

# 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 Assem-  
bly, do enact as follows:

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

3 § 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~~] a crime defined in this  
9 article, except a crime defined in section 221.10 of this article  
10 provided, however, that the record of such conviction does not demon-  
11 strate a conviction under subdivision two of such section 221.10, or  
12 article 220 of this chapter, committed within the three years immedi-  
13 ately preceding such violation, it shall be punishable (a) only by a fine  
14 of not more than two hundred dollars, if the defendant was previously  
15 convicted of one such offense committed during such period, and (b) by a  
16 fine of not more than two hundred fifty dollars or a term of imprison-  
17 ment not in excess of fifteen days or both, if the defendant was previ-  
18 ously convicted of two such offenses committed during such period.

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

22 (k) (i) The accusatory instrument alleged a violation of article two  
23 hundred twenty or section 240.36 of the penal law, prior to the taking  
24 effect of article two hundred twenty-one of the penal law, or a  
25 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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1 sole controlled substance involved is marijuana; and (iii) the  
2 conviction was only for a violation or violations[~~, and (iv) at least~~  
3 ~~three years have passed since the offense occurred~~] of section 221.10 of  
4 the penal law provided, however, that the record of such conviction does  
5 not demonstrate a conviction under subdivision two of such section  
6 221.10, or for a petty offense or offenses. No defendant shall be  
7 required or permitted to waive eligibility for sealing pursuant to this  
8 paragraph as part of a plea of guilty, sentence or any agreement related  
9 to a conviction for a violation of section 221.05 or section 221.10 of  
10 the penal law and any such waiver shall be deemed void and wholly unen-  
11 forceable.

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

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

23 6. (a) Notwithstanding any other provision of law except as provided  
24 in paragraph (d) of subdivision one of this section and paragraph (e) of  
25 subdivision four of section eight hundred thirty-seven of the executive  
26 law: (i) when the division of criminal justice services conducts a  
27 search of its criminal history records, maintained pursuant to subdivi-  
28 sion six of section eight hundred thirty-seven of the executive law, and  
29 returns a report thereon, all references to a conviction for a violation  
30 of section 221.10 of the penal law, other than a conviction after trial  
31 of, or plea of guilty to, subdivision two of such section 221.10, shall  
32 be excluded from such report; and (ii) the chief administrator of the  
33 courts shall develop and promulgate rules as may be necessary to ensure  
34 that no written or electronic report of a criminal history record search  
35 conducted by the office of court administration contains information  
36 relating to a conviction for a violation of section 221.10 of the penal  
37 law, other than a conviction after trial of, or plea of guilty to,  
38 subdivision two of such section 221.10, unless such search is conducted  
39 solely for a bona fide research purpose, provided that such information,  
40 if so disseminated, shall be disseminated in accordance with procedures  
41 established by the chief administrator of the courts to assure the secu-  
42 rity and privacy of identification and information data, which shall  
43 include the execution of an agreement which protects the confidentiality  
44 of the information and reasonably protects against data linkage to indi-  
45 viduals.

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

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

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