

Substitute for HOUSE BILL No. 2453

By Committee on Corrections and Juvenile Justice

2-17

9 AN ACT concerning crimes and punishment; relating to controlled sub-
10 stances; presence of a minor; amending K.S.A. 2009 Supp. 21-36a01,
11 21-36a05, 21-36a10 and 21-36a13 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2009 Supp. 21-36a01 is hereby amended to read
15 as follows: 21-36a01. As used in K.S.A. 2009 Supp. 21-36a01 through 21-
16 36a17, and amendments thereto:

17 (a) “Controlled substance” means any drug, substance or immediate
18 precursor included in any of the schedules designated in K.S.A. 65-4105,
19 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

20 (b) (1) “Controlled substance analog” means a substance that is in-
21 tended for human consumption, and:

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

26 (B) which has a stimulant, depressant or hallucinogenic effect on the
27 central nervous system substantially similar to the stimulant, depressant
28 or hallucinogenic effect on the central nervous system of a controlled
29 substance included in the schedules designated in K.S.A. 65-4105 or 65-
30 4107, and amendments thereto; or

31 (C) with respect to a particular individual, which the individual rep-
32 represents or intends to have a stimulant, depressant or hallucinogenic effect
33 on the central nervous system substantially similar to the stimulant, de-
34 pressant or hallucinogenic effect on the central nervous system of a con-
35 trolled substance included in the schedules designated in K.S.A. 65-4105
36 or 65-4107, and amendments thereto.

37 (2) “Controlled substance analog” does not include:

38 (A) A controlled substance;

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

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

1 respect to the substance is permitted by the exemption.

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

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

12 (e) "Drug" means:

13 (1) Substances recognized as drugs in the official United States phar-
14 macopoeia, official homeopathic pharmacopoeia of the United States or
15 official national formulary or any supplement to any of them;

16 (2) substances intended for use in the diagnosis, cure, mitigation,
17 treatment or prevention of disease in man or animals;

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

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

23 (f) "Drug paraphernalia" means all equipment and materials of any
24 kind which are used, or primarily intended or designed for use in planting,
25 propagating, cultivating, growing, harvesting, manufacturing, compound-
26 ing, converting, producing, processing, preparing, testing, analyzing,
27 packaging, repackaging, storing, containing, concealing, injecting, ingest-
28 ing, inhaling or otherwise introducing into the human body a controlled
29 substance and in violation of this act. "Drug paraphernalia" shall include,
30 but is not limited to:

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

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

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

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

40 (5) scales and balances used or intended for use in weighing or meas-
41 uring controlled substances;

42 (6) diluents and adulterants, including, but not limited to, quinine
43 hydrochloride, mannitol, mannite, dextrose and lactose, which are used

- 1 or intended for use in cutting controlled substances;
- 2 (7) separation gins and sifters used or intended for use in removing
3 twigs and seeds from or otherwise cleaning or refining marijuana;
- 4 (8) blenders, bowls, containers, spoons and mixing devices used or
5 intended for use in compounding controlled substances;
- 6 (9) capsules, balloons, envelopes, bags and other containers used or
7 intended for use in packaging small quantities of controlled substances;
- 8 (10) containers and other objects used or intended for use in storing
9 or concealing controlled substances;
- 10 (11) hypodermic syringes, needles and other objects used or intended
11 for use in parenterally injecting controlled substances into the human
12 body;
- 13 (12) objects used or primarily intended or designed for use in in-
14 gesting, inhaling or otherwise introducing marijuana, cocaine, hashish,
15 hashish oil, phencyclidine (PCP), methamphetamine or amphetamine
16 into the human body, such as:
- 17 (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with
18 or without screens, permanent screens, hashish heads or punctured metal
19 bowls;
- 20 (B) water pipes, bongos or smoking pipes designed to draw smoke
21 through water or another cooling device;
- 22 (C) carburetion pipes, glass or other heat resistant tubes or any other
23 device used or intended to be used, designed to be used to cause vapor-
24 ization of a controlled substance for inhalation;
- 25 (D) smoking and carburetion masks;
- 26 (E) roach clips, objects used to hold burning material, such as a ma-
27 rijuana cigarette, that has become too small or too short to be held in the
28 hand;
- 29 (F) miniature cocaine spoons and cocaine vials;
- 30 (G) chamber smoking pipes;
- 31 (H) carburetor smoking pipes;
- 32 (I) electric smoking pipes;
- 33 (J) air-driven smoking pipes;
- 34 (K) chillums;
- 35 (L) bongos;
- 36 (M) ice pipes or chillers;
- 37 (N) any smoking pipe manufactured to disguise its intended purpose;
- 38 (O) wired cigarette papers; or
- 39 (P) cocaine freebase kits.
- 40 (g) "Immediate precursor" means a substance which the board of
41 pharmacy has found to be and by rules and regulations designates as being
42 the principal compound commonly used or produced primarily for use
43 and which is an immediate chemical intermediary used or likely to be

