

**HOUSE BILL No. 2350**

By Committee on Corrections and Juvenile Justice

2-14

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to possession of marijuana; cultivation and distribution of marijuana;  
3 amending K.S.A. 2018 Supp. 21-5705 and 21-5706 and repealing the  
4 existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 Supp. 21-5705 is hereby amended to read as  
8 follows: 21-5705. (a) It shall be unlawful for any person to distribute or  
9 possess with the intent to distribute any of the following controlled  
10 substances or controlled substance analogs thereof:

11 (1) Opiates, opium or narcotic drugs, or any stimulant designated in  
12 ~~subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107(d)(1), (d)(3) or (f)(1),~~  
13 and amendments thereto;

14 (2) any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e),~~  
15 ~~subsection (e) of K.S.A. 65-4107(e), subsection (b) or (c) of K.S.A. 65-~~  
16 ~~4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b),~~ and amendments  
17 thereto;

18 (3) any stimulant designated in ~~subsection (f) of K.S.A. 65-4105(f),~~  
19 ~~subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107(d)(2), (d)(4),~~  
20 ~~(d)(5) or (f)(2) or subsection (e) of K.S.A. 65-4109(e),~~ and amendments  
21 thereto;

22 (4) any hallucinogenic drug designated in ~~subsection (d) of K.S.A.~~  
23 ~~65-4105(d), subsection (g) of K.S.A. 65-4107(g) or subsection (g) of~~  
24 ~~K.S.A. 65-4109(g),~~ and amendments thereto;

25 (5) any substance designated in ~~subsection (g) of K.S.A. 65-4105(g)~~  
26 ~~and subsection (e), (d), (e), (f) or (g) of K.S.A. or 65-4111(c), (d), (e), (f)~~  
27 ~~or (g),~~ and amendments thereto;

28 (6) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-~~  
29 ~~4109(f),~~ and amendments thereto; or

30 (7) any substance designated in ~~subsection (h) of K.S.A. 65-4105(h),~~  
31 and amendments thereto.

32 (b) It shall be unlawful for any person to distribute or possess with  
33 the intent to distribute a controlled substance or a controlled substance  
34 analog designated in K.S.A. 65-4113, and amendments thereto.

35 (c) It shall be unlawful for any person to cultivate any controlled  
36 substance or controlled substance analog listed in subsection (a).

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

2 (A) Drug severity level 4 felony if the quantity of the material was  
3 less than 3.5 grams;

4 (B) drug severity level 3 felony if the quantity of the material was at  
5 least 3.5 grams but less than 100 grams;

6 (C) drug severity level 2 felony if the quantity of the material was at  
7 least 100 grams but less than 1 kilogram; and

8 (D) drug severity level 1 felony if the quantity of the material was 1  
9 kilogram or more.

10 (2) Violation of subsection (a) with respect to material containing any  
11 quantity of marijuana, or an analog thereof, is a: *class A nonperson*  
12 *misdemeanor.*

13 ~~(A) Drug severity level 4 felony if the quantity of the material was~~  
14 ~~less than 25 grams;~~

15 ~~(B) drug severity level 3 felony if the quantity of the material was at~~  
16 ~~least 25 grams but less than 450 grams;~~

17 ~~(C) drug severity level 2 felony if the quantity of the material was at~~  
18 ~~least 450 grams but less than 30 kilograms; and~~

19 ~~(D) drug severity level 1 felony if the quantity of the material was 30~~  
20 ~~kilograms or more.~~

21 (3) Violation of subsection (a) with respect to material containing any  
22 quantity of heroin, as defined by ~~subsection (e)(1) of K.S.A. 65-4105(c)~~  
23 ~~(1), and amendments thereto, or methamphetamine, as defined by~~  
24 ~~subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1), and~~  
25 ~~amendments thereto, or an analog thereof, is a:~~

26 (A) Drug severity level 4 felony if the quantity of the material was  
27 less than 1 gram;

28 (B) drug severity level 3 felony if the quantity of the material was at  
29 least 1 gram but less than 3.5 grams;

30 (C) drug severity level 2 felony if the quantity of the material was at  
31 least 3.5 grams but less than 100 grams; and

32 (D) drug severity level 1 felony if the quantity of the material was  
33 100 grams or more.

34 (4) Violation of subsection (a) with respect to material containing any  
35 quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107,  
36 65-4109 or 65-4111, and amendments thereto, or an analog thereof,  
37 distributed by dosage unit, is a:

38 (A) Drug severity level 4 felony if the number of dosage units was  
39 fewer than 10;

40 (B) drug severity level 3 felony if the number of dosage units was at  
41 least 10 but less than 100;

42 (C) drug severity level 2 felony if the number of dosage units was at  
43 least 100 but less than 1,000; and

1 (D) drug severity level 1 felony if the number of dosage units was  
2 1,000 or more.

3 (5) For any violation of subsection (a), the severity level of the  
4 offense shall be increased one level if the controlled substance or  
5 controlled substance analog was distributed or possessed with the intent to  
6 distribute on or within 1,000 feet of any school property.

7 (6) Violation of subsection (b) is a:

8 (A) Class A person misdemeanor, except as provided in subsection  
9 (d)(6)(B); and

10 (B) nondrug severity level 7, person felony if the substance was  
11 distributed to or possessed with the intent to distribute to a minor.

12 (7) (A) *Except as provided in subsection (d)(7)(B)*, violation of  
13 subsection (c) is a:

14 ~~(A)~~(i) Drug severity level 3 felony if the number of plants cultivated  
15 was more than 4 but fewer than 50;

16 ~~(B)~~(ii) drug severity level 2 felony if the number of plants cultivated  
17 was at least 50 but fewer than 100; and

18 ~~(C)~~(iii) drug severity level 1 felony if the number of plants cultivated  
19 was 100 or more.

