

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 704

By: Rader

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5
6 AS INTRODUCED

7 An Act relating to sentence enhancements; amending 21
8 O.S. 2011, Section 51.1, as amended by Section 1,
9 Chapter 126, O.S.L. 2018 (21 O.S. Supp. 2020, Section
10 51.1), which relates to second and subsequent
11 offenses; prohibiting the use of enhanced sentences
12 in certain circumstances; amending 22 O.S. 2011,
13 Section 982a, as last amended by Section 1, Chapter
14 128, O.S.L. 2018 (22 O.S. Supp. 2020, Section 982a),
15 which relates to judicial review; making certain
16 offenders eligible for sentence modifications;
17 modifying court procedures; providing for certain
18 time limitations; directing the Department of
19 Corrections to provide certain notice of amendments;
20 establishing requirements; amending 22 O.S. 2011,
21 Section 991b, as last amended by Section 3, Chapter
22 459, O.S.L. 2019 (22 O.S. Supp. 2020, Section 991b),
23 which relates to revocation of suspended sentences;
24 providing for modification of sentences for certain
persons considered for revocation; amending 22 O.S.
2011, Section 991c, as last amended by Section 2,
Chapter 46, O.S.L. 2020 (22 O.S. Supp. 2020, Section
991c), which relates to deferred sentences; providing
for modification of sentences for certain persons
considered for acceleration; amending 22 O.S. 2011,
Section 1080, which relates to the Post-Conviction
Procedure Act; modifying circumstances allowing a
person to institute proceedings; prohibiting a civil
cause of action; amending 22 O.S. 2011, Section 1083,
as amended by Section 1, Chapter 216, O.S.L. 2014 (22
O.S. Supp. 2020, Section 1083), which relates to
response and disposition of application; providing
for certain presumption and evidentiary standard;
amending 57 O.S. 2011, Section 332.2, as last amended
by Section 5, Chapter 459, O.S.L. 2019 (57 O.S. Supp.
2020, Section 332.2), which relates to the meetings

1 of the Pardon and Parole Board; expanding list of
2 applicants eligible for specialized commutation
3 docket; amending 63 O.S. 2011, Section 2-401, as last
4 amended by Section 1, Chapter 130, O.S.L. 2018 (63
5 O.S. Supp. 2020, Section 2-401), which relates to
6 prohibited acts under the Uniform Controlled
7 Dangerous Substances Act; modifying certain
8 penalties; amending 63 O.S. 2011, Sections 2-403, 2-
9 404, 2-406 and 2-407, as amended by Section 7,
10 Chapter 305, O.S.L. 2015 (63 O.S. Supp. 2020, Section
11 407), which relates to prohibited acts; modifying
12 certain penalties; amending 63 O.S. 2011, Section 2-
13 415, as last amended by Section 40, Chapter 25,
14 O.S.L. 2019 (63 O.S. Supp. 2020, Section 2-415),
15 which relates to fines and penalties; modifying
16 penalties; providing for codification; and providing
17 an effective date.

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

19 SECTION 1. AMENDATORY 21 O.S. 2011, Section 51.1, as
20 amended by Section 1, Chapter 126, O.S.L. 2018 (21 O.S. Supp. 2020,
21 Section 51.1), is amended to read as follows:

22 Section 51.1. A. Except as otherwise provided in the Elderly
23 and Incapacitated Victim's Protection Program and Section 51.1a of
24 this title, every person who, having been convicted of any felony,
25 commits any crime after such conviction, within ten (10) years of
26 the date following the completion of the execution of the sentence,
27 and against whom the district attorney seeks to enhance punishment
28 pursuant to this section of law, is punishable therefor as follows:

29 1. If the offense for which the person is subsequently
30 convicted is an offense enumerated in Section 571 of Title 57 of the

1 Oklahoma Statutes and the offense is punishable by imprisonment in
2 the custody of the Department of Corrections for a term exceeding
3 five (5) years, such person is punishable by imprisonment in the
4 custody of the Department of Corrections for a term in the range of
5 ten (10) years to life imprisonment;

6 2. If the offense of which such person is subsequently
7 convicted is such that upon a first conviction an offender would be
8 punishable by imprisonment in the custody of the Department of
9 Corrections for any term exceeding five (5) years, such person is
10 punishable by imprisonment in the custody of the Department of
11 Corrections for a term in the range of twice the minimum term for a
12 first time offender to life imprisonment. If the subsequent felony
13 offense does not carry a minimum sentence as a first time offender,
14 such person is punishable by imprisonment in the custody of the
15 Department of Corrections for a term in the range of two (2) years
16 to life imprisonment; and

17 3. If such subsequent offense is such that upon a first
18 conviction the offender would be punishable by imprisonment in the
19 custody of the Department of Corrections for five (5) years, or any
20 less term, then the person convicted of such subsequent offense is
21 punishable by imprisonment in the custody of the Department of
22 Corrections for a term not exceeding ten (10) years.

23 B. Every person who, having been twice convicted of felony
24 offenses, commits a subsequent felony offense which is an offense

1 enumerated in Section 571 of Title 57 of the Oklahoma Statutes,
2 within ten (10) years of the date following the completion of the
3 execution of the sentence, and against whom the district attorney
4 seeks to enhance punishment pursuant to this section of law, is
5 punishable by imprisonment in the custody of the Department of
6 Corrections for a term in the range of twenty (20) years to life
7 imprisonment. Felony offenses relied upon shall not have arisen out
8 of the same transaction or occurrence or series of events closely
9 related in time and location. Nothing in this section shall
10 abrogate or affect the punishment by death in all crimes now or
11 hereafter made punishable by death.

12 C. Every person who, having been twice convicted of felony
13 offenses, commits a subsequent felony offense within ten (10) years
14 of the date following the completion of the execution of the
15 sentence, and against whom the district attorney seeks to enhance
16 punishment pursuant to this section of law, is punishable by
17 imprisonment in the custody of the Department of Corrections for a
18 term in the range of three times the minimum term for a first time
19 offender to life imprisonment. If the subsequent felony offense
20 does not carry a minimum sentence as a first time offender, the
21 person is punishable by imprisonment in the custody of the
22 Department of Corrections for a term in the range of four (4) years
23 to life imprisonment. Felony offenses relied upon shall not have
24 arisen out of the same transaction or occurrence or series of events

1 closely related in time and location. Nothing in this section shall
2 abrogate or affect the punishment by death in all crimes now or
3 hereafter made punishable by death.

4 D. A previous conviction for possession of a controlled
5 dangerous substance pursuant to Section 2-402 of Title 63 of the
6 Oklahoma Statutes, or the equivalent law for possession of a
7 controlled dangerous substance from any other jurisdiction, may not
8 be used to enhance punishment pursuant to this section of law.

9 E. ~~Every person who, having previously been convicted of a~~
10 ~~felony other than a felony enumerated in Section 571 of Title 57 of~~
11 ~~the Oklahoma Statutes, is convicted of a second or subsequent felony~~
12 ~~for:~~

13 1. ~~Uttering a subscription on instrument as that of one with~~
14 ~~the same name, as provided in Section 1592 of this title;~~

15 2. ~~Receiving or concealing stolen property, as provided in~~
16 ~~Section 1713 of this title;~~

17 3. ~~False personation of another, as provided in Section 1531 of~~
18 ~~this title;~~

19 4. ~~Unauthorized use of a motor vehicle, as provided in Section~~
20 ~~4-102 of Title 47 of the Oklahoma Statutes;~~

21 5. ~~Grand larceny, as provided in Section 1705 of this title;~~

22 6. ~~False declaration of ownership to a pawnbroker, as provided~~
23 ~~in Section 1512 of Title 59 of the Oklahoma Statutes;~~

1 ~~7. Forgery in the second degree, as provided in Section 1577 of~~
2 ~~this title;~~

3 ~~8. Receiving, possessing or concealing a stolen vehicle, as~~
4 ~~provided in Section 4-103 of Title 47 of the Oklahoma Statutes; or~~

5 ~~9. Larceny of merchandise from a retailer, as provided in~~
6 ~~Section 1731 of this title,~~

7 ~~is punishable by imprisonment in the custody of the Department of~~
8 ~~Corrections for a term of not more than twice the maximum sentence~~
9 ~~that could have been imposed for a first conviction of the current~~
10 ~~offense Notwithstanding subsections A, B and C of this section, a~~

11 ~~previous conviction for a felony shall not be used to enhance~~
12 ~~punishment pursuant to this section for a second or subsequent~~
13 ~~felony conviction and is punishable by imprisonment in the custody~~
14 ~~of the Department of Corrections for a term not to exceed the~~
15 ~~maximum sentence that could have been imposed for the first~~
16 ~~conviction. This subsection shall not apply to any felony~~
17 ~~conviction for:~~

18 ~~1. A felony enumerated in Section 571 of Title 57 of the~~
19 ~~Oklahoma Statutes;~~

20 ~~2. A felony enumerated in Section 644 of this title;~~

21 ~~3. Any offense that would require registration as a sex~~
22 ~~offender pursuant to the Sex Offender Registration Act;~~

23 ~~4. A felony enumerated in Section 1685 of this title;~~

1 5. A felony enumerated in subsection B of Section 11-904 of
2 Title 47 of the Oklahoma Statutes; or

3 6. Any equivalent law enumerated in this paragraph from another
4 jurisdiction.

