

**KENTUCKY CRIMINAL LAW MANUAL  
SUPPLEMENT FOR 2011 EDITION**

**2012 LEGISLATIVE CHANGES  
TO KCLM**

**Section 2.3**

**KRS 431.005 Arrest by peace officers –  
By private persons**

- (1) A peace officer may make an arrest:
- (a) In obedience to a warrant; or
  - (b) Without a warrant when a felony is committed in his or her presence; or
  - (c) Without a warrant when he or she has probable cause to believe that the person being arrested has committed a felony; or
  - (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his or her presence; or
  - (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his or her presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his or her presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person being arrested has violated KRS 189A.010 or KRS 281A.210; or
  - (f) Without a warrant when a violation of KRS 508.030 has occurred in the emergency room of a hospital without the officer's presence if the officer has probable cause to believe that the person being arrested has violated KRS 508.030. For the purposes of this paragraph, "emergency room" means that portion of a licensed hospital which as the primary purpose of providing emergency medical care, twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year.
- (2) (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.
- (b) For the purposes of this subsection, the term "family member" has the

same meaning as set out in KRS 403.720(2).

- (c) For the purpose of this subsection, the term "member of an unmarried couple" has the same meaning as set out in KRS 403.720(4).

***EDITOR'S NOTE: The Kentucky Court of Appeals ruled that "member of an unmarried couple" includes homosexual couples, but not roommates unless engaged in an intimate (i.e., sexual) relationship. Ireland v. Davis, 957 S.W.2d 310 (Ky Ct. App. 1997).***

- (3) A peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person is a sexual offender who has failed to comply with the Kentucky Sex Offender Registry requirements based upon information received from the Law Information Network of Kentucky.
- (4) For purposes of subsections (2) and (3) of this section, a "peace officer" is an officer certified pursuant to KRS 15.380.
- (5) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.
- (6) A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.
- (7) If a law enforcement officer has probable cause to believe that a person has violated a restraining order issued under KRS 508.155, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

**KRS 431.015 Citation for misdemeanor – Arrest for certain misdemeanors - Failure to appear**

- (1) (a) KRS 431.005 to the contrary notwithstanding, and except as provided in paragraphs (b), (c), and (d) of this subsection, a peace officer shall issue a citation instead of making an arrest for a misdemeanor committed in his or her presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.
- (b) A peace officer may make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is:
1. A violation of KRS Chapter 508, 510, or 527, or KRS 189A.010;
  2. An offense in which the defendant poses a risk of danger to himself, herself, or another person; or
  3. An offense in which the defendant refuses to follow the peace officer's reasonable instructions.
- (c) A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785.
- (d) A peace officer may make an arrest or may issue a citation for a violation of KRS 508.030 which occurs in the emergency room of a hospital pursuant to KRS 431.005(1)(f).
- (2) A peace officer may issue a citation instead of making an arrest for a violation committed in his or her presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or unless the offense charged is a violation of KRS 189.223, 189.290, 189.393, 189.520, 189.580, 235.240, 281.600, 511.080, or 525.070 committed in his or her presence or a violation of KRS 189A.010, not committed in his or her presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).
- (3) If the defendant fails to appear in response to the citation, or if there are reasonable

grounds to believe that he or she will not appear, a complaint may be made before a judge and a warrant shall issue.

- (4) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "ARRESTED" in lieu of the date of court appearance.

**Section 5.1**

**KRS 186.010 Definitions**

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- (2) "**Highway**" means every way or place of whatever nature when any part of it is open to the use of the public, as a matter of right, license, or privilege, for the purpose of vehicular traffic.

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- (4) "**Motor vehicle**" means in KRS 186.020 to 186.260, all vehicles, as defined in paragraph (a) of subsection (8) of this section, which are propelled otherwise than by muscular power. As used in KRS 186.400 to 186.640, it means all vehicles, as defined in paragraph (b) of subsection (8) of this section, which are self-propelled. "Motor vehicle" shall not include a moped as defined in this section, but shall include low-speed vehicles as defined in this section.

- (5) "**Moped**" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.

- (6) "**Operator**" means any person in actual control of a motor vehicle upon a highway.

- (7) (a) "**Owner**" means a person who holds the legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest.

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- (8)(a) **"Vehicle,"** as used in KRS 186.020 to 186.260, includes all agencies for the transportation of persons or property over or upon the public highways of this Commonwealth and all vehicles passing over or upon said highways, excepting road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electric power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the city limit of any municipality.
- (b) As used in KRS 186.400 to 186.640, "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human and animal power or used exclusively upon stationary rails or tracks, or which derives its power from overhead wires.
- (9) KRS 186.020 to 186.270 apply to motor vehicle licenses. KRS 186.400 to 186.640 apply to operator's licenses.
- (10) **"Dealer"** means any person engaging in the business of buying or selling motor vehicles.
- (11) **"Commercial vehicles"** means all motor vehicles that are required to be registered under the terms of KRS 186.050, but not including vehicles primarily designed for carrying passengers and having provisions for not more than nine (9) passengers (including driver), motorcycles, sidecar attachments, pickup trucks and passenger vans which are not being used for commercial or business purposes, and motor vehicles registered under KRS 186.060.
- (12) **"Resident"** means any person who has established Kentucky as his or her state of domicile. Proof of residency shall include, but not be limited to, a deed or property tax bill, utility agreement or utility bill, or rental housing agreement. The possession by an

operator of a vehicle of a valid Kentucky operator's license shall be prima-facie evidence that the operator is a resident of Kentucky.

