

Good Samaritan Fatal Overdose Prevention: Laws and Implementation

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INTRODUCTION

Provisional data from the National Center for Health Statistics at the Centers for Disease Control and Prevention show that just under 106,000 Americans died of a drug overdose during the 12-month period from November 1, 2020 to October 31, 2021.¹ This represents a 15.9 percent increase in fatal overdoses compared to the same period the year before and a 46.6 percent increase over calendar year 2019.² Reversing this dire trend is a priority of policymakers nationwide. One key to reducing fatal overdoses is ensuring that overdose victims receive emergency assistance as quickly as possible.³ Not all overdose victims or witnesses immediately seek emergency assistance, however. Historically, many individuals resist seeking help for fear that law enforcement officers will arrest them for drug possession or other criminal offenses. To help reduce individuals' reluctance to seek emergency help, most states adopted Good Samaritan fatal overdose prevention (GSFOP) laws.⁴ These laws grant some form of protection, typically immunity from arrest or prosecution, to individuals who witness an overdose and seek emergency medical assistance for the victim. Most states also extend protection to the overdose victim. GSFOP laws are a relatively recent legal development in the United States; the first such statute took effect in 2007, and over half of those currently in place took effect in 2015 or later. This fact sheet describes the current status of GSFOP laws throughout the United States as well as findings from interviews with state drug control officials concerning the application and effectiveness of those laws.

GOOD SAMARITAN FATAL OVERDOSE PREEVENTION LAWS IN THE UNITED STATES

During 2021, the Legislative Analysis and Public Policy Association (LAPPA) researched the [status of GSFOP laws](#) enacted or proposed in all 50 states, the District of Columbia, and the U.S. territories.⁵ As of December 2021, 48 states and the District of Columbia have GSFOP laws in place; Kansas and Wyoming are the two exceptions. All statutes in these 49 jurisdictions provide protection for drug possession offenses, though the level of protection varies. Twenty-six states and the District of Columbia provide immunity against prosecution and arrest, while 19 states protect against prosecution but not arrest. Texas and Utah provide only an affirmative defense for drug possession charges, and Iowa only precludes the use of certain information obtained during an emergency response as evidence or to support probable cause.⁶

¹ F.B. Ahmad, et al., *Provisional drug overdose death counts*, NAT'L CENTER FOR HEALTH STATISTICS (March 16, 2022), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

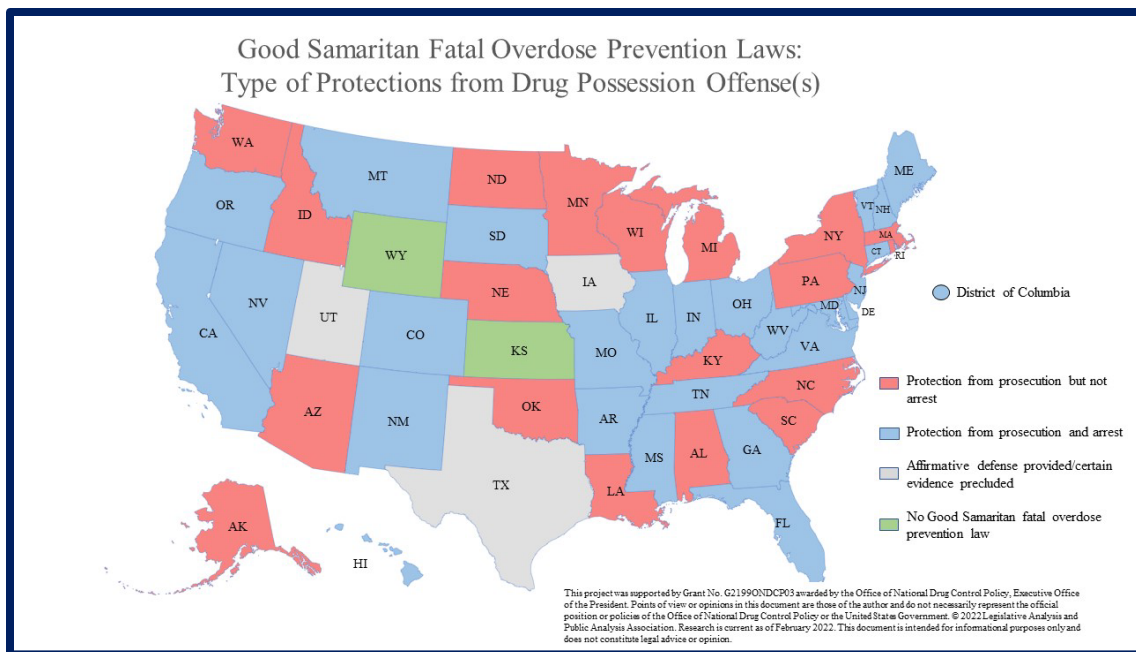
² *Id.*

³ *Good Samaritan fatal overdose prevention laws*, DRUG POLICY ALLIANCE (accessed Feb. 17, 2022), <https://www.drugpolicy.org/issues/good-samaritan-fatal-overdose-prevention-laws>.

