SENATE BILL 383

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO CONTROLLED SUBSTANCES; DECREASING PENALTIES FOR
POSESSION OF MARIJUANA AND OF DRUG PARAPHERNALIA.

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 possess a controlled substance analog.

.199339.1
B. A person who violates this section with respect to:

(1) one ounce or less of marijuana is subject to a civil penalty of fifty dollars ($50.00); and, for a second or subsequent offense, is guilty of a petty misdemeanor and, notwithstanding the provisions of Section 31-19-1 NMSA 1978, shall be punished by a fine of up to one hundred dollars ($100);

(2) more than one ounce but not more than four ounces of marijuana, is subject to a civil penalty of up to one hundred dollars ($100); and, for a second or subsequent offense, is guilty of a petty misdemeanor and, notwithstanding the provisions of Section 31-19-1 NMSA 1978, shall be punished by a fine of up to two hundred dollars ($200);

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

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

C. A person who violates this section with respect to:

(1) one ounce or less of [marijuana or]
synthetic cannabinoids is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars ($50.00) or more than one hundred dollars ($100) and by imprisonment for not more than fifteen days, and, for the second and subsequent offenses, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000) or by imprisonment for a definite term less than one year, or both;

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

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

[C.] D. A minor who violates this section with respect to the substances listed in this subsection is guilty of a petty misdemeanor and, notwithstanding the provisions of Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a fine not to exceed one hundred dollars ($100) or forty-eight hours of community service. For the third or subsequent violation by a minor of this section with respect to those substances listed in this subsection, the punishment shall be a fine not to exceed five hundred dollars ($500) and, notwithstanding the provisions of Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by not less than forty-eight hours or more than one hundred and twenty hours of community service.
substances, the provisions of Section 32A-2-19 NMSA 1978 shall govern punishment of the minor. As used in this subsection, "minor" means a person who is less than eighteen years of age. The provisions of this subsection apply to the following substances:

(1) synthetic cannabinoids;

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

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

[D-E] Except as provided in Subsections B, C and G of this section, and for those substances listed in Subsection [E] F of this section, 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 controlled substance analog of a substance enumerated in Schedule I, II, III or IV is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500) or more than .199339.1

- 4 -
one thousand dollars ($1,000) or by imprisonment for a definite
term less than one year, or both.

[F. A] A person who violates this section with
respect to phencyclidine as enumerated in Schedule III or a
controlled substance analog of phencyclidine; methamphetamine,
its salts, isomers or salts of isomers as enumerated in
Schedule II or a controlled substance analog of
methamphetamine, its salts, isomers or salts of isomers;
flunitrazepam, its salts, isomers or salts of isomers as
enumerated in Schedule I or a controlled substance analog of
flunitrazepam, including naturally occurring metabolites, its
salts, isomers or salts of isomers; gamma hydroxybutyric acid
and any chemical compound that is metabolically converted to
gamma hydroxybutyric acid, its salts, isomers or salts of
isomers as enumerated in Schedule I or a controlled substance
analog of gamma hydroxybutyric acid, its salts, isomers or
salts of isomers; gamma butyrolactone and any chemical compound
that is metabolically converted to gamma hydroxybutyric acid,
its salts, isomers or salts of isomers as enumerated in
Schedule I or a controlled substance analog of gamma
butyrolactone, its salts, isomers or salts of isomers; 1-4
butane diol and any chemical compound that is metabolically
converted to gamma hydroxybutyric acid, its salts, isomers or
salts of isomers as enumerated in Schedule I or a controlled
substance analog of 1-4 butane diol, its salts, isomers or
salts of isomers; or a narcotic drug enumerated in Schedule I
or II or a controlled substance analog of a narcotic drug
enumerated in Schedule I or II is guilty of a fourth degree
felony and shall be sentenced pursuant to the provisions of

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

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

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

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

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

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

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.

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.

.199339.1
C. A person who violates this section with respect to Subsection A of this section 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 civil penalty of fifty dollars ($50.00); and for a second or subsequent offense, is guilty of a petty misdemeanor and, notwithstanding the provisions of Section 31-19-1 NMSA 1978, shall be punished by a fine of up to one hundred dollars ($100). A person who violates this section with respect to 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."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.