

1 AN ACT relating to trafficking in heroin.

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

3 ➔Section 1. KRS 218A.010 is amended to read as follows:

4 As used in this chapter:

- 5 (1) "Administer" means the direct application of a controlled substance, whether by
6 injection, inhalation, ingestion, or any other means, to the body of a patient or
7 research subject by:
- 8 (a) A practitioner or by his or her authorized agent under his or her immediate
9 supervision and pursuant to his or her order; or
- 10 (b) The patient or research subject at the direction and in the presence of the
11 practitioner;
- 12 (2) "Anabolic steroid" means any drug or hormonal substance chemically and
13 pharmacologically related to testosterone that promotes muscle growth and includes
14 those substances listed in KRS 218A.090(5) but does not include estrogens,
15 progestins, and anticosteroids;
- 16 (3) "Cabinet" means the Cabinet for Health and Family Services;
- 17 (4) **"Carfentanil" means any substance containing any quantity of carfentanil, or**
18 **any of its salts, isomers, or salts of isomers;**
- 19 ~~(5)~~ "Child" means any person under the age of majority as specified in KRS 2.015;
- 20 ~~(6)~~~~(5)~~ "Cocaine" means a substance containing any quantity of cocaine, its salts,
21 optical and geometric isomers, and salts of isomers;
- 22 ~~(7)~~~~(6)~~ "Controlled substance" means methamphetamine, or a drug, substance, or
23 immediate precursor in Schedules I through V and includes a controlled substance
24 analogue;
- 25 ~~(8)~~~~(7)~~ (a) "Controlled substance analogue," except as provided in paragraph (b) of
26 this subsection, means a substance:
- 27 1. The chemical structure of which is substantially similar to the structure

- 1 of a controlled substance in Schedule I or II; and
- 2 2. Which has a stimulant, depressant, or hallucinogenic effect on the
- 3 central nervous system that is substantially similar to or greater than the
- 4 stimulant, depressant, or hallucinogenic effect on the central nervous
- 5 system of a controlled substance in Schedule I or II; or
- 6 3. With respect to a particular person, which such person represents or
- 7 intends to have a stimulant, depressant, or hallucinogenic effect on the
- 8 central nervous system that is substantially similar to or greater than the
- 9 stimulant, depressant, or hallucinogenic effect on the central nervous
- 10 system of a controlled substance in Schedule I or II.

11 (b) Such term does not include:

- 12 1. Any substance for which there is an approved new drug application;
- 13 2. With respect to a particular person, any substance if an exemption is in
- 14 effect for investigational use for that person pursuant to federal law to
- 15 the extent conduct with respect to such substance is pursuant to such
- 16 exemption; or
- 17 3. Any substance to the extent not intended for human consumption before
- 18 the exemption described in subparagraph 2. of this paragraph takes
- 19 effect with respect to that substance;

20 ~~(9)~~ "Counterfeit substance" means a controlled substance which, or the container

21 or labeling of which, without authorization, bears the trademark, trade name, or

22 other identifying mark, imprint, number, or device, or any likeness thereof, of a

23 manufacturer, distributor, or dispenser other than the person who in fact

24 manufactured, distributed, or dispensed the substance;

25 ~~(10)~~ "Dispense" means to deliver a controlled substance to an ultimate user or

26 research subject by or pursuant to the lawful order of a practitioner, including the

27 packaging, labeling, or compounding necessary to prepare the substance for that

1 delivery;

2 ~~(11)~~~~(10)~~ "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or
3 V controlled substance to or for the use of an ultimate user;

4 ~~(12)~~~~(11)~~ "Distribute" means to deliver other than by administering or dispensing a
5 controlled substance;

6 ~~(13)~~~~(12)~~ "Dosage unit" means a single pill, capsule, ampule, liquid, or other form of
7 administration available as a single unit;

8 ~~(14)~~~~(13)~~ "Drug" means:

9 (a) Substances recognized as drugs in the official United States Pharmacopoeia,
10 official Homeopathic Pharmacopoeia of the United States, or official National
11 Formulary, or any supplement to any of them;

12 (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or
13 prevention of disease in man or animals;

14 (c) Substances (other than food) intended to affect the structure or any function of
15 the body of man or animals; and

16 (d) Substances intended for use as a component of any article specified in this
17 subsection.

18 It does not include devices or their components, parts, or accessories;

19 **(15) "Fentanyl" means a substance containing any quantity of fentanyl, or any of its**
20 **salts, isomers, or salts of isomers;**

21 **(16) "Fentanyl derivative" means a substance containing any quantity of any**
22 **chemical compound, except compounds scheduled as controlled substances**
23 **pursuant to this chapter, which is structurally derived from 1-ethyl-4-(N-**
24 **phenylamido) piperidine:**

25 **(a) By substitution:**

26 **1. At the 2-position of the 1-ethyl group with a phenyl, furan, thiophene,**
27 **or ethyloxotetrazole ring system; and**

1 2. Of the terminal amido hydrogen atom with an alkyl, alkoxy,
 2 cycloalkyl, or furanyl group; and

3 (b) Which may be further modified in one (1) or more of the following ways:

4 1. By substitution on the N-phenyl ring to any extent with alkyl, alkoxy,
 5 haloalkyl, hydroxyl, or halide substituents;

