

21-5705. Unlawful cultivation or distribution of controlled substances. (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

- (1) 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;
 - (2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;
 - (3) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;
 - (4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;
 - (5) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto;
 - (6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto; or
 - (7) any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.
- (b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.
- (c) It shall be unlawful for any person to cultivate any controlled substance or controlled substance analog listed in subsection (a).

(d) (1) Except as provided further, violation of subsection (a) is a:

- (A) Drug severity level 4 felony if the quantity of the material was less than 3.5 grams;
 - (B) drug severity level 3 felony if the quantity of the material was at least 3.5 grams but less than 100 grams;
 - (C) drug severity level 2 felony if the quantity of the material was at least 100 grams but less than 1 kilogram; and
 - (D) drug severity level 1 felony if the quantity of the material was 1 kilogram or more.
- (2) Violation of subsection (a) with respect to material containing any quantity of marijuana, or an analog thereof, is a:
- (A) Drug severity level 4 felony if the quantity of the material was less than 25 grams;
 - (B) drug severity level 3 felony if the quantity of the material was at least 25 grams but less than 450 grams;
 - (C) drug severity level 2 felony if the quantity of the material was at least 450 grams but less than 30 kilograms; and
 - (D) drug severity level 1 felony if the quantity of the material was 30 kilograms or more.
- (3) Violation of subsection (a) with respect to material containing any quantity of heroin, as defined by subsection (c) (1) of K.S.A. 65-4105, and amendments thereto, or methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof, is a:
- (A) Drug severity level 4 felony if the quantity of the material was less than 1 gram;
 - (B) drug severity level 3 felony if the quantity of the material was at least 1 gram but less than 3.5 grams;
 - (C) drug severity level 2 felony if the quantity of the material was at least 3.5 grams but less than 100 grams; and
 - (D) drug severity level 1 felony if the quantity of the material was 100 grams or more.
- (4) Violation of subsection (a) with respect to material containing any quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments thereto, or an analog thereof, distributed by dosage unit, is a:
- (A) Drug severity level 4 felony if the number of dosage units was fewer than 10;
 - (B) drug severity level 3 felony if the number of dosage units was at least 10 but less than 100;
 - (C) drug severity level 2 felony if the number of dosage units was at least 100 but less than 1,000; and
 - (D) drug severity level 1 felony if the number of dosage units was 1,000 or more.
- (5) For any violation of subsection (a), the severity level of the offense shall be increased one level if the controlled substance or controlled substance analog was distributed or possessed with the intent to distribute on or within 1,000 feet of any school property.
- (6) Violation of subsection (b) is a:
- (A) Class A person misdemeanor, except as provided in subsection (d)(6)(B); and
 - (B) nondrug severity level 7, person felony if the substance was distributed to or possessed with the intent to distribute to a minor.
- (7) Violation of subsection (c) is a:
- (A) Drug severity level 3 felony if the number of plants cultivated was more than 4 but fewer than 50;
 - (B) drug severity level 2 felony if the number of plants cultivated was at least 50 but fewer than 100; and
 - (C) drug severity level 1 felony if the number of plants cultivated was 100 or more.
- (e) In any prosecution under this section, there shall be a rebuttable presumption of an intent to distribute if any person possesses the following quantities of controlled substances or analogs thereof:
- (1) 450 grams or more of marijuana;
 - (2) 3.5 grams or more of heroin or methamphetamine;
 - (3) 100 dosage units or more containing a controlled substance; or
 - (4) 100 grams or more of any other controlled substance.
- (f) It shall not be a defense to charges arising under this section that the defendant:
- (1) Was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog;
 - (2) did not know the quantity of the controlled substance or controlled substance analog; or
 - (3) did not know the specific controlled substance or controlled substance analog contained in the material that was distributed or possessed with the intent to distribute.
- (g) As used in this section:
- (1) "Material" means the total amount of any substance, including a compound or a mixture, which contains any quantity of a controlled substance or controlled substance analog.
 - (2) "Dosage unit" means a controlled substance or controlled substance analog distributed or possessed with the intent to distribute as a discrete unit, including but not limited to, one pill, one capsule or one microdot, and not distributed by weight.
- (A) For steroids, or controlled substances in liquid solution legally manufactured for prescription use, or an analog

thereof, "dosage unit" means the smallest medically approved dosage unit, as determined by the label, materials provided by the manufacturer, a prescribing authority, licensed health care professional or other qualified health authority.

(B) For illegally manufactured controlled substances in liquid solution, or controlled substances in liquid products not intended for ingestion by human beings, or an analog thereof, "dosage unit" means 10 milligrams, including the liquid carrier medium, except as provided in subsection (g)(2)(C).

(C) For lysergic acid diethylamide (LSD) in liquid form, or an analog thereof, a dosage unit is defined as 0.4 milligrams, including the liquid medium.

History: L. 2009, ch. 32, § 5; L. 2010, ch. 74, § 2; L. 2010, ch. 155, § 4; L. 2011, ch. 83, § 1; L. 2012, ch. 150, § 9; July 1.

Revisor's Note:

Section was also amended by L. 2010, ch. 109, § 14, but that version was repealed by L. 2010, ch. 155, § 25.