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SENATE BILL NO. 323

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 18.2-251.03 of the Code of Virginia, relating to arrest and prosecution when experiencing or reporting overdoses.

Patron—Vogel

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-251.03 of the Code of Virginia is amended and reenacted as follows:****§ 18.2-251.03. Arrest and prosecution when experiencing or reporting overdoses.**

A. For purposes of this section, "overdose" means a life-threatening condition resulting from the consumption or use of a controlled substance, alcohol, or any combination of such substances.

B. ~~No~~ Any individual ~~shall be~~ subject to arrest or prosecution for the unlawful purchase, possession, or consumption of alcohol pursuant to § 4.1-305, unlawful purchase, possession, or consumption of marijuana pursuant to § 4.1-1105.1, possession of a controlled substance pursuant to § 18.2-250, intoxication in public pursuant to § 18.2-388, or possession of controlled paraphernalia pursuant to § 54.1-3466 *may have any proceeding against him deferred and may be placed on probation under terms and conditions pursuant to § 18.2-251, regardless of whether such individual has any prior convictions, if:*

1. Such individual (i) in good faith, seeks or obtains emergency medical attention (a) for himself, if he is experiencing an overdose, or (b) for another individual, if such other individual is experiencing an overdose; (ii) is experiencing an overdose and another individual, in good faith, seeks or obtains emergency medical attention for such individual, by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in § 9.1-101, or an emergency 911 system; or (iii) in good faith, renders emergency care or assistance, including cardiopulmonary resuscitation (CPR) or the administration of naloxone or other opioid antagonist for overdose reversal, to an individual experiencing an overdose while another individual seeks or obtains emergency medical attention in accordance with this subdivision;

2. Such individual remains at the scene of the overdose or at any alternative location to which he or she the person requiring emergency medical attention has been transported until a law-enforcement officer responds to the report of an overdose. If no law-enforcement officer is present at the scene of the overdose or at the alternative location, then such individual shall cooperate with law enforcement as otherwise set forth herein;

3. Such individual identifies himself to the law-enforcement officer who responds to the report of the overdose; and

4. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a result of the individual seeking or obtaining emergency medical attention or rendering emergency care or assistance.

C. The provisions of this section shall not apply to any person who seeks or obtains emergency medical attention for himself or another individual, to a person experiencing an overdose when another individual seeks or obtains emergency medical attention for him, or to a person who renders emergency care or assistance to an individual experiencing an overdose while another person seeks or obtains emergency medical attention during the execution of a search warrant or during the conduct of a lawful search or a lawful arrest.

D. This section does not establish protection from arrest or prosecution for any individual or offense other than those listed in subsection B.

E. ~~No law-enforcement officer acting in good faith shall be found liable for false arrest if it is later determined that the person arrested was immune from prosecution under this section~~ *Any individual who qualifies for a first offender deferred disposition in accordance with § 18.2-251 and subsection B may be offered participation in a drug treatment court docket pursuant to § 18.2-254.1 as an alternative to such first offender deferred disposition. Upon fulfillment of the terms and conditions of such drug treatment court docket, the court shall discharge the individual and dismiss the proceedings against him.*

F. *In the event that an individual charged with possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) qualifies for a first offender deferred disposition in accordance with § 18.2-251 and subsection B or a drug treatment court docket in*

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59 *accordance with subsection E and subsequently violates a term or condition of such program, the court*
60 *may enter an adjudication of guilt and such individual is guilty of a Class 1 misdemeanor.*

61 *For all other individuals who qualify for a first offender deferred disposition in accordance with*
62 *§ 18.2-251 and subsection B or a drug treatment court docket in accordance with subsection E and who*
63 *subsequently violate a term or condition of such program, the court may enter an adjudication of guilt*
64 *and proceed as otherwise provided.*