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Testimony before the Assembly Committee on Criminal Justice and Public Safety Assembly Bill 634 November 30, 2023

Thank you, Chair Spiros, Vice-Chair Schutt, and members of the Assembly Committee on Criminal Justice and Public Safety for holding this hearing on Assembly Bill (AB) 634, relating to immunity for certain controlled substances offenses for aiders and aided persons. I also thank Senator James for co-authoring this Bill with me and the many bi-partisan co-sponsors for their support. Assembly Bill 634 is informally known as the “Good Samaritan Bill.”

Opioid overdose deaths are tragic. They are destructive to families and communities alike. As a retired nurse, I have firsthand experience in responding to overdoses. Every second counts when attempting to save a life from an overdose, and most people are not trained to handle an overdose situation. That is why I support this Bill. If an individual who is also using controlled substances finds themselves in a situation where a friend, loved one, or complete stranger is overdosing, they should not face criminal charges for making that call to emergency services. While I understand the argument that we would be saving those overdosing to “die another day,” it is impossible to rehabilitate and redeem someone who is deceased, even those individuals who some believe are unredeemable.

Good Samaritan laws came about in order to combat the growing overdose epidemic across the United States. In 2013, the Wisconsin State Legislature introduced the Heroin, Opioid Prevention and Education (HOPE) Agenda. Several years after introducing the HOPE Agenda, then Governor Scott Walker signed into law 2017 Wisconsin Act 33, expanding the Good Samaritan law already in place to provide *limited* immunity to both the aider and the aided individual. Unfortunately, the provisions providing immunity for the aided individual, as well as the reintroduction of parole and extended supervision revocation for both the aider and the aided occurred when no action was taken to extend or eliminate the sunset deadline, which expired in 2020.

In a 2021 report released by the United States Government Accountability Office (GAO), 17 studies assessed the effectiveness of Good Samaritan laws in the states that implemented it. The report concluded there was a decrease in overdose death rates for states with Good Samaritan laws.

AB 634 resembles 2019 Assembly Bill 651, which passed the Assembly Committee on Substance Abuse and Prevention and the Assembly Floor by unanimous votes. Unfortunately, the State Senate did not take a floor vote on AB 651 at that time.

Thank you for your kind consideration of this Bill. I am happy to answer any questions you have.



November 30th, 2023

Representative Spiros, Chair

Members of the Assembly Committee on Criminal Justice and Public Safety

Testimony on 2023 Assembly Bill 634

Relating to: immunity for certain controlled substances offenses for aiders and aided persons.

Thank you, Chairman Spiros and other members of the committee, for hearing my testimony on Assembly Bill 634 today. The opioid epidemic is not a new issue. According to the CDC, there were an estimated 107,622 drug overdose deaths in the United States during 2021, an increase of nearly 15% from the previous year. Wisconsin is not an outlier. In 2021, the last available full year of data, there were 1,427 opioid related deaths in Wisconsin. The number one cause of death for Wisconsinites under 40 in 2022 was accidental overdoses.

This is also not a new issue for the legislature. In 2013, the Wisconsin State Legislature introduced the Heroin, Opioid Prevention and Education (HOPE) Agenda, which aimed to combat the heroin crisis, the abuse of prescription drugs, and, eventually, the opioid epidemic that our state currently faces. Although a decade has passed, the impacts of recreational drug use have only gotten worse, especially with the rising presence of fentanyl laced drugs. In 2013, the original Good Samaritan law was established by defining an “aider” as someone who brings an individual to an emergency room, summons a first responder, or calls 911. If the aider were to do any of these things as soon as possible after acknowledging the overdose, they would be immune from prosecution for possession of drug paraphernalia and possession of a controlled substance.

Fast forward to 2017, the legislature expanded this immunity to prohibit the revocation of probation, parole, or extended supervision for the *aider* for possession of a controlled substance, drug paraphernalia, or masking agent. The *aided* individual also received immunities in this legislation; the aided person may not have his or her parole, extended supervision, or probation revoked if he or she were to complete a treatment program, or if a treatment program is unavailable or prohibitive financially, agreed to be imprisoned in the county jail for no less than 15 days. Additionally, it also required a district attorney to offer a deferred prosecution agreement to an aided person if he or she is subject to prosecution for bail jumping, possession of a controlled substance, possession of drug paraphernalia, or masking agent.

However, these protections had sunset provisions, only lasting until August of 2020. 2019 Assembly Bill 651 would have removed the sunset provisions and made the protections permanent. Unfortunately due to a shortened session because of the pandemic, this bill never got across the finish line. This bill in front of you today would reinstate those provisions.

These types of protections are useful; they do not discourage people from calling for help and saving lives. 47 other states and Washington D.C. have some form of Good Samaritan law in place with varying degrees of protections for the aider and aided, types of drug offenses, and when the immunity takes place (i.e. can the individual still get arrested). The United States Government Accountability Office (GAO) released a report in 2021 detailing the variations of the Good Samaritan law in states across the country and the effectiveness of these policies. The GAO also found that 25 states have taken the step to prohibit the revocation of probation or term of parole for these limited crimes. In this report, the GAO utilized 17 studies to assess whether the Good Samaritan law is effective in states that implemented it. They found that there was a decrease in overdose death rates for states that implemented such laws.