6 2. By substitution on the piperadine ring to any extent with alkyl, allyl,
 7 alkoxy, hydroxy, or halide substituents at the 2-, 3-, 5-, and/or 6-
 8 positions;

9 3. By substitution on the piperadine ring to any extent with a phenyl,
 10 alkoxy, or carboxylate ester substituent at the 4- position; or

11 4. By substitution on the 1-ethyl group to any extent with alkyl, alkoxy,
 12 or hydroxy substituents;

13 ~~(17)~~~~(14)~~ "Good faith prior examination," as used in KRS Chapter 218A and for
 14 criminal prosecution only, means an in-person medical examination of the patient
 15 conducted by the prescribing practitioner or other health-care professional routinely
 16 relied upon in the ordinary course of his or her practice, at which time the patient is
 17 physically examined and a medical history of the patient is obtained. "In-person"
 18 includes telehealth examinations. This subsection shall not be applicable to hospice
 19 providers licensed pursuant to KRS Chapter 216B;

20 ~~(18)~~~~(15)~~ "Hazardous chemical substance" includes any chemical substance used or
 21 intended for use in the illegal manufacture of a controlled substance as defined in
 22 this section or the illegal manufacture of methamphetamine as defined in KRS
 23 218A.1431, which:

24 (a) Poses an explosion hazard;

25 (b) Poses a fire hazard; or

26 (c) Is poisonous or injurious if handled, swallowed, or inhaled;

27 ~~(19)~~~~(16)~~ "Heroin" means a substance containing any quantity of heroin, or any of its

1 salts, isomers, or salts of isomers;

2 ~~(20)~~~~(17)~~ "Hydrocodone combination product" means a drug with:

3 (a) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of
4 its salts, per one hundred (100) milliliters or not more than fifteen (15)
5 milligrams per dosage unit, with a fourfold or greater quantity of an
6 isoquinoline alkaloid of opium; or

7 (b) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of
8 its salts, per one hundred (100) milliliters or not more than fifteen (15)
9 milligrams per dosage unit, with one (1) or more active, nonnarcotic
10 ingredients in recognized therapeutic amounts;

11 ~~(21)~~~~(18)~~ "Immediate precursor" means a substance which is the principal compound
12 commonly used or produced primarily for use, and which is an immediate chemical
13 intermediary used or likely to be used in the manufacture of a controlled substance
14 or methamphetamine, the control of which is necessary to prevent, curtail, or limit
15 manufacture;

16 ~~(22)~~~~(19)~~ "Intent to manufacture" means any evidence which demonstrates a person's
17 conscious objective to manufacture a controlled substance or methamphetamine.
18 Such evidence includes but is not limited to statements and a chemical substance's
19 usage, quantity, manner of storage, or proximity to other chemical substances or
20 equipment used to manufacture a controlled substance or methamphetamine;

21 ~~(23)~~~~(20)~~ "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and
22 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical,
23 positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer"
24 means the optical or geometric isomer;

25 ~~(24)~~~~(21)~~ "Manufacture," except as provided in KRS 218A.1431, means the production,
26 preparation, propagation, compounding, conversion, or processing of a controlled
27 substance, either directly or indirectly by extraction from substances of natural

1 origin or independently by means of chemical synthesis, or by a combination of
2 extraction and chemical synthesis, and includes any packaging or repackaging of the
3 substance or labeling or relabeling of its container except that this term does not
4 include activities:

5 (a) By a practitioner as an incident to his or her administering or dispensing of a
6 controlled substance in the course of his or her professional practice;

7 (b) By a practitioner, or by his or her authorized agent under his supervision, for
8 the purpose of, or as an incident to, research, teaching, or chemical analysis
9 and not for sale; or

10 (c) By a pharmacist as an incident to his or her dispensing of a controlled
11 substance in the course of his or her professional practice;

12 ~~(25)~~~~(22)~~ "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or
13 not; the seeds thereof; the resin extracted from any part of the plant; and every
14 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its
15 seeds or resin or any compound, mixture, or preparation which contains any
16 quantity of these substances. The term "marijuana" does not include:

17 (a) Industrial hemp as defined in KRS 260.850;

18 (b) The substance cannabidiol, when transferred, dispensed, or administered
19 pursuant to the written order of a physician practicing at a hospital or
20 associated clinic affiliated with a Kentucky public university having a college
21 or school of medicine;~~or~~

22 (c) For persons participating in a clinical trial or in an expanded access program,
23 a drug or substance approved for the use of those participants by the United
24 States Food and Drug Administration; **or**

25 **(d) A cannabidiol product approved as a prescription medication by the United**
26 **States Food and Drug Administration;**

27 ~~(26)~~~~(23)~~ "Medical history," as used in KRS Chapter 218A and for criminal prosecution

1 only, means an accounting of a patient's medical background, including but not
2 limited to prior medical conditions, prescriptions, and family background;

3 ~~(27)~~~~(24)~~ "Medical order," as used in KRS Chapter 218A and for criminal prosecution
4 only, means a lawful order of a specifically identified practitioner for a specifically
5 identified patient for the patient's health-care needs. "Medical order" may or may
6 not include a prescription drug order;

7 ~~(28)~~~~(25)~~ "Medical record," as used in KRS Chapter 218A and for criminal prosecution
8 only, means a record, other than for financial or billing purposes, relating to a
9 patient, kept by a practitioner as a result of the practitioner-patient relationship;

