



TWENTY-THIRD LEGISLATURE
COMMONWEALTH OF THE NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY AND GOVERNMENTAL
OPERATIONS

P.O. BOX 500586 SAIPAN, MP 96950

MARISSA R. FLORES
CHAIRWOMAN

Adopted - 6/20/2023

STANDING COMMITTEE REPORT NO. 23-18

DATE: MAY 16, 2023

RE: H.B. 23-24

The Honorable Edmund S. Villagomez
Speaker of the House of Representatives
Twenty-Third Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations to which was referred:

H. B. No. 23-24:

“To provide an affirmative defense against drug possession charges in case of an overdose.”

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion, your Committee recommends that H. B. NO. 23-24 be passed by the House in its current form.

HOUSE CLERK'S OFC
RECEIVED BY *DM*
DATE *6/9/2023* TIME *4:30p*

II. ANALYSIS:

A. Purpose:

The purpose of House Bill No. 23-24 is to provide an affirmative defense against drug possession charges in case of an overdose.

B. Committee Findings:

Your Committee finds that drug overdoses are considered severe medical emergencies and require immediate medical attention. Furthermore, overdoses occur when someone consumes a toxic level of a substance (or multiple substances) and the effects of this overload interfere with their brain and body's ability to function normally.¹ Such substances/drugs include, but are not limited to, alcohol, opioids (heroin, fentanyl, prescription killers, etc.), benzodiazepines and stimulants (methamphetamine, cocaine, many others). Drug overdoses can be fatal; however, if results do not lead to fatality, overdose-related toxicity can result in several negative short-term and long-term health consequences. Your Committee finds that in the event of an overdose, it is recommended to immediately contact emergency medical professionals and to stay with the overdosed-individual until medical help arrives. Overdose-related circumstances can provide high level of stress to surrounding individuals and seeking immediate medical attention may be the only option that will save their life.

Your Committee also finds that several states within the United States have enacted laws that provide affirmative defense to drug possession charges in the event of an overdose. Such states include, Hawaii, California, Colorado, Florida, Georgia, and many others.² Often referred to as "Good Samaritan Overdose Prevention Laws", these statutes protect individuals who act with noble intentions to assist an individual who is suffering from a drug-related overdose. In the event that a certain amount of a substance/drug is found on the assisting individual. Your Committee further finds that a person should not be punished for committing a righteous act, especially when one's life is in danger. Furthermore, your Committee also finds that according to the National Institute on Drug Abuse, the death rates for drug-related overdoses increase on an annual basis.³ Your Committee finds that it would be highly appropriate to enact appropriate laws to allow for individuals to report overdose occurrences without any fear of being arrested and charged for a crime while acting with noble intentions.

Therefore, your Committee agrees with the intent and purpose of House Bill No. 23-24 and recommends its passage in its current form.

¹ <https://americanaddictioncenters.org/overdose>

² <https://namsdl.org/wp-content/uploads/Good-Samaritan-Overdose-Prevention-Statutes.pdf>

³ <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates#:~:text=More%20than%20106%2C000%20persons%20in,drugs%20from%201999%20to%202021.>

C. Public Comments:

The Committee received comments from the following:

- Douglas W. Hartig, CNMI Office of the Public Defender (Written)

The Public Defender does not support the proposed legislation.

- Honorable Edward Manibusan, CNMI Attorney General (Written)

The Attorney General states that the proposed legislation is constitutionally sufficient and may save lives.

D. Legislative History:

House Bill No. 23-24 was introduced by Representative Malcolm J. Omar on March 09, 2023 to the full body of the House and was referred to the House Standing Committee on Judiciary and Governmental Operations for disposition.

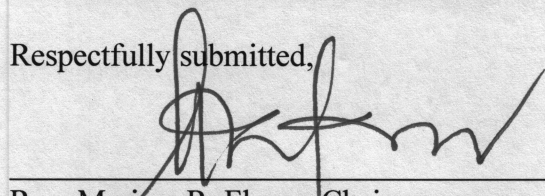
E. Cost Benefit:

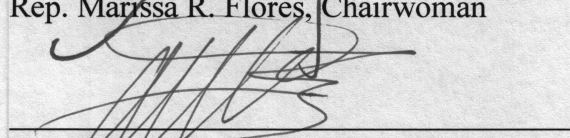
The enactment of House Bill No. 23-24 will not result in additional costs to the CNMI government for the intent of the proposed legislation intends to provide an affirmative defense against drug possession charges for individuals reporting to law enforcement authorities of the occurrence of a drug overdose. Thus, such affirmative defenses will lower costs associated with making arrests and imprisonments.

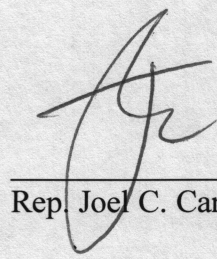
III. CONCLUSION:

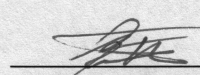
The Committee is in accord with the intent and purpose of H. B. NO. 23-24, and recommends its passage in its current form.

