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SENATE BILL 323

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO CONTROLLED SUBSTANCES; DECREASING PENALTIES FOR
POSSESSION OF MARIJUANA AND OF DRUG PARAPHERNALIA; CREATING A
PENALTY ASSESSMENT FOR THE CRIMINAL CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-31-23 NMSA 1978 (being Laws 1972,
Chapter 84, Section 23, as amended) is amended to read:

"30-31-23. CONTROLLED SUBSTANCES--POSSESSION
PROHIBITED.--

A. It is unlawful for a person intentionally to
possess a controlled substance unless the substance was
obtained pursuant to a valid prescription or order of a
practitioner while acting in the course of professional
practice or except as otherwise authorized by the Controlled
Substances Act. It is unlawful for a person intentionally to

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1 possess a controlled substance analog.

2 B. A person who violates this section with respect
3 to:

4 (1) up to one-half ounce of marijuana shall be
5 issued a penalty assessment, pursuant to Section 3 of this 2019
6 act and is subject to a fine of fifty dollars (\$50.00);

7 (2) more than one-half ounce but less than one
8 ounce of marijuana is, for the first offense, guilty of a petty
9 misdemeanor and shall be punished by a fine of not less than
10 fifty dollars (\$50.00) or more than one hundred dollars (\$100)
11 and by imprisonment for not more than fifteen days, and, for a
12 second or subsequent offense, is guilty of a misdemeanor and
13 shall be punished by a fine of not less than one hundred
14 dollars (\$100) or more than one thousand dollars (\$1,000) or by
15 imprisonment for a definite term of less than one year, or
16 both;

17 (3) more than one ounce but less than eight
18 ounces of marijuana is guilty of a misdemeanor and shall be
19 punished by a fine of not less than one hundred dollars (\$100)
20 or more than one thousand dollars (\$1,000) or by imprisonment
21 for a definite term of less than one year, or both; or

22 (4) eight ounces or more of marijuana is
23 guilty of a fourth degree felony and shall be sentenced
24 pursuant to the provisions of Section 31-18-15 NMSA 1978.

25 [~~B.~~] C. A person who violates this section with

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1 respect to:

2 (1) one ounce or less of [~~marijuana or~~]
3 synthetic cannabinoids is, for the first offense, guilty of a
4 petty misdemeanor and shall be punished by a fine of not less
5 than fifty dollars (\$50.00) or more than one hundred dollars
6 (\$100) and by imprisonment for not more than fifteen days, and,
7 for the second and subsequent offenses, is guilty of a
8 misdemeanor and shall be punished by a fine of not less than
9 one hundred dollars (\$100) or more than one thousand dollars
10 (\$1,000) or by imprisonment for a definite term less than one
11 year, or both;

12 (2) more than one ounce and less than eight
13 ounces of [~~marijuana or~~] synthetic cannabinoids is guilty of a
14 misdemeanor and shall be punished by a fine of not less than
15 one hundred dollars (\$100) or more than one thousand dollars
16 (\$1,000) or by imprisonment for a definite term less than one
17 year, or both; or

18 (3) eight ounces or more of [~~marijuana or~~]
19 synthetic cannabinoids is guilty of a fourth degree felony and
20 shall be sentenced pursuant to the provisions of Section
21 31-18-15 NMSA 1978.

22 [~~G-~~] D. A minor who violates this section with
23 respect to the substances listed in this subsection is guilty
24 of a petty misdemeanor and, notwithstanding the provisions of
25 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a

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1 fine not to exceed one hundred dollars (\$100) or forty-eight
2 hours of community service. For the third or subsequent
3 violation by a minor of this section with respect to those
4 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
5 govern punishment of the minor. As used in this subsection,
6 "minor" means a person who is less than eighteen years of age.
7 The provisions of this subsection apply to the following
8 substances:

9 (1) synthetic cannabinoids;

10 (2) any of the substances listed in Paragraphs
11 (20) through (25) of Subsection C of Section 30-31-6 NMSA 1978;
12 or

13 (3) a substance added to Schedule I by a rule
14 of the board adopted on or after [~~the effective date of this~~]
15 March 31, 2011 [~~act~~] if the board determines that the
16 pharmacological effect of the substance, the risk to the public
17 health by abuse of the substance and the potential of the
18 substance to produce psychic or physiological dependence
19 liability is similar to the substances described in Paragraph
20 (1) or (2) of this subsection.

21 [~~D-~~] E. Except as provided in Subsections B, C and
22 G of this section, and for those substances listed in
23 Subsection [~~E~~] F of this section, a person who violates this
24 section with respect to any amount of any controlled substance
25 enumerated in Schedule I, II, III or IV or a controlled

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1 substance analog of a substance enumerated in Schedule I, II,
2 III or IV is guilty of a misdemeanor and shall be punished by a
3 fine of not less than five hundred dollars (\$500) or more than
4 one thousand dollars (\$1,000) or by imprisonment for a definite
5 term less than one year, or both.

