AN ACT relating to controlled substances.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "hospital" means a facility licensed pursuant to KRS Chapter 216B as either an acute care hospital, psychiatric hospital, rehabilitation hospital, or chemical dependency treatment facility.

(2) Any person who unlawfully possesses a controlled substance classified in Schedules I or II in any hospital building, on hospital grounds, or on any premises owned or controlled by a hospital shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply.

(3) The provisions of subsection (2) of this section shall not apply to any misdemeanor offense relating to salvia.

(4) (a) Each hospital shall display in prominent locations, which may include parking lots, lobbies, waiting rooms, and cafeterias, a sign at least six (6) inches high and fourteen (14) inches wide stating:

UNLAWFUL POSSESSION OF A
CONTROLLED SUBSTANCE ON HOSPITAL
PROPERTY IN KENTUCKY IS A FELONY PUNISHABLE
BY A MAXIMUM OF FIVE (5) YEARS IN PRISON AND A
TEN THOUSAND DOLLAR ($10,000) FINE.

(b) A hospital's failure to post the sign shall not be a defense to liability under this section.

➔Section 2. KRS 218A.133 is amended to read as follows:

(1) As used in this section:

(a) "Drug overdose" means an acute condition of physical illness, coma, mania,

hysteria, seizure, cardiac arrest, cessation of breathing, or death which reasonably appears to be the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe requires medical assistance; and

(b) "Good faith" does not include seeking medical assistance during the course of the execution of an arrest warrant, or search warrant, or a lawful search.

(2) A person shall not be charged with or prosecuted for a criminal offense prohibiting the ***unlawful*** possession of a controlled substance or the possession of drug paraphernalia, for a violation of KRS 507.030(1)(d) or 507.040(1)(d), or for an offense punishable under KRS 218A.1412(3)(c) if:

(a) In good faith, medical assistance with a drug overdose is sought from a public safety answering point, emergency medical services, a law enforcement officer, or a health practitioner because the person:

1. Requests emergency medical assistance for himself or herself or another person;

2. Acts in concert with another person who requests emergency medical assistance; or

3. Appears to be in need of emergency medical assistance and is the individual for whom the request was made;

(b) The person remains with, or is, the individual who appears to be experiencing a drug overdose until the requested assistance is provided; and

(c) The evidence for the charge or prosecution is obtained as a result of the drug overdose and the need for medical assistance.

(3) The provisions of subsection (2) of this section shall not extend to the investigation and prosecution of any other crimes committed by a person who otherwise qualifies under this section.

(4) When contact information is available for the person who requested emergency medical assistance, it shall be reported to the local health department. Health department personnel shall make contact with the person who requested emergency medical assistance in order to offer referrals regarding substance abuse treatment, if appropriate.

(5) A law enforcement officer who makes an arrest in contravention of this section shall not be criminally or civilly liable for false arrest or false imprisonment if the arrest was based on probable cause.

➔Section 3. KRS 218A.1415 is amended to read as follows:

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

~~(a)]~~ a controlled substance that is classified in Schedules I or II and is a narcotic drug~~[;~~

~~(b) A controlled substance analogue;~~

~~(c) Methamphetamine;~~

~~(d) Lysergic acid diethylamide;~~

~~(e) Phencyclidine;~~

~~(f) Gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or~~

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

(2) ***Except as provided in subsection (3) of this section, unlawful*** possession of a controlled substance in the first degree is a Class D felony subject to the following provisions:

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

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

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

2. Presumptive probation;

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

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

(3) (a) Unlawful possession of a controlled substance in any hospital building, on hospital grounds, or on any premises owned or controlled by a hospital is a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply.

(b) As used in this subsection, "hospital" means a facility licensed pursuant to KRS Chapter 216B as either an acute care hospital, psychiatric hospital, rehabilitation hospital, or chemical dependency treatment facility.

