

1 STATE OF OKLAHOMA

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

3 SENATE BILL 421

By: Bice

4
5
6 AS INTRODUCED

7 An Act relating to the Uniform Controlled Dangerous
8 Substances Act; amending 63 O.S. 2011, Section 2-401,
9 as last amended by Section 1, Chapter 130, O.S.L.
10 2018 (63 O.S. Supp. 2018, Section 2-401), which
11 relates to penalties for prohibited acts; modifying
12 prohibited acts; requiring certain factors be met for
13 certain offenses; modifying penalties; modifying
14 preclusions; providing definition; prescribing
15 certain penalty for offenses; and providing an
16 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,~~
25 ~~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 a synthetic controlled
11 substance except when authorized by the Food and Drug Administration
12 of the United States Department of Health and Human Services;

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

22 a. the person possesses the means to weigh a controlled
23 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 their 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 or
- 14 g. the person has in their 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
25

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 prior sentence is a felony
7 punishable by a term of imprisonment in the custody of the
8 Department of Corrections for not more than ~~fourteen (14)~~ years
9 seven (7) 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 prior sentences is a felony
12 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 prior sentence is a

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

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

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

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

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

18 ~~4. Any person convicted of violating the provisions of~~
19 ~~paragraph 1 of this subsection with respect to manufacturing a~~
20 ~~controlled substance is guilty of a felony and shall be punished by~~
21 ~~imprisonment in the custody of the Department of Corrections for a~~
22 ~~term not to exceed ten (10) years and a fine of not more than~~
23 ~~Twenty five Thousand Dollars (\$25,000.00), which shall be in~~
24

1 ~~addition to other punishment provided by law and shall not be~~
2 ~~imposed in lieu of other punishment.~~

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

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

16 ~~E.~~ D. Any person who is at least eighteen (18) years of age and
17 who violates the provisions of this section by using or soliciting
18 the use of services of a person less than eighteen (18) years of age
19 to distribute, dispense, transport with intent to distribute or
20 dispense or cultivate a controlled dangerous substance or by
21 distributing a controlled dangerous substance to a person under
22 eighteen (18) years of age, or in the presence of a person under
23 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 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 prior sentence, a term
6 of imprisonment in the custody of the Department of Corrections for
7 not less than four (4) years nor more than twenty (20) years; or

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

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

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

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

13 For the purposes of this subsection, median strips or the green
14 space dividing roads, streets and highways shall not be considered
15 to be a public park.

16 ~~G.~~ F. 1. Except as authorized by the Uniform Controlled
17 Dangerous Substances Act, it shall be unlawful for any person to
18 manufacture or attempt to manufacture any controlled dangerous
19 substance or possess any substance listed in Section 2-322 of this
20 title or any substance containing any detectable amount of
21 pseudoephedrine or its salts, optical isomers or salts of optical
22 isomers, iodine or its salts, optical isomers or salts of optical
23 isomers, hydriodic acid, sodium metal, lithium metal, anhydrous
24

1 ammonia, phosphorus, or organic solvents with the intent to use that
2 substance to manufacture a controlled dangerous substance.

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

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

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

12 b. one (1) kilogram to one hundred (100) kilograms of
13 marijuana or seven (7) to one hundred (100) marijuana
14 plants, upon conviction, is guilty of a felony
15 punishable by imprisonment for a term not to exceed
16 three (3) years and a fine not to exceed Fifteen
17 Thousand Dollars (\$15,000.00). For a second violation
18 of this paragraph within ten (10) years of the date
19 following the completion of the prior sentence, a term
20 not more than three (3) years. A third or subsequent
21 violation of this paragraph within ten (10) years of
22 the date following the completion of the prior
23 sentences is a felony punishable by imprisonment in

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

19 ~~3.~~ 4. Any person violating the provisions of this subsection
20 with respect to the unlawful manufacturing or attempting to
21 unlawfully manufacture any controlled dangerous substance in the
22 following amounts:

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

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

3 (1) coca leaves, except coca leaves and extracts of
4 coca leaves from which cocaine, ecgonine, and
5 derivatives of ecgonine or their salts have been
6 removed,

7 (2) cocaine, its salts, optical and geometric
8 isomers, and salts of isomers,

9 (3) ecgonine, its derivatives, their salts, isomers,
10 and salts of isomers, or

11 (4) any compound, mixture, or preparation which
12 contains any quantity of any of the substances
13 referred to in divisions (1) through (3) of this
14 subparagraph,

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

18 d. one hundred (100) grams or more of phencyclidine (PCP)
19 or 1 kilogram or more of a mixture or substance
20 containing a detectable amount of phencyclidine (PCP),

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

- 1 f. four hundred (400) grams or more of a mixture or
2 substance containing a detectable amount of N-phenyl-
3 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100
4 grams or more of a mixture or substance containing a
5 detectable amount of any analogue of N-phenyl-N-[1-(2-
6 phenylethyl)-4-piperidinyl] propanamide,
7 g. one thousand (1,000) kilograms or more of a mixture or
8 substance containing a detectable amount of ~~marihuana~~
9 marijuana or one thousand (1000) or more ~~marihuana~~
10 marijuana plants regardless of weight, or
11 h. fifty (50) grams or more of methamphetamine, its
12 salts, isomers, and salts of its isomers or 500 grams
13 or more of a mixture or substance containing a
14 detectable amount of methamphetamine, its salts,
15 isomers, or salts of its isomers,

16 upon conviction, is guilty of aggravated manufacturing a controlled
17 dangerous substance punishable by imprisonment for not ~~less~~ more
18 than ~~twenty (20)~~ thirty (30) years ~~nor more than life~~ and by a fine
19 of not less than Fifty Thousand Dollars (\$50,000.00), which shall be
20 in addition to other punishment provided by law and shall not be
21 imposed in lieu of other punishment. Any person convicted of a
22 violation of the provisions of this paragraph shall be required to
23 serve a minimum of ~~eighty-five percent (85%)~~ sixty-five percent
24 (65%) of the sentence received prior to becoming eligible for state

1 correctional earned credits towards the completion of the sentence
2 or eligible for parole.

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

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

22 ~~H.~~ G. Any person convicted of any offense described in the
23 Uniform Controlled Dangerous Substances Act may, in addition to the
24 fine imposed, be assessed an amount not to exceed ten percent (10%)
25

1 of the fine imposed. Such assessment shall be paid into a revolving
2 fund for enforcement of controlled dangerous substances created
3 pursuant to Section 2-506 of this title.

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

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

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

20 ~~L.~~ K. Any person convicted of a second or subsequent felony
21 violation of the provisions of this section, except for paragraphs 1
22 and 2 of subsection B of this section, paragraphs ~~2, 3, 4 and 5~~ 2, 3
23 of subsection C of this section, paragraphs 1, ~~2, 3~~ 2, 3 of
24 subsection ~~E~~ D of this section ~~and~~ and, paragraphs 1 and 2 of subsection

1 ¶ E of this section and paragraphs 2 and 3 of subsection F of this
2 section, shall be punished as a habitual offender pursuant to
3 Section 51.1 of Title 21 of the Oklahoma Statutes.

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

5
6 57-1-426 BHG 1/16/2019 1:33:39 PM
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25