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June 6, 2011

Honorable John A. DeFrancisco
New York State Senate
416 Capitol Building
Albany, NY 12247

OPPOSITION to S.4454-A (DeFrancisco)/A. 2063- B (Gottfried)

Dear Senator DeFrancisco:

On behalf of the New York State District Attorneys Association, I am writing in opposition to S.4454-A/A.2063-B. While I fully understand and endorse your efforts to prevent overdose deaths, the bill as written offers unintended and unjustified protection to drug dealers. As prosecutors familiar with the drug trade, we understand very well the extraordinary harm that drugs can cause to individuals, families and communities. Those who traffic in drugs often target young people, making drugs easily available to them to encourage them to become regular customers. While the Legislative Findings in the bill indicate that it is not the intent of this legislation to protect predatory drug traffickers, the bill as written would do just that. As a result, we would be in the very difficult position of having to tell the parents of a lethal overdose victim that the drug dealer who supplied the drugs that caused their child's death cannot be prosecuted.

We believe that there are several problems with the specific wording of the bill which make the bill overbroad and unclear. The ambiguities will greatly dilute the bill's intended public message. Those present when a person experiences an overdose will not know whether they can safely seek health care for that person without risking criminal liability. On the other hand, these ambiguities will help drug traffickers elude warranted prosecution by claiming that they fall within the scope of the bill's broad prohibition on arrest, charging, prosecution and conviction.

For example, under the proposed bill, there is a sweeping prohibition on criminal prosecution of anyone who "in good faith" (undefined) seeks health care for a person experiencing a drug or alcohol overdose. Anyone who falls within this category may not be "arrested, charged, prosecuted for or convicted of" any of the drug possession or sale crimes in article 220 or 221 from the most minor misdemeanors to the most serious A and B sale and trafficking felonies. The only type of prosecution permitted with respect to a controlled substance or marijuana would be a prosecution for "an offense involving sale for compensation." This term is not defined and this language has no recognized statutory definition under current law. "Sale" is defined under current law and does not require compensation. Even the term compensation itself is unclear. Is it limited to monetary compensation or would it also include an exchange of drugs for sex, contraband or favors? This raises many questions about what crimes may be charged and when.

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If the term “sale for compensation” is intended to distinguish between drug dealers and drug users, it does not do so effectively. Many drug dealers establish a customer-base by distributing narcotics without compensation, with the hope that a certain percentage will return as paying customers. These predatory drug dealers would receive an unintended benefit because they could not be charged with any crime under the bill. At the same time, many instances will remain where a person in a position to seek health care for someone experiencing an overdose will be uncertain as to whether they will receive the benefit of the law. The fact that such uncertainty remains means that a key aim of the bill - removing the threat of prosecution as a deterrent to the seeking of health care for drug overdoses – will go unfulfilled.

At present, predatory drug dealers deserving of prosecution are distinguished by looking at their conduct under all of the facts and circumstances. Reducing discretion to make such nuanced judgments will increase the possibility of inappropriate outcomes. Drug traffickers will benefit fortuitously, without accomplishing the bill’s goal of encouraging more people to seek health care for drug overdoses because the uncertainty of prosecution remains.

For all of the reasons noted above, the Association opposes S.4454-A/A.2063-B in its current form.

Sincerely,



Derek P. Champagne
D.A. Franklin County and
President of DAASNY

Cc://
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