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- (14) **"Instruction permit"** includes both motor vehicle instruction permits and motorcycle instruction permits.
- (15) **"Motorcycle"** means any motor driven vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three (3) wheels in contact with the ground, including vehicles on which the operator and passengers ride in an enclosed cab. Motorcycle shall include an alternative-speed motorcycle as defined in this section, but shall not include a tractor, or a moped as defined in this section.
- (16) **"Low-speed vehicle"** means a motor vehicle that
- Is self-propelled using an electric motor, combination driven motor, or a combination thereof;
  - Is four (4) wheeled; and
  - Is designed to operate at a speed not to exceed twenty-five (25) miles per hour as certified by the manufacturer.
- (17) **"Alternative-speed motorcycle"** means a motorcycle that:
- Is self-propelled using an electric motor, combustion driven motor, or a combination thereof;
  - Is three (3) wheeled;
  - Has a fully enclosed cab and includes at least one door for entry; and
  - Is designed to operate at a speed not to exceed forty (40) miles per hour as certified by the manufacturer.
- (18) **"Multiple-vehicle driving range"** means an enclosed area that is not part of a highway or otherwise open to the public on which a number of motor vehicles may be used simultaneously to provide driver training under the supervision of one (1) or more driver training instructors.

**KRS 186.450 Instruction permits for motor vehicle and motorcycle – Age requirements – Restrictions on driving with permit**

**Penalty:** KRS 186.990(3)

- (1) A person who is at least sixteen (16) years of age may apply for an instruction permit to operate a motor vehicle. A person who

possesses a valid intermediate motor vehicle operators' license issued under KRS 186.452 or a person who is at least eighteen (18) years of age may apply for an instruction permit to operate a motorcycle. A holder of either a motor vehicle or motorcycle instruction permit may also operate a moped under that permit...

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- (3) (a) An instruction permit to operate a motor vehicle shall be valid for three (3) years and may be renewed. An instruction permit to operate a motorcycle shall be valid for one (1) year and may be renewed one (1) time.
- (b) Except as provided in KRS 186.415, a person who has attained the age of sixteen (16) years and is under the age of eighteen (18) years shall have the instruction permit a minimum of one hundred eighty (180) days before applying for an intermediate license and shall have an intermediate license for a minimum of one hundred eighty (180) days before applying for an operator's license.
- (c) A person who was under eighteen (18) years of age at the time of application for an instruction permit and is eighteen (18) years of age or older shall have the instruction permit a minimum of one hundred eighty (180) days and complete a driver training program under KRS 186.410(4) before applying for an operator's license.
- (d) A person who is at least eighteen (18) years of age and is under the age of twenty-one (21) years at the time of application for an instruction permit shall have the instruction permit a minimum of one hundred eighty (180) days before applying for an operator's license.
- (e) A person who is at least twenty-one (21) years of age at the time of application for an instruction permit shall have the instruction permit a minimum of thirty (30) days before applying for an operator's license.
- (f) In accordance with KRS 15A.352(5), a person whose motorcycle instruction permit has expired may apply to the circuit clerk to receive a motorcycle operator's license or endorsement if

the person presents proof of successful completion of a motorcycle safety education course approved by the Justice and Public Safety Cabinet under KRS 15A.350 to 15A.366.

- (4) (a) A person shall have the instruction permit in his possession at all times when operating a motor vehicle, motorcycle, or moped upon the highway.
- (b) When operating a motor vehicle, a motor vehicle instruction permit holder shall be accompanied by a person with a valid operator's license who is at least twenty-one (21) years of age occupying the seat beside the operator at all times.
- (c) The requirements of paragraph (b) of this subsection shall not apply to a motor vehicle instruction permit holder being supervised on a multiple-vehicle driving range by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school.
- (5) A person with an instruction permit who is under the age of eighteen (18) shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving including, but not limited to, emergencies, involvement in school related activities, or involvement in work related activities.
- (6) Except when accompanied by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or non-public secondary school, a person with an instruction permit who is under the age of eighteen (18) years shall not operate a motor vehicle at any time when accompanied by more than one (1) unrelated person who is under the age of twenty (20) years. A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of this subsection if the officer has no other cause to stop or seize the person other than a violation of this subsection. This subsection shall not apply to any operator of a vehicle registered under the provisions of KRS 186.050(4) who is engaged in agricultural activities.
- (7) A violation under subsection (4), (5), or (6)

of this section, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1) shall add an additional minimum of one hundred eighty (180) days from the date of the violation before a person who is under the age of eighteen (18) years may apply for an intermediate license to operate a motor vehicle, motorcycle, or moped.