➔Section 4. KRS 218A.1416 is amended to read as follows:

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

(a) A controlled substance classified in Schedules I or II which is not a narcotic drug ***and not a synthetic drug, salvia, or marijuana***;~~[or specified in KRS 218A.1415; or]~~

(b) A controlled substance classified in Schedule III;~~[but not synthetic drugs, salvia, or marijuana.]~~

(c) A controlled substance analogue;

(d) Methamphetamine;

(e) Lysergic acid diethylamide;

(f) Phencyclidine;

(g) Gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or

(h) Flunitrazepam, including its salts, isomers, and salts of isomers.

(2) ***Unlawful*** possession of a controlled substance in the second degree is a Class A misdemeanor.

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

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

(2) ***Unlawful*** possession of a controlled substance in the third degree is a Class A misdemeanor.

➔Section 6. KRS 218A.202 is amended to read as follows:

(1) As used in this section:

(a) "Cabinet" means the Cabinet for Health and Family Services;

(b) "Cannabis business" has the same meaning as in KRS 218B.010;

(c) "Controlled substance" means any Schedule II, III, IV, or V controlled substance and does not include medicinal cannabis;

(d) "Dispensary" has the same meaning as in KRS 218B.010;

(e) "Dispensary agent" has the same meaning as in KRS 218B.010;

(f) "Disqualifying felony offense" has the same meaning as in KRS 218B.010;

(g) "Medicinal cannabis" has the same meaning as in KRS 218B.010;

(h) "Medicinal cannabis practitioner" has the same meaning as in KRS 218B.010;

(i) "Registry identification card" has the same meaning as in KRS 218B.010;

(j) "State licensing board" has the same meaning as in KRS 218B.010;

(k) "Use of medicinal cannabis" has the same meaning as in KRS 218B.010; and

(l) "Written certification" has the same meaning as in KRS 218B.010.

(2) The cabinet shall establish and maintain an electronic system for monitoring

Schedules II, III, IV, and V controlled substances and medicinal cannabis. The cabinet may contract for the design, upgrade, or operation of this system if the contract preserves all of the rights, privileges, and protections guaranteed to Kentucky citizens under this chapter and the contract requires that all other aspects of the system be operated in conformity with the requirements of this or any other applicable state or federal law.

(3) For the purpose of monitoring the prescribing and dispensing of Schedule II, III, IV, or V controlled substances:

(a) A practitioner or a pharmacist authorized to prescribe or dispense controlled substances to humans shall register with the cabinet to use the system provided for in this section and shall maintain such registration continuously during the practitioner's or pharmacist's term of licensure and shall not have to pay a fee or tax specifically dedicated to the operation of the system;

(b) Every practitioner or pharmacy which dispenses a controlled substance to a person in Kentucky, or to a person at an address in Kentucky, shall report to the cabinet the data required by this section, which includes the reporting of any Schedule II controlled substance dispensed at a facility licensed by the cabinet and a Schedule II through Schedule V controlled substance regardless of dosage when dispensed by the emergency department of a hospital to an emergency department patient. Reporting shall not be required for:

1. A drug administered directly to a patient in a hospital, a resident of a health care facility licensed under KRS Chapter 216B, a resident of a child-caring facility as defined by KRS 199.011, or an individual in a jail, correctional facility, or juvenile detention facility;

2. A Schedule III through Schedule V controlled substance dispensed by a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of

forty-eight (48) hours and is not dispensed by the emergency department of a hospital; or

3. A drug administered or dispensed to a research subject enrolled in a research protocol approved by an institutional review board that has an active federalwide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections, where the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

(c) In addition to the data required by paragraph (d) of this subsection, a Kentucky-licensed acute care hospital or critical access hospital shall report to the cabinet all positive toxicology screens that were performed by the hospital's emergency department to evaluate the patient's suspected drug overdose;

(d) Data for each controlled substance that is reported shall include but not be limited to the following:

1. Patient identifier;
2. National drug code of the drug dispensed;
3. Date of dispensing;
4. Quantity dispensed;
5. Prescriber; and
6. Dispenser;

(e) The data shall be provided in the electronic format specified by the cabinet unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the

dispenser exceeds these error tolerance rates;

