

1 HOUSE BILL 154

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Andrea Reeb and William "Bill" R. Rehm

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10 AN ACT

11 RELATING TO CHILDREN; AMENDING THE DEFINITION OF "DELINQUENT
12 ACT" IN THE DELINQUENCY ACT TO INCLUDE CANNABIS USE, POSSESSION
13 AND PRODUCTION; AMENDING SECTIONS OF THE CANNABIS REGULATION
14 ACT TO INCLUDE CANNABIS USE, POSSESSION AND PRODUCTION BY A
15 MINOR AS A DELINQUENT ACT.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 32A-2-3 NMSA 1978 (being Laws 1993,
19 Chapter 77, Section 32, as amended) is amended to read:

20 "32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

21 A. "cannabis" means all parts of the plant genus
22 Cannabis containing a delta-9-tetrahydrocannabinol
23 concentration of more than three-tenths percent on a dry weight
24 basis, whether growing or not; the seeds of the plant; the
25 resin extracted from any part of the plant; and every compound,

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1 manufacture, salt, derivative, mixture or preparation of the
2 plant, its seeds or its resin;

3 B. "cannabis extract":

4 (1) means a product obtained by separating
5 resins, tetrahydrocannabinols or other substances from cannabis
6 by extraction methods approved by the division; and

7 (2) does not include the weight of any other
8 ingredient combined with cannabis extract to prepare topical or
9 oral administrations, food, drink or another product;

10 C. "cannabis product" means a product that is or
11 that contains cannabis or cannabis extract, including edible or
12 topical products that may also contain other ingredients;

13 ~~[A.]~~ D. "delinquent act" means an act committed by
14 a child that would be designated as a crime under the law if
15 committed by an adult, not including a violation of Section
16 30-9-2 NMSA 1978, including the following offenses:

17 (1) any of the following offenses pursuant to
18 municipal traffic codes or the Motor Vehicle Code:

19 (a) driving while under the influence of
20 intoxicating liquor or drugs;

21 (b) failure to stop in the event of an
22 accident causing death, personal injury or damage to property;

23 (c) unlawful taking of a vehicle or
24 motor vehicle;

25 (d) receiving or transferring of a

1 stolen vehicle or motor vehicle;

2 (e) homicide by vehicle;

3 (f) injuring or tampering with a
4 vehicle;

5 (g) altering or changing of an engine
6 number or other vehicle identification numbers;

7 (h) altering or forging of a driver's
8 license or permit or any making of a fictitious license or
9 permit;

10 (i) reckless driving;

11 (j) driving with a suspended or revoked
12 license; or

13 (k) an offense punishable as a felony;

14 (2) buying, attempting to buy, receiving,
15 possessing or being served any alcoholic liquor or being
16 present in a licensed liquor establishment, other than a
17 restaurant or a licensed retail liquor establishment, except in
18 the presence of the child's parent, guardian, custodian or
19 adult spouse. As used in this paragraph, "restaurant" means an
20 establishment where meals are prepared and served primarily for
21 on-premises consumption and that has a dining room, a kitchen
22 and the employees necessary for preparing, cooking and serving
23 meals. "Restaurant" does not include an establishment, as
24 defined in regulations promulgated by the director of the
25 special investigations unit of the department of public safety,

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1 that serves only hamburgers, sandwiches, salads and other fast
2 foods;

3 (3) a violation of Section 30-29-2 NMSA 1978,
4 regarding the illegal use of a glue, aerosol spray product or
5 other chemical substance;

6 (4) a violation of the Controlled Substances
7 Act;

8 (5) escape from the custody of a law
9 enforcement officer or a juvenile probation or parole officer
10 or from any placement made by the department by a child who has
11 been adjudicated a delinquent child;

12 (6) a violation of Section 30-15-1.1 NMSA 1978
13 regarding unauthorized graffiti on personal or real property;
14 [~~or~~]

15 (7) a violation of an order of protection
16 issued pursuant to the provisions of the Family Violence
17 Protection Act; or

18 (8) buying, attempting to buy, receiving,
19 possessing or being served any cannabis product, or producing
20 cannabis or being present in a licensed retail cannabis
21 establishment, except in the presence of the child's parent,
22 guardian, custodian or adult spouse. A "licensed retail
23 cannabis establishment" means a location at which cannabis
24 products are sold to qualified patients, primary caregivers and
25 reciprocal participants and directly to consumers;

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1 ~~[B.]~~ E. "delinquent child" means a child who has
2 committed a delinquent act;

3 ~~[G.]~~ F. "delinquent offender" means a delinquent
4 child who is subject to juvenile sanctions only and who is not
5 a youthful offender or a serious youthful offender;

