Department of
Criminal Justice Training

Kentucky Justice and Public Safety Cabinet

2012

Kentucky Leadership Institute

Leadership is a behavior, not a position

2012 Kentucky General Assembly

Emergency Legislation (Compiled)

John W. Bizzack, Ph.D.
Commissioner

Effective: 4/25/2012

Department of
CRIMINAL JUSTICE TRAINING
KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET

KENTUCKY
LEADERSHIP
INSTITUTE
Leadership is a behavior, not a position

The Leadership Institute Branch of the Department of Criminal Justice Training offers a Web-based service to address questions concerning legal issues in law enforcement. Questions can now be sent via e-mail to the Legal Training Section at

docjt.legal@ky.gov

Questions concerning changes in statutes, current case laws and general legal issues concerning law enforcement agencies and/or their officers acting in official capacity will be addressed by the Legal Training Section.

Questions concerning the Kentucky Law Enforcement Council policies and KLEFPF will be forwarded to the DOCJT General Counsel for consideration.

Questions received will be answered in approximately two or three business days.

Please include in the query your name, rank, agency and a daytime phone number in case the assigned attorney needs clarification on the issues to be addressed.

DOCJT.KY.GOV

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NOTE:

General Information concerning the Department of Criminal Justice Training may be found at http://docjt.ky.gov. Agency publications may be found at http://docjt.ky.gov/publications.asp.

In addition, the Department of Criminal Justice Training has a new service on its web site to assist agencies that have questions concerning various legal matters. Questions concerning changes in statutes, current case laws, and general legal issues concerning law enforcement agencies and/or their officers can now be addressed to docjt.legal@ky.gov. The Legal Training Section staff will monitor this site, and questions received will be forwarded to a staff attorney for reply. Questions concerning the Kentucky Law Enforcement Council policies and those concerning KLEFPF will be forwarded to the DOCJT General Counsel for consideration. It is the goal that questions received be answered within two to three business days (Monday-Friday). Please include in the query your name, agency, and a day phone number or email address in case the assigned attorney needs clarification on the issues to be addressed.

2012 KENTUCKY GENERAL ASSEMBLY

EMERGENCY LEGISLATION (COMPILED)

Effective Upon Signing Date (see individual statutes)

NOTE: THIS DOCUMENT INCLUDES NEW STATUTE NUMBERS AND CATCHLINES AS PROVIDED BY THE LEGISLATIVE RESEARCH COMMISSION. THEY ARE NOT CONSIDERED FINAL, HOWEVER, UNTIL PUBLISHED BY THE LRC ON THE KENTUCKY STATE WEBSITE.

SENATE BILL 75 SLOW-MOVING VEHICLES
SIGNED INTO LAW ON APRIL 11, 2012

SECTION 1. KRS 189.050 is amended to read as follows:

KRS 189.050 *Rear, side, and clearance lights and lanterns.* (NOTE: MODIFIED CATCHLINE)

* * * * *

(5) When in operation between sunset and sunrise on any highway, motorless vehicles, except bicycles, shall have in operation***:***
(a) A four (4) way flasher system, with two (2) flashing yellow or amber lights visible from the front of the vehicle ***for a distance of at least five hundred (500) feet*** and two (2) flashing red lights visible from the rear of the vehicle ***for a distance of at least five hundred (500) feet; or***
(b) Two (2) reflective lanterns, one (1) on either side of the rear of the vehicle, showing white to the front of the vehicle and red to the rear of the vehicle, with the lantern on the left side of the vehicle situated at least twelve (12) inches higher than the lantern on the right.

