

137--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

---

Introduced by Sens. SQUADRON, ESPAILLAT, HAMILTON, HASSELL-THOMPSON, HOYLMAN, MONTGOMERY, PARKER, PERKINS, RIVERA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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; and to amend the legislative law, in relation to specifying requirements with respect to bills affecting the penal law

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 OR ETHNICI-  
12 TY; 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.

LBD00177-03-5

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 AND SUCH MARIHUANA IS BURNING.

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 immedi-  
10 ately 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. Subdivision 1 of section 170.56 of the criminal procedure law, as  
30 amended by chapter 360 of the laws of 1977, is amended to read as  
31 follows:

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

1 CASE, THE ENTRY OF A PLEA OF GUILTY IS LIKELY TO RESULT IN SEVERE COLLA-  
2 TERAL CONSEQUENCES, INCLUDING, BUT NOT LIMITED TO, THOSE THAT COULD  
3 LEAVE A NONCITIZEN INADMISSIBLE OR DEPORTABLE FROM THE UNITED STATES.

4 S 6. Paragraphs (h) and (i) of subdivision 1 of section 440.10 of the  
5 criminal procedure law, paragraph (h) as amended and paragraph (i) as  
6 added by chapter 332 of the laws of 2010, are amended and a new para-  
7 graph (j) is added to read as follows:

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

10 (i) The judgment is a conviction where the arresting charge was under  
11 section 240.37 (loitering for the purpose of engaging in a prostitution  
12 offense, provided that the defendant was not alleged to be loitering for  
13 the purpose of patronizing a prostitute or promoting prostitution) or  
14 230.00 (prostitution) of the penal law, and the defendant's partic-  
15 ipation in the offense was a result of having been a victim of sex traf-  
16 ficking under section 230.34 of the penal law or trafficking in persons  
17 under the Trafficking Victims Protection Act (United States Code, title  
18 22, chapter 78); provided that

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

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

32 (J) THE JUDGMENT OCCURRED PRIOR TO THE EFFECTIVE DATE OF THIS PARA-  
33 GRAPH AND IS A CONVICTION FOR AN OFFENSE AS DEFINED BY SECTION 221.10 OF  
34 THE PENAL LAW (CRIMINAL POSSESSION OF MARIHUANA IN THE FIFTH DEGREE), AS  
35 IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH, PROVIDED THAT  
36 THE ACCUSATORY INSTRUMENT THAT UNDERLIES THE JUDGMENT DOES NOT INCLUDE  
37 AN ALLEGATION THAT THE DEFENDANT POSSESSED MORE THAN TWENTY-FIVE GRAMS  
38 OF MARIHUANA.

39 S 7. Subdivision 6 of section 440.10 of the criminal procedure law, as  
40 added by chapter 332 of the laws of 2010, is amended to read as follows:

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

45 S 8. Paragraphs (i), (j) and (k) of subdivision 3 of section 160.50 of  
46 the criminal procedure law, paragraphs (i) and (j) as added by chapter  
47 905 of the laws of 1977 and paragraph (k) as added by chapter 835 of the  
48 laws of 1977 and as relettered by chapter 192 of the laws of 1980, are  
49 amended to read as follows:

50 (i) prior to the filing of an accusatory instrument in a local crimi-  
51 nal court against such person, the prosecutor elects not to prosecute  
52 such person. In such event, the prosecutor shall serve a certification  
53 of such disposition upon the division of criminal justice services and  
54 upon the appropriate police department or law enforcement agency which,  
55 upon receipt thereof, shall comply with the provisions of paragraphs  
56 (a), (b), (c) and (d) of subdivision one of this section in the same

1 manner as is required thereunder with respect to an order of a court  
2 entered pursuant to said subdivision one[.]; OR

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

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

20 S 9. The legislative law is amended by adding a new section 52-a to  
21 read as follows:

22 S 52-A. REQUIREMENT WITH RESPECT TO BILLS INCREASING CORRECTIONAL  
23 POPULATIONS. 1. WHENEVER A COMMITTEE REPORTS A BILL FAVORABLY WHICH, IF  
24 PASSED, WOULD INCREASE OR DECREASE THE PRETRIAL OR SENTENCED POPULATION  
25 OF CORRECTIONAL FACILITIES IN THIS STATE, A MAJORITY OF THE COMMITTEE  
26 MEMBERS VOTING MAY REQUEST THAT A RACIAL AND ETHNIC IMPACT STATEMENT BE  
27 PREPARED. EACH HOUSE OF THE LEGISLATURE SHALL SEPARATELY PRESCRIBE RULES  
28 REQUIRING RACIAL AND ETHNIC IMPACT STATEMENTS TO ACCOMPANY, ON A SEPA-  
29 RATE FORM, BILLS AND AMENDMENTS TO BILLS AFTER SUCH BILLS HAVE BEEN  
30 REPORTED FROM COMMITTEE. RACIAL AND ETHNIC IMPACT STATEMENTS SHALL BE  
31 PREPARED BEFORE THE BILL IS CONSIDERED FOR FINAL PASSAGE. THE STATEMENT  
32 SHALL INDICATE WHETHER THE BILL WOULD HAVE A DISPARATE IMPACT ON THE  
33 RACIAL AND ETHNIC COMPOSITION OF THE CORRECTIONAL FACILITY POPULATION  
34 AND AN EXPLANATION OF THAT IMPACT. ANY RACIAL AND ETHNIC IMPACT STATE-  
35 MENT PRINTED WITH OR PREPARED FOR A BILL IS SOLELY FOR THE PURPOSE OF  
36 INFORMATION, SUMMARIZATION AND EXPLANATION FOR MEMBERS OF THE LEGISLA-  
37 TURE AND SHALL NOT BE CONSTRUED TO REPRESENT THE INTENT OF THE LEGISLA-  
38 TURE OR EITHER CHAMBER THEREOF FOR ANY PURPOSE. EACH RACIAL AND ETHNIC  
39 IMPACT STATEMENT SHALL BEAR THE FOLLOWING DISCLAIMER: "THE FOLLOWING  
40 RACIAL AND ETHNIC IMPACT STATEMENT IS PREPARED FOR THE BENEFIT OF THE  
41 MEMBERS OF THE LEGISLATURE, SOLELY FOR PURPOSES OF INFORMATION, SUMMA-  
42 RIZATION AND EXPLANATION AND DOES NOT REPRESENT THE INTENT OF THE LEGIS-  
43 LATURE OR EITHER CHAMBER THEREOF FOR ANY PURPOSE."

44 2. RACIAL AND ETHNIC IMPACT STATEMENTS SHALL BE MADE AVAILABLE TO THE  
45 PUBLIC IN THE SAME MANNER THAT THE TEXT OF BILLS ARE MADE AVAILABLE TO  
46 THE PUBLIC.

47 S 10. This act shall take effect on the first of November next  
48 succeeding the date upon which it shall have become a law.