

1 HOUSE BILL 183

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Roger Montoya and Gail Chasey

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10 AN ACT

11 RELATING TO CHILDREN; ELIMINATING CERTAIN FINES AND FEES
12 RELATING TO CRIMES COMMITTED BY JUVENILES.

13
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) up to one-half ounce of marijuana shall be
4 issued a penalty assessment, pursuant to Section [~~3 of this~~
5 ~~2019 act~~] 31-19A-1 NMSA 1978 and is subject to a fine of fifty
6 dollars (\$50.00);

7 (2) more than one-half ounce but up to and
8 including one ounce of marijuana is, for the first offense,
9 guilty of a petty misdemeanor and shall be punished by a fine
10 of not less than fifty dollars (\$50.00) or more than one
11 hundred dollars (\$100) and by imprisonment for not more than
12 fifteen days, and, for a second or subsequent offense, is
13 guilty of a misdemeanor and shall be punished by a fine of not
14 less than one hundred dollars (\$100) or more than one thousand
15 dollars (\$1,000) or by imprisonment for a definite term of less
16 than one year, or 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 C. A person who violates this section with respect

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1 to:

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

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

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

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1 perform no more than forty-eight hours of community service.

2 For the third or subsequent violation by a minor of this
3 section with respect to those substances, the provisions of
4 Section 32A-2-19 NMSA 1978 shall govern punishment of the
5 minor. As used in this subsection, "minor" means a person who
6 is less than eighteen years of age. The provisions of this
7 subsection apply to the following 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 March 31, 2011 if the board
14 determines that the pharmacological effect of the substance,
15 the risk to the public health by abuse of the substance and the
16 potential of the substance to produce psychic or physiological
17 dependence liability is similar to the substances described in
18 Paragraph (1) or (2) of this subsection.

19 E. Except as provided in Subsections B, C and G of
20 this section, and for those substances listed in Subsection F
21 of this section, a person who violates this section with
22 respect to any amount of any controlled substance enumerated in
23 Schedule I, II, III or IV or a controlled substance analog of a
24 substance enumerated in Schedule I, II, III or IV is guilty of
25 a misdemeanor and shall be punished by a fine of not less than

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1 five hundred dollars (\$500) or more than one thousand dollars
2 (\$1,000) or by imprisonment for a definite term less than one
3 year, or both.

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

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

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

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

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

25 (3) eight ounces or more of marijuana or

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1 synthetic cannabinoids is guilty of a third degree felony and
2 shall be sentenced pursuant to the provisions of Section
3 31-18-15 NMSA 1978;

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

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

19 SECTION 2. Section 31-15-12 NMSA 1978 (being Laws 1973,
20 Chapter 156, Section 12, as amended) is amended to read:

21 "31-15-12. EXPLANATION OF RIGHTS--WAIVER OF COUNSEL--
22 APPLICATION FEE--INDIGENCY DETERMINATION.--

23 A. If any person charged with any crime or a
24 delinquent act that carries a possible sentence of imprisonment
25 appears in any court without counsel, the judge shall inform

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1 [him] the person of [his] the person's right:

2 (1) to confer with the district public
3 defender; and

4 (2) if [he] the person is financially unable
5 to obtain counsel, to be represented by the district public
6 defender at all stages of the proceedings against [him] the
7 person.

8 B. Following notification of any person under
9 Subsection A of this section, the judge shall notify the
10 district public defender and continue the proceedings until the
11 person has applied with the district public defender.

12 C. A person shall pay a [~~non-refundable~~]
13 nonrefundable application fee of ten dollars (\$10.00) at the
14 time the person applies with the public defender for
15 representation. The fee shall be deposited in the public
16 defender automation fund. The public defender shall determine
17 if the person is indigent and unable to pay the fee, subject to
18 review by the court. When the person remains in custody and is
19 unable to pay the fee, the court may waive payment of the fee.
20 A child subject to the provisions of the Delinquency Act shall
21 not be required to pay the application fee.

22 D. Peace officers shall notify the district public
23 defender of any person not represented by counsel who is being
24 forcibly detained and who is charged with, or under suspicion
25 of, the commission of any crime that carries a possible

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1 sentence of imprisonment, unless the person has previously
2 appeared in court upon that charge.

3 E. Any person entitled to representation by the
4 district public defender may intelligently waive [~~his~~] the
5 right to representation. The waiver may be for all or any part
6 of the proceedings. The waiver shall be in writing and
7 countersigned by a district public defender."

8 SECTION 3. Section 32A-1-19 NMSA 1978 (being Laws 1993,
9 Chapter 77, Section 28, as amended) is amended to read:

10 "32A-1-19. COURT COSTS AND EXPENSES.--

11 A. The following expenses shall be a charge upon
12 the funds of the court upon their certification by the court:

13 (1) reasonable compensation for services and
14 related expenses for counsel appointed by the court;

15 (2) reasonable compensation for services and
16 related expenses of a guardian ad litem or a child's attorney
17 appointed by the court; and

18 (3) the expenses of service of summonses,
19 notices, subpoenas, traveling expenses of witnesses and other
20 like expenses incurred in any proceeding under the Children's
21 Code.

