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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  
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 up to and  
including one ounce of marijuana is, for the first offense,  
guilty of a petty misdemeanor and shall be punished by a fine

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

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

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

17 C. A person who violates this section with respect  
18 to:

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

1 one hundred dollars (\$100) or more than one thousand dollars  
2 (\$1,000) or by imprisonment for a definite term less than one  
3 year, or both;

4 (2) more than one ounce and less than eight  
5 ounces of synthetic cannabinoids is 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  
8 by imprisonment for a definite term less than one year, or  
9 both; or

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

14 D. A minor who violates this section with respect  
15 to the substances listed in this subsection is guilty of a  
16 petty misdemeanor and, notwithstanding the provisions of  
17 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by  
18 a fine not to exceed one hundred dollars (\$100) or  
19 forty-eight hours of community service. For the third or  
20 subsequent violation by a minor of this section with respect  
21 to those substances, the provisions of Section 32A-2-19 NMSA  
22 1978 shall govern punishment of the minor. As used in this  
23 subsection, "minor" means a person who is less than eighteen  
24 years of age. The provisions of this subsection apply to the  
25 following substances:

1 (1) synthetic cannabinoids;  
2 (2) any of the substances listed in  
3 Paragraphs (20) through (25) of Subsection C of  
4 Section 30-31-6 NMSA 1978; or

5 (3) a substance added to Schedule I by a  
6 rule of the board adopted on or after March 31, 2011 if the  
7 board determines that the pharmacological effect of the  
8 substance, the risk to the public health by abuse of the  
9 substance and the potential of the substance to produce  
10 psychic or physiological dependence liability is similar to  
11 the substances described in Paragraph (1) or (2) of this  
12 subsection.

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

23 F. A person who violates this section with respect  
24 to phencyclidine as enumerated in Schedule III or a  
25 controlled substance analog of phencyclidine;

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

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

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

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

20                   (3) eight ounces or more of marijuana or  
21 synthetic cannabinoids is guilty of a third degree felony and  
22 shall be sentenced pursuant to the provisions of Section  
23 31-18-15 NMSA 1978;

24                   (4) any amount of any other controlled  
25 substance enumerated in Schedule I, II, III or IV or a

1 controlled substance analog of a substance enumerated in  
2 Schedule I, II, III or IV, except phencyclidine as enumerated  
3 in Schedule III, a narcotic drug enumerated in Schedule I or  
4 II or a controlled substance analog of a narcotic drug  
5 enumerated in Schedule I or II, is guilty of a fourth degree  
6 felony and shall be sentenced pursuant to the provisions of  
7 Section 31-18-15 NMSA 1978; and

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

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

18 "30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF  
19 DRUG PARAPHERNALIA PROHIBITED--EXCEPTIONS.--

20 A. It is unlawful for a person to use or possess  
21 with intent to use drug paraphernalia to plant, propagate,  
22 cultivate, grow, harvest, manufacture, compound, convert,  
23 produce, process, prepare, test, analyze, pack, repack,  
24 store, contain, conceal, inject, ingest, inhale or otherwise  
25 introduce into the human body a controlled substance in

1 violation of the Controlled Substances Act. The provisions  
2 of this subsection do not apply to a person who is in  
3 possession of hypodermic syringes or needles at the time the  
4 person is directly and immediately engaged in a harm  
5 reduction program, as provided in the Harm Reduction Act.

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

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

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

24 C. A person who violates the provisions of  
25 Subsection A of this section shall be issued a penalty



1 assessment pursuant to Section 3 of this 2019 act and is  
2 subject to a fine of fifty dollars (\$50.00). A person who  
3 violates the provisions of Subsection B of this section is  
4 guilty of a misdemeanor.

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

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

14 "PENALTY ASSESSMENT.--

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

18 B. Whenever a person is issued a penalty  
19 assessment under the Criminal Code, the officer shall advise  
20 the person of the option either to accept the penalty  
21 assessment and pay it to the court or to appear in court.  
22 The officer, using a uniform non-traffic citation, shall  
23 complete the information section, prepare the penalty  
24 assessment and prepare a notice to appear in court specifying  
25 the time and place to appear. The citation shall state the

1 address to which the penalty assessment is to be paid if the  
2 person accepts the penalty assessment and does not elect to  
3 appear in court. The officer shall have the person sign the  
4 citation as a promise either to pay the penalty assessment as  
5 prescribed or to appear in court as specified, give a copy of  
6 the citation to the person and release the person from  
7 custody. An officer shall not accept custody of payment of  
8 any penalty assessment.

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

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

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

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

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

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

8 I. When a person issued a penalty assessment  
9 elects to appear in court rather than to pay the penalty  
10 assessment to the court, no fine imposed upon later  
11 conviction shall exceed the penalty assessment established  
12 for the particular penalty assessment. A person who elects  
13 to appear in court shall pay the costs required by law to be  
14 collected by magistrate or metropolitan court judges.

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

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

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