

# Safe Reporting of Overdoses Through Immunity from Prosecution<sup>i</sup>

## The Problem

Unintentional drug overdose is a leading cause of preventable death in the United States. Overdose bystanders may not call for medical assistance for fear of being arrested for drug-related crimes. To encourage bystanders to call for life-saving help, many states have passed laws that provide immunity from arrest and prosecution, or other legal protections, for people who call for help in the event of an overdose. Other states have laws that provide little incentive for someone to call for help in an overdose emergency, and instead, arrest and prosecution are an inevitable consequence. Virginia is one of those states that provide little incentive to call for help.

Virginia officials projected a record number of drug overdose fatalities in 2019, with fatalities expected to approach 1,550, a 4% jump from 2018<sup>ii</sup>. It is clear that the Safe Reporting Act enacted in 2015 and amended in 2018<sup>iii</sup>, is not effective in slowing the deaths of our family members struggling with addiction and not yet in recovery.

Often these deaths occur because the person in trouble or someone witnessing the overdose is hesitant to call for help because they will be arrested and prosecuted for possession of a controlled substance. Under the current law, both the witness and person overdosing will be arrested and prosecuted, and the law offers only to the person calling for help an opportunity to mount an affirmative defense when in court.<sup>iv</sup> We know it takes immunity from arrest and prosecution, for both the witness who called for help and the person who is overdosing, to decrease overdose-related mortality.<sup>v</sup>

## The Bill

A bill has been introduced that would amend the current law<sup>vi</sup> to one that offers immunity from prosecution when someone's life is at risk during a drug overdose. This bill is HB532<sup>vii</sup> and is similar to laws enacted in other states that have reduced mortality by encouraging calls for help when someone is overdosing.

## The Ask

Virginians are being asked to support HB 532 by contacting their legislators and asking others in their circles to contact their legislators in support of the amendment to the Safe Reporting of Overdose.

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<sup>i</sup> Prepared by Marianne Burke, January 6, 2020

<sup>ii</sup> <https://www.nbc12.com/2019/10/28/record-drug-overdose-deaths-projected-virginia/>

<sup>iii</sup> <https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-251.03/>

<sup>iv</sup> **Affirmative defense is a legal term that pertains to a defendant's response to being accused of a certain crime.** When an affirmative defense is used, the defendant is basically admitting he committed the crime of which he is accused, but is offering an explanation or justification for the incident.

<sup>v</sup> <https://www.ncbi.nlm.nih.gov/pubmed/28972445>,

<https://www.ncbi.nlm.nih.gov/pubmed/29966919>,

[http://www.drugpolicy.org/issues/good-samaritan-fatal-overdose-prevention-laws?fbclid=IwAR1oyKtA8tdt1Ss0req\\_wd5JxdxVB3QZ0o1PbUJ\\_7FNivNzaMK2alpFrifM](http://www.drugpolicy.org/issues/good-samaritan-fatal-overdose-prevention-laws?fbclid=IwAR1oyKtA8tdt1Ss0req_wd5JxdxVB3QZ0o1PbUJ_7FNivNzaMK2alpFrifM)

<sup>vi</sup> <https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-251.03/>

<sup>vii</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB532>