

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 421

6 By: Bice and Young

7 COMMITTEE SUBSTITUTE

8 An Act relating to the Uniform Controlled Dangerous
9 Substances Act; amending 63 O.S. 2011, Section 2-401,
10 as last amended by Section 1, Chapter 130, O.S.L.
11 2018 (63 O.S. Supp. 2018, Section 2-401), which
12 relates to penalties for prohibited acts; modifying
13 prohibited acts; requiring certain factors be met for
14 certain offenses; modifying penalties; modifying
15 preclusions; providing definitions; prescribing
16 certain penalty for offenses; and providing an
17 effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as
20 last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp.
21 2018, Section 2-401), is amended to read as follows:

22 Section 2-401. A. Except as authorized by the Uniform
23 Controlled Dangerous Substances Act, it shall be unlawful for any
24 person:

1. To distribute, or dispense, ~~transport with intent to~~
~~distribute or dispense, possess with intent to manufacture,~~
~~distribute, or dispense,~~ a controlled dangerous substance or to

1 solicit the use of or use the services of a person less than
2 eighteen (18) years of age to cultivate, distribute or dispense a
3 controlled dangerous substance;

4 2. To create, or distribute, ~~transport with intent to~~
5 ~~distribute or dispense, or possess with intent to distribute,~~ a
6 counterfeit controlled dangerous substance; ~~or~~

7 3. To distribute any imitation controlled substance as defined
8 by Section 2-101 of this title, except when authorized by the Food
9 and Drug Administration of the United States Department of Health
10 and Human Services;

11 4. To manufacture or distribute a synthetic controlled
12 substance except when authorized by the Food and Drug Administration
13 of the United States Department of Health and Human Services;

14 5. To transport with intent to distribute or dispense, or
15 possess with intent to manufacture, distribute or dispense, a
16 controlled dangerous substance; to transport with intent to
17 distribute or dispense, or possess with intent to distribute, a
18 counterfeit controlled dangerous substance; or to possess with
19 intent to distribute a synthetic controlled substance. In order to
20 prove intent to distribute, dispense or manufacture pursuant to the
21 offenses listed in paragraph 5 of this subsection, at least three of
22 the following factors must be present unless the person was in
23 possession of more than four (4) grams of a controlled substance
24 classified in Schedule I or II, except for marijuana:

- 1 a. the person possesses the means to weigh a controlled
2 substance,
- 3 b. the person possesses a record indicating a drug-
4 related transaction,
- 5 c. the person possesses materials primarily used for
6 separating and packaging controlled substances,
- 7 d. the person possesses a firearm that is in the
8 immediate physical control of the person at the time
9 of possession of the controlled substance,
- 10 e. the person has in their immediate possession or
11 control at least two other controlled substances in
12 any amount,
- 13 f. the person has implemented excessive security measures
14 in a structure or vehicle connected to the offender,
15 or
- 16 g. the person has in their immediate possession or
17 control cash in excess of Five Hundred Dollars
18 (\$500.00).

19 B. Any person who violates the provisions of subsection A of
20 this section with respect to:

21 1. A substance classified in Schedule I or II, except for
22 marijuana, involving one-quarter (0.25) of a gram or more of the
23 Schedule I or II substance, upon conviction, shall be guilty of
24 ~~transporting or possessing with an intent to distribute a controlled~~

1 ~~dangerous substance,~~ a felony, and shall be sentenced to a term of
2 imprisonment in the custody of the Department of Corrections for not
3 more than ~~seven (7)~~ three (3) years and a fine of not more than One
4 Hundred Thousand Dollars (\$100,000.00), which shall be in addition
5 to other punishment provided by law and shall not be imposed in lieu
6 of other punishment. A second conviction for the violation of
7 provisions of this paragraph within ten (10) years of the date
8 following the completion of the prior sentence is a felony
9 punishable by a term of imprisonment in the custody of the
10 Department of Corrections for not more than ~~fourteen (14)~~ years
11 seven (7) years. A third or subsequent conviction for the violation
12 of the provisions of this paragraph within ten (10) years of the
13 date following the completion of the prior sentences is a felony
14 punishable by a term of imprisonment in the custody of the
15 Department of Corrections for not more than ~~twenty (20)~~ ten (10)
16 years;