STATE SENATOR

JESSE



JAMES

23RD DISTRICT

This bill aims to try and save lives while also holding those who are choosing to use drugs accountable. This issue impacts all Wisconsinites. Drug use impacts people of all ages, races, and locations. People need immediate medical attention when experiencing an overdose, and saving a person's life can literally be a matter of minutes. We need to pass this crucial legislation once again. Thank you, and I will take any questions at this time.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesse James".

Senator Jesse James
23rd Senate District
Sen.James@legis.wisconsin.gov



State of Wisconsin
Department of Health Services

Tony Evers, Governor
Kirsten L. Johnson, Secretary

TO: Members of the Assembly Committee on Judiciary and Public Safety

FROM: HJ Waukau, Legislative Director

DATE: November 30, 2023

RE: AB 634 relating to: immunity for certain controlled substances offenses for aiders and aided persons.

The Department of Health Services (DHS) would like to submit written testimony for information only on Assembly Bill (AB 634) regarding immunity for certain controlled substances offenses for aiders and aided persons. Current law grants immunity from prosecution for an aider who possesses a controlled substance, and who summon or provide emergency medical assistance for another person because they are overdosing or having an adverse reaction to a controlled substance. Under 2017 Wisconsin Act 33, an aider was also immune from having parole, probation, or extended supervision revoked for possessing a controlled substance under the same circumstances. Further, the limited immunity would only apply to the aided person if they complete a treatment program as part of their parole, probation, or extended supervision. Additionally, Act 33 provided that a prosecutor must offer an aided person a deferred prosecution agreement if they complete a treatment program. The expanded immunities under Act 33 sunset on August 1, 2020.

In 2021, there were 1,427 people who died of opioid-related deaths in Wisconsin, and the opioid epidemic affects all genders, races, and age groups in both rural and urban communities.¹ AB 634 would permanently reinstate the protections sunset under 2017 Act 33. AB 634 would provide limited immunity to ensure people calling for help (aider), when someone is experiencing an overdose (aided). Anyone who uses opioids can experience an overdose at any time. When a person survives an opioid overdose, it's because someone knew what was happening and how to act. AB 634 removes the hesitancy of calling 911 when someone is experiencing an overdose. Additionally, AB 634 differs slightly from 2017 Act 33 in that it states the aider would have to obtain assistance "as soon as is practicable," rather than seeking assistance "immediately."

AB 634 will have a positive impact on health equity as it encourages those disproportionately affected by the criminal justice system to seek help. It also moves Wisconsin one step closer to treating substance use disorder instead of criminalizing it. Adding back the 2017 immunity for aiders and aided will strengthen Wisconsin's protections and allows helpers and survivors a path to move forward.

¹ "Dose of Reality: Opioid Data Summary Dashboard," Wisconsin Department of Health Services, last revised September 1, 2023, <https://www.dhs.wisconsin.gov/opioids/dashboards.htm>.

AB 634 could be further strengthened if it extended the same limited immunity provisions to the aided, not just the aider. According to a 2021 National Institutes of Health study, far more people experience fentanyl overdoses in jails than in the general population.² Requiring jail time for people with opioid use disorder (OUD) puts them at greater risk for overdose and death due to lack of resources and/or access to treatment as required by AB 634. In addition, those recently released from jail are also at higher risk for overdose.³ Further, all neighboring states have good Samaritan laws to protect both the aider and the aided.

AB 634 provides needed protections for those suffering from OUD and at-risk of an overdose so lives can be saved, and Wisconsin can continue to help those wrestling with addiction. Additional resources and information on opioid addiction can be found on DHS's Dose of Reality website,⁴ and DHS offers itself as a resource to the Committee if it has any questions.

² E. Kaplowitz et al. "Fentanyl-related overdose during incarceration: a comprehensive review," *Health Justice* 9, no. 13 (2021): doi: [10.1186/s40352-021-00138-6](https://doi.org/10.1186/s40352-021-00138-6).

³ E A Carson, "Mortality in State and Federal Prisons, 2001-2018 – Statistical Tables," U.S. Department of Justice, April 2021, <https://bjs.ojp.gov/content/pub/pdf/msfp0118st.pdf>.

⁴ "Dose of Reality," Wisconsin Department of Health Services, last revised October 29, 2023, <https://www.dhs.wisconsin.gov/opioids/index.htm>.

Assembly Criminal Justice and Public Safety Committee
Public Hearing, 11-30-23

Good afternoon. My name is Annette Czarnecki and I am a member of the Wisconsin Good Samaritan Coalition and I support AB 634.

Thank you to the bill's sponsors and to Committee Chair Spiros for holding a public hearing.

I am here today because I lost three family members to overdose.

More than twenty years ago, I lost my two brothers, Matt and Gregg to prescription opioids. In 2020, I lost my stepdaughter, Sarah Caldwell, to an overdose – opioids and prescription medications. I am also here because of Sarah's dad, my partner Jim Caldwell, who was in recovery for 40 years before his death from cancer. I know recovery is possible. But first, people have to not die.

I am a certified grief support specialist and I facilitate an overdose grief support group. I understand the anger families feel when they learn their loved one died because a friend at the scene was afraid to call 911.

