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## Slaying the Dragon: How the Law Can Help Rehab a Country in Crisis

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# Slaying the Dragon: How the Law Can Help Rehab a Country in Crisis

Samantha Kopf \*

## Introduction

Motor-vehicle-related deaths consistently topped the accidental death count in the United States for decades.<sup>1</sup> In 2009, for the first time, drug poisoning took over as the number one accidental killer.<sup>2</sup> In 1980, approximately 6,100 people died from drug overdose.<sup>3</sup> In the past ten years, the drug overdose rate for males and females, regardless of race, ethnicity and age, increased.<sup>4</sup> In 2000, 4.1 per 100,000 people died from unintentional drug overdose; in 2010, that number rose to 9.7 per 100,000.<sup>5</sup> The drug overdose epidemic, now the leading cause of unintentional death in the United States,<sup>6</sup> warrants national attention.

Drug overdose and motor-vehicle-related fatalities are similar in that they are both accidental and preventable. In the twentieth century, a systematic effort to increase motor-vehicle-related safety resulted in a drastic decline in the annual motor-vehicle-related death rate.<sup>7</sup> Although the number of motor

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\* Samantha Kopf is a student at Pace University School of Law. She dedicates this article to the families.

1. NAT'L CTR. FOR HEALTH STATISTICS, CTRS. FOR DISEASE CONTROL & PREVENTION, NCHS DATA ON DRUG POISONING DEATHS (2014), available at [http://www.cdc.gov/nchs/data/factsheets/factsheet\\_drug\\_poisoning.pdf](http://www.cdc.gov/nchs/data/factsheets/factsheet_drug_poisoning.pdf).

2. *Id.*

3. Margaret Warner et al., *Drug Poisoning Deaths in the United States, 1980-2008*, CTRS. FOR DISEASE CONTROL & PREVENTION (2011), available at <http://www.cdc.gov/nchs/data/databriefs/db81.pdf>.

4. See NAT'L CTR. FOR HEALTH STATISTICS, *supra* note 1.

5. *Id.*

6. See Warner et al., *supra* note 3.

7. Ctrs. for Disease Control & Prevention, *Achievements in Public Health 1900-1999*, 48 MORBIDITY & MORTALITY WEEKLY REPORT 369, 369-70 (1999), available at <http://www.cdc.gov/mmwr/PDF/wk/mm4818.pdf>.

vehicles on America's roads increased from 23 million in 1929<sup>8</sup> to 215 million in 1999,<sup>9</sup> and the number of miles traveled in motor vehicles was more than ten times higher in 1999 than it was in the 1920s, the annual motor-vehicle-related death rate during that time decreased by 90 %.<sup>10</sup> In 1966, "to reduce traffic accidents and deaths and injuries resulting from traffic accidents,"<sup>11</sup> President Johnson signed the National Traffic and Motor Vehicle Act and the Highway Safety Act into law.<sup>12</sup> The federal government took charge of setting and enforcing safety regulations.

The national charge, led by the United States Department of Transportation, focused on manipulating the interaction between the host (vehicle), the agent (driver) and the environment (roads).<sup>13</sup> According to the Centers for Disease Control, "the results were rapid."<sup>14</sup> Enactment and enforcement of laws, public education, government and community recognition of the need for change, and federal and state government programs contributed to the success.<sup>15</sup> The Centers for Disease Control and state and local governments collaborated in the effort to reduce motor-vehicle-related deaths.<sup>16</sup> In 1966, motor vehicle accidents killed 5.5 people per 100,000 vehicle miles traveled; in 2011, motor vehicle accidents killed 1.10 people per 100,000 vehicle miles traveled.<sup>17</sup>

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8. Kim Kenney, *Cars in the 1920s*, SUITE101 (Jan. 15, 2009), <http://suite101.com/a/cars-in-the-1920s-a90169>.

9. See MORBIDITY & MORTALITY WEEKLY REPORT, *supra* note 7.

10. *Id.*

11. 49 U.S.C. § 30101 (2012).

12. *1966: President Johnson Signs the National Traffic and Motor Vehicle Safety Act, This Day in History Series*, THE HISTORY CHANNEL, <http://www.history.com/this-day-in-history/president-johnson-signs-the-national-traffic-and-motor-vehicle-safety-act> (last visited May 12, 2015).

13. MORBIDITY & MORTALITY WEEKLY REPORT, *supra* note 7, at 370. The manipulation of the three variables is called the "Haddon Matrix" after Dr. William Haddon, Jr. Carol W. Runyan, *Introduction: Back to the Future - Revisiting Haddon's Conceptualization of Injury Epidemiology and Prevention*, 25 OXFORD J. 1, 60-64 (2003), available at <http://epirev.oxfordjournals.org/content/25/1/60.long>.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Motor Vehicle Traffic Fatalities & Fatality Rate: 1899 - 2003*, ADVOCATES FOR HIGHWAY & AUTO. SAFETY,

As was the approach with the effort to reduce motor-vehicle-related fatalities, drug overdose prevention should target the interaction between host (drugs), agent (drug users and their peers) and environment (criminal justice system). Drug overdose and motor-vehicle-related fatalities are distinguishable in that drug overdose, unlike motor-vehicle-accidents, includes an inherently illegal activity. In recognition of this difference, the effort to reduce drug overdose deaths must include the elimination of counterproductive criminal laws that discourage not-completely-innocent bystanders, concerned with their own penal interests, from calling emergency services.

To reduce the number of drug overdose fatalities, existing laws must change; it is not enough to create, enact, and enforce new laws. Once counterproductive criminal laws that frustrate public health and public policy are repealed, new laws, known as 911 Good Samaritan Overdose Laws, can be enacted and enforced in a manner similar to highway safety laws.

