

**4.42. Possession of Opioid Antagonists; receipt into evidence  
[CPL 60.49; CPLR 4519-a]**

**(1) For the purposes of this section, opioid antagonist is defined as a drug approved by the Food and Drug Administration that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opioid in the body and shall be limited to naloxone and other medications approved by the department of health for such purpose.**

**(2) (a) Evidence that a person was in possession of an opioid antagonist may not be admitted at any trial, hearing or other proceeding in a prosecution for any offense under sections 220.03, 220.06, 220.09, 220.16, 220.18, or 220.21 of the Penal Law for the purpose of establishing probable cause for an arrest or proving any person's commission of such offense.**

**(b) Possession of an opioid antagonist may not be received in evidence in any trial, hearing or proceeding pursuant to subdivision one of section two hundred thirty-one and paragraph three of subdivision b of section two hundred thirty-three of the real property law[,] or subdivision five of section seven hundred eleven and subdivision one of section seven hundred fifteen of the real property actions and proceedings law as evidence that the building or premises are being used for illegal trade, manufacture, or other illegal business.**

**Note**

This rule recites verbatim the provisions of CPL 60.49 and CPLR 4519-a that were added to the respective consolidated laws by L 2021, ch 431.

**Subdivision (1)** sets forth verbatim the definition of “opioid antagonist” that applies to both the CPL and the CPLR provisions. (CPL 60.49 [2]; CPLR 4519-a [2].)

**Subdivision (2) (a)** sets forth verbatim the provision in CPL 60.49 (1).

The statute prohibits the admission of evidence of opioid antagonists in prosecutions for all controlled substance *possession* offenses, but does not apply to prosecutions for the sale, manufacture or trafficking of a controlled substance. The statute’s evidentiary bar applies to “probable cause for an arrest” determinations and evidence to prove a person’s commission of a possession crime, but does not address whether that evidence may be used to justify a law enforcement intrusion based on less than probable cause (for example, one based on “reasonable suspicion”) under the framework governing police encounters outlined by *People v De Bour* (40 NY2d 210 [1976]) and its progeny.

**Subdivision (2) (b)** sets forth verbatim the provision in CPLR 4519-a (1). The statutes referred to in that paragraph are: Real Property Law § 231 (1) (lease, when void; liability of landlord where premises are occupied for unlawful purpose); Real Property Law § 233 (b) (3) (eviction from manufactured home parks); Real Property Actions and Proceedings Law § 711 (5) (grounds for proceeding to recover possession of real property where landlord-tenant relationship exists); and Real Property Actions and Proceedings Law § 715 (1) (grounds and procedure to recover possession of real property where use or occupancy is illegal).

The Legislative Memorandum in support of the legislation explained that

“[o]pioid antagonists, such as naloxone, have been in existence since the 1960s and have helped in preventing numerous heroin and opiate overdose-related deaths in emergency situations. Recent legislation and actions by law enforcement and chemical dependence prevention and treatment providers have increased the availability of naloxone to those with addiction to heroin and opiates and to those who care for individuals with substance use issues, including family members and medical professionals. At hearings and roundtable discussions held by the Assembly, chemical dependence prevention and treatment providers, physicians, drug policy experts, and law enforcement all cited the importance of the availability of opioid antagonists in preventing overdose-related deaths. Although medical treatment is required after an opioid antagonist is administered, its use and possession should not be discouraged amongst those who need it most. By prohibiting the possession of opioid antagonists as evidence in court of possession

of controlled substances, this bill would help to encourage people to obtain and possess opioid antagonists and continue to save lives.” (Sponsor’s Mem in Support of 2021 NY Assembly Bill A2354, enacted as L 2021, ch 431.)