

SHORT TITLE: Controlled dangerous substances; requiring death penalty for trafficking-related homicide; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 417

By: Long (Lewis)

AS INTRODUCED

An Act relating to controlled dangerous substances; amending 63 O.S. 1991, Section 2-415, as amended by Section 1, Chapter 21, O.S.L. 1993 (63 O.S. Supp. 1994, Section 2-415), which relates to penalties for trafficking in illegal drugs; establishing trafficking-related homicide penalties; authorizing life, life without parole, and death; requiring certain procedure to impose death penalty for trafficking-related homicide; requiring certain notice and hearing; providing for aggravating and mitigating factors; stating aggravating and mitigating factors; requiring special findings; prohibiting death penalty for person under eighteen years of age at time of offense; providing other exceptions to imposition of death penalty for trafficking-related homicide; requiring certain instructions to jury on discrimination; requiring signed statement from jurors; authorizing imposition of sentence other than death; requiring review of death sentence to Court of Criminal Appeals; stating duties of Court upon review; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2-415, as amended by Section 1, Chapter 21, O.S.L. 1993 (63 O.S. Supp. 1994, Section 2-415), is amended to read as follows:

Section 2-415. A. The provisions of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of this title, shall apply to persons convicted of violations with respect to the following substances:

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

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

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

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

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

Violation of this section shall be known as "trafficking in illegal drugs".

Any person who commits the conduct described in paragraph 1, 2 or 3 of this subsection and represents the quantity of the

controlled substance to be an amount described in subsection C of this section shall be punished under the provisions appropriate for the amount of controlled substance represented, regardless of the actual amount.

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

1. Marihuana:

- a. twenty-five (25) pounds or more of a mixture or substance containing a detectable amount of marihuana, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or
- b. one thousand (1,000) pounds or more of a mixture or substance containing a detectable amount of marihuana, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

2. Cocaine or coca leaves:

- a. twenty-eight (28) grams or more of a mixture or substance containing a detectable amount of cocaine or coca leaves, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or
- b. three hundred (300) grams or more of a mixture or substance containing a detectable amount of cocaine or coca leaves, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

3. Heroin:

- a. ten (10) grams or more of a mixture or substance containing a detectable amount of heroin, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or
- b. twenty-eight (28) grams or more of a mixture or substance containing a detectable amount of heroin, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

4. Amphetamine or methamphetamine:

- a. twenty (20) grams or more of a mixture or substance containing a detectable amount of amphetamine or methamphetamine, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than Two Hundred Thousand Dollars (\$200,000.00), or
- b. two hundred (200) grams or more of a mixture or substance containing a detectable amount of amphetamine or methamphetamine, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00);

5. Lysergic acid diethylamide (LSD):

- a. if the quantity involved is not less than fifty (50) dosage units and not more than one thousand (1,000) dosage units, such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or

b. if the quantity involved is more than one thousand (1,000) dosage units, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Two Hundred Fifty Thousand Dollars (\$250,000.00);

6. Phencyclidine (PCP):

a. one (1) ounce or more of a substance containing a mixture or substance containing a detectable amount of phencyclidine (PCP), such violation shall be punishable by a fine of not less than Twenty Thousand Dollars (\$20,000.00) and not more than Fifty Thousand Dollars (\$50,000.00), or

b. eight (8) ounces or more of a substance containing a mixture or substance containing a detectable amount of phencyclidine (PCP), such violation shall be punishable by a fine of not less than Fifty Thousand Dollars (\$50,000.00) and not more than Two Hundred Fifty Thousand Dollars (\$250,000.00); and

7. Cocaine base:

a. five (5) grams or more of a mixture or substance described in paragraph 2 of this subsection which contains cocaine base, such violation shall be punishable by a fine of not less than Twenty-five Thousand Dollars (\$25,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00), or

b. fifty (50) grams or more of a mixture or substance described in paragraph 2 of this subsection which contains cocaine base, such violation shall be punishable by a fine of not less than One Hundred Thousand Dollars (\$100,000.00) and not more than Five Hundred Thousand Dollars (\$500,000.00).

D. Any person who violates the provisions of this section with respect to a controlled substance specified in subsection A of this section in a quantity specified in subsection C of this section shall, in addition to any fines specified by this section, be punishable by a term of imprisonment as follows:

1. Not less than twice the term of imprisonment provided for in Section 2-401 of this title;

2. If the person has previously been convicted of one violation of this section or has been previously convicted of a felony violation of the Uniform Controlled Dangerous Substances Act arising from separate and distinct transactions, not less than three times the term of imprisonment provided for in Section 2-401 of this title; and

3. If the person has previously been convicted of two or more violations of this section or any provision of the Uniform Controlled Dangerous Substances Act which constitutes a felony, or a combination of such violations arising out of separate and distinct transactions, life without parole.

