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

Section 1. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by his or her authorized agent under his or her immediate supervision and pursuant to his or her order; or

(b) The patient or research subject at the direction and in the presence of the practitioner;

(2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances classified as Schedule III controlled substances pursuant to KRS 218A.020 but does not include estrogens, progestins, and anticosteroids;

(3) "Cabinet" means the Cabinet for Health and Family Services;

(4) "Carfentanil" means any substance containing any quantity of carfentanil, or any of its salts, isomers, or salts of isomers;

(5) "Certified community based palliative care program" means a palliative care program which has received certification from the Joint Commission;

(6) "Child" means any person under the age of majority as specified in KRS 2.015;

(7) "Cocaine" means a substance containing any quantity of cocaine, its salts, optical and geometric isomers, and salts of isomers;

(8) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;

(9) (a) "Controlled substance analogue," except as provided in paragraph (b) of this
subsection, means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and

2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or

3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) "Controlled substance analogue" does not include:

1. Any substance for which there is an approved new drug application;

2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or

3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;

(10) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;

(11) "Dispense" means to deliver a controlled substance to an ultimate user or research
subject by or pursuant to the lawful order of a practitioner, including the packaging,
labeling, or compounding necessary to prepare the substance for that delivery;

(12) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V
controlled substance to or for the use of an ultimate user;

(13) "Distribute" means to deliver other than by administering or dispensing a controlled
substance;

(14) "Dosage unit" means a single pill, capsule, ampule, liquid, or other form of
administration available as a single unit;

(15) "Drug" means:

(a) 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;

(b) Substances intended for use in the diagnosis, care, mitigation, treatment, or
prevention of disease in man or animals;

(c) Substances (other than food) intended to affect the structure or any function of
the body of man or animals; and

(d) Substances intended for use as a component of any article specified in this
subsection.

It does not include devices or their components, parts, or accessories;

(16) "Fentanyl" means a substance containing any quantity of fentanyl, or any of its salts,
isomers, or salts of isomers;

(17) "Fentanyl derivative" means a substance containing any quantity of any chemical
compound, except compounds specifically scheduled as controlled substances by
statute or by administrative regulation pursuant to this chapter, which is structurally
derived from 1-ethyl-4-(N-phenylamido) piperadine:

(a) By substitution:

1. At the 2-position of the 1-ethyl group with a phenyl, furan, thiophene, or
ethyloxotetrazole ring system; and

2. Of the terminal amido hydrogen atom with an alkyl, alkoxy, cycloalkyl, or furanyl group; and

(b) Which may be further modified in one (1) or more of the following ways:

1. By substitution on the N-phenyl ring to any extent with alkyl, alkoxy, haloalkyl, hydroxyl, or halide substituents;

2. By substitution on the piperadine ring to any extent with alkyl, allyl, alkoxy, hydroxy, or halide substituents at the 2-, 3-, 5-, and/or 6-positions;

3. By substitution on the piperadine ring to any extent with a phenyl, alkoxy, or carboxylate ester substituent at the 4-position; or

4. By substitution on the 1-ethyl group to any extent with alkyl, alkoxy, or hydroxy substituents;

(18) "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;

(19) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:

(a) Poses an explosion hazard;

(b) Poses a fire hazard; or

(c) Is poisonous or injurious if handled, swallowed, or inhaled;
(20) "Heroin" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;

(21) "Hydrocodone combination product" means a drug with:

(a) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium; or

(b) Not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(22) "Immediate precursor" means a substance which is 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 or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;

(23) "Industrial hemp" has the same meaning as in KRS 260.850;

(24) "Industrial hemp products" has the same meaning as in KRS 260.850;

(25) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;

(26) "Isomer" means the optical isomer, except the Cabinet for Health and Family Services may include the optical, positional, or geometric isomer to classify any substance pursuant to KRS 218A.020;

(27) "Kratom" means Mitragyna speciosa or mitragynine and includes all parts of the
plant presently classified botanically as Mitragyna speciosa, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term does not include any other species in the genus Mitragyna;

"Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly 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 activities:

(a) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice;
(b) By a practitioner, or by his or her authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
(c) By a pharmacist as an incident to his or her dispensing of a controlled substance in the course of his or her professional practice;

"Marijuana" means all parts of the plant Cannabis sp., 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 or any compound, mixture, or preparation which contains any quantity of these substances. The term "marijuana" does not include:

(a) Industrial hemp that is in the possession, custody, or control of a person who
holds a license issued by the Department of Agriculture permitting that person
to cultivate, handle, or process industrial hemp;

(b) Industrial hemp products that do not include any living plants, viable seeds,
leaf materials, or floral materials;

(c) The substance cannabidiol, when transferred, dispensed, or administered
pursuant to the written order of a physician practicing at a hospital or
associated clinic affiliated with a Kentucky public university having a college
or school of medicine;

(d) For persons participating in a clinical trial or in an expanded access program,
a drug or substance approved for the use of those participants by the United
States Food and Drug Administration;

(e) A cannabidiol product derived from industrial hemp, as defined in KRS
260.850;

