

1 AN ACT relating to controlled substances.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in Sections 1 to 3 of this Act:*

6 *(a) "Commissioner" means the commissioner of the Department for Public*
7 *Health;*

8 *(b) "Department" means Department for Public Health;*

9 *(c) "Harm reduction centers" means a community-based resource offering*
10 *services which may include but are not limited to health screening, syringe*
11 *support, drug checking, disease prevention, recovery assistance, and*
12 *overdose prevention services where persons may safely consume pre-*
13 *obtained substances.*

14 *(2) Within six (6) months after the effective date of this Act, the department shall*
15 *establish a program to prevent drug overdoses through the establishment of harm*
16 *reduction centers.*

17 *(3) Harm reduction centers established pursuant to Sections 1 to 3 of this Act shall*
18 *be operated by a local health department. The legislative body of the county,*
19 *urban-county government, or consolidated local government in which the*
20 *program would operate shall approve the:*

21 *(a) Opening and operation of the proposed harm reduction center;*

22 *(b) Location of the proposed harm reduction center; and*

23 *(c) Hours of operation of the proposed harm reduction center.*

24 *(4) Each harm reduction center established pursuant to Sections 1 to 3 of this Act*
25 *shall provide the necessary health care professionals to prevent overdose,*
26 *referrals for counseling, or other medical treatment that may be appropriate for*
27 *persons utilizing the harm reduction center.*

1 (5) A harm reduction center established pursuant to Sections 1 to 3 of this Act may,
 2 in cooperation with a Kentucky public university college or school of medicine,
 3 provide drug and substance checking services. An agency offering services under
 4 this subsection shall:

5 (a) Offer voluntary testing of any substance which may be a controlled
 6 substance or psychoactive substance to ascertain the composition and likely
 7 identity of the drug or substance;

8 (b) Advise the individual who presented a drug or substance for checking of the
 9 outcome of the testing;

10 (c) Provide accurate and appropriate information and harm reduction advice to
 11 help individuals make informed decisions about drug and substance use;
 12 and

13 (d) 1. Return a drug or substance to the individual who presented it for
 14 checking; or

15 2. Dispose of, or arrange for the disposal of, any drug or substance
 16 surrendered by any individual for disposal.

17 (6) The commissioner shall promulgate regulations in accordance with KRS Chapter
 18 13A to authorize the program established by Sections 1 to 3 of this Act.

19 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO
 20 READ AS FOLLOWS:

21 (1) There is hereby established an advisory committee to advise the commissioner
 22 with respect to administrative regulations necessary to effectuate the purpose of
 23 Sections 1 to 3 of this Act. The advisory committee shall be chaired by the
 24 commissioner, or the commissioner's designee, and shall consist of the following
 25 additional members:

26 (a) The commissioner of the Department for Behavioral Health, Developmental
 27 and Intellectual Disabilities, or his or her designee;

- 1 (b) The dean of the University of Kentucky College of Social Work, or his or
2 her designee;
- 3 (c) The dean of the University of Louisville Raymond A. Kent School of Social
4 Work and Family Science, or his or her designee;
- 5 (d) Three (3) members appointed by the Governor:
- 6 1. A physician certified by the American Society of Addiction Medicine;
7 and
- 8 2. Two (2) persons in recovery from a substance use disorder defined in
9 the most recent version of the Diagnostic and Statistical Manual of
10 Mental Disorders.
- 11 (2) The advisory committee shall make recommendations to the commissioner with
12 respect to:
- 13 (a) Maximizing the potential public health and safety benefits of harm
14 reduction centers;
- 15 (b) The proper disposal of hypodermic needles and syringes;
- 16 (c) The recovery of persons utilizing such harm reduction centers;
- 17 (d) Federal, state, and local laws impacting the creation and operation of the
18 harm reduction centers;
- 19 (e) Appropriate guidance to relevant professional licensing boards;
- 20 (f) Potential collaboration with other public health efforts;
- 21 (g) Consideration of any other factors beneficial to promoting the public health
22 and safety; and
- 23 (h) Liability protection for property owners and harm reduction center staff,
24 volunteers, and participants from criminal or civil liability resulting from
25 the operation of a harm reduction center.
- 26 (3) The commissioner shall promulgate administrative regulations authorized by
27 Sections 1 to 3 of this Act no later than six (6) months after the effective date of

1 *this Act.*

2 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO
3 READ AS FOLLOWS:

4 *Notwithstanding any other law to the contrary, a person or entity, including but not*
5 *limited to property owners, managers, employees, volunteers, clients, or participants,*
6 *and state, city, or county government employees acting in the course and scope of*
7 *employment, shall not:*

8 *(1) Be arrested, charged, or prosecuted pursuant to KRS Chapter 218A or KRS*
9 *506.120;*

10 *(2) Have their property subject to forfeiture;*

11 *(3) Be subject to any civil or administrative penalty, including but not limited to*
12 *disciplinary action by a professional licensing board, credentialing restrictions,*
13 *contractual or civil liability, or medical staff or other employment action; or*

14 *(4) Be denied any right or privilege for actions, conduct, or omissions;*
15 *relating to the approval or operation of a harm reduction center in compliance with*
16 *Sections 1 to 3 of this Act and any regulations promulgated pursuant to Sections 1 to 3*
17 *of this Act.*

18 ➔Section 4. KRS 218A.1415 is amended to read as follows:

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

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

23 (b) A controlled substance analogue;

24 (c) Methamphetamine;

25 (d) Lysergic acid diethylamide;

26 (e) Phencyclidine;

27 (f) Gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of

1 isomers, and analogues; or

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

3 (2) Possession of a controlled substance in the first degree is **punishable by up to**
 4 **fifteen (15) hours of community service and evidence-based educational**
 5 **programming for reducing problematic substance use which has been approved**
 6 **by the Division of Behavioral Health within the Department for Behavioral**
 7 **Health, Developmental and Intellectual Disabilities**~~[a Class D felony subject to the~~
 8 following provisions:

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

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

13 1. ~~Deferred prosecution pursuant to KRS 218A.14151; or~~

14 2. ~~Presumptive probation;~~

15 ~~(c) Deferred prosecution under paragraph (b) of this subsection shall be the~~
 16 ~~preferred alternative for a first offense; and~~

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

21 ➔Section 5. KRS 218A.1416 is amended to read as follows:

22 (1) A person is guilty of possession of a controlled substance in the second degree
 23 when he or she knowingly and unlawfully possesses: a controlled substance
 24 classified in Schedules I or II which is not a narcotic drug; or specified in KRS
 25 218A.1415; or a controlled substance classified in Schedule III; but not synthetic
 26 drugs, salvia, or marijuana.

27 (2) Possession of a controlled substance in the second degree is **punishable by up to**

1 *fifteen (15) hours of community service and evidence-based educational*
 2 *programming for reducing problematic substance use which has been approved*
 3 *by the Division of Behavioral Health within the Department for Behavioral*
 4 *Health, Developmental and Intellectual Disabilities*~~[a Class A misdemeanor].~~

5 ➔Section 6. KRS 218A.1417 is amended to read as follows:

6 (1) A person is guilty of possession of a controlled substance in the third degree when
 7 he or she knowingly and unlawfully possesses a controlled substance classified in
 8 Schedules IV or V.

9 (2) Possession of a controlled substance in the third degree is *punishable by up to*
 10 *fifteen (15) hours of community service and evidence-based educational*
 11 *programming for reducing problematic substance use which has been approved*
 12 *by the Division of Behavioral Health within the Department for Behavioral*
 13 *Health, Developmental and Intellectual Disabilities*~~[a Class A misdemeanor].~~

14 ➔Section 7. KRS 218A.1422 is amended to read as follows:

15 (1) A person is guilty of possession of marijuana when he or she knowingly and
 16 unlawfully possesses marijuana.

17 (2) Possession of marijuana is *punishable by up to fifteen (15) hours of community*
 18 *service and evidence-based educational programming for reducing problematic*
 19 *substance use which has been approved by the Division of Behavioral Health*
 20 *within the Department for Behavioral Health, Developmental and Intellectual*
 21 *Disabilities*~~[a Class B misdemeanor, except that, KRS Chapter 532 to the contrary~~
 22 ~~notwithstanding, the maximum term of incarceration shall be no greater than forty-~~
 23 ~~five (45) days].~~

24 ➔Section 8. KRS 218A.1430 is amended to read as follows:

25 (1) (a) A person is guilty of trafficking in synthetic drugs when he or she knowingly
 26 and unlawfully traffics in synthetic drugs.

27 (b) Trafficking in synthetic drugs is a Class D felony for the first offense and a

1 Class C felony for each subsequent offense.

2 (c) In lieu of the fine amounts otherwise allowed under KRS Chapter 534, for any
3 offense under this subsection the court may impose a maximum fine of double
4 the defendant's gain from the commission of the offense, in which case any
5 fine money collected shall be divided between the same parties, in the same
6 ratio, and for the same purposes as established for forfeited property under
7 KRS 218A.420.

