

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2939

By: Pope (Tim)

AS INTRODUCED

An Act relating to the Uniform Controlled Dangerous Substances Act; amending 63 O.S. 1991, Section 2-415, as last amended by Section 535, Chapter 133, O.S.L. 1997 (63 O.S. Supp. 1997, Section 2-415), which relates to drug trafficking; modifying range of punishment for certain offenses; requiring certain procedures to be followed; amending 21 O.S. 1991, Section 701.12, which relates to aggravating circumstances for death penalty; adding aggravating circumstance; 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 last amended by Section 535, Chapter 133, O.S.L. 1997 (63 O.S. Supp. 1997, 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 guilty of a felony.

E. Any person sentenced to the custody of the Department of Corrections, with or without postimprisonment supervision, 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~~ H 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 subparagraph b of paragraph 1 of subsection C E of Section 138 of Title 57 of the Oklahoma Statutes.

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

F. Any person who 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, and the current conviction includes a quantity of one of the specified controlled dangerous substances listed in subsection A of this section in an amount that is at least double the greatest amount of the controlled dangerous substance listed in one of the paragraphs of subsection C of this section, shall be punishable by life without parole or death. If the State of Oklahoma elects to seek the death penalty pursuant to this subsection, the state shall be required to comply with all statutes regarding the imposition of the death penalty for the crime of first degree murder.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 701.12, is amended to read as follows:

Section 701.12 Aggravating circumstances shall be:

1. The defendant was previously convicted of a felony involving the use or threat of violence to the person;

2. The defendant knowingly created a great risk of death to more than one person;

3. The defendant committed a violation of Section 2-415 of Title 63 of the Oklahoma Statutes, was previously convicted of two or more violations of that 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, and the current conviction includes a quantity of one of the specified controlled dangerous substances listed in subsection A of Section 2-415 of Title 63 of the Oklahoma Statutes in an amount that is at least double the greatest amount of the controlled dangerous substance listed in one of the paragraphs of subsection C of Section 2-415 of Title 63 of the Oklahoma Statutes,  
and:

- a. the current conviction is undertaken in concert with five or more other persons,
- b. the person occupies a position of an organizer or supervisor, or
- c. the person obtains substantial income or resources from violating the Uniform Controlled Dangerous Substances Act;

4. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;

~~4.~~ 5. The murder was especially heinous, atrocious, or cruel;

~~5.~~ 6. The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;

~~6.~~ 7. The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony;

~~7.~~ 8. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; or

~~8.~~ 9. The victim of the murder was a peace officer as defined by Section 99 of ~~Title 21 of the Oklahoma Statutes~~ this title, or guard of an institution under the control of the Department of Corrections, and such person was killed while in performance of official duty.

SECTION 3. This act shall become effective November 1, 1998.

46-2-9258

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