

# STATE OF NEW YORK

667

2017-2018 Regular Sessions

## IN ASSEMBLY

January 9, 2017

Introduced by M. of A. RODRIGUEZ -- read once and referred 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; 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 Assem-  
bly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "fairness  
2 and equity act".

3 § 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.

18 § 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 § 221.05 Unlawful possession of marihuana.

21 A person is guilty of unlawful possession of marihuana when he know-  
22 ingly and unlawfully possesses marihuana and such marihuana is burning.

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

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1 Unlawful possession of marihuana is a violation punishable only by a  
2 fine of not more than one hundred dollars. [~~However, where the defendant~~  
3 ~~has previously been convicted of an offense defined in this article or~~  
4 ~~article 220 of this chapter, committed within the three years immediate-~~  
5 ~~ly preceding such violation, it shall be punishable (a) only by a fine~~  
6 ~~of not more than two hundred dollars, if the defendant was previously~~  
7 ~~convicted of one such offense committed during such period, and (b) by a~~  
8 ~~fine of not more than two hundred fifty dollars or a term of imprison-~~  
9 ~~ment not in excess of fifteen days or both, if the defendant was previ-~~  
10 ~~ously convicted of two such offenses committed during such period.]~~

11 § 4. Section 221.10 of the penal law, as amended by chapter 265 of the  
12 laws of 1979, subdivision 2 as amended by chapter 75 of the laws of  
13 1995, is amended to read as follows:

14 § 221.10 Criminal possession of marihuana in the fifth degree.

15 A person is guilty of criminal possession of marihuana in the fifth  
16 degree when he knowingly and unlawfully possesses[+

17 ~~1. marihuana in a public place, as defined in section 240.00 of this~~  
18 ~~chapter, and such marihuana is burning or open to public view, or~~

19 ~~2.]~~ one or more preparations, compounds, mixtures or substances  
20 containing marihuana and the preparations, compounds, mixtures or  
21 substances are of an aggregate weight of more than twenty-five grams.

22 Criminal possession of marihuana in the fifth degree is a class B  
23 misdemeanor.

24 § 5. Subdivision 1 of section 170.56 of the criminal procedure law, as  
25 amended by chapter 360 of the laws of 1977, is amended to read as  
26 follows:

27 1. Upon or after arraignment in a local criminal court upon an infor-  
28 mation, a prosecutor's information or a misdemeanor complaint, where the  
29 sole remaining count or counts charge a violation or violations of  
30 section 221.05, 221.10, 221.15, 221.35 or 221.40 of the penal law and  
31 before the entry of a plea of guilty thereto or commencement of a trial  
32 thereof, the court, upon motion of a defendant, may order that all  
33 proceedings be suspended and the action adjourned in contemplation of  
34 dismissal, or upon a finding that adjournment would not be necessary or  
35 appropriate and the setting forth in the record of the reasons for such  
36 findings, may dismiss in furtherance of justice the accusatory instru-  
37 ment; provided, however, that the court may not order such adjournment  
38 in contemplation of dismissal or dismiss the accusatory instrument if:  
39 (a) the defendant has previously been granted such adjournment in  
40 contemplation of dismissal, or (b) the defendant has previously been  
41 granted a dismissal under this section, or (c) the defendant has previ-  
42 ously been convicted of any offense involving controlled substances, or  
43 (d) the defendant has previously been convicted of a crime and the  
44 district attorney does not consent or (e) the defendant has previously  
45 been adjudicated a youthful offender on the basis of any act or acts  
46 involving controlled substances and the district attorney does not  
47 consent. Notwithstanding the limitations set forth in this subdivision,  
48 the court may order that all proceedings be suspended and the action  
49 adjourned in contemplation of dismissal based upon a finding of excep-  
50 tional circumstances. For purposes of this subdivision, exceptional  
51 circumstances exist when, regardless of the ultimate disposition of the  
52 case, the entry of a plea of guilty is likely to result in severe colla-  
53 teral consequences, including, but not limited to, those that could  
54 leave a noncitizen inadmissible or deportable from the United States.

55 § 6. Paragraphs (h) and (i) of subdivision 1 of section 440.10 of the  
56 criminal procedure law, paragraph (h) as amended by chapter 332 of the

laws of 2010 and paragraph (i) as amended by chapter 368 of the laws of 2015, 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 person for prostitution or promoting prostitution) or 230.00 (prostitution) or 230.03 (prostitution in a school zone) 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, labor trafficking under section 135.35 of the penal law, aggravated labor trafficking under section 135.37 of the penal law, compelling prostitution under section 230.33 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 compelling prostitution crime or has sought services for victims of such trafficking or compelling prostitution crime, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking or compelling prostitution crime 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 trafficking, compelling prostitution 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, compelling prostitution 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 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.

§ 7. 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.

§ 8. 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

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

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