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HOUSE BILL 336

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTIONS OF THE
NMSA 1978; PROVIDING FOR DRUG-FREE RESIDENTIAL ZONES;
BROADENING THE DEFINITION OF DRUG-FREE SCHOOL ZONES.

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

Section 1. Section 30-31-2 NMSA 1978 (being Laws 1972,
Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled
Substances Act:

A. "administer" means the direct application of a
controlled substance by any means to the body of a patient or
research subject by a practitioner or ~~[his]~~ the practitioner's
agent;

B. "agent" includes an authorized person who acts
on behalf of a manufacturer, distributor or dispenser. It does

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1 not include a common or contract carrier, public warehouseman
2 or employee of the carrier or warehouseman;

3 C. "board" means the board of pharmacy;

4 D. "bureau" means the narcotic and dangerous drug
5 section of the criminal division of the United States
6 department of justice, or its successor agency;

7 E. "controlled substance" means a drug or substance
8 listed in Schedules I through V of the Controlled Substances
9 Act or rules adopted thereto;

10 F. "counterfeit substance" means a controlled
11 substance that bears the unauthorized trademark, trade name,
12 imprint, number, device or other identifying mark or likeness
13 of a manufacturer, distributor or dispenser other than the
14 person who in fact manufactured, distributed or dispensed the
15 controlled substance;

16 G. "deliver" means the actual, constructive or
17 attempted transfer from one person to another of a controlled
18 substance or controlled substance analog, whether or not there
19 is an agency relationship;

20 H. "dispense" means to deliver a controlled
21 substance to an ultimate user or research subject pursuant to
22 the lawful order of a practitioner, including the
23 administering, prescribing, packaging, labeling or compounding
24 necessary to prepare the controlled substance for that
25 delivery;

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1 I. "dispenser" means a practitioner who dispenses
2 and includes hospitals, pharmacies and clinics where controlled
3 substances are dispensed;

4 J. "distribute" means to deliver other than by
5 administering or dispensing a controlled substance or
6 controlled substance analog;

7 K. "drug" or "substance" means substances
8 recognized as drugs in the official United States
9 pharmacopoeia, official homeopathic pharmacopoeia of the United
10 States or official national formulary or any respective
11 supplement to those publications. It does not include devices
12 or their components, parts or accessories;

13 L. "hashish" means the resin extracted from any
14 part of marijuana, whether growing or not, and every compound,
15 manufacture, salt, derivative, mixture or preparation of such
16 resins;

17 M. "manufacture" means the production, preparation,
18 compounding, conversion or processing of a controlled substance
19 or controlled substance analog by extraction from substances of
20 natural origin or independently by means of chemical synthesis
21 or by a combination of extraction and chemical synthesis and
22 includes any packaging or repackaging of the substance or
23 labeling or relabeling of its container, except that this term
24 does not include the preparation or compounding of a controlled
25 substance:

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1 (1) by a practitioner as an incident to [~~his~~]
2 administering or dispensing of a controlled substance in the
3 course of [~~his~~] the practitioner's professional practice; or

4 (2) by a practitioner, or by [~~his~~] the
5 practitioner's agent under [~~his~~] the practitioner's
6 supervision, for the purpose of or as an incident to research,
7 teaching or chemical analysis and not for sale;

8 N. "marijuana" means all parts of the plant
9 cannabis, including any and all varieties, species and
10 subspecies of the genus Cannabis, whether growing or not, the
11 seeds thereof and every compound, manufacture, salt,
12 derivative, mixture or preparation of the plant or its seeds.
13 It does not include the mature stalks of the plant, hashish,
14 tetrahydrocannabinols extracted or isolated from marijuana,
15 fiber produced from the stalks, oil or cake made from the seeds
16 of the plant, any other compound, manufacture, salt,
17 derivative, mixture or preparation of the mature stalks, fiber,
18 oil or cake, or the sterilized seed of the plant that is
19 incapable of germination;

20 O. "narcotic drug" means any of the following,
21 whether produced directly or indirectly by extraction from
22 substances of vegetable origin or independently by means of
23 chemical synthesis or by a combination of extraction and
24 chemical synthesis:

25 (1) opium and opiate and any salt, compound,

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1 derivative or preparation of opium or opiate;

2 (2) any salt, compound, isomer, derivative or
3 preparation that is a chemical equivalent of any of the
4 substances referred to in Paragraph (1) of this subsection,
5 except the isoquinoline alkaloids of opium;