SECTION 2. KRS 189.820 is amended to read as follows:

KRS 189.820 *Slow-moving vehicle emblem or reflective tape required – Display – Regulations for mounting emblem or reflective tape*. (NOTE: MODIFIED CATCHLINE)
(1) ***Except as provided in subsection (4) of this section,*** all slow-moving vehicles sold, leased, or rented in, or for use within, the Commonwealth of Kentucky [~~after~~

~~January 1, 1971,]~~shall have affixed to them as standard equipment a slow-moving vehicle emblem.
(2) ***Except as provided in subsection (4) of this section,*** the slow-moving vehicle emblem shall be displayed as herein provided on all slow-moving vehicles operated day or night upon the public roads within the Commonwealth of Kentucky~~[, no later than January 1, 1973]~~.
(3) The slow-moving vehicle emblem shall be mounted as near the center of the rear of the slow-moving vehicle as is practicable, and the lower edge of the emblem shall be mounted at least three feet (3') or more above the road surface, and shall be maintained in a clean, reflective condition.
(4) As an alternative to the slow-moving vehicle emblem, one (1)-inch-wide white or silver reflective tape may be used on motorless slow-moving vehicles as follows:
(a) The rear of the vehicle shall be covered with a minimum of one hundred (100) square inches of the reflective tape;
(b) The reflective tape on the rear of the vehicle shall, at a minimum, outline the entire rear of the vehicle;
(c) Each side of the vehicle shall be covered with a minimum of thirty-six (36) square inches of reflective tape; and
(d) The highest point of the left front of the vehicle shall be covered with a minimum of twenty-four (24) square inches of reflective tape.

SECTION 3. KRS 189.830 is amended to read as follows:

KRS 189.830 Use of emblem or reflective tape restricted – Exemption from requirement. **(NOTE: MODIFIED CATCHLINE)**
(1) The slow-moving vehicle emblem shall be restricted to the uses specified herein and the use on any other type of vehicle or on other objects is prohibited.
(2) The ***slow-moving vehicle***~~[said]~~ emblem shall not be required on trailers or other drawn vehicles which do not obstruct the slow-moving vehicle emblem required on the towing vehicle.
(3) Highway construction or maintenance vehicles and public utility vehicles shall not require ***slow-moving vehicle***~~[said]~~ emblems when being guarded by flagmen or flares.
(4) The use of~~[such]~~ slow-moving vehicle emblems ***or alternate reflective tape, as required under KRS 189.820(4),*** shall be in addition to any other reflective or lighting devices required by law.
(5) The slow-moving vehicle emblem shall not be used on a bicycle.

Section 4. Whereas, because the number of recent collisions that have occurred between motor vehicles and slow-moving vehicles which were not clearly marked is evidence that this is an urgent traffic safety issue in many areas of the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

HOUSE BILL 293 ELECTIONS
SIGNED INTO LAW ON APRIL 11, 2012

Effective: 4/25/2012

SECTION 1. KRS 117.265 is amended to read as follows:
(1) A voter may, at any regular or special election, cast a write-in vote for any person qualified as provided in subsection (2) or (3) of this section, whose name does not appear upon the ballot label for any office, by writing the name of his or her choice upon the appropriate device for the office being voted on provided on the voting machine as required by KRS 117.125. Any candidate for city office who is defeated in a partisan or nonpartisan primary shall be ineligible as a candidate for the same office in the regular election. Any voter utilizing an absentee ballot for a regular or special election may write in a vote for any eligible person whose name does not appear upon the ballot, by writing the name of his or her choice under the office.
(2) Write-in votes shall be counted only for candidates for election to office who have filed a declaration of intent to be a write-in candidate with the Secretary of State or county clerk, depending on the office being sought, on or before the fourth Friday in October preceding the date of the regular election and not later than the second Friday before the date of a special election. ***In the case of a special election administered under KRS 118.730, a declaration of intent to be a write-in candidate shall be filed at least twenty-eight (28) days before the day of the election.*** The declaration of intent shall be filed no earlier than the first Wednesday after the first Monday in November of the year preceding the year the office will appear on the ballot, and no later than 4 p.m. local time at the place of filing when filed on the last date on which papers may be filed. The declaration of intent shall be on a form prescribed by the Secretary of State.

