AN ACT relating to crimes and punishments.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

In addition to any other penalty authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a violation of Section 2 or 4 of this Act or KRS 218A.500 or to any misdemeanor offense under this chapter that includes possession of a controlled substance as an element of the offense shall be required to:

(1) Perform community service for a period of time as determined by the court; and

(2) Complete a drug treatment program pursuant to Section 5 or 6 of this Act.

➔Section 2. KRS 218A.140 is amended to read as follows:

(1) (a) No person shall obtain or attempt to obtain a prescription for a controlled substance by knowingly misrepresenting to, or knowingly withholding information from, a practitioner.

(b) No person shall procure or attempt to procure the administration of a controlled substance by knowingly misrepresenting to, or withholding information from, a practitioner.

(c) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance by the use of a false name or the giving of a false address.

(d) No person shall knowingly make a false statement regarding any prescription, order, report, or record required by this chapter.

(e) No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself or herself to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.

(f) In order to obtain a controlled substance, no person shall present a

prescription for a controlled substance that was obtained in violation of this chapter.

(g) No person shall affix any false or forged label to a package or receptacle containing any controlled substance.

(2) No person shall possess, manufacture, sell, dispense, prescribe, distribute, or administer any counterfeit substance.

(3) No person shall knowingly obtain or attempt to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship with the practitioner or his or her designee from whom the person seeks to obtain the prescription.

(4) No person shall knowingly assist a person in obtaining or attempting to obtain a prescription in violation of this chapter.

(5) Any person who violates any subsection of this section ***other than subsection (2)*** shall be guilty of a Class D felony***. Any person who violates subsection (2) of this section shall be guilty of a Class A misdemeanor***.

➔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.

(2) Possession of a controlled substance in the first degree is a Class ***A misdemeanor***[~~ 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;

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

(c)[~~(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.

➔Section 4. KRS 218A.1437 is amended to read as follows:

(1) A person is guilty of unlawful possession of a methamphetamine precursor when he or she knowingly and unlawfully possesses a drug product or combination of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the drug product or combination of drug products as a precursor to manufacturing methamphetamine or other controlled substance.

(2) (a) Except as provided in paragraph (b) of this subsection, possession of a drug product or combination of drug products containing more than nine (9) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, within any thirty (30) day period shall constitute prima facie evidence of the intent to use the drug product or combination of drug products as a precursor to methamphetamine or other controlled

substance.

(b) The prima facie evidence referred to in paragraph (a) of this subsection shall not apply to the following persons who lawfully possess a drug product or combination of drug products listed in subsection (1) of this section in the course of legitimate business:

1. A retail distributor of drug products or wholesaler of drug products or its agent;
2. A wholesale drug distributor, or its agent, issued a permit by the Board of Pharmacy;
3. A pharmacist licensed by the Board of Pharmacy;
4. A pharmacy permitted by the Board of Pharmacy;
5. A licensed health care professional possessing the drug products in the course of carrying out his or her profession;
6. A trained chemist working in a properly equipped research laboratory in an education, government, or corporate setting; or
7. A common carrier under contract with any of the persons or entities set out in subparagraphs 1. to 6. of this paragraph.

(3) Unlawful possession of a methamphetamine precursor is a Class ***A misdemeanor***~~[D felony]~~ for the first offense and a Class C felony for each subsequent offense.

➔Section 5. KRS 218A.275 is amended to read as follows:

(1) A court ***shall***~~[may]~~ request ***that*** the Division of Probation and Parole~~[to]~~ perform a risk and needs assessment for any person found guilty of possession of a controlled substance pursuant to KRS ***218A.1404,*** 218A.1415, 218A.1416, or 218A.1417. The assessor shall make a recommendation to the court as to ***what***~~[whether]~~ treatment is indicated by the assessment, and~~[, if so,]~~ the most appropriate treatment or recovery program environment.

(2) The person, his or her family, and the prosecuting attorney may offer their

opinions as to the appropriate treatment course. While the court may consider the opinion of the parties and the offender's family in making its decision as to the appropriate treatment, the final determination as to the type, duration, and frequency of treatment shall be made by the court.~~[If treatment is indicated for the person,]~~

(3) The court ***shall***~~[may]~~ order ***the person***~~[him or her]~~ to the appropriate treatment or recovery program that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as designated by the secretary of the Cabinet for Health and Family Services where a program of treatment or recovery not to exceed one (1) year in duration may be prescribed.

(4) The court may consider any appropriate drug treatment center, including community-based, faith-based, charitable, church-sponsored, or nonprofit residential counseling or treatment programs.

(5) The person ordered to the designated treatment or recovery program shall present himself or herself for registration and initiation of the treatment or recovery program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated treatment or recovery program within the specified time, or if at any time during the program of treatment or recovery prescribed, the authorized director of the treatment or recovery program finds that the person is unwilling to participate in his or her treatment, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment, or may rescind the treatment order and impose a sentence for the possession offense. Upon discharge of the person from the treatment or recovery program by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the one (1) year period or upon satisfactory completion of one (1) year of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or

her designee, shall notify the sentencing court of the date of such discharge from the treatment or recovery program.