⁴ *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>.

⁵ *Good Samaritan Fatal Overdose Prevention and Drug Induced Homicide: State Laws*, LEG. ANALYSIS & PUB. POLICY ASSOC. (Dec. 2021), <http://legislativeanalysis.org/wp-content/uploads/2021/12/GOODSA1.pdf>.

⁶ *Id.* at 3-15.



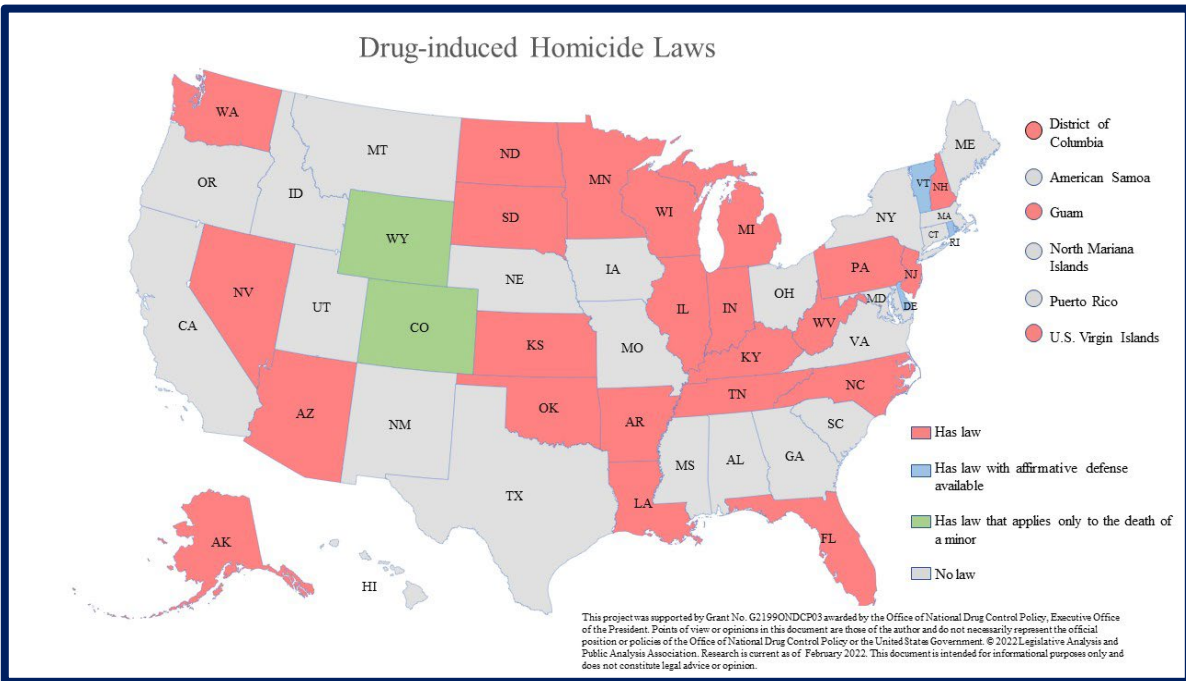
Most states' laws provide protection for offenses beyond drug possession. Immunity for possession of drug paraphernalia exists in 37 states and the District of Columbia, immunity from probation and parole violations exists in 25 states and the District of Columbia, immunity for some underage alcohol offenses exists in 13 states and the District of Columbia, and immunity from protective order violations exists in 10 states. LAPP's status of GSFOP laws summary shows the states that fall into each of the categories listed above.⁷

Precisely who is eligible for these protections also varies state to state. Although most states grant GSFOP protections to the person requesting medical assistance and the person experiencing an overdose, four states—Alabama, Indiana, Oklahoma, and Wisconsin—only protect individuals seeking assistance for others. Six states—Alabama, Iowa, Minnesota, North Carolina, South Carolina, and Texas—restrict eligibility only to the individual who is, or has a reasonable belief of being, the first person to call for assistance. To address only overdose reports made in “good faith,” 10 states make protections unavailable when overdose assistance is sought while police are executing a search or arrest warrant or conducting a lawful search. Finally, six states—Iowa, Ohio, South Carolina, South Dakota, Tennessee, and Texas—place limits on the number of times one may benefit from GSFOP protections.

