

## HOUSE BILL No. 2216

By Committee on Corrections and Juvenile Justice

2-5

---

AN ACT concerning crimes and punishments; relating to controlled substances, acts within 1,000 feet of certain property; amending K.S.A. 65-4161 and 65-4163 and K.S.A. 2002 Supp. 21-4717 and repealing the existing sections.

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

Section 1. K.S.A. 65-4161 is hereby amended to read as follows: 65-4161. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; dispense or compound any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (b), (c) and (d), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) If any person who violates this section has one prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then that person shall be guilty of a drug severity level 2 felony.

(c) If any person who violates this section has two or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty of a drug severity level 1 felony.

(d) Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection (a), such person shall be guilty of a drug severity level 2 felony if such person is 18 or more years of age and the substances involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any *licensed day care, public park, playground or school* 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.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the

1 offense or that children must be present within the structure or on the  
2 property during the time of any alleged criminal act. If the structure or  
3 property meets the description above, the actual use of that structure or  
4 property at the time alleged shall not be a defense to the crime charged  
5 or the sentence imposed.

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

9 (f) For purposes of the uniform controlled substances act, the pro-  
10 hibitions contained in this section shall apply to controlled substance an-  
11 alogos as defined in subsection (bb) of K.S.A. 65-4101 and amendments  
12 thereto.

13 (g) The provisions of this section shall be part of and supplemental  
14 to the uniform controlled substances act.

15 Sec. 2. K.S.A. 65-4163 is hereby amended to read as follows: 65-  
16 4163. (a) Except as authorized by the uniform controlled substances act,  
17 it shall be unlawful for any person to sell, offer for sale or have in such  
18 person's possession with the intent to sell, deliver or distribute; cultivate;  
19 prescribe; administer; deliver; distribute; dispense or compound:

20 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105,  
21 subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109  
22 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

23 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-  
24 section (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A.  
25 65-4109, and amendments thereto;

26 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-  
27 4105, and amendments thereto or designated in subsection (g) of K.S.A.  
28 65-4107 and amendments thereto or designated in subsection (g) of  
29 K.S.A. 65-4109 and amendments thereto;

30 (4) any substance designated in subsection (g) of K.S.A. 65-4105, and  
31 amendments thereto, and designated in subsection (c), (d), (e), (f) or (g)  
32 of K.S.A. 65-4111, and amendments thereto; or

33 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-  
34 4109, and amendments thereto.

35 Except as provided in subsection (b), any person who violates this sub-  
36 section shall be guilty of a drug severity level 3 felony.

37 (b) Notwithstanding any other provision of law, upon conviction of  
38 any person pursuant to subsection (a) for an offense in which the sub-  
39 stances involved were possessed with intent to sell, sold or offered for  
40 sale in or on, or within 1,000 feet of any *licensed day care, public park,*  
41 *playground* or school property upon which is located a structure used by  
42 a unified school district or an accredited nonpublic school for student  
43 instruction or attendance or extracurricular activities of pupils enrolled in

1 kindergarten or any of the grades one through 12 and such person is 18  
2 or more years of age, such person shall be guilty of a drug severity level  
3 2 felony.

4 Nothing in this subsection shall be construed as requiring that school  
5 be in session or that classes are actually being held at the time of the  
6 offense or that children must be present within the structure or on the  
7 property during the time of any alleged criminal act. If the structure or  
8 property meets the description above, the actual use of that structure or  
9 property at the time alleged shall not be a defense to the crime charged  
10 or the sentence imposed.

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

14 (d) For purposes of the uniform controlled substances act, the pro-  
15 hibitions contained in this section shall apply to controlled substance an-  
16 alogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments  
17 thereto.

18 (e) The provisions of this section shall be part of and supplemental  
19 to the uniform controlled substances act.

20 Sec. 3. K.S.A. 2002 Supp. 21-4717 is hereby amended to read as  
21 follows: 21-4717. (a) The following aggravating factors, which apply to  
22 drug crimes committed on or after July 1, 1993, under the sentencing  
23 guidelines system, may be considered in determining whether substantial  
24 and compelling reasons for departure exist:

25 (1) The crime was committed as part of a major organized drug man-  
26 ufacture, production, cultivation or delivery activity. Two or more of the  
27 following nonexclusive factors constitute evidence of major organized  
28 drug manufacture, production, cultivation or delivery activity:

29 (A) The offender derived a substantial amount of money or asset  
30 ownership from the illegal drug sale activity.

31 (B) The presence of a substantial quantity or variety of weapons or  
32 explosives at the scene of arrest or associated with the illegal drug activity.

33 (C) The presence of drug transaction records or customer lists that  
34 indicate a drug sale activity of major size.

35 (D) The presence of manufacturing or distribution materials such as,  
36 but not limited to, drug recipes, precursor chemicals, laboratory equip-  
37 ment, lighting, irrigation systems, ventilation, power-generation, scales or  
38 packaging material.

39 (E) Building acquisitions or building modifications including but not  
40 limited to painting, wiring, plumbing or lighting which advanced or fa-  
41 cilitated the commission of the offense.

42 (F) Possession of large amounts of illegal drugs or substantial quan-  
43 tities of controlled substances.

1 (G) A showing that the offender has engaged in repeated criminal  
2 acts associated with the manufacture, production, cultivation or delivery  
3 of controlled substances.

4 (H) *The offender manufactured or attempted to manufacture con-*  
5 *trolled substances in the immediate presence of a person under 18 years*  
6 *of age.*

7 (2) The offender possessed illegal drugs:

8 (A) With intent to sell, which were sold or were offered for sale to a  
9 person under 18 years of age; or

10 (B) with the intent to sell, deliver or distribute or which were sold or  
11 offered for sale in the immediate presence of a person under 18 years of  
12 age.

13 (3) The offender, 18 or more years of age, employs, hires, uses, per-  
14 suades, induces, entices or coerces any individual under 16 years of age  
15 to violate or assist in avoiding detection or apprehension for violation of  
16 any provision of the uniform controlled substances act, K.S.A. 65-4101 *et*  
17 *seq.* and amendments thereto or any attempt, conspiracy or solicitation  
18 as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments  
19 thereto to commit a violation of any provision of the uniform controlled  
20 substances act regardless of whether the offender knew the age of the  
21 individual under 16 years of age.

22 (4) The offender was incarcerated during the commission of the  
23 offense.

24 (b) In determining whether aggravating factors exist as provided in  
25 this section, the court shall review the victim impact statement.

26 Sec. 4. K.S.A. 65-4161 and 65-4163 and K.S.A. 2002 Supp. 21-4717  
27 are hereby repealed.

28 Sec. 5. This act shall take effect and be in force from and after its  
29 publication in the statute book.

30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43