AN ACT relating to controlled substances.

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

➔Section 1. KRS 72.026 is amended to read as follows:

(1) Unless another cause of death is clearly established, in cases requiring a post-mortem examination under KRS 72.025 the coroner or medical examiner shall take a blood sample and have it tested for the presence of any controlled substances which were in the body at the time of death.

(2) If a coroner or medical examiner determines that a drug overdose is the cause of death of a person, he or she shall provide notice of the death to:

(a) The state registrar of vital statistics and the Department of Kentucky State Police. The notice shall include any information relating to the drug that resulted in the overdose. The state registrar of vital statistics shall not enter the information on the deceased person's death certificate unless the information is already on the death certificate;~~[and]~~

(b) The licensing board for the individual who prescribed or dispensed the medication, if known. The notice shall include any information relating to the drug that resulted in the overdose, including the individual authorized by law to prescribe or dispense drugs who dispensed or prescribed the drug to the decedent***; and***

(c) The Commonwealth's attorney and a local law enforcement agency in the circuit where the death occurred, if the death resulted from the use of a Schedule I controlled substance with the notice including all information as to the types and concentrations of Schedule I drugs detected.

This subsection shall not apply to reporting the name of a pharmacist who dispensed a drug based on a prescription.

(3) The state registrar of vital statistics shall report, within five (5) business days of the receipt of a certified death certificate or amended death certificate, to the Division

of Kentucky State Medical Examiners Office, any death which has resulted from the use of drugs or a drug overdose.

(4) The Justice and Public Safety Cabinet in consultation with the Kentucky State Medical Examiners Office shall promulgate administrative regulations necessary to administer this section.

➔Section 2. KRS 196.286 is amended to read as follows:

(1) The department shall measure and document cost savings resulting from amendments to or creation of statutes in KRS Chapter 218A contained in 2011 Ky. Acts ch. 2, secs. 5 to 22. Measured and documented savings shall be reinvested or distributed as provided in this section.

(2) The Department of Corrections shall establish a baseline for measurement using the average number of inmates incarcerated at each type of penitentiary as defined in KRS 197.010 and at local jails in fiscal year 2010-2011.

(3) The department shall determine the average cost of incarceration for each type of penitentiary as defined in KRS 197.010 and for local jails, including health care costs, transportation costs, and other related costs, for one (1) inmate for one (1) year for the immediately preceding fiscal year.

(4) Beginning with the budget request for the 2012-2014 fiscal biennium, savings shall be estimated using the baseline established in subsection (2) of this section to determine the estimated average reduction of inmates due to the implementation of amendments to or creation of statutes in KRS Chapter 218A contained in 2011 Ky. Acts ch. 2, secs. 5 to 22 and multiplied by the appropriate average cost determined in subsection (3) of this section.

(5) ***Twenty-five percent (25%) of*** the estimated amount of savings shall be used ***to provide supplemental funding for KY-ASAP programs operating under KRS Chapter 15A and the remainder shall be used*** solely for expanding and enhancing treatment programs that employ evidence-based or promising practices designed to

reduce the likelihood of future criminal behavior, which shall include treatment programs at existing facilities as outlined in KRS 196.287.

(6) The amount of savings shall be estimated each year of the 2012-2014 fiscal biennium, and for each year of each fiscal biennium thereafter, as specified in subsection (4) of this section.

(7) In submitting its budget request for the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the department shall estimate the amount of savings measured under this section, and shall request the amount necessary to distribute or allocate those savings as provided in subsection (5) of this section.

(8) In enacting the budget for the department, beginning in the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the General Assembly shall determine the estimated amount necessary for reinvestment in programs and initiatives as provided by subsection (5) of this section, based upon projected savings as measured by this section, and shall ensure that appropriations to the department are sufficient to meet the funding requirements of this section.

➔Section 3. KRS 196.288 is amended to read as follows:

(1) The department shall measure and document cost savings resulting from amendments to or creation of statutes in KRS Chapters 27A, 196, 197, 431, 439, 532, 533, and 534 contained in 2011 Ky. Acts ch. 2. Measured and documented savings shall be reinvested or distributed as provided in this section.