10 ~~(29)~~~~(26)~~ "Methamphetamine" means any substance that contains any quantity of
11 methamphetamine, or any of its salts, isomers, or salts of isomers;

12 ~~(30)~~~~(27)~~ "Narcotic drug" means any of the following, whether produced directly or
13 indirectly by extraction from substances of vegetable origin, or independently by
14 means of chemical synthesis, or by a combination of extraction and chemical
15 synthesis:

16 (a) Opium and opiate, and any salt, compound, derivative, or preparation of
17 opium or opiate;

18 (b) Any salt, compound, isomer, derivative, or preparation thereof which is
19 chemically equivalent or identical with any of the substances referred to in
20 paragraph (a) of this subsection, but not including the isoquinoline alkaloids
21 of opium;

22 (c) Opium poppy and poppy straw;

23 (d) Coca leaves, except coca leaves and extracts of coca leaves from which
24 cocaine, ecgonine, and derivatives of ecgonine or their salts have been
25 removed;

26 (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

27 (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and

1 (g) Any compound, mixture, or preparation which contains any quantity of any of
2 the substances referred to in paragraphs (a) to (f) of this subsection;

3 ~~(31)~~~~(28)~~ "Opiate" means any substance having an addiction-forming or addiction-
4 sustaining liability similar to morphine or being capable of conversion into a drug
5 having addiction-forming or addiction-sustaining liability. It does not include,
6 unless specifically designated as controlled under KRS 218A.030, the
7 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
8 (dextromethorphan). It does include its racemic and levorotatory forms;

9 ~~(32)~~~~(29)~~ "Opium poppy" means the plant of the species papaver somniferum L., except
10 its seeds;

11 ~~(33)~~~~(30)~~ "Person" means individual, corporation, government or governmental
12 subdivision or agency, business trust, estate, trust, partnership or association, or any
13 other legal entity;

14 ~~(34)~~~~(31)~~ "Physical injury" has the same meaning it has in KRS 500.080;

15 ~~(35)~~~~(32)~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after
16 mowing;

17 ~~(36)~~~~(33)~~ "Pharmacist" means a natural person licensed by this state to engage in the
18 practice of the profession of pharmacy;

19 ~~(37)~~~~(34)~~ "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific
20 investigator, optometrist as authorized in KRS 320.240, advanced practice
21 registered nurse as authorized under KRS 314.011, or other person licensed,
22 registered, or otherwise permitted by state or federal law to acquire, distribute,
23 dispense, conduct research with respect to, or to administer a controlled substance
24 in the course of professional practice or research in this state. "Practitioner" also
25 includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered
26 nurse authorized under KRS 314.011 who is a resident of and actively practicing in
27 a state other than Kentucky and who is licensed and has prescriptive authority for

1 controlled substances under the professional licensing laws of another state, unless
2 the person's Kentucky license has been revoked, suspended, restricted, or probated,
3 in which case the terms of the Kentucky license shall prevail;

4 ~~(38)~~~~(35)~~ "Practitioner-patient relationship," as used in KRS Chapter 218A and for
5 criminal prosecution only, means a medical relationship that exists between a
6 patient and a practitioner or the practitioner's designee, after the practitioner or his
7 or her designee has conducted at least one (1) good faith prior examination;

8 ~~(39)~~~~(36)~~ "Prescription" means a written, electronic, or oral order for a drug or
9 medicine, or combination or mixture of drugs or medicines, or proprietary
10 preparation, signed or given or authorized by a medical, dental, chiropody,
11 veterinarian, optometric practitioner, or advanced practice registered nurse, and
12 intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
13 disease in man or other animals;

14 ~~(40)~~~~(37)~~ "Prescription blank," with reference to a controlled substance, means a
15 document that meets the requirements of KRS 218A.204 and 217.216;

16 ~~(41)~~~~(38)~~ "Presumptive probation" means a sentence of probation not to exceed the
17 maximum term specified for the offense, subject to conditions otherwise authorized
18 by law, that is presumed to be the appropriate sentence for certain offenses
19 designated in this chapter, notwithstanding contrary provisions of KRS Chapter
20 533. That presumption shall only be overcome by a finding on the record by the
21 sentencing court of substantial and compelling reasons why the defendant cannot be
22 safely and effectively supervised in the community, is not amenable to community-
23 based treatment, or poses a significant risk to public safety;

24 ~~(42)~~~~(39)~~ "Production" includes the manufacture, planting, cultivation, growing, or
25 harvesting of a controlled substance;

26 ~~(43)~~~~(40)~~ "Recovery program" means an evidence-based, nonclinical service that assists
27 individuals and families working toward sustained recovery from substance use and

1 other criminal risk factors. This can be done through an array of support programs
2 and services that are delivered through residential and nonresidential means;

3 ~~(44)~~~~(41)~~ "Salvia" means *Salvia divinorum* or Salvinorin A and includes all parts of the
4 plant presently classified botanically as *Salvia divinorum*, whether growing or not,
5 the seeds thereof, any extract from any part of that plant, and every compound,
6 manufacture, derivative, mixture, or preparation of that plant, its seeds, or its
7 extracts, including salts, isomers, and salts of isomers whenever the existence of
8 such salts, isomers, and salts of isomers is possible within the specific chemical
9 designation of that plant, its seeds, or extracts. The term shall not include any other
10 species in the genus *salvia*;