- (8) A person under the age of eighteen (18) who accumulates more than six (6) points against his driving privilege may have the driving privilege suspended pursuant to KRS Chapter 186 or probated by the court.

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## **Section 5.2**

### **KRS 189.050 Rear, side, and clearance lights and lanterns**

**1, 2, 5 Penalty: KRS 189.990(1)**

**3, 4 Penalty: KRS 189.990(2)(c)**

- (1) All motor vehicles shall display at the rear two (2) red lights visible when lighted for at least five hundred (500) feet, unless the motor vehicle was originally equipped with one (1) such light.
- (2) A person shall not operate any motor truck or semitrailer truck on any highway unless it is equipped with a red light that automatically indicates the application of brakes and is visible from the rear a distance of not less than five hundred (500) feet.
- (3) No person shall operate on any highway a motor truck or semitrailer truck having a width of any part in excess of eighty-four (84) inches, unless it carries at least two (2) clearance lights to indicate the outside left limit of the motor truck or semitrailer truck, one (1) light colored white, to be

attached to and be visible from the front of the motor truck or semitrailer truck, and two (2) lights colored red, to be attached to and be visible from the rear, in each case a distance of not less than five hundred (500) feet.

- (4) When in operation on any highway slow-moving or motorless vehicles, except bicycles, shall have at least one (1) light on the left side of the vehicle whether from the front or rear, showing white and of sufficient power to reveal clearly the outline of the left side of the vehicle and in such a manner that the outline may be observed clearly by approaching vehicles from a distance of at least five hundred (500) feet.
- (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.

### **KRS 189.125 Requirements of use of seat belts, child restraint systems, and child booster seats – Exceptions**

**3 Penalty: KRS 189.990(24) & (25)**

**6 Penalty: KRS 189.990(25)&(26)**

(1) Except as otherwise provided in this section, "**motor vehicle**" as used in this section means every vehicle designed to carry fifteen (15) or fewer passengers and used for the transportation of persons, but the term does not include:

- (a) Motorcycles;
- (b) Motor driven cycles; or
- (c) Farm trucks registered for agricultural use only and having a gross weight of one (1) ton or more.

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(3) (a) Any driver of a motor vehicle, when transporting a child of forty (40) inches in height or less in a motor vehicle operated on the roadways, streets, and highways of this state, shall have the child properly secured in a child restraint system of a type meeting federal motor vehicle safety standards.

(b) Any driver of a motor vehicle, when transporting a child under the age of seven (7) years who is between forty (40) inches and fifty (50) inches in height in a motor vehicle operated on the roadways, streets, and highways of this state, shall have the child properly secured in a child booster seat.

(4) As used in this section:

(a) "**Child restraint system**" means any device manufactured to transport children in a motor vehicle which conforms to all applicable federal motor vehicle safety standards.

(b) "**Child booster seat**" means a child passenger restraint system that meets the standards set forth in 49 C.F.R. Part 571 that is designed to elevate a child to properly sit in a federally approved lap and shoulder belt system.

(5) Failure to use a child passenger restraint system or a child booster seat shall not be considered as contributory negligence, nor shall such failure to use a passenger restraint system or booster seat be admissible as evidence in the trial of any civil action. Failure of any person to wear a seat belt shall not constitute negligence per se.

(6) A person shall not operate a motor vehicle manufactured after 1981 on the public roadways of this state unless the driver and all passengers are wearing a properly adjusted and fastened seat belt, unless the passenger is a child who is secured as required in

subsection (3) of this section. The provisions of this subsection shall not apply to:

(a) A person who has in his possession at the time of the conduct in question a written statement from a physician or licensed chiropractor that he is unable, for medical or physical reasons, to wear a seat belt; or

(b) A letter carrier of the United States postal service while engaged in the performance of his duties.

(7) A conviction for a violation of subsection (6) of this section shall not be transmitted by the court to the Transportation Cabinet. The Transportation Cabinet shall not include a conviction for a violation of subsection (6) of this section as part of any person's driving history record.

(8) The provisions of subsection (6) of this section shall supersede any existing local ordinance involving the use of seat belts. No ordinance contrary to subsection (6) of this section may be enacted by any unit of local government.

### Section 5.3

#### KRS 189.390 Speed – Secretary authorized to increase speed limit in certain areas by official order - Parking

**Penalty:** KRS 189.990(1)

(1) As used in this section, unless the context requires otherwise:

(a) "**Business district**" means the territory contiguous to and including a highway if, within six hundred (600) feet along the highway, there are buildings in use for business or industrial purposes that occupy three hundred (300) feet of frontage on one (1) side or three hundred (300) feet collectively on both sides of the highway;

(b) "**Residential district**" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred (300) feet or more is improved with residences or residences and buildings in use for business; and

(c) "**State highway**" means a highway or street maintained by the Kentucky Department of Highways.

