

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3412

By: Pae

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 2021, 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; reducing certain penalties; clarifying penalty provisions for second and subsequent convictions; deleting certain unlawful acts and penalty provisions; modifying scope of certain prohibited act; providing an exception; defining term; modifying penalties; updating language; updating internal statutory references; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, 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

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

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

15 5. To transport with intent to distribute or dispense or
16 possess with intent to manufacture, distribute, or dispense a
17 controlled dangerous substance, or to transport with intent to
18 distribute or dispense or possess with intent to distribute, a
19 counterfeit controlled dangerous substance, or to possess with
20 intent to distribute a synthetic controlled substance. In order to
21 prove intent to distribute, dispense, or manufacture pursuant to the
22 offenses listed in this paragraph, at least three of the following
23 factors must be involved unless the person was in possession of more
24 than four (4) grams of a substance classified in Schedule I or II of

1 the Uniform Controlled Dangerous Substances Act, except for
2 marijuana:

3 a. the person possesses the means to weigh a controlled
4 substance,

5 b. the person possesses a record indicating a drug-
6 related transaction,

7 c. the person possesses materials primarily used for
8 separating and packaging controlled substances,

9 d. the person possesses a firearm that is in the
10 immediate physical control of the person at the time
11 of possession of the controlled substance,

12 e. the person has in his or her immediate possession or
13 control at least two other controlled substances in
14 any amount,

15 f. the person has implemented excessive security measures
16 in a structure or vehicle connected to the offender,
17 and

18 g. the person has in his or her immediate possession or
19 control cash in excess of Five Hundred Dollars
20 (\$500.00).

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

23 1. A substance classified in Schedule I or II, except for
24 marijuana, involving one-quarter (0.25) of a gram or more of the

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

19 2. Any One-quarter (0.25) of a gram or more of any other
20 controlled dangerous substance classified in Schedule III, IV, V or
21 marijuana, upon conviction, shall be guilty of a felony and shall be
22 sentenced to a term of imprisonment in the custody of the Department
23 of Corrections for not more than ~~five (5)~~ two (2) years and a fine
24 of not more than Twenty Thousand Dollars (\$20,000.00), which shall

1 be in addition to other punishment provided by law and shall not be
2 imposed in lieu of other punishment. A second conviction for the
3 violation of the provisions of this paragraph within ten (10) years
4 of the date following the completion of the execution of the prior
5 sentence is a felony punishable by a term of imprisonment in the
6 custody of the Department of Corrections for not more than ~~ten (10)~~
7 five (5) years. A third or subsequent conviction for the violation
8 of the provisions of this paragraph within ten (10) years of the
9 date following the completion of the execution of the prior sentence
10 is a felony punishable by a term of imprisonment in the custody of
11 the Department of Corrections for not more than ~~fifteen (15)~~ eight
12 (8) years; or

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

1 punishment provided by law and shall not be imposed in lieu of other
2 punishment.

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

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

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

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

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

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

22 ~~E.~~ D. Any person who is at least eighteen (18) years of age and
23 who violates the provisions of this section by using or soliciting
24 the use of services of a person less than eighteen (18) years of age

1 to distribute, dispense, transport with intent to distribute or
2 dispense or cultivate a controlled dangerous substance or by
3 distributing a controlled dangerous substance to a person under
4 eighteen (18) years of age, or in the presence of a person under
5 twelve (12) years of age, upon conviction, is punishable by:

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

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

14 3. For a third or subsequent violation of this ~~section~~
15 subsection within ten (10) years of the date following the
16 completion of the execution of the prior sentence, a term of
17 imprisonment in the custody of the Department of Corrections for not
18 less than ten (10) years nor more than life.