### I. The Law and Overdose

In an environment that limits an overdose victim's access to emergency treatment, overdose has become epidemic.<sup>18</sup> Overdose usually occurs when the victim is with a friend or family member.<sup>19</sup> Overdose witnesses generally do not call for help or bring a victim to a hospital because the threat of arrest for possession, use, and other drug crimes looms heavily.<sup>20</sup> When someone overdoses, out of fear of police involvement, a call for medical assistance happens less than 50 % of the time.<sup>21</sup>

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<http://www.saferoads.org/federal/2004/TrafficFatalities1899-2003.pdf> (citing National Highway Traffic Safety Administration data); Nat'l Highway Traffic Safety Admin., *Early Estimate of Motor Vehicle Traffic Fatalities for the First Nine Months (January-September) of 2012*, U.S. DEP'T OF TRANSP. (2012), available at <http://www-nrd.nhtsa.dot.gov/Pubs/811706.pdf>.

18. Corey Davis, *Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Overdose Good Samaritan Laws*, THE NETWORK FOR PUB. HEALTH L. (2013), available at [http://www.networkforphl.org/\\_asset/qz5pvn/network-naloxone-10-4.pdf](http://www.networkforphl.org/_asset/qz5pvn/network-naloxone-10-4.pdf).

19. *Id.*

20. *Id.*

21. Cody Swingle, Letter to the Editor, *911 Good Samaritan Act, Bill Protects Those Who Seek Help*, TAMPA BAY TIMES (Apr. 3, 2013), <http://www.tampabay.com/opinion/letters/wednesdays-letters-bill-protects->

“Though normally preventable, [opioid] overdose is too often not prevented, and the laws and law enforcement practices play a significant role in this failure.”<sup>22</sup>

North Carolina residents BJ and Chad Sanders lost their nineteen-year-old daughter and sister to overdose.<sup>23</sup> Shelly Sanders was found dead in her bed at school after overdosing on heroin.<sup>24</sup> The friend with whom she was using found her unresponsive, panicked, and fled; he did not call 911 because he was on parole and was afraid of being criminally punished.<sup>25</sup> Justin Pearlman, a lifetime heroin user, survived his heroin overdose when, in the midst of an overdose one night, he called 911.<sup>26</sup> Emergency medical responders saved Mr. Pearlman’s life, but police, who also responded to the call for help, discovered drugs in Mr. Pearlman’s home and charged him with possession of an illegal substance.<sup>27</sup> Mr. Pearlman was sent to jail.<sup>28</sup> Later, discussing what he would do if a similar situation presented itself, Mr. Pearlman said, “I don’t think I would ever call 911 on myself or another person. I wouldn’t want to be prosecuted . . . it’s so horrible to go to jail.”<sup>29</sup>

Although most overdose calls for help do not result in criminal prosecution,<sup>30</sup> stories of a bystander being convicted of homicide<sup>31</sup> or drug trafficking<sup>32</sup> exist. Other drug users and potential witnesses of drug overdoses hear similar stories and internalize the message that they send. The message is, “[d]on’t

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those-who-seek-help/1223270.

22. Scott Buris et al., *Stopping An Invisible Epidemic: Legal Issues in the Provision of Naloxene to Prevent Opioid Overdose*, 1 DREXEL L. REV. 273, 277 (2009).

23. Allison Glasser, *Saving Lives from Drug Overdose Death with Simple Solutions*, BLUENC (Dec. 13, 2012), <http://www.bluenc.com/saving-lives-drug-overdose-death-simple-solutions>.

24. *Id.*

25. *Id.*

26. Hilary Shenfeld, ‘Good Samaritan’ Laws and Drug-Overdose Victims, NEWSWEEK (July 6, 2010), <http://mag.newsweek.com/2010/07/06/advocates-say-good-samaritan-laws-could-save-overdose-victims.html>.

27. *Id.*

28. *Id.*

29. *Id.*

30. Buris et al., *supra* note 22, at 329.

31. State v. Jones, No. 05 CA 59, 2006 WL 466658 (Ohio Ct. App. Feb. 24, 2006).

32. Lofthouse v. Commonwealth, 13 S.W.3d 236 (Ky. 2000).

call 911 because you and the victim will be arrested.”<sup>33</sup> In order to stall the overdose epidemic, the message must change. Witnesses of drug overdoses, no matter their criminal history, must be confident that the law will not punish them for acting responsibly. Overdose victims can be saved if the law not only moves out of the way, but also establishes immunity for witnesses who will no longer need to choose between saving a life and protecting their own liberty.

## II. The Law as Part of the Solution

Government bodies that recognize that existing criminal law is partially to blame for the increase in overdose deaths have urged states to address the overdose epidemic.<sup>34</sup> In 2008, the U.S. Conference of Mayors adopted a resolution to develop city-coordinated drug overdose prevention. The resolution considered that “establishing emergency ‘Good Samaritan’ limited immunity policies that protect from prosecution people who call 911 would increase timely medical attention to overdose victims”<sup>35</sup> and “nearly one hundred colleges and universities have adopted Good Samaritan policies that have proven effective in encouraging students to seek help in the event of an alcohol or other drug overdose.”<sup>36</sup> The U.S. Conference of Mayors

. . . supports establishing emergency “Good Samaritan” policies that provide immunity from prosecution:

- For individuals at the scene of a health emergency related to the acute toxic effects of controlled substance use, intoxication, withdrawal or addiction, who have contacted 911 in good faith to receive emergency medical

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33. *Id.*

34. *See* Davis, *supra* note 18.

35. THE 76TH U.S. CONFERENCE OF MAYORS, 2008 ADOPTED RESOLUTIONS: SAVING LIVES, SAVING LIVES, SAVING MONEY: CITY-COORDINATED DRUG OVERDOSE PREVENTION (2008), *available at* [http://www.usmayors.org/resolutions/76th\\_conference/chhs\\_16.asp](http://www.usmayors.org/resolutions/76th_conference/chhs_16.asp).