(f) The cabinet shall only disclose data to persons and entities authorized to receive that data under this subsection. Disclosure to any other person or entity, including disclosure in the context of a civil action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited unless specifically authorized by this section. The cabinet shall be authorized to provide data to:

1. A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;
2. Employees of the Office of the Inspector General of the cabinet who have successfully completed training for the electronic system and who have been approved to use the system, federal prosecutors, Kentucky Commonwealth's attorneys and assistant Commonwealth's attorneys, county attorneys and assistant county attorneys, a peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal agent whose duty is to enforce the laws of this Commonwealth, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;
3. A state-operated Medicaid program in conformity with paragraph (g) of this subsection;
4. A properly convened grand jury pursuant to a subpoena properly issued for the records;
5. A practitioner or pharmacist, or employee of the practitioner's or

pharmacist's practice acting under the specific direction of the practitioner or pharmacist, who certifies that the requested information is for the purpose of:

a. Providing medical or pharmaceutical treatment to a bona fide current or prospective patient;

b. Reviewing data on controlled substances that have been reported for the birth mother of an infant who is currently being treated by the practitioner for neonatal abstinence syndrome, or has symptoms that suggest prenatal drug exposure; or

c. Reviewing and assessing the individual prescribing or dispensing patterns of the practitioner or pharmacist or to determine the accuracy and completeness of information contained in the monitoring system;

6. The chief medical officer of a hospital or long-term-care facility, an employee of the hospital or long-term-care facility as designated by the chief medical officer and who is working under his or her specific direction, or a physician designee if the hospital or facility has no chief medical officer, if the officer, employee, or designee certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current or prospective patient or resident in the hospital or facility;

7. In addition to the purposes authorized under subparagraph 1. of this paragraph, the Kentucky Board of Medical Licensure, for any physician who is:

a. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing or dispensing

practices;

b. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring; or

c. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring in that area;

8. In addition to the purposes authorized under subparagraph 1. of this paragraph, the Kentucky Board of Nursing, for any advanced practice registered nurse who is:

a. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing or dispensing practices;

b. Associated in a partnership or other business entity with an advanced practice registered nurse who is already under investigation by the Board of Nursing for improper prescribing practices;

c. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring; or

d. In a designated geographic area for which a report on a physician or another advanced practice registered nurse in that area indicates a substantial likelihood that inappropriate prescribing or dispensing may be occurring in that area;

9. A judge or a probation or parole officer administering a diversion or

probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program; or

10. A medical examiner engaged in a death investigation pursuant to KRS 72.026;

(g) The Department for Medicaid Services shall use any data or reports from the system for the purpose of identifying Medicaid providers or recipients whose prescribing, dispensing, or usage of controlled substances may be:

1. Appropriately managed by a single outpatient pharmacy or primary care physician; or

2. Indicative of improper, inappropriate, or illegal prescribing or dispensing practices by a practitioner or drug seeking by a Medicaid recipient;

(h) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except as provided in this subsection, in another statute, or by order of a court of competent jurisdiction and only to a person or entity authorized to receive the data or the report under this section, except that:

1. A person specified in paragraph (f)2. of this subsection who is authorized to receive data or a report may share that information with any other persons specified in paragraph (f)2. of this subsection authorized to receive data or a report if the persons specified in paragraph (f)2. of this subsection are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this subparagraph shall document in writing each person to whom the data or report has been

given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each agency engaged in the investigation;

2. A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in paragraph (f)1. of this subsection, or with a law enforcement officer designated in paragraph (f)2. of this subsection;

3. The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B;

4. If a state licensing board as defined in KRS 218A.205 initiates formal disciplinary proceedings against a licensee, and data obtained by the board is relevant to the charges, the board may provide the data to the licensee and his or her counsel, as part of the notice process required by KRS 13B.050, and admit the data as evidence in an administrative hearing conducted pursuant to KRS Chapter 13B, with the board and licensee taking all necessary steps to prevent further disclosure of the data; and