6 ~~[D.]~~ G. "detention facility" means a place where a
7 child may be detained under the Children's Code pending court
8 hearing and does not include a facility for the care and
9 rehabilitation of an adjudicated delinquent child;

10 ~~[E.]~~ H. "felony" means an act that would be a
11 felony if committed by an adult;

12 ~~[F.]~~ I. "misdemeanor" means an act that would be a
13 misdemeanor or petty misdemeanor if committed by an adult;

14 ~~[G.]~~ J. "restitution" means financial reimbursement
15 by the child to the victim or community service imposed by the
16 court and is limited to easily ascertainable damages for injury
17 to or loss of property, actual expenses incurred for medical,
18 psychiatric and psychological treatment for injury to a person
19 and lost wages resulting from physical injury, which are a
20 direct and proximate result of a delinquent act. "Restitution"
21 does not include reimbursement for damages for mental anguish,
22 pain and suffering or other intangible losses. As used in this
23 subsection, "victim" means a person who is injured or suffers
24 damage of any kind by an act that is the subject of a complaint
25 or referral to law enforcement officers or juvenile probation

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1 authorities. Nothing contained in this definition limits or
2 replaces the provisions of Subsections A and B of Section
3 32A-2-27 NMSA 1978;

4 ~~[H.]~~ K. "serious youthful offender" means an
5 individual fifteen to eighteen years of age who is charged with
6 and indicted or bound over for trial for first degree murder.
7 A "serious youthful offender" is not a delinquent child as
8 defined pursuant to the provisions of this section;

9 ~~[I.]~~ L. "supervised release" means the release of a
10 juvenile, whose term of commitment has not expired, from a
11 facility for the care and rehabilitation of adjudicated
12 delinquent children, with specified conditions to protect
13 public safety and promote successful transition and
14 reintegration into the community. A juvenile on supervised
15 release is subject to monitoring by the department until the
16 term of commitment has expired and may be returned to custody
17 for violating conditions of release; and

18 ~~[J.]~~ M. "youthful offender" means a delinquent
19 child subject to adult or juvenile sanctions who is:

20 (1) fourteen to eighteen years of age at the
21 time of the offense and who is adjudicated for at least one of
22 the following offenses:

23 (a) second degree murder, as provided in
24 Section 30-2-1 NMSA 1978;

25 (b) assault with intent to commit a

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1 violent felony, as provided in Section 30-3-3 NMSA 1978;

2 (c) kidnapping, as provided in Section
3 30-4-1 NMSA 1978;

4 (d) aggravated battery, as provided in
5 Subsection C of Section 30-3-5 NMSA 1978;

6 (e) aggravated battery against a
7 household member, as provided in Subsection C of Section
8 30-3-16 NMSA 1978;

9 (f) aggravated battery upon a peace
10 officer, as provided in Subsection C of Section 30-22-25 NMSA
11 1978;

12 (g) shooting at a dwelling or occupied
13 building or shooting at or from a motor vehicle, as provided in
14 Section 30-3-8 NMSA 1978;

15 (h) dangerous use of explosives, as
16 provided in Section 30-7-5 NMSA 1978;

17 (i) criminal sexual penetration, as
18 provided in Section 30-9-11 NMSA 1978;

19 (j) robbery, as provided in Section
20 30-16-2 NMSA 1978;

21 (k) aggravated burglary, as provided in
22 Section 30-16-4 NMSA 1978;

23 (l) aggravated arson, as provided in
24 Section 30-17-6 NMSA 1978; or

25 (m) abuse of a child that results in

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1 great bodily harm or death to the child, as provided in Section
2 30-6-1 NMSA 1978;

3 (2) fourteen to eighteen years of age at the
4 time of the offense, who is adjudicated for any felony offense
5 and who has had three prior, separate felony adjudications
6 within a three-year time period immediately preceding the
7 instant offense. The felony adjudications relied upon as prior
8 adjudications shall not have arisen out of the same transaction
9 or occurrence or series of events related in time and location.
10 Successful completion of consent decrees is not considered a
11 prior adjudication for the purposes of this paragraph; or

12 (3) fourteen years of age and who is
13 adjudicated for first degree murder, as provided in Section
14 30-2-1 NMSA 1978."

15 SECTION 2. Section 26-2C-27 NMSA 1978 (being Laws 2021
16 (1st S.S.), Chapter 4, Section 27) is amended to read:

17 "26-2C-27. PERSONAL PRODUCTION OF CANNABIS--PENALTIES.--

18 A. Unless otherwise provided in the Cannabis
19 Regulation Act, it is unlawful for a person without a license
20 to intentionally produce cannabis products except as provided
21 in this section.