6 (3) opium poppy and poppy straw, including all
7 parts of the plant of the species *Papaver somniferum* L. except
8 its seeds; or

9 (4) coca leaves and any salt, compound,
10 derivative or preparation of coca leaves, any salt, compound,
11 isomer, derivative or preparation that is a chemical equivalent
12 of any of these substances except decocainized coca leaves or
13 extractions of coca leaves that do not contain cocaine or
14 ecgonine;

15 P. "opiate" means any substance having an
16 addiction-forming or addiction-sustaining liability similar to
17 morphine or being capable of conversion into a drug having
18 addiction-forming or addiction-sustaining liability. "Opiate"
19 does not include, unless specifically designated as controlled
20 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
21 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.
22 "Opiate" does include its racemic and levorotatory forms;

23 Q. "person" means an individual, partnership,
24 corporation, association, institution, political subdivision,
25 government agency or other legal entity;

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1 R. "practitioner" means a physician, doctor of
2 oriental medicine, dentist, physician assistant, certified
3 nurse practitioner, clinical nurse specialist, certified nurse-
4 midwife, prescribing psychologist, veterinarian, pharmacist,
5 pharmacist clinician or other person licensed or certified to
6 prescribe and administer drugs that are subject to the
7 Controlled Substances Act;

8 S. "prescription" means an order given individually
9 for the person for whom is prescribed a controlled substance,
10 either directly from a licensed practitioner or the
11 practitioner's agent to the pharmacist, including by means of
12 electronic transmission, or indirectly by means of a written
13 order signed by the prescriber, bearing the name and address of
14 the prescriber, [~~his~~] the prescriber's license classification,
15 the name and address of the patient, the name and quantity of
16 the drug prescribed, directions for use and the date of issue
17 and in accordance with the Controlled Substances Act or rules
18 adopted thereto;

19 T. "scientific investigator" means a person
20 registered to conduct research with controlled substances in
21 the course of [~~his~~] the person's professional practice or
22 research and includes analytical laboratories;

23 U. "ultimate user" means a person who lawfully
24 possesses a controlled substance for [~~his~~] the person's own use
25 or for the use of a member of [~~his~~] the person's household or

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1 for administering to an animal under the care, custody and
2 control of the person or by a member of [~~his~~] the person's
3 household;

4 V. "drug paraphernalia" means all equipment,
5 products and materials of any kind that are used, intended for
6 use or designed for use in planting, propagating, cultivating,
7 growing, harvesting, manufacturing, compounding, converting,
8 producing, processing, preparing, testing, analyzing,
9 packaging, repackaging, storing, containing, concealing,
10 injecting, ingesting, inhaling or otherwise introducing into
11 the human body a controlled substance or controlled substance
12 analog in violation of the Controlled Substances Act. It
13 includes:

14 (1) kits used, intended for use or designed
15 for use in planting, propagating, cultivating, growing or
16 harvesting any species of plant that is a controlled substance
17 or controlled substance analog or from which a controlled
18 substance can be derived;

19 (2) kits used, intended for use or designed
20 for use in manufacturing, compounding, converting, producing,
21 processing or preparing controlled substances or controlled
22 substance analogs;

23 (3) isomerization devices used, intended for
24 use or designed for use in increasing the potency of any
25 species of plant that is a controlled substance;

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1 (4) testing equipment used, intended for use
2 or designed for use in identifying or in analyzing the
3 strength, effectiveness or purity of controlled substances or
4 controlled substance analogs;

5 (5) scales or balances used, intended for use
6 or designed for use in weighing or measuring controlled
7 substances or controlled substance analogs;

8 (6) diluents and adulterants, such as quinine
9 hydrochloride, mannitol, mannite dextrose and lactose, used,
10 intended for use or designed for use in cutting controlled
11 substances or controlled substance analogs;

12 (7) separation gins and sifters used, intended
13 for use or designed for use in removing twigs and seeds from,
14 or in otherwise cleaning and refining, marijuana;

15 (8) blenders, bowls, containers, spoons and
16 mixing devices used, intended for use or designed for use in
17 compounding controlled substances or controlled substance
18 analogs;

19 (9) capsules, balloons, envelopes and other
20 containers used, intended for use or designed for use in
21 packaging small quantities of controlled substances or
22 controlled substance analogs;

