

1 **SENATE FLOOR VERSION**

2 April 10, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1100

6 By: Mize of the House

7 and

8 Bice of the Senate

9 [public health and safety - modifying elements of
10 certain prohibited acts - effective date]

11 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

12 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as
13 last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp.
14 2018, Section 2-401), is amended to read as follows:

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

18 1. To distribute, or dispense, ~~transport with intent to~~
19 ~~distribute or dispense, possess with intent to manufacture,~~
20 ~~distribute, or dispense,~~ a controlled dangerous substance or to
21 solicit the use of or use the services of a person less than
22 eighteen (18) years of age to cultivate, distribute or dispense a
23 controlled dangerous substance;
24

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

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

8 4. To manufacture or distribute any synthetic controlled
9 substance, except when authorized by the Food and Drug
10 Administration of the United States Department of Health and Human
11 Services; or

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

23 a. the person possesses the means to weigh a controlled
24 substance,

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

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

19 1. A substance classified in Schedule I or II, except for
20 marijuana, involving one-quarter (0.25) of a gram or more of the
21 Schedule I or II substance, upon conviction, shall be guilty of
22 ~~transporting or possessing with an intent to distribute a controlled~~
23 ~~dangerous substance,~~ a felony, and shall be sentenced to a term of
24 imprisonment in the custody of the Department of Corrections for not

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

15 2. Any One-quarter (0.25) of a gram or more of any other
16 controlled dangerous substance classified in Schedule III, IV, V or
17 marijuana, upon conviction, shall be guilty of a felony and shall be
18 sentenced to a term of imprisonment in the custody of the Department
19 of Corrections for not more than ~~five (5)~~ two (2) years and a fine
20 of not more than Twenty Thousand Dollars (\$20,000.00), which shall
21 be in addition to other punishment provided by law and shall not be
22 imposed in lieu of other punishment. A second conviction for the
23 violation of the provisions of this paragraph within ten (10) years
24 of the date following the completion of the execution of the prior

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

9 3. ~~An~~ One-quarter (0.25) of a gram or more of an imitation
10 controlled substance as defined by Section 2-101 of this title, upon
11 conviction, shall be guilty of a misdemeanor and shall be sentenced
12 to a term of imprisonment in the county jail for a period of not
13 more than one (1) year and a fine of not more than One Thousand
14 Dollars (\$1,000.00). A person convicted of a second or subsequent
15 violation of the provisions of this paragraph within ten (10) years
16 of the date following the completion of the execution of the prior
17 sentence shall be guilty of a felony and shall be sentenced to a
18 term of imprisonment in the custody of the Department of Corrections
19 for not more than two (2) years and a fine of not more than Five
20 Thousand Dollars (\$5,000.00), which shall be in addition to other
21 punishment provided by law and shall not be imposed in lieu of other
22 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 for 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 execution of
6 the prior sentence, a term of imprisonment in the custody of the
7 Department of Corrections for not less than four (4) years nor more
8 than twenty (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 execution of the prior sentences, a term of
12 imprisonment in the custody of the Department of Corrections for not
13 less than ten (10) years nor more than life.

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

1 402 of Title 10 of the Oklahoma Statutes, during hours of operation
2 of the aforementioned locations, 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 execution of the prior sentence, a term of
10 imprisonment in the custody of the Department of Corrections, or by
11 the imposition of a fine or by both, not exceeding thrice that
12 authorized by the appropriate provision of this section.

13 Convictions for second and subsequent violations of the provisions
14 of this section shall not be subject to statutory provisions of
15 suspended sentences, deferred sentences or probation.

16 For purposes of this subsection, median strips or the green
17 space dividing roads, streets and highways shall not be considered a
18 portion of the public park.

19 As used in this subsection, "hours of operation" shall include
20 all extracurricular activities sanctioned or authorized by the
21 public or private elementary or secondary school or public
22 vocational school.

23 ~~G. F.~~ 1. Except as authorized by the Uniform Controlled
24 Dangerous Substances Act, it shall be unlawful for any person to

1 manufacture or attempt to manufacture any controlled dangerous
2 substance or possess any substance listed in Section 2-322 of this
3 title or any substance containing any detectable amount of
4 pseudoephedrine or its salts, optical isomers or salts of optical
5 isomers, iodine or its salts, optical isomers or salts of optical
6 isomers, hydriodic acid, sodium metal, lithium metal, anhydrous
7 ammonia, phosphorus, or organic solvents with the intent to use that
8 substance to manufacture a controlled dangerous substance.

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

1 sentences is punishable by a term of imprisonment in the custody of
2 the Department of Corrections for a term of not more than fifteen
3 (15) years. A third or subsequent violation of this subsection
4 within ten (10) years of the date following the completion of the
5 execution of the prior sentences is punishable by a term of
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 marijuana in the following amounts:

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

18 b. one (1) kilogram to one hundred (100) kilograms of
19 marijuana or seven to one hundred marijuana plants
20 shall, upon conviction, be guilty of a felony
21 punishable by imprisonment in the custody of the
22 Department of Corrections for a term of not more than
23 three (3) years and a fine of not more than Fifteen
24 Thousand Dollars (\$15,000.00). A second conviction of

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

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

1 subparagraph within ten (10) years of the date
2 following the completion of the execution of the prior
3 sentences is punishable by a term of imprisonment in
4 the custody of the Department of Corrections for a
5 term of not more than fifteen (15) years.