*** * * * ***

SECTION 2. KRS 118.730 is amended to read as follows:
(1) When a vacancy exists in either house of the General Assembly during its session, the presiding officer of the house in which the vacancy exists shall issue a writ of election; when the General Assembly is not in session, the writ shall be issued by the Governor. The writ shall be signed by the officer issuing it, shall designate the day for holding the election, and shall be directed to the proper sheriff or sheriffs.
(2) If a writ of election has been issued to fill a vacancy in either house of the General Assembly and only one (1) candidate has been nominated under KRS 118.760 and KRS 118.770 and no candidate has filed a declaration of intent to be a write-in candidate for the vacancy under 117.265(2), the county clerks of the counties in the territory in which the special election is to be held shall conduct voting in only one (1) of the following:
(a) The county clerk's office; or
(b) Other place or places designated by the county board of elections and approved by the State Board of Elections.
(3) Subsection (2) of this section shall not apply when the writ of election calls for the election to be held on either:
(a) The day of a primary or general election; or
(b) The same day as any other special election, except an uncontested special election to fill a vacancy in either house of the General Assembly.

Effective: 4/25/2012

SECTION 3. KRS 118.740 is amended to read as follows:
(1) A copy of a proclamation issued under KRS 118.710 or 118.720, or a writ of election issued under KRS 118.730 shall be forwarded by mail to the sheriff of each county in the district in which the election is to be held, at least thirty-five (35) days before the election. The sheriff of each county in which an election is to be held shall give notice at least ***twenty-eight (28)***[~~thirty (30)~~] days before the day of election. If, from any cause, the sheriff cannot properly act, he shall immediately hand the writ or proclamation to the person authorized to act in his place.
(2) If a special election is administered under KRS 188.730(2), the notice required by subsection (1) of this section shall include the location of the election.

SECTION 4. KRS 118.770 is amended to read as follows:
When a writ of election or proclamation is issued to fill a vacancy as prescribed in KRS 118.710, 118.720, or 118.730, independent, or political organization, or political group petitions and certificates of nomination ***shall***[~~may~~] be filed ***at least*** twenty-eight (28) days before the day of election, and if filed with the Secretary of State shall be immediately certified by him or her to the proper county clerks.

Section 5. This Act shall be cited as The Dewayne Bunch Act.

Section 6. Whereas it is possible that a vacancy could occur in the General Assembly prior to ninety days after adjournment of the 2012 Regular Session of the General Assembly, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

NOTE: Although this provision is of little concern to most law enforcement agencies, it is included because Sheriff's Offices are directly involved in the election process.

HOUSE BILL 481 – SYNTHETIC DRUGS
SIGNED INTO LAW ON APRIL 11, 2012

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

KRS 218A.1430 Trafficking in and possession of synthetic drugs.

Effective: 4/25/2012

(1) (a) A person is guilty of trafficking in synthetic drugs when he or she knowingly and unlawfully traffics in synthetic drugs.
(b) Trafficking in synthetic drugs is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.
(c) In lieu of the fine amounts otherwise allowed under KRS Chapter 534, for any offense under this subsection the court may impose a maximum fine of double the defendant's gain from the commission of the offense, in which case any fine money collected shall be divided between the same parties, in the same ratio, and for the same purposes as established for forfeited property under KRS 218A.420.
(d) It shall be an affirmative defense to an offense under this subsection that the defendant committed the offense during the course of the defendant's employment as an employee of a retail store and that the defendant did not know and should not have known that the trafficked substance was a synthetic drug.
(2) (a) A person is guilty of possession of synthetic drugs when he or she knowingly and unlawfully possesses synthetic drugs.
(b) Possession of synthetic drugs is a Class B misdemeanor, except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.

SECTION 2. KRS 217.065 is amended to read as follows:
Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

* * * * *

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana,~~[naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists or piperazines]~~ ***synthetic drugs***, salvia, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit-forming";

* * * * *

SECTION 3. KRS 218A.010 is amended to read as follows:
As used in this chapter:

* * * * *

(44) "Synthetic ***cannabinoids***~~[Cannabinoid agonists]~~ or piperazines" means any chemical compound ***which is not approved by the United States Food and Drug Administration, or if approved which is not dispensed or possessed in***

accordance with state and federal law, that contains Benzylpiperazine ***(BZP)***; Trifluoromethylphenylpiperazine ***(TFMPP)***; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol ***(HU-210)***; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol ***(HU-211)***; ***or any compound in the following structural classes:***[~~(1-(2-morpholin-4-ylethyl)indol-3-yl)-napthalen-1-ylmethanone (JWH-200); 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250); or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;~~]

(a) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, and AM-2201;

(b) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to JWH-167, JWH-250, JWH-251, and RCS-8;

