

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 360

By: Brooks

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5
6 AS INTRODUCED

7 An Act relating to Uniform Controlled Dangerous
8 Substances Act; amending 63 O.S. 2011, Section 2-401,
9 as last amended by Section 1, Chapter 130, O.S.L.
10 2018 (63 O.S. Supp. 2020, Section 2-401), which
11 relates to penalties for prohibited acts; modifying
12 prohibited acts; requiring certain factors be met for
13 certain offenses; and providing an effective date.

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

15 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as
16 last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp.
17 2020, 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, it shall be unlawful for any
20 person:

21 1. To distribute, or dispense, ~~transport with intent to~~
22 ~~distribute or dispense, possess with intent to manufacture,~~
23 ~~distribute, or dispense,~~ a controlled dangerous substance or to
24 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; or

10 4. To transport with intent to distribute or dispense, or
11 possess with intent to distribute or dispense, a controlled
12 dangerous substance or counterfeit controlled dangerous substance.
13 To prove intent, the following factors must be present at the time
14 of transport or possession:

15 a. possession of a controlled dangerous substance or
16 counterfeit controlled dangerous substance in a
17 quantity of one-quarter (1/4) or more of the quantity
18 listed in subsection C of Section 2-415 of this title,
19 and

20 b. at least three (3) of the following factors:

21 (1) the person possesses the means to weigh the
22 substance,

23 (2) the substance is separated and packaged in a
24 manner to facilitate delivery,

- 1 (3) the person possesses a firearm that is in the
2 immediate physical control of the person,
3 (4) the person possesses at least two (2) other
4 controlled dangerous substances or counterfeit
5 controlled dangerous substances in any amount, or
6 (5) the person possesses cash in excess of Five
7 Hundred Dollars (\$500.00).

8 B. Any person who violates the provisions of this section with
9 respect to:

10 1. A substance classified in Schedule I or II, except for
11 marijuana, upon conviction, shall be guilty of transporting or
12 possessing with an intent to distribute or dispense a controlled
13 dangerous substance, a felony, and shall be sentenced to a term of
14 imprisonment in the custody of the Department of Corrections for not
15 more than seven (7) years and a fine of not more than One Hundred
16 Thousand Dollars (\$100,000.00), which shall be in addition to other
17 punishment provided by law and shall not be imposed in lieu of other
18 punishment. A second conviction for the violation of provisions of
19 this paragraph is a felony punishable by a term of imprisonment in
20 the custody of the Department of Corrections for not more than
21 fourteen (14) years. A third or subsequent conviction for the
22 violation of the provisions of this paragraph is a felony punishable
23 by a term of imprisonment in the custody of the Department of
24 Corrections for not more than twenty (20) years;

1 2. Any other controlled dangerous substance classified in
2 Schedule III, IV, V or marijuana, upon conviction, shall be guilty
3 of a felony and shall be sentenced to a term of imprisonment in the
4 custody of the Department of Corrections for not more than five (5)
5 years and a fine of not more than Twenty Thousand Dollars
6 (\$20,000.00), which shall be in addition to other punishment
7 provided by law and shall not be imposed in lieu of other
8 punishment. A second conviction for the violation of the provisions
9 of this paragraph is a felony punishable by a term of imprisonment
10 in the custody of the Department of Corrections for not more than
11 ten (10) years. A third or subsequent conviction for the violation
12 of the provisions of this paragraph is a felony punishable by a term
13 of imprisonment in the custody of the Department of Corrections for
14 not more than fifteen (15) years; or

