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I N A S S E M B L Y

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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:

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.

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

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1 1. A PERSON WHO, IN GOOD FAITH, SEEKS HEALTH CARE FOR SOMEONE WHO IS
2 EXPERIENCING A DRUG OR ALCOHOL OVERDOSE OR OTHER LIFE THREATENING
3 MEDICAL EMERGENCY SHALL NOT BE CHARGED OR PROSECUTED FOR A CONTROLLED
4 SUBSTANCE OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY OR A MARIHUANA
5 OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY-ONE OF THIS TITLE, OTHER THAN
6 AN OFFENSE INVOLVING SALE FOR CONSIDERATION OR OTHER BENEFIT OR GAIN, OR
7 CHARGED OR PROSECUTED FOR POSSESSION OF ALCOHOL BY A PERSON UNDER AGE
8 TWENTY-ONE YEARS UNDER SECTION SIXTY-FIVE-C OF THE ALCOHOLIC BEVERAGE
9 CONTROL LAW, OR FOR POSSESSION OF DRUG PARAPHERNALIA UNDER ARTICLE THIR-
10 TY-NINE OF THE GENERAL BUSINESS LAW, WITH RESPECT TO ANY CONTROLLED
11 SUBSTANCE, MARIHUANA, ALCOHOL OR PARAPHERNALIA THAT WAS OBTAINED AS A
12 RESULT OF SUCH SEEKING OR RECEIVING OF HEALTH CARE.

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

26 3. DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE
27 THE FOLLOWING MEANINGS:

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

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

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

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

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

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

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

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

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

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

25 A person is guilty of criminal possession of a controlled substance in
26 the seventh degree when he or she knowingly and unlawfully possesses a
27 controlled substance; provided, however, that it shall not be a
28 violation of this section when a person possesses a residual amount of a
29 controlled substance and that residual amount is in or on a hypodermic
30 syringe or hypodermic needle obtained and possessed pursuant to section
31 thirty-three hundred eighty-one of the public health law; NOR SHALL IT
32 BE A VIOLATION OF THIS SECTION WHEN A PERSON'S UNLAWFUL POSSESSION OF A
33 CONTROLLED SUBSTANCE IS DISCOVERED AS A RESULT OF SEEKING IMMEDIATE
34 HEALTH CARE AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION
35 220.78 OF THE PENAL LAW, FOR EITHER ANOTHER PERSON OR HIM OR HERSELF
36 BECAUSE SUCH PERSON IS EXPERIENCING A DRUG OR ALCOHOL OVERDOSE OR OTHER
37 LIFE THREATENING MEDICAL EMERGENCY AS DEFINED IN PARAGRAPH (A) OF SUBDI-
38 VISION THREE OF SECTION 220.78 OF THE PENAL LAW.

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