

SENATE BILL 323

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

INTRODUCED BY

Joseph Cervantes

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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

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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.

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

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

(2) more than one-half ounce but HJC→less than up to and including←HJC one ounce of marijuana is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100) and by imprisonment for not more than fifteen days, and, for a second or subsequent offense, is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term of less than one year, or both;

(3) more than one ounce but less than eight ounces of marijuana is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment

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for a definite term of less than one year, or both; or

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

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

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

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

(3) eight ounces or more of [~~marijuana or~~] synthetic cannabinoids is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section

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31-18-15 NMSA 1978.

[~~G.~~] D. A minor who violates this section with respect to the substances listed in this subsection is guilty of a petty misdemeanor and, notwithstanding the provisions of Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a fine not to exceed one hundred dollars (\$100) or forty-eight hours of community service. For the third or subsequent violation by a minor of this section with respect to those substances, the provisions of Section 32A-2-19 NMSA 1978 shall govern punishment of the minor. As used in this subsection, "minor" means a person who is less than eighteen years of age. The provisions of this subsection apply to the following substances:

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

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~~[D-]~~ E. Except as provided in Subsections B, C and G of this section, and for those substances listed in Subsection ~~[E]~~ F of this section, a person who violates this section with respect to any amount of any controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both.

~~[E-]~~ F. A person who violates this section with respect to phencyclidine as enumerated in Schedule III or a controlled substance analog of phencyclidine; methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers; flunitrazepam, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of flunitrazepam, including naturally occurring metabolites, its salts, isomers or salts of isomers; gamma hydroxybutyric acid and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma hydroxybutyric acid, its salts, isomers or salts of isomers; gamma butyrolactone and any chemical compound

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

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

(1) one ounce or less of marijuana or synthetic cannabinoids is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one

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year, or both, and for the second or subsequent offense, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

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

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

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

(5) phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II, a controlled substance analog of phencyclidine or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a third degree felony and shall be sentenced

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pursuant to the provisions of Section 31-18-15 NMSA 1978."

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

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

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

B. It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances

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Act. The provisions of this subsection do not apply to:

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

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

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

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

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

"[NEW MATERIAL] PENALTY ASSESSMENT.--

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

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

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

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

E. The magistrate court or metropolitan court in the county where the alleged violation occurred has jurisdiction for any case arising from a penalty assessment under the Criminal Code.

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

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

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

I. When a person issued a penalty assessment elects to appear in court rather than to pay the penalty assessment to the court, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment. A person who elects to appear in court shall pay

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the costs required by law to be collected by magistrate or metropolitan court judges.

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

**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.