19 ~~F.~~ E. Any person who violates any provision of this section by
20 transporting with intent to distribute or dispense, distributing or
21 possessing with intent to distribute a controlled dangerous
22 substance to a person, or violation of subsection ~~G~~ F of this
23 section, in or on, or within ~~two thousand (2,000)~~ five hundred (500)
24 feet of the real property comprising a public or private elementary

1 or secondary school, public vocational school, ~~public or private~~
2 ~~college or university, or other institution of higher education,~~
3 recreation center or public park, including state parks and
4 recreation areas, ~~public housing project,~~ or child care facility as
5 defined by Section 402 of Title 10 of the Oklahoma Statutes, during
6 hours of operation of the aforementioned locations, upon conviction,
7 shall be punished by:

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

12 2. For a second or subsequent violation of this ~~section~~
13 subsection within ten (10) years of the date following the
14 completion of the execution of the prior sentence, a term of
15 imprisonment in the custody of the Department of Corrections, or by
16 the imposition of a fine or by both, not exceeding thrice that
17 authorized by the appropriate provision of this section.

18 Convictions for second and subsequent violations of the provisions
19 of this section shall not be subject to statutory provisions of
20 suspended sentences, deferred sentences or probation.

21 For purposes of this subsection, median strips or the green
22 space dividing roads, streets, and highways shall not be considered
23 a portion of the public park.
24

1 As used in this subsection, "hours of operation" shall include
2 all extracurricular activities sanctioned or authorized by the
3 public or private elementary or secondary school or public
4 vocational school.

5 ~~G. F.~~ 1. Except as authorized by the Uniform Controlled
6 Dangerous Substances Act, it shall be unlawful for any person to
7 manufacture or attempt to manufacture any controlled dangerous
8 substance or possess any substance listed in Section 2-322 of this
9 title or any substance containing any detectable amount of
10 pseudoephedrine or its salts, optical isomers or salts of optical
11 isomers, iodine or its salts, optical isomers or salts of optical
12 isomers, hydriodic acid, sodium metal, lithium metal, anhydrous
13 ammonia, phosphorus, or organic solvents with the intent to use that
14 substance to manufacture a controlled dangerous substance.

15 2. Any person violating the provisions of this subsection with
16 respect to the unlawful manufacturing or attempting to unlawfully
17 manufacture any controlled dangerous substance, except for
18 marijuana, or possessing any substance listed in this subsection or
19 Section 2-322 of this title, upon conviction, is guilty of a felony
20 and shall be punished by imprisonment in the custody of the
21 Department of Corrections for not ~~less than seven (7)~~ more than ten
22 (10) years ~~nor more than life~~ and by a fine of not ~~less than Fifty~~
23 ~~Thousand Dollars (\$50,000.00)~~ more than Twenty-five Thousand Dollars
24 (\$25,000.00), which shall be in addition to other punishment

1 provided by law and shall not be imposed in lieu of other
2 punishment. The possession of any amount of anhydrous ammonia in an
3 unauthorized container shall be prima facie evidence of intent to
4 use such substance to manufacture a controlled dangerous substance.
5 A second violation of this subsection within ten (10) years of the
6 date following the completion of the execution of the prior
7 sentences is punishable by a term of imprisonment in the custody of
8 the Department of Corrections for a term of not more than fifteen
9 (15) years. A third or subsequent violation of this subsection
10 within ten (10) years of the date following the completion of the
11 execution of the prior sentences is punishable by a term of
12 imprisonment in the custody of the Department of Corrections for a
13 term of not more than twenty (20) years.

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

17 a. six or fewer marijuana plants capable of producing
18 less than one (1) kilogram of marijuana, excluding
19 parts of the plant that do not contain hydrocannabinol
20 shall, upon conviction, be guilty of a misdemeanor
21 punishable by imprisonment in the county jail for a
22 term of not more than one (1) year and a fine of not
23 more than One Thousand Dollars (\$1,000.00),
24

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

18 c. one hundred (100) kilograms or more but less than one
19 thousand (1,000) kilograms of marijuana or one hundred
20 one marijuana plants but less than one thousand
21 marijuana plants shall, upon conviction, be guilty of
22 a felony punishable by imprisonment in the custody of
23 the Department of Corrections for a term of not more
24 than five (5) years and a fine of not more than

Fifteen Thousand Dollars (\$15,000.00). A second conviction for violation of this subparagraph within ten (10) years of the date following the completion of the execution of the prior sentence is punishable by a term of imprisonment in the custody of the Department of Corrections for a term of not more than ten (10) years. A third or subsequent conviction of this subparagraph within ten (10) years of the date following the completion of the execution of the prior sentences is punishable by a term of imprisonment in the custody of the Department of Corrections for a term of not more than fifteen (15) years.