8 (d) It shall be an affirmative defense to an offense under this subsection that the
9 defendant committed the offense during the course of the defendant's
10 employment as an employee of a retail store and that the defendant did not
11 know and should not have known that the trafficked substance was a synthetic
12 drug.

13 (2) (a) A person is guilty of possession of synthetic drugs when he or she knowingly
14 and unlawfully possesses synthetic drugs.

15 (b) Possession of synthetic drugs is *punishable by up to fifteen (15) hours of*
16 *community service and evidence-based educational programming for*
17 *reducing problematic substance use which has been approved by the*
18 *Division of Behavioral Health within the Department for Behavioral*
19 *Health, Developmental and Intellectual Disabilities*;

20 1. — A Class A misdemeanor for the first offense; and

21 2. — A Class D felony for each subsequent offense].

22 ➔Section 9. KRS 218A.275 is amended to read as follows:

23 (1) *The Department of Pretrial Services shall employ or contract with persons*
24 *authorized to diagnose substance use disorders, and shall* [A court may request the
25 Division of Probation and Parole to] perform a risk and needs assessment for any
26 person *charged with* [found guilty of] possession of a controlled substance pursuant
27 to KRS 218A.1415, 218A.1416, [or] 218A.1417, *218A.1422, or 218A.1430. If the*

1 person is diagnosed with any substance use disorder defined in the most recent
2 version of the Diagnostic and Statistical Manual of Mental Disorders, the
3 assessor shall make a recommendation to the court as to whether treatment is
4 indicated by the assessment, and, if so, the most appropriate level and modality of
5 treatment or recovery program environment. If treatment is indicated for the person,
6 unless the court makes a written finding that the recommended treatment would
7 not be in the public interest, the court ~~shall~~^{may} order him or her to the
8 appropriate treatment or recovery program that will effectively respond to the
9 person's level of risk, criminal risk factors, and individual characteristics as
10 designated by the secretary of the Cabinet for Health and Family Services where a
11 program of treatment or recovery not to exceed one (1) year in duration may be
12 prescribed. The person ordered to the designated treatment or recovery program
13 shall present himself or herself for registration and initiation of the treatment or
14 recovery program within five (5) days of the date of sentencing. If, without good
15 cause, the person fails to appear at the designated treatment or recovery program
16 within the specified time, or if at any time during the program of treatment or
17 recovery prescribed, the authorized director of the treatment or recovery program
18 finds that the person is unwilling to participate in his or her treatment, the director
19 shall notify the sentencing court. Upon receipt of notification, the court shall cause
20 the person to be brought before it and may continue the order of treatment, or may
21 rescind the treatment order and impose a sentence for the possession offense. Upon
22 discharge of the person from the treatment or recovery program by the secretary of
23 the Cabinet for Health and Family Services, or his or her designee, prior to the
24 expiration of the one (1) year period or upon satisfactory completion of one (1) year
25 of treatment, the person shall be deemed finally discharged from sentence. The
26 secretary, or his or her designee, shall notify the sentencing court of the date of such
27 discharge from the treatment or recovery program.

- 1 (2) The secretary of the Cabinet for Health and Family Services, or his or her designee,
2 shall inform each court of the identity and location of the treatment or recovery
3 program to which the person is sentenced.
- 4 (3) Transportation to an inpatient facility shall be provided by order of the court when
5 the court finds the person unable to convey himself or herself to the facility within
6 five (5) days of sentencing by reason of physical infirmity or financial incapability.
- 7 (4) The sentencing court shall immediately notify the designated treatment or recovery
8 program of the sentence and its effective date.
- 9 (5) The secretary for health and family services, or his or her designee, may authorize
10 transfer of the person from the initially designated treatment or recovery program to
11 another treatment or recovery program for therapeutic purposes. The sentencing
12 court shall be notified of termination of treatment by the terminating treatment or
13 recovery program and shall be notified by the secretary of the new treatment or
14 recovery program to which the person was transferred.
- 15 (6) Responsibility for payment for treatment services rendered to persons pursuant to
16 this section shall be as under the statutes pertaining to payment of patients and
17 others for services rendered by the Cabinet for Health and Family Services, unless
18 the person and the treatment or recovery program shall arrange otherwise.
- 19 (7) None of the provisions of this section shall be deemed to preclude the court from
20 exercising its usual discretion with regard to ordering probation or conditional
21 discharge.
- 22 (8) ~~Except as provided in subsection (12) of this section,~~ In the case of any person
23 who has been convicted ~~for the first time~~ of possession of controlled substances,
24 the court may set aside and void the conviction upon satisfactory completion of
25 treatment, probation, or other sentence, and issue to the person a certificate to that
26 effect. A conviction voided under this subsection shall not be deemed ~~a first~~
27 ~~offense for purposes of this chapter or deemed~~ a conviction for purposes of