17 2. Any One-quarter (0.25) of a gram or more of any other
18 controlled dangerous substance classified in Schedule III, IV, V or
19 marijuana, upon conviction, shall be guilty of a felony and shall be
20 sentenced to a term of imprisonment in the custody of the Department
21 of Corrections for not more than ~~five (5)~~ two (2) years and a fine
22 of not more than Twenty Thousand Dollars (\$20,000.00), which shall
23 be in addition to other punishment provided by law and shall not be
24 imposed in lieu of other punishment. A second conviction for the

1 violation of the provisions of this paragraph within ten (10) years
2 of the date following the completion of the prior sentences is a
3 felony punishable by a term of imprisonment in the custody of the
4 Department of Corrections for not more than ~~ten (10)~~ five (5) years.
5 A third or subsequent conviction for the violation of the provisions
6 of this paragraph within ten (10) years of the date following the
7 completion of the prior sentences is a felony punishable by a term
8 of imprisonment in the custody of the Department of Corrections for
9 not more than ~~fifteen (15)~~ eight (8) years; or

10 3. ~~An~~ One-quarter (0.25) of a gram or more of an imitation
11 controlled substance as defined by Section 2-101 of this title, upon
12 conviction, shall be guilty of a misdemeanor and shall be sentenced
13 to a term of imprisonment in the county jail for a period of not
14 more than one (1) year and a fine of not more than One Thousand
15 Dollars (\$1,000.00). A person convicted of a second or subsequent
16 violation of the provisions of this paragraph within ten (10) years
17 of the date following the completion of the prior sentence shall be
18 guilty of a felony and shall be sentenced to a term of imprisonment
19 in the custody of the Department of Corrections for not more than
20 two (2) years and a fine of not more than Five Thousand Dollars
21 (\$5,000.00), which shall be in addition to other punishment provided
22 by law and shall not be imposed in lieu of other punishment.

23 C. 1. ~~Except when authorized by the Food and Drug~~
24 ~~Administration of the United States Department of Health and Human~~

1 ~~Services, it shall be unlawful for any person to manufacture or~~
2 ~~distribute a controlled substance or synthetic controlled substance.~~

3 ~~2. Any person convicted of violating the provisions of~~
4 ~~paragraph 1 of this subsection with respect to distributing a~~
5 ~~controlled substance is guilty of a felony and shall be punished by~~
6 ~~imprisonment in the custody of the Department of Corrections for a~~
7 ~~term not to exceed ten (10) years and a fine of not more than~~
8 ~~Twenty-five Thousand Dollars (\$25,000.00), which shall be in~~
9 ~~addition to other punishment provided by law and shall not be~~
10 ~~imposed in lieu of other punishment.~~

11 ~~3. A second conviction for the violation of the provisions of~~
12 ~~paragraph 1 of this subsection with respect to distributing a~~
13 ~~controlled substance is a felony punishable by imprisonment in the~~
14 ~~custody of the Department of Corrections for a term not less than~~
15 ~~two (2) years nor more than twenty (20) years. A third or~~
16 ~~subsequent conviction for the violation of the provisions of this~~
17 ~~paragraph is a felony punishable by imprisonment in the custody of~~
18 ~~the Department of Corrections for a term not less than ten (10)~~
19 ~~years nor more than life.~~

20 ~~4. Any person convicted of violating the provisions of~~
21 ~~paragraph 1 of this subsection with respect to manufacturing a~~
22 ~~controlled substance is guilty of a felony and shall be punished by~~
23 ~~imprisonment in the custody of the Department of Corrections for a~~
24 ~~term not to exceed ten (10) years and a fine of not more than~~

1 ~~Twenty five Thousand Dollars (\$25,000.00), which shall be in~~
2 ~~addition to other punishment provided by law and shall not be~~
3 ~~imposed in lieu of other punishment.~~

4 ~~5. A second conviction for the violation of the provisions of~~
5 ~~paragraph 1 of this subsection with respect to manufacturing a~~
6 ~~controlled substance is a felony punishable by imprisonment in the~~
7 ~~custody of the Department of Corrections for a term not less than~~
8 ~~two (2) years nor more than twenty (20) years. A third or~~
9 ~~subsequent conviction for the violation of the provisions of this~~
10 ~~paragraph is a felony punishable by imprisonment in the custody of~~
11 ~~the Department of Corrections for a term not less than ten (10)~~
12 ~~years nor more than life.~~

13 ~~D.~~ Convictions for violations of the provisions of this section
14 shall be subject to the statutory provisions for suspended or
15 deferred sentences, or probation as provided in Section 991a of
16 Title 22 of the Oklahoma Statutes.

17 ~~E.~~ D. Any person who is at least eighteen (18) years of age and
18 who violates the provisions of this section by using or soliciting
19 the use of services of a person less than eighteen (18) years of age
20 to distribute, dispense, transport with intent to distribute or
21 dispense or cultivate a controlled dangerous substance or by
22 distributing a controlled dangerous substance to a person under
23 eighteen (18) years of age, or in the presence of a person under
24 twelve (12) years of age, is punishable by:

1 1. For a first violation of this ~~section~~ subsection, a term of
2 imprisonment in the custody of the Department of Corrections not
3 less than two (2) years nor more than ten (10) years;

4 2. For a second violation of this ~~section~~ subsection within ten
5 (10) years of the date following the completion of the prior
6 sentence, a term of imprisonment in the custody of the Department of
7 Corrections for not less than four (4) years nor more than twenty
8 (20) years; or

9 3. For a third or subsequent violation of this ~~section~~
10 subsection within ten (10) years of the date following the
11 completion of the prior sentences, a term of imprisonment in the
12 custody of the Department of Corrections for not less than ten (10)
13 years nor more than life.

14 ~~F. E.~~ Any person who violates any provision of this ~~section~~
15 subsection by transporting with intent to distribute or dispense,
16 distributing or possessing with intent to distribute a controlled
17 dangerous substance to a person, or violation of subsection ~~G~~ F of
18 this section, in or on, or within ~~two thousand (2,000)~~ five hundred
19 (500) feet of the real property comprising a public or private
20 elementary or secondary school, public vocational school, ~~public or~~
21 ~~private college or university, or other institution of higher~~
22 ~~education~~, recreation center or public park, including state parks
23 and recreation areas, ~~public housing project~~, or child care facility
24 as defined by Section 402 of Title 10 of the Oklahoma Statutes

1 during hours of normal operation of the aforementioned locations,
2 shall be punished by:

3 1. For a first offense, a term of imprisonment in the custody
4 of the Department of Corrections, or by the imposition of a fine or
5 by both, not exceeding twice that authorized by the appropriate
6 provision of this section; or

7 2. For a second or subsequent violation of this ~~section~~
8 subsection within ten (10) years of the date following the
9 completion of the prior sentence, a term of imprisonment in the
10 custody of the Department of Corrections, or by the imposition of a
11 fine or by both, not exceeding thrice that authorized by the
12 appropriate provision of this section. Convictions for second and
13 subsequent violations of the provisions of this section shall not be
14 subject to statutory provisions of suspended sentences, deferred
15 sentences or probation.

16 For the purposes of this subsection:

17 a. median strips or the green space dividing roads,
18 streets and highways shall not be considered to be a
19 public park, and

20 b. hours of normal operation shall include all
21 extracurricular activities sanctioned or authorized by
22 the public or private elementary or secondary school
23 or public vocational school.

24

1 ~~G.~~ F. 1. Except as authorized by the Uniform Controlled
2 Dangerous Substances Act, it shall be unlawful for any person to
3 manufacture or attempt to manufacture any controlled dangerous
4 substance or possess any substance listed in Section 2-322 of this
5 title or any substance containing any detectable amount of
6 pseudoephedrine or its salts, optical isomers or salts of optical
7 isomers, iodine or its salts, optical isomers or salts of optical
8 isomers, hydriodic acid, sodium metal, lithium metal, anhydrous
9 ammonia, phosphorus, or organic solvents with the intent to use that
10 substance to manufacture a controlled dangerous substance.

11 2. Any person violating the provisions of this subsection with
12 respect to the unlawful manufacturing or attempting to unlawfully
13 manufacture any controlled dangerous substance, except for
14 marijuana, or possessing any substance listed in this subsection or
15 Section 2-322 of this title, upon conviction, is guilty of a felony
16 and shall be punished by imprisonment for ~~not less than seven (7)~~
17 ~~years nor more than life and by a fine of not less than Fifty~~
18 ~~Thousand Dollars (\$50,000.00)~~ a term not to exceed ten (10) years
19 and a fine of not more than Twenty-five Thousand Dollars
20 (\$25,000.00), which shall be in addition to other punishment
21 provided by law and shall not be imposed in lieu of other
22 punishment. The possession of any amount of anhydrous ammonia in an
23 unauthorized container shall be prima facie evidence of intent to
24 use such substance to manufacture a controlled dangerous substance.

