

# STATE OF NEW YORK

6579--A

2019-2020 Regular Sessions

## IN SENATE

June 16, 2019

Introduced by Sens. BAILEY, MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Section 221.05 of the penal law, as added by chapter 360 of  
2 the laws of 1977, is amended to read as follows:

3 § 221.05 Unlawful possession of marihuana in the second degree.

4 A person is guilty of unlawful possession of marihuana in the second  
5 degree when he knowingly and unlawfully possesses marihuana.

6 Unlawful possession of marihuana in the second degree is a violation  
7 punishable only by a fine of not more than [~~one hundred~~] fifty dollars.

8 [~~However, where the defendant has previously been convicted of an~~  
9 ~~offense defined in this article or article 220 of this chapter, commit-~~  
10 ~~ted within the three years immediately preceding such violation, it~~  
11 ~~shall be punishable (a) only by a fine of not more than two hundred~~  
12 ~~dollars, if the defendant was previously convicted of one such offense~~  
13 ~~committed during such period, and (b) by a fine of not more than two~~  
14 ~~hundred fifty dollars or a term of imprisonment not in excess of fifteen~~  
15 ~~days or both, if the defendant was previously convicted of two such~~  
16 ~~offenses committed during such period.~~]

17 § 2. Section 221.10 of the penal law, as amended by chapter 265 of the  
18 laws of 1979 and subdivision 2 as amended by chapter 75 of the laws of  
19 1995, is amended to read as follows:

20 § 221.10 [~~Criminal~~] Unlawful possession of marihuana in the [~~fifth~~]  
21 first degree.

22 A person is guilty of [~~criminal~~] unlawful possession of marihuana in  
23 the [~~fifth~~] first degree when he knowingly and unlawfully possesses [+  
24 ~~1. marihuana in a public place, as defined in section 240.00 of this~~  
25 ~~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.

LBD13421-04-9

1 ~~2-~~] one or more preparations, compounds, mixtures or substances  
2 containing marihuana and the preparations, compounds, mixtures or  
3 substances are of an aggregate weight of more than [~~twenty-five grams~~]  
4 one ounce.

5 [~~Criminal~~] Unlawful possession of marihuana in the [~~fifth~~] first  
6 degree is a [~~class-B misdemeanor~~] violation punishable only by a fine of  
7 not more than two hundred dollars.

8 § 3. Subparagraph (ii) of paragraph (i) and paragraph (j) of subdivi-  
9 sion 1 of section 440.10 of the criminal procedure law, subparagraph  
10 (ii) of paragraph (i) as amended by section 3 of part 00 of chapter 55  
11 of the laws of 2019, paragraph (j) as amended by section 2 of part MMM  
12 of chapter 59 of the laws of 2019, are amended and a new paragraph (k)  
13 is added to read as follows:

14 (ii) official documentation of the defendant's status as a victim of  
15 trafficking, compelling prostitution or trafficking in persons at the  
16 time of the offense from a federal, state or local government agency  
17 shall create a presumption that the defendant's participation in the  
18 offense was a result of having been a victim of sex trafficking, compel-  
19 ling prostitution or trafficking in persons, but shall not be required  
20 for granting a motion under this paragraph; [~~or~~]

21 (j) The judgment is a conviction for a class A or unclassified misde-  
22 meanor entered prior to the effective date of this paragraph and satis-  
23 fies the ground prescribed in paragraph (h) of this subdivision. There  
24 shall be a rebuttable presumption that a conviction by plea to such an  
25 offense was not knowing, voluntary and intelligent, based on ongoing  
26 collateral consequences, including potential or actual immigration  
27 consequences, and there shall be a rebuttable presumption that a  
28 conviction by verdict constitutes cruel and unusual punishment under  
29 section five of article one of the state constitution based on such  
30 consequences[~~-~~]; or

31 (k) The judgment occurred prior to the effective date of this para-  
32 graph and is a conviction for an offense as defined by section 221.05 or  
33 221.10 of the penal law as in effect prior to the effective date of this  
34 paragraph in which case the court shall grant the motion.

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

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

41 § 5. Paragraph (k) of subdivision 3 of section 160.50 of the criminal  
42 procedure law, as added by chapter 835 of the laws of 1977 and as relet-  
43 tered by chapter 192 of the laws of 1980, is amended to read as follows:

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

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

1 (ii) section 221.05 or 221.10 of the penal law prior to the effective  
2 date of the chapter of laws of two thousand nineteen that amended this  
3 section; or

4 (iii) section 221.05 or 221.10 of the penal law.

5 No defendant shall be required or permitted to waive eligibility for  
6 sealing pursuant to this paragraph as part of a plea of guilty, sentence  
7 or any agreement related to a conviction for a violation of section  
8 221.05 or section 221.10 of the penal law and any such waiver shall be  
9 deemed void and wholly unenforceable.

