

BILL ANALYSIS

Senate Research Center
87R3882 MCF-D

S.B. 811
By: Schwertner
Criminal Justice
4/16/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Fear of arrest and fear of police involvement can lead bystanders to delay or forgo calling 911, increasing the risk of overdose deaths. Good samaritan drug overdose laws have shown evidence of effectiveness since people become more likely to call 911 during an overdose. In addition, law enforcement officers in states that have adopted good samaritan laws have reported that these laws have improved citizens' image of law enforcement.

Currently, 40 states and the District of Columbia have enacted some form of a good samaritan or 911 drug immunity law. Texas has a good samaritan law regarding underage drinking where the individual would not face any criminal consequence if medical assistance was sought for themselves or another person who was in a state of emergency as a result of consumption. S.B. 811 will encourage people to call for help and reduce overdose deaths in Texas.

Key Provisions of S.B. 811

S.B. 811 will encourage people to call for help in an overdose emergency by providing limited legal immunity to overdose victims and those who seek help for them.

As proposed, S.B. 811 amends current law relating to a defense to prosecution for certain offenses involving possession of small amounts of controlled substances, marihuana, dangerous drugs, or abusable volatile chemicals, or possession of drug paraphernalia for defendants seeking assistance for a suspected overdose.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 481.115, Health and Safety Code, by adding Subsections (g), (h), and (i), as follows:

(g) Provides that it is a defense to prosecution for an offense punishable under Subsection (b) (relating to a state jail felony in Penalty Group 1 if the amount of controlled substance possessed is less than one gram) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) Provides that the defense to prosecution provided by Subsection (g) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481 (Texas Controlled Substances Act), Chapter 483 (Dangerous Drugs), or Chapter 485 (Abusable Volatile Chemicals); or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(i) Provides that the defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

SECTION 2. Amends Section 481.1151, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense punishable under Subsection (b)(1) (relating to an offense that is a state jail felony if the number of abused units of the controlled substance is fewer than 20) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or Chapter 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 3. Amends Section 481.116, Health and Safety Code, by adding Subsections (f), (g), and (h), as follows:

(f) Provides that it is a defense to prosecution for an offense punishable under Subsection (b) (relating to an offense punishable by state jail felony for a possession of a controlled substance of less than one gram) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) Provides that the defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or Chapter 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(h) Provides that the defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

SECTION 4. Amends Section 481.1161, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense punishable under Subsection (b)(1) or (2) (relating to a Class A or Class B misdemeanor if the amount of controlled substance is a certain amount) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 5. Amends Section 481.117, Health and Safety Code, by adding Subsections (f), (g), and (h), as follows:

(f) Provides that it is a defense to prosecution for an offense punishable under Subsection (b) (relating to a Class A misdemeanor if the amount of controlled substance is less than 28 grams) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) Provides that the defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or Chapter 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(h) Provides that the defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

SECTION 6. Amends Section 481.118, Health and Safety Code, by adding Subsections (f), (g), and (h), as follows:

(f) Provides that it is a defense to prosecution for an offense punishable under Subsection (b) (relating to a Class B misdemeanor if the amount of controlled substance is less than 28 grams) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) Provides that the defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the

possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or Chapter 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(h) Provides that the defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

SECTION 7. Amends Section 481.119, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense under Subsection (b) (relating to a Class B misdemeanor for an offense of possession of a controlled substance listed under this chapter but not listed in a penalty group) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or Chapter 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 8. Amends Section 481.121, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense punishable under Subsection (b)(1) or (2) (relating to a Class A or Class B misdemeanor for the possession of certain amounts of marihuana) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or Chapter 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 9. Amends Section 481.125, Health and Safety Code, by adding Subsections (g), (h), and (i), as follows:

(g) Provides that it is a defense to prosecution for an offense under Subsection (a) (relating to a Class C misdemeanor for the possession of drug paraphernalia or use of controlled substances) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance

during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) Provides that the defense to prosecution provided by Subsection (g) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or Chapter 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(i) Provides that the defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

SECTION 10. Amends Section 483.041, Health and Safety Code, by adding Subsections (e), (f), and (g), as follows:

(e) Provides that it is a defense to prosecution for an offense under Subsection (a) (relating to a Class A misdemeanor for the possession of a dangerous drug unless the person obtains the drug from a pharmacist) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(f) Provides that the defense to prosecution provided by Subsection (e) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or Chapter 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, Class A, Class B, or Class C misdemeanor.

(g) Provides that the defense to prosecution provided by Subsection (e) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (e) is not available.

SECTION 11. Amends Section 485.031, Health and Safety Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that it is a defense to prosecution for an offense under Subsection (a) (relating to a Class B misdemeanor for the use of certain volatile chemicals) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and made the request for medical assistance during an ongoing medical emergency, remained on the scene until the medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) Provides that the defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under certain sections of this code relating to offenses for the possession of, use of, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor;

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under Chapter 481, Chapter 483, or Chapter 485; or

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or certain sections of this code relating to offenses for the possession, use, or intent to use certain controlled substances or paraphernalia punishable as a state jail felony, or as a Class A, Class B, or Class C misdemeanor.

(e) Provides that the defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2021.