36. *Id.*

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treatment for a victim of drug toxicity or overdose; and

- For individuals who have experienced an accidental or intentional drug overdose and who have been rendered aid by public safety personnel responding to a 911 call placed in good faith requesting emergency medical treatment; and

. . . calls upon:

- The National Institute of Drug Abuse and the Centers for Disease Control and Prevention to urgently fund research to evaluate scientifically the effectiveness of overdose prevention interventions and develop model programs. . . .<sup>37</sup>

The U.S. Conference of Mayors is calling for change.

Lawmakers in several states are responding to the need to remove legal barriers and implement new laws to slow the overdose epidemic.<sup>38</sup> In 2007, New Mexico became the first state to pass limited liability laws in relation to drug overdose.<sup>39</sup> In New Mexico,

[a] person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose shall not be charged or prosecuted for possession of a controlled substance . . . if the evidence for the charge of possession of a controlled substance was gained as

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37. *Id.*

38. *Id.* ("As of July 23, 2013, thirteen other states (WA, NY, CT, IL, CO, RI, FL, MA, CA, NC, NJ, VT, and DE) and the District of Columbia have followed suit. Additionally, Alaska has a law explicitly requiring courts to take the fact that a Good Samaritan summoned medical assistance into account at sentencing.").

39. *See Davis, supra* note 18.

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a result of the seeking of medical assistance.<sup>40</sup>

This immunity also applies to “[a] person who experiences a drug-related overdose and is in need of medical assistance.”<sup>41</sup> In addition, “the act of seeking medical assistance for someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substances Act.”<sup>42</sup> The New Mexico law does not grant immunity for other drug related offenses such as possession of drug paraphernalia or drug trafficking and does not protect people who are on parole or probation or who have a warrant for arrest.

In 2006, accidental drug overdoses caused 9 % of premature deaths in New Mexico.<sup>43</sup> Across the United States, accidental drug overdose caused 5.6 % of premature deaths. In 2007, with 24.2 deaths per 100,000 people, New Mexico led the country in drug-induced deaths.<sup>44</sup> In that same year, the number of statewide unintentional deaths caused by poisoning surpassed the number of statewide unintentional deaths caused by motor-vehicle accidents.

In 2011, New York became the largest state to enact a 911 Good Samaritan Overdose law. The legislation passed unanimously in the Senate, received only two “no” votes in the Assembly, and garnered Governor Cuomo’s support.<sup>45</sup> Law enforcement officials, concerned with granting immunity to criminals, opposed the passage of the law.<sup>46</sup> The New York law provides “a limited shield from *charge and prosecution* for

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40. N.M. STAT. ANN. § 30-31-27.1 (2007).

41. *Id.*

42. *Id.*

43. Nina Shah, *Unintentional Illicit and Prescription Drug Overdose Death Trends, 2008*, 2009 N.M. EPIDEMIOLOGY 9 (Nov. 20, 2009), available at <http://nmhealth.org/publication/view/newsletter/256/>.

44. Michael Landen, *Drug Overdose Death in New Mexico*, N.M. DEP’T OF HEALTH, available at <http://www.saynoheroine.org/PDFs/HAC-yDeathTrends.pdf> (last visited May 12, 2015).

45. Drug Policy Alliance, *911 Good Samaritan: Explaining New York's Fatal Overdose Prevention Law*, DRUG POLICY, available at [http://www.drugpolicy.org/sites/default/files/911\\_Good\\_Samaritan\\_Informational\\_Brief.pdf](http://www.drugpolicy.org/sites/default/files/911_Good_Samaritan_Informational_Brief.pdf).

46. *Id.*

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possession of narcotics, marijuana, and, for minors, alcohol.”<sup>47</sup> A person who possesses up to eight ounces of narcotics or any amount of marijuana is shielded. Possession of more than eight ounces of narcotics is not covered. The law also “provides limited immunity from *arrest* when the witnesses who call 911 or overdose victims possess residual or very small amounts of drugs.”<sup>48</sup> Misdemeanor amounts of marijuana are not covered. The New York law does not protect people who are on parole or probation or who have a warrant for arrest.

The law protects a criminal defendant who, in good faith, seeks emergency help for an overdose victim.<sup>49</sup> Governor Cuomo stated,

accidental drug overdose is the fourth leading cause of death among adults in New York. Approximately 85 % of overdose events occur in the company of others, but no medical assistance was sought in half of those cases and in only 14 % of cases was calling an ambulance the first response to a peer’s overdose.<sup>50</sup>

Legislators intended:

to encourage a witness or victim of a drug or alcohol related overdose to call 911 or seek other emergency assistance in order to save the life of an overdose victim by establishing a state policy of protecting the witnesses or victim from arrest, charge, prosecution, and conviction for drug possession, drug paraphernalia possession, and certain alcohol related offenses. It is not the intent of the legislature to protect individuals from arrest, charge, or prosecution for other offenses, including drug trafficking, or to interfere with law

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47. *Id.*

48. *Id.*

49. N.Y. PENAL LAW § 220.78 (McKinney 2011).

50. Memorandum from Governor Andrew Cuomo to N.Y. Senate with Senate Bill Number 2063-C (July 20, 2011), *available at* <http://www.licadd.com/wp-content/uploads/2011/07/GoodSamApproval.pdf>.

