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HOUSE BILL 713

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Eric A. Youngberg

AN ACT

RELATING TO CONTROLLED SUBSTANCES; MAKING IT A CRIME TO
DISTRIBUTE CERTAIN RAPE DRUGS WITHOUT THE RECIPIENT'S
KNOWLEDGE; PROVIDING PENALTIES FOR DISTRIBUTING A RAPE DRUG
WITHOUT THE RECIPIENT'S KNOWLEDGE AND FOR POSSESSION OF RAPE
DRUGS; RECONCILING MULTIPLE AMENDMENTS TO LAWS 1990.

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

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

"30-31-1. SHORT TITLE.--~~[Sections 1 through 42 of this
act]~~ Chapter 30, Article 31 NMSA 1978 may be cited as the
"Controlled Substances Act"."

Section 2. Section 30-31-6 NMSA 1978 (being Laws 1972,
Chapter 84, Section 6, as amended) is amended to read:

"30-31-6. SCHEDULE I.--The following controlled
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1 substances are included in Schedule I:

2 A. any of the following opiates, including their
3 isomers, esters, ethers, salts, and salts of isomers, esters
4 and ethers, unless specifically exempted, whenever the
5 existence of these isomers, esters, ethers and salts is
6 possible within the specific chemical designation:

- 7 (1) acetylmethadol;
- 8 (2) allylprodine;
- 9 (3) alphacetylmethadol;
- 10 (4) alphameprodine;
- 11 (5) alphamethadol;
- 12 (6) benzethidine;
- 13 (7) betacetylmethadol;
- 14 (8) betameprodine;
- 15 (9) betamethadol;
- 16 (10) betaprodine;
- 17 (11) clonitazene;
- 18 (12) dextromoramide;
- 19 (13) dextrorphan;
- 20 (14) diampromide;
- 21 (15) diethylthiambutene;
- 22 (16) dimenoxadol;
- 23 (17) dimepheptanol;
- 24 (18) dimethylthiambutene;
- 25 (19) dioxaphetyl butyrate;

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- 1 (20) dipipanone;
- 2 (21) ethylmethylthiambutene;
- 3 (22) etonitazene;
- 4 (23) etoxeridine;
- 5 (24) furethidine;
- 6 (25) hydroxypethidine;
- 7 (26) ketobemidone;
- 8 (27) levomoramide;
- 9 (28) levophenacymorphan;
- 10 (29) morpheridine;
- 11 (30) noracymethadol;
- 12 (31) norlevorphanol;
- 13 (32) normethadone;
- 14 (33) norpipanone;
- 15 (34) phenadoxone;
- 16 (35) phenampromide;
- 17 (36) phenomorphan;
- 18 (37) phenoperidine;
- 19 (38) piritramide;
- 20 (39) proheptazine;
- 21 (40) properidine;
- 22 (41) racemoramide; and
- 23 (42) trimeperidine;

24 B. any of the following opium derivatives, their
25 salts, isomers and salts of isomers, unless specifically

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1 exempted, whenever the existence of these salts, isomers and
2 salts of isomers is possible within the specific chemical
3 designation:

- 4 (1) acetorphine;
- 5 (2) acetyldihydrocodeine;
- 6 (3) benzylmorphine;
- 7 (4) codeine methylbromide;
- 8 (5) codeine-N-oxide;
- 9 (6) cyprenorphine;
- 10 (7) desomorphine;
- 11 (8) dihydromorphine;
- 12 (9) etorphine;
- 13 (10) heroin;
- 14 (11) hydromorphinol;
- 15 (12) methyl-desorphine;
- 16 (13) methyldihydromorphine;
- 17 (14) morphine methylbromide;
- 18 (15) morphine methylsulfonate;
- 19 (16) morphine-N-oxide;
- 20 (17) myrophine;
- 21 (18) nicocodeine;
- 22 (19) nicomorphine;
- 23 (20) normorphine;
- 24 (21) pholcodine; and
- 25 (22) thebacon;

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1 C. any material, compound, mixture or preparation
2 which contains any quantity of the following hallucinogenic
3 substances, their salts, isomers and salts of isomers, unless
4 specifically exempted, whenever the existence of these salts,
5 isomers and salts of isomers is possible within the specific
6 chemical designation:

- 7 (1) 3,4-methylenedioxy amphetamine;
8 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
9 (3) 3,4,5-trimethoxy amphetamine;
10 (4) bufotenine;
11 (5) diethyltryptamine;
12 (6) dimethyltryptamine;
13 (7) 4-methyl-2,5-dimethoxy amphetamine;
14 (8) ibogaine;
15 (9) lysergic acid diethylamide;
16 (10) marijuana;
17 (11) mescaline;
18 (12) peyote, except as otherwise provided in
19 the Controlled Substances Act;
20 (13) N-ethyl-3-piperidyl benzilate;
21 (14) N-methyl-3-piperidyl benzilate;
22 (15) psilocybin;
23 (16) psilocyn;
24 (17) tetrahydrocannabinols; and
25 (18) hashish;

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1 D. the enumeration of peyote as a controlled
2 substance does not apply to the use of peyote in bona fide
3 religious ceremonies by a bona fide religious organization, and
4 members of the organization so using peyote are exempt from
5 registration. Any person who manufactures peyote for or
6 distributes peyote to the organization or its members shall
7 comply with the federal Comprehensive Drug Abuse Prevention and
8 Control Act of 1970 and all other requirements of law;

9 E. the enumeration of marijuana,
10 tetrahydrocannabinols or chemical derivatives of
11 tetrahydrocannabinol as Schedule I controlled substances does
12 not apply to the use of marijuana, tetrahydrocannabinols or
13 chemical derivatives of tetrahydrocannabinol by certified
14 patients pursuant to the Controlled Substances Therapeutic
15 Research Act; and

16 F. controlled substances added to Schedule I by
17 rule adopted by the board pursuant to Section 30-31-3 NMSA
18 1978."

19 Section 3. Section 30-31-7 NMSA 1978 (being Laws 1972,
20 Chapter 84, Section 7, as amended) is amended to read:

21 "30-31-7. SCHEDULE II.--

22 A. The following controlled substances are included
23 in Schedule II:

24 (1) any of the following substances, except
25 those narcotic drugs listed in other schedules, whether

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1 produced directly or indirectly by extraction from substances
2 of vegetable origin, or independently by means of chemical
3 synthesis, or by combination of extraction and chemical
4 synthesis:

5 (a) opium and opiate, and any salt,
6 compound, derivative or preparation of opium or opiate;

7 (b) any salt, compound, isomer,
8 derivative or preparation thereof which is chemically
9 equivalent or identical with any of the substances referred to
10 in Subparagraph (a) of this paragraph, but not including the
11 isoquinoline alkaloids of opium;

12 (c) opium poppy and poppy straw;

13 (d) coca leaves and any salt, compound,
14 derivative or preparation of coca leaves, and any salt,
15 compound, derivative or preparation thereof which is chemically
16 equivalent or identical with any of these substances, but not
17 including decocainized coca leaves or extractions which do not
18 contain cocaine or ecgonine;

19 (e) marijuana, but only for the use by
20 certified patients pursuant to the Controlled Substances
21 Therapeutic Research Act; and

22 (f) tetrahydrocannabinols or chemical
23 derivatives of tetrahydrocannabinol, but only for the use of
24 certified patients pursuant to the Controlled Substances
25 Therapeutic Research Act.

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1 Marijuana, tetrahydrocannabinols or chemical derivatives
2 of tetrahydrocannabinol shall be considered Schedule II
3 controlled substances only for the purposes enumerated in the
4 Controlled Substances Therapeutic Research Act;

5 (2) any of the following opiates, including
6 their isomers, esters, ethers, salts and salts of isomers,
7 whenever the existence of these isomers, esters, ethers and
8 salts is possible within the specific chemical designation:

- 9 (a) alphaprodine;
- 10 (b) anileridine;
- 11 (c) bezitramide;
- 12 (d) dihydrocodeine;
- 13 (e) diphenoxylate;
- 14 (f) fentanyl;
- 15 (g) hydromorphone;
- 16 (h) isomethadone;
- 17 (i) levomethorphan;
- 18 (j) levorphanol;
- 19 (k) meperidine;
- 20 (l) metazocine;
- 21 (m) methadone;
- 22 (n) methadone--intermediate, 4-cyano-2-
23 dimethylamino-4, 4-diphenyl butane;
- 24 (o) moramide--intermediate, 2-methyl-3-
25 morpholino-1, 1-diphenyl-propane-carboxylic acid;