5 SECTION 2. AMENDATORY 22 O.S. 2011, Section 982a, as
6 last amended by Section 1, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
7 2020, Section 982a), is amended to read as follows:

8 Section 982a. A. 1. Any time within sixty (60) months after
9 the initial sentence is imposed or within sixty (60) months after
10 probation has been revoked, the court imposing sentence or
11 revocation of probation may modify such sentence or revocation by
12 directing that another sentence be imposed, if the court is
13 satisfied that the best interests of the public will not be
14 jeopardized; provided, however, the court shall not impose a
15 deferred sentence. Any application for sentence modification that
16 is filed and ruled upon beyond twelve (12) months of the initial
17 sentence being imposed must be approved by the district attorney who
18 shall provide written notice to any victims in the case which is
19 being considered for modification.

20 2. The court imposing sentence may modify the sentence of any
21 offender who was originally sentenced for a drug charge and ordered
22 to complete the Drug Offender Work Camp at the Bill Johnson
23 Correctional Facility and direct that another sentence be imposed,
24 if the court is satisfied that the best interests of the public will

1 not be jeopardized; provided, however, the court shall not impose a
2 deferred sentence. An application for sentence modification
3 pursuant to this paragraph may be filed and ruled upon beyond the
4 initial sixty-month time period provided for in paragraph 1 of this
5 subsection.

6 3. This section shall not apply to convicted felons who have
7 been in confinement in any state or federal prison system for any
8 previous felony conviction during the ten-year period preceding the
9 date that the sentence this section applies to was imposed.

10 Further, without the consent of the district attorney, this section
11 shall not apply to sentences imposed pursuant to a plea agreement or
12 jury verdict.

13 B. The court imposing the sentence may modify the sentence of
14 any offender sentenced to life without parole for an offense other
15 than a violent crime, as enumerated in Section 571 of Title 57 of
16 the Oklahoma Statutes, who has served at least ten (10) years of the
17 sentence in the custody of the Department of Corrections upon a
18 finding that the best interests of the public will not be
19 jeopardized. Provided; however, prior to granting a sentence
20 modification under the provisions of this subsection, the court
21 shall provide notice of the hearing to determine sentence
22 modification to the victim or representative of the victim and shall
23 allow the victim or representative of the victim the opportunity to
24 provide testimony at the hearing. The court shall consider the

1 testimony of the victim or representative of the victim when
2 rendering a decision to modify the sentence of an offender.

3 C. For purposes of judicial review, upon court order or written
4 request from the sentencing judge, the Department of Corrections
5 shall provide the court imposing sentence or revocation of probation
6 with a report to include a summary of the assessed needs of the
7 offender, any progress made by the offender in addressing his or her
8 assessed needs, and any other information the Department can supply
9 on the offender. The court shall consider such reports when
10 modifying the sentence or revocation of probation. The court shall
11 allow the Department of Corrections at least twenty (20) days after
12 receipt of a request or order from the court to prepare the required
13 reports.

14 D. If the court considers modification of the sentence or
15 revocation of probation, a hearing shall be made in open court after
16 receipt of the reports required in subsection C of this section.
17 The clerk of the court imposing sentence or revocation of probation
18 shall give notice of the judicial review hearing to the Department
19 of Corrections, the offender, the legal counsel of the offender, and
20 the district attorney of the county in which the offender was
21 convicted upon receipt of the reports. Such notice shall be mailed
22 at least twenty-one (21) days prior to the hearing date and shall
23 include a copy of the report and any other written information to be
24 considered at the judicial review hearing.

1 E. If an appeal is taken from the original sentence or from a
2 revocation of probation which results in a modification of the
3 sentence or modification to the revocation of probation of the
4 offender, such sentence may be further modified in the manner
5 described in paragraph 1 of subsection A of this section within
6 sixty (60) months after the receipt by the clerk of the district
7 court of the mandate from the Supreme Court or the Court of Criminal
8 Appeals.

9 F. 1. Notwithstanding the provisions of subsections A, C or D
10 of this section, each court shall resentence persons, upon a finding
11 that the person was sentenced, whether by trial or plea, to an
12 enhanced term greater than the maximum sentence for a first
13 conviction of the offense or offenses and the person:

14 a. was sentenced with an enhancement that is no longer
15 allowable pursuant to subsection E of Section 51.1 of
16 Title 21 of the Oklahoma Statutes and is currently
17 -serving a sentence of imprisonment, or

18 b. was sentenced with an enhancement that is no longer
19 allowable pursuant to Section 2-401, 2-403, 2-404, 2-
20 406, 2-407 or 2-415 of Title 63 of the Oklahoma
21 Statutes, or

22 c. had their suspended sentence revoked pursuant to the
23 provisions of subsection G of Section 991b of this
24 title, or

1 d. had their deferred sentence accelerated pursuant to
2 the provisions of subsection K of Section 991c of this
3 title.

4 2. A hearing shall not be conducted to modify a sentence
5 pursuant to this subsection unless requested by the person or on the
6 person's behalf.

7 3. If the sentence of a person includes multiple felony
8 convictions, one or more of which were subject to an enhancement
9 that is no longer allowable based on one or more former felony
10 convictions, the court shall reduce the sentence to the length the
11 sentence would have been if the person was sentenced for a first
12 conviction of each current offense based on the current maximum.

13 4. a. The court shall resentence each person set forth in
14 subparagraphs a and b of paragraph 1 of this
15 subsection within three (3) months of receipt of a
16 petition submitted by the person or on the person's
17 benefit.

18 b. The court shall resentence each person set forth in
19 subparagraphs c and d of paragraph 1 of this
20 subsection within six (6) months of receipt of a
21 petition submitted by the person or on the person's
22 benefit.

23 5. A person whose sentence is modified pursuant to this
24 subsection shall be given credit for time served. Resentencing

1 pursuant to this subsection shall not result in the imposition of a
2 term longer than the original sentence.

3 6. A final judgment entered pursuant to this subsection may be
4 appealed to the Court of Criminal Appeals within sixty (60) days
5 from the entry of the denial or final order.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 983c of Title 22, unless there
8 is created a duplication in numbering, reads as follows:

9 A. No later than thirty (30) days after the effective date of
10 this act, the Director of the Department of Corrections shall
11 provide written and oral notice of the amendments to Section 51.1 of
12 Title 21 of the Oklahoma Statutes and Sections 2-401, 2-403, 2-404,
13 2-406, 2-407 and 2-415 of Title 63 of the Oklahoma Statutes to every
14 person in the custody of the Department of Corrections or thereafter
15 admitted. Written and oral notice shall include:

16 1. A recent change in the law may impact individuals serving a
17 sentence that was enhanced based on a prior felony conviction if the
18 sentence of imprisonment is greater than the (current) maximum
19 sentence that could have been imposed for a first conviction of the
20 current offense or offenses; and

21 2. Individuals whose sentence is no longer eligible for an
22 enhancement may have the right to apply for sentence modification
23 pursuant to Section 1080 of Title 22 of the Oklahoma Statutes.

24 B. The Director shall post in common areas:
25

1 1. Copies of Section 51.1 of Title 21 of the Oklahoma Statutes
2 and a list of offenses that are not impacted by the statutory change
3 pursuant to subsection E of Section 51.1 of Title 21 of the Oklahoma
4 Statutes; and

5 2. Copies of Sections 2-401, 2-403, 2-404, 2-406, 2-407 and 2-
6 415 of Title 63 of the Oklahoma Statutes.

7 C. Copies of the written notice shall be made available to the
8 public on the Department's website.

9 D. The provisions of this section shall terminate on August 1,
10 2022.

11 SECTION 4. AMENDATORY 22 O.S. 2011, Section 991b, as
12 last amended by Section 3, Chapter 459, O.S.L. 2019 (22 O.S. Supp.
13 2020, Section 991b), is amended to read as follows:

14 Section 991b. A. Whenever a sentence has been suspended by the
15 court after conviction of a person for any crime, the suspended
16 sentence of the person may not be revoked, in whole or part, for any
17 cause unless a petition setting forth the grounds for such
18 revocation is filed by the district attorney with the clerk of the
19 sentencing court and competent evidence justifying the revocation of
20 the suspended sentence is presented to the court at a hearing to be
21 held for that purpose within twenty (20) days after the entry of the
22 plea of not guilty to the petition, unless waived by both the state
23 and the defendant. The ~~State of Oklahoma~~ state may dismiss the
24 petition without prejudice one time upon good cause shown to the

1 court, provided that any successor petition must be filed within
2 forty-five (45) days of the date of the dismissal of the petition.

