

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 32

By: Thompson

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishment; amending 21
8 O.S. 2011, Section 748, as last amended by Section 2,
9 Chapter 231, O.S.L. 2014 (21 O.S. Supp. 2016, Section
10 748), which relates to human trafficking; modifying
11 requirements; amending 63 O.S. 2011, Section 2-401,
12 as amended by Section 4, Chapter 206, O.S.L. 2012 (63
13 O.S. Supp. 2016, Section 2-401), which relates to
14 penalties for prohibited acts; modifying the
15 application of earned credits for offenders; and
16 providing an effective date.

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

18 SECTION 1. AMENDATORY 21 O.S. 2011, Section 748, as last
19 amended by Section 2, Chapter 231, O.S.L. 2014 (21 O.S. Supp. 2016,
20 Section 748), is amended to read as follows:

21 Section 748. A. As used in ~~Sections 748~~ this section and
22 Section 748.2 of this title:

23 1. "Coercion" means compelling, forcing or intimidating a
24 person to act by:

- 25 a. threats of harm or physical restraint against any
26 person,

- 1 b. any act, scheme, plan, or pattern intended to cause a
2 person to believe that performing, or failing to
3 perform, an act would result in serious physical,
4 financial, or emotional harm or distress to or
5 physical restraint against any person,
- 6 c. the abuse or threatened abuse of the law or legal
7 process,
- 8 d. knowingly destroying, concealing, removing,
9 confiscating or possessing any actual or purported
10 passport, labor or immigration document, or other
11 government identification document, including but not
12 limited to a driver license or birth certificate, of
13 another person,
- 14 e. facilitating or controlling a person's access to any
15 addictive or controlled substance other than for legal
16 medical purposes,
- 17 f. blackmail,
- 18 g. demanding or claiming money, goods, or any other thing
19 of value from or on behalf of a prostituted person
20 where such demand or claim arises from or is directly
21 related to the act of prostitution,
- 22 h. determining, dictating or setting the times at which
23 another person will be available to engage in an act
24 of prostitution with a third party,

1 i. determining, dictating or setting the places at which
2 another person will be available for solicitation of,
3 or to engage in, an act of prostitution with a third
4 party, or

5 j. determining, dictating or setting the places at which
6 another person will reside for purposes of making such
7 person available to engage in an act of prostitution
8 with a third party;

9 2. "Commercial sex" means any form of commercial sexual
10 activity such as sexually explicit performances, prostitution,
11 participation in the production of pornography, performance in a
12 strip club, or exotic dancing or display;

13 3. "Debt bondage" means the status or condition of a debtor
14 arising from a pledge by the debtor of his or her personal services
15 or of those of a person under his or her control as a security for
16 debt if the value of those services as reasonably assessed is not
17 applied toward the liquidation of the debt or the length and nature
18 of those services are not respectively limited and defined;

19 4. "Human trafficking" means modern-day slavery that includes,
20 but is not limited to, extreme exploitation and the denial of
21 freedom or liberty of an individual for purposes of deriving benefit
22 from that individual's commercial sex act or labor;

23 5. "Human trafficking for labor" means:
24

1 a. recruiting, enticing, harboring, maintaining,
2 transporting, providing or obtaining, by any means,
3 another person through deception, force, fraud, threat
4 or coercion or for purposes of engaging the person in
5 labor, or

6 b. benefiting, financially or by receiving anything of
7 value, from participation in a venture that has
8 engaged in an act of trafficking for labor;

9 6. "Human trafficking for commercial sex" means:

10 a. recruiting, enticing, harboring, maintaining,
11 transporting, providing or obtaining, by any means,
12 another person through deception, force, fraud, threat
13 or coercion for purposes of engaging the person in a
14 commercial sex act,

15 b. recruiting, enticing, harboring, maintaining,
16 transporting, providing, purchasing or obtaining, by
17 any means, a minor for purposes of engaging the minor
18 in a commercial sex act, or

19 c. benefiting, financially or by receiving anything of
20 value, from participating in a venture that has
21 engaged in an act of trafficking for commercial sex;

22 7. "Legal process" means the criminal law, the civil law, or
23 the regulatory system of the federal government, any state,
24 territory, district, commonwealth, or trust territory therein, and

1 any foreign government or subdivision thereof and includes legal
2 civil actions, criminal actions, and regulatory petitions or
3 applications;

4 8. "Minor" means an individual under eighteen (18) years of
5 age; and

6 9. "Victim" means a person against whom a violation of any
7 provision of this section has been committed.

