

SENATE FLOOR SUBSTITUTE FOR SENATE JUDICIARY
COMMITTEE SUBSTITUTE FOR SENATE BILL 383

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

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

.201398.2

underscored material = new
~~[bracketed material] = delete~~

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 2015
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

.201398.2

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.

.201398.2

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

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

.201398.2

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;

.201398.2

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

.201398.2

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 2015 act and is

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

.201398.2

1 section, prepare the penalty assessment and prepare a notice to
2 appear in court specifying the time and place to appear. The
3 officer shall have the person sign the citation as a promise
4 either to pay the penalty assessment as prescribed or to appear
5 in court as specified, give a copy of the citation to the
6 person and release the person from custody. An officer shall
7 not accept custody of payment of any penalty assessment.

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

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

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

20 F. A penalty assessment citation issued by a law
21 enforcement officer shall be submitted to the appropriate
22 magistrate or metropolitan court within three business days of
23 issuance. If the citation is not submitted within three
24 business days, it may be dismissed with prejudice.

25 G. A citation with a written promise to appear in

1 court or to pay the penalty assessment is a summons. If a
2 person fails to appear or to pay the penalty assessment by the
3 appearance date, a warrant for failure to appear may be issued.

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

6 I. When a person issued a penalty assessment elects
7 to appear in court rather than to pay the penalty assessment to
8 the court, no fine imposed upon later conviction shall exceed
9 the penalty assessment established for the particular penalty
10 assessment."

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

14 SECTION 5. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2015.

16 - 11 -

underscored material = new
[bracketed material] = delete