AN ACT relating to drug paraphernalia.

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

Section 1. KRS 218A.500 is amended to read as follows:

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

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

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

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

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

(d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances, except that any testing equipment, including but not limited to drug testing strips, used to determine the presence of fentanyl or a fentanyl derivative shall not be considered drug paraphernalia under this section;

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

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

(g) Separation gins and sifters used, intended for use, or designed for use in
removing twigs and seeds from, or in otherwise cleaning or refining
marijuana;

(h) Blenders, bowls, containers, spoons, and mixing devices used, intended for
use, or designed for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, and other containers used, intended for use, or
designed for use in packaging small quantities of controlled substances;

(j) Containers and other objects used, intended for use, or designed for use in
storing or concealing controlled substances;

(k) Hypodermic syringes, needles, and other objects used, intended for use, or
designed for use in parenterally injecting controlled substances into the human
body; and

(l) Objects used, intended for use, or designed for use in ingesting, inhaling, or
otherwise introducing marijuana, cocaine, hashish, or hashish oil into the
human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic
pipes with or without screens, permanent screens, hashish heads, or punctured
metal bowls; water pipes; carburetion tubes and devices; smoking and
carburetion masks; roach clips which mean objects used to hold burning
material, such as marijuana cigarettes, that have become too small or too short
to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber
pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice
pipes or chillers.

(2) It is unlawful for any person to use, or to possess with intent to use, drug
paraphernalia for the purpose of planting, propagating, cultivating, growing,
harvesting, manufacturing, compounding, converting, producing, processing,
preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

(3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

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

(5) (a) This section shall not prohibit a local health department from operating a substance abuse treatment outreach program which:

1. Allows participants to exchange hypodermic needles and syringes; or

2. Provides its participants testing equipment, including but not limited to drug testing strips, to determine the presence of fentanyl or a fentanyl derivative.

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

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

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

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

(6) (a) Prior to searching a person, a person's premises, or a person's vehicle, a peace officer may inquire as to the presence of needles or other sharp objects in the areas to be searched that may cut or puncture the officer and offer to not charge a person with possession of drug paraphernalia if the person declares to the officer the presence of the needle or other sharp object. If, in response to the offer, the person admits to the presence of the needle or other sharp object prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object or for possession of a controlled substance for residual or trace drug amounts present on the needle or sharp object.

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

(7) (a) This section shall not prohibit the retail sale of testing equipment, including but not limited to drug testing strips, used to determine the presence of fentanyl or a fentanyl derivative, hypodermic syringes, and needles without a prescription in pharmacies.

(b) Testing equipment, including but not limited to drug testing strips, used to determine the presence of fentanyl or a fentanyl derivative, hypodermic syringes and needles in the inventory of a pharmacy shall not be deemed drug paraphernalia under this section.

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

⇒ Section 2. KRS 15.525 is amended to read as follows:
(1) A law enforcement agency may create a program to refer persons to treatment for
substance use who voluntarily seek assistance from the law enforcement agency.

(2) A person voluntarily seeking assistance through a program created pursuant to this
section:
   (a) Shall not be placed under arrest;
   (b) Shall not be prosecuted for the possession of any controlled substance or drug
paraphernalia, pursuant to Section 1 of this Act, surrendered to the law
enforcement agency. Items surrendered pursuant to this paragraph shall be
recorded by the law enforcement agency at the time of surrender and shall be
destroyed; and
   (c) Shall be promptly referred to a community mental health center, medical
provider, or other entity for substance use treatment.

(3) A person is ineligible for placement through a program established pursuant to this
section if the person:
   (a) Has an outstanding arrest warrant issued by a Kentucky court or an
extraditable arrest warrant issued by a court of another state;
   (b) Places law enforcement or its representatives in reasonable apprehension of
physical injury; or
   (c) Is under the age of eighteen (18) and does not have the consent of a parent or
guardian.

(4) Information gathered by a program created pursuant to this section related to a
person who has voluntarily sought assistance under this section is exempt from
disclosure under the Kentucky Open Records Act pursuant to KRS 61.878(1)(a).

(5) Except for intentional misconduct, any law enforcement agency or person that
provides referrals or services in accordance with subsection (2) of this section shall
be immune from criminal and civil liability.