

STATE OF NEW YORK

6579

2019-2020 Regular Sessions

IN SENATE

June 16, 2019

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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.

4 A person is guilty of unlawful possession of marihuana when he know-
5 ingly and unlawfully possesses marihuana.

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

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

19 § 221.10 Criminal possession of marihuana in the fifth degree.

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

22 ~~1. marihuana in a public place, as defined in section 240.00 of this~~
23 ~~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.

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

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

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

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

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

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

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

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

43 (k) (i) The accusatory instrument alleged a violation of article two
44 hundred twenty or section 240.36 of the penal law, prior to the taking
45 effect of article two hundred twenty-one of the penal law, or a
46 violation of article two hundred twenty-one of the penal law; and (iii) the
47 sole controlled substance involved is marijuana; and (iii) the
48 conviction was only for a violation or violations[~~, and (iv) at least~~
49 ~~three years have passed since the offense occurred~~] of section 221.05 or
50 221.10 of the penal law. No defendant shall be required or permitted to
51 waive eligibility for sealing pursuant to this paragraph as part of a
52 plea of guilty, sentence or any agreement related to a conviction for a
53 violation of section 221.05 or section 221.10 of the penal law and any
54 such waiver shall be deemed void and wholly unenforceable.

55 § 6. Section 160.50 of the criminal procedure law is amended by
56 adding a new subdivision 5 to read as follows:

1 5. (a) Notwithstanding any other provision of law except as provided
2 in paragraph (d) of subdivision one of this section and paragraph (e) of
3 subdivision four of section eight hundred thirty-seven of the executive
4 law: (i) when the division of criminal justice services conducts a
5 search of its criminal history records, maintained pursuant to subdivi-
6 sion six of section eight hundred thirty-seven of the executive law, and
7 returns a report thereon, all references to a conviction for a violation
8 of section 221.10 of the penal law, shall be excluded from such report;
9 and (ii) the chief administrator of the courts shall develop and promul-
10 gate rules as may be necessary to ensure that no written or electronic
11 report of a criminal history record search conducted by the office of
12 court administration contains information relating to a conviction for a
13 violation of section 221.10 of the penal law, unless such search is
14 conducted solely for a bona fide research purpose, provided that such
15 information, if so disseminated, shall be disseminated in accordance
16 with procedures established by the chief administrator of the courts to
17 assure the security and privacy of identification and information data,
18 which shall include the execution of an agreement which protects the
19 confidentiality of the information and reasonably protects against data
20 linkage to individuals.

21 (b) Nothing contained in this subdivision shall be deemed to permit or
22 require the release, disclosure or other dissemination by the division
23 of criminal justice services or the office of court administration of
24 criminal history record information that has been sealed in accordance
25 with law.

26 § 7. Subdivision 8 of section 1399-n of the public health law, as
27 amended by chapter 13 of the laws of 2003, is amended to read as
28 follows:

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

32 § 8. This act, including but not limited to the amendments to subdivi-
33 sion 1 of section 221.10 of the penal law made by section two of this
34 act, are ameliorative in intent and effect. Any person who stands
35 convicted under such subdivision 1 of section 221.10 as of the date this
36 section takes effect, and any person who stands convicted under such
37 subdivision 1 of section 221.10 and serving a sentence of imprisonment
38 for such conviction on such date shall be entitled to judgment, which
39 shall be granted promptly by the court: (a) vacating such conviction
40 pursuant to paragraph (h) of subdivision 1 of section 440.10 of the
41 criminal procedure law, on grounds that such conviction constitutes
42 cruel and unusual punishment under the state constitution; and (b)
43 releasing such person from custody under such sentence and, when sought
44 from a superior court, granting any other appropriate, related habeas
45 corpus relief pursuant to article 70 of the civil practice law and
46 rules.

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