

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:37 A.M. on February 26, 2008, in Room 123-S of the Capitol.

All members were present except:

Terry Bruce- excused
Barbara Allen- excused
Donald Betts- excused
Les Donovan arrived, 9:40 A.M.
Phil Journey arrived, 9:43 A.M.
Derek Schmidt arrived, 9:39 A.M.

Committee staff present:

Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Hon. John White, Recorder, Kansas Criminal Code Recodification Commission
Jeffrey Brandau, Kansas Bureau of Investigation

Others attending:

See attached list.

The Chairman opened the hearing on **SB 640–Recodification of certain drug crimes.**

Judge John White testified in support, stating **SB 640** is the result of the Kansas Criminal Code Recodification Commission's work on recodifying Kansas drug crimes (Attachment 1). Judge White reviewed the recommended changes, indicating the only substantive change is to move of drug crimes from Chapter 65 to Chapter 21 of the Kansas Statutes.

Jeffrey Brandau spoke in support, stating while **SB 640** is a recodification of current status, the KBI has concerns regarding the New Section 17 and would prefer to have this section deleted (Attachment 2). In addition, Mr Brandeau suggested changes to the listing of drug paraphernalia and controlled substances. The Chairman indicated **SB 640** is current law and is not intended to make substantive changes to existing law. He recommended that Mr. Brandeau arrange to file a bill in the next legislative session to make the changes requested so the committee can have a hearing on those changes and anyone having an interest in those changes would be able to testify. Chairman Vratil thanked Mr. Brandeau for bringing these points to the committee's attention.

There being no further conferees, the hearing on **SB 640** was closed.

The Chairman called for final action on **SB 565–The state fair board, employees, background investigations.** The Chairman reviewed the balloon amendment distributed at yesterday's committee meeting (Attachment 3).

Senator Goodwin moved, Senator Donovan seconded, to amend SB 565 as reflected in the balloon amendment. Motion carried.

Senator Schmidt moved, Senator Goodwin seconded, to recommend SB 565 as amended, favorably for passage.

The Chairman called for final action on **SB 581–Juvenile offender, possession of alcohol.** Senator Vratil reviewed the bill, there were no proposed amendments.

Senator Journey moved, Senator Lynn seconded, to recommend SB 581 favorably for passage. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:37 A.M. on February 26, 2008, in Room 123-S of the Capitol.

The Chairman called for final action on **SB 582–Driving under the influence, ignition interlock and impoundment of vehicle.** The Chairman reviewed the bill, there were no proposed amendments.

Senator Journey moved, Senator Lynn seconded, to recommend SB 582 favorably for passage. Motion carried.

The Chairman called for final action on **SB 588–Traffic in contraband in a correctional facility.** Senator Vratil reviewed the bill and proposed balloon amendments (Attachments 4 & 5).

Senator Donovan moved, Senator Goodwin seconded, to amend SB 588 as reflected in the proposed balloon amendments. Motion carried.

Senator Goodwin moved, Senator Schmidt seconded, to recommend SB 588 as amended, favorably for passage. Motion carried.

The Senator announced that after discussions with interested parties on both sides of the issue, he has decided not to work either **SB 589** or **SB 547**. He will ask the Senate President to bless **SB 589** since the interested parties indicated they would like to continue discussions in an effort to reach a compromise.

The meeting adjourned at 10:12 A.M. The next scheduled meeting is February 27, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-26-08

NAME	REPRESENTING
Mike Hein	Hein Law Firm.
Mike Reecht	Quest Cherokee
Steve Johnson	ONEOK, Inc.
Bob Vancrum	Quest Cherokee
Patricia Hahnel	Adaska
Jane Carter	KOSE, (AFT/AFSCME)
Margy Petty	KCC
John McCannon	KCC
Tom Stratton	KCC
Jeff B. Hendon	KSA
ERIK SARTORIUS	City of Overland Park
DAVID BLEAKLEY	EKOGA - COLT ENERGY
NICK POWELL	EKOGA - COLT ENERGY
Miss Edman	WPA
Matthew Goddard	Heartland Community Bankers Assoc.
Kathy Olsen	Ks Bankers Assn.
Mike Reecht	Quest Cherokee



Kansas Criminal Code Recodification Commission

Prof. Tom Stacy, Chair
Ed Klumpp, Co-Chair
Sen. John Vratil
Sen. David Haley
Rep. Lance Kinzer
Rep. Paul Davis
Rep. Jan Pauls
Hon. Christel Marquardt
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Hon. John W. White, Reporter
Brett A. Watson, staff attorney

Ed Collister
Prof. Michael Kaye
Timothy Madden
Steve Opat
Kim Parker
Jacqie Spradling
Debra Wilson

TO: Senate Judiciary Committee

FROM: Kansas Criminal Code Recodification Committee

Appearing:

Prof. Tom Stacy, Co-Chairman
Ed Klumpp, Co-Chairman
John W. White, Reporter
Brett Watson, Staff Attorney

We appear on behalf of the Kansas Criminal Code Recodification Commission to speak in support of Senate Bill 640, New Sections 1-18. New Sections 1 through 18 represent the work of the KCCRC in recodifying Kansas drug crimes.

The KCCRC's work proposes that the legislature make the following changes to present drug crimes statutes:

- To move drug crimes from Chapter 65 to Chapter 21 of the Kansas Statutes, and
- To group existing statutes into the core offenses of manufacture, distribution, and possession without revising existing Kansas law.

You will find these proposed changes in "Appendix A".

The KCCRC's work also makes recommendations to the legislature for substantive changes to current drug crimes statutes. Those changes are included in "Appendix B".

Move drug crimes from Chapter 65 to Chapter 21 of the Kansas Statutes-

First, speaking to the proposal moving drug crimes from Chapter 65 to Chapter 21. Cases involving drug crimes have a major impact on the work of law enforcement, the courts, the department of corrections, and other agencies of the criminal justice system. Although drug convictions account for approximately

25% of our prison population drug offenses are not in the criminal code but are found in Chapter 65 of Kansas statutes in the section generally devoted to regulation of pharmacists.

Highly technical definitions included in the definitions statute (K.S.A. 65-4101) are not easily understood by prosecutors, defense attorneys, judges, and jurors. Conduct considered criminal need not comport with highly technical definitions understood by chemists and pharmacists. Moving the drug offenses to the criminal code and providing traditional and readily understandable definitions of criminal conduct would improve and modernize our drug laws.

The Commission recommends that Chapter 65 drug offenses be moved to and become a part of the Kansas Criminal Code, Chapter 21 of the Kansas Statutes.

Group existing statutes into the core offenses of manufacture, distribution, and possession without revising existing Kansas law (Appendix A)-

Serious drug felonies currently are not grouped together in Chapter 65 and instead appear in different portions of that Chapter. Our proposed recodification groups all of these offenses together. In addition, it orders these offenses around the core offenses of manufacture, distribution, and possession. These changes make the drug provisions more coherent, clear, and user-friendly without revising current Kansas law.

The proposed statutes in Appendix A are incorporated into New Sections 1-18 of SB 640. In Appendix A there is a "Comment" section following each statute that enumerates the existing statute(s) included in the proposed statute and explains the reasons for the revisions that are made.