- (2) An operator of a vehicle upon a highway shall not drive at a greater speed than is reasonable and prudent, having regard for the traffic and for the condition and use of the highway.
- (3) The speed limit for motor vehicles on state highways shall be as follows, unless conditions exist that require lower speed for compliance with subsection (2) of this section, or the secretary of the Transportation Cabinet establishes a different speed limit in accordance with subsection (4) of this section:
  - (a) Sixty-five (65) miles per hour on interstate highways, and parkways;
  - (b) Fifty-five (55) miles per hour on all other state highways; and
  - (c) Thirty-five (35) miles per hour in a business or residential district.
- (4) (a) If the secretary of transportation determines, upon the basis of an engineering and traffic investigation, that any speed limit is greater or less than is reasonable or safe under the conditions found to exist at any intersection, or upon any part of a state highway, the secretary of transportation may establish by official order a reasonable and safe speed limit at the location. The secretary shall not increase any speed limit established by subsection (3) of this section in excess of sixty-five (65) miles per hour, except that, notwithstanding the provisions of subsection (3)(a) of this section, the secretary may increase the speed limit on any of the following segments of highway to seventy (70) miles per hour:

- 1. Interstate 24 (entire length);
- 2. Interstate 64 from Interstate 264 to the West Virginia state line;
- 3. Interstate 65 from Interstate 264 to the Tennessee state line;
- 4. Interstate 69 (entire length);
- 5. Interstate 71 from Interstate 264 to Interstate 275;
- 6. Interstate 75 from the Tennessee state line to Interstate 275;
- 7. The Audubon Parkway (entire length);
- 8. The Julian M. Carroll Purchase Parkway (entire length);
- 9. The Bert T. Combs Mountain Parkway from Interstate 64 to the beginning of the Mountain Parkway Extension (KY 9009) in Wolfe County;
- 10. The Edward T. Breathitt Pennyrile Parkway (entire length);
- 11. The Wendell H. Ford Western Kentucky Parkway (entire length);
- 12. The Louie B. Nunn Cumberland Parkway (entire length);
- 13. The Martha Layne Collins Bluegrass Parkway (entire length); and
- 14. The William H. Natcher Parkway (entire length).

- (b) In a highway work zone, the Transportation Cabinet may temporarily reduce established speed limits without an engineering or traffic investigation. A speed limit established under this paragraph shall become effective when and where posted. The Transportation Cabinet shall post signs notifying the traveling public of the temporary highway work zone maximum speed limit. Nothing in this paragraph shall be construed to prevent the Transportation Cabinet from using moveable or portable speed limit signs in highway work zones.

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- (6) The speed limit for motor vehicles in an off-street parking facility offered for public use, whether publicly or privately owned, shall be fifteen (15) miles per hour.
- (7) A person shall not drive a motor vehicle at a speed that will impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

- (8) In every charge for a violation of any speed limit specified in this section, the warrant or citation shall specify the speed at which the defendant is alleged to have driven, and the lawful speed limit applicable at the location where the violation is charged to have occurred.

## Section 5.4

### **KRS 189.820 Slow-moving vehicle emblem or reflective tape required – Display – Regulations for mounting emblem or reflective tape**

**Penalty:** KRS 189.993(6)

- (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 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.
- (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.

### **KRS 189.830 Use of emblem or reflective tape restricted – Exemption from requirement**

**Penalty:** KRS 189.993(6)

- (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 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 emblems when being guarded by flagmen or flares.
- (4) The use of slow-moving vehicle emblems or alternate reflective tape as required under KRS 189.820 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 6.2

### **KRS 218A.010 Definitions for chapter**

As used in this chapter:

- (1) "**Administer**" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
  - (a) A practitioner or by his or her authorized agent under his or her immediate supervision and pursuant to his or her order; or
  - (b) The patient or research subject at the direction and in the presence of the practitioner.
- (2) "**Anabolic steroid**" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090 (5) but does not include estrogens, progestins, and anticosteroids.
- (3) "**Cabinet**" means the Cabinet for Health Services.
- (4) "**Child**" means any person under the age of majority as specified in KRS 2.015.
- (5) "**Cocaine**" means a substance containing any quantity of cocaine, its salts, optical and

- geometric isomers, and salts of isomers;
- (6) "**Controlled substance**" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.
- (7) (a) "**Controlled substance analogue**", except as provided in paragraph (b), means a substance:
1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
  2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
  3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:
1. Any substance for which there is an approved new drug application;
  2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
  3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.
- (8) "**Counterfeit substance**" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- (9) "**Dispense**" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- (10) "**Dispenser**" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user.
- (11) "**Distribute**" means to deliver other than by administering or dispensing a controlled substance.
- (12) "**Dosage unit**" means a single pill, capsule, ampule, liquid, or other form of administration available as a single unit;
- (13) "**Drug**" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
  - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
  - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
  - (d) Substances intended for use as a component of any article specified in this subsection.
- It does not include devices or their components, parts, or accessories.
- \* \* \* \* \*
- (15) "**Hazardous chemical substance**" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
- (a) Poses an explosion hazard;
  - (b) Poses a fire hazard; or
  - (c) Is poisonous or injurious, if handled, swallowed, or inhaled;
- (16) "**Heroin**" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;
- (17) "**Immediate precursor**" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit

manufacture.