6 ~~[E-]~~ F. A person who violates this section with
7 respect to phencyclidine as enumerated in Schedule III or a
8 controlled substance analog of phencyclidine; methamphetamine,
9 its salts, isomers or salts of isomers as enumerated in
10 Schedule II or a controlled substance analog of
11 methamphetamine, its salts, isomers or salts of isomers;
12 flunitrazepam, its salts, isomers or salts of isomers as
13 enumerated in Schedule I or a controlled substance analog of
14 flunitrazepam, including naturally occurring metabolites, its
15 salts, isomers or salts of isomers; gamma hydroxybutyric acid
16 and any chemical compound that is metabolically converted to
17 gamma hydroxybutyric acid, its salts, isomers or salts of
18 isomers as enumerated in Schedule I or a controlled substance
19 analog of gamma hydroxybutyric acid, its salts, isomers or
20 salts of isomers; gamma butyrolactone and any chemical compound
21 that is metabolically converted to gamma hydroxybutyric acid,
22 its salts, isomers or salts of isomers as enumerated in
23 Schedule I or a controlled substance analog of gamma
24 butyrolactone, its salts, isomers or salts of isomers; 1-4
25 butane diol and any chemical compound that is metabolically

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1 converted to gamma hydroxybutyric acid, its salts, isomers or
2 salts of isomers as enumerated in Schedule I or a controlled
3 substance analog of 1-4 butane diol, its salts, isomers or
4 salts of isomers; or a narcotic drug enumerated in Schedule I
5 or II or a controlled substance analog of a narcotic drug
6 enumerated in Schedule I or II is guilty of a fourth degree
7 felony and shall be sentenced pursuant to the provisions of
8 Section 31-18-15 NMSA 1978.

9 ~~[F-]~~ G. Except for a minor as defined in Subsection
10 ~~[G]~~ D of this section, a person who violates Subsection A of
11 this section while within a posted drug-free school zone,
12 excluding private property residentially zoned or used
13 primarily as a residence and excluding a person in or on a
14 motor vehicle in transit through the posted drug-free school
15 zone, with respect to:

16 (1) one ounce or less of marijuana or
17 synthetic cannabinoids is, for the first offense, guilty of a
18 misdemeanor and shall be punished by a fine of not less than
19 one hundred dollars (\$100) or more than one thousand dollars
20 (\$1,000) or by imprisonment for a definite term less than one
21 year, or both, and for the second or subsequent offense, is
22 guilty of a fourth degree felony and shall be sentenced
23 pursuant to the provisions of Section 31-18-15 NMSA 1978;

24 (2) more than one ounce and less than eight
25 ounces of marijuana or synthetic cannabinoids is guilty of a

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1 fourth degree felony and shall be sentenced pursuant to the
2 provisions of Section 31-18-15 NMSA 1978;

3 (3) eight ounces or more of marijuana or
4 synthetic cannabinoids is guilty of a third degree felony and
5 shall be sentenced pursuant to the provisions of Section
6 31-18-15 NMSA 1978;

7 (4) any amount of any other controlled
8 substance enumerated in Schedule I, II, III or IV or a
9 controlled substance analog of a substance enumerated in
10 Schedule I, II, III or IV, except phencyclidine as enumerated
11 in Schedule III, a narcotic drug enumerated in Schedule I or II
12 or a controlled substance analog of a narcotic drug enumerated
13 in Schedule I or II, is guilty of a fourth degree felony and
14 shall be sentenced pursuant to the provisions of Section
15 31-18-15 NMSA 1978; and

16 (5) phencyclidine as enumerated in Schedule
17 III, a narcotic drug enumerated in Schedule I or II, a
18 controlled substance analog of phencyclidine or a controlled
19 substance analog of a narcotic drug enumerated in Schedule I or
20 II is guilty of a third degree felony and shall be sentenced
21 pursuant to the provisions of Section 31-18-15 NMSA 1978."

22 **SECTION 2.** Section 30-31-25.1 NMSA 1978 (being Laws 1981,
23 Chapter 31, Section 2, as amended) is amended to read:

24 "30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF DRUG
25 PARAPHERNALIA PROHIBITED--EXCEPTIONS.--

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1 A. It is unlawful for a person to use or possess
2 with intent to use drug paraphernalia to plant, propagate,
3 cultivate, grow, harvest, manufacture, compound, convert,
4 produce, process, prepare, test, analyze, pack, repack, store,
5 contain, conceal, inject, ingest, inhale or otherwise introduce
6 into the human body a controlled substance in violation of the
7 Controlled Substances Act. The provisions of this subsection
8 do not apply to a person who is in possession of hypodermic
9 syringes or needles at the time ~~he~~ the person is directly and
10 immediately engaged in a harm reduction program, as provided in
11 the Harm Reduction Act.

