive Protection*

Limitations on the number of times an individual can receive GSOL protections are concerning because SUD is a disease, not a switch one can turn on and off.<sup>151</sup> In fact, SUD is a such a complex disease that it involves both the brain and body, and willpower is not enough to overcome it.<sup>152</sup> Those struggling with SUD can sometimes relapse,<sup>153</sup>

---

<sup>151</sup> *Is Addiction a Disease?*, Partnership to End Addiction, <https://drugfree.org/article/is-addiction-a-disease/> [<https://perma.cc/RZB6-4HHM>].

<sup>152</sup> *Understanding Drug Use and Addiction DrugFacts*, NAT'L INST. ON DRUG ABUSE (June 2018), <https://nida.nih.gov/publications/drugfacts/understanding-drug-use-addiction#:~:text=They%20may%20mistakenly%20think%20that,intentions%20or%20a%20strong%20will> [<https://perma.cc/54QS-RNV5>].

<sup>153</sup> Relapse is a return to drug use after an attempt to stop. *Drugs Brains, and Behavior: The Science of Addiction, Treatment and Recovery*, NAT'L INST. ON DRUG ABUSE

which is a process of drug addiction rather than a moral failing.<sup>154</sup> Thus, merely telling people that they cannot receive GSOL immunity more than one or two times fails to acknowledge the realities of addiction. The belief that individuals with substance use disorder can cease their drug use on command is flawed. Therefore, GSOL provisions should not impose any limits on the number of times one can receive GSOL immunity.

*D. Mitigation*

The act of seeking medical assistance for or by someone who is experiencing a drug overdose should be considered a mitigating circumstance at sentencing for a violation of any other offense found committed in tandem with the overdose. By doing this, individuals caught in circumstances where they feel as though they have to decide between calling 9-1-1 for help in an overdose instance and potentially getting charged and prosecuted for another crime will be more likely to call for medical assistance. Expanding protections to allow for sentencing mitigation of offenses found at the overdose scene helps realize the purpose of GSOLs and encourages individuals to call for help.

*E. No Treatment Requirement*

GSOLs should not require entry into treatment for GSOL protection eligibility. While it is important to encourage individuals who have survived an overdose to enter into treatment programs to help prevent further drug misuse and overdose, it is equally as important to withhold from weaponizing treatment as a condition to receiving GSOL protection. This is because the data does not show that it is beneficial to force individuals into treatment.<sup>155</sup>

The treatment provisions that Ohio and West Virginia have may have been enacted with the intent and purpose of preventing further drug use and subsequent overdose.<sup>156</sup> However, these states' goals are unlikely to be met with the treatment requirement provision. When treatment is imposed on a person who is unwilling to enter treatment,

---

(July 2020), <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery> [<https://perma.cc/ZX3T-ELFR>].

<sup>154</sup> *Id.*

<sup>155</sup> Maia Szalavitz, *Why Forced Addiction Treatment Fails*, N.Y. TIMES (Apr. 30, 2022), <https://www.nytimes.com/2022/04/30/opinion/forced-addiction-treatment.html> (last visited Mar. 19, 2023).

<sup>156</sup> See OHIO REV. CODE ANN. § 2925.11(B)(2) (2022); W. VA. CODE ANN. §§ 16-47-5 (2022).

2024]

SALIM

771

it does not necessarily improve outcomes in reducing drug use.<sup>157</sup> For example, peer-reviewed studies reveal that imposing compulsory drug treatment on individuals generally has no significant impact, or has negative impacts.<sup>158</sup> While some individuals who are required to enter treatment to receive GSOL protection do, in fact, want to receive treatment, this provision is overinclusive in that the provision also would apply to people who do not yet want to receive treatment.<sup>159</sup> Providing resources in lieu of forcing treatment acts more as a safeguard in trying to prevent subsequent overdoses by arming the individual with treatment resources and information to use when they are ready to enter treatment.

#### F. Recovery Services

Instead of coercing individuals into treatment, states GSOLs should require the dispatch of recovery coaches at overdose scenes to provide the individuals in need of medical assistance with resources and an opportunity to enter treatment. The individual should not be required to accept or enter treatment to be eligible for protection.

If adopted and applied uniformly across all states, this policy proposal will likely encourage people to call 9-1-1 in the event of an overdose because the ambiguity and uncertainty of whether good Samaritan immunities will apply to a person depending on their location will less likely be a concern. While it is unlikely for all states to adopt this policy proposal, it serves as a first step in the evolution of GSOLs for states to re-examine their own GSOLs, which can propel states to initiate or further amend their GSOLs.

### V. CONCLUSION

GSOLs are important because they are associated with lower rates of overdose deaths compared to states without these laws.<sup>160</sup> Studies have shown that GSOLs are associated with lower rates of opioid-related overdose deaths.<sup>161</sup> Despite state legislatures' headway in enacting GSOLs, mere enactment is not enough for individuals to enjoy their protections. Because GSOLs vary by state, it is difficult to understand

---

<sup>157</sup> D. Werb, et. al., *The Effectiveness of Compulsory Drug Treatment: A Systematic Review*, 28 INT'L J. DRUG POL. 7 (2016) [<https://doi.org/10.1016/j.drugpo.2015.12.005>].

<sup>158</sup> *Id.* (finding that 33% of studies reported no significant impact resulting from compulsory drug treatment, while 22% of studies reported a negative impact, and another 22% percent of studies reported a positive impact).

<sup>159</sup> See OHIO REV. CODE ANN. § 2925.11(B)(2) (2022); W. VA. CODE ANN. §§ 16-47-5 (2022).

<sup>160</sup> DRUG MISUSE, *supra* note 13, at 2.

<sup>161</sup> DRUG MISUSE, *supra* note 13, at 24.

how and if the law applies to an individual in a state, as illustrated by the Mark and Christy hypothetical. If most or all states adopt a model uniform GSOL, this minimizes any confusion a person may have regarding whether the good Samaritan protections will apply to him.

The proposed policies for GSOLs were designed with the purpose of encouraging individuals to seek medical attention in the event of overdose for the purpose of saving lives, as was originally intended by legislatures upon states' enactments of their respective GSOLs. The provisions of the proposed policies allow both the overdose victim and the person seeking medical help in good faith for the victim to be eligible for GSOL protections, and be immune from CDS/paraphernalia offenses, as well as drug-related parole or probation violations. There is expressly no limit to the number of times an individual who meets all the requirements can be eligible for GSOL protections. Seeking medical attention in good faith for a suspected drug overdose is a mitigating factor at sentencing for non-protected offenses, and there are requirements for first responders to dispatch recovery coaches to provide treatment information and options to the individual. The application of these provisions will allow individuals to seek help in instances of overdose because there are protections to both the help-seeker and the overdose victim. If all states adopt these policy proposals, it is more likely that people will be more willing to call for help in cases of overdose, thereby saving lives, as is intended by the proposed GSOL policies.