

1 ENGROSSED SENATE  
2 BILL NO. 421

By: Bice and Young of the  
Senate

3 and

4 Mize of the House

5  
6 [ Uniform Controlled Dangerous Substances Act -  
7 penalties for prohibited acts - effective date ]  
8

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

10 SECTION 1. AMENDATORY 63 O.S. 2011, Section 2-401, as  
11 last amended by Section 1, Chapter 130, O.S.L. 2018 (63 O.S. Supp.  
12 2018, Section 2-401), is amended to read as follows:

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

16 1. To distribute, or dispense, ~~transport with intent to~~  
17 ~~distribute or dispense, possess with intent to manufacture,~~  
18 ~~distribute, or dispense,~~ a controlled dangerous substance or to  
19 solicit the use of or use the services of a person less than  
20 eighteen (18) years of age to cultivate, distribute or dispense a  
21 controlled dangerous substance;

22 2. To create, or distribute, ~~transport with intent to~~  
23 ~~distribute or dispense, or possess with intent to distribute,~~ a  
24 counterfeit controlled dangerous substance; ~~or~~

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

5           4. To manufacture or distribute a synthetic controlled  
6 substance except when authorized by the Food and Drug Administration  
7 of the United States Department of Health and Human Services;

8           5. To transport with intent to distribute or dispense, or  
9 possess with intent to manufacture, distribute or dispense, a  
10 controlled dangerous substance; to transport with intent to  
11 distribute or dispense, or possess with intent to distribute, a  
12 counterfeit controlled dangerous substance; or to possess with  
13 intent to distribute a synthetic controlled substance. In order to  
14 prove intent to distribute, dispense or manufacture pursuant to the  
15 offenses listed in paragraph 5 of this subsection, at least three of  
16 the following factors must be present unless the person was in  
17 possession of more than four (4) grams of a controlled substance  
18 classified in Schedule I or II, except for marijuana:

19           a. the person possesses the means to weigh a controlled  
20 substance,

21           b. the person possesses a record indicating a drug-  
22 related transaction,

23           c. the person possesses materials primarily used for  
24 separating and packaging controlled substances,

- 1           d. the person possesses a firearm that is in the  
2           immediate physical control of the person at the time  
3           of possession of the controlled substance,  
4           e. the person has in their immediate possession or  
5           control at least two other controlled substances in  
6           any amount,  
7           f. the person has implemented excessive security measures  
8           in a structure or vehicle connected to the offender,  
9           or  
10          g. the person has in their immediate possession or  
11          control cash in excess of Five Hundred Dollars  
12          (\$500.00).

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

15           1. A substance classified in Schedule I or II, except for  
16 marijuana, involving one-quarter (0.25) of a gram or more of the  
17 Schedule I or II substance, upon conviction, shall be guilty of  
18 ~~transporting or possessing with an intent to distribute a controlled~~  
19 ~~dangerous substance,~~ a felony, and shall be sentenced to a term of  
20 imprisonment in the custody of the Department of Corrections for not  
21 more than ~~seven (7)~~ three (3) years and a fine of not more than One  
22 Hundred Thousand Dollars (\$100,000.00), which shall be in addition  
23 to other punishment provided by law and shall not be imposed in lieu  
24 of other punishment. A second conviction for the violation of

1 provisions of this paragraph within ten (10) years of the date  
2 following the completion of the prior sentence is a felony  
3 punishable by a term of imprisonment in the custody of the  
4 Department of Corrections for not more than ~~fourteen (14) years~~  
5 seven (7) years. A third or subsequent conviction for the violation  
6 of the provisions of this paragraph within ten (10) years of the  
7 date following the completion of the prior sentences is a felony  
8 punishable by a term of imprisonment in the custody of the  
9 Department of Corrections for not more than ~~twenty (20)~~ ten (10)  
10 years;

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

1 completion of the prior sentences is a felony punishable by a term  
2 of imprisonment in the custody of the Department of Corrections for  
3 not more than ~~fifteen (15)~~ eight (8) years; or

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

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

21 ~~2. Any person convicted of violating the provisions of~~  
22 ~~paragraph 1 of this subsection with respect to distributing a~~  
23 ~~controlled substance is guilty of a felony and shall be punished by~~  
24 ~~imprisonment in the custody of the Department of Corrections for a~~

1 ~~term not to exceed ten (10) years and a fine of not more than~~  
2 ~~Twenty-five Thousand Dollars (\$25,000.00), which shall be in~~  
3 ~~addition to other punishment provided by law and shall not be~~  
4 ~~imposed in lieu of other punishment.~~

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

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

22 ~~5. A second conviction for the violation of the provisions of~~  
23 ~~paragraph 1 of this subsection with respect to manufacturing a~~  
24 ~~controlled substance is a felony punishable by imprisonment in the~~

1 ~~custody of the Department of Corrections for a term not less than~~  
2 ~~two (2) years nor more than twenty (20) years. A third or~~  
3 ~~subsequent conviction for the violation of the provisions of this~~  
4 ~~paragraph is a felony punishable by imprisonment in the custody of~~  
5 ~~the Department of Corrections for a term not less than ten (10)~~  
6 ~~years nor more than life.~~

7 D. Convictions for violations of the provisions of this section  
8 shall be subject to the statutory provisions for suspended or  
9 deferred sentences, or probation as provided in Section 991a of  
10 Title 22 of the Oklahoma Statutes.

