

# STATE OF NEW YORK

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2340

2023-2024 Regular Sessions

## IN SENATE

January 20, 2023

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Introduced by Sens. RIVERA, BRISPORT, RAMOS, SALAZAR -- 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.

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

LBD02723-01-3

1 § 2. Section 220.03 of the penal law, as amended by section 4 of part  
2 I of chapter 57 of the laws of 2015 and the opening paragraph as amended  
3 by chapter 433 of the laws of 2021, is amended to read as follows:

4 § 220.03 [~~Criminal~~] Unlawful possession of a controlled substance [~~in~~  
5 ~~the seventh degree~~].

6 A person is guilty of [~~criminal~~] unlawful possession of a controlled  
7 substance [~~in the seventh degree~~] when [~~he or she~~] they knowingly and  
8 unlawfully [~~possesses~~] possess a controlled substance; provided, howev-  
9 er, that it shall not be a violation of this section when a person  
10 possesses a residual amount of a controlled substance and that residual  
11 amount is in or on a hypodermic syringe or hypodermic needle; nor shall  
12 it be a violation of this section when a person's unlawful possession of  
13 a controlled substance is discovered as a result of seeking immediate  
14 health care as defined in paragraph (b) of subdivision three of section  
15 220.78 of this article, for either another person or [~~him or herself~~]  
16 themselves because such person is experiencing a drug or alcohol overdose  
17 or other life threatening medical emergency as defined in paragraph (a)  
18 of subdivision three of section 220.78 of this article.

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

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

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

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

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

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

48 (a) Expungement of certain [~~marihuana-related~~] records. A conviction  
49 for an offense described in subparagraph (iii) of paragraph (k) or  
50 subparagraph (ii) of paragraph (m) of subdivision three of this section  
51 shall, [~~on and after the effective date of this paragraph,~~] in accord-  
52 ance with the provisions of this paragraph, be vacated and dismissed,  
53 and all records of such conviction or convictions and related to such  
54 conviction or convictions shall be expunged, as described in subdivision  
55 forty-five of section 1.20 of this chapter, and the matter shall be  
56 considered terminated in favor of the accused and deemed a nullity,

1 having been rendered by this paragraph legally invalid. All such records  
2 for an offense described in this paragraph where the conviction was  
3 entered on or before the effective date of the chapter of the laws of  
4 ~~[2019]~~ two thousand nineteen or two thousand twenty-three, as applica-  
5 ble, that amended this paragraph shall be expunged promptly and, in any  
6 event, no later than one year after such effective date.

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

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

40 § 6. Paragraph (k) of subdivision 1 of section 440.10 of the criminal  
41 procedure law, as amended by chapter 92 of the laws of 2021, is amended  
42 to read as follows:

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

1 § 7. Subdivision 6 of section 440.10 of the criminal procedure law, as  
2 amended by chapter 629 of the laws of 2021, is amended to read as  
3 follows:

4 6. If the court grants a motion under paragraph (i) or paragraph (k)  
5 of subdivision one of this section, it must vacate the judgment and  
6 dismiss the accusatory instrument, and may take such additional action  
7 as is appropriate in the circumstances. In the case of a motion granted  
8 under paragraph (i) of subdivision one of this section, the court must  
9 vacate the judgment on the merits because the defendant's participation  
10 in the offense was a result of having been a victim of trafficking. A  
11 defendant shall not be required to demonstrate prejudice prior to vacat-  
12 ing the judgment.

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

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

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

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

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

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

28 § 11. Subdivision 2 of section 850 of the general business law, as  
29 amended by chapter 433 of the laws of 2021 and subparagraph (vii) of  
30 paragraph (a) of subdivision 2 as separately amended by chapter 92 of  
31 the laws of 2021, is amended to read as follows:

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

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

38 (ii) Kits, used or designed for the purpose of manufacturing,  
39 compounding, converting, producing, or preparing controlled substances;

40 (iii) Isomerization devices, used or designed for the purpose of  
41 increasing the potency of any species of plant which is a controlled  
42 substance;

43 (iv) Scales and balances, used or designed for the purpose of weighing  
44 or measuring controlled substances; and

45 (v) Diluents and adulterants, including but not limited to quinine  
46 hydrochloride, mannitol, mannite, dextrose and lactose, used or designed  
47 for the purpose of cutting controlled substances[+

48 ~~(vi) and~~

49 ~~(vii) Objects, used or designed for the purpose of ingesting, inhal-~~  
50 ~~ing, or otherwise introducing cocaine into the human body].~~

51 (b) "Drug-related paraphernalia" shall not include ~~[hypodermic~~  
52 ~~needles, hypodermic syringes and other objects used for the purpose of~~  
53 ~~parenterally injecting controlled substances]~~ objects used for the  
54 purpose of injecting, ingesting, inhaling or otherwise introducing drugs  
55 into the human body.

1 § 12. A person under parole, probation or other state or local super-  
2 vision, or released on bail awaiting trial as of the effective date of  
3 this act shall not be punished or otherwise penalized for conduct that  
4 is no longer considered criminal under article 220 of the penal law  
5 pursuant to the provisions of this act.

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

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

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

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

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

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

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

31 (ii) policies and practices that will prioritize access to treatment  
32 and recovery for individuals wishing to address their use of controlled  
33 substances;

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

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

37 (v) the immigration consequences of convictions for crimes related to  
38 drug use;

39 (vi) how to reduce unnecessary family separation;

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

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

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

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

1 eleven members to be appointed as follows: (A) three members shall be  
2 appointed by the governor; (B) three members shall be appointed by the  
3 temporary president of the senate; (C) one member shall be appointed by  
4 the minority leader of the senate; (D) three members shall be appointed  
5 by the speaker of the assembly; and (E) one member shall be appointed by  
6 the minority leader of the assembly.

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

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

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

25 (b) The members of the task force shall receive no compensation for  
26 their services but shall be reimbursed for expenses actually and neces-  
27 sarily incurred in the performance of their duties.

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

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

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