



The Need for Indiana to Update Its Current Drug Overdose Good Samaritan Law

KEY POINTS

Indiana’s Aaron’s Law contains Good Samaritan provisions that offer some legal protections to individuals who administer naloxone and call 911 at the scene of an overdose.

Despite these provisions, many Hoosiers do not call 911 at the scene of an overdose because the Good Samaritan protections offered under Aaron’s Law are confusing and limited.

Improving Indiana’s opioid overdose Good Samaritan protections would increase willingness to call 911 at the scene of an overdose.

Recommendations include the creation of a comprehensive, stand-alone overdose Good Samaritan Law or the expansion of Indiana’s Lifeline Law to include controlled substances and offer protections for those of any age.

Introduction

In 2015, in an attempt to curb rising rates of overdose deaths, Indiana lawmakers passed Senate Enrolled Act (SEA) 406, also known as Aaron’s Law, allowing lay persons, including family members and friends of individuals at risk of opioid overdose to obtain naloxone, the opioid overdose reversal drug, via a prescription.^{1,2} Aaron’s Law also ensured immunity from civil liabilities for those who call 911 onto the scene of an overdose, such as liability associated with failure to revive a person from an overdose despite the administration of naloxone.² A 2016 amendment to the law (SEA 187) established Good Samaritan (i.e., criminal liability) protections for drug and paraphernalia possession for lay persons (also known as lay responders) who administer naloxone and call 911.³ Additionally, under the 2016 amendment, lay responders are now able to access naloxone through a standing order (i.e., *without* an individual prescription).³ The creation of Aaron’s law is an incredible first step in the direction of saving lives and protecting those who intervene in the case of an overdose. However, the combination of naloxone access and opioid-related Good Samaritan protections in a single law seriously weakens the intent of the Good Samaritan protections to persuade individuals to call 911. In cases where 911 is not called, those who overdose are at an increased risk of harm as a result of not receiving proper emergency medical care in a timely manner. A stand-alone opioid overdose Good Samaritan Law (GSL) is needed to strengthen and improve clarity of the criminal liability protections, making it more likely that lay responders will call 911.

Limitations of Indiana’s Good Samaritan Law

Although Aaron’s Law is life-saving legislation intended to decrease overdose deaths via the distribution of naloxone and the reduction of barriers associated with calling 911 to an overdose scene, several aspects of the law as currently written weaken its Good Samaritan protections. For example, as the law is currently written, protections only exist for the individual who administers naloxone *and* calls 911.⁴ As such, the person(s) responding to the

overdose may be hesitant to call 911 for fear the overdose victim might face criminal charges. An unwillingness to call 911 may be especially prominent if the person who overdosed is a close friend or family member of the lay responder. Supporting this, an analysis of survey data from 217 lay persons who obtained naloxone at local health departments across Indiana found 20% did not call 911 to the scene of the most recent overdose they witnessed, with fear of police being the most common reason for failure to call.⁵

Despite the protections offered to lay responders who call 911 at the scene of an overdose, several requirements must first be met before lay responders are granted protections. For example, to receive criminal and civil liability protections, an individual must meet the following conditions: administer naloxone, call 911, remain on the scene until police arrive, provide the name of the person who overdosed, and cooperate with police with all requests.⁴ As such, protections are reliant on a person having administered naloxone. As outlined in IN § 16-42-27-2, immunity applies to those who have “administered an overdose intervention drug to an individual who appeared to be experiencing an opioid-related overdose.”⁴ Because the law explicitly states this action must be taken to receive immunity, it can be assumed those who do not administer naloxone will not be protected from civil or criminal charges. This makes it less likely lay responders who do not have naloxone will call 911 since protections might be interpreted as not applying to them. However, it is in these cases emergency medical services are most is needed, given the overdose victim’s chances of survival are severely reduced when naloxone is not administered in a timely manner.

Although Aaron’s Law offers criminal and civil liability protections to those who administer naloxone and call 911, these protections are still rather limited, especially in comparison to GSLs in other states. For example, 18 states provide protections from parole and probation violations in addition to drug possession.⁶ Furthermore, ten states provide immunity from other controlled substance-related crimes other than possession.⁶ Additionally, much ambiguity exists in the language of Aaron’s Law, making it difficult for both lay responders and health professionals to

interpret the law and implement it into practice. For example, it is unclear whether or not other witnesses are protected under the law, i.e. those who were on the scene and followed all specified requirements but may have not been the one to administer naloxone. A recent focus group consisting of lay responders in Indiana examined knowledge and understanding of Aaron's Law. Results show many participants were confused by the ambiguity of the law; specifically, there were questions surrounding what exactly it meant to "cooperate" with police.⁷ Additionally, many participants did not know Aaron's Law is different than the Indiana Lifeline Law, which is a GSL designed to encourage minors to call 911 and report alcohol poisoning as a result of underage drinking.⁷ Indeed, many lay responders are unaware Aaron's Law exists. Data from the same survey described above reports approximately 22% of lay persons surveyed are unaware of Aaron's Law.⁵ The obscurity of Indiana's GSL creates an additional barrier to reducing the number of overdose deaths in Indiana, as many lay persons may be unaware of the law or reluctant to call 911 at the scene of an overdose given the limited protections offered by the current GSL.

The recent passing of Indiana HB 1359 reinforces the need for stronger Good Samaritan protections for lay responders in Indiana. HB 1359 charges individuals with a level 1 felony if the distribution of cocaine; methamphetamine; or a schedule I, II, or III controlled substance to another person results in their death.⁸ As such, this law is likely to make lay responders even wearier of calling 911.

Recommendations

Indiana legislators should develop and pass a comprehensive, stand-alone, opioid overdose GSL. Good Samaritan protections should not be included as part of another law, as is the current case in Indiana. States such as Nevada, Oregon, and Tennessee have strong drug-related GSLs independent of additional legislation that Indiana can look to as examples.⁹ A stand-alone GSL should also be accompanied by increased clarity in the language used and greater legal protections for both the individual who calls 911 onto the scene of the overdose and the individual who experienced the overdose.

Alternatively, Indiana lawmakers could expand the Indiana Lifeline Law (ILL) to include controlled substances. As previously mentioned, the ILL is a comprehensive alcohol-related GSL created to encourage those under 21 to call 911 in the case of alcohol poisoning. As part of previous expansion of the ILL in 2014 (SB 227), those who call 911 for any emergency, not just alcohol related, receive immunity from legal prosecution from certain alcohol offenses.¹⁰ To receive protection, individuals must meet requirements similar to those of Aaron's Law, such as staying on the scene and cooperating with police.¹¹ However, as part of the ILL, those who "acted in concert with another person who requested emergency medical assistance" are also protected from prosecution.¹⁰ As described above, Aaron's Law is not currently written in a way that guarantees protection for those on the scene of the overdose who assist in calling 911 yet do not directly administer naloxone. The ILL also states that if someone calls 911 to report alcohol poisoning, the victim of the poisoning will be protected from conviction for underage possession and public intoxication (IN § 7.1-5-1-6.6).¹² However, to receive immunity the individual must not have a prior conviction for an alcohol offense.¹¹ The ILL is currently a comprehensive GSL that offers protections for both the individual who called 911 and the victim of alcohol poisoning, and continuing its expansion to include controlled substances and protections for those who are over the age of twenty-one would further the intended benefits of this progressive legislation.

Conclusion

The enactment of Indiana's Aaron's Law, and its subsequent amendment, was a groundbreaking first attempt to provide legal protections to those who assist in saving the lives of overdose victims. However, stronger protections are needed to assure lay responders calling 911 will not result in criminal prosecution for themselves,

the overdose victim(s), or other witnesses at the overdose scene. A stand-alone GSL or expanding protections in the ILL to include controlled substances and protections for those over twenty-one could save hundreds of Hoosier lives by easing lay responder fears around calling 911, thus ensuring overdose victims receive necessary medical attention.

Issue Brief Preparation

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