

SENATE Substitute for Substitute for HOUSE BILL NO. 2318

By Committee on Judiciary

AN ACT concerning crimes, punishment and criminal procedure; relating to controlled substances; sentencing guidelines grid for drug crimes; amending K.S.A. 2011 Supp. 21-5701, 21-5703, 21-5705, 21-5706, 21-5708, 21-5709, 21-5710, 21-5713, 21-5714, 21-5716, 21-6604, 21-6608, 21-6611, 21-6614, 21-6805, 21-6808, 21-6810, 21-6821, 21-6824, 22-2802, 22-2908, 22-3412, 22-3604, 22-3717, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376 and 75-5291 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 21-6614a, 21-6614b, 21-6614c and 75-5291b.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2011 Supp. 21-5701 is hereby amended to read as follows: 21-5701.

As used in K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto:

(a) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(b) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:

(A) The chemical structure of which is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) which has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, which the individual represents or intends to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially

similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act (21 U.S.C. 355) to the extent conduct with respect to the substance is permitted by the exemption.

(c) "Cultivate" means the planting or promotion of growth of five or more plants which contain or can produce controlled substances.

(d) "Distribute" means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(e) "Drug" means:

(1) 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;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or

prevention of disease in man or animals;

(3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and

(4) substances intended for use as a component of any article specified in paragraph (1), (2) or (3). It does not include devices or their components, parts or accessories.

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

"Drug paraphernalia" shall include, but is not limited to:

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

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;

(4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used or intended for use in weighing or measuring controlled substances;

(6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;

(7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) containers and other objects used or intended for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;

(12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for

inhalation;

(D) smoking and carburetion masks;

(E) roach clips, objects used to hold burning material, such as a marijuana cigarette,

that has become too small or too short to be held in the hand;

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

(N) any smoking pipe manufactured to disguise its intended purpose;

(O) wired cigarette papers; or

(P) cocaine freebase kits.

(g) "Immediate precursor" means a substance which the board of pharmacy has found to be and by rules and regulations designates as being 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, the control of which is necessary to prevent, curtail or limit manufacture.

(h) "Isomer" means all enantiomers and diastereomers.

(i) "Manufacture" means the production, preparation, propagation, compounding,

conversion or processing of a controlled substance either directly or indirectly or 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.~~ "Manufacture" does not include:

(1) The preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) (A) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) (B) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance; or

(2) the addition of diluents or adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose or lactose, which are intended for use in cutting a controlled substance.

(j) "Marijuana" means all parts of all varieties of the plant Cannabis 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. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or

preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(k) "Minor" means a person under 18 years of age.

(l) "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:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) but not including the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw;

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(m) "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. "Opiate" does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms.

(n) "Opium poppy" means the plant of the species *Papaver somniferum* L. except its seeds.

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

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

(q) "Possession" means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(r) "School property" means property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. This definition shall not be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the above definition, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(s) "Simulated controlled substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

Sec. 2. K.S.A. 2011 Supp. 21-5703 is hereby amended to read as follows: 21-5703. (a) It shall be unlawful for any person to manufacture any controlled substance or controlled

substance analog.

(b) Violation or attempted violation of subsection (a) is a ~~drug severity level 1 felony~~ :

(1) Drug severity level 2 felony, except as provided in subsections (b)(2) and (b)(3):

(2) drug severity level 1 felony if the offender has a prior conviction under this section,

under K.S.A. 65-4159, prior to its repeal, or under a substantially similar offense from another jurisdiction: and

(3) drug severity level 1 felony if the controlled substance is methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof.

(c) The provisions of subsection (d) of K.S.A. 2011 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance or controlled substance analog pursuant to this section.

(e)(d) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision, or the defendant agrees to participate in a licensed or certified drug treatment program.

(d)(e) The sentence of a person who violates this section shall not be subject to statutory provisions for suspended sentence, community service work or probation.

(e)(f) The sentence of a person who violates this section or K.S.A. 65-4159 prior to its repeal, shall not be reduced because these sections prohibit conduct identical to that prohibited by K.S.A. 65-4161 or 65-4163, prior to ~~such sections~~ their repeal, or K.S.A. 2011 Supp. 21-5705, and amendments thereto.

Sec. 3. K.S.A. 2011 Supp. 21-5705 is hereby amended to read as follows: 21-5705. (a) It shall be unlawful for any person to ~~cultivate~~, distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

(1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;

(2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(3) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(5) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto;

(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto; or

(7) any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.

