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, P. RIVERA, LAVINE -- Multi-Sponsored by -- M. of A. GIGLIO, HOOPER, JACOBS, V. LOPEZ, McDONOUGH, McENENY, PAULIN, PERRY, 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 -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

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:

Section 1. Legislative intent. 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 penal law is amended by adding a new section 220.78 to read as follows:

S 220.78 WITNESS OR VICTIM OF DRUG OR ALCOHOL OVERDOSE.

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

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1. 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 SHALL NOT BE CHARGED OR PROSECUTED FOR A CONTROLLED SUBSTANCE OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY OR A MARIHUANA OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY-ONE OF THIS TITLE, OTHER THAN AN OFFENSE INVOLVING SALE FOR CONSIDERATION OR OTHER BENEFIT OR GAIN, OR CHARGED OR PROSECUTED 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 CONTROLLED SUBSTANCE, MARIHUANA, ALCOHOL OR PARAPHERNALIA THAT WAS OBTAINED AS A RESULT OF SUCH SEEKING OR RECEIVING OF HEALTH CARE.

2. 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 CHARGED OR PROSECUTED FOR A CONTROLLED SUBSTANCE OFFENSE UNDER THIS ARTICLE OR A MARIHUANA OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY-ONE OF THIS TITLE, OTHER THAN AN OFFENSE INVOLVING SALE FOR CONSIDERATION OR OTHER BENEFIT OR GAIN, OR CHARGED OR PROSECUTED 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 OF HEALTH CARE.

3. 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 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.

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

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

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

5. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO BAR THE ADMISSIBILITY OF ANY EVIDENCE IN CONNECTION WITH THE INVESTIGATION AND PROSECUTION OF A CRIME WITH REGARD TO ANOTHER DEFENDANT WHO DOES NOT INDEPENDENTLY QUALIFY FOR THE BAR TO PROSECUTION OR FOR THE AFFIRMATIVE DEFENSE; NOR WITH REGARD TO OTHER CRIMES COMMITTED BY A PERSON WHO OTHERWISE QUALIFIES UNDER THIS SECTION; NOR SHALL ANYTHING IN THIS SECTION BE CONSTRUED TO BAR ANY SEIZURE PURSUANT TO LAW, INCLUDING BUT NOT LIMITED TO PURSUANT TO SECTION THIRTY-THREE HUNDRED EIGHTY-SEVEN OF THE PUBLIC HEALTH LAW.

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

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 MEDICAL 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. The opening paragraph of section 220.03 of the penal law, as amended by chapter 284 of the laws of 2010, is amended to read as follows:

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

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