3 B. Whenever a sentence has been suspended by the court after
4 conviction of a person for any crime, the suspended sentence of the
5 person may not be revoked in whole for a technical violation unless
6 a petition setting forth the grounds for such revocation is filed by
7 the district attorney with the clerk of the sentencing court and
8 competent evidence justifying the revocation of the suspended
9 sentence is presented to the court at a hearing to be held for that
10 purpose within twenty (20) days after the entry of the plea of not
11 guilty to the petition, unless waived by both the state and the
12 defendant. The ~~State of Oklahoma~~ state may dismiss the petition
13 without prejudice one time upon good cause shown to the court;
14 provided, that any successor petition must be filed within forty-
15 five (45) days of the date of the dismissal of the petition. Any
16 revocation of a suspended sentence based on a technical violation
17 shall not exceed six (6) months for a first revocation and five (5)
18 years for a second or subsequent revocation.

19 C. "Technical violation" as used in this section means a
20 violation of the court-imposed rules and conditions of probation,
21 other than:

- 22 1. Committing or being arrested for a new crime;
- 23 2. Attempting to falsify a drug screen, or three or more failed
24 drug or alcohol screens within a three-month period;

1 3. Failing to pay restitution;

2 4. Tampering with an electronic monitoring device;

3 5. Failing to initially report or missing assigned reporting
4 requirements for an excess of sixty (60) days;

5 6. Unlawfully contacting a victim, codefendant or criminal
6 associates;

7 7. Five or more separate and distinct technical violations
8 within a ninety-day period; or

9 8. Any violation of the Specialized Sex Offender Rules.

10 D. 1. The Department of Corrections shall develop a matrix of
11 technical violations and sanctions to address violations committed
12 by persons who are being supervised by the Department. The
13 Department shall be authorized to use a violation response and
14 intermediate sanction process based on the sanction matrix to apply
15 to any technical violations of probationers. Within four (4)
16 working days of the discovery of the violation, the probation
17 officer shall initiate the violation response and intermediate
18 sanction process. The sentencing judge may authorize any
19 recommended sanctions, which may include, but are not limited to: ~~u~~
20 short-term jail or lockup, day treatment, program attendance,
21 community service, outpatient or inpatient treatment, monetary
22 fines, curfews, ignition interlock devices on vehicles, ~~r~~ or a one-
23 time referral to a term of confinement of six (6) months in an
24 intermediate revocation facility operated by the Department of

1 Corrections; provided, upon approval of the district attorney, a
2 person may be sanctioned to serve additional terms of confinement in
3 an intermediate revocation facility. The probation officer shall
4 complete a sanction form, which shall specify the technical
5 violation, sanction, and the action plan to correct the noncompliant
6 behavior resulting in the technical violation. The probation
7 officer shall refer to the sanctioning matrix to determine the
8 supervision, treatment, and sanctions appropriate to address the
9 noncompliant behavior. The probation officer shall refer the
10 violation information and recommended response with a sanction plan
11 to the Department of Corrections to be heard by a hearing officer.
12 The Department of Corrections shall develop a sanction matrix,
13 forms, policies and procedures necessary to implement this
14 provision. The Department of Corrections shall establish procedures
15 to hear responses to technical violations and review sanction plans
16 including the following:

- 17 a. hearing officers shall report through a chain of
18 command separate from that of the supervising
19 probation officers,
- 20 b. the Department shall provide the offender written
21 notice of the violation, the evidence relied upon, and
22 the reason the sanction was imposed,
- 23 c. the hearing shall be held unless the offender waives
24 the right to the hearing,

1 d. hearings shall be electronically recorded, and

2 e. the Department shall provide to judges and district
3 attorneys a record of all violations and actions taken
4 pursuant to this subsection.

5 2. The hearing officer shall determine based on a preponderance
6 of the evidence whether a technical violation occurred. Upon a
7 finding that a technical violation occurred, the hearing officer may
8 order the offender to participate in the recommended sanction plan
9 or may modify the plan. Offenders who accept the sanction plan
10 shall sign a violation response sanction form, and the hearing
11 officer shall then impose the sanction. Failure of the offender to
12 comply with the imposed sanction plan shall constitute a violation
13 of the rules and conditions of supervision that may result in a
14 revocation proceeding. If an offender does not voluntarily accept
15 the recommended sanction plan, the Department shall either impose
16 the sanction and allow the offender to appeal to the district court,
17 or request a revocation proceeding as provided by law. Every
18 administrative hearing and sanction imposed by the Department shall
19 be appealable to the district court.

20 3. Absent a finding of willful nonpayment by the offender, the
21 failure of an offender to pay fines and costs may not serve as a
22 basis for revocation, excluding restitution.

23 E. 1. Where one of the grounds for revocation is the failure
24 of the defendant to make restitution as ordered, the Department of

1 Corrections shall forward to the district attorney all information
2 pertaining to the failure of the defendant to make timely
3 restitution as ordered by the court, and the district attorney shall
4 file a petition setting forth the grounds for revocation.

5 2. The defendant ordered to make restitution can petition the
6 court at any time for remission or a change in the terms of the
7 order of restitution if the defendant undergoes a change of
8 condition which materially affects the ability of the defendant to
9 comply with the order of the court.

10 3. At the hearing, if one of the grounds for the petition for
11 revocation is the failure of the defendant to make timely
12 restitution as ordered by the court, the court will hear evidence
13 and if it appears to the satisfaction of the court from such
14 evidence that the terms of the order of restitution create a
15 manifest hardship on the defendant or the immediate family of the
16 defendant, the court may cancel all or any part of the amount still
17 due, or modify the terms or method of payment. Provided, if the
18 court determines that a reduction in the restitution still due is
19 warranted, the court shall equally apply the same percentage
20 reduction to any court-ordered monetary obligation owed by the
21 defendant including, but not limited to, fines, court costs and
22 costs of incarceration.

23 F. The court may revoke a portion of the sentence and leave the
24 remaining part not revoked, but suspended for the remainder of the

1 term of the sentence, and under the provisions applying to it. The
2 person whose suspended sentence is being considered for revocation
3 at the hearing shall have the right to be represented by counsel, to
4 present competent evidence in his or her own behalf and to be
5 confronted by the witnesses against the defendant. Any order of the
6 court revoking the suspended sentence, in whole or in part, shall be
7 subject to review on appeal, as in other appeals of criminal cases.
8 Provided, however, that if the crime for which the suspended
9 sentence is given was a felony, the defendant may be allowed bail
10 pending appeal. If the reason for revocation be that the defendant
11 committed a felony, the defendant shall not be allowed bail pending
12 appeal.

13 G. Notwithstanding the provisions of subsections A and B of
14 this section, when the suspended sentence of a person is being
15 considered for revocation for an offense where the penalty has
16 subsequently been lowered to a misdemeanor or to a shorter term or
17 the enhancement applied to their sentence is no longer allowable
18 pursuant to subsection E of Section 51.1 of Title 21 of the Oklahoma
19 Statutes or pursuant to Sections 2-401, 2-403, 2-404, 2-407 or 2-415
20 of Title 63 of the Oklahoma Statutes, the sentence shall be modified
21 to a term that does not exceed the current maximum sentence.

22 SECTION 5. AMENDATORY 22 O.S. 2011, Section 991c, as
23 last amended by Section 2, Chapter 46, O.S.L. 2020 (22 O.S. Supp.
24 2020, Section 991c), is amended to read as follows:

1 Section 991c. A. Upon a verdict or plea of guilty or upon a
2 plea of nolo contendere, but before a judgment of guilt, the court
3 may, without entering a judgment of guilt and with the consent of
4 the defendant, defer further proceedings upon the specific
5 conditions prescribed by the court not to exceed a seven-year
6 period, except as authorized under subsection B of this section.
7 The court shall first consider restitution among the various
8 conditions it may prescribe. The court may also consider ordering
9 the defendant to:

10 1. Pay court costs;

11 2. Pay an assessment in lieu of any fine authorized by law for
12 the offense;

13 3. Pay any other assessment or cost authorized by law;

14 4. Engage in a term of community service without compensation,
15 according to a schedule consistent with the employment and family
16 responsibilities of the defendant;

17 5. County jail confinement for a period not to exceed ninety
18 (90) days or the maximum amount of jail time provided for the
19 offense, if it is less than ninety (90) days;

20 6. Pay an amount as reimbursement for reasonable attorney fees,
21 to be paid into the court fund, if a court-appointed attorney has
22 been provided to the defendant;

23 7. Be supervised in the community for a period not to exceed
24 eighteen (18) months, unless a petition alleging violation of any

1 condition of deferred judgment is filed during the period of
2 supervision. As a condition of any supervision, the defendant shall
3 be required to pay a supervision fee of Forty Dollars (\$40.00) per
4 month. The supervision fee shall be waived in whole or part by the
5 supervisory agency when the accused is indigent. No person shall be
6 denied supervision based solely on the inability of the person to
7 pay a fee;

8 8. Pay into the court fund a monthly amount not exceeding Forty
9 Dollars (\$40.00) per month during any period during which the
10 proceedings are deferred when the defendant is not to be supervised
11 in the community. The total amount to be paid into the court fund
12 shall be established by the court and shall not exceed the amount of
13 the maximum fine authorized by law for the offense;

14 9. Make other reparations to the community or victim as
15 required and deemed appropriate by the court;

16 10. Order any conditions which can be imposed for a suspended
17 sentence pursuant to paragraph 1 of subsection A of Section 991a of
18 this title; or

19 11. Any combination of the above provisions.