(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.

~~(e) (1) Violation of subsection (a) is a drug severity level 3 felony, except that:~~

~~(A) Violation of subsection (a) is a drug severity level 2 felony if the trier of fact makes a finding that the offender is 18 or more years of age and the substance was distributed to or possessed with intent to distribute to a minor or the violation occurs on or within 1,000 feet of any school property;~~

~~(B) violation of subsection (a)(1) is a drug severity level 2 felony if that person has one prior conviction under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction; and~~

~~(C) violation of subsection (a)(1) is a drug severity level 1 felony if that person has two prior convictions under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction.~~

~~(2) Violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if the substance was distributed to or possessed with the intent to distribute to a child under 18 years of age.~~

~~(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.~~

(c) It shall be unlawful for any person to cultivate any controlled substance or controlled substance analog listed in subsection (a).

(d) (1) Except as provided further, violation of subsection (a) is a:

(A) Drug severity level 4 felony if the quantity of the material was less than 3.5 grams;

(B) drug severity level 3 felony if the quantity of the material was at least 3.5 grams but less than 100 grams;

(C) drug severity level 2 felony if the quantity of the material was at least 100 grams but less than 1 kilogram; and

(D) drug severity level 1 felony if the quantity of the material was 1 kilogram or more.

(2) Violation of subsection (a) with respect to material containing any quantity of marijuana, or an analog thereof, is a:

(A) Drug severity level 4 felony if the quantity of the material was less than 25 grams;

(B) drug severity level 3 felony if the quantity of the material was at least 25 grams but less than 450 grams;

(C) drug severity level 2 felony if the quantity of the material was at least 450 grams but less than 30 kilograms; and

(D) drug severity level 1 felony if the quantity of the material was 30 kilograms or more.

(3) Violation of subsection (a) with respect to material containing any quantity of heroin, as defined by subsection (c)(1) of K.S.A. 65-4105, and amendments thereto, or methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof, is a:

(A) Drug severity level 4 felony if the quantity of the material was less than 1 gram;

(B) drug severity level 3 felony if the quantity of the material was at least 1 gram but less than 3.5 grams;

(C) drug severity level 2 felony if the quantity of the material was at least 3.5 grams but less than 100 grams; and

(D) drug severity level 1 felony if the quantity of the material was 100 grams or more.

(4) Violation of subsection (a) with respect to material containing any quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments thereto, or an analog thereof, distributed by dosage unit, is a:

(A) Drug severity level 4 felony if the number of dosage units was fewer than 10;

(B) drug severity level 3 felony if the number of dosage units was at least 10 but less than 100;

(C) drug severity level 2 felony if the number of dosage units was at least 100 but less than 1,000; and

(D) drug severity level 1 felony if the number of dosage units was 1,000 or more.

(5) For any violation of subsection (a), the severity level of the offense shall be increased one level if the controlled substance or controlled substance analog was distributed or possessed with the intent to distribute on or within 1,000 feet of any school property.

(6) Violation of subsection (b) is a:

(A) Class A person misdemeanor, except as provided in subsection (d)(6)(B); and

(B) nondrug severity level 7, person felony if the substance was distributed to or possessed with the intent to distribute to a minor.

(7) Violation of subsection (c) is a:

(A) Drug severity level 3 felony if the number of plants cultivated was more than 4 but fewer than 50;

(B) drug severity level 2 felony if the number of plants cultivated was at least 50 but fewer than 100; and

(C) drug severity level 1 felony if the number of plants cultivated was 100 or more.

(e) In any prosecution under this section, there shall be a rebuttable presumption of an intent to distribute if any person possesses the following quantities of controlled substances or analogs thereof:

(1) 450 grams or more of marijuana:

(2) 3.5 grams or more of heroin or methamphetamine:

(3) 100 dosage units or more containing a controlled substance; or

(4) 100 grams or more of any other controlled substance.

(f) It shall not be a defense to charges arising under this section that the defendant:

(1) Was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog:

(2) did not know the quantity of the controlled substance or controlled substance analog; or

(3) did not know the specific controlled substance or controlled substance analog contained in the material that was distributed or possessed with the intent to distribute.

(g) As used in this section:

(1) "Material" means the total amount of any substance, including a compound or a mixture, which contains any quantity of a controlled substance or controlled substance analog.