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- 1 (p) oxycodone;
2 (q) pethidine;
3 (r) pethidine--intermediate--A, 4-cyano-
4 1-methyl-4-phenylpiperidine;
5 (s) pethidine--intermediate--B, ethyl-4-
6 phenyl-piperidine-4-carboxylate;
7 (t) pethidine--intermediate--C, 1-
8 methyl-4-phenylpiperidine-4-carboxylic acid;
9 (u) phenazocine;
10 (v) piminodine;
11 (w) racemethorphan; and
12 (x) racemorphan;

13 (3) unless listed in another schedule, any
14 material, compound, mixture or preparation which contains any
15 quantity of the following substances having a potential for
16 abuse associated with a stimulant effect on the central nervous
17 system:

- 18 (a) amphetamine, its salts, optical
19 isomers and salts of its optical isomers;
20 (b) phenmetrazine and its salts;
21 (c) methamphetamine, its salts, isomers
22 and salts of isomers; and
23 (d) methylphenidate; and

24 (4) controlled substances added to Schedule II
25 by rule adopted by the board pursuant to Section 30-31-3 NMSA

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1 1978.

2 B. Where methadone is prescribed, administered or
3 dispensed by a practitioner of a drug abuse rehabilitation
4 program [~~as defined in Paragraph (3) of Subsection A of Section~~
5 ~~26-2-13 NMSA 1978~~] while acting in the course of his
6 professional practice, or otherwise lawfully obtained or
7 possessed by a person, such person shall not possess such
8 methadone beyond the date stamped or typed on the label of the
9 container of the methadone, nor shall any person possess
10 methadone except in the container in which it was originally
11 administered or dispensed to such person, and such container
12 [~~must~~] shall include a label showing the name of the
13 prescribing physician or practitioner, the identity of
14 methadone, the name of the ultimate user, the date when the
15 methadone is to be administered to or used or consumed by the
16 named ultimate user shown on the label and a warning on the
17 label of the methadone container that the ultimate user must
18 use, consume or administer to himself the methadone in such
19 container. Any person who violates this subsection is guilty
20 of a felony and shall be punished by imprisonment for not less
21 than one year nor more than five years, or by a fine of up to
22 five thousand dollars (\$5,000), or both."

23 Section 4. Section 30-31-8 NMSA 1978 (being Laws 1972,
24 Chapter 84, Section 8) is amended to read:

25 "30-31-8. SCHEDULE III.--The following controlled

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- 1 substances are included in Schedule III:
- 2 A. any material, compound, mixture or preparation
- 3 containing limited quantities of any substance having a
- 4 stimulant effect on the central nervous system which is
- 5 controlled and listed in Schedule II;
- 6 B. unless listed in another schedule, any material,
- 7 compound, mixture or preparation which contains any quantity of
- 8 the following substances having a potential for abuse
- 9 associated with a depressant effect on the central nervous
- 10 system:
- 11 (1) any substance which contains any quantity
- 12 of a derivative of barbituric acid, or any salt of a derivative
- 13 of barbituric acid, except those substances which are
- 14 specifically listed in [~~other~~] another schedule;
- 15 (2) chlorhexadol;
- 16 (3) glutethimide;
- 17 (4) lysergic acid;
- 18 (5) lysergic acid amide;
- 19 (6) methyprylon;
- 20 (7) phencyclidine;
- 21 (8) sulfondiethylmethane;
- 22 (9) sulfonethylmethane; or
- 23 (10) sulfonmethane;
- 24 C. nalorphine;
- 25 D. any material, compound, mixture or preparation

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1 containing limited quantities of any of the following narcotic
2 drugs, or any salts thereof:

3 (1) not more than one and eight-tenths grams
4 of codeine, or any of its salts, per one hundred milliliters or
5 not more than ninety milligrams per dosage unit, with an equal
6 or greater quantity of an isoquinoline alkaloid of opium;

7 (2) not more than one and eight-tenths grams
8 of codeine, or any of its salts, per one hundred milliliters or
9 not more than ninety milligrams per dosage unit, with one or
10 more active, non-narcotic ingredients in recognized therapeutic
11 amounts;

