

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 2309

By: Frix

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 2011, Section 2-401, as last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp. 2018, Section 2-401), which relates to the Uniform Controlled Dangerous Substances Act; modifying elements of certain prohibited acts; making certain acts unlawful; providing list of factors necessary to prove intent; modifying penalties for prohibited acts; deleting penalties for prohibited acts; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp. 2018, 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, or 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

1 eighteen (18) years of age to cultivate, distribute or dispense a
2 controlled dangerous substance;

3 2. To create, or distribute, ~~transport with intent to~~
4 ~~distribute or dispense, or possess with intent to distribute,~~ a
5 counterfeit 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 4. To manufacture or distribute any synthetic controlled
11 substance, except when authorized by the Food and Drug
12 Administration of the United States Department of Health and Human
13 Services; or

14 5. To transport with intent to distribute or dispense, possess
15 with intent to distribute, or possess with intent to manufacture a
16 controlled dangerous substance, a synthetic controlled substance or
17 an imitation controlled substance.

18 In order to prove intent to distribute, dispense or manufacture
19 pursuant to the offenses listed in this subsection, at least three
20 of the following factors must be involved unless the person was in
21 possession of more than four (4) grams of a substance classified in
22 Schedule I or II, except for marijuana:

23 a. the person possesses the means to weigh a controlled
24 substance,

- b. the person possesses a record indicating a drug-related transaction,
- c. the person possesses materials primarily used for separating and packaging controlled substances,
- d. the person possesses a firearm that is in the immediate physical control of the person at the time of possession of the controlled substance,
- e. the person has in his or her immediate possession or control at least two other controlled substances in any amount,
- f. the person has implemented excessive security measures in a structure or vehicle connected to the offender,
and
- g. the person has in his or her immediate possession or control cash in excess of Five Hundred Dollars (\$500.00).

B. Any person who violates the provisions of subsection A of this section with respect to:

1. A substance classified in Schedule I or II, except for marijuana, involving one-quarter (0.25) of a gram or more of the Schedule I or II substance, upon conviction, shall be guilty of ~~transporting or possessing with an intent to distribute a controlled dangerous substance,~~ a felony, and shall be sentenced to a term of imprisonment in the custody of the Department of Corrections for not

1 more than ~~seven (7)~~ three (3) years and a fine of not more than One
2 Hundred Thousand Dollars (\$100,000.00), which shall be in addition
3 to other punishment provided by law and shall not be imposed in lieu
4 of other punishment. A second conviction for the violation of
5 provisions of this paragraph within ten (10) years of the date
6 following the completion of the execution of the prior sentence is a
7 felony punishable by a term of imprisonment in the custody of the
8 Department of Corrections for not more than ~~fourteen (14)~~ seven (7)
9 years. A third or subsequent conviction for the violation of the
10 provisions of this paragraph within ten (10) years of the date
11 following the completion of the execution of the prior sentence is a
12 felony punishable by a term of imprisonment in the custody of the
13 Department of Corrections for not more than ~~twenty (20)~~ ten (10)
14 years;

15 2. Any One-quarter (0.25) of a gram or more of any other
16 controlled dangerous substance classified in Schedule III, IV, V or
17 marijuana, upon conviction, shall be guilty of a felony and shall be
18 sentenced to a term of imprisonment in the custody of the Department
19 of Corrections for not more than ~~five (5)~~ two (2) years and a fine
20 of not more than Twenty Thousand Dollars (\$20,000.00), which shall
21 be in addition to other punishment provided by law and shall not be
22 imposed in lieu of other punishment. A second conviction for the
23 violation of the provisions of this paragraph within ten (10) years
24 of the date following the completion of the execution of the prior

1 sentence is a felony punishable by a term of imprisonment in the
2 custody of the Department of Corrections for not more than ~~ten (10)~~
3 five (5) years. A third or subsequent conviction for the violation
4 of the provisions of this paragraph within ten (10) years of the
5 date following the completion of the execution of the prior sentence
6 is a felony punishable by a term of imprisonment in the custody of
7 the Department of Corrections for not more than ~~fifteen (15)~~ eight
8 (8) years; or

9 3. ~~An~~ One-quarter (0.25) of a gram or more of an imitation
10 controlled substance as defined by Section 2-101 of this title, upon
11 conviction, shall be guilty of a misdemeanor and shall be sentenced
12 to a term of imprisonment in the county jail for a period of not
13 more than one (1) year and a fine of not more than One Thousand
14 Dollars (\$1,000.00). A person convicted of a second or subsequent
15 violation of the provisions of this paragraph within ten (10) years
16 of the date following the completion of the execution of the prior
17 sentence shall be guilty of a felony and shall be sentenced to a
18 term of imprisonment in the custody of the Department of Corrections
19 for not more than two (2) years and a fine of not more than Five
20 Thousand Dollars (\$5,000.00), which shall be in addition to other
21 punishment provided by law and shall not be imposed in lieu of other
22 punishment.

