

1 AN ACT relating to possession of a controlled substance.

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 classified as Schedule III controlled substances pursuant to KRS
15 218A.020 but does not include estrogens, 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 any of
18 its salts, isomers, or salts of isomers;
- 19 (5) "Certified community based palliative care program" means a palliative care
20 program which has received certification from the Joint Commission;
- 21 (6) "Child" means any person under the age of majority as specified in KRS 2.015;
- 22 (7) "Cocaine" means a substance containing any quantity of cocaine, its salts, optical
23 and geometric isomers, and salts of isomers;
- 24 (8) "Controlled substance" means methamphetamine, or a drug, substance, or
25 immediate precursor in Schedules I through V and includes a controlled substance
26 analogue;
- 27 (9) (a) "Controlled substance analogue," except as provided in paragraph (b) of this

1 subsection, means a substance:

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

13 (b) Such term does not include:

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

22 (10) "Counterfeit substance" means a controlled substance which, or the container or
23 labeling of which, without authorization, bears the trademark, trade name, or other
24 identifying mark, imprint, number, or device, or any likeness thereof, of a
25 manufacturer, distributor, or dispenser other than the person who in fact
26 manufactured, distributed, or dispensed the substance;

27 (11) "Dispense" means to deliver a controlled substance to an ultimate user or research

1 subject by or pursuant to the lawful order of a practitioner, including the packaging,
2 labeling, or compounding necessary to prepare the substance for that delivery;

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

5 (13) "Distribute" means to deliver other than by administering or dispensing a controlled
6 substance;

7 (14) "Dosage unit" means a single pill, capsule, ampule, liquid, or other form of
8 administration available as a single unit;

9 (15) "Drug" means:

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

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

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

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

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

20 (16) "Fentanyl" means a substance containing any quantity of fentanyl, or any of its salts,
21 isomers, or salts of isomers;

22 (17) "Fentanyl derivative" means a substance containing any quantity of any chemical
23 compound, except compounds specifically scheduled as controlled substances by
24 statute or by administrative regulation pursuant to this chapter, which is structurally
25 derived from 1-ethyl-4-(N-phenylamido) piperadine:

26 (a) By substitution:

27 1. At the 2-position of the 1-ethyl group with a phenyl, furan, thiophene, or

- 1 ethyloxotetrazole ring system; and
- 2 2. Of the terminal amido hydrogen atom with an alkyl, alkoxy, cycloalkyl,
- 3 or furanyl group; and
- 4 (b) Which may be further modified in one (1) or more of the following ways:
- 5 1. By substitution on the N-phenyl ring to any extent with alkyl, alkoxy,
- 6 haloalkyl, hydroxyl, or halide substituents;
- 7 2. By substitution on the piperadine ring to any extent with alkyl, allyl,
- 8 alkoxy, hydroxy, or halide substituents at the 2-, 3-, 5-, and/or 6-
- 9 positions;
- 10 3. By substitution on the piperadine ring to any extent with a phenyl,
- 11 alkoxy, or carboxylate ester substituent at the 4- position; or
- 12 4. By substitution on the 1-ethyl group to any extent with alkyl, alkoxy, or
- 13 hydroxy substituents;
- 14 (18) "Good faith prior examination," as used in KRS Chapter 218A and for criminal
- 15 prosecution only, means an in-person medical examination of the patient conducted
- 16 by the prescribing practitioner or other health-care professional routinely relied
- 17 upon in the ordinary course of his or her practice, at which time the patient is
- 18 physically examined and a medical history of the patient is obtained. "In-person"
- 19 includes telehealth examinations. This subsection shall not be applicable to hospice
- 20 providers licensed pursuant to KRS Chapter 216B;
- 21 (19) "Hazardous chemical substance" includes any chemical substance used or intended
- 22 for use in the illegal manufacture of a controlled substance as defined in this section
- 23 or the illegal manufacture of methamphetamine as defined in KRS 218A.1431,
- 24 which:
- 25 (a) Poses an explosion hazard;
- 26 (b) Poses a fire hazard; or
- 27 (c) Is poisonous or injurious if handled, swallowed, or inhaled;

