

STATE OF NEW YORK

7013

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. RIVERA -- 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; 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 § 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.
- 23 Unlawful possession of marihuana is a violation punishable only by a
24 fine of not more than one hundred dollars. [~~However, where the defendant~~

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

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

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

12 § 221.10 Criminal possession of marihuana in the fifth degree.

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

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

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

20 Criminal possession of marihuana in the fifth degree is a class B
21 misdemeanor.

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

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

53 § 6. Paragraphs (h) and (i) of subdivision 1 of section 440.10 of the
54 criminal procedure law, paragraph (h) as amended by chapter 332 of the
55 laws of 2010 and paragraph (i) as amended by chapter 368 of the laws of
56 2015, are amended and a new paragraph (j) is added to read as follows:

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

3 (i) The judgment is a conviction where the arresting charge was under
4 section 240.37 (loitering for the purpose of engaging in a prostitution
5 offense, provided that the defendant was not alleged to be loitering for
6 the purpose of patronizing a person for prostitution or promoting pros-
7 titution) or 230.00 (prostitution) or 230.03 (prostitution in a school
8 zone) of the penal law, and the defendant's participation in the offense
9 was a result of having been a victim of sex trafficking under section
10 230.34 of the penal law, labor trafficking under section 135.35 of the
11 penal law, aggravated labor trafficking under section 135.37 of the
12 penal law, compelling prostitution under section 230.33 of the penal
13 law, or trafficking in persons under the Trafficking Victims Protection
14 Act (United States Code, title 22, chapter 78); provided that

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

23 (ii) official documentation of the defendant's status as a victim of
24 trafficking, compelling prostitution or trafficking in persons at the
25 time of the offense from a federal, state or local government agency
26 shall create a presumption that the defendant's participation in the
27 offense was a result of having been a victim of sex trafficking, compel-
28 ling prostitution or trafficking in persons, but shall not be required
29 for granting a motion under this paragraph[~~+~~]; or

30 (j) The judgment occurred prior to the effective date of this para-
31 graph and is a conviction for an offense as defined by section 221.10 of
32 the penal law (criminal possession of marihuana in the fifth degree), as
33 in effect prior to the effective date of this paragraph, provided that
34 the accusatory instrument that underlies the judgment does not include
35 an allegation that the defendant possessed more than twenty-five grams
36 of marihuana.

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

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

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

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

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

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

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

20 § 52-a. Requirement with respect to bills increasing correctional
21 populations. 1. Whenever a committee reports a bill favorably which, if
22 passed, would increase or decrease the pretrial or sentenced population
23 of correctional facilities in this state, a majority of the committee
24 members voting may request that a racial and ethnic impact statement be
25 prepared. Each house of the legislature shall separately prescribe rules
26 requiring racial and ethnic impact statements to accompany, on a sepa-
27 rate form, bills and amendments to bills after such bills have been
28 reported from committee. Racial and ethnic impact statements shall be
29 prepared before the bill is considered for final passage. The statement
30 shall indicate whether the bill would have a disparate impact on the
31 racial and ethnic composition of the correctional facility population
32 and an explanation of that impact. Any racial and ethnic impact state-
33 ment printed with or prepared for a bill is solely for the purpose of
34 information, summarization and explanation for members of the legisla-
35 ture and shall not be construed to represent the intent of the legisla-
36 ture or either chamber thereof for any purpose. Each racial and ethnic
37 impact statement shall bear the following disclaimer: "The following
38 racial and ethnic impact statement is prepared for the benefit of the
39 members of the legislature, solely for purposes of information, summa-
40 rization and explanation and does not represent the intent of the legis-
41 lature or either chamber thereof for any purpose."

42 2. Racial and ethnic impact statements shall be made available to the
43 public in the same manner that the text of bills are made available to
44 the public.

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