

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1411

By: Corn

COMMITTEE SUBSTITUTE

(Controlled dangerous substances - amending Section 30, Chapter 4, 1st Extraordinary Session, O.S.L. 1999, as amended by Section 2, Chapter 291, O.S.L. 2000 (21 O.S. Supp. 2000, Section 13.1) - parole eligibility for certain offenders - amending 21 O.S. Section 852.1, as last amended by Section 156, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 852.1) - child endangerment - amending 21 O.S. 1991, Sections 1401 and 1402, as last amended by Sections 240 and 241, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Sections 1401 and 1402) - arson - amending 22 O.S. 1991, Section 1077 - bail allowable upon appeal - amending 63 O.S. 1991, Section 2-401, as last amended by Section 1, Chapter 265, O.S.L. 2000 (63 O.S. Supp. 2000, Section 2-401) - acts prohibited pursuant to the Uniform Controlled Dangerous Substances Act - Drug Eradication and Enforcement Plan Revolving Fund - codification - effective date -

emergency)

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

SECTION 1. AMENDATORY Section 30, Chapter 4, 1st Extraordinary Session, O.S.L. 1999, as amended by Section 2, Chapter 291, O.S.L. 2000 (21 O.S. Supp. 2000, Section 13.1), is amended to read as follows:

Section 13.1 Persons convicted of first degree murder as defined in Section 701.9 of this title, robbery with a dangerous weapon as defined in Section 801 of this title, first degree rape as defined in Section 1115 of this title, first degree arson as defined in Section 1401 of this title, first degree burglary as defined in Section 1436 of this title, bombing as defined in Section 1767.1 of this title, any crime against a child provided for in Section 7115

of Title 10 of the Oklahoma Statutes, forcible sodomy as defined in Section 888 of this title, child pornography as defined in Section 1021.2 or 1021.3 of this title, child prostitution as defined in Section 1030 of this title, lewd molestation of a child as defined in Section 1123 of this title, or drug manufacturing as defined in subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes shall be required to serve not less than eighty-five percent (85%) of any sentence of imprisonment imposed by the judicial system prior to becoming eligible for consideration for parole. Persons convicted of these offenses shall not be eligible for earned credits or any other type of credits which have the effect of reducing the length of the sentence to less than eighty-five percent (85%) of the sentence imposed.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 852.1, as last amended by Section 156, Chapter 5, 1st Extraordinary Session O.S.L. 1999 (21 O.S. Supp. 2000, Section 852.1), is amended to read as follows:

Section 852.1 A. A person who is the parent, guardian, or person having custody or control over a child as defined in Section 7001-1.3 of Title 10 of the Oklahoma Statutes, commits child endangerment when the person knowingly permits physical or sexual abuse of a child or who knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured or attempted to be manufactured as defined in Section 2-101 of Title 63 of the Oklahoma Statutes. However, it is an affirmative defense to this paragraph if the person had a reasonable apprehension that any action to stop the abuse would result in substantial bodily harm to the person or the child.

B. The provisions of this section shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for

the treatment or cure of disease or remedial care for such child. This subsection shall in no way limit or modify the protections afforded said child in Section 852 of Title 21 or Section 7006-1.1 of Title 10 of the Oklahoma Statutes.

C. Any person convicted of violating any provision of this section shall be guilty of a felony punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1401, as last amended by Section 240, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1401), is amended to read as follows:

Section 1401. Any person who willfully and maliciously sets fire to or burns, or by the use of any explosive device, accelerant, ignition device, heat-producing device or substance or while manufacturing or attempting to manufacture a controlled dangerous substance in violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning or destruction of any building or structure or contents thereof, inhabited or occupied by one or more persons, whether the property of that person or another, or who willfully and maliciously sets fire to or burns, or by the use of any explosive device, accelerant, ignition device, heat-producing device or substance or while manufacturing or attempting to manufacture a controlled dangerous substance in violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes, causes a person to be burned, or aids, counsels or procures the burning of a person, shall be guilty of arson in the first degree, which is a felony, and upon conviction thereof shall be punished by a fine not to exceed Twenty-five

Thousand Dollars (\$25,000.00) or be confined to the State Penitentiary for not more than thirty-five (35) years or both.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 1402, as last amended by Section 241, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1402), is amended to read as follows:

Section 1402. Any person who willfully and maliciously sets fire to or burns or by the use of any explosive device or substance or while manufacturing or attempting to manufacture a controlled dangerous substance in violation of subsection G of Section 2-401 of Title 63 of the Oklahoma Statutes destroys in whole or in part, or causes to be burned or destroyed, or aids, counsels or procures the burning or destruction of any uninhabited or unoccupied building or structure or contents thereof, whether the property of ~~himself~~ the person or another, shall be guilty of arson in the second degree, which is a felony, and upon conviction thereof shall be punished by a fine not to exceed Twenty Thousand Dollars (\$20,000.00) or be confined in the State Penitentiary for not more than twenty-five (25) years or both.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1077, is amended to read as follows:

Section 1077. Bail on appeal shall be allowed on appeal from a judgment of conviction of misdemeanor, or in felony cases where the punishment is a fine only, and when made and approved shall stay the execution of such judgment. Bail on appeal after the effective date of this act shall not be allowed after conviction of any of the following offenses:

1. Murder in any degree;
2. Kidnapping for purpose of extortion;
3. Robbery with a dangerous weapon;
4. Rape in any degree;
5. Arson in the first degree;

6. Shooting with intent to kill;

7. Manslaughter in the first degree;

8. Forcible sodomy;

9. Any felony conviction for which the evidence shows that the defendant used or was in possession of a firearm or other dangerous or deadly weapon during the commission of the offense;

10. Trafficking in illegal drugs; ~~or~~

11. Manufacturing a controlled dangerous substance; or

12. Any other felony after former conviction of a felony.

The granting or refusal of bail after judgment of conviction in all other felony cases shall rest in the discretion of the court, however, if bail is allowed, the trial court shall state the reason therefor.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 2-401, as last amended by Section 1, Chapter 265, O.S.L. 2000 (63 O.S. Supp. 2000, 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, possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance or to 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;

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), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections 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), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections 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), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment; or

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), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

C. 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), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. 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 of not less than ten (10) years nor more than life and a fine of not more than One Hundred Thousand Dollars (\$100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

D. Any person convicted of a second or subsequent felony violation of the provisions of this section, except for paragraph 4 of subsection B of this section or subsections C, F or G of this section, shall be punished by a term of imprisonment twice that otherwise authorized and by twice the fine otherwise authorized, which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. 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.

E. 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, 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 and shall not be subject to statutory provisions for suspension or deferral of sentence or any type of probation.

F. 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 two thousand (2,000) 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, a family child care home, a child care center, a large family child care home or part-day child care program, as those terms are defined by Section 402 of Title 10 of the Oklahoma Statutes, 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.

G. 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 or possess any substance listed in Section 2-322 of this title or any substance containing any detectable amount of pseudoephedrine or its salts, optical isomers or salts of optical isomers, iodine or its salts, optical isomers or salts of optical isomers, hydriatic acid, sodium metal, lithium metal, anhydrous ammonia, or ether with the intent to use that substance to manufacture a 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, or possessing any substance listed in this subsection or Section 2-322 of this title, 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), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. The possession of any amount of anhydrous ammonia in an unauthorized container or the possession of three or more of the substances listed in this subsection shall be prima facie evidence of intent to use such substance to manufacture a controlled dangerous substance.

Any sentence to the custody of the Department of Corrections 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 a violation of this subsection shall not be eligible for an appeal bond.

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.

H. For purposes of this section, "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 Authorities Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-512 of Title 63, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund to be known as the Drug Eradication and Enforcement Plan Revolving Fund. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies appropriated or transferred to the fund and any monies contributed to the fund from any other source. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended for the purpose of providing grants to district attorneys' offices, sheriffs' offices and municipal police departments. The grants shall be used for eradication of illegal drugs and enforcement of drug laws. Allowable expenditure of the grants shall include, but shall not be limited to, the following purposes:

1. Purchase of equipment;
2. Purchase of drug-sniffing dogs;

3. Matching federal grants or funds;
4. Funding advanced training programs;
5. Funding drug education and awareness programs; and
6. Funding drug courts.

Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims signed by an authorized state employee and filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 8. This act shall become effective July 1, 2001.

SECTION 9. 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.

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