20 However, unless under the supervision of the district attorney,
21 the offender shall be required to pay Forty Dollars (\$40.00) per
22 month to the district attorney during the first two (2) years of
23 probation to compensate the district attorney for the costs incurred
24 during the prosecution of the offender and for the additional work
25

1 of verifying the compliance of the offender with the rules and
2 conditions of his or her probation. The district attorney may waive
3 any part of this requirement in the best interests of justice. The
4 court shall not waive, suspend, defer or dismiss the costs of
5 prosecution in its entirety. However, if the court determines that
6 a reduction in the fine, costs and costs of prosecution is
7 warranted, the court shall equally apply the same percentage
8 reduction to the fine, costs and costs of prosecution owed by the
9 offender.

10 B. When the court has ordered restitution as a condition of
11 supervision as provided for in subsection A of this section and that
12 condition has not been satisfied, the court may, at any time prior
13 to the termination or expiration of the supervision period, order an
14 extension of supervision for a period not to exceed three (3) years.

15 C. In addition to any conditions of supervision provided for in
16 subsection A of this section, the court shall, in the case of a
17 person before the court for the offense of operating or being in
18 control of a motor vehicle while the person was under the influence
19 of alcohol, other intoxicating substance, or a combination of
20 alcohol and another intoxicating substance, or who is before the
21 court for the offense of operating a motor vehicle while the ability
22 of the person to operate such vehicle was impaired due to the
23 consumption of alcohol, require the person to participate in an
24 alcohol and drug substance abuse evaluation program offered by a

1 facility or qualified practitioner certified by the Department of
2 Mental Health and Substance Abuse Services for the purpose of
3 evaluating the receptivity to treatment and prognosis of the person.
4 The court shall order the person to reimburse the facility or
5 qualified practitioner for the evaluation. The Department of Mental
6 Health and Substance Abuse Services shall establish a fee schedule,
7 based upon the ability of a person to pay, provided the fee for an
8 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
9 evaluation shall be conducted at a certified facility, the office of
10 a qualified practitioner or at another location as ordered by the
11 court. The facility or qualified practitioner shall, within
12 seventy-two (72) hours from the time the person is assessed, submit
13 a written report to the court for the purpose of assisting the court
14 in its determination of conditions for deferred sentence. No
15 person, agency or facility operating an alcohol and drug substance
16 abuse evaluation program certified by the Department of Mental
17 Health and Substance Abuse Services shall solicit or refer any
18 person evaluated pursuant to this subsection for any treatment
19 program or alcohol and drug substance abuse service in which the
20 person, agency or facility has a vested interest; however, this
21 provision shall not be construed to prohibit the court from ordering
22 participation in or any person from voluntarily utilizing a
23 treatment program or alcohol and drug substance abuse service
24 offered by such person, agency or facility. Any evaluation report

1 submitted to the court pursuant to this subsection shall be handled
2 in a manner which will keep the report confidential from review by
3 the general public. Nothing contained in this subsection shall be
4 construed to prohibit the court from ordering judgment and sentence
5 in the event the defendant fails or refuses to comply with an order
6 of the court to obtain the evaluation required by this subsection.

7 As used in this subsection, "qualified practitioner" means a person
8 with at least a bachelor's degree in substance abuse treatment,
9 mental health or a related health care field and at least two (2)
10 years of experience in providing alcohol abuse treatment, other drug
11 abuse treatment, or both alcohol and other drug abuse treatment who
12 is certified each year by the Department of Mental Health and
13 Substance Abuse Services to provide these assessments. However, any
14 person who does not meet the requirements for a qualified
15 practitioner as defined herein, but who has been previously
16 certified by the Department of Mental Health and Substance Abuse
17 Services to provide alcohol or drug treatment or assessments, shall
18 be considered a qualified practitioner provided all education,
19 experience and certification requirements stated herein are met by
20 September 1, 1995. The court may also require the person to
21 participate in one or both of the following:

22 1. An alcohol and drug substance abuse course, pursuant to
23 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and
24

1 2. A victims impact panel program, as defined in subsection H
2 of Section 991a of this title, if such a program is offered in the
3 county where the judgment is rendered. The defendant shall be
4 required to pay a fee of Seventy-five Dollars (\$75.00) as set by the
5 governing authority of the program and approved by the court to the
6 victims impact panel program to offset the cost of participation by
7 the defendant, if in the opinion of the court the defendant has the
8 ability to pay such fee.

9 D. Upon completion of the conditions of the deferred judgment,
10 and upon a finding by the court that the conditions have been met
11 and all fines, fees, and monetary assessments have been paid as
12 ordered, the defendant shall be discharged without a court judgment
13 of guilt, and the court shall order the verdict or plea of guilty or
14 plea of nolo contendere to be expunged from the record and the
15 charge shall be dismissed with prejudice to any further action. The
16 procedure to expunge the record of the defendant shall be as
17 follows:

18 1. All references to the name of the defendant shall be deleted
19 from the docket sheet;

20 2. The public index of the filing of the charge shall be
21 expunged by deletion, mark-out or obliteration;

22 3. Upon expungement, the court clerk shall keep a separate
23 confidential index of case numbers and names of defendants which
24 have been obliterated pursuant to the provisions of this section;

1 4. No information concerning the confidential file shall be
2 revealed or released, except upon written order of a judge of the
3 district court or upon written request by the named defendant to the
4 court clerk for the purpose of updating the criminal history record
5 of the defendant with the Oklahoma State Bureau of Investigation;
6 and

7 5. Defendants qualifying under Section 18 of this title may
8 petition the court to have the filing of the indictment and the
9 dismissal expunged from the public index and docket sheet. This
10 section shall not be mutually exclusive of Section 18 of this title.

11 Records expunged pursuant to this subsection shall be sealed to
12 the public but not to law enforcement agencies for law enforcement
13 purposes. Records expunged pursuant to this subsection shall be
14 admissible in any subsequent criminal prosecution to prove the
15 existence of a prior conviction or prior deferred judgment without
16 the necessity of a court order requesting the unsealing of such
17 records.

18 E. The provisions of subsection D of this section shall be
19 retroactive.

20 F. Whenever a judgment has been deferred by the court according
21 to the provisions of this section, deferred judgment may not be
22 accelerated for any technical violation unless a petition setting
23 forth the grounds for such acceleration is filed by the district
24 attorney with the clerk of the sentencing court and competent

1 evidence justifying the acceleration of the judgment is presented to
2 the court at a hearing to be held for that purpose. The hearing
3 shall be held not more than twenty (20) days after the entry of the
4 plea of not guilty to the petition, unless waived by both the state
5 and the defendant. Any acceleration of a deferred sentence based on
6 a technical violation shall not exceed ninety (90) days for a first
7 acceleration or five (5) years for a second or subsequent
8 acceleration.

9 G. Upon any violation of the deferred judgment, other than a
10 technical violation, the court may enter a judgment of guilt and
11 proceed as provided in Section 991a of this title or may modify any
12 condition imposed. Provided, however, if the deferred judgment is
13 for a felony offense, and the defendant commits another felony
14 offense, the defendant shall not be allowed bail pending appeal.

15 H. The deferred judgment procedure described in this section
16 shall apply only to defendants who have not been previously
17 convicted of a felony offense and have not received more than one
18 deferred judgment for a felony offense within the ten (10) years
19 previous to the commission of the pending offense.

20 Provided, the court may waive this prohibition upon written
21 application of the district attorney. Both the application and the
22 waiver shall be made a part of the record of the case.

23 I. The deferred judgment procedure described in this section
24 shall not apply to defendants found guilty or who plead guilty or
25

1 nolo contendere to a sex offense required by law to register
2 pursuant to the Sex Offenders Registration Act.

3 J. All defendants who are supervised pursuant to this section
4 shall be subject to the sanction process as established in
5 subsection D of Section 991b of this title.

6 K. Notwithstanding the provisions of subsections F and G of
7 this section, a person who is being considered for an acceleration
8 of a deferred judgment for an offense where the penalty has
9 subsequently been lowered to a misdemeanor shall only be subject to
10 a judgment and sentence that would have been applicable had he or
11 she committed the offense after July 1, 2017, or the enhancement
12 applied to their sentence is no longer allowable pursuant to
13 subsection E of Section 51.1 of Title 21 of the Oklahoma Statutes or
14 pursuant to Sections 2-401, 2-403, 2-404, 2-406, 2-407 or 2-415 of
15 Title 63 of the Oklahoma Statutes.

