

**OFFICE OF POLICY AND LEGAL ANALYSIS
BILL ANALYSIS**

TO: Members, Joint Standing Committee on Criminal Justice and Public Safety

FROM: Jane Orbeton, Legislative Analyst

DATE: February 15, 2022

RE: LD 1862, An Act to Strengthen Maine's Good Samaritan Laws Concerning Drug-related Medical Assistance

Summary

This bill amends Maine's current Good Samaritan laws to cover all nonviolent offenses (see bill for definitions of violent offenses) and violations of conditions of release and probation for a person who overdoses, in good faith calls for assistance or is present at the location to which medical assistance is called to assist with a drug-related overdose.

Senator Maxmin testified in support of the bill and presented a proposed amendment which is copied in below.

- The amendment replaces the bill, repeals current law and enacts a replacement.
- The amendment proposes to provide immunity from arrest and prosecution for a person who in good faith seeks assistance for a person with a drug overdose, for the overdosing person and for any other person present at the location when the medical professional or law enforcement officer arrives to provide assistance.
- Immunity from arrest and prosecution lasts from when the medical professional or law enforcement officer arrives to provide assistance until the medical professional or law enforcement officer leaves the location of the medical emergency.
- The person is protected from arrest or prosecution for a violation of law, except for listed excluded crimes, and protection from revocation or termination proceedings related to certain forms of release or community or supervised confinement if the grounds for arrest or prosecution or revocation result from the medical professional or law enforcement officer responding to the call for assistance or if the identity of the person is obtained as a result of the response to the call.
- Excluded crimes are listed in the amendment: sexual assaults and sexual exploitation of a minor, sex trafficking and aggravated sex trafficking, offenses against persons, robbery, arson, kidnapping, conspiracy and attempt to commit certain crimes and aggravated attempted murder, criminal restraint and criminal forced labor.
- The amendment provides a pre-trial process for determining whether the defendant is immune from prosecution.

Testimony

The names of persons who registered online to testify and persons who submitted testimony electronically, along with copies of the submissions, are posted on the committee webpage, under Criminal Justice Committee , in “committee materials,” by LD number at this web address: <https://legislature.maine.gov/cjps-meeting-materials-130th-legislature>.

Proponents:

Senator Maxmin introduced the bill and testified in favor, also introducing the proposed amendment copied in below. Senator Moore spoke in favor and spoke of the inadequacy of current law. Representatives Lydia Crafts and Raegan LaRochelle spoke in support of the amendment. Many other people, representing themselves and many organizations, spoke in support of the bill and amendment.

Supporters of the bill and amendment raised the following issues: the deaths and tragedies from drug overdoses; the need to expand the Good Samaritan law to provide better protection for the person experiencing the overdose, the people calling for assistance and others who are present; the need to focus on harm reduction and public health; the fear of the criminal justice system that keeps people from seeking help; the need to save lives; the inadequacy of current approaches to drug use and substance use disorder; and the Options Liaisons program.

Opponents:

Persons testifying and presenting written testimony against the bill and amendment included Commissioner of Public Safety Michael Sauschuck, who stressed the need for the current Good Samaritan law and who praised the current law and provided statistics on states with such laws. See two entries in “Information requested” below for requests to the commissioner. Also speaking against the bill and amendment was Franklin County Sheriff Scott Nichols speaking for the Maine Sheriffs Association, Augusta Police Chief Jared Mills for Maine Chiefs of Police Association, and Assistant Attorney General John Risler.

Issues that the opponents of the bill and amendment raised include the adequacy of the current law, the expansion of immunity to cover a broader range of crimes and not just drug possession crimes, expansion of immunity to cover persons who were present but did not seek assistance, and that expanded immunity as proposed could protect someone who actually was the supplier of drugs that caused the overdose or engaged in crime and not assisting the overdose victim in any way.

Neither for nor against:

The Sex Offender Management and Risk Assessment Advisory Commission, through its chair AAG Kent Avery, submitted testimony neither for nor against, citing; (1) the language removed from the bill by the amendment that defined sexually violent offenses by reference to a SORNA statute and (2) that immunity from prosecution would extend to probation violations when the underlying crime was a violent crime. The Criminal Law Advisory Commission submitted testimony neither for nor against citing: (1) that CLAC has not had an opportunity to consider the proposed amendment, and (2) issues that CLAC had raised regarding the original bill regarding the connection between the assistance rendered and the immunity provided, immunity for all present at the location and for what period of time, the criminal conduct that qualifies for immunity, and the court procedure for determining immunity,

Possible Amendments;

See testimony of Walter McKee for suggested amendment to the provisions protecting a person from revocation or termination proceedings, also noted in “Information requested” below.

INFORMATION REQUESTED:

The following information was requested:

1. Walter McKee, Maine Association of Criminal Defense Lawyers: suggested that amendment is needed to the protections from violations in subsection 2. MACDL’S proposed amendment to section 1111-B, subsection 2 would read as follows. Note that “and community confinement” would need to be added to the amendment summary.