(6)[~~(2)~~] The secretary of the Cabinet for Health and Family Services, or his or her designee, shall inform each court of the identity and location of the treatment or recovery program to which the person is sentenced.

(7)[~~(3)~~] Transportation to an inpatient facility shall be provided by order of the court when the court finds the person unable to convey himself or herself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.

(8)[~~(4)~~] The sentencing court shall immediately notify the designated treatment or recovery program of the sentence and its effective date.

(9)[~~(5)~~] The secretary for health and family services, or his or her designee, may authorize transfer of the person from the initially designated treatment or recovery program to another treatment or recovery program for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating treatment or recovery program and shall be notified by the secretary of the new treatment or recovery program to which the person was transferred.

(10)[~~(6)~~] ***Unless the offender's income is at or below one hundred twenty-five percent (125%) of the annual poverty guidelines as published by the United States Department of Health and Human Services, the offender shall be responsible for the payment of treatment services.*** Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment of patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the treatment or recovery program shall arrange otherwise.

(11)[~~(7)~~] None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional

discharge.

(12)[~~(8)~~] Except as provided in subsection ***(16)***[~~(12)~~] of this section, in the case of any person who has been convicted for the first time of possession of controlled substances, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Voiding of a conviction under this subsection and dismissal may occur only once with respect to any person.

(13)[~~(9)~~] If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in KRS 27A.099. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.

(14)[~~(10)~~] After the sealing of the record, the proceedings in the matter shall not be used against the defendant except for the purposes of determining the person's eligibility to have his or her conviction voided under subsection ***(12)***[~~(8)~~] of this section. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record has been sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

(15)[~~(11)~~] Inspection of the sealed records may thereafter be permitted by the court pursuant to KRS 27A.099 or upon a motion by the person who is the subject of the

records and only to those persons named in the motion or upon a motion of the prosecutor to verify a defendant's eligibility to have his or her conviction voided under subsection ***(12)***[~~(8)~~] of this section.

(16)[~~(12)~~] A person who has previously had a charge of possession of controlled substances dismissed after completion of a deferred prosecution under KRS 218A.14151 shall not be eligible for voiding of conviction under this section.

➔Section 6. KRS 218A.276 is amended to read as follows:

(1) ***The***[~~A~~] court ***shall***[~~ may~~] request ***that*** the Division of Probation and Parole[~~ to~~] perform a risk and needs assessment for any person found guilty of possession of ***counterfeit substances pursuant to Section 2 of this Act,*** marijuana pursuant to KRS 218A.1422, synthetic drugs pursuant to KRS 218A.1430, ***methamphetamine precursors pursuant to Section 4 of this Act,***[~~ or~~] salvia pursuant to KRS 218A.1451***, or drug paraphernalia pursuant to KRS 218A.500***. The assessor shall make a recommendation to the court as to ***what***[~~ whether~~] treatment is indicated by the assessment, and[~~, if so,~~] the most appropriate treatment or recovery program environment.

(2) The person, his or her family, and the prosecuting attorney may offer their opinions as to the appropriate treatment course. While the court may consider the opinion of the parties and the offender's family in making its decision as to the appropriate treatment, the final determination as to the type, duration, and frequency of treatment shall be made by the court.[~~ If treatment is indicated for the person, ~~]

(3) The court ***shall***[~~ may~~] order ***the person***[~~ him or her~~] to the appropriate treatment or recovery program as indicated by the assessment that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as designated by the secretary of the Cabinet for Health and Family Services where a program of treatment or recovery not to exceed ninety (90) days in duration may be

prescribed.

(4) The court may consider any appropriate drug treatment center, including community-based, faith-based, charitable, church-sponsored, or nonprofit residential counseling or treatment programs.

(5) The person ordered to the designated treatment or recovery program shall present himself or herself for registration and initiation of the treatment or recovery program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated treatment or recovery program within the specified time, or if any time during the program of treatment or recovery prescribed, the authorized director of the treatment or recovery program finds that the person is unwilling to participate in his or her treatment, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment, or may rescind the treatment order and impose a sentence for the possession offense. Upon discharge of the person from the treatment or recovery program by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or her designee, shall notify the sentencing court of the date of such discharge from the treatment or recovery program.

(6)[~~(2)~~] The secretary of the Cabinet for Health and Family Services, or his or her designee, shall inform each court of the identity and location of the treatment or recovery program to which a person sentenced by that court under this chapter shall be initially ordered.

(7)[~~(3)~~] In the case of a person ordered to an inpatient facility for treatment pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself or herself to the facility

within five (5) days of sentencing by reason of physical infirmity or financial incapability.

(8)[~~(4)~~] The sentencing court shall immediately notify the designated treatment or recovery program of the sentence and its effective date.