23 C. 1. ~~Except when authorized by the Food and Drug~~
24 ~~Administration of the United States Department of Health and Human~~

1 ~~Services, it shall be unlawful for any person to manufacture or~~
2 ~~distribute a controlled substance or synthetic controlled substance.~~

3 ~~2. Any person convicted of violating the provisions of~~
4 ~~paragraph 1 of this subsection with respect to distributing a~~
5 ~~controlled substance is guilty of a felony and shall be punished by~~
6 ~~imprisonment in the custody of the Department of Corrections for a~~
7 ~~term not to exceed ten (10) years and a fine of not more than~~
8 ~~Twenty-five Thousand Dollars (\$25,000.00), which shall be in~~
9 ~~addition to other punishment provided by law and shall not be~~
10 ~~imposed in lieu of other punishment.~~

11 ~~3. A second conviction for the violation of the provisions of~~
12 ~~paragraph 1 of this subsection with respect to distributing a~~
13 ~~controlled substance is a felony punishable by imprisonment in the~~
14 ~~custody of the Department of Corrections for a term not less than~~
15 ~~two (2) years nor more than twenty (20) years. A third or~~
16 ~~subsequent conviction for the violation of the provisions of this~~
17 ~~paragraph is a felony punishable by imprisonment in the custody of~~
18 ~~the Department of Corrections for a term not less than ten (10)~~
19 ~~years nor more than life.~~

20 ~~4. Any person convicted of violating the provisions of~~
21 ~~paragraph 1 of this subsection with respect to manufacturing a~~
22 ~~controlled substance is guilty of a felony and shall be punished by~~
23 ~~imprisonment in the custody of the Department of Corrections for a~~
24 ~~term not to exceed ten (10) years and a fine of not more than~~

1 ~~Twenty-five Thousand Dollars (\$25,000.00), which shall be in~~
2 ~~addition to other punishment provided by law and shall not be~~
3 ~~imposed in lieu of other punishment.~~

4 ~~5. A second conviction for the violation of the provisions of~~
5 ~~paragraph 1 of this subsection with respect to manufacturing a~~
6 ~~controlled substance is a felony punishable by imprisonment in the~~
7 ~~custody of the Department of Corrections for a term not less than~~
8 ~~two (2) years nor more than twenty (20) years. A third or~~
9 ~~subsequent conviction for the violation of the provisions of this~~
10 ~~paragraph is a felony punishable by imprisonment in the custody of~~
11 ~~the Department of Corrections for a term not less than ten (10)~~
12 ~~years nor more than life.~~

13 ~~D.~~ Convictions for violations of the provisions of this section
14 shall be subject to the statutory provisions for suspended or
15 deferred sentences, or probation as provided in Section 991a of
16 Title 22 of the Oklahoma Statutes.

17 ~~E.~~ D. Any person who is at least eighteen (18) years of age and
18 who violates the provisions of this section by using or soliciting
19 the use of services of a person less than eighteen (18) years of age
20 to distribute, dispense, transport with intent to distribute or
21 dispense or cultivate a controlled dangerous substance or by
22 distributing a controlled dangerous substance to a person under
23 eighteen (18) years of age, or in the presence of a person under
24 twelve (12) years of age, is punishable by:

1 1. For a first violation of this section, a term of
2 imprisonment in the custody of the Department of Corrections not
3 less than two (2) years nor more than ten (10) years;

4 2. For a second violation of this section within ten (10) years
5 of the date following the completion of the execution of the prior
6 sentence, a term of imprisonment in the custody of the Department of
7 Corrections for not less than four (4) years nor more than twenty
8 (20) years; or

9 3. For a third or subsequent violation of this section within
10 ten (10) years of the date following the completion of the execution
11 of the prior sentence, a term of imprisonment in the custody of the
12 Department of Corrections for not less than ten (10) years nor more
13 than life.