As part of its GSFOP research, LAPP looked at drug-induced homicide or drug delivery resulting in death (DIH/DDRD) laws throughout the U.S. These laws authorize criminal charges against individuals who furnish or deliver a controlled substance that causes another individual's death.⁸ DIH/DDRD laws exist in tension with GSFOP protections, as individuals who provide drugs to others are often best suited to summon medical assistance, but they are at risk of severe criminal penalties if the overdose victim dies. There is ongoing debate among policymakers over the extent that DIH/DDRD laws weaken incentives provided by GSFOP laws to report overdoses. At present, 27 states, the District of Columbia, Guam, and the U.S. Virgin Islands have DIH/DDRD laws in effect. Three of the 27 states—Delaware, Rhode Island, and Vermont—provide an affirmative defense to DIH/DDRD prosecution when the accused makes a good faith effort to promptly seek, provide, or obtain emergency assistance for someone experiencing an overdose.

⁷ *Id.*

⁸ *Drug-induced homicide laws*, PRESCRIPTION DRUG ABUSE POLICY SYSTEM (Jan. 1, 2019), <http://www.pdaps.org/datasets/drug-induced-homicide-1529945480-1549313265-1559075032>.



EVALUATING THE EFFECTIVENESS OF GSFOP LAWS

Measuring the effectiveness of GSFOP laws is challenging because of the many variables involved. In theory, a successful GSFOP law should result in fewer fatal overdoses. However, with overdose deaths increasing almost everywhere in the U.S., either GSFOP laws are ineffective or, more likely, the myriad other factors causing fatal overdoses outweigh the benefits of the laws. GSFOP law effectiveness could manifest as an increase in 911 calls, but increasing numbers of overdoses could produce the same result. Moreover, to the extent that fatal overdoses decrease in a particular area, attributing any such good news solely to GSFOP laws rather than other overdose mitigation measures in effect is difficult.

The U.S. Government Accountability Office (GAO) released a report in March 2021 that reviewed 17 prior studies of GSFOP laws. Some of the prior studies attempted to measure the association between GSFOP law enactment and the rate of opioid-related overdose deaths. In these instances, the GAO found that GSFOP law enactment corresponded with lower opioid deaths when controlling for other variables.⁹ Unfortunately, the GAO found this information inconclusive, as not all studies involved statistically significant results. The GAO attributed much of the statistical uncertainty to methodological issues, as the variety of drug policies adopted in different states over time made it difficult to isolate the specific effects of GSFOP laws. Differences within and among states in how public health and safety entities collect and report overdose death data over time also complicate these policy evaluations.

To further the understanding of on-the-ground implementation of GSFOP and DIH/DDRDL laws, in late 2021 and early 2022, LAPP interviewed approximately one dozen state drug directors and other individuals working in law enforcement and substance use disorder programs around the country. Their observations varied, but several common patterns emerged. First, many of the interviewees did not possess any data about the effectiveness of GSFOP laws, and some suggested that LAPP contact other departments within the state for more complete data on overdoses and arrests. This reaction speaks to the lack of current, formal study, or monitoring of the effectiveness of GSFOP and DIH/DDRDL laws.

Several state officials expressed disappointment or pessimism regarding the level of GSFOP training and

⁹ GAO-21-248, *Most States Have Good Samaritan Laws and Research Indicates They May Have Positive Effects*, U.S. GOV'T ACCOUNTABILITY OFFICE (March 2021), <https://www.gao.gov/assets/gao-21-248.pdf>.

education provided to local law enforcement officers and emergency medical service providers. If first responders are unfamiliar with the GSFOP laws in their jurisdictions, there is a risk that overdose victims or witnesses will be improperly arrested or prosecuted. It appears that formal training on GSFOP laws is uncommon, and where it exists, it is often administered on an *ad hoc*, agency-by-agency basis. Some states reported that they provide educational materials as a resource but leave it to individual first responders to decide how to make use of those materials. There are exceptions, however. For instance, one state reported that law enforcement officers are instructed on GSFOP laws as part of basic and field training.

Public awareness was also an area of concern among interviewees. GSFOP laws will not be effective if the public—particularly the subset of those who use drugs—remains unaware of the protections afforded. Some state health authorities broadcast relevant information on GSFOP laws, such as with televised public service announcements, that tell the stories of overdose survivors and direct viewers to state websites. Nevertheless, they do not always reach their target audience, and they often compete with counter-narratives and misconceptions about GSFOP laws. Interviewees noted that their state health departments and other relevant agencies conduct significant public messaging. States also reported increasing their outreach during overdose spikes and targeting their campaigns to syringe services programs, methadone clinics, and drug treatment centers. Despite this, the public is less informed than state officials would like. One state conducted a survey and found that between 33 and 40 percent of respondents were entirely unaware of their state’s GSFOP law, and others were confused about the precise offenses covered by GSFOP laws. One official reported that many bystanders assume the law provides blanket protection from arrest after calling 911, but in such a case, a person otherwise qualified for GSFOP protection might be unaware that an outstanding warrant disqualifies him or her from immunity.

