

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S137

SPONSOR: SQUADRON

TITLE OF BILL: 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; to amend the legislative law, in relation to specifying requirements with respect to bills affecting the penal law; to amend the executive law, in relation to expanding the duties of division of criminal justice services; and to repeal section 221.35 of the penal law relating to criminal sale of marihuana in the fifth degree

PURPOSE:

The purpose of this bill is to make New York penal law fairer and more equitable in the administration of marihuana enforcement, and avoid the disparate racial and ethnic impact seen in current marihuana and other enforcement.

SUMMARY OF PROVISIONS:

Section 1 states that this act shall be known as the "Fairness and Equity Act."

Section 2 amends subdivision 6 of section 1.05 of the penal law to state that that the law should be enforced equally and fairly and not result in a disparate impact on people because of their race or ethnicity.

Section 3 amends section 221.05 of the penal law to eliminate penalties escalating to jail time for the violation of "unlawful possession of marihuana."

Section 4 amends subdivision 2 of section 221.10 of the penal law so that the penalty for possession of small amounts of marihuana that is "burning" or "open to public view" is a violation, not a misdemeanor.

Sections 5 and 6 define criminal sale of less than 25 grams of marihuana as selling marihuana for consideration.

Section 7 amends subdivision 1 of section 170.56 of the criminal procedure law to allow a court to order an adjournment in contemplation of dismissal based upon a finding of exceptional circumstances.

Section 8 amends section 210.46 of the criminal procedure law to reflect the repeal of section 221.35 of the penal law.

Sections 9 and 10 amend section 440.10 of the criminal procedure law to provide for the vacating of convictions that occurred before the enact-

ment of this bill.

Section 11 amends paragraph k of subdivision 3 of section 160.50 of the criminal procedure law to eliminate the three-year wait requirement for the sealing of marihuana-related records.

Section 12 adds a new section 52-a to the legislative law to create guidelines for the implementation and use of racial and ethnic impact statements to accompany certain legislation.

Section 13 amends paragraph f of subdivision 4 of section 837 of the executive law to require that the Division of Criminal Justice Services conduct research and analysis necessary to complete racial and ethnic impact statements and present an annual report containing statistics and other information relevant to such statements.

Section 14 establishes the effective date.

JUSTIFICATION:

Since 1977, possession of small amounts of marijuana (25 grams or less) has been "decriminalized" in New York State. It is a violation punishable by a fine, not a misdemeanor that leads to arrest.

In decriminalizing marijuana, the intent was clear: "The legislature finds that arrests, criminal prosecutions and criminal penalties are inappropriate for people who possess small quantities of marihuana for personal use. Every year, this process needlessly scars thousands of lives and wastes millions of dollars in law enforcement resources, while detracting from the prosecution of serious crime." (Chapter 360, Laws of 1977)

But 35 years later, by 2012, more than 44,600 people in New York State were arrested and charged for a misdemeanor crime for possessing small amounts of marijuana for personal use, if it was said to be "in public view" or "burning." Dozens of additional people were charged with criminal drug sales for the equivalent of sharing a single "joint."

Of the 28,644 people arrested in New York City in 2013 for possessing small amounts of marijuana, nearly 87 percent were black or Latino, mostly young men. Of those arrested for sharing, the vast majority were black or Latino young men between the ages of 16-30. These severe disparities are alarming and indefensible when considering that data from the Substance Abuse and Mental Health Services Administration of the U.S. government consistently shows that young white men are far more likely to possess and use marijuana than non-whites.

In other words, in New York, possessing small amounts of marijuana is largely decriminalized for people who are white, and vastly more likely to be criminalized for people who are black or Latino.

The consequences of New York's inequitable decriminalization are severe. Today, nearly 600,000 New Yorkers are saddled with an arrest record for possessing small amounts of marijuana, the overwhelming majority of whom are black or Latino. According to the National Employment Law Project,

these arrest records can follow a person for the rest of one's life and impact the ability to access banking services, schools, jobs, housing, certain licensing, and also have immigration consequences. In addition, according to research by the ACLU and Queens College sociologist Harry Levine, the costs associated with these arrests total hundreds of millions of dollars to taxpayers every year.

This bill addresses the disparate racial and ethnic impact that existing law has had by more fairly decriminalizing possession of small amounts of marijuana, including sharing a single marijuana cigarette. It also creates a process for those who have been arrested for possessing or sharing small amounts of marijuana to have their records stricken or sealed.

