

2142

2017-2018 Regular Sessions

I N A S S E M B L Y

January 17, 2017

Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the
Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in
relation to sealing records for certain proceedings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 221.05 of the penal law, as added by chapter 360 of
2 the laws of 1977, is amended to read as follows:
3 S 221.05 Unlawful possession of marihuana.
4 A person is guilty of unlawful possession of marihuana when he know-
5 ingly and unlawfully possesses marihuana.
6 Unlawful possession of marihuana is a violation punishable only by a
7 fine of not more than one hundred dollars. However, where the defendant
8 has previously been convicted of [an offense] A CRIME defined in this
9 article, EXCEPT A CRIME DEFINED IN SECTION 221.10 OF THIS ARTICLE
10 PROVIDED, HOWEVER, THAT THE RECORD OF SUCH CONVICTION DOES NOT DEMON-
11 STRATE A CONVICTION UNDER SUBDIVISION TWO OF SUCH SECTION 221.10, or
12 article 220 of this chapter, committed within the three years immedi-
13 ately preceding such violation, it shall be punishable (a) only by a fine
14 of not more than two hundred dollars, if the defendant was previously
15 convicted of one such offense committed during such period, and (b) by a
16 fine of not more than two hundred fifty dollars or a term of imprison-
17 ment not in excess of fifteen days or both, if the defendant was previ-
18 ously convicted of two such offenses committed during such period.
19 S 2. Paragraph (k) of subdivision 3 of section 160.50 of the criminal
20 procedure law, as added by chapter 835 of the laws of 1977 and as relet-
21 tered by chapter 192 of the laws of 1980, is amended to read as follows:
22 (k) (i) The accusatory instrument alleged a violation of article two
23 hundred twenty or section 240.36 of the penal law, prior to the taking
24 effect of article two hundred twenty-one of the penal law, or a
25 violation of article two hundred twenty-one of the penal law; (ii) the
26 sole controlled substance involved is marijuana; AND (iii) the
27 conviction was only for a violation or violations[; and (iv) at least
28 three years have passed since the offense occurred] OF SECTION 221.10 OF

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

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1 THE PENAL LAW PROVIDED, HOWEVER, THAT THE RECORD OF SUCH CONVICTION DOES
2 NOT DEMONSTRATE A CONVICTION UNDER SUBDIVISION TWO OF SUCH SECTION
3 221.10, OR FOR A PETTY OFFENSE OR OFFENSES. NO DEFENDANT SHALL BE
4 REQUIRED OR PERMITTED TO WAIVE ELIGIBILITY FOR SEALING PURSUANT TO THIS
5 PARAGRAPH AS PART OF A PLEA OF GUILTY, SENTENCE OR ANY AGREEMENT RELATED
6 TO A CONVICTION FOR A VIOLATION OF SECTION 221.05 OR SECTION 221.10 OF
7 THE PENAL LAW AND ANY SUCH WAIVER SHALL BE DEEMED VOID AND WHOLLY UNEN-
8 FORCEABLE.

9 S 3. Section 160.50 of the criminal procedure law is amended by adding
10 three new subdivisions 5, 6 and 7 to read as follows:

11 5. A PERSON CONVICTED OF A VIOLATION OF SECTION 221.10 OF THE PENAL
12 LAW, OTHER THAN A CONVICTION AFTER TRIAL OF, OR PLEA OF GUILTY TO,
13 SUBDIVISION TWO OF SUCH SECTION 221.10, PRIOR TO THE EFFECTIVE DATE OF
14 THIS SUBDIVISION MAY UPON MOTION APPLY TO THE COURT IN WHICH SUCH TERMI-
15 NATION OCCURRED, UPON NOT LESS THAN TWENTY DAYS NOTICE TO THE DISTRICT
16 ATTORNEY, FOR AN ORDER GRANTING TO SUCH PERSON THE RELIEF SET FORTH IN
17 SUBDIVISION ONE OF THIS SECTION, AND SUCH ORDER SHALL BE GRANTED UNLESS
18 THE DISTRICT ATTORNEY DEMONSTRATES THAT THE INTERESTS OF JUSTICE REQUIRE
19 OTHERWISE.

20 6. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW EXCEPT AS PROVIDED
21 IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION AND PARAGRAPH (E) OF
22 SUBDIVISION FOUR OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE
23 LAW: (I) WHEN THE DIVISION OF CRIMINAL JUSTICE SERVICES CONDUCTS A
24 SEARCH OF ITS CRIMINAL HISTORY RECORDS, MAINTAINED PURSUANT TO SUBDIVI-
25 SION SIX OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW, AND
26 RETURNS A REPORT THEREON, ALL REFERENCES TO A CONVICTION FOR A VIOLATION
27 OF SECTION 221.10 OF THE PENAL LAW, OTHER THAN A CONVICTION AFTER TRIAL
28 OF, OR PLEA OF GUILTY TO, SUBDIVISION TWO OF SUCH SECTION 221.10, SHALL
29 BE EXCLUDED FROM SUCH REPORT; AND (II) THE CHIEF ADMINISTRATOR OF THE
30 COURTS SHALL DEVELOP AND PROMULGATE RULES AS MAY BE NECESSARY TO ENSURE
31 THAT NO WRITTEN OR ELECTRONIC REPORT OF A CRIMINAL HISTORY RECORD SEARCH
32 CONDUCTED BY THE OFFICE OF COURT ADMINISTRATION CONTAINS INFORMATION
33 RELATING TO A CONVICTION FOR A VIOLATION OF SECTION 221.10 OF THE PENAL
34 LAW, OTHER THAN A CONVICTION AFTER TRIAL OF, OR PLEA OF GUILTY TO,
35 SUBDIVISION TWO OF SUCH SECTION 221.10, UNLESS SUCH SEARCH IS CONDUCTED
36 SOLELY FOR A BONA FIDE RESEARCH PURPOSE, PROVIDED THAT SUCH INFORMATION,
37 IF SO DISSEMINATED, SHALL BE DISSEMINATED IN ACCORDANCE WITH PROCEDURES
38 ESTABLISHED BY THE CHIEF ADMINISTRATOR OF THE COURTS TO ASSURE THE SECU-
39 RITY AND PRIVACY OF IDENTIFICATION AND INFORMATION DATA, WHICH SHALL
40 INCLUDE THE EXECUTION OF AN AGREEMENT WHICH PROTECTS THE CONFIDENTIALITY
41 OF THE INFORMATION AND REASONABLY PROTECTS AGAINST DATA LINKAGE TO INDI-
42 VIDUALS.

43 (B) NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE DEEMED TO PERMIT OR
44 REQUIRE THE RELEASE, DISCLOSURE OR OTHER DISSEMINATION BY THE DIVISION
45 OF CRIMINAL JUSTICE SERVICES OR THE OFFICE OF COURT ADMINISTRATION OF
46 CRIMINAL HISTORY RECORD INFORMATION THAT HAS BEEN SEALED IN ACCORDANCE
47 WITH LAW.

48 7. A PERSON CONVICTED OF A VIOLATION OF SECTION 221.05 OF THE PENAL
49 LAW SHALL, ON THE EFFECTIVE DATE OF THIS SUBDIVISION, HAVE SUCH
50 CONVICTION IMMEDIATELY SEALED PURSUANT TO SUBDIVISION ONE OF THIS
51 SECTION IF SUCH CONVICTION OCCURRED LESS THAN THREE YEARS PRIOR TO SUCH
52 EFFECTIVE DATE.

53 S 4. This act shall take effect on the sixtieth day after it shall
54 have become a law.