(18) "**Intent to manufacture**" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes, but is not limited to statements, a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine.

(19) "**Isomer**" means the optical isomer, except as used in KRS 218A.050 (3) and 218A.070 (1) (d). As used in KRS 218A.050 (3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070 (1) (d), the term "isomer" means the optical or geometric isomer.

(20) "**Manufacture**", except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

- (a) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or
- (b) By a practitioner, or by his or her authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
- (c) By a pharmacist as an incident to his or her dispensing of a controlled substance in the course of his or her professional practice.

(21) "**Marijuana**" means all parts of the plant *Cannabis* sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.

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(25) "**Methamphetamine**" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers.

(26) "**Narcotic drug**" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
- (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
- (c) Opium poppy and poppy straw;
- (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
- (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
- (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection.

(27) "**Opiate**" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(28) "**Opium poppy**" means the plant of the species *papaver somniferum* L., except its seeds.

(29) "**Person**" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(30) "**Physical injury**" has the same meaning it has in KRS 500.080.

(31) "**Poppy straw**" means all parts, except the seeds, of the opium poppy, after mowing.

(32) "**Pharmacist**" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.

(33) "**Practitioner**" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, or veterinarian who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail.

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(35) "**Prescription**" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.

(36) "**Prescription blank**," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216.

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(38) "**Production**" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

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(40) "**Salvia**" means *Salvia divinorum* or Salvinorin A and includes all parts of the plant presently classified botanically as *Salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus *salvia*;

(41) "**Second or subsequent offense**" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been

convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.

(42) "**Sell**" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.

(43) "**Serious physical injury**" has the same meaning it has in KRS 500.080.

(44) "**Synthetic cannabinoids 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:

(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, alkylendioxy, 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  $\alpha$ -Pyrrolidinopropiophenone ( $\alpha$ -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.

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(48) "**Tetrahydrocannabinols**" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic

substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;
3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(49) "**Traffic**," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.

(50) "**Transfer**" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.

(51) "**Ultimate user**" means a person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his household.

#### **KRS 218A.050 Schedule I controlled substances**

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:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation:
- Acetylmethadol; Allylprodine;  
Alphacetylmehtadol; Alphameprodine;  
Alphamethadol; Benzethidine;  
Betacetylmethadol; Betameprodine;  
Betamethadol; Betaprodine; Clonitazene;  
Dextromoramide; Dextrorphan; Diampromide;  
Diethylthiambutene; Dimenoxadol;  
Dimepheptanol; Dimethylthiambutene;  
Dioxaphetyl butyrate; Dipipanone;  
Ethylmethylthiambute; Etonitazene;  
Etoxidine; Furethidine; Hydroxypethidine;  
Ketobemidone; Levomoramide;  
Levophenacymorphan; Morpheridine;  
Noracymethadol; Norlevorphanol;  
Normethadone; Norpipanone; Phenadoxone;

Phenampramide; Phenomorphan;  
Phenoperidine; Piritramide; Proheptazine;  
Properidine; Propriam; Racemoramide;  
Trimeperidine.

- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methyrbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihyrdomorphine; Etorphine; Heroin; Hydromorphinol; Methyldesorphine; Methylidihydromorphine; Morphine methyrbromide; Morphine methysulfonate; Morphine\_N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

- (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-methylenedioxymaphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-1-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but limited to, Methcathinone, Cat, and Ephedrone); synthetic drugs or salvia.

- (4) Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid.

**KRS 218A.1401 Selling controlled substances other than synthetic drugs or salvia to minor – Penalties**

- (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 synthetic drugs, 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.

**KRS 218A.141 Additional penalties for trafficking in controlled substance other than salvia or marijuana**

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 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.

**KRS 218A.1411 Trafficking in controlled substance in or near school – Exception for misdemeanor salvia offenses - Penalty**

- (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 salvia.

**KRS 218A.1413 Trafficking in controlled substance in second degree – Penalties**

- (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;
  - (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) He or she knowingly and unlawfully traffics in 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.

**KRS 218A.1416 Possession of controlled substance in second degree – Penalties**

- (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 synthetic drugs, salvia, or marijuana.
- (2) Possession of a controlled substance in the second degree is a Class A misdemeanor.

**KRS 218A.1426 Repealed**

**KRS 218A.1427 Repealed**

**KRS 218A.1428 Repealed**

**KRS 218A.1430 Trafficking in synthetic drugs – Penalties – Affirmative defense – Possession of synthetic drugs - Penalty**

- (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.

**KRS 218A.1446 Requirements for dispensing of ephedrine-based products – Electronic log or recordkeeping mechanism – Thirty-day and one-year quantity limitations on ephedrine-based products – Exceptions – Preemption of local laws - Blocking mechanism – Annual report**

- (1) Any compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers shall be dispensed, sold, or distributed only by a registered pharmacist, a pharmacy intern, or a pharmacy technician.
- (2) Any person purchasing, receiving, or otherwise acquiring any nonprescription compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers shall:
  - (a) Produce a government issued photo identification showing the date of birth of the person; and
  - (b) Sign an electronic log or record showing the:
    1. Date of the transaction;
    2. Name, date of birth, and address of the person making the purchase; and
    3. The amount and name of the compound, mixture, or preparation.

