

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1459
(Representatives Mitskog, Heinert, Schneider)
(Senator Larson)

AN ACT to amend and reenact section 19-03.1-23.1 of the North Dakota Century Code, relating to increased penalties for drug offenses within three hundred feet of a public park; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.1. Increased penalties for aggravating factors in drug offenses - Penalty.

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
 - a. The offense was committed during a school sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in, on, or within three hundred feet [91.4 meters] of the real property comprising a preschool facility, a public or private elementary or secondary school, or a public career and technical education school, the defendant was at least twenty-one years of age at the time of the offense, and the offense involved the delivery of a controlled substance to a minor;
 - b. The offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance, other than marijuana or tetrahydrocannabinol, in, on, or within three hundred feet [91.4 meters] of the real property comprising a public park;
 - c. The offense involved:
 - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
 - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
 - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
 - (3) Twenty-eight grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
 - (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;

- (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
- (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;
- (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
- (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
- (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate; or
- (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or

~~e.d.~~ The defendant had a firearm in the defendant's actual possession at the time of the offense; or

~~d.e.~~ The defendant sells, distributes, delivers, or conspires to deliver a controlled substance to an individual which results in the death of the individual due to the use of that controlled substance and the death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4.

2. The offense is:

- a. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
- b. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
- c. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1459.

House Vote: Yeas 64 Nays 27 Absent 3

Senate Vote: Yeas 41 Nays 5 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State