11 ~~(45)~~~~(42)~~ "Second or subsequent offense" means that for the purposes of this chapter an
12 offense is considered as a second or subsequent offense, if, prior to his or her
13 conviction of the offense, the offender has at any time been convicted under this
14 chapter, or under any statute of the United States, or of any state relating to
15 substances classified as controlled substances or counterfeit substances, except that
16 a prior conviction for a nontrafficking offense shall be treated as a prior offense
17 only when the subsequent offense is a nontrafficking offense. For the purposes of
18 this section, a conviction voided under KRS 218A.275 or 218A.276 shall not
19 constitute a conviction under this chapter;

20 ~~(46)~~~~(43)~~ "Sell" means to dispose of a controlled substance to another person for
21 consideration or in furtherance of commercial distribution;

22 ~~(47)~~~~(44)~~ "Serious physical injury" has the same meaning it has in KRS 500.080;

23 ~~(48)~~~~(45)~~ "Synthetic cannabinoids or piperazines" means any chemical compound which
24 is not approved by the United States Food and Drug Administration or, if approved,
25 which is not dispensed or possessed in accordance with state and federal law, that
26 contains Benzylpiperazine (BZP); Trifluoromethylphenylpiperazine (TFMPP); 1,1-
27 Dimethylheptyl-11-hydroxytetrahydrocannabinol (HU-210); 1-Butyl-3-(1-

1 naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol (HU-211); or any
2 compound in the following structural classes:

3 (a) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole
4 structure with substitution at the nitrogen atom of the indole ring by an alkyl,
5 haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
6 piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further
7 substituted in the indole ring to any extent and whether or not substituted in
8 the naphthyl ring to any extent. Examples of this structural class include but
9 are not limited to JWH-015, JWH-018, JWH-019, JWH-073, JWH-081,
10 JWH-122, JWH-200, and AM-2201;

11 (b) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole
12 structure with substitution at the nitrogen atom of the indole ring by an alkyl,
13 haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
14 piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further
15 substituted in the indole ring to any extent and whether or not substituted in
16 the phenyl ring to any extent. Examples of this structural class include but are
17 not limited to JWH-167, JWH-250, JWH-251, and RCS-8;

18 (c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with
19 substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl,
20 alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl,
21 or 2-(4-morpholinyl)ethyl group whether or not further substituted in the
22 indole ring to any extent and whether or not substituted in the phenyl ring to
23 any extent. Examples of this structural class include but are not limited to
24 AM-630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;

25 (d) Cyclohexylphenols: Any compound containing a 2-(3-
26 hydroxycyclohexyl)phenol structure with substitution at the 5-position of the
27 phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl,

- 1 cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl
2 group whether or not substituted in the cyclohexyl ring to any extent.
3 Examples of this structural class include but are not limited to CP 47,497 and
4 its C8 homologue (cannabicyclohexanol);
- 5 (e) Naphthylmethylindeles: Any compound containing a 1H-indol-3-yl-(1-
6 naphthyl)methane structure with substitution at the nitrogen atom of the indole
7 ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-
8 methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not
9 further substituted in the indole ring to any extent and whether or not
10 substituted in the naphthyl ring to any extent. Examples of this structural class
11 include but are not limited to JWH-175, JWH-184, and JWH-185;
- 12 (f) Naphthoypyrroles: Any compound containing a 3-(1-naphthoypyrrole
13 structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl,
14 haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
15 piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further
16 substituted in the pyrrole ring to any extent and whether or not substituted in
17 the naphthyl ring to any extent. Examples of this structural class include but
18 are not limited to JWH-030, JWH-145, JWH-146, JWH-307, and JWH-368;
- 19 (g) Naphthylmethylindenes: Any compound containing a 1-(1-
20 naphthylmethyl)indene structure with substitution at the 3-position of the
21 indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,
22 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether
23 or not further substituted in the indene ring to any extent and whether or not
24 substituted in the naphthyl ring to any extent. Examples of this structural class
25 include but are not limited to JWH-176;
- 26 (h) Tetramethylcyclopropanoylindoles: Any compound containing a 3-(1-
27 tetramethylcyclopropoyl)indole structure with substitution at the nitrogen

1 atom of the indole ring by an alkyl, haloalkyl, cycloalkylmethyl,
2 cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl
3 group, whether or not further substituted in the indole ring to any extent and
4 whether or not further substituted in the tetramethylcyclopropyl ring to any
5 extent. Examples of this structural class include but are not limited to UR-144
6 and XLR-11;

7 (i) Adamantoylindoles: Any compound containing a 3-(1-adamantoyl)indole
8 structure with substitution at the nitrogen atom of the indole ring by an alkyl,
9 haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
10 piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further
11 substituted in the indole ring to any extent and whether or not substituted in
12 the adamantyl ring system to any extent. Examples of this structural class
13 include but are not limited to AB-001 and AM-1248; or

14 (j) Any other synthetic cannabinoid or piperazine which is not approved by the
15 United States Food and Drug Administration or, if approved, which is not
16 dispensed or possessed in accordance with state and federal law;

17 ~~(49)~~~~(46)~~ "Synthetic cathinones" means any chemical compound which is not approved
18 by the United States Food and Drug Administration or, if approved, which is not
19 dispensed or possessed in accordance with state and federal law (not including
20 bupropion or compounds listed under a different schedule) structurally derived from
21 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl,
22 or thiophene ring systems, whether or not the compound is further modified in one
23 (1) or more of the following ways:

24 (a) By substitution in the ring system to any extent with alkyl, alkylendioxy,
25 alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further
26 substituted in the ring system by one (1) or more other univalent substituents.
27 Examples of this class include but are not limited to 3,4-

1 Methylenedioxycathinone (bk-MDA);

2 (b) By substitution at the 3-position with an acyclic alkyl substituent. Examples of
3 this class include but are not limited to 2-methylamino-1-phenylbutan-1-one
4 (buphedrone);

5 (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or
6 methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a
7 cyclic structure. Examples of this class include but are not limited to
8 Dimethylcathinone, Ethcathinone, and α -Pyrrolidinopropiophenone (α -PPP);
9 or

10 (d) Any other synthetic cathinone which is not approved by the United States
11 Food and Drug Administration or, if approved, is not dispensed or possessed
12 in accordance with state or federal law;

13 ~~(50)~~~~(47)~~ "Synthetic drugs" means any synthetic cannabinoids or piperazines or any
14 synthetic cathinones;

15 ~~(51)~~~~(48)~~ "Telehealth" has the same meaning it has in KRS 311.550;

16 ~~(52)~~~~(49)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances
17 contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or
18 synthetic substances, derivatives, and their isomers with similar chemical structure
19 and pharmacological activity such as the following:

20 (a) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

21 (b) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and

22 (c) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

23 ~~(53)~~~~(50)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture,
24 distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute,
25 dispense, or sell a controlled substance;

26 ~~(54)~~~~(51)~~ "Transfer" means to dispose of a controlled substance to another person
27 without consideration and not in furtherance of commercial distribution; and

1 ~~(55)~~~~(52)~~ "Ultimate user" means a person who lawfully possesses a controlled substance
2 for his or her own use or for the use of a member of his or her household or for
3 administering to an animal owned by him or her or by a member of his or her
4 household.

5 ➔Section 2. KRS 218A.020 is amended to read as follows:

- 6 (1) The Cabinet for Health and Family Services shall administer this chapter and may
7 by regulation add substances to or delete or reschedule all substances enumerated in
8 the schedules set forth in this chapter. In making a determination regarding a
9 substance, the Cabinet for Health and Family Services may consider the following:
- 10 (a) The actual or relative potential for abuse;
 - 11 (b) The scientific evidence of its pharmacological effect, if known;
 - 12 (c) The state of current scientific knowledge regarding the substance;
 - 13 (d) The history and current pattern of abuse;
 - 14 (e) The scope, duration, and significance of abuse;
 - 15 (f) The risk to the public health;
 - 16 (g) The potential of the substance to produce psychic or physiological dependence
17 liability; and
 - 18 (h) Whether the substance is an immediate precursor of a substance already
19 controlled under this chapter.
- 20 (2) After considering the factors enumerated in subsection (1) of this section, the
21 Cabinet for Health and Family Services may adopt a regulation controlling the
22 substance if it finds the substance has a potential for abuse.
- 23 (3) If any substance is designated, rescheduled, or deleted as a controlled substance
24 under federal law and notice thereof is given to the Cabinet for Health and Family
25 Services, the Cabinet for Health and Family Services may similarly control the
26 substance under this chapter by regulation.
- 27 (4) The Cabinet for Health and Family Services shall exclude any nonnarcotic

1 substance from a schedule if the substance may be lawfully sold over the counter
 2 without prescription under the provisions of the Federal Food, Drug and Cosmetic
 3 Act, or the Federal Comprehensive Drug Abuse Prevention and Control Act of
 4 1970, or the Kentucky Revised Statutes (for the purposes of this section the
 5 Kentucky Revised Statutes shall not include any regulations issued thereunder).

6 (5) The Office of Drug Control Policy may request that the Cabinet for Health and
 7 Family Services schedule any substance that would meet the criteria to be
 8 scheduled pursuant to this chapter~~[a substance substantially similar to a synthetic~~
 9 ~~cannabinoid or piperazine or a synthetic cathinone]~~. The cabinet shall consider the
 10 request utilizing the criteria established by this section and shall issue a written
 11 response within sixty (60) days of the scheduling request delineating the cabinet's
 12 decision to schedule or not schedule the substance and the basis for the cabinet's
 13 decision. The cabinet's response shall be provided to the Legislative Research
 14 Commission and shall be a public record.

15 ➔Section 3. KRS 218A.050 is amended to read as follows:

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

19 (1) Any material, compound, mixture, or preparation which contains any quantity of the
 20 following opiates, including their isomers, esters, ethers, salts, and salts of isomers,
 21 esters, and ethers, unless specifically excepted, whenever the existence of these
 22 isomers, esters, ethers, or salts is possible within the specific chemical designation:
 23 Acetylfentanyl; Acetylmethadol; Allylprodine; Alphacetylmethadol;
 24 Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol;
 25 Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide;
 26 Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol;
 27 Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene;