1 For a second violation of this paragraph within ten (10) years of
2 the date following the completion of the prior sentence, a term of
3 not more than fifteen (15) years. A third or subsequent violation
4 of this paragraph within ten (10) years of the date following the
5 completion of the prior sentences is a felony punishable by
6 imprisonment in the custody of the Department of Corrections for a
7 term of not more than twenty (20) years.

8 3. Any person violating the provisions of this subsection with
9 respect to the unlawful manufacturing or attempting to unlawfully
10 manufacture, of marijuana, in the following amounts, is subject to
11 the following penalties:

12 a. six (6) or fewer marijuana plants capable of producing
13 less than one (1) kilogram of marijuana, excluding
14 parts of the plant that do not contain
15 hydrocannabinol, upon conviction, is guilty of a
16 misdemeanor punishable by imprisonment for a term not
17 to exceed one (1) year in the county jail and a fine
18 not to exceed One Thousand Dollars (\$1,000.00),

19 b. one (1) kilogram to one hundred (100) kilograms of
20 marijuana or seven (7) to one hundred (100) marijuana
21 plants, upon conviction, is guilty of a felony
22 punishable by imprisonment for a term not to exceed
23 three (3) years and a fine not to exceed Fifteen
24 Thousand Dollars (\$15,000.00). For a second violation

1 of this paragraph within ten (10) years of the date
2 following the completion of the prior sentence, a term
3 not more than three (3) years. A third or subsequent
4 violation of this paragraph within ten (10) years of
5 the date following the completion of the prior
6 sentences is a felony punishable by imprisonment in
7 the custody of the Department of Corrections for a
8 term not more than ten (10) years, and

9 c. more than one hundred (100) kilograms to less than one
10 thousand (1,000) kilograms of marijuana or one hundred
11 one (101) to nine hundred ninety-nine (999) marijuana
12 plants, upon conviction, is guilty of a felony
13 punishable by imprisonment for a term not to exceed
14 five (5) years and a fine not to exceed Fifteen
15 Thousand Dollars (\$15,000.00). For a second violation
16 of this paragraph within ten (10) years of the date
17 following the completion of the prior sentence, a term
18 not more than ten (10) years. A third or subsequent
19 violation of this paragraph within ten (10) years of
20 the date following the completion of the execution of
21 the prior sentences is a felony punishable by
22 imprisonment in the custody of the Department of
23 Corrections for a term not more than fifteen (15)
24 years.

1 ~~3.~~ 4. Any person violating the provisions of this subsection
2 with respect to the unlawful manufacturing or attempting to
3 unlawfully manufacture any controlled dangerous substance in the
4 following amounts:

5 a. one (1) kilogram or more of a mixture or substance
6 containing a detectable amount of heroin,

7 b. five (5) kilograms or more of a mixture or substance
8 containing a detectable amount of:

9 (1) coca leaves, except coca leaves and extracts of
10 coca leaves from which cocaine, ecgonine, and
11 derivatives of ecgonine or their salts have been
12 removed,

13 (2) cocaine, its salts, optical and geometric
14 isomers, and salts of isomers,

15 (3) ecgonine, its derivatives, their salts, isomers,
16 and salts of isomers, or

17 (4) any compound, mixture, or preparation which
18 contains any quantity of any of the substances
19 referred to in divisions (1) through (3) of this
20 subparagraph,

21 c. fifty (50) grams or more of a mixture or substance
22 described in division (2) of subparagraph b of this
23 paragraph which contains cocaine base,
24

- 1 d. one hundred (100) grams or more of phencyclidine (PCP)
2 or 1 kilogram or more of a mixture or substance
3 containing a detectable amount of phencyclidine (PCP),
4 e. ten (10) grams or more of a mixture or substance
5 containing a detectable amount of lysergic acid
6 diethylamide (LSD),
7 f. four hundred (400) grams or more of a mixture or
8 substance containing a detectable amount of N-phenyl-
9 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ~~100~~
10 one hundred (100) grams or more of a mixture or
11 substance containing a detectable amount of any
12 analogue of N-phenyl-N-[1-(2-phenylethyl)-4-
13 piperidinyl] propanamide,
14 g. one thousand (1,000) kilograms or more of a mixture or
15 substance containing a detectable amount of ~~marihuana~~
16 marijuana or one thousand ~~(1000)~~ (1,000) or more
17 ~~marihuana~~ marijuana plants regardless of weight, or
18 h. fifty (50) grams or more of methamphetamine, its
19 salts, isomers, and salts of its isomers or ~~500~~ five
20 hundred (500) grams or more of a mixture or substance
21 containing a detectable amount of methamphetamine, its
22 salts, isomers, or salts of its isomers,

