

# HB 463

2011 Omnibus Criminal Justice Act

# HB 463: Overview

- ▶ Kentucky Acts 2011 Regular Session, Chapter 2
- ▶ The Public Safety & Offender Accountability Act
- ▶ Effective Date (*generally*): June 8, 2011
  - *Kentucky Constitution, Section 55*
  - *OAG 11-002*
  - *Sections 112-116 - Effective dates vary*
  - *Sections 34, 37, 49, 64, 67 and Sections 87-91*

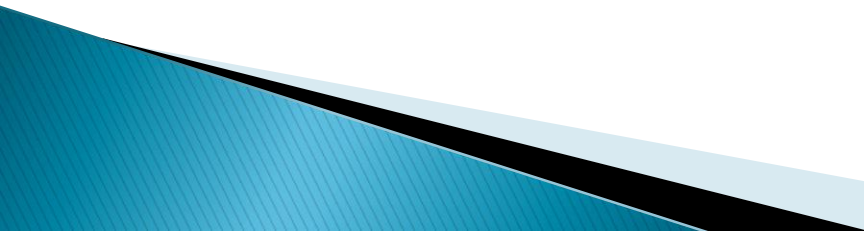
# Retroactivity

## **KRS 446.110 Offenses committed and rights accruing prior to repeal of law**

No new law shall be construed to repeal a former law as to any offense committed against a former law, nor as to any act done, or penalty, forfeiture or punishment incurred, or any right accrued or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued or claim arising before the new law takes effect, except that the proceedings thereafter had shall conform, so far as practicable, to the laws in force at the time of such proceedings.

If any penalty, forfeiture or punishment is mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.

# HB 463: Controlled Substances

- ▶ Section 5: Definitions
  - ▶ Sections 6–8: Sentence Enhancements
  - ▶ Sections 9–11: Drug Trafficking
  - ▶ Sections 12–14: Drug Possession
  - ▶ Section 15: Theft of a Controlled Substance
  - ▶ Sections 16–18: Penalty reductions, other crimes
- 

# Section 5

- ▶ Definitions
- ▶ Amends KRS 218A.010
  - Cocaine, Heroin defined
  - Dosage defined

Section 5. KRS 218A.010 is amended to read as follows:

As used in this chapter:

\* \* \* \*

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

\* \* \* \*

~~(12)(11)~~ "Dosage unit" means a single pill, capsule, ampule, liquid, or other form of administration available as a single unit;

\* \* \*

16) "Heroin" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;

Summary

Bill Language

# Section 5 (cont.)

## ▶ Presumptive probation

34)} *"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;*

Summary

Bill Language

# Section 5 (cont.)

- ▶ Recovery program

*39) "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;*

Summary

Bill Language

# Section 6

- ▶ Amends KRS 218A.140(5)
- ▶ Deletes repeat offender enhancements

Section 6. KRS 218A.140 is amended to read as follows:

- (5) Any person who violates any subsection of this section shall be guilty of a Class D felony~~[for a first offense and a Class C felony for subsequent offenses]~~.

Summary

Bill Language

# Section 7

- ▶ Amends KRS 218A.1404
- ▶ Deletes enhancement of misdemeanors
- ▶ Section 7. KRS 218A.1404 is amended to read as follows:
  - (1) No person shall traffic in any controlled substance except as authorized by law.
  - (2) No person shall possess any controlled substance except as authorized by law.
  - (3) No person shall dispense, prescribe, distribute, or administer any controlled substance except as authorized by law.
  - (4) Unless another specific penalty is provided in this chapter, any person who violates the provisions of subsection (1) or (3) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for subsequent offenses and any person who violates the provisions of subsection (2) of this section shall be guilty of a Class A misdemeanor ~~for the first offense and a Class D felony for subsequent offenses~~.

Summary

Bill Language

# Section 8 – School zone

- ▶ Amends KRS 218A.1411
- ▶ School zone enhancement
- ▶ Zone reduced to 1,000 feet, not yards

Section 8. KRS 218A.1411 is amended to read as follows:

(1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) ~~feet/yards~~ of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.

(2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to synthetic cannabinoid agonists or piperazines or salvia.