- 1 Etonitazene; Etoxidine; Furethidine; Hydroxypethidine; Ketobemidone;
2 Levomoramide; Levophenacylmorphan; Morpheridine; Noracymethadol;
3 Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide;
4 Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram;
5 Racemoramide; Trimeperidine; 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-
6 piperidinylidene]-benzenesulfonamide (W-18); 4-chloro-N-[1-(2-phenylethyl)-2-
7 piperidinylidene]-benzenesulfonamide (W-15); **or any fentanyl derivative**;
- 8 (2) Any material, compound, mixture, or preparation which contains any quantity of the
9 following opium derivatives, including their salts, isomers, and salts of isomers,
10 unless specifically excepted, whenever the existence of these salts, isomers, or salts
11 of isomers is possible within the specific chemical designation: Acetorphine;
12 Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-
13 Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin;
14 Hydromorphinol; Methyldesorphine; Methyldihydromorphine; Morphine
15 methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine;
16 Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon;
- 17 (3) Any material, compound, mixture, or preparation which contains any quantity of the
18 following hallucinogenic substances, their salts, isomers, or salts of isomers, unless
19 specifically excepted, whenever the existence of these salts, isomers, and salts of
20 isomers is possible within the specific chemical designation: 3, 4-
21 methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4,
22 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-
23 methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide;
24 Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl
25 benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2
26 Methylamino-1-phenylpropan-1-one (including but not limited to Methcathinone,
27 Cat, and Ephedrone); synthetic drugs; or salvia;

- 1 (4) Any material, compound, mixture, or preparation which contains any quantity of the
2 following substance having a depressant effect on the central nervous system,
3 including its salts, isomers, and salts of isomers, unless specifically excepted,
4 whenever the existence of these salts, isomers, or salts of isomers is possible within
5 the specific chemical designation: gamma hydroxybutyric acid; and
- 6 (5) Any material, compound, mixture, or preparation which contains any quantity of the
7 following substances:
- 8 (a) 2-(2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (2,5H-
9 NBOMe);
- 10 (b) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
11 (2,5I-NBOMe);
- 12 (c) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
13 (2,5B-NBOMe); or
- 14 (d) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine
15 (2,5C-NBOMe).

16 ➔Section 4. KRS 218A.1410 is amended to read as follows:

- 17 (1) A person is guilty of importing heroin, carfentanil, fentanyl, or fentanyl
18 derivatives when he or she knowingly and unlawfully transports any quantity of
19 heroin, carfentanil, fentanyl, or fentanyl derivatives into the Commonwealth by
20 any means with the intent to sell or distribute the heroin, carfentanil, fentanyl, or
21 fentanyl derivatives.
- 22 (2) The provisions of this section are intended to be a separate offense from others in
23 this chapter, and shall be punished in addition to violations of this chapter occurring
24 during the same course of conduct.
- 25 (3) Importing heroin, carfentanil, fentanyl, or fentanyl derivatives is a Class C felony,
26 and the defendant shall not be released on probation, shock probation, conditional
27 discharge, or parole until he or she has served at least fifty percent (50%) of the

1 sentence imposed.

2 ➔Section 5. KRS 218A.1412 is amended to read as follows:

- 3 (1) A person is guilty of trafficking in a controlled substance in the first degree when he
 4 or she knowingly and unlawfully traffics in:
- 5 (a) Four (4) grams or more of cocaine;
- 6 (b) Two (2) grams or more of ~~heroin, fentanyl, or~~ methamphetamine;
- 7 (c) Ten (10) or more dosage units of a controlled substance that is classified in
 8 Schedules I or II and is a narcotic drug, or a controlled substance analogue;
- 9 (d) Any quantity of lysergic acid diethylamide; phencyclidine; gamma
 10 hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and
 11 analogues; or flunitrazepam, including its salts, isomers, and salts of isomers;~~f~~
 12 ~~or~~
- 13 (e) **Any quantity of fentanyl, carfentanil, or fentanyl derivatives;**
- 14 (f) **Two (2) grams or more of heroin;**
- 15 (g) **Less than two (2) grams of heroin; or**
- 16 (h) Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of
 17 this subsection in an amount less than the amounts specified in those
 18 paragraphs.
- 19 (2) The amounts specified in subsection (1) of this section may occur in a single
 20 transaction or may occur in a series of transactions over a period of time not to
 21 exceed ninety (90) days that cumulatively result in the quantities specified in this
 22 section.
- 23 (3) (a) Any person who violates the provisions of subsection (1)(a), (b), (c),~~or~~ (d),
 24 **(e), or (f)** of this section shall be guilty of a Class C felony for the first offense
 25 and a Class B felony for a second or subsequent offense.
- 26 (b) **Any person who violates the provisions of subsection (1)(g) of this section**
 27 **shall be guilty of a Class C felony for the first offense and a Class B felony**

1 for a second or subsequent offense, except that if the finder of fact, during
2 the guilt phase of a trial, finds by a preponderance of the evidence that a
3 person had a substance use disorder involving the use of heroin at the time
4 of the commission of the offense the person shall be guilty of a Class D
5 felony for the first offense, and a Class C felony for a second or subsequent
6 offense. "Substance use disorder" shall have the same meaning as in the
7 current edition of the American Psychiatric Association's Diagnostic and
8 Statistical Manual of Mental Disorders.

