

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2451

BY: CAMPBELL

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING 63 O.S. 1991, SECTION 2-401, WHICH RELATES TO PROHIBITIONS AND PENALTIES FOR CONTROLLED DANGEROUS SUBSTANCE OFFENSES; ENHANCING PENALTIES FOR CERTAIN VIOLATIONS COMMITTED ON, IN OR AROUND CERTAIN SCHOOLS, PARKS AND RECREATION AREAS; REPEALING 63 O.S. 1991, SECTIONS 2-401A AND 2-418, WHICH RELATE TO CONTROLLED DANGEROUS SUBSTANCE OFFENSES COMMITTED ON, IN OR AROUND CERTAIN SCHOOLS, PARKS AND RECREATION AREAS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2-401, is amended to read as follows:

Section 2-401. A. Except as authorized by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, it shall be unlawful for any person:

1. To distribute, dispense, or solicit the use of or use the services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or possess

with intent to manufacture, distribute, or dispense, a controlled dangerous substance;

2. To create, distribute, or possess with intent to distribute, a counterfeit controlled dangerous substance; or

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

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

1. A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than five (5) years nor more than life and a fine of not more than One Hundred Thousand Dollars (\$100,000.00). Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

2. Any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than two (2) years nor more than life and a fine of not more than Twenty Thousand Dollars (\$20,000.00). Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

3. A substance classified in Schedule V, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than One Thousand Dollars (\$1,000.00);

4. An imitation controlled substance as defined by Section 2-101 of this title, upon conviction, shall be guilty of a

misdemeanor and shall be sentenced to a term of imprisonment in the county jail for a period of not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00). A person convicted of a second violation of the provisions of this paragraph shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than Five Thousand Dollars (\$5,000.00); or

5. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance. Any person convicted of violating the provisions of this paragraph is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term not to exceed life and a fine of not more than Twenty-five Thousand Dollars (\$25,000.00). A second or subsequent conviction for the violation of the provisions of this paragraph is a felony punishable by imprisonment in the State Penitentiary for a term not less than ten (10) years and more than life and a fine of not more than One Hundred Thousand Dollars (\$100,000.00).

C. Any person convicted of a second or subsequent felony violation of the provisions of this section, except for paragraphs 4 and 5 of subsection B of this section or subsection E of this section, shall be punished by a term of imprisonment twice that otherwise authorized and by twice the fine otherwise authorized. Convictions for second or subsequent violations of the provisions of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

D. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute or dispense a controlled dangerous substance or by

distributing a controlled dangerous substance to a person under eighteen (18) years of age is punishable by twice the fine and by twice the imprisonment otherwise authorized.

E. Any person who violates the provisions of this section by distributing or possessing with intent to distribute a controlled dangerous substance to a person, in or on, or within one thousand (1,000) feet of the real property comprising a public or private elementary or secondary school, public vocational school, public or private college or university, or other institution of higher education, recreation center or public park, including state parks and recreation areas, shall be punished by:

1. For a first offense, a term of imprisonment, or by the imposition of a fine or by both, not exceeding twice that authorized by the appropriate provision of this section and shall serve a minimum of fifty percent (50%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence; or

2. For a second or subsequent offense, a term of imprisonment not exceeding three times that authorized by the appropriate provision of this section and shall serve a minimum of ninety percent (90%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence.

~~E.~~ F. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance. Any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, upon conviction, is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for not less than twenty (20) years nor more than life and by a fine of not less than Fifty Thousand Dollars (\$50,000.00).

Said sentence shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation. A person convicted of a second or subsequent violation of the provisions of this subsection shall be required to serve at least ten (10) years of such person's sentence before becoming eligible for parole or any early release from incarceration.

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

SECTION 2. REPEALER 63 O.S. 1991, Sections 2-401A and 2-418, are hereby repealed.

SECTION 3. This act shall become effective September 1, 1992.

43-2-7334 MCD