23 (10) containers and other objects used,
24 intended for use or designed for use in storing or concealing
25 controlled substances or controlled substance analogs;

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1 (11) hypodermic syringes, needles and other
2 objects used, intended for use or designed for use in
3 parenterally injecting controlled substances or controlled
4 substance analogs into the human body;

5 (12) objects used, intended for use or
6 designed for use in ingesting, inhaling or otherwise
7 introducing marijuana, cocaine, hashish or hashish oil into the
8 human body, such as:

9 (a) metal, wooden, acrylic, glass,
10 stone, plastic or ceramic pipes, with or without screens,
11 permanent screens, hashish heads or punctured metal bowls;

12 (b) water pipes;

13 (c) carburetion tubes and devices;

14 (d) smoking and carburetion masks;

15 (e) roach clips, meaning objects used to
16 hold burning material, such as a marijuana cigarette, that has
17 become too small to hold in the hand;

18 (f) miniature cocaine spoons and cocaine
19 vials;

20 (g) chamber pipes;

21 (h) carburetor pipes;

22 (i) electric pipes;

23 (j) air-driven pipes;

24 (k) chilams;

25 (l) bongs; or

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1 (m) ice pipes or chillers; and
2 (13) in determining whether an object is drug
3 paraphernalia, a court or other authority should consider, in
4 addition to all other logically relevant factors, the
5 following:

6 (a) statements by the owner or by anyone
7 in control of the object concerning its use;

8 (b) the proximity of the object, in time
9 and space, to a direct violation of the Controlled Substances
10 Act or any other law relating to controlled substances or
11 controlled substance analogs;

12 (c) the proximity of the object to
13 controlled substances or controlled substance analogs;

14 (d) the existence of any residue of a
15 controlled substance or controlled substance analog on the
16 object;

17 (e) instructions, written or oral,
18 provided with the object concerning its use;

19 (f) descriptive materials accompanying
20 the object that explain or depict its use;

21 (g) the manner in which the object is
22 displayed for sale; and

23 (h) expert testimony concerning its use;

24 W. "controlled substance analog" means a substance
25 other than a controlled substance that has a chemical structure

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1 substantially similar to that of a controlled substance in
2 Schedule I, II, III, IV or V or that was specifically designed
3 to produce effects substantially similar to that of controlled
4 substances in Schedule I, II, III, IV or V. Examples of
5 chemical classes in which controlled substance analogs are
6 found include the following:

- 7 (1) phenethylamines;
- 8 (2) N-substituted piperidines;
- 9 (3) morphinans;
- 10 (4) ecgonines;
- 11 (5) quinazolinones;
- 12 (6) substituted indoles; and
- 13 (7) arylcycloalkylamines.

14 Specifically excluded from the definition of "controlled
15 substance analog" are those substances that are generally
16 recognized as safe and effective within the meaning of the
17 Federal Food, Drug and Cosmetic Act or have been manufactured,
18 distributed or possessed in conformance with the provisions of
19 an approved new drug application or an exemption for
20 investigational use within the meaning of Section 505 of the
21 Federal Food, Drug and Cosmetic Act;

22 X. "human consumption" includes application,
23 injection, inhalation, ingestion or any other manner of
24 introduction;

25 Y. "drug-free school zone" means a [public] school

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1 or property [~~that is~~] used for [~~public~~] school purposes and the
2 area within one thousand feet of the school property line [~~but~~
3 ~~it does not mean any post-secondary school; and~~];

4 Z. "valid practitioner-patient relationship" means
5 a professional relationship, as defined by the practitioner's
6 licensing board, between the practitioner and the patient; and

7 AA. "drug-free residential zone" means a dwelling
8 designed and used as a residence, including manufactured homes,
9 condominiums and apartments, and the area within one thousand
10 feet of the exterior boundary of the dwelling."

11 Section 2. Section 30-31-20 NMSA 1978 (being Laws 1972,
12 Chapter 84, Section 20, as amended) is amended to read:

13 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--
14 VIOLATION.--

15 A. As used in the Controlled Substances Act,
16 "traffic" means the:

17 (1) manufacture of any controlled substance
18 enumerated in Schedules I through V or any controlled substance
19 analog as defined in Subsection W of Section 30-31-2 NMSA 1978;

20 (2) distribution, sale, barter or giving away
21 of any controlled substance enumerated in Schedule I or II that
22 is a narcotic drug or a controlled substance analog of a
23 controlled substance enumerated in Schedule I or II that is a
24 narcotic drug; or

25 (3) possession with intent to distribute any

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1 controlled substance enumerated in Schedule I or II that is a
2 narcotic drug or controlled substance analog of a controlled
3 substance enumerated in Schedule I or II that is a narcotic
4 drug.

