

FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019

SB 408/a

March 1, 2019

Mr. President:

Your **JUDICIARY COMMITTEE**, to whom has been referred

SENATE BILL 408

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 12, after "MISDEMEANOR", insert "DECREASING THE PENALTY FOR POSSESSION OF DRUG PARAPHERNALIA; CREATING A PENALTY ASSESSMENT FOR THE CRIMINAL CODE".

2. On page 2, line 11, after the semicolon, insert "or".

3. On page 2, line 12 and 13, strike "and less than eight ounces", on line 17, strike the semicolon and "or", strike lines 18 through 20 in their entirety and strike line 21 up to the period.

4. On page 6, between lines 19 and 20, insert the following new sections:

"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.

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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 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.

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.

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F. A penalty assessment citation issued by a law enforcement officer shall be submitted to the appropriate magistrate court or metropolitan court within three 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 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."".

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Respectfully submitted,

Richard C. Martinez, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 2 Against
Yes: 6
No: Baca, Cervantes
Excused: Griggs, Lopez, Payne
Absent: None

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