

STATE OF NEW YORK

1284

2021-2022 Regular Sessions

IN SENATE

January 8, 2021

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

AN ACT to amend the penal law, the criminal procedure law and the general business law, in relation to decriminalizing possession of controlled substances; to amend the public health law, in relation to establishing the drug decriminalization task force; to repeal certain provisions of the penal law related thereto; and providing for the repeal of certain provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings. The legislature hereby finds that
2 substance use disorder is a disease and should therefore be treated
3 using a public health, rather than a criminal-legal-system-centered
4 approach. Existing laws criminalizing the possession of drugs have been
5 ineffective in reducing drug use and preventing substance use disorder.
6 Instead, these laws have devastated individuals, families, and communi-
7 ties. Treating substance use as a crime by arresting and incarcerating
8 people for personal use offenses causes significant harm to individuals
9 who use drugs by disrupting and further destabilizing their lives. It
10 also contributes to an increased risk of death, the spread of infectious
11 diseases, mass incarceration, the separation of families, and barriers
12 to accessing housing, employment, and other vital services. Furthermore,
13 even though research shows that drugs are used and sold at similar
14 levels across all races, laws criminalizing the use of drugs have
15 disproportionately impacted Black and Latinx communities. The purpose of
16 this legislation is to save lives and to help transform New York's
17 approach to drug use from one based on criminalization and stigma to one
18 based on science and compassion, by eliminating criminal and civil
19 penalties for the personal possession of controlled substances.

20 § 2. Section 220.03 of the penal law, as amended by section 4 of part
21 I of chapter 57 of the laws of 2015, is amended to read as follows:

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

LBD04043-01-1

§ 220.03 [~~Criminal~~] Unlawful possession of a controlled substance [~~in the seventh degree~~].

A person is guilty of [~~criminal~~] unlawful possession of a controlled substance [~~in the seventh degree~~] when [~~he or she~~] they knowingly and unlawfully [~~possesses~~] possess a controlled substance; provided, however, that it shall not be a violation of this section when a person possesses a residual amount of a controlled substance and that residual amount is in or on a hypodermic syringe or hypodermic needle obtained and possessed pursuant to section thirty-three hundred eighty-one of the public health law, which includes the state's syringe exchange and pharmacy and medical provider-based expanded syringe access programs; nor shall it be a violation of this section when a person's unlawful possession of a controlled substance is discovered as a result of seeking immediate health care as defined in paragraph (b) of subdivision three of section 220.78 of [~~the penal law~~] this article, for either another person or [~~him or herself~~] themselves because such person is experiencing a drug or alcohol overdose or other life threatening medical emergency as defined in paragraph (a) of subdivision three of section 220.78 of [~~the penal law~~] this article.

[~~Criminal~~] Unlawful possession of a controlled substance [~~in the seventh degree~~] is a [~~class A misdemeanor~~] violation punishable by a fine of up to fifty dollars or participation in a needs screening to identify health and other service needs, including but not limited to services that may address any problematic substance use and mental health conditions, lack of employment, housing, or food, and any need for civil legal services. The screening should prioritize the individual's self-identified needs for referral to appropriate services. Such screening shall be conducted by individuals trained in the use of evidence-based, culturally and gender competent trauma-informed practices. Upon verification that the person has completed the screening within forty-five days of when the fine was imposed, the fine imposed by this section shall be waived. Failure to pay such fine shall not be the basis for further penalties or for a term of incarceration.

§ 3. Subdivision 3 of section 160.50 of the criminal procedure law is amended by adding a new paragraph (m) to read as follows:

(m) (i) the conviction was for a violation of an offense defined in section 220.03 of the penal law prior to the effective date of this paragraph.

(ii) the conviction is for an offense defined in section 220.03 of the penal law.

No defendant shall be required or permitted to waive eligibility for sealing or expungement pursuant to this section as part of a plea of guilty, sentence or any agreement related to a conviction for a violation of section 220.03 of the penal law and any such waiver shall be deemed void and wholly unenforceable.

§ 4. Paragraph (a) of subdivision 5 of section 160.50 of the criminal procedure law, as amended by chapter 132 of the laws of 2019, is amended to read as follows:

(a) Expungement of certain [~~marihuana-related~~] records. A conviction for an offense described in subparagraph (iii) of paragraph (k) or subparagraph (ii) of paragraph (m) of subdivision three of this section 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 conviction or convictions and 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

1 considered terminated in favor of the accused and deemed a nullity,
2 having been rendered by this paragraph legally invalid. All such records
3 for an offense described in this paragraph where the conviction was
4 entered on or before the effective date of the chapter of the laws of
5 2019 or 2020, as applicable, that amended this paragraph shall be
6 expunged promptly and, in any event, no later than one year after such
7 effective date.