12 (3) not more than three hundred milligrams of
13 dihydrocodeinone, or any of its salts, per one hundred
14 milliliters or not more than fifteen milligrams per dosage
15 unit, with a fourfold or greater quantity of an isoquinoline
16 alkaloid of opium;

17 (4) not more than three hundred milligrams of
18 dihydrocodeinone, or any of its salts, per one hundred
19 milliliters or not more than fifteen milligrams per dosage
20 unit, with one or more active, non-narcotic ingredients in
21 recognized therapeutic amounts;

22 (5) not more than one and eight-tenths grams
23 of dihydrocodeine, or any of its salts, per one hundred
24 milliliters or not more than ninety milligrams per dosage unit,
25 with one or more active, non-narcotic ingredients in recognized

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1 therapeutic amounts;

2 (6) not more than three hundred milligrams of
3 ethylmorphine, or any of its salts, per one hundred milliliters
4 or not more than fifteen milligrams per dosage unit, with one
5 or more active non-narcotic ingredients in recognized
6 therapeutic amounts;

7 (7) not more than five hundred milligrams of
8 opium per one hundred milliliters or per one hundred grams, or
9 not more than twenty-five milligrams per dosage unit, with one
10 or more active, non-narcotic ingredients in recognized
11 therapeutic amounts; or

12 (8) not more than fifty milligrams of
13 morphine, or any of its salts, per one hundred milliliters or
14 per one hundred grams with one or more active, non-narcotic
15 ingredients in recognized therapeutic amounts;

16 E. controlled substances added to Schedule III by
17 rule adopted by the board pursuant to Section 30-31-3 NMSA
18 1978; and

19 [~~E.~~] F. the board may exempt by regulation any
20 compound, mixture or preparation containing any stimulant or
21 depressant substance listed in Subsections A and B of this
22 section from the application of any part of the Controlled
23 Substances Act if the compound, mixture or preparation contains
24 any active medicinal ingredients not having a stimulant or
25 depressant effect on the central nervous system and if the

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1 admixtures are included in combinations, quantity, proportion
2 or concentration that vitiate the potential for abuse of the
3 substances which have a stimulant or depressant effect on the
4 central nervous system."

5 Section 5. Section 30-31-9 NMSA 1978 (being Laws 1972,
6 Chapter 84, Section 9) is amended to read:

7 "30-31-9. SCHEDULE IV.--The following controlled
8 substances are included in Schedule IV:

9 A. any material, compound, mixture or preparation
10 which contains any quantity of the following substances having
11 a potential for abuse associated with a depressant effect on
12 the central nervous system:

- 13 (1) barbital;
- 14 (2) chloral betaine;
- 15 (3) chloral hydrate;
- 16 (4) ethchlorvynol;
- 17 (5) ethinamate;
- 18 (6) methohexital;
- 19 (7) meprobamate;
- 20 (8) methylphenobarbital;
- 21 (9) paraldehyde;
- 22 (10) petrichloral; or
- 23 (11) phenobarbital;

24 B. controlled substances added to Schedule IV by
25 rule adopted by the board pursuant to Section 30-31-3 NMSA

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1 1978; and

2 ~~[B-]~~ C. the board may exempt by regulation any
3 compound, mixture or preparation containing any depressant
4 substance listed in Subsection A of this section from the
5 application of all or any part of the Controlled Substances Act
6 if the compound, mixture or preparation contains any active
7 medicinal ingredients not having a depressant effect on the
8 central nervous system and if the admixtures are included in
9 combinations, quantity, proportion or concentration that
10 vitiate the potential for abuse of the substances which have a
11 depressant effect on the central nervous system."

12 Section 6. Section 30-31-22 NMSA 1978 (being Laws 1972,
13 Chapter 84, Section 22, as amended) is amended to read:

14 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
15 DISTRIBUTION PROHIBITED.--

16 A. Except as authorized by the Controlled
17 Substances Act, it is unlawful for any person to intentionally
18 distribute or possess with intent to distribute a controlled
19 substance or a controlled substance analog except a substance
20 enumerated in Schedule I or II that is a narcotic drug or a
21 controlled substance analog of a controlled substance
22 enumerated in Schedule I or II that is a narcotic drug. Any
23 person who violates this subsection with respect to:

24 (1) marijuana is:

25 (a) for the first offense, guilty of a

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1 fourth degree felony and shall be sentenced pursuant to the
2 provisions of Section 31-18-15 NMSA 1978;

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

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

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

17 (2) any other controlled substance enumerated in
18 Schedule I, II, III or IV or a controlled substance analog of a
19 controlled substance enumerated in Schedule I, II, III or IV
20 except a substance enumerated in Schedule I or II that is a
21 narcotic drug or a controlled substance analog of a controlled
22 substance enumerated in Schedule I or II that is a narcotic
23 drug, is:

24 (a) for the first offense, guilty of a third
25 degree felony and shall be sentenced pursuant to the provisions

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1 of Section 31-18-15 NMSA 1978; and

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

5 (3) a controlled substance enumerated in
6 Schedule V or a controlled substance analog of a controlled
7 substance enumerated in Schedule V 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 five hundred dollars (\$500) or by
10 imprisonment for a definite term not less than one hundred
11 eighty days but less than one year, or both.

12 B. It is unlawful for any person to distribute gamma
13 hydroxybutyric acid or flunitrazepam to another person without
14 that person's knowledge and with intent to commit a crime
15 against that person, including criminal sexual penetration.
16 For the purposes of this subsection, "without that person's
17 knowledge" means the person is unaware that a substance with
18 the ability to alter that person's ability to appraise conduct
19 or to decline participation in or communicate unwillingness to
20 participate in conduct is being distributed to that person.
21 Any person who violates this subsection is:

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

25 (2) for the second and subsequent offenses,

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1 guilty of a second degree felony and shall be sentenced
2 pursuant to the provisions of Section 31-18-15 NMSA 1978.

3 ~~[B-]~~ C. Except as authorized by the Controlled
4 Substances Act, it is unlawful for any person to intentionally
5 create or deliver, or possess with intent to deliver, a
6 counterfeit substance. Any person who violates this subsection
7 with respect to:

8 (1) a counterfeit substance enumerated in
9 Schedule I, II, III or IV is guilty of a fourth degree felony
10 and shall be sentenced pursuant to the provisions of Section
11 31-18-15 NMSA 1978; and

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

17 ~~[G-]~~ D. Any person who knowingly violates Subsection
18 A or ~~[B]~~ C of this section while within a drug-free school
19 zone, excluding private property residentially zoned or used
20 primarily as a residence, with respect to:

21 (1) marijuana is:
22 (a) for the first offense, guilty of a third
23 degree felony and shall be sentenced pursuant to the provisions
24 of Section 31-18-15 NMSA 1978;

25 (b) for the second and subsequent offenses,

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1 guilty of a second degree felony and shall be sentenced
2 pursuant to the provisions of Section 31-18-15 NMSA 1978;

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

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

13 (2) any other controlled substance enumerated in
14 Schedule I, II, III or IV or a controlled substance analog of a
15 controlled substance enumerated in Schedule I, II, III or IV
16 except a substance enumerated in Schedule I or II that is a
17 narcotic drug or a controlled substance analog of a controlled
18 substance [~~enumerated~~] enumerated in Schedule I or II that is a
19 narcotic drug, is:

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

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

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1 (3) a controlled substance enumerated in
2 Schedule V or a controlled substance analog of a controlled
3 substance enumerated in Schedule V is guilty of a fourth degree
4 felony and shall be sentenced pursuant to the provisions of
5 Section 31-18-15 NMSA 1978; and

6 (4) the intentional creation, delivery or
7 possession with the intent to deliver:

8 (a) a counterfeit substance enumerated in
9 Schedule I, II, III or IV is guilty of a third degree felony
10 and shall be sentenced pursuant to the provisions of Section
11 31-18-15 NMSA 1978; and

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

18 [~~D-~~] E. Notwithstanding the provisions of Subsection
19 A of this section, distribution of a small amount of marijuana
20 for no remuneration shall be treated as provided in Paragraph
21 [~~(3)~~] (1) of Subsection B of Section 30-31-23 NMSA 1978."