23 upon conviction, is guilty of aggravated manufacturing a controlled
24 dangerous substance punishable by imprisonment for not ~~less~~ more

1 than ~~twenty (20)~~ thirty (30) years ~~nor more than life~~ and by a fine
2 of not less than Fifty Thousand Dollars (\$50,000.00), which shall be
3 in addition to other punishment provided by law and shall not be
4 imposed in lieu of other punishment. Any person convicted of a
5 violation of the provisions of this paragraph shall be required to
6 serve a minimum of ~~eighty-five percent (85%)~~ sixty-five percent
7 (65%) of the sentence received prior to becoming eligible for state
8 correctional earned credits towards the completion of the sentence
9 or eligible for parole.

10 ~~4.~~ 5. Any sentence to the custody of the Department of
11 Corrections for any violation of paragraph ~~3~~ 4 of this subsection
12 shall not be subject to statutory provisions for suspended
13 sentences, deferred sentences, or probation. A person convicted of
14 a second or subsequent violation of the provisions of paragraph ~~3~~ 4
15 of this subsection shall be punished as a habitual offender pursuant
16 to Section 51.1 of Title 21 of the Oklahoma Statutes and shall be
17 required to serve a minimum of ~~eighty-five percent (85%)~~ sixty-five
18 percent (65%) of the sentence received prior to becoming eligible
19 for state correctional earned credits or eligibility for parole.

20 ~~5.~~ 6. Any person who has been convicted of manufacturing or
21 attempting to manufacture methamphetamine pursuant to the provisions
22 of this subsection and who, after such conviction, purchases or
23 attempts to purchase, receive or otherwise acquire any product,
24 mixture, or preparation containing any detectable quantity of base

1 pseudoephedrine or ephedrine shall, upon conviction, be guilty of a
2 felony punishable by imprisonment in the custody of the Department
3 of Corrections for a term in the range of twice the minimum term
4 provided for in paragraph 2 of this subsection.

5 ~~H.~~ G. Any person convicted of any offense described in the
6 Uniform Controlled Dangerous Substances Act may, in addition to the
7 fine imposed, be assessed an amount not to exceed ten percent (10%)
8 of the fine imposed. Such assessment shall be paid into a revolving
9 fund for enforcement of controlled dangerous substances created
10 pursuant to Section 2-506 of this title.

11 ~~F.~~ H. Any person convicted of any offense described in this
12 section shall, in addition to any fine imposed, pay a special
13 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
14 deposited into the Trauma Care Assistance Revolving Fund created in
15 Section 1-2522 of this title.

16 ~~J.~~ I. For purposes of this section, "public housing project"
17 means any dwelling or accommodations operated as a state or
18 federally subsidized multifamily housing project by any housing
19 authority, nonprofit corporation or municipal developer or housing
20 projects created pursuant to the Oklahoma Housing Authorities Act.

21 ~~K.~~ J. When a person is found guilty of a violation of the
22 provisions of this section, the court shall order, in addition to
23 any other penalty, the defendant to pay a one-hundred-dollar
24 assessment to be deposited in the Drug Abuse Education and Treatment

1 Revolving Fund created in Section 2-503.2 of this title, upon
2 collection.

3 ~~H.~~ K. Any person convicted of a second or subsequent felony
4 violation of the provisions of this section, except for paragraphs 1
5 ~~and, 2 and 3~~ of subsection B of this section, ~~paragraphs 2, 3, 4 and~~
6 ~~5 of subsection C of this section,~~ paragraphs 1, 2, and 3 of
7 subsection ~~E~~ D of this section ~~and, 2 and 3~~ of
8 subsection ~~F~~ E of this section and paragraphs 2 and 3 of subsection
9 F of this section, shall be punished as a habitual offender pursuant
10 to Section 51.1 of Title 21 of the Oklahoma Statutes.

11 SECTION 2. This act shall become effective November 1, 2019.

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