

STATE OF NEW YORK

2340

2023-2024 Regular Sessions

IN SENATE

January 20, 2023

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.

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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.