

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1100

By: Manger

4
5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2011, Section 2-401, as last amended by
9 Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp.
10 2018, Section 2-401), which relates to the Uniform
11 Controlled Dangerous Substances Act; modifying
12 elements of certain prohibited acts; making certain
13 acts unlawful; providing list of factors necessary to
14 prove intent; modifying penalties for prohibited
15 acts; deleting penalties for certain prohibited acts;
16 and providing an effective date.

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

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

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

24 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
solicit the use of or use the services of a person less than

1 | eighteen (18) years of age to cultivate, distribute or dispense a
2 | controlled dangerous substance;

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

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

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

14 | 5. To transport with intent to distribute or dispense,
15 | possesses with intent to distribute, or possess with intent to
16 | manufacture a controlled dangerous substance, a synthetic controlled
17 | substance or an imitation controlled substance.

18 | In order to prove intent to distribute, dispense or manufacture
19 | pursuant to the offenses listed in this subsection, at least three
20 | of the following factors must be involved unless the person was in
21 | possession of more than four (4) grams of a substance classified in
22 | Schedule I or II, 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 sentence is a
12 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 sentence
6 is a felony punishable by a term of imprisonment in the custody of
7 the Department of Corrections for not more than ~~fifteen (15)~~ eight
8 (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, 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 within ten (10) years
5 of the date following the completion of the execution 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 within
10 ten (10) years of the date following the completion of the execution
11 of the prior sentence, a term of imprisonment in the custody of the
12 Department of Corrections for not less than ten (10) years nor more
13 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)~~ five hundred (500)
19 feet of the real property comprising a public or private elementary
20 or secondary school, public vocational school, ~~public or private~~
21 ~~college or university, or other institution of higher education,~~
22 recreation center or public park, including state parks and
23 recreation areas, ~~public housing project,~~ or child care facility as
24

1 defined by Section 402 of Title 10 of the Oklahoma Statutes, during
2 hours of operation of the aforesaid 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 within
8 ten (10) years of the date following the completion of the execution
9 of the prior sentence, a term of imprisonment in the custody of the
10 Department of Corrections, or by the imposition of a fine or by
11 both, not exceeding thrice that authorized by the appropriate
12 provision of this section. Convictions for second and subsequent
13 violations of the provisions of this section shall not be subject to
14 statutory provisions of suspended sentences, deferred sentences or
15 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 ~~G. F.~~ 1. Except as authorized by the Uniform Controlled
20 Dangerous Substances Act, it shall be unlawful for any person to
21 manufacture or attempt to manufacture any controlled dangerous
22 substance or possess any substance listed in Section 2-322 of this
23 title or any substance containing any detectable amount of
24 pseudoephedrine or its salts, optical isomers or salts of optical

1 isomers, iodine or its salts, optical isomers or salts of optical
2 isomers, hydriodic acid, sodium metal, lithium metal, anhydrous
3 ammonia, phosphorus, or organic solvents with the intent to use that
4 substance to manufacture a controlled dangerous substance.

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

1 prior sentence is punishable by a term of imprisonment in the
2 custody of the Department of Corrections of not more than twenty
3 (20) years.

4 3. Any person violating the provisions of this subsection with
5 respect to the unlawful manufacturing or attempting to unlawfully
6 manufacture marijuana in the following amounts:

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

14 b. one (1) kilogram to one hundred (100) kilograms of
15 marijuana or seven to one hundred marijuana plants
16 shall, upon conviction, be guilty of a felony
17 punishable by imprisonment in the custody of the
18 Department of Corrections for a term of not more than
19 three (3) years and a fine of not more than Fifteen
20 Thousand Dollars (\$15,000.00). A second conviction of
21 this subparagraph within ten (10) years of the date
22 following the completion of the execution of the prior
23 sentence is punishable by imprisonment in the custody
24 of the Department of Correction for a term of not more

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

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

1 the custody of the Department of Corrections for a
2 term of not more than fifteen (15) years.

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

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

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

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

15 (2) cocaine, its salts, optical and geometric
16 isomers, and salts of isomers,

17 (3) ecgonine, its derivatives, their salts, isomers,
18 and salts of isomers, or

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

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

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

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

22 ~~5.~~ 6. Any person who has been convicted of manufacturing or
23 attempting to manufacture methamphetamine pursuant to the provisions
24 of this subsection and who, after such conviction, purchases or

1 attempts to purchase, receive or otherwise acquire any product,
2 mixture, or preparation containing any detectable quantity of base
3 pseudoephedrine or ephedrine shall, upon conviction, be guilty of a
4 felony punishable by imprisonment in the custody of the Department
5 of Corrections for a term in the range of twice the minimum term
6 provided for in paragraph 2 of this subsection.

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

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

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

23 ~~K.~~ J. When a person is found guilty of a violation of the
24 provisions of this section, the court shall order, in addition to

1 any other penalty, the defendant to pay a one-hundred-dollar
2 assessment to be deposited in the Drug Abuse Education and Treatment
3 Revolving Fund created in Section 2-503.2 of this title, upon
4 collection.

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

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

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