22 B. ~~[The court may order the parent or other person~~
23 ~~legally obligated to care for and support a child to pay all or~~
24 ~~part of the costs and expenses pursuant to Subsection A of this~~
25 ~~section when:~~

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1 ~~(1) the child has been found to be a~~
2 ~~delinquent child, a child of a family in need of court-ordered~~
3 ~~services, an abused or neglected child or a child with a mental~~
4 ~~illness or a developmental disability;~~

5 ~~(2) the parent or other person legally~~
6 ~~obligated to care for and support a child is given notice and a~~
7 ~~hearing to determine the parent or person's financial ability~~
8 ~~to pay the costs and expenses; and~~

9 ~~(3) the court finds that the parent or person~~
10 ~~is able to pay all or part of the costs and expenses.~~

11 ~~Unless otherwise ordered, payment shall be made to the~~
12 ~~court for remittance to those to whom compensation is due or,~~
13 ~~if costs and expenses have been paid by the court, to the court~~
14 ~~for remittance to the state. The court may prescribe the~~
15 ~~manner of payment.]~~ A child, the family of a child or a person

16 legally obligated to care for and support a child who is
17 subject to the provisions of the Delinquency Act shall not be
18 required to pay any court costs, expenses pursuant to
19 Subsection A of this section, fees or fines.

20 C. Whenever legal custody of an adjudicated child
21 is vested in someone other than the child's parents, including
22 an agency, institution or department of this state, if the
23 court, after notice to the parents or other persons legally
24 obligated to support the child and after a hearing, finds that
25 the parents or other legally obligated persons are financially

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1 able to pay all or part of the costs and expenses of the
2 support and treatment, the court may order the parents or other
3 legally obligated persons to pay to the custodian in the manner
4 the court directs a reasonable sum that will cover all or part
5 of the expenses of the support and treatment of the child
6 subsequent to the entry of the custody order. The court may
7 use the child support guidelines set forth in Section 40-4-11.1
8 NMSA 1978 to calculate a reasonable payment. If the parents or
9 other legally obligated persons willfully fail or refuse to pay
10 the sum ordered, the court may proceed with contempt charges
11 and the order for payment may be filed and if filed shall have
12 the effect of a civil judgment."

13 SECTION 4. Section 32A-2-19 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 48, as amended) is amended to read:

15 "32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT
16 OFFENDER.--

17 A. At the conclusion of the dispositional hearing,
18 the court may make and include in the dispositional judgment
19 its findings on the following:

20 (1) the interaction and interrelationship of
21 the child with the child's parents and siblings and any other
22 person who may significantly affect the child's best interests;

23 (2) the child's adjustment to the child's
24 home, school and community;

25 (3) the mental and physical health of all

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1 individuals involved, including consideration of such factors
2 as the child's brain development, maturity, trauma history and
3 disability;

4 (4) the wishes of the child as to the child's
5 custodian;

6 (5) the wishes of the child's parents as to
7 the child's custody;

8 (6) whether there exists a relative of the
9 child or other individual who, after study by the department,
10 is found to be qualified to receive and care for the child;

11 (7) the availability of services recommended
12 in the predisposition report; and

13 (8) the ability of the parents to care for the
14 child in the home.

15 B. If a child is found to be delinquent, the court
16 may ~~[impose a fine not to exceed the fine that could be imposed~~
17 ~~if the child were an adult and may]~~ enter its judgment making
18 any of the following dispositions for the supervision, care and
19 rehabilitation of the child:

20 (1) transfer legal custody to the department,
21 an agency responsible for the care and rehabilitation of
22 delinquent children, which shall receive the child at a
23 facility designated by the secretary of the department as a
24 juvenile reception facility. The department shall thereafter
25 determine the appropriate placement, supervision and

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1 rehabilitation program for the child. The judge may include
2 recommendations for placement of the child. Commitments are
3 subject to limitations and modifications set forth in Section
4 32A-2-23 NMSA 1978. The types of commitments include:

5 (a) a short-term commitment of one year
6 in a facility for the care and rehabilitation of adjudicated
7 delinquent children. No more than nine months shall be served
8 at the facility and no less than ninety days shall be served on
9 supervised release, unless: 1) a petition to extend the
10 commitment has been filed prior to the commencement of
11 supervised release; 2) the commitment has been extended
12 pursuant to Section 32A-2-23 NMSA 1978; or 3) supervised
13 release is revoked pursuant to Section 32A-2-25 NMSA 1978;

