

1 SENATE BILL 408

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Jacob R. Candelaria and Andrea Romero

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10 AN ACT

11 RELATING TO CONTROLLED SUBSTANCES; REDUCING SIMPLE POSSESSION
12 OF A CONTROLLED SUBSTANCE TO A MISDEMEANOR.

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

15 SECTION 1. Section 30-31-23 NMSA 1978 (being Laws 1972,
16 Chapter 84, Section 23, as amended) is amended to read:

17 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION
18 PROHIBITED.--

19 A. It is unlawful for a person intentionally to
20 possess a controlled substance unless the substance was
21 obtained pursuant to a valid prescription or order of a
22 practitioner while acting in the course of professional
23 practice or except as otherwise authorized by the Controlled
24 Substances Act. It is unlawful for a person intentionally to
25 possess a controlled substance analog.

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

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

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

18 (3) eight ounces or more of marijuana or
19 synthetic cannabinoids is guilty of a fourth degree felony and
20 shall be sentenced pursuant to the provisions of Section
21 31-18-15 NMSA 1978.

22 C. A minor who violates this section with respect
23 to the substances listed in this subsection is guilty of a
24 petty misdemeanor and, notwithstanding the provisions of
25 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a

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1 fine not to exceed one hundred dollars (\$100) or forty-eight
2 hours of community service. For the third or subsequent
3 violation by a minor of this section with respect to those
4 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
5 govern punishment of the minor. As used in this subsection,
6 "minor" means a person who is less than eighteen years of age.
7 The provisions of this subsection apply to the following
8 substances:

9 (1) synthetic cannabinoids;

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

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

21 D. [~~Except for those substances listed in~~
22 ~~Subsection E of this section, a~~] 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,

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

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

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

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

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

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

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

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