

4454--B

2011-2012 Regular Sessions

I N S E N A T E

April 6, 2011

Introduced by Sens. DeFRANCISCO, ADAMS, BONACIC, GOLDEN, HANNON, KLEIN, KRUEGER, LARKIN, MONTGOMERY, 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the criminal procedure law, in relation to prosecution of a person who, in good faith, seeks health care for someone who is experiencing a drug or alcohol overdose or other life threatening medical emergency

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

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

11 S 2. The penal law is amended by adding a new section 220.78 to read
12 as follows:

13 S 220.78 WITNESS OR VICTIM OF DRUG OR ALCOHOL OVERDOSE.

14 1. A PERSON WHO, IN GOOD FAITH, SEEKS HEALTH CARE FOR SOMEONE WHO IS
15 EXPERIENCING A DRUG OR ALCOHOL OVERDOSE OR OTHER LIFE THREATENING
16 MEDICAL EMERGENCY SHALL NOT BE CHARGED OR PROSECUTED FOR A CONTROLLED
17 SUBSTANCE OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY OR A MARIHUANA
18 OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY-ONE OF THIS TITLE, OTHER THAN
19 AN OFFENSE INVOLVING SALE FOR CONSIDERATION OR OTHER BENEFIT OR GAIN, OR

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

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1 CHARGED OR PROSECUTED FOR POSSESSION OF ALCOHOL BY A PERSON UNDER AGE
2 TWENTY-ONE YEARS UNDER SECTION SIXTY-FIVE-C OF THE ALCOHOLIC BEVERAGE
3 CONTROL LAW, OR FOR POSSESSION OF DRUG PARAPHERNALIA UNDER ARTICLE THIR-
4 TY-NINE OF THE GENERAL BUSINESS LAW, WITH RESPECT TO ANY CONTROLLED
5 SUBSTANCE, MARIHUANA, ALCOHOL OR PARAPHERNALIA THAT WAS OBTAINED AS A
6 RESULT OF SUCH SEEKING OR RECEIVING OF HEALTH CARE.

7 2. A PERSON WHO IS EXPERIENCING A DRUG OR ALCOHOL OVERDOSE OR OTHER
8 LIFE THREATENING MEDICAL EMERGENCY AND, IN GOOD FAITH, SEEKS HEALTH CARE
9 FOR HIMSELF OR HERSELF OR IS THE SUBJECT OF SUCH A GOOD FAITH REQUEST
10 FOR HEALTH CARE, SHALL NOT BE CHARGED OR PROSECUTED FOR A CONTROLLED
11 SUBSTANCE OFFENSE UNDER THIS ARTICLE OR A MARIHUANA OFFENSE UNDER ARTI-
12 CLE TWO HUNDRED TWENTY-ONE OF THIS TITLE, OTHER THAN AN OFFENSE INVOLV-
13 ING SALE FOR CONSIDERATION OR OTHER BENEFIT OR GAIN, OR CHARGED OR PROS-
14 ECUTED FOR POSSESSION OF ALCOHOL BY A PERSON UNDER AGE TWENTY-ONE YEARS
15 UNDER SECTION SIXTY-FIVE-C OF THE ALCOHOLIC BEVERAGE CONTROL LAW, OR FOR
16 POSSESSION OF DRUG PARAPHERNALIA UNDER ARTICLE THIRTY-NINE OF THE GENER-
17 AL BUSINESS LAW, WITH RESPECT TO ANY SUBSTANCE, MARIHUANA, ALCOHOL OR
18 PARAPHERNALIA THAT WAS OBTAINED AS A RESULT OF SUCH SEEKING OR RECEIVING
19 OF HEALTH CARE.

20 3. DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE
21 THE FOLLOWING MEANINGS:

22 (A) "DRUG OR ALCOHOL OVERDOSE" OR "OVERDOSE" MEANS AN ACUTE CONDITION
23 INCLUDING, BUT NOT LIMITED TO, PHYSICAL ILLNESS, COMA, MANIA, HYSTERIA
24 OR DEATH, WHICH IS THE RESULT OF CONSUMPTION OR USE OF A CONTROLLED
25 SUBSTANCE OR ALCOHOL AND RELATES TO AN ADVERSE REACTION TO OR THE QUAN-
26 TITY OF THE CONTROLLED SUBSTANCE OR ALCOHOL OR A SUBSTANCE WITH WHICH
27 THE CONTROLLED SUBSTANCE OR ALCOHOL WAS COMBINED; PROVIDED THAT A
28 PATIENT'S CONDITION SHALL BE DEEMED TO BE A DRUG OR ALCOHOL OVERDOSE IF
29 A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOWLEDGE OF MEDICINE AND
30 HEALTH, COULD REASONABLY BELIEVE THAT THE CONDITION IS IN FACT A DRUG OR
31 ALCOHOL OVERDOSE AND (EXCEPT AS TO DEATH) REQUIRES HEALTH CARE.