- 1 (20) "Heroin" means a substance containing any quantity of heroin, or any of its salts,
2 isomers, or salts of isomers;
- 3 (21) "Hydrocodone combination product" means a drug with:
- 4 (a) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of
5 its salts, per one hundred (100) milliliters or not more than fifteen (15)
6 milligrams per dosage unit, with a fourfold or greater quantity of an
7 isoquinoline alkaloid of opium; or
- 8 (b) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of
9 its salts, per one hundred (100) milliliters or not more than fifteen (15)
10 milligrams per dosage unit, with one (1) or more active, nonnarcotic
11 ingredients in recognized therapeutic amounts;
- 12 (22) "Immediate precursor" means a substance which is the principal compound
13 commonly used or produced primarily for use, and which is an immediate chemical
14 intermediary used or likely to be used in the manufacture of a controlled substance
15 or methamphetamine, the control of which is necessary to prevent, curtail, or limit
16 manufacture;
- 17 (23) "Industrial hemp" has the same meaning as in KRS 260.850;
- 18 (24) "Industrial hemp products" has the same meaning as in KRS 260.850;
- 19 (25) "Intent to manufacture" means any evidence which demonstrates a person's
20 conscious objective to manufacture a controlled substance or methamphetamine.
21 Such evidence includes but is not limited to statements and a chemical substance's
22 usage, quantity, manner of storage, or proximity to other chemical substances or
23 equipment used to manufacture a controlled substance or methamphetamine;
- 24 (26) "Isomer" means the optical isomer, except the Cabinet for Health and Family
25 Services may include the optical, positional, or geometric isomer to classify any
26 substance pursuant to KRS 218A.020;
- 27 (27) "Manufacture," except as provided in KRS 218A.1431, means the production,

1 preparation, propagation, compounding, conversion, or processing of a controlled
2 substance, either directly or indirectly by extraction from substances of natural
3 origin or independently by means of chemical synthesis, or by a combination of
4 extraction and chemical synthesis, and includes any packaging or repackaging of the
5 substance or labeling or relabeling of its container except that this term does not
6 include activities:

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

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

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

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

19 (a) Industrial hemp that is in the possession, custody, or control of a person who
20 holds a license issued by the Department of Agriculture permitting that person
21 to cultivate, handle, or process industrial hemp;

22 (b) Industrial hemp products that do not include any living plants, viable seeds,
23 leaf materials, or floral materials;

24 (c) The substance cannabidiol, when transferred, dispensed, or administered
25 pursuant to the written order of a physician practicing at a hospital or
26 associated clinic affiliated with a Kentucky public university having a college
27 or school of medicine;

- 1 (d) For persons participating in a clinical trial or in an expanded access program,
2 a drug or substance approved for the use of those participants by the United
3 States Food and Drug Administration;
- 4 (e) A cannabidiol product derived from industrial hemp, as defined in KRS
5 260.850; or
- 6 (f) A cannabidiol product approved as a prescription medication by the United
7 States Food and Drug Administration;
- 8 (29) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only,
9 means an accounting of a patient's medical background, including but not limited to
10 prior medical conditions, prescriptions, and family background;
- 11 (30) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only,
12 means a lawful order of a specifically identified practitioner for a specifically
13 identified patient for the patient's health-care needs. "Medical order" may or may
14 not include a prescription drug order;
- 15 (31) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only,
16 means a record, other than for financial or billing purposes, relating to a patient,
17 kept by a practitioner as a result of the practitioner-patient relationship;
- 18 (32) "Methamphetamine" means any substance that contains any quantity of
19 methamphetamine, or any of its salts, isomers, or salts of isomers;
- 20 (33) "Narcotic drug" means any of the following, whether produced directly or indirectly
21 by extraction from substances of vegetable origin, or independently by means of
22 chemical synthesis, or by a combination of extraction and chemical synthesis:
- 23 (a) Opium and opiate, and any salt, compound, derivative, or preparation of
24 opium or opiate;
- 25 (b) Any salt, compound, isomer, derivative, or preparation thereof which is
26 chemically equivalent or identical with any of the substances referred to in
27 paragraph (a) of this subsection, but not including the isoquinoline alkaloids

