

HOUSE BILL No. 2705

By Committee on Federal and State Affairs

2-14

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to crimes involving controlled substances; distribution of a controlled
3 substance; replacing the rebuttable presumption of intent to distribute
4 with a permissive inference; amending K.S.A. 2021 Supp. 21-5705 and
5 repealing the existing section.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2021 Supp. 21-5705 is hereby amended to read as
9 follows: 21-5705. (a) It shall be unlawful for any person to distribute or
10 possess with the intent to distribute any of the following controlled
11 substances or controlled substance analogs thereof:

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

15 (2) any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e),~~
16 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (e) of K.S.A. 65-~~
17 ~~4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b),~~ and amendments
18 thereto;

19 (3) any stimulant designated in ~~subsection (f) of K.S.A. 65-4105(f),~~
20 ~~subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107(d)(2), (d)(4),~~
21 ~~(d)(5) or (f)(2) or subsection (e) of K.S.A. 65-4109(e),~~ and amendments
22 thereto;

23 (4) any hallucinogenic drug designated in ~~subsection (d) of K.S.A.~~
24 ~~65-4105(d), subsection (g) of K.S.A. 65-4107(g) or subsection (g) of~~
25 ~~K.S.A. 65-4109(g),~~ and amendments thereto;

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

29 (6) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~
30 ~~4109(f),~~ and amendments thereto; or

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

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

36 (c) It shall be unlawful for any person to cultivate any controlled

1 substance or controlled substance analog listed in subsection (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (D) drug severity level 1 felony if the quantity of the material was
33 100 grams or more.

34 (4) Violation of subsection (a) with respect to material containing any
35 quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107,
36 65-4109 or 65-4111, and amendments thereto, or an analog thereof,
37 distributed by dosage unit, is a:

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

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

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

1 (D) drug severity level 1 felony if the number of dosage units was
2 1,000 or more.

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

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

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

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

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

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

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

17 (C) drug severity level 1 felony if the number of plants cultivated was
18 100 or more.

19 (e) In any prosecution under this section, there shall be a ~~rebuttable~~
20 ~~presumption~~ *permissive inference* of an intent to distribute if any person
21 possesses the following quantities of controlled substances or analogs
22 thereof *and there are facts to support such inference*:

23 (1) 450 grams or more of marijuana;

24 (2) 3.5 grams or more of heroin or methamphetamine;

25 (3) 100 dosage units or more containing a controlled substance; or

26 (4) 100 grams or more of any other controlled substance.

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

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

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

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

37 (g) As used in this section:

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

41 (2) "Dosage unit" means a controlled substance or controlled
42 substance analog distributed or possessed with the intent to distribute as a
43 discrete unit, including but not limited to, one pill, one capsule or one

1 microdot, and not distributed by weight.

2 (A) For steroids, or controlled substances in liquid solution legally
3 manufactured for prescription use, or an analog thereof, "dosage unit"
4 means the smallest medically approved dosage unit, as determined by the
5 label, materials provided by the manufacturer, a prescribing authority,
6 licensed health care professional or other qualified health authority.

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

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

15 Sec. 2. K.S.A. 2021 Supp. 21-5705 is hereby repealed.

16 Sec. 3. This act shall take effect and be in force from and after its
17 publication in the statute book.