

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2452

By: Braddock

4  
5 AS INTRODUCED

6 An Act relating to public health and safety; amending  
7 63 O.S. 2001, Sections 2-401, as last amended by  
8 Section 4, Chapter 283, O.S.L. 2005 and 2-402, as  
9 amended by Section 3, Chapter 396, O.S.L. 2004 (63  
10 O.S. Supp. 2007, Sections 2-401 and 2-402), which  
11 relate to the Uniform Controlled Dangerous Substances  
12 Act; modifying certain penalties; and providing an  
13 effective date.

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

15 SECTION 1. AMENDATORY 63 O.S. 2001, Section 2-401, as  
16 last amended by Section 4, Chapter 283, O.S.L. 2005 (63 O.S. Supp.  
17 2007, Section 2-401), is amended to read as follows:

18 Section 2-401. A. Except as authorized by the Uniform  
19 Controlled Dangerous Substances Act is shall be unlawful for any  
20 person:

21 1. To distribute, dispense, transport with intent to distribute  
22 or dispense, possess with intent to manufacture, distribute, or  
23 dispense, a controlled dangerous substance or to solicit the use of  
24 or use the services of a person less than eighteen (18) years of age

1 to cultivate, distribute or dispense a controlled dangerous  
2 substance;

3 2. To create, distribute, transport with intent to distribute  
4 or dispense, or possess with intent to distribute, a counterfeit  
5 controlled dangerous substance; or

6 3. To distribute any imitation controlled substance as defined  
7 by Section 2-101 of this title, except when authorized by the Food  
8 and Drug Administration of the United States Department of Health  
9 and Human Services.

10 B. Any person who violates the provisions of this section with  
11 respect to:

12 1. A substance classified in Schedule I or II which is a  
13 narcotic drug, lysergic acid diethylamide (LSD), gamma  
14 butyrolactone, gamma hydroxyvalerate, gamma valerolactone, 1,4  
15 butanediol, or gamma-hydroxybutyric acid as defined in Sections 2-  
16 204 and 2-208 of this title, upon conviction, shall be guilty of a  
17 felony and shall be sentenced to a term of imprisonment for not less  
18 than ~~five (5)~~ two (2) years nor more than life and a fine of not  
19 more than One Hundred Thousand Dollars (\$100,000.00), which shall be  
20 in addition to other punishment provided by law and shall not be  
21 imposed in lieu of other punishment. Any sentence to the custody of  
22 the Department of Corrections shall not be subject to statutory  
23 provisions for suspended sentences, deferred sentences, or probation  
24 except when the conviction is for a first offense;

1           2. Any other controlled dangerous substance classified in  
2 Schedule I, II, III, or IV, upon conviction, shall be guilty of a  
3 felony and shall be sentenced to a term of imprisonment for not less  
4 than ~~two (2) years~~ one (1) year nor more than life and a fine of not  
5 more than Twenty Thousand Dollars (\$20,000.00), which shall be in  
6 addition to other punishment provided by law and shall not be  
7 imposed in lieu of other punishment. Any sentence to the custody of  
8 the Department of Corrections shall not be subject to statutory  
9 provisions for suspended sentences, deferred sentences, or probation  
10 except when the conviction is for a first offense;

11           3. A substance classified in Schedule V, upon conviction, shall  
12 be guilty of a felony and shall be sentenced to a term of  
13 imprisonment for not more than five (5) years and a fine of not more  
14 than One Thousand Dollars (\$1,000.00), which shall be in addition to  
15 other punishment provided by law and shall not be imposed in lieu of  
16 other punishment; or

17           4. An imitation controlled substance as defined by Section 2-  
18 101 of this title, upon conviction, shall be guilty of a misdemeanor  
19 and shall be sentenced to a term of imprisonment in the county jail  
20 for a period of not more than one (1) year and a fine of not more  
21 than One Thousand Dollars (\$1,000.00). A person convicted of a  
22 second violation of the provisions of this paragraph shall be guilty  
23 of a felony and shall be sentenced to a term of imprisonment for not  
24 more than five (5) years and a fine of not more than Five Thousand

1 Dollars (\$5,000.00), which shall be in addition to other punishment  
2 provided by law and shall not be imposed in lieu of other  
3 punishment.

4 C. 1. Except when authorized by the Food and Drug  
5 Administration of the United States Department of Health and Human  
6 Services, it shall be unlawful for any person to manufacture,  
7 cultivate, distribute, or possess with intent to distribute a  
8 synthetic controlled substance.

