

**HOUSE BILL No. 2277**

By Committee on Corrections and Juvenile Justice

2-9

Proposed Amendments to HB 2277 - other definition  
House Corrections and Juvenile Justice  
Prepared by the Office of Revisor of Statutes  
February 18, 2021

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 repealing the  
4 existing section.

21-5701 and

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 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.

Section 2. K.S.A. 2020 Supp. 21-5701 is hereby amended...see attachment

38 Sec. 2. K.S.A. 2020 Supp. 21-5111 is hereby repealed.

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

Renumber sections

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

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

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

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

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

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

(A) A controlled substance;

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

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

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

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

(e) "Drug" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) smoking and carburetion masks;

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

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

(K) chillums;

(L) bongs;

(M) ice pipes or chillers;

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

(O) wired cigarette papers; or

(P) cocaine freebase kits.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) opium poppy and poppy straw;

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

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

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

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

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

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

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

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