

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 578

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 21, 2012

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 578.

This bill, designated the “Good Samaritan Emergency Response Act,” would protect a person from arrest, charge, prosecution or conviction if that person in good faith sought medical assistance for someone experiencing a drug overdose, and the evidence for the offense was obtained as a result of the person’s efforts to obtain the medical assistance. The same prosecutorial immunity would also apply for a victim of a drug overdose who sought medical assistance or was the subject of a good faith request for such assistance.

As originally introduced, the bill protected the witness and victim of a drug overdose from arrest, charge, prosecution, or conviction for: (1) obtaining, possessing, using, or being under the influence of a controlled dangerous substance (N.J.S.A.2C:35-10); (2) distributing or possessing with intent to distribute an imitation controlled dangerous substance (N.J.S.A.2C:35-11); (3) using or possessing with the intent to use drug paraphernalia or possessing a hypodermic syringe or needle (N.J.S.A.2C:36-2 and N.J.S.A.2C:36-6); and (4) sharing or possessing with the intent to share a controlled dangerous substance, drug paraphernalia, or a hypodermic syringe or needle.

The committee amendments expand the list of offenses encompassed by the bill as follows:

- (1) failing to make lawful disposition of a controlled dangerous substance or controlled substance analog pursuant to subsection a., b., or c. of N.J.S.2C:35-10;
- (2) inhaling the fumes of or possessing any toxic chemical pursuant to subsection b. of section 7 of P.L.1999, c.90 (C.2C:35-10.4);
- (3) using, obtaining, attempting to obtain, or possessing prescription drugs pursuant to subsection b., d., or e. of section 8 of P.L.1999, c.90 (C.2C:35-10.5);
- (4) acquiring or obtaining possession of a controlled dangerous substance or controlled substance analog by fraud pursuant to N.J.S.2C:35-13; and

- (5) unlawfully possessing a controlled dangerous substance that was lawfully prescribed or dispensed pursuant to N.J.S.2C:35-24.

The committee amendments would also eliminate the following offenses: (1) distributing or possessing with intent to distribute an imitation controlled dangerous substance pursuant to subsection a. of N.J.S.2C:35-11; and (2) sharing or possessing with the intent to share a controlled dangerous substance, drug paraphernalia, or a hypodermic syringe or needle. The amendments remove subsection a. of N.J.S.2C:35-11 because this statute pertains to distribution and possession with intent to distribute, but not to possession, and the offenses enumerated in the bill concern possession only. The amendments eliminate the reference to “sharing” and “possessing with intent to share” as these terms are not set out in the Criminal Code. The amendments also amend the definitional section of the bill to eliminate the terms “share” and “sharing.”

In addition to immunity from arrest, charge, prosecution or conviction for the enumerated drug offenses, the bill also provides immunity for the victim or witness for: (1) violating a restraining order issued pursuant to the “Drug Offender Restraining Order Act of 1999,” P.L.1999, c.334 (C.2C:35-5.4 et seq.); (2) violating a condition of parole as provided in sections 16 through 21 of P.L.1979, c.441 (C.30:4-123.60 through 30:4-123.65); (3) violating the conditions of probation; and (4) forfeiting property pursuant to the provisions of N.J.S.2C:64-1, except that prima facie contraband shall still be subject to forfeiture.

The bill provides for an affirmative defense to prosecution for a violation of N.J.S.2C:35-9 (strict liability for drug-induced deaths) if the defendant proves that the evidence obtained for the prosecution occurred as a result of seeking or receiving medical assistance for a drug overdose.

In addition, the bill provides that for any other offense defined in chapter 35 (controlled dangerous substances) or chapter 36 (drug paraphernalia) of Title 2C of the New Jersey Statutes, the act of seeking medical assistance for someone experiencing a drug overdose would be considered by the court as a mitigating factor in a criminal prosecution. The amendments clarify that the mitigating factor would apply only for offenses where criminal immunity is not provided under the bill.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

- (1) Clarifies language in findings and declarations.

(2) Eliminates the definition and references to the term “share” and “sharing.”

(3) Amend sections 4 and 5 to expand the list of offenses concerning the overdose witness and victim as follows: (a) failing to make lawful disposition of a controlled dangerous substance or controlled substance analog pursuant to subsection a., b., or c. of N.J.S.2C:35-10; (b) Inhaling the fumes of or possessing any toxic chemical pursuant to subsection b. of section 7 of P.L.1999, c.90 (C.2C:35-10.4); (c) Using, obtaining, attempting to obtain, or possessing prescription drugs pursuant to subsection b., d., or e. of section 8 of P.L.1999, c.90 (C.2C:35-10.5); (d)Acquiring or obtaining possession of a controlled dangerous substance or controlled substance analog by fraud pursuant to N.J.S.2C:35-13; and (e)Possessing, unlawfully, a controlled dangerous substance that was lawfully prescribed or dispensed pursuant to N.J.S.2C:35-24.

(4) Eliminate the following offenses in sections 4 and 5: (a) distributing or possessing with intent to distribute an imitation controlled dangerous substance pursuant to subsection a. of N.J.S.2C:35-11; and (b) sharing or possessing with the intent to share a controlled dangerous substance, drug paraphernalia, or a hypodermic syringe or needle.

(5) Update the bill’s title and synopsis to more accurately reflect the scope and intent of the bill as reported by the committee.