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enforcement protocols to secure the scene of an overdose.<sup>51</sup>

In Washington, the only state that has officially reviewed the effectiveness of its 911 Good Samaritan Law,

[a] person who experiences a drug-related overdose and is in need of medical assistance shall not be charged or prosecuted for possession of a controlled substance . . . or penalized if the evidence for the charge of possession of a controlled substance was obtained as a result of the overdose and the need for medical assistance.<sup>52</sup>

Here, the legislature intended “to save lives by increasing timely medical attention to drug overdose victims through the establishment of limited immunity from prosecution for people who seek medical assistance in a drug overdose situation.”<sup>53</sup>

The Washington Legislature, in its session discussion, reflected on Washington’s need for a new law. “Drug overdose is the leading cause of unintentional injury death in Washington state, ahead of motor vehicle related deaths. Washington state is one of sixteen states in which drug overdoses cause more deaths than traffic accidents.”<sup>54</sup> Additionally,

[t]he Washington state department of health reports that in 1999, unintentional drug poisoning was responsible for four hundred three deaths in this state; in 2007, the number had increased to seven hundred sixty-one, compared with six hundred ten motor vehicle related deaths that same year. Many drug overdose fatalities occur because peers delay or forego calling 911 for fear of arrest or police involvement, which researchers

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51. 2011 N.Y. Sess. Laws Ch. 154 (A. 2063-C) (McKinney).

52. WASH. REV. CODE ANN. § 69.50.315 (West 2010).

53. 2010 Wash. Sess. Laws Ch. 9 (S.B. 5516).

54. *Id.*

continually identify as the most significant barrier to the ideal first response of calling emergency services.<sup>55</sup>

Faced with the same troubling statistics, New Mexico, New York and Washington enacted 911 Good Samaritan Overdose laws in order to manipulate the interaction between drugs (host), people (agent), and the law (environment). The existing 911 Good Samaritan Overdose laws, which embrace public policy concerns and promote public health, have been met with little resistance. However, simply passing laws state-by-state, even unanimously, is not enough to effectuate a rapid response. The issue must be faced head-on through national legislation and a national campaign that establishes a comprehensive immunity policy.<sup>56</sup>

### III. Do the Existing Laws Work?

Washington's initial evaluation of its 911 Good Samaritan Overdose law is encouraging. Eighty-eight percent of opiate users indicated that, because they were aware of the new law, they would be more likely to report an overdose.<sup>57</sup> Although 42 % of opiate users stated that they had witnessed an overdose, 911 was only called 50 % of the time.<sup>58</sup> Arrests of overdose victims and witnesses who called for help were extremely rare; only one person was arrested at an overdose.<sup>59</sup> According to the study, "no evidence of negative consequences has been found"<sup>60</sup> and therefore "other states should consider this legislative approach as an integral part of their plan to improve public health."<sup>61</sup> Researchers found very few criticisms.<sup>62</sup>

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55. *Id.*

56. *See* Buris et al., *supra* note 22.

57. Banta-Green et al., *Washington's 911 Good Samaritan Drug Overdose Law: Initial Evaluation Results*, UNIV. OF WASH. ALCOHOL & DRUG ABUSE INST. (2011), available at <http://adai.uw.edu/pubs/infobriefs/ADAI-IB-2011-05.pdf>.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* (A criticism of the law is that police are generally unaware of the new law and have difficulty identifying to whom the law applies.).

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Although New York has not officially evaluated its 911 Good Samaritan Overdose law, a 2012 case study represents the law in effect. Stephanie Bongiovi, musician Jon Bon Jovi's daughter, overdosed on heroin in her dorm room at Hamilton College. Her friends called 911. Emergency responders saved Ms. Bongiovi's life, but police later arrested her for possession of heroin and marijuana. Following the arrest, enforcing the 911 Good Samaritan law, an Oneida County District Attorney dropped the charges. The District Attorney stated, "this [911 Good Samaritan] law was passed so people don't watch somebody die because they're afraid of jail."<sup>63</sup> Due to Ms. Bongiovi's father's high profile, this event received mass media attention and helped spread the word about New York's new law. According to the director for the Center for Behavior Health at Evergreen Health Services, "911 is no longer a threat, but a lifeline."<sup>64</sup>

Reflections on Washington's and New York's Good Samaritan 911 laws show that the laws are effective when people know that the laws exist. In New York, knowledge of the law spread because an overdose victim happened to be famous. In Washington, knowledge of the law spread through a strategized multi-faceted plan.<sup>65</sup> First, the state held a press conference to announce the law.<sup>66</sup> Next, the state recorded public service announcements and messages from the parent of an overdose victim, the medical director of the Washington Poison Center, and the state's Attorney General.<sup>67</sup> Information dissemination also included distributing informational wallet cards at needle exchanges and other venues, putting up posters about the law at drug treatment programs, and building and publicizing a website.<sup>68</sup> Most people know about Washington's law because of an informational website.<sup>69</sup> The laws are still

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63. Press Release, N.Y. State Office of Alcoholism & Substance Abuse Servs. Cmty. Grps. Team Up with NYSDOH and OASAS on Innovative Pub. Educ. Campaign to Prevent Overdose Deaths (May 2, 2013), *available at* <http://www.oasas.ny.gov/pio/press/20130502ODDPC.cfm>.

64. *Id.*

65. Washington State's administration of the law is analyzed because there is extensive information available about the law and its administration.

66. *See* Banta-Green et al., *supra* note 57.

67. *Id.*

68. *Id.*

69. *Id.*

extremely new and therefore empirical data pertaining to the laws' direct effects are limited.

