



Separating myth from reality: Liability questions around the administration of naloxone

OAA ABATEMENT ACADEMY

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The Legal Parameters in First Responders Administering Naloxone

**Opioid Abatement Authority Webinar
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General Background

- Virginia law generally protects police officers and first responders from civil liability when they administer naloxone in a good-faith effort to save someone's life from an opioid overdose, provided they have undergone the appropriate training.



Approved Training Required

- The Virginia Association of Chiefs of Police (VACP) manages a First Responder Naloxone grant for the Virginia Department of Behavioral Health and Developmental Services (DBHDS).
- Police officers (as defined in §9.1-101) who have completed an approved training program, may administer naloxone and will not be subject to civil liability, pursuant to Virginia Code §§ 54.1-3408 and 8.01- 225.



Virginia's Good Samaritan Law (Virginia Code § 8.01-225)

- Virginia Code §8.01-225(A-19) states that police officers and first responders who in good faith administer naloxone in an emergency to an individual who is believed to be experiencing, or about to experience, a life-threatening opioid overdose shall be immune from civil liability for any personal injury that results from any act or omission in the rendering of such treatment, unless such act or omission was the result of gross negligence or willful misconduct.



Virginia's Good Samaritan Law (Virginia Code § 8.01-225)

- ▶ The District Court of the Eastern District of Virginia held that Virginia's "Good Samaritan" statute, Va. Code Ann. § 8.01-225, shields individuals from liability when, in good faith, they provide "emergency care or assistance, without compensation, to any ill or injured person" in various situations. Va. Code Ann. § 8.01-225 (A)(1). *Harrison v. Prince William County Police Dept.*, 640 F. Supp. 2d 688, 713 (E.D. Va. 2009).



Virginia's Good Samaritan Law (Virginia Code § 8.01-225)

- Likewise, the Virginia Supreme Court noted that in order to encourage voluntary rescue efforts, a majority of states, including Virginia, have adopted so-called "Good Samaritan" statutes which remove the fear of potential liability from individuals who render aid in emergency situations. *Stoots v. Marion Life Saving Crew, Inc.*, 300 Va. 354, 362 (2021).



Derivative Sovereign Immunity (Common Law)

- The ancient doctrine of sovereign immunity, while often controversial, “is alive and well in Virginia.” *Messina v. Burden*, 228 Va. 301, 307 (1984).
- “[T]he doctrine of sovereign immunity protects municipalities from tort liability arising from the exercise of governmental functions.” *Neise v. City of Alexandria*, 264 Va. 230, 238 (2002).
- A “governmental function” involves the exercise of powers and duties exclusively for the public welfare. *Massenburg v. City of Petersburg*, 298 Va. 212, 218 (2019).



Derivative Sovereign Immunity (Common Law)

- In *Patterson v. City of Danville*, the Virginia Supreme Court held that providing medical care to inmates at a municipal jail involves the exercise of "powers and duties of government conferred by law" on the municipality. *Patterson v. City of Danville*, 301 Va. 181, 190 (2022).
- A locality engaged in a governmental function “benefits from immunity from suit, whether the claims involve simple negligence, gross negligence, or even intentional torts.” *Newport News School Board v. Z.M., a Minor*, ___ Va. ___ 240833 (2025).



Derivative Sovereign Immunity (Common Law)

- In *Patterson v. City of Danville*, the Virginia Supreme Court noted that “an employee's personal immunity derives from the governmental entity's immunity.” Hence, the Supreme Court termed the government employee's immunity, “derivative sovereign immunity.” *Patterson v. City of Danville*, 301 Va. 181, 182 (2022).
- The Supreme Court has long noted that government employees who enjoy the protections of derivative sovereign immunity are protected against claims of simple negligence, but “are not immune from claims of gross negligence....” *Newport News School Board v. Z.M., a Minor*, ___ Va. ___ 240833 (2025).

Qualified Immunity (Federal Court)

- In general, Qualified immunity shields government employees, including police, from liability in civil lawsuits in Federal Court, unless the employee's actions violate a clearly established constitutional right.
- When evaluating whether qualified immunity applies, the courts consider whether the rights allegedly violated by the governmental employee was clearly established at the time of the challenged conduct. *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985).



Qualified Immunity (Federal Court)

- Courts also consider whether the conduct of a governmental employee was objectively reasonable using the reasonable officer standard. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).
- If these factors are satisfied, the governmental employee will enjoy the protections of qualified immunity and the case will be dismissed.