22 Section 7. Section 30-31-23 NMSA 1978 (being Laws 1972,
23 Chapter 84, Section 23, as amended by Laws 1990, Chapter 19,
24 Section 5 and also by Laws 1990, Chapter 33, Section 1) is
25 amended to read:

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1 "30-31-23. CONTROLLED SUBSTANCES--POSSESSION

2 PROHIBITED.--

3 A. It is unlawful for any person intentionally to
4 possess a controlled substance unless the substance was
5 obtained pursuant to a valid prescription or order of a
6 practitioner while acting in the course of his professional
7 practice or except as otherwise authorized by the Controlled
8 Substances Act. It is unlawful for any person intentionally to
9 possess a controlled substance analog.

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

12 (1) one ounce or less of marijuana is, for the
13 first offense, guilty of a petty misdemeanor and shall be
14 punished by a fine of not less than fifty dollars (\$50.00) or
15 more than one hundred dollars (\$100) and by imprisonment for
16 not more than fifteen days, and, for the second and subsequent
17 offenses, guilty of a misdemeanor and shall be punished by a
18 fine of not less than one hundred dollars (\$100) or more than
19 one thousand dollars (\$1,000) or by imprisonment for a definite
20 term less than one year, or both;

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

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

4 C. Except for those substances listed in Subsection D
5 of this section, any person who violates this section with
6 respect to any amount of any controlled substance enumerated in
7 Schedule I, II, III or IV or a controlled substance analog of a
8 substance enumerated in Schedule I, II, III or IV is guilty of
9 a misdemeanor and shall be punished by a fine of not less than
10 five hundred dollars (\$500) or more than one thousand dollars
11 (\$1,000) or by imprisonment for a definite term less than one
12 year, or both.

13 D. Any person who violates this section with respect
14 to phencyclidine as enumerated in Schedule III or a controlled
15 substance analog of phencyclidine; methamphetamine, its salts,
16 isomers or salts of isomers as enumerated in Schedule II or a
17 controlled substance analog of methamphetamine, its salts,
18 isomers or salts of isomers; flunitrazepam, its salts, isomers
19 or salts of isomers as enumerated in Schedule I or a controlled
20 substance analog of flunitrazepam, including naturally
21 occurring metabolites, its salts, isomers or salts of isomers;
22 gamma hydroxybutyric acid and any chemical compound that is
23 metabolically converted to gamma hydroxybutyric acid, its
24 salts, isomers or salts of isomers as enumerated in Schedule I
25 or a controlled substance analog of gamma hydroxybutyric acid,

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[bracketed material] = delete

1 its salts, isomers or salts of isomers; gamma butyrolactone and
2 any chemical compound that is metabolically converted to gamma
3 hydroxybutyric acid, its salts, isomers or salts of isomers as
4 enumerated in Schedule I or a controlled substance analog of
5 gamma butyrolactone, its salts, isomers or salts of isomers;
6 1-4 butane diol and any chemical compound that is metabolically
7 converted to gamma hydroxybutyric acid, its salts, isomers or
8 salts of isomers as enumerated in Schedule I or a controlled
9 substance analog of 1-4 butane diol, its salts, isomers or
10 salts of isomers; or a narcotic drug enumerated in Schedule I
11 or II or a controlled substance analog of a narcotic drug
12 enumerated in Schedule I or II is guilty of a fourth degree
13 felony and shall be sentenced pursuant to the provisions of
14 Section 31-18-15 NMSA 1978.

15 E. Any person who violates Subsection A of this
16 section while within a posted drug-free school zone, excluding
17 private property residentially zoned or used primarily as a
18 residence and excluding any person in or on a motor vehicle in
19 transit through the posted drug-free school zone, with respect
20 to:

21 (1) one ounce or less of marijuana is, for the
22 first offense, guilty of a misdemeanor and shall be punished by
23 a fine of not less than one hundred dollars (\$100) or more than
24 one thousand dollars (\$1,000) or by imprisonment for a definite
25 term less than one year, or both, and for the second or

.154290.2

underscored material = new
[bracketed material] = delete

1 subsequent offense, is guilty of a fourth degree felony and
2 shall be sentenced pursuant to the provisions of Section
3 31-18-15 NMSA 1978;

4 (2) more than one ounce and less than eight
5 ounces of marijuana is guilty of a fourth degree felony and
6 shall be sentenced pursuant to the provisions of Section
7 31-18-15 NMSA 1978;

8 (3) eight ounces or more of marijuana is guilty
9 of a third degree felony and shall be sentenced pursuant to the
10 provisions of Section 31-18-15 NMSA 1978;

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

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