Comparisons of accidental overdose death rates before the laws were created and after they were enacted provide a rough representation of effectiveness. This comparison does not take into consideration the number of people using drugs or other available overdose remedies. Three years after New Mexico enacted its Good Samaritan 911 law, the death rate from accidental overdose dropped from 24.2 deaths per 100,000 people to 23.8 deaths per 100,000 people. The change, four-tenths of a life, does not represent even one son, daughter, brother or sister. Between 2010 and 2013, the drug overdose mortality rate in New York remained at 7.8 deaths per 100,000 people. There was no change. In 1999, Washington State's drug overdose mortality rate was 9.3 deaths per 100,000; in 2010, the number increased to 13.1.<sup>70</sup> This is a 41 % increase. In 2010, New Mexico, New York and Washington lost more lives to drug overdoses than to motor vehicle accidents.<sup>71</sup>

#### IV. A Model: The Highway Safety Program

Enacting 911 Good Samaritan laws is the first step in deterring drug overdose deaths, but, as the above statistics show, it is not enough. In order to fulfill the purpose of the laws - to save lives - the nation must make a comprehensive effort to enact, enforce, and notify the public about immunity. The new laws and the dissemination system should follow the model of the Highway Safety Act.

In 1966, President Johnson created the National Traffic Safety Agency and the National Highway Safety Agency. The President appointed Dr. William Haddon as administrator of the two agencies; Dr. Haddon created and applied the Haddon matrix, which provided a systematic way to explore options to reduce deaths.<sup>72</sup> By appointing a physician to lead a federal

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70. JEFFREY LEVI ET AL., TRUST FOR AMERICA'S HEALTH, PRESCRIPTION DRUG ABUSE: STRATEGIES TO STOP THE EPIDEMIC 2013 (2013), *available at* <http://healthyamericans.org/assets/files/TFAH2013RxDrugAbuseRptFINAL.pdf>.

71. *Id.*

72. *See Runyan, supra* note 13.

agency, President Johnson emphasized the importance of strategically placing an individual with expertise in a variety of fields and comfort with the scientific method at the head of a public health agency. Dr. Haddon depicted phases of motor vehicle crashes as pre-event, event, and post-event and analyzed them in terms of the human, vehicles and equipment, physical environment, and socioeconomic environment.<sup>73</sup> The boxes of the matrix present opportunities to identify potential strategies to combat each factor during each phase. “Haddon’s models are applicable to any health problem and nicely demonstrate the value of using a conceptual approach to address practical problems through research and intervention.”<sup>74</sup>

Once possible interventions were created, specific interventions were chosen and, under the Highway Safety Act, the National Highway Traffic Safety Administration (NHTSA) funded and gave technical help to states that were following the Act’s protocol.<sup>75</sup> The current version of the Act requires each state to “have a highway safety program, approved by the Secretary, that is designed to reduce traffic accidents and the resulting deaths, injuries, and property damage.”<sup>76</sup> It promulgates uniform guidelines “expressed in terms of performance criteria” that include programs directed at drivers, law enforcement officials, record keepers, investigators, registration departments, and emergency services.<sup>77</sup> The Act puts the administration of the programs in the hands of state governors and requires them to establish a “State highway safety agency which shall have adequate powers and be suitably equipped and organized to carry out” the program.<sup>78</sup> To bring state and national efforts together, the Act promises to mobilize national law enforcement, to make the mobilization highly visible, to enforce statutes, and to require each state to submit a

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73. *Id.*

74. *Id.*

75. WARREN G. LAHEIST, HIGHWAY SAFETY ASSESSMENT: A SUMMARY OF FINDINGS IN TEN STATES, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN. TECHNICAL REPORT NUMBER DOT HS 808 796 (1998), <http://www.nhtsa.gov/cars/rules/regrev/evaluate/808796.html>.

76. 23 U.S.C. § 402 (2012).

77. *Id.*

78. *Id.*

highway safety plan to the Secretary of Transportation.<sup>79</sup> Plans must include performance measures, a strategy for programming funds, data, and data analysis about proposed measures.<sup>80</sup>

Creating a national law to battle motor-vehicle-related deaths was only one part of the battle against traffic fatalities. Eight months before President Johnson signed the National Traffic and Motor Vehicle Act and the Highway Safety Act, he spoke to the crisis in his State of the Union Address. “Our people have a right to feel secure in their homes and on their streets - and that right just must be secured,” he stated.<sup>81</sup> He continued, “[n]or can we fail to arrest the destruction of life . . . on our highways” and promised to “propose a Highway Safety Act of 1966 to seek an end to this mounting tragedy.”<sup>82</sup> The President of the United States recognized the urgency of the epidemic and brought national attention to an impending and pertinent new law.

Once established, NHTSA contributed to the reduction in accidental deaths by implementing changes that made calling for and receiving emergency assistance easier. NHTSA created a uniform symbol to identify emergency medical services and a technical assessment program to evaluate strengths, weaknesses, needs, and strategies, published informative documents, and collaborated with other federal departments.<sup>83</sup> Grants for states implementing highway safety programs are to be used, in part, to emphasize publicity for the program.<sup>84</sup> Recently, NHTSA issued an interim final rule (IFR) to establish new uniform procedures governing the implementation of state highway safety programs.<sup>85</sup> The IFR states, “based on NHTSA’s

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79. *Id.*

80. *Id.* This is not an exhaustive list.

81. Lyndon B. Johnson, U.S. President, State of the Union Address (Jan. 12, 1966), *available at* <http://www.thisnation.com/library/sotu/1966lj.html>.

82. *Id.*

83. *The History of EMS at NHTSA*, EMS.GOV, <http://www.ems.gov/history.htm> (last visited Feb. 12, 2014).

84. 23 U.S.C. § 405.

85. Uniform Procedures for State Highway Safety Grant Programs, 78 Fed. Reg. 4,985 (Jan. 23, 2013), *available at* <https://www.federalregister.gov/articles/2013/01/23/2013-00682/uniform-procedures-for-state-highway-safety-grant-programs#h-9>.

