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I N   A S S E M B L Y

August 20, 2014

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Introduced by COMMITTEE ON RULES -- (at request of M. of A. Camara) --  
read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to de-criminalizing the personal possession of marihuana; to amend the criminal procedure law, in relation to certain pleas; to amend the legislative law, in relation to specifying requirements with respect to bills affecting the penal law; to amend the executive law, in relation to expanding the duties of division of criminal justice services; and to repeal section 221.35 of the penal law relating to criminal sale of marihuana in the fifth degree

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

1     Section 1. This act shall be known and may be cited as the "fairness  
2     and equity act".  
3     S 2. Subdivisions 5 and 6 of section 1.05 of the penal law, subdivi-  
4     sion 5 as amended by chapter 612 of the laws of 1982 and subdivision 6  
5     as amended by chapter 98 of the laws of 2006, are amended to read as  
6     follows:  
7     5. To provide for an appropriate public response to particular  
8     offenses, including consideration of the consequences of the offense for  
9     the victim, including the victim's family, and the community; [and]  
10    6. TO ENSURE THAT LAWS ARE ENFORCED EQUALLY AND FAIRLY AND DO NOT  
11    RESULT IN A DISPARATE IMPACT ON PEOPLE BECAUSE OF THEIR RACE AND ETHNIC-  
12    ITY; AND  
13    7. To insure the public safety by preventing the commission of  
14    offenses through the deterrent influence of the sentences authorized,  
15    the rehabilitation of those convicted, the promotion of their successful  
16    and productive reentry and reintegration into society, and their  
17    confinement when required in the interests of public protection.  
18    S 3. Section 221.05 of the penal law, as added by chapter 360 of the  
19    laws of 1977, is amended to read as follows:  
20    S 221.05 Unlawful possession of marihuana.  
21    A person is guilty of unlawful possession of marihuana when he know-  
22    ingly and unlawfully possesses marihuana.

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

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1 Unlawful possession of marihuana is a violation punishable only by a  
2 fine of not more than one hundred dollars. [However, where the defendant  
3 has previously been convicted of an offense defined in this article or  
4 article 220 of this chapter, committed within the three years immediate-  
5 ly preceding such violation, it shall be punishable (a) only by a fine  
6 of not more than two hundred dollars, if the defendant was previously  
7 convicted of one such offense committed during such period, and (b) by a  
8 fine of not more than two hundred fifty dollars or a term of imprison-  
9 ment not in excess of fifteen days or both, if the defendant was previ-  
10 ously convicted of two such offenses committed during such period.]

11 S 4. Section 221.10 of the penal law, as amended by chapter 265 of the  
12 laws of 1979, subdivision 2 as amended by chapter 75 of the laws of  
13 1995, is amended to read as follows:

14 S 221.10 Criminal possession of marihuana in the fifth degree.

15 A person is guilty of criminal possession of marihuana in the fifth  
16 degree when he knowingly and unlawfully possesses[:

17 1. marihuana in a public place, as defined in section 240.00 of this  
18 chapter, and such marihuana is burning or open to public view; or

19 2.] one or more preparations, compounds, mixtures or substances  
20 containing marihuana and the preparations, compounds, mixtures or  
21 substances are of an aggregate weight of more than twenty-five grams.

22 Criminal possession of marihuana in the fifth degree is a class B  
23 misdemeanor.

24 S 5. Section 221.35 of the penal law is REPEALED.

25 S 6. Section 221.40 of the penal law, as added by chapter 360 of the  
26 laws of 1977, is amended to read as follows:

27 S 221.40 Criminal sale of marihuana in the fourth degree.

28 A person is guilty of criminal sale of marihuana in the fourth degree  
29 when he knowingly and unlawfully sells marihuana [except as provided in  
30 section 221.35 of this article] FOR CONSIDERATION.

31 Criminal sale of marihuana in the fourth degree is a class A misdemea-  
32 nor.

33 S 7. Subdivision 1 of section 170.56 of the criminal procedure law, as  
34 amended by chapter 360 of the laws of 1977, is amended to read as  
35 follows:

36 1. Upon or after arraignment in a local criminal court upon an infor-  
37 mation, a prosecutor's information or a misdemeanor complaint, where the  
38 sole remaining count or counts charge a violation or violations of  
39 section 221.05, 221.10, 221.15[, 221.35] or 221.40 of the penal law and  
40 before the entry of a plea of guilty thereto or commencement of a trial  
41 thereof, the court, upon motion of a defendant, may order that all  
42 proceedings be suspended and the action adjourned in contemplation of  
43 dismissal, or upon a finding that adjournment would not be necessary or  
44 appropriate and the setting forth in the record of the reasons for such  
45 findings, may dismiss in furtherance of justice the accusatory instru-  
46 ment; provided, however, that the court may not order such adjournment  
47 in contemplation of dismissal or dismiss the accusatory instrument if:  
48 (a) the defendant has previously been granted such adjournment in  
49 contemplation of dismissal, or (b) the defendant has previously been  
50 granted a dismissal under this section, or (c) the defendant has previ-  
51 ously been convicted of any offense involving controlled substances, or  
52 (d) the defendant has previously been convicted of a crime and the  
53 district attorney does not consent or (e) the defendant has previously  
54 been adjudicated a youthful offender on the basis of any act or acts  
55 involving controlled substances and the district attorney does not  
56 consent. NOTWITHSTANDING THE LIMITATIONS SET FORTH IN THIS SUBDIVISION,

