

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 258

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

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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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) up to one-half ounce 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-half ounce but less than one
8 ounce of marijuana is, for the first offense, guilty of a petty
9 misdemeanor and shall be punished by a fine of not less than
10 fifty dollars (\$50.00) or more than one hundred dollars (\$100)
11 and by imprisonment for not more than fifteen days; and, for a
12 second or subsequent offense, guilty of a misdemeanor and shall
13 be punished by a fine of not less than one hundred dollars
14 (\$100) or more than one thousand dollars (\$1,000) or by
15 imprisonment for a definite term of less than one year, or
16 both;

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

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

25 [~~B.~~] C. A person who violates this section with

1 respect to:

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

11 (2) more than one ounce and less than eight
12 ounces of [~~marijuana or~~] synthetic cannabinoids is guilty of a
13 misdemeanor and shall be punished by a fine of not less than
14 one hundred dollars (\$100) or more than one thousand dollars
15 (\$1,000) or by imprisonment for a definite term less than one
16 year, or both; or

17 (3) eight ounces or more of [~~marijuana or~~]
18 synthetic cannabinoids is guilty of a fourth degree felony and
19 shall be sentenced pursuant to the provisions of Section
20 31-18-15 NMSA 1978.

21 [~~G.~~] D. A minor who violates this section with
22 respect to the substances listed in this subsection is guilty
23 of a petty misdemeanor and, notwithstanding the provisions of
24 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a
25 fine not to exceed one hundred dollars (\$100) or forty-eight

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1 hours of community service. For the third or subsequent
2 violation by a minor of this section with respect to those
3 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
4 govern punishment of the minor. As used in this subsection,
5 "minor" means a person who is less than eighteen years of age.
6 The provisions of this subsection apply to the following
7 substances:

8 (1) synthetic cannabinoids;

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

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

20 [~~D.~~] E. Except as provided in Subsections B, C and
21 G of this section, and for those substances listed in
22 Subsection [~~E~~] F of this section, a person who violates this
23 section with respect to any amount of any controlled substance
24 enumerated in Schedule I, II, III or IV or a controlled
25 substance analog of a substance enumerated in Schedule I, II,

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

5 ~~[E-]~~ F. A person who violates this section with
6 respect to phencyclidine as enumerated in Schedule III or a
7 controlled substance analog of phencyclidine; methamphetamine,
8 its salts, isomers or salts of isomers as enumerated in
9 Schedule II or a controlled substance analog of
10 methamphetamine, its salts, isomers or salts of isomers;
11 flunitrazepam, its salts, isomers or salts of isomers as
12 enumerated in Schedule I or a controlled substance analog of
13 flunitrazepam, including naturally occurring metabolites, its
14 salts, isomers or salts of isomers; gamma hydroxybutyric acid
15 and any chemical compound that is metabolically converted to
16 gamma hydroxybutyric acid, its salts, isomers or salts of
17 isomers as enumerated in Schedule I or a controlled substance
18 analog of gamma hydroxybutyric acid, its salts, isomers or
19 salts of isomers; gamma butyrolactone and any chemical compound
20 that is metabolically converted to gamma hydroxybutyric acid,
21 its salts, isomers or salts of isomers as enumerated in
22 Schedule I or a controlled substance analog of gamma
23 butyrolactone, its salts, isomers or salts of isomers; 1-4
24 butane diol and any chemical compound that is metabolically
25 converted to gamma hydroxybutyric acid, its salts, isomers or

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1 salts of isomers as enumerated in Schedule I or a controlled
2 substance analog of 1-4 butane diol, its salts, isomers or
3 salts of isomers; or a narcotic drug enumerated in Schedule I
4 or II or a controlled substance analog of a narcotic drug
5 enumerated in Schedule I or II is guilty of a fourth degree
6 felony and shall be sentenced pursuant to the provisions of
7 Section 31-18-15 NMSA 1978.

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

15 (1) one ounce or less of marijuana or
16 synthetic cannabinoids is, for the first offense, guilty of a
17 misdemeanor and shall be punished by a fine of not less than
18 one hundred dollars (\$100) or more than one thousand dollars
19 (\$1,000) or by imprisonment for a definite term less than one
20 year, or both, and for the second or subsequent offense, is
21 guilty of a fourth degree felony and shall be sentenced
22 pursuant to the provisions of Section 31-18-15 NMSA 1978;

23 (2) more than one ounce and less than eight
24 ounces of marijuana or synthetic cannabinoids is guilty of a
25 fourth degree felony and shall be sentenced pursuant to the

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1 provisions of Section 31-18-15 NMSA 1978;

2 (3) eight ounces or more of marijuana or
3 synthetic cannabinoids is guilty of a third degree felony and
4 shall be sentenced pursuant to the provisions of Section
5 31-18-15 NMSA 1978;