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experience with dispersing traffic safety messages, the IFR requires that a communications plan include marketing and educational efforts and use a variety of communication mechanisms to increase awareness of a problem.”<sup>86</sup>

Although extremely effective in reducing the number of vehicle related fatalities, the NHTSA received criticism from the auto industry and other observers who believed the safety standards to be excessive. Mandatory seat belt and air bag laws angered car manufacturers.<sup>87</sup> Helmet laws enraged people claiming violations of personal freedom.<sup>88</sup> Although lobbyists attempted to have the highway safety laws repealed, the empirical data showed massive success. The highway safety laws fulfilled their purpose and saved lives.

#### V. Mimicking What Works: Recommendations for Implementation

Only 17 states and Washington, D.C. currently have a form of 911 Good Samaritan Laws in place; 33 states do not have immunity or mitigation laws.<sup>89</sup> The highway safety program is the best model for an effective drug overdose prevention program. Looking to this model, the federal government should create a National Drug Overdose Prevention Agency, similar to the NHTSA, and should appoint an individual, perhaps a physician like Dr. Haddon, who is intimately familiar with public health and can utilize the scientific method as director. The agency should use Haddon’s matrix to create solutions that address prevention and deterrence in the pre-event stage and overdose in the post-event stage. When Haddon’s matrix was applied to the problem of injuries to children falling on playgrounds, suggestions for solutions included “teach children

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86. *Id.*

87. LS Robertson, Guest Editorial, *Groundless Attack on an Uncommon Man: William Haddon, Jr., MD*, *INJ. PREVENTION*, 7:260-62 (2001), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1730766/pdf/v007p00260.pdf>.

88. Donald Wruck, *Safety vs. Personal Freedom: Does Illinois Need A Helmet Law?* (Nov. 15, 2013), <http://www.wp-law.com/blog/2013/11/safety-vs-personal-freedom-does-illinois-need-a-helmet-law/>.

89. Press Release, Trust for America's Health, Nearly Two-Thirds of States Lack Rescue Drug and Good Samaritan Overdose Laws (Feb. 3, 2014), available at <http://healthyamericans.org/newsroom/releases/?releaseid=302>.

how to summon help when injuries occur” and “ensure funding for adequate emergency personnel appropriately equipped to deal with pediatric emergencies.”<sup>90</sup> Applying the matrix to drug overdose, interventions should include teaching users and bystanders how to summon help, without fear, when overdose occurs and ensure funding for adequate personnel such as state overdose agencies.

Intervention should also include reducing the interference of socioeconomic factors, such as criminal laws that punish bystanders for their involvement in or possession of drugs and drug paraphernalia. Existing 911 Good Samaritan laws should be amended to lift hampering specifications such as the type or amount of drugs present. By including specifications, existing laws place the importance of arresting a more serious drug offender above saving a life; this is in opposition to the stated legislative purpose behind Good Samaritan laws. The idea is not to encourage criminal activity, but to lift the barrier and “encourage the saving of people’s lives.”<sup>91</sup>

New laws that are created by state agencies that report to the federal government should be written to extend immunity to people on parole, probation, and with a criminal record. The drug-using population consists of a significant number of addicted recidivists.<sup>92</sup> Excluding people on parole or probation from immunity is counterintuitive; prior users are the ones most likely to witness a potentially fatal overdose. Without immunity for all, legal barriers will take the last chance at survival away from people like Shelly Sanders; Shelly Sanders’ friend did not call 911 because he was on parole. Lifting these restrictions will satisfy the nondiscriminatory purpose of the law - to save lives, regardless of whom a person uses drugs with or around.

Extending immunity to everyone, regardless of criminal history, will allow law enforcement officers to apply the law without delay or confusion. In Washington State, officers

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90. Runyan, *supra* note 13.

91. Michael Ollove, *States Combat Overdose Deaths*, STATELINE (Feb. 20, 2014), <http://www.pewstates.org/projects/stateline/headlines/states-combat-overdose-deaths-85899540921> (quoting Robert Childs, executive director of the North Carolina Harm Reduction Coalition).

92. N.Y. COMM’N ON DRUGS AND THE COURTS, *Confronting the Cycle of Addiction & Recidivism* (2000), available at <http://www.nycourts.gov/reports/addictionrecidivism.shtml#15>.

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reported that they were unsure to whom the immunity applied.<sup>93</sup> The law should be included in law enforcement officers' training curriculum as a part of basic training so that stories of bystanders being arrested as a consequence of calling 911 are replaced with stories of lives being saved as a consequence of calling 911. To help increase the number of lives saved, and account for the recidivist problem and law enforcement's stated difficulty in applying the law, the law needs to indiscriminately apply to everyone.

In addition to utilizing the Haddon matrix, to ensure adequate implementation of the laws, Congress should pass a 911 Good Samaritan Act to mimic the Highway Safety Act to provide grants to states that implement the protocol properly. The Act should promulgate uniform guidelines that specify types of programs to implement, ways to reach drug users and their families and friends, directions for record keeping, and instructions for law enforcement officials and emergency personnel. State governors should be responsible to administer the program and should be required to create a State 911 Good Samaritan agency. The agency should consist of trained professionals familiar with drugs and drug users who are knowledgeable about the interplay between the law and drugs in their particular state. An effective drug overdose prevention program will require federal and state government interaction; the federal government must hold states accountable and must bring national attention to the crisis and the widespread creation of a new law. The general public must be made aware of its right to immunity and its responsibility to call for help.

Awareness of the law is the most important aspect of the new law. In Washington State, police officers criticized the 911 Good Samaritan law because they were generally unaware of it.<sup>94</sup> If police officers do not know the law, bystanders who hold lives in their hands are most likely unaware as well. States should be required to create public service announcements and mount aggressive campaigns, similar to the fights against drunk driving and texting while driving, to spread the word about immunity. The more people who are aware of the law, the more

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93. See Banta-Green et al., *supra* note 57.

