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HOUSE BILL 25

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

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO CONTROLLED SUBSTANCES; PROVIDING A CIVIL PENALTY FOR POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA BY A PERSON EIGHTEEN YEARS OF AGE OR OLDER; PROVIDING CIVIL FINES; AUTHORIZING REFERRAL TO A DRUG COUNSELING PROGRAM FOR A MINOR IN POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Controlled Substances Act is enacted to read:

"[NEW MATERIAL] POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA BY A PERSON EIGHTEEN YEARS OF AGE OR OLDER-- CITATION--CIVIL FINE--PROCEDURE.--

A. Upon a first offense for possession of one ounce or less of marijuana by a person eighteen years of age or older, the arresting law enforcement officer shall offer the alleged offender the option of accepting a citation for a one hundred dollar (\$100) civil fine or appearing in metropolitan or magistrate court within thirty days after

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1 issuance of the citation to contest it. The offender's
2 signature on the citation constitutes an acknowledgment of
3 guilt of the offense stated in the citation.

4 B. If an offender elects to sign the citation,
5 payment of the civil fine shall be made by mailing the payment
6 or tendering the payment in person within thirty days from the
7 date of issuance of the citation to the metropolitan or
8 magistrate court. Payment of the fine is timely if postmarked
9 within thirty days from the date of issuance of the citation.
10 When a fine is paid by currency, a receipt shall be
11 immediately issued to the offender. When a fine is paid by
12 check, the canceled check is a sufficient receipt.

13 C. If an alleged offender elects to contest the
14 citation, he shall appear in metropolitan or magistrate court
15 within thirty days after issuance of the citation to contest
16 it. The citing law enforcement officer shall act as the
17 plaintiff during the proceedings. The citing law enforcement
18 officer shall be required to prove, by a preponderance of the
19 evidence, that the alleged offender was in possession of one
20 ounce or less of marijuana. If the court determines that the
21 alleged offender is guilty of the civil offense of possession
22 of one ounce or less of marijuana by a person eighteen years
23 of age or older, the court shall impose a civil fine of one
24 hundred dollars (\$100) and may require the offender to pay
25 court costs. When a fine is paid by currency, a receipt shall
be immediately issued to the offender. When a fine is paid by
check, the canceled check is a sufficient receipt.

D. The department of public safety shall prepare a
citation, to be used by law enforcement officers, for the

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1 offense of possession of one ounce or less of marijuana by a
2 person eighteen years of age or older. The department of
3 public safety shall prepare a warning notice to be used by law
4 enforcement officers when a citation is not issued.

5 E. A record of payment of a civil fine for
6 possession of one ounce or less of marijuana by a person
7 eighteen years of age or older is not admissible as evidence
8 in a separate civil or criminal action.

9 F. If the civil fine is not paid within thirty
10 days from the date of issuance of the citation, the offender
11 may be punished for contempt by the presiding metropolitan or
12 magistrate court, pursuant to the provisions of Sections
13 34-1-2 and 35-3-9 NMSA 1978.

14 G. A civil fine collected by a metropolitan or a
15 magistrate court pursuant to the provisions of this section
16 shall be remitted to the state treasurer for deposit into the
17 general fund."

18 Section 2. Section 30-31-23 NMSA 1978 (being Laws 1972,
19 Chapter 84, Section 23, as amended by Laws 1990, Chapter 19,
20 Section 5 and also by Laws 1990, Chapter 33, Section 1) is
21 amended to read:

22 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
23 PROHIBITED.--

24 A. It is unlawful for [~~any~~] a person intentionally
25 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 his professional
practice or except as otherwise authorized by the Controlled
Substances Act. It is unlawful for [~~any~~] a person

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1 intentionally to possess a controlled substance analog.

