

CHAPTER 225

CRIMINAL LAW AND PROCEDURE

SENATE BILL 12-020

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also REPRESENTATIVE(S) Summers, Court, Fields, Fischer, Hullinghorst, Kerr A., Labuda, Lee, Singer, Soper, Todd, Vigil, Acree, Duran, Hamner, Kagan, Kerr J., Miklosi, Schafer S., Tyler, Williams A., Wilson, Young.

AN ACT**CONCERNING IMMUNITY FROM CERTAIN CRIMINAL OFFENSES WHEN A PERSON REPORTS IN GOOD FAITH AN EMERGENCY DRUG OR ALCOHOL OVERDOSE EVENT.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby declares that Colorado has a strong interest in preventing deaths that result from the use of drugs and alcohol.

(2) The general assembly further declares that:

(a) The creation of a safe haven provision within the state's criminal statutes for a person who reports in good faith an emergency drug or alcohol overdose event serves the state's interest in preventing further deaths from the use of drugs and alcohol; and

(b) By creating such a safe haven provision, the general assembly intends to encourage:

(I) Persons who otherwise would be reluctant to report such an event due to a fear of criminal prosecution to do so without delay; and

(II) Persons who abuse alcohol or drugs to seek treatment and assistance as necessary to obtain a safer, healthier lifestyle.

SECTION 2. In Colorado Revised Statutes, **add** 18-1-711 as follows:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

18-1-711. Immunity for persons who suffer or report an emergency drug or alcohol overdose event - definitions. (1) A PERSON SHALL BE IMMUNE FROM CRIMINAL PROSECUTION FOR AN OFFENSE DESCRIBED IN SUBSECTION (3) OF THIS SECTION IF:

(a) THE PERSON REPORTS IN GOOD FAITH AN EMERGENCY DRUG OR ALCOHOL OVERDOSE EVENT TO A LAW ENFORCEMENT OFFICER, TO THE 911 SYSTEM, OR TO A MEDICAL PROVIDER;

(b) THE PERSON REMAINS AT THE SCENE OF THE EVENT UNTIL A LAW ENFORCEMENT OFFICER OR AN EMERGENCY MEDICAL RESPONDER ARRIVES, OR THE PERSON REMAINS AT THE FACILITIES OF THE MEDICAL PROVIDER UNTIL A LAW ENFORCEMENT OFFICER ARRIVES;

(c) THE PERSON IDENTIFIES HIMSELF OR HERSELF TO, AND COOPERATES WITH, THE LAW ENFORCEMENT OFFICER, EMERGENCY MEDICAL RESPONDER, OR MEDICAL PROVIDER; AND

(d) THE OFFENSE ARISES FROM THE SAME COURSE OF EVENTS FROM WHICH THE EMERGENCY DRUG OR ALCOHOL OVERDOSE EVENT AROSE.

(2) THE IMMUNITY DESCRIBED IN SUBSECTION (1) OF THIS SECTION ALSO EXTENDS TO THE PERSON WHO SUFFERED THE EMERGENCY DRUG OR ALCOHOL OVERDOSE EVENT IF ALL OF THE CONDITIONS OF SUBSECTION (1) ARE SATISFIED.

(3) THE IMMUNITY DESCRIBED IN SUBSECTION (1) OF THIS SECTION SHALL APPLY TO THE FOLLOWING CRIMINAL OFFENSES:

(a) UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, AS DESCRIBED IN SECTION 18-18-403.5 (2) (a) (I), (2) (b) (I), OR (2) (c);

(b) UNLAWFUL USE OF A CONTROLLED SUBSTANCE, AS DESCRIBED IN SECTION 18-18-404;

(c) UNLAWFUL POSSESSION OF TWO OUNCES OR LESS OF MARIJUANA, AS DESCRIBED IN SECTION 18-18-406 (1); OR MORE THAN TWO OUNCES OF MARIJUANA BUT NO MORE THAN SIX OUNCES OF MARIJUANA, AS DESCRIBED IN SECTION 18-18-406 (4) (a); OR MORE THAN SIX OUNCES OF MARIJUANA BUT NO MORE THAN TWELVE OUNCES OF MARIJUANA OR THREE OUNCES OR LESS OF MARIJUANA CONCENTRATE AS DESCRIBED IN SECTION 18-18-406 (4) (b);

(d) OPEN AND PUBLIC DISPLAY, CONSUMPTION, OR USE OF LESS THAN TWO OUNCES OF MARIJUANA AS DESCRIBED IN SECTION 18-18-406 (3) (a) (I);

(e) TRANSFERRING OR DISPENSING TWO OUNCES OR LESS OF MARIJUANA FROM ONE PERSON TO ANOTHER FOR NO CONSIDERATION, AS DESCRIBED IN SECTION 18-18-406 (5);

(f) USE OR POSSESSION OF SYNTHETIC CANNABINOIDS OR SALVIA DIVINORUM, AS DESCRIBED IN SECTION 18-18-406.1;

(g) POSSESSION OF DRUG PARAPHERNALIA, AS DESCRIBED IN SECTION 18-18-428;
AND

(h) ILLEGAL POSSESSION OR CONSUMPTION OF ETHYL ALCOHOL BY AN UNDERAGE PERSON, AS DESCRIBED IN SECTION 18-13-122.

(4) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO PROHIBIT THE PROSECUTION OF A PERSON FOR AN OFFENSE OTHER THAN AN OFFENSE LISTED IN SUBSECTION (3) OF THIS SECTION OR TO LIMIT THE ABILITY OF A DISTRICT ATTORNEY OR A LAW ENFORCEMENT OFFICER TO OBTAIN OR USE EVIDENCE OBTAINED FROM A REPORT, RECORDING, OR ANY OTHER STATEMENT PROVIDED PURSUANT TO SUBSECTION (1) OF THIS SECTION TO INVESTIGATE AND PROSECUTE AN OFFENSE OTHER THAN AN OFFENSE LISTED IN SUBSECTION (3) OF THIS SECTION.