(c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2- piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to AM630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;

(d) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples of this structural class include but are not limited to CP 47,497 and its C8 homologue (cannabicyclohexanol);

(e) Naphthylmethylindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-175, JWH-184, and JWH-185;

(f) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-030, JWH-145, JWH-146, JWH-307, and JWH 368; (g) Naphthylmethylindenes: Any compound containing a 1-(1-naphthylmethyl)indene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-176; or

(h) Any other synthetic cannabinoid or piperazine which is not approved by the United States Food and Drug Administration, or if approved, which is not dispensed or possessed in accordance with state and federal law;

(45) "Synthetic cathinones" means any chemical compound which is not approved by the United States Food and Drug Administration, or if approved, which is not dispensed or possessed in accordance with state and federal law (not including bupropion or compounds listed under a different schedule) structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in one (1) or more of the following ways:

(a) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one (1) or more other univalent substituents. Examples of this class include but are not limited to 3,4-Methylenedioxycathinone (bk-MDA);

(b) By substitution at the 3-position with an acyclic alkyl substituent. Examples of this class include but are not limited to 2-methylamino-1-phenylbutan-1-one (buphedrone);

(c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure. Examples of this class include but are not limited to Dimethylcathinone, Ethcathinone, and □-Pyrrolidinopropiophenone (□-PPP); or

(d) Any other synthetic cathinone which is not approved by the United States Food and Drug Administration, or if approved, is not dispensed or possessed in accordance with state or federal law;

(46) "Synthetic drugs" means any synthetic cannabinoids or piperazines or any synthetic cathinones.

(Remaining sections renumbered accordingly.)

SECTION 4. KRS 218A.020 is amended to read as follows:

(1) The Cabinet for Health and Family Services shall administer this chapter and may by regulation add substances to or delete or reschedule all substances enumerated in the schedules set forth in this chapter. In making a determination regarding a substance, the Cabinet for Health and Family Services may consider the following:
(a) The actual or relative potential for abuse;
(b) The scientific evidence of its pharmacological effect, if known;
(c) The state of current scientific knowledge regarding the substance;
(d) The history and current pattern of abuse;
(e) The scope, duration, and significance of abuse;
(f) The risk to the public health;
(g) The potential of the substance to produce psychic or physiological dependence liability; and
(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.
(2) After considering the factors enumerated in subsection (1) the Cabinet for Health and Family Services may adopt a regulation controlling the substance if it finds the substance has a potential for abuse.

* * * * *

(5) The Office of Drug Control Policy may request that the Cabinet for Health and Family Services schedule a substance substantially similar to a synthetic cannabinoid or piperazine or a synthetic cathinone. The cabinet shall consider the request utilizing the criteria established by this section and shall issue a written response within sixty (60) days of the scheduling request delineating the cabinet's decision to schedule or not schedule the substance and the basis for the cabinet's decision. The cabinet's response shall be provided to the Legislative Research Commission and shall be a public record.

SECTION 5. KRS 218A.050 is amended to read as follows:
Unless otherwise rescheduled by ***administrative*** regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

* * * * *

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline;~~[naphthylpyrovalerone; 3,4-methylenedioxypyrovalerone; 3,4-methylenedioxymethylcathinone; 4-methylmethcathinone;]~~ Peyote; N-ethyl-3-piperidyl

benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including but not limited to Methcathinone, Cat, and Ephedrone); synthetic ***drugs***[~~cannabinoid agonists or piperazines~~]; ***or*** salvia.

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SECTION 6. KRS 218A.1401 is amended to read as follows:
(1) A person is guilty of selling controlled substances to a minor when he or she, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance other than[~~ naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone,3,4-methylenedioxymethylcathinone, 4-methylmethcathinone,~~] synthetic ***drugs***[~~cannabinoid agonists, piperazines,~~] or salvia to any person under eighteen (18) years of age.
(2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

SECTION 7. KRS 218A.141 is amended to read as follows:
Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, other than trafficking in ***salvia or***[~~ naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, piperazines, salvia, or trafficking in~~] marijuana shall, in addition to any other penalty authorized by law, be sentenced to:
(1) Pay the costs of disposal of the controlled substances;
(2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;
(3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and
(4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

SECTION 8. KRS 218A.1411 is amended to read as follows:
(1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) feet of any school building used primarily for classroom instruction 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. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.