4. 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. one (1) kilogram or more of a mixture or substance containing a detectable amount of heroin,
- b. five (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 divisions (1) through (3) of this subparagraph,

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

d. one hundred (100) grams or more of phencyclidine (PCP) or one (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 one hundred (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,

1 g. one thousand (1,000) kilograms or more of a mixture or
2 substance containing a detectable amount of ~~marihuana~~
3 marijuana or one thousand ~~(1000)~~ or more ~~marihuana~~
4 marijuana plants regardless of weight, or

5 h. fifty (50) grams or more of methamphetamine, its
6 salts, isomers, and salts of its isomers or five
7 hundred (500) grams or more of a mixture or substance
8 containing a detectable amount of methamphetamine, its
9 salts, isomers, or salts of its isomers,

10 upon conviction, is guilty of aggravated manufacturing a controlled
11 dangerous substance punishable by imprisonment for not ~~less~~ more
12 than ~~twenty (20)~~ thirty (30) years ~~nor more than life~~ and by a fine
13 of not less than Fifty Thousand Dollars (\$50,000.00), which shall be
14 in addition to other punishment provided by law and shall not be
15 imposed in lieu of other punishment. Any person convicted of a
16 violation of the provisions of this paragraph shall be required to
17 serve a minimum of ~~eighty-five percent (85%)~~ sixty-five percent
18 (65%) of the sentence received prior to becoming eligible for state
19 correctional earned credits towards the completion of the sentence
20 or eligible for parole.

21 ~~4.~~ 5. Any sentence to the custody of the Department of
22 Corrections for any violation of paragraph ~~3~~ 4 of this subsection
23 shall not be subject to statutory provisions for suspended
24 sentences, deferred sentences, or probation. A person convicted of

1 a second or subsequent violation of the provisions of paragraph ~~3~~ 4
2 of this subsection shall be punished as a habitual offender pursuant
3 to Section 51.1 of Title 21 of the Oklahoma Statutes and shall be
4 required to serve a minimum of eighty-five percent (85%) of the
5 sentence received prior to becoming eligible for state correctional
6 earned credits or eligibility for parole.

7 ~~5.~~ 6. Any person who has been convicted of manufacturing or
8 attempting to manufacture methamphetamine pursuant to the provisions
9 of this subsection and who, after such conviction, purchases or
10 attempts to purchase, receive or otherwise acquire any product,
11 mixture, or preparation containing any detectable quantity of base
12 pseudoephedrine or ephedrine shall, upon conviction, be guilty of a
13 felony punishable by imprisonment in the custody of the Department
14 of Corrections for a term in the range of twice the minimum term
15 provided for in paragraph 2 of this subsection.

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

22 ~~I.~~ H. Any person convicted of any offense described in this
23 section shall, in addition to any fine imposed, pay a special
24 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be

1 deposited into the Trauma Care Assistance Revolving Fund created in
2 Section ~~1-2522~~ 1-2530.9 of this title.

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

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

14 ~~L.~~ K. Any person convicted of a second or subsequent felony
15 violation of the provisions of this section, except for paragraphs 1
16 ~~and, 2 and 3~~ of subsection B of this section, ~~paragraphs 2, 3, 4 and~~
17 ~~5 of subsection C of this section,~~ paragraphs 1, 2, and 3 of
18 subsection ~~E~~ D of this section ~~and,~~ paragraphs 1 and 2 of subsection
19 ~~F~~ E of this section and paragraphs 2 and 3 of subsection F of this
20 section, shall be punished as a habitual offender pursuant to
21 Section 51.1 of Title 21 of the Oklahoma Statutes.

22 SECTION 2. This act shall become effective November 1, 2022.
23

24 58-2-8864 GRS 01/05/22