(5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "EMERGENCY DRUG OR ALCOHOL OVERDOSE EVENT" MEANS AN ACUTE CONDITION INCLUDING, BUT NOT LIMITED TO, PHYSICAL ILLNESS, COMA, MANIA, HYSTERIA, OR DEATH RESULTING FROM THE CONSUMPTION OR USE OF A CONTROLLED SUBSTANCE, OR OF ALCOHOL, OR ANOTHER SUBSTANCE WITH WHICH A CONTROLLED SUBSTANCE OR ALCOHOL WAS COMBINED, AND THAT A LAYPERSON WOULD REASONABLY BELIEVE TO BE A DRUG OR ALCOHOL OVERDOSE THAT REQUIRES MEDICAL ASSISTANCE.

SECTION 3. In Colorado Revised Statutes, 16-11.3-103, **add** (6) as follows:

16-11.3-103. Duties of the commission - mission - staffing - repeal. (6) THE COMMISSION IS ENCOURAGED TO CREATE AND MAKE PUBLICLY AVAILABLE A DOCUMENT DESCRIBING THE PROVISIONS OF SECTION 18-1-711, C.R.S.

SECTION 4. In Colorado Revised Statutes, 18-18-403.5, **amend** (1) as follows:

18-18-403.5. Unlawful possession of a controlled substance. (1) Except as authorized by part 3 of article 22 of title 12, C.R.S., BY SECTION 18-1-711, or by part 2 or 3 of this article, it is unlawful for ~~any~~ A person knowingly to possess a controlled substance.

SECTION 5. In Colorado Revised Statutes, 18-18-404, **amend** (1) (a) as follows:

18-18-404. Unlawful use of a controlled substance. (1) (a) Except as is otherwise provided for offenses concerning marijuana and marijuana concentrate in sections 18-18-406 and 18-18-406.5, ~~any~~ AND AS DESCRIBED BY SECTION 18-1-711, A person who uses any controlled substance, except when it is dispensed by or under the direction of a person licensed or authorized by law to prescribe, administer, or dispense the controlled substance for bona fide medical needs, commits a class 2 misdemeanor.

SECTION 6. In Colorado Revised Statutes, 18-18-406, **amend** (1) and (3) (a) (I) as follows:

18-18-406. Offenses relating to marijuana and marijuana concentrate.

(1) ~~Any~~ EXCEPT AS DESCRIBED IN SECTION 18-1-711, A person who possesses two ounces or less of marijuana commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(3)(a)(I) ~~Any~~ EXCEPT AS DESCRIBED IN SECTION 18-1-711, A person who openly and publicly displays, consumes, or uses two ounces or less of marijuana commits a class 2 petty offense and, upon conviction thereof, shall be punished, at a minimum, by a fine of not less than one hundred dollars or, at a maximum, by a fine of not more than one hundred dollars and, notwithstanding the provisions of section 18-1.3-503, by fifteen days in the county jail.

SECTION 7. In Colorado Revised Statutes, 18-18-428, **amend** (1) as follows:

18-18-428. Possession of drug paraphernalia - penalty. (1) EXCEPT AS DESCRIBED IN SECTION 18-1-711, a person commits possession of drug paraphernalia if he OR SHE possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this state.

SECTION 8. In Colorado Revised Statutes, 18-13-122, **amend** (2) (a), (4.5) introductory portion, (4.5) (a), (4.5) (b), and (4.5) (d) as follows:

18-13-122. Illegal possession or consumption of ethyl alcohol by an underage person - definitions - adolescent substance abuse prevention and treatment fund - legislative declaration. (2) (a) ~~Any~~ EXCEPT AS DESCRIBED BY SECTION 18-1-711 AND SUBSECTION (4.5) OF THIS SECTION, A person under twenty-one years of age who possesses or consumes ethyl alcohol anywhere in the state of Colorado commits illegal possession or consumption of ethyl alcohol by an underage person. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

(4.5) An underage person ~~and one or two other persons~~ shall be immune from criminal prosecution under this section if ~~they establish~~ HE OR SHE ESTABLISHES the following:

(a) ~~One of~~ The underage ~~persons~~ PERSON called 911 and reported IN GOOD FAITH that another underage person was in need of medical assistance due to alcohol consumption;

(b) The underage person who called 911 ~~and, if applicable, one or two other persons acting in concert with the underage person who called 911 provided each of their names~~ HIS OR HER NAME to the 911 operator;

(d) The underage person ~~and, if applicable, one or two other persons acting in concert with the underage person~~ who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance ~~and~~ OR law enforcement personnel on the scene.

SECTION 9. In Colorado Revised Statutes, 12-47-901, **amend** (1.5) introductory portion, (1.5) (a), (1.5) (b), and (1.5) (d) as follows:

12-47-901. Unlawful acts - exceptions. (1.5) An underage person ~~and one or two other persons~~ shall be immune from criminal prosecution under paragraph (b) or (c) of subsection (1) of this section if ~~they establish~~ HE OR SHE ESTABLISHES the following:

(a) ~~One of~~ The underage ~~persons~~ PERSON called 911 and reported that another underage person was in need of medical assistance due to alcohol consumption;

(b) The underage person who called 911 ~~and, if applicable, one or two other persons acting in concert with the underage person who called 911~~ provided ~~each of their names~~ HIS OR HER NAME to the 911 operator;

(d) The underage person ~~and, if applicable, one or two other persons acting in concert with the underage person~~ who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance ~~and~~ OR law enforcement personnel on the scene.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 29, 2012