

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2112

By: Pae

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5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2021, Section 2-401, which relates to the  
Uniform Controlled Dangerous Substances Act;  
9 clarifying elements of certain prohibited acts;  
stating presumption for persons charged for  
10 possessing controlled dangerous substances; providing  
rebuttal of presumption with certain evidence; and  
11 providing an effective date.

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

15 SECTION 1. AMENDATORY 63 O.S. 2021, Section 2-401, is  
16 amended to read as follows:

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

20 1. To distribute, or dispense, ~~transport with intent to~~  
21 ~~distribute or dispense, possess with intent to manufacture,~~  
22 ~~distribute, or dispense,~~ a controlled dangerous substance or to  
23 solicit the use of or use the services of a person less than  
24

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 for  
11 | consideration, or possess with intent to manufacture, distribute, or  
12 | dispense for consideration controlled dangerous substances or  
13 | counterfeit controlled dangerous substances. In any offense charged  
14 | pursuant to this paragraph, there exists a presumption that the  
15 | person possessed a controlled dangerous substance for personal use  
16 | pursuant to paragraph 1 of subsection A of Section 2-402 of this  
17 | title. This presumption may be rebutted by evidence indicating that  
18 | three of the following circumstances exist:

19 |           a. the person possesses the means to weigh the controlled  
20 |           dangerous substance or counterfeit controlled  
21 |           dangerous substance,

22 |           b. the person possesses a ledger, customer lists,  
23 |           communications, or other materials indicating a  
24 |           history of drug-related transactions,

- 1           c. the person has in his or her immediate possession or  
2           control cash in excess of One Thousand Dollars  
3           (\$1,000.00),
- 4           d. the person possesses at least three separate  
5           controlled dangerous substances or counterfeit  
6           controlled dangerous substances,
- 7           e. the person possesses at least ten separate baggies  
8           containing a controlled dangerous substance or  
9           counterfeit controlled dangerous substance, or
- 10          f. relevant and admissible evidence that contributes to  
11          the proof that the purpose of the person was to  
12          deliver, dispense, or distribute a controlled  
13          dangerous substance or counterfeit controlled  
14          dangerous substance.

15           B. Any person who violates the provisions of this section with  
16 respect to:

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

1 punishment. A second conviction for the violation of the provisions  
2 of this paragraph is a felony punishable by a term of imprisonment  
3 in the custody of the Department of Corrections for not more than  
4 fourteen (14) years. A third or subsequent conviction for the  
5 violation of the provisions of this paragraph is a felony punishable  
6 by a term of imprisonment in the custody of the Department of  
7 Corrections for not more than twenty (20) years;

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

22 3. An imitation controlled substance as defined by Section 2-  
23 101 of this title, upon conviction, shall be guilty of a misdemeanor  
24 and shall be sentenced to a term of imprisonment in the county jail

1 for a period of not more than one (1) year and a fine of not more  
2 than One Thousand Dollars (\$1,000.00). A person convicted of a  
3 second violation of the provisions of this paragraph shall be guilty  
4 of a felony and shall be sentenced to a term of imprisonment in the  
5 custody of the Department of Corrections for not more than two (2)  
6 years and a fine of not more than Five Thousand Dollars (\$5,000.00),  
7 which shall be in addition to other punishment provided by law and  
8 shall not be imposed in lieu of other punishment.

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

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

21 3. A second conviction for the violation of the provisions of  
22 paragraph 1 of this subsection with respect to distributing a  
23 controlled substance is a felony punishable by imprisonment in the  
24 custody of the Department of Corrections for a term not less than

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

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

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

23 D. Convictions for violations of the provisions of this section  
24 shall be subject to the statutory provisions for suspended or

1 deferred sentences, or probation as provided in Section 991a of  
2 Title 22 of the Oklahoma Statutes.

3 E. Any person who is at least eighteen (18) years of age and  
4 who violates the provisions of this section by using or soliciting  
5 the use of services of a person less than eighteen (18) years of age  
6 to distribute, dispense, transport with intent to distribute or  
7 dispense or cultivate a controlled dangerous substance or by  
8 distributing a controlled dangerous substance to a person under  
9 eighteen (18) years of age, or in the presence of a person under  
10 twelve (12) years of age, is punishable by:

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

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

17 3. For a third or subsequent violation of this ~~section~~  
18 subsection, a term of imprisonment in the custody of the Department  
19 of Corrections for not less than ten (10) years nor more than life.

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

1 comprising a public or private elementary or secondary school,  
2 public vocational school, public or private college or university,  
3 or other institution of higher education, recreation center or  
4 public park, including state parks and recreation areas, public  
5 housing project, or child care facility as defined by Section 402 of  
6 Title 10 of the Oklahoma Statutes, shall be punished by:

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

11 2. For a second or subsequent violation of this ~~section~~  
12 subsection, a term of imprisonment in the custody of the Department  
13 of Corrections, or by the imposition of a fine, or by both, not  
14 exceeding thrice that authorized by the appropriate provision of  
15 this section. Convictions for second and subsequent violations of  
16 the provisions of this ~~section~~ subsection shall not be subject to  
17 statutory provisions of suspended sentences, deferred sentences or  
18 probation.

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

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

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

17 3. Any person violating the provisions of this subsection with  
18 respect to the unlawful manufacturing or attempting to unlawfully  
19 manufacture any controlled dangerous substance in the following  
20 amounts:

- 21 a. one (1) kilogram or more of a mixture or substance  
22 containing a detectable amount of heroin,
- 23 b. five (5) kilograms or more of a mixture or substance  
24 containing a detectable amount of:

1 (1) coca leaves, except coca leaves and extracts of  
2 coca leaves from which cocaine, ecgonine, and  
3 derivatives of ecgonine or their salts have been  
4 removed,

5 (2) cocaine, its salts, optical and geometric  
6 isomers, and salts of isomers,

7 (3) ecgonine, its derivatives, their salts, isomers,  
8 and salts of isomers, or

9 (4) any compound, mixture, or preparation which  
10 contains any quantity of any of the substances  
11 referred to in divisions (1) through (3) of this  
12 subparagraph,

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

16 d. one hundred (100) grams or more of phencyclidine (PCP)  
17 or ~~±~~ one (1) kilogram or more of a mixture or  
18 substance containing a detectable amount of  
19 phencyclidine (PCP),

20 e. ten (10) grams or more of a mixture or substance  
21 containing a detectable amount of lysergic acid  
22 diethylamide (LSD),

23 f. four hundred (400) grams or more of a mixture or  
24 substance containing a detectable amount of N-phenyl-

1 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ~~100~~  
2 one hundred (100) grams or more of a mixture or  
3 substance containing a detectable amount of any  
4 analogue of N-phenyl-N-[1-(2-phenylethyl)-4-  
5 piperidinyl] propanamide,

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

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

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

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

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

20           H. Any person convicted of any offense described in the Uniform  
21 Controlled Dangerous Substances Act may, in addition to the fine  
22 imposed, be assessed an amount not to exceed ten percent (10%) of  
23 the fine imposed. Such assessment shall be paid into a revolving  
24

1 fund for enforcement of controlled dangerous substances created  
2 pursuant to Section 2-506 of this title.

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

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

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

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

1 section, shall be punished as a habitual offender pursuant to  
2 Section 51.1 of Title 21 of the Oklahoma Statutes.

3 SECTION 2. This act shall become effective November 1, 2023.

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