5 B. Except as authorized by the Controlled
6 Substances Act, it is unlawful for any person to intentionally
7 traffic. ~~[Any]~~ A person who violates this subsection is:

8 (1) for the first offense, guilty of a second
9 degree felony and shall be sentenced pursuant to the provisions
10 of Section 31-18-15 NMSA 1978; and

11 (2) for the second and subsequent offenses,
12 guilty of a first degree felony and shall be sentenced pursuant
13 to the provisions of Section 31-18-15 NMSA 1978.

14 C. ~~[Any]~~ A person who knowingly violates Subsection
15 B of this section within a drug-free school zone ~~[excluding~~
16 ~~private property residentially zoned or used primarily as a~~
17 ~~residence]~~ or a drug-free residential zone is guilty of a first
18 degree felony and shall be sentenced pursuant to the provisions
19 of Section 31-18-15 NMSA 1978."

20 Section 3. Section 30-31-22 NMSA 1978 (being Laws 1972,
21 Chapter 84, Section 22, as amended) is amended to read:

22 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
23 DISTRIBUTION PROHIBITED.--

24 A. Except as authorized by the Controlled
25 Substances Act, it is unlawful for ~~[any]~~ a person to

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1 intentionally distribute or possess with intent to distribute a
2 controlled substance or a controlled substance analog except a
3 substance enumerated in Schedule I or II that is a narcotic
4 drug or a controlled substance analog of a controlled substance
5 enumerated in Schedule I or II that is a narcotic drug. ~~[Any]~~

6 A person who violates this subsection with respect to:

7 (1) marijuana is:

8 (a) for the first offense, guilty of a
9 fourth degree felony and shall be sentenced pursuant to the
10 provisions of Section 31-18-15 NMSA 1978;

11 (b) for the second and subsequent
12 offenses, guilty of a third degree felony and shall be
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA
14 1978;

15 (c) for the first offense, if more than
16 one hundred pounds is possessed with intent to distribute or
17 distributed or both, guilty of a third degree felony and shall
18 be sentenced pursuant to the provisions of Section 31-18-15
19 NMSA 1978; and

20 (d) for the second and subsequent
21 offenses, if more than one hundred pounds is possessed with
22 intent to distribute or distributed or both, guilty of a second
23 degree felony and shall be sentenced pursuant to the provisions
24 of Section 31-18-15 NMSA 1978;

25 (2) any other controlled substance enumerated in

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1 Schedule I, II, III or IV or a controlled substance analog of a
2 controlled substance enumerated in Schedule I, II, III or IV
3 except a substance enumerated in Schedule I or II that is a
4 narcotic drug or a controlled substance analog of a controlled
5 substance enumerated in Schedule I or II that is a narcotic
6 drug, is:

7 (a) for the first offense, guilty of a third
8 degree felony and shall be sentenced pursuant to the provisions
9 of Section 31-18-15 NMSA 1978; and

10 (b) for the second and subsequent offenses,
11 guilty of a second degree felony and shall be sentenced
12 pursuant to the provisions of Section 31-18-15 NMSA 1978; and

13 (3) a controlled substance enumerated in
14 Schedule V or a controlled substance analog of a controlled
15 substance enumerated in Schedule V is guilty of a misdemeanor
16 and shall be punished by a fine of not less than one hundred
17 dollars (\$100) or more than five hundred dollars (\$500) or by
18 imprisonment for a definite term not less than one hundred
19 eighty days but less than one year, or both.

20 B. It is unlawful for [~~any~~] a person to distribute
21 gamma hydroxybutyric acid or flunitrazepam to another person
22 without that person's knowledge and with intent to commit a
23 crime against that person, including criminal sexual
24 penetration. For the purposes of this subsection, "without
25 that person's knowledge" means the person is unaware that a

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1 substance with the ability to alter that person's ability to
2 appraise conduct or to decline participation in or communicate
3 unwillingness to participate in conduct is being distributed to
4 that person. [~~Any~~] A person who violates this subsection is:

5 (1) for the first offense, guilty of a third
6 degree felony and shall be sentenced pursuant to the provisions
7 of Section 31-18-15 NMSA 1978; and

8 (2) for the second and subsequent offenses,
9 guilty of a second degree felony and shall be sentenced
10 pursuant to the provisions of Section 31-18-15 NMSA 1978.