I know that many families of loss do not understand the nature of substance use disorders, nor what happens when someone overdoses. I have had a long journey in understanding – much of which involved letting go of anger and dealing with my own grief. And also learning that substance use disorders and overdose situations are not simple.

AB 634 won't solve everything, but it is a step in the right direction. The bill restores limited immunity - which removes a barrier for some people to make the 911 call. This was law in 2017 with Act 33, and unfortunately expired in August 2020. How many years have passed since 2020 with no action on this?

In the meantime our family members, friends, and co-workers, continue to die because people fear arrest for themselves or their overdosing friend. In 2021, Wisconsin had almost five overdose deaths per day.

I assume all of us here today want to reduce overdose deaths in Wisconsin. So I ask: what is more important to you?

- Putting people who use drugs in jail, or
- Saving lives

I hope when you examine your conscience your answer is saving lives. **No one should fear arrest for calling 911 to save a life.** Regarding illegal drugs and criminal justice? As the detective in Sarah's case told me: "We are not going to arrest out way out of this problem."

This is an urgent problem. Families cannot bear to lose more people because someone was afraid to call 911. Please get this bill done!

Annette Czarnecki
313 Potter St.
Madison, WI 53715

My name is Bev Kelley-Miller. Today I am wearing a t-shirt with 56 Wisconsinites who lost their lives to an overdose representing 53 families who lost multiple siblings. I am an impacted family member and I support AB634.

Megan was a beautiful young woman. She was always very happy and loved to tell stories. Megan was nice to everyone; people remember her for the way she treated them.

Megan was the youngest of four. She attended Catholic Central and St. Joe's Middle School. As a young girl, Megan played soccer year-round. She was also a Girl Scout and attended camps every summer.

In 2011, Megan was very proud to graduate from Appleton East; that fall she attended FVTC.

Her family and friends meant a great deal to her; she was always willing to help others. Megan was a fun-loving young woman, who had a memorable laugh. We greatly miss her every single day.

We will always love you, Megan, to the moon and back!



Megan Rose Kelley

Jan 9, 1993 – Apr 14, 2015

Forever 22

On April 14, 2015, I received a phone call that changed my life forever when I was informed that my youngest daughter, Megan Kelley, Forever 22, died from a preventable overdose. Megan was found 14 hours after she overdosed and died—I saw her body with riga mortis and her skin was red, blue and purple with dried blood under her nose. I can never get that image out of my mind.

Megan was on probation with a stayed and imposed prison sentence. Her supplier friend came through Megan's funeral line 5 days later and told us that he was the last person to see Megan alive. He was on

extended supervision and deliberately failed to call 911 to save Megan's life. He knew that he would be revoked and sent back to prison for a rule violation. He also knew that if he called 911 that Megan would be sent to prison since she had been convicted of a 2nd degree recklessly endangering safety charge, which is considered a violent crime when her friend overdosed and lived. Instead of calling to save Megan's life, he came and cried at her funeral.

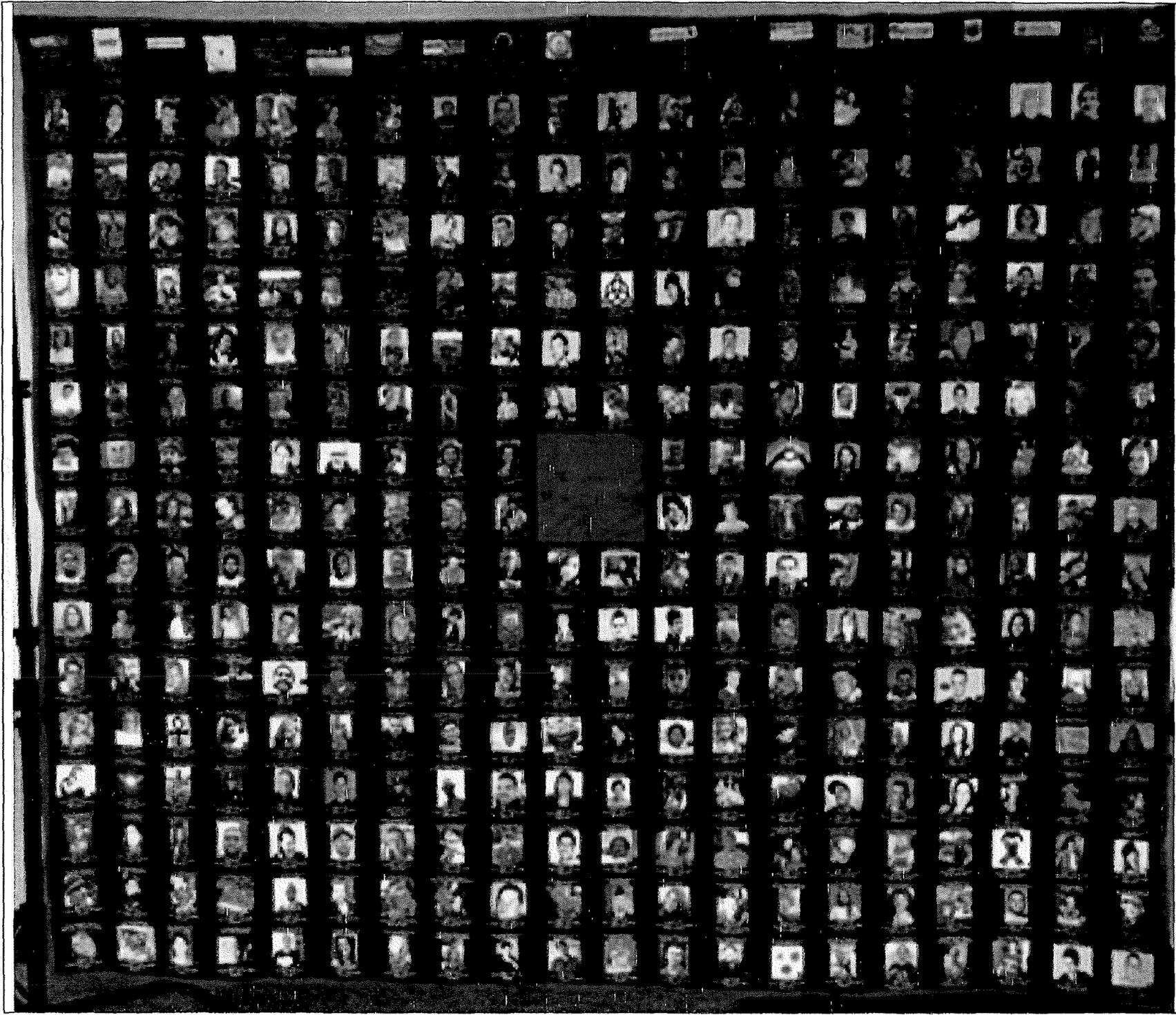
In 2016, I was one of the moms who collected petitions to change the inadequate, original 911 Good Samaritan law which is our current law because that one did not provide immunity to people on probation/parole or extended supervision. I was at the signing of the revised law that provided immunity on July 17, 2017. I noticed there was a sunset clause included and asked Rep. John Nygren why when the Opioid Crisis would not be over with in three years. He said it was progress not perfection.