5. A practitioner, pharmacist, or employee who obtains data under paragraph (f)5. of this subsection may share the report with the patient or person authorized to act on the patient's behalf. Any practitioner, pharmacist, or employee who obtains data under paragraph (f)5. of this subsection may place the report in the patient's medical record, in which case the individual report shall then be deemed a medical record subject to disclosure on the same terms and conditions as an ordinary medical record in lieu of the disclosure restrictions otherwise imposed by this section;

(i) The cabinet, all peace officers specified in paragraph (f)2. of this subsection,

all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated;

(j) Intentional failure to comply with the reporting requirements of this subsection shall be a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense; and

(k) If the cabinet becomes aware of a prescriber's or dispenser's failure to comply with this section, the cabinet shall notify the licensing board or agency responsible for licensing the prescriber or dispenser. The licensing board shall treat the notification as a complaint against the license.

(4) For the purpose of monitoring the cultivation, processing, production, recommending, and dispensing of medicinal cannabis:

(a) Every medicinal cannabis practitioner who is authorized pursuant to KRS 218B.050 to provide written certifications for the use of medicinal cannabis and every cannabis business licensed under KRS 218B.080, 218B.085, and 218B.090 shall register with the cabinet to use the system provided for in this section and shall maintain such registration continuously during the medicinal cannabis practitioner's authorization to provide written certifications or a cannabis business's term of licensure and shall not have to pay a fee or tax specifically dedicated to the operation of the system;

(b) No later than July 1, 2024, the cabinet shall ensure that the system provided for in this section allows:

1. Medicinal cannabis practitioners to record the issuance of written certifications to a patient as required by KRS 218B.050;

2. The cabinet, law enforcement personnel, and dispensary agents to verify the validity of registry identification cards issued by the cabinet. When

verifying the validity of an identification card, the system shall only disclose whether the identification card is valid and whether the cardholder is a registered qualified patient, visiting qualified patient, or designated caregiver;

3. Dispensary agents to record the amount of medicinal cannabis that is dispensed to a cardholder during each transaction, as required by KRS 218B.110;

4. Law enforcement personnel and dispensary agents to access medicinal cannabis sales data recorded by dispensary agents pursuant to KRS 218B.110;

5. The sharing of dispensing data recorded by dispensary agents, pursuant to KRS 218B.110, with all licensed dispensaries in real time;

6. Licensed cannabis businesses to record data required by administrative regulations promulgated pursuant to KRS 218B.140 to facilitate the tracking of medicinal cannabis from the point of cultivation to the point of sale to cardholders; and

7. The cabinet to track all medicinal cannabis in the state from the point of cultivation to the point of sale to a cardholder;

(c) The cabinet shall only disclose data related to the cultivation, production, recommending, and dispensing of medicinal cannabis to persons and entities authorized to receive that data under this subsection. Disclosure to any other person or entity, including disclosure in the context of a civil action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited unless specifically authorized by this subsection. The cabinet shall be authorized to provide data to:

1. Any person or entity authorized to receive data pursuant to paragraph (b) of this subsection;

2. A designated representative of a state licensing board responsible for the licensure, regulation, or discipline of medicinal cannabis practitioners and who is involved in a bona fide specific investigation involving a designated person;
3. Employees of the Office of the Inspector General of the cabinet who have successfully completed training for the electronic system and who have been approved to use the system, Kentucky Commonwealth's attorneys and assistant Commonwealth's attorneys, and county attorneys and assistant county attorneys who are engaged in a bona fide specific investigation involving a designated person;
4. A properly convened grand jury pursuant to a subpoena properly issued for the records;
5. A medicinal cannabis practitioner or an employee of a medicinal cannabis practitioner's practice acting under the specific direction of the medicinal cannabis practitioner, who certifies that the request for information is for the purpose of complying with KRS 218B.050(4)(c);
6. The chief medical officer of a hospital or long-term-care facility, an employee of the hospital or long-term-care facility as designated by the chief medical officer and who is working under his or her specific direction, or a physician designee if the hospital or facility has no chief medical officer, if the officer, employee, or designee certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current or prospective patient or resident in the hospital or facility;
7. In addition to the purposes authorized under subparagraph 2. of this paragraph, the Kentucky Board of Medical Licensure, for any physician who is:

