

Wisconsin Good Samaritan Policy Brief

Wisconsin Good Samaritan Law- Where are we now?

Legislation was initially enacted in 2013¹ as part of the **HOPE (Heroin, Opioid Prevention and Education)** legislation. The intent was to provide limited criminal immunity to witnesses of overdoses who call 911 (aiders). The legislation included only immunity from criminal **prosecution** for **aiders** for possession of controlled substance, drug paraphernalia, and drug masking agents.¹

The law was **amended in 2017**² to include additional protections for “aiders” and to individuals who receive aid during an overdose (“aided” individuals).

- Immunity from criminal **prosecution** for **aiders** for possession of controlled substance, drug paraphernalia, and drug masking agents became contingent on the aider’s “attempt to obtain assistance occurs immediately after the aider believes the other person is suffering from the overdose or other adverse reaction.”
- Immunity from **revocation probation, parole or extended supervision** of **aiders** was added and also contingent on “the aider's attempt to obtain assistance occurs immediately after the aider believes the other person is suffering from the overdose or other adverse reaction.”
- Immunity from **prosecution for possession of drug paraphernalia, controlled substance or analog, or a masking agent**, the district attorney shall offer the **aided person** a deferred prosecution agreement that includes the completion of a treatment program.
- Immunity from **parole, probation, or extended supervision revocation** for **aided person** under the circumstances surrounding or leading to an aider's attempt to get help if the aided person completes a treatment program as a condition of his or her parole, probation, or extended supervision. If a treatment program is unavailable or unaffordable, a person will be imprisoned in the county jail ≥ 15 days.

However, the 2017 legislation included a sunset clause, and the **2017 protections sunset in August 2020**, leaving Wisconsin with an extremely weak Good Samaritan Law.

How could Wisconsin Good Samaritan Law be strengthened?

1. **Define the aider** as a person who in good faith calls for assistance for another person experiencing a suspected substance-related overdose, any person rendering aid at the location of the suspected substance-related overdose and any person who is experiencing a suspected drug-related overdose.³
2. **Provide Arrest Protections for the aider.** Research shows that Good Samaritan Laws are most effective at **reducing opioid overdose deaths when they provide arrest immunity** to those seeking aid during a witnessed overdose. This reduction in overdose deaths is not seen with only prosecution and/or charge immunity.⁴
3. **Do not re-introduce the 2017 language stipulating that the caller must seek help “immediately”** to have legal protections, as this can be interpreted differently by law enforcement, and this uncertainty will contribute to ongoing concerns related to calling 911.

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4. **Provide immunity from parole, probation or extended supervision revocation for the aider**, but do not re-enact the clause specific to “immediately” calling for help, as this can be interpreted differently by law enforcement, and this uncertainty will contribute to ongoing concerns related to calling 911.
5. **Provide immunity from arrest, charges, or prosecutions for paraphernalia, possessions of controlled substance or masking agent for the aided individual**, but do so directly- not as a deferred prosecution that is contingent on completion of treatment. Individuals who cannot afford or access treatment should not be prosecuted or incarcerated when their only reason for interaction with law enforcement was in the event of an overdose. Counties can and should still offer treatment and harm reduction services for individuals who have survived an overdose.
6. **Provide immunity from parole, probation or extended supervision revocation for the aided person**, but do not re-enact the requirement for completion of treatment as a condition of probation, parole or extended supervision. Individuals who cannot afford or access treatment should not be prosecuted or incarcerated when their only reason for interaction with law enforcement was in the event of an overdose.

WI Good Samaritan Protections	2013	2017	2020-present	Coalition Recommended
Aider- immunity from arrest or charges- paraphernalia, possession of controlled substance, or masking agent				X
Aider- immunity from prosecution- paraphernalia, possession of controlled substance, or masking agent	X	X*	X	X
Aider- immunity from parole, probation or extended supervision revocation		X*		X
OD Survivor (aided)-immunity from arrest or charges- paraphernalia & possession of controlled substance or masking agent				X
OD Survivor (aided)- immunity from prosecution for paraphernalia, possession of controlled substance, or masking agent		X+		X
OD Survivor (aided)- immunity from parole, probation or extended supervision revocation		X^		X

*Immunity is only granted if the aider attempts to get help “immediately”

+Immunity available via deferred prosecution if the aided person completes a treatment program

^Immunity is only granted if the aided person completes a treatment program as a condition of probation, parole, or extended supervision. If the individual can’t access treatment they go to jail for no less than 15 days.

¹ Wisconsin Legislature: 2013 Wisconsin Act 194. (n.d.). <https://docs.legis.wisconsin.gov/2013/related/acts/194>

² Wisconsin Legislature: 2017 Wisconsin Act 33. (n.d.). <https://docs.legis.wisconsin.gov/2017/related/acts/33>

³ Language adapted from Maine Statute **1111-B** which can be found: <https://legislature.maine.gov/statutes/17-A/title17-Asec1111-B.html>

⁴ Hamilton, L., Davis, C. S., Kravitz-Wirtz, N., Ponicki, W., & Cerdá, M. (2021). Good Samaritan laws and overdose mortality in the United States in the fentanyl era. *International Journal of Drug Policy*, 97, 103294. <https://doi.org/10.1016/j.drugpo.2021.103294>