94. *Id.*

lives will be saved.

911 Good Samaritan laws will attract less criticism than the Highway Safety Laws incurred. In the drug community, there is no equivalent to car manufacturers; the laws do not impose any obligations or standards. Criticism of the current laws does exist. For example, Governor Paul LePage of Maine, who views extending immunity to drug users as encouraging drug use, does not support 911 Good Samaritan laws. In 2013, Governor LePage vetoed a bill to create Good Samaritan immunities in his state. In his veto letter, Governor LePage acknowledged the “noble” intent of the law, but was “concerned [the] bill may create an unnecessary barrier for drug enforcement.”<sup>95</sup> No police expressed concern about the bill.<sup>96</sup> This type of criticism can be overcome by alerting critics to real world stories about the effectiveness of, and need for, the laws. For example, New Jersey Governor Chris Christie initially partially vetoed a Good Samaritan Emergency Response Act because it did not focus on prevention. After speaking with advocates, including parents of overdose victims, Governor Christie changed his mind.<sup>97</sup> He stated, “[w]e want you to save a life first. The deal we’ll make is we won’t prosecute or arrest [you]. I would rather you didn’t do it in the first place, but I live in the real world.”<sup>98</sup> Governor Christie’s statement makes it clear that the laws are not meant to, and will not, create new drug users or hamper drug enforcement efforts. The laws will save lives of people who are currently using; they will extend immunity to people who call for help. If the laws are not enacted, one drug user will die and a second drug user, who does not call for help, will remain under

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95. Letter from Governor Paul LePage, Office of the Governor, State of Maine, to the 126th Legislature of the State of Maine (June 10, 2013), available at <http://www.maine.gov/tools/whatsnew/attach.php?id=543044&an=1>.

96. *Cause and Effect of 83 LePage Vetoes*, Editorial, HUFFINGTON POST (July 16, 2013), <http://bangordailynews.com/2013/07/16/opinion/editorials/cause-and-effect-of-83-lepage-vetoes/>.

97. Susan K. Livio, *Christie, Inspired by Victims’ Parents and Bon Jovi, Signs “Good Samaritan” Drug Overdose Bill*, HUFFINGTON POST (May 3, 2013), [http://www.nj.com/politics/index.ssf/2013/05/christie\\_signs\\_good\\_samaritan.html](http://www.nj.com/politics/index.ssf/2013/05/christie_signs_good_samaritan.html).

98. Governor Christie’s concerns address the pre-event stage of Haddon’s matrix. Although prevention and deterrence are monumentally important, they are not part of the post-event stage that is the subject of this article.

the law's radar; the law will not extend immunity to anyone who would otherwise be arrested if the immunity did not exist. One person's life should not be used as an opportunity to punish another person's crime.

Governor Christie's valuation of saving a life above all else echoes other areas of law. For example, a lawyer can break confidentiality "to prevent reasonably certain death or substantial bodily harm."<sup>99</sup> Preserving a human life is a paramount interest.<sup>100</sup> Criticisms of 911 Good Samaritan laws are empirically unfounded and, according to the one available case study from Washington State, are wrong. The federal government should draw national attention to and push to pass a comprehensive drug overdose prevention program that includes universal 911 Good Samaritan laws and encourage states to implement protocols specific to each state's need.

### Conclusion

Accidental overdose deaths are rampant; the country is in what U.S. Attorney General Eric Holder calls an "urgent public health crisis."<sup>101</sup> Government officials recognize the problem and "are enlisting a variety of partners – including doctors, educators, community leaders, and police officials – to increase . . . support for education, prevention, and treatment."<sup>102</sup> In his State of the State Address, Vermont's Governor Shumlin told the people of his state that heroin and opiate drug addiction "is a crisis bubbling just beneath the surface. . . ."<sup>103</sup> He compared the drug epidemic to natural disasters and declared that "we must address it as a public health crisis, providing treatment and

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99. MODEL RULES OF PROF'L CONDUCT R. 1.6.

100. *See* *Roe v. Wade*, 410 U.S. 113 (1973).

101. Shimon Prokupez, *Attorney General Eric Holder Vows to Fight Rising Heroin Deaths*, CNN (Mar. 10, 2014), <http://www.cnn.com/2014/03/10/us/holder-heroin-overdose-initiative/>.

102. Dep't of Justice, Office of Pub. Affairs, *Attorney General Holder, Calling Rise in Heroin Overdoses 'Urgent Public Health Crisis,' Vows Mix of Enforcement, Treatment* (Mar. 10, 2014).

103. Governor Shumlin's 2014 State of the State Address, VERMONT.GOV (Jan. 8, 2014), <http://governor.vermont.gov/newsroom-state-of-state-speech-2013>.

support, rather than simply doling out punishment . . . .”<sup>104</sup> Governor Shumin devoted his entire speech to Vermont’s drug problem.

The media recognizes the epidemic as well. Following the overdose deaths of celebrities such as Heath Ledger and Philip Seymour Hoffman, media outlets are devoting attention to interrupting the attack. CNN,<sup>105</sup> CBS,<sup>106</sup> and Forbes<sup>107</sup> are among the major news outlets that have run stories on accidental overdose deaths. Unfortunately, not enough attention is being paid to the immunization aspects of the laws; Attorney General Holder and most media articles focus on the administration of Naloxone, a drug used to reverse overdoses. For example, on February 4, 2014, *The Huffington Post* published an article entitled “Heroin Overdose Prevention Bill Advances In New York After Philip Seymour Hoffman’s Death.”<sup>108</sup> Although the article mentions the already existing “‘Good Samaritan’ law that protects people from prosecution if they call 911 to report an overdose,” it focuses more on a new bill to increase access to Naloxone.<sup>109</sup>

The Food and Drug Administration recently decided to allow doctors to provide Evzio, a device that automatically injects the correct amount of Naloxene, to family members or caregivers.<sup>110</sup> Fifteen states and the District of Columbia

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104. *Id.*

105. Kristina Sgueglia et al., *The Heroin Epidemic, and the Antidote for Overdose*, CNN (Feb. 20, 2014), <http://www.cnn.com/2014/02/10/health/heroin-epidemic-naloxone/index.html>.

