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Sixty-fifth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED 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; 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, ~~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 person who violates this subsection is guilty of a class C felony. If~~, at the time of~~ the offense is committed during the hours of six a.m. to ten p.m. when school is in session or during a regularly school-sponsored activity and the person is in or on, or within ~~one thousand feet [300.48 meters]~~three hundred feet [91.4 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 the hours of six a.m. to ten p.m. when school is in session or during a regularly school-sponsored activity and 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, public or private elementary or secondary school, 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;

~~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.