2. Immunity from arrest, prosecution or revocation proceedings Except with regard to an excluded crime as defined in subsection 1, paragraph A, a protected person is immune from arrest or prosecution for a violation of law or from revocation proceedings with regard to conditions of release under Title 15, chapter 105-A, subchapter 5, probation under chapter 67, subchapter 1, administrative release under chapter 67, subchapter 2, or supervised community confinement under Title 34-A, section 3036-A, or from termination proceedings for deferred disposition violations under chapter 67, subchapter 4 or termination from community confinement monitoring under Title 30-A, chapter 13, subchapter 4, if:

A. The grounds for the arrest or prosecution of or a revocation or termination proceeding against the protected person are obtained a result of a medical professional or law enforcement officer responding to the call for medical assistance; or

B. The identity of the protected person is learned or the protected person is identified as a person subject to arrest, termination, prosecution or revocation as a result of a medical professional or law enforcement officer responding to the call for medical assistance.

2. Commissioner Sauschuck has provided information on efforts of DHHS Office of Behavioral Health and DPS to provide education on the current Good Samaritan law for the general public in a booklet titled OPTIONS, Campaign Metrics//The Good Samaritan Law. The booklet has been posted on the electronic CJPS Committee webpage, under committee materials, under LD 1862. An electronic copy was sent to committee members and interested parties on February 15.
3. Commissioner Sauschuck was asked which parts of LD 1862/amendment would be reasonable to enact.
4. John Risler, AAG, was asked how the Office of the Attorney General defines public safety as it relates to the duties of the office.

**Proposed Committee Amendment to LD 1862, From Senator Maxmin
An Act to Strengthen Maine’s Good Samaritan Laws Concerning Drug-related
Medical Assistance**

Amend the bill by striking everything after the enacting clause and by inserting the following:

Sec. 1. 17-A MRSA §1111-B, as amended by PL 2021, c. 299, Pt. C, §1 and c. 434, §8, is repealed and the following enacted in its place:

§1111-B. Immunity from arrest, prosecution or revocation proceedings when medical assistance has been called for a suspected drug-related overdose

When a medical professional or law enforcement officer has been called to the location of a medical emergency in response to a suspected drug-related overdose, the following provisions apply to any person who in good faith has sought assistance and any other person present at the location when the medical professional or a law enforcement officer arrives to provide assistance. The following provisions apply for the duration of the response to the medical emergency of a drug-related overdose and end when the medical professional or law enforcement officer leaves the location of the medical emergency.

1, Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. “Excluded crime” means a crime that does not qualify for immunity under subsection 2. The following crimes are excluded crimes: an offense against a person under chapter 9; a sexual assault under chapter 11; sexual exploitation of a minor under chapter 12; kidnapping, criminal restraint and criminal forced labor under chapter 13; robbery under section 651; arson under section 802; aggravated sex trafficking under section 852; and sex trafficking under section 853. Excluded crime also means criminal conspiracy under section 151 to commit a crime listed in this paragraph, criminal attempt under section 152 to commit a crime listed in this paragraph, aggravated attempted murder under section 152-A, and criminal solicitation under section 153 to commit a crime listed in this paragraph.

B. “Protected person” means a person who in good faith seeks medical assistance for another person experiencing a suspected drug-related overdose and any other person present at the location when the medical professional or any law enforcement officer arrives to provide assistance.

2. Immunity from arrest, prosecution or revocation proceedings Except with regard to an excluded crime as defined in subsection 1, paragraph A, a protected person is immune from arrest or prosecution for a violation of law or from revocation proceedings with regard to conditions of release under Title 15, chapter 105-A, subchapter 5, probation under chapter 67, subchapter 1, administrative release under chapter 67, subchapter 2, or supervised community

confinement under Title 34-A, section 3036-A, or from termination proceedings for deferred disposition violations under chapter 67, subchapter 4, if:

A. The grounds for the arrest or prosecution of or a revocation proceeding against the protected person are obtained a result of a medical professional or law enforcement officer responding to the call for medical assistance; or

B. The identity of the protected person is learned or the protected person is identified as a person subject to arrest, prosecution or revocation as a result of a medical professional or law enforcement officer responding to the call for medical assistance.

3. Motion to determine immunity. A criminal defendant may move the court prior to trial to determine whether the defendant is immune from prosecution pursuant to subsection 2. Once the defendant has filed a motion and has presented evidence to establish immunity, the prosecution has the burden of proving by clear and convincing evidence that the grounds for immunity do not apply to the defendant. The court may hear testimony and shall make factual and legal findings as necessary to determine immunity.

SUMMARY

This amendment replaces the bill. The amendment repeals and replaces Title 17-A, Maine Revised Statutes, section 1111-B. The amendment provides that when a medical professional or law enforcement officer has been called to the location of a medical emergency in response to a suspected drug-related overdose, immunity from arrest and prosecution, revocation proceedings and deferred disposition termination proceedings is provided for any person who in good faith sought medical assistance and any other person present at the location when the medical professional or a law enforcement officer arrive to provide medical assistance. The amendment provides a list of excluded crimes that are not subject to immunity. The amendment provides a motion procedure for court determination of immunity.