106. *Antidote for Heroin Overdose to be Administered by Police in New Campaign*, CBS NEWS (Feb. 12, 2014), <http://www.cbsnews.com/videos/antidote-for-heroin-overdose-to-be-administered-by-police-in-new-campaign/>.

107. David Kroll, *More Attention To Preventing Opioid-Overdose Deaths With Naloxone*, FORBES.COM (Feb. 10, 2014), <http://www.forbes.com/sites/davidkroll/2014/02/10/more-attention-to-preventing-opioid-overdose-deaths-with-naloxone/>.

108. Matt Sledge, *Heroin Overdose Prevention Bill Advances in New York After Philip Seymour Hoffman's Death*, HUFFINGTON POST (Feb. 4, 2014), [http://www.huffingtonpost.com/2014/02/04/philip-seymour-hoffman-naloxone\\_n\\_4725883.html](http://www.huffingtonpost.com/2014/02/04/philip-seymour-hoffman-naloxone_n_4725883.html).

109. *Id.*

110. *Holder Seeks "Balanced Approach" on Heroin as FDA Backs Overdose Antidote*, GUARDIAN (Apr. 3, 2014), <http://www.theguardian.com/world/2014/apr/03/holder-balanced-approach->

distribute Naloxone as part of a program to enable bystanders and police officers to save more lives.<sup>111</sup> Between 1996 and 2010, Naloxone administration has reversed 10,000 overdoses in the United States.<sup>112</sup> Although government agencies that support Naloxone distribution recommend and provide directions for administering the drug, step one of most “What should I do if I see an overdose?” instructional forms is “Call 911 immediately!”<sup>113</sup> If people are unaware of 911 Good Samaritan Laws, they will never satisfy step one; without 911 Good Samaritan laws, the responders’ level of preparation is less relevant. If responders are never called, then they cannot reverse an overdose or save a life.

Naloxone administration is just one critical part of the mission that is yet to be fully carried through. Overdose victims will continue to perish because the legal system has failed to go beyond passing laws. For example, in March of 2014, after Illinois passed a Good Samaritan law that protects people who report overdoses for prosecution for certain offenses, police responded to a dire scene outside of a grocery store.<sup>114</sup> Police found a man, who had overdosed on heroin, dumped outside of the business’s doors.<sup>115</sup> Responders administered Naloxone and, within minutes, “[the overdose victim] was alert and speaking with police and paramedics....”<sup>116</sup> The people who called - the ones who threw the man out of the car as they fled the scene - did not return to speak with police.<sup>117</sup> Reflecting on the event, Patrol Lt. Scott Cook said, “[w]e’d much rather have someone brought to a public place or a hospital instead of being left in an

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heroin-fda-antidote.

111. Sgueglia et al., *supra* note 105.

112. Alexander Y. Walley et al., *Opioid Overdose Rates and Implementation of Overdose Education and Nasal Naloxone Distribution in Massachusetts: Interrupted Time Series Analysis*, *BMJ* (Jan. 31, 2013), <http://www.bmj.com/content/346/bmj.f174?view=long>.

113. *Opioid Overdose Prevention*, N.Y. DEPT OF HEALTH (2014), [http://www.health.ny.gov/diseases/aids/general/opioid\\_overdose\\_prevention/](http://www.health.ny.gov/diseases/aids/general/opioid_overdose_prevention/).

114. Matt Buedel, *Overdose Victim Revived in Parking Lot; Car Flees Scene After Man Dumped Outside East Bluff Grocery Store*, *PEORIA J. STAR* (Mar. 10, 2014), <http://www.pjstar.com/article/20140309/News/140309008?template=printart>.

115. *Id.*

116. *Id.*

117. *Id.*

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alley to die because people are afraid of getting arrested. . . . You might get asked some questions, but you might save someone's life."<sup>118</sup> Patrol Lt. Cook's concern demonstrates that it is not enough to pass laws that give first responders the tools to save lives; the law must clear the way for first responders to get access to the lives that need saving.

In the past, when faced with a countrywide identifiable epidemic, the federal government successfully implemented a program that is scientifically proven to have worked. With the drug overdose epidemic, the federal government should follow the model provided by the successful program, the National Highway Safety Act. Working together, state and federal officials can manipulate the law to provide people with a chance for survival. The federal government must declare that, in this country, regardless of your past, your possession, whomever you are and whatever you do, calling 911 to save an overdose victim's life will not result in criminal consequences. Without a change in the laws and an effort to create widespread awareness, unnecessary and preventable deaths will continue to occur. New immunization laws and a national campaign will give people like Shelly Sanders and the hundreds of thousands of other people who died while able bystanders sat idly by a chance to survive. As Attorney General Holder acknowledged, "the government has a small window to prevent the heroin problem from getting 'even more out of control than it already is.'"<sup>119</sup> Before the window slams shut, to save lives, the law must react now.

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118. *Id.*

119. Eric Tucker, *Holder: US Needs "Balanced Approach" on Heroin*, ASSOCIATED PRESS (Apr. 3, 2014), [http://hosted.ap.org/dynamic/stories/U/US\\_HOLDER\\_HEROIN?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT](http://hosted.ap.org/dynamic/stories/U/US_HOLDER_HEROIN?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT).