

S T A T E O F N E W Y O R K

5191--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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
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

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

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1 A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOWLEDGE OF MEDICINE AND
2 HEALTH, COULD REASONABLY BELIEVE THAT THE CONDITION IS IN FACT A DRUG OR
3 ALCOHOL OVERDOSE AND (EXCEPT AS TO DEATH) REQUIRES HEALTH CARE.

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

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

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

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

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

42 S 4. This act shall take effect immediately.