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

38 4. IT SHALL BE AN AFFIRMATIVE DEFENSE TO A CRIMINAL SALE CONTROLLED
39 SUBSTANCE OFFENSE UNDER THIS ARTICLE OR A CRIMINAL SALE OF MARIHUANA
40 OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY-ONE OF THIS TITLE, NOT COVERED
41 BY SUBDIVISION ONE OR TWO OF THIS SECTION, WITH RESPECT TO ANY
42 CONTROLLED SUBSTANCE OR MARIHUANA WHICH WAS OBTAINED AS A RESULT OF SUCH
43 SEEKING OR RECEIVING OF HEALTH CARE, THAT:

44 (A) THE DEFENDANT, IN GOOD FAITH, SEEKS HEALTH CARE FOR SOMEONE OR FOR
45 HIM OR HERSELF WHO IS EXPERIENCING A DRUG OR ALCOHOL OVERDOSE OR OTHER
46 LIFE THREATENING MEDICAL EMERGENCY; AND

47 (B) THE DEFENDANT HAS NO PRIOR CONVICTION FOR THE COMMISSION OR
48 ATTEMPTED COMMISSION OF A CLASS A-I, A-II OR B FELONY UNDER THIS ARTI-
49 CLE.

50 5. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO BAR THE ADMISSIBILITY
51 OF ANY EVIDENCE IN CONNECTION WITH THE INVESTIGATION AND PROSECUTION OF
52 A CRIME WITH REGARD TO ANOTHER DEFENDANT WHO DOES NOT INDEPENDENTLY
53 QUALIFY FOR THE BAR TO PROSECUTION OR FOR THE AFFIRMATIVE DEFENSE; NOR
54 WITH REGARD TO OTHER CRIMES COMMITTED BY A PERSON WHO OTHERWISE QUALI-
55 FIES UNDER THIS SECTION; NOR SHALL ANYTHING IN THIS SECTION BE CONSTRUED
56 TO BAR ANY SEIZURE PURSUANT TO LAW, INCLUDING BUT NOT LIMITED TO PURSU-

1 ANT TO SECTION THIRTY-THREE HUNDRED EIGHTY-SEVEN OF THE PUBLIC HEALTH
2 LAW.

3 6. THE BAR TO PROSECUTION DESCRIBED IN SUBDIVISIONS ONE AND TWO OF
4 THIS SECTION SHALL NOT APPLY TO THE PROSECUTION OF A CLASS A-I FELONY
5 UNDER THIS ARTICLE, AND THE AFFIRMATIVE DEFENSE DESCRIBED IN SUBDIVISION
6 FOUR OF THIS SECTION SHALL NOT APPLY TO THE PROSECUTION OF A CLASS A-I
7 OR A-II FELONY UNDER THIS ARTICLE.

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

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

15 S 4. The opening paragraph of section 220.03 of the penal law, as
16 amended by chapter 284 of the laws of 2010, is amended to read as
17 follows:

18 A person is guilty of criminal possession of a controlled substance in
19 the seventh degree when he or she knowingly and unlawfully possesses a
20 controlled substance; provided, however, that it shall not be a
21 violation of this section when a person possesses a residual amount of a
22 controlled substance and that residual amount is in or on a hypodermic
23 syringe or hypodermic needle obtained and possessed pursuant to section
24 thirty-three hundred eighty-one of the public health law; NOR SHALL IT
25 BE A VIOLATION OF THIS SECTION WHEN A PERSON'S UNLAWFUL POSSESSION OF A
26 CONTROLLED SUBSTANCE IS DISCOVERED AS A RESULT OF SEEKING IMMEDIATE
27 HEALTH CARE AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION
28 220.78 OF THE PENAL LAW, FOR EITHER ANOTHER PERSON OR HIM OR HERSELF
29 BECAUSE SUCH PERSON IS EXPERIENCING A DRUG OR ALCOHOL OVERDOSE OR OTHER
30 LIFE THREATENING MEDICAL EMERGENCY AS DEFINED IN PARAGRAPH (A) OF SUBDI-
31 VISION THREE OF SECTION 220.78 OF THE PENAL LAW.

32 S 5. This act shall take effect on the sixtieth day after it shall
33 have become a law.