8 § 5. Subparagraph (ii) of paragraph (b) of subdivision 5 of section
9 160.50 of the criminal procedure law, as added by chapter 131 of the
10 laws of 2019, is amended to read as follows:

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

41 § 6. Paragraph (k) of subdivision 1 of section 440.10 of the criminal
42 procedure law, as added by chapter 132 of the laws of 2019, is amended
43 to read as follows:

44 (k) The judgment [~~occurred prior to the effective date of this para-~~
45 ~~graph and~~] is a conviction for an offense as defined in subparagraph (i)
46 or (ii) of paragraph (k) or subparagraph (i) of paragraph (m) of subdi-
47 vision three of section 160.50 of this part, in which case the court
48 shall presume that a conviction by plea for the aforementioned offenses
49 was not knowing, voluntary and intelligent if it has [~~severe or~~] ongoing
50 collateral consequences, including but not limited to potential or actu-
51 al immigration consequences, and shall presume that a conviction by
52 verdict for the aforementioned offenses constitutes cruel and unusual
53 punishment under section five of article one of the state constitution,
54 based on those consequences. The people may rebut these presumptions.

§ 7. Subdivision 6 of section 440.10 of the criminal procedure law, as amended by chapter 131 of the laws of 2019, is amended to read as follows:

6. If the court grants a motion under paragraph (i) or paragraph (k) 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. A defendant shall not be required to demonstrate prejudice prior to vacating the judgment.

§ 8. Subdivision 9 of section 440.10 of the criminal procedure law, as added by section 4 of part 00 of chapter 55 of the laws of 2019, is amended to read as follows:

9. Upon ~~[granting of]~~ considering a motion pursuant to paragraph (j) of subdivision one of this section, a defendant shall not be required to demonstrate prejudice. Upon granting the motion, the court may either:

(a) With the consent of the people, vacate ~~[the judgment or]~~ and modify the judgment ~~[by reducing it]~~ to ~~[one of conviction for a lesser]~~ an alternate offense; or

(b) Vacate the judgment and order a new trial wherein the defendant enters a plea to the same offense in order to permit the court to resentence the defendant in accordance with the amendatory provisions of subdivision one-a of section 70.15 of the penal law.

§ 9. Section 220.46 of the penal law is REPEALED.

§ 10. Section 220.25 of the penal law is REPEALED.

§ 11. Subdivision 2 of section 850 of the general business law, as amended by chapter 812 of the laws of 1980, is amended to read as follows:

2. (a) "Drug-related paraphernalia" consists of the following objects used for the following purposes:

~~[(a)]~~ (i) Kits, used or designed for the purpose of planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

~~[(b)]~~ (ii) Kits, used or designed for the purpose of manufacturing, compounding, converting, producing, or preparing controlled substances;

~~[(c)]~~ (iii) Isomerization devices, used or designed for the purpose of increasing the potency of any species of plant which is a controlled substance;

~~[(d)]~~ (iv) Scales and balances, used or designed for the purpose of weighing or measuring controlled substances; and

~~[(e)]~~ (v) Diluents and adulterants, including but not limited to quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or designed for the purpose of cutting controlled substances; and

~~[(f)]~~ (vi) Separation gins, used or designed for the purpose of removing twigs and seeds in order to clean or refine marihuana~~;~~

~~(g) Hypodermic syringes, needles and other objects, used or designed for the purpose of parenterally injecting controlled substances into the human body;~~

~~(h) Objects, used or designed for the purpose of ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body].~~

(b) "Drug-related paraphernalia" shall not include objects used for the purpose of injecting, ingesting, inhaling or otherwise introducing drugs into the human body.

§ 12. A person under parole, probation or other state or local supervision, or released on bail awaiting trial as of the effective date of this act shall not be punished or otherwise penalized for conduct that

1 is no longer considered criminal under article 220 of the penal law
2 pursuant to the provisions of this act.

3 § 13. The public health law is amended by adding a new section 3395 to
4 read as follows:

5 § 3395. Drug decriminalization task force. 1. There is hereby estab-
6 lished a drug decriminalization task force which, pursuant to the
7 provisions of this section, shall develop recommendations for reforming
8 state laws, regulations and practices so that they align with the stated
9 goal of treating substance use disorder as a disease, rather than a
10 criminal behavior.