(f) For the purpose of conducting scientific research, a cannabinoid product
derived from industrial hemp, as defined in KRS 260.850; or

(g) A cannabinoid product approved as a prescription medication by the United
States Food and Drug Administration;

(30) "Medical history," as used in KRS Chapter 218A and for criminal prosecution
only, means an accounting of a patient's medical background, including but not
limited to prior medical conditions, prescriptions, and family background;

(31) "Medical order," as used in KRS Chapter 218A and for criminal prosecution
only, means a lawful order of a specifically identified practitioner for a specifically
identified patient for the patient's health-care needs. "Medical order" may or may
not include a prescription drug order;

(32) "Medical record," as used in KRS Chapter 218A and for criminal prosecution
only, means a record, other than for financial or billing purposes, relating to a
patient, kept by a practitioner as a result of the practitioner-patient relationship;
"Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;

"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:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and

(g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;

"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 KRS 218A.020, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;

"Opium poppy" means the plant of the species papaver somniferum L., except
its seeds;

(37) "Person" means individual, corporation, government or governmental
subdivision or agency, business trust, estate, trust, partnership or association, or any
other legal entity;

(38) "Physical injury" has the same meaning it has in KRS 500.080;

(39) "Poppy straw" means all parts, except the seeds, of the opium poppy, after
mowing;

(40) "Pharmacist" means a natural person licensed by this state to engage in the
practice of the profession of pharmacy;

(41) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific
investigator, optometrist as authorized in KRS 320.240, advanced practice
registered nurse as authorized under KRS 314.011, physician assistant as authorized
under KRS 311.858, or other person licensed, registered, or otherwise permitted by
state or federal law to acquire, distribute, dispense, conduct research with respect to,
or to administer a controlled substance in the course of professional practice or
research in this state. "Practitioner" also includes a physician, dentist, podiatrist,
veterinarian, or advanced practice registered nurse authorized under KRS 314.011
who is a resident of and actively practicing in a state other than Kentucky and who
is licensed and has prescriptive authority for controlled substances under the
professional licensing laws of another state, unless the person's Kentucky license
has been revoked, suspended, restricted, or probated, in which case the terms of the
Kentucky license shall prevail;

(42) "Practitioner-patient relationship," as used in KRS Chapter 218A and for
criminal prosecution only, means a medical relationship that exists between a
patient and a practitioner or the practitioner's designee, after the practitioner or his
or her designee has conducted at least one (1) good faith prior examination;

(43) "Prescription" means a written, electronic, or oral order for a drug or
medicine, or combination or mixture of drugs or medicines, or proprietary
preparation, signed or given or authorized by a medical, dental, chiropody,
veterinarian, optometric practitioner, or advanced practice registered nurse, and
intended for use in the diagnosis, cure, mitigation, treatment, or prevention of
disease in man or other animals;

(44)"Prescription blank," with reference to a controlled substance, means a
document that meets the requirements of KRS 218A.204 and 217.216;

(45)"Presumptive probation" means a sentence of probation not to exceed the
maximum term specified for the offense, subject to conditions otherwise authorized
by law, that is presumed to be the appropriate sentence for certain offenses
designated in this chapter, notwithstanding contrary provisions of KRS Chapter
533. That presumption shall only be overcome by a finding on the record by the
sentencing court of substantial and compelling reasons why the defendant cannot be
safely and effectively supervised in the community, is not amenable to community-
based treatment, or poses a significant risk to public safety;

(46)"Production" includes the manufacture, planting, cultivation, growing, or
harvesting of a controlled substance;

(47)"Recovery program" means an evidence-based, nonclinical service that assists
individuals and families working toward sustained recovery from substance use and
other criminal risk factors. This can be done through an array of support programs
and services that are delivered through residential and nonresidential means;

(48)"Salvia" means Salvia divinorum or Salvinorin A and includes all parts of the
plant presently classified botanically as Salvia divinorum, whether growing or not,
the seeds thereof, any extract from any part of that plant, and every compound,
manufacture, derivative, mixture, or preparation of that plant, its seeds, or its
extracts, including salts, isomers, and salts of isomers whenever the existence of
such salts, isomers, and salts of isomers is possible within the specific chemical
designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus salvia;

(49) [48] "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;

(50) [49] "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;

(51) [50] "Serious physical injury" has the same meaning it has in KRS 500.080;

(52) [51] "Synthetic cannabinoids or piperazines" means any chemical compound which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law, that contains Benzylpiperazine (BZP); Trifluoromethylphenylpiperazine (TFMPP); 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol (HU-210); 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexamabinol (HU-211); or any compound in the following structural classes:

(a) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but
are not limited to JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, and AM-2201;

(b) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to JWH-167, JWH-250, JWH-251, and RCS-8;

(c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to AM-630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;

(d) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples of this structural class include but are not limited to CP 47,497 and its C8 homologue (cannabicyclohexanol);

(e) Naphthylmethylinindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not not
further substituted in the indole ring to any extent and whether or not
substituted in the naphthyl ring to any extent. Examples of this structural class
include but are not limited to JWH-175, JWH-184, and JWH-185;

