

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

1 relationship. "Distribute" includes, but is not limited to, sale, offer for sale,
2 furnishing, buying for, delivering, giving, or any act that causes or is
3 intended to cause some item to be transferred from one person to another.
4 "Distribute" does not include acts of administering, dispensing or
5 prescribing a controlled substance as authorized by the pharmacy act of the
6 state of Kansas, the uniform controlled substances act, or otherwise
7 authorized by law.

8 (h) "DNA" means deoxyribonucleic acid.

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

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

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

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

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

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

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

1 (n) "Forcible felony" includes any treason, murder, voluntary
2 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated
3 battery, aggravated sodomy and any other felony which involves the use or
4 threat of physical force or violence against any person.

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

9 (p) "Law enforcement officer" means:

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

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

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

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

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

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

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

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

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

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

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

41 (y) "Prosecutor" means the same as prosecuting attorney in K.S.A.
42 22-2202, and amendments thereto.

43 (z) "Public employee" is a person employed by or acting for the state

1 or by or for a county, municipality or other subdivision or governmental
2 instrumentality of the state for the purpose of exercising their respective
3 powers and performing their respective duties, and who is not a "public
4 officer."

5 (aa) "Public officer" includes the following, whether elected or
6 appointed:

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

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

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

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

18 (5) a law enforcement officer; and

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

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

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

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

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

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

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

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

1 schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and
2 65-4113, and amendments thereto.

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

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

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

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

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

22 (A) A controlled substance;

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

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

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

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

39 (e) "Drug" means:

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

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

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

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

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

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

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

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

25 (4) testing equipment used or intended for use in identifying or in
26 analyzing the strength, effectiveness or purity of controlled
27 substances{, excluding fentanyl testing strips};

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

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

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

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

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

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

43 (11) hypodermic syringes, needles and other objects used or

1 intended for use in parenterally injecting controlled substances into
2 the human body;

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

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

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

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

15 (D) smoking and carburetion masks;

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

19 (F) miniature cocaine spoons and cocaine vials;

20 (G) chamber smoking pipes;

21 (H) carburetor smoking pipes;

22 (I) electric smoking pipes;

23 (J) air-driven smoking pipes;

24 (K) chillums;

25 (L) bongs;

26 (M) ice pipes or chillers;

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

29 (O) wired cigarette papers; or

30 (P) cocaine freebase kits.

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

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

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

42 (i) "Manufacture" means the production, preparation,
43 propagation, compounding, conversion or processing of a controlled

1 substance either directly or indirectly or by extraction from
2 substances of natural origin or independently by means of chemical
3 synthesis or by a combination of extraction and chemical synthesis.

4 "Manufacture" does not include:

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

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

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

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

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

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

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

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

43 (2) any salt, compound, isomer, derivative or preparation thereof

1 that is chemically equivalent or identical with any of the substances
2 referred to in paragraph (1) but not including the isoquinoline
3 alkaloids of opium;

4 (3) opium poppy and poppy straw;

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

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

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

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

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

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

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

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

1 **controlled substance.**

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

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