In preparing New Sections 1-18, the Commission has solicited input from the KBI technology section, from Kyle Smith, formerly of the Kansas Bureau of Investigation, and from the Kansas Board of Pharmacy. Kyle Smith presented testimony to the Commission. His comments provided valuable assistance to the Commission in our work on the drug crimes statutes. He has been supportive of our proposals.

We have also met with a representative from the Kansas Board of Pharmacy. The Board of Pharmacy has no objections to our proposals.

In our work on drug crimes, and other crimes, we have met with members of the KBI technology section. We have attempted to avoid any changes that would affect the KBI's crime reporting and data collection systems.

This summarizes our work on New Sections 1-18 of Senate Bill 640. We invite your questions.

Article 5.

21-501 Definitions.

21-502 Effective date and scope of this act.

21-503 Unlawful manufacturing or attempted manufacturing of a controlled substance or a controlled substance analog.

21-504 Same; costs and expenses.

21-505 Unlawful distribution and cultivation of a controlled substance or a controlled substance analog.

21-506 Unlawful possession of a controlled substance or a controlled substance analog.

21-507 Unlawful manufacture, distribution, cultivation, or possession of a controlled substance using a communication facility.

21-508 Unlawfully obtaining and selling a prescription drug.

21-509 Unlawful possession of drug paraphernalia and certain precursors.

21-510 Unlawful distribution of drug paraphernalia and certain precursors.

21-511 Factors to consider when determining what is drug paraphernalia.

21-512 Unlawful abuse of toxic vapors.

21-513 Unlawful distribution of a simulated controlled substance.

21-514 Unlawful representation that a noncontrolled substance is a controlled substance.

21-515 Unlawful administration of a substance.

21-516 Treatment of a controlled substance analog.

21-517 Unlawful acts involving proceeds derived from violations of this article.

21-518 Uniformity of article.

Comment

Article 5.

Drug Crimes

21-501 Definitions.

- (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 to these sections.
- (b) (1) "Controlled substance analog" means a substance that is intended for human consumption, and:
 - (A) The chemical structure of which 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) which 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, which the individual represents or intends 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 which 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, the Uniform Controlled Substances Act, or otherwise authorized by law.
- (e) "Drug" means:
 - (1) Substances recognized as drugs in the official United States pharmacopoeia, 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 man or animals;

- (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 - (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subsection. It does not include devices or their components, parts or accessories.
- (f) "Drug paraphernalia" means all equipment and materials of any kind which 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 article. "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 which 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 which 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, which 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, phenylacetone (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 or intended to be used, 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.
- (g) "Immediate precursor" means a substance which the Board of Pharmacy has found to be and by rule and regulation designates as being the principal compound commonly used or produced primarily for use and which 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 and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include 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:
- (1) 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
 - (2) 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.
- (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. It does not include 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 which is incapable of germination.
- (k) "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 which is chemically equivalent or identical with any of the substances referred to in clause (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 which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
- (l) "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. It 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). It does include its racemic and levorotatory forms.
- (m) "Opium poppy" means the plant of the species *Papaver somniferum l.* except its seeds.
- (n) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.
- (o) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- (p) "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.
- (q) "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.
- (r) "Simulated controlled substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

Comment

This section incorporates K.S.A. 65-4101, 65-4150, and 65-7003.

In 2007, about 23% of the Kansas prison population was serving sentences for drug offenses and 31% of new prison admissions were the result of drug convictions. These statistics indicate that a substantial portion of criminal prosecutions involve drug offenses currently in Chapter 65. These offenses are not part of the civil regulatory regime of the Uniform Controlled Substances Act. In order to promote efficiency, the criminal provisions have been moved from Chapter 65 to Chapter 21. Prosecutors, defense counsel, and the general public should find it easier to locate these provisions if they are recorded with the other major criminal statutes. The Commission consulted with the Board of Pharmacy and it indicated that removal of these provisions from Chapter 65 would not effect its mission.

In order to clarify the code, the terms "deliver" and "delivery" have been omitted. The definition of "distribute" combines the terms "deliver" and "distribute" into one comprehensive term. The previous references to administering and dispensing in the definition of "distribute" are unnecessary as they are acts authorized by the Pharmacy Act. The phrase "including but not limited to transfer by sale or offer

for sale," has been added to emphasize the sales element and avoid repetition of these terms throughout the code.

A definition of "possession" has been added which codifies the one included in PIK 67.13-D. The meaning of the term is an important element in many drug and paraphernalia cases and it appears in the text of several statutes, yet the legislature has never defined the term. The proposed definition allows the legislature to adopt the meaning of the term as it has been defined by the Kansas courts.

A definition of "school property" has been added. Recent amendments to the drug code enhanced the criminal penalties for crimes committed with 1,000 feet of a school. The definition is added to avoid repetition throughout the code.

21-502 Effective date and scope of this act.

- (a) Prosecutions for crimes committed prior to the effective date of this Act shall be governed by the law in effect at the time the crime was committed. For purposes of this section, a crime was committed prior to the effective date of this Act if any element of the crime occurred prior thereto.
- (b) The prohibitions of this article shall apply unless the conduct prohibited is authorized by the Pharmacy Act, the Uniform Controlled Substances Act, or otherwise authorized by law.

Comment

Subsection (a) provides that the applicable law shall be the law in effect at the time of the defendant's conduct. It relies on the principle of *Chiles v. State*, 254 Kan. 888, 897 (1994), that a statute operates prospectively unless its language clearly indicates that the legislature intends for it to apply retroactively.

Subsection (b) is meant to avoid the unnecessary repetition of the phrase, "unless authorized by the Uniform Controlled Substances Act," or similar language. It is also meant to emphasize that certain activities are authorized in statutes other than the Uniform Controlled Substances Act. For example, the acts of administering and dispensing drugs are authorized by the Pharmacy Act, K.S.A. 65-1626a.

1 KCCRC
2 1-25-08

3
4 **21-503 Unlawful manufacturing or attempted manufacturing of a controlled substance or a controlled**
5 **substance analog.**

- 6 (a) It shall be unlawful for any person to manufacture any controlled substance or controlled
7 substance analog.
8 (b) Violation or attempted violation of subsection (a) shall be a drug severity level 1 felony. The
9 provisions of subsection (d) of K.S.A. 21-3301, and amendments thereto, shall not apply to a
10 violation of attempting to unlawfully manufacture any controlled substance pursuant to this
11 section.
12 (c) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or
13 surety, unless the court determines, on the record, that the defendant is not likely to re-
14 offend, the court imposes pretrial supervision, or the defendant agrees to participate in a
15 licensed or certified drug treatment program.
16 (d) The sentence of a person who violates this section shall not be subject to statutory provisions
17 for suspended sentence, community service work, or probation.
18 (e) The sentence of a person who violates this section or K.S.A. 65-4159, which was applicable
19 before the effective date of this Act, shall not be reduced because these sections prohibit
20 conduct identical to that prohibited by 21-505, K.S.A. 65-4161, or 65-4163, and amendments
21 thereto.

