STATE OF NEW YORK

8420

2019-2020 Regular Sessions

IN ASSEMBLY

June 16, 2019

Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to vacating records for certain proceedings; and to amend the public health law, in relation to the definition of smoking

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~~] fifty dollars. [~~However, where the defendant has previously been convicted of an offense defined in this article 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. Section 221.10 of the penal law, as amended by chapter 265 of the laws of 1979 and subdivision 2 as amended by chapter 75 of the laws of 1995, is amended to read as follows:

§ 221.10 Criminal possession of marihuana in the fifth degree.

A person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses[~~:~~

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

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

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

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

§ 3. Subparagraph (ii) of paragraph (i) and paragraph (j) of subdivision 1 of section 440.10 of the criminal procedure law, subparagraph (ii) of paragraph (i) as amended by section 3 of part OO of chapter 55 of the laws of 2019, paragraph (j) as amended by section 2 of part MMM of chapter 59 of the laws of 2019, are amended and a new paragraph (k) is added to read as follows:

(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 is a conviction for a class A or unclassified misdemeanor entered prior to the effective date of this paragraph and satisfies the ground prescribed in paragraph (h) of this subdivision. There shall be a rebuttable presumption that a conviction by plea to such an offense was not knowing, voluntary and intelligent, based on ongoing collateral consequences, including potential or actual immigration consequences, and there shall be a rebuttable presumption that a conviction by verdict constitutes cruel and unusual punishment under section five of article one of the state constitution based on such consequences[~~.~~]**; or**

(k) The judgment occurred prior to the effective date of this paragraph and is a conviction for an offense as defined by section 221.05 or 221.10 of the penal law as in effect prior to the effective date of this paragraph in which case the court shall grant the motion.

§ 4. 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 (k)** 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.

§ 5. 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 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 221.05 or 221.10 of the penal law**. **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.**

§ 6. Section 160.50 of the criminal procedure law is amended by adding a new subdivision 5 to read as follows:

5. (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, 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, 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. Subdivision 8 of section 1399-n of the public health law, as amended by chapter 13 of the laws of 2003, is amended to read as follows:

8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or marihuana as defined in section thirty-three hundred two of this chapter.

§ 8. This act, including but not limited to the amendments to subdivision 1 of section 221.10 of the penal law made by section two of this act, are ameliorative in intent and effect. Any person who stands convicted under such subdivision 1 of section 221.10 as of the date this section takes effect, and any person who stands convicted under such subdivision 1 of section 221.10 and serving a sentence of imprisonment for such conviction on such date shall be entitled to judgment, which shall be granted promptly by the court: (a) vacating such conviction pursuant to paragraph (h) of subdivision 1 of section 440.10 of the criminal procedure law, on grounds that such conviction constitutes cruel and unusual punishment under the state constitution; and (b) releasing such person from custody under such sentence and, when sought from a superior court, granting any other appropriate, related habeas corpus relief pursuant to article 70 of the civil practice law and rules.

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