Sixty-fifth Legislative Assembly of North Dakota

## **HOUSE BILL NO. 1341**

Introduced by

Representative Rick C. Becker

- 1 A BILL for an Act to amend and reenact subsections 3 and 7 of section 19-03.1-23 and
- 2 subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to the
- 3 elimination of enhanced penalties for manufacturing, delivering, or possessing controlled
- 4 substances near schools.

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## 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. <u>a.</u> For second or subsequent <u>offendersoffenses</u>, in addition to any other penalty imposed under this section, <u>aif the</u> person who violates this chapter, <u>except a person who manufactures</u>, <u>delivers</u>, <u>or possesses with the intent to manufacture or deliver marijuana</u>, <u>was at least twenty-one years of age at the time of the offense</u>, <u>and delivered a controlled substance to a person under the age of eighteen</u>, <u>the person</u> is subject to, and the court shall impose, <u>the following penalties to run consecutively to any other sentence imposed:</u>
    - 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 forof at least eight years which is to run consecutively to any other sentence imposed.

- 1 <u>b.</u> It is not a defense that the defendant did not know the age of a person protected under this subdivision <u>a</u>.
  - 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, anyAny 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 <u>sixteentwenty-one</u> years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor;

1	<u>еb</u> .	The offense involved:		
2		(1)	Fifty	grams or more of a mixture or substance containing a detectable
3			amo	unt of heroin;
4		(2)	Fifty	grams or more of a mixture or substance containing a detectable
5			amo	unt of:
6			(a)	Coca leaves, except coca leaves and extracts of coca leaves from
7				which cocaine, ecgonine, and derivatives of ecgonine or their salts
8				have been removed;
9			(b)	Cocaine, its salts, optical and geometric isomers, and salts of
10				isomers;
11			(c)	Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
12			(d)	Any compound, mixture, or preparation that contains any quantity of
13				any of the substance referred to in subparagraphs a through c;
14		(3)	Five	grams or more of a mixture or substance described in paragraph 2
15			whic	h contains cocaine base;
16		(4)	Ten	grams or more of phencyclidine or one hundred grams or more of a
17			mixt	ure or substance containing a detectable amount of phencyclidine;
18		(5)	One	gram, one hundred dosage units, or one-half liquid ounce or more of a
19			mixt	ure or substance containing a detectable amount of lysergic acid
20			dieth	nylamide;
21		(6)	Fort	y grams or more of a mixture or substance containing a detectable
22			amo	unt of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten
23			gran	ns or more of a mixture or substance containing a detectable amount of
24			any	analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
25		(7)	Fifty	grams or more of a mixture or substance containing a detectable
26			amo	unt of methamphetamine;
27		(8)	Ten	grams, one hundred dosage units, or one-half liquid ounce or more of a
28			mixt	ure or substance containing a detectable amount of
29			3,4-1	methylenedioxy-N-methylamphetamine, C11H15NO2;
30		(9)	One	hundred dosage units or one-half liquid ounce of a mixture or
31			subs	stance containing a detectable amount of gamma-hydroxybutyrate or

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