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SENATE BILL 1270

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

CARLOS R. CISNEROS

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE.

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

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997

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4
5 February 28, 1997

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7 Mr. President:

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9 Your WAYS AND MEANS COMMITTEE, to whom has been
10 referred

11
12 SENATE BILL 1270

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14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

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17 SENATE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR
18 SENATE BILL 1270

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20 DO PASS, and thence referred to the COMMITTEES' COMMITTEE.

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22 Respectfully submitted,
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Carlos R. Cisneros, Chairman

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Duran, Jennings, McSorley, Nava

Absent: None

S1270WMI

Underscored material = new
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SENATE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR
SENATE BILL 1270

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
INCREASING THE PENALTIES FOR CERTAIN CONTROLLED SUBSTANCES
VIOLATIONS.

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

Section 1. Section 30-31-22 NMSA 1978 (being Laws 1972,
Chapter 84, Section 22, as amended) is amended to read:

"30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
DISTRIBUTION PROHIBITED. --

A. Except as authorized by the Controlled Substances
Act, it is unlawful for any person to intentionally distribute
or possess with intent to distribute a controlled substance or a
controlled substance analog except a substance enumerated in
Schedule I or II that is a narcotic drug or a controlled
substance analog of a controlled substance enumerated in

Underscored material = new
[bracketed material] = delete

Schedule I or II that is a narcotic drug. Any person who violates this subsection with respect to:

(1) marijuana is:

1 (a) except as provided in Subparagraph (c) of
2 this paragraph, for the first offense, guilty of a fourth degree
3 felony and shall be sentenced pursuant to the provisions of
4 Section 31-18-15 NMSA 1978;

5 (b) for the second and subsequent offenses,
6 guilty of a third degree felony and shall be sentenced pursuant
7 to the provisions of Section 31-18-15 NMSA 1978;

8 (c) for the first offense, if more than one
9 hundred pounds is possessed with intent to distribute or
10 distributed or both, guilty of a third degree felony and shall
11 be sentenced pursuant to the provisions of Section 31-18-15 NMSA
12 1978; and

13 (d) for the second and subsequent offenses,
14 if more than one hundred pounds is possessed with intent to
15 distribute or distributed or both, guilty of a second degree
16 felony and shall be sentenced pursuant to the provisions of
17 Section 31-18-15 NMSA 1978;

18 (2) except as provided in Paragraph (3) of this
19 subsection, any other controlled substance enumerated in
20 Schedule I, II, III or IV or a controlled substance analog of a
21 controlled substance enumerated in Schedule I, II, III or IV
22 except a substance enumerated in Schedule I or II that is a
23 narcotic drug or a controlled substance analog of a controlled
24 substance enumerated in Schedule I or II that is a narcotic
25 drug, is:

1 (a) for the first offense, guilty of a third
2 degree felony and shall be sentenced pursuant to the provisions of
3 Section 31-18-15 NMSA 1978; and

4 (b) for the second and subsequent offenses,
5 guilty of a second degree felony and shall be sentenced pursuant to
6 the provisions of Section 31-18-15 NMSA 1978; [~~and~~]

7 (3) methamphetamine, its salts, isomers and salts of
8 isomers as enumerated in Schedule II or a controlled substance
9 analog of methamphetamine, its salts, isomers and salts of isomers,
10 is:

11 (a) for the first offense, guilty of a second
12 degree felony and shall be sentenced pursuant to the provisions of
13 Section 31-18-15 NMSA 1978; and

14 (b) for the second and subsequent offenses,
15 guilty of a first degree felony and shall be sentenced pursuant to
16 the provisions of Section 31-18-15 NMSA 1978; and

17 [~~(3)~~] (4) a controlled substance enumerated in
18 Schedule V or a controlled substance analog of a controlled
19 substance enumerated in Schedule V is guilty of a misdemeanor and
20 shall be punished by a fine of not less than one hundred dollars
21 (\$100) or more than five hundred dollars (\$500) or by imprisonment
22 for a definite term not less than one hundred eighty days but less
23 than one year, or both.

24 B. Except as authorized by the Controlled Substances Act,
25 it is unlawful for any person to intentionally create or deliver,

1 or possess with intent to deliver, a counterfeit substance. Any
 2 person who violates this subsection with respect to:

3 (1) a counterfeit substance enumerated in Schedule
 4 I, II, III or IV is guilty of a fourth degree felony and shall be
 5 sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;
 6 and

7 (2) a counterfeit substance enumerated in Schedule V
 8 is guilty of a petty misdemeanor and shall be punished by a fine of
 9 not more than one hundred dollars (\$100) or by imprisonment for a
 10 definite term not to exceed six months, or both.