- 1 used in the manufacture of a controlled substance, the control of which
2 is necessary to prevent, curtail or limit manufacture.
- 3 (h) "Isomer" means all enantiomers and diastereomers.
- 4 (i) "Manufacture" means the production, preparation, propagation,
5 compounding, conversion or processing of a controlled substance either
6 directly or indirectly or by extraction from substances of natural origin or
7 independently by means of chemical synthesis or by a combination of
8 extraction and chemical synthesis and includes any packaging or repack-
9 aging of the substance or labeling or relabeling of its container. "Manu-
10 facture" does not include the preparation or compounding of a controlled
11 substance by an individual for the individual's own lawful use or the prep-
12 aration, compounding, packaging or labeling of a controlled substance:
- 13 (1) By a practitioner or the practitioner's agent pursuant to a lawful
14 order of a practitioner as an incident to the practitioner's administering
15 or dispensing of a controlled substance in the course of the practitioner's
16 professional practice; or
- 17 (2) by a practitioner or by the practitioner's authorized agent under
18 such practitioner's supervision for the purpose of or as an incident to
19 research, teaching or chemical analysis or by a pharmacist or medical care
20 facility as an incident to dispensing of a controlled substance.
- 21 (j) "Marijuana" means all parts of all varieties of the plant Cannabis
22 whether growing or not, the seeds thereof, the resin extracted from any
23 part of the plant and every compound, manufacture, salt, derivative, mix-
24 ture or preparation of the plant, its seeds or resin. "Marijuana" does not
25 include the mature stalks of the plant, fiber produced from the stalks, oil
26 or cake made from the seeds of the plant, any other compound, manu-
27 facture, salt, derivative, mixture or preparation of the mature stalks, ex-
28 cept the resin extracted therefrom, fiber, oil or cake or the sterilized seed
29 of the plant which is incapable of germination.
- 30 (k) "*Minor*" means a person under 18 years of age.
- 31 ~~(k)~~ (l) "Narcotic drug" means any of the following whether produced
32 directly or indirectly by extraction from substances of vegetable origin or
33 independently by means of chemical synthesis or by a combination of
34 extraction and chemical synthesis:
- 35 (1) Opium and opiate and any salt, compound, derivative or prepa-
36 ration of opium or opiate;
- 37 (2) any salt, compound, isomer, derivative or preparation thereof
38 which is chemically equivalent or identical with any of the substances
39 referred to in paragraph (1) but not including the isoquinoline alkaloids
40 of opium;
- 41 (3) opium poppy and poppy straw;
- 42 (4) coca leaves and any salt, compound, derivative or preparation of
43 coca leaves and any salt, compound, isomer, derivative or preparation