The sunset clause expired on August 1, 2020 during the pandemic. Since then countless more people have died from overdoses in Wisconsin. Rarely does an ordinary citizen call 911 when someone is overdosing. More often it's friends who are on paper who use and fear calling 911 understanding that they can be revoked and sent to prison—where corrections in the carceral system are focused on punishment where there are only 700 beds for treatment for the entire overcrowded prison population of over 22,000 who are incarcerated.

A month after Megan's death, I began going into schools and treatment facilities to share her story. A year after Megan's death, I was inspired to make the Wisconsin Faces of Addiction Quilts that have evolved into the Wisconsin Memorial Quilts with over 1,200 Wisconsinites who lost their lives to a SUD. This is only a tiny snapshot of what is happening in the State of Wisconsin. I understand the heartache and agony of family members who submit quilt squares who share their loved one's story and do not understand why a "friend" would deliberately fail to call 911 to save their life. I always ask if the family member was on paper and the answer is always yes.

By passing AB634 we can save more lives by providing people on paper with immunity so that they do not fear being sent to prison where there are few if any resources and treatment. Eighty percent or more are incarcerated in the State of Wisconsin for a crime or rule violation associated with a SUD.

Thank you in advance in support of this bill.



There are 4 Memorial Quilts set up regionally to show the patterns of what is happening in our families, communities and the State of Wisconsin.

This particular quilt represents the Milwaukee area and surrounding cities.

There are over 1,200 people who died from a SUD,

Family and friends continue to submit quilt squares so I can make a 5th Quilt and tour the State with them.



This quilt represents the Fox Cities, some of the Northern and Western parts of the State of Wisconsin.

Only a tiny snapshot of what's happening in this state.



Memorandum

To: Members of the Assembly Criminal Justice & Public Safety Committee
From: Bill Keeton, Chief Advocacy Officer
Re: Support for Assembly Bill 634

Date: November 30, 2023

Vivent Health encourages you to support Assembly Bill 634, which would grant immunity from prosecution for possession of a controlled substance for individuals rendering aid to an individual who is overdosing, as well as for the person who is experiencing an overdose.

Vivent Health, formerly the AIDS Resource Center of Wisconsin, is Wisconsin's largest provider of prevention, healthcare and treatment services for people living with and vulnerable to HIV. We have locations in 10 cities and strive to reach all people impacted by HIV in our state.

Core to our mission is working to end the transmission of HIV by empowering individuals with the education, resources and strategies to reduce or eliminate the chances they acquire HIV. Since 1994, the incredible staff from our prevention programs have made hundreds of thousands of contacts with people vulnerable to HIV, including our friends, family and loved ones who are actively using drugs. In addition to HIV prevention efforts, our staff also provide life-saving overdose prevention education and materials.

The stark reality today is that regardless of where one lives in Wisconsin, we all are impacted by opioid use. Many of us have lost friends and family to overdose. In Wisconsin, since 2011, the rate of drug overdose deaths increased from 12.1 to 31.6 per 100,000 residents. In the last year, more than 1,500 people lost their lives to an overdose, and since 2014 that number is now over 10,000, with almost 75% of them opioid-related.

Every day, our staff serve people who are impacted by overdose, working to provide the tools needed to prevent and respond to overdose. In 2022, we distributed more than 65,000 doses of naloxone (Narcan) and our participants reported 2,146 lives saved.

