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2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed 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.

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

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1 S 3. Section 221.05 of the penal law, as added by chapter 360 of the
2 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 defined in this article or
9 article 220 of this chapter, committed within the three years immediate-
10 ly preceding such violation, it shall be punishable (a) only by a fine
11 of not more than two hundred dollars, if the defendant was previously
12 convicted of one such offense committed during such period, and (b) by a
13 fine of not more than two hundred fifty dollars or a term of imprison-
14 ment not in excess of fifteen days or both, if the defendant was previ-
15 ously convicted of two such offenses committed during such period.]

16 S 4. Section 221.10 of the penal law, as amended by chapter 265 of the
17 laws of 1979, subdivision 2 as amended by chapter 75 of the laws of
18 1995, is amended to read as follows:

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

20 A person is guilty of criminal possession of marihuana in the fifth
21 degree when he knowingly and unlawfully possesses[:
22 1. marihuana in a public place, as defined in section 240.00 of this
23 chapter, and such marihuana is burning or open to public view; or
24 2.] one or more preparations, compounds, mixtures or substances
25 containing marihuana and the preparations, compounds, mixtures or
26 substances are of an aggregate weight of more than twenty-five grams.

27 Criminal possession of marihuana in the fifth degree is a class B
28 misdemeanor.

29 S 5. Section 221.35 of the penal law is REPEALED.
30 S 6. Section 221.40 of the penal law, as added by chapter 360 of the
31 laws of 1977, is amended to read as follows:

32 S 221.40 Criminal sale of marihuana in the fourth degree.
33 A person is guilty of criminal sale of marihuana in the fourth degree
34 when he knowingly and unlawfully sells marihuana [except as provided in
35 section 221.35 of this article] FOR CONSIDERATION.

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

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

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

(d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not 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).

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

1 ON THE RACIAL AND ETHNIC COMPOSITION OF THE CORRECTIONAL FACILITY POPU-
2 LATION AND AN EXPLANATION OF THAT IMPACT. ANY RACIAL AND ETHNIC IMPACT
3 STATEMENT PRINTED WITH OR PREPARED FOR A BILL IS SOLELY FOR THE PURPOSE
4 OF INFORMATION, SUMMARIZATION AND EXPLANATION FOR MEMBERS OF THE LEGIS-
5 LATURE AND SHALL NOT BE CONSTRUED TO REPRESENT THE INTENT OF THE LEGIS-
6 LATURE OR EITHER CHAMBER THEREOF FOR ANY PURPOSE. EACH RACIAL AND ETHNIC
7 IMPACT STATEMENT SHALL BEAR THE FOLLOWING DISCLAIMER: "THE FOLLOWING
8 RACIAL AND ETHNIC IMPACT STATEMENT IS PREPARED FOR THE BENEFIT OF THE
9 MEMBERS OF THE LEGISLATURE, SOLELY FOR PURPOSES OF INFORMATION, SUMMA-
10 RIZATION AND EXPLANATION AND DOES NOT REPRESENT THE INTENT OF THE LEGIS-
11 LATURE OR EITHER CHAMBER THEREOF FOR ANY PURPOSE."

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

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

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

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