The terms of imprisonment specified in this subsection shall not be subject to statutory provisions for suspension, deferral or probation, or state correctional institution earned credits accruing from and after November 1, 1989, except for the achievement earned credits authorized by subsection F of Section 138 of Title 57 of the Oklahoma Statutes. To qualify for such achievement credits, such inmates must also be in compliance with the standards for Class level 2 behavior, as defined in subsection C of Section 138 of Title 57 of the Oklahoma Statutes.

Persons convicted of violations of this section shall not be eligible for appeal bonds.

E. In addition to the other penalties set forth in this section:

1. Any person engaging in or working in furtherance of any violation of the Trafficking in Illegal Drugs Act or any person engaging in an offense punishable under the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of this title who intentionally kills or counsels, induces, procures, or causes the intentional killing of an individual, and such killing results, shall be sentenced to life, life without parole, or death; and

2. Any person during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for a violation of any provision of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of this title who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any federal, state, or local law enforcement officer engaged in, or on account of, the performance of such officer's duties and such killing results, shall be sentenced to life, life without parole, or death.

F. A person shall be subjected to the penalty of death for any offense of this subsection only in accordance with the provisions of Section 2 of this act.

G. As used in this subsection, the term "law enforcement officer" means a public servant authorized by law or by a governmental agency or the federal government to conduct or engage in the prevention, investigation, prosecution or adjudication of an offense, and include those persons engaged in corrections, probation or parole functions.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1018 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Hearing required. A person shall be subject to the penalty of death for a violation of any offense under the provisions of subsection E of Section 2-415 of Title 63 of the Oklahoma Statutes only in accordance with the provisions of this section.

B. Notice of intent. Whenever the state intends to seek the death penalty for an offense under subsection E of Section 2-415 of Title 63 of the Oklahoma Statutes, the district attorney, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court and serve upon the defendant, a notice stating that the state in the event of a conviction will seek the sentence of death. Such notice shall set forth the aggravating factors enumerated in subsection H of this section and any other aggravating factors which the state will seek to prove as the basis of the death penalty. The court may permit the district attorney to amend this notice for good cause shown.

C. Hearing before court or jury. 1. When the district attorney has filed a notice as required under subsection B of this section and the defendant is found guilty of or pleads to an offense under subsection E of Section 2-415 of Title 63 of the Oklahoma Statutes, the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted:

- a. before the jury which determined the defendant's guilt,
- b. before a jury impaneled for the purpose of the hearing if:
 - (1) the defendant was convicted upon a plea of guilty,
 - (2) the defendant was convicted after a trial before the court sitting without a jury,
 - (3) the jury which determined the defendant's guilt has been discharged for good cause, or

(4) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary, or

c. before the court alone, upon the motion of the defendant and with the approval of the district attorney.

2. A jury impaneled pursuant to subparagraph b of paragraph 1 of this subsection shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate with approval of the court that it shall consist of any number less than twelve members.

D. Proof of aggravating or mitigating factors. Notwithstanding any provision of law, when a defendant is found guilty of or pleads guilty to an offense under subsection E of Section 2-415 of Title 63 of the Oklahoma Statutes, no presentence report shall be prepared. In the sentencing hearing, information may be presented as to matters relating to any of the aggravating or mitigating factors set forth in subsections G and H of this section, or any other mitigating factors or any aggravating factors for which notice has been provided under subsection B of this section. Where information is presented relating to any of the aggravating factors set forth in subsection H of this section, information may be presented relating to any aggravating factors for which notice has been provided under subsection B of this section. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial, or at the trial judge's discretion. Any other information relevant to such mitigating or aggravating factors may be presented by either the district attorney or the defendant, regardless of its admission under the rules governing evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or

misleading the jury. The district attorney and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence if any of the aggravating or mitigating factors and as to appropriateness in that case of imposing a sentence of death. The district attorney shall open the argument. The defendant shall be permitted to reply. The district attorney shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the district attorney, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the evidence.

E. Return of findings. The jury findings, or if there is no jury, the court shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factors set forth in subsection H of this section that are found to exist. If one of the aggravating factors set forth in paragraph 1 of subsection H of this section and another of the aggravating factors set forth in paragraphs 2 through 11 of subsection H of this section is found to exist, a special finding identifying any other aggravating factor for which notice has been provided under subsection B of this section may be returned. A finding with respect to a mitigation factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this subsection, regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factors must be unanimous. If no aggravating factor is found to exist or an aggravating factor set forth in paragraph 1 of subsection H of this section is not found to exist, the court shall impose a sentence other than death,

authorized by law. If an aggravating factor set forth in paragraph 1 subsection H of this section is found to exist or one or more of the other aggravating factors set forth in paragraphs 2 through 11 of subsection H of this section is found to exist, the jury, or if no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend that a sentence of death be imposed rather than a sentence of life imprisonment without the possibility of parole or life. The jury or the court, regardless of its findings with respect to aggravating and mitigating factors, is never required to impose a death sentence and the jury shall be so instructed.