- 1 thereof which is chemically equivalent or identical with any of these sub-
2 stances, but not including decocainized coca leaves or extractions of coca
3 leaves which do not contain cocaine or ecgonine.
- 4 ~~(m)~~ (m) “Opiate” means any substance having an addiction-forming or
5 addiction-sustaining liability similar to morphine or being capable of con-
6 version into a drug having addiction-forming or addiction-sustaining li-
7 bility. “Opiate” does not include, unless specifically designated as con-
8 trolled under K.S.A. 65-4102, and amendments thereto, the
9 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
10 (dextromethorphan). “Opiate” does include its racemic and levorotatory
11 forms.
- 12 ~~(n)~~ (n) “Opium poppy” means the plant of the species *Papaver som-*
13 *niferum* L. except its seeds.
- 14 ~~(o)~~ (o) “Person” means individual, corporation, government or gov-
15 ernmental subdivision or agency, business trust, estate, trust, partnership,
16 association or any other legal entity.
- 17 ~~(p)~~ (p) “Poppy straw” means all parts, except the seeds, of the opium
18 poppy, after mowing.
- 19 ~~(q)~~ (q) “Possession” means having joint or exclusive control over an
20 item with knowledge of and intent to have such control or knowingly
21 keeping some item in a place where the person has some measure of
22 access and right of control.
- 23 (r) “Presence of a minor” means:
24 (1) A minor is within close proximity to the illegal activity;
25 (2) the illegal activity is conducted in a place where minors can rea-
26 sonably be expected to be present; or
27 (3) in the minor’s dwelling whether or not the minor is present in the
28 dwelling.
- 29 This definition shall not be construed as requiring that a defendant
30 actually be aware of the presence of a minor or a minor actually be aware
31 of the illegal activity.
- 32 ~~(s)~~ (s) “School property” means property upon which is located a
33 structure used by a unified school district or an accredited nonpublic
34 school for student instruction or attendance or extracurricular activities
35 of pupils enrolled in kindergarten or any of the grades one through 12.
36 This definition shall not be construed as requiring that school be in session
37 or that classes are actually being held at the time of the offense or that
38 ~~children~~ minors must be present within the structure or on the property
39 during the time of any alleged criminal act. If the structure or property
40 meets the above definition, the actual use of that structure or property
41 at the time alleged shall not be a defense to the crime charged or the
42 sentence imposed.
- 43 ~~(t)~~ (t) “Simulated controlled substance” means any product which

1 identifies itself by a common name or slang term associated with a con-
2 trolled substance and which indicates on its label or accompanying pro-
3 motional material that the product simulates the effect of a controlled
4 substance.

5 Sec. 2. K.S.A. 2009 Supp. 21-36a05 is hereby amended to read as
6 follows: 21-36a05. (a) It shall be unlawful for any person to cultivate,
7 distribute or possess with the intent to distribute any of the following
8 controlled substances or controlled substance analogs thereof:

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

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

15 (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-
16 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.
17 65-4109, and amendments thereto;

18 (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-
19 4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-
20 4109, and amendments thereto;

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

24 (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-
25 4109, and amendments thereto.

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

29 (c) (1) Violation of subsection (a) is a drug severity level 3 felony,
30 except that:

31 (A) Violation of subsection (a) ~~on or within 1,000 feet of any school~~
32 ~~property~~ is a drug severity level 2 felony *if the offender is 18 or more*
33 *years of age and the controlled substance or controlled substance analog*
34 *is distributed or possessed with the intent to distribute to a minor, in the*
35 *presence of a minor or on or within 1,000 feet of any school property;*

36 (B) violation of subsection (a)(1) is a drug severity level 2 felony if
37 that person has one prior conviction under subsection (a)(1), under K.S.A.
38 65-4161 prior to its repeal, or under a substantially similar offense from
39 another jurisdiction; and

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

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

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

8 Sec. 3. K.S.A. 2009 Supp. 21-36a10 is hereby amended to read as
9 follows: 21-36a10. (a) It shall be unlawful for any person to advertise,
10 market, label, distribute or possess with the intent to distribute:

11 (1) Any product containing ephedrine, pseudoephedrine, red phos-
12 phorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pres-
13 surized ammonia or phenylpropanolamine or their salts, isomers or salts
14 of isomers if the person knows or reasonably should know that the pur-
15 chaser will use the product to manufacture a controlled substance; or

16 (2) any product containing ephedrine, pseudoephedrine or phenyl-
17 propanolamine, or their salts, isomers or salts of isomers for indication of
18 stimulation, mental alertness, weight loss, appetite control, energy or
19 other indications not approved pursuant to the pertinent federal over-
20 the-counter drug final monograph or tentative final monograph or ap-
21 proved new drug application.

