

# 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:

1 Section 1. This act shall be known and may be cited as the "fairness  
2 and equity act".  
3 § 2. Subdivisions 5 and 6 of section 1.05 of the penal law, subdivi-  
4 sion 5 as amended by chapter 612 of the laws of 1982 and subdivision 6  
5 as amended by chapter 98 of the laws of 2006, are amended to read as  
6 follows:  
7 5. To provide for an appropriate public response to particular  
8 offenses, including consideration of the consequences of the offense for  
9 the victim, including the victim's family, and the community; [~~and~~]  
10 6. To ensure that laws are enforced equally and fairly and do not  
11 result in a disparate impact on people because of their race or ethnici-  
12 ty; and  
13 7. To insure the public safety by preventing the commission of  
14 offenses through the deterrent influence of the sentences authorized,  
15 the rehabilitation of those convicted, the promotion of their successful  
16 and productive reentry and reintegration into society, and their  
17 confinement when required in the interests of public protection.  
18 § 3. Section 221.05 of the penal law, as added by chapter 360 of the  
19 laws of 1977, is amended to read as follows:  
20 § 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

1 A person is guilty of unlawful possession of marihuana when he know-  
2 ingly and unlawfully possesses marihuana and such marihuana is burning.

3 Unlawful possession of marihuana is a violation punishable only by a  
4 fine of not more than one hundred dollars. [~~However, where the defendant  
5 has previously been convicted of an offense defined in this article or  
6 article 220 of this chapter, committed within the three years immedi-  
7 ately preceding such violation, it shall be punishable (a) only by a fine  
8 of not more than two hundred dollars, if the defendant was previously  
9 convicted of one such offense committed during such period, and (b) by a  
10 fine of not more than two hundred fifty dollars or a term of imprison-  
11 ment not in excess of fifteen days or both, if the defendant was previ-  
12 ously convicted of two such offenses committed during such period.~~]

13 § 4. Section 221.10 of the penal law, as amended by chapter 265 of the  
14 laws of 1979, subdivision 2 as amended by chapter 75 of the laws of  
15 1995, is amended to read as follows:

16 § 221.10 Criminal possession of marihuana in the fifth degree.

17 A person is guilty of criminal possession of marihuana in the fifth  
18 degree when he knowingly and unlawfully possesses[+

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

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

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

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

29 1. Upon or after arraignment in a local criminal court upon an infor-  
30 mation, a prosecutor's information or a misdemeanor complaint, where the  
31 sole remaining count or counts charge a violation or violations of  
32 section 221.05, 221.10, 221.15, 221.35 or 221.40 of the penal law and  
33 before the entry of a plea of guilty thereto or commencement of a trial  
34 thereof, the court, upon motion of a defendant, may order that all  
35 proceedings be suspended and the action adjourned in contemplation of  
36 dismissal, or upon a finding that adjournment would not be necessary or  
37 appropriate and the setting forth in the record of the reasons for such  
38 findings, may dismiss in furtherance of justice the accusatory instru-  
39 ment; provided, however, that the court may not order such adjournment  
40 in contemplation of dismissal or dismiss the accusatory instrument if:  
41 (a) the defendant has previously been granted such adjournment in  
42 contemplation of dismissal, or (b) the defendant has previously been  
43 granted a dismissal under this section, or (c) the defendant has previ-  
44 ously been convicted of any offense involving controlled substances, or  
45 (d) the defendant has previously been convicted of a crime and the  
46 district attorney does not consent or (e) the defendant has previously  
47 been adjudicated a youthful offender on the basis of any act or acts  
48 involving controlled substances and the district attorney does not  
49 consent. Notwithstanding the limitations set forth in this subdivision,  
50 the court may order that all proceedings be suspended and the action  
51 adjourned in contemplation of dismissal based upon a finding of excep-  
52 tional circumstances. For purposes of this subdivision, exceptional  
53 circumstances exist when, regardless of the ultimate disposition of the  
54 case, the entry of a plea of guilty is likely to result in severe colla-  
55 teral consequences, including, but not limited to, those that could  
56 leave a noncitizen inadmissible or deportable from the United States.

1 § 6. Paragraphs (h) and (i) of subdivision 1 of section 440.10 of the  
2 criminal procedure law, paragraph (h) as amended by chapter 332 of the  
3 laws of 2010, paragraph (i) as amended by chapter 368 of the laws of  
4 2015 and the opening paragraph of (i) as amended by chapter 189 of the  
5 laws of 2018, are amended and a new paragraph (j) is added to read as  
6 follows:

7 (h) The judgment was obtained in violation of a right of the defendant  
8 under the constitution of this state or of the United States; ~~[or]~~