9 2. Any person convicted of violating the provisions of this  
10 paragraph is guilty of a felony and shall be punished by  
11 imprisonment in the State Penitentiary for a term not to exceed life  
12 and a fine of not more than Twenty-five Thousand Dollars  
13 (\$25,000.00), which shall be in addition to other punishment  
14 provided by law and shall not be imposed in lieu of other  
15 punishment.

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

20 4. In addition the violator shall be fined an amount not more  
21 than One Hundred Thousand Dollars (\$100,000.00), which shall be in  
22 addition to other punishment provided by law and shall not be  
23 imposed in lieu of other punishment.

24

1 D. 1. Any person convicted of a second or subsequent felony  
2 violation of the provisions of this section, except for paragraph 4  
3 of subsection B of this section, shall be punished as a habitual  
4 offender pursuant to Section 51.1 of Title 21 of the Oklahoma  
5 Statutes.

6 2. In addition the violator shall be fined twice the fine  
7 otherwise authorized, which shall be in addition to other punishment  
8 provided by law and shall not be imposed in lieu of other  
9 punishment.

10 3. Convictions for second or subsequent violations of the  
11 provisions of this section shall not be subject to statutory  
12 provisions for suspended sentences, deferred sentences, or  
13 probation.

14 E. Any person who is at least eighteen (18) years of age and  
15 who violates the provisions of this section by using or soliciting  
16 the use of services of a person less than eighteen (18) years of age  
17 to distribute, dispense, transport with intent to distribute or  
18 dispense or cultivate a controlled dangerous substance or by  
19 distributing a controlled dangerous substance to a person under  
20 eighteen (18) years of age is punishable by twice the fine and by  
21 twice the imprisonment otherwise authorized.

22 F. Any person who violates any provision of this section by  
23 transporting with intent to distribute or dispense, distributing or  
24 possessing with intent to distribute a controlled dangerous

1 substance to a person, or violation of subsection G of this section,  
2 in or on, or within two thousand (2,000) feet of the real property  
3 comprising a public or private elementary or secondary school,  
4 public vocational school, public or private college or university,  
5 or other institution of higher education, recreation center or  
6 public park, including state parks and recreation areas, public  
7 housing project, or child care facility as defined by Section 402 of  
8 Title 10 of the Oklahoma Statutes shall be punished by:

9 1. For a first offense, a term of imprisonment, or by the  
10 imposition of a fine or by both, not exceeding twice that authorized  
11 by the appropriate provision of this section and shall serve a  
12 minimum of fifty percent (50%) of the sentence received prior to  
13 becoming eligible for state correctional institution earned credits  
14 toward the completion of said sentence; or

15 2. For a second or subsequent offense, a term of imprisonment  
16 as provided for a habitual offender pursuant to Section 51.1 of  
17 Title 21 of the Oklahoma Statutes. In addition the violator shall  
18 serve eighty-five percent (85%) of the sentence received prior to  
19 becoming eligible for state correctional institution earned credits  
20 toward the completion of said sentence or eligibility for parole.

21 G. 1. Except as authorized by the Uniform Controlled Dangerous  
22 Substances Act, it shall be unlawful for any person to manufacture  
23 or attempt to manufacture any controlled dangerous substance or  
24 possess any substance listed in Section 2-322 of this title or any

1 substance containing any detectable amount of pseudoephedrine or its  
2 salts, optical isomers or salts of optical isomers, iodine or its  
3 salts, optical isomers or salts of optical isomers, hydriodic acid,  
4 sodium metal, lithium metal, anhydrous ammonia, phosphorus, or  
5 organic solvents with the intent to use that substance to  
6 manufacture a controlled dangerous substance.

7 2. Any person violating the provisions of this subsection with  
8 respect to the unlawful manufacturing or attempting to unlawfully  
9 manufacture any controlled dangerous substance, or possessing any  
10 substance listed in this subsection or Section 2-322 of this title,  
11 upon conviction, is guilty of a felony and shall be punished by  
12 imprisonment in the State Penitentiary for not less than seven (7)  
13 years nor more than life and by a fine of not less than Fifty  
14 Thousand Dollars (\$50,000.00), which shall be in addition to other  
15 punishment provided by law and shall not be imposed in lieu of other  
16 punishment. The possession of any amount of anhydrous ammonia in an  
17 unauthorized container shall be prima facie evidence of intent to  
18 use such substance to manufacture a controlled dangerous substance.

