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Ohio law designed to curb overdose deaths has complications

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Immunity is available - although not necessarily guaranteed - for individuals who seek medical help for a drug overdose. Prosecutors are trying to apply the law, but drug-treatment advocates wonder if it could deter individuals from calling 911 for an overdose.

By Shane Hoover @Repository staff writer

CANTON Ohio passed a Good Samaritan law this year to encourage individuals to seek medical help for a drug overdose without fear of being arrested for drug possession.

Three months after the law took effect, prosecutors still are trying to figure out how to make it work, and drug-treatment advocates wonder if the law could actually deter individuals from calling 911.

What is the law?

Thirty-seven states offer some sort of immunity from criminal prosecution when a person calls 911 or seeks medical care for a drug overdose, according to the National Council of State Legislatures.

Ohio's law grants immunity from arrest and prosecution for misdemeanor or fifth-degree felony drug possession.

To qualify for immunity, a person must, in good faith, seek medical help for himself or herself or for another person having an overdose, or be the person for who help is sought.

Further, the qualifying individual must seek and obtain a screening and referral for drug treatment within 30 days of seeking medical care, and give proof of the referral to prosecutors. Failing to do so could lead to criminal charges.

Immunity only can be granted twice under the law. A person who is on probation or parole isn't eligible for immunity, but the law favors drug treatment over incarceration in those cases.

Sorting it out

It's up to each of Ohio's 88 counties to decide how to apply the law. Assistant Stark County Prosecutor Michelle Cordova is in charge of that effort locally.

"This has raised as many questions as it's answered," Cordova said during a presentation on the law earlier this month at the Stark County Opiate Symposium.

"I'm not aware of any statewide initiative to get us all on the same page, which is true across every aspect of the criminal justice system," she said. "We're all kind of doing our own thing."

The biggest challenge is tracking who is eligible for immunity.

Prosecutors typically don't keep tabs on cases that don't result in charges, Cordova said. But that's what they have to do to enforce the two-time immunity limit and the treatment referral.

To keep track, the Stark County Prosecutor's Office has made a form that will be used by all 23 law enforcement jurisdictions in the county when a person qualifies for immunity. The county's criminal justice computer network will allow officers to see who has been granted immunity in the county.

But no existing law enforcement databases are equipped at this point to share that kind of data beyond the county line. For example, there's no easy way for an officer in Canton to know if a person has been granted immunity in Akron or Youngstown.

"You have an officer arriving on-scene, he's not going to stop and call the clerk's office in every county in Ohio ...; to figure out if a person has had immunity before," said Margaret Scott, deputy chief assistant Summit County prosecutor.

Narrow immunity

The law only grants immunity from arrest and prosecution for misdemeanor and fifth-degree-felony drug possession.

Police who respond to a 911 call for an overdose still could charge a person with possession of drug paraphernalia, child endangering, operating a vehicle under the influence or other crimes, depending on the circumstances. Police also can arrest persons with outstanding warrants.

Some departments have been diverting heroin-related cases to treatment, but the immunity law gives an officer discretion whether to pursue charges other than drug possession, Cordova said.

Police also can seize contraband and evidence, and would still have to do an investigation because if a person doesn't get a treatment referral within 30 days, charges could be filed, she said.

Advocate's view

Cordova said she isn't aware of immunity being granted under this law in Stark County, primarily because local agencies have been getting trained on how to use the law.

The prosecutor's office doesn't keep stats on the number of times a person has been charged with a crime after seeking help for an overdose, and its staff doesn't know how many people don't call for help because they fear criminal consequences.

But Cindy Koumoutzis, of Lake Township, personally knows the thought process. When her daughter overdosed in their home, Koumoutzis revived her with CPR and called 911.

But fearing she could be charged because of the drug residue, syringe and paraphernalia in her daughter's room, she canceled the call and drove her daughter to a hospital.

Koumoutzis is state director of Ohio Change Addiction Now. She advocated for the Good Samaritan law but has her misgivings with how it turned out.

Her biggest concern is the two-time limit on immunity - a concern shared by the Drug Policy Alliance - especially when Ohio led the nation with 2,106 fatal opioid overdoses in 2014, according to a recent tally by the Henry J. Kaiser Family Foundation.

"Ohio is No. 1 in the nation and you want to limit how many times I can call and save a life?" Koumoutzis asked.

She also was critical of the fact that prosecutors, rather than treatment providers, will be tracking the names of individuals given immunity, and said she feared the law would be undercut if police pursue charges not covered by immunity when they respond to an overdose.

"It's hard enough right now ...; to get those with a substance-use disorder trusting enough to call," Koumoutzis said. "The minute someone has been arrested, it's gone. They won't call."

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