14 (b) a long-term commitment for no more
15 than two years in a facility for the care and rehabilitation of
16 adjudicated delinquent children. No more than twenty-one
17 months shall be served at the facility and no less than ninety
18 days shall be served on supervised release, unless: 1)
19 supervised release is revoked pursuant to Section 32A-2-25 NMSA
20 1978; or 2) the commitment is extended pursuant to Section
21 32A-2-23 NMSA 1978;

22 (c) if the child is a delinquent
23 offender who committed one of the criminal offenses set forth
24 in Subsection [F] J of Section 32A-2-3 NMSA 1978, a commitment
25 to age twenty-one, unless sooner discharged; or

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1 (d) if the child is a youthful offender,
2 a commitment to age twenty-one, unless sooner discharged;

3 (2) place the child on probation under those
4 conditions and limitations as the court may prescribe;

5 (3) place the child in a local detention
6 facility that has been certified in accordance with the
7 provisions of Section 32A-2-4 NMSA 1978 for a period not to
8 exceed fifteen days within a three hundred sixty-five day time
9 period; or if a child is found to be delinquent solely on the
10 basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA
11 1978, the court shall only enter a judgment placing the child
12 on probation or ordering restitution or ~~[imposing a fine not to~~
13 ~~exceed the fine that could be imposed if the child were an~~
14 ~~adult or any combination of these dispositions]~~ both; or

15 (4) if a child is found to be delinquent
16 solely on the basis of Paragraph (2), (3) or (4) of Subsection
17 A of Section 32A-2-3 NMSA 1978, the court may make any
18 disposition provided by this section and may enter its judgment
19 placing the child on probation and, as a condition of
20 probation, transfer custody of the child to the department for
21 a period not to exceed six months without further order of the
22 court; provided that this transfer shall not be made unless the
23 court first determines that the department is able to provide
24 or contract for adequate and appropriate treatment for the
25 child and that the treatment is likely to be beneficial.

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1 C. When the child is an Indian child, the Indian
2 child's cultural needs shall be considered in the dispositional
3 judgment and reasonable access to cultural practices and
4 traditional treatment shall be provided.

5 D. A child found to be delinquent shall not be
6 committed or transferred to a penal institution or other
7 facility used for the execution of sentences of persons
8 convicted of crimes.

9 E. Whenever the court vests legal custody in an
10 agency, institution or department, it shall transmit with the
11 dispositional judgment copies of the clinical reports,
12 predisposition study and report and other information it has
13 pertinent to the care and treatment of the child.

14 F. Prior to any child being placed in the custody
15 of the department, the department shall be provided with
16 reasonable oral or written notification and an opportunity to
17 be heard.

18 G. In addition to any other disposition pursuant to
19 Subsection B of this section, the court may make an abuse or
20 neglect report for investigation and proceedings as provided
21 for in the Abuse and Neglect Act. The report may be made to a
22 local law enforcement agency, the department or a tribal law
23 enforcement or social service agency for an Indian child
24 residing in Indian country.

25 H. In addition to any other disposition pursuant to

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1 this section or any other penalty provided by law, if a child
2 who is fifteen years of age or older is adjudicated delinquent
3 on the basis of Paragraph (2), (3) or (4) of Subsection A of
4 Section 32A-2-3 NMSA 1978, the child's driving privileges may
5 be denied or the child's driver's license may be revoked for a
6 period of ninety days. For a second or a subsequent
7 adjudication, the child's driving privileges may be denied or
8 the child's driver's license revoked for a period of one year.
9 Within twenty-four hours of the dispositional judgment, the
10 court may send to the motor vehicle division of the taxation
11 and revenue department the order adjudicating delinquency.
12 Upon receipt of an order from the court adjudicating
13 delinquency, the director of the motor vehicle division of the
14 taxation and revenue department may revoke or deny the
15 delinquent's driver's license or driving privileges. Nothing
16 in this section may prohibit the delinquent from applying for a
17 limited driving privilege pursuant to Section 66-5-35 NMSA 1978
18 or an ignition interlock license pursuant to the Ignition
19 Interlock Licensing Act, and nothing in this section precludes
20 the delinquent's participation in an appropriate educational,
21 counseling or rehabilitation program.

22 I. In addition to any other disposition pursuant to
23 this section or any other penalty provided by law, when a child
24 is adjudicated delinquent on the basis of Paragraph (6) of
25 Subsection A of Section 32A-2-3 NMSA 1978, the child shall

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1 perform the mandatory community service set forth in Section
2 30-15-1.1 NMSA 1978. When a child fails to completely perform
3 the mandatory community service, the name and address of the
4 child's parent or legal guardian shall be published in a
5 newspaper of general circulation, accompanied by a notice that
6 the parent or legal guardian is the parent or legal guardian of
7 a child adjudicated delinquent for committing graffiti."

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