While we are proud of the lives saved, we also have memorial boards filled with names of brothers, sisters, mothers, fathers, neighbors and loved ones who have been lost.

Time and again, the people we serve tell us they are afraid to call for help and risk arrest for themselves or the person overdosing. While there is no doubt that members of law enforcement share our goal of preventing drug overdoses in our communities, for the people who are struggling with drug use, engagement with the criminal legal system can be hugely disruptive to their ability to maintain employment, housing, or healthcare. Unfortunately, the loss of these key socioeconomic factors puts individuals who are using or who have previously used drugs at greater risk for relapse or overdose.

The bottom line is that in an overdose situation, every second matters. Current law creates narrow and complicated protections for individuals in this space, which in turns creates fear, confusion, and doubt, resulting in hesitancy to act that costs lives. This bill serves as a foundation for people to feel safer in calling 911.

The people we serve do not want to die. The people who care for them do not want to lose them. We urge the committee to vote "yes" on AB 634 to restore the previous protections Wisconsin had in place prior to 2020 and ensure all Wisconsin residents who are responding to an overdose feel safe when they turn to emergency responders in a medical emergency.



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Katie R. York
Acting State Public
Defender

Katie R. York
Deputy State
Public Defender

Assembly Committee on Criminal Justice & Public Safety
Thursday, November 30, 2023
Assembly Bill 634

Chair Spiros and members,

Thank you for the opportunity to provide information on Assembly Bill (AB) 634, which provides immunity for aiders and aided persons in overdose situations. The State Public Defender (SPD) supported the original 2017 provision proposed by Representative John Nygren as well as the 2019 effort to remove the sunset date on the statute. SPD thanks the bill authors for proposing AB 634.

During the three year period in which this statute was in effect, there were repeated examples of how this statute played a role in critical life saving emergency responses. As part of Representative Nygren's Heroin, Opioid Prevention, and Education agenda, we began to see an improvement in the overdose and overdose fatality rates. Unfortunately, between the impact of the pandemic and the sunset of this statutory provision, those rates have begun to increase again.

Bills such as AB 634 and the overall effort of the HOPE agenda help to reframe substance abuse issues as primarily a public health response which is a more effective and efficient response.

Thank you again for having a hearing on Assembly Bill 634. We urge the committee to support and forward the bill to the Assembly.

TO: Assembly Committee on Criminal Justice and Public Safety
Rep. Spiros, Chair
FROM: Ritu Bhatnagar, MD, MPH, FASAM, DFAPA
Immediate Past President, Wisconsin Society of Addiction Medicine
DATE: November 30, 2023
RE: Support of 2023 AB 634

Good day, Mr. Chairman and members of the Committee on Criminal Justice and Public Safety. My name is Dr. Ritu Bhatnagar. I am speaking from the perspective of a physician involved in the treatment of addiction and a community member. I am a licensed psychiatrist who specializes in addiction psychiatry. I have worked for a decade in a specialty addiction treatment setting, and additionally, I am immediate past president of the Wisconsin Society of Addiction Medicine (WISAM), the medical specialty society representing physicians and other clinicians in Wisconsin who specialize in the prevention and treatment of addiction. I am here today on behalf of the WISAM, the Good Samaritan Coalition, and the Wisconsin Medical Society (WMS) to testify **in support** of Assembly Bill 634 relating to immunity for certain controlled substances offenses for aiders and aided persons.

The history of this bill is likely known to this committee. Briefly, starting with HOPE legislation in 2013 and then Act 33 in 2017 which allowed for similar provisions, had a sunset clause built into it, and when 2020 came around, so did the pandemic. The 2017 Act 33 was not renewed. This led to a great deal of variation around the state in how Good Samaritans and the people they aided were treated by legal authorities.

Today, while COVID pandemic may be receding, the opioid epidemic continues. In Wisconsin in 2021, about 5 people died each day from an overdose. Headlines continue to describe deadly adulterants in the drug supply, and more people are aware of these dangers. Unsuspecting people have a first-time encounter with a substance that has adulterants, end up overdosing, and need naloxone to be revived. State efforts have allowed for more naloxone to be a relatively common sight in the community- and we thank you for your support with those efforts.

Sometimes when people are being revived, they need medical help. Unfortunately, if there is fear of legal involvement, people are scared to call for help.

We are very much in support of people calling for help if needed without fear of legal repercussions, for both the person who experienced the overdose, and the person who helped that individual. Restoring and expanding the immunities for both the aider and the aided individual as noted in the bill is urgent.

For that reason, WISAM and the Good Samaritan Coalition are in support of AB 634 and would like to see it move forward with the following amendments:

Provide immunity from arrest for the aider. Good Samaritan Laws are most effective when they provide arrest protections.

Provide immunity from arrest, charges, or prosecutions for the aided person, and do so directly- not as deferred prosecution and not with requirements for treatment. Again, Good Samaritan Laws are most effective when arrest protections are offered to individuals who have survived an overdose.

Provide immunity from probation, parole and extended supervision revocation for the aided person without a requirement of completion of treatment.

As written, individuals who cannot access treatment (often because of limited services in their home region) or cannot afford it have to serve time in jail. This is inherently inequitable to individuals living in more rural areas and those without insurance or finances to pay for treatment.