- 1 of opium;
- 2 (c) Opium poppy and poppy straw;
- 3 (d) Coca leaves, except coca leaves and extracts of coca leaves from which
4 cocaine, ecgonine, and derivatives of ecgonine or their salts have been
5 removed;
- 6 (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- 7 (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
- 8 (g) Any compound, mixture, or preparation which contains any quantity of any of
9 the substances referred to in paragraphs (a) to (f) of this subsection;
- 10 (34) "Opiate" means any substance having an addiction-forming or addiction-sustaining
11 liability similar to morphine or being capable of conversion into a drug having
12 addiction-forming or addiction-sustaining liability. It does not include, unless
13 specifically designated as controlled under KRS 218A.020, the dextrorotatory
14 isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does
15 include its racemic and levorotatory forms;
- 16 (35) "Opium poppy" means the plant of the species *papaver somniferum* L., except its
17 seeds;
- 18 (36) "Person" means individual, corporation, government or governmental subdivision
19 or agency, business trust, estate, trust, partnership or association, or any other legal
20 entity;
- 21 (37) "Physical injury" has the same meaning it has in KRS 500.080;
- 22 (38) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- 23 (39) "Pharmacist" means a natural person licensed by this state to engage in the practice
24 of the profession of pharmacy;
- 25 (40) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific
26 investigator, optometrist as authorized in KRS 320.240, advanced practice
27 registered nurse as authorized under KRS 314.011, or other person licensed,

1 registered, or otherwise permitted by state or federal law to acquire, distribute,
2 dispense, conduct research with respect to, or to administer a controlled substance
3 in the course of professional practice or research in this state. "Practitioner" also
4 includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered
5 nurse authorized under KRS 314.011 who is a resident of and actively practicing in
6 a state other than Kentucky and who is licensed and has prescriptive authority for
7 controlled substances under the professional licensing laws of another state, unless
8 the person's Kentucky license has been revoked, suspended, restricted, or probated,
9 in which case the terms of the Kentucky license shall prevail;

10 (41) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal
11 prosecution only, means a medical relationship that exists between a patient and a
12 practitioner or the practitioner's designee, after the practitioner or his or her
13 designee has conducted at least one (1) good faith prior examination;

14 (42) "Prescription" means a written, electronic, or oral order for a drug or medicine, or
15 combination or mixture of drugs or medicines, or proprietary preparation, signed or
16 given or authorized by a medical, dental, chiropody, veterinarian, optometric
17 practitioner, or advanced practice registered nurse, and intended for use in the
18 diagnosis, cure, mitigation, treatment, or prevention of disease in man or other
19 animals;

20 (43) "Prescription blank," with reference to a controlled substance, means a document
21 that meets the requirements of KRS 218A.204 and 217.216;

22 (44) "Presumptive probation" means a sentence of probation not to exceed the maximum
23 term specified for the offense, subject to conditions otherwise authorized by law,
24 that is presumed to be the appropriate sentence for certain offenses designated in
25 this chapter, notwithstanding contrary provisions of KRS Chapter 533. That
26 presumption shall only be overcome by a finding on the record by the sentencing
27 court of substantial and compelling reasons why the defendant cannot be safely and

1 effectively supervised in the community, is not amenable to community-based
2 treatment, or poses a significant risk to public safety;

3 (45) "Production" includes the manufacture, planting, cultivation, growing, or harvesting
4 of a controlled substance;

5 (46) "Recovery program" means an evidence-based, nonclinical service that assists
6 individuals and families working toward sustained recovery from substance use and
7 other criminal risk factors. This can be done through an array of support programs
8 and services that are delivered through residential and nonresidential means;

9 (47) **"Residue" means the substance left after evaporation, distillation, combustion, or**
10 **consumption;**

11 **(48)** "Salvia" means Salvia divinorum or Salvinorin A and includes all parts of the plant
12 presently classified botanically as Salvia divinorum, whether growing or not, the
13 seeds thereof, any extract from any part of that plant, and every compound,
14 manufacture, derivative, mixture, or preparation of that plant, its seeds, or its
15 extracts, including salts, isomers, and salts of isomers whenever the existence of
16 such salts, isomers, and salts of isomers is possible within the specific chemical
17 designation of that plant, its seeds, or extracts. The term shall not include any other
18 species in the genus salvia;

19 **(49)**~~[(48)]~~ "Second or subsequent offense" means that for the purposes of this chapter an
20 offense is considered as a second or subsequent offense, if, prior to his or her
21 conviction of the offense, the offender has at any time been convicted under this
22 chapter, or under any statute of the United States, or of any state relating to
23 substances classified as controlled substances or counterfeit substances, except that
24 a prior conviction for a nontrafficking offense shall be treated as a prior offense
25 only when the subsequent offense is a nontrafficking offense. For the purposes of
26 this section, a conviction voided under KRS 218A.275 or 218A.276 shall not
27 constitute a conviction under this chapter;

