

HOUSE BILL No. 2328

By Committee on Corrections and Juvenile Justice

2-7

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to controlled substances definitions; excluding materials used to detect
3 the presence of fentanyl, ketamine or gamma hydroxybutyric acid from
4 the definition of drug paraphernalia; amending K.S.A. 2022 Supp. 21-
5 5701 and repealing the existing section; also repealing K.S.A. 2022
6 Supp. 21-5701b.

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

9 Section 1. K.S.A. 2022 Supp. 21-5701 is hereby amended to read as
10 follows: 21-5701. As used in K.S.A. 2022 Supp. 21-5701 through 21-
11 5717, and amendments thereto:

12 (a) "Controlled substance" means any drug, substance or immediate
13 precursor included in any of the schedules designated in K.S.A. 65-4105,
14 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

15 (b) (1) "Controlled substance analog" means a substance that is
16 intended for human consumption, and at least one of the following:

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

21 (B) the substance has a stimulant, depressant or hallucinogenic effect
22 on the central nervous system substantially similar to the stimulant,
23 depressant or hallucinogenic effect on the central nervous system of a
24 controlled substance included in the schedules designated in K.S.A. 65-
25 4105 or 65-4107, and amendments thereto; or

26 (C) with respect to a particular individual, such individual represents
27 or intends the substance to have a stimulant, depressant or hallucinogenic
28 effect on the central nervous system substantially similar to the stimulant,
29 depressant or hallucinogenic effect on the central nervous system of a
30 controlled substance included in the schedules designated in K.S.A. 65-
31 4105 or 65-4107, and amendments thereto.

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

33 (A) A controlled substance;

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

35 or

36 (C) a substance with respect to which an exemption is in effect for

1 investigational use by a particular person under section 505 of the federal
 2 food, drug, and cosmetic act, 21 U.S.C. § 355, to the extent conduct with
 3 respect to the substance is permitted by the exemption.

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

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

14 (e) (1) "Drug" means:

15 (A) Substances recognized as drugs in the official United States
 16 pharmacopeia, official homeopathic pharmacopoeia of the United States or
 17 official national formulary or any supplement to any of them;

18 (B) substances intended for use in the diagnosis, cure, mitigation,
 19 treatment or prevention of disease in humans or animals;

20 (C) substances, other than food, intended to affect the structure or any
 21 function of the body of humans or animals; and

22 (D) substances intended for use as a component of any article
 23 specified in subparagraph (A), (B) or (C).

24 (2) "Drug" does not include devices or their components, parts or
 25 accessories.

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

33 (1) "Drug paraphernalia" ~~shall include~~ includes, but is not limited to:

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

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

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

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

43 (5) (E) scales and balances used or intended for use in weighing or

- 1 measuring controlled substances;
- 2 ~~(6)~~(F) diluents and adulterants, including, but not limited to, quinine
- 3 hydrochloride, mannitol, mannite, dextrose and lactose that are used or
- 4 intended for use in cutting controlled substances;
- 5 ~~(7)~~(G) separation gins and sifters used or intended for use in
- 6 removing twigs and seeds from or otherwise cleaning or refining
- 7 marijuana;
- 8 ~~(8)~~(H) blenders, bowls, containers, spoons and mixing devices used
- 9 or intended for use in compounding controlled substances;
- 10 ~~(9)~~(I) capsules, balloons, envelopes, bags and other containers used
- 11 or intended for use in packaging small quantities of controlled substances;
- 12 ~~(10)~~(J) containers and other objects used or intended for use in
- 13 storing or concealing controlled substances;
- 14 ~~(11)~~(K) hypodermic syringes, needles and other objects used or
- 15 intended for use in parenterally injecting controlled substances into the
- 16 human body; *or*
- 17 ~~(12)~~(L) objects used or primarily intended or designed for use in
- 18 ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
- 19 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into
- 20 the human body, such as:
- 21 ~~(A)~~(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes
- 22 with or without screens, permanent screens, hashish heads or punctured
- 23 metal bowls;
- 24 ~~(B)~~(ii) water pipes, bongos or smoking pipes designed to draw smoke
- 25 through water or another cooling device;
- 26 ~~(C)~~(iii) carburetion pipes, glass or other ~~heat-resistant~~ *heat-resistant*
- 27 tubes or any other device used, intended to be used or designed to be used
- 28 to cause vaporization of a controlled substance for inhalation;
- 29 ~~(D)~~(iv) smoking and carburetion masks;
- 30 ~~(E)~~(v) roach clips, objects used to hold burning material, such as a
- 31 marijuana cigarette, that has become too small or too short to be held in
- 32 the hand;
- 33 ~~(F)~~(vi) miniature cocaine spoons and cocaine vials;
- 34 ~~(G)~~(vii) chamber smoking pipes;
- 35 ~~(H)~~(viii) carburetor smoking pipes;
- 36 ~~(I)~~(ix) electric smoking pipes;
- 37 ~~(J)~~(x) air-driven smoking pipes;
- 38 ~~(K)~~(xi) chillums;
- 39 ~~(L)~~(xii) bongos;
- 40 ~~(M)~~(xiii) ice pipes or chillers;
- 41 ~~(N)~~(xiv) any smoking pipe manufactured to disguise its intended
- 42 purpose;
- 43 ~~(O)~~(xv) wired cigarette papers; or

