# STATE OF NEW YORK

495

2019-2020 Regular Sessions

# IN SENATE

**(Prefiled)**

January 9, 2019

Introduced by Sens. RIVERA, KENNEDY, MONTGOMERY, SEPULVEDA -- 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:**

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

§ 2. Subdivisions 5 and 6 of section 1.05 of the penal law, subdivision 5 as amended by chapter 612 of the laws of 1982 and subdivision 6 as amended by chapter 98 of the laws of 2006, are amended to read as follows:

5. To provide for an appropriate public response to particular offenses, including consideration of the consequences of the offense for the victim, including the victim's family, and the community; [~~and~~]

6. **To ensure that laws are enforced equally and fairly and do not result in a disparate impact on people because of their race or ethnicity; and**

**7.** To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, the promotion of their successful and productive reentry and reintegration into society, and their confinement when required in the interests of public protection.

§ 3. 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.

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

LBD05601-01-9

A person is guilty of unlawful possession of marihuana when he knowingly and unlawfully possesses marihuana **and such marihuana is burning**.

Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred 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.~~]

§ 4. Section 221.10 of the penal law, as amended by chapter 265 of the laws of 1979, 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~~

~~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.

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

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

1. Upon or after arraignment in a local criminal court upon an information, a prosecutor's information or a misdemeanor complaint, where the sole remaining count or counts charge a violation or violations of section 221.05, 221.10, 221.15, 221.35 or 221.40 of the penal law and before the entry of a plea of guilty thereto or commencement of a trial thereof, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal, or upon a finding that adjournment would not be necessary or appropriate and the setting forth in the record of the reasons for such findings, may dismiss in furtherance of justice the accusatory instrument; provided, however, that the court may not order such adjournment in contemplation of dismissal or dismiss the accusatory instrument if: (a) the defendant has previously been granted such adjournment in contemplation of dismissal, or (b) the defendant has previously been granted a dismissal under this section, or (c) the defendant has previously been convicted of any offense involving controlled substances, or (d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not consent. **Notwithstanding the limitations set forth in this subdivision, the court may order that all proceedings be suspended and the action adjourned in contemplation of dismissal based upon a finding of exceptional circumstances. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe collateral consequences, including, but not limited to, those that could leave a noncitizen inadmissible or deportable from the United States.**

§ 6. Paragraphs (h) and (i) of subdivision 1 of section 440.10 of the criminal procedure law, paragraph (h) as amended by chapter 332 of the laws of 2010, paragraph (i) as amended by chapter 368 of the laws of 2015 and the opening paragraph of (i) as amended by chapter 189 of the laws of 2018, 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, sex trafficking of a child under section 230.34-a 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, such subdivision as renumbered by chapter 142 of the laws of 1991, 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 manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one[~~.~~]**; or**

(j) following the arrest of such person, the arresting police agency, prior to the filing of an accusatory instrument in a local criminal court but subsequent to the forwarding of a copy of the fingerprints of such person to the division of criminal justice services, elects not to proceed further. In such event, the head of the arresting police agency shall serve a certification of such disposition upon the division of criminal justice services 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 manner as is required thereunder with respect to an order of a court entered pursuant to said subdivision one[~~.~~]**; or**

(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~~].

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

**§ 52-a. Requirement with respect to bills increasing correctional populations. 1. Whenever a committee reports a bill favorably which, if passed, would increase or decrease the pretrial or sentenced population of correctional facilities in this state, a majority of the committee members voting may request that a racial and ethnic impact statement be prepared. Each house of the legislature shall separately prescribe rules requiring racial and ethnic impact statements to accompany, on a separate form, bills and amendments to bills after such bills have been reported from committee. Racial and ethnic impact statements shall be prepared before the bill is considered for final passage. The statement shall indicate whether the bill would have a disparate impact on the racial and ethnic composition of the correctional facility population and an explanation of that impact. Any racial and ethnic impact statement printed with or prepared for a bill is solely for the purpose of information, summarization and explanation for members of the legislature and shall not be construed to represent the intent of the legislature or either chamber thereof for any purpose. Each racial and ethnic impact statement shall bear the following disclaimer: "The following racial and ethnic impact statement is prepared for the benefit of the members of the legislature, solely for purposes of information, summarization and explanation and does not represent the intent of the legislature or either chamber thereof for any purpose."**

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

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