

**CHAPTER 149****(HB 265)**

AN ACT relating to crimes and punishments and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of trafficking in synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully traffics in synthetic cannabinoid agonists or piperazines.*
- (2) *Trafficking in synthetic cannabinoid agonists or piperazines is a Class A Misdemeanor.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of possession of synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully possesses synthetic cannabinoid agonists or piperazines.*
- (2) *Possession of synthetic cannabinoid agonists or piperazines is a Class B misdemeanor.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of synthetic cannabinoid agonists or piperazines manufacture when he or she knowingly manufactures synthetic cannabinoid agonists or piperazines.*
- (2) *Synthetic cannabinoid agonists or piperazines manufacture is a Class A misdemeanor.*

➔Section 4. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
  - (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
  - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;
- (5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of this subsection, means a substance:
  1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
  2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
  3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:
  1. Any substance for which there is an approved new drug application;

2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
  3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;
- (7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;
  - (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
  - (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
  - (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
  - (11) "Drug" means:
    - (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
    - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
    - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
    - (d) Substances intended for use as a component of any article specified in this subsection.It does not include devices or their components, parts, or accessories;
  - (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;
  - (13) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
    - (a) Poses an explosion hazard;
    - (b) Poses a fire hazard; or
    - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
  - (14) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
  - (15) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;
  - (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;

- (17) "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
- (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice;
  - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
  - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice;
- (18) "Marijuana" means all parts of the plant *Cannabis sp.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances;
- (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;
- (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- (22) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (23) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
  - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
  - (c) Opium poppy and poppy straw;
  - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
  - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
  - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
  - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (25) "Opium poppy" means the plant of the species *papaver somniferum L.*, except its seeds;

- (26) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (27) "Physical injury" has the same meaning it has in KRS 500.080;
- (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (29) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced registered nurse practitioner as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced registered nurse practitioner authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his designee has conducted at least one (1) good faith prior examination;
- (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced registered nurse practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (33) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (35) ***"Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol; or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol. The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;***
- (36) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;
- ~~(37)~~(36) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- ~~(38)~~(37) "Serious physical injury" has the same meaning it has in KRS 500.080;
- ~~(39)~~(38) "Telehealth" has the same meaning it has in KRS 311.550;
- ~~(40)~~(39) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
  2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
  3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

- ~~(41)~~~~(40)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- ~~(42)~~~~(41)~~ "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- ~~(43)~~~~(42)~~ "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

➔Section 5. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxidine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphanol; Methyl-desorphine; Methyl-dihydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone, Cat, and Ephedrone); *synthetic cannabinoid agonists or piperazines*.
- (4) Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid.

➔Section 6. KRS 217.065 is amended to read as follows:

Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If in package form unless it bears a label containing:
  - (a) The name and place of business of the manufacturer, packer, or distributor, except that, in the case of a prescription drug, it shall bear the name and place of business of the manufacturer, and the name and place of business of the packer, or distributor, if other than the manufacturer; and

- (b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary;
- (3) If any word, statement, or other information required by or under authority of KRS 217.005 to 217.215 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, *synthetic cannabinoid agonists or piperazines*, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit-forming";
- (5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:
  - (a) The common or usual name of the drug, if such there be; and
  - (b) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided that to the extent that compliance with this subsection is impracticable, exemptions shall be established by regulations promulgated by the secretary;
- (6) Unless its labeling bears:
  - (a) Adequate directions for use; and
  - (b) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided that where any requirement of subsection (a) of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirements;
- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided that the method of packing may be modified with a consent of the cabinet. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia;
- (8) If it has been found by the cabinet to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;
- (9)
  - (a) If it is a drug and its container is so made, formed, or filled as to be misleading; or
  - (b) If it is an imitation of another drug; or
  - (c) If it is offered for sale under the name of another drug;
- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