22 (b) It shall be unlawful for any person to market, distribute or man-
23 ufacture with intent to distribute any drug paraphernalia, knowing or
24 under circumstances where one reasonably should know that it will be
25 used to manufacture or distribute a controlled substance in violation of
26 K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto.

27 (c) It shall be unlawful for any person to distribute, possess with in-
28 tent to distribute or manufacture with intent to distribute any drug par-
29 aphernalia, knowing or under circumstances where one reasonably should
30 know, that it will be used as such in violation of K.S.A. 2009 Supp. 21-
31 36a01 through 21-36a17, and amendments thereto, except subsection (b)
32 of K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

33 (d) It shall be unlawful for any person to distribute, possess with
34 intent to distribute or manufacture with intent to distribute any drug
35 paraphernalia, knowing, or under circumstances where one reasonably
36 should know, that it will be used as such in violation of subsection (b) of
37 K.S.A. 2009 Supp. 21-36a06, and amendments thereto.

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

39 (2) violation of subsection (b) is a drug severity level 4 felony;

40 (3) violation of subsection (c) is a *severity* level 9, nonperson felony,
41 except that violation of subsection (c) is a drug severity level 4 felony if
42 ~~that person distributes or causes drug paraphernalia to be distributed to~~
43 ~~a person under 18 years of age or within 1,000 feet of school property~~

1 *the offender is 18 or more years of age and distributes or causes drug*
2 *paraphernalia to be distributed to a minor, in the presence of a minor or*
3 *on or within 1,000 feet of any school property;*

4 (4) violation of subsection (d) is a class A nonperson misdemeanor,
5 except that violation of subsection (d) is a ~~nondrug~~ severity level 9, non-
6 person felony if ~~that person distributes or causes drug paraphernalia to~~
7 ~~be distributed to a person under 18 years of age or within 1,000 feet of~~
8 ~~any school property~~ *the offender is 18 or more years of age and distributes*
9 *or causes drug paraphernalia to be distributed to a minor, in the presence*
10 *of a minor or on or within 1,000 feet of any school property.*

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

16 (g) As used in this section, “or under circumstances where one rea-
17 sonably should know” that an item will be used in violation of this section,
18 shall include, but not be limited to, the following:

19 (1) Actual knowledge from prior experience or statements by
20 customers;

21 (2) inappropriate or impractical design for alleged legitimate use;

22 (3) receipt of packaging material, advertising information or other
23 manufacturer supplied information regarding the item’s use as drug par-
24 aphernalia; or

25 (4) receipt of a written warning from a law enforcement or prose-
26 cutorial agency having jurisdiction that the item has been previously de-
27 termined to have been designed specifically for use as drug paraphernalia.

28 Sec. 4. K.S.A. 2009 Supp. 21-36a13 is hereby amended to read as
29 follows: 21-36a13. (a) It shall be unlawful for any person to distribute,
30 possess with the intent to distribute, or manufacture with the intent to
31 distribute any simulated controlled substance.

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

34 (c) (1) Violation of subsection (a) is a nondrug severity level 9, non-
35 person felony, except that violation of subsection (a) is a nondrug severity
36 level 7, nonperson felony if ~~that person is 18 or more years of age and~~
37 ~~the violation occurs on or within 1,000 feet of any school property~~ *the*
38 *offender is 18 or more years of age and distributes or causes drug para-*
39 *phernalia to be distributed to a minor, in the presence of a minor or on*
40 *or within 1,000 feet of any school property;*

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

42 Sec. 5. K.S.A. 2009 Supp. 21-36a01, 21-36a05, 21-36a10 and 21-
43 36a13 are hereby repealed.

1 Sec. 6. This act shall take effect and be in force from and after its
2 publication in the statute book.