22 B. A person twenty-one years of age or older who
23 intentionally produces:

24 (1) more than six and up to twelve mature or
25 immature cannabis plants shall be issued a penalty assessment

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1 pursuant to Section 31-19A-1 NMSA 1978 and is subject to a fine
2 of fifty dollars (\$50.00); and

3 (2) more than twelve mature or immature
4 cannabis plants is guilty of a fourth degree felony and may be
5 sentenced as provided in Section 31-18-15 NMSA 1978.

6 C. A person who is eighteen years of age or older
7 but less than twenty-one years of age who intentionally
8 produces:

9 (1) up to six mature or immature cannabis
10 plants shall be issued a penalty assessment pursuant to Section
11 31-19A-1 NMSA 1978 and is subject to a fine of fifty dollars
12 (\$50.00);

13 (2) more than six mature or immature cannabis
14 plants and up to twelve mature or immature cannabis plants is
15 guilty of a misdemeanor and shall be sentenced pursuant to the
16 provisions of Section 31-19-1 NMSA 1978; and

17 (3) more than twelve mature or immature
18 cannabis plants is guilty of a fourth degree felony and shall
19 be sentenced pursuant to the provisions of Section 31-18-15
20 NMSA 1978.

21 ~~[D. A person who is less than eighteen years of age~~
22 ~~who intentionally produces cannabis products is guilty of a~~
23 ~~civil violation and shall be subject to:~~

24 ~~(1) attendance at a four-hour evidence-based~~
25 ~~drug education and legal rights program at no cost to the~~

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1 ~~minor; or~~

2 ~~(2) four hours of community service.]"~~

3 SECTION 3. Section 26-2C-28 NMSA 1978 (being Laws 2021
4 (1st S.S.), Chapter 4, Section 28) is amended to read:

5 "26-2C-28. UNLICENSED SALES OF CANNABIS--PENALTIES.--

6 A. As used in this section, "traffic" means the:

7 (1) distribution, sale, barter or giving away
8 of cannabis products; or

9 (2) possession with intent to distribute,
10 sell, barter or give away cannabis products.

11 B. Unless otherwise provided in the Cannabis
12 Regulation Act or the Lynn and Erin Compassionate Use Act, it
13 is unlawful for a person without a license to intentionally
14 traffic cannabis products.

15 C. In addition to the penalties provided in the
16 Delinquency Act, a person under eighteen years of age who
17 violates Subsection B of this section shall be subject to:

18 (1) attendance at a four-hour evidence-based
19 drug education and legal rights program at no cost to the
20 person; or

21 (2) four hours of community service.

22 D. Except as otherwise provided in Section [~~14 of~~
23 ~~the Cannabis Regulation Act~~] 26-2C-14 NMSA 1978, a person
24 eighteen years of age or older who violates Subsection B of
25 this section is guilty of a misdemeanor and shall be sentenced

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1 pursuant to the provisions of Section 31-19-1 NMSA 1978.

2 E. A person eighteen years of age or older who
3 violates Subsection B of this section and who conducts
4 unlicensed cannabis product sales from a building, room or
5 other area open to the public in a manner that would lead a
6 reasonable person to believe that the area is a cannabis
7 establishment licensed pursuant to the Cannabis Regulation Act
8 is guilty of a fourth degree felony and shall be sentenced
9 pursuant to the provisions of Section 31-18-15 NMSA 1978."

10 SECTION 4. Section 26-2C-30 NMSA 1978 (being Laws 2021
11 (1st S.S.), Chapter 4, Section 30) is amended to read:

12 "26-2C-30. UNLAWFUL POSSESSION OF CANNABIS--PENALTIES.--
13 Except as allowed in the Cannabis Regulation Act and the Lynn
14 and Erin Compassionate Use Act:

15 A. a person [~~under~~] who is eighteen years of age or
16 older but less than twenty-one years of age shall not possess
17 cannabis products. A person who violates this subsection is
18 guilty of a civil violation and shall be subject to:

19 (1) attendance at a four-hour evidence-based
20 drug education and legal rights program at no cost to the
21 person; or

22 (2) four hours of community service; and

23 B. a person twenty-one years of age or older shall
24 not possess more than two ounces of cannabis, sixteen grams of
25 cannabis extract and eight hundred milligrams of edible

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1 cannabis in public. A person who violates this subsection with
2 respect to:

3 (1) more than two but not more than eight
4 ounces of cannabis, more than sixteen grams of cannabis extract
5 and more than eight hundred milligrams of edible cannabis is
6 guilty of a misdemeanor and shall be sentenced pursuant to the
7 provisions of Section 31-19-1 NMSA 1978; or

8 (2) more than eight ounces of cannabis, sixty-
9 four grams of cannabis extract or three thousand two hundred
10 milligrams of edible cannabis is guilty of a fourth degree
11 felony and shall be sentenced pursuant to the provisions of
12 Section 31-18-15 NMSA 1978."

13 SECTION 5. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2023.