If the treatment clause is to be maintained, it is also problematic because it does not clarify what is meant by the term "treatment," which often means it is a judge making this determination, not a clinician. Medications for opioid use disorder are the most effective treatment for opioid use disorder, yet they are not available in all communities, and we are aware there continues to be stigma against them in many judicial environments across the state.

There are other states, like Maine¹, which have enacted Good Samaritan laws with the above recommendations. The U.S. GAO found a pattern of lower rates of opioid-related overdose deaths among states that have enacted stronger Good Samaritan laws².

The Good Samaritan Coalition and WISAM look forward to ongoing discussions about adding those amendments, which would make the bill even more effective. We recognize that any effort that can make people feel safer calling for help when their own or someone else's life is on the line is a move in a positive direction for the state.

Thanks for your time,

Sincerely,

Ritu Bhatnagar, MD MPH FASAM DFAPA

References:

¹<https://knowyouroptions.me/good-samaritan-law/>

²<https://www.gao.gov/products/gao-21-248>

WI Good Samaritan Protections	2013	2017	2020-present	October 2023 Proposed Bills
Aider- immunity from arrest or charges- paraphernalia, possession of controlled substance, or masking agent				
Aider- immunity from prosecution- paraphernalia, possession of controlled substance, or masking agent	X	X ¹	X	X ⁴
Aider- immunity from parole, probation or extended supervision revocation		X ¹		X ⁴
OD Survivor (aided)-immunity from arrest or charges- paraphernalia & possession of controlled substance or masking agent				
OD Survivor (aided)- immunity from prosecution for paraphernalia, possession of controlled substance, or masking agent		X ²		X ²
OD Survivor (aided)- immunity from parole, probation or extended supervision revocation		X ³		X ³

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

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

3 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.

4 Immunity is granted if the “aider’s attempt to obtain assistance occurs as soon as is practicable after the aider believes the other person is suffering from the overdose or other adverse reaction.”



AMERICAN CIVIL LIBERTIES UNION

Wisconsin

November 30, 2023

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(414) 272-4032
aclu-wi.org

Chair Spiros, Vice-Chair Schutt, and Honorable Members of the Assembly Committee on Criminal Justice and Public Safety:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide written testimony regarding Assembly Bill 634, Assembly Bill 433, and Assembly Bill 542.

ACLU-WI Supports AB-634

The devastating effects of the American addiction crisis needs no explanation, with countless Wisconsinites being directly impacted. By expanding the Good Samaritan law, 2017 Wisconsin Act 33 was a critical measure for encouraging individuals to call for immediate medical attention in the case of an overdose. In addition to providing aiders and aided persons with immunity or diversion opportunities for limited possession offenses, aiders and aided persons would not face revocation of probation, parole, or extended supervision so long as they completed a treatment program. These protections were sunset in 2020 but their reimplemention is essential for saving lives.

The number one reason people cite for not calling 911 in the event of an overdose is fear of arrest. And it is a strong reason: less than 50% of overdoses result in a call for help.¹ Overdose deaths are often preventable, but like a heart attack, the chance of survival greatly depends on how quickly one receives medical assistance.

According to a fifty-state survey compiled by the Network for Public Health Law, 48 states and the District of Columbia have enacted at least one overdose Good Samaritan law as of May 2023, including 27 states with laws providing protection from probation or parole violations.² A 2021 report from the Government Accountability Office that reviewed 17 studies on the effectiveness of Good Samaritan laws found "a pattern of lower rates of opioid-related overdose deaths among states that have enacted [these] laws, both compared to death rates prior to a law's enactment and death rates in states without such laws."³

¹ Koester, S., Mueller, S. R., Raville, L., Langegger, S., & Binswanger, I. A., "Why are some people who have received overdose education and naloxone reticent to call Emergency Medical Services in the event of overdose?" *International Journal of Drug Policy*, 48 (October 2017), available at <https://www.ncbi.nlm.nih.gov/pubmed/28734745c>.

² "Harm Reduction Legal Project: 50-State Survey," The Network for Public Health Law (July 2023), <https://www.networkforphl.org/wp-content/uploads/2023/07/Legal-Interventions-to-Reduce-Overdose-Mortality-Overdose-Good-Samaritan-Laws-2.pdf>.

³ "Drug Misuse: Most States Have Good Samaritan Laws and Research Indicates They May Have Positive Effects," U.S. Government Accountability Office (March 2021), <https://www.gao.gov/products/gao-21-248>.

ACLU-WI Opposes AB-433

We all want to live in safe and healthy communities, and legislation impacting the criminal legal system should be focused on the most effective approaches to achieving that goal. AB-433 would take us in the wrong direction.

In addition to the data collection requirements contained in AB-433, this bill would make draconian changes to state law relating to the cash bail system that ignore both the realities behind Wisconsin's bail jumping prosecutions and the legal, economic, and human impact of cash bail. Under the bill, if a defendant has a previous conviction for bail jumping, they may only be released by executing a secured bond or paying at least \$5,000 cash bail. This minimum bail amount would apply regardless of the nature of the pendant charge, the age of the previous bail jumping conviction, or whether the previous bail jumping conviction was a misdemeanor or a felony. If a defendant is accused of a "violent crime" and has a previous conviction for a violent crime, they may only be released by executing a secured bond or paying at least \$10,000 cash bail.

