

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2166:

Young

AS INTRODUCED

An Act relating to the Uniform Controlled Dangerous Substances Act; amending 63 O.S. 2001, Section 2-101, as amended by Section 2, Chapter 338, O.S.L. 2003 (63 O.S. Supp. 2003, Section 2-101), which relates to definitions; modifying definition of synthetic controlled substance; amending 63 O.S. 2001, Section 2-401, as last amended by Section 2, Chapter 437, O.S.L. 2003 (63 O.S. Supp. 2003, Section 2-401), which relates to offenses and penalties; prohibiting the cultivation of a synthetic controlled substance; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-101, as amended by Section 2, Chapter 338, O.S.L. 2003 (63 O.S. Supp. 2003, Section 2-101), is amended to read as follows:

Section 2-101. As used in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title:

1. "Administer" means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient, animal or research subject by:

- a. a practitioner (or, in the presence of the practitioner, by the authorized agent of the practitioner), or

b. the patient or research subject at the direction and in the presence of the practitioner;

2. "Agent" means a peace officer appointed by and who acts in behalf of the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or an authorized person who acts on behalf of or at the direction of a person who manufactures, distributes, dispenses, prescribes, administers or uses for scientific purposes controlled dangerous substances but does not include a common or contract carrier, public warehouser or employee thereof, or a person required to register under the Uniform Controlled Dangerous Substances Act;

3. "Board" means the Advisory Board to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

4. "Bureau" means the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

5. "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or ecgonine;

6. "Commissioner" or "Director" means the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

7. "Control" means to add, remove or change the placement of a drug, substance or immediate precursor under the Uniform Controlled Dangerous Substances Act;

8. "Controlled dangerous substance" means a drug, substance or immediate precursor in Schedules I through V of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title;

9. "Counterfeit substance" means a controlled substance which, or the container or labeling of which without authorization, bears the trademark, trade name or other identifying marks, imprint, number or device or any likeness thereof of a manufacturer,

distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance;

10. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled dangerous substance, whether or not there is an agency relationship;

11. "Dispense" means to deliver a controlled dangerous substance to an ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for such distribution.

"Dispenser" is a practitioner who delivers a controlled dangerous substance to an ultimate user or human research subject;

12. "Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance;

13. "Distributor" means a commercial entity engaged in the distribution or reverse distribution of narcotics and dangerous drugs and who complies with all regulations promulgated by the federal Drug Enforcement Administration and the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;

14. "Drug" means articles:

- a. recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them,
- b. intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals,
- c. other than food, intended to affect the structure or any function of the body of man or other animals, and
- d. intended for use as a component of any article specified in this paragraph;

provided, however, the term "drug" does not include devices or their components, parts or accessories;

15. "Drug-dependent person" means a person who is using a controlled dangerous substance and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled dangerous substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

16. "Home care agency" means any sole proprietorship, partnership, association, corporation, or other organization which administers, offers, or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence;

17. "Home care services" means skilled or personal care services provided to clients in their place of residence for a fee;

18. "Hospice" means a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program which provides a continuum of home and inpatient care for the terminally ill patient and the patient's family. Such term shall also include a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program if such program is licensed pursuant to the provisions of this act. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available twenty-four (24) hours a day, seven (7) days a week, and is provided on the basis of need, regardless of ability to pay. "Class A" Hospice refers to Medicare certified hospices. "Class B" refers to all other providers of hospice services;

19. "Imitation controlled substance" means a substance that is not a controlled dangerous substance, which by dosage unit appearance, color, shape, size, markings or by representations made, would lead a reasonable person to believe that the substance is a controlled dangerous substance. In the event the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an "imitation controlled substance", the court or authority concerned should consider, in addition to all other factors, the following factors as related to "representations made" in determining whether the substance is an "imitation controlled substance":

- a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, or its use or effect,
- b. statements made to the recipient that the substance may be resold for inordinate profit,
- c. whether the substance is packaged in a manner normally used for illicit controlled substances,
- d. evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities,
- e. prior convictions, if any, of an owner, or any other person in control of the object, under state or federal law related to controlled substances or fraud, and
- f. the proximity of the substances to controlled dangerous substances;

20. "Immediate precursor" means a substance which the Director has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used, or likely to be used, in

the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail or limit such manufacture;