(2) The department shall establish a baseline for measurement using the average number of inmates incarcerated at each type of penitentiary as defined in KRS 197.010 and at local jails in fiscal year 2010-2011.

(3) The department shall determine the average cost of:

(a) Incarceration for each type of penitentiary as defined in KRS 197.010 and for local jails, including health care costs, transportation costs, and other related costs, for one (1) inmate for one (1) year for the immediately preceding fiscal

year; and

(b) Providing probation and parole services for one (1) parolee for one (1) year for the immediately preceding fiscal year.

(4) Beginning with the budget request for the 2012-2014 fiscal biennium, savings shall be estimated from the baseline established in subsection (2) of this section as follows:

(a) The estimated average reduction of inmates due to mandatory reentry supervision as required by KRS 439.3406 multiplied by the appropriate average cost as determined in subsection (3)(a) of this section;

(b) The estimated average reduction of inmates due to accelerated parole hearings as required by KRS 439.340 multiplied by the appropriate average cost as determined in subsection (3)(a) of this section;

(c) The estimated average increase of parolees due to paragraphs (a) and (b) of this subsection multiplied by the average cost as determined in subsection (3)(b) of this section; and

(d) The estimated average reduction of parolees due to parole credit for good behavior as provided in KRS 439.345 multiplied by the average cost as determined in subsection (3)(b) of this section.

(5) The following amounts shall be allocated or distributed from the estimated amount of savings that would otherwise remain in the general fund:

(a) Twenty-five percent (25%) shall be distributed to the local corrections assistance fund established by KRS 441.207;~~[and]~~

(b) ***Twenty-five percent (25%) shall be distributed to provide supplemental funding for KY-ASAP programs operating under KRS Chapter 15A; and***

(c) In enacting the budget for the department and the judicial branch, beginning in the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the General Assembly shall:

1. Determine the estimated amount necessary for reinvestment in:
   a. Expanded treatment programs and expanded probation and parole services provided by or through the department; and
   b. Additional pretrial services and drug court case specialists provided by or through the Administrative Office of the Courts; and
2. Shall allocate and appropriate sufficient amounts to fully fund these reinvestment programs.

(6) The amount of savings shall be estimated each year of the 2012-2014 fiscal biennium, and for each year of each fiscal biennium thereafter, as specified in subsection (4) of this section.

(7) (a) In submitting its budget request for the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the department shall estimate the amount of savings measured under this section and shall request the amount necessary to distribute or allocate those savings as provided in subsection (5) of this section.

(b) In submitting its budget request for the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the judicial branch shall request the amount necessary to distribute or allocate those savings as provided in subsection (5) of this section.

➔Section 4. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) The Department for Medicaid Services shall provide a substance abuse benefit which shall include a broad array of treatment options for those with heroin and other opiate abuse disorders. At a minimum, these options shall include assessment, crisis residential, mobile crisis, outpatient, intensive outpatient treatment, and residential treatment.

(2) The department shall promulgate administrative regulations to implement this section and to expand the behavioral health network to allow providers to provide services within their licensure category.

(3) Providers of peer-mediated, recovery-oriented, therapeutic community models of care, such as those operated by Recovery Kentucky, shall have the opportunity to contract with managed care organizations to be reimbursed for any portion of those services that are provided by licensed or certified providers in accordance with approved billing codes.

(4) Beginning January 1, 2015, the Department for Medicaid Services shall provide an annual report to the Legislative Research Commission detailing the number of providers of substance abuse treatment, the type of services offered by each provider, the geographic distribution of providers, and a summary of expenditures on substance abuse treatment services provided by Medicaid.