And, the bill creates a process for the legislature to avoid such a severe inequitable impact in the future through racial and ethnic impact statements. These statements would provide information to determine if certain proposed legislation would disproportionately impact racial and ethnic minorities and if that legislation, when enacted, causes a disparate impact. Connecticut, Iowa, and Oregon have already implemented racial and ethnic impact statements, which are most analogous to New York's "fiscal notes."

PRIOR LEGISLATIVE HISTORY:

2014: S7927/A10175- REFERRED TO RULES

EFFECTIVE DATE:

The one hundred eightieth day after it shall have become law.

What the Bill Does:

Decriminalizes Possession of Small Amounts of Marijuana: Reduces the penalty for marijuana that is burning or open to public view from a misdemeanor to a violation. As a result, this will end years of disproportionate arrests of and enforcement against New Yorkers because of their race or ethnicity.

Closes the Sharing Loophole: Currently, police can arrest individuals for “sale of marijuana” simply for sharing (passing a joint). Our bill removes this language and clarifies that sale of marijuana must involve compensation.

Provides Judicial Flexibility: Gives judges the ability to adjourn a case for an amount of time at the judge’s discretion (rather than immediately issuing a decision); if the defendant stays out of trouble, the charges can be dismissed. This process is legally known as Adjournment in Contemplation of Dismissal (ACD). The chance to have charges dismissed for good behavior rather than a conviction upfront is critical, as marijuana convictions often result in severe collateral consequences, such as deportation or eviction from public housing.

Creates a Vacating Process: Individuals who have been previously convicted for burning or having marijuana open to public view will have their sentences stricken from the record (legally known as vacating) so that these arrests are no longer held against them. Important for housing and employment applications, among others.

Eliminates Three Year Waiting Period for Sealing of Records: Current law requires courts to wait three years to seal marijuana-related records. This legislation would eliminate that requirement.

Creates a Process for Racial and Ethnic Impact Statements: All legislation is currently required to include a fiscal impact statement. Similarly, this legislation requires a Racial and Ethnic Impact Statement to be attached to any bill that amends the penal code and could change the pre-trial or sentenced population of correctional facilities, at the request of a majority of committee members. The impact statement would provide information to help legislators determine if a proposed bill would disproportionately impact racial and ethnic minorities.

Requirements for DCJS: Requires DCJS to provide information to the legislature for the completion of Racial and Ethnic Impact Statements, and requires DCJS to annually report the statistical, on-the-ground effects of any bill signed into law that contained a Racial and Ethnic Impact Statement. This will allow legislators and the public to see any impacts of enacted legislation as it is implemented, and if necessary, to introduce or repeal legislation to correct any disproportionate impacts.

STATE OF NEW YORK

7927

IN SENATE

July 9, 2014

Introduced by Sens. SQUADRON, DILAN, ESPAILLAT, HOYLMAN, KRUEGER, MONTGOMERY, PARKER, PERKINS, RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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; to amend the legislative law, in relation to specifying requirements with respect to bills affecting the penal law; to amend the executive law, in relation to expanding the duties of division of criminal justice services; and to repeal section 221.35 of the penal law relating to criminal sale of marihuana in the fifth degree

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 and ethnic-
12 ity; 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.

LBD15556-03-4



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

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 immediate-
7 ly 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. Section 221.35 of the penal law is REPEALED.

27 § 6. Section 221.40 of the penal law, as added by chapter 360 of the
28 laws of 1977, is amended to read as follows:

29 § 221.40 Criminal sale of marihuana in the fourth degree.

30 A person is guilty of criminal sale of marihuana in the fourth degree
31 when he knowingly and unlawfully sells marihuana [except as provided in
32 section 221.35 of this article] for consideration.

