

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1100

By: Manger and **Mize**

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9 COMMITTEE SUBSTITUTE

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

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

21 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as
22 last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp.
23 2018, Section 2-401), is amended to read as follows:

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

1 1. To distribute, or dispense, ~~transport with intent to~~
2 ~~distribute or dispense, possess with intent to manufacture,~~
3 ~~distribute, or dispense,~~ a controlled dangerous substance or to
4 solicit the use of or use the services of a person less than
5 eighteen (18) years of age to cultivate, distribute or dispense a
6 controlled dangerous substance;

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

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

14 4. To manufacture or distribute any synthetic controlled
15 substance, except when authorized by the Food and Drug
16 Administration of the United States Department of Health and Human
17 Services; or

18 5. To transport with intent to distribute or dispense or
19 possesses with intent to manufacture, distribute or dispense a
20 controlled dangerous substance, or to transport with intent to
21 distribute or dispense or possess with intent to distribute, a
22 counterfeit controlled dangerous substance, or to possess with
23 intent to distribute a synthetic controlled substance. In order to
24 prove intent to distribute, dispense or manufacture pursuant to the

1 offenses listed in this paragraph, at least three of the following
2 factors must be involved unless the person was in possession of more
3 than four (4) grams of a substance classified in Schedule I or II,
4 except for marijuana:

- 5 a. the person possesses the means to weigh a controlled
6 substance,
- 7 b. the person possesses a record indicating a drug-
8 related transaction,
- 9 c. the person possesses materials primarily used for
10 separating and packaging controlled substances,
- 11 d. the person possesses a firearm that is in the
12 immediate physical control of the person at the time
13 of possession of the controlled substance,
- 14 e. the person has in his or her immediate possession or
15 control at least two other controlled substances in
16 any amount,
- 17 f. the person has implemented excessive security measures
18 in a structure or vehicle connected to the offender,
19 and
- 20 g. the person has in his or her immediate possession or
21 control cash in excess of Five Hundred Dollars
22 (\$500.00).

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

1 1. A substance classified in Schedule I or II, except for
2 marijuana, involving one-quarter (0.25) of a gram or more of the
3 Schedule I or II substance, upon conviction, shall be guilty of
4 ~~transporting or possessing with an intent to distribute a controlled~~
5 ~~dangerous substance,~~ a felony, and shall be sentenced to a term of
6 imprisonment in the custody of the Department of Corrections for not
7 more than ~~seven (7)~~ three (3) years and a fine of not more than One
8 Hundred Thousand Dollars (\$100,000.00), which shall be in addition
9 to other punishment provided by law and shall not be imposed in lieu
10 of other punishment. A second conviction for the violation of
11 provisions of this paragraph within ten (10) years of the date
12 following the completion of the execution of the prior sentence is a
13 felony punishable by a term of imprisonment in the custody of the
14 Department of Corrections for not more than ~~fourteen (14)~~ seven (7)
15 years. A third or subsequent conviction for the violation of the
16 provisions of this paragraph within ten (10) years of the date
17 following the completion of the execution of the prior sentences is
18 a felony punishable by a term of imprisonment in the custody of the
19 Department of Corrections for not more than ~~twenty (20)~~ ten (10)
20 years;

21 2. ~~Any~~ One-quarter (0.25) of a gram or more of any other
22 controlled dangerous substance classified in Schedule III, IV, V or
23 marijuana, upon conviction, shall be guilty of a felony and shall be
24 sentenced to a term of imprisonment in the custody of the Department

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

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

1 for not more than two (2) years and a fine of not more than Five
2 Thousand Dollars (\$5,000.00), which shall be in addition to other
3 punishment provided by law and shall not be imposed in lieu of other
4 punishment.

5 C. ~~1. Except when authorized by the Food and Drug~~
6 ~~Administration of the United States Department of Health and Human~~
7 ~~Services, it shall be unlawful for any person to manufacture or~~
8 ~~distribute a controlled substance or synthetic controlled substance.~~

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

17 ~~3. A second conviction for the violation of the provisions of~~
18 ~~paragraph 1 of this subsection with respect to distributing a~~
19 ~~controlled substance is a felony punishable by imprisonment in the~~
20 ~~custody of the Department of Corrections for a term not less than~~
21 ~~two (2) years nor more than twenty (20) years. A third or~~
22 ~~subsequent conviction for the violation of the provisions of this~~
23 ~~paragraph is a felony punishable by imprisonment in the custody of~~
24

1 ~~the Department of Corrections for a term not less than ten (10)~~
2 ~~years nor more than life.~~

3 ~~4. Any person convicted of violating the provisions of~~
4 ~~paragraph 1 of this subsection with respect to manufacturing 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 ~~5. A second conviction for the violation of the provisions of~~
12 ~~paragraph 1 of this subsection with respect to manufacturing 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 ~~D.~~ Convictions for violations of the provisions of this section
21 shall be subject to the statutory provisions for suspended or
22 deferred sentences, or probation as provided in Section 991a of
23 Title 22 of the Oklahoma Statutes.