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

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

22 2. For a second violation of this ~~section~~ subsection within ten  
23 (10) years of the date following the completion of the prior  
24 sentence, a term of imprisonment in the custody of the Department of

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

3 3. For a third or subsequent violation of this ~~section~~  
4 subsection within ten (10) years of the date following the  
5 completion of the prior sentences, a term of imprisonment in the  
6 custody of the Department of Corrections for not less than ten (10)  
7 years nor more than life.

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

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

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

10           For the purposes of this subsection:

- 11           a. median strips or the green space dividing roads,  
12           streets and highways shall not be considered to be a  
13           public park, and
- 14           b. hours of normal operation shall include all  
15           extracurricular activities sanctioned or authorized by  
16           the public or private elementary or secondary school  
17           or public vocational school.

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

1 isomers, hydriodic acid, sodium metal, lithium metal, anhydrous  
2 ammonia, phosphorus, or organic solvents with the intent to use that  
3 substance to manufacture a controlled dangerous substance.

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

1        3. Any person violating the provisions of this subsection with  
2 respect to the unlawful manufacturing or attempting to unlawfully  
3 manufacture, of marijuana, in the following amounts, is subject to  
4 the following penalties:

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

12           b. one (1) kilogram to one hundred (100) kilograms of  
13           marijuana or seven (7) to one hundred (100) marijuana  
14           plants, upon conviction, is guilty of a felony  
15           punishable by imprisonment for a term not to exceed  
16           three (3) years and a fine not to exceed Fifteen  
17           Thousand Dollars (\$15,000.00). For a second violation  
18           of this paragraph within ten (10) years of the date  
19           following the completion of the prior sentence, a term  
20           not more than three (3) years. A third or subsequent  
21           violation of this paragraph within ten (10) years of  
22           the date following the completion of the prior  
23           sentences is a felony punishable by imprisonment in

1           the custody of the Department of Corrections for a  
2           term not more than ten (10) years, and  
3        c. more than one hundred (100) kilograms to less than one  
4           thousand (1,000) kilograms of marijuana or one hundred  
5           one (101) to nine hundred ninety-nine (999) marijuana  
6           plants, upon conviction, is guilty of a felony  
7           punishable by imprisonment for a term not to exceed  
8           five (5) years and a fine not to exceed Fifteen  
9           Thousand Dollars (\$15,000.00). For a second violation  
10           of this paragraph within ten (10) years of the date  
11           following the completion of the prior sentence, a term  
12           not more than ten (10) years. A third or subsequent  
13           violation of this paragraph within ten (10) years of  
14           the date following the completion of the execution of  
15           the prior sentences is a felony punishable by  
16           imprisonment in the custody of the Department of  
17           Corrections for a term not more than fifteen (15)  
18           years.

19        ~~3.~~ 4. Any person violating the provisions of this subsection  
20 with respect to the unlawful manufacturing or attempting to  
21 unlawfully manufacture any controlled dangerous substance in the  
22 following 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 one hundred (100) grams or more of a mixture or  
5 substance containing a detectable amount of any  
6 analogue of N-phenyl-N-[1-(2-phenylethyl)-4-  
7 piperidinyl] propanamide,

8 g. one thousand (1,000) kilograms or more of a mixture or  
9 substance containing a detectable amount of ~~marihuana~~  
10 marijuana or one thousand ~~(1000)~~ (1,000) or more  
11 ~~marihuana~~ marijuana plants regardless of weight, or

12 h. fifty (50) grams or more of methamphetamine, its  
13 salts, isomers, and salts of its isomers or ~~500~~ five  
14 hundred (500) grams or more of a mixture or substance  
15 containing a detectable amount of methamphetamine, its  
16 salts, isomers, or salts of its isomers,

17 upon conviction, is guilty of aggravated manufacturing a controlled  
18 dangerous substance punishable by imprisonment for not ~~less~~ more  
19 than ~~twenty (20)~~ thirty (30) years ~~nor more than life~~ and by a fine  
20 of not less than Fifty Thousand Dollars (\$50,000.00), which shall be  
21 in addition to other punishment provided by law and shall not be  
22 imposed in lieu of other punishment. Any person convicted of a  
23 violation of the provisions of this paragraph shall be required to  
24 serve a minimum of ~~eighty-five percent (85%)~~ sixty-five percent

1 (65%) of the sentence received prior to becoming eligible for state  
2 correctional earned credits towards the completion of the sentence  
3 or eligible for parole.

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

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

23 ~~H.~~ G. Any person convicted of any offense described in the  
24 Uniform Controlled Dangerous Substances Act may, in addition to the

1 fine imposed, be assessed an amount not to exceed ten percent (10%)  
2 of the fine imposed. Such assessment shall be paid into a revolving  
3 fund for enforcement of controlled dangerous substances created  
4 pursuant to Section 2-506 of this title.

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

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

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

21 ~~L.~~ K. Any person convicted of a second or subsequent felony  
22 violation of the provisions of this section, except for paragraphs 1  
23 ~~and, 2 and 3~~ of subsection B of this section, ~~paragraphs 2, 3, 4 and~~  
24 ~~5 of subsection C of this section,~~ paragraphs 1, 2, and 3 of

1 subsection ~~F~~ D of this section ~~and~~, paragraphs 1 ~~and~~, 2 and 3 of  
2 subsection ~~F~~ E of this section and paragraphs 2 and 3 of subsection  
3 F of this section, shall be punished as a habitual offender pursuant  
4 to Section 51.1 of Title 21 of the Oklahoma Statutes.

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

6 Passed the Senate the 14th day of March, 2019.

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\_\_\_\_\_  
Presiding Officer of the Senate

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10 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
11 2019.

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Presiding Officer of the House  
of Representatives

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