20 (B) *If the substance involved is marijuana, as designated in K.S.A.*  
21 *65-4105(d), and amendments thereto, violation of subsection (c) is a class*  
22 *A nonperson misdemeanor.*

23 (e) In any prosecution under this section, there shall be a rebuttable  
24 presumption of an intent to distribute if any person possesses the following  
25 quantities of controlled substances or analogs thereof:

26 (1) 450 grams or more of marijuana;

27 (2) 3.5 grams or more of heroin or methamphetamine;

28 (3) 100 dosage units or more containing a controlled substance; or

29 (4) 100 grams or more of any other controlled substance.

30 (f) It shall not be a defense to charges arising under this section that  
31 the defendant:

32 (1) Was acting in an agency relationship on behalf of any other party  
33 in a transaction involving a controlled substance or controlled substance  
34 analog;

35 (2) did not know the quantity of the controlled substance or  
36 controlled substance analog; or

37 (3) did not know the specific controlled substance or controlled  
38 substance analog contained in the material that was distributed or  
39 possessed with the intent to distribute.

40 (g) As used in this section:

41 (1) "Material" means the total amount of any substance, including a  
42 compound or a mixture, which contains any quantity of a controlled  
43 substance or controlled substance analog.

1 (2) "Dosage unit" means a controlled substance or controlled  
2 substance analog distributed or possessed with the intent to distribute as a  
3 discrete unit, including but not limited to, one pill, one capsule or one  
4 microdot, and not distributed by weight.

5 (A) For steroids, or controlled substances in liquid solution legally  
6 manufactured for prescription use, or an analog thereof, "dosage unit"  
7 means the smallest medically approved dosage unit, as determined by the  
8 label, materials provided by the manufacturer, a prescribing authority,  
9 licensed health care professional or other qualified health authority.

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

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

18 Sec. 2. K.S.A. 2018 Supp. 21-5706 is hereby amended to read as  
19 follows: 21-5706. (a) It shall be unlawful for any person to possess any  
20 opiates, opium or narcotic drugs, or any stimulant designated in K.S.A. 65-  
21 4107(d)(1), (d)(3) or (f)(1), and amendments thereto, or a controlled  
22 substance analog thereof.

23 (b) It shall be unlawful for any person to possess any of the following  
24 controlled substances or controlled substance analogs thereof:

25 (1) Any depressant designated in K.S.A. 65-4105(e), ~~K.S.A. 65-~~  
26 ~~4107(e), K.S.A. 65-4109(b) or (c) or K.S.A. 65-4111(b), and amendments~~  
27 ~~thereto;~~

28 (2) any stimulant designated in K.S.A. 65-4105(f), ~~K.S.A. 65-4107(d)~~  
29 ~~(2), (d)(4), (d)(5) or (f)(2) or K.S.A. 65-4109(e), and amendments thereto;~~

30 (3) any hallucinogenic drug designated in K.S.A. 65-4105(d), ~~K.S.A.-~~  
31 ~~65-4107(g) or K.S.A. 65-4109(g), and amendments thereto;~~

32 (4) any substance designated in K.S.A. 65-4105(g) and K.S.A. 65-  
33 4111(c), (d), (e), (f) or (g), and amendments thereto;

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

36 (6) any substance designated in K.S.A. 65-4113, and amendments  
37 thereto; or

38 (7) any substance designated in K.S.A. 65-4105(h), and amendments  
39 thereto.

40 (c) (1) Violation of subsection (a) is a drug severity level 5 felony.

41 (2) Except as provided in subsection (c)(3):

42 (A) Violation of subsection (b) is a class A nonperson misdemeanor,  
43 except as provided in subsection (c)(2)(B); and

1 (B) violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug  
2 severity level 5 felony if that person has a prior conviction under such  
3 subsection, under K.S.A. 65-4162, prior to its repeal, under a substantially  
4 similar offense from another jurisdiction, or under any city ordinance or  
5 county resolution for a substantially similar offense if the substance  
6 involved was 3, 4-methylenedioxymethamphetamine (MDMA), ~~marijuana~~  
7 ~~as designated in K.S.A. 65-4105(d), and amendments thereto,~~ or any  
8 substance designated in K.S.A. 65-4105(h), and amendments thereto, or an  
9 analog thereof.

10 (3) If the substance involved is marijuana, as designated in K.S.A.  
11 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as  
12 designated in K.S.A. 65-4105(h), and amendments thereto, violation of  
13 subsection (b) is a:

14 (A) Class B nonperson misdemeanor, except as provided in  
15 *subsection (c)(3)(B) and (c)(3)(C); and*

16 (B) class A nonperson misdemeanor if that person has ~~a one or more~~  
17 ~~prior conviction~~ *convictions* under such subsection, under K.S.A. 65-4162,  
18 prior to its repeal, under a substantially similar offense from another  
19 jurisdiction, or under any city ordinance or county resolution for a  
20 substantially similar offense; ~~and~~

21 ~~(C) drug severity level 5 felony if that person has two or more prior~~  
22 ~~convictions under such subsection, under K.S.A. 65-4162, prior to its~~  
23 ~~repeal, under a substantially similar offense from another jurisdiction, or~~  
24 ~~under any city ordinance or county resolution for a substantially similar~~  
25 ~~offense.~~

26 (d) It shall not be a defense to charges arising under this section that  
27 the defendant was acting in an agency relationship on behalf of any other  
28 party in a transaction involving a controlled substance or controlled  
29 substance analog.

30 Sec. 3. K.S.A. 2018 Supp. 21-5705 and 21-5706 are hereby repealed.

31 Sec. 4. This act shall take effect and be in force from and after its  
32 publication in the statute book.