(2) "Dosage unit" means a controlled substance or controlled substance analog distributed or possessed with the intent to distribute as a discrete unit, including but not limited to, one pill, one capsule or one microdot, and not distributed by weight.

(A) For steroids, or controlled substances in liquid solution legally manufactured for prescription use, or an analog thereof, "dosage unit" means the smallest medically approved

dosage unit, as determined by the label, materials provided by the manufacturer, a prescribing authority, licensed health care professional or other qualified health authority.

(B) For illegally manufactured controlled substances in liquid solution, or controlled substances in liquid products not intended for ingestion by human beings, or an analog thereof, "dosage unit" means 10 milligrams, including the liquid carrier medium, except as provided in subsection (g)(2)(C).

(C) For lysergic acid diethylamide (LSD) in liquid form, or an analog thereof, a dosage unit is defined as 0.4 milligrams, including the liquid medium.

Sec. 4. K.S.A. 2011 Supp. 21-5706 is hereby amended to read as follows: 21-5706: (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a controlled substance analog thereof.

(b) It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c),

(d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto;

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto;

(6) any substance designated in K.S.A. 65-4113, and amendments thereto; or

(7) any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 4.5 felony; and

(2) (A) violation of subsection (b) is a class A nonperson misdemeanor, except ~~that, as~~ provided in subsection (c)(2)(B); and

(B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug severity level 4.5 felony if that person has a prior conviction under such subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana as designated in subsection (d) of K.S.A. 65-4105, and amendments thereto, or any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto, or an analog thereof.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.

Sec. 5. K.S.A. 2011 Supp. 21-5708 is hereby amended to read as follows: 21-5708. (a) Unlawfully obtaining a prescription-only drug is:

(1) Making, altering or signing of a prescription order by a person other than a

practitioner or a mid-level practitioner;

(2) distribution of a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;

(3) possession of a prescription order with intent to distribute it and knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;

(4) possession of a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered or signed by a person other than a practitioner or a mid-level practitioner; or

(5) providing false information, with the intent to deceive, to a practitioner or mid-level practitioner for the purpose of obtaining a prescription-only drug.

(b) Unlawfully selling a prescription-only drug is unlawfully obtaining a prescription-only drug, as defined in subsection (a), and:

(1) Selling the prescription-only drug so obtained;

(2) offering for sale the prescription-only drug so obtained; or

(3) possessing with intent to sell the prescription-only drug so obtained.

(c) (1) Unlawfully obtaining a prescription-only drug is a:

(A) Class A nonperson misdemeanor, except that, as provided in subsection (c)(1)(B);

and

(2) (B) Unlawfully obtaining a prescription-only drug is a nondrug severity level 9, nonperson felony if that person has a prior conviction of paragraph (1) under this section, K.S.A. 2010 Supp. 21-36a08, prior to its transfer, or K.S.A. 21-4214, prior to its repeal.

(3) (2) Unlawfully selling a prescription-only drug is a nondrug severity level 6,

nonperson felony.

(d) As used in this section:

(1) "Pharmacist," "practitioner," "mid-level practitioner" and "prescription-only drug" shall have the meanings ascribed thereto by K.S.A. 65-1626, and amendments thereto.

(2) "Prescription order" means an order transmitted in writing, orally, telephonically or by other means of communication for a prescription-only drug to be filled by a pharmacist. "Prescription order" does not mean a drug dispensed pursuant to such an order.

(e) The provisions of this section shall not be applicable to prosecutions involving prescription-only drugs which could be brought under K.S.A. 2011 Supp. 21-5705 or 21-5706, and amendments thereto.

Sec. 6. K.S.A. 2011 Supp. 21-5709 is hereby amended to read as follows: 21-5709. (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with an intent to use the product to manufacture a controlled substance.

(b) It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to:

(1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute a controlled substance; or

(2) store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

(c) It shall be unlawful for any person to use or possess with intent to use anhydrous

ammonia or pressurized ammonia in a container not approved for that chemical by the Kansas department of agriculture.

(d) It shall be unlawful for any person to purchase, receive or otherwise acquire at retail any compound, mixture or preparation containing more than 3.6 grams of pseudoephedrine base or ephedrine base in any single transaction or any compound, mixture or preparation containing more than nine grams of pseudoephedrine base or ephedrine base within any 30-day period.