11 C. Any person who knowingly violates Subsection A or B of
 12 this section while within a drug-free school zone, excluding
 13 private property residentially zoned or used primarily as a
 14 residence, with respect to:

15 (1) marijuana is:

16 (a) except as provided in Subparagraph (c) of
 17 this paragraph, for the first offense, guilty of a third degree
 18 felony and shall be sentenced pursuant to the provisions of Section
 19 31-18-15 NMSA 1978;

20 (b) for the second and subsequent offenses,
 21 guilty of a second degree felony and shall be sentenced pursuant to
 22 the provisions of Section 31-18-15 NMSA 1978;

23 (c) for the first offense, if more than one
 24 hundred pounds is possessed with intent to distribute or
 25 distributed or both, guilty of a second degree felony and shall be

Underscored material = new
 [bracketed material] = delete

1 sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;
2 and

3 (d) for the second and subsequent offenses, if
4 more than one hundred pounds is possessed with intent to distribute
5 or distributed or both, guilty of a first degree felony and shall
6 be sentenced pursuant to the provisions of Section 31-18-15 NMSA
7 1978;

8 (2) any other controlled substance enumerated in
9 Schedule I, II, III or IV or a controlled substance analog of a
10 controlled substance enumerated in Schedule I, II, III or IV except
11 a substance enumerated in Schedule I or II that is a narcotic drug
12 or a controlled substance analog of a controlled substance
13 [~~enumerated~~] enumerated in Schedule I or II that is a narcotic
14 drug, is:

15 (a) for the first offense, guilty of a second
16 degree felony and shall be sentenced pursuant to the provisions of
17 Section 31-18-15 NMSA 1978; and

18 (b) for the second and subsequent offenses,
19 guilty of a first degree felony and shall be sentenced pursuant to
20 the provisions of Section 31-18-15 NMSA 1978;

21 (3) a controlled substance enumerated in Schedule V
22 or a controlled substance analog of a controlled substance
23 enumerated in Schedule V is guilty of a fourth degree felony and
24 shall be sentenced pursuant to the provisions of Section 31-18-15
25 NMSA 1978; and

1 (4) the intentional creation, delivery or possession
2 with the intent to deliver:

3 (a) a counterfeit substance enumerated in
4 Schedule I, II, III or IV is guilty of a third degree felony and
5 shall be sentenced pursuant to the provisions of Section 31-18-15
6 NMSA 1978; and

7 (b) a counterfeit substance enumerated in
8 Schedule V is guilty of a misdemeanor and shall be punished by a
9 fine of not less than one hundred dollars (\$100) nor more than five
10 hundred dollars (\$500) or by imprisonment for a definite term not
11 less than one hundred eighty days but less than one year, or both.

12 D. Notwithstanding the provisions of Subsection A of this
13 section, distribution of a small amount of marijuana for no
14 remuneration shall be treated as provided in Paragraph (3) of
15 Subsection B of Section 30-31-23 NMSA 1978. "

16 Section 2. Section 30-31-23 NMSA 1978 (being Laws 1972,
17 Chapter 84, Section 23, as amended by Laws 1990, Chapter 19,
18 Section 5 and also by Laws 1990, Chapter 33, Section 1) is amended
19 to read:

20 "30-31-23. CONTROLLED SUBSTANCES-- POSSESSION PROHIBITED. --

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

1 any person intentionally to possess a controlled substance analog.

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

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

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

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

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

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

3 D. Any person who violates this section with respect to
 4 phencyclidine as enumerated in Schedule III or a controlled
 5 substance analog of phencyclidine; methamphetamine, its salts,
 6 isomers or salts of isomers as enumerated in Schedule II or a
 7 controlled substance analog of methamphetamine, its salts, isomers
 8 or salts of isomers; or a narcotic drug enumerated in Schedule I or
 9 II or a controlled substance analog of a narcotic drug enumerated
 10 in Schedule I or II is guilty of a fourth degree felony and shall
 11 be sentenced pursuant to the provisions of Section 31-18-15 NMSA
 12 1978.