8 B. It shall be unlawful to knowingly engage in human
9 trafficking.

10 C. Any person violating the provisions of this section shall,
11 upon conviction, be guilty of a felony punishable by imprisonment in
12 the custody of the Department of Corrections for a term of not less
13 than five (5) years or for life, or by a fine of not more than One
14 Hundred Thousand Dollars (\$100,000.00), or by both such fine and
15 imprisonment. Any person violating the provisions of this section
16 where the victim of the offense is under eighteen (18) years of age
17 at the time of the offense shall, upon conviction, be guilty of a
18 felony punishable by imprisonment in the custody of the Department
19 of Corrections for a term of not less than fifteen (15) years or for
20 life, or by a fine of not more than Two Hundred Fifty Thousand
21 Dollars (\$250,000.00), or by both such fine and imprisonment. The
22 court shall also order the defendant to pay restitution to the
23 victim as provided in Section 991f of Title 22 of the Oklahoma
24 Statutes. If the person is convicted of human trafficking, the

1 person shall serve eighty-five percent (85%) of the sentence before
2 being eligible for parole consideration or before application of any
3 earned credits. The terms of imprisonment specified in this
4 subsection shall not be subject to statutory provisions for
5 suspension, deferral or probation, or state correctional institution
6 earned credits accruing from and after November 1, 1989, except for
7 the achievement earned credits authorized by subsection H of Section
8 138 of Title 57 of the Oklahoma Statutes. To qualify for such
9 achievement earned credits, such inmates must also be in compliance
10 with the standards for Class level 2 behavior, as defined in
11 subsection D of Section 138 of Title 57 of the Oklahoma Statutes.
12 Such person shall not be eligible for parole consideration prior to
13 serving eighty-five percent (85%) of the sentence imposed and such
14 person shall not be eligible for earned credits or any other type of
15 credits which have the effect of reducing the length of the sentence
16 to less than eighty-five percent (85%) of the sentence imposed.

17 D. It is an affirmative defense to prosecution for a criminal
18 offense that, during the time of the alleged commission of the
19 offense, the defendant was a victim of human trafficking.

20 E. The consent of a victim to the activity prohibited by this
21 section shall not constitute a defense.

22 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-401, as
23 amended by Section 4, Chapter 206, O.S.L. 2012 (63 O.S. Supp. 2016,
24 Section 2-401), is amended to read as follows:

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

4 1. To distribute, dispense, transport with intent to distribute
5 or dispense, possess with intent to manufacture, distribute, or
6 dispense, a controlled dangerous substance or to solicit the use of
7 or use the services of a person less than eighteen (18) years of age
8 to cultivate, distribute or dispense a controlled dangerous
9 substance;

10 2. To create, distribute, transport with intent to distribute
11 or dispense, or possess with intent to distribute, a counterfeit
12 controlled dangerous substance; or

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

17 B. Any person who violates the provisions of this section with
18 respect to:

19 1. A substance classified in Schedule I or II which is a
20 narcotic drug, lysergic acid diethylamide (LSD), gamma
21 butyrolactone, gamma hydroxyvalerate, gamma valerolactone, 1,4
22 butanediol, or gamma-hydroxybutyric acid as defined in Sections 2-
23 204 and 2-208 of this title, upon conviction, shall be guilty of a
24 felony and shall be sentenced to a term of imprisonment for not less

1 than five (5) years nor more than life and a fine of not more than
2 One Hundred Thousand Dollars (\$100,000.00), which shall be in
3 addition to other punishment provided by law and shall not be
4 imposed in lieu of other punishment. Any sentence to the custody of
5 the Department of Corrections shall not be subject to statutory
6 provisions for suspended sentences, deferred sentences, or probation
7 except when the conviction is for a first offense;

8 2. Any other controlled dangerous substance classified in
9 Schedule I, II, III, or IV, upon conviction, shall be guilty of a
10 felony and shall be sentenced to a term of imprisonment for not less
11 than two (2) years nor more than life and a fine of not more than
12 Twenty Thousand Dollars (\$20,000.00), which shall be in addition to
13 other punishment provided by law and shall not be imposed in lieu of
14 other punishment. Any sentence to the custody of the Department of
15 Corrections shall not be subject to statutory provisions for
16 suspended sentences, deferred sentences, or probation except when
17 the conviction is for a first offense;

18 3. A substance classified in Schedule V, upon conviction, shall
19 be guilty of a felony and shall be sentenced to a term of
20 imprisonment for not more than five (5) years and a fine of not more
21 than One Thousand Dollars (\$1,000.00), which shall be in addition to
22 other punishment provided by law and shall not be imposed in lieu of
23 other punishment; or
24

1 4. An imitation controlled substance as defined by Section 2-
2 101 of this title, upon conviction, shall be guilty of a misdemeanor
3 and shall be sentenced to a term of imprisonment in the county jail
4 for a period of not more than one (1) year and a fine of not more
5 than One Thousand Dollars (\$1,000.00). A person convicted of a
6 second violation of the provisions of this paragraph shall be guilty
7 of a felony and shall be sentenced to a term of imprisonment for not
8 more than five (5) years and a fine of not more than Five Thousand
9 Dollars (\$5,000.00), which shall be in addition to other punishment
10 provided by law and shall not be imposed in lieu of other
11 punishment.