(e) (1) Violation of subsection (a) is a drug severity level 2_3 felony;

(2) violation of subsection (b)(1) is a:

(A) Drug severity level 4_5 felony, except that violation of subsection (b)(1) is a as provided in subsection (e)(2)(B); and

(B) class A nonperson misdemeanor if the drug paraphernalia was used to cultivate fewer than five marijuana plants;

(3) violation of subsection (b)(2) is a class A nonperson misdemeanor;

(4) violation of subsection (c) is a drug severity level 4_5 felony; and

(5) violation of subsection (d) is a class A nonperson misdemeanor.

(f) For persons arrested and charged under subsection (a) or (c), bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to reoffend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

Sec. 7. K.S.A. 2011 Supp. 21-5710 is hereby amended to read as follows: 21-5710. (a) It shall be unlawful for any person to advertise, market, label, distribute or possess with the intent to distribute:

(1) Any product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance or controlled substance analog; or

(2) any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(b) It shall be unlawful for any person to distribute, possess with the intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to manufacture or distribute a controlled substance or controlled substance analog in violation of K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto.

(c) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used as such in violation of K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, except subsection (b) of K.S.A. 2011 Supp. 21-5706, and amendments thereto.

(d) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances

where one reasonably should know, that it will be used as such in violation of subsection (b) of K.S.A. 2011 Supp. 21-5706, and amendments thereto.

(e) (1) Violation of subsection (a) is a drug severity level ~~2~~3 felony;

(2) violation of subsection (b) is a:

(A) Drug severity level 4_5 felony, except that violation of subsection (b) is a as provided in subsection (e)(2)(B); and

(B) drug severity level 3_4 felony if the trier of fact makes a finding that ~~the offender is 18 or more years of age and~~ the offender distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property;

(3) violation of subsection (c) is a:

(A) Nondrug severity level 9, nonperson felony, except that violation of subsection (c) is a as provided in subsection (e)(3)(B); and

(B) drug severity level 4_5 felony if the trier of fact makes a finding that ~~the offender is 18 or more years of age and~~ the offender distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property; and

(4) violation of subsection (d) is a:

(A) Class A nonperson misdemeanor, except that violation of subsection (d) is a as provided in subsection (e)(4)(B); and

(B) nondrug severity level 9, nonperson felony if the trier of fact makes a finding that ~~the offender is 18 or more years of age and~~ the offender distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property.

(f) For persons arrested and charged under subsection (a), bail shall be at least \$50,000

cash or surety, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(g) As used in this section, "or under circumstances where one reasonably should know" that an item will be used in violation of this section, shall include, but not be limited to, the following:

- (1) Actual knowledge from prior experience or statements by customers;
- (2) inappropriate or impractical design for alleged legitimate use;
- (3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or
- (4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

Sec. 8. K.S.A. 2011 Supp. 21-5713 is hereby amended to read as follows: 21-5713. (a) It shall be unlawful for any person to distribute, possess with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substance.

(b) It shall be unlawful for any person to use or possess with intent to use any simulated controlled substance.

(c) (1) Violation of subsection (a) is a:

(A) Nondrug severity level 9, nonperson felony, except that violation of subsection (a) is a as provided in subsection (c)(1)(B); and

(B) nondrug severity level 7, nonperson felony if the trier of fact makes a finding that

the offender is 18 or more years of age and the violation occurred on or within 1,000 feet of any school property; and

(2) violation of subsection (b) is a class A nonperson misdemeanor.

Sec. 9. K.S.A. 2011 Supp. 21-5714 is hereby amended to read as follows: 21-5714. (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any substance which is not a controlled substance:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

(b) Violation of subsection (a) is a:

(1) Class A nonperson misdemeanor, except ~~that violation of subsection (a) is a~~ as provided in subsection (b)(2); and

(2) nondrug severity level 9, nonperson felony if the distributor is 18 or more years of age, distributing to a ~~person under 18 years of age~~ minor and at least three years older than the ~~person under 18 years of age~~ minor to whom the distribution is made.

(c) If any one of the following factors is established, there shall be a presumption that distribution of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal distribution of controlled substances;

(2) the distribution of the substance included an exchange of or demand for money or other consideration for distribution of the substance and the amount of the consideration was substantially in excess of the reasonable value of the substance; or

(3) the physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

(d) A person who commits a violation of subsection (a) also may be prosecuted for, convicted of and punished for theft.