1 ~~(50)~~~~(49)~~ "Sell" means to dispose of a controlled substance to another person for
2 consideration or in furtherance of commercial distribution;

3 ~~(51)~~~~(50)~~ "Serious physical injury" has the same meaning it has in KRS 500.080;

4 ~~(52)~~~~(51)~~ "Synthetic cannabinoids or piperazines" means any chemical compound which
5 is not approved by the United States Food and Drug Administration or, if approved,
6 which is not dispensed or possessed in accordance with state and federal law, that
7 contains Benzylpiperazine (BZP); Trifluoromethylphenylpiperazine (TFMPP); 1,1-
8 Dimethylheptyl-11-hydroxytetrahydrocannabinol (HU-210); 1-Butyl-3-(1-
9 naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol (HU-211); or any
10 compound in the following structural classes:

11 (a) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole
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 naphthyl ring to any extent. Examples of this structural class include but
17 are not limited to JWH-015, JWH-018, JWH-019, JWH-073, JWH-081,
18 JWH-122, JWH-200, and AM-2201;

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

26 (c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with
27 substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl,

1 alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl,
2 or 2-(4-morpholinyl)ethyl group whether or not further substituted in the
3 indole ring to any extent and whether or not substituted in the phenyl ring to
4 any extent. Examples of this structural class include but are not limited to
5 AM-630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;

6 (d) Cyclohexylphenols: Any compound containing a 2-(3-
7 hydroxycyclohexyl)phenol structure with substitution at the 5-position of the
8 phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl,
9 cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl
10 group whether or not substituted in the cyclohexyl ring to any extent.
11 Examples of this structural class include but are not limited to CP 47,497 and
12 its C8 homologue (cannabicyclohexanol);

13 (e) Naphthylmethylindeles: Any compound containing a 1H-indol-3-yl-(1-
14 naphthyl)methane structure with substitution at the nitrogen atom of the indole
15 ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-
16 methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not
17 further substituted in the indole ring to any extent and whether or not
18 substituted in the naphthyl ring to any extent. Examples of this structural class
19 include but are not limited to JWH-175, JWH-184, and JWH-185;

20 (f) Naphthoypyrroles: Any compound containing a 3-(1-naphthoypyrrole
21 structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl,
22 haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
23 piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further
24 substituted in the pyrrole ring to any extent and whether or not substituted in
25 the naphthyl ring to any extent. Examples of this structural class include but
26 are not limited to JWH-030, JWH-145, JWH-146, JWH-307, and JWH-368;

27 (g) Naphthylmethylindeles: Any compound containing a 1-(1-

1 naphthylmethyl)indene structure with substitution at the 3-position of the
2 indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,
3 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether
4 or not further substituted in the indene ring to any extent and whether or not
5 substituted in the naphthyl ring to any extent. Examples of this structural class
6 include but are not limited to JWH-176;

7 (h) Tetramethylcyclopropanoylindoles: Any compound containing a 3-(1-
8 tetramethylcyclopropoyl)indole structure with substitution at the nitrogen
9 atom of the indole ring by an alkyl, haloalkyl, cycloalkylmethyl,
10 cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl
11 group, whether or not further substituted in the indole ring to any extent and
12 whether or not further substituted in the tetramethylcyclopropyl ring to any
13 extent. Examples of this structural class include but are not limited to UR-144
14 and XLR-11;

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

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

25 ~~(53)~~~~(52)~~ "Synthetic cathinones" means any chemical compound which is not approved
26 by the United States Food and Drug Administration or, if approved, which is not
27 dispensed or possessed in accordance with state and federal law (not including

1 bupropion or compounds listed under a different schedule) structurally derived from
2 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl,
3 or thiophene ring systems, whether or not the compound is further modified in one
4 (1) or more of the following ways:

- 5 (a) By substitution in the ring system to any extent with alkyl, alkylendioxy,
6 alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further
7 substituted in the ring system by one (1) or more other univalent substituents.
8 Examples of this class include but are not limited to 3,4-
9 Methylenedioxcathinone (bk-MDA);
- 10 (b) By substitution at the 3-position with an acyclic alkyl substituent. Examples of
11 this class include but are not limited to 2-methylamino-1-phenylbutan-1-one
12 (buphedrone);
- 13 (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or
14 methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a
15 cyclic structure. Examples of this class include but are not limited to
16 Dimethylcathinone, Ethcathinone, and α -Pyrrolidinopropiophenone (α -PPP);
17 or
- 18 (d) Any other synthetic cathinone which is not approved by the United States
19 Food and Drug Administration or, if approved, is not dispensed or possessed
20 in accordance with state or federal law;

21 ~~(54)~~~~(53)~~ "Synthetic drugs" means any synthetic cannabinoids or piperazines or any
22 synthetic cathinones;

23 ~~(55)~~~~(54)~~ "Telehealth" has the same meaning it has in KRS 311.550;

24 ~~(56)~~~~(55)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances
25 contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or
26 synthetic substances, derivatives, and their isomers with similar chemical structure
27 and pharmacological activity such as the following:

- 1 (a) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
2 (b) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
3 (c) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

4 **(57) "Trace amount" means an amount of a substance which approaches the limit of**
5 **detection and is incapable of being accurately measured;**

6 **(58)**~~(56)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture,
7 distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute,
8 dispense, or sell a controlled substance;

9 **(59)**~~(57)~~ "Transfer" means to dispose of a controlled substance to another person
10 without consideration and not in furtherance of commercial distribution; and

11 **(60)**~~(58)~~ "Ultimate user" means a person who lawfully possesses a controlled substance
12 for his or her own use or for the use of a member of his or her household or for
13 administering to an animal owned by him or her or by a member of his or her
14 household.

15 ➔Section 2. KRS 218A.1415 is amended to read as follows:

16 (1) A person is guilty of possession of a controlled substance in the first degree when
17 he or she knowingly and unlawfully possesses:

18 (a) A controlled substance that is classified in Schedules I or II and is a narcotic
19 drug;

20 (b) A controlled substance analogue;

21 (c) Methamphetamine;

22 (d) Lysergic acid diethylamide;

23 (e) Phencyclidine;

24 (f) Gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of
25 isomers, and analogues; or

26 (g) Flunitrazepam, including its salts, isomers, and salts of isomers.

27 (2) Possession of a controlled substance in the first degree is:

1 **(a) For residue or a trace amount, a Class A misdemeanor; and**

2 **(b) For any other amount,** a Class D felony subject to the following provisions:

3 ~~1.(a)~~ The maximum term of incarceration shall be no greater than three
4 (3) years, notwithstanding KRS Chapter 532;

5 ~~2.(b)~~ For a person's first or second offense under this section, he or she
6 may be subject to a period of:

7 ~~a.[1.]~~Deferred prosecution pursuant to KRS 218A.14151; or

8 ~~b.[2.]~~Presumptive probation;

9 ~~3.(c)~~ Deferred prosecution under **subparagraph 2. of this** paragraph ~~[(b)~~
10 ~~of this subsection]~~ shall be the preferred alternative for a first offense;
11 and

12 ~~4.(d)~~ If a person does not enter a deferred prosecution program for his or
13 her first or second offense, he or she shall be subject to a period of
14 presumptive probation, unless a court determines the defendant is not
15 eligible for presumptive probation as defined in KRS 218A.010.

16 ➔Section 3. KRS 218A.1416 is amended to read as follows:

17 (1) A person is guilty of possession of a controlled substance in the second degree
18 when he or she knowingly and unlawfully possesses: a controlled substance
19 classified in Schedules I or II which is not a narcotic drug; or specified in KRS
20 218A.1415; or a controlled substance classified in Schedule III; but not synthetic
21 drugs, salvia, or marijuana.

22 (2) Possession of a controlled substance in the second degree is:

23 **(a) For residue or a trace amount, a Class B misdemeanor; and**

24 **(b) For any other amount,** a Class A misdemeanor.

25 ➔Section 4. KRS 218A.1417 is amended to read as follows:

26 (1) A person is guilty of possession of a controlled substance in the third degree when
27 he or she knowingly and unlawfully possesses a controlled substance classified in

- 1 Schedules IV or V.
- 2 (2) Possession of a controlled substance in the third degree is:
- 3 (a) For residue or a trace amount, a Class B misdemeanor; and
- 4 (b) For any other amount, a Class A misdemeanor.