Summary

Bill Language

# Section 9 – Trafficking I

- ▶ Amends KRS 218A.1412
- ▶ 4 or more grams of cocaine or heroin
- ▶ 2 or more grams of meth;
- ▶ 10 or more dosage units of narcotics under Schedules I or II
- ▶ Any quantity of LSD, PCP, GHB

- ▶ Section 9. 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 heroin or methamphetamine;
  - ▶ (c) Ten (10) or more dosage units of a controlled substance[,] that is classified in Schedules I or II ~~and which~~ is a narcotic drug, ~~or~~ a controlled substance analogue;
  - ▶ (d) Any quantity of lysergic acid diethylamide; phencyclidine; [a controlled substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;] gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; 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.

Summary

Bill Language

# Section 9 – Trafficking I (cont.)

- ▶ Class C Felony
- ▶ Accumulation of sales for 90 days is permitted to reach the required amount.

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) Except as provided in paragraph (b) of this subsection, any person who violates the provisions of~~subsection (1) 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 offense or subsequent offense~~:~~

(a) ~~For the first offense be guilty of a Class C felony.~~

(b) ~~For a second or subsequent offense be guilty of a Class B felony.~~

Summary

Bill Language

# Section 10 – Trafficking II

- ▶ Amends KRS 218A.1413
- ▶ 10 or more dosage unites of non-narcotics under Schedules I and II
- ▶ 20 more dosage unites of Schedule III
- ▶ Class D Felony; repeat offense Class C Felony
- ▶ Lesser amounts Class D felony limited to 3 years; repeat offense Class D Felony

Section 10. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:*
- (a) He *or she* knowingly and unlawfully traffics in:
1. Ten (10) or more dosage units of a controlled substance classified in Schedules I and II ~~that~~<sup>[which]</sup> is not a narcotic drug; or specified in KRS 218A.1412; or
  2. Twenty (20) or more dosage units of a controlled substance classified in Schedule III; but not [~~lysergic acid diethylamide, phencyclidine,~~] synthetic cannabinoid agonists or piperazines, salvia, or marijuana; [~~or~~]

Summary

Bill Language

# Section 10 – Trafficking II (cont.)

(b) He *or she* knowingly and unlawfully prescribes~~[, orders]~~, distributes, supplies, or sells an anabolic steroid for:

1. Enhancing *human* performance in an exercise, sport, or game; or
2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity; *or*

*(c) Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amounts specified in that paragraph.*

(2) *(a) Except as provided in paragraph (b) of this subsection,* any person who violates the provisions of subsection (1) 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.*

*(b) Any person who violates the provisions of subsection (1)(c) of this section shall be guilty of:*

1. *A Class D felony for the first offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years; and*
2. *A Class D felony for a second offense or subsequent offense*~~[:~~

~~(a) For the first offense be guilty of a Class D felony.~~

~~(b) For a second or subsequent offense be guilty of a Class C felony~~].

Bill Language cont.

# Section 11 – Trafficking III

- ▶ Amends KRS 218A.1414
- ▶ 20 or more dosage units of Schedules IV or V
- ▶ Class A Misdemeanor; repeat offense Class D Felony
- ▶ Lesser amounts Class A Misdemeanor with presumed probation; repeat offense Class D Felony limited to 3 years
- ▶ No accumulation

Section 11. KRS 218A.1414 is amended to read as follows:

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

(a) Twenty (20) or more dosage units of a controlled substance classified in Schedules IV or V; or

(b) Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amount specified in that paragraph.

Summary

Bill Language

# Section 11 – Trafficking III cont.

- ▶ Amends KRS 218A.1414
- ▶ 20 or more dosage units of Schedules IV or V
- ▶ Class A Misdemeanor; repeat offense Class D Felony
- ▶ Lesser amounts Class A Misdemeanor with presumed probation; repeat offense Class D Felony limited to 3 years
- ▶ No accumulation

(2) ~~(a)~~ Any person who violates the provisions of subsection (1)~~(a)~~ of this section shall *be guilty of a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.*

*(b) Any person who violates the provisions of subsection (1)(b) of this section shall be guilty of:*

*1. A Class A misdemeanor for the first offense, subject to the imposition of presumptive probation; and*

*2. A Class D felony for a second or subsequent offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years[.*

~~(a) For the first offense be guilty of a Class A misdemeanor.~~

~~(b) For a second or subsequent offense be guilty of a Class D felony].~~

Summary

Bill Language

# Section 12–Possession I

- ▶ Amends KRS 218A.1415
- ▶ Narcotics in Schedules I and II
- ▶ Analogues
- ▶ Meth
- ▶ LSD, PCP, GHB
- ▶ Flunitrazepam

Section 12. 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 contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or,]~~ that is classified in Schedules I or II and~~[which]~~ 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.

