

1 AN ACT relating to drug paraphernalia.

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

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

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

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

11 It includes but is not limited to:

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

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

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

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

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

27 (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite,

- 1 dextrose and lactose, used, intended for use, or designed for use in cutting  
2 controlled substances;
- 3 (g) Separation gins and sifters used, intended for use, or designed for use in  
4 removing twigs and seeds from, or in otherwise cleaning or refining  
5 marijuana;
- 6 (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for  
7 use, or designed for use in compounding controlled substances;
- 8 (i) Capsules, balloons, envelopes, and other containers used, intended for use, or  
9 designed for use in packaging small quantities of controlled substances;
- 10 (j) Containers and other objects used, intended for use, or designed for use in  
11 storing or concealing controlled substances;
- 12 (k) Hypodermic syringes, needles, and other objects used, intended for use, or  
13 designed for use in parenterally injecting controlled substances into the human  
14 body; and
- 15 (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or  
16 otherwise introducing marijuana, cocaine, hashish, or hashish oil into the  
17 human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic  
18 pipes with or without screens, permanent screens, hashish heads, or punctured  
19 metal bowls; water pipes; carburetion tubes and devices; smoking and  
20 carburetion masks; roach clips which mean objects used to hold burning  
21 material, such as marijuana cigarettes, that have become too small or too short  
22 to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber  
23 pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice  
24 pipes or chillers.
- 25 (2) It is unlawful for any person to use, or to possess with intent to use, drug  
26 paraphernalia for the purpose of planting, propagating, cultivating, growing,  
27 harvesting, manufacturing, compounding, converting, producing, processing,

1 preparing, testing, analyzing, packing, repacking, storing, containing, concealing,  
 2 injecting, ingesting, inhaling, or otherwise introducing into the human body a  
 3 controlled substance in violation of this chapter.

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

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

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

17 1. Allows participants to exchange hypodermic needles and syringes; or  
 18 2. Provides its participants testing equipment, including but not limited  
 19 to drug testing strips, to determine the presence of fentanyl or a  
 20 fentanyl derivative.

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

24 1. The legislative body of the first or home rule class city in which the  
 25 program would operate if located in such a city; and  
 26 2. The legislative body of the city, county, urban-county government, ~~or~~  
 27 ~~consolidated local government~~, charter county government, or unified

1                    **local government** in which the program would operate.

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

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

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

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

21           (b) **Testing equipment, including but not limited to drug testing strips, used to**  
22            **determine the presence of fentanyl or a fentanyl derivative,** hypodermic  
23            **syringes**~~[syringe]~~ and **needles in the**~~[needle]~~ inventory of a pharmacy shall  
24            not be deemed drug paraphernalia under this section.

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

27            ➔Section 2. KRS 15.525 is amended to read as follows:

- 1 (1) A law enforcement agency may create a program to refer persons to treatment for  
2 substance use who voluntarily seek assistance from the law enforcement agency.
- 3 (2) A person voluntarily seeking assistance through a program created pursuant to this  
4 section:
- 5 (a) Shall not be placed under arrest;
- 6 (b) Shall not be prosecuted for the possession of any controlled substance or drug  
7 paraphernalia, pursuant to Section 1 of this Act, surrendered to the law  
8 enforcement agency. Items surrendered pursuant to this paragraph shall be  
9 recorded by the law enforcement agency at the time of surrender and shall be  
10 destroyed; and
- 11 (c) Shall be promptly referred to a community mental health center, medical  
12 provider, or other entity for substance use treatment.
- 13 (3) A person is ineligible for placement through a program established pursuant to this  
14 section if the person:
- 15 (a) Has an outstanding arrest warrant issued by a Kentucky court or an  
16 extraditable arrest warrant issued by a court of another state;
- 17 (b) Places law enforcement or its representatives in reasonable apprehension of  
18 physical injury; or
- 19 (c) Is under the age of eighteen (18) and does not have the consent of a parent or  
20 guardian.
- 21 (4) Information gathered by a program created pursuant to this section related to a  
22 person who has voluntarily sought assistance under this section is exempt from  
23 disclosure under the Kentucky Open Records Act pursuant to KRS 61.878(1)(a).
- 24 (5) Except for intentional misconduct, any law enforcement agency or person that  
25 provides referrals or services in accordance with subsection (2) of this section shall  
26 be immune from criminal and civil liability.