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SENATE BILL 216

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

INTRODUCED BY

Jacob R. Candelaria and Leo Jaramillo

AN ACT

RELATING TO CRIME; REDUCING THE CLASSIFICATION OF POSSESSION OF
A CONTROLLED SUBSTANCE.

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

SECTION 1. Section 30-31-23 NMSA 1978 (being Laws 1972,
Chapter 84, Section 23, as amended) is amended to read:

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

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

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 or

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

18 ~~(3) eight ounces or more of synthetic~~
19 ~~cannabinoids is guilty of a fourth degree felony and shall be~~
20 ~~sentenced pursuant to the provisions of Section 31-18-15 NMSA~~
21 ~~1978].~~

22 D. A minor who violates this section with respect
23 to the substances listed in this subsection is guilty of a
24 petty misdemeanor and, notwithstanding the provisions of
25 Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a

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1 fine not to exceed one hundred dollars (\$100) or forty-eight
2 hours of community service. For the third or subsequent
3 violation by a minor of this section with respect to those
4 substances, the provisions of Section 32A-2-19 NMSA 1978 shall
5 govern punishment of the minor. As used in this subsection,
6 "minor" means a person who is less than eighteen years of age.
7 The provisions of this subsection apply to the following
8 substances:

9 (1) synthetic cannabinoids;

10 (2) any of the substances listed in Paragraphs
11 (20) through (25) of Subsection C of Section 30-31-6 NMSA 1978;
12 or

13 (3) a substance added to Schedule I by a rule
14 of the board adopted on or after March 31, 2011 if the board
15 determines that the pharmacological effect of the substance,
16 the risk to the public health by abuse of the substance and the
17 potential of the substance to produce psychic or physiological
18 dependence liability is similar to the substances described in
19 Paragraph (1) or (2) of this subsection.

20 E. Except as provided in Subsections B, C and ~~[G]~~ F
21 of this section, ~~[and for those substances listed in Subsection~~
22 ~~F of this section]~~ a person who violates this section with
23 respect to any amount of any controlled substance enumerated in
24 Schedule I, II, III or IV or a controlled substance analog of a
25 substance enumerated in Schedule I, II, III or IV is guilty of

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1 a misdemeanor and shall be punished by a fine of not less than
2 five hundred dollars (\$500) or more than one thousand dollars
3 (\$1,000) or by imprisonment for a definite term less than one
4 year, or both.

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

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

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

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

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

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1 (3) eight ounces or more of marijuana or
2 synthetic cannabinoids is guilty of a third degree felony and
3 shall be sentenced pursuant to the provisions of Section
4 31-18-15 NMSA 1978;

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

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