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23 Comment

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25 This section incorporates K.S.A. 65-4159 and 65-4159a.

26
27 The language has been simplified to reduce unnecessary wordiness. For example, the phrase “any
28 person violating the provisions of this section with respect to the unlawful manufacturing or attempting
29 to unlawfully manufacture any controlled substance or controlled substance analog, upon conviction, is
30 guilty of a drug severity level 1 felony” has been simplified to “Violation or attempted violation of
31 subsection (a) shall be a drug severity level 1 felony.” Throughout the code the language has been
32 similarly simplified. This clarification makes the code easier to read and it should reduce the space
33 needed to print the code in the statute books.

34
35 Subsection (d) incorporates K.S.A. 65-4159a, which responds to and overturns *State v. McAdam*, 277
36 Kan. 136 (2004). The revision eliminates the need for a separate statute.

1 KCCRC
2 1-25-08

3
4 **21-504 Same; costs and expenses.**

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6 **All costs and expenses resulting from the seizure, disposition and decontamination of an unlawful**
7 **manufacturing site shall be assessed as costs against the defendant.**

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Comment

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11 This section incorporates K.S.A. 65-4158.



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4 **21-505 Unlawful distribution and cultivation of a controlled substance or a controlled substance**
5 **analog.**

- 6
7 **(a) It shall be unlawful for any person to cultivate, distribute, or possess with the intent to**
8 **distribute any of the following controlled substances or controlled substance analogs thereof:**
9 **(1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1),**
10 **(d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto;**
11 **(2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A.**
12 **65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and**
13 **amendments thereto;**
14 **(3) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4)**
15 **or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments**
16 **thereto;**
17 **(4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and**
18 **amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and**
19 **amendments thereto or designated in subsection (g) of K.S.A. 65-4109 and**
20 **amendments thereto;**
21 **(5) any substance designated in subsection (g) of K.S.A. 65-4105, and amendments**
22 **thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and**
23 **amendments thereto;**
24 **(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments**
25 **thereto.**
26 **(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a**
27 **controlled substance or a controlled substance analog designated in K.S.A. 65-4113.**
28 **(c) (1) Violation of subsection (a) shall be a drug severity level 3 felony; except that**
29 **(2) violation of subsection (a) on or within 1,000 feet of any school property shall be a**
30 **drug severity level 2 felony;**
31 **(3) violation of subsection (a)(1) shall be a drug severity level 2 felony if that person has**
32 **one prior conviction under that subsection, under K.S.A. 65-4161, or under a**
33 **substantially similar offense from another jurisdiction; and**
34 **(4) violation of subsection (a)(1) shall be a drug severity level 1 felony if that person has**
35 **two prior convictions under that subsection, under K.S.A. 65-4161, or under a**
36 **substantially similar offense from another jurisdiction;**
37 **(5) violation of subsection (b) shall be a class A nonperson misdemeanor; except that**
38 **(6) violation of subsection (b) shall be a drug severity level 4 felony if the substance was**
39 **distributed to or possessed with the intent to distribute to a child under 18 years of**
40 **age.**
41 **(d) It shall not be a defense to charges arising under this section that the defendant was acting in**
42 **an agency relationship on behalf of any other party in a transaction involving a controlled**
43 **substance.**
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Comment

This section incorporates K.S.A. 65-4161, 65-4163, and 65-4164.

By combining these three statutes, the major distribution offenses will all be under a single statute. It will be easier to refer to the code for these offenses and it will be unnecessary to repeat certain phrases and sections, such as the section which eliminates the agency defense.

Subsection (a) defines the offense. In the current three statutes, several terms are repeated, such as "sell," "offer for sale," "deliver," "distribute," "prescribe," "administer," "dispense," or "possess with the intent to sell," "deliver" or "distribute." Several of these terms have been eliminated because they are redundant under the revised definition of "distribute." It is unnecessary to include "prescribe," "administer," or "dispense" as these are, by definition, lawful acts under the Uniform Controlled Substances Act and the Pharmacy Act. In a case where a physician or pharmacist prescribes, administers, or dispenses a controlled substance, without proper authorization, they would fall under the broad definition of "distribute," which includes any transfer of a controlled substance. The term "cultivate" has been retained as it has a distinct meaning that does not fall under the definition of distribution.

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4 **21-506 Unlawful possession of a controlled substance or a controlled substance analog.**

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6 (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any
7 stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments
8 thereto, or a controlled substance analog thereof.
- 9 (b) It shall be unlawful for any person to possess any of the following controlled substances or
10 controlled substance analogs thereof:
- 11 (1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A.
12 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111;
 - 13 (2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4)
14 or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments
15 thereto;
 - 16 (3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105 and
17 amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and
18 amendments thereto or designated in subsection (g) of K.S.A. 65-4109 and
19 amendments thereto;
 - 20 (4) any substance designated in subsection (g) of K.S.A. 65-4105, and amendments
21 thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and
22 amendments thereto; or
 - 23 (5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments
24 thereto.
- 25 (c) (1) Violation of subsection (a) shall be a drug severity level 4 felony;
26 (2) violation of subsection (b) shall be a class A nonperson misdemeanor; except that
27 (3) violation of subsection (b) shall be a drug severity level 4 felony if that person has a
28 prior conviction under that subsection, under K.S.A. 65-4162, under a substantially
29 similar offense from another jurisdiction, or under any city ordinance or county
30 resolution for a substantially similar offense if the substance involved was marijuana
31 or tetrahydrocannabinol as designated in K.S.A. 65-4105(d), and amendments thereto.
- 32 (d) It shall not be a defense to charges arising under this section that the defendant was acting in
33 an agency relationship on behalf of any other party in a transaction involving a controlled
34 substance.

35
36 Comment

37
38 This section incorporates K.S.A. 65-4160 and 65-4162 into one statute. As with section 21-505,
39 combining the two statutes promotes clarity and avoids unnecessary repetition.

1-14

1 KCCRC
2 1-25-08

3
4 **21-507 Unlawful manufacture, distribution, cultivation, or possession of a controlled substance using**
5 **a communication facility.**

6
7 (a) It shall be unlawful for any person to knowingly or intentionally use any communication
8 facility:

9 (1) In committing, causing, or facilitating the commission of any felony under 21-503,
10 21-505, or 21-506 and amendments thereto; or

11 (2) in any attempt to commit, any conspiracy to commit, or any criminal solicitation of
12 any felony under 21-503, 21-505, or 21-506 and amendments thereto. Each separate
13 use of a communication facility may be charged as a separate offense under this
14 subsection.

15 (b) Violation of subsection (a) shall be a nondrug severity level 8, nonperson felony.

16 (c) As used in this section, 'communication facility' means any and all public and private
17 instrumentalities used or useful in the transmission of writing, signs, signals, pictures or
18 sounds of all kinds and includes telephone, wire, radio, computer, computer networks,
19 beepers, pagers and all other means of communication.