Only an electronic logging or recordkeeping mechanism approved by the Office of Drug Control Policy may be utilized to meet the requirements of this subsection. No pharmacy may dispense or sell any compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers unless the electronic logging or recordkeeping mechanism required by this section is provided at no cost to the pharmacy.

- (3) An electronic log or record, as described in subsection (2) of this section, shall be kept of each day's transactions. The registered pharmacist, a pharmacy intern, or a pharmacy technician shall initial the entry of each sale in the log, evidencing completion of each transaction. The log shall be:
- (a) Kept for a period of two (2) years; and
  - (b) Subject to random and warrantless inspection by city, county, or state law enforcement officers;

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- (5) No person shall purchase, receive, or otherwise acquire any product, mixture, or preparation or combinations of products, mixtures, or preparations containing more than seven and one-fifth (7.2) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers within any thirty (30) day period or twenty-four (24) grams within one (1) year period provided that either of these limits shall not apply to any quantity of product, mixture or preparation dispensed pursuant to a valid prescription. In addition to the thirty (30) day and the one (1) year restrictions, no person shall purchase, receive, or otherwise acquire more than three (3) packages of any product, mixture, or preparation containing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers during each transaction.

- (6) A person under eighteen (18) years of age shall not purchase or attempt to purchase any quantity of a nonprescription ephedrine, pseudoephedrine, or phenylpropanolamine product as described in subsection (1) of this section. No person shall aid or assist a person under eighteen (18) years of age in purchasing any quantity of a nonprescription ephedrine, pseudoephedrine, or phenylpropanolamine product as described in subsection (1) of this section.

- (7) The requirements of this section shall not apply to any compounds, mixtures, or preparation containing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers which are in liquid, liquid capsule, or gel capsule form or to any compounds, mixtures, or preparations containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts or optical isomers which are deemed to be not subject to abuse upon joint review and agreement of the Office of Drug Control Policy, the Board of Pharmacy, and the Cabinet for Health Services.

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- (9) The provisions of this section shall supersede and preempt all local laws, ordinances, and regulations pertaining to the sale of any compounds, mixtures, or preparation containing ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers, or salts of optical isomers.

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**KRS 218A.1453 Repealed**

**KRS 218A.1454 Repealed**

**KRS 218A.1455 Repealed**

### **Section 6.3**

**KRS 218A.240 Controlled substances – Duties and authority of state and local officers, Cabinet for Health Services, and Kentucky Board of Pharmacy – Civil proceedings – Identification of trends – Identification of prescribers, dispensers, and patients for licensing board – Review of hospital's or health care facility's prescribing and dispensing practices**

- (1) All police officers and deputy sheriffs directly employed full-time by state, county, city, urban-county, or consolidated local governments, the State Police, the Cabinet for Health Services, their officers and agents, and of all city, county, and Commonwealth's attorneys, and the Attorney General, within their respective jurisdictions, shall enforce all provisions of this chapter and cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all

other states relating to controlled substances.

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- (5) Notwithstanding the existence or pursuit of any other remedy, civil or criminal, any law enforcement authority may maintain, in its own name, an action to restrain or enjoin any violation of this chapter, or to forfeit any property subject to forfeiture under KRS 218A.410, irrespective of whether the owner of the property has been charged with or convicted of any offense under this chapter.
- (a) Any civil action against any person brought pursuant to this section may be instituted in the Circuit Court in any county in which the person resides, in which any property owned by the person and subject to forfeiture is found, or in which the person has violated any provision of this chapter.
- (b) A final judgment rendered in favor of the Commonwealth in any criminal proceeding brought under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought pursuant to this section.
- (c) The prevailing party in any civil proceeding brought pursuant to this section shall recover his or her costs, including a reasonable attorney's fee.
- (d) Distribution of funds under this section shall be made in the same manner as in KRS 218A.420, except that if the Commonwealth's attorney has not initiated the forfeiture action under this section, his or her percentage of the funds shall go to the agency initiating the forfeiture action.

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- (7) (a) The Cabinet for Health Services shall use the data compiled in the electronic system created in KRS 218A.202 for investigations, research, statistical analysis, and educational purposes, and shall proactively identify trends in controlled substance usage and other potential problem areas. Only cabinet personnel who have undergone training for the electronic system and who have been approved to use the system shall be authorized access to the data and reports under this subsection. The cabinet shall notify a board responsible for the licensure, regulation, or discipline of each practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances, if a

report or analysis conducted under this subsection indicates that further investigation about inappropriate or unlawful prescribing or dispensing may be necessary by the board.