➔Section 5. KRS 217.186 is amended to read as follows:

(1) A licensed health-care provider who, acting in good faith, directly or by standing order, prescribes or dispenses the drug naloxone to a ***person or agency***~~[patient]~~ who, in the judgment of the health-care provider, is capable of administering the drug for an emergency opioid overdose, shall not, as a result of his or her acts or omissions, be subject to disciplinary or other adverse action under KRS Chapter 311, 311A, 314, or 315 or any other professional licensing statute.

(2) A prescription for naloxone may include authorization for administration of the drug to the person for whom it is prescribed by a third party if the prescribing instructions indicate the need for the third party upon administering the drug to immediately notify a local public safety answering point of the situation necessitating the administration.

(3) A peace officer, firefighter, paramedic, or emergency medical technician may receive a naloxone prescription, possess naloxone, and administer naloxone to an

individual suffering from an apparent opiate-related overdose.

(4) A person acting in good faith who administers naloxone as the third party under this section shall be immune from criminal and civil liability for the administration, unless personal injury results from the gross negligence or willful or wanton misconduct of the person administering the drug.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

(1) A person shall have criminal immunity for a violation of a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia if:

(a) The person in good faith seeks medical assistance from a public safety answering point, emergency medical services, a law enforcement officer, or a health practitioner for a person experiencing a drug overdose;

(b) The person remains with the overdose victim until the requested assistance arrives or is provided; and

(c) The conduct for which immunity is sought arises from the same course of events from which the drug overdose arose.

(2) The immunity provided in subsection (1) of this section:

(a) Shall extend to the person who suffered the drug overdose if, subsequent to the person being charged with a violation of KRS Chapter 218A and prior to trial the person participates in and demonstrates suitable compliance with the terms of a secular or faith-based substance abuse treatment or recovery program if space is available in a program appropriate to that person; but

(b) Shall not extend to the investigation and prosecution of any other crimes committed by a person who otherwise qualifies for limited immunity under this section including a trafficking prosecution based upon possession with

the intent to traffic in the controlled substance.

➔Section 7. KRS 218A.040 is amended to read as follows:

(1) The Cabinet for Health and Family Services shall place a substance in Schedule I if it finds that the substance:

(a)~~[(1)]~~ Has high potential for abuse; and

(b)~~[(2)]~~ Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(2) Death resulting from an overdose of a Schedule I controlled substance is a foreseeable result of the consumption or use of the substance.

➔Section 8. 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 ***a substance containing a detectable amount of*** cocaine;

(b) Two (2) grams or more of ***a substance containing a detectable amount of*** heroin or methamphetamine;

(c) Ten (10) or more dosage units***, or the equivalent thereof,*** 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 lysergic acid diethylamide; phencyclidine; 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.

(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 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. ***If the offense involves the defendant trafficking in one (1) or more substances containing a detectable amount of heroin or methamphetamine or both in an aggregate amount of four (4) grams or greater, the defendant 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.***

(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.

(4) Upon the motion by the Commonwealth stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, a sentencing court may impose in its judgment a minimum service of time requirement less than the fifty percent (50%) standard imposed under subsection (3)(a) of this subsection in consideration of the following:

(a) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;

(b) The truthfulness, completeness, and reliability of any information or testimony provided by the defendant;

(c) The nature and extent of the defendant's assistance;

(d) Any injury suffered by, or any danger or risk of injury to the defendant or his family resulting from his or her assistance;

(e) The timelines of the defendant's assistance; and

(f) Any other information placed in the record by the Commonwealth.

➔Section 9. KRS 218A.500 is amended to read as follows:

As used in this section and KRS 218A.510:

(1) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes but is not limited to:

(a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting

controlled substances;

(g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body; and

(l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips which mean objects used to hold burning material, such as marijuana cigarettes, that have become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.

(2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing,

injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

(3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(5) ***Prior to searching a person, a person's premises, or a person's vehicle, a peace officer may ask the person whether the person is in possession of a hypodermic needle or other sharp object that may cut or puncture the officer or whether a hypodermic needle or other sharp object is on the premises or in the vehicle to be searched. If there is a hypodermic needle or other sharp object on the person, on the person's premises, or in the person's vehicle, and the person alerts the officer of that fact prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object or for possession of a controlled substance for residual or trace drug amounts present on the needle or sharp object. The exemption under this subsection shall not apply to any other drug paraphernalia that may be present and found during the search or to controlled substances present in other than residual or trace amounts.***

(6) Any person who violates any provision of this section shall be guilty of a Class A

misdemeanor.