1 ~~E.~~ D. Any person who is at least eighteen (18) years of age and
2 who violates the provisions of this section by using or soliciting
3 the use of services of a person less than eighteen (18) years of age
4 to distribute, dispense, transport with intent to distribute or
5 dispense or cultivate a controlled dangerous substance or by
6 distributing a controlled dangerous substance to a person under
7 eighteen (18) years of age, or in the presence of a person under
8 twelve (12) years of age, is punishable by:

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

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

17 3. For a third or subsequent violation of this ~~section~~
18 subsection within ten (10) years of the date following the
19 completion of the execution of the prior sentences, a term of
20 imprisonment in the custody of the Department of Corrections for not
21 less than ten (10) years nor more than life.

22 ~~F.~~ E. Any person who violates any provision of this section by
23 transporting with intent to distribute or dispense, distributing or
24 possessing with intent to distribute a controlled dangerous

1 substance to a person, or violation of subsection ~~G~~ F of this
2 section, in or on, or within two thousand (2,000) feet of the real
3 property comprising a public or private elementary or secondary
4 school, public vocational school, public or private college or
5 university, or other institution of higher education, recreation
6 center or public park, including state parks and recreation areas,
7 ~~public housing project,~~ or child care facility as defined by Section
8 402 of Title 10 of the Oklahoma Statutes, during hours of operation
9 of the aforementioned locations, shall be punished by:

10 1. For a first offense, a term of imprisonment in the custody
11 of the Department of Corrections, or by the imposition of a fine or
12 by both, not exceeding twice that authorized by the appropriate
13 provision of this section; or

14 2. For a second or subsequent violation of this ~~section~~
15 subsection within ten (10) years of the date following the
16 completion of the execution of the prior sentence, a term of
17 imprisonment in the custody of the Department of Corrections, or by
18 the imposition of a fine or by both, not exceeding thrice that
19 authorized by the appropriate provision of this section.

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

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

4 As used in this subsection, "hours of operation" shall include
5 all extracurricular activities sanctioned or authorized by the
6 public or private elementary or secondary school or public
7 vocational school.

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

18 2. Any person violating the provisions of this subsection with
19 respect to the unlawful manufacturing or attempting to unlawfully
20 manufacture any controlled dangerous substance, except for
21 marijuana, or possessing any substance listed in this subsection or
22 Section 2-322 of this title, upon conviction, is guilty of a felony
23 and shall be punished by imprisonment in the custody of the
24 Department of Corrections for not ~~less than seven (7)~~ more than ten

1 ~~(10) years nor more than life~~ and by a fine of not ~~less than Fifty~~
2 ~~Thousand Dollars (\$50,000.00)~~ more than Twenty-five Thousand Dollars
3 (\$25,000.00), which shall be in addition to other punishment
4 provided by law and shall not be imposed in lieu of other
5 punishment. The possession of any amount of anhydrous ammonia in an
6 unauthorized container shall be prima facie evidence of intent to
7 use such substance to manufacture a controlled dangerous substance.
8 A second violation of this subsection within ten (10) years of the
9 date following the completion of the execution of the prior
10 sentences is punishable by a term of imprisonment in the custody of
11 the Department of Corrections for a term of not more than fifteen
12 (15) years. A third or subsequent violation of this subsection
13 within ten (10) years of the date following the completion of the
14 execution of the prior sentences is punishable by a term of
15 imprisonment in the custody of the Department of Corrections for a
16 term of not more than twenty (20) years.

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

20 a. six or fewer marijuana plants capable of producing
21 less than one (1) kilogram of marijuana, excluding
22 parts of the plant that do not contain hydrocannabinol
23 shall, upon conviction, be guilty of a misdemeanor
24 punishable by imprisonment in the county jail for a

1 term of not more than one (1) year and a fine of not
2 more than One Thousand Dollars (\$1,000.00),

3 b. one (1) kilogram to one hundred (100) kilograms of
4 marijuana or seven to one hundred marijuana plants
5 shall, upon conviction, be guilty of a felony
6 punishable by imprisonment in the custody of the
7 Department of Corrections for a term of not more than
8 three (3) years and a fine of not more than Fifteen
9 Thousand Dollars (\$15,000.00). A second conviction of
10 this subparagraph within ten (10) years of the date
11 following the completion of the execution of the prior
12 sentence is punishable by imprisonment in the custody
13 of the Department of Corrections for a term of not
14 more than six (6) years. A third or subsequent
15 conviction of this subparagraph within ten (10) years
16 of the date following the completion of the execution
17 of the prior sentences is punishable by imprisonment
18 in the custody of the Department of Corrections for a
19 term of not more than ten (10) years, and

20 c. one hundred (100) kilograms or more but less than one
21 thousand (1,000) kilograms of marijuana or one hundred
22 one marijuana plants but less than one thousand
23 marijuana plants shall, upon conviction, be guilty of
24 a felony punishable by imprisonment in the custody of

1 the Department of Corrections for a term of not more
2 than five (5) years and a fine of not more than
3 Fifteen Thousand Dollars (\$15,000.00). A second
4 conviction for violation of this subparagraph within
5 ten (10) years of the date following the completion of
6 the execution of the prior sentence is punishable by a
7 term of imprisonment in the custody of the Department
8 of Corrections for a term of not more than ten (10)
9 years. A third or subsequent conviction of this
10 subparagraph within ten (10) years of the date
11 following the completion of the execution of the prior
12 sentences is punishable by a term of imprisonment in
13 the custody of the Department of Corrections for a
14 term of not more than fifteen (15) years.