20
21 Comment:

22
23 This section incorporates K.S.A. 65-4141. The title of the current offense is confusing as it indicates that
24 the statute applies to the use of a communication facility in the sale or purchase of a controlled
25 substance. However, the statute actually applies when the facility is used to further the manufacture,
26 distribution, cultivation, or possession of a controlled substance.

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29

3
4 **21-508 Unlawfully obtaining and selling a prescription drug.**

- 5
6 (a) It shall be unlawful for any person to obtain a prescription-only drug by:
- 7 (1) Making, altering or signing of a prescription order by a person other than a
 - 8 practitioner or a mid-level practitioner;
 - 9 (2) distribution of a prescription order, knowing it to have been made, altered or signed
 - 10 by a person other than a practitioner or a mid-level practitioner;
 - 11 (3) possession of a prescription order with intent to distribute it and knowing it to have
 - 12 been made, altered or signed by a person other than a practitioner or a mid-level
 - 13 practitioner;
 - 14 (4) possession of a prescription-only drug knowing it to have been obtained pursuant to a
 - 15 prescription order made, altered or signed by a person other than a practitioner or a
 - 16 mid-level practitioner; or
 - 17 (5) providing false information to a practitioner or mid-level practitioner for the purpose
 - 18 of obtaining a prescription-only drug.
- 19 (b) (1) Violation of subsection (a) shall be a class A nonperson misdemeanor; except that
- 20 (2) violation of subsection (a) shall be a nondrug severity level 6, nonperson felony if that
 - 21 person sells, possess with the intent to sell, or offers for sale the prescription-only
 - 22 drug so obtained; and
 - 23 (3) violation of subsection (a) shall be a nondrug severity level 9 nonperson felony if that
 - 24 person has a prior conviction under that subsection or under K.S.A. 21-4214.
- 25 (c) As used in this section:
- 26 (1) "Pharmacist," "practitioner," "mid-level practitioner" and "prescription-only drug"
 - 27 shall have the meanings ascribed thereto by K.S.A. 65-1626 and amendments thereto.
 - 28 (2) "Prescription order" means a written, oral or telephonic order for a prescription-only
 - 29 drug to be filled by a pharmacist. "Prescription order" does not mean a drug
 - 30 dispensed pursuant to such an order.
- 31 (d) The provisions of this section shall not be applicable to prosecutions involving prescription-
- 32 only drugs which could be brought under 21-503, 21-505, or 21-506 and amendments thereto.
- 33

34 Comment

35
36 This section incorporates K.S.A. 21-4214 and K.S.A. 21-4215. As they are drug related offenses they fit
37 better here than in the article on crimes against public safety.
38

3
4 **21-509 Unlawful possession of drug paraphernalia and certain precursors.**

- 5
6 (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus,
7 lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or
8 phenylpropanolamine, or their salts, isomers or salts of isomers with an intent to use the
9 product to manufacture a controlled substance.
- 10 (b) It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia
11 to:
12 (1) manufacture, cultivate, plant, propagate, harvest, test, analyze, or distribute a
13 controlled substance; or
14 (2) store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled
15 substance into the human body.
- 16 (c) It shall be unlawful for any person to use or possess with intent to use anhydrous ammonia or
17 pressurized ammonia in a container not approved for that chemical by the Kansas department
18 of agriculture.
- 19 (d) It shall be unlawful for any person to purchase, receive or otherwise acquire at retail any
20 compound, mixture or preparation containing more than 3.6 grams of pseudoephedrine base
21 or ephedrine base in any single transaction or any compound, mixture or preparation
22 containing more than nine grams of pseudoephedrine base or ephedrine base within any 30-
23 day period.
- 24 (e) (1) Violation of subsection (a) shall be a drug severity level 2 felony;
25 (2) violation of subsection (b)(1) shall be a drug severity level 4 felony; except that
26 (3) violation of subsection (b)(1) shall be a class A nonperson misdemeanor if the drug
27 paraphernalia was used to cultivate fewer than five marijuana plants;
28 (4) violation of subsection (b)(2) shall be a class A nonperson misdemeanor;
29 (5) violation of subsection (c) shall be a drug severity level 4 felony;
30 (6) violation of subsection (d) shall be a class A nonperson misdemeanor.
- 31 (f) For persons arrested and charged under subsection (a) or (c), bail shall be at least \$50,000
32 cash or surety, unless the court determines, on the record, that the defendant is not likely to
33 re-offend, the court imposes pretrial supervision, or the defendant agrees to participate in a
34 licensed or certified drug treatment program.

35
36 Comment

37
38 This section incorporates provisions from K.S.A. 65-4152 and 65-7006.

39
40 All offenses involving the possession and possession with the intent to use drug paraphernalia or
41 precursors to commit a further drug crime, such as manufacturing or distribution, are contained in 21-
42 509. All offenses involving the distribution of the paraphernalia or precursors, such as head shops, are
43 contained in 21-510. Under current law, this distinction is made between K.S.A 65-4152 and 65-4153.
44 The revision places the appropriate sections of K.S.A. 65-7006 under the statute. This avoids the use of
45 two separate statutes when one is sufficient.

46
47 Some redundant terms from subsection (b) have been removed. The terms "plant," "grow," and
48 "propagate" are synonymous with the phrase "promoting the growth" which falls under the definition

1 of "cultivate." The term "propagation" also falls under the definition of manufacture, as does
2 "production", "processing", "preparation," "compound," "convert," "packaging," and "repackaging."
3 The terms "test" and "analyze" are likely part of the manufacture process, but they are not enumerated
4 under the definition of manufacture so they are left intact.
5
6 Subsection (e) uses the term "fewer" rather than "less." This is the preferable term because "fewer"
7 refers to number, "less" refers to quantity, and the section is based on the number of plants.
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21-510 Unlawful distribution of drug paraphernalia and certain precursors.

- (a) It shall be unlawful for any person to advertise, market, label, distribute, or possess with the intent to distribute:**
 - (1) Any drug product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance; or**
 - (2) any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.**
- (b) It shall be unlawful for any person to market, distribute, or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to manufacture or distribute a controlled substance in violation of this article.**
- (c) It shall be unlawful for any person to distribute, possess with intent to distribute, or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of this article except 21-506(b).**
- (d) It shall be unlawful for any person to distribute, possess with intent to distribute, or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of 21-506(b).**
- (e) It shall be unlawful for any person to purchase, receive or otherwise acquire at retail any compound, mixture or preparation containing more than 3.6 grams of pseudoephedrine base or ephedrine base in any single transaction or any compound, mixture or preparation containing more than nine grams of pseudoephedrine base or ephedrine base within any 30-day period.**
- (f)**
 - (1) Violation of subsection (a) shall be a drug severity level 2 felony;**
 - (2) violation of subsection (b) shall be a drug severity level 4 felony;**
 - (3) violation of subsection (c) shall be a level 9, nonperson felony; except that**
 - (4) violation of subsection (c) shall be a drug severity level 4 felony if that person distributes or causes drug paraphernalia to be distributed to a person under 18 years of age or within 1,000 feet of any school property;**
 - (5) violation of subsection (d) shall be a class A nonperson misdemeanor; except that**
 - (6) violation of subsection (d) shall be a nondrug severity level 9, nonperson felony if that person distributes or causes drug paraphernalia to be distributed to a person under 18 years of age or within 1,000 feet of any school property;**
 - (7) violation of subsection (e) shall be a class A nonperson misdemeanor.**
- (g) For persons arrested and charged under subsection (a), bail shall be at least \$50,000 cash or surety, unless the court determines, on the record, that the defendant is not likely to re-**

1 offend, the court imposes pretrial supervision, or the defendant agrees to participate in a
2 licensed or certified drug treatment program.