16 SECTION 6. AMENDATORY 22 O.S. 2011, Section 1080, is
17 amended to read as follows:

18 Section 1080. Any person who has been convicted of, or
19 sentenced for, a crime and who claims:

20 ~~(a) that~~ 1. That the conviction or the sentence was in
21 violation of the Constitution of the United States or the
22 Constitution or laws of this state;

23 ~~(b) that~~ 2. That the court was without jurisdiction to impose
24 sentence;

1 ~~(c) that~~ 3. That the sentence exceeds the maximum authorized by
2 law;

3 ~~(d) that~~ 4. That there exists evidence of material facts, not
4 previously presented and heard, that requires vacation of the
5 conviction or sentence in the interest of justice;

6 ~~(e) that~~ 5. That his sentence has expired, his suspended
7 sentence, probation, parole, or conditional release unlawfully
8 revoked, or he is otherwise unlawfully held in custody or other
9 restraint; ~~or~~

10 ~~(f) that~~ 6. That the conviction or sentence is otherwise
11 subject to collateral attack upon any ground of alleged error
12 heretofore available under any common law, statutory or other writ,
13 motion, petition, proceeding or remedy; or

14 7. That the penalty for the offense of which the defendant was
15 convicted has subsequently been lowered to a misdemeanor or shorter
16 term and the defendant was sentenced to a penalty that exceeds the
17 current maximum sentence authorized by law for the offense;
18 may institute a proceeding under ~~this act~~ the Post-Conviction
19 Procedure Act in the court in which the judgment and sentence on
20 conviction was imposed to secure the appropriate relief. Excluding
21 a timely appeal, ~~this act~~ the Post-Conviction Procedure Act
22 encompasses and replaces all common law and statutory methods of
23 challenging a conviction or sentence. Nothing in this section shall
24

1 be construed to create a civil cause of action related to a change
2 in the law governing the conviction of an applicant.

3 SECTION 7. AMENDATORY 22 O.S. 2011, Section 1083, as
4 amended by Section 1, Chapter 216, O.S.L. 2014 (22 O.S. Supp. 2020,
5 Section 1083), is amended to read as follows:

6 Section 1083. A. Within thirty (30) days after the docketing
7 of the application, or within any further time the court may fix,
8 the state shall respond by answer or by motion which may be
9 supported by affidavits. When an applicant asserts a claim of
10 ineffective assistance of counsel, the state shall have ninety (90)
11 days after the docketing of the application to respond by answer or
12 by motion. In considering the application, the court shall take
13 account of substance, regardless of defects of form. If the
14 application is not accompanied by the record of the proceedings
15 challenged therein, the respondent shall file with its answer the
16 record or portions thereof that are material to the questions raised
17 in the application; or such records may be ordered by the court.
18 The court may also allow depositions and affidavits for good cause
19 shown.

20 B. When a court is satisfied, on the basis of the application,
21 the answer or motion of respondent, and the record, that the
22 applicant is not entitled to post-conviction relief and no purpose
23 would be served by any further proceedings, it may order the
24 application dismissed or grant leave to file an amended application.

1 Disposition on the pleadings and record is not proper if there
2 exists a material issue of fact. The judge assigned to the case
3 should not dispose of it on the basis of information within his
4 personal knowledge not made a part of the record.

5 C. The court may grant a motion by either party for summary
6 disposition of the application when it appears from the response and
7 pleadings that there is no genuine issue of material fact and the
8 moving party is entitled to judgment as a matter of law. An order
9 disposing of an application without a hearing shall state the
10 court's findings and conclusions regarding the issues presented.

11 D. When an application is filed pursuant to paragraph 7 of
12 Section 1080 of this title, the court shall presume that the
13 applicant is entitled to relief unless the state proves by clear and
14 convincing evidence that the provision of law governing the
15 conviction of the applicant has not changed or the record rebuts the
16 claim by the applicant.

17 SECTION 8. AMENDATORY 57 O.S. 2011, Section 332.2, as
18 last amended by Section 5, Chapter 459, O.S.L. 2019 (57 O.S. Supp.
19 2020, Section 332.2), is amended to read as follows:

20 Section 332.2. A. The Pardon and Parole Board, which shall
21 meet only on the call of the Chairman, is authorized, if and when an
22 application made to the Governor for a reprieve, commutation,
23 parole, pardon, or other act of clemency is certified thereto by the
24 Governor, to examine into the merits of said application and make

1 recommendations to the Governor in relation thereto, said
2 recommendation being advisory to the Governor and not binding
3 thereon.

4 B. Any consideration for commutation shall be made only after
5 application is made to the Pardon and Parole Board pursuant to the
6 procedures set forth in this section. The Pardon and Parole Board
7 shall provide a copy of the application to the district attorney,
8 the victim or representative of the victim and the Office of the
9 Attorney General within ten (10) business days of receipt of such
10 application.

11 C. An application for commutation, other than those provided
12 for in subsection F of this section, must be sent to the trial
13 officials, who shall have twenty (20) business days to provide a
14 written recommendation or protest prior to consideration of the
15 application. Trial officials shall include:

16 1. The current elected judge of the court where the conviction
17 was had;

18 2. The current elected district attorney of the jurisdiction
19 where the conviction was had; or

20 3. The chief or head administrative officer of the arresting
21 law enforcement agency.

22 D. In cases resolved prior to the tenure of the present
23 officeholders, the recommendation or protest of persons holding such
24

1 offices at the time of conviction may also be considered by the
2 Board.

3 E. The recommendation for commutation of a sentence by a trial
4 official may include the following:

5 1. A statement that the penalty now appears to be excessive;

6 2. A recommendation of a definite term now considered by the
7 official as just and proper; and

8 3. A statement of the reasons for the recommendation based upon
9 facts directly related to the case which were not available to the
10 court or jury at the time of the trial or based upon there having
11 been a statutory change in penalty for the crime which makes the
12 original penalty appear excessive.

13 F. The Pardon and Parole Board shall establish an accelerated,
14 single-stage commutation docket for any applicant who has been
15 convicted of a crime that has been reclassified from a felony to a
16 misdemeanor under Oklahoma law and for any applicant who received an
17 enhanced sentence based on one or more prior felony convictions that
18 is no longer allowable pursuant to subsection E of Section 51.1 of
19 Title 21 of the Oklahoma Statutes or pursuant to Sections 2-401, 2-
20 403, 2-404, 2-406, 2-407 or 2-415 of Title 63 of the Oklahoma
21 Statutes, if the inmate is serving a term of imprisonment greater
22 than the maximum sentence that could have been imposed for a first
23 offense of the current offense. The Pardon and Parole Board shall
24 be empowered to recommend to the Governor for commutation, by

1 majority vote, any commutation application placed on the
2 accelerated, single-stage commutation docket that meets the
3 eligibility criteria provided above. The Department of Corrections
4 shall certify a list of potentially eligible inmates to the Pardon
5 and Parole Board within thirty (30) days ~~of the effective date of~~
6 ~~this act~~ before November 1, 2019.

7 G. The Pardon and Parole Board shall schedule the application
8 on a commutation docket in compliance with the notice requirements
9 set forth herein. The Board shall provide the victim or
10 representative of the victim at least twenty (20) days to offer
11 recommendations or protests before consideration of the application.

12 H. Applications for commutation shall be given impartial review
13 as required in Section 10 of Article VI of the Oklahoma
14 Constitution.

15 I. Any consideration for pardon shall be made only after
16 application is made to the Pardon and Parole Board. Upon receipt of
17 an application for pardon, the Board shall provide a copy of the
18 application to the district attorney, the victim or representative
19 of the victim and the Office of the Attorney General within twenty
20 (20) business days of receipt of such application. The district
21 attorney and the victim or representative of the victim shall have
22 twenty (20) business days to provide written recommendation or
23 protest prior to the consideration of the application. The Board
24

1 shall schedule the application on a pardon docket in compliance with
2 the notice requirements set forth herein.

3 J. In accordance with Section 10 of Article VI of the Oklahoma
4 Constitution, the Board shall communicate to the Legislature, at
5 each regular session, by providing a summary of the activities of
6 the Board. This summary shall include, but not be limited to, the
7 following Board activity:

8 1. The approval or recommendation rates of the Board for both
9 violent and nonviolent offenses;

10 2. The parole approval rates for each individual Board member
11 for both violent and nonviolent offenses; and

12 3. The percentage of public comments to and personal
13 appearances before the Board including victim protests and personal
14 appearances, district attorney protests and personal appearances,
15 and delegate recommendations and personal appearances on behalf of
16 the offender.

17 This summary shall be made available to the public through
18 publication on the website of the Pardon and Parole Board.

19 K. The Pardon and Parole Board shall provide a copy of their
20 regular docket and administrative parole docket to each district
21 attorney in this state at least twenty (20) days before such docket
22 is considered by the Board, or in the case of a supplemental,
23 addendum or special docket, at least ten (10) days before such
24 docket is considered by the Board, and shall notify the district

1 attorney of any recommendations for commutations or paroles no later
2 than twenty (20) days after the docket is considered by the Board.

