

1 AN ACT relating to marijuana.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 218A.1421 (Effective until January 1, 2025) is amended to read
4 as follows:

5 (1) A person is guilty of trafficking in marijuana when he or she knowingly and
6 unlawfully traffics in **more than eight (8) ounces of** marijuana.

7 ~~(2) [Trafficking in less than eight (8) ounces of marijuana is:~~

8 ~~(a) For a first offense a Class A misdemeanor.~~

9 ~~(b) For a second or subsequent offense a Class D felony.~~

10 ~~(3) [Trafficking in **more than** eight (8) ~~or more~~ ounces but less than five (5) pounds~~
11 ~~of marijuana is:~~

12 ~~(a) For a first offense a Class D felony.~~

13 ~~(b) For a second or subsequent offense a Class C felony.~~

14 ~~**(3)** [(4)] Trafficking in five (5) or more pounds of marijuana is:~~

15 ~~(a) For a first offense a Class C felony.~~

16 ~~(b) For a second or subsequent offense a Class B felony.~~

17 ~~[(5) The unlawful possession by any person of eight (8) or more ounces of marijuana~~
18 ~~shall be prima facie evidence that the person possessed the marijuana with the~~
19 ~~intent to sell or transfer it.]~~

20 ➔Section 2. KRS 218A.1421 (Effective January 1, 2025) is amended to read as
21 follows:

22 (1) A person is guilty of trafficking in marijuana when he or she knowingly and
23 unlawfully traffics in **more than eight (8) ounces of** marijuana, and the trafficking
24 is not in compliance with, or otherwise authorized by, KRS Chapter 218B.

25 ~~(2) [Unless authorized by KRS Chapter 218B, trafficking in less than eight (8) ounces~~
26 ~~of marijuana is:~~

27 ~~(a) For a first offense a Class A misdemeanor.~~

1 ~~(b) For a second or subsequent offense a Class D felony.~~

2 ~~(3)~~ Unless authorized by KRS Chapter 218B, trafficking in **more than** eight (8) ~~for~~
3 ~~more~~ ounces but less than five (5) pounds of marijuana is:

4 (a) For a first offense a Class D felony.

5 (b) For a second or subsequent offense a Class C felony.

6 ~~(3)~~~~(4)~~ Unless authorized by KRS Chapter 218B, trafficking in five (5) or more
7 pounds of marijuana is:

8 (a) For a first offense a Class C felony.

9 (b) For a second or subsequent offense a Class B felony.

10 ~~(4)~~~~(5)~~ Unless authorized by KRS Chapter 218B, the unlawful possession by any
11 person of eight (8) or more ounces of marijuana shall be prima facie evidence that
12 the person possessed the marijuana with the intent to sell or transfer it.

13 ~~(6)~~ This section does not apply to:

14 (a) A cannabis business or a cannabis business agent, as defined in KRS
15 218B.010, when acting in compliance with KRS Chapter 218B; or

16 (b) A cardholder, as defined in KRS 218B.010, whose use of medicinal cannabis
17 is in compliance with KRS Chapter 218B.

18 ➔Section 3. KRS 218A.1422 (Effective until January 1, 2025) is amended to read
19 as follows:

20 (1) A person is guilty of **unlawful** possession of marijuana when he or she
21 knowingly and unlawfully possesses marijuana **in excess of:**

22 **(a) Eight (8) ounces; or**

23 **(b) Five (5) plants.**

24 (2) Possession of marijuana is a **Class A**~~[Class B]~~ misdemeanor~~, except that, KRS~~
25 ~~Chapter 532 to the contrary notwithstanding, the maximum term of incarceration~~
26 ~~shall be no greater than forty-five (45) days].~~

27 ➔Section 4. KRS 218A.1422 (Effective January 1, 2025) is amended to read as

1 follows:

2 (1) A person is guilty of unlawful possession of marijuana when he or she knowingly
3 and unlawfully possesses marijuana in excess of eight (8) ounces or five (5) plants,
4 and the possession is not in compliance with, or otherwise authorized by, KRS
5 Chapter 218B.