3 (h) As used in this section, the term "or under circumstances where one reasonably should know"
4 that an item will be used in violation of this section, shall include, but not be limited to, the
5 following:

- 6 (1) Actual knowledge from prior experience or statements by customers;
- 7 (2) inappropriate or impractical design for alleged legitimate use;
- 8 (3) receipt of packaging material, advertising information or other manufacturer supplied
9 information regarding the item's use as drug paraphernalia; or
- 10 (4) receipt of a written warning from a law enforcement or prosecutorial agency having
11 jurisdiction that the item has been previously determined to have been designed
12 specifically for use as drug paraphernalia.

13
14 Comment

15
16 This provision is based upon K.S.A. 65-7006 and K.S.A. 65-4153. As stated in section 21-509, this section
17 targets the distribution of paraphernalia and precursors. The relevant portions of K.S.A. 65-7006 are
18 included.

19
20 The phrase "sell, offer for sale, have in such person's possession with intent to sell" from K.S.A. 65-
21 4153(a) has been eliminated because it is duplicative of the definition of "distribute." The term "sell"
22 from K.S.A. 65-7006(b) has been removed for the same reason.
23
24
25

3
4 **21-511 Factors to consider when determining what is drug paraphernalia.**

- 5
6 **(a) In determining whether an object is drug paraphernalia, a court or other authority shall**
7 **consider, in addition to all other logically relevant factors, the following:**
8 **(1) Statements by an owner or person in control of the object concerning its use;**
9 **(2) prior convictions, if any, of an owner or person in control of the object, under any**
10 **state or federal law relating to any controlled substance;**
11 **(3) the proximity of the object, in time and space, to a direct violation of this article.**
12 **(4) the proximity of the object to controlled substances;**
13 **(5) the existence of any residue of controlled substances on the object;**
14 **(6) direct or circumstantial evidence of the intent of an owner or person in control of the**
15 **object, to deliver it to a person the owner or person in control of the object knows, or**
16 **should reasonably know, intends to use the object to facilitate a violation of the**
17 **uniform controlled substances act. The innocence of an owner or person in control of**
18 **the object as to a direct violation of this article shall not prevent a finding that the**
19 **object is intended for use as drug paraphernalia;**
20 **(7) oral or written instructions provided with the object concerning its use;**
21 **(8) descriptive materials accompanying the object which explain or depict its use;**
22 **(9) national and local advertising concerning the object's use.;**
23 **(10) the manner in which the object is displayed for sale.;**
24 **(11) whether the owner or person in control of the object is a legitimate supplier of similar**
25 **or related items to the community, such as a distributor or dealer of tobacco products;**
26 **(12) direct or circumstantial evidence of the ratio of sales of the object or objects to the**
27 **total sales of the business enterprise;**
28 **(13) the existence and scope of legitimate uses for the object in the community.**
29 **(14) expert testimony concerning the object's use;**
30 **(15) any evidence that alleged paraphernalia can or has been used to store a controlled**
31 **substance or to introduce a controlled substance into the human body as opposed to**
32 **any legitimate use for the alleged paraphernalia; or**
33 **(16) advertising of the item in magazines or other means which specifically glorify,**
34 **encourage or espouse the illegal use, manufacture, sale or cultivation of controlled**
35 **substances.**
36 **(b) The fact that an item has not yet been used or did not contain a controlled substance at the**
37 **time of the seizure is not a defense to a charge that the item was possessed with the intention**
38 **for use as drug paraphernalia.**

39
40 Comment

41
42 This section incorporates K.S.A. 65-4151 and 65-4152(f).
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4 **21-512 Unlawful abuse of toxic vapors.**
5

- 6 (a) It shall be unlawful for any person to possess, buy, use, smell or inhale toxic vapors with the
7 intent of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled
8 senses of the nervous system.
- 9 (b) Violation of subsection (a) shall be a class B nonperson misdemeanor.
- 10 (c) In addition to any sentence or fine imposed, the court shall enter an order which requires that
11 the person enroll in and successfully complete an alcohol and drug safety action education
12 program, treatment program or both such programs as provided in K.S.A. 8-1008, and
13 amendments thereto.
- 14 (d) This section shall not apply to the inhalation of anesthesia or other substances for medical or
15 dental purposes.
- 16 (e) For the purposes of this section, the term "toxic vapors" means vapors from the following
17 substances or products containing such substances:
 - 18 (1) Alcohols, including methyl, isopropyl, propyl or butyl;
 - 19 (2) Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;
 - 20 (3) Acetone;
 - 21 (4) Benzene;
 - 22 (5) Carbon tetrachloride;
 - 23 (6) Cyclohexane;
 - 24 (7) freons, including freon 11 and freon 12;
 - 25 (8) Hexane;
 - 26 (9) Methyl ethyl ketone;
 - 27 (10) Methyl isobutyl ketone;
 - 28 (11) Naptha;
 - 29 (12) Perchlorethylene;
 - 30 (13) Toluene;
 - 31 (14) Trichloroethane; or
 - 32 (15) Xylene.
- 33 (f) In a prosecution for a violation of this section, evidence that a container lists one or more of
34 the substances described in subsection (c) as one of its ingredients shall be *prima facie*
35 evidence that the substance in such container contains toxic vapors and emits the fumes
36 thereof.

37
38 Comment

39
40 This section incorporates K.S.A. 65-4165.

41
42 One minor change is made to subsection (a). The current version of this statute refers to inhaling the
43 fumes of toxic vapors. The revision refers to inhaling the toxic vapors. The change is not substantive.
44 As the definition of fume is "any smoke-like or vaporous exhalation from matter or substances", the
45 phrase "fumes of toxic vapors" is redundant.
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4 **21-513 Unlawful distribution of a simulated controlled substance.**

5

6 **(a) It shall be unlawful for any person to distribute, possess with the intent to distribute, or**
7 **manufacture with the intent to distribute any simulated controlled substance.**

8 **(b) It shall be unlawful for any person to possess any simulated controlled substance.**

9 **(c) (1) Violation of subsection (a) shall be a nondrug severity level 9, nonperson felony;**
10 **except that**

11 **(2) violation of subsection (a) shall be a nondrug severity level 7, nonperson felony if that**
12 **person is 18 or more years of age and the violation occurs on or within 1,000 feet of**
13 **any school property;**

14 **(3) violation of subsection (b) shall be a class A nonperson misdemeanor.**

15

16

Comment

17

18 This section incorporates K.S.A. 65-4153. The portions of that statute related to paraphernalia are
19 incorporated in 21-509. This offense was removed and placed in its own statute because it involves a
20 subject matter that is different from drug paraphernalia.