3 L. The Pardon and Parole Board shall notify all victims or
4 representatives of the victim in writing at least twenty (20) days
5 before an inmate is considered by the Board provided the Board has
6 received a request from the victim or representatives of the victim
7 for notice. The Board shall provide all victims or representatives
8 of the victim with the date, time and place of the scheduled meeting
9 and rules for attendance and providing information or input to the
10 Board regarding the inmate or the crime. If requested by the victim
11 or representatives of the victim, the Board shall allow the victim
12 or representatives of the victim to testify at the parole hearing of
13 the inmate for at least five (5) minutes.

14 M. The Pardon and Parole Board shall notify all victims or
15 representatives of the victim in writing of the decision of the
16 Board no later than twenty (20) days after the inmate is considered
17 by the Board.

18 N. Any notice required to be provided to the victims or the
19 representatives of the victim shall be mailed by first-class mail to
20 the last-known address of the victim or representatives of the
21 victim. It is the responsibility of the victims or representatives
22 of the victim to provide the Pardon and Parole Board a current
23 mailing address. The victim-witness coordinator of the district
24 attorney shall assist the victims or representatives of the victim

1 with supplying their address to the Board if they wish to be
2 notified. Upon failure of the Pardon and Parole Board to notify a
3 victim who has requested notification and has provided a current
4 mailing address, the final decision of the Board may be voidable,
5 provided, the victim who failed to receive notification requests a
6 reconsideration hearing within thirty (30) days of the
7 recommendation by the Board for parole. The Pardon and Parole Board
8 may reconsider previous action and may rescind a recommendation if
9 deemed appropriate as determined by the Board.

10 O. For purposes of this section, "victim" shall mean all
11 persons who have suffered direct or threatened physical or emotional
12 harm, or financial loss as the result of the commission or attempted
13 commission of criminally injurious conduct, and "representatives of
14 the victim" shall mean those persons who are members of the
15 immediate family of the victim, including stepparents, stepbrothers,
16 stepsisters, and stepchildren.

17 P. All meetings of the Pardon and Parole Board shall comply
18 with Section 301 et seq. of Title 25 of the Oklahoma Statutes;
19 provided, that the Board shall have the authority to limit the
20 number of persons attending in support of, or in opposition to, any
21 inmate being considered for parole and shall have the authority to
22 exclude persons from attendance in accordance with prison security
23 regulations and the capacity of the meeting room. Persons excluded
24 from attending the meeting under this provision shall be informed of

1 their right to be informed of the vote of the Board in accordance
2 with Section 312 of Title 25 of the Oklahoma Statutes. Provided
3 further, nothing in this section shall be construed to prevent any
4 member of the press or any public official from attending any
5 meeting of the Pardon and Parole Board, except as provided by the
6 Oklahoma Open Meeting Act.

7 Q. All victim information maintained by the Department of
8 Corrections and the Pardon and Parole Board shall be confidential
9 and shall not be released.

10 SECTION 9. AMENDATORY 63 O.S. 2011, Section 2-401, as
11 last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp.
12 2020, Section 2-401), is amended to read as follows:

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

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

22 2. To create, distribute, transport with intent to distribute
23 or dispense, or possess with intent to distribute, a counterfeit
24 controlled dangerous substance; or

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

5 B. Any person who violates the provisions of this section with
6 respect to:

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

22 2. Any other controlled dangerous substance classified in
23 Schedule III, IV, V or marijuana, upon conviction, shall be guilty
24 of a felony and shall be sentenced to a term of imprisonment in the
25

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

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

23 C. 1. Except when authorized by the Food and Drug
24 Administration of the United States Department of Health and Human
25

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. 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 not
3 less than two (2) years nor more than ten (10) years;

4 2. For a second violation of this section, a term of
5 imprisonment in the custody of the Department of Corrections for not
6 less than four (4) years nor more than twenty (20) years; or

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

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

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

1 2. For a second or subsequent violation of this section, a term
2 of imprisonment in the custody of the Department of Corrections, or
3 by the imposition of a fine or by both, not exceeding thrice that
4 authorized by the appropriate provision of this section.

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

8 G. 1. Except as authorized by the Uniform Controlled Dangerous
9 Substances Act, it shall be unlawful for any person to manufacture
10 or attempt to manufacture any controlled dangerous substance or
11 possess any substance listed in Section 2-322 of this title or any
12 substance containing any detectable amount of pseudoephedrine or its
13 salts, optical isomers or salts of optical isomers, iodine or its
14 salts, optical isomers or salts of optical isomers, hydriodic acid,
15 sodium metal, lithium metal, anhydrous ammonia, phosphorus, or
16 organic solvents with the intent to use that substance to
17 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, or possessing any
21 substance listed in this subsection or Section 2-322 of this title,
22 upon conviction, is guilty of a felony and shall be punished by
23 imprisonment for not less than seven (7) years nor more than life
24 and by a fine of not less than Fifty Thousand Dollars (\$50,000.00),

1 which shall be in addition to other punishment provided by law and
2 shall not be imposed in lieu of other punishment. The possession of
3 any amount of anhydrous ammonia in an unauthorized container shall
4 be prima facie evidence of intent to use such substance to
5 manufacture a controlled dangerous substance.

6 3. 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~~7~~ and
16 derivatives of ecgonine or their salts have been
17 removed,

18 (2) cocaine, its salts, optical and geometric
19 isomers~~7~~ and salts of isomers,

20 (3) ecgonine, its derivatives, their salts, isomers~~7~~
21 and salts of isomers, or

22 (4) any compound, mixture~~7~~ or preparation which
23 contains any quantity of any of the substances
24
25

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 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 100
15 grams or more of a mixture or substance containing a
16 detectable amount of any analogue of N-phenyl-N-[1-(2-
17 phenylethyl)-4-piperidinyl] propanamide,
- 18 g. one thousand (1,000) kilograms or more of a mixture or
19 substance containing a detectable amount of marihuana
20 or one thousand (1000) or more marihuana plants
21 regardless of weight, or
- 22 h. fifty (50) grams or more of methamphetamine, its
23 salts, isomers, and salts of its isomers or 500 grams
24 or more of a mixture or substance containing a

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

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

23 5. ~~Any person who has been convicted of manufacturing or~~
24 ~~attempting to manufacture methamphetamine pursuant to the provisions~~

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

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

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

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

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

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

14 SECTION 10. AMENDATORY 63 O.S. 2011, Section 2-403, is
15 amended to read as follows:

16 Section 2-403. A. Any person found guilty of larceny, burglary
17 or theft of controlled dangerous substances is guilty of a felony
18 punishable by imprisonment for a period not to exceed ten (10)
19 years. ~~A second or subsequent offense under this subsection is a~~
20 ~~felony punishable by imprisonment for not less than ten (10) years.~~
21 ~~Convictions for second or subsequent violations of this subsection~~
22 ~~shall not be subject to statutory provisions for suspended~~
23 ~~sentences, deferred sentences or probation.~~

1 B. Any person found guilty of robbery or attempted robbery of
2 controlled dangerous substances from a practitioner, manufacturer,
3 distributor or agent thereof as defined in Section 2-101 of this
4 title is guilty of a felony punishable by imprisonment for a period
5 of not less than five (5) years, ~~and such sentence shall not be~~
6 ~~subject to statutory provisions for suspended sentences, deferred~~
7 ~~sentences or probation. A second or subsequent offense under this~~
8 ~~subsection is a felony punishable by life imprisonment. Convictions~~
9 ~~for second or subsequent offenses of this subsection shall not be~~
10 ~~subject to statutory provisions for suspended sentences, deferred~~
11 ~~sentences or probation.~~

12 SECTION 11. AMENDATORY 63 O.S. 2011, Section 2-404, is
13 amended to read as follows:

14 Section 2-404. A. It shall be unlawful for any person:

15 1. Who is subject to the requirements of Article III of ~~this~~
16 ~~act~~ the Uniform Controlled Dangerous Substances Act to distribute or
17 dispense a controlled dangerous substance in violation of Section 2-
18 308 of this title;

19 2. Who is a registrant to manufacture, distribute, or dispense
20 a controlled dangerous substance not authorized by his registration
21 to another registrant or other authorized person;

22 3. To omit, remove, alter, or obliterate a symbol required by
23 the Federal Controlled Substances Act or ~~this act~~ the Uniform
24 Controlled Dangerous Substances Act;

1 4. To refuse or fail to make, keep, or furnish any record,
2 notification, order form, statement, invoice, or information
3 required under ~~this act~~ the Uniform Controlled Dangerous Substances
4 Act;

5 5. To refuse any entry into any premises or inspection
6 authorized by ~~this act~~ the Uniform Controlled Dangerous Substances
7 Act; or

8 6. To keep or maintain any store, shop, warehouse, dwelling
9 house, building, vehicle, boat, aircraft, or any place whatever,
10 which is resorted to by persons using controlled dangerous
11 substances in violation of ~~this act~~ the Uniform Controlled Dangerous
12 Substances Act for the purpose of using such substances, or which is
13 used for the keeping or selling of the same in violation of ~~this act~~
14 the Uniform Controlled Dangerous Substances Act.