33 Criminal sale of marihuana in the fourth degree is a class A misdemea-
34 nor.

35 § 7. Subdivision 1 of section 170.56 of the criminal procedure law, as
36 amended by chapter 360 of the laws of 1977, is amended to read as
37 follows:

38 1. Upon or after arraignment in a local criminal court upon an infor-
39 mation, a prosecutor's information or a misdemeanor complaint, where the
40 sole remaining count or counts charge a violation or violations of
41 section 221.05, 221.10, 221.15[, 221.35] or 221.40 of the penal law and
42 before the entry of a plea of guilty thereto or commencement of a trial
43 thereof, the court, upon motion of a defendant, may order that all
44 proceedings be suspended and the action adjourned in contemplation of
45 dismissal, or upon a finding that adjournment would not be necessary or
46 appropriate and the setting forth in the record of the reasons for such
47 findings, may dismiss in furtherance of justice the accusatory instru-
48 ment; provided, however, that the court may not order such adjournment
49 in contemplation of dismissal or dismiss the accusatory instrument if:
50 (a) the defendant has previously been granted such adjournment in
51 contemplation of dismissal, or (b) the defendant has previously been
52 granted a dismissal under this section, or (c) the defendant has previ-
53 ously been convicted of any offense involving controlled substances, or
54 (d) the defendant has previously been convicted of a crime and the
55 district attorney does not consent or (e) the defendant has previously
56 been adjudicated a youthful offender on the basis of any act or acts



1 involving controlled substances and the district attorney does not
2 consent. Notwithstanding the limitations set forth in this subdivision,
3 the court may order that all proceedings be suspended and the action
4 adjourned in contemplation of dismissal based upon a finding of excep-
5 tional circumstances. For purposes of this subdivision, exceptional
6 circumstances exist when, regardless of the ultimate disposition of the
7 case, the entry of a plea of guilty is likely to result in severe colla-
8 teral consequences, including, but not limited to, those that could
9 leave a noncitizen inadmissible or deportable from the United States.

10 § 8. Section 210.46 of the criminal procedure law, as amended by chap-
11 ter 360 of the laws of 1977, is amended to read as follows:

12 § 210.46 Adjournment in contemplation of dismissal in marihuana cases
13 in a superior court.

14 Upon or after arraignment in a superior court upon an indictment where
15 the sole remaining count or counts charge a violation or violations of
16 section 221.05, 221.10, 221.15[, 221.35] or 221.40 of the penal law and
17 before the entry of a plea of guilty thereto or commencement of a trial
18 thereof, the court, upon motion of a defendant, may order that all
19 proceedings be suspended and the action adjourned in contemplation of
20 dismissal or may dismiss the indictment in furtherance of justice, in
21 accordance with the provisions of section 170.56 of this chapter.

22 § 9. Paragraphs (h) and (i) of subdivision 1 of section 440.10 of the
23 criminal procedure law, paragraph (h) as amended and paragraph (i) as
24 added by chapter 332 of the laws of 2010, are amended and a new para-
25 graph (j) is added to read as follows:

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

28 (i) The judgment is a conviction where the arresting charge was under
29 section 240.37 (loitering for the purpose of engaging in a prostitution
30 offense, provided that the defendant was not alleged to be loitering for
31 the purpose of patronizing a prostitute or promoting prostitution) or
32 230.00 (prostitution) of the penal law, and the defendant's partic-
33 ipation in the offense was a result of having been a victim of sex traf-
34 ficking under section 230.34 of the penal law or trafficking in persons
35 under the Trafficking Victims Protection Act (United States Code, title
36 22, chapter 78); provided that

37 (i) a motion under this paragraph shall be made with due diligence,
38 after the defendant has ceased to be a victim of such trafficking or has
39 sought services for victims of such trafficking, subject to reasonable
40 concerns for the safety of the defendant, family members of the defend-
41 ant, or other victims of such trafficking that may be jeopardized by the
42 bringing of such motion, or for other reasons consistent with the
43 purpose of this paragraph; and

44 (ii) official documentation of the defendant's status as a victim of
45 sex trafficking or trafficking in persons at the time of the offense
46 from a federal, state or local government agency shall create a presump-
47 tion that the defendant's participation in the offense was a result of
48 having been a victim of sex trafficking or trafficking in persons, but
49 shall not be required for granting a motion under this paragraph[.]; or

50 (j) The judgment occurred prior to the effective date of this para-
51 graph and is a conviction for:

52 (i) an offense as defined by section 221.10 of the penal law (criminal
53 possession of marihuana in the fifth degree), as in effect prior to the
54 effective date of this paragraph, provided that the accusatory instru-
55 ment that underlies the judgment does not include an allegation that the
56 defendant possessed more than twenty-five grams of marihuana; or



1 (ii) an offense as defined by former section 221.35 of the penal law
2 (criminal sale of marihuana in the fifth degree).