Summary

Bill Language

# Section 12–Possession I (cont.)

- ▶ Class D Felony limited to 3 years
  - ▶ Deferred prosecution or presumptive probation
  - ▶ Exclusion of Schedule I non-narcotics
- ▶ (2) Possession of a controlled substance in the first degree is:
    - ▶ ~~(a) For a first offense~~ 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 Section 20 of this Act; 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 Section 5 of this Act.*
    - ▶ ~~[(b) For a second or subsequent offense a Class C felony.]~~

Summary

Bill Language

# Section 13–Possession II

- ▶ Amends KRS 218A.1416
- ▶ Deletes repeat offender enhancement
- ▶ Section 13. KRS 218A.1416 is amended to read as follows:
  - ▶ (1) A person is guilty of possession of a controlled substance in the second degree when he *or she* knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not [~~lysergic acid diethylamide, phencyclidine,~~] synthetic cannabinoid agonists or piperazines, salvia, or marijuana.
  - ▶ (2) Possession of a controlled substance in the second degree is:
    - ▶ ~~(a) For a first offense] a Class A misdemeanor.~~
    - ▶ ~~[(b) For a second or subsequent offense a Class D felony.]~~

Summary

Bill Language

# Section 14–Possession III

- ▶ Amends KRS 218A.1417
- ▶ Deletes repeat offender enhancement
- ▶ Section 14. KRS 218A.1417 is amended to read as follows:
  - ▶ (1) A person is guilty of possession of a controlled substance in the third degree when he *or she* knowingly and unlawfully possesses a controlled substance classified in Schedules IV or V.
  - ▶ (2) Possession of a controlled substance in the third degree is:
    - ▶ ~~(a) For a first offense] a Class A misdemeanor.~~
    - ▶ ~~[(b) For a second or subsequent offense a Class D felony.]~~

Summary

Bill Language

# Section 15–Theft of Controlled Substance

- ▶ Amends KRS 218A.1418
  - ▶ Class D Felony
  - ▶ Deletes enhancement when value exceeds \$300
  - ▶ Precludes use of KRS Chapter 514 theft crimes
- ▶ Section 15. KRS 218A.1418 is amended to read as follows:
    - (1) A person is guilty of theft of a controlled substance when he *or she* unlawfully takes or exercises control over a controlled substance belonging to another person with the intent to deprive him thereof.
    - ▶ (2) Theft of a controlled substance is:
      - ▶ ~~(a) for a first offense] a Class D felony~~ if the controlled substance has a value of three hundred dollars (\$300) or less.
      - ▶ ~~(b) For a second or subsequent offense, or value greater than three hundred dollars (\$300), a Class C felony].~~
    - ▶ *(3) The acts specified in this section shall not constitute theft under KRS Chapter 514.*

Summary

Bill Language

# Section 16

- ▶ Penalty reductions for other Misdemeanor possession crimes in Sections 16–18
- ▶ Marijuana possession
- ▶ Section 16. KRS 218A.1422 is amended to read as follows:
  - ▶ (1) A person is guilty of possession of marijuana when he *or she* knowingly and unlawfully possesses marijuana.
  - ▶ (2) Possession of marijuana is a Class ~~B~~[A] misdemeanor, *except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than forty-five (45) days.*

Summary

Bill Language

# Section 17

- ▶ Cannabinoid
- ▶ Piperazines
- ▶ Section 17. KRS 218A.1427 is amended to read as follows:
  - ▶ (1) A person is guilty of possession of synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully possesses synthetic cannabinoid agonists or piperazines.
  - ▶ (2) Possession of synthetic cannabinoid agonists or piperazines is a Class B misdemeanor, *except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.*