15 B. Any person who violates this section is punishable by a
16 civil fine of not more than One Thousand Dollars (\$1,000.00);
17 provided, that, if the violation is prosecuted by an information or
18 indictment which alleges that the violation was committed knowingly
19 or intentionally, and the trier of fact specifically finds that the
20 violation was committed knowingly or intentionally, such person is
21 guilty of a felony punishable by imprisonment for not more than five
22 (5) years, and a fine of not more than Ten Thousand Dollars
23 (\$10,000.00), except that if such person is a corporation it shall
24 be subject to a civil penalty of not more than One Hundred Thousand

1 Dollars (\$100,000.00). The fine provided for in this subsection
2 shall be in addition to other punishments provided by law and shall
3 not be in lieu of other punishment.

4 C. ~~Any person convicted of a second or subsequent violation of~~
5 ~~this section is punishable by a term of imprisonment twice that~~
6 ~~otherwise authorized and by twice the fine otherwise authorized.~~
7 ~~The fine provided for in this subsection shall be in addition to~~
8 ~~other punishments provided by law and shall not be in lieu of other~~
9 ~~punishment.~~

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

15 SECTION 12. AMENDATORY 63 O.S. 2011, Section 2-406, is
16 amended to read as follows:

17 Section 2-406. A. It shall be unlawful for any registrant
18 knowingly or intentionally:

19 1. To distribute, other than by dispensing or as otherwise
20 authorized by ~~this act~~ the Uniform Controlled Dangerous Substances
21 Act, a controlled dangerous substance classified in Schedules I or
22 II, in the course of his legitimate business, except pursuant to an
23 order form as required by Section 2-308 of this title;

1 2. To use in the course of the manufacture or distribution of a
2 controlled dangerous substance a registration number which is
3 fictitious, revoked, suspended or issued to another person;

4 3. To acquire or obtain possession of a controlled dangerous
5 substance by misrepresentation, fraud, forgery, deception or
6 subterfuge;

7 4. To furnish false or fraudulent material information in, or
8 omit any material information from, any application, report, or
9 other document required to be kept or filed under ~~this act~~ the
10 Uniform Controlled Dangerous Substances Act, or any record required
11 to be kept by ~~this act~~ the Uniform Controlled Dangerous Substances
12 Act; and

13 5. To make, distribute, or possess any punch, die, plate,
14 stone, or other thing designed to print, imprint, or reproduce the
15 trademark, trade name, or other identifying mark, imprint, or device
16 of another or any likeness of any of the foregoing upon any drug or
17 container or labeling thereof so as to render such drug a
18 counterfeit controlled dangerous substance.

19 B. Any person who violates this section is guilty of a felony
20 punishable by imprisonment for not more than twenty (20) years or a
21 fine of not more than Two Hundred Fifty Thousand Dollars
22 (\$250,000.00), or both.

23 C. ~~Any person convicted of a second or subsequent violation of~~
24 ~~this section is punishable by a term of imprisonment twice that~~

1 ~~otherwise authorized and by twice the fine otherwise authorized.~~
2 ~~Convictions for second or subsequent violations of this section~~
3 ~~shall not be subject to statutory provisions for suspended~~
4 ~~sentences, deferred sentences, or probation.~~

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

10 SECTION 13. AMENDATORY 63 O.S. 2011, Section 2-407, as
11 amended by Section 7, Chapter 305, O.S.L. 2015 (63 O.S. Supp. 2020,
12 Section 2-407), is amended to read as follows:

13 Section 2-407. A. No person shall obtain or attempt to obtain
14 any preparation excepted from the provisions of the Uniform
15 Controlled Dangerous Substances Act pursuant to Section 2-313 of
16 this title in a manner inconsistent with the provisions of paragraph
17 1 of subsection B of Section 2-313 of this title, or a controlled
18 dangerous substance or procure or attempt to procure the
19 administration of a controlled dangerous substance:

- 20 1. By fraud, deceit, misrepresentation, or subterfuge;
- 21 2. By the forgery of, alteration of, adding any information to
22 or changing any information on a prescription or of any written
23 order;
- 24 3. By the concealment of a material fact;

1 4. By the use of a false name or the giving of a false address;

2 or

3 5. By knowingly failing to disclose the receipt of a controlled
4 dangerous substance or a prescription for a controlled dangerous
5 substance of the same or similar therapeutic use from another
6 practitioner within the previous thirty (30) days.

7 B. Except as authorized by ~~this act~~ the Uniform Controlled
8 Dangerous Substances Act, a person shall not manufacture, create,
9 deliver, or possess with intent to manufacture, create, or deliver
10 or possess a prescription form, an original prescription form, or a
11 counterfeit prescription form. This shall not apply to the
12 legitimate manufacture or delivery of prescription forms, or a
13 person acting as an authorized agent of the practitioner.

14 C. Information communicated to a physician in an effort
15 unlawfully to procure a controlled dangerous substance, or
16 unlawfully to procure the administration of any such drug, shall not
17 be deemed a privileged communication.

18 D. Any person who violates this section is guilty of a felony
19 punishable by imprisonment for not more than ten (10) years, by a
20 fine of not more than Ten Thousand Dollars (\$10,000.00), or by both
21 such fine and imprisonment. ~~A second or subsequent offense under~~
22 ~~this section is a felony punishable by imprisonment for not less~~
23 ~~than four (4) years nor more than twenty (20) years, by a fine of~~

1 ~~not more than Twenty Thousand Dollars (\$20,000.00), or by both such~~
2 ~~fine and imprisonment.~~

3 ~~E. Convictions for second or subsequent violations of this~~
4 ~~section shall not be subject to statutory provisions for suspended~~
5 ~~sentences, deferred sentences, or probation.~~

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

11 SECTION 14. AMENDATORY 63 O.S. 2011, Section 2-415, as
12 last amended by Section 40, Chapter 25, O.S.L. 2019 (63 O.S. Supp.
13 2020, Section 2-415), is amended to read as follows:

14 Section 2-415. A. The provisions of the Trafficking in Illegal
15 Drugs Act shall apply to persons convicted of violations with
16 respect to the following substances:

- 17 1. Marihuana;
- 18 2. Cocaine or coca leaves;
- 19 3. Heroin;
- 20 4. Amphetamine or methamphetamine;
- 21 5. Lysergic acid diethylamide (LSD);
- 22 6. Phencyclidine (PCP);
- 23 7. Cocaine base, commonly known as "crack" or "rock";

1 8. 3,4-Methylenedioxy methamphetamine, commonly known as
2 "ecstasy" or MDMA;

3 9. Morphine;

4 10. Oxycodone;

5 11. Hydrocodone;

6 12. Benzodiazepine; or

7 13. Fentanyl and its analogs and derivatives.

8 B. Except as otherwise authorized by the Uniform Controlled
9 Dangerous Substances Act, it shall be unlawful for any person to:

10 1. Knowingly distribute, manufacture, bring into this state or
11 possess a controlled substance specified in subsection A of this
12 section in the quantities specified in subsection C of this section;

13 2. Possess any controlled substance with the intent to
14 manufacture a controlled substance specified in subsection A of this
15 section in quantities specified in subsection C of this section; or

16 3. Use or solicit the use of services of a person less than
17 eighteen (18) years of age to distribute or manufacture a controlled
18 dangerous substance specified in subsection A of this section in
19 quantities specified in subsection C of this section.

20 Violation of this section shall be known as "trafficking in
21 illegal drugs". Separate types of controlled substances described
22 in subsection A of this section when possessed at the same time in
23 violation of any provision of this section shall constitute a
24 separate offense for each substance.

1 Any person who commits the conduct described in paragraph 1, 2
2 or 3 of this subsection and represents the quantity of the
3 controlled substance to be an amount described in subsection C of
4 this section shall be punished under the provisions appropriate for
5 the amount of controlled substance represented, regardless of the
6 actual amount.