15 3. An imitation controlled substance as defined by Section 2-
16 101 of this title, upon conviction, shall be guilty of a misdemeanor
17 and shall be sentenced to a term of imprisonment in the county jail
18 for a period of not more than one (1) year and a fine of not more
19 than One Thousand Dollars (\$1,000.00). A person convicted of a
20 second violation of the provisions of this paragraph shall be guilty
21 of a felony and shall be sentenced to a term of imprisonment in the
22 custody of the Department of Corrections for not more than two (2)
23 years and a fine of not more than Five Thousand Dollars (\$5,000.00),
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1 which shall be in addition to other punishment provided by law and
2 shall not be imposed in lieu of other 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 dangerous substance is guilty of a felony and shall be
10 punished by imprisonment in the custody of the Department of
11 Corrections for a term not to exceed ten (10) years and a fine of
12 not more than Twenty-five Thousand Dollars (\$25,000.00), which shall
13 be in 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 dangerous substance is guilty of a felony and shall be
4 punished by imprisonment in the custody of the Department of
5 Corrections for a term not to exceed ten (10) years and a fine of
6 not more than Twenty-five Thousand Dollars (\$25,000.00), which shall
7 be in 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 dangerous substance is a felony punishable by
12 imprisonment in the custody of the Department of Corrections for a
13 term not less than two (2) years nor more than twenty (20) years. A
14 third or subsequent conviction for the violation of the provisions
15 of this paragraph is a felony punishable by imprisonment in the
16 custody of the Department of Corrections for a term not less than
17 ten (10) 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. 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, is punishable by:

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

9 2. For a second violation of this section, a term of
10 imprisonment in the custody of the Department of Corrections for not
11 less than four (4) years nor more than twenty (20) years; or

12 3. For a third or subsequent violation of this section, a term
13 of imprisonment in the custody of the Department of Corrections for
14 not less than ten (10) years nor more than life.

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

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

7 2. For a second or subsequent violation of this section, a term
8 of imprisonment in the custody of the Department of Corrections, or
9 by the imposition of a fine or by both, not exceeding thrice that
10 authorized by the appropriate provision of this section.

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

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

1 2. 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, or possessing any
4 substance listed in this subsection or Section 2-322 of this title,
5 upon conviction, is guilty of a felony and shall be punished by
6 imprisonment for not less than seven (7) years nor more than life
7 and by a fine of not less than Fifty Thousand Dollars (\$50,000.00),
8 which shall be in addition to other punishment provided by law and
9 shall not be imposed in lieu of other punishment. The possession of
10 any amount of anhydrous ammonia in an unauthorized container shall
11 be prima facie evidence of intent to use such substance to
12 manufacture a controlled dangerous substance.

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

- 17 a. one (1) kilogram or more of a mixture or substance
18 containing a detectable amount of heroin,
- 19 b. five (5) kilograms or more of a mixture or substance
20 containing a detectable amount of:
 - 21 (1) coca leaves, except coca leaves and extracts of
22 coca leaves from which cocaine, ecgonine, and
23 derivatives of ecgonine or their salts have been
24 removed,

- 1 (2) cocaine, its salts, optical and geometric
2 isomers, and salts of isomers,
3 (3) ecgonine, its derivatives, their salts, isomers,
4 and salts of isomers, or
5 (4) any compound, mixture, or preparation which
6 contains any quantity of any of the substances
7 referred to in divisions (1) through (3) of this
8 subparagraph,

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

12 d. one hundred (100) grams or more of phencyclidine (PCP)
13 or 1 kilogram or more of a mixture or substance
14 containing a detectable amount of phencyclidine (PCP),

15 e. ten (10) grams or more of a mixture or substance
16 containing a detectable amount of lysergic acid
17 diethylamide (LSD),

18 f. four hundred (400) grams or more of a mixture or
19 substance containing a detectable amount of N-phenyl-
20 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ~~100~~
21 one hundred (100) grams or more of a mixture or
22 substance containing a detectable amount of any
23 analogue of N-phenyl-N-[1-(2-phenylethyl)-4-
24 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)~~ (1,000) or more
4 ~~marihuana~~ 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 ~~500~~ 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 than
12 twenty (20) years nor more than life and by a fine of not less than
13 Fifty Thousand Dollars (\$50,000.00), which shall be in addition to
14 other punishment provided by law and shall not be imposed in lieu of
15 other punishment. Any person convicted of a violation of the
16 provisions of this paragraph shall be required to serve a minimum of
17 eighty-five percent (85%) of the sentence received prior to becoming
18 eligible for state correctional earned credits towards the
19 completion of the sentence or eligible for parole.

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

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

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

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

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

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

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

21 SECTION 2. This act shall become effective November 1, 2021.

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