2 B. ~~[Any]~~ A person less than eighteen years of age
3 who violates this section with respect to ~~[(1)]~~ one ounce or
4 less of marijuana is, for the first offense, guilty of a petty
5 misdemeanor and shall be punished by a fine of not less than
6 fifty dollars (\$50.00) or more than one hundred dollars (\$100)
7 and by imprisonment for not more than fifteen days, and, for
8 the second and subsequent offenses, guilty of a misdemeanor
9 and shall be punished by a fine of not less than one hundred
10 dollars (\$100) or more than one thousand dollars (\$1,000) or
11 by imprisonment for a definite term less than one year, or
12 both. In addition to a fine or punishment imposed pursuant to
13 the provisions of this subsection, a court may refer an
14 offender to a drug counseling program administered by or
15 approved by the department of health.

16 ~~[(2)]~~ C. A person who violates this section with
17 respect to:

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

23 ~~[(3)]~~ (2) eight ounces or more of marijuana
24 is guilty of a fourth degree felony and shall be sentenced
25 pursuant to the provisions of Section 31-18-15 NMSA 1978.

~~[E.]~~ D. Except for those substances listed in
Subsection ~~[D]~~ E of this section, ~~[any]~~ a person who violates
this section with respect to any amount of any controlled
substance enumerated in Schedule I, II, III or IV or a

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1 controlled substance analog of a substance enumerated in
2 Schedule I, II, III or IV is guilty of a misdemeanor and shall
3 be punished by a fine of not less than five hundred dollars
4 (\$500) or more than one thousand dollars (\$1,000) or by
5 imprisonment for a definite term less than one year, or both.

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

17 Section 3. Section 32A-2-3 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 32, as amended) is amended to read:

19 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

20 A. "delinquent act" means possession of one ounce
21 or less of marijuana by a person less than eighteen years of
22 age, as provided in Section 30-31-23 NMSA 1978 or an act
23 committed by a child that would be designated as a crime under
24 the law if committed by an adult, including the following
25 offenses:

(1) pursuant to municipal traffic codes or
the Motor Vehicle Code:

(a) any driving while under the
influence of intoxicating liquor or drugs;

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1 (b) any failure to stop in the event of
2 an accident causing death, personal injury or damage to
3 property;

4 (c) any unlawful taking of a vehicle or
5 motor vehicle;

6 (d) any receiving or transferring of a
7 stolen vehicle or motor vehicle;

8 (e) any homicide by vehicle;

9 (f) any injuring or tampering with a
10 vehicle;

11 (g) any altering or changing of an
12 engine number or other vehicle identification numbers;

13 (h) any altering or forging of a
14 driver's license or permit or any making of a fictitious
15 license or permit;

16 (i) reckless driving;

17 (j) driving with a suspended or revoked
18 license; or

19 (k) any offense punishable as a felony;

20 (2) buying, attempting to buy, receiving,
21 possessing or being served any alcoholic liquor or being
22 present in a licensed liquor establishment, other than a
23 restaurant or a licensed retail liquor establishment, except
24 in the presence of the child's parent, guardian, custodian or
25 adult spouse. As used in this paragraph, "restaurant" means
any establishment where meals are prepared and served
primarily for on-premises consumption and that has a dining
room, a kitchen and the employees necessary for preparing,
cooking and serving meals. "Restaurant" does not include

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1 [~~establishments~~] an establishment, as defined in regulations
2 promulgated by the director of the special investigations
3 division of the department of public safety, that [~~serve~~]
4 serves only hamburgers, sandwiches, salads and other fast
5 foods;

6 (3) any felony violation of the provisions of
7 Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations
8 adopted by the state game commission that relate to the time,
9 extent, means or manner that game animals, birds or fish may
10 be hunted, taken, captured, killed, possessed, sold, purchased
11 or shipped and for which a fine may be imposed or a civil
12 damage awarded;

13 (4) any violation of Section 30-29-2 NMSA
14 1978, regarding the illegal use of a glue, aerosol spray
15 product or other chemical substance;

16 (5) any violation of the Controlled
17 Substances Act;

