

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, and the trafficking
6 is not in compliance with, or otherwise authorized by, KRS Chapter 218B.

7 (2) Unless authorized by KRS Chapter 218B, ~~trafficking in less than eight (8) ounces~~
8 ~~of marijuana is:~~

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

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

11 ~~(3) Unless authorized by KRS Chapter 218B,]~~ trafficking in ***more than*** eight (8) ~~or~~
12 ~~more]~~ ounces but less than five (5) pounds of marijuana is:

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

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

15 ~~(3)~~~~(4)~~ Unless authorized by KRS Chapter 218B, trafficking in five (5) or more
16 pounds of marijuana is:

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

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

19 ~~(4)~~~~(5)~~ Unless authorized by KRS Chapter 218B, the unlawful possession by any
20 person of ***more than*** eight (8) ~~or more~~ ounces of marijuana shall be prima facie
21 evidence that the person possessed the marijuana with the intent to sell or transfer
22 it.

23 ~~(5)~~~~(6)~~ This section does not apply to:

24 (a) A cannabis business or a cannabis business agent, as defined in KRS
25 218B.010, when acting in compliance with KRS Chapter 218B; or

26 (b) A cardholder, as defined in KRS 218B.010, whose use of medicinal cannabis
27 is in compliance with KRS Chapter 218B.

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

- 2 (1) A person is guilty of **unlawful** possession of marijuana when he or she knowingly
3 and unlawfully possesses marijuana, and the possession is not in compliance with,
4 or otherwise authorized by, KRS Chapter 218B **in excess of:**
5 **(a) Eight (8) ounces; or**
6 **(b) Five (5) plants.**
- 7 (2) Possession of marijuana is a **Class A**~~[Class B]~~ misdemeanor, except that, KRS
8 Chapter 532 to the contrary notwithstanding, the maximum term of incarceration
9 shall be no greater than forty-five (45) days.
- 10 (3) This section does not apply to:
- 11 (a) A cannabis business or a cannabis business agent, as defined in KRS
12 218B.010, when acting in compliance with KRS Chapter 218B; or
- 13 (b) A cardholder, as defined in KRS 218B.010, whose use of medicinal cannabis
14 is in compliance with KRS Chapter 218B.

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

- 16 (1) A person is guilty of marijuana cultivation when he or she knowingly and
17 unlawfully plants, cultivates, or harvests **more than five (5) plants of** marijuana
18 with the intent to sell or transfer it, and the cultivation is not in compliance with, or
19 otherwise authorized by, KRS Chapter 218B.
- 20 (2) Unless authorized by KRS Chapter 218B, marijuana cultivation~~[of five (5) or more~~
21 ~~plants of marijuana]~~ is:
- 22 (a) For a first offense a Class D felony.
- 23 (b) For a second or subsequent offense a Class C felony.
- 24 (3) ~~[Unless authorized by KRS Chapter 218B, marijuana cultivation of fewer than five~~
25 ~~(5) plants is:~~
- 26 ~~(a) For a first offense a Class A misdemeanor.~~
- 27 ~~(b) For a second or subsequent offense a Class D felony.~~

1 ~~(4) Unless authorized by KRS Chapter 218B,~~ The planting, cultivating, or harvesting
2 of more than five (5) ~~or more~~ marijuana plants shall be prima facie evidence that
3 the marijuana plants were planted, cultivated, or harvested for the purpose of sale or
4 transfer.

5 ~~(4)(5)~~ This section does not apply to a cannabis business or a cannabis business
6 agent, as defined in KRS 218B.010, when acting in compliance with KRS Chapter
7 218B.

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

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

1 the person to be brought before it and may continue the order of treatment, or may
2 rescind the treatment order and impose a sentence for the possession offense. Upon
3 discharge of the person from the treatment or recovery program by the secretary of
4 the Cabinet for Health and Family Services, or his or her designee, prior to the
5 expiration of the ninety (90) day period or upon satisfactory completion of ninety
6 (90) days of treatment, the person shall be deemed finally discharged from
7 sentence. The secretary, or his or her designee, shall notify the sentencing court of
8 the date of such discharge from the treatment or recovery program.

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

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

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

19 (5) The secretary of the Cabinet for Health and Family Services, or his or her designee,
20 may authorize transfer of the person from the initially designated treatment or
21 recovery program to another treatment or recovery program for therapeutic
22 purposes. The sentencing court shall be notified of termination of treatment by the
23 terminating treatment or recovery program and shall be notified by the secretary or
24 his or her designee of the new treatment or recovery program to which the person
25 was transferred.

