

4454--A

2011-2012 Regular Sessions

I N S E N A T E

April 6, 2011

Introduced by Sens. DeFRANCISCO, ADAMS, GOLDEN, KRUEGER, RANZENHOFER --
read twice and ordered printed, and when printed to be committed to
the Committee on Codes -- committee discharged, bill amended, ordered
reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to seeking or
receiving health care for a drug or alcohol overdose

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. It is the intent of the legislature to encourage a witness
2 or victim of a drug or alcohol related overdose to call 911 or seek
3 other emergency assistance in order to save the life of an overdose
4 victim by establishing a state policy of protecting the witnesses or
5 victim from arrest, charge, prosecution, and conviction for drug
6 possession, drug paraphernalia possession, and certain alcohol related
7 offenses. It is not the intent of the legislature to protect individuals
8 from arrest, charge, or prosecution for other offenses, including drug
9 trafficking, or to interfere with law enforcement protocols to secure
10 the scene of an overdose.

11 S 2. The criminal procedure law is amended by adding a new section
12 140.60 to read as follows:

13 S 140.60 WITNESS OR VICTIM OF DRUG OR ALCOHOL OVERDOSE.

14 1. DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE
15 THE FOLLOWING MEANINGS:

16 (A) "DRUG OR ALCOHOL OVERDOSE" OR "OVERDOSE" MEANS AN ACUTE CONDITION
17 INCLUDING, BUT NOT LIMITED TO, PHYSICAL ILLNESS, COMA, MANIA, HYSTERIA
18 OR DEATH, WHICH IS THE RESULT OF CONSUMPTION OR USE OF A CONTROLLED
19 SUBSTANCE OR ALCOHOL AND RELATES TO AN ADVERSE REACTION TO OR THE QUAN-
20 TITY OF THE CONTROLLED SUBSTANCE OR ALCOHOL OR A SUBSTANCE WITH WHICH
21 THE CONTROLLED SUBSTANCE OR ALCOHOL WAS COMBINED; PROVIDED THAT A
22 PATIENT'S CONDITION SHALL BE DEEMED TO BE A DRUG OR ALCOHOL OVERDOSE IF
23 A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOWLEDGE OF MEDICINE AND

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 HEALTH, COULD REASONABLY BELIEVE THAT THE CONDITION IS IN FACT A DRUG OR
2 ALCOHOL OVERDOSE AND (EXCEPT AS TO DEATH) REQUIRES HEALTH CARE.

3 (B) "HEALTH CARE" MEANS THE PROFESSIONAL SERVICES PROVIDED TO A PERSON
4 EXPERIENCING A DRUG OR ALCOHOL OVERDOSE BY A HEALTH CARE PROFESSIONAL
5 LICENSED, REGISTERED OR CERTIFIED UNDER TITLE EIGHT OF THE EDUCATION LAW
6 OR ARTICLE THIRTY OF THE PUBLIC HEALTH LAW WHO, ACTING WITHIN HIS OR HER
7 LAWFUL SCOPE OF PRACTICE, MAY PROVIDE DIAGNOSIS, TREATMENT OR EMERGENCY
8 SERVICES FOR A PERSON EXPERIENCING A DRUG OR ALCOHOL OVERDOSE.

9 2. A PERSON WHO, IN GOOD FAITH, SEEKS HEALTH CARE FOR SOMEONE WHO IS
10 EXPERIENCING A DRUG OR ALCOHOL OVERDOSE OR OTHER LIFE THREATENING
11 MEDICAL EMERGENCY SHALL NOT BE ARRESTED, CHARGED, PROSECUTED FOR OR
12 CONVICTED OF A CONTROLLED SUBSTANCE OFFENSE UNDER ARTICLE TWO HUNDRED
13 TWENTY OR A MARIHUANA OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY-ONE OF
14 THE PENAL LAW, OTHER THAN AN OFFENSE INVOLVING SALE FOR COMPENSATION, OR
15 FOR POSSESSION OF ALCOHOL BY A PERSON UNDER AGE TWENTY-ONE YEARS UNDER
16 SECTION SIXTY-FIVE-C OF THE ALCOHOLIC BEVERAGE CONTROL LAW, OR FOR
17 POSSESSION OF DRUG PARAPHERNALIA UNDER ARTICLE THIRTY-NINE OF THE GENER-
18 AL BUSINESS LAW, WITH RESPECT TO ANY CONTROLLED SUBSTANCE, MARIHUANA,
19 ALCOHOL OR PARAPHERNALIA THAT WAS OBTAINED AS A RESULT OF SUCH SEEKING
20 OR RECEIVING OF HEALTH CARE.

21 3. A PERSON WHO IS EXPERIENCING A DRUG OR ALCOHOL OVERDOSE OR OTHER
22 LIFE THREATENING MEDICAL EMERGENCY AND, IN GOOD FAITH, SEEKS HEALTH CARE
23 FOR HIMSELF OR HERSELF OR IS THE SUBJECT OF SUCH A GOOD FAITH REQUEST
24 FOR HEALTH CARE, SHALL NOT BE ARRESTED, CHARGED, PROSECUTED FOR OR
25 CONVICTED OF A CONTROLLED SUBSTANCE OFFENSE UNDER ARTICLE TWO HUNDRED
26 TWENTY OR A MARIHUANA OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY-ONE OF
27 THE PENAL LAW, OTHER THAN AN OFFENSE INVOLVING SALE FOR COMPENSATION, OR
28 FOR POSSESSION OF ALCOHOL BY A PERSON UNDER AGE TWENTY-ONE YEARS UNDER
29 SECTION SIXTY-FIVE-C OF THE ALCOHOLIC BEVERAGE CONTROL LAW, OR FOR
30 POSSESSION OF DRUG PARAPHERNALIA UNDER ARTICLE THIRTY-NINE OF THE GENER-
31 AL BUSINESS LAW, WITH RESPECT TO ANY SUBSTANCE, MARIHUANA, ALCOHOL OR
32 PARAPHERNALIA THAT WAS OBTAINED AS A RESULT OF SUCH SEEKING OR RECEIVING
33 OF HEALTH CARE.

34 S 3. Section 390.40 of the criminal procedure law is amended by adding
35 a new subdivision 3 to read as follows:

36 3. THE ACT OF SEEKING HEALTH CARE FOR SOMEONE WHO IS EXPERIENCING A
37 DRUG OR ALCOHOL OVERDOSE OR OTHER LIFE THREATENING MEDICAL EMERGENCY
38 SHALL BE CONSIDERED BY THE COURT WHEN PRESENTED AS A MITIGATING FACTOR
39 IN ANY CRIMINAL PROSECUTION FOR A CONTROLLED SUBSTANCE, MARIHUANA, DRUG
40 PARAPHERNALIA, OR ALCOHOL RELATED OFFENSE.

41 S 4. This act shall take effect immediately.