Lack of trust is another complicating issue. A state official raised the problem of isolated anecdotes concerning GSFOP laws turning into negative narratives about law enforcement and are spread by word of mouth. Multiple officials noted the mutual mistrust between overdose victims and law enforcement officers, with one explicitly stating: “Drug users don’t trust cops, and cops don’t trust drug users.” Some overdose witnesses fear that police will arrest them regardless of what the law says, and some law enforcement officers are frustrated that, instead of arresting habitual drug users, they are compelled to release them to “use again.” One official suggested that successful public promotion of GSFOP laws will require greater buy-in from community stakeholders who are trusted by law enforcement and overdose victims alike.

Most of the state officials surveyed remarked on challenges with implementation or interpretation of GSFOP laws and suggested that simpler or clearer language would improve the effectiveness of the laws. Legal ambiguities and litigation have resulted in uneven application within some states, varying breadth of GSFOP protections, and confusion among law enforcement. One official shared a common situation in his state in which an individual is found unresponsive in a public place or in a vehicle, and a bystander calls in a welfare check. If the unresponsive individual is found with drugs and was—unknown to any other person—suffering an overdose, some officers have been confused about whether to arrest the victim. Multiple interviewees proposed amending GSFOP laws to improve their clarity for law enforcement and the public by more precisely listing the situations and offenses that would be granted immunity. One official thought that broader, simpler laws could improve understanding and reduce mistrust, ultimately leading to fewer fatal overdoses. Another individual suggested that offenses given immunity from charge and prosecution are also given immunity from arrest, a step taken by many states, but not all.

None of the officials interviewed reported any formal methods used to measure the success or failure of GSFOP laws in their states. The officials’ anecdotal observations generally track with the findings of the GAO report mentioned earlier: the results are positive, if not conclusive. Several states reported no significant change in 911 calls or arrests that they would attribute to the law; others observed more people calling 911 who otherwise would have fled the scene; and one state reported that its overdose hospitalizations increased by 66 percent, and naloxone reversals doubled in the two years following the GSFOP law’s passage.

COMMENTS ABOUT DIH/DDRDR LAWS

State officials had mixed opinions on the subject of DIH/DDRDR laws, although favorable reactions exceeded unfavorable ones. In states with DIH/DDRDR laws already in effect, several officials do not see a conflict between the application of these laws and GSFOP laws. DIH/DDRDR prosecutions, they explained, are complicated, time-consuming, and limited in number. Establishing a cause of death from specific drugs is a high burden of proof. These statutes are generally used to go “up the food chain” to target high-level drug traffickers, not to prosecute any individual who provides drugs to another. In states without DIH/DDRDR laws, officials likewise seemed generally receptive, viewing such laws as a useful tool for law enforcement. One suggested narrowing the law’s focus to “for profit” drug distribution, to combat profiteering traffickers of illicit fentanyl. Respondents from all states, however, acknowledged that DIH/DDRDR laws come with tradeoffs. Even DIH/DDRDR supporters conceded that for some overdose witnesses, the laws may act as a deterrent to call for help and can weaken trust in the police. A survey in one state found that fear of arrest could cause bystanders not to seek emergency assistance, “particularly if they had a warrant or sold or gave the drugs to the affected person.”

CONCLUSION

Good Samaritan fatal overdose prevention laws are a fairly new weapon in the fight against overdose deaths. Prioritizing the well-being of overdose victims by providing limited immunity from criminal charges improves victims’ chances of receiving timely medical interventions. Though more comprehensive data would be useful, the available evidence suggests that these laws are effective. GSFOP laws are not without flaws, and there are several challenges in implementation. Overall, however, these laws are valuable in combatting fatal overdoses in the United States.

ABOUT LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces timely model laws and policies that can be used by national, state, and local public health, public safety, and substance use disorder practitioners who want the latest comprehensive information on law and policy as well as up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to fact sheets. Examples of topics on which LAPPA has assisted stakeholders include law enforcement/community engagement, naloxone laws, alternatives to incarceration for those with substance use disorders, medication for addiction treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.

For more information about LAPPA, please visit: <https://legislativeanalysis.org/>.

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