

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2277

By Committee on Corrections and Juvenile Justice

2-9

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to definitions in the Kansas criminal code; modifying the definition of
3 possession; amending K.S.A. 2020 Supp. 21-5111 **and 21-5701** and
4 repealing the existing ~~section~~ **sections**.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2020 Supp. 21-5111 is hereby amended to read as
8 follows: 21-5111. The following definitions shall apply when the words
9 and phrases defined are used in this code, except when a particular context
10 clearly requires a different meaning.

11 (a) "Act" includes a failure or omission to take action.

12 (b) "Another" means a person or persons as defined in this code other
13 than the person whose act is claimed to be criminal.

14 (c) "Conduct" means an act or a series of acts; and the accompanying
15 mental state.

16 (d) "Conviction" includes a judgment of guilt entered upon a plea of
17 guilty.

18 (e) "Deception" means knowingly creating or reinforcing a false
19 impression, including false impressions as to law, value, intention or other
20 state of mind. "Deception" as to a person's intention to perform a promise
21 shall not be inferred from the fact alone that such person did not
22 subsequently perform the promise. Falsity as to matters having no
23 pecuniary significance, or puffing by statements unlikely to deceive
24 reasonable persons, is not "deception".

25 (f) "Deprive permanently" means to:

26 (1) Take from the owner the possession, use or benefit of property,
27 without an intent to restore the same;

28 (2) retain property without intent to restore the same or with intent to
29 restore it to the owner only if the owner purchases or leases it back, or
30 pays a reward or other compensation for its return; or

31 (3) sell, give, pledge or otherwise dispose of any interest in property
32 or subject it to the claim of a person other than the owner.

33 (g) "Distribute" means the actual or constructive transfer from one
34 person to another of some item whether or not there is an agency
35 relationship. "Distribute" includes, but is not limited to, sale, offer for sale,
36 furnishing, buying for, delivering, giving, or any act that causes or is

1 intended to cause some item to be transferred from one person to another.
2 "Distribute" does not include acts of administering, dispensing or
3 prescribing a controlled substance as authorized by the pharmacy act of the
4 state of Kansas, the uniform controlled substances act, or otherwise
5 authorized by law.

6 (h) "DNA" means deoxyribonucleic acid.

7 (i) "Domestic violence" means an act or threatened act of violence
8 against a person with whom the offender is involved or has been involved
9 in a dating relationship, or an act or threatened act of violence against a
10 family or household member by a family or household member. "Domestic
11 violence" also includes any other crime committed against a person or
12 against property, or any municipal ordinance violation against a person or
13 against property, when directed against a person with whom the offender is
14 involved or has been involved in a dating relationship or when directed
15 against a family or household member by a family or household member.
16 For the purposes of this definition:

17 (1) "Dating relationship" means a social relationship of a romantic
18 nature. In addition to any other factors the court deems relevant, the trier
19 of fact may consider the following when making a determination of
20 whether a relationship exists or existed: Nature of the relationship, length
21 of time the relationship existed, frequency of interaction between the
22 parties and time since termination of the relationship, if applicable.

23 (2) "Family or household member" means persons 18 years of age or
24 older who are spouses, former spouses, parents or stepparents and children
25 or stepchildren, and persons who are presently residing together or have
26 resided together in the past, and persons who have a child in common
27 regardless of whether they have been married or have lived together at any
28 time. "Family or household member" also includes a man and woman if
29 the woman is pregnant and the man is alleged to be the father, regardless
30 of whether they have been married or have lived together at any time.

31 (j) "Domestic violence offense" means any crime committed whereby
32 the underlying factual basis includes an act of domestic violence.

33 (k) "Dwelling" means a building or portion thereof, a tent, a vehicle
34 or other enclosed space which is used or intended for use as a human
35 habitation, home or residence.

36 (l) "Expungement" means the sealing of records such that the records
37 are unavailable except to the petitioner and criminal justice agencies as
38 provided by K.S.A. 22-4701 et seq., and amendments thereto, and except
39 as provided in this act.

40 (m) "Firearm" means any weapon designed or having the capacity to
41 propel a projectile by force of an explosion or combustion.

42 (n) "Forcible felony" includes any treason, murder, voluntary
43 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated

1 battery, aggravated sodomy and any other felony which involves the use or
2 threat of physical force or violence against any person.

3 (o) "Intent to defraud" means an intention to deceive another person,
4 and to induce such other person, in reliance upon such deception, to
5 assume, create, transfer, alter or terminate a right, obligation or power with
6 reference to property.

