



# The Advocate

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KENTUCKY DEPARTMENT OF PUBLIC ADVOCACY

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## Justice for all

### Legislature must properly fund public defender system

**I**f you cannot afford an attorney, one will be appointed for you." That simple statement is one of the best things about the American criminal justice system. No one is supposed to be railroaded simply because they can't pay legal fees. That promise is real comfort for a lot of folks just trying to make ends meet.

Yet, in Kentucky, we sabotage that right by keeping the state's public-defender system sorely underfunded, the lawyers poorly paid and overburdened, and the system a mere stepchild in the state budgeting process.

*"Why should access to a basic right depend on whether the agency can scrape up the money"*

A report, "Improving Indigent Defense for the 21st Century", should be required reading for state lawmakers before they head back into session. For more than a year, a task force of lawyers, elected officials and civic and business leaders

took a hard look at the system. The conclusion: For the sake of what is both legal and moral, the state must spend more money on the defense of the poor.

Public Advocate Ernie Lewis runs an efficient, well-managed agency doing the best it can with limited resources, a Massachusetts consultant reported to the task force. But the consultant found that in comparison to at least 19 other states, Kentucky:

- Pays the lowest starting salaries at \$23,388, and even pays experienced lawyers and managers much less than their peers.
- Imposes the heaviest caseloads, with Louisville public defenders handling 700 cases a year — nearly twice the national average.

- Spends less money on defending people than nearly every state in the nation.
- Lacks enough defenders to help the convicted file appeals or to work with juveniles.
- Lacks offices in many counties and must depend on contract lawyers willing to accept some of the lowest fees in the nation.

These problems are not new. The same consultant found them six years ago. In response to that report, the state set aside a sliver of fees on DUI convictions and administrative court costs levied against poor defendants. But to even collect that money, the consultant said, the public advocate now must hire a collection agency.

Why should access to a basic right depend on whether the agency can scrape up money? Because the legislature, despite giving the agency some extra money last year, has not shown a real commitment to improving the public-defender system.

A decent budget from the general fund, more staff, better pay, more offices across the state — these are not perks for lawyers. They are essential tools for ensuring that no citizen is denied a basic right offered by the U.S. Constitution — to have an adequate defense. ♦

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*The probability that we may fail in the struggle ought not to deter us from the support of a cause we believe to be just.*

- Abraham Lincoln

## DPA ON THE WEB

- DPA Home Page <http://dpa.state.ky.us>
- Criminal Law Links <http://dpa.state.ky.us/~rwheeler>
- DPA Education <http://dpa.state.ky.us/train.html>
- DPA Employment Opportunities:  
<http://dpa.state.ky.us/career.htm>
- The Advocate* (since May 1998)  
<http://dpa.state.ky.us/advocate>
- Defender Annual Caseload Report:  
<http://dpa.state.ky.us/library/caseload.html>

We hope that you find this service useful. If you have any suggestions or comments, please send them to DPA Webmaster, 100 Fair Oaks Lane, Frankfort, 40601 