



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 33
[January 2017 Special Session
Assembly Bill 3]

**Immunity for Aiders and Aided
Persons in Drug Overdoses**

BACKGROUND

State law provides immunity from criminal prosecution for certain offenses for a person who aides (“aider”) another person who is suffering from an overdose of a controlled substance (“aided person”). Specifically, an aider is immune from prosecution for the possession of a controlled substance or controlled substance analog, possession of drug paraphernalia, or possession of a masking agent (“possession offenses”) under the circumstances surrounding or leading to his or her actions as an aider.

An “aider” is a person who does any of the following if the aided person is, or the person believes him or her to be, suffering from an overdose of, or other adverse reaction to, a controlled substance or controlled substance analog: (1) brings the aided person to an emergency room, hospital, fire station, or other health care facility; (2) summons a law enforcement officer, ambulance, emergency medical technician, or other health care provider to assist the aided person; or (3) dials the telephone number “911” or, in an area in which “911” is not available, the number for an emergency medical service (EMS) provider, to obtain assistance for the aided person.

2017 WISCONSIN ACT 33

Immunity From Criminal Prosecution

2017 Wisconsin Act 33 retains the immunity from criminal prosecution for possession offenses for an aider. However, under the Act, for the aider to be immune from criminal prosecution, an aider’s attempt to obtain assistance for the aided person must occur immediately after the aider believes the aided person is suffering from the overdose or other adverse reaction.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

In addition, the Act provides that if an aided person is subject to criminal prosecution for a possession offense under the circumstances surrounding or leading to the aider's actions, the district attorney must offer the aided person a deferred prosecution agreement that includes the completion of a treatment program.

Revocation of Parole, Probation, or Extended Supervision

The Act prohibits the revocation of parole, probation, or extended supervision for an aider or aided person under the circumstances surrounding or leading to the aider's actions.

For the aider to be immune from revocation, an aider's attempt to obtain assistance for the aided person must occur immediately after the aider believes the aided person is suffering from the overdose or other adverse reaction.

For the aided person to be immune from revocation, the aided person must complete a treatment program as a condition of his or her parole, probation, or extended supervision, or, if a treatment program is unavailable or would be financially prohibitive, agree to be imprisoned in the county jail for not less than 15 days.

Sunset Date

The Act sunsets the changes relating to immunity and revocation, described above, on August 1, 2020.

Definition of "Aider"

The Act changes to the definition of "aider." First, it requires the aider to make contact with: (1) an individual who staffs the emergency room, hospital, fire station, or other health care facility to which the aider brings the aided person; (2) a law enforcement officer, ambulance, emergency medical technician, or other health care provider summoned by the aider; or (3) an individual answering "911" or the number for an EMS provider called by the aider. Second, a person is an "aider" if the aided person is, or if a reasonable person would believe him or her to be, suffering from an overdose or other adverse reaction.

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