6 (2) Possession of marijuana is a Class A~~[Class B]~~ misdemeanor~~[- except that, KRS~~
7 ~~Chapter 532 to the contrary notwithstanding, the maximum term of incarceration~~
8 ~~shall be no greater than forty-five (45) days].~~

9 (3) This section does not apply to:

- 10 (a) A cannabis business or a cannabis business agent, as defined in KRS
11 218B.010, when acting in compliance with KRS Chapter 218B; or
12 (b) A cardholder, as defined in KRS 218B.010, whose use of medicinal cannabis
13 is in compliance with KRS Chapter 218B.

14 ➔Section 5. KRS 218A.1423 (Effective until January 1, 2025) is amended to read
15 as follows:

16 (1) A person is guilty of marijuana cultivation when he or she knowingly and
17 unlawfully plants, cultivates, or harvests more than five (5) plants of marijuana
18 with the intent to sell or transfer it.

19 (2) Marijuana cultivation~~[of five (5) or more plants of marijuana]~~ is:

- 20 (a) For a first offense a Class D felony.
21 (b) For a second or subsequent offense a Class C felony.

22 (3) ~~[Marijuana cultivation of fewer than five (5) plants is:~~

- 23 ~~(a) For a first offense a Class A misdemeanor.~~
24 ~~(b) For a second or subsequent offense a Class D felony.~~

25 ~~(4)]~~The planting, cultivating, or harvesting of more than five (5)~~[or more]~~ marijuana
26 plants shall be prima facie evidence that the marijuana plants were planted,
27 cultivated, or harvested for the purpose of sale or transfer.

➔Section 6. KRS 218A.1423 (Effective January 1, 2025) is amended to read as follows:

(1) A person is guilty of marijuana cultivation when he or she knowingly and unlawfully plants, cultivates, or harvests **more than five (5) plants of** marijuana with the intent to sell or transfer it, and the cultivation is not in compliance with, or otherwise authorized by, KRS Chapter 218B.

(2) Unless authorized by KRS Chapter 218B, marijuana cultivation~~[of five (5) or more plants of marijuana]~~ is:

(a) For a first offense a Class D felony.

(b) For a second or subsequent offense a Class C felony.

~~(3) [Unless authorized by KRS Chapter 218B, marijuana cultivation of fewer than five (5) plants is:~~

~~(a) For a first offense a Class A misdemeanor.~~

~~(b) For a second or subsequent offense a Class D felony.~~

~~(4)]~~Unless authorized by KRS Chapter 218B, the planting, cultivating, or harvesting of **more than** five (5)~~[or more]~~ marijuana plants shall be prima facie evidence that the marijuana plants were planted, cultivated, or harvested for the purpose of sale or transfer.

(5) This section does not apply to a cannabis business or a cannabis business agent, as defined in KRS 218B.010, when acting in compliance with KRS Chapter 218B.

➔Section 7. KRS 218A.276 is amended to read as follows:

(1) A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of **unlawful** possession of marijuana pursuant to KRS 218A.1422, synthetic drugs pursuant to KRS 218A.1430, or salvia pursuant to KRS 218A.1451. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated

1 for the person, the court may order him or her to the appropriate treatment or
2 recovery program as indicated by the assessment that will effectively respond to the
3 person's level of risk, criminal risk factors, and individual characteristics as
4 designated by the secretary of the Cabinet for Health and Family Services where a
5 program of treatment or recovery not to exceed ninety (90) days in duration may be
6 prescribed. The person ordered to the designated treatment or recovery program
7 shall present himself or herself for registration and initiation of the treatment or
8 recovery program within five (5) days of the date of sentencing. If, without good
9 cause, the person fails to appear at the designated treatment or recovery program
10 within the specified time, or if any time during the program of treatment or
11 recovery prescribed, the authorized director of the treatment or recovery program
12 finds that the person is unwilling to participate in his or her treatment, the director
13 shall notify the sentencing court. Upon receipt of notification, the court shall cause
14 the person to be brought before it and may continue the order of treatment, or may
15 rescind the treatment order and impose a sentence for the possession offense. Upon
16 discharge of the person from the treatment or recovery program by the secretary of
17 the Cabinet for Health and Family Services, or his or her designee, prior to the
18 expiration of the ninety (90) day period or upon satisfactory completion of ninety
19 (90) days of treatment, the person shall be deemed finally discharged from
20 sentence. The secretary, or his or her designee, shall notify the sentencing court of
21 the date of such discharge from the treatment or recovery program.

22 (2) The secretary of the Cabinet for Health and Family Services, or his or her designee,
23 shall inform each court of the identity and location of the treatment or recovery
24 program to which a person sentenced by that court under this chapter shall be
25 initially ordered.

26 (3) In the case of a person ordered to an inpatient facility for treatment pursuant to this
27 chapter, transportation to the facility shall be provided by order of the court when

- 1 the court finds the person unable to convey himself or herself to the facility within
2 five (5) days of sentencing by reason of physical infirmity or financial incapability.
- 3 (4) The sentencing court shall immediately notify the designated treatment or recovery
4 program of the sentence and its effective date.
- 5 (5) The secretary of the Cabinet for Health and Family Services, or his or her designee,
6 may authorize transfer of the person from the initially designated treatment or
7 recovery program to another treatment or recovery program for therapeutic
8 purposes. The sentencing court shall be notified of termination of treatment by the
9 terminating treatment or recovery program and shall be notified by the secretary or
10 his or her designee of the new treatment or recovery program to which the person
11 was transferred.
- 12 (6) Responsibility for payment for treatment services rendered to persons pursuant to
13 this section shall be as under the statutes pertaining to payment by patients and
14 others for services rendered by the Cabinet for Health and Family Services, unless
15 the person and the treatment or recovery program shall arrange otherwise.
- 16 (7) None of the provisions of this section shall be deemed to preclude the court from
17 exercising its usual discretion with regard to ordering probation, presumptive
18 probation, or conditional discharge.
- 19 (8) In the case of any person who has been convicted of unlawful possession of
20 marijuana, synthetic drugs, or salvia, the court may set aside and void the
21 conviction upon satisfactory completion of treatment, probation, or other sentence,
22 and issue to the person a certificate to that effect. A conviction voided under this
23 subsection shall not be deemed a first offense for purposes of this chapter or
24 deemed a conviction for purposes of disqualifications or disabilities imposed by law
25 upon conviction of a crime.
- 26 (9) If the court voids a conviction under this section, the court shall order the sealing of
27 all records in the custody of the court and any records in the custody of any other

1 agency or official, including law enforcement records, except as provided in KRS
2 27A.099. The court shall order the sealing on a form provided by the
3 Administrative Office of the Courts. Every agency with records relating to the
4 arrest, charge, or other matters arising out of the arrest or charge that is ordered to
5 seal records, shall certify to the court within sixty (60) days of the entry of the order
6 that the required sealing action has been completed.

7 (10) After the sealing of the record, the proceedings in the matter shall not be used
8 against the defendant. The court and other agencies shall reply to any inquiry that
9 no record exists on the matter. The person whose record is sealed shall not have to
10 disclose the fact of the record or any matter relating thereto on an application for
11 employment, credit, or other type of application.

12 (11) Inspection of the sealed records may thereafter be permitted by the court or upon a
13 motion by the person who is the subject of the records and only to those persons
14 named in the motion.