Conclusion

- The law is structured to encourage first responders, including police officers to provide life saving services to the public, including administering naloxone, without fear of civil liability. The Commonwealth has adopted a “Good Samaritan” law and provided a program to train first responders in how to administer naloxone. These actions by the Commonwealth are intended to promote the public policy that administering naloxone to saves lives and serves the best interest of the public.



Virginia's Opioid Overdose and Naloxone Education Program

What is REVIVE!?





The REVIVE! program is built on three primary objectives:

- **Naloxone Administration:** Training individuals on how to correctly administer naloxone, a life-saving medication that can reverse the effects of an opioid overdose.
- **Breaking the Stigma:** Addressing and dismantling the stigma associated with substance use disorders, fostering a more understanding and supportive community.
- **Providing Second Chances:** Equipping people with the tools, resources, and knowledge they need to assist those affected by opioid use disorders, extending help beyond the initial intervention.





Why REVIVE!?

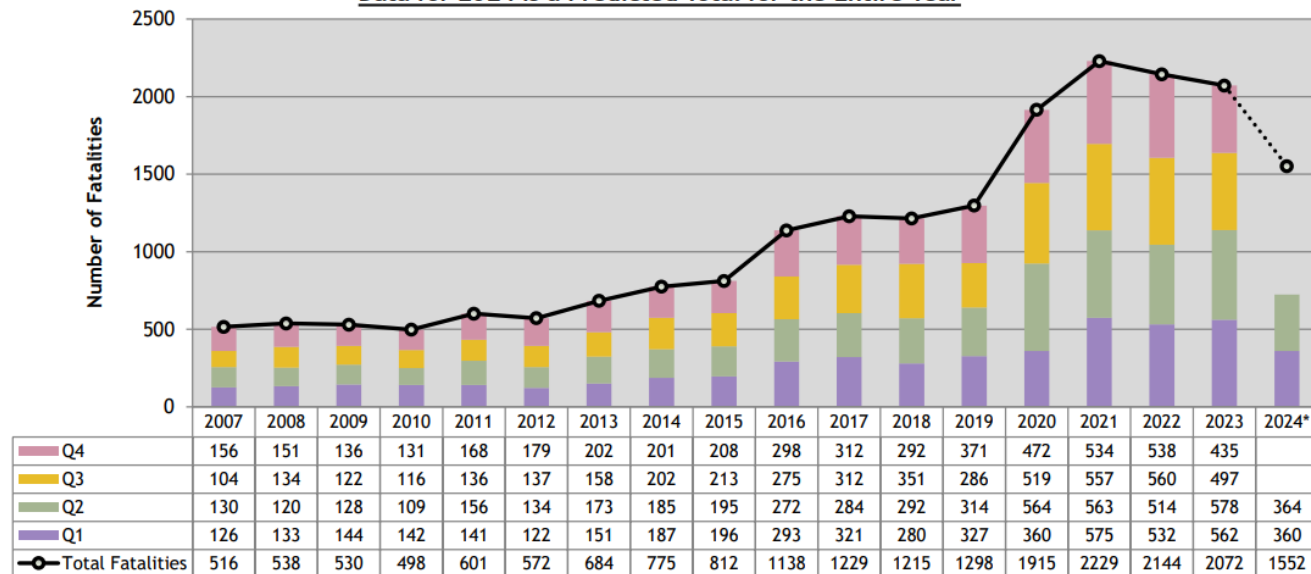
- *Since 2013, fatal drug overdose has been the leading cause of unnatural death in the state, with opioid overdoses being the primary driver behind this grim statistic*
- In response to the growing crisis, in 2013, Virginia implemented the REVIVE! program.
- REVIVE! seeks to empower communities across the Commonwealth to take proactive steps in combating the opioid crisis and saving lives.
- Despite these measures, the opioid crisis remains a significant public health challenge for Virginia. Continued efforts and resources are essential to address this epidemic effectively and to reduce the devastating impact it has on individuals, families, and communities throughout the state.



ALL OPIOIDS

From 2007-2015, opioids (fentanyl, heroin, U-47700, and/or one or more prescription opioids) made up approximately 75% of all fatal drug overdoses annually in Virginia. However, this percentage is increasing each year due to the significant increase in fatal fentanyl and/or heroin overdoses which began in late 2013 and early 2014. Preliminary numbers for 2023 indicated that 81.6% of all fatal overdoses of any substance were due to one or more opioids. The preliminary number of fatal opioid overdoses in 2023 decreased 3.4% from the previous year.