21. "Laboratory" means a laboratory approved by the Director as proper to be entrusted with the custody of controlled dangerous substances and the use of controlled dangerous substances for scientific and medical purposes and for purposes of instruction;

22. "Manufacture" means the production, preparation, propagation, compounding or processing of a controlled dangerous substance, either directly or indirectly by extraction from substances of natural or synthetic origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacturer" includes any person who packages, repackages or labels any container of any controlled dangerous substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;

23. "Marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination;

24. "Medical purpose" means an intention to utilize a controlled dangerous substance for physical or mental treatment, for diagnosis, or for the prevention of a disease condition not in violation of any state or federal law and not for the purpose of satisfying physiological or psychological dependence or other abuse;

25. "Mid-level practitioner" means an advanced practice nurse as defined and within parameters specified in Section 567.3a of

Title 59 of the Oklahoma Statutes, or a certified animal euthanasia technician as defined in Section 698.2 of Title 59 of the Oklahoma Statutes, or an animal control officer registered by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control under subsection B of Section ~~3~~ 2-301 of this ~~act~~ title within the parameters of such officer's duty under Sections 501 through 508 of Title 4 of the Oklahoma Statutes;

26. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- a. opium, coca leaves and opiates,
- b. a compound, manufacture, salt, derivative or preparation of opium, coca leaves or opiates,
- c. cocaine, its salts, optical and geometric isomers, and salts of isomers,
- d. ecgonine, its derivatives, their salts, isomers and salts of isomers, and
- e. a substance, and any compound, manufacture, salt, derivative or preparation thereof, which is chemically identical with any of the substances referred to in subparagraphs a through d of this paragraph, except that the words "narcotic drug" as used in Section 2-101 et seq. of this title shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

27. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under the Uniform Controlled Dangerous Substances Act, the dextrorotatory isomer of 3-methoxy-n-

methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;

28. "Opium poppy" means the plant of the species *Papaver somniferum* L., except the seeds thereof;

29. "Peace officer" means a police officer, sheriff, deputy sheriff, district attorney's investigator, investigator from the Office of the Attorney General, or any other person elected or appointed by law to enforce any of the criminal laws of this state or of the United States;

30. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;

31. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;

32. "Practitioner" means:

- a.
 - (1) a medical doctor or osteopathic physician,
 - (2) a dentist,
 - (3) a podiatrist,
 - (4) an optometrist,
 - (5) a veterinarian,
 - (6) a physician assistant under the supervision of a licensed medical doctor or osteopathic physician,
 - (7) a scientific investigator, or
 - (8) any other person,licensed, registered or otherwise permitted to prescribe, distribute, dispense, conduct research with respect to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state, or
- b. a pharmacy, hospital, laboratory or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect

to, use for scientific purposes or administer a controlled dangerous substance in the course of professional practice or research in this state;

33. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled dangerous substance;

34. "State" means the State of Oklahoma or any other state of the United States;

35. "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for the person's own use or for the use of a member of the person's household or for administration to an animal owned by the person or by a member of the person's household;

36. "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act including, but not limited to:

- a. kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled dangerous substance or from which a controlled dangerous substance can be derived,
- b. kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled dangerous substances,

- c. isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled dangerous substance,
- d. testing equipment used or intended for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances,
- e. scales and balances used or intended for use in weighing or measuring controlled dangerous substances,
- f. diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances,
- g. separation gins and sifters used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana,
- h. blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances,
- i. capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances,
- j. containers and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body,
- k. hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled dangerous substances into the human body, and
- l. objects used or intended for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body, such as:

- (1) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls,
- (2) water pipes,
- (3) carburetion tubes and devices,
- (4) smoking and carburetion masks,
- (5) roach clips, meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand,
- (6) miniature cocaine spoons and cocaine vials,
- (7) chamber pipes,
- (8) carburetor pipes,
- (9) electric pipes,
- (10) air-driven pipes,
- (11) chillums,
- (12) bongs, or
- (13) ice pipes or chillers;

provided, however, the term "drug paraphernalia" shall not include separation gins intended for use in preparing tea or spice, clamps used for constructing electrical equipment, water pipes designed for ornamentation or pipes designed for smoking tobacco;

