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SENATE BILL 383

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO CONTROLLED SUBSTANCES; DECREASING PENALTIES FOR
POSSESSION OF MARIJUANA AND OF DRUG PARAPHERNALIA.

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
possess a controlled substance analog.

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

3 (1) one ounce or less of marijuana is subject
4 to a civil penalty of fifty dollars (\$50.00); and, for a second
5 or subsequent offense, is guilty of a petty misdemeanor and,
6 notwithstanding the provisions of Section 31-19-1 NMSA 1978,
7 shall be punished by a fine of up to one hundred dollars
8 (\$100);

9 (2) more than one ounce but not more than four
10 ounces of marijuana, is subject to a civil penalty of up to one
11 hundred dollars (\$100); and, for a second or subsequent
12 offense, is guilty of a petty misdemeanor and, notwithstanding
13 the provisions of Section 31-19-1 NMSA 1978, shall be punished
14 by a fine of up to two hundred dollars (\$200);

15 (3) more than four ounces but not more than
16 eight ounces of marijuana, is guilty of a misdemeanor and,
17 notwithstanding the provisions of Section 31-19-1 NMSA 1978,
18 shall be punished by a fine of up to three hundred dollars
19 (\$300); or

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

23 ~~[B-]~~ C. A person who violates this section with
24 respect to:

25 (1) one ounce or less of ~~[marijuana or]~~

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

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

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

19 [~~G.~~] D. A minor who violates this section with
20 respect to the substances listed in this subsection is guilty
21 of a petty misdemeanor and, notwithstanding the provisions of
22 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a
23 fine not to exceed one hundred dollars (\$100) or forty-eight
24 hours of community service. For the third or subsequent
25 violation by a minor of this section with respect to those

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1 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
2 govern punishment of the minor. As used in this subsection,
3 "minor" means a person who is less than eighteen years of age.
4 The provisions of this subsection apply to the following
5 substances:

- 6 (1) synthetic cannabinoids;
- 7 (2) any of the substances listed in Paragraphs
8 (20) through (25) of Subsection C of Section 30-31-6 NMSA 1978;
9 or
- 10 (3) a substance added to Schedule I by a rule
11 of the board adopted on or after [~~the effective date of this~~
12 March 31, 2011 ~~act~~] if the board determines that the
13 pharmacological effect of the substance, the risk to the public
14 health by abuse of the substance and the potential of the
15 substance to produce psychic or physiological dependence
16 liability is similar to the substances described in Paragraph
17 (1) or (2) of this subsection.

18 [~~D-~~] E. Except as provided in Subsections B, C and
19 G of this section, and for those substances listed in
20 Subsection [~~E~~] F of this section, a person who violates this
21 section with respect to any amount of any controlled substance
22 enumerated in Schedule I, II, III or IV or a controlled
23 substance analog of a substance enumerated in Schedule I, II,
24 III or IV is guilty of a misdemeanor and shall be punished by a
25 fine of not less than five hundred dollars (\$500) or more than

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1 one thousand dollars (\$1,000) or by imprisonment for a definite
2 term less than one year, or both.

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

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1 salts of isomers; or a narcotic drug enumerated in Schedule I
2 or II or a controlled substance analog of a narcotic drug
3 enumerated in Schedule I or II is guilty of a fourth degree
4 felony and shall be sentenced pursuant to the provisions of
5 Section 31-18-15 NMSA 1978.

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

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

21 (2) more than one ounce and less than eight
22 ounces of marijuana or synthetic cannabinoids is guilty of a
23 fourth degree felony and shall be sentenced pursuant to the
24 provisions of Section 31-18-15 NMSA 1978;

25 (3) eight ounces or more of marijuana or

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1 synthetic cannabinoids is guilty of a third degree felony and
2 shall be sentenced pursuant to the provisions of Section
3 31-18-15 NMSA 1978;

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

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

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

21 "30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF DRUG
22 PARAPHERNALIA PROHIBITED--EXCEPTIONS.--

23 A. It is unlawful for a person to use or possess
24 with intent to use drug paraphernalia to plant, propagate,
25 cultivate, grow, harvest, manufacture, compound, convert,

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1 produce, process, prepare, test, analyze, pack, repack, store,
2 contain, conceal, inject, ingest, inhale or otherwise introduce
3 into the human body a controlled substance in violation of the
4 Controlled Substances Act. The provisions of this subsection
5 do not apply to a person who is in possession of hypodermic
6 syringes or needles at the time ~~[he]~~ the person is directly and
7 immediately engaged in a harm reduction program, as provided in
8 the Harm Reduction Act.

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

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

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

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1 C. A person who violates this section with respect
2 to Subsection A of this section is [~~guilty of a misdemeanor and~~
3 ~~upon conviction shall be punished by a fine of not less than~~
4 ~~fifty dollars (\$50.00) nor more than one hundred dollars (\$100)~~
5 ~~or by imprisonment for a definite term less than one year, or~~
6 ~~both~~] subject to a civil penalty of fifty dollars (\$50.00); and
7 for a second or subsequent offense, is guilty of a petty
8 misdemeanor and, notwithstanding the provisions of Section
9 31-19-1 NMSA 1978, shall be punished by a fine of up to one
10 hundred dollars (\$100). A person who violates this section
11 with respect to Subsection B of this section is guilty of a
12 misdemeanor.

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

20 SECTION 3. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2015.