# Section 18

- ▶ Penalty reductions for other Misdemeanor possession crimes in Sections 16–18
- ▶ Salvia
- ▶ Section 18. KRS 218A.1451 is amended to read as follows:
  - ▶ (1) A person is guilty of possession of salvia when he or she knowingly and unlawfully possesses salvia for human consumption.
  - (2) Possession of salvia is a Class B misdemeanor, *except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.*

Summary

Bill Language

# Section 26 – PFO

- ▶ Amends KRS 532.080 relating to persistent felony offenders
- ▶ Time on postincarceration supervision added to eligibility for PFO status
- ▶ Section 26. KRS 532.080 is amended to read as follows:
  - \* \* \*
  - ▶ (c) That the offender:
    - ▶ \* \* \* \*
    - ▶ 2. Was on probation, parole, postincarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
    - 3. Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

Summary

Bill Language

# Section 26 – PFO (cont.)

- ▶ Subsec. (8)
- ▶ No PFO enhancement of first degree drug possession crimes
- ▶ No PFO enhancement by using a prior first degree drug possession conviction unless convicted of subsequent felony
- ▶ (8) (a) No conviction, plea of guilty, or Alford plea to a violation of KRS 218A.500 shall bring a defendant within the purview of or be used as a conviction eligible for making a person a persistent felony offender under this section.
- (b) (b) A conviction, plea of guilty, or Alford plea under Section 12 [KRS 218A.1415, 1<sup>st</sup> degree possession] of this Act shall not trigger the application of this section, regardless of the number or type of prior felony convictions that may have been entered against the defendant. A conviction, plea of guilty, or Alford plea under Section 12 of this Act may be used as a prior felony offense allowing this section to be applied if he or she is subsequently convicted of a different felony offense.

Summary

Bill Language

# Section 26 – PFO (cont.)

- ▶ Subsection (10)
- ▶ No double enhancement as a repeat offender under BOTH PFO and another statute except:
  - KRS 189A.010 (DUI)
  - KRS 189A.090 (Op. Sus Lic. DUI)
  - KRS 506.140 (Crime gang recruitment)
  - KRS 508.032 (DV Assault)
  - KRS 508.140 (Stalking)
  - KRS 510.015 (Repeat sex offenses)
- ▶ (10) (a) Except as provided in paragraph (b) of this subsection, this section shall not apply to a person convicted of a criminal offense if the penalty for that offense was increased from a misdemeanor to a felony, or from a lower felony classification to a higher felony classification, because the conviction constituted a second or subsequent violation of that offense.
- ▶ (b) This subsection shall not prohibit the application of this section to a person convicted of:
  - ▶ 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140, 508.032, 508.140, or 510.015; or
  - ▶ 2. Any other felony offense if the penalty was not enhanced to a higher level because the Commonwealth elected to prosecute the person as a first-time violator of that offense.

Summary

Bill Language

# Section 46 – Citable Offenses

- ▶ Amends KRS 431.015
- ▶ Affects authority of law enforcement arrests for misdemeanor offenses, but not felonies or violations
- ▶ Section 46. KRS 431.015 is amended to read as follows:
  - ▶ (1) *(a)* KRS 431.005 to the contrary notwithstanding, and except as provided in paragraphs (b) and (c) of this subsection, a peace officer ~~shall~~<sup>may</sup> issue a citation instead of making an arrest for a misdemeanor committed in his or her presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.

Summary

Bill Language

# Section 46 – Citable Offenses (cont.)

- ▶ (b) A peace officer may make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is:
  - ▶ 1. A violation of KRS Chapter 508, 510, or 527, or KRS 189A.010;
  - ▶ 2. An offense in which the defendant poses a risk of danger to himself, herself, or another person; or
  - ▶ 3. An offense in which the defendant refuses to follow the peace officer's reasonable instructions.
- ▶ (c) A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785.
- ▶ (2) A peace officer may issue a citation instead of making an arrest for a **violation** committed in his presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or unless the offense charged is a violation of KRS 189.223, 189.290, 189.393, 189.520, 189.580, 235.240, 281.600, 511.080, or 525.070 committed in his presence or a violation of KRS 189A.010, not committed in his presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).
- ▶ (3) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that he will not appear, a complaint may be made before a judge and a warrant shall issue.
- ▶ (4) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "ARRESTED" in lieu of the date of court appearance.

Bill Language cont.

# Thank You

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