Total Number of Fatal Opioid Overdoses by Quarter and Year of Death, 2007-2024*
Data for 2024 is a Predicted Total for the Entire Year



* 'All Opioids' includes all versions of fentanyl, heroin, prescription opioids, U-47700, nitazenes, and opioids unspecified

² 'Opioids Unspecified' are a small category of deaths in which the determination of heroin and/or one or more prescription opioids cannot be made due to specific circumstances of the death. Most commonly, these circumstances are a result of death several days after an overdose, in which the OCME cannot test for toxicology because the substances have been metabolized out of the decedent's system.

³ Fatal opioid numbers have changed slightly from past reports due to the removal of fentanyl from the category of prescription opioids, as well as the addition of buprenorphine, levorphanol, meperidine, pentazocine, propoxyphene, and tapentadol added to the list of prescription opioids.



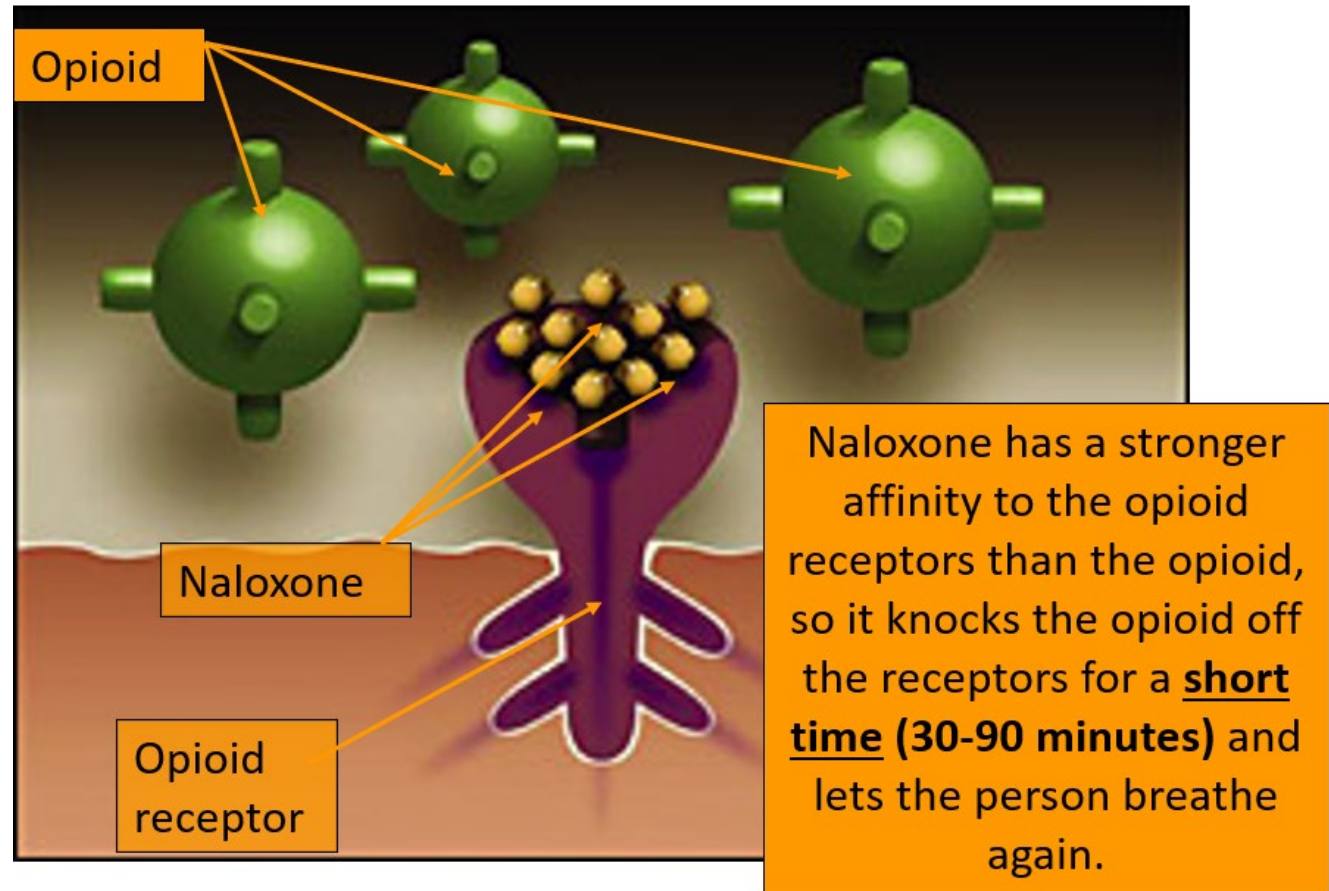
What is Naloxone?