(2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to~~[naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, piperazines, or]~~ salvia.

SECTION 9. KRS 218A.1413 is amended to read as follows:
(1) A person is guilty of trafficking in a controlled substance in the second degree when:
(a) He or she knowingly and unlawfully traffics in:
1. Ten (10) or more dosage units of a controlled substance classified in Schedules I and II that is not a narcotic drug; or specified in KRS 218A.1412***, and which is not a synthetic drug, salvia, or marijuana***; or
2. Twenty (20) or more dosage units of a controlled substance classified in Schedule III;~~[but not naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists or piperazines, salvia, or marijuana;]~~
(b) He or she knowingly and unlawfully prescribes, distributes, supplies, or sells an anabolic steroid for:
1. Enhancing human performance in an exercise, sport, or game; or
2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity; or
(c) Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amounts specified in that paragraph.
(2) (a) Except as provided in paragraph (b) of this subsection, any person who violates the provisions of subsection (1) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.
(b) Any person who violates the provisions of subsection (1)(c) of this section shall be guilty of:
1. A Class D felony for the first offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years; and
2. A Class D felony for a second offense or subsequent offense.

SECTION 10. KRS 218A.1416 is amended to read as follows:
(1) A person is guilty of possession of a controlled substance in the second degree when he or she knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not~~[naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone,]~~ synthetic ***drugs,*** ~~[cannabinoid agonists, piperazines,]~~salvia, or marijuana.
(2) Possession of a controlled substance in the second degree is a Class A misdemeanor.

SECTION 11. KRS 218A.276 is amended to read as follows:

KRS 218A.276 ***Assessment and treatment program for possessors of marijuana, synthetic drugs, or salvia – Rescission of treatment order – Voiding of conviction – Sealing of records.*** **(NOTE: MODIFIED CATCHLINE)**

(1) A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of possession of marijuana pursuant to KRS 218A.1422,~~[naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone pursuant to KRS 218A.1454,]~~ synthetic ***drugs***~~[cannabinoid agonists or piperazines]~~ pursuant to ***KRS 218A.1430,***~~[KRS 218A.1427,]~~ or salvia pursuant to KRS 218A.1451. 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 him or ***her to the***~~[herthe]~~ appropriate treatment or recovery program as indicated by the assessment 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 ninety (90) days in duration may be prescribed. 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 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. 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 ninety (90) day period or upon satisfactory completion of ninety (90) days 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.

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(8) In the case of any person who has been convicted of possession of marijuana,~~[naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone,]~~ synthetic ***drugs*** ~~[cannabinoid agonists, piperazines]~~, or salvia, 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.

(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. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is 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 or upon a motion by the person who is the subject of the records and only to those persons named in the motion.

SECTION 12. KRS 218A.350 is amended to read as follows:

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(7) ***(a)*** Any person who violates any of the provisions of this section shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for subsequent offenses.
(b) In lieu of the fine amounts otherwise allowed under KRS Chapter 534, for any offense under this subsection the court may impose a maximum fine of double the defendant's gain from the commission of the offense, in which case any fine money collected shall be divided between the same parties, in the same ratio, and for the same purposes as established for forfeited property under KRS 218A.420.
(c) It shall be an affirmative defense to an offense under this subsection that the defendant committed the offense during the course of the defendant's employment as an employee of a retail store and that the defendant did not know and should not have known that the trafficked substance was a synthetic drug.

SECTION 13. KRS 218A.410 is amended to read as follows:
(1) The following are subject to forfeiture:
(a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state;
(b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state;
(c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he or she is the holder thereof, constitutes authority for the seizure and forfeiture of the plants;

(d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband;
(e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter;
(f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;
(g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection;
(h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:
1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent;
3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission; and
4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana~~[, naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, piperazines,]~~ or salvia;
(i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
(j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him or her to have been committed or omitted without his or her knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The

burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph; and
(k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana***, synthetic drugs,***~~[, naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, piperazines,]~~ or salvia, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.
(2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he or she is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.
(3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

SECTION 14. KRS 218A.992 is amended to read as follows:
(1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:
(a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or
(b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.
(2) The provisions of this section shall not apply to a violation of KRS 218A.210, ~~[218A.1426, 218A.1427, 218A.1428,]~~ 218A.1450, 218A.1451, ***or*** 218A.1452~~[, 218A.1453, 218A.1454, or 218A.1455]~~.