10 § 6. Section 1.20 of the criminal procedure law is amended by adding a  
11 new subdivision 45 to read as follows:

12 45. "Expunge" means, where an arrest and any enforcement activity  
13 connected with that arrest, including prosecution and any disposition in  
14 any New York state court, is deemed a nullity and the accused is  
15 restored, in contemplation of the law, to the status such individual  
16 occupied before the arrest, prosecution and/or disposition; that records  
17 of such arrest, prosecution and/or disposition shall be marked as  
18 expunged or shall be destroyed as set forth in section 160.50 of this  
19 chapter. Neither the arrest nor prosecution and/or disposition, if any,  
20 of a matter deemed a nullity shall operate as a disqualification of any  
21 person so accused to pursue or engage in any lawful activity, occupa-  
22 tion, profession or calling. Except where specifically required or  
23 permitted by statute or upon specific authorization of a superior court,  
24 no such person shall be required to divulge information pertaining to  
25 the arrest, prosecution and/or disposition of such a matter.

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

28 5. (a) Expungement of certain marijuana-related records. Where an  
29 accusatory instrument alleged an offense described in paragraph (k) of  
30 subdivision three of this section, such count or counts of the accusato-  
31 ry instrument in such criminal action or proceeding shall, on the effec-  
32 tive date of this paragraph, in accordance with the provisions of this  
33 paragraph, be vacated and dismissed, and all records of such count or  
34 counts and, in the absence of any other valid count or counts, all  
35 records of such action or proceeding shall be expunged, as described in  
36 subdivision forty-five of section 1.20 of this chapter, and the matter  
37 shall be considered terminated in favor of the accused and deemed a  
38 nullity, having been rendered by this paragraph legally invalid.

39 (b) Duties of certain state officials and law enforcement agencies.  
40 Commencing upon the effective date of this paragraph:

41 (i) the chief administrator of the courts shall promptly notify the  
42 commissioner of the division of criminal justice services and the heads  
43 of all appropriate police departments and other law enforcement agencies  
44 of all counts that have been vacated and dismissed pursuant to paragraph  
45 (a) of this subdivision and that, in the absence of any other valid  
46 count or counts, all records of such action or proceeding shall be  
47 expunged and the matter shall be considered terminated in favor of the  
48 accused and deemed a nullity, having been rendered legally invalid. Upon  
49 receipt of notification of such vacatur, dismissal and expungement, all  
50 records relating to such count or counts, or the criminal action or  
51 proceeding, as the case may be, shall be marked as expunged by conspicu-  
52 ously indicating on the face of the record and on each page or at the  
53 beginning of the digitized file of the record that the record has been  
54 designated as expunged. Upon the written request of the individual whose  
55 case has been expunged or their designated agent, such records shall be  
56 destroyed. Such records and papers shall not be made available to any

1 person, except the individual whose case has been expunged or such  
2 person's designated agent; and

3 (ii) where automatic vacatur, dismissal, and expungement, including  
4 record destruction if requested, is required by this subdivision but any  
5 record of the court system in this state has not yet been updated to  
6 reflect same (A) notwithstanding any other provision of law except as  
7 provided in paragraph (d) of subdivision one of this section and para-  
8 graph (e) of subdivision four of section eight hundred thirty-seven of  
9 the executive law: (1) when the division of criminal justice services  
10 conducts a search of its criminal history records, maintained pursuant  
11 to subdivision six of section eight hundred thirty-seven of the execu-  
12 tive law, and returns a report thereon, all references to a conviction  
13 for an offense described in paragraph (k) of subdivision three of this  
14 section shall be excluded from such report; and (2) the chief adminis-  
15 trator of the courts shall develop and promulgate rules as may be neces-  
16 sary to ensure that no written or electronic report of a criminal histo-  
17 ry record search conducted by the office of court administration  
18 contains information relating to a conviction for an offense described  
19 in paragraph (k) of subdivision three of this section; and (B) where  
20 court records relevant to such matter cannot be located or have been  
21 destroyed, and a person or the person's attorney presents to an appro-  
22 priate court employee a fingerprint record of the New York state divi-  
23 sion of criminal justice services, or a copy of a court disposition  
24 record or other relevant court record, which indicates that a criminal  
25 action or proceeding against such person was terminated by conviction of  
26 an offense described in paragraph (k) of subdivision three of this  
27 section, then promptly, and in any event within thirty days after such  
28 notice to such court employee, the chief administrator of the courts or  
29 his or her designee shall assure that such vacatur, dismissal, and  
30 expungement, including record destruction if requested, have been  
31 completed in accordance with subparagraph (i) of this paragraph.

32 (c) Vacatur, dismissal and expungement as set forth in this subdivi-  
33 sion is without prejudice to any person or such person's attorney seek-  
34 ing further relief pursuant to article four hundred forty of this chap-  
35 ter or any other law. Nothing in this section is intended or shall be  
36 interpreted to diminish or abrogate any right or remedy otherwise avail-  
37 able to any person.

38 (d) The office of court administration, in conjunction with the divi-  
39 sion of criminal justice services, shall develop an affirmative informa-  
40 tion campaign and widely disseminate to the public, through its website,  
41 public service announcements and other means, in multiple languages and  
42 through multiple outlets, information concerning the expungement, vaca-  
43 tur and resentencing of marihuana convictions established by the chapter  
44 of the laws of two thousand nineteen that added this paragraph, includ-  
45 ing, but not limited to, the automatic expungement of certain past  
46 convictions, the means by which an individual may file a motion for  
47 vacatur, dismissal and expungement of certain past convictions, and the  
48 impact of such changes on such person's criminal history records.

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

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

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