F. Imposition of sentence. Upon the recommendation that the sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. A sentence of death shall not be carried out upon a person who is under eighteen (18) years of age at the time the crime was committed. A sentence of death shall not be carried out upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability either:

1. Cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

2. Lacks the capacity to recognize or understand the facts which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.

G. Mitigating factors. In determining whether a sentence of death is to be imposed on a defendant, the finder of fact shall consider mitigating factors, including the following:

1. The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirement of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge;

2. The defendant was under unusual and substantial duress, regardless of whether the duress was of such degree as to constitute a defense to the charges;

3. The defendant is punishable as a principal in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge;

4. The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of homicide, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing death to any person;

5. The defendant was youthful, although not under eighteen (18) years of age;

6. The defendant did not have a significant prior criminal record;

7. The defendant committed the offense under severe mental or emotional disturbance;

8. Another defendant or defendants, equally culpable in the crime, will not be punished by death;

9. The victim consented to the criminal conduct that resulted in the victim's death; and

10. That other factors in the defendant's background or character mitigate against imposition of the death sentence.

H. Aggravating factors for homicide. If the defendant is found guilty of or pleads guilty to an offense under subsection E of Section 2-415 of Title 63 of the Oklahoma Statutes, the following aggravating factors are the only aggravating factors that shall be considered, unless notice of additional aggravating factors is provided under subsection B of this section.

1. The defendant:

- a. intentionally killed the victim,
- b. intentionally inflicted serious bodily injury which resulted in the death of the victim,
- c. intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim,
- d. intentionally engaged in conduct which the defendant knew would create a grave risk of death to a person, other than one of the participants in the offense and resulted in the death of the victim;

2. The defendant has been convicted of another offense resulting in death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by law;

3. The defendant has previously been convicted of two or more state or federal offenses punishable by a term of imprisonment of more than one (1) year, committed on different occasions, involving a controlled substance;

4. The defendant has previously been convicted of two or more state or federal offenses punishable by a term of imprisonment of more than one (1) year, committed on different occasions, involving the infliction of serious bodily injury upon another person;

5. In the commission of the offense or in escaping apprehension for a violation of subsection E of Section 2-415 of Title 63 of the Oklahoma Statutes, the defendant knowingly created a grave risk of

death to one or more persons in addition to the victim of the offense;

6. The defendant procured the commission of the offense by payment or promise of payment, of anything of pecuniary value;

7. The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value;

8. The defendant committed the offense after substantial planning and premeditation;

9. The victim was particularly vulnerable due to old age, youth or infirmity;

10. The defendant had previously been convicted of violating the provisions of the Uniform Controlled Dangerous Substances Act for which a sentence of five (5) or more years may be imposed or had previously been convicted of any provision of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of Title 63 of the Oklahoma Statutes; and

11. The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

I. Right of defendant to justice without discrimination. In any hearing held before a jury under the provisions of this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or the victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or the victim may be. The jury shall return to the court a certificate signed by each juror that consideration of the race, color, religious beliefs, national origin, or sex of the defendant

or the victim was not involved in reaching each juror's individual decision, and that the individual juror would have made the same recommendations regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or the victim may be.

J. Sentencing in capital cases where death penalty is not imposed or sought. If a person is convicted for an offense under subsection E of section 2-415 of Title 63 of the Oklahoma Statutes and the court does not impose the penalty of death, the court may impose a sentence of life or life imprisonment without the possibility of parole.

K. Appeal in capital cases. 1. In any case in which the sentence of death is imposed pursuant to the provisions of this section, the sentence of death shall be subject to review by the Oklahoma Court of Criminal Appeals, as provided in Section 701.13 of Title 21 of the Oklahoma Statutes, except the provision of paragraph 3 of this subsection shall be in lieu of the provisions of subsection C of Section 701.13 of Title 21 of the Oklahoma Statutes. If a direct appeal be taken by the defendant such appeal may be consolidated with the appeal of the sentence of death.

2. On review of the sentence, the Court of Criminal Appeals may consider the record, the evidence submitted during the trial, the information submitted during sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

3. The Court shall affirm the sentence if it determines that the sentence of death was not imposed under the influence of passion, prejudice or any other arbitrary factor, and, notwithstanding the provisions of paragraph 2 of subsection C of Section 701.13 of Title 21 of the Oklahoma Statutes, the information supports the special findings of the existence of every aggravating factor upon which the sentence was based, together with, or the

failure to find, any mitigating factors as set forth or allowed in this section.

SECTION 3. This act shall become effective November 1, 1995.

45-1-0165

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