37. "Synthetic controlled substance" means a substance, whether synthetic or naturally occurring, that is not a controlled dangerous substance, but ~~is a substance that~~ which produces a like or similar physiological or psychological effect on the human central nervous system that currently has no accepted medical use in treatment in the United States and has a potential for abuse. The court or authority concerned with establishing that the substance is a synthetic controlled substance should consider, in addition to all other factors, the following factors as related to "representations

made" in determining whether the substance is a synthetic controlled substance:

- a. statements made by an owner or by any other person in control of the substance concerning the nature of the substance, its use or effect,
- b. statements made to the recipient that the substance may be resold for an inordinate profit,
- c. prior convictions, if any, of an owner or any person in control of the substance, under state or federal law related to controlled dangerous substances, and
- d. the proximity of the substance to any controlled dangerous substance;

38. "Tetrahydrocannabinols" means all substances that have been chemically synthesized to emulate the tetrahydrocannabinols of marihuana;

39. "Isomer" means the optical isomer, except as used in subsection C of Section 2-204 of this title and paragraph 4 of subsection A of Section 2-206 of this title. As used in subsection C of Section 2-204 of this title, "isomer" means the optical, positional or geometric isomer. As used in paragraph 4 of subsection A of Section 2-206 of this title, the term "isomer" means the optical or geometric isomer;

40. "Hazardous materials" means materials, whether solid, liquid or gas, which are toxic to human, animal, aquatic or plant life, and the disposal of which materials is controlled by state or federal guidelines; and

41. "Anhydrous ammonia" means any substance that exhibits cryogenic evaporative behavior and tests positive for ammonia.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-401, as last amended by Section 2, Chapter 437, O.S.L. 2003 (63 O.S. Supp. 2003, Section 2-401), is amended to read as follows:

Section 2-401. A. Except as authorized by the Uniform Controlled Dangerous Substances Act 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. 1. 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, cultivate, distribute, or possess with intent to distribute a synthetic controlled substance.

2. 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.

3. A second or subsequent conviction for the violation of the provisions of this paragraph is a felony punishable as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes.

4. In addition the violator shall be fined an amount 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. 1. 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, shall be punished as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes.

2. In addition the violator shall be fined 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.

3. 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.

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, or violation of subparagraph G of this section, 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, recreation center or public park, including state parks and recreation areas, public housing project, or child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes 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 as provided for a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes. In addition the violator shall serve eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence or eligibility for parole.

G. 1. 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, hydriodic acid, sodium metal, lithium metal, anhydrous ammonia, or organic solvents

with the intent to use that substance to manufacture a controlled dangerous substance.

2. Any person violating the provisions of this subsection 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 seven (7) 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.

3. Any person violating the provisions of this subsection with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance in the following amounts:

- a. 1 kilogram or more of a mixture or substance containing a detectable amount of heroin,
- b. 5 kilograms or more of a mixture or substance containing a detectable amount of:
 - (1) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed,
 - (2) cocaine, its salts, optical and geometric isomers, and salts of isomers,
 - (3) ecgonine, its derivatives, their salts, isomers, and salts of isomers, or

- (4) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (1) through (3) of this paragraph,
- c. 50 grams or more of a mixture or substance described in subparagraph (2) of paragraph b which contains cocaine base,
 - d. 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP),
 - e. 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD),
 - f. 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide,
 - g. 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana or 1000 or more marihuana plants regardless of weight, or
 - h. 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers,

upon conviction, is guilty of aggravated manufacturing a controlled dangerous substance punishable 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. Any person convicted of a violation of the provisions of this paragraph shall be required to serve a minimum of eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional earned credits towards the completion of the sentence or eligible for parole.

4. Any sentence to the custody of the Department of Corrections for any violation of paragraph 3 of this subsection 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 paragraph 3 of this subsection shall be punished as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes and shall be required to serve a minimum of eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional earned credits or eligibility for parole.

H. 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, notwithstanding any maximum assessment allowable in Section 2-506 of this title. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to Section 2-506 of this title.

I. 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.

J. When a person is found guilty of a violation of the provisions of this section, the court shall order, in addition to any other penalty, the defendant to pay a one-hundred-dollar assessment to be deposited in the Drug Abuse Education and Treatment

Revolving Fund created in Section 2-503.2 of Title 63 of the
Oklahoma Statutes, upon collection.

SECTION 3. This act shall become effective November 1, 2004.

49-2-8167 GRS 01/13/04