14 ~~F.~~ E. Any person who violates any provision of this section by
15 transporting with intent to distribute or dispense, distributing or
16 possessing with intent to distribute a controlled dangerous
17 substance to a person, or violation of subsection ~~G~~ F of this
18 section, in or on, or within two thousand (2,000) feet of the real
19 property comprising a public or private elementary or secondary
20 school, public vocational school, public or private college or
21 university, or other institution of higher education, recreation
22 center or public park, including state parks and recreation areas,
23 ~~public housing project~~, or child care facility as defined by Section
24 402 of Title 10 of the Oklahoma Statutes, shall be punished by:

1 1. For a first offense, a term of imprisonment in the custody
2 of the Department of Corrections, or by the imposition of a fine or
3 by both, not exceeding twice that authorized by the appropriate
4 provision of this section; or

5 2. For a second or subsequent violation of this section within
6 ten (10) years of the date following the completion of the execution
7 of the prior sentence, a term of imprisonment in the custody of the
8 Department of Corrections, or by the imposition of a fine or by
9 both, not exceeding thrice that authorized by the appropriate
10 provision of this section. Convictions for second and subsequent
11 violations of the provisions of this section shall not be subject to
12 statutory provisions of suspended sentences, deferred sentences or
13 probation.

14 For purposes of this subsection, median strips or the green
15 space dividing roads, streets and highways shall not be considered a
16 portion of the public park.

17 ~~G.~~ F. 1. Except as authorized by the Uniform Controlled
18 Dangerous Substances Act, it shall be unlawful for any person to
19 manufacture or attempt to manufacture any controlled dangerous
20 substance or possess any substance listed in Section 2-322 of this
21 title or any substance containing any detectable amount of
22 pseudoephedrine or its salts, optical isomers or salts of optical
23 isomers, iodine or its salts, optical isomers or salts of optical
24 isomers, hydriodic acid, sodium metal, lithium metal, anhydrous

1 ammonia, phosphorus, or organic solvents with the intent to use that
2 substance to manufacture a controlled dangerous substance.

3 2. Any person violating the provisions of this subsection with
4 respect to the unlawful manufacturing or attempting to unlawfully
5 manufacture any controlled dangerous substance, except for
6 marijuana, or possessing any substance listed in this subsection or
7 Section 2-322 of this title, upon conviction, is guilty of a felony
8 and shall be punished by imprisonment in the custody of the
9 Department of Corrections for not ~~less than seven (7)~~ more than ten
10 (10) years ~~nor more than life~~ and by a fine of not ~~less than Fifty~~
11 ~~Thousand Dollars (\$50,000.00)~~ more than Twenty-five Thousand Dollars
12 (\$25,000.00), which shall be in addition to other punishment
13 provided by law and shall not be imposed in lieu of other
14 punishment. The possession of any amount of anhydrous ammonia in an
15 unauthorized container shall be prima facie evidence of intent to
16 use such substance to manufacture a controlled dangerous substance.
17 A second violation of this subsection within ten (10) years of the
18 date following the completion of the execution of the prior sentence
19 is punishable by a term of imprisonment in the custody of the
20 Department of Corrections of not more than fifteen (15) years. A
21 third or subsequent violation of this subsection within ten (10)
22 years of the date following the completion of the execution of the
23 prior sentence is punishable by a term of imprisonment in the
24

1 custody of the Department of Corrections of not more than twenty
2 (20) years.

3 3. Any person violating the provisions of this subsection with
4 respect to the unlawful manufacturing or attempting to unlawfully
5 manufacture marijuana in the following amounts:

6 a. six or fewer marijuana plants capable of producing
7 less than one (1) kilogram of marijuana excluding
8 parts of the plant that do not contain hydrocannabinol
9 shall, upon conviction, be guilty of a misdemeanor
10 punishable by imprisonment in the county jail for a
11 term of not more than one (1) year and a fine of not
12 more than One Thousand Dollars (\$1,000.00),

13 b. one (1) kilogram to one hundred (100) kilograms of
14 marijuana or seven to one hundred marijuana plants
15 shall, upon conviction, be guilty of a felony
16 punishable by imprisonment in the custody of the
17 Department of Corrections for a term of not more than
18 three (3) years and a fine of not more than Fifteen
19 Thousand Dollars (\$15,000.00). A second conviction of
20 this subparagraph within ten (10) years of the date
21 following the completion of the execution of the prior
22 sentence is punishable by imprisonment in the custody
23 of the Department of Correction for a term of not more
24 than six (6) years. A third or subsequent conviction

1 of this subparagraph within ten (10) years of the date
2 following the completion of the execution of the prior
3 sentence is punishable by imprisonment in the custody
4 of the Department of Corrections for a term of not
5 more than ten (10) years, and

6 c. one hundred (100) kilograms or more but less than one
7 thousand (1,000) kilograms of marijuana or one hundred
8 one marijuana plants but less than nine hundred
9 ninety-nine marijuana plants shall, upon conviction,
10 be guilty of a felony punishable by imprisonment in
11 the custody of the Department of Corrections for a
12 term of not more than five (5) years and a fine of not
13 more than Fifteen Thousand Dollars (\$15,000.00). A
14 second conviction for a violation of this subparagraph
15 within ten (10) years of the date following the
16 completion of the execution of the prior sentence is
17 punishable by a term of imprisonment in the custody of
18 the Department of Corrections of not more than ten
19 (10) years. A third or subsequent conviction of this
20 subparagraph within ten (10) years of the date
21 following the completion of the execution of the prior
22 sentence is punishable by a term of imprisonment in
23 the custody of the Department of Corrections for a
24 term of not more than fifteen (15) years.

