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Committee Assignment: Assembly Freedom 2

Bill #: AF-11

Sponsors: Rian Bisson, Christopher Cardillo, Patrick Fries, Joseph Ricottone

An Act To:

Amend sections one and two of the New York Consolidated Laws, Penal Law - PEN § 220.78 to protect the parties of prostitution from criminal charges if one party should witness a life-threatening situation and contact emergency services.

The People of the State of New York, represented in the Senate and

Assembly do enact as follows:

Purpose:

This bill will allow participants in prostitution to contact emergency services without risk of criminal charges in order to help prevent violence, rape, and other crimes that target prostitutes.

Summary of Provisions

Section 1: Definitions

Drug/Alcohol Overdose or Overdose(fully defined in section 3): a condition

resulting from the consumption of alcohol or a controlled substance that counts as an overdose according to a qualified professional and requires healthcare services

Healthcare(fully defined in section 3): services provided to a person experiencing an overdose by a health care professional who can make qualified decisions and actions

Prostitution: the commission by a person of any natural or unnatural sexual act, deviate sexual intercourse, or sexual contact for monetary consideration or other thing of value.

Section 2: Provisions

1. A person who, in good faith, seeks health care or emergency services for someone who is experiencing a drug or alcohol overdose, or is victim as a direct result of prostitution to a violent crime, sexual assault, abuse, or other life threatening medical emergency shall not be charged or prosecuted for prostitution, promoting prostitution, patronizing a person for prostitution, 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, is victim as a direct result of prostitution to a violent crime, sexual assault, abuse, or other life threatening medical emergency and, in good faith, seeks health care or emergency services for himself or herself or is the subject of such a good faith request for health care, shall not be charged or prosecuted for prostitution, 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 o

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

Justification

Abuse, rape, trafficking, and domestic violence have become very vocalized and imminent problems in the United States recently. A large population of victims of these types of crimes are prostitutes. All prostitutes can be victims of these crimes, but women who are trafficked and abused in greater quantity have a higher risk, and because of an inability to call 911 in an emergency without getting charged with prostitution, these victims are silent. By protecting the prostitute from prosecution in the state of an emergency, the quantity of silent victims would decrease. Prostitutes live in a dangerous environment they are more than likely unable to alter. By granting them as well as possibly patrons or organizers of prostitution immunity, this environment would become less dangerous without encouraging the industry to thrive. This amended bill will improve and possibly save the lives of many people in need.

Fiscal Implications

There are no fiscal implications for this bill.

Effective Date

This bill would be effective on passage.

