

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED 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; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

- 8 3. a. For second or subsequent ~~offenders~~offenses, in addition to any other penalty
9 imposed under this section, ~~aif the person who violates this chapter, except a~~
10 ~~person who manufactures, delivers, or possesses with the intent to manufacture~~
11 ~~or deliver marijuana, was at least twenty-one years of age at the time of the~~
12 ~~offense, and delivered a controlled substance to a person under the age of~~
13 ~~eighteen, the person~~ is subject to, and the court shall impose, ~~the following~~
14 ~~penalties to run consecutively to any other sentence imposed:~~
- 15 a. ~~Any person, eighteen years of age or older, who violates this section by willfully~~
16 ~~manufacturing, delivering, or possessing with intent to manufacture or deliver a~~
17 ~~controlled substance in or on, or within one thousand feet [300.48 meters] of the~~
18 ~~real property comprising a public or private elementary or secondary school or a~~
19 ~~public career and technical education school is subject to an eight year term of~~
20 ~~imprisonment.~~
- 21 b. ~~If the defendant was at least twenty-one years of age at the time of the offense,~~
22 ~~and delivered a controlled substance to a person under the age of eighteen, the~~
23 ~~defendant must be sentenced to a term of imprisonment for~~ at least eight
24 years which is to run consecutively to any other sentence imposed.

1 **b.** It is not a defense that the defendant did not know the age of a person protected
2 under this subdivision **a.**

3 **c.** The penalty in subdivision a does not apply to a person who manufactures,
4 delivers, or possesses with the intent to manufacture or deliver marijuana.

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

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

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

24 1. A person who violates section 19-03.1-23 is subject to the penalties provided in
25 subsection 2 if:
26 **a.** The offense was committed during a school sponsored activity or was committed
27 during the hours of six a.m. to ten p.m. if school is in session, the offense
28 involved the manufacture, delivery, or possession, with intent to manufacture or
29 deliver a controlled substance in ~~or, on, or within one thousand feet [300.48-~~
30 ~~meters]~~ three hundred feet [91.4 meters] of; the real property comprising a ~~child-~~
31 ~~care or~~ preschool facility, a public or private elementary or secondary school, or a

1 public career and technical education school, ~~or a public or private college or~~
2 ~~university;~~

3 ~~b.~~ ~~The~~the defendant was at least ~~sixteen~~twenty-one years of age at the time of the
4 offense, and the offense involved the delivery of a controlled substance to a
5 minor;

6 ~~eb.~~ The offense involved:

7 (1) Fifty grams or more of a mixture or substance containing a detectable
8 amount of heroin;

9 (2) Fifty grams or more of a mixture or substance containing a detectable
10 amount of:

11 (a) Coca leaves, except coca leaves and extracts of coca leaves from
12 which cocaine, ecgonine, and derivatives of ecgonine or their salts
13 have been removed;

14 (b) Cocaine, its salts, optical and geometric isomers, and salts of
15 isomers;

16 (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

17 (d) Any compound, mixture, or preparation that contains any quantity of
18 any of the substance referred to in subparagraphs a through c;

19 (3) Five grams or more of a mixture or substance described in paragraph 2
20 which contains cocaine base;

21 (4) Ten grams or more of phencyclidine or one hundred grams or more of a
22 mixture or substance containing a detectable amount of phencyclidine;

23 (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a
24 mixture or substance containing a detectable amount of lysergic acid
25 diethylamide;

26 (6) Forty grams or more of a mixture or substance containing a detectable
27 amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide or ten
28 grams or more of a mixture or substance containing a detectable amount of
29 any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] propanamide;

30 (7) Fifty grams or more of a mixture or substance containing a detectable
31 amount of methamphetamine;

- 1 (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a
2 mixture or substance containing a detectable amount of
3 3,4-methylenedioxy-N-methylamphetamine, C₁₁H₁₅NO₂;
- 4 (9) One hundred dosage units or one-half liquid ounce of a mixture or
5 substance containing a detectable amount of gamma-hydroxybutyrate or
6 gamma-butyrolactone or 1,4 butanediol or any substance that is an analog
7 of gamma-hydroxybutyrate;
- 8 (10) One hundred dosage units or one-half liquid ounce of a mixture or
9 substance containing a detectable amount of flunitrazepam; or
- 10 (11) Five hundred grams or more of marijuana; or
- 11 etc. The defendant had a firearm in the defendant's actual possession at the time of
12 the offense.