a. Associated in a partnership, other business entity, or supervision agreement established pursuant to KRS 311.854 with a physician who is already under investigation by the Board of Medical Licensure for improper issuance of written certifications;

b. Associated in a partnership or other business entity with an advanced practice registered nurse who is already under investigation by the Board of Nursing for improper issuance of written certifications;

c. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate issuance of written certifications may be occurring; or

d. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate issuance of written certifications may be occurring in that area;

8. In addition to the purposes authorized under subparagraph 2. of this paragraph, the Kentucky Board of Nursing, for any advanced practice registered nurse who is:

a. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper issuance of written certifications;

b. Associated in a partnership or other business entity with an advanced practice registered nurse who is already under investigation by the Board of Nursing for improper issuance of written certifications;

c. In a designated geographic area for which a trend report indicates

a substantial likelihood that inappropriate issuance of written certifications may be occurring; or

d. In a designated geographic area for which a report on another advanced practice registered nurse in that area indicates a substantial likelihood that inappropriate issuance of written certifications may be occurring in that area;

9. A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program;

10. A medical examiner engaged in a death investigation pursuant to KRS 72.026; or

11. The Legislative Research Commission, the University of Kentucky College of Medicine, or the Kentucky Center for Cannabis established in KRS 164.983 if the cabinet determines that disclosing data related to the cultivation, production, recommending, and dispensing of medicinal cannabis to the Legislative Research Commission, the University of Kentucky College of Medicine, or the Kentucky Center for Cannabis is necessary to comply with the reporting requirements established in KRS 218B.020(8); and

(d) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except as provided in this section, in another statute, or by order of a court of competent jurisdiction and only to a person or entity authorized to receive the data or the report under this section, except that:

1. A person specified in paragraph (c)3. of this subsection who is

authorized to receive data or a report may share that information with any other persons specified in paragraph (c)3. of this subsection authorized to receive data or a report if the persons specified in paragraph (c)3. of this subsection are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this subparagraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each agency engaged in the investigation;

2. If a state licensing board initiates formal disciplinary proceedings against a licensee, and data obtained by the board is relevant to the charges, the board may provide the data to the licensee and his or her counsel, as part of the notice process required by KRS 13B.050, and admit the data as evidence in an administrative hearing conducted pursuant to KRS Chapter 13B, with the board and licensee taking all necessary steps to prevent further disclosure of the data; and

3. A medicinal cannabis practitioner or an employee of a medicinal cannabis practitioner's practice acting under the specific direction of the medicinal cannabis practitioner who obtains data under paragraph (c)5. of this subsection may share the report with the patient or person authorized to act on the patient's behalf. Any medicinal cannabis practitioner or employee who obtains data under paragraph (c)5. of this subsection may place the report in the patient's medical record, in which case the individual report shall then be deemed a medical record subject to disclosure on the same terms and conditions as an ordinary medical record in lieu of the disclosure restrictions otherwise imposed by this

section.

(5) The data contained in, and any report obtained from, the electronic system for monitoring established pursuant to this section shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.

(6) Intentional disclosure of transmitted data to a person not authorized by subsection (3)(f) to (h) or (4)(c) and (d) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide current or prospective patient or a bona fide specific investigation, shall be a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.

(7) The cabinet may, by promulgating an administrative regulation, limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.

(8) (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.

(b) The cabinet shall work with each board responsible for the licensure, regulation, or discipline of medicinal cannabis practitioners for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.

(c) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the

purposes and uses of the electronic system for monitoring established in this section.

(d) The cabinet shall work with the Justice and Public Safety Cabinet for the development of a continuing education program for law enforcement officers about the purposes and uses of the electronic system for monitoring established in this section.

