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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

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

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

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

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

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

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

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

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

S 52-A. REQUIREMENT WITH RESPECT TO BILLS AFFECTING THE PENAL LAW. WHENEVER A COMMITTEE REPORTS A BILL FAVORABLY WHICH, IF PASSED, WOULD INCREASE OR DECREASE THE PRETRIAL OR SENTENCED POPULATION OF CORRECTIONAL FACILITIES IN THIS STATE, A MAJORITY OF THE COMMITTEE MEMBERS VOTING MAY REQUEST THAT A RACIAL AND ETHNIC IMPACT STATEMENT BE PREPARED. THE LEGISLATURE SHALL BY CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY PRESCRIBE RULES REQUIRING RACIAL AND ETHNIC IMPACT STATEMENTS TO ACCOMPANY, ON A SEPARATE FORM, BILLS AND AMENDMENTS TO BILLS AFTER SUCH BILLS HAVE BEEN REPORTED FROM COMMITTEE. RACIAL AND ETHNIC IMPACT STATEMENTS SHALL BE PREPARED BEFORE THE BILL IS CONSIDERED FOR FINAL PASSAGE. THE STATEMENT SHALL INDICATE WHETHER THE BILL WOULD HAVE A DISPARATE IMPACT ON THE RACIAL AND ETHNIC COMPOSITION OF THE CORRECTIONAL FACILITY POPULATION AND AN EXPLANATION OF THAT IMPACT. ANY RACIAL AND ETHNIC IMPACT 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.