6 (4) any amount of any other controlled
7 substance enumerated in Schedule I, II, III or IV or a
8 controlled substance analog of a substance enumerated in
9 Schedule I, II, III or IV, except phencyclidine as enumerated
10 in Schedule III, a narcotic drug enumerated in Schedule I or II
11 or a controlled substance analog of a narcotic drug enumerated
12 in Schedule I or II, is guilty of a fourth degree felony and
13 shall be sentenced pursuant to the provisions of Section
14 31-18-15 NMSA 1978; and

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

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

23 "30-31-25.1. POSSESSION, DELIVERY OR MANUFACTURE OF DRUG
24 PARAPHERNALIA PROHIBITED--EXCEPTIONS.--

25 A. It is unlawful for a person to use or possess

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1 with intent to use drug paraphernalia to plant, propagate,
2 cultivate, grow, harvest, manufacture, compound, convert,
3 produce, process, prepare, test, analyze, pack, repack, store,
4 contain, conceal, inject, ingest, inhale or otherwise introduce
5 into the human body a controlled substance in violation of the
6 Controlled Substances Act. The provisions of this subsection
7 do not apply to a person who is in possession of hypodermic
8 syringes or needles at the time ~~he~~ the person is directly and
9 immediately engaged in a harm reduction program, as provided in
10 the Harm Reduction Act.

11 B. It is unlawful for a person to deliver, possess
12 with intent to deliver or manufacture with the intent to
13 deliver drug paraphernalia with knowledge, or under
14 circumstances where one reasonably should know, that it will be
15 used to plant, propagate, cultivate, grow, harvest,
16 manufacture, compound, convert, produce, process, prepare,
17 test, analyze, pack, repack, store, contain, conceal, inject,
18 ingest, inhale or otherwise introduce into the human body a
19 controlled substance in violation of the Controlled Substances
20 Act. The provisions of this subsection do not apply to:

21 (1) department of health employees or their
22 designees while they are directly and immediately engaged in
23 activities related to the harm reduction program authorized by
24 the Harm Reduction Act; or

25 (2) the sale or distribution of hypodermic

1 syringes and needles by pharmacists licensed pursuant to the
2 Pharmacy Act.

3 C. A person who violates this section with respect
4 to Subsection A of this section shall be issued a penalty
5 assessment pursuant to Section 3 of this 2017 act and is
6 ~~[guilty of a misdemeanor and upon conviction shall be punished~~
7 ~~by a fine of not less than fifty dollars (\$50.00) nor more than~~
8 ~~one hundred dollars (\$100) or by imprisonment for a definite~~
9 ~~term less than one year, or both]~~ subject to a fine of fifty
10 dollars (\$50.00). A person who violates this section with
11 respect to Subsection B of this section is guilty of a
12 misdemeanor.

13 D. A person eighteen years of age or over who
14 violates the provisions of Subsection B of this section by
15 delivering drug paraphernalia to a person under eighteen years
16 of age and who is at least three years ~~[his]~~ the person's
17 junior is guilty of a fourth degree felony and shall be
18 sentenced pursuant to the provisions of Section 31-18-15 NMSA
19 1978."

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

22 "[NEW MATERIAL] PENALTY ASSESSMENT.--

23 A. Payment of a fine pursuant to a penalty
24 assessment citation shall not be considered a criminal
25 conviction.

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1 B. Whenever a person is issued a penalty assessment
2 under the Criminal Code, the officer shall advise the person of
3 the option either to accept the penalty assessment and pay it
4 to the court or to appear in court. The officer, using a
5 uniform non-traffic citation, shall complete the information
6 section, prepare the penalty assessment and prepare a notice to
7 appear in court specifying the time and place to appear. The
8 citation shall state the address to which the penalty
9 assessment is to be paid if the person accepts the penalty
10 assessment and does not elect to appear in court. The officer
11 shall have the person sign the citation as a promise either to
12 pay the penalty assessment as prescribed or to appear in court
13 as specified, give a copy of the citation to the person and
14 release the person from custody. An officer shall not accept
15 custody of payment of any penalty assessment.

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

20 D. In order to secure release, the person must give
21 a written promise to appear in court or to pay the penalty
22 assessment prescribed or to acknowledge receipt of a warning
23 notice.

24 E. The magistrate court or metropolitan court in
25 the county where the alleged violation occurred has

1 jurisdiction for any case arising from a penalty assessment
2 under the Criminal Code.

3 F. A penalty assessment citation issued by a law
4 enforcement officer shall be submitted to the appropriate
5 magistrate or metropolitan court within three business days of
6 issuance. If the citation is not submitted within three
7 business days, it may be dismissed with prejudice.

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

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

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

21 J. Penalty assessments collected by a magistrate
22 court or metropolitan court pursuant to this section shall be
23 transferred to the administrative office of the courts for
24 credit to the magistrate drug court fund."

25 SECTION 4. TEMPORARY PROVISION--INSTRUCTIONS TO

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1 COMPILER.--The New Mexico compilation commission shall compile
2 Section 3 of this act in a new article of Chapter 31 NMSA 1978.

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