

1 AN ACT relating to marijuana.

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

3 ➔Section 1. KRS 218A.1421 is amended to read as follows:

4 (1) A person is guilty of trafficking in marijuana when he *or she* knowingly and
5 unlawfully traffics in ***more than eight (8) ounces of*** marijuana.

6 ~~(2) [Trafficking in less than eight (8) ounces of marijuana is:~~

7 ~~(a) For a first offense a Class A misdemeanor.~~

8 ~~(b) For a second or subsequent offense a Class D felony.~~

9 ~~(3)]~~Trafficking in ***more than*** eight (8)~~[or more]~~ ounces but less than five (5) pounds
10 of marijuana is:

11 (a) For a first offense a Class D felony.

12 (b) For a second or subsequent offense a Class C felony.

13 ~~(3)~~~~(4)~~ Trafficking in five (5) or more pounds of marijuana is:

14 (a) For a first offense a Class C felony.

15 (b) For a second or subsequent offense a Class B felony.

16 ~~[(5) The unlawful possession by any person of eight (8) or more ounces of marijuana~~
17 ~~shall be prima facie evidence that the person possessed the marijuana with the intent~~
18 ~~to sell or transfer it.]~~

19 ➔Section 2. KRS 218A.1422 is amended to read as follows:

20 (1) A person is guilty of ***unlawful*** possession of marijuana when he or she knowingly
21 and unlawfully possesses marijuana ***in excess of:***

22 ***(a) Eight (8) ounces; or***

23 ***(b) Five (5) plants.***

24 (2) Possession of marijuana is a ***Class A***~~[Class B]~~ misdemeanor~~[, except that, KRS~~
25 ~~Chapter 532 to the contrary notwithstanding, the maximum term of incarceration~~
26 ~~shall be no greater than forty five (45) days].~~

27 ➔Section 3. KRS 218A.1423 is amended to read as follows:

1 (1) A person is guilty of marijuana cultivation when he or she knowingly and
2 unlawfully plants, cultivates, or harvests more than five (5) plants of marijuana
3 with the intent to sell or transfer it.

4 (2) Marijuana cultivation~~[of five (5) or more plants of marijuana]~~ is:

5 (a) For a first offense a Class D felony.

6 (b) For a second or subsequent offense a Class C felony.

7 ~~(3) [Marijuana cultivation of fewer than five (5) plants is:~~

8 ~~(a) For a first offense a Class A misdemeanor.~~

9 ~~(b) For a second or subsequent offense a Class D felony.~~

10 ~~(4)]~~The planting, cultivating, or harvesting of more than five (5)~~[or more]~~ marijuana
11 plants shall be prima facie evidence that the marijuana plants were planted,
12 cultivated, or harvested for the purpose of sale or transfer.

13 ➔Section 4. KRS 218A.276 is amended to read as follows:

14 (1) A court may request the Division of Probation and Parole to perform a risk and
15 needs assessment for any person found guilty of unlawful possession of marijuana
16 pursuant to KRS 218A.1422, synthetic drugs pursuant to KRS 218A.1430, or salvia
17 pursuant to KRS 218A.1451. The assessor shall make a recommendation to the
18 court as to whether treatment is indicated by the assessment, and, if so, the most
19 appropriate treatment or recovery program environment. If treatment is indicated for
20 the person, the court may order him or her to the appropriate treatment or recovery
21 program as indicated by the assessment that will effectively respond to the person's
22 level of risk, criminal risk factors, and individual characteristics as designated by
23 the secretary of the Cabinet for Health and Family Services where a program of
24 treatment or recovery not to exceed ninety (90) days in duration may be prescribed.
25 The person ordered to the designated treatment or recovery program shall present
26 himself or herself for registration and initiation of the treatment or recovery
27 program within five (5) days of the date of sentencing. If, without good cause, the