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

23 a. one (1) kilogram or more of a mixture or substance  
24 containing a detectable amount of heroin,

1           b.    five (5) kilograms or more of a mixture or substance  
2                   containing a detectable amount of:

3                   (1)    coca leaves, except coca leaves and extracts of  
4                            coca leaves from which cocaine, ecgonine, and  
5                            derivatives of ecgonine or their salts have been  
6                            removed,

7                   (2)    cocaine, its salts, optical and geometric  
8                            isomers, and salts of isomers,

9                   (3)    ecgonine, its derivatives, their salts, isomers,  
10                           and salts of isomers, or

11                   (4)    any compound, mixture, or preparation which  
12                            contains any quantity of any of the substances  
13                            referred to in divisions (1) through (3) of this  
14                            subparagraph,

15           c.    fifty (50) grams or more of a mixture or substance  
16                   described in division (2) of subparagraph b of this  
17                   paragraph which contains cocaine base,

18           d.    one hundred (100) grams or more of phencyclidine (PCP)  
19                   or 1 kilogram or more of a mixture or substance  
20                   containing a detectable amount of phencyclidine (PCP),

21           e.    ten (10) grams or more of a mixture or substance  
22                   containing a detectable amount of lysergic acid  
23                   diethylamide (LSD),  
24

- 1 f. four hundred (400) grams or more of a mixture or  
2 substance containing a detectable amount of N-phenyl-  
3 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100  
4 grams or more of a mixture or substance containing a  
5 detectable amount of any analogue of N-phenyl-N-[1-(2-  
6 phenylethyl)-4-piperidinyl] propanamide,
- 7 g. one thousand (1,000) kilograms or more of a mixture or  
8 substance containing a detectable amount of marihuana  
9 or one thousand (1000) or more marihuana plants  
10 regardless of weight, or
- 11 h. fifty (50) grams or more of methamphetamine, its  
12 salts, isomers, and salts of its isomers or 500 grams  
13 or more of a mixture or substance containing a  
14 detectable amount of methamphetamine, its salts,  
15 isomers, or salts of its isomers,

16 upon conviction, is guilty of aggravated manufacturing a controlled  
17 dangerous substance punishable by imprisonment in the State  
18 Penitentiary for not less than twenty (20) years nor more than life  
19 and by a fine of not less than Fifty Thousand Dollars (\$50,000.00),  
20 which shall be in addition to other punishment provided by law and  
21 shall not be imposed in lieu of other punishment. Any person  
22 convicted of a violation of the provisions of this paragraph shall  
23 be required to serve a minimum of eighty-five percent (85%) of the  
24 sentence received prior to becoming eligible for state correctional

1 earned credits towards the completion of the sentence or eligible  
2 for parole.

3 4. Any sentence to the custody of the Department of Corrections  
4 for any violation of paragraph 3 of this subsection shall not be  
5 subject to statutory provisions for suspended sentences, deferred  
6 sentences, or probation. A person convicted of a second or  
7 subsequent violation of the provisions of paragraph 3 of this  
8 subsection shall be punished as a habitual offender pursuant to  
9 Section 51.1 of Title 21 of the Oklahoma Statutes and shall be  
10 required to serve a minimum of eighty-five percent (85%) of the  
11 sentence received prior to becoming eligible for state correctional  
12 earned credits or eligibility for parole.

13 H. Any person convicted of any offense described in the Uniform  
14 Controlled Dangerous Substances Act may, in addition to the fine  
15 imposed, be assessed an amount not to exceed ten percent (10%) of  
16 the fine imposed. Such assessment shall be paid into a revolving  
17 fund for enforcement of controlled dangerous substances created  
18 pursuant to Section 2-506 of this title.

19 I. Any person convicted of any offense described in this  
20 section shall, in addition to any fine imposed, pay a special  
21 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be  
22 deposited into the Trauma Care Assistance Revolving Fund created in  
23 Section 1-2522 of this title.

24

1 J. For purposes of this section, "public housing project" means  
2 any dwelling or accommodations operated as a state or federally  
3 subsidized multifamily housing project by any housing authority,  
4 nonprofit corporation or municipal developer or housing projects  
5 created pursuant to the Oklahoma Housing Authorities Act.

