

4454

2011-2012 Regular Sessions

I N S E N A T E

April 6, 2011

Introduced by Sens. DeFRANCISCO, GOLDEN, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to evidence obtained as a result of seeking or receiving health care for a drug overdose

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

1 Section 1. The criminal procedure law is amended by adding a new
2 section 60.78 to read as follows:
3 S 60.78 RULES OF EVIDENCE; HEALTH CARE FOR DRUG OVERDOSE; LIMITED USE OF
4 EVIDENCE.
5 1. DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE
6 THE FOLLOWING MEANINGS:
7 (A) "DRUG OVERDOSE" OR "OVERDOSE" SHALL MEAN AN ACUTE CONDITION
8 INCLUDING, BUT NOT LIMITED TO, PHYSICAL ILLNESS, COMA, MANIA, HYSTERIA
9 OR DEATH, WHICH IS THE RESULT OF CONSUMPTION OR USE OF A CONTROLLED
10 SUBSTANCE AND RELATES TO AN ADVERSE REACTION TO OR THE QUANTITY OF THE
11 CONTROLLED SUBSTANCE OR A SUBSTANCE WITH WHICH THE CONTROLLED SUBSTANCE
12 WAS COMBINED; PROVIDED THAT A PATIENT'S CONDITION SHALL BE DEEMED TO BE
13 A DRUG OVERDOSE IF A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOWLEDGE
14 OF MEDICINE AND HEALTH, COULD REASONABLY BELIEVE THAT THE CONDITION IS
15 IN FACT A DRUG OVERDOSE AND (EXCEPT AS TO DEATH) REQUIRES HEALTH CARE.
16 (B) "HEALTH CARE" MEANS THE PROFESSIONAL SERVICES PROVIDED TO A PERSON
17 EXPERIENCING A DRUG OVERDOSE BY A HEALTH CARE PROFESSIONAL LICENSED,
18 REGISTERED OR CERTIFIED UNDER TITLE EIGHT OF THE EDUCATION LAW OR ARTI-
19 CLE THIRTY OF THE PUBLIC HEALTH LAW WHO, ACTING WITHIN HIS OR HER LAWFUL
20 SCOPE OF PRACTICE, MAY PROVIDE DIAGNOSIS, TREATMENT OR EMERGENCY
21 SERVICES FOR A PERSON EXPERIENCING A DRUG OVERDOSE.
22 2. WHERE ANY PERSON, IN GOOD FAITH, SEEKS HEALTH CARE FOR SOMEONE
23 EXPERIENCING A DRUG OVERDOSE, ANY EVIDENCE RELATING TO POSSESSION OF A

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

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1 CONTROLLED SUBSTANCE OR POSSESSION OF MARIHUANA BY SUCH PERSON THAT WAS
2 OBTAINED AS A RESULT OF THE SEEKING OR RECEIVING OF HEALTH CARE SHALL
3 NOT BE ADMISSIBLE AGAINST SUCH PERSON IN ANY PROSECUTION FOR ANY DEGREE
4 OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE UNDER ARTICLE TWO
5 HUNDRED TWENTY OF THE PENAL LAW OR UNLAWFUL OR CRIMINAL POSSESSION OF
6 MARIHUANA UNDER ARTICLE TWO HUNDRED TWENTY-ONE OF THE PENAL LAW.

7 3. WHERE ANY PERSON EXPERIENCES A DRUG OVERDOSE AND SEEKS OR RECEIVES
8 HEALTH CARE, ANY EVIDENCE RELATING TO POSSESSION OF A CONTROLLED
9 SUBSTANCE OR POSSESSION OF MARIHUANA BY SUCH PERSON THAT WAS OBTAINED AS
10 A RESULT OF THE SEEKING OR RECEIVING OF HEALTH CARE SHALL NOT BE ADMIS-
11 SIBLE AGAINST SUCH PERSON IN ANY PROSECUTION FOR ANY DEGREE OF CRIMINAL
12 POSSESSION OF A CONTROLLED SUBSTANCE UNDER ARTICLE TWO HUNDRED TWENTY OF
13 THE PENAL LAW OR UNLAWFUL OR CRIMINAL POSSESSION OF MARIHUANA UNDER
14 ARTICLE TWO HUNDRED TWENTY-ONE OF THE PENAL LAW.

15 S 2. This act shall take effect immediately.