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4 **21-514 Unlawful representation that a noncontrolled substance is a controlled substance.**

5

6 (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any
7 substance which is not a controlled substance:

8 (1) Upon an express representation that the substance is a controlled substance or that
9 the substance is of such nature or appearance that the recipient will be able to
10 distribute the substance as a controlled substance; or

11 (2) under circumstances which would give a reasonable person reason to believe that the
12 substance is a controlled substance.

13 (b) (1) Violation of subsection (a) shall be a class A nonperson misdemeanor; except t hat

14 (2) violation of subsection (a) shall be a nondrug severity level 9, nonperson felony if the
15 distributor is 18 or more years of age and at least three years older than the person to
16 whom the distribution is made.

17 (c) If any one of the following factors is established, there shall be a presumption that delivery of
18 a substance was under circumstances which would give a reasonable person reason to believe
19 that a substance is a controlled substance:

20 (1) The substance was packaged in a manner normally used for the illegal delivery of
21 controlled substances;

22 (2) the delivery of the substance included an exchange of or demand for money or other
23 consideration for delivery of the substance, and the amount of the consideration was
24 substantially in excess of the reasonable value of the substance; or

25 (3) the physical appearance of the capsule or other material containing the substance is
26 substantially identical to a specific controlled substance.

27

28

Comment

29 This section incorporates K.S.A. 65-4155.

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4 **21-515 Unlawful administration of a substance.**

5
6 (a) It shall be unlawful for any person to intentionally or knowingly administer a controlled
7 substance to another person without their consent for the purpose of impairing such other
8 person's physical or mental ability to appraise or control their conduct.

9 (b) Violation of subsection (a) shall be a class A person misdemeanor.

10 (c) (1) For the purpose of this section, the term "controlled substance," in addition to the
11 definition provided in 21-501(a), includes gamma hydroxybutyric acid, or any
12 controlled substance analog, as defined in K.S.A. 65-4101, of gamma hydroxybutyric
13 acid, including gamma butyrolactone; butyrolactone; butyrolactone gamma; 4-
14 butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-
15 furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid
16 lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with CAS
17 No. 96-48-0; 1,4 butanediol; butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene
18 glycol; 1,4- dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol;
19 tetramethylene 1,4-diol.

20 (2) For the purpose of this section the term "administer" means any method of causing
21 the ingestion by another person of a controlled substance including introduction of
22 the substance into any food, beverage or other consumable that is known, or should
23 be known to be consumed by such other person.

24 (d) This section shall not prohibit administration of any substance described in subsection (b)(1)
25 for lawful medical or therapeutic treatment.

26
27 Comment

28
29 This section incorporates K.S.A. 21-3445.

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4 **21-516 Treatment of a controlled substance analog.**

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6 **Within 10 days after the initiation of prosecution with respect to a controlled substance analog by**
7 **indictment, complaint or information, the prosecuting attorney shall notify the Board of Pharmacy of**
8 **information relevant to emergency scheduling as provided for in subsection (e) of K.S.A. 65-4102 and**
9 **amendments thereto. After final determination that the controlled substance analog should not be**
10 **scheduled, no prosecution relating to that substance as a controlled substance analog may be**
11 **commenced or continued.**

12

Comment

13 This section incorporates K.S.A. 65-4105a. The first sentence of the current statute has been deleted as
14 it is duplicative of the definition of controlled substance analog found in 21-501.

15 _____
16

3
4 **21-517 Unlawful acts involving proceeds derived from violations of this article.**

- 5
6 (a) It shall be unlawful for any person to receive or acquire proceeds, or engage in transactions
7 involving proceeds, known to be derived from commission of any crime in this Article. The
8 provisions of this subsection do not apply to any transaction between an individual and that
9 individual's counsel necessary to preserve that individual's right to representation, as
10 guaranteed by section 10 of the bill of rights of the constitution of the state of Kansas and by
11 the sixth amendment to the United States constitution. This exception does not create any
12 presumption against or prohibition of the right of the state to seek and obtain forfeiture of
13 any proceeds derived from a violation of this article.
- 14 (b) It shall be unlawful for any person to give, sell, transfer, trade, invest, conceal, transport or
15 maintain an interest in or otherwise make available anything of value which that person
16 knows is intended to be used for the purpose of committing or furthering the commission of
17 any crime in this Article.
- 18 (c) It shall be unlawful for any person to direct, plan, organize, initiate, finance, manage,
19 supervise or facilitate the transportation or transfer of proceeds known to be derived from
20 commission of any crime in this Article.
- 21 (d) It shall be unlawful for any person to conduct a financial transaction involving proceeds
22 derived from commission of any crime in this Article when the transaction is designed in
23 whole or in part to conceal or disguise the nature, location, source, ownership or control of
24 the proceeds known to be derived from commission of any crime in this Article or to avoid a
25 transaction reporting requirement under state or federal law.
- 26 (e) (1) Violation of this section shall be a drug severity level 4 felony if the value of the
27 proceeds is less than \$5,000;
28 (2) Violation of this section shall be a drug severity level 3 felony if the value of the
29 proceeds is at least \$5,000 but less than \$100,000;
30 (3) Violation of this section shall be a drug severity level 2 felony if the value of the
31 proceeds is at least \$100,000 but less than \$500,000;
32 (4) Violation of this section shall be a drug severity level 1 felony if the value of the
33 proceeds is \$500,000 or more.

34
35 Comment

36
37 This section incorporates K.S.A. 65-4142.

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4 **21-518 Uniformity of article.**
5

6 **The provisions listed below shall be applicable and uniform throughout this state and in all cities and**
7 **counties therein. No city or county shall enact or enforce any law, ordinance, rule, regulation or**
8 **resolution in conflict with, in addition to, or supplemental to, the provisions listed below unless**
9 **expressly authorized by law to do so:**

- 10 (1) K.S.A. 21-2501a(c);
- 11 (2) K.S.A. 65-1643(k) & (l);
- 12 (3) K.S.A. 65-4113(e);
- 13 (4) K.S.A. 21-503(c);
- 14 (5) K.S.A. 21-510(g);
- 15 (6) K.S.A. 21-512(c).

16
17
18 Comment

19
20 This section incorporates K.S.A. 65-4166 with specific references to the relevant statutes from the 2005
21 act.

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24

The KCCRC recommends three substantive changes to existing drug statutes:

1. That the definition of drug "manufacture" be changed to exclude repackaging and the practice of cutting. Repackaging and cutting are commonly part of drug distribution.
2. That proposed K.S.A. 21-515 be amended to clarify that an offender may be convicted of and punished for both a violation of proposed K.S.A. 21-515 and K.S.A. 21-3701(a)(2) theft by deception.
3. That the precursor and paraphernalia possession offenses be integrated explicitly with the law of attempts to possess, distribute, or manufacture.

1. Definition of "manufacture"

Our recommendation can be implemented by adding the indicated language to proposed 21-501(i):

~~(A) (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. and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include "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 and adulterants such as, including but not limited to, quinine hydrochloride, mannitol, mannite, extrose and lactose, which are intended for use in cutting controlled substances.~~

2. Revision to "Unlawful representation that a noncontrolled substance is a controlled substance".

Our recommendation can be implemented by adding the indicated language to proposed 21-515:

21-515 Unlawful representation that a noncontrolled substance is a controlled substance.