6 K. When a person is found guilty of a violation of the  
7 provisions of this section, the court shall order, in addition to  
8 any other penalty, the defendant to pay a one-hundred-dollar  
9 assessment to be deposited in the Drug Abuse Education and Treatment  
10 Revolving Fund created in Section 2-503.2 of this title, upon  
11 collection.

12 SECTION 2. AMENDATORY 63 O.S. 2001, Section 2-402, as  
13 amended by Section 3, Chapter 396, O.S.L. 2004 (63 O.S. Supp. 2007,  
14 Section 2-402), is amended to read as follows:

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

21 2. It shall be unlawful for any person to purchase any  
22 preparation excepted from the provisions of the Uniform Controlled  
23 Dangerous Substances Act, Section 2-101 et seq. of this title,  
24 pursuant to Section 2-313 of this title in an amount or within a

1 time interval other than that permitted by Section 2-313 of this  
2 title.

3 3. It shall be unlawful for any person or business to sell,  
4 market, advertise or label any product containing ephedrine, its  
5 salts, optical isomers, or salts of optical isomers, for the  
6 indication of stimulation, mental alertness, weight loss, appetite  
7 control, muscle development, energy or other indication which is not  
8 approved by the pertinent federal OTC Final Monograph, Tentative  
9 Final Monograph, or FDA-approved new drug application or its legal  
10 equivalent. In determining compliance with this requirement, the  
11 following factors shall be considered:

- 12 a. the packaging of the product,
- 13 b. the name of the product, and
- 14 c. the distribution and promotion of the product,  
15 including verbal representations made at the point of  
16 sale.

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

18 1. Any Schedule I or II substance, except marihuana or a  
19 substance included in subsection D of Section 2-206 of this title,  
20 is guilty of a felony punishable by imprisonment for not ~~less than~~  
21 ~~two (2) years nor~~ more than ten (10) years. A second or subsequent  
22 violation of this section with respect to Schedule I or II  
23 substance, except marihuana or a substance included in subsection D  
24 of Section 2-206 of this title, is a felony punishable by

1 imprisonment for not less than four (4) years nor more than twenty  
2 (20) years; or

3       2. Any Schedule III, IV or V substance, marihuana, a substance  
4 included in subsection D of Section 2-206 of this title, or any  
5 preparation excepted from the provisions of the Uniform Controlled  
6 Dangerous Substances Act is guilty of a misdemeanor punishable by  
7 confinement for not more than one (1) year. A second or subsequent  
8 violation of this section with respect to any Schedule III, IV or V  
9 substance, marihuana, a substance included in subsection D of  
10 Section 2-206 of this title, or any preparation excepted from the  
11 provisions of the Uniform Controlled Dangerous Substances Act is a  
12 felony punishable by imprisonment for not ~~less than two (2) years~~  
13 ~~nor~~ more than ten (10) years.

14       C. Any person who violates any provision of this section by  
15 possessing or purchasing a controlled dangerous substance from any  
16 person, in or on, or within one thousand (1,000) feet of the real  
17 property comprising a public or private elementary or secondary  
18 school, public vocational school, public or private college or  
19 university, or other institution of higher education, recreation  
20 center or public park, including state parks and recreation areas,  
21 or in the presence of any child under twelve (12) years of age,  
22 shall be guilty of a felony and punished by:

23       1. For a first offense, a term of imprisonment, or by the  
24 imposition of a fine, or by both, not exceeding twice that

1 authorized by the appropriate provision of this section. In  
2 addition, the person shall serve a minimum of fifty percent (50%) of  
3 the sentence received prior to becoming eligible for state  
4 correctional institution earned credits toward the completion of  
5 said sentence; or

6 2. For a second or subsequent offense, a term of imprisonment  
7 not exceeding three times that authorized by the appropriate  
8 provision of this section and the person shall serve a minimum of  
9 ninety percent (90%) of the sentence received prior to becoming  
10 eligible for state correctional institution earned credits toward  
11 the completion of said sentence.

12 D. Any person convicted of any offense described in this  
13 section shall, in addition to any fine imposed, pay a special  
14 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be  
15 deposited into the Trauma Care Assistance Revolving Fund created in  
16 Section 1-2522 of this title.

17 SECTION 3. This act shall become effective November 1, 2008.

18

19 51-2-9454 GRS 01/02/08

20

21

22

23

24