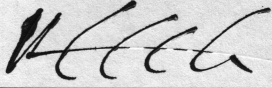
Respectfully submitted,


Rep. Marissa R. Flores, Chairwoman


Rep. Vincent R.S. Aldan, Member

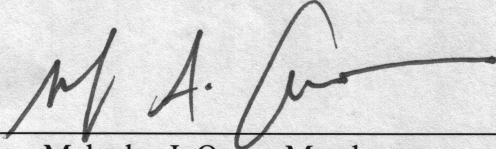

Rep. Joel C. Camacho, Vice Chair


Rep. Blas Jonathan "BJ" T. Attao, Member

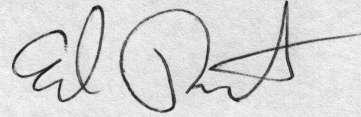


Rep. Vicente C. Camacho, Member

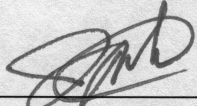
Rep. Manny G.T. Castro, Member



Rep. Malcolm J. Omar, Member

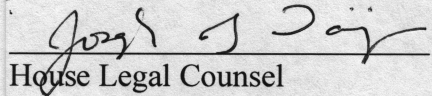


Rep. Edwin K. Propst, Member



Rep. John Paul P. Sablan, Member

Reviewed by:



House Legal Counsel

Attachment:

- Letter dated March 23, 2023 from the Office of the Public Defender; and
- Letter dated March 24, 2023 from the Attorney General.



**Office of the Public Defender
Commonwealth of the Northern Mariana Islands**

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Representative Marissa R. Flores
Twenty Second, Northern Marianas Commonwealth Legislature
Hon. Jesus P. Mafnas Memorial Building
P.O. Box 500129
Saipan, MP 96950

RE: H.B. 23-22 and H.B. 23-24

March 23, 2023

Dear Madam Chairwoman;

The Office of the Public Defender has several serious concerns and so would ask that H.B. 23-22 and H.B. 23-24 not be passed.

H.B.23-22 creates an unchecked police department by creating an investigation unit, AGID, with the power of arrest. This agency is unchecked by the legislature or the administration. This is completely unnecessary and ill-advised. Currently AGO and OPA have oversight authority over DPS. But H.B. 23-22 creates a law enforcement agency with no oversight. Some states do have a *state wide investigative agency* but so does the CNMI. Here *it is DPS*. A state law enforcement agency over sees investigation throughout the entire state, just as DPS does throughout the Commonwealth. This new bill will eliminate the current checks and balances. If there were municipal police departments, such as a separate Garapan police department and Susupi police department or even Rota, Tinian and Saipan police departments then there may be a reason for an overseeing law enforcement agency. But this legislation creates a separate parallel agency with the same authority as DPS. However, unlike DPS, whose commissioner must be approved by and can be removed by the Senate or governor, *this agency has no oversight* beyond the AG. Any need for policing of the central government or legislature can already be done by the Public Auditor who already has investigators for that purpose.

This will be expensive to implement. If created it will need to be funded. This will have the effect of having to cut money from another department or agency or raising taxes. Maybe even cut the DPS budget so as to fund law enforcement. This really doesn't make sense.

There are ethical and conflict of interests issues. There are times in a criminal case when a defense lawyer will raise issues of DPS violating a person's rights against unlawful search and seizure or the unlawful taking of incriminating statements¹ When an Assistant AG defends a

police officer against such an assertion there is no problem. But this new bill would create a situation where the AG is defending the actions of a colleague and someone who acted at the direction of the AG. This will raise concerns. Maybe a special prosecutor should be appointed, but this will be expensive. And if the AG decided not to appoint a special prosecutor even the courts cannot act to see justice is served.

H.B. 23-22⁴ is based on a faulty premise, is unnecessary and is subject to misuse. The Findings and Purpose are misleading. Drug overdose which may exist on the mainland do not exist here. There is no overdose death increase in the CNMI. This is really an excuse to create an end run for law enforcement to violate protected *constitutional rights* against unlawful search and seizure.

This proposal *will not save lives* by providing limited immunity during drug overdose situations but rather allow law enforcement to violate protected rights. To allege otherwise is disingenuous at best as the premise that lives are lost in the CNMI due to drug overdose increases is just plain false. I encourage anyone supporting this bill to contact DPH and see if there have been any drug related deaths other than alcohol.

As in Kentucky, a state with a similar law, a person who is in apparent need of medical attention is subject to search and seizure and then prosecution unless the caller is very specific as to the use of drugs and the effects on the distressed person. ² Such a law is ripe for a search based on false pretenses and will discourage rather than encourage a fellow user from calling 911.

I thank you for the opportunity to comment on this bills. I would welcome the opportunity to speak with you or any of your fellow legislators about this or other pending legislation. If I can assist in this or any other matter in the future, please contact me at your convenience. Thank you for your consideration.