Naloxone is a medication designed to rapidly reverse opioid overdose.

Available in *two* FDA-approved formulations:

Injectable and prepackaged *nasal spray*.

How Naloxone Works



Safety of Naloxone

- **Serious side effects from Naloxone use are rare.**
- Using Naloxone during an opioid overdose far outweighs any risk of side effects. Reported side effects are often related to *acute opioid withdrawal*.
- Naloxone has the same dose for an adult and a child.
- Naloxone has no abuse potential.

- Naloxone will **NOT** reverse overdoses from other drugs such as:

Alcohol, benzodiazepines, cocaine, amphetamines or xylazine.

Steps to Respond to an Opioid Overdose

1. Check for Responsiveness
2. Call 911, if you must leave the individual alone, place them into recovery position.
3. Administer Naloxone
4. Continue Rescue Breathing
5. Assess and respond based on outcome of first naloxone administration

****If you must leave an unresponsive person at anytime, put them in recovery position****



Check for Responsiveness



- **Try to stimulate them.**
 - Shout their name, tap their shoulder, or pinch their ear lobe.
- **Give a sternum rub.**
 - Make a fist and rake your knuckles hard up and down the front of the person's sternum (breastbone). This is sometimes enough to wake the person up.
- **Check for breathing.**
 - Put your ear to the person's mouth and nose so that you can also watch their chest. Feel for breath and watch to see if the person's chest rises and falls.
- If the person does not respond or is not breathing, proceed to step 2.





