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

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I N A S S E M B L Y

January 13, 2011

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

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:

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

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

S 140.60 WITNESS OR VICTIM OF DRUG OR ALCOHOL OVERDOSE.

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

(A) "DRUG OR ALCOHOL OVERDOSE" OR "OVERDOSE" MEANS AN ACUTE CONDITION INCLUDING, BUT NOT LIMITED TO, PHYSICAL ILLNESS, COMA, MANIA, HYSTERIA OR DEATH, WHICH IS THE RESULT OF CONSUMPTION OR USE OF A CONTROLLED SUBSTANCE OR ALCOHOL AND RELATES TO AN ADVERSE REACTION TO OR THE QUANTITY OF THE CONTROLLED SUBSTANCE OR ALCOHOL OR A SUBSTANCE WITH WHICH THE CONTROLLED SUBSTANCE OR ALCOHOL WAS COMBINED; PROVIDED THAT A 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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A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOWLEDGE OF MEDICINE AND HEALTH, COULD REASONABLY BELIEVE THAT THE CONDITION IS IN FACT A DRUG OR ALCOHOL OVERDOSE AND (EXCEPT AS TO DEATH) REQUIRES HEALTH CARE.

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

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

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

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

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

S 4. This act shall take effect immediately.