7 C. In the case of a violation of the provisions of subsection B
8 of this section, involving:

9 1. Marihuana:

10 a. twenty-five (25) pounds or more of a mixture or
11 substance containing a detectable amount of marihuana
12 shall be punishable by a fine of not less than Twenty-
13 five Thousand Dollars (\$25,000.00) and not more than
14 One Hundred Thousand Dollars (\$100,000.00), or

15 b. one thousand (1,000) pounds or more of a mixture or
16 substance containing a detectable amount of marihuana
17 shall be deemed aggravated trafficking punishable by a
18 fine of not less than One Hundred Thousand Dollars
19 (\$100,000.00) and not more than Five Hundred Thousand
20 Dollars (\$500,000.00);

21 2. Cocaine, coca leaves or cocaine base:

22 a. twenty-eight (28) grams or more of a mixture or
23 substance containing a detectable amount of cocaine,
24 coca leaves or cocaine base shall be punishable by a

1 fine of not less than Twenty-five Thousand Dollars
2 (\$25,000.00) and not more than One Hundred Thousand
3 Dollars (\$100,000.00),

4 b. three hundred (300) grams or more of a mixture or
5 substance containing a detectable amount of cocaine,
6 coca leaves or cocaine base shall be punishable by a
7 fine of not less than One Hundred Thousand Dollars
8 (\$100,000.00) and not more than Five Hundred Thousand
9 Dollars (\$500,000.00), or

10 c. four hundred fifty (450) grams or more of a mixture or
11 substance containing a detectable amount of cocaine,
12 coca leaves or cocaine base shall be deemed aggravated
13 trafficking punishable by a fine of not less than One
14 Hundred Thousand Dollars (\$100,000.00) and not more
15 than Five Hundred Thousand Dollars (\$500,000.00);

16 3. Heroin:

17 a. ten (10) grams or more of a mixture or substance
18 containing a detectable amount of heroin shall be
19 punishable by a fine of not less than Twenty-five
20 Thousand Dollars (\$25,000.00) and not more than Fifty
21 Thousand Dollars (\$50,000.00), or

22 b. twenty-eight (28) grams or more of a mixture or
23 substance containing a detectable amount of heroin
24 shall be punishable by a fine of not less than Fifty
25

1 Thousand Dollars (\$50,000.00) and not more than Five
2 Hundred Thousand Dollars (\$500,000.00);

3 4. Amphetamine or methamphetamine:

4 a. twenty (20) grams or more of a mixture or substance
5 containing a detectable amount of amphetamine or
6 methamphetamine shall be punishable by a fine of not
7 less than Twenty-five Thousand Dollars (\$25,000.00)
8 and not more than Two Hundred Thousand Dollars
9 (\$200,000.00),

10 b. two hundred (200) grams or more of a mixture or
11 substance containing a detectable amount of
12 amphetamine or methamphetamine shall be punishable by
13 a fine of not less than Fifty Thousand Dollars
14 (\$50,000.00) and not more than Five Hundred Thousand
15 Dollars (\$500,000.00), or

16 c. four hundred fifty (450) grams or more of a mixture or
17 substance containing a detectable amount of
18 amphetamine or methamphetamine shall be deemed
19 aggravated trafficking punishable by a fine of not
20 less than Fifty Thousand Dollars (\$50,000.00) and not
21 more than Five Hundred Thousand Dollars (\$500,000.00);

22 5. Lysergic acid diethylamide (LSD):

23 a. one (1) gram or more of a mixture or substance
24 containing a detectable amount of lysergic acid

1 diethylamide (LSD) shall be punishable by a fine of
2 not less than Fifty Thousand Dollars (\$50,000.00) and
3 not more than One Hundred Thousand Dollars
4 (\$100,000.00), or

- 5 b. ten (10) grams or more of a mixture or substance
6 containing a detectable amount of lysergic acid
7 diethylamide (LSD) shall be punishable by a fine of
8 not less than One Hundred Thousand Dollars
9 (\$100,000.00) and not more than Two Hundred Fifty
10 Thousand Dollars (\$250,000.00);

11 6. Phencyclidine (PCP):

- 12 a. twenty (20) grams or more of a substance containing a
13 mixture or substance containing a detectable amount of
14 phencyclidine (PCP) shall be punishable by a fine of
15 not less than Twenty Thousand Dollars (\$20,000.00) and
16 not more than Fifty Thousand Dollars (\$50,000.00), or
17 b. one hundred fifty (150) grams or more of a substance
18 containing a mixture or substance containing a
19 detectable amount of phencyclidine (PCP) shall be
20 punishable by a fine of not less than Fifty Thousand
21 Dollars (\$50,000.00) and not more than Two Hundred
22 Fifty Thousand Dollars (\$250,000.00);

23 7. Methylenedioxy methamphetamine:
24
25

- 1 a. thirty (30) tablets or ten (10) grams of a mixture or
2 substance containing a detectable amount of 3,4-
3 Methylenedioxy methamphetamine shall be trafficking
4 punishable by a term of imprisonment in the custody of
5 the Department of Corrections not to exceed twenty
6 (20) years and by a fine of not less than Twenty-five
7 Thousand Dollars (\$25,000.00) and not more than One
8 Hundred Thousand Dollars (\$100,000.00), or
9 b. one hundred (100) tablets or thirty (30) grams of a
10 mixture or substance containing a detectable amount of
11 3,4-Methylenedioxy methamphetamine shall be aggravated
12 trafficking punishable by a term of imprisonment in
13 the custody of the Department of Corrections of not
14 less than two (2) years nor more than life by a fine
15 of not less than One Hundred Thousand Dollars
16 (\$100,000.00) and not more than Five Hundred Thousand
17 Dollars (\$500,000.00);

18 8. Morphine: One thousand (1,000) grams or more of a mixture
19 containing a detectable amount of morphine shall be trafficking
20 punishable by a term of imprisonment in the custody of the
21 Department of Corrections not to exceed twenty (20) years and by a
22 fine of not less than One Hundred Thousand Dollars (\$100,000.00) and
23 not more than Five Hundred Thousand Dollars (\$500,000.00);
24

1 9. Oxycodone: Four hundred (400) grams or more of a mixture
2 containing a detectable amount of oxycodone shall be trafficking
3 punishable by a term of imprisonment in the custody of the
4 Department of Corrections not to exceed twenty (20) years and by a
5 fine of not less than One Hundred Thousand Dollars (\$100,000.00) and
6 not more than Five Hundred Thousand Dollars (\$500,000.00);

7 10. Hydrocodone: Three thousand seven hundred and fifty
8 (3,750) grams or more of a mixture containing a detectable amount of
9 hydrocodone shall be trafficking punishable by a term of
10 imprisonment in the custody of the Department of Corrections not to
11 exceed twenty (20) years and by a fine of not less than One Hundred
12 Thousand Dollars (\$100,000.00) and not more than Five Hundred
13 Thousand Dollars (\$500,000.00);

14 11. Benzodiazepine: Five hundred (500) grams or more of a
15 mixture containing a detectable amount of benzodiazepine shall be
16 trafficking punishable by a term of imprisonment not to exceed
17 twenty (20) years and by a fine of not less than One Hundred
18 Thousand Dollars (\$100,000.00) and not more than Five Hundred
19 Thousand Dollars (\$500,000.00); and

20 12. Fentanyl and its analogs and derivatives: One (1) gram or
21 more of a mixture containing fentanyl or carfentanil, or any
22 fentanyl analogs or derivatives shall be punishable by a fine of not
23 less than One Hundred Thousand Dollars (\$100,000.00) and not more
24 than Five Hundred Thousand Dollars (\$500,000.00).

1 D. Any person who violates the provisions of this section with
2 respect to a marihuana, cocaine, coca leaves, cocaine base, heroin,
3 amphetamine or methamphetamine in a quantity specified in paragraphs
4 1, 2, 3 and 4 of subsection C of this section shall, in addition to
5 any fines specified by this section, be punishable by a term of
6 imprisonment as follows:

7 ~~1. For trafficking, a first violation of this section, a term~~
8 ~~of imprisonment in the custody of the Department of Corrections not~~
9 ~~to exceed twenty (20) years;~~

10 ~~2. For trafficking, a second violation of this section, a term~~
11 ~~of imprisonment in the Department of Corrections of not less than~~
12 ~~four (4) years nor more than life, for which the person shall serve~~
13 ~~fifty percent (50%) of the sentence before being eligible for parole~~
14 ~~consideration;~~

15 ~~3. For trafficking, a third or subsequent violation of this~~
16 ~~section, a term of imprisonment in the custody of the Department of~~
17 ~~Corrections of not less than twenty (20) years nor more than life,~~
18 ~~of which the person shall serve fifty percent (50%) of the sentence~~
19 ~~before being eligible for parole consideration.~~

20 Persons convicted of trafficking shall not be eligible for
21 earned credits or any other type of credits which have the effect of
22 reducing the length of sentence to less than fifty percent (50%) of
23 the sentence imposed; and
24

1 If the person is convicted of aggravated trafficking as provided
2 in subparagraph b of paragraph 1 of subsection C of this section,
3 subparagraph c of paragraph 2 of subsection C of this section or
4 subparagraph c of paragraph 4 of subsection C of this section, a
5 sentence of imprisonment in the custody of the Department of
6 Corrections as provided in ~~paragraphs 1, 2 and 3~~ of subsection D of
7 this section, of which the person shall serve eighty-five percent
8 (85%) of such sentence before being eligible for parole
9 consideration.

10 E. ~~The penalties specified in subsections C and D of this~~
11 ~~section are subject to the enhancements enumerated in subsections E~~
12 ~~and F of Section 2-401 of this title.~~

13 F. 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 1-2530.9 of this title and the assessment pursuant to
18 Section 2-503.2 of this title.

19 SECTION 15. This act shall become effective November 1, 2021.
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