11 C. Except as authorized by the Controlled Substances
12 Act, it is unlawful for [~~any~~] a person to intentionally create
13 or deliver, or possess with intent to deliver, a counterfeit
14 substance. [~~Any~~] A person who violates this subsection with
15 respect to:

16 (1) a counterfeit substance enumerated in
17 Schedule I, II, III or IV is guilty of a fourth degree felony
18 and shall be sentenced pursuant to the provisions of Section
19 31-18-15 NMSA 1978; and

20 (2) a counterfeit substance enumerated in
21 Schedule V is guilty of a petty misdemeanor and shall be
22 punished by a fine of not more than one hundred dollars (\$100)
23 or by imprisonment for a definite term not to exceed six
24 months, or both.

25 D. [~~Any~~] A person who knowingly violates Subsection A
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1 or C of this section while within a drug-free school zone
2 [~~excluding private property residentially zoned or used~~
3 ~~primarily as a residence~~] or a drug-free residential zone with
4 respect to:

5 (1) marijuana is:

6 (a) for the first offense, guilty of a third
7 degree felony and shall be sentenced pursuant to the provisions
8 of Section 31-18-15 NMSA 1978;

9 (b) for the second and subsequent offenses,
10 guilty of a second degree felony and shall be sentenced
11 pursuant to the provisions of Section 31-18-15 NMSA 1978;

12 (c) for the first offense, if more than one
13 hundred pounds is possessed with intent to distribute or
14 distributed or both, guilty of a second degree felony and shall
15 be sentenced pursuant to the provisions of Section 31-18-15
16 NMSA 1978; and

17 (d) for the second and subsequent offenses,
18 if more than one hundred pounds is possessed with intent to
19 distribute or distributed or both, guilty of a first degree
20 felony and shall be sentenced pursuant to the provisions of
21 Section 31-18-15 NMSA 1978;

22 (2) any other controlled substance enumerated in
23 Schedule I, II, III or IV or a controlled substance analog of a
24 controlled substance enumerated in Schedule I, II, III or IV
25 except a substance enumerated in Schedule I or II that is a

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1 narcotic drug or a controlled substance analog of a controlled
2 substance enumerated in Schedule I or II that is a narcotic
3 drug, is:

4 (a) for the first offense, guilty of a
5 second degree felony and shall be sentenced pursuant to the
6 provisions of Section 31-18-15 NMSA 1978; and

7 (b) for the second and subsequent offenses,
8 guilty of a first degree felony and shall be sentenced pursuant
9 to the provisions of Section 31-18-15 NMSA 1978;

10 (3) a controlled substance enumerated in
11 Schedule V or a controlled substance analog of a controlled
12 substance enumerated in Schedule V is guilty of a fourth degree
13 felony and shall be sentenced pursuant to the provisions of
14 Section 31-18-15 NMSA 1978; and

15 (4) the intentional creation, delivery or
16 possession with the intent to deliver:

17 (a) a counterfeit substance enumerated in
18 Schedule I, II, III or IV is guilty of a third degree felony
19 and shall be sentenced pursuant to the provisions of Section
20 31-18-15 NMSA 1978; and

21 (b) a counterfeit substance enumerated in
22 Schedule V is guilty of a misdemeanor and shall be punished by
23 a fine of not less than one hundred dollars (\$100) nor more
24 than five hundred dollars (\$500) or by imprisonment for a
25 definite term not less than one hundred eighty days but less

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1 than one year, or both.

2 E. Notwithstanding the provisions of Subsection A of
3 this section, distribution of a small amount of marijuana for
4 no remuneration shall be treated as provided in Paragraph (1)
5 of Subsection B of Section 30-31-23 NMSA 1978."

6 Section 4. Section 30-31-23 NMSA 1978 (being Laws 1972,
7 Chapter 84, Section 23, as amended) is amended to read:

8 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
9 PROHIBITED.--

10 A. It is unlawful for [~~any~~] a person intentionally to
11 possess a controlled substance unless the substance was
12 obtained pursuant to a valid prescription or order of a
13 practitioner while acting in the course of [~~his~~] the
14 practitioner's professional practice or except as otherwise
15 authorized by the Controlled Substances Act. It is unlawful
16 for [~~any~~] a person intentionally to possess a controlled
17 substance analog.