THE COURT MAY ORDER THAT ALL PROCEEDINGS BE SUSPENDED AND THE ACTION ADJOURNED IN CONTEMPLATION OF DISMISSAL BASED UPON A FINDING OF EXCEPTIONAL CIRCUMSTANCES. FOR PURPOSES OF THIS SUBDIVISION, EXCEPTIONAL CIRCUMSTANCES EXIST WHEN, REGARDLESS OF THE ULTIMATE DISPOSITION OF THE CASE, THE ENTRY OF A PLEA OF GUILTY IS LIKELY TO RESULT IN SEVERE COLLATERAL CONSEQUENCES, INCLUDING, BUT NOT LIMITED TO, THOSE THAT COULD LEAVE A NONCITIZEN INADMISSIBLE OR DEPORTABLE FROM THE UNITED STATES.

S 8. Section 210.46 of the criminal procedure law, as amended by chapter 360 of the laws of 1977, is amended to read as follows:

S 210.46 Adjournment in contemplation of dismissal in marihuana cases in a superior court.

Upon or after arraignment in a superior court upon an indictment where the sole remaining count or counts charge a violation or violations of section 221.05, 221.10, 221.15[, 221.35] or 221.40 of the penal law and before the entry of a plea of guilty thereto or commencement of a trial thereof, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal or may dismiss the indictment in furtherance of justice, in accordance with the provisions of section 170.56 of this chapter.

S 9. Paragraphs (h) and (i) of subdivision 1 of section 440.10 of the criminal procedure law, paragraph (h) as amended and paragraph (i) as added by chapter 332 of the laws of 2010, are amended and a new paragraph (j) is added to read as follows:

(h) The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States; [or]

(i) The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that

(i) a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and

(ii) official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but shall not be required for granting a motion under this paragraph[.]; OR

(J) THE JUDGMENT OCCURRED PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH AND IS A CONVICTION FOR:

(I) AN OFFENSE AS DEFINED BY SECTION 221.10 OF THE PENAL LAW (CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE), AS IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH, PROVIDED THAT THE ACCUSATORY INSTRUMENT THAT UNDERLIES THE JUDGMENT DOES NOT INCLUDE AN ALLEGATION THAT THE DEFENDANT POSSESSED MORE THAN TWENTY-FIVE GRAMS OF MARIHUANA; OR

(II) AN OFFENSE AS DEFINED BY FORMER SECTION 221.35 OF THE PENAL LAW (CRIMINAL SALE OF MARIHUANA IN THE FIFTH DEGREE).

1 S 10. Subdivision 6 of section 440.10 of the criminal procedure law,  
2 as added by chapter 332 of the laws of 2010, is amended to read as  
3 follows:

4 6. If the court grants a motion under paragraph (i) OR PARAGRAPH (J)  
5 of subdivision one of this section, it must vacate the judgment and  
6 dismiss the accusatory instrument, and may take such additional action  
7 as is appropriate in the circumstances.

8 S 11. Paragraphs (i), (j) and (k) of subdivision 3 of section 160.50  
9 of the criminal procedure law, paragraphs (i) and (j) as added by chap-  
10 ter 905 of the laws of 1977 and paragraph (k) as added by chapter 835 of  
11 the laws of 1977 and as relettered by chapter 192 of the laws of 1980,  
12 are amended to read as follows:

13 (i) prior to the filing of an accusatory instrument in a local crimi-  
14 nal court against such person, the prosecutor elects not to prosecute  
15 such person. In such event, the prosecutor shall serve a certification  
16 of such disposition upon the division of criminal justice services and  
17 upon the appropriate police department or law enforcement agency which,  
18 upon receipt thereof, shall comply with the provisions of paragraphs  
19 (a), (b), (c) and (d) of subdivision one of this section in the same  
20 manner as is required thereunder with respect to an order of a court  
21 entered pursuant to said subdivision one[.]; OR

22 (j) following the arrest of such person, the arresting police agency,  
23 prior to the filing of an accusatory instrument in a local criminal  
24 court but subsequent to the forwarding of a copy of the fingerprints of  
25 such person to the division of criminal justice services, elects not to  
26 proceed further. In such event, the head of the arresting police agency  
27 shall serve a certification of such disposition upon the division of  
28 criminal justice services which, upon receipt thereof, shall comply with  
29 the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of  
30 this section in the same manner as is required thereunder with respect  
31 to an order of a court entered pursuant to said subdivision one[.]; OR

32 (k) (i) The accusatory instrument alleged a violation of article two  
33 hundred twenty or section 240.36 of the penal law, prior to the taking  
34 effect of article two hundred twenty-one of the penal law, or a  
35 violation of article two hundred twenty-one of the penal law; (ii) the  
36 sole controlled substance involved is marijuana; AND (iii) the  
37 conviction was only for a violation or violations[; and (iv) at least  
38 three years have passed since the offense occurred].