(9)[~~(5)~~] The secretary of the Cabinet for Health and Family Services, or his or her designee, may authorize transfer of the person from the initially designated treatment or recovery program to another treatment or recovery program for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating treatment or recovery program and shall be notified by the secretary or his or her designee of the new treatment or recovery program to which the person was transferred.

(10)[~~(6)~~] ***Unless the offender's income is at or below one hundred twenty-five percent (125%) of the annual poverty guidelines as published by the United States Department of Health and Human Services, the offender shall be responsible for the payment of treatment services.*** Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the treatment or recovery program shall arrange otherwise.

(11)[~~(7)~~] None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation, presumptive probation, or conditional discharge.

(12)[~~(8)~~] In the case of any person who has been convicted of possession of marijuana, synthetic drugs, or salvia, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for

purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(13)[~~(9)~~] If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in KRS 27A.099. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.

(14)[~~(10)~~] After the sealing of the record, the proceedings in the matter shall not be used against the defendant. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

(15)[~~(11)~~] Inspection of the sealed records may thereafter be permitted by the court or upon a motion by the person who is the subject of the records and only to those persons named in the motion.

➔Section 7. KRS 431.078 is amended to read as follows:

(1) Any person who has been convicted of:

(a) A misdemeanor, a violation, or a traffic infraction not otherwise classified as a misdemeanor or violation, or a series of misdemeanors, violations, or traffic infractions arising from a single incident; or

(b) A series of misdemeanors, violations, or traffic infractions not arising from a single incident;

may petition the court in which he was convicted for expungement of his misdemeanor or violation record within that judicial district, including a record of

any charges for misdemeanors, violations, or traffic infractions that were dismissed or amended in the criminal action. The person shall be informed of the right at the time of adjudication.

(2) Except as provided in KRS 218A.275***(12)***~~[(8)]~~ and 218A.276***(12)***~~[(8)]~~, the petition shall be filed no sooner than five (5) years after the completion of the person's sentence or five (5) years after the successful completion of the person's probation, whichever occurs later.

(3) Upon the filing of a petition, the court shall set a date for a hearing, no sooner than thirty (30) days after the filing of the petition, and shall notify the county attorney; the victim of the crime, if there was an identified victim; and any other person whom the person filing the petition has reason to believe may have relevant information related to the expungement of the record. Inability to locate the victim shall not delay the proceedings in the case or preclude the holding of a hearing or the issuance of an order of expungement.

(4) For a petition brought under subsection (1)(a) of this section, the court shall order expunged all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if at the hearing the court finds that:

(a) The offense was not a sex offense or an offense committed against a child;

(b) The person had not in the five (5) years prior to the filing of the petition for expungement been convicted of a felony or a misdemeanor;

(c) No proceeding concerning a felony or misdemeanor is pending or being instituted against the person; and

(d) The offense is not one subject to enhancement for a second or subsequent offense or the time for such an enhancement has expired.

(5) For a petition brought under subsection (1)(b) of this section, the court may order expunged all records in the custody of the court and any records in the custody of

any other agency or official, including law enforcement records, if at the hearing the court finds that:

(a) The offense was not a sex offense or an offense committed against a child;

(b) The person had not in the five (5) years prior to the filing of the petition for expungement been convicted of a felony or a misdemeanor;

(c) No proceeding concerning a felony or misdemeanor is pending or being instituted against the person; and

(d) The offense is not one subject to enhancement for a second or subsequent offense or the time for such an enhancement has expired.

(6) Upon the entry of an order to expunge the records, the proceedings in the case shall be deemed never to have occurred; the court and other agencies shall cause records to be deleted or removed from their computer systems so that the matter shall not appear on official state-performed background checks; the persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

(7) The filing fee for a petition under this section shall be one hundred dollars ($100). The first fifty dollars ($50) of each fee collected pursuant to this subsection shall be deposited into a trust and agency account for deputy clerks and shall not be refundable.

(8) Copies of the order shall be sent to each agency or official named therein.

(9) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in the petition.

(10) This section shall be deemed to be retroactive, and any person who has been convicted of a misdemeanor prior to July 14, 1992, may petition the court in which

he was convicted, or if he was convicted prior to the inception of the District Court to the District Court in the county where he now resides, for expungement of the record of one (1) misdemeanor offense or violation or a series of misdemeanor offenses or violations arising from a single incident, provided that the offense was not one specified in subsection (4) and that the offense was not the precursor offense of a felony offense for which he was subsequently convicted. This section shall apply only to offenses against the Commonwealth of Kentucky.

(11) As used in this section, "violation" has the same meaning as in KRS 500.080.

(12) Any person denied an expungement prior to June 25, 2013, due to the presence of a traffic infraction on his or her record may file a new petition for expungement of the previously petitioned offenses, which the court shall hear and decide under the terms of this section. No court costs or other fees, from the court or any other agency, shall be required of a person filing a new petition under this subsection.