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:

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to vacating records for certain proceedings, as proposed in legislative bills numbers S. 6579-A and A. 8420-A, is REPEALED and a new paragraph (k) is added to read as follows:

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

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

(k) **(i)** The [~~accusatory instrument alleged~~] **conviction was for** a violation of[~~:~~

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

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

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

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

No defendant shall be required or permitted to waive eligibility for sealing **or expungement** pursuant to this [~~paragraph~~] **section** 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.

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

(a) Expungement of certain marihuana-related records. [~~Where an accusatory instrument alleged~~] **A conviction for** an offense described in paragraph (k) of subdivision three of this section[~~, such count or counts of the accusatory instrument in such criminal action or proceeding~~] shall, on **and after** the effective date of this paragraph, in accordance with the provisions of this paragraph, be vacated and dismissed, and all records of such [~~count or counts~~] **conviction or convictions** and[~~, in the absence of any other valid count or counts, all records of such action or proceeding~~] **related to such conviction or convictions** shall be expunged, as described in subdivision forty-five of section 1.20 of this chapter, and the matter shall be considered terminated in favor of the accused and deemed a nullity, having been rendered by this paragraph legally invalid. **All such records for an offense described in this paragraph where the conviction was entered on or before the effective date of the chapter of the laws of 2019 that amended this paragraph shall be expunged promptly and, in any event, no later than one year after such effective date.**

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

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

the record that the record has been designated as expunged. Upon the written request of the individual whose case has been expunged or their designated agent, such records shall be destroyed. Such records and papers shall not be made available to any person, except the individual whose case has been expunged or such person's designated agent; and

§ 5. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2019, amending the penal law and the criminal procedure law relating to vacating records for certain proceedings, as proposed in legislative bills numbers S. 6579-A and A. 8420-A, takes effect.