- (b) The cabinet shall develop criteria, in collaboration with the Board of Medical Licensure and the Board of Pharmacy, to be used to generate trend reports from the data obtained by the system. Meetings at which the criteria are developed shall be meetings, as defined in KRS 61.805, that comply with the open meetings laws, KRS 61.805 to 61.850.
- (c) The cabinet shall, on a quarterly basis, publish trend reports from the data obtained by the system.
- (d) Peace officers authorized to receive data under KRS 218A.202 may request trend reports not specifically published pursuant to paragraph (c) of this subsection. A report under this paragraph may be based upon the criteria developed under paragraph (b) of this subsection or upon any of the data collected pursuant to subsection (4) of KRS 218A.202, except that the report shall not identify an individual prescriber, dispenser, or patient.
- (e) No trend report generated under this subsection shall identify an individual prescriber, dispenser, or patient.

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**KRS 218A.350 Prohibited practices concerning substances that simulate controlled substances – Penalties**

- (1) No person shall sell or transfer any substance, other than a controlled substance, with the representation or upon creation of an impression that the substance which is sold or transferred is a controlled substance.
- (2) No person shall possess for sale or transfer any substance designed in any manner, including but not limited to design of the item or its container, markings, or color, to simulate a controlled substance.
- (3) No person shall possess for sale or transfer any substance, not covered by subsection (2) of this section which is not a controlled substance with the representation or upon the creation of an impression that the substance held for sale or transfer is a controlled substance.

- (4) No person shall manufacture, package, repack, advertise, or mark any substance, which is not a controlled substance, in such a manner as to resemble a controlled substance, for the purpose of creating the impression that the substance is a controlled substance.
- (5) For the purpose of determining whether this section has been violated, the court or other authority shall include in its consideration the following:
- (a) Whether the noncontrolled substance was packaged in a manner normally used for the illegal sale of controlled substances;
  - (b) Whether the sale or attempted sale included an exchange of or demand for money or other property as consideration, and whether the amount of the consideration was substantially greater than the reasonable value of the noncontrolled substance.
  - (c) Whether the physical appearance of the noncontrolled substance is substantially identical to that of a controlled substance.
- (6) In any prosecution brought under this section, it is not a defense to a violation of this section that the defendant believed the noncontrolled substance to actually be a controlled substance.
- (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.

#### **KRS 218A.410 Property subject to forfeiture**

- (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 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;
4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana, 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.

(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 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.

**KRS 218A.992 Enhancement of penalty when in possession of a firearm at the time of commission of offense**

- (1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who was at the time of the commission of the offense 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, KRS 218A.1450, KRS 218A.1451, or KRS 218A.1452.

**Section 8.3**

**KRS 512.090 Unlawful acts relating to acquiring metals**

- (1) A person is guilty of unlawful acts relating to acquiring metals when the person intentionally and without permission cuts, mutilates, defaces, or otherwise injures any personal or real property of another, including any fixtures or improvements, for the purpose of obtaining any restricted metal, nonferrous metal, or ferrous metal as defined in KRS 433.900, in any amount.
- (2) Unlawful acts relating to acquiring metals is:
  - (a) A Class B misdemeanor with a fine of not more than two hundred fifty dollars (\$250) or imprisonment in the county jail for less than ninety (90) days, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is less than three thousand dollars (\$3,000); or
  - (b) A Class D felony with a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000) or double his or her gain from commission of the offense, whichever is the greater, or imprisonment for not less than one (1) year but not more than five (5) years, or both, if the direct injury to the property, the amount of loss in value to the property, the amount

of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is three thousand dollars (\$3,000) or more.

**Section 8.4**

**KRS 517.060 Defrauding secured creditors**

- (1) A person is guilty of defrauding secured creditors when he destroys, damages, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with intent either to lower the value of the secured interest or unlawfully to hinder enforcement of that interest.
- (2) Defrauding secured creditors is a Class A misdemeanor unless the value of the property subject to the security interest is:
  - (a) Five hundred dollars (\$500) or more up to ten thousand dollars (\$10,000), in which case it is a Class D felony; or
  - (b) Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.

**Section 8.6**

**KRS 527.020 Carrying concealed deadly weapon**

- (1) A person is guilty of carrying a concealed weapon when he carries concealed a firearm or other deadly weapon on or about his person.
- (2) Peace officers and certified court security officers, when necessary for their protection in the discharge of their official duties; United States mail carriers when actually engaged in their duties; and agents and messengers of express companies, when necessary for their protection in the discharge of their official duties, may carry concealed weapons on or about their person.
- (3) The director of the Division of Law Enforcement in the Department of Fish and Wildlife Resources, conservation officers of the Department of Fish and Wildlife Resources, and policemen directly employed by state, county, city, or urban-county governments may carry concealed deadly weapons on or about their person at all times within the Commonwealth of Kentucky, when expressly authorized to do so by law or by the government employing the officer.
- (4) Persons, except those specified in subsection (5) of this section, licensed to carry a

concealed deadly weapon pursuant to KRS 237.110 may carry a firearm or other concealed deadly weapon on or about their persons at all times within the Commonwealth of Kentucky, if the firearm or concealed deadly weapon is carried in conformity with the requirements of that section. Unless otherwise specifically provided by the Kentucky Revised Statutes or applicable federal law, no criminal penalty shall attach to carrying a concealed firearm or other deadly weapon with a permit at any location at which an unconcealed firearm or other deadly weapon may be constitutionally carried. No person or organization, public or private, shall prohibit a person licensed to carry a concealed deadly weapon from possessing a firearm, ammunition, or both, or other deadly weapon in his or her vehicle in compliance with the provisions of KRS 237.110 and 237.115. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction.