12 B. It is unlawful for a person to deliver, possess
13 with intent to deliver or manufacture with the intent to
14 deliver drug paraphernalia with knowledge, or under
15 circumstances where one reasonably should know, that it will be
16 used to plant, propagate, cultivate, grow, harvest,
17 manufacture, compound, convert, produce, process, prepare,
18 test, analyze, pack, repack, store, contain, conceal, inject,
19 ingest, inhale or otherwise introduce into the human body a
20 controlled substance in violation of the Controlled Substances
21 Act. The provisions of this subsection do not apply to:

22 (1) department of health employees or their
23 designees while they are directly and immediately engaged in
24 activities related to the harm reduction program authorized by
25 the Harm Reduction Act; or

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1 (2) the sale or distribution of hypodermic
2 syringes and needles by pharmacists licensed pursuant to the
3 Pharmacy Act.

4 C. A person who violates [~~this section with respect~~
5 ~~to~~] the provisions of Subsection A of this section shall be
6 issued a penalty assessment pursuant to Section 3 of this 2019
7 act and is [~~guilty of a misdemeanor and upon conviction shall~~
8 ~~be punished by a fine of not less than fifty dollars (\$50.00)~~
9 ~~nor more than one hundred dollars (\$100) or by imprisonment for~~
10 ~~a definite term less than one year, or both~~] subject to a fine
11 of fifty dollars (\$50.00). A person who violates [~~this section~~
12 ~~with respect to~~] the provisions of Subsection B of this section
13 is guilty of a misdemeanor.

14 D. A person eighteen years of age or over who
15 violates the provisions of Subsection B of this section by
16 delivering drug paraphernalia to a person under eighteen years
17 of age and who is at least three years [~~his~~] the person's
18 junior is guilty of a fourth degree felony and shall be
19 sentenced pursuant to the provisions of Section 31-18-15 NMSA
20 1978."

21 SECTION 3. A new section of Chapter 31 NMSA 1978 is
22 enacted to read:

23 "[NEW MATERIAL] PENALTY ASSESSMENT.--

24 A. Payment of a fine pursuant to a penalty
25 assessment citation shall not be considered a criminal

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1 conviction.

2 B. Whenever a person is issued a penalty assessment
3 under the Criminal Code, the officer shall advise the person of
4 the option either to accept the penalty assessment and pay it
5 to the court or to appear in court. The officer, using a
6 uniform non-traffic citation, shall complete the information
7 section, prepare the penalty assessment and prepare a notice to
8 appear in court specifying the time and place to appear. The
9 citation shall state the address to which the penalty
10 assessment is to be paid if the person accepts the penalty
11 assessment and does not elect to appear in court. The officer
12 shall have the person sign the citation as a promise either to
13 pay the penalty assessment as prescribed or to appear in court
14 as specified, give a copy of the citation to the person and
15 release the person from custody. An officer shall not accept
16 custody of payment of any penalty assessment.

17 C. The officer may issue a warning notice, but
18 shall fill in the information section of the citation and give
19 a copy to the person after requiring a signature on the warning
20 notice as an acknowledgment of receipt.

21 D. In order to secure release, the person shall
22 give a written promise to appear in court or to pay the penalty
23 assessment prescribed or acknowledge receipt of a warning
24 notice.

25 E. The magistrate court or metropolitan court in

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1 the county where the alleged violation occurred has
2 jurisdiction for any case arising from a penalty assessment
3 under the Criminal Code.

4 F. A penalty assessment citation issued by a law
5 enforcement officer shall be submitted to the appropriate
6 magistrate court or metropolitan court within three business
7 days of issuance. If the citation is not submitted within
8 three business days, it may be dismissed with prejudice.

9 G. A citation with a written promise to appear in
10 court or to pay the penalty assessment is a summons. If a
11 person fails to appear or to pay the penalty assessment by the
12 appearance date, a warrant for failure to appear may be issued.

13 H. A written promise to appear in court may be
14 complied with by appearance of counsel.

15 I. When a person issued a penalty assessment elects
16 to appear in court rather than to pay the penalty assessment to
17 the court, no fine imposed upon later conviction shall exceed
18 the penalty assessment established for the particular penalty
19 assessment. A person who elects to appear in court shall pay
20 the costs required by law to be collected by magistrate or
21 metropolitan court judges.

22 J. Penalty assessments collected by a magistrate
23 court or metropolitan court pursuant to this section shall be
24 transferred to the administrative office of the courts for
25 credit to the magistrate drug court fund."

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SECTION 4. TEMPORARY PROVISION--INSTRUCTIONS TO
COMPILER.--The New Mexico compilation commission shall compile
Section 3 of this act in a new article of Chapter 31 NMSA 1978.

SECTION 5. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2019.