

2063--A

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 13, 2011

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Introduced by M. of A. GOTTFRIED, DINOWITZ, CAHILL, GALEF, JAFFEE, BROOK-KRASNY, DenDEKKER, ORTIZ, SPANO, P. RIVERA -- Multi-Sponsored by -- M. of A. GIGLIO, HOOPER, JACOBS, V. LOPEZ, McDONOUGH, McENENY, PAULIN, PERRY, PHEFFER, RABBITT, SALADINO, SCARBOROUGH, TITONE, WEISENBERG -- read once and referred 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 ASSEMBLY, 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

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

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1 THE CONTROLLED SUBSTANCE OR ALCOHOL WAS COMBINED; PROVIDED THAT A  
2 PATIENT'S CONDITION SHALL BE DEEMED TO BE A DRUG OR ALCOHOL OVERDOSE IF  
3 A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOWLEDGE OF MEDICINE AND  
4 HEALTH, COULD REASONABLY BELIEVE THAT THE CONDITION IS IN FACT A DRUG OR  
5 ALCOHOL OVERDOSE AND (EXCEPT AS TO DEATH) REQUIRES HEALTH CARE.

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

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

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

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

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

44 S 4. This act shall take effect immediately.