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I N S E N A T E

July 9, 2014

Introduced by Sens. SQUADRON, DILAN, ESPAILLAT, HOYLMAN, KRUEGER, MONTGOMERY, PARKER, PERKINS, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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.

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

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1 A person is guilty of unlawful possession of marihuana when he know-  
2 ingly and unlawfully possesses marihuana.

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

13 S 4. Section 221.10 of the penal law, as amended by chapter 265 of the  
14 laws of 1979, subdivision 2 as amended by chapter 75 of the laws of  
15 1995, is amended to read as follows:

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

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

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

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

24 Criminal possession of marihuana in the fifth degree is a class B  
25 misdemeanor.

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 Section 221.35 of the penal law is REPEALED.

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

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

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

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

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

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

1 involving controlled substances and the district attorney does not  
2 consent. NOTWITHSTANDING THE LIMITATIONS SET FORTH IN THIS SUBDIVISION,  
3 THE COURT MAY ORDER THAT ALL PROCEEDINGS BE SUSPENDED AND THE ACTION  
4 ADJOURNED IN CONTEMPLATION OF DISMISSAL BASED UPON A FINDING OF EXCEP-  
5 TIONAL CIRCUMSTANCES. FOR PURPOSES OF THIS SUBDIVISION, EXCEPTIONAL  
6 CIRCUMSTANCES EXIST WHEN, REGARDLESS OF THE ULTIMATE DISPOSITION OF THE  
7 CASE, THE ENTRY OF A PLEA OF GUILTY IS LIKELY TO RESULT IN SEVERE COLLA-  
8 TERAL CONSEQUENCES, INCLUDING, BUT NOT LIMITED TO, THOSE THAT COULD  
9 LEAVE A NONCITIZEN INADMISSIBLE OR DEPORTABLE FROM THE UNITED STATES.

10 S 8. Section 210.46 of the criminal procedure law, as amended by chap-  
11 ter 360 of the laws of 1977, is amended to read as follows:

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

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

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

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

28 (i) The judgment is a conviction where the arresting charge was under  
29 section 240.37 (loitering for the purpose of engaging in a prostitution  
30 offense, provided that the defendant was not alleged to be loitering for  
31 the purpose of patronizing a prostitute or promoting prostitution) or  
32 230.00 (prostitution) of the penal law, and the defendant's partic-  
33 ipation in the offense was a result of having been a victim of sex traf-  
34 ficking under section 230.34 of the penal law or trafficking in persons  
35 under the Trafficking Victims Protection Act (United States Code, title  
36 22, chapter 78); provided that

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

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

50 (J) THE JUDGMENT OCCURRED PRIOR TO THE EFFECTIVE DATE OF THIS PARA-  
51 GRAPH AND IS A CONVICTION FOR:

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

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

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

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

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

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

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

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

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

43 S 52-A. REQUIREMENT WITH RESPECT TO BILLS AFFECTING THE PENAL LAW.  
44 WHENEVER A COMMITTEE REPORTS A BILL FAVORABLY WHICH, IF PASSED, WOULD  
45 INCREASE OR DECREASE THE PRETRIAL OR SENTENCED POPULATION OF CORRECTION-  
46 AL FACILITIES IN THIS STATE, A MAJORITY OF THE COMMITTEE MEMBERS VOTING  
47 MAY REQUEST THAT A RACIAL AND ETHNIC IMPACT STATEMENT BE PREPARED. THE  
48 LEGISLATURE SHALL BY CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY  
49 PRESCRIBE RULES REQUIRING RACIAL AND ETHNIC IMPACT STATEMENTS TO ACCOM-  
50 PANY, ON A SEPARATE FORM, BILLS AND AMENDMENTS TO BILLS AFTER SUCH BILLS  
51 HAVE BEEN REPORTED FROM COMMITTEE. RACIAL AND ETHNIC IMPACT STATEMENTS  
52 SHALL BE PREPARED BEFORE THE BILL IS CONSIDERED FOR FINAL PASSAGE. THE  
53 STATEMENT SHALL INDICATE WHETHER THE BILL WOULD HAVE A DISPARATE IMPACT  
54 ON THE RACIAL AND ETHNIC COMPOSITION OF THE CORRECTIONAL FACILITY POPU-  
55 LATION AND AN EXPLANATION OF THAT IMPACT. ANY RACIAL AND ETHNIC IMPACT  
56 STATEMENT PRINTED WITH OR PREPARED FOR A BILL IS SOLELY FOR THE PURPOSE

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

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

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

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

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