7 (p) "Law enforcement officer" means:

8 (1) Any person who by virtue of such person's office or public
9 employment is vested by law with a duty to maintain public order or to
10 make arrests for crimes, whether that duty extends to all crimes or is
11 limited to specific crimes;

12 (2) any officer of the Kansas department of corrections or, for the
13 purposes of K.S.A. 2020 Supp. 21-5412 and ~~subsection (d) of K.S.A. 2020~~
14 ~~Supp. 21-5413(d)~~, and amendments thereto, any employee of the Kansas
15 department of corrections; or

16 (3) any university police officer or campus police officer, as defined
17 in K.S.A. 22-2401a, and amendments thereto.

18 (q) "Obtain" means to bring about a transfer of interest in or
19 possession of property, whether to the offender or to another.

20 (r) "Obtains or exerts control" over property includes, but is not
21 limited to, the taking, carrying away, sale, conveyance, transfer of title to,
22 interest in, or possession of property.

23 (s) "Owner" means a person who has any interest in property.

24 (t) "Person" means an individual, public or private corporation,
25 government, partnership, or unincorporated association.

26 (u) "Personal property" means goods, chattels, effects, evidences of
27 rights in action and all written instruments by which any pecuniary
28 obligation, or any right or title to property real or personal, shall be
29 created, acknowledged, assigned, transferred, increased, defeated,
30 discharged, or dismissed.

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

35 (w) "Property" means anything of value, tangible or intangible, real
36 or personal.

37 (x) "Prosecution" means all legal proceedings by which a person's
38 liability for a crime is determined.

39 (y) "Prosecutor" means the same as prosecuting attorney in K.S.A.
40 22-2202, and amendments thereto.

41 (z) "Public employee" is a person employed by or acting for the state
42 or by or for a county, municipality or other subdivision or governmental
43 instrumentality of the state for the purpose of exercising their respective

1 powers and performing their respective duties, and who is not a "public
2 officer."

3 (aa) "Public officer" includes the following, whether elected or
4 appointed:

5 (1) An executive or administrative officer of the state, or a county,
6 municipality or other subdivision or governmental instrumentality of or
7 within the state;

8 (2) a member of the legislature or of a governing board of a county,
9 municipality, or other subdivision of or within the state;

10 (3) a judicial officer, which shall include a judge of the district court,
11 juror, master or any other person appointed by a judge or court to hear or
12 determine a cause or controversy;

13 (4) a hearing officer, which shall include any person authorized by
14 law or private agreement, to hear or determine a cause or controversy and
15 who is not a judicial officer;

16 (5) a law enforcement officer; and

17 (6) any other person exercising the functions of a public officer under
18 color of right.

19 (bb) "Real property" or "real estate" means every estate, interest, and
20 right in lands, tenements and hereditaments.

21 (cc) "Solicit" or "solicitation" means to command, authorize, urge,
22 incite, request or advise another to commit a crime.

23 (dd) "State" or "this state" means the state of Kansas and all land and
24 water in respect to which the state of Kansas has either exclusive or
25 concurrent jurisdiction, and the air space above such land and water.
26 "Other state" means any state or territory of the United States, the District
27 of Columbia and the Commonwealth of Puerto Rico.

28 (ee) "Stolen property" means property over which control has been
29 obtained by theft.

30 (ff) "Threat" means a communicated intent to inflict physical or other
31 harm on any person or on property.

32 (gg) "Written instrument" means any paper, document or other
33 instrument containing written or printed matter or the equivalent thereof,
34 used for purposes of reciting, embodying, conveying or recording
35 information, and any money, token, stamp, seal, badge, trademark, or other
36 evidence or symbol of value, right, privilege or identification, ~~which~~ *that*
37 is capable of being used to the advantage or disadvantage of some person.