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

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

10 § 11. Paragraphs (i), (j) and (k) of subdivision 3 of section 160.50
11 of the criminal procedure law, paragraphs (i) and (j) as added by chap-
12 ter 905 of the laws of 1977 and paragraph (k) as added by chapter 835 of
13 the laws of 1977 and as relettered by chapter 192 of the laws of 1980,
14 are amended to read as follows:

15 (i) prior to the filing of an accusatory instrument in a local crimi-
16 nal court against such person, the prosecutor elects not to prosecute
17 such person. In such event, the prosecutor shall serve a certification
18 of such disposition upon the division of criminal justice services and
19 upon the appropriate police department or law enforcement agency which,
20 upon receipt thereof, shall comply with the provisions of paragraphs
21 (a), (b), (c) and (d) of subdivision one of this section in the same
22 manner as is required thereunder with respect to an order of a court
23 entered pursuant to said subdivision one[.]; or

24 (j) following the arrest of such person, the arresting police agency,
25 prior to the filing of an accusatory instrument in a local criminal
26 court but subsequent to the forwarding of a copy of the fingerprints of
27 such person to the division of criminal justice services, elects not to
28 proceed further. In such event, the head of the arresting police agency
29 shall serve a certification of such disposition upon the division of
30 criminal justice services which, upon receipt thereof, shall comply with
31 the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of
32 this section in the same manner as is required thereunder with respect
33 to an order of a court entered pursuant to said subdivision one[.]; or

34 (k) (i) The accusatory instrument alleged a violation of article two
35 hundred twenty or section 240.36 of the penal law, prior to the taking
36 effect of article two hundred twenty-one of the penal law, or a
37 violation of article two hundred twenty-one of the penal law; (ii) the
38 sole controlled substance involved is marijuana; and (iii) the
39 conviction was only for a violation or violations[; and (iv) at least
40 three years have passed since the offense occurred].

41 § 12. The legislative law is amended by adding a new section 52-a to
42 read as follows:

43 § 52-a. Requirement with respect to bills affecting the penal law.
44 Whenever a committee reports a bill favorably which, if passed, would
45 increase or decrease the pretrial or sentenced population of correction-
46 al facilities in this state, a majority of the committee members voting
47 may request that a racial and ethnic impact statement be prepared. The
48 legislature shall by concurrent resolution of the senate and assembly
49 prescribe rules requiring racial and ethnic impact statements to accom-
50 pany, on a separate form, bills and amendments to bills after such bills
51 have been reported from committee. Racial and ethnic impact statements
52 shall be prepared before the bill is considered for final passage. The
53 statement shall indicate whether the bill would have a disparate impact
54 on the racial and ethnic composition of the correctional facility popu-
55 lation and an explanation of that impact. Any racial and ethnic impact
56 statement printed with or prepared for a bill is solely for the purpose

1 of information, summarization and explanation for members of the legis-
2 lature and shall not be construed to represent the intent of the legis-
3 lature or either chamber thereof for any purpose. Each racial and ethnic
4 impact statement shall bear the following disclaimer: "The following
5 racial and ethnic impact statement is prepared for the benefit of the
6 members of the legislature, solely for purposes of information, summa-
7 rization and explanation and does not represent the intent of the legis-
8 lature or either chamber thereof for any purpose."

9 § 13. Paragraph (f) of subdivision 4 of section 837 of the executive
10 law, as amended by chapter 169 of the laws of 1994, is amended and a new
11 paragraph (g) is added to read as follows:

12 (f) [Accomplish] accomplish all of the functions, powers, and duties
13 set forth in paragraphs (a), (b), (c) and (d) of this subdivision with
14 respect to the processing and disposition of cases involving violent
15 felony offenses specified in subdivision one of section 70.02 of the
16 penal law[.]; and

17 (g) accomplish all of the functions, powers, and duties set forth in
18 paragraphs (a), (b), (c) and (d) of this subdivision with respect to all
19 chapters of law resulting from legislative bills that have been subject
20 to the provisions of section fifty-two-a of the legislative law. The
21 division shall present to the governor, the temporary president of the
22 senate, the minority leader of the senate, the speaker of the assembly
23 and the minority leader of the assembly an annual report containing the
24 statistics and other information relevant to this subdivision.

25 § 14. This act shall take effect on the one hundred eightieth day
26 after it shall have become a law.

