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SENATE BILL 258

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Joseph Cervantes

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

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1 possess a controlled substance analog.

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

4 (1) one ounce or less of marijuana shall be  
5 issued a penalty assessment, pursuant to Section 3 of this 2017  
6 act, and is subject to a fine of fifty dollars (\$50.00);

7 (2) more than one ounce but not more than four  
8 ounces of marijuana is guilty of a petty misdemeanor and,  
9 notwithstanding the provisions of Section 31-19-1 NMSA 1978,  
10 shall be punished by a fine of up to two hundred dollars  
11 (\$200);

12 (3) more than four ounces but not more than  
13 eight ounces of marijuana is guilty of a misdemeanor and,  
14 notwithstanding the provisions of Section 31-19-1 NMSA 1978,  
15 shall be punished by a fine of up to three hundred dollars  
16 (\$300); or

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

20 ~~[B.]~~ C. A person who violates this section with  
21 respect to:

22 (1) one ounce or less of ~~[marijuana or]~~  
23 synthetic cannabinoids is, for the first offense, guilty of a  
24 petty misdemeanor and shall be punished by a fine of not less  
25 than fifty dollars (\$50.00) or more than one hundred dollars

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

6 (2) more than one ounce and less than eight  
7 ounces of [~~marijuana or~~] synthetic cannabinoids is guilty of a  
8 misdemeanor and shall be punished by a fine of not less than  
9 one hundred dollars (\$100) or more than one thousand dollars  
10 (\$1,000) or by imprisonment for a definite term less than one  
11 year, or both; or

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

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

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1 The provisions of this subsection apply to the following  
2 substances:

3 (1) synthetic cannabinoids;

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

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

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

25 [~~E-~~] F. A person who violates this section with

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

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1 felony and shall be sentenced pursuant to the provisions of  
2 Section 31-18-15 NMSA 1978.

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

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

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

22 (3) eight ounces or more of marijuana or  
23 synthetic cannabinoids is guilty of a third degree felony and  
24 shall be sentenced pursuant to the provisions of Section  
25 31-18-15 NMSA 1978;

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1 (4) any amount of any other controlled  
2 substance enumerated in Schedule I, II, III or IV or a  
3 controlled substance analog of a substance enumerated in  
4 Schedule I, II, III or IV, except phencyclidine as enumerated  
5 in Schedule III, a narcotic drug enumerated in Schedule I or II  
6 or a controlled substance analog of a narcotic drug enumerated  
7 in Schedule I or II, is guilty of a fourth degree felony and  
8 shall be sentenced pursuant to the provisions of Section  
9 31-18-15 NMSA 1978; and

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

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

18 "30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF DRUG  
19 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, store,  
24 contain, conceal, inject, ingest, inhale or otherwise introduce  
25 into the human body a controlled substance in violation of the

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1 Controlled Substances Act. The provisions of this subsection  
2 do not apply to a person who is in possession of hypodermic  
3 syringes or needles at the time ~~[he]~~ the person is directly and  
4 immediately engaged in a harm reduction program, as provided in  
5 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 be  
10 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 Substances  
15 Act. The provisions of this subsection do not apply to:

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

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

23 C. A person who violates this section with respect  
24 to Subsection A of this section shall be issued a penalty  
25 assessment pursuant to Section 3 of this 2017 act and is

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1 ~~[guilty of a misdemeanor and upon conviction shall be punished~~  
2 ~~by a fine of not less than fifty dollars (\$50.00) nor more than~~  
3 ~~one hundred dollars (\$100) or by imprisonment for a definite~~  
4 ~~term less than one year, or both]~~ subject to a fine of fifty  
5 dollars (\$50.00). A person who violates this section with  
6 respect to Subsection B of this section is guilty of a  
7 misdemeanor.

8 D. A person eighteen years of age or over who  
9 violates the provisions of Subsection B of this section by  
10 delivering drug paraphernalia to a person under eighteen years  
11 of age and who is at least three years ~~[his]~~ the person's  
12 junior is guilty of a fourth degree felony and shall be  
13 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
14 1978."

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

17 "[NEW MATERIAL] PENALTY ASSESSMENT.--

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

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

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

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

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

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

23 F. A penalty assessment citation issued by a law  
24 enforcement officer shall be submitted to the appropriate  
25 magistrate or metropolitan court within three business days of

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1 issuance. If the citation is not submitted within three  
2 business days, it may be dismissed with prejudice.

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

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

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

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

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

23 SECTION 5. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 2017.