

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR

5 HOUSE BILL NO. 1677

6 By: Blackwell

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to public health and safety; amending
9 63 O.S. 2011, Section 2-401, as amended by Section 4,
10 Chapter 206, O.S.L. 2012 (63 O.S. Supp. 2012, Section
11 2-401), which relates to the Uniform Controlled
12 Dangerous Substances Act; increasing assessment
13 amount for persons convicted of certain offenses;
14 prohibiting waiver of assessment by the court;
15 providing an exception; and providing an effective
16 date.

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

18 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as
19 amended by Section 4, Chapter 206, O.S.L. 2012 (63 O.S. Supp. 2012,
20 Section 2-401), is amended to read as follows:

21 Section 2-401. A. Except as authorized by the Uniform
22 Controlled Dangerous Substances Act, it shall be unlawful for any
23 person:

24 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

1 or use the services of a person less than eighteen (18) years of age
2 to cultivate, distribute or dispense a controlled dangerous
3 substance;

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

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

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

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

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

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

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

1 of a felony and shall be sentenced to a term of imprisonment for not
2 more than five (5) years and a fine of not more than Five Thousand
3 Dollars (\$5,000.00), which shall be in addition to other punishment
4 provided by law and shall not be imposed in lieu of other
5 punishment.

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

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

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

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

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 the 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 the 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 for not less than seven (7) years nor more than life
13 and by a fine of not less than Fifty Thousand Dollars (\$50,000.00),
14 which shall be in addition to other punishment provided by law and
15 shall not be imposed in lieu of other punishment. The possession of
16 any amount of anhydrous ammonia in an unauthorized container shall
17 be prima facie evidence of intent to use such substance to
18 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 for not less than
18 twenty (20) years nor more than life and by a fine of not less than
19 Fifty Thousand Dollars (\$50,000.00), which shall be in addition to
20 other punishment provided by law and shall not be imposed in lieu of
21 other punishment. Any person convicted of a violation of the
22 provisions of this paragraph shall be required to serve a minimum of
23 eighty-five percent (85%) of the sentence received prior to becoming
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1 eligible for state correctional earned credits towards the
2 completion of the sentence or eligible 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 5. Any person who has been convicted of manufacturing or
14 attempting to manufacture methamphetamine pursuant to the provisions
15 of this subsection and who, after such conviction, purchases or
16 attempts to purchase, receive or otherwise acquire any product,
17 mixture, or preparation containing any detectable quantity of base
18 pseudoephedrine or ephedrine shall, upon conviction, be guilty of a
19 felony punishable by imprisonment in the custody of the Department
20 of Corrections for a term in the range of twice the minimum term
21 provided for in paragraph 2 of this subsection.

22 H. Any person convicted of any offense described in the Uniform
23 Controlled Dangerous Substances Act ~~may~~ shall, in addition to the
24 fine imposed, be assessed an amount of not ~~to exceed~~ less than ten

1 percent (10%) but not to exceed the entire amount of the fine
2 imposed. Such assessment shall be paid into a revolving fund for
3 enforcement of controlled dangerous substances created pursuant to
4 Section 2-506 of this title. The court shall not waive the
5 assessment in its entirety. However, if the court determines that a
6 reduction in the fine is warranted, the court shall equally apply
7 the same percentage reduction to the assessment owed by the
8 defendant.

9 I. Any person convicted of any offense described in this
10 section shall, in addition to any fine imposed, pay a special
11 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
12 deposited into the Trauma Care Assistance Revolving Fund created in
13 Section ~~1-2522~~ 1-2530.9 of this title.

14 J. For purposes of this section, "public housing project" means
15 any dwelling or accommodations operated as a state or federally
16 subsidized multifamily housing project by any housing authority,
17 nonprofit corporation or municipal developer or housing projects
18 created pursuant to the Oklahoma Housing Authorities Act.

19 K. When a person is found guilty of a violation of the
20 provisions of this section, the court shall order, in addition to
21 any other penalty, the defendant to pay a one-hundred-dollar
22 assessment to be deposited in the Drug Abuse Education and Treatment
23 Revolving Fund created in Section 2-503.2 of this title, upon
24 collection.

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SECTION 2. This act shall become effective November 1, 2013.

54-1-7258 GRS 02/21/13