39 S 12. The legislative law is amended by adding a new section 52-a to  
40 read as follows:

41 S 52-A. REQUIREMENT WITH RESPECT TO BILLS AFFECTING THE PENAL LAW.  
42 WHENEVER A COMMITTEE REPORTS A BILL FAVORABLY WHICH, IF PASSED, WOULD  
43 INCREASE OR DECREASE THE PRETRIAL OR SENTENCED POPULATION OF CORRECTION-  
44 AL FACILITIES IN THIS STATE, A MAJORITY OF THE COMMITTEE MEMBERS VOTING  
45 MAY REQUEST THAT A RACIAL AND ETHNIC IMPACT STATEMENT BE PREPARED. THE  
46 LEGISLATURE SHALL BY CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY  
47 PRESCRIBE RULES REQUIRING RACIAL AND ETHNIC IMPACT STATEMENTS TO ACCOM-  
48 PANY, ON A SEPARATE FORM, BILLS AND AMENDMENTS TO BILLS AFTER SUCH BILLS  
49 HAVE BEEN REPORTED FROM COMMITTEE. RACIAL AND ETHNIC IMPACT STATEMENTS  
50 SHALL BE PREPARED BEFORE THE BILL IS CONSIDERED FOR FINAL PASSAGE. THE  
51 STATEMENT SHALL INDICATE WHETHER THE BILL WOULD HAVE A DISPARATE IMPACT  
52 ON THE RACIAL AND ETHNIC COMPOSITION OF THE CORRECTIONAL FACILITY POPU-  
53 LATION AND AN EXPLANATION OF THAT IMPACT. ANY RACIAL AND ETHNIC IMPACT  
54 STATEMENT PRINTED WITH OR PREPARED FOR A BILL IS SOLELY FOR THE PURPOSE  
55 OF INFORMATION, SUMMARIZATION AND EXPLANATION FOR MEMBERS OF THE LEGIS-  
56 LATURE AND SHALL NOT BE CONSTRUED TO REPRESENT THE INTENT OF THE LEGIS-

1 LATURE OR EITHER CHAMBER THEREOF FOR ANY PURPOSE. EACH RACIAL AND ETHNIC  
2 IMPACT STATEMENT SHALL BEAR THE FOLLOWING DISCLAIMER: "THE FOLLOWING  
3 RACIAL AND ETHNIC IMPACT STATEMENT IS PREPARED FOR THE BENEFIT OF THE  
4 MEMBERS OF THE LEGISLATURE, SOLELY FOR PURPOSES OF INFORMATION, SUMMA-  
5 RIZATION AND EXPLANATION AND DOES NOT REPRESENT THE INTENT OF THE LEGIS-  
6 LATURE OR EITHER CHAMBER THEREOF FOR ANY PURPOSE."

7 S 13. Paragraph (f) of subdivision 4 of section 837 of the executive  
8 law, as amended by chapter 169 of the laws of 1994, is amended and a new  
9 paragraph (g) is added to read as follows:

10 (f) [Accomplish] ACCOMPLISH all of the functions, powers, and duties  
11 set forth in paragraphs (a), (b), (c) and (d) of this subdivision with  
12 respect to the processing and disposition of cases involving violent  
13 felony offenses specified in subdivision one of section 70.02 of the  
14 penal law[.]; AND

15 (G) ACCOMPLISH ALL OF THE FUNCTIONS, POWERS, AND DUTIES SET FORTH IN  
16 PARAGRAPHS (A), (B), (C) AND (D) OF THIS SUBDIVISION WITH RESPECT TO ALL  
17 CHAPTERS OF LAW RESULTING FROM LEGISLATIVE BILLS THAT HAVE BEEN SUBJECT  
18 TO THE PROVISIONS OF SECTION FIFTY-TWO-A OF THE LEGISLATIVE LAW. THE  
19 DIVISION SHALL PRESENT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE  
20 SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE ASSEMBLY  
21 AND THE MINORITY LEADER OF THE ASSEMBLY AN ANNUAL REPORT CONTAINING THE  
22 STATISTICS AND OTHER INFORMATION RELEVANT TO THIS SUBDIVISION.

23 S 14. This act shall take effect on the one hundred eightieth day  
24 after it shall have become a law.