The Realities of Bail Jumping Charges in Wisconsin

Over the past few decades, criminal bail jumping charges have skyrocketed in Wisconsin—often "top[ping] the list of the state's most common charges."⁴ It is important to note that conduct resulting in a criminal bail jumping charge does not need to be a crime itself. Missing an appointment with a caseworker, breaking a curfew, not updating an address, missing a drug test, or relapsing could all result in a bail jumping charge if they relate to a non-monetary bail condition. Sometimes Wisconsinites are charged and convicted of multiple counts of bail jumping even if they were not convicted of the original charge.

As data from a legal and quantitative analysis published in 2018 suggests, "an underlying purpose for filing bail jumping charges may be to create leverage against defendants to induce them to plead to their original charge rather than to punish them for violating their bond conditions."⁵ The Wisconsin Justice Initiative and the Mastantuono Coffee & Thomas law firm published data on the staggering prevalence of bail jumping charges issued by several counties in 2021.⁶ The table on the following page summarizes some of this data:

⁴ Natalie Yahr, *Walk the line: How bail jumping became Wisconsin's 'most-charged crime,'* Cap Times (Feb. 26, 2020), https://captimes.com/news/local/neighborhoods/walk-the-line-how-bail-jumping-became-wisconsins-most-charged-crime/article_8349851a-f8cd-5fc3-a659-7fc5c1885e25.html.

⁵ Amy Johnson, *The Use of Wisconsin's Bail Jumping Statute: A Legal and Quantitative Analysis*, 2018 WIS. L. REV. 619 (2018), <https://repository.law.wisc.edu/s/uwlaw/media/40009>.

⁶ Wisconsin Justice Initiative Blog (2022), <https://www.wjiinc.org/blog/category/bail-jumping-project>.

County	Percent of Misdemeanor Cases that Include Bail-Jumping Charges	Percent of Felony Cases that Include Bail-Jumping Charges
Adams	18%	36%
Ashland	21%	42%
Barron	26%	33%
Bayfield	10%	30%
Brown	23%	44%
Buffalo	6%	11%
Burnett	9%	33%
Calumet	20%	46%
Chippewa	33%	59%
Clark	17%	37%
Columbia	28%	40%
Crawford	31%	34%
Dane	11%	35%
Dodge	20%	39%
Door	21%	46%
Douglas	8%	21%
Dunn	30%	46%

A Two-Tiered System of “Justice”

Wisconsin’s reliance on cash bail has perpetuated a two-tiered system of justice: one for the wealthy and one for everyone else. Imposing the mandatory bail requirements in AB-433 would exacerbate the inequities in the current pre-trial detention system and result in extraordinary costs to counties to support a ballooning jail population. Spending even a few days in jail can have devastating, long-lasting consequences for presumptively innocent individuals and their families. The inability to pay cash bail hurts the very things that help someone charged with an offense succeed: employment, stable housing, and strong family and community connections. On top of the risk of job loss, eviction, and the impact on child custody and parental rights, people incarcerated pre-trial can find themselves under a mountain of system-imposed debt.

Wisconsin statutes give counties discretion to charge incarcerated people a fee for their incarceration. According to a report from the Institute for Research on Poverty (IRP), 16 of 22 counties that responded to the IRP survey charged incarcerated people a booking fee or daily rate for room and board.⁷ In 2019, Wisconsin Watch found that at least 23 Wisconsin counties assess “pay-to-stay” fees.⁸ Further, Wisconsin jails and telecommunications companies extract more money from incarcerated people and their families, with rates for phone calls as high as \$14.77 for a 15-minute call in some counties.⁹

In addition to the cascading economic and social consequences, detention poses a systemic disadvantage to people unable to afford the price of freedom pretrial. Compared to similarly situated non-detained peers, people detained pretrial are more likely to plead guilty,¹⁰ more likely to be convicted,¹¹ and more likely to have longer sentences¹² if incarcerated.

According to a 2013 study of cases in Kentucky, people held pretrial are four times more likely to receive a jail sentence and three times more likely to receive a prison sentence, even when controlling for other factors such as charge type, demographics, and criminal history.¹³ Not to mention, Wisconsin is in the midst of a constitutional crisis, where defendants in poverty—disproportionately people from Black and brown communities—are routinely forced to sit in jail while awaiting the appointment of counsel in violation of the Sixth Amendment.

Studies have also found that pretrial detention can be the strongest single factor influencing a convicted defendant’s likelihood of being sentenced to jail or prison.¹⁴ As Chief Justice Rehnquist wrote for the majority in *United States v. Salerno*, “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” 481 U.S. 739, 755 (1987). While the U.S. Supreme Court has held that, “the presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary,” the reality of cash bail in our current system means that Wisconsinites charged with a crime are not innocent until proven guilty but instead innocent until proven poor.

⁷ Will Maher, *Poverty Fact Sheet: Pay-to-Stay Jail Fees in Wisconsin*, Institute for Research on Poverty (2017-2018), <https://www.irp.wisc.edu/wp/wp-content/uploads/2018/10/Factsheet15-Pay-to-Stay-Jail-Fees-in-WI.pdf>.