➔Section 10. KRS 439.3401 is amended to read as follows:

(1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of:

(a) A capital offense;

(b) A Class A felony;

(c) A Class B felony involving the death of the victim or serious physical injury to a victim;

(d) An offense described in KRS 507.040 or 507.050 where the offense involves the killing of a peace officer or firefighter while the officer or firefighter was acting in the line of duty;

(e) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;

(f) Use of a minor in a sexual performance as described in KRS 531.310;

(g) Promoting a sexual performance by a minor as described in KRS 531.320;

(h) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);

(i) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;

(j) Criminal abuse in the first degree as described in KRS 508.100;

(k) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;

(l) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

(m) Robbery in the first degree.

The court shall designate in its judgment if the victim suffered death or serious

physical injury.

(2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his or her sentence is commuted to a life sentence shall not be released on probation or parole until he or she has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.

(3) (a) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.

(b) A violent offender who has been convicted of a violation of KRS 507.040 where the victim of the offense was clearly identifiable as a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed.

(c) A violent offender who has been convicted of a violation of KRS 507.040 or 507.050 where the victim of the offense was a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least fifty percent (50%) of the sentence imposed.

(d) Any offender who has been convicted of a homicide or fetal homicide offense under KRS Chapter 507 or 507A where the victim of the offense died as the result of an overdose of a Schedule I controlled substance and who is not otherwise subject to paragraph (a), (b), or (c) of this subsection

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.

(4) A violent offender shall not be awarded any credit on his sentence authorized by KRS 197.045(1)(b)1. In no event shall a violent offender be given credit on his or her sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.

(5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.

(6) This section shall apply only to those persons who commit offenses after July 15, 1998.

(7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.

(8) The provisions of subsection (1) of this section extending the definition of "violent offender" to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002.

➔Section 11. KRS 501.060 is amended to read as follows:

(1) Conduct is the cause of a result when it is an antecedent without which the result in question would not have occurred.

(2) When intentionally causing a particular result is an element of an offense, the element is not established if the actual result is not within the intention or the contemplation of the actor unless:

(a) The actual result differs from that intended or contemplated, as the case may be, only in the respect that a different person or different property is injured or

affected or that the injury or harm intended or contemplated would have been more serious or more extensive; or

(b) The actual result involves the same kind of injury or harm as that intended or contemplated and occurs in a manner which the actor knows or should know is rendered substantially more probable by his conduct.

(3) When wantonly or recklessly causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of recklessness, of which he should be aware unless:

(a) The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(b) The actual result involves the same kind of injury or harm as the probable result and occurs in a manner which the actor knows or should know is rendered substantially more probable by his conduct.

(4) The question of whether an actor knew or should have known the result he caused was rendered substantially more probable by his conduct is an issue of fact.

(5) In a prosecution under KRS Chapter 507 or 507A for a death which resulted from an overdose of a Schedule I controlled substance, it shall not be a defense to the establishment of causation under this section that the decedent contributed to his or her own death by the intentional, knowing, wanton, or reckless injection, inhalation, or ingestion of the substance or by consenting to the administration of the substance by another, or that the defendant had no direct knowledge of or contact with the ultimate decedent.

➔Section 12. By December 31, 2015, the Department of Criminal Justice Training shall offer voluntary regionalized in-service training on the topic of heroin for law enforcement officers employed by agencies that utilize Department of Criminal

Justice Training basic training for their recruits, including instructional material on the detection and interdiction of heroin trafficking, the dynamics of heroin abuse, and available treatment options for addicts. There shall be at least one course offered in each area development district by July 15, 2015, with the courses being designed to qualify as in-service training under KRS 15.404.