- (11) If:
- (a) It is a drug intended for use by man which is a habit forming drug to which subsection (4) of this section applies; or because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner, and is not dispensed upon a prescription unless prior to dispensing its label bears the statement "Caution: Federal law prohibits dispensing without prescription"; or
  - (b) It is a drug or device and its label (as originally packed) directs that it is to be dispensed or sold only on prescription, unless it is dispensed or sold on a prescription of an authorized practitioner and its label (as dispensed) bears the name and place of business of the dispenser or seller, the serial number and date of such prescription, and the name of such licensed practitioner. Such prescriptions shall not be refilled except on the specific authorization of the prescribing practitioner; provided that where any requirement of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirement;
- (12) A drug sold on a prescription of a practitioner (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if:
- (a) Such practitioner is licensed by law to administer such drug; and
  - (b) Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such practitioner.
- (13) It is not the intention of subsection (2)(a) of this section as amended herein to require the name and place of business of the wholesaler to appear upon the label of the package unless otherwise required by this section.

➔Section 7. KRS 218A.1401 is amended to read as follows:

- (1) A person is guilty of selling controlled substances to a minor when he, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance ***other than synthetic cannabinoid agonists or piperazines*** to any person under eighteen (18) years of age.
- (2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

➔Section 8. KRS 218A.141 is amended to read as follows:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, ***trafficking in synthetic cannabinoid agonists or piperazines***, or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- (1) Pay the costs of disposal of the controlled substances;
- (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;
- (3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and
- (4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

➔Section 9. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) yards of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.

- (2) ***The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to synthetic cannabinoid agonists or piperazines.***

➔Section 10. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
- (a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, ***synthetic cannabinoid agonists or piperazines***, or marijuana; or
  - (b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:
    1. Enhancing performance in an exercise, sport, or game; or
    2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.
- (2) Any person who violates the provisions of subsection (1) of this section shall:
- (a) For the first offense be guilty of a Class D felony.
  - (b) For a second or subsequent offense be guilty of a Class C felony.

➔Section 11. KRS 218A.1416 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, ***synthetic cannabinoid agonists or piperazines***, or marijuana.
- (2) Possession of a controlled substance in the second degree is:
- (a) For a first offense a Class A misdemeanor.
  - (b) For a second or subsequent offense a Class D felony.

➔Section 12. KRS 218A.276 is amended to read as follows:

- (1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422 ***or possession of synthetic cannabinoid agonists or piperazines pursuant to Section 2 of this Act*** may be ordered to a facility designated by the secretary of the Cabinet for Health and Family Services where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for Health and Family Services, or his designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his designee, shall notify the sentencing court of the date of such discharge from the facility.
- (2) The secretary of the Cabinet for Health and Family Services, or his designee, shall inform each court of the identity and location of the facility to which a person sentenced by that court under this chapter shall be initially ordered.
- (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.



- (5) The secretary of the Cabinet for Health and Family Services, or his designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the facility shall arrange otherwise.
- (7) None of the provisions of this chapter shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana *or possession of synthetic cannabinoid agonists or piperazines*, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

➔Section 13. KRS 218A.410 is amended to read as follows:

- (1) The following are subject to forfeiture:
  - (a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state.
  - (b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.
  - (c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.
  - (d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband.
  - (e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter.
  - (f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.
  - (g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection.
  - (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:
    - 1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
    - 2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;
4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana *or synthetic cannabinoid agonists or piperazines*.
  - (i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.
  - (j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph.
  - (k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana *or synthetic cannabinoid agonists or piperazines*, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.
- (2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.
- (3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

➔Section 14. KRS 218A.500 is amended to read as follows:

As used in this section and KRS 218A.510:

- (1) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:
  - (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
  - (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
  - (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

- (d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
  - (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
  - (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
  - (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
  - (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
  - (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
  - (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
  - (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
  - (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips which mean objects used to hold burning material, such as marijuana cigarettes, that have become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.
- (2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.
- (3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.
- (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.
- (5) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor ~~for the first offense and a Class D felony for subsequent offenses~~.

➔Section 15. KRS 218A.992 is amended to read as follows:

- (1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:
  - (a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or
  - (b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.
- (2) The provisions of this section shall not apply to a violation of KRS 218A.210 *or Section 1, 2, or 3 of this Act*.

➔Section 16. KRS 530.064 is amended to read as follows:

- (1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:

- (a) Illegal sexual activity; or
- (b) Illegal controlled substances activity other than activity involving marijuana *or synthetic cannabinoid agonists or piperazines as defined in Section 4 of this Act*;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

- (2) Unlawful transaction with a minor in the first degree is a:

- (a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
- (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
- (c) Class A felony if the minor so used incurs physical injury thereby.