15 4. Any person violating the provisions of this subsection with
16 respect to the unlawful manufacturing or attempting to unlawfully
17 manufacture any controlled dangerous substance in the following
18 amounts:

- 19 a. one (1) kilogram or more of a mixture or substance
20 containing a detectable amount of heroin,
21 b. five (5) kilograms or more of a mixture or substance
22 containing a detectable amount of:
23 (1) coca leaves, except coca leaves and extracts of
24 coca leaves from which cocaine, ecgonine, and

1 derivatives of ecgonine or their salts have been
2 removed,

3 (2) cocaine, its salts, optical and geometric
4 isomers, and salts of isomers,

5 (3) ecgonine, its derivatives, their salts, isomers,
6 and salts of isomers, or

7 (4) any compound, mixture, or preparation which
8 contains any quantity of any of the substances
9 referred to in divisions (1) through (3) of this
10 subparagraph,

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

14 d. one hundred (100) grams or more of phencyclidine (PCP)
15 or one (1) kilogram or more of a mixture or substance
16 containing a detectable amount of phencyclidine (PCP),

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

20 f. four hundred (400) grams or more of a mixture or
21 substance containing a detectable amount of N-phenyl-
22 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or one
23 hundred (100) grams or more of a mixture or substance
24 containing a detectable amount of any analogue of N-

1 phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]

2 propanamide,

3 g. one thousand (1,000) kilograms or more of a mixture or
4 substance containing a detectable amount of ~~marihuana~~
5 marijuana or one thousand ~~(1000)~~ or more ~~marihuana~~
6 marijuana plants regardless of weight, or

7 h. fifty (50) grams or more of methamphetamine, its
8 salts, isomers, and salts of its isomers or five
9 hundred (500) grams or more of a mixture or substance
10 containing a detectable amount of methamphetamine, its
11 salts, isomers, or salts of its isomers,

12 upon conviction, is guilty of aggravated manufacturing a controlled
13 dangerous substance punishable by imprisonment for not ~~less~~ more
14 than ~~twenty (20)~~ thirty (30) years ~~nor more than life~~ and by a fine
15 of not less than Fifty Thousand Dollars (\$50,000.00), which shall be
16 in addition to other punishment provided by law and shall not be
17 imposed in lieu of other punishment. Any person convicted of a
18 violation of the provisions of this paragraph shall be required to
19 serve a minimum of eighty-five percent (85%) of the sentence
20 received prior to becoming eligible for state correctional earned
21 credits towards the completion of the sentence or eligible for
22 parole.

23 ~~4.~~ 5. Any sentence to the custody of the Department of
24 Corrections for any violation of paragraph ~~3~~ 4 of this subsection

1 shall not be subject to statutory provisions for suspended
2 sentences, deferred sentences, or probation. A person convicted of
3 a second or subsequent violation of the provisions of paragraph ~~3~~ 4
4 of this subsection shall be punished as a habitual offender pursuant
5 to Section 51.1 of Title 21 of the Oklahoma Statutes and shall be
6 required to serve a minimum of ~~eighty-five percent (85%)~~ sixty-five
7 percent (65%) of the sentence received prior to becoming eligible
8 for state correctional earned credits or eligibility for parole.

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

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

24

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

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

11 ~~K.~~ J. When a person is found guilty of a violation of the
12 provisions of this section, the court shall order, in addition to
13 any other penalty, the defendant to pay a one-hundred-dollar
14 assessment to be deposited in the Drug Abuse Education and Treatment
15 Revolving Fund created in Section 2-503.2 of this title, upon
16 collection.

17 ~~L.~~ K. Any person convicted of a second or subsequent felony
18 violation of the provisions of this section, except for paragraphs 1
19 ~~and, 2 and 3~~ of subsection B of this section, ~~paragraphs 2, 3, 4 and~~
20 ~~5 of subsection C of this section,~~ paragraphs 1, 2, and 3 of
21 subsection ~~E~~ D of this section ~~and,~~ paragraphs 1 and 2 of subsection
22 ~~F~~ E of this section and paragraphs 2 and 3 of subsection F of this
23 section, shall be punished as a habitual offender pursuant to
24 Section 51.1 of Title 21 of the Oklahoma Statutes.

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

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02/28/2019 -
DO PASS, As Amended and Coauthored.