Call 911

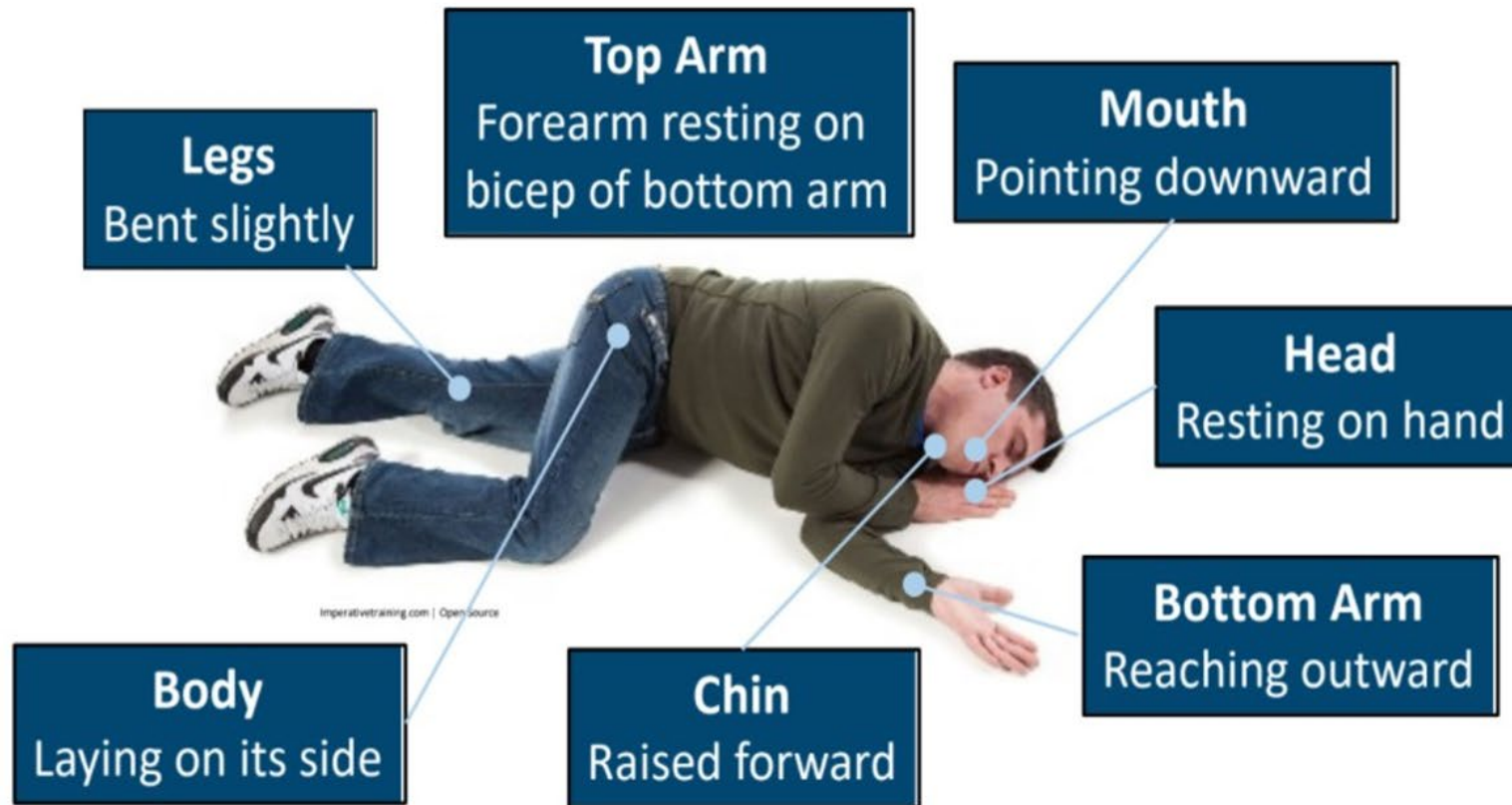


Calling 911 immediately when responding to an overdose is vital. An individual who has overdosed needs to be assessed by medical professionals.

- If there is more than one person around, instruct another individual to call 911. Avoid the bystander effect.
- If you have a phone, call 911, put call on “speakerphone” and place phone on the ground.
- Give the exact location.
- Report that the person’s breathing has slowed or stopped, that he/she/they are unresponsive, and it is a suspected overdose.



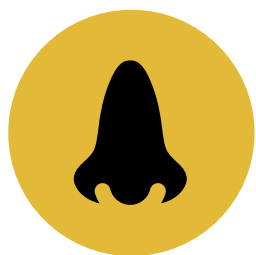
RECOVERY POSITION SETUP



****If you must leave an unresponsive person at anytime, put them in recovery position****



Give 2 Rescue Breaths



1. Place the person on their back.
2. Tilt their chin up to open the airway.
3. Plug/pinch their nose with one hand, and give two even, regular-sized breaths. Blow enough air into their lungs to make their chest rise. If you do not see their chest rise out of the corner of your eye, tilt the head back more and make sure you're plugging/pinching their nose.





<https://youtu.be/31GdwcBdwRo>



Administer Naloxone



Naloxone takes effect within 30-45 seconds after its given, but we give the person up to 3 minutes to respond.

While waiting for naloxone to take effect and for response, immediately begin step 5.

Rescue Breathing or CPR (if rescuer is CPR trained or instructed to do so by 911)

1. Place the person **on their back**.
2. **Tilt their chin up** to open the airway.
3. **Plug/Pinch their nose** with one hand, and give 2 even, regular-sized breaths. Blow enough air into their lungs to make their chest rise. If you don't see their chest rise out of the corner of your eye, tilt the head back more and make sure you're plugging/pinching their nose.
4. **Give 1 breath every 5 seconds**. Repeat this step until the person begins breathing on their own.

PLEASE NOTE – You may have heard that recent CPR guidelines recommend “hands-only CPR,” or only chest compressions instead of rescue breathing and chest compressions. The CPR guidelines are for layperson response to cardiac arrest, and NOT overdose. It is still recommended that you perform rescue breathing for an overdose, where the primary issue is respiratory depression, and not cardiac arrest. Brain damage can occur after three-to-five-minute without oxygen. Rescue breathing gets oxygen to the brain quickly. Once you give naloxone, it may take some time to take effect, so the person may not start breathing on their own right away. Continue rescue breathing/CPR for them until the naloxone takes effect or until emergency medical services arrive.



NALOXONE FAQ

Is naloxone free?

You may check with your local health district or community service board, to determine if you are eligible for no-cost naloxone. Availability may vary.

Do I need a prescription?

Prescription is no longer required however, the State Health Commissioner's standing order is still in place, serving as a prescription for the public. At the discretion of the pharmacy, a claim to the insurance carrier may be submitted to cover some, or all, of the cost of naloxone.

Where can I get Naloxone?

- Local Pharmacy or retailer:

Over the Counter Narcan nasal spray naloxone is available for ***purchase*** at local pharmacies, retailers, in store and online.

