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Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1341

Introduced by

Representative Rick C. Becker

A BILL for 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.

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, ~~a~~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 eight 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~~Any person who violates this subsection is guilty of a class C felony. ~~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 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] of, the real property comprising a child care or preschool facility, public or private elementary or secondary school, public career and technical education school, or a public or private college or university;~~

   ~~b.~~ 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;

~~c~~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-piperidinyl] 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-piperidinyl] 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.