1 person fails to appear at the designated treatment or recovery program within the
2 specified time, or if any time during the program of treatment or recovery
3 prescribed, the authorized director of the treatment or recovery program finds that
4 the person is unwilling to participate in his or her treatment, the director shall notify
5 the sentencing court. Upon receipt of notification, the court shall cause the person to
6 be brought before it and may continue the order of treatment, or may rescind the
7 treatment order and impose a sentence for the possession offense. Upon discharge
8 of the person from the treatment or recovery program by the secretary of the Cabinet
9 for Health and Family Services, or his or her designee, prior to the expiration of the
10 ninety (90) day period or upon satisfactory completion of ninety (90) days of
11 treatment, the person shall be deemed finally discharged from sentence. The
12 secretary, or his or her designee, shall notify the sentencing court of the date of such
13 discharge from the treatment or recovery program.

14 (2) The secretary of the Cabinet for Health and Family Services, or his or her designee,
15 shall inform each court of the identity and location of the treatment or recovery
16 program to which a person sentenced by that court under this chapter shall be
17 initially ordered.

18 (3) In the case of a person ordered to an inpatient facility for treatment pursuant to this
19 chapter, transportation to the facility shall be provided by order of the court when
20 the court finds the person unable to convey himself or herself to the facility within
21 five (5) days of sentencing by reason of physical infirmity or financial incapability.

22 (4) The sentencing court shall immediately notify the designated treatment or recovery
23 program of the sentence and its effective date.

24 (5) The secretary of the Cabinet for Health and Family Services, or his or her designee,
25 may authorize transfer of the person from the initially designated treatment or
26 recovery program to another treatment or recovery program for therapeutic
27 purposes. The sentencing court shall be notified of termination of treatment by the

- 1 terminating treatment or recovery program and shall be notified by the secretary or
2 his or her designee of the new treatment or recovery program to which the person
3 was transferred.
- 4 (6) Responsibility for payment for treatment services rendered to persons pursuant to
5 this section shall be as under the statutes pertaining to payment by patients and
6 others for services rendered by the Cabinet for Health and Family Services, unless
7 the person and the treatment or recovery program shall arrange otherwise.
- 8 (7) None of the provisions of this section shall be deemed to preclude the court from
9 exercising its usual discretion with regard to ordering probation, presumptive
10 probation, or conditional discharge.
- 11 (8) In the case of any person who has been convicted of unlawful possession of
12 marijuana, synthetic drugs, or salvia, the court may set aside and void the conviction
13 upon satisfactory completion of treatment, probation, or other sentence, and issue to
14 the person a certificate to that effect. A conviction voided under this subsection
15 shall not be deemed a first offense for purposes of this chapter or deemed a
16 conviction for purposes of disqualifications or disabilities imposed by law upon
17 conviction of a crime.
- 18 (9) If the court voids a conviction under this section, the court shall order the sealing of
19 all records in the custody of the court and any records in the custody of any other
20 agency or official, including law enforcement records, except as provided in KRS
21 27A.099. The court shall order the sealing on a form provided by the Administrative
22 Office of the Courts. Every agency with records relating to the arrest, charge, or
23 other matters arising out of the arrest or charge that is ordered to seal records, shall
24 certify to the court within sixty (60) days of the entry of the order that the required
25 sealing action has been completed.
- 26 (10) After the sealing of the record, the proceedings in the matter shall not be used
27 against the defendant. The court and other agencies shall reply to any inquiry that no

1 record exists on the matter. The person whose record is sealed shall not have to
2 disclose the fact of the record or any matter relating thereto on an application for
3 employment, credit, or other type of application.

4 (11) Inspection of the sealed records may thereafter be permitted by the court or upon a
5 motion by the person who is the subject of the records and only to those persons
6 named in the motion.