9 (i) The judgment is a conviction where the arresting charge was under  
10 section 240.37 (loitering for the purpose of engaging in a prostitution  
11 offense, provided that the defendant was not alleged to be loitering for  
12 the purpose of patronizing a person for prostitution or promoting pros-  
13 titution) or 230.00 (prostitution) or 230.03 (prostitution in a school  
14 zone) of the penal law, and the defendant's participation in the offense  
15 was a result of having been a victim of sex trafficking under section  
16 230.34 of the penal law, sex trafficking of a child under section  
17 230.34-a of the penal law, labor trafficking under section 135.35 of the  
18 penal law, aggravated labor trafficking under section 135.37 of the  
19 penal law, compelling prostitution under section 230.33 of the penal  
20 law, or trafficking in persons under the Trafficking Victims Protection  
21 Act (United States Code, title 22, chapter 78); provided that

22 (i) a motion under this paragraph shall be made with due diligence,  
23 after the defendant has ceased to be a victim of such trafficking or  
24 compelling prostitution crime or has sought services for victims of such  
25 trafficking or compelling prostitution crime, subject to reasonable  
26 concerns for the safety of the defendant, family members of the defend-  
27 ant, or other victims of such trafficking or compelling prostitution  
28 crime that may be jeopardized by the bringing of such motion, or for  
29 other reasons consistent with the purpose of this paragraph; and

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

37 (j) The judgment occurred prior to the effective date of this para-  
38 graph and is a conviction for an offense as defined by section 221.10 of  
39 the penal law (criminal possession of marihuana in the fifth degree), as  
40 in effect prior to the effective date of this paragraph, provided that  
41 the accusatory instrument that underlies the judgment does not include  
42 an allegation that the defendant possessed more than twenty-five grams  
43 of marihuana.

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

46 6. If the court grants a motion under paragraph (i) or paragraph (j)  
47 of subdivision one of this section, it must vacate the judgment and  
48 dismiss the accusatory instrument, and may take such additional action  
49 as is appropriate in the circumstances.

50 § 8. Paragraphs (i), (j) and (k) of subdivision 3 of section 160.50 of  
51 the criminal procedure law, such subdivision as renumbered by chapter  
52 142 of the laws of 1991, paragraphs (i) and (j) as added by chapter 905  
53 of the laws of 1977 and paragraph (k) as added by chapter 835 of the  
54 laws of 1977 and as relettered by chapter 192 of the laws of 1980, are  
55 amended to read as follows:

1 (i) prior to the filing of an accusatory instrument in a local crimi-  
2 nal court against such person, the prosecutor elects not to prosecute  
3 such person. In such event, the prosecutor shall serve a certification  
4 of such disposition upon the division of criminal justice services and  
5 upon the appropriate police department or law enforcement agency which,  
6 upon receipt thereof, shall comply with the provisions of paragraphs  
7 (a), (b), (c) and (d) of subdivision one of this section in the same  
8 manner as is required thereunder with respect to an order of a court  
9 entered pursuant to said subdivision one~~[-]~~; or

10 (j) following the arrest of such person, the arresting police agency,  
11 prior to the filing of an accusatory instrument in a local criminal  
12 court but subsequent to the forwarding of a copy of the fingerprints of  
13 such person to the division of criminal justice services, elects not to  
14 proceed further. In such event, the head of the arresting police agency  
15 shall serve a certification of such disposition upon the division of  
16 criminal justice services which, upon receipt thereof, shall comply with  
17 the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of  
18 this section in the same manner as is required thereunder with respect  
19 to an order of a court entered pursuant to said subdivision one~~[-]~~; or

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

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

29 § 52-a. Requirement with respect to bills increasing correctional  
30 populations. 1. Whenever a committee reports a bill favorably which, if  
31 passed, would increase or decrease the pretrial or sentenced population  
32 of correctional facilities in this state, a majority of the committee  
33 members voting may request that a racial and ethnic impact statement be  
34 prepared. Each house of the legislature shall separately prescribe rules  
35 requiring racial and ethnic impact statements to accompany, on a sepa-  
36 rate form, bills and amendments to bills after such bills have been  
37 reported from committee. Racial and ethnic impact statements shall be  
38 prepared before the bill is considered for final passage. The statement  
39 shall indicate whether the bill would have a disparate impact on the  
40 racial and ethnic composition of the correctional facility population  
41 and an explanation of that impact. Any racial and ethnic impact state-  
42 ment printed with or prepared for a bill is solely for the purpose of  
43 information, summarization and explanation for members of the legisla-  
44 ture and shall not be construed to represent the intent of the legisla-  
45 ture or either chamber thereof for any purpose. Each racial and ethnic  
46 impact statement shall bear the following disclaimer: "The following  
47 racial and ethnic impact statement is prepared for the benefit of the  
48 members of the legislature, solely for purposes of information, summa-  
49 rizat  
50 rizat  
51 rizat  
52 rizat  
53 rizat  
54 rizat  
55 rizat  
tion and explanation and does not represent the intent of the legis-  
lature or either chamber thereof for any purpose."

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

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