- Community Service Boards and Local Health Departments. Call ahead to inquire for availability and eligibility.
- Healthcare Providers may issue a prescription for naloxone



First Responder Naloxone Program

- The Department of Behavioral Health and Developmental Services (DBHDS) has received a federal grant from SAMHSA to address the opioid epidemic and equip first responders to safely and effectively respond to an opioid overdose emergency. To manage this program, DBHDS has partnered with the Virginia Association of Chiefs of Police (VACP).
- This grant provides naloxone supplies and education to first responder agencies located in the Commonwealth at no-cost to the agencies.
- Eligible agencies under this grant include:
 - Law Enforcement
 - Jails / Correctional Facilities
 - Probation and Parole
 - Juvenile justice
 - Emergency Communications
 - LE/ Ranger Divisions of State Parks / Forestry
 - Military Police
 - Fire Departments
 - EMS Agencies
 - Rescue Squads





Virginia Code: Professional use by practitioners

§ 54.1-3408. Professional use by practitioners, section X.

- Applies to emergency medical services personnel, law-enforcement officers, employees of the Department of Forensic Science, employees of the Office of the Chief Medical Examiner, employees of the Department of General Services Division of Consolidated Laboratory Services, employees of the Department of Corrections designated by the Director of the Department of Corrections or designated as probation and parole officers or as correctional officers, employees of the Department of Juvenile Justice designated as probation and parole officers or as juvenile correctional officers, employees of regional jails, school nurses, local health department employees that are assigned to a public school, other school board employees or individuals contracted by a school board to provide school health services, and firefighters.





Virginia Code: Professional use by practitioners

§ 54.1-3408. Professional use by practitioners, section Y and Z.

- “Y. ...a person who is acting on behalf of an organization that provides services to individuals at risk of experiencing an opioid overdose or training in the administration of naloxone for overdose reversal may dispense naloxone to a person who has received instruction on the administration of naloxone for opioid overdose reversal, provided that such dispensing is (i) pursuant to a standing order issued by a prescriber and (ii) in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and the Department of Health.”
- “Z. A person who is not otherwise authorized to administer naloxone or other opioid antagonist used for overdose reversal may administer naloxone or other opioid antagonist used for overdose reversal to a person who is believed to be experiencing or about to experience a life-threatening opioid overdose.”





Virginia Code: Safe Reporting Law

§ 18.2-251.03. Arrest and prosecution when experiencing or reporting overdoses.

No individual shall be subject to arrest or prosecution for:

1. Unlawful purchase, possession, or consumption of alcohol or marijuana
2. Possession of a controlled substance or controlled paraphernalia
3. Intoxication in public

- IF -

4. They are seeking emergency medical attention for themselves or another person who is experiencing an overdose
5. Are rendering emergency care or assistance to someone experiencing an overdose while someone else seeks emergency medical attention

- AND -

6. They remain at the scene of the overdose or at an alternate location where they have been transported to by emergency medical services while awaiting law enforcement response;
7. They identify themselves to law enforcement; and
8. The evidence was obtained as a result of the individual seeking or obtaining emergency medical attention or rendering emergency care or assistance.”

**Does not apply if the emergency medical attention was sought or obtained during the execution of a search warrant or during the conduct of a lawful search or a lawful arrest*



Virginia Code: Safe Reporting Law

EFFECTIVE JULY 1, 2025

- § 18.2-251.03. Arrest and prosecution when experiencing or reporting an overdose **or act of sexual violence**.
 - "Act of sexual violence" means an alleged violation of § 18.2-361, 18.2-370, or 18.2-370.1 or the laws pertaining to criminal sexual assault pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4.
 - Immunity shall not apply to the individual who is alleged to have committed the act of sexual violence.
- Section E
 - "...any individual immune to arrest or prosecution under this section shall not have his bail, probation, furlough, supervised release, suspended sentence, or parole revoked for the behavior immune from arrest or prosecution under the provisions of this section."





Virginia Code: Paraphernalia Exception

§ 54.1-3466. Possession or distribution of controlled paraphernalia.

- A. ... "Controlled paraphernalia" does not include narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog."

EFFECTIVE JULY 1, 2025

- A. ... "Controlled paraphernalia" does not include drug checking products used to determine the presence or concentration of a contaminant that can cause physical harm or death.



**Learn more about
naloxone, and find
additional resources.**



DBHDS

Virginia Department of Behavioral Health
and Developmental Services



dbhds.virginia.gov



Questions?

For more information



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www.voaa.us