7 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO
8 READ AS FOLLOWS:

9 (1) As used in this section:

10 (a) "Eligible conviction" means any criminal conviction for a violation of
11 Section 2 of this Act, subsection (2) of Section 1 of this Act, or subsection
12 (2) of Section 3 of this act, or a conviction for an offense prior to July 14,
13 1992, for possession, cultivation, or trafficking of marijuana which was
14 punishable by not more than five (5) years' incarceration;

15 (b) "Expungeable conviction" means any eligible conviction for which the
16 available record does not indicate that the offense involved a quantity of
17 marijuana in excess of the personal use quantity of cannabis; and

18 (c) "Personal use quantity of marijuana" means:

19 1. Eight (8) ounces or less of marijuana; or

20 2. Five (5) or fewer plants of marijuana.

21 (2) The Administrative Office of the Courts shall establish a process for identifying
22 all eligible convictions and communicating each eligible conviction to the court
23 in which the conviction occurred, and to the office of the Commonwealth's
24 attorney or county attorney that prosecuted the case. All eligible convictions shall
25 be communicated to the office of the Commonwealth's attorney or county
26 attorney that prosecuted the case within ninety (90) days of the effective date of
27 this Act.

- 1 (3) Within ninety (90) days of the receipt of an eligible conviction, the office of the
2 Commonwealth's attorney or county attorney that prosecuted the case may file
3 with the court in which the conviction occurred an objection to the expungement
4 of any eligible conviction which is not an expungeable conviction.
- 5 (4) Within two hundred (200) days of the effective date of this Act, for any eligible
6 conviction to which the office of the Commonwealth's attorney or county attorney
7 that prosecuted the case has not filed an objection, the court shall order the
8 judgment vacated, and dismiss with prejudice any charges which are eligible for
9 expungement under this section, and order expunged all records in the custody of
10 the court and any records in the custody of any other agency or official, including
11 law enforcement records.
- 12 (5) (a) Any person who has an eligible conviction prior to the effective date of this
13 Act and whose records have not been expunged pursuant to subsection (4)
14 of this section may, at any time after one (1) year after the effective date of
15 this Act, petition the court in which the conviction occurred to expunge all
16 eligible convictions.
- 17 (b) There shall be no filing fee for a petition pursuant to this subsection.
- 18 (c) An expungement petition brought under this subsection shall be served
19 upon the offices of the county and Commonwealth's attorneys that
20 prosecuted the case, and the court shall notify the county and
21 Commonwealth's attorneys of an opportunity for a response to the petition.
22 The response shall be filed within ninety (90) days after the filing of the
23 petition.
- 24 (d) If a response is not filed within ninety (90) days after the filing of the
25 petition, the court shall order the judgment vacated and dismiss with
26 prejudice any charges which are eligible for expungement under this
27 section.

1 (e) If a response is filed objecting to the expungement of the eligible conviction,
2 the court shall, within ninety (90) days of the receipt of the objection,
3 schedule a hearing on the petition. If, at the hearing, the court finds that
4 the eligible conviction is an expungeable conviction, the court shall order
5 the judgment vacated and dismiss with prejudice any charges which are
6 eligible for expungement under this section.

7 (6) Upon entry of an order vacating and expunging a conviction, the original
8 conviction shall be vacated and the record shall be expunged. The court and
9 other agencies shall cause records to be deleted or removed from their computer
10 systems so that the matter shall not appear on official state-performed
11 background checks. The court and other agencies shall reply to any inquiry that
12 no record exists on the matter. The person whose record is expunged shall not
13 have to disclose the fact of the record or any matter relating thereto on an
14 application for employment, credit, or other type of application. If the expunged
15 conviction was a felony and the person is not prohibited from voting for any other
16 reason, the person's ability to vote shall be restored and the person may register
17 to vote.

18 (7) The Administrative Office of the Courts shall, by December 1, 2023, provide a
19 report to the Interim Joint Committee on Judiciary providing data by county on
20 the numbers of eligible convictions identified, objections filed with the court, and
21 the number of expungements granted.

22 (8) This section shall be retroactive.