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HOUSE BILL 918

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO CONTROLLED SUBSTANCES; DECRIMINALIZING POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA BY A PERSON EIGHTEEN YEARS OF AGE OR OLDER; PROVIDING CIVIL FINES; AMENDING AND ENACTING SECTIONS OF THE CONTROLLED SUBSTANCES ACT.

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

Section 1. A new section of the Controlled Substances Act is enacted to read:

" NEW MATERIAL POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA BY A PERSON EIGHTEEN YEARS OF AGE OR OLDER-- CITATION-- CIVIL FINE-- PROCEDURE. --

A. Upon a first offense for possession of one ounce or less of marijuana by a person eighteen years of age or older, the arresting law enforcement officer shall offer the alleged offender the option of accepting a citation for a

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1 one hundred dollar (\$100) civil fine or appearing in
2 metropolitan or magistrate court within thirty days after
3 issuance of the citation to contest it. Upon a second or
4 subsequent offense for possession of one ounce or less of
5 marijuana by a person eighteen years of age or older, the
6 citing law enforcement officer shall offer the alleged
7 offender the option of accepting a citation for a five hundred
8 dollar (\$500) civil fine or appearing in metropolitan or
9 magistrate court within thirty days after issuance of the
10 citation to contest it. The violator's signature on the
11 citation constitutes an acknowledgment of guilt of the offense
12 stated in the citation.

13 B. If an offender elects to sign the citation,
14 payment of the civil fine shall be made by mailing the payment
15 or tendering the payment in person within thirty days from the
16 date of issuance of the citation to the metropolitan or
17 magistrate court. Payment of the fine is timely if postmarked
18 within thirty days from the date of issuance of the citation.
19 When a fine is paid by currency, a receipt shall be
20 immediately issued to the offender. When a fine is paid by
21 check, the canceled check is a sufficient receipt.

22 C. If an alleged offender elects to contest the
23 citation, he shall appear in metropolitan or magistrate court
24 within thirty days after issuance of the citation to contest
25 it. The citing law enforcement officer shall act as the

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1 plaintiff during the proceedings. The citing law enforcement
2 officer shall be required to prove, by a preponderance of the
3 evidence, that the alleged offender was in possession of one
4 ounce or less of marijuana. If the court determines that the
5 alleged offender is guilty of the civil offense of possession
6 of one ounce or less of marijuana by a person eighteen years
7 of age or older, the court shall impose a civil fine of one
8 hundred dollars (\$100) and may require the offender to pay
9 court costs. If the court determines that the alleged
10 offender is guilty of a second or subsequent civil offense of
11 possession of one ounce or less of marijuana by a person
12 eighteen years of age or older, the court shall impose a civil
13 fine of five hundred dollars (\$500) and may require the
14 offender to pay court costs. When a fine is paid by currency,
15 a receipt shall be immediately issued to the offender. When a
16 fine is paid by check, the canceled check is a sufficient
17 receipt.

18 D. The department of public safety shall prepare a
19 citation, to be used by law enforcement officers, for the
20 offense of possession of one ounce or less of marijuana by a
21 person eighteen years of age or older. The department of
22 public safety shall prepare a warning notice to be used by law
23 enforcement officers when a citation is not issued.

24 E. A record of payment of a civil fine for
25 possession of one ounce or less of marijuana by a person

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1 eighteen years of age or older is not admissible as evidence
2 in a separate civil or criminal action; provided that the
3 record may be used to determine if a person has a prior
4 offense for possession of one ounce or less of marijuana by a
5 person eighteen years of age or older.

6 F. If the civil fine is not paid within thirty
7 days from the date of issuance of the citation, the offender
8 may be punished for contempt by the presiding metropolitan or
9 magistrate court, pursuant to the provisions of Sections 34-1-2
10 and 35-3-9 NMSA 1978.

11 G. A civil fine collected by a metropolitan court
12 or a magistrate court pursuant to the provisions of this
13 section shall be remitted to the state treasurer for deposit
14 into the general fund. "

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

19 "30-31-23. CONTROLLED SUBSTANCES-- POSSESSION
20 PROHIBITED. --

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

. 136978. 1

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1 Substances Act. It is unlawful for [~~any~~] a person
2 intentionally to possess a controlled substance analog.

3 B. [~~Any~~] A person less than eighteen years of age
4 who violates this section with respect to [~~(1)~~] one ounce or
5 less of marijuana is, for the first offense, guilty of a petty
6 misdemeanor and shall be punished by a fine of not less than
7 fifty dollars (\$50.00) or more than one hundred dollars (\$100)
8 and by imprisonment for not more than fifteen days, and, for
9 the second and subsequent offenses, guilty of a misdemeanor
10 and shall be punished by a fine of not less than one hundred
11 dollars (\$100) or more than one thousand dollars (\$1,000) or
12 by imprisonment for a definite term less than one year, or
13 both.

14 [~~(2)~~] C. A person who violates this section with
15 respect to:

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

21 [~~(3)~~] (2) eight ounces or more of marijuana
22 is guilty of a fourth degree felony and shall be sentenced
23 pursuant to the provisions of Section 31-18-15 NMSA 1978.

24 [~~(C)~~] D. Except for those substances listed in
25 Subsection [~~(D)~~] E of this section, [~~any~~] a person who violates

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1 this section with respect to any amount of any controlled
2 substance enumerated in Schedule I, II, III or IV or a
3 controlled substance analog of a substance enumerated in
4 Schedule I, II, III or IV is guilty of a misdemeanor and shall
5 be punished by a fine of not less than five hundred dollars
6 (\$500) or more than one thousand dollars (\$1,000) or by
7 imprisonment for a definite term less than one year, or both.

8 [D.—Any] E. A person who violates this section
9 with respect to phencyclidine as enumerated in Schedule III or
10 a controlled substance analog of phencyclidine;
11 methamphetamine, its salts, isomers or salts of isomers as
12 enumerated in Schedule II or a controlled substance analog of
13 methamphetamine, its salts, isomers or salts of isomers; or a
14 narcotic drug enumerated in Schedule I or II or a controlled
15 substance analog of a narcotic drug enumerated in Schedule I
16 or II is guilty of a fourth degree felony and shall be
17 sentenced pursuant to the provisions of Section 31-18-15 NMSA
18 1978. "

19 Section 3. EFFECTIVE DATE. -- This effective date of the
20 provisions of this act is July 1, 2001.