Respectfully,

Douglas W. Hartig
Public Defender

¹ U.S. Constitution 5th and 6th Amendments

² Wilson v. Commonwealth, 628 S.W.3d 132 (2021)



Commonwealth of the Northern Mariana Islands
Office of the Attorney General

2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

EDWARD MANIBUSAN
Attorney General

LILLIAN A. TENORIO
Deputy Attorney General

VIA EMAIL: rep.floresm@cnmileg.net

March 24, 2023

OAGHOR: 2023-17
LSR No. 23-135

Hon. Marissa Flores
Chairperson, House Committee on Judicial
and Governmental Operations
House of Representatives
23rd Northern Mariana Islands Legislature
Saipan, MP 96950

Re: House Bill No. 23-24: "To provide for an affirmative defense against drug possession charges in the case of an overdose."

Dear Chairperson Flores:

Thank you for requesting the comments of the Office of the Attorney General on House Bill No. 23-24. The bill proposes to provide an affirmative defense against drug possession in cases of an overdose.

The bill as written is constitutionally sufficient and may save lives by providing for an affirmative defense to a small category of drug possession for those who seek medical attention for a drug overdose.

I am available to discuss further the issues raised in House Bill No. 23-24. Please feel free to contact me at (670) 237-7500 or email at attorney_general@cnmioag.org.

Sincerely,

EDWARD MANIBUSAN
Attorney General

cc: All Members, House of Representatives

Civil Division
Telephone: (670) 237-7500
Facsimile: (670) 664-2349

Criminal Division
Telephone: (670) 237-7600
Facsimile: (670) 234-7016

Attorney General Investigation Division
Telephone: (670) 237-7628
Facsimile: (670) 234-7016

Victim Witness Advocacy Unit
Telephone: (670) 237-7602
Facsimile: (670) 234-7016

TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

Regular Session, 2023

H. B. 23- 24

A BILL FOR AN ACT

To provide an affirmative defense against drug possession charges in the case of an overdose.

**BE IT ENACTED BY THE 23RD NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Findings and Purpose.** The Legislature intends to save lives by
2 increasing timely medical attention to drug overdose victims through the
3 establishment of limited immunity from prosecution for people who seek medical
4 assistance in a drug overdose situation. Drug overdose is the leading cause of
5 unintentional injury death in the United States, ahead of motor vehicle-related
6 deaths. Drug deaths in the United States, which fell for the first time in 25 years in
7 2018, rose to record numbers in 2019 and are continuing to climb, a resurgence that
8 is being complicated and perhaps worsened by the coronavirus pandemic.

9 Nearly 72,000 Americans died from drug overdoses in 2019, according to
10 preliminary data released Wednesday by the Centers for Disease Control and
11 Prevention — an increase of 5 percent from 2018. Drug deaths have risen an
12 average of 13 percent so far this year over last year, according to mortality data

1 from local and state governments collected by The New York Times as of July
2 2020, covering 40 percent of the U.S. population.

3 The Legislature finds that many drug overdose fatalities occur because
4 peers delay or forego calling 911 for fear of arrest or police involvement, which
5 researchers continually identify as the most significant barrier to the ideal first
6 response of calling emergency services. Moreover, many victims of drug overdose
7 also fear arrest and refuse to call 911 or seek medical assistance during an overdose.
8 The Legislature finds that lives can be saved by providing limited immunity during
9 drug overdose situation. Accordingly, the purpose of this legislation to protect
10 against drug possession charges if the evidence for the charge of possession of a
11 controlled substance was obtained as a result of the person experiencing the
12 overdose or a peer seeking medical assistance for someone else.

13 **Section 2. Amendment.** Title 6, Chapter 2, Article 2 Defenses of the
14 Commonwealth Code is hereby amended by adding a new section 254 to read as
15 follows:

16 **“§ 254. Defense: Overdose.**

17 (a) A person charged with possession of less than 5 grams of a controlled
18 substance, acting in good faith who seeks medical assistance for a drug-related
19 overdose shall be able to raise an affirmative defense to the charge of possession of
20 a controlled substance pursuant to this article, if the evidence for the charge of

1 possession of a controlled substance was obtained as a result of the person seeking
2 medical assistance.

3 (b) The protection in this section from prosecution for possession of
4 a controlled substance shall not apply, regardless of the weight, to any other
5 criminal charges.”

6 **Section 3. Severability.** If any provisions of this Act or the application of
7 any such provision to any person or circumstance should be held invalid by a court
8 of competent jurisdiction, the remainder of this Act or the application of its
9 provisions to persons or circumstances other than those to which it is held invalid
10 shall not be affected thereby.

11 **Section 4. Savings Clause.** This Act and any repealer contained herein
12 shall not be construed as affecting any existing right acquired under contract or
13 acquired under statutes repealed or under any rule, regulation, or order adopted
14 under the statutes. Repealers contained in this Act shall not affect any proceeding
15 instituted under or pursuant to prior law. The enactment of the Act shall not have
16 the effect of terminating, or in any way modifying, any liability, civil or criminal,
17 which shall already be in existence on the date this Act becomes effective.

18 **Section 5. Effective Date.** This Act shall take effect upon its approval by
19 the Governor, or its becoming law without such approval.

Prefiled: 3/3/2023

HOUSE BILL 23- 24

Date: _____

Introduced by: _____

Rep. Malcom J. Omar

Reviewed for Legal Sufficiency by:

James A. Dargatzis
House Legal Counsel