

STATE OF NEW YORK

8432

2019-2020 Regular Sessions

IN ASSEMBLY

June 20, 2019

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

AN ACT to amend the criminal procedure law, in relation to vacating records for certain proceedings; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Paragraph (k) of subdivision 1 of section 440.10 of the
2 criminal procedure law, as added by a chapter of the laws of 2019,
3 amending the penal law and the criminal procedure law relating to vacat-
4 ing records for certain proceedings, as proposed in legislative bills
5 numbers S. 6579-A and A. 8420-A, is REPEALED and a new paragraph (k) is
6 added to read as follows:

7 (k) The judgment occurred prior to the effective date of this para-
8 graph and is a conviction for an offense as defined in subparagraph (i)
9 or (ii) of paragraph (k) of subdivision three of section 160.50 of this
10 part, in which case the court shall presume that a conviction by plea
11 for the aforementioned offenses was not knowing, voluntary and intelli-
12 gent if it has severe or ongoing consequences, including but not limited
13 to potential or actual immigration consequences, and shall presume that
14 a conviction by verdict for the aforementioned offenses constitutes
15 cruel and unusual punishment under section five of article one of the
16 state constitution, based on those consequences. The people may rebut
17 these presumptions.

18 § 2. Paragraph (k) of subdivision 3 of section 160.50 of the criminal
19 procedure law, as amended by a chapter of the laws of 2019, amending the
20 penal law and the criminal procedure law relating to vacating records
21 for certain proceedings, as proposed in legislative bills numbers S.
22 6579-A and A. 8420-A, is amended to read as follows:

23 (k) (i) The [~~accusatory instrument alleged~~] conviction was for a
24 violation of[+]

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

LBD13421-10-9

1 ~~(i)~~ article two hundred twenty or section 240.36 of the penal law
2 prior to the effective date of article two hundred twenty-one of the
3 penal law, and the sole controlled substance involved was marihuana and
4 the conviction was only for a violation or violations; or

5 (ii) the conviction is for an offense defined in section 221.05 or
6 221.10 of the penal law prior to the effective date of the chapter of
7 the laws of two thousand nineteen that amended this ~~[section]~~ paragraph;
8 or

9 (iii) the conviction is for an offense defined in section 221.05 or
10 221.10 of the penal law.

11 No defendant shall be required or permitted to waive eligibility for
12 sealing or expungement pursuant to this ~~[paragraph]~~ section as part of a
13 plea of guilty, sentence or any agreement related to a conviction for a
14 violation of section 221.05 or section 221.10 of the penal law and any
15 such waiver shall be deemed void and wholly unenforceable.

16 § 3. Paragraph (a) of subdivision 5 of section 160.50 of the criminal
17 procedure law, as added by a chapter of the laws of 2019, amending the
18 penal law and the criminal procedure law relating to vacating records
19 for certain proceedings, as proposed in legislative bills numbers S.
20 6579-A and A. 8420-A, is amended to read as follows:

21 (a) Expungement of certain marihuana-related records. ~~[Where an accu-~~
22 ~~satory instrument alleged]~~ A conviction for an offense described in
23 paragraph (k) of subdivision three of this section~~[, such count or~~
24 ~~counts of the accusatory instrument in such criminal action or proceed-~~
25 ~~ing]~~ shall, on and after the effective date of this paragraph, in
26 accordance with the provisions of this paragraph, be vacated and
27 dismissed, and all records of such ~~[count or counts]~~ conviction or
28 convictions and~~[, in the absence of any other valid count or counts, all~~
29 ~~records of such action or proceeding]~~ related to such conviction or
30 convictions shall be expunged, as described in subdivision forty-five of
31 section 1.20 of this chapter, and the matter shall be considered termi-
32 nated in favor of the accused and deemed a nullity, having been rendered
33 by this paragraph legally invalid. All such records for an offense
34 described in this paragraph where the conviction was entered on or
35 before the effective date of the chapter of the laws of 2019 that
36 amended this paragraph shall be expunged promptly and, in any event, no
37 later than one year after such effective date.

38 § 4. Subparagraph (i) of paragraph (b) of subdivision 5 of section
39 160.50 of the criminal procedure law, as added by a chapter of the laws
40 of 2019, amending the penal law and the criminal procedure law relating
41 to vacating records for certain proceedings, as proposed in legislative
42 bills numbers S. 6579-A and A. 8420-A, is amended to read as follows:

43 (i) the chief administrator of the courts shall promptly notify the
44 commissioner of the division of criminal justice services and the heads
45 of all appropriate police departments, district attorney's offices and
46 other law enforcement agencies of all ~~[counts]~~ convictions that have
47 been vacated and dismissed pursuant to paragraph (a) of this subdivision
48 and that~~[, in the absence of any other valid count or counts,]~~ all
49 records ~~[of such action or proceeding]~~ related to such convictions shall
50 be expunged and the matter shall be considered terminated in favor of
51 the accused and deemed a nullity, having been rendered legally invalid.
52 Upon receipt of notification of such vacatur, dismissal and expungement,
53 all records relating to such ~~[count or counts]~~ conviction or
54 convictions, or the criminal action or proceeding, as the case may be,
55 shall be marked as expunged by conspicuously indicating on the face of
56 the record and on each page or at the beginning of the digitized file of

1 the record that the record has been designated as expunged. Upon the
2 written request of the individual whose case has been expunged or their
3 designated agent, such records shall be destroyed. Such records and
4 papers shall not be made available to any person, except the individual
5 whose case has been expunged or such person's designated agent; and
6 § 5. This act shall take effect on the same date and in the same
7 manner as a chapter of the laws of 2019, amending the penal law and the
8 criminal procedure law relating to vacating records for certain
9 proceedings, as proposed in legislative bills numbers S. 6579-A and A.
10 8420-A, takes effect.