(f) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole
structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl,
haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-
piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further
substituted in the pyrrole ring to any extent and whether or not substituted in
the naphthyl ring to any extent. Examples of this structural class include but
are not limited to JWH-030, JWH-145, JWH-146, JWH-307, and JWH-368;

(g) Naphthylmethylindenenes: Any compound containing a 1-(1-
naphthylmethyl)indene structure with substitution at the 3-position of the
indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl,
1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether
or not further substituted in the indene ring to any extent and whether or not
substituted in the naphthyl ring to any extent. Examples of this structural class
include but are not limited to JWH-176;

(h) Tetramethylcyclopropanoylindoles: Any compound containing a 3-(1-
tetramethylcyclopropoyl)indole structure with substitution at the nitrogen
atom of the indole ring by an alkyl, haloalkyl, cycloalkylmethyl,
cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl
group, whether or not further substituted in the indole ring to any extent and
whether or not further substituted in the tetramethylcyclopropyl ring to any
extent. Examples of this structural class include but are not limited to UR-144
and XLR-11;

(i) Adamantoylindoles: Any compound containing a 3-(1-adamantoyl)indole
structure with substitution at the nitrogen atom of the indole ring by an alkyl,
haloalkyl, alkenyl, cycloalkymethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring system to any extent. Examples of this structural class include but are not limited to AB-001 and AM-1248; or

(j) Any other synthetic cannabinoid or piperazine which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law;

(53) "Synthetic cathinones" means any chemical compound which is not approved by the United States Food and Drug Administration or, if approved, which is not dispensed or possessed in accordance with state and federal law (not including bupropion or compounds listed under a different schedule) structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in one (1) or more of the following ways:

(a) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one (1) or more other univalent substituents. Examples of this class include but are not limited to 3,4-Methylenedioxyxycathinone (bk-MDA);

(b) By substitution at the 3-position with an acyclic alkyl substituent. Examples of this class include but are not limited to 2-methylamino-1-phenylbutan-1-one (buphedrone);

(c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure. Examples of this class include but are not limited to Dimethylcathinone, Ethcathinone, and α-Pyrrolidinopropiophenone (α-PPP);
or

(d) Any other synthetic cathinone which is not approved by the United States Food and Drug Administration or, if approved, is not dispensed or possessed in accordance with state or federal law;

(54) "Synthetic drugs" means any synthetic cannabinoids or piperazines or any synthetic cathinones;

(55) "Telehealth" has the same meaning it has in KRS 311.550;

(56) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(a) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

(b) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and

(c) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

(57) "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;

(58) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and

(59) "Ultimate user" means a person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

Section 2. KRS 218A.1412 is amended to read as follows:

(1) A person is guilty of trafficking in a controlled substance in the first degree when he or she knowingly and unlawfully traffics in:

(a) Four (4) grams or more of cocaine;
(b) Two (2) grams or more of methamphetamine;

(c) Ten (10) or more dosage units of a controlled substance that is classified in Schedules I or II and is a narcotic drug, or a controlled substance analogue;

(d) Any quantity of heroin, fentanyl, carfentanil, or fentanyl derivatives; lysergic acid diethylamide; phencyclidine; gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; kratom; or flunitrazepam, including its salts, isomers, and salts of isomers; or

(e) Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of this subsection in an amount less than the amounts specified in those paragraphs.

(2) The amounts specified in subsection (1) of this section may occur in a single transaction or may occur in a series of transactions over a period of time not to exceed ninety (90) days that cumulatively result in the quantities specified in this section.

(3) (a) Any person who violates the provisions of subsection (1)(a), (b), (c), or (d) of this section shall be guilty of a Class C felony for the first offense and a Class B felony for a second or subsequent offense.

(b) Any person who violates the provisions of subsection (1)(e) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

(c) Any person convicted of a Class C felony offense or higher under this section shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least fifty percent (50%) of the sentence imposed in cases where the trafficked substance was heroin, fentanyl, carfentanil, or fentanyl derivatives.

Section 3. KRS 218A.1415 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the first degree when
he or she knowingly and unlawfully possesses:

(a) A controlled substance that is classified in Schedules I or II and is a narcotic drug;

(b) A controlled substance analogue;

(c) Methamphetamine;

(d) Lysergic acid diethylamide;

(e) Phencyclidine;

(f) Gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or

(g) Flunitrazepam, including its salts, isomers, and salts of isomers; or

(h) Kratom.

(2) Possession of a controlled substance in the first degree is a Class D felony subject to the following provisions:

(a) The maximum term of incarceration shall be no greater than three (3) years, notwithstanding KRS Chapter 532;

(b) For a person's first or second offense under this section, he or she may be subject to a period of:

1. Deferred prosecution pursuant to KRS 218A.14151; or

2. Presumptive probation;

(c) Deferred prosecution under paragraph (b) of this subsection shall be the preferred alternative for a first offense; and

(d) If a person does not enter a deferred prosecution program for his or her first or second offense, he or she shall be subject to a period of presumptive probation, unless a court determines the defendant is not eligible for presumptive probation as defined in KRS 218A.010.