9 (c) Any person who violates the provisions of subsection (1)(~~h~~)(~~e~~) of this
10 section:

- 11 1. Shall be guilty of a Class D felony for the first offense and a Class C
12 felony for a second or subsequent offense; and
- 13 2. a. Except as provided in subdivision b. of this subparagraph, where
14 the trafficked substance was heroin and the defendant committed
15 the offense while possessing more than one (1) items of
16 paraphernalia, including but not limited to scales, ledgers,
17 instruments and material to cut, package, or mix the final product,
18 excess cash, multiple subscriber identity modules in excess of the
19 number of communication devices possessed by the person at the
20 time of arrest, or weapons, which given the totality of the
21 circumstances indicate the trafficking to have been a commercial
22 activity, shall not be released on parole until he or she has served
23 at least fifty percent (50%) of the sentence imposed.
- 24 b. This subparagraph shall not apply to a person who has been
25 determined by a court to have had a substance use disorder relating
26 to a controlled substance at the time of the offense. "Substance use
27 disorder" shall have the same meaning as in the current edition of

1 the American Psychiatric Association's Diagnostic and Statistical
2 Manual of Mental Disorders.

3 ~~(d)~~~~(e)~~ Any person convicted of a Class C felony offense or higher under this
4 section shall not be released on probation, shock probation, parole, conditional
5 discharge, or other form of early release until he or she has served at least fifty
6 percent (50%) of the sentence imposed in cases where the trafficked substance
7 was heroin, **fentanyl, carfentanil, or contained fentanyl derivatives.**

8 ➔Section 6. KRS 218A.142 is amended to read as follows:

9 (1) A person is guilty of aggravated trafficking in a controlled substance in the first
10 degree when he or she knowingly and unlawfully traffics in:

11 **(a) One hundred (100) grams or more of heroin;**

12 **(b) Twenty-eight (28) grams or more of fentanyl; or**

13 **(c) Ten (10) grams or more of carfentanil or fentanyl derivatives.**

14 (2) Aggravated trafficking in a controlled substance in the first degree is a Class B
15 felony, and the defendant shall not be released on probation, shock probation,
16 conditional discharge, or parole until he or she has served at least fifty percent
17 (50%) of the sentence imposed.

18 ➔Section 7. KRS 218A.205 is amended to read as follows:

19 (1) As used in this section:

20 (a) "Reporting agency" includes:

- 21 1. The Department of Kentucky State Police;
- 22 2. The Office of the Attorney General;
- 23 3. The Cabinet for Health and Family Services; and
- 24 4. The applicable state licensing board; and

25 (b) "State licensing board" means:

- 26 1. The Kentucky Board of Medical Licensure;
- 27 2. The Kentucky Board of Nursing;

- 1 3. The Kentucky Board of Dentistry;
- 2 4. The Kentucky Board of Optometric Examiners;
- 3 5. The State Board of Podiatry; and
- 4 6. Any other board that licenses or regulates a person who is entitled to
- 5 prescribe or dispense controlled substances to humans.
- 6 (2) (a) When a reporting agency or a law enforcement agency receives a report of
- 7 improper, inappropriate, or illegal prescribing or dispensing of a controlled
- 8 substance it may, to the extent otherwise allowed by law, send a copy of the
- 9 report within three (3) business days to every other reporting agency.
- 10 (b) A county attorney or Commonwealth's attorney shall notify the Office of the
- 11 Attorney General and the appropriate state licensing board within three (3)
- 12 business days of an indictment or a waiver of indictment becoming public in
- 13 his or her jurisdiction charging a licensed person with a felony offense relating
- 14 to the manufacture of, trafficking in, prescribing, dispensing, or possession of
- 15 a controlled substance.
- 16 (3) Each state licensing board shall, **in consultation with the Kentucky Office of Drug**
- 17 **Control Policy**, establish the following by administrative regulation for those
- 18 licensees authorized to prescribe or dispense controlled substances:
- 19 (a) Mandatory prescribing and dispensing standards related to controlled
- 20 substances, the requirements of which shall include the diagnostic, treatment,
- 21 review, and other protocols and standards established for Schedule II
- 22 controlled substances and Schedule III controlled substances containing
- 23 hydrocodone under KRS 218A.172 and which may include the exemptions
- 24 authorized by KRS 218A.172(4);
- 25 (b) **In accord with the CDC Guideline for Prescribing Opioids for Chronic Pain**
- 26 **published in 2016, a prohibition on a practitioner issuing a prescription for**
- 27 **a Schedule II controlled substance for more than a three (3) day supply of a**

1 Schedule II controlled substance if the prescription is intended to treat pain
2 as an acute medical condition, with the following exceptions:

3 1. The practitioner, in his or her professional judgment believes that
4 more than a three (3) day supply of a Schedule II controlled substance
5 is medically necessary to treat the patient's pain as an acute medical
6 condition and the practitioner adequately documents the acute
7 medical condition and lack of alternative treatment options which
8 justifies deviation from the three (3) day supply limit established in
9 this subsection in the patient's medical records;

10 2. The prescription for a Schedule II controlled substance is prescribed
11 to treat chronic pain;

12 3. The prescription for a Schedule II controlled substance is prescribed
13 to treat pain associated with a valid cancer diagnosis;

14 4. The prescription for a Schedule II controlled substance is prescribed
15 to treat pain while the patient is receiving hospice or end-of-life
16 treatment;

17 5. The prescription for a Schedule II controlled substance is prescribed
18 as part of a narcotic treatment program licensed by the Cabinet for
19 Health and Family Services;