18 (6) escape from the custody of a law
19 enforcement officer or a juvenile probation or parole officer
20 or from any placement made by the department by a child who
21 has been adjudicated a delinquent child; or

22 (7) any violation of Section 30-15-1.1 NMSA
23 1978 regarding unauthorized graffiti on personal or real
24 property;

25 B. "delinquent child" means a child who has
committed a delinquent act;

C. "delinquent offender" means a delinquent child
who is subject to juvenile sanctions only and who is not a
youthful offender or a serious youthful offender;

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1 D. "detention facility" means a place where a
2 child may be detained under the Children's Code pending court
3 hearing and does not include a facility for the care and
4 rehabilitation of an adjudicated delinquent child;

5 E. "felony" means an act that would be a felony if
6 committed by an adult;

7 F. "misdemeanor" means an act that would be a
8 misdemeanor or petty misdemeanor if committed by an adult;

9 G. "restitution" means financial reimbursement by
10 the child to the victim or community service imposed by the
11 court and is limited to easily ascertainable damages for
12 injury to or loss of property, actual expenses incurred for
13 medical, psychiatric and psychological treatment for injury to
14 a person and lost wages resulting from physical injury, which
15 are a direct and proximate result of a delinquent act.

16 "Restitution" does not include reimbursement for damages for
17 mental anguish, pain and suffering or other intangible losses.
18 As used in this subsection, "victim" means any person who is
19 injured or suffers damage of any kind by an act that is the
20 subject of a complaint or referral to law enforcement officers
21 or juvenile probation authorities. Nothing contained in this
22 definition limits or replaces the provisions of Subsections A
23 and B of Section 32A-2-27 NMSA 1978;

24 H. "serious youthful offender" means an individual
25 fifteen to eighteen years of age who is charged with and
indicted or bound over for trial for first degree murder. A
"serious youthful offender" is not a delinquent child as
defined pursuant to the provisions of this section; and

I. "youthful offender" means a delinquent child

1 subject to adult or juvenile sanctions who is:

2 (1) fourteen to eighteen years of age at the
3 time of the offense and who is adjudicated for at least one of
4 the following offenses:

5 (a) second degree murder, as provided
6 in Section 30-2-1 NMSA 1978;

7 (b) assault with intent to commit a
8 violent felony, as provided in Section 30-3-3 NMSA 1978;

9 (c) kidnapping, as provided in Section
10 30-4-1 NMSA 1978;

11 (d) aggravated battery, as provided in
12 Subsection C of Section 30-3-5 NMSA 1978;

13 (e) aggravated battery upon a peace
14 officer, as provided in Subsection C of Section 30-22-25 NMSA
15 1978;

16 (f) shooting at a dwelling or occupied
17 building or shooting at or from a motor vehicle, as provided
18 in Section 30-3-8 NMSA 1978;

19 (g) dangerous use of explosives, as
20 provided in Section 30-7-5 NMSA 1978;

21 (h) criminal sexual penetration, as
22 provided in Section 30-9-11 NMSA 1978;

23 (i) robbery, as provided in Section
24 30-16-2 NMSA 1978;

25 (j) aggravated burglary, as provided in
Section 30-16-4 NMSA 1978;

(k) aggravated arson, as provided in
Section 30-17-6 NMSA 1978; or

(l) abuse of a child that results in

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great bodily harm or death to the child, as provided in
Section 30-6-1 NMSA 1978;

(2) fourteen to eighteen years of age at the
time of the offense and adjudicated for any felony offense and
who has had three prior, separate felony adjudications within
a three-year time period immediately preceding the instant
offense. The felony adjudications relied upon as prior
adjudications shall not have arisen out of the same
transaction or occurrence or series of events related in time
and location. Successful completion of consent decrees are
not considered a prior adjudication for the purposes of this
paragraph; or

(3) fourteen years of age and adjudicated for
first degree murder, as provided in Section 30-2-1 NMSA 1978."

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