STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 739

By: Helton and Monson of the Senate

and

Kirby, Caldwell, Benson, Maddox (Jim), Johnson (Rob), Thornbrugh and Maddux (Elmer) of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments and public health and safety; amending 21 O.S. 1991, Section 1289.23, and 63 O.S. 1991, Sections 2-401, as amended by Section 1, Chapter 86, O.S.L. 1992, and 2-402, as last amended by Section 1, Chapter 311, O.S.L. 1993 (63 O.S. Supp. 1993, Sections 2-401 and 2-402), which relate to off-duty peace officers, controlled dangerous substances and penalties for prohibited acts; providing for reserve peace officers to carry a weapon when not on active duty; stating certain conditions; clarifying scope of authority; making certain acts unlawful; expanding list of acts for which an enhanced punishment applies; prohibiting certain acts within one thousand feet of public housing project; providing penalty; defining term; directing dissemination of information; providing for noncodification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1289.23, is amended to read as follows:

Section 1289.23 A. A full-time duly appointed peace officer who is certified by the Council on Law Enforcement Education and Training, pursuant to the provisions of Section 3311 of Title 70 of the Oklahoma Statutes, is hereby authorized to carry a weapon

certified and approved by his employing agency during periods when he is not on active duty.

B. When an off-duty officer carries a certified weapon, the officer shall be in law enforcement uniform prescribed by the employing agency or when not wearing the prescribed law enforcement uniform shall be required:

1. To have his official peace officers badge, Commission Card and C.L.E.E.T. Certification Card on his person at all times when carrying a weapon certified and approved by the employing agency; and

2. To keep the authorized weapon concealed from view at all times except when the weapon is used within the guidelines, rules and regulations established by the employing agency.

C. Nothing in this section shall be construed to alter or amend the provisions of Section 1272.1 of this title or expand the duties, authority or jurisdiction of any peace officer.

D. A reserve peace officer who has satisfactorily completed a basic police course of not less than one hundred twenty (120) hours of accredited instruction for reserve police officers and reserve deputies from the Council on Law Enforcement Education and Training or a course of study approved by the Council may carry a certified weapon when such officer is off duty provided:

1. The officer has been granted written authorization signed by the director of the employing agency; and

2. The employing agency shall maintain a current list of any officers authorized to carry a certified weapon while said officers are off duty, and shall provide a copy of such list to the Council on Law Enforcement Education and Training. Any change to said list shall be made in writing and mailed to the Council on Law Enforcement Education and Training within five (5) days.

E. When an off-duty reserve peace officer carries a certified weapon, the officer shall be in law enforcement uniform prescribed by the employing agency or when not wearing the prescribed law enforcement uniform shall be required:

1. To have his official peace officer's badge, Commission Card, C.L.E.E.T. Certification Card and written authorization on

his person at all times when carrying a weapon certified and approved by the employing agency; and

2. To keep the authorized weapon concealed from view at all times except when the weapon is used within the guidelines, rules and regulations established by the employing agency.

F. Nothing in subsection D of this section shall be construed to alter or amend the provisions of Section 1750.2 of Title 59 of the Oklahoma Statutes or expand the duties or authority of any reserve peace officer.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 2-401, as amended by Section 1, Chapter 86, O.S.L. 1992 (63 O.S. Supp. 1993, 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, transport with intent to distribute or dispense, or solicit the use of or use the services of a person less than eighteen (18) years of age to cultivate, distribute or dispense a controlled dangerous substance or possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance;

2. To create, distribute, transport with intent to distribute or dispense, 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, transport with intent to distribute or dispense or cultivate 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 any provision of this section by transporting with intent to distribute or dispense, 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, or public housing project 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.

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.

G. For purposes of this section and Section 2-402 of this title, "public housing project" means any dwelling or accommodations operated as a state or federally subsidized multifamily housing project by any housing authority, nonprofit corporation or municipal developer or housing projects created pursuant to the Oklahoma Housing Authority Act, Section 1051 et seq. of this title.

SECTION 3. The Attorney General shall disseminate information to the public relating to the penalties for committing controlled substance crimes in or near schools, parks and public housing projects or in the presence of minor children under twelve (12) years of age. The Attorney General shall draft a plain language

version of this section and Section 2-402 of this title describing in a clear coherent manner using words with common everyday meanings the content of these provisions. The Attorney General shall publicize and disseminate the plain language version as widely as practicable, including distributing the version to school boards, local governments, and administrators and occupants of public housing projects.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2-402, as last amended by Section 1, Chapter 311, O.S.L. 1993 (63 O.S. Supp. 1993, Section 2-402), is amended to read as follows:

Section 2-402. A. 1. It shall be unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this act.

2. It shall be unlawful for any person to purchase any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act pursuant to Section 2-313 of this title in an amount or within a time interval other than that permitted by Section 2-313 of this title.

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

1. Any Schedule I or II substance, except marihuana or a substance included in subsection D of Section 2-206 <u>of this title</u>, is guilty of a felony punishable by imprisonment for not less than two (2) years nor more than ten (10) years. A second or subsequent violation of this section with respect to Schedule I or II substance, except marihuana or a substance included in subsection D of Section 2-206 <u>of this title</u>, is a felony punishable by imprisonment for not less than four (4) years nor more than twenty (20) years.

2. Any Schedule III, IV or V substance, marihuana, a substance included in subsection D of Section 2-206 <u>of this title</u>, or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act is guilty of a misdemeanor punishable by confinement for not more than one (1) year. A

second or subsequent violation of this section with respect to any Schedule III, IV or V substance, marihuana, a substance included in subsection D of Section 2-206 of this title, or any preparation excepted from the provisions of the Uniform Controlled Dangerous Substances Act is a felony punishable by imprisonment for not less than two (2) nor more than ten (10) years.

C. Any person who violates any provision of this section by possessing or purchasing a controlled dangerous substance from any 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, public housing project or in the presence of any child under twelve (12) years of age, 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.

SECTION 5. The provisions of Section 3 of this act shall not be codified in the Oklahoma Statutes.

SECTION 6. Section 1 of this act shall become effective September 1, 1994.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.