13 E. Whoever, during and in relation to a violation of
 14 Paragraph (3) of Subsection B or Subsection D of this section,
 15 possesses a firearm shall be sentenced, in addition to the
 16 punishment provided in those subsections, to a mandatory term of
 17 imprisonment of one year, and the sentence imposed pursuant to this
 18 subsection shall be the first year served and shall not be
 19 suspended or deferred. The court shall not run the mandatory term
 20 imposed pursuant to this section concurrently with any other term
 21 of imprisonment, including that imposed for the violation of
 22 Paragraph (3) of Subsection B or Subsection D of this section."

23 Section 3. A new section of the Controlled Substances Act is
 24 enacted to read:

25 "[NEW MATERIAL] DRUG TRAFFICKING WITH FIREARM - MANDATORY

1 IMPRISONMENT. --

2 A. Whoever, during and in relation to a violation of
3 Section 30-31-20, 30-31-21, Paragraph (1), (2) or (3) of Subsection
4 A of Section 30-31-22 or Paragraph (1) of Subsection B of Section
5 30-31-22 NMSA 1978, carries or uses a firearm shall be sentenced,
6 in addition to the punishment provided in those sections, to a
7 mandatory term of imprisonment of five years.

8 B. Notwithstanding any other provision of law, the court
9 shall not run the term of imprisonment imposed pursuant to
10 Subsection A of this section concurrently with any other term of
11 imprisonment, including imprisonment for a violation of Section
12 30-31-20, 30-31-21, Paragraph (1), (2) or (3) of Subsection A of
13 Section 30-31-22 or Paragraph (1) of Subsection B of Section
14 30-31-22 NMSA 1978. The sentence imposed pursuant to Subsection A
15 of this section shall be the first five years served and shall not
16 be suspended or deferred.

17 C. If the case is tried by a jury and if a prima facie
18 case has been established showing that a firearm was carried or
19 used during and in relation to a violation of Section 30-31-20,
20 30-31-21, Paragraph (1), (2) or (3) of Subsection A of Section
21 30-31-22 or Paragraph (1) of Subsection B of Section 30-31-22 NMSA
22 1978, the court shall submit the issue to the jury by special
23 interrogatory. If the case is tried by the court and if a prima
24 facie case has been established showing that a firearm was carried
25 or used during and in relation to a violation of Section 30-31-20,

1 30-31-21, Paragraph (1), (2) or (3) of Subsection A of Section
2 30-31-22 or Paragraph (1) of Subsection B of Section 30-31-22 NMSA
3 1978, the court shall decide the issue and shall make a separate
4 finding of fact on the issue.

5 D. As used in this section:

6 (1) "carries a firearm" means the defendant has it
7 immediately available for use either on his person or within his
8 reach; and

9 (2) "uses a firearm" means brandishing, displaying,
10 bartering, striking with, firing or attempting to fire a firearm."

11 Section 4. EFFECTIVE DATE. --The effective date of the
12 provisions of this act is July 1, 1997.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 3, 1997

Mr. President:

Your COMMITTEES' COMMITTEE, to whom has been referred

SENATE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR
SENATE BILL 1270

has had it under consideration and reports same WITHOUT
RECOMMENDATION, and further recommends that it now be referred to
the JUDICIARY COMMITTEE thence to the FINANCE COMMITTEE.

Respectfully submitted,

Manny M. Aragon, Chairman

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KEYBOARD(TYPE SLUGS)

Page 15

Adopted _____ Not Adopted _____
(Chi ef Clerk) (Chi ef Clerk)

Date _____

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 14, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR
SENATE BILL 1270

has had it under consideration and reports same WITHOUT
RECOMMENDATION, amended as follows:

1. On page 8, line 18, strike "firearm" and insert in lieu
thereof, "concealed deadly weapon or uses a deadly weapon".

2. On page 9, line 21, strike "firearm" and insert in lieu
thereof "concealed deadly weapon".,

and thence referred to the FINANCE COMMITTEE.

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Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 4 For 3 Against

Yes: 4
No: Tsosie, McSorley, Macias
Excused: Sanchez
Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 18, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR
SENATE BILL 1270

has had it under consideration and reports same WITHOUT
RECOMMENDATION, amended as follows:

1. On page 8, line 18, strike "firearm" and insert in lieu
thereof, "concealed deadly weapon or uses a deadly weapon".

2. On page 9, line 21, strike "firearm" and insert in lieu
thereof "concealed deadly weapon".,

and thence referred to the FINANCE COMMITTEE.

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Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 4 For 3 Against

Yes: 4

No: Tsosie, McSorley, Macias

Excused: Sanchez

Absent: None

S1270JU1