⁸ Izabela Zaluska, *Pay-to-stay, other fees, can put jail inmates hundreds or thousands in debt*, Wisconsin Watch (Sept. 15, 2019), <https://wisconsinwatch.org/2019/09/pay-to-stay/>.

⁹ Wanda Bertram, *New data: Wisconsin jails and telecom giants profiting from high phone rates that keep families apart*, Prison Policy Initiative (Sept. 10, 2021), <https://www.prisonpolicy.org/blog/2021/09/10/wisconsin-phones/>.

¹⁰ Paul Heaton, Sandra Mayson, and Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711 (2017), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3409&context=faculty_scholarship.

¹¹ Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J. Law, Economics, & Organization, 511 (2018), http://home.ubalt.edu/id86mp66/PTJC/SymposiumReadings/Distortion-of-Justice_Stevenson.pdf.

¹² Meghan Sacks and Alissa Ackerman, *Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?*, 25 CRIM. JUST. POL’Y REV. 59 (2014), <https://journals.sagepub.com/doi/abs/10.1177/0887403412461501>.

¹³ Christopher Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Laura and John Arnold Foundation (2013), <https://perma.cc/CKF5-RCMN>.

¹⁴ *Id.*

ACLU-WI Opposes AB-542

AB-542 would require the Department of Justice to award grants to schools to acquire proactive firearm detection software. A number of companies have responded to recent horrific mass shootings by touting technology that can ostensibly detect people with guns. Two companies in particular have attracted a lot of press attention for their products: one that makes AI-enhanced metal detectors, and another that sells video analytics software that “watches” surveillance camera feeds and sounds an alarm when the machine vision thinks it sees a person holding a gun. While such technologies can have their place, we need to think carefully as a society about if, how, and where we want to deploy them.

The ACLU recently released a report, “Digital Dystopia: The Danger in Buying What the EdTech Surveillance Industry is Selling,”¹⁵ that dives into the booming multi-billion-dollar education technology (EdTech) surveillance industry and the harmful impacts these invasive, and largely ineffective, products have on students. The report looks at the deceptive marketing claims made by popular EdTech surveillance companies and breaks down how they use educators’ fears and unsubstantiated efficacy claims to falsely convince schools that their products are needed to keep students safe. The report also seeks to highlight the substantial harm surveillance causes to students and gives recommendations for school districts to make better informed decisions about using surveillance technologies.

Specifically, weapon detection surveillance technology claims to be able to analyze video from surveillance cameras to detect and warn schools about the presence of a weapon.¹⁶ However, false hits, such as mistaking a broomstick,¹⁷ three-ring binder, or a Google Chromebook laptop¹⁸ for a gun or other type of weapon, could result in an armed police response to a school. Sending police into a school with weapons drawn, thinking they are facing an armed student or potential active shooter, could have devastating and even life-threatening impacts on innocent students and school staff.

Ultimately, we urge committee members to consider the following recommendations from the ACLU report when considering the use of student surveillance technology:

- When considering the acquisition and use of student surveillance technologies, school policymakers, influencers, and other community members should not let fear drive their decision-making. While that may be understandably difficult, better decisions are made through the dispassionate examination of established facts.

¹⁵ “Digital Dystopia: The Danger in Buying What the EdTech Surveillance Industry is Selling,” ACLU (October 2023), <https://www.aclu.org/report/digital-dystopia-the-danger-in-buying-what-the-edtech-surveillance-industry-is-selling>.

¹⁶ Jay Stanley, “Are Gun Detectors the Answer to Mass Shootings?” ACLU (November 2, 2022), <https://www.aclu.org/news/privacy-technology/are-gun-detectors-the-answer-to-mass-shootings>.

¹⁷ Todd Feathers, “Facial Recognition Company Lied to School District About its Racist Tech,” Vice (December 1, 2020), <https://www.vice.com/en/article/qjpkmx/fac-recognition-company-lied-to-school-district-about-its-racist-tech>.

¹⁸ “Opinion: Body Scanner Problems at Charlotte-Mecklenburg Schools,” Charlotte Observer (editorial) (August 25, 2022), <https://www.govtech.com/education/k-12/opinion-body-scanner-problems-at-charlotte-mecklenburg-schools>.

- When learning about the alleged benefits of using student surveillance technologies, school policymakers, influencers, and other community members should not rely on unsubstantiated efficacy claims offered to them by EdTech Surveillance companies who have a financial interest in the sale of the technologies (including those that provided free technology but make money off its maintenance, data storage, or by selling related products or enhanced versions of their free product). Instead, insist on proof of efficacy from unbiased, fully independent sources that provide evidence, gathered in the education context, that has been peer-reviewed to ensure accuracy and reliability.
- Consider adoption of legislation requiring all schools to follow best practices for student surveillance technology decision-making to ensure any surveillance technology acquired has been shown to have a significant effect on improving the health, safety, and welfare of persons in school settings, with proof of such efficacy established through independent, peer-reviewed, evidence-based research. In determining whether the technology is in the best interest of the school community, schools should investigate and consider any unintended harms or other consequences that might accompany the use of such a technology, as well as the opportunity costs of electing to acquire and use such a technology. Further, there should be a process to ensure school community member engagement in local decision-making. The ACLU drafted the “Student Surveillance Technology Acquisition Standards Act” model bill (see Appendix 2 of the report cited above for the full text of the model bill).