38 **Sec. 2. K.S.A. 2020 Supp. 21-5701 is hereby amended to read as**
39 **follows: 21-5701. As used in K.S.A. 2020 Supp. 21-5701 through 21-**
40 **5717, and amendments thereto: (a) "Controlled substance" means any**
41 **drug, substance or immediate precursor included in any of the**
42 **schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and**
43 **65-4113, and amendments thereto.**

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

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

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

12 **(C) with respect to a particular individual, such individual**
13 **represents or intends the substance to have a stimulant, depressant or**
14 **hallucinogenic effect on the central nervous system substantially**
15 **similar to the stimulant, depressant or hallucinogenic effect on the**
16 **central nervous system of a controlled substance included in the**
17 **schedules designated in K.S.A. 65-4105 or 65-4107, and amendments**
18 **thereto.**

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

20 **(A) A controlled substance;**

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

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

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

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

37 **(e) "Drug" means:**

38 **(1) Substances recognized as drugs in the official United States**
39 **pharmacopeia, official homeopathic pharmacopoeia of the United**
40 **States or official national formulary or any supplement to any of**
41 **them;**

42 **(2) substances intended for use in the diagnosis, cure, mitigation,**
43 **treatment or prevention of disease in humans or animals;**

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

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

6 **(f) "Drug paraphernalia" means all equipment and materials of**
7 **any kind that are used, or primarily intended or designed for use in**
8 **planting, propagating, cultivating, growing, harvesting,**
9 **manufacturing, compounding, converting, producing, processing,**
10 **preparing, testing, analyzing, packaging, repackaging, storing,**
11 **containing, concealing, injecting, ingesting, inhaling or otherwise**
12 **introducing into the human body a controlled substance and in**
13 **violation of this act. "Drug paraphernalia" shall include, but is not**
14 **limited to:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (D) smoking and carburetion masks;

14 (E) roach clips, objects used to hold burning material, such as a
15 marijuana cigarette, that has become too small or too short to be held
16 in the hand;

17 (F) miniature cocaine spoons and cocaine vials;

18 (G) chamber smoking pipes;

19 (H) carburetor smoking pipes;

20 (I) electric smoking pipes;

21 (J) air-driven smoking pipes;

22 (K) chillums;

23 (L) bongs;

24 (M) ice pipes or chillers;

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

27 (O) wired cigarette papers; or

28 (P) cocaine freebase kits.

29 "Drug paraphernalia" shall not include any products, chemicals or
30 materials described in K.S.A. 2020 Supp. 21-5709(a), and amendments
31 thereto.

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

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

40 (i) "Manufacture" means the production, preparation,
41 propagation, compounding, conversion or processing of a controlled
42 substance either directly or indirectly or by extraction from
43 substances of natural origin or independently by means of chemical

1 synthesis or by a combination of extraction and chemical synthesis.

2 "Manufacture" does not include:

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

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

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

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

18 (j) "Marijuana" means all parts of all varieties of the plant
19 Cannabis whether growing or not, the seeds thereof, the resin
20 extracted from any part of the plant and every compound,
21 manufacture, salt, derivative, mixture or preparation of the plant, its
22 seeds or resin. "Marijuana" does not include: (1) The mature stalks of
23 the plant, fiber produced from the stalks, oil or cake made from the
24 seeds of the plant, any other compound, manufacture, salt, derivative,
25 mixture or preparation of the mature stalks, except the resin extracted
26 therefrom, fiber, oil or cake or the sterilized seed of the plant that is
27 incapable of germination; (2) any substance listed in schedules II
28 through V of the uniform controlled substances act; (3) cannabidiol
29 (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-
30 yl]-5-pentyl-1,3-benzenediol); or (4) industrial hemp as defined in
31 K.S.A. 2020 Supp. 2-3901, and amendments thereto, when cultivated,
32 produced, possessed or used for activities authorized by the
33 commercial industrial hemp act.

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

35 (l) "Narcotic drug" means any of the following whether produced
36 directly or indirectly by extraction from substances of vegetable origin
37 or independently by means of chemical synthesis or by a combination
38 of extraction and chemical synthesis:

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

41 (2) any salt, compound, isomer, derivative or preparation thereof
42 that is chemically equivalent or identical with any of the substances
43 referred to in paragraph (1) but not including the isoquinoline

1 alkaloids of opium;

2 (3) opium poppy and poppy straw;

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

8 (m) "Opiate" means any substance having an addiction-forming
9 or addiction-sustaining liability similar to morphine or being capable
10 of conversion into a drug having addiction-forming or addiction-
11 sustaining liability. "Opiate" does not include, unless specifically
12 designated as controlled under K.S.A. 65-4102, and amendments
13 thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan
14 and its salts (dextromethorphan). "Opiate" does include its racemic
15 and levorotatory forms.

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

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

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

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

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

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

43 Sec. ~~2~~ 3. K.S.A. 2020 Supp. 21-5111 ~~is~~ and 21-5701 are hereby

1 repealed.

2 Sec.~~3~~ **4.** This act shall take effect and be in force from and after its
3 publication in the statute book.