15 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO
16 READ AS FOLLOWS:

17 **(1) As used in this section:**

18 **(a) "Eligible conviction" means any criminal conviction for a violation of KRS**
19 **218A.1421(2), 218A.1422, or 218A.1423(5), or a conviction for an offense**
20 **prior to July 14, 1992, for possession, cultivation, or trafficking of**
21 **marijuana which was punishable by not more than five (5) years'**
22 **incarceration;**

23 **(b) "Expungeable conviction" means any eligible conviction for which the**
24 **available record does not indicate that the offense involved a quantity of**
25 **marijuana in excess of the personal use quantity of cannabis; and**

26 **(c) "Personal use quantity of marijuana" means:**
27 **1. Eight (8) ounces or less of marijuana; or**

1 2. Five (5) or fewer plants of marijuana.

2 (2) The Administrative Office of the Courts shall establish a process for identifying
3 all eligible convictions and communicating each eligible conviction to the court
4 in which the conviction occurred, and to the office of the Commonwealth's
5 attorney or county attorney that prosecuted the case. All eligible convictions shall
6 be communicated to the office of the Commonwealth's attorney or county
7 attorney that prosecuted the case within ninety (90) days of the effective date of
8 this Act.

9 (3) Within ninety (90) days of the receipt of an eligible conviction, the office of the
10 Commonwealth's attorney or county attorney that prosecuted the case may file
11 with the court in which the conviction occurred an objection to the expungement
12 of any eligible conviction which is not an expungeable conviction.

13 (4) Within two hundred (200) days of the effective date of this Act, for any eligible
14 conviction to which the office of the Commonwealth's attorney or county attorney
15 that prosecuted the case has not filed an objection, the court shall order the
16 judgment vacated, dismiss with prejudice any charges which are eligible for
17 expungement under this section, and order expunged all records in the custody of
18 the court and any records in the custody of any other agency or official, including
19 law enforcement records.

20 (5) (a) Any person who has an eligible conviction prior to the effective date of this
21 Act and whose records have not been expunged pursuant to subsection (4)
22 of this section may, at any time after one (1) year after the effective date of
23 this Act, petition the court in which the conviction occurred to expunge all
24 eligible convictions.

25 (b) There shall be no filing fee for a petition pursuant to this subsection.

26 (c) An expungement petition brought under this subsection shall be served
27 upon the office of the county attorney or Commonwealth's attorney that

1 prosecuted the case, and the court shall notify the county attorney or
2 Commonwealth's attorney of an opportunity for a response to the petition.
3 The response shall be filed within ninety (90) days after the filing of the
4 petition.

5 (d) If a response is not filed within ninety (90) days after the filing of the
6 petition, the court shall order the judgment vacated and dismiss with
7 prejudice any charges which are eligible for expungement under this
8 section.

9 (e) If a response is filed objecting to the expungement of the eligible conviction,
10 the court shall, within ninety (90) days of the receipt of the objection,
11 schedule a hearing on the petition. If, at the hearing, the court finds that the
12 eligible conviction is an expungeable conviction, the court shall order the
13 judgment vacated and dismiss with prejudice any charges which are eligible
14 for expungement under this section.

15 (6) Upon entry of an order vacating and expunging a conviction, the original
16 conviction shall be vacated and the record shall be expunged. The court and
17 other agencies shall cause records to be deleted or removed from their computer
18 systems so that the matter shall not appear on official state-performed
19 background checks. The court and other agencies shall reply to any inquiry that
20 no record exists on the matter. The person whose record is expunged shall not
21 have to disclose the fact of the record or any matter relating thereto on an
22 application for employment, credit, or other type of application. If the expunged
23 conviction was a felony and the person is not prohibited from voting for any other
24 reason, the person's ability to vote shall be restored and the person may register
25 to vote.

26 (7) The Administrative Office of the Courts shall, by December 1, 2025, provide a
27 report to the Legislative Research Commission and the Interim Joint Committee

1 on Judiciary providing data by county on the numbers of eligible convictions
2 identified, objections filed with the court, and the number of expungements
3 granted.

4 (8) This section shall be retroactive.

5 ➔Section 9. Sections 2, 4, and 6 of this Act take effect January 1, 2025.