11 2. The task force shall study and utilize reliable evidence and infor-
12 mation to:

13 (a) Identify amounts of individual controlled substances consistent
14 with non-prescribed personal use;

15 (b) Identify qualitative and quantitative research data about the
16 types of services that people with substance use disorders who are
17 involved with the criminal legal or child welfare systems desire and
18 currently cannot access, and barriers to accessing existing services;
19 and

20 (c) Issue recommendations regarding laws, regulations and policies
21 identified by the task force as needing reform, including changes to the
22 penal law, the social services law and any other statutes that will help
23 the state achieve the objective of addressing the use of drugs through a
24 public health approach. In developing recommendations, the task force
25 shall consider:

26 (i) the quantity of drugs used by individuals with a substance use
27 disorder;

28 (ii) policies and practices that will prioritize access to treatment
29 and recovery for individuals wishing to address their use of controlled
30 substances;

31 (iii) non-carceral strategies to divert individuals who use drugs from
32 the criminal legal system, including charges for selling drugs;

33 (iv) the criminalization of possession of methadone and buprenorphine;

34 (v) the immigration consequences of convictions for crimes related to
35 drug use;

36 (vi) how to reduce unnecessary family separation;

37 (vii) how to reduce civil collateral consequences of drug convictions
38 including effects on employment, housing, education, and licensing;

39 (viii) how to maximize the use of harm reduction strategies; and

40 (ix) how to address racial disparities in enforcement.

41 3. (a) (i) Such task force shall be comprised of the commissioner of
42 health or their designee; the commissioner of addiction services and
43 supports or their designee; the commissioner of mental health or their
44 designee; the commissioner of the division of criminal justice services
45 or their designee; the commissioner of the office of children and family
46 services or their designee; the director of the office of indigent legal
47 services or their designee; one public defender recommended by the New
48 York state defenders association; one prosecutor recommended by the
49 district attorneys association of the state of New York; two experts in
50 the etiology and treatment of substance use disorders recommended by the
51 New York academy of medicine, at least one of whom must be an expert in
52 medication-assisted treatment and at least one of whom must be an expert
53 in the comorbidity of substance use disorders with mental health; and
54 eleven members to be appointed as follows: (A) three members shall be
55 appointed by the governor; (B) three members shall be appointed by the
56 temporary president of the senate; (C) one member shall be appointed by

1 the minority leader of the senate; (D) three members shall be appointed
2 by the speaker of the assembly; and (E) one member shall be appointed by
3 the minority leader of the assembly.

4 (ii) If appointments are not made within thirty days, the senate
5 majority leader and speaker of the assembly shall appoint the remaining
6 members.

7 (iii) All appointees shall have expertise in at least one of the
8 following fields: public health, substance use disorders, mental health,
9 drug user health and harm reduction, the criminal legal system, child
10 welfare, immigration, drug policy or racial justice. Further, appointees
11 shall include people with prior drug convictions, individuals who have
12 participated in a drug court program, individuals who have been formerly
13 incarcerated, individuals impacted by the child welfare system, and
14 representatives of organizations serving communities impacted by past
15 federal and state drug policies. All appointments shall be coordinated
16 to ensure statewide geographic representation that is balanced and
17 diverse in its composition.

18 (iv) The task force shall be chaired by the commissioner of health or
19 selected by the commissioner from the appointed members. The task force
20 shall elect a vice-chair and other necessary officers from among all
21 appointed members.

22 (b) The members of the task force shall receive no compensation for
23 their services but shall be reimbursed for expenses actually and neces-
24 sarily incurred in the performance of their duties;

25 (c) No civil action shall be brought in any court against any member
26 of the drug decriminalization task force for any act or omission neces-
27 sary to the discharge of their duties as a member of the task force,
28 except as provided herein. Such member may be liable for damages in any
29 such action if they failed to act in good faith and exercise reasonable
30 care. Any information obtained by a member of the task force while
31 carrying out their duties as prescribed in subdivision two of this
32 section shall only be utilized in their capacity as a member of the task
33 force.

34 4. No later than one year after the effective date of this section,
35 the task force shall provide a report containing the results of the
36 study, including evidence used as a basis in making such report, and its
37 recommendations, if any, together with drafts of legislation necessary
38 to carry out its recommendations by filing said report, documentation,
39 and draft legislation, with the governor, the temporary president of the
40 senate, the minority leader of the senate, the speaker of the assembly,
41 and the minority leader of the assembly. The task force shall also make
42 the report, documentation, and draft legislation available to the public
43 by posting a copy on the website maintained by the office.

44 § 14. This act shall take effect on the one hundred and eightieth day
45 after it shall have become a law; provided, however, that section thir-
46 teen shall expire and be deemed repealed two years after such effective
47 date.