(5) (a) The following persons, if they hold a license to carry a concealed deadly weapon pursuant to KRS 237.110, may carry a firearm or other concealed deadly weapon on or about their persons at all times and at all locations within the Commonwealth of Kentucky, without limitation other than as provided in this subsection:

1. A Commonwealth's attorney or assistant Commonwealth's attorney;
2. A retired Commonwealth's attorney or retired assistant Commonwealth's attorney;
3. A county attorney or assistant county attorney;
4. A retired county attorney or retired assistant county attorney;
5. A justice or judge of the Court of Justice; and
6. A retired or senior status justice or judge of the Court of Justice.

(b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.

(c) A person specified in this section who is issued a concealed deadly weapon license shall be issued a license which bears on its face the statement that it is valid at all locations within the Commonwealth of Kentucky and may have such other identifying characteristics as determined by the Kentucky State Police.

(6) (a) Except provided in this subsection, the following persons may carry concealed deadly weapons on or about their person at all times and at all locations within the Commonwealth of Kentucky:

1. An elected sheriff and full-time and part-time deputy sheriffs certified pursuant to KRS 15.380 to 15.404 when expressly authorized to do so by the unit of government employing the officer;

2. An elected jailer and a deputy jailer who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the jailer;

3. The department head or any employee of a corrections department in any jurisdiction where the office of elected jailer has been merged with the office of sheriff who has successfully completed Department of Corrections basic training and maintains his or her current in-service training when expressly authorized to do so by the unit of government by which he or she is employed.

(b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.

(7) (a) A full-time paid peace officer of a government agency from another state or territory of the United States or an elected sheriff from another territory of the United States may carry a concealed deadly weapon in Kentucky, on or off duty, if the other state or territory accords a Kentucky full-time paid peace officer and a Kentucky elected sheriff the same rights by law. If the other state or territory limits a Kentucky full-time paid peace officer or elected sheriff to carrying a concealed deadly weapon

while on duty, then that same restriction shall apply to a full-time paid peace officer or elected sheriff from that state or territory.

(b) The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS 520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.

(8) A loaded or unloaded firearm or other deadly weapon shall not be deemed concealed on or about the person if it is located in any enclosed container, compartment, or storage space installed as original equipment in a motor vehicle by its manufacturer, including but not limited to a glove compartment, center console, or seat pocket, regardless of whether said enclosed container, storage space, or compartment is locked, unlocked, or does not have a locking mechanism. No person or organization, public or private, shall prohibit a person from keeping a loaded or unloaded firearm or ammunition, or both, or other deadly weapon in a vehicle in accordance with the provisions of this subsection. Any attempt by a person or organization, public or private, to violate the provisions of this subsection may be the subject of an action for appropriate relief or for damages in a Circuit Court or District Court of competent jurisdiction. This subsection shall not apply to any person prohibited from possessing a firearm pursuant to KRS 527.040.

(9) The provisions of this section shall not apply to a person who carries a concealed deadly weapon on or about his or her person without a license issued pursuant to KRS 237.110:

(a) If he or she is the owner of the property or has the permission of the owner of the property, on real property which he or she or his or her spouse, parent, grandparent, or child owns;

(b) If he or she is the lessee of the property or has the permission of the lessee of the property, on real property which he or she or his or her spouse, parent, grandparent, or child occupies pursuant to a lease; or

(c) If he or she is the sole proprietor of the business, on real property owned or leased by the business.

(10) Carrying a concealed weapon is a Class A

misdemeanor unless the defendant has been previously convicted of a felony in which a deadly weapon was possessed, used or displayed in which case it is a Class D felony.

#### **KRS 527.090 Fraudulent firearm transaction**

(1) As used in this section:

(a) "Licensed dealer" means a person who is licensed pursuant to 18 U.S.C. sec. 923 and pursuant to any laws of this Commonwealth and engages in the business of dealing in firearms;

(b) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal; and

(c) "Private seller" means a person who sells or offers for sale any firearm.

(2) A person is guilty of fraudulent firearm transaction when he or she knowingly;

(a) Solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms to transfer a firearm under circumstances which the person knows would violate the laws of this Commonwealth or the United States;

(b) Provides to a licensed dealer or private seller of firearms what the person knows to be materially false information with intent to deceive the dealer or seller about the legality of a transfer of a firearm; or

(c) Procures another to engage in conduct prohibited by this section.

(3) Fraudulent firearm transaction is a Class D felony.

#### **Section 8.7**

#### **KRS 530.064 Unlawful transaction with a minor in the first degree**

(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, synthetic drugs, or salvia as defined in KRS 218A.010(36);

Except those offenses involving minors in KRS Chapter 531 **[Pornography]** and in KRS 529.100 where that offense involves commercial sexual activity. **[Human trafficking]**.

(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.