18 B. [~~Any~~] A person who violates this section with
19 respect to:

20 (1) one ounce or less of marijuana is, for the
21 first offense, guilty of a petty misdemeanor and shall be
22 punished by a fine of not less than fifty dollars (\$50.00) or
23 more than one hundred dollars (\$100) and by imprisonment for
24 not more than fifteen days, and, for the second and subsequent
25 offenses, guilty of a misdemeanor and shall be punished by a

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1 fine of not less than one hundred dollars (\$100) or more than
2 one thousand dollars (\$1,000) or by imprisonment for a definite
3 term less than one year, or both;

4 (2) more than one ounce and less than eight
5 ounces of marijuana is guilty of a misdemeanor and shall be
6 punished by a fine of not less than one hundred dollars (\$100)
7 or more than one thousand dollars (\$1,000) or by imprisonment
8 for a definite term less than one year, or both; or

9 (3) eight ounces or more of marijuana is guilty
10 of a fourth degree felony and shall be sentenced pursuant to
11 the provisions of Section 31-18-15 NMSA 1978.

12 C. Except for those substances listed in Subsection D
13 of this section, [~~any~~] a person who violates this section with
14 respect to any amount of any controlled substance enumerated in
15 Schedule I, II, III or IV or a controlled substance analog of a
16 substance enumerated in Schedule I, II, III or IV is guilty of
17 a misdemeanor and shall be punished by a fine of not less than
18 five hundred dollars (\$500) or more than one thousand dollars
19 (\$1,000) or by imprisonment for a definite term less than one
20 year, or both.

21 D. [~~Any~~] A person who violates this section with
22 respect to phencyclidine as enumerated in Schedule III or a
23 controlled substance analog of phencyclidine; methamphetamine,
24 its salts, isomers or salts of isomers as enumerated in
25 Schedule II or a controlled substance analog of

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1 methamphetamine, its salts, isomers or salts of isomers;
2 flunitrazepam, its salts, isomers or salts of isomers as
3 enumerated in Schedule I or a controlled substance analog of
4 flunitrazepam, including naturally occurring metabolites, its
5 salts, isomers or salts of isomers; gamma hydroxybutyric acid
6 and any chemical compound that is metabolically converted to
7 gamma hydroxybutyric acid, its salts, isomers or salts of
8 isomers as enumerated in Schedule I or a controlled substance
9 analog of gamma hydroxybutyric acid, its salts, isomers or
10 salts of isomers; gamma butyrolactone and any chemical compound
11 that is metabolically converted to gamma hydroxybutyric acid,
12 its salts, isomers or salts of isomers as enumerated in
13 Schedule I or a controlled substance analog of gamma
14 butyrolactone, its salts, isomers or salts of isomers; 1-4
15 butane diol and any chemical compound that is metabolically
16 converted to gamma hydroxybutyric acid, its salts, isomers or
17 salts of isomers as enumerated in Schedule I or a controlled
18 substance analog of 1-4 butane diol, its salts, isomers or
19 salts of isomers; or a narcotic drug enumerated in Schedule I
20 or II or a controlled substance analog of a narcotic drug
21 enumerated in Schedule I or II is guilty of a fourth degree
22 felony and shall be sentenced pursuant to the provisions of
23 Section 31-18-15 NMSA 1978.

24 E. ~~[Any]~~ A person who violates Subsection A of this
25 section while within a posted drug-free school zone ~~[excluding~~

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1 ~~private property residentially zoned or used primarily as a~~
2 ~~residence and] or a drug-free residential zone~~, excluding any
3 person in or on a motor vehicle in transit through the posted
4 drug-free school zone or drug-free residential zone, with
5 respect to:

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

14 (2) more than one ounce and less than eight
15 ounces of marijuana is guilty of a fourth degree felony and
16 shall be sentenced pursuant to the provisions of Section
17 31-18-15 NMSA 1978;

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

21 (4) any amount of any other 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, except phencyclidine as enumerated in Schedule III,
25 a narcotic drug enumerated in Schedule I or II or a controlled

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underscoring material = new
~~[bracketed material] = delete~~

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

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