➔Section 17. KRS 189A.010 is amended to read as follows:

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:

- (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
- (b) While under the influence of alcohol;
- (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
- (d) ***While the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle;***
- (e) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or

~~(f)(e)~~ Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle, if the person is under the age of twenty-one (21).

- (2) With the exception of the results of the tests administered pursuant to KRS 189A.103(7), if the sample of the person's blood or breath that is used to determine the alcohol concentration thereof was obtained more than two (2) hours after cessation of operation or physical control of a motor vehicle, the results of the test or tests shall be inadmissible as evidence in a prosecution under subsection (1)(a) or ~~(f)(e)~~ of this section. The results of the test or tests, however, may be admissible in a prosecution under subsection (1)(b) or ~~(e)(d)~~ of this section.

- (3) In any prosecution for a violation of subsection (1)(b) or ~~(e)(d)~~ of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood or breath shall give rise to the following presumptions:

- (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and
- (b) If there was an alcohol concentration of 0.05 or greater but less than 0.08 based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or ~~(e)(4)~~ of this section.

- (4) (a) ***Except as provided in paragraph (b) of this subsection***, the fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.
- (b) ***A laboratory test or tests for a controlled substance shall be inadmissible as evidence in a prosecution under subsection (1)(d) of this section upon a finding by the court that the defendant consumed the substance under a valid prescription from a practitioner, as defined in KRS 218A.010, acting in the course of his or her professional practice.***
- (5) Any person who violates the provisions of paragraph (a), (b), (c), ~~(d)~~, **or (e)** of subsection (1) of this section shall:
- (a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days, or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
- (b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
- (c) For a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be sixty (60) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
- (d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release.
- (e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state or jurisdiction, for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)~~(f)(e)~~ of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.
- (6) Any person who violates the provisions of subsection (1)~~(f)(e)~~ of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this subsection shall not be subject to the penalties established in subsection (5) of this section or any other penalty established pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1).

- (7) If the person is under the age of twenty-one (21) and there was an alcohol concentration of 0.08 or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (5) of this section.
- (8) For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.
- (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.
- (10) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (11) For purposes of this section, aggravating circumstances are any one (1) or more of the following:
- (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the speed limit;
  - (b) Operating a motor vehicle in the wrong direction on a limited access highway;
  - (c) Operating a motor vehicle that causes an accident resulting in death or serious physical injury as defined in KRS 500.080;
  - (d) Operating a motor vehicle while the alcohol concentration in the operator's blood or breath is ~~0.15~~~~{0.18}~~ or more as measured by a test or tests of a sample of the operator's blood or breath taken within two (2) hours of cessation of operation of the motor vehicle;
  - (e) Refusing to submit to any test or tests of one's blood, breath, or urine requested by an officer having reasonable grounds to believe the person was operating or in physical control of a motor vehicle in violation of subsection (1) of this section; and
  - (f) Operating a motor vehicle that is transporting a passenger under the age of twelve (12) years old.
- (12) ***The substances applicable to a prosecution under subsection (1)(d) of this section are:***
- (a) ***Any Schedule I controlled substance except marijuana;***
  - (b) ***Alprazolam;***
  - (c) ***Amphetamine;***
  - (d) ***Buprenorphine;***
  - (e) ***Butalbital;***
  - (f) ***Carisoprodol;***
  - (g) ***Cocaine;***
  - (h) ***Diazepam;***
  - (i) ***Hydrocodone;***
  - (j) ***Meprobamate;***
  - (k) ***Methadone;***
  - (l) ***Methamphetamine;***
  - (m) ***Oxycodone;***
  - (n) ***Promethazine;***
  - (o) ***Propoxyphene; and***
  - (p) ***Zolpidem.***

➔Section 18. KRS 189A.040 is amended to read as follows:

- (1) In addition to any other penalty prescribed by KRS 189A.010(5)(a) or (6), the court shall sentence the person to attend an alcohol or substance abuse education or treatment program subject to the following terms and conditions for a first offender or a person convicted under KRS 189A.010(1)~~(f)(e)~~:
  - (a) The treatment or education shall be for a period of ninety (90) days and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program;
  - (b) Each defendant shall pay the cost of the education or treatment program up to his ability to pay but no more than the actual cost of the treatment;
  - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant shall be released prior to the expiration of the ninety (90) day period; and
  - (d) Failure to complete the education or treatment program or to pay the amount specified by the court for education or treatment shall constitute contempt, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the education or treatment program.
- (2) In addition to any other penalty prescribed by KRS 189A.010(5)(b), the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a second offender:
  - (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program;
  - (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the treatment;
  - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the one (1) year period; and
  - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending the completion of the treatment program.
- (3) In addition to any other penalty prescribed by KRS 189A.010(5)(c) or (d), the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a third or subsequent offender:
  - (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program. The program may be an inpatient or residential-type program;
  - (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the program;
  - (c) A defendant, upon written recommendation to the court by the administrator of the program, may be released from the inpatient or residential program prior to the expiration of one (1) year but shall be retained in the program on an outpatient basis for the remainder of the year period; and
  - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the treatment program.
- (4) Costs of treatment or education programs which are paid from the service fee established by KRS 189A.050, or from state or federal funds, or any combination thereof, shall be deducted from the amount which the defendant must pay.

- (5) For the purposes of this section, "treatment" means service in an alcohol or substance abuse education or treatment program or facility licensed, regulated, and monitored by the Cabinet for Health and Family Services for services as required under this section.
- (6) The Cabinet for Health and Family Services shall promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section. The criteria developed by the Cabinet for Health and Family Services shall include:
- (a) Manner of assessment;
  - (b) Appropriate education and treatment plans; and
  - (c) Referrals to other treatment providers.
- (7) The participating facilities and programs shall be required to abide by these standards and shall report completion to the Transportation Cabinet. Upon request, the facility or program shall report to the courts regarding the progress of offenders being treated pursuant to this section.
- (8) Administrative decisions regarding the licensure of education and treatment facilities and programs may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- ➔Section 19. KRS 189A.050 is amended to read as follows:
- (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, *or* (e) shall be sentenced to pay a service fee of three hundred seventy-five dollars (\$375), which shall be in addition to all other penalties authorized by law.
  - (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.
  - (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid into the general fund, and the remainder of the revenue collected from the service fee imposed by this section shall be utilized as follows:
    - (a) Twelve percent (12%) of the amount collected shall be transferred to the Department of Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;
    - (b) Twenty percent (20%) of the service fee collected pursuant to this section shall be allocated to the Department for Public Advocacy;
    - (c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;
    - (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:
      1. Fifty percent (50%) shall be credited to the traumatic brain injury trust fund established under KRS 211.476; and
      2. Fifty percent (50%) shall be credited to the Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph;
    - (e) Any amount specified by a specific statute shall be transferred as provided in that statute;
    - (f) Forty-six percent (46%) of the amount collected shall be transferred to be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department for Public Advocacy; and
    - (g) The remainder of the amount collected shall be transferred to the general fund.
  - (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be placed in trust and agency accounts that shall not lapse.



➔Section 20. KRS 189A.070 is amended to read as follows:

- (1) Unless the person is under eighteen (18) years of age, in addition to the penalties specified in KRS 189A.010, a person convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, *or (e)* shall have his license to operate a motor vehicle or motorcycle revoked by the court as follows:
  - (a) For the first offense within a five (5) year period, for a period of not less than thirty (30) days nor more than one hundred twenty (120) days;
  - (b) For the second offense within a five (5) year period, for a period of not less than twelve (12) months nor more than eighteen (18) months;
  - (c) For a third offense within a five (5) year period, for a period of not less than twenty-four (24) months nor more than thirty-six (36) months; and
  - (d) For a fourth or subsequent offense within a five (5) year period, sixty (60) months.
  - (e) For purposes of this section, "offense" shall have the same meaning as described in KRS 189A.010(5)(e).
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (3) In addition to the period of license revocation set forth in subsection (1) or (7) of this section, no person shall be eligible for reinstatement of his privilege to operate a motor vehicle until he has completed the alcohol or substance abuse education or treatment program ordered pursuant to KRS 189A.040.
- (4) A person under the age of eighteen (18) who is convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, *or (e)* shall have his license revoked by the court until he reaches the age of eighteen (18) or shall have his license revoked as provided in subsection (1) or (7) of this section, whichever penalty will result in the longer period of revocation or court-ordered driving conditions.
- (5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court upon conviction. The court shall transmit the conviction records, and other appropriate information to the Transportation Cabinet. A court shall not waive or stay this procedure.
- (6) Should a person convicted under this chapter whose license is revoked fail to surrender it to the court upon conviction, the court shall issue an order directing the sheriff or any other peace officer to seize the license forthwith and deliver it to the court.
- (7) A person whose license has been revoked pursuant to subsection (1)(b), (c), or (d) of this section may move the court to reduce the applicable minimum period of revocation by one-half (1/2), but in no case less than twelve (12) months. The court may, upon a written finding in the record for good cause shown, order such a period to be reduced by one-half (1/2), but in no case less than twelve (12) months, if the following conditions are satisfied:
  - (a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);
  - (b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and
  - (c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the applicable minimum period of revocation provided for under subsection (1)(b), (c), or (d) of this section nor for more than the respective maximum period of revocation provided for under subsection (1)(b), (c), or (d) of this section.
- (8) Upon a finding of a violation of any of the conditions specified in subsection (7) of this section or of the order permitting any reduction in a minimum period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the minimum period of revocation required under subsection (1)(b), (c), or (d) of this section.

➔Section 21. KRS 189A.085 is amended to read as follows:

- (1) Unless the court orders installation of an ignition interlock device under KRS 189A.340, upon the conviction of a second or subsequent offense of KRS 189A.010, a person shall have the license plate or plates on all of the motor vehicles owned by him or her, either solely or jointly, impounded by the court of competent jurisdiction in accordance with the following procedures:
  - (a) At the final sentencing hearing, the person who has been convicted of a second or subsequent offense of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)** shall physically surrender any and all license plate or plates currently in force on any motor vehicle owned either individually or jointly by him or her to the court. The order of the court suspending the license plate or plates shall not exceed the time for the suspension of the motor vehicle operator's license of the second or subsequent offender as specified in KRS 189A.070.
  - (b) The clerk of the court shall retain any surrendered plate or plates and transmit all surrendered plate or plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulations promulgated by the Transportation Cabinet.
- (2) Upon application, the court may grant hardship exceptions to family members or other individuals affected by the surrender of any license plate or plates of any vehicle owned by the second or subsequent offender. Hardship exceptions may be granted by the court to the second or subsequent offender's family members or other affected individuals only if the family members or other affected individuals prove to the court's satisfaction that their inability to utilize the surrendered vehicles would pose an undue hardship upon the family members or affected other individuals. Upon the court's granting of hardship exceptions, the clerk or the Transportation Cabinet as appropriate, shall return to the family members or other affected individuals the license plate or plates of the vehicles of the second or subsequent offender for their utilization. The second or subsequent offender shall not be permitted to operate a vehicle for which the license plate has been suspended or for which a hardship exception has been granted under any circumstances.
- (3) If the license plate of a jointly owned vehicle is impounded, this vehicle may be transferred to a joint owner of the vehicle who was not the violator.
- (4) If the license plate of a motor vehicle is impounded, the vehicle may be transferred.

➔Section 22. KRS 189A.090 is amended to read as follows:

- (1) No person shall operate or be in physical control of a motor vehicle while his license is revoked or suspended under KRS 189A.010(6), 189A.070, 189A.107, 189A.200, or 189A.220, or operate or be in physical control of a motor vehicle without a functioning ignition interlock device in violation of KRS 189A.345(1).
- (2) In addition to any other penalty imposed by the court, any person who violates subsection (1) of this section shall:
  - (a) For a first offense within a five (5) year period, be guilty of a Class B misdemeanor and have his license revoked by the court for six (6) months, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)**, in which event he shall be guilty of a Class A misdemeanor and have his license revoked by the court for a period of one (1) year;
  - (b) For a second offense within a five (5) year period, be guilty of a Class A misdemeanor and have his license revoked by the court for one (1) year, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)**, in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of two (2) years;
  - (c) For a third or subsequent offense within a five (5) year period, be guilty of a Class D felony and have his license revoked by the court for two (2) years, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)**, in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of five (5) years.
- (3) The five (5) year period under this section shall be measured in the same manner as in KRS 189A.070.
- (4) After one (1) year of the period of revocation provided for in subsection (2)(b) or (c) of this section has elapsed, a person whose license has been revoked pursuant to either of those subsections may move the court to have an ignition interlock device installed for the remaining portion of the period of revocation. The court

may, upon a written finding in the record for good cause shown, order an ignition interlock device installed if the following conditions are satisfied:

- (a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);
  - (b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and
  - (c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the period of revocation required for the person under subsection (2)(b) or (c) of this section.
- (5) Upon a finding of a violation of any of the conditions specified in subsection (4) of this section or of the order permitting the installation of an ignition interlock device in lieu of the remaining period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the remaining period of revocation required under subsection (2)(b) or (c) of this section.

➔Section 23. KRS 189A.105 is amended to read as follows:

- (1) A person's refusal to submit to tests under KRS 189A.103 shall result in revocation of his driving privilege as provided in this chapter.
  - (2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:
    - 1. That, if the person refuses to submit to such tests, the fact of this refusal may be used against him in court as evidence of violating KRS 189A.010 and will result in revocation of his driver's license, and if the person refuses to submit to the tests and is subsequently convicted of violating KRS 189A.010(1) then he will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he submits to the tests, and that if the person refuses to submit to the tests he will be unable to obtain a hardship license; and
    - 2. That, if a test is taken, the results of the test may be used against him in court as evidence of violating KRS 189A.010(1), and that if the results of the test are ~~0.15{0.18}~~ or above and the person is subsequently convicted of violating KRS 189A.010(1), then he will be subject to a sentence that is twice as long as the mandatory minimum jail sentence imposed if the results are less than ~~0.15{0.18}~~; and
    - 3. That if the person first submits to the requested alcohol and substance tests, the person has the right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested.
  - (b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged. However, if the incident involves a motor vehicle accident in which there was a fatality, the investigating peace officer shall seek such a search warrant for blood, breath, or urine testing unless the testing has already been done by consent. If testing done pursuant to a warrant reveals the presence of alcohol or any other substance that impaired the driving ability of a person who is charged with and convicted of an offense arising from the accident, the sentencing court shall require, in addition to any other sentencing provision, that the defendant make restitution to the state for the cost of the testing.
- (3) During the period immediately preceding the administration of any test, the person shall be afforded an opportunity of at least ten (10) minutes but not more than fifteen (15) minutes to attempt to contact and communicate with an attorney and shall be informed of this right. Inability to communicate with an attorney during this period shall not be deemed to relieve the person of his obligation to submit to the tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain applicable to the person upon refusal. Nothing in this section shall be deemed to create a right to have an attorney present during the administration of the tests, but the person's attorney may be present if the attorney can physically appear at the location where the test is to be administered within the time period established in this section.

- (4) Immediately following the administration of the final test requested by the officer, the person shall again be informed of his right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested. He shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.

➔Section 24. KRS 189A.240 is amended to read as follows:

In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(b), if the court determines by a preponderance of the evidence that:

- (1) The person was charged and arrested by a peace officer with a violation of KRS 189A.010(1)(a), (b), (c),~~(d),~~ *or* (e);
- (2) The peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c),~~(d),~~ *or* (e);
- (3) There is probable cause to believe that the person committed the violation of KRS 189A.010(1)(a), (b), (c),~~(d),~~ *or* (e) as charged; and
- (4) The person has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)(e) or has had his motor vehicle operator's license suspended or revoked on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest, then the court shall continue to suspend the person's operator's license or privilege to operate a motor vehicle. The provisions of this section shall not be construed as limiting the person's ability to challenge any prior convictions or license suspensions or refusals.

➔Section 25. Whereas synthetic cannabinoid agonists and piperazines are dangerous substances that are currently legal to sell and possess in this state, and whereas it is necessary to prohibit the sale or possession of these substances immediately in an effort to prevent stockpiling of them by individuals for future use, an emergency is declared to exist, and Sections 1 to 16 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by Governor April 13, 2010.**