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

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

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

9 (1) coca leaves, except coca leaves and extracts of
10 coca leaves from which cocaine, ecgonine, and
11 derivatives of ecgonine or their salts have been
12 removed,

13 (2) cocaine, its salts, optical and geometric
14 isomers, and salts of isomers,

15 (3) ecgonine, its derivatives, their salts, isomers,
16 and salts of isomers, or

17 (4) any compound, mixture, or preparation which
18 contains any quantity of any of the substances
19 referred to in divisions (1) through (3) of this
20 subparagraph,

21 c. fifty (50) grams or more of a mixture or substance
22 described in division (2) of subparagraph b of this
23 paragraph which contains cocaine base,
24

- d. one hundred (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. ten (10) grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD),
- f. four hundred (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. one thousand (1,000) kilograms or more of a mixture or substance containing a detectable amount of ~~marihuana~~ marijuana or one thousand ~~(1000)~~ or more ~~marihuana~~ marijuana plants regardless of weight, or
- h. fifty (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 for not ~~less~~ more than ~~twenty (20)~~ thirty (30) years ~~nor more than life~~ and by a fine

1 of not less than Fifty Thousand Dollars (\$50,000.00), which shall be
2 in addition to other punishment provided by law and shall not be
3 imposed in lieu of other punishment. Any person convicted of a
4 violation of the provisions of this paragraph shall be required to
5 serve a minimum of eighty-five percent (85%) of the sentence
6 received prior to becoming eligible for state correctional earned
7 credits towards the completion of the sentence or eligible for
8 parole.

9 ~~4.~~ 5. Any sentence to the custody of the Department of
10 Corrections for any violation of paragraph ~~3~~ 4 of this subsection
11 shall not be subject to statutory provisions for suspended
12 sentences, deferred sentences, or probation. A person convicted of
13 a second or subsequent violation of the provisions of paragraph ~~3~~ 4
14 of this subsection shall be punished as a habitual offender pursuant
15 to Section 51.1 of Title 21 of the Oklahoma Statutes and shall be
16 required to serve a minimum of ~~eighty-five percent (85%)~~ sixty-five
17 percent (65%) of the sentence received prior to becoming eligible
18 for state correctional earned credits or eligibility for parole.

19 ~~5.~~ 6. Any person who has been convicted of manufacturing or
20 attempting to manufacture methamphetamine pursuant to the provisions
21 of this subsection and who, after such conviction, purchases or
22 attempts to purchase, receive or otherwise acquire any product,
23 mixture, or preparation containing any detectable quantity of base
24 pseudoephedrine or ephedrine shall, upon conviction, be guilty of a

1 felony punishable by imprisonment in the custody of the Department
2 of Corrections for a term in the range of twice the minimum term
3 provided for in paragraph 2 of this subsection.

4 ~~H.~~ G. Any person convicted of any offense described in the
5 Uniform Controlled Dangerous Substances Act may, in addition to the
6 fine imposed, be assessed an amount not to exceed ten percent (10%)
7 of the fine imposed. Such assessment shall be paid into a revolving
8 fund for enforcement of controlled dangerous substances created
9 pursuant to Section 2-506 of this title.

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

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

20 ~~K.~~ J. When a person is found guilty of a violation of the
21 provisions of this section, the court shall order, in addition to
22 any other penalty, the defendant to pay a one-hundred-dollar
23 assessment to be deposited in the Drug Abuse Education and Treatment
24

1 Revolving Fund created in Section 2-503.2 of this title, upon
2 collection.

3 ~~H.~~ K. Any person convicted of a second or subsequent felony
4 violation of the provisions of this section, except for paragraphs 1
5 and 2 of subsection B of this section, ~~paragraphs 2, 3, 4 and 5 of~~
6 ~~subsection C of this section,~~ paragraphs 1, 2, ~~and 3 of subsection E~~
7 D of this section ~~and,~~ paragraphs 1 and 2 of subsection ~~F~~ E of this
8 section and paragraphs 2 and 3 of subsection F of this section,
9 shall be punished as a habitual offender pursuant to Section 51.1 of
10 Title 21 of the Oklahoma Statutes.

11 SECTION 2. This act shall become effective November 1, 2019.

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