1 ~~(P)~~(xvi) cocaine freebase kits.

2 (2) "Drug paraphernalia" ~~shall~~ does not include:

3 (A) Any products, chemicals or materials described in K.S.A. 2022
4 Supp. 21-5709(a), and amendments thereto; or

5 (B) *any materials used or intended for use to test a substance for the*
6 *presence of fentanyl, a fentanyl analog, ketamine or gamma*
7 *hydroxybutyric acid.*

8 (g) "Immediate precursor" means a substance that the state board of
9 pharmacy has found to be and by rules and regulations designates as being
10 the principal compound commonly used or produced primarily for use and
11 that is an immediate chemical intermediary used or likely to be used in the
12 manufacture of a controlled substance, the control of which is necessary to
13 prevent, curtail or limit manufacture.

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

15 (i) "Manufacture" means the production, preparation, propagation,
16 compounding, conversion or processing of a controlled substance either
17 directly or indirectly or by extraction from substances of natural origin or
18 independently by means of chemical synthesis or by a combination of
19 extraction and chemical synthesis. "Manufacture" does not include:

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

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

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

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

34 (j) "Marijuana" means all parts of all varieties of the plant Cannabis
35 whether growing or not, the seeds thereof, the resin extracted from any
36 part of the plant and every compound, manufacture, salt, derivative,
37 mixture or preparation of the plant, its seeds or resin. "Marijuana" does not
38 include:

39 (1) The mature stalks of the plant, fiber produced from the stalks, oil
40 or cake made from the seeds of the plant, any other compound,
41 manufacture, salt, derivative, mixture or preparation of the mature stalks,
42 except the resin extracted therefrom, fiber, oil or cake or the sterilized seed
43 of the plant that is incapable of germination;

1 (2) any substance listed in schedules II through V of the uniform
2 controlled substances act;

3 (3) drug products approved by the United States food and drug
4 administration as of the effective date of this act;

5 (4) cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-
6 2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol); or

7 (5) industrial hemp as defined in K.S.A. 2-3901, and amendments
8 thereto, when cultivated, produced, possessed or used for activities
9 authorized by the commercial industrial hemp act.

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

11 (l) "Narcotic drug" means any of the following whether produced
12 directly or indirectly by extraction from substances of vegetable origin or
13 independently by means of chemical synthesis or by a combination of
14 extraction and chemical synthesis:

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

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

20 (3) opium poppy and poppy straw;

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

26 (m) "Opiate" means any substance having an addiction-forming or
27 addiction-sustaining liability similar to morphine or being capable of
28 conversion into a drug having addiction-forming or addiction-sustaining
29 liability. "Opiate" does not include, unless specifically designated as
30 controlled under K.S.A. 65-4102, and amendments thereto, the
31 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
32 (dextromethorphan). "Opiate" does include its racemic and levorotatory
33 forms.

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

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

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

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

1 ~~right of control.~~

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

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

18 Sec. 2. K.S.A. 2022 Supp. 21-5701 and 21-5701b are hereby
19 repealed.

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