12 C. 1. Except when authorized by the Food and Drug
13 Administration of the United States Department of Health and Human
14 Services, it shall be unlawful for any person to manufacture,
15 cultivate, distribute, or possess with intent to distribute a
16 synthetic controlled substance.

17 2. Any person convicted of violating the provisions of this
18 paragraph is guilty of a felony and shall be punished by
19 imprisonment for a term not to exceed life and a fine of not more
20 than Twenty-five Thousand Dollars (\$25,000.00), which shall be in
21 addition to other punishment provided by law and shall not be
22 imposed in lieu of other punishment.

23 3. A second or subsequent conviction for the violation of the
24 provisions of this paragraph is a felony punishable as a habitual

1 offender pursuant to Section 51.1 of Title 21 of the Oklahoma
2 Statutes.

3 4. In addition, the violator shall be fined an amount not more
4 than One Hundred Thousand Dollars (\$100,000.00), which shall be in
5 addition to other punishment provided by law and shall not be
6 imposed in lieu of other punishment.

7 D. 1. Any person convicted of a second or subsequent felony
8 violation of the provisions of this section, except for paragraph 4
9 of subsection B of this section, shall be punished as a habitual
10 offender pursuant to Section 51.1 of Title 21 of the Oklahoma
11 Statutes.

12 2. In addition, the violator shall be fined twice the fine
13 otherwise authorized, which shall be in addition to other punishment
14 provided by law and shall not be imposed in lieu of other
15 punishment.

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

20 E. Any person who is at least eighteen (18) years of age and
21 who violates the provisions of this section by using or soliciting
22 the use of services of a person less than eighteen (18) years of age
23 to distribute, dispense, transport with intent to distribute or
24 dispense or cultivate a controlled dangerous substance or by

1 distributing a controlled dangerous substance to a person under
2 eighteen (18) years of age, is punishable by twice the fine and by
3 twice the imprisonment otherwise authorized.

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

15 1. For a first offense, a term of imprisonment, or by the
16 imposition of a fine or by both, not exceeding twice that authorized
17 by the appropriate provision of this section ~~and shall serve a~~
18 ~~minimum of fifty percent (50%) of the sentence received prior to~~
19 ~~becoming eligible for state correctional institution earned credits~~
20 ~~toward the completion of the sentence.~~ Such person shall not be
21 eligible for parole consideration prior to serving fifty percent
22 (50%) of the sentence imposed and such person shall not be eligible
23 for earned credits or any other type of credits which have the

24

1 effect of reducing the length of the sentence to less than fifty
2 percent (50%) of the sentence imposed; or

3 2. For a second or subsequent offense, a term of imprisonment
4 as provided for a habitual offender pursuant to Section 51.1 of
5 Title 21 of the Oklahoma Statutes. ~~In addition, the violator shall~~
6 ~~serve eighty-five percent (85%) of the sentence received prior to~~
7 ~~becoming eligible for state correctional institution earned credits~~
8 ~~toward the completion of the sentence or eligibility for parole~~ Such
9 person shall not be eligible for parole consideration prior to
10 serving eighty-five percent (85%) of the sentence imposed and such
11 person shall not be eligible for earned credits or any other type of
12 credits which have the effect of reducing the length of the sentence
13 to less than eighty-five percent (85%) of the sentence imposed.

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 grams or more of a mixture or substance containing a
22 detectable amount of any analogue of N-phenyl-N-[1-(2-
23 phenylethyl)-4-piperidinyl] propanamide,
24

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

5 h. fifty (50) grams or more of methamphetamine, its
6 salts, isomers, and salts of its isomers or 500 grams
7 or more of a mixture or substance containing a
8 detectable amount of methamphetamine, its salts,
9 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~~ Such person shall
20 not be eligible for parole consideration prior to serving eighty-
21 five percent (85%) of the sentence imposed and such person shall not
22 be eligible for earned credits or any other type of credits which
23 have the effect of reducing the length of the sentence to less than
24 eighty-five percent (85%) of the sentence imposed.

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 for parole. Such person shall not be~~
11 ~~eligible for parole consideration prior to serving eighty-five~~
12 ~~percent (85%) of the sentence imposed and such person shall not be~~
13 ~~eligible for earned credits or any other type of credits which have~~
14 ~~the effect of reducing the length of the sentence to less than~~
15 ~~eighty-five percent (85%) of the sentence imposed.~~

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

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

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

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

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

1 SECTION 3. This act shall become effective November 1, 2017.

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