STATE OF NEW YORK

3809

2017-2018 Regular Sessions

IN SENATE

January 27, 2017

Introduced by Sens. BAILEY, HAMILTON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to sealing records for certain proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 221.05 of the penal law, as added by chapter 360 of the laws of 1977, is amended to read as follows:

§ 221.05 Unlawful possession of marihuana.

A person is guilty of unlawful possession of marihuana when he knowingly and unlawfully possesses marihuana.

Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred dollars. However, where the defendant has previously been convicted of [~~an offense~~] **a crime** defined in this article, **except a crime defined in section 221.10 of this article provided, however, that the record of such conviction does not demonstrate a conviction under subdivision two of such section 221.10,** or article 220 of this chapter, committed within the three years immediately preceding such violation, it shall be punishable (a) only by a fine of not more than two hundred dollars, if the defendant was previously convicted of one such offense committed during such period, and (b) by a fine of not more than two hundred fifty dollars or a term of imprisonment not in excess of fifteen days or both, if the defendant was previously convicted of two such offenses committed during such period.

§ 2. Paragraph (k) of subdivision 3 of section 160.50 of the criminal procedure law, as added by chapter 835 of the laws of 1977 and as relettered by chapter 192 of the laws of 1980, is amended to read as follows:

(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

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

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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~~] of section 221.10 of the penal law provided, however, that the record of such conviction does not demonstrate a conviction under subdivision two of such section 221.10, or for a petty offense or offenses. No defendant shall be required or permitted to waive eligibility for sealing pursuant to this paragraph as part of a plea of guilty, sentence or any agreement related to a conviction for a violation of section 221.05 or section 221.10 of the penal law and any such waiver shall be deemed void and wholly unenforceable.

§ 3. Section 160.50 of the criminal procedure law is amended by adding three new subdivisions 5, 6 and 7 to read as follows:

5. A person convicted of a violation of section 221.10 of the penal law, other than a conviction after trial of, or plea of guilty to, subdivision two of such section 221.10, prior to the effective date of this subdivision may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless the district attorney demonstrates that the interests of justice require otherwise.

6. (a) Notwithstanding any other provision of law except as provided in paragraph (d) of subdivision one of this section and paragraph (e) of subdivision four of section eight hundred thirty-seven of the executive law: (i) when the division of criminal justice services conducts a search of its criminal history records, maintained pursuant to subdivision six of section eight hundred thirty-seven of the executive law, and returns a report thereon, all references to a conviction for a violation of section 221.10 of the penal law, other than a conviction after trial of, or plea of guilty to, subdivision two of such section 221.10, shall be excluded from such report; and (ii) the chief administrator of the courts shall develop and promulgate rules as may be necessary to ensure that no written or electronic report of a criminal history record search conducted by the office of court administration contains information relating to a conviction for a violation of section 221.10 of the penal law, other than a conviction after trial of, or plea of guilty to, subdivision two of such section 221.10, unless such search is conducted solely for a bona fide research purpose, provided that such information, if so disseminated, shall be disseminated in accordance with procedures established by the chief administrator of the courts to assure the security and privacy of identification and information data, which shall include the execution of an agreement which protects the confidentiality of the information and reasonably protects against data linkage to individuals.

(b) Nothing contained in this subdivision shall be deemed to permit or require the release, disclosure or other dissemination by the division of criminal justice services or the office of court administration of criminal history record information that has been sealed in accordance with law.

7. A person convicted of a violation of section 221.05 of the penal law shall, on the effective date of this subdivision, have such conviction immediately sealed pursuant to subdivision one of this section if such conviction occurred less than three years prior to such effective date.

§ 4. This act shall take effect on the sixtieth day after it shall have become a law.