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

5703

2011-2012 Regular Sessions

I N S E N A T E

June 10, 2011

Introduced by Sen. HANNON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and 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 prosecution and conviction for drug or drug paraphernalia possession, and certain alcohol related offenses. It is not the intent of the legislature to protect individuals 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 AFFIRMATIVE DEFENSE OF A 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 A PRUDENT LAYPERSON, POSSESSING AN AVERAGE KNOWLEDGE OF MEDICINE AND

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

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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. IT SHALL BE AN AFFIRMATIVE DEFENSE TO A CONTROLLED SUBSTANCE OFFENSE UNDER ARTICLE TWO HUNDRED TWENTY OR A MARIHUANA OFFENSE 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 CONTROLLED SUBSTANCE, MARIHUANA, ALCOHOL OR PARAPHERNALIA THAT WAS OBTAINED AS A RESULT OF SUCH SEEKING OR RECEIVING OF HEALTH CARE IF:

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

(B) THE DEFENDANT HAS NO PRIOR CONVICTION FOR THE COMMISSION OR ATTEMPTED COMMISSION OF A CLASS A-I, A-II OR B FELONY UNDER ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW; AND

(C) THE CONTROLLED SUBSTANCE OR MARIHUANA WERE NOT POSSESSED OR PROVIDED IN THE CONTEXT OF A BUSINESS TRANSACTION.

3. THIS AFFIRMATIVE DEFENSE SHALL NOT BE CONSTRUED TO BAR THE ADMISSIBILITY OF ANY EVIDENCE OBTAINED IN CONNECTION WITH THE INVESTIGATION AND PROSECUTION OF THE CRIME WITH REGARD TO ANOTHER DEFENDANT WHO DOES NOT QUALIFY FOR THE AFFIRMATIVE DEFENSE.

4. THIS AFFIRMATIVE DEFENSE SHALL NOT APPLY TO THE PROSECUTION OF A CLASS A-I OR A-II FELONY UNDER ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW.

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 AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION 1 OF SECTION 220.78 OF THE PENAL LAW FOR SOMEONE WHO IS EXPERIENCING A DRUG OR ALCOHOL OVERDOSE OR OTHER LIFE THREATENING MEDICAL EMERGENCY AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION 1 OF SECTION 220.78 OF THE PENAL LAW MAY BE CONSIDERED BY THE COURT 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 1 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 ONE OF SECTION 220.78 OF THE PENAL LAW.

S 5. This act shall take effect immediately.