

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 317

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING PENALTIES FOR
POSSESSION OF A CONTROLLED SUBSTANCE; REQUIRING A CONDITIONAL
DISCHARGE FOR A FIRST OR SECOND OFFENSE REGARDING POSSESSION
OF A CONTROLLED SUBSTANCE; AMENDING SECTIONS OF THE CONTROLLED
SUBSTANCES ACT.

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 by Laws 1990, Chapter 19,
Section 5 and also by Laws 1990, Chapter 33, Section 1) is
amended to read:

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

A. It is unlawful for ~~any~~ a person intentionally
to possess a controlled substance unless the substance was

underscored material = new
[bracketed material] = delete

1 obtained pursuant to a valid prescription or order of a
2 practitioner while acting in the course of his professional
3 practice or except as otherwise authorized by the Controlled
4 Substances Act. It is unlawful for [~~any~~] a person
5 intentionally to possess a controlled substance analog.

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

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

17 (2) more than one ounce and 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 less than one year, or both; or

22 (3) eight ounces or more of ~~marijuana~~ is for
23 the first or second offense, guilty of a misdemeanor and shall
24 be punished by a fine of not less than five hundred dollars
25 (\$500) or more than one thousand dollars (\$1,000) or by

underscored material = new
[bracketed material] = delete

1 imprisonment for a definite term less than one year, or both.
2 Upon a third or subsequent offense, the person is guilty of a
3 fourth degree felony and shall be sentenced pursuant to the
4 provisions of Section 31-18-15 NMSA 1978.

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

15 D. A person who violates this section with respect
16 to less than two grams of phencyclidine as enumerated in
17 Schedule III or less than two grams of a controlled substance
18 analog of phencyclioine; or less than two grams of
19 methamphetamine, its salts, isomers or salts of isomers as
20 enumerated in Schedule II or less than two grams of a
21 controlled substance analog of methamphetamine, its salts,
22 isomers or salts of isomers; or less than two grams of a
23 narcotic drug enumerated in Schedule I or II or less than two
24 grams of a controlled substance analog of a narcotic drug
25 enumerated in Schedule I or II, is for the first or second

underscored material = new
[bracketed material] = delete

1 offense, guilty of a misdemeanor and shall be punished by a
2 fine of not less than five hundred dollars (\$500) or more than
3 one thousand dollars (\$1,000) or by imprisonment for a
4 definite term less than one year, or both. Upon a third or
5 subsequent offense, the person is guilty of a fourth degree
6 felony and shall be sentenced pursuant to the provisions of
7 Section 31-18-15 NMSA 1978.

8 [D.—Any] E. A person who violates this section
9 with respect to two grams or more of phencyclidine as
10 enumerated in Schedule III or two grams or more of a
11 controlled substance analog of phencyclidine; or two grams or
12 more of methamphetamine, its salts, isomers or salts of
13 isomers as enumerated in Schedule II or two grams or more of a
14 controlled substance analog of methamphetamine, its salts,
15 isomers or salts of isomers; or two grams or more of a
16 narcotic drug enumerated in Schedule I or II or two grams or
17 more of a controlled substance analog of a narcotic drug
18 enumerated in Schedule I or II, is guilty of a fourth degree
19 felony and shall be sentenced pursuant to the provisions of
20 Section 31-18-15 NMSA 1978. "

21 Section 2. Section 30-31-28 NMSA 1978 (being Laws 1972,
22 Chapter 84, Section 28) is amended to read:

23 "30-31-28. **CONDITIONAL DISCHARGE FOR POSSESSION-- [AS]**
24 **FIRST OR SECOND OFFENSE. --**

25 A. If [any] a person, who has not previously been

underscored material = new
[bracketed material] = delete

1 convicted or has previously been convicted once of violating
2 the laws of any state or any laws of the United States
3 relating to narcotic drugs, marijuana, hallucinogenic or
4 depressant or stimulant substances, is found guilty of a
5 violation of Section [23] 30-31-23 NMSA 1978, after trial or
6 upon a plea of guilty, the court [~~may~~] shall, without entering
7 a judgment of guilty and with the consent of the person, defer
8 further proceedings and place him on probation upon reasonable
9 conditions and for a period, not to exceed one year, as the
10 court may prescribe. The conditions of probation may include
11 a referral by the court to a drug treatment program
12 administered by or approved by the department of health.

13 B. Upon violation of a condition of the probation,
14 the court may enter an adjudication of guilt and proceed as
15 otherwise provided. The court may, in its discretion, dismiss
16 the proceedings against the person and discharge him from
17 probation before the expiration of the maximum period
18 prescribed from the person's probation.

19 C. If during the period of his probation the
20 person does not violate any of the conditions of the
21 probation, then upon expiration of the period the court shall
22 discharge such person and dismiss the proceedings against him.
23 Discharge and dismissal under this section shall be without
24 court adjudication of guilt, but a nonpublic record shall be
25 retained by the attorney general solely for the purpose of use

underscored material = new
[bracketed material] = delete

1 by the courts in determining whether or not, in subsequent
2 proceedings, the person qualifies under this section. A
3 discharge or dismissal shall not be deemed a conviction for
4 purposes of disqualifications or disabilities imposed by law
5 upon conviction of a crime [~~including the penalties prescribed~~
6 ~~under this section for second or subsequent convictions or for~~
7 ~~any other purpose. Discharge and dismissal under this section~~
8 ~~may occur only once with respect to any person~~].

9 D. Upon the dismissal of a person and discharge of
10 the proceedings against him under this section, a person, if
11 he was not over eighteen years of age at the time of the
12 offense, may apply to the court for an order to expunge from
13 all official records all recordation relating to his arrest,
14 indictment or information, trial, finding or plea of guilty,
15 and dismissal and discharge pursuant to this section except
16 nonpublic records filed with the attorney general. If the
17 court determines, after hearing, that the person was dismissed
18 and the proceedings against him discharged and that he was not
19 over eighteen years of age at the time of the offense, it
20 shall enter the order. The effect of the order shall be to
21 restore the person, in the contemplation of the law, to the
22 status he occupied before the arrest or indictment or
23 information. [No] A person in whose behalf an order has been
24 entered shall not be held thereafter under any provision of
25 any law to be guilty of perjury or otherwise giving a false

underscored material = new
[bracketed material] = delete

1 statement by reason of his failures to recite or acknowledge
2 such arrest, or indictment or information or trial in response
3 to any inquiry made of him for any purpose. "

4 Section 3. EFFECTIVE DATE. -- The effective date of the
5 provisions of this act is July 1, 2001.

6 - 7 -

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25