6 4. Any person violating the provisions of this subsection with
7 respect to the unlawful manufacturing or attempting to unlawfully
8 manufacture any controlled dangerous substance in the following
9 amounts:

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

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

14 (1) coca leaves, except coca leaves and extracts of
15 coca leaves from which cocaine, ecgonine, and
16 derivatives of ecgonine or their salts have been
17 removed,

18 (2) cocaine, its salts, optical and geometric
19 isomers, and salts of isomers,

20 (3) ecgonine, its derivatives, their salts, isomers,
21 and salts of isomers, or

22 (4) any compound, mixture, or preparation which
23 contains any quantity of any of the substances
24

1 referred to in divisions (1) through (3) of this
2 subparagraph,

3 c. fifty (50) grams or more of a mixture or substance
4 described in division (2) of subparagraph b of this
5 paragraph which contains cocaine base,

6 d. one hundred (100) grams or more of phencyclidine (PCP)
7 or one (1) kilogram or more of a mixture or substance
8 containing a detectable amount of phencyclidine (PCP),

9 e. ten (10) grams or more of a mixture or substance
10 containing a detectable amount of lysergic acid
11 diethylamide (LSD),

12 f. four hundred (400) grams or more of a mixture or
13 substance containing a detectable amount of N-phenyl-
14 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or one
15 hundred (100) grams or more of a mixture or substance
16 containing a detectable amount of any analogue of N-
17 phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]
18 propanamide,

19 g. one thousand (1,000) kilograms or more of a mixture or
20 substance containing a detectable amount of ~~marihuana~~
21 marijuana or one thousand ~~(1000)~~ or more ~~marihuana~~
22 marijuana plants regardless of weight, or

23 h. fifty (50) grams or more of methamphetamine, its
24 salts, isomers, and salts of its isomers or five

1 hundred (500) grams or more of a mixture or substance
2 containing a detectable amount of methamphetamine, its
3 salts, isomers, or salts of its isomers,
4 upon conviction, is guilty of aggravated manufacturing a controlled
5 dangerous substance punishable by imprisonment for not ~~less~~ more
6 than ~~twenty (20)~~ thirty (30) years ~~nor more than life~~ and by a fine
7 of not less than Fifty Thousand Dollars (\$50,000.00), which shall be
8 in addition to other punishment provided by law and shall not be
9 imposed in lieu of other punishment. Any person convicted of a
10 violation of the provisions of this paragraph shall be required to
11 serve a minimum of eighty-five percent (85%) of the sentence
12 received prior to becoming eligible for state correctional earned
13 credits towards the completion of the sentence or eligible for
14 parole.

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

1 ~~5.~~ 6. Any person who has been convicted of manufacturing or
2 attempting to manufacture methamphetamine pursuant to the provisions
3 of this subsection and who, after such conviction, purchases or
4 attempts to purchase, receive or otherwise acquire any product,
5 mixture, or preparation containing any detectable quantity of base
6 pseudoephedrine or ephedrine shall, upon conviction, be guilty of a
7 felony punishable by imprisonment in the custody of the Department
8 of Corrections for a term in the range of twice the minimum term
9 provided for in paragraph 2 of this subsection.

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

16 ~~I.~~ H. Any person convicted of any offense described in this
17 section shall, in addition to any fine imposed, pay a special
18 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
19 deposited into the Trauma Care Assistance Revolving Fund created in
20 Section ~~1-2522~~ 1-2530.9 of this title.

21 ~~J. For purposes of this section, "public housing project" means~~
22 ~~any dwelling or accommodations operated as a state or federally~~
23 ~~subsidized multifamily housing project by any housing authority,~~

24

1 ~~nonprofit corporation or municipal developer or housing projects~~
2 ~~created pursuant to the Oklahoma Housing Authorities Act.~~

3 ~~K.~~ I. When a person is found guilty of a violation of the
4 provisions of this section, the court shall order, in addition to
5 any other penalty, the defendant to pay a one-hundred-dollar
6 assessment to be deposited in the Drug Abuse Education and Treatment
7 Revolving Fund created in Section 2-503.2 of this title, upon
8 collection.

9 ~~E.~~ J. Any person convicted of a second or subsequent felony
10 violation of the provisions of this section, except for paragraphs 1
11 ~~and, 2 and 3~~ of subsection B of this section, ~~paragraphs 2, 3, 4 and~~
12 ~~5 of subsection C of this section,~~ paragraphs 1, 2, and 3 of
13 subsection ~~E~~ D of this section ~~and,~~ paragraphs 1 and 2 of subsection
14 ~~F~~ E of this section and paragraphs 2 and 3 of subsection F of this
15 section, shall be punished as a habitual offender pursuant to
16 Section 51.1 of Title 21 of the Oklahoma Statutes.

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

18 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
19 April 10, 2019 - DO PASS AS AMENDED
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