1 disqualifications or disabilities imposed by law upon conviction of a crime.~~]~~
2 ~~Voiding of a conviction under this subsection and dismissal may occur only once~~
3 ~~with respect to any person.]~~

4 (9) If the court voids a conviction under this section, the court shall order the sealing of
5 all records in the custody of the court and any records in the custody of any other
6 agency or official, including law enforcement records, except as provided in KRS
7 27A.099. The court shall order the sealing on a form provided by the Administrative
8 Office of the Courts. Every agency with records relating to the arrest, charge, or
9 other matters arising out of the arrest or charge that is ordered to seal records, shall
10 certify to the court within sixty (60) days of the entry of the order that the required
11 sealing action has been completed.

12 (10) After the sealing of the record, the proceedings in the matter shall not be used
13 against the defendant~~[except for the purposes of determining the person's eligibility~~
14 ~~to have his or her conviction voided under subsection (8) of this section]~~. The court
15 and other agencies shall reply to any inquiry that no record exists on the matter. The
16 person whose record has been sealed shall not have to disclose the fact of the record
17 or any matter relating thereto on an application for employment, credit, or other type
18 of application.

19 (11) Inspection of the sealed records may thereafter be permitted by the court pursuant to
20 KRS 27A.099 or upon a motion by the person who is the subject of the records and
21 only to those persons named in the motion~~[or upon a motion of the prosecutor to~~
22 ~~verify a defendant's eligibility to have his or her conviction voided under subsection~~
23 ~~(8) of this section.~~

24 ~~(12) A person who has previously had a charge of possession of controlled substances~~
25 ~~dismissed after completion of a deferred prosecution under KRS 218A.14151 shall~~
26 ~~not be eligible for voiding of conviction under this section].~~

27 ➔Section 10. KRS 218A.500 is amended to read as follows:

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

2 (1) "Drug paraphernalia" means all equipment, products and materials of any kind
3 which are used, intended for use, or designed for use in planting, propagating,
4 cultivating, growing, harvesting, manufacturing, compounding, converting,
5 producing, processing, ***or*** preparing ~~[, testing, analyzing, packaging, repackaging,~~
6 ~~storing, containing, concealing, injecting, ingesting, inhaling, or otherwise~~
7 ~~introducing into the human body]~~ a controlled substance in violation of this chapter.

8 It includes but is not limited to:

9 (a) Kits used, intended for use, or designed for use in planting, propagating,
10 cultivating, growing, or harvesting of any species of plant which is a
11 controlled substance or from which a controlled substance can be derived;

12 (b) Kits used, intended for use, or designed for use in manufacturing,
13 compounding, converting, producing, processing, or preparing controlled
14 substances;

15 (c) Isomerization devices used, intended for use, or designed for use in increasing
16 the potency of any species of plant which is a controlled substance;

17 (d) ~~[Testing equipment used, intended for use, or designed for use in identifying,~~
18 ~~or in analyzing the strength, effectiveness or purity of controlled substances;~~

19 ~~(e)]~~ Scales and balances used, intended for use, or designed for use in weighing or
20 measuring controlled substances;

21 ~~(e)]~~~~(f)]~~ Diluents and adulterants, such as quinine hydrochloride, mannitol,
22 mannite, dextrose and lactose, used, intended for use, or designed for use in
23 cutting controlled substances;

24 ~~(f)]~~~~(g)]~~ Separation gins and sifters used, intended for use, or designed for use in
25 removing twigs and seeds from, or in otherwise cleaning or refining
26 marijuana; ***and***

27 ~~(g)]~~~~(h)]~~ Blenders, bowls, containers, spoons, and mixing devices used, intended

1 for use, or designed for use in compounding controlled substances[;

2 ~~(i) Capsules, balloons, envelopes, and other containers used, intended for use, or~~

3 ~~designed for use in packaging small quantities of controlled substances;~~

4 ~~(j) Containers and other objects used, intended for use, or designed for use in~~