26 (6) Responsibility for payment for treatment services rendered to persons pursuant to
27 this section shall be as under the statutes pertaining to payment by patients and

1 others for services rendered by the Cabinet for Health and Family Services, unless
2 the person and the treatment or recovery program shall arrange otherwise.

3 (7) None of the provisions of this section shall be deemed to preclude the court from
4 exercising its usual discretion with regard to ordering probation, presumptive
5 probation, or conditional discharge.

6 (8) In the case of any person who has been convicted of unlawful possession of
7 marijuana, synthetic drugs, or salvia, the court may set aside and void the
8 conviction upon satisfactory completion of treatment, probation, or other sentence,
9 and issue to the person a certificate to that effect. A conviction voided under this
10 subsection shall not be deemed a first offense for purposes of this chapter or
11 deemed a conviction for purposes of disqualifications or disabilities imposed by law
12 upon conviction of a crime.

13 (9) If the court voids a conviction under this section, the court shall order the sealing of
14 all records in the custody of the court and any records in the custody of any other
15 agency or official, including law enforcement records, except as provided in KRS
16 27A.099. The court shall order the sealing on a form provided by the
17 Administrative Office of the Courts. Every agency with records relating to the
18 arrest, charge, or other matters arising out of the arrest or charge that is ordered to
19 seal records, shall certify to the court within sixty (60) days of the entry of the order
20 that the required sealing action has been completed.

21 (10) After the sealing of the record, the proceedings in the matter shall not be used
22 against the defendant. The court and other agencies shall reply to any inquiry that
23 no record exists on the matter. The person whose record is sealed shall not have to
24 disclose the fact of the record or any matter relating thereto on an application for
25 employment, credit, or other type of application.

26 (11) Inspection of the sealed records may thereafter be permitted by the court or upon a
27 motion by the person who is the subject of the records and only to those persons

1 named in the motion.

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

4 (1) As used in this section:

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

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

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

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

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

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

23 (3) Within ninety (90) days of the receipt of an eligible conviction, the office of the
24 Commonwealth's attorney or county attorney that prosecuted the case may file
25 with the court in which the conviction occurred an objection to the expungement
26 of any eligible conviction which is not an expungeable conviction.

27 (4) Within two hundred (200) days of the effective date of this Act, for any eligible

1 conviction to which the office of the Commonwealth's attorney or county attorney
2 that prosecuted the case has not filed an objection, the court shall order the
3 judgment vacated, dismiss with prejudice any charges which are eligible for
4 expungement under this section, and order expunged all records in the custody of
5 the court and any records in the custody of any other agency or official, including
6 law enforcement records.

7 (5) (a) Any person who has an eligible conviction prior to the effective date of this
8 Act and whose records have not been expunged under subsection (4) of this
9 section may, at any time after one (1) year after the effective date of this Act,
10 petition the court in which the conviction occurred to expunge all eligible
11 convictions.

12 (b) There shall be no filing fee for a petition under this subsection.

13 (c) An expungement petition brought under this subsection shall be served
14 upon the offices of the Commonwealth's attorney or county attorney that
15 prosecuted the case, and the court shall notify the Commonwealth's
16 attorney or county attorney of an opportunity for a response to the petition.
17 The response shall be filed within ninety (90) days after the filing of the
18 petition.

19 (d) If a response is not filed within ninety (90) days after the filing of the
20 petition, the court shall order the judgment vacated and dismiss with
21 prejudice any charges which are eligible for expungement under this
22 section.

23 (e) If a response is filed objecting to the expungement of the eligible conviction,
24 the court shall, within ninety (90) days of the receipt of the objection,
25 schedule a hearing on the petition. If, at the hearing, the court finds that the
26 eligible conviction is an expungeable conviction, the court shall order the
27 judgment vacated and dismiss with prejudice any charges which are eligible

1 for expungement under this section.

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

13 (7) On or before December 1, 2025, the Administrative Office of the Courts shall
14 provide a report to the Legislative Research Commission for referral to the
15 Interim Joint Committee on Judiciary providing data by county on the numbers
16 of eligible convictions identified, objections filed with the court, and the number
17 of expungements granted.

18 (8) This section shall be retroactive.