(e) The cabinet shall develop a training program for cannabis business agents about the purposes and uses of the electronic system for monitoring established in this section.

(9) The cabinet, Office of Inspector General, shall conduct quarterly reviews to identify patterns of potential improper, inappropriate, or illegal prescribing or dispensing of a controlled substance, issuance of written certifications, or cultivation, processing, or dispensing of medicinal cannabis. The Office of Inspector General may independently investigate and submit findings and recommendations to the appropriate boards of licensure or other reporting agencies.

(10) The cabinet shall promulgate administrative regulations to implement the provisions of this section. Included in these administrative regulations shall be:

(a) An error resolution process allowing a patient to whom a report had been disclosed under subsections (3) and (4) of this section to request the correction of inaccurate information contained in the system relating to that patient; and

(b) A requirement that data be reported to the system under subsection (3)(b) of this section within one (1) day of dispensing.

(11) (a) ~~[Before July 1, 2018,]~~The Administrative Office of the Courts shall forward data regarding any felony or Class A misdemeanor conviction that involves the trafficking or ***unlawful*** possession of a controlled substance or other prohibited acts under KRS Chapter 218A for the previous five (5) calendar years to the cabinet for inclusion in the electronic monitoring system

established under this section. ***The***~~[On or after July 1, 2018, such]~~ data shall be forwarded by the Administrative Office of the Courts to the cabinet on a continuing basis. The cabinet shall incorporate the data received into the system so that a query by patient name indicates any prior drug conviction.

(b) ~~[Before July 1, 2024,]~~The Administrative Office of the Courts shall forward all available data regarding any disqualifying felony offense for the previous five (5) calendar years to the cabinet for inclusion in the electronic monitoring system established under this section. ***The***~~[On or after July 1, 2024, such]~~ data shall be forwarded by the Administrative Office of the Courts to the cabinet on a continuing basis. The cabinet shall incorporate the data received into the system so that a query by patient name indicates any prior disqualifying felony conviction.

➔Section 7. KRS 218A.205 is amended to read as follows:

(1) As used in this section:

(a) "Reporting agency" includes:

1. The Department of Kentucky State Police;
2. The Office of the Attorney General;
3. The Cabinet for Health and Family Services; and
4. The applicable state licensing board; and

(b) "State licensing board" means:

1. The Kentucky Board of Medical Licensure;
2. The Kentucky Board of Nursing;
3. The Kentucky Board of Dentistry;
4. The Kentucky Board of Optometric Examiners;
5. The State Board of Podiatry; and
6. Any other board that licenses or regulates a person who is entitled to prescribe or dispense controlled substances to humans.

(2) (a) When a reporting agency or a law enforcement agency receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance it may, to the extent otherwise allowed by law, send a copy of the report within three (3) business days to every other reporting agency.

(b) A county attorney or Commonwealth's attorney shall notify the Office of the Attorney General and the appropriate state licensing board within three (3) business days of an indictment or a waiver of indictment becoming public in his or her jurisdiction charging a licensed person with a felony offense relating to the manufacture of, trafficking in, prescribing, dispensing, or ***unlawful*** possession of a controlled substance.

(3) Each state licensing board shall, in consultation with the Kentucky Office of Drug Control Policy, establish the following by administrative regulation for those licensees authorized to prescribe or dispense controlled substances:

(a) Mandatory prescribing and dispensing standards related to controlled substances, the requirements of which shall include the diagnostic, treatment, review, and other protocols and standards established for Schedule II controlled substances and Schedule III controlled substances containing hydrocodone under KRS 218A.172 and which may include the exemptions authorized by KRS 218A.172(4);

(b) In accord with the CDC Guideline for Prescribing Opioids for Chronic Pain published in 2016, a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply of a Schedule II controlled substance if the prescription is intended to treat pain as an acute medical condition, with the following exceptions:

1. The practitioner, in his or her professional judgment, believes that more than a three (3) day supply of a Schedule II controlled substance is medically necessary to treat the patient's pain as an acute medical

condition and the practitioner adequately documents the acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit established in this subsection in the patient's medical records;

2. The prescription for a Schedule II controlled substance is prescribed to treat chronic pain;

3. The prescription for a Schedule II controlled substance is prescribed to treat pain associated with a valid cancer diagnosis;

4. The prescription for a Schedule II controlled substance is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment or is receiving care from a certified community based palliative care program;

5. The prescription for a Schedule II controlled substance is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

6. The prescription for a Schedule II controlled substance is prescribed to treat pain following a major surgery or the treatment of significant trauma, as defined by the state licensing board in consultation with the Kentucky Office of Drug Control Policy;

7. The Schedule II controlled substance is dispensed or administered directly to an ultimate user in an inpatient setting; or

8. Any additional treatment scenario deemed medically necessary by the state licensing board in consultation with the Kentucky Office of Drug Control Policy.

~~[Nothing in]~~This paragraph shall ***not*** authorize a state licensing board to promulgate regulations which expand any practitioner's prescriptive authority beyond that which existed prior to June 29, 2017;

(c) A prohibition on a practitioner dispensing greater than a forty-eight (48) hour supply of any Schedule II controlled substance or a Schedule III controlled substance containing hydrocodone unless the dispensing is done as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(d) A procedure for temporarily suspending, limiting, or restricting a license held by a named licensee where a substantial likelihood exists to believe that the continued unrestricted practice by the named licensee would constitute a danger to the health, welfare, or safety of the licensee's patients or of the general public;

(e) A procedure for the expedited review of complaints filed against their licensees pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances that is designed to commence an investigation within seven (7) days of a complaint being filed and produce a charging decision by the board on the complaint within one hundred twenty (120) days of the receipt of the complaint, unless an extension for a definite period of time is requested by a law enforcement agency due to an ongoing criminal investigation;

(f) The establishment and enforcement of licensure standards that conform to the following:

1. A permanent ban on licensees and applicants convicted after July 20, 2012, in this state or any other state of any felony offense relating to controlled substances from prescribing or dispensing a controlled substance;

2. Restrictions short of a permanent ban on licensees and applicants convicted in this state or any other state of any misdemeanor offense relating to prescribing or dispensing a controlled substance;

3. Restrictions mirroring in time and scope any disciplinary limitation placed on a licensee or applicant by a licensing board of another state if the disciplinary action results from improper, inappropriate, or illegal prescribing or dispensing of controlled substances; and

4. A requirement that licensees and applicants report to the board any conviction or disciplinary action covered by this subsection with appropriate sanctions for any failure to make this required report;

(g) A procedure for the continuous submission of all disciplinary and other reportable information to the National Practitioner Data Bank of the United States Department of Health and Human Services;

(h) If not otherwise required by other law, a process for submitting a query on each applicant for licensure to the National Practitioner Data Bank of the United States Department of Health and Human Services to retrieve any relevant data on the applicant; and

(i) Continuing education requirements beginning with the first full educational year occurring after July 1, 2012, that specify that at least seven and one-half percent (7.5%) of the continuing education required of the licensed practitioner relate to the use of the electronic monitoring system established in KRS 218A.202, pain management, or addiction disorders.

(4) For the purposes of pharmacy dispensing, the medical necessity for a Schedule II controlled substance as documented by the practitioner in the patient's medical record and the prescription for more than a three (3) day supply of that controlled substance are presumed to be valid.

(5) A state licensing board shall employ or obtain the services of a specialist in the treatment of pain and a specialist in drug addiction to evaluate information received regarding a licensee's prescribing or dispensing practices related to controlled substances if the board or its staff does not possess such expertise, to ascertain if the

licensee under investigation is engaging in improper, inappropriate, or illegal practices.