5 ~~storing or concealing controlled substances;~~

6 ~~(k) Hypodermic syringes, needles, and other objects used, intended for use, or~~

7 ~~designed for use in parenterally injecting controlled substances into the human~~

8 ~~body; and~~

9 ~~(l) Objects used, intended for use, or designed for use in ingesting, inhaling, or~~

10 ~~otherwise introducing marijuana, cocaine, hashish, or hashish oil into the~~

11 ~~human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic~~

12 ~~pipes with or without screens, permanent screens, hashish heads, or punctured~~

13 ~~metal bowls; water pipes; carburetion tubes and devices; smoking and~~

14 ~~carburetion masks; roach clips which mean objects used to hold burning~~

15 ~~material, such as marijuana cigarettes, that have become too small or too short~~

16 ~~to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber~~

17 ~~pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice~~

18 ~~pipes or chillers].~~

19 (2) It is unlawful for any person to use, or to possess with intent to use, drug

20 paraphernalia for the purpose of planting, propagating, cultivating, growing,

21 harvesting, manufacturing, compounding, converting, producing, processing, or

22 ~~preparing[, testing, analyzing, packing, repacking, storing, containing, concealing,~~

23 ~~injecting, ingesting, inhaling, or otherwise introducing into the human body] a~~

24 controlled substance in violation of this chapter.

25 (3) It is unlawful for any person to deliver, possess with intent to deliver, or

26 manufacture with intent to deliver, drug paraphernalia, knowing, or under

27 circumstances where one reasonably should know, that it will be used to plant,

1 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
2 process, or prepare[, ~~test, analyze, pack, repack, store, contain, conceal, inject,~~
3 ~~ingest, inhale, or otherwise introduce into the human body~~] a controlled substance
4 in violation of this chapter.

5 (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other
6 publication any advertisement, knowing, or under circumstances where one
7 reasonably should know, that the purpose of the advertisement, in whole or in part,
8 is to promote the sale of objects designed or intended for use as drug paraphernalia.

9 (5) (a) This section shall not prohibit a local health department from operating a
10 substance abuse treatment outreach program which allows participants to
11 exchange hypodermic needles and syringes.

12 (b) To operate a substance abuse treatment outreach program under this
13 subsection, the local health department shall have the consent, which may be
14 revoked at any time, of the local board of health and:

15 1. The legislative body of the first or home rule class city in which the
16 program would operate if located in such a city; and

17 2. The legislative body of the county, urban-county government, or
18 consolidated local government in which the program would operate.

19 (c) Items exchanged at the program shall not be deemed drug paraphernalia under
20 this section while located at the program.

21 (6) (a) Prior to searching a person, a person's premises, or a person's vehicle, a peace
22 officer may inquire as to the presence of needles or other sharp objects in the
23 areas to be searched that may cut or puncture the officer and offer to not
24 charge a person with possession of drug paraphernalia if the person declares to
25 the officer the presence of the needle or other sharp object. If, in response to
26 the offer, the person admits to the presence of the needle or other sharp object
27 prior to the search, the person shall not be charged with or prosecuted for

1 possession of drug paraphernalia for the needle or sharp object or for
2 possession of a controlled substance for residual or trace drug amounts present
3 on the needle or sharp object.

4 (b) The exemption under this subsection shall not apply to any other drug
5 paraphernalia that may be present and found during the search or to controlled
6 substances present in other than residual or trace amounts.

7 (7) (a) This section shall not prohibit the retail sale of hypodermic syringes and
8 needles without a prescription in pharmacies.

9 (b) Hypodermic syringe and needle inventory of a pharmacy shall not be deemed
10 drug paraphernalia under this section.

11 (8) Any person who violates any provision of this section shall be guilty of a Class A
12 misdemeanor.

13 ➔Section 11. The following KRS sections are repealed:

14 218A.14151 Deferred prosecution program for first and second offenders of KRS
15 218A.1415.

16 218A.1450 Trafficking in salvia -- Penalty.

17 218A.1451 Possession of salvia -- Penalty -- Maximum term of incarceration.

18 218A.1452 Salvia cultivation -- Penalty.

19 218A.276 Assessment and treatment program for possessors of marijuana, synthetic
20 drugs, or salvia -- Rescission of treatment order -- Voiding of conviction -- Sealing
21 of records.

22 27A.099 Deferred prosecution -- Application -- Listing of persons with records sealed.