~~(a) No person shall knowingly deliver or cause to be delivered in this state~~ *It shall be a class A nonperson misdemeanor for any person to distribute or possess with the intent to distribute any substance which is not a controlled substance:*

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

(b) If any one of the following factors is established, there shall be a presumption that delivery of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:

(1) The substance was packaged in a manner normally used for the illegal delivery of controlled substances.

(2) The delivery of the substance included an exchange of or demand for money or other consideration for delivery of the substance, and the amount of the consideration was substantially in excess of the reasonable value of the substance.

(3) The physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

~~(c) Except as provided in subsection (d), violation of this section is a class A nonperson misdemeanor.~~

~~(d) (c) Any person 18 or more years of age who violates this section by delivering or causing to be delivered in this state~~ *It shall be a nondrug severity level 9, nonperson felony for any person to violate this section by distributing or causing to be distributed a substance to a person under 18 years of age and who is at least three years older than the person under 18 years of age to whom the delivery is made is guilty of a nondrug severity level 9, nonperson felony. if the distributor is 18 or more years of age and at least three years older than the person to whom the distribution is made.*

(d) *A person who commits this crime also may be prosecuted for, convicted of, and punished for theft by deception.*

3. Precursor and paraphernalia possession offenses be integrated with the law of attempts

Our recommendation can be implemented by substituting the following provision for proposed 21-509:

21-509. Overt acts sufficient for attempted manufacture, distribution, or possession of a controlled substance.

- (a) Any person who possesses ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance or controlled substance analog shall be guilty of attempted violation of K.S.A. 21-503(a). Any person who possesses drug paraphernalia with the intent to manufacture a controlled substance or a controlled substance analog shall be guilty of attempted violation of K.S.A. 21-503(a).
- (b) Any person who possesses any drug paraphernalia with the intent to distribute or cultivate a controlled substance designated in K.S.A. 21-505(a) or a controlled substance analog thereof shall be guilty of attempted violation of that section.
- (c) Any person who possesses any drug paraphernalia with the intent to distribute a controlled substance or controlled substance analog designated in K.S.A. 65-4113 shall be guilty of attempted violation of K.S.A. 21-505(b).
- (d) Any person who possesses any drug paraphernalia with the intent to possess or have under such person's control any controlled substance designated in K.S.A. 21-506(a) or a controlled substance analog thereof shall be guilty of attempted violation of that section.
- (e) Any person who possesses any drug paraphernalia with the intent to possess or have under such person's control any controlled substance designated in K.S.A. 21-506(b) or a controlled substance analog thereof shall be guilty of attempted violation of that section.
- (f) This section does not preclude a person from conviction of attempted manufacture, distribution, or possession of a controlled substance or a controlled substance analog based upon overt acts other than those herein mentioned.



Kansas Bureau of Investigation

Robert E. Blecha
Director

Stephen N. Six
Attorney General

TESTIMONY
BEFORE THE SENATE JUDICIARY
JEFFERY BRANDAU, SPECIAL-AGENT-IN-CHARGE
KANSAS BUREAU OF INVESTIGATION
February 26, 2008

Chairman Schmidt and Members of the Committee:

I am Jeffery Brandau and I am a Special-Agent-in-Charge at the Kansas Bureau of Investigation. I am here today representing the Kansas Bureau of Investigation. While SB 640 is a recodification of current statutes it is time to review what is contained within this bill. One section of concern is:

New Sec. 17. (a) It shall be unlawful for any person to receive or acquire proceeds or engage in transactions involving proceeds, known to be derived from commission of any crime in this act. The provisions of this subsection do not apply to any transaction between an individual and that individual's counsel necessary to preserve that individual's right to representation, as guaranteed by section 10 of the bill of rights of the constitution of the state of Kansas and by the Sixth Amendment to the United States Constitution. This exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of this act.

It is troublesome to see in this bill a provision that makes an exemption for counsel to accept ill-begotten gains from criminal activity, for the purpose of representation. If a defendant in a criminal proceeding does not have legitimate funds or assets to pay for counsel the government provides court appointed counsel. It appears this is against the ethical obligation of judicial officers. The Kansas Bureau of Investigation would prefer to have this section deleted from SB 640.

Thank you for your time in considering this change.

Senate Judiciary

2-26-08

Attachment 2

SENATE BILL No. 565

By Committee on Judiciary

2-6

Proposed Amendment

Prepared by Office of Revisor of Statutes
February 25, 2008

Senate Judiciary
2-26-08
Attachment 3

9 AN ACT relating to the state fair board; concerning background inves-
10 tigations for certain employees; amending K.S.A. 2-205 and repealing
11 the existing section.

12

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

14 Section 1. K.S.A. 2-205 is hereby amended to read as follows: 2-205.

15 (a) (1) All moneys received by the state fair board through the operation
16 of the state fair and from any and all other sources directly related to the
17 operation of the state fair shall be remitted to the state treasurer in ac-
18 cordance with the provisions of K.S.A. 75-4215, and amendments thereto.
19 Upon receipt of each such remittance, the state treasurer shall deposit
20 the entire amount in the state treasury to the credit of the state fair fee
21 fund, which is hereby created.

22 (2) During each fiscal year, moneys in the state fair fee fund, and
23 appropriations for the operation of the state fair from the state general
24 fund made for the state fair, or the state fair board, may be transferred
25 from the state treasury to a bank in Reno county, Kansas, to the account
26 of the state fair board, upon vouchers of the state fair board, to establish
27 the state fair board local bank account. The moneys in the state fair board
28 local bank account may be used by the state fair board:

29 (A) In operating and conducting a state fair, including but not by way
30 of limitation, the payment of labor, salaries of part-time employees, prizes
31 and awards and as provided by this section; and

32 (B) in operating and promoting nonfair days events. The state trea-
33 surer and the director of accounts and reports are authorized and directed
34 to honor all such vouchers and orders of the state fair board, and to make
35 such transfers as directed.

36 (3) (A) During each fiscal year, the state fair board may expend mon-
37 eys on deposit to its credit in the state fair board local bank account, for
38 the operation and promotion of the state fair and nonfair days events, by
39 approved vouchers directed to the treasurer of the state fair board and
40 by the issuance of checks by the treasurer of the board to the persons
41 entitled thereto as shown upon such vouchers. All such expenditures may
42 be made without compliance with any of the provisions of any act con-
43 tained in article 37 of chapter 75 of the Kansas Statutes Annotated, and

3-2

1 amendments thereto.

2 (B) During the period beginning May 1 and extending to October 31
3 of each year, the state fair board may employ labor and personnel in
4 conjunction with the current operation of the state fair, without compli-
5 ance with the provisions of any act contained in article 29 of chapter 75
6 of the Kansas Statutes Annotated, and amendments thereto. *The state*
7 *fair board may conduct* ~~criminal and background investigations for such~~
8 ~~employees.~~ This authority to employ shall not be construed as authorizing
9 the board to employ its normal classified service employees on a different
10 basis for all or any part of that six-month period.