(6) Any statute to the contrary notwithstanding, ***a***~~[no]~~ state licensing board shall ***not*** require that a grievance or complaint against a licensee relating to controlled substances be sworn to or notarized, but the grievance or complaint shall identify the name and address of the grievant or complainant, unless the board by administrative regulation authorizes the filing of anonymous complaints. Any~~[such]~~ authorizing administrative regulation shall require that an anonymous complaint or grievance be accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint or grievance is meritorious.

(7) Every state licensing board shall cooperate to the maximum extent permitted by law with all state, local, and federal law enforcement agencies, and all professional licensing boards and agencies, state and federal, in the United States or its territories in the coordination of actions to deter the improper, inappropriate, or illegal prescribing or dispensing of a controlled substance.

(8) Each state licensing board shall require a fingerprint-supported criminal record check by the Department of Kentucky State Police and the Federal Bureau of Investigation of any applicant for initial licensure to practice any profession authorized to prescribe or dispense controlled substances.

➔Section 8. KRS 218A.275 is amended to read as follows:

(1) ***(a)*** A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of ***unlawful*** possession of a controlled substance pursuant to KRS 218A.1415, 218A.1416, or 218A.1417. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated~~[for the~~

~~person]~~, the court may order ***the person*** ~~[him or her]~~ to the appropriate treatment or recovery program that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as designated by the secretary of the Cabinet for Health and Family Services where a program of treatment or recovery not to exceed one (1) year in duration may be prescribed.

(b) The person ordered to the designated treatment or recovery program shall present himself or herself for registration and initiation of the treatment or recovery program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated treatment or recovery program within the specified time, or if at any time during the program of treatment or recovery prescribed, the authorized director of the treatment or recovery program finds that the person is unwilling to participate in his or her treatment, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment, or may rescind the treatment order and impose a sentence for the possession offense.

(c) Upon discharge of the person from the treatment or recovery program by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the one (1) year period or upon satisfactory completion of one (1) year of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or her designee, shall notify the sentencing court of the date of~~[such]~~ discharge from the treatment or recovery program.

(2) The secretary of the Cabinet for Health and Family Services, or his or her designee, shall inform each court of the identity and location of the treatment or recovery program to which the person is sentenced.

(3) Transportation to an inpatient facility shall be provided by order of the court when the court finds the person unable to convey himself or herself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.

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

(5) The secretary for health and family services, or his or her designee, may authorize transfer of the person from the initially designated treatment or recovery program to another treatment or recovery program for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating treatment or recovery program and shall be notified by the secretary of the new treatment or recovery program to which the person was transferred.

(6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment of patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the treatment or recovery program shall arrange otherwise.

(7) ~~[None of]~~The provisions of this section shall ***not*** be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.

(8) Except as provided in subsection (12) of this section, in the case of any person who has been convicted for the first time of ***unlawful*** possession of ***a*** controlled ***substance***~~[substances]~~, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Voiding of a conviction under this subsection and dismissal may occur only once with respect to any person.

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

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

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

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

➔Section 9. 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. The term "drug paraphernalia" does not include medicinal cannabis accessories as defined in KRS 218B.010. 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) Except as provided in subsection (7) of this section, testing equipment used, intended for use, or designed for use in analyzing the strength, effectiveness, or purity of controlled substances;

(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 allows participants to exchange hypodermic needles and syringes.

(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 county, urban-county government, or consolidated 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

unlawful 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 hypodermic syringes and needles without a prescription in pharmacies.

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

(c) 1. Except as provided in subparagraph 2. of this paragraph, narcotic drug testing products utilized in determining whether a controlled substance contains a synthetic opioid or its analogues shall not be deemed drug paraphernalia under this section.

2. A narcotic drug testing product that is utilized in conjunction with the importation, manufacture, or selling of fentanyl or a fentanyl analogue in violation of this chapter shall be deemed drug paraphernalia under this section.

(d) Notwithstanding any other statute to the contrary, possession of a narcotic drug testing product used in accordance with paragraph (c)1. of this subsection that contains residual or trace amounts of a synthetic opioid or an analogue thereof shall not be prosecuted as ***unlawful*** possession of a controlled substance under any provision of this chapter.

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