Sec. 10. K.S.A. 2011 Supp. 21-5716 is hereby amended to read as follows: 21-5716. (a) It shall be unlawful for any person to receive or acquire proceeds or engage in transactions involving proceeds, known to be derived from a violation of K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or any substantially similar offense from another jurisdiction. The provisions of this subsection do not apply to any transaction between an individual and that individual's counsel necessary to preserve that individual's right to representation, as guaranteed by section 10 of the bill of rights of the constitution of the state of Kansas and by the sixth amendment to the United States constitution. This exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto.

(b) It shall be unlawful for any person to distribute, invest, conceal, transport or maintain an interest in or otherwise make available anything of value which that person knows is intended to be used for the purpose of committing or furthering the commission of any crime in K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or any substantially

similar offense from another jurisdiction.

(c) It shall be unlawful for any person to direct, plan, organize, initiate, finance, manage, supervise or facilitate the transportation or transfer of proceeds known to be derived from commission of any crime in K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or any substantially similar offense from another jurisdiction.

(d) It shall be unlawful for any person to conduct a financial transaction involving proceeds derived from commission of any crime in K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or any substantially similar offense from another jurisdiction, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds known to be derived from commission of any crime in K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or any substantially similar offense from another jurisdiction, or to avoid a transaction reporting requirement under state or federal law.

(e) Violation of this section is a:

(1) ~~Violation of this section is a~~ Drug severity level 4_5 felony if the value of the proceeds is less than \$5,000;

(2) ~~violation of this section is a~~ drug severity level 3_4 felony if the value of the proceeds is at least \$5,000 but less than \$100,000;

(3) ~~violation of this section shall be a~~ drug severity level 2_3 felony if the value of the proceeds is at least \$100,000 but less than ~~\$500,000~~ \$250,000;

(4) drug severity level 2 felony if the value of the proceeds is at least \$250,000 but less than \$500,000; and

~~(4)(5)~~ violation of this section shall be a drug severity level 1 felony if the value of the proceeds is \$500,000 or more.

Sec. 11. K.S.A. 2011 Supp. 21-6604 is hereby amended to read as follows: 21-6604. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense and may impose the provisions of subsection (q);

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

SENTENCING RANGE - DRUG OFFENSES

| Category | A | B | C | D | E | F | G | H | I |
|------------------|---------------------|-------------------|---------------------------------|-------------------|------------------------|----------------------|--------------------|-------------------|-------------------------|
| Severity Level I | 3 + Person Felonies | 2 Person Felonies | 1 Person & 1 Nonperson Felonies | 1 Person Felony | 3 + Nonperson Felonies | 2 Nonperson Felonies | 1 Nonperson Felony | 2+ Misdemeanors | 1 Misdemeanor No Record |
| I | 204 194 185 | 196 186 176 | 187 178 169 | 179 170 161 | 170 162 154 | 167 158 150 | 162 154 146 | 161 150 142 | 154 146 138 |
| II | 144 136 134 | 137 130 122 | 130 123 112 | 124 117 111 | 116 111 105 | 113 108 101 | 110 104 99 | 108 100 96 | 103 98 92 |
| III | 83 78 74 | 77 73 68 | 72 68 65 | 68 64 60 | 62 59 55 | 59 56 52 | 57 54 51 | 54 51 49 | 51 49 46 |
| IV | 51 49 46 | 47 44 41 | 42 40 37 | 36 34 32 | 32 30 28 | 36 24 22 | 27 22 20 | 19 18 17 | 16 15 14 |
| V | 42 40 37 | 36 34 32 | 32 30 28 | 26 24 23 | 22 20 18 | 18 17 16 | 16 15 14 | 14 13 12 | 12 11 10 |

| LEGEND |
|--------------------------|
| Presumptive Probation |
| Border Box |
| Presumptive Imprisonment |

Sec. 31. K.S.A. 2011 Supp. 21-5701, 21-5703, 21-5705, 21-5706, 21-5708, 21-5709, 21-5710, 21-5713, 21-5714, 21-5716, 21-6604, 21-6608, 21-6611, 21-6614, 21-6614a, 21-6614b, 21-6614c, 21-6805, 21-6808, 21-6810, 21-6821, 21-6824, 22-2802, 22-2908, 22-3412, 22-3604, 22-3717, 38-2346, 38-2347, 38-2369, 38-2374, 38-2376, 75-5291 and 75-5291b are hereby repealed.

Sec. 32. This act shall take effect and be in force from and after its publication in the statute book.