11 (4) On or before each June 30, all unencumbered moneys on deposit
12 to the credit of the state fair board in the state fair board local bank
13 account shall be transferred back to the state treasury to the credit of the
14 state fair fee fund or appropriation from the state general fund according
15 as each may be entitled. All moneys in the state fair fee fund may be used
16 for the payment of checks drawn against the state fair board local bank
17 account upon vouchers drawn by the state fair board. Upon the close of
18 accounts for each fiscal year, the state fair board shall submit a full and
19 complete object classification report for such fiscal year on all moneys
20 collected by and expended by the state fair board to the director of ac-
21 counts and reports.

22 (b) All moneys received by the state fair board through the operation
23 and promotion of nonfair days events shall be deposited in the state fair
24 board local bank account for use for nonfair days events by the state fair
25 board and as provided by this section. All expenses incurred in the op-
26 eration and promotion of nonfair days events shall be paid from the state
27 fair board local bank account by issuance of checks by the treasurer of
28 the state fair board or a person designated by such treasurer.

29 (c) The state fair board local bank account required for use in oper-
30 ating and promoting the state fair or nonfair days events under this section
31 shall be awarded to a bank in Reno county, Kansas, by the pooled money
32 investment board under a written agreement in accordance with proce-
33 dures for state bank accounts under K.S.A. 75-4217, and amendments
34 thereto, and shall be secured by pledge of securities in the manner pre-
35 scribed for state bank accounts under K.S.A. 75-4218, and amendments
36 thereto, and in the amount prescribed for fee agency accounts under that
37 statute.

38 (d) (1) Upon request of the state fair board, the director of accounts
39 and reports shall authorize the state fair board to establish a change fund
40 for the purposes of the state fair for use on those days not designated as
41 official state fair days in an amount of not to exceed \$15,000 to be main-
42 tained in the form of cash. For the purposes of establishing such change
43 fund, moneys may be withdrawn from moneys available therefor in the

a check of the internet site maintained by the Kansas bureau of investigation concerning registered offenders prior to employing such persons. The board is authorized to use such information to determine such person's fitness for employment. The state fair board or any employees thereof, shall not be liable for civil damages to any person refused employment or discharged from employment by reason of the board complying with this paragraph

SENATE BILL No. 588

By Committee on Judiciary
2-11

9 AN ACT concerning crimes and punishment; relating to traffic in con-
10 traband in a correctional institution **or care and treatment facility**;
11 amending K.S.A. 21-3826 and repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 21-3826 is hereby amended to read as follows: 21-
15 3826. (a) Traffic in contraband in a correctional institution **or care and**
16 **treatment facility** is introducing or attempting to introduce into or upon
17 the grounds of any correctional institution **or care and treatment facility**
18 or taking, sending, attempting to take or attempting to send from any correc-
19 tional institution **or care and treatment facility** or any unauthorized possession
20 while in any correctional institution **or care and treatment facility** or distri-
21 buting within any correctional institution **or care and treatment facility**, any
22 item without the consent of the administrator of the correctional institution
23 **or care and treatment facility**.

24 (b) For purposes of this section, "correctional institution" means any
25 state correctional institution or facility, conservation camp, state security
26 hospital, juvenile correctional facility, community correction center or
27 facility for detention or confinement, juvenile detention facility ~~or or~~, jail ~~or~~
28 ~~facility operated by the department of social and rehabilitation services~~
29 ~~for the purposes provided for under K.S.A. 59-29a02 et seq., and amendments~~
30 ~~thereto~~.

31 (c) For purposes of this section, "care and treatment facility" means
32 the state security hospital provided for under K.S.A. 76-1305 et seq., and
33 amendments thereto, and a facility operated by the department of social
34 and rehabilitation services for the purposes provided for under K.S.A. 59-
35 29a02 et seq., and amendments thereto.

36 (d) (1) Traffic in contraband in a correctional institution **or care and**
37 **treatment facility** of firearms, ammunition, explosives or a controlled substance
38 which is defined in sub-section (e) of K.S.A. 65-4101, and amendments thereto,
39 is a severity level 5, nonperson felony.

40 (2) Traffic in any contraband, as defined by rules and regulations
41 adopted by the secretary, in a correctional institution by an employee of
42 a correctional institution is a severity level 5, nonperson felony.

43 (3) Traffic in any contraband, as defined by rules and regulations
44 adopted by the secretary of social and rehabilitation services, in a care and
45 treatment facility by an employee of a care and treatment facility is a
46 severity level 5, nonperson felony.

47 (e) Except as provided in subsection (d), traffic in contraband in a
48 correctional institution **or care and treatment facility** is a severity level 6,
49 nonperson felony.

50 Sec. 2. K.S.A. 21-3826 is hereby repealed.

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

SENATE BILL No. 588

By Committee on Judiciary
2-11

9 AN ACT concerning crimes and punishment; relating to traffic in con-
10 traband in a correctional institution; amending K.S.A. 21-3826 and
11 repealing the existing section.
12

or care and treatment
facility

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

14 Section 1. K.S.A. 21-3826 is hereby amended to read as follows: 21-
15 3826. (a) Traffic in contraband in a correctional institution is introducing
16 or attempting to introduce into or upon the grounds of any correctional
17 institution or taking, sending, attempting to take or attempting to send
18 from any correctional institution or any unauthorized possession while in
19 any correctional institution or distributing within any correctional insti-
20 tution any item without the consent of the administrator of the correc-
21 tional institution.

22 (b) For purposes of this section, "correctional institution" means any
23 state correctional institution or facility, conservation camp, state security
24 hospital, juvenile correctional facility, community correction center or
25 facility for detention or confinement, juvenile detention facility or or, jail or
26 facility operated by the department of social and rehabilitation services
27 for the purposes provided for under K.S.A. 59-29a02 et seq., and amendments
28 thereto.

(c) For purposes of this section, "care and treatment facility" means the state security hospital provided for under K.S.A. 76-1305 et seq., and amendments thereto, and a facility operated by the department of social and rehabilitation services for the purposes provided for under K.S.A. 59-29a02 et seq., and amendments thereto.

29 ~~(c)~~ (d) (1) Traffic in contraband in a correctional institution of firearms,
30 ammunition, explosives or a controlled substance which is defined in sub-
31 section (c) of K.S.A. 65-4101, and amendments thereto, is a severity level
32 5, nonperson felony.

33 (2) Traffic in any contraband, as defined by rules and regulations
34 adopted by the secretary, in a correctional institution by an employee of
35 a correctional institution is a severity level 5, nonperson felony.

36 ~~(d)~~ (e) Except as provided in subsection ~~(c)~~ (d), traffic in contraband in a
37 correctional institution is a severity level 6, nonperson felony.

38 Sec. 2. K.S.A. 21-3826 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.

(3) Traffic in any contra- band, as defined by rules and regulations adopted by the secretary of social and rehabilitation services, in a care and treatment facility by an employee of a care and treatment facility is a severity level 5, nonperson felony.