



## SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

### Summary of 2017 Act No. 95 (R125, S179)

#### Limited Immunity for Persons Seeking Medical Treatment for Another Person Experiencing Drug or Alcohol-Related Overdoses

2017 Act No. 95, which was effective June 10, 2017, added Article 19 to Chapter 53 of Title 44 of the S.C. Code of Laws (§§44-53-1910 through 1970). The Article essentially provides as follows.

- **A PERSON WHO SEEKS MEDICAL ASSISTANCE** – by contacting the 911 system, a law enforcement officer, or emergency services personnel – **FOR ANOTHER PERSON WHO APPEARS TO BE EXPERIENCING A DRUG OR ALCOHOL-RELATED OVERDOSE** (defined in §44-53-1910(2) as an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from consumption or use of controlled substance, alcohol, or another substance combined with a controlled substance or alcohol, that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance) (§44-53-1920(A)).
- **MAY NOT BE PROSECUTED FOR:**
  - (1) Dispensing or delivering a controlled substance under §44-53-370(a), *when the controlled substance is dispensed or delivered directly to the person who appears to be experiencing a drug-related overdose* (§44-53-1920(B)(1));
  - (2) possessing a controlled substance under §44-53-370(c) (§44-53-1920(B)(2));
  - (3) possessing less than 1 gram of methamphetamine or cocaine base under §44-53-375(A) (§44-53-1920(B)(3));
  - (4) dispensing/delivering methamphetamine/cocaine base under §44-53-375(B), *when the methamphetamine/cocaine base is dispensed/delivered directly to the person who appears to be experiencing a drug-related overdose* (§44-53-1920(B)(4));
  - (5) possessing paraphernalia under §44-53-391 (§44-53-1920(B)(5));
  - (6) selling or delivering paraphernalia under §44-53-391, *when the sale or delivery is to the person who appears to be experiencing a drug-related overdose* (§44-53-1920(B)(6));
  - (7) purchasing, attempting to purchase, consuming, or knowingly possessing alcohol under §63-19-2440 (§44-53-1920(B)(7));
  - (8) transferring/giving beer/wine to a person under 21 for consumption under §61-4-90 (§44-53-1920(B)(8)); **OR**
  - (9) contributing to the delinquency of a minor under §16-17-490 (§44-53-1920(B)(9)).
- **IF THE EVIDENCE WAS OBTAINED AS A RESULT OF THE PERSON SEEKING** medical assistance for the apparent overdose on the premises **OR IMMEDIATELY AFTER SEEKING SUCH** (§§44-53-1920(A) & 44-53-1930(A)); **AND**
- **THE PERSON:**
  - (1) **ACTED IN GOOD FAITH** when seeking medical assistance, **UPON A REASONABLE BELIEF THAT HE WAS THE FIRST PERSON TO CALL FOR ASSISTANCE** (§44-53-1920(A)(1)); **AND**
  - (2) **PROVIDED HIS OWN NAME** to the 911 system or LEO upon arrival (§§44-53-1920(A)(2) & (D), & 44-53-1930(B)); **AND**
  - (3) **FULLY COOPERATED** with LE and medical personnel (§§44-53-1920(D) & 44-53-1930(B)); **AND**
  - (4) **REMAINED WITH THE INDIVIDUAL** needing medical assistance **UNTIL HELP ARRIVED** (§44-53-1920(D)); **AND**
  - (5) **DID NOT SEEK MEDICAL ASSISTANCE DURING** the course of the **EXECUTION OF AN ARREST WARRANT, SEARCH WARRANT, OR OTHER LAWFUL SEARCH** (§44-53-1920(A)(3)).

Under §44-53-1950, a person immune from prosecution for the crimes listed in §44-53-1920(B), may be prosecuted for other crimes even if they arise from the same circumstances. And, under §44-53-1940, if the person is charged with other drug or alcohol-related offenses arising from the same circumstances, the person's decision to seek medical assistance, pursuant to §44-53-1920(A) or 44-53-1930, may be considered by the Court in mitigation at sentencing.

Moreover, under §44-53-1960, the provisions of Article 19 do **NOT** limit (1) the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for immunity or with regard to other crimes committed by a person who otherwise qualifies for immunity; (2) any seizure of evidence or contraband otherwise permitted by law; or (3) affect the authority of a LEO to detain a person in the course of an investigation or to effect an arrest for any offense, except as provided in §§44-53-1920(A) or 44-53-1930. (NOTE: In 44-53-1960, it says "Nothing in this section...", but it is clear from the context and content that the Legislature intended to say "this article," and to interpret it literally as written would defeat that intent and lead to an absurd result. See *Browning v. Hartvigsen*, 307 S.C. 122, 414 S.E.2d 115, 117 (1992); *Enos v. Doe*, 380 S.C. 295, 669 S.E.2d 619, 623 (Ct. App. 2008)).

Under §44-53-1970, a LEO who arrests a person for an offense listed in §44-53-1920(B) is not subject to criminal prosecution, or civil liability, for false arrest or false imprisonment if the arrest was based on probable cause.

**NOTE: THE LEGISLATION DOES NOT INCLUDE A SAVINGS CLAUSE SO IT IS RETROACTIVE  
(WHICH MEANS THAT IT APPLIES TO CONDUCT OCCURRING AND CHARGES BROUGHT PRIOR TO JUNE 10, 2017).**