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Sixty-eighth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED HOUSE BILL NO. 1459

Introduced by

Representatives Mitskog, Heinert, Schneider

Senator Larson

A BILL for an Act to amend and reenact section 19-03.1-23.1 of the North Dakota Century Code, relating to increased penalties for drug offenses within three hundred feet of a public park; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

19-03.1-23.1. Increased penalties for aggravating factors in drug offenses - Penalty.

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, on, or within three hundred feet [91.4 meters] of the real property comprising a preschool facility, a public or private elementary or secondary school, or a public career and technical education school, the defendant was at least twenty-one years of age at the time of the offense, and the offense involved the delivery of a controlled substance to a minor;
   b. The offense involved the manufacture, delivery, or possession, with intent to manufacture or deliver a controlled substance, other than marijuana or tetrahydrocannabinol, in, on, or within three hundred feet [91.4 meters] of the real property comprising a public park;
   c. 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) Twenty-eight 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; or

(10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; ~~or~~

~~c.~~d. The defendant had a firearm in the defendant's actual possession at the time of the offense~~.~~; or

~~d.~~e. The defendant sells, distributes, delivers, or conspires to deliver a controlled substance to an individual which results in the death of the individual due to the use of that controlled substance and the death of the individual would not have occurred in the absence of the defendant's conduct. This subdivision does not apply to an individual who is immune from prosecution under section 19-03.1-23.4.

2. The offense is:

a. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.

b. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.

c. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.