SECTION 15. KRS 243.500 is amended to read as follows:
Any license issued under KRS 243.020 to 243.670 may be revoked or suspended for the following causes:
(1) Conviction of the licensee or his agent or employee for selling any illegal beverages on the licensed premises.
(2) Making any false, material statements in an application for a license or supplemental license.
(3) Violation of the provisions of KRS 243.670.
(4) Conviction of the licensee or any of his clerks, servants, agents, or employees of:

(a) Two (2) violations of the terms and provisions of KRS Chapter 241, 243, or 244 or any act regulating the manufacture, sale, and transportation of alcoholic beverages within two (2) consecutive years;
(b) Two (2) misdemeanors directly or indirectly attributable to the use of intoxicating liquors within two (2) consecutive years; or
(c) Any felony.
(5) Failure or default of a licensee to pay an excise tax or any part of the tax or any penalties imposed by or under the provisions of any statutes, ordinances, or Acts of Congress relative to taxation, or for a violation of any administrative regulations promulgated by the Department of Revenue made in pursuance thereof.
(6) Revocation of any license or permit provided in KRS 243.060, 243.070, 243.600, and 243.610, or granted under any Act of Congress relative to the regulation of the manufacture, sale, and transportation of alcoholic beverages. Any license issued under KRS 243.020 to 243.670 shall be revoked or suspended if the licensee sells the alcoholic beverages at a price in excess of the price set by federal or state regulations.
(7) Setting up, conducting, operating, or keeping, on the licensed premises, any gambling game, device, machine, contrivance, lottery, gift enterprise, handbook, or facility for betting or transmitting bets on horse races; or permitting to be set up, conducted, operated, kept, or engaged in, on the licensed premises, any such game, device, machine, contrivance, lottery, gift enterprise, handbook, or facility. This section shall not apply to contests in which eligibility to participate is determined by chance and the ultimate winner is determined by skill and the licensee has no direct interest, or to the sale of lottery tickets sold under the provisions of KRS Chapter 154A.
(8) Conviction of the licensee, his agents, servants, or employees for:
(a) The sale or use upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances***, including synthetic drugs***;
(b) Knowingly permitting the sale or use by patrons upon the licensed premises of those items described in KRS 218A.050 to 218A.130 as controlled substances***, including synthetic drugs***; or
(c) Knowingly receiving stolen property upon the licensed premises.

SECTION 16. KRS 530.064 is amended to read as follows:
(1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:
(a) Illegal sexual activity; or
(b) Illegal controlled substances activity other than activity involving marijuana,~~[naphthylpyrovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone,]~~ synthetic ***drugs***~~[cannabinoid agonists or piperazines]~~, or salvia as defined in KRS 218A.010;
Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.
(2) Unlawful transaction with a minor in the first degree is a:
(a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
(b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and

(c) Class A felony if the minor so used incurs physical injury thereby.

SECTION 17. THE FOLLOWING KRS SECTIONS ARE REPEALED:
218A.1426 Trafficking in synthetic cannabinoid agonists or piperazines -- Penalty.
218A.1427 Possession of synthetic cannabinoid agonists or piperazines -- Penalty -- Maximum term of incarceration.
218A.1428 Manufacture of synthetic cannabinoid agonists or piperazines -- Penalty.
218A.1453 Trafficking in substituted cathinones -- Penalty.
218A.1454 Possession of substituted cathinones -- Penalty.
218A.1455 Manufacturing substituted cathinones – Penalty.

Section 18. Whereas the substances specified in Sections 1 to 16 of this Act are dangerous substances that pose a clear and present danger to the citizens of the Commonwealth, and whereas no just reason exists for a delay in providing the Commonwealth's citizens with the protections afforded by this Act, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Effective: 4/25/2012