

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1341
(Representative Rick C. Becker)

AN ACT to amend and reenact subsections 3 and 7 of section 19-03.1-23 and subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to the elimination of enhanced penalties for manufacturing, delivering, or possessing controlled substances near schools; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

3. a. For second or subsequent ~~offenders~~offenses, in addition to any other penalty imposed under this section, ~~if the person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the person is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:~~
 - ~~a.~~ Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to an eight-year term of imprisonment.
 - ~~b.~~ If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to a term of imprisonment for of at least eightfour years which is to run consecutively to any other sentence imposed.
 - ~~b.~~ It is not a defense that the defendant did not know the age of a person protected under this subdivision a.
 - ~~c.~~ The penalty in subdivision a does not apply to a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana.

SECTION 2. AMENDMENT. Subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for a first offense under this subsection and a class C felony for a second or subsequent offense under this subsection. If, at the time of the offense the person is in or on, ~~or within one thousand feet [300.48 meters]~~ of the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves ~~one ounce [28.35 grams] or less of marijuana.~~ Any person who violates this subsection regarding

possession of ~~one ounce [28.35 grams]~~ or less of marijuana is guilty of a class B misdemeanor.

SECTION 3. AMENDMENT. Subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
 - a. ~~The offense was committed during a school sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters]three hundred feet [91.4 meters] of;~~ the real property comprising a ~~child-care or preschool facility, a public or private elementary or secondary school, or a public career and technical education school, or a public or private college or university;~~
 - b. ~~The~~the defendant was at least ~~sixteen~~twenty-one years of age at the time of the offense, and the offense involved the delivery of a controlled substance to a minor;
 - e.b. The offense involved:
 - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
 - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:
 - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
 - (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
 - (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
 - (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
 - (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;
 - (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
 - (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;

- (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate;
 - (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or
 - (11) Five hundred grams or more of marijuana; or
- d.c. The defendant had a firearm in the defendant's actual possession at the time of the offense.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1341.

House Vote: Yeas 87 Nays 2 Absent 5

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State