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SENATE BILL 331

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Ben D. Altamirano

AN ACT

**RELATING TO CONTROLLED SUBSTANCES; AMENDING PENALTIES FOR
POSSESSION OF A CONTROLLED SUBSTANCE; PROVIDING THE DISTRICT
COURT WITH EXCLUSIVE JURISDICTION OF PROCEEDINGS REGARDING
POSSESSION OF A CONTROLLED SUBSTANCE; REQUIRING A CONDITIONAL
DISCHARGE FOR A FIRST OR SECOND OFFENSE REGARDING POSSESSION
OF A CONTROLLED SUBSTANCE; AUTHORIZING REFERRAL TO A DRUG
TREATMENT PROGRAM; AMENDING SECTIONS OF THE CONTROLLED
SUBSTANCES ACT; MAKING AN APPROPRIATION.**

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

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1 PROHIBITED. --

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

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

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

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

25 (3) eight ounces or more of marijuana is for

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

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

17 D. [~~Any~~] A person who violates this section with
18 respect to phencyclidine as enumerated in Schedule III or a
19 controlled substance analog of phencyclidine; ~~methamphetamine,~~
20 its salts, isomers or salts of isomers as enumerated in
21 Schedule II or a controlled substance analog of
22 methamphetamine, its salts, isomers or salts of isomers; or a
23 narcotic drug enumerated in Schedule I or II or a controlled
24 substance analog of a narcotic drug enumerated in Schedule I
25 or II is for the first or second offense, guilty of a

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

7 E. The district court has exclusive jurisdiction
8 of all proceedings for the offenses set forth in this
9 section. "

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

12 "30-31-28. CONDITIONAL DISCHARGE FOR POSSESSION [AS]--
13 FIRST OR SECOND OFFENSE. --

14 A. If [~~any~~] a person, who has not previously been
15 convicted or has previously been convicted once of violating
16 the laws of any state or any laws of the United States
17 relating to narcotic drugs, marijuana, hallucinogenic or
18 depressant or stimulant substances, is found guilty of a
19 violation of Section [~~23~~] 30-31-23 NMSA 1978, after trial or
20 upon a plea of guilty, the court [~~may~~] shall, without entering
21 a judgment of guilty and with the consent of the person, defer
22 further proceedings and place him on probation upon reasonable
23 conditions and for a period, not to exceed one year, as the
24 court may prescribe. The conditions of probation may include
25 a referral by the court to a drug treatment program

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1 administered by or approved by the department of health.

2 B. Upon violation of a condition of the probation,
3 the court may enter an adjudication of guilt and proceed as
4 otherwise provided. The court may, in its discretion, dismiss
5 the proceedings against the person and discharge him from
6 probation before the expiration of the maximum period
7 prescribed from the person's probation.

8 C. If during the period of his probation the
9 person does not violate any of the conditions of the
10 probation, then upon expiration of the period the court shall
11 discharge such person and dismiss the proceedings against him.
12 Discharge and dismissal under this section shall be without
13 court adjudication of guilt, but a nonpublic record shall be
14 retained by the attorney general solely for the purpose of use
15 by the courts in determining whether or not, in subsequent
16 proceedings, the person qualifies under this section. A
17 discharge or dismissal shall not be deemed a conviction for
18 purposes of disqualifications or disabilities imposed by law
19 upon conviction of a crime [~~including the penalties prescribed~~
20 ~~under this section for second or subsequent convictions or for~~
21 ~~any other purpose. Discharge and dismissal under this section~~
22 ~~may occur only once with respect to any person~~].

23 D. Upon the dismissal of a person and discharge of
24 the proceedings against him under this section, a person, if
25 he was not over eighteen years of age at the time of the

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1 offense, may apply to the court for an order to expunge from
2 all official records all recordation relating to his arrest,
3 indictment or information, trial, finding or plea of guilty,
4 and dismissal and discharge pursuant to this section except
5 nonpublic records filed with the attorney general. If the
6 court determines, after hearing, that the person was dismissed
7 and the proceedings against him discharged and that he was not
8 over eighteen years of age at the time of the offense, it
9 shall enter the order. The effect of the order shall be to
10 restore the person, in the contemplation of the law, to the
11 status he occupied before the arrest or indictment or
12 information. No person in whose behalf an order has been
13 entered shall be held thereafter under any provision of any
14 law to be guilty of perjury or otherwise giving a false
15 statement by reason of his failures to recite or acknowledge
16 such arrest, or indictment or information or trial in response
17 to any inquiry made of him for any purpose. "

18 Section 3. APPROPRIATION. -- One million dollars
19 (\$1,000,000) is appropriated from the tobacco settlement
20 program fund to the department of health for expenditures in
21 fiscal year 2003 for the purpose of providing drug treatment
22 services in lieu of incarceration. Any unexpended or
23 unencumbered balance remaining at the end of fiscal year 2003
24 shall revert to the tobacco settlement program fund.

25 Section 4. APPLICABILITY. -- The provisions of this act

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1 apply to persons convicted for an offense of possession of a
2 controlled substance, as provided in Section 30-31-23 NMSA
3 1978, when the offense was committed on or after July 1, 2002.

4 Section 5. EFFECTIVE DATE. -- The effective date of the
5 provisions of this act is July 1, 2002.

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