

SUBJECT: Creating a defense to prosecution for those calling 911 for drug overdoses

COMMITTEE: Public Health — favorable, without amendment

VOTE: 11 ayes — Klick, Guerra, Allison, Campos, Coleman, Collier, Jetton,
Oliverson, Price, Smith, Zwiener

0 nays

WITNESSES: For — Cedrick Mattli, Texas A&M Student Government Association;
Devin Driver, Texas Criminal Justice Coalition; Sandra Sosa; (*Registered,
but did not testify*: Jamaal Smith, City of Houston, Office of the Mayor
Sylvester Turner; M. Paige Williams, for Dallas County Criminal District
Attorney John Creuzot; Dustin Cox, GRAV; Troy Alexander, Texas
Medical Association)

Against — Jorge Renaud, LatinoJustice; (*Registered, but did not testify*:
Susana Carranza; Vanessa MacDougal)

On — Matthew Lovitt, National Alliance on Mental Illness Texas; Cate
Graziani, Texas Harm Reduction Alliance; Shannon Hoffman, The Hogg
Foundation for Mental Health; Claire Zagorski; (*Registered, but did not
testify*: Elias Lang Cortez, Texas Harm Reduction Alliance)

BACKGROUND: Health and Safety Code, ch. 481 is the Texas Controlled Substances Act.
It categorizes illegal substances into penalty groups and provides penalties
for the manufacture, delivery, and possession of controlled substances.
The act also establishes punishments for substances that are not listed in
penalty groups but are listed in schedules, which are lists of controlled
substances maintained under Health and Safety Code sec. 481.032.

DIGEST: HB 1694 would create a defense to prosecution for certain drug offenses
for individuals seeking medical assistance for another person who may be
experiencing a drug overdose and for the victim of the possible overdose.

The defense would apply to multiple Health and Safety Code drug

offenses relating to possession of up to four ounces of marijuana and small amounts of drugs in Penalty Groups 1, 1-A, 2, 2-A, 3, and 4. It also would apply to controlled substances listed in a schedule but not in a penalty group, drug paraphernalia, a dangerous drug without a prescription, and certain actions relating to abusable volatile chemicals.

The defense would be available to an individual who:

- was the first person to request emergency medical assistance in response to the possible overdose of another and made the request during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or
- was the victim of a possible overdose and the request was made by the victim or another person during an ongoing medical emergency.

The defense to prosecution would not be available if:

- at the time of the request, a peace officer was arresting the individual or executing a search warrant describing the person or place where the request for medical assistance had been made;
- at the time of the request, the individual was committing another crime, other than the ones that would be covered by the newly established defense to prosecution;
- the individual had been previously convicted of or placed on deferred adjudication community supervision for an offense under the Texas Controlled Substances Act, Texas Dangerous Drug Act, or offense related to abusable volatile chemicals; or
- the individual had been acquitted in a previous proceeding by successfully establishing a defense to prosecution that would be established by the bill.

The defenses to prosecution established by the bill would not preclude the admission of evidence obtained by law enforcement that resulted from the request for help if the evidence pertained to an offense other than one for

which the newly created defenses could be used.

The bill would take effect September 1, 2021, and would apply to an offense committed on or after that date.

**SUPPORTERS
SAY:**

HB 1694 would help reduce drug overdose-related deaths in Texas by giving legal protections to certain individuals who call for emergency medical assistance in response to another's drug overdose and for the person who needs aid.

Drug overdoses are a serious problem in Texas and the frequency of overdoses has increased during the COVID-19 pandemic. Many overdose deaths could be prevented with quick and appropriate medical treatment. However, fear of arrest and prosecution can prevent people witnessing an overdose from calling 911. HB 1694 would address this by establishing legal defenses to criminal drug prosecution in certain situations, thereby encouraging those best positioned to seek emergency care to help those in danger of an overdose.

These types of laws, sometimes called Good Samaritan laws, have been shown to decrease overdose-related deaths, and Texas would join about 40 other states with similar laws. Texas has a law similar to HB 1694 that gives protections to minors who seek emergency medical assistance for a possible alcohol overdose, and those involved with potential drug overdoses should have similar protections.

In response to the governor's veto of a bill similar to HB 1694 in 2015, this bill is narrowly drawn and would apply only to possession of small amounts of marijuana, controlled substances and other drugs, abusable volatile chemicals, and drug paraphernalia. The bill includes provisions to ensure it would not be misused by drug dealers, those possessing large quantities of controlled substances, or those with repeated drug offenses. Other provisions ensure the bill would not interfere with law enforcement activities by making the defenses not apply when certain other offenses were being committed or during the execution of a search warrant. These provisions establishing when HB 1694 would not apply are a reflection of

collaboration with the Governor's Office to ensure that HB 1694 does not result in a veto and are an effort to create an acceptable Good Samaritan law for Texas. It would establish a pathway to prevent many overdoses deaths, and Texas should continue to work on all possible fronts to prevent as many overdoses as possible.

CRITICS
SAY:

While the Texas needs a Good Samaritan bill, the defenses to prosecution that would be established in HB 1694 are too narrowly drawn and would limit the effectiveness and fairness of the bill. The state should encourage all those witnessing or experiencing an overdoses to call 911 and let them focus on saving a life rather than place them in a situation where they have to choose between helping someone and possible arrest.

It is unfair and unsafe for the bill to make the defense unavailable to those with previous drug-related convictions or probation. The lives of these individuals and those around them should be valued the same as others who would be able to use the defenses in the bill. Such a restriction could reinforce and exacerbate racial disparities in the criminal justice system and in access to health care.

Relapse is common with substance abuse and limiting the defenses to being used once could place those struggling to overcome addiction in danger of legal consequences if they call to save a life a second time. It also is potentially dangerous to limit the defense to the first person who calls for help. If multiple people witness an overdose, all of them should have an incentive to seek help.