20 6. The prescription for a Schedule II controlled substance is prescribed
21 to treat pain following a major surgery or the treatment of significant
22 trauma, as defined by the state licensing board in consultation with
23 the Kentucky Office of Drug Control Policy;

24 7. The Schedule II controlled substance is dispensed or administered
25 directly to an ultimate user in an inpatient setting; or

26 8. Any additional treatment scenario deemed medically necessary by the
27 state licensing board in consultation the Kentucky Office of Drug

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Control Policy:

(c) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour supply of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone unless the dispensing is done as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(d)~~**(e)**~~ A procedure for temporarily suspending, limiting, or restricting a license held by a named licensee where a substantial likelihood exists to believe that the continued unrestricted practice by the named licensee would constitute a danger to the health, welfare, or safety of the licensee's patients or of the general public;

(e)~~**(d)**~~ A procedure for the expedited review of complaints filed against their licensees pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances that is designed to commence an investigation within seven (7) days of a complaint being filed and produce a charging decision by the board on the complaint within one hundred twenty (120) days of the receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation;

(f)~~**(e)**~~ The establishment and enforcement of licensure standards that conform to the following:

1. A permanent ban on licensees and applicants convicted after July 20, 2012, in this state or any other state of any felony offense relating to controlled substances from prescribing or dispensing a controlled substance;
2. Restrictions short of a permanent ban on licensees and applicants convicted in this state or any other state of any misdemeanor offense

- 1 relating to prescribing or dispensing a controlled substance;
- 2 3. Restrictions mirroring in time and scope any disciplinary limitation
- 3 placed on a licensee or applicant by a licensing board of another state if
- 4 the disciplinary action results from improper, inappropriate, or illegal
- 5 prescribing or dispensing of controlled substances; and
- 6 4. A requirement that licensees and applicants report to the board any
- 7 conviction or disciplinary action covered by this subsection with
- 8 appropriate sanctions for any failure to make this required report;
- 9 ~~(g)~~~~(f)~~ A procedure for the continuous submission of all disciplinary and other
- 10 reportable information to the National Practitioner Data Bank of the United
- 11 States Department of Health and Human Services;
- 12 ~~(h)~~~~(g)~~ If not otherwise required by other law, a process for submitting a query
- 13 on each applicant for licensure to the National Practitioner Data Bank of the
- 14 United States Department of Health and Human Services to retrieve any
- 15 relevant data on the applicant; and
- 16 ~~(i)~~~~(h)~~ Continuing education requirements beginning with the first full
- 17 educational year occurring after July 1, 2012, that specify that at least seven
- 18 and one-half percent (7.5%) of the continuing education required of the
- 19 licensed practitioner relate to the use of the electronic monitoring system
- 20 established in KRS 218A.202, pain management, or addiction disorders.
- 21 (4) **For the purposes of pharmacy dispensing, the medical necessity for a Schedule II**
- 22 **controlled substance as documented by the practitioner in the patient's medical**
- 23 **record and the prescription for more than a three (3) day supply of that controlled**
- 24 **substance are presumed to be valid.**
- 25 (5) A state licensing board shall employ or obtain the services of a specialist in the
- 26 treatment of pain and a specialist in drug addiction to evaluate information received
- 27 regarding a licensee's prescribing or dispensing practices related to controlled

1 substances if the board or its staff does not possess such expertise, to ascertain if the
2 licensee under investigation is engaging in improper, inappropriate, or illegal
3 practices.

4 ~~(6)~~~~(5)~~ Any statute to the contrary notwithstanding, no state licensing board shall
5 require that a grievance or complaint against a licensee relating to controlled
6 substances be sworn to or notarized, but the grievance or complaint shall identify
7 the name and address of the grievant or complainant, unless the board by
8 administrative regulation authorizes the filing of anonymous complaints. Any such
9 authorizing administrative regulation shall require that an anonymous complaint or
10 grievance be accompanied by sufficient corroborating evidence as would allow the
11 board to believe, based upon a totality of the circumstances, that a reasonable
12 probability exists that the complaint or grievance is meritorious.

13 ~~(7)~~~~(6)~~ Every state licensing board shall cooperate to the maximum extent permitted
14 by law with all state, local, and federal law enforcement agencies, and all
15 professional licensing boards and agencies, state and federal, in the United States or
16 its territories in the coordination of actions to deter the improper, inappropriate, or
17 illegal prescribing or dispensing of a controlled substance.

18 ~~(8)~~~~(7)~~ Each state licensing board shall require a fingerprint-supported criminal
19 record check by the Department of Kentucky State Police and the Federal Bureau of
20 Investigation of any applicant for initial licensure to practice any profession
21 authorized to prescribe or dispense controlled substances.

22 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO
23 READ AS FOLLOWS:

24 **(1) A person is guilty of trafficking in a misrepresented controlled substance when he**
25 **or she knowingly and unlawfully sells or distributes any Schedule I controlled**
26 **substance, carfentanil, or fentanyl while misrepresenting the identity of the**
27 **Schedule I controlled substance, carfentanil, or fentanyl being sold or distributed**

- 1 as a legitimate pharmaceutical product.
- 2 (2) The provisions of this section are intended to be a separate offense from others in
- 3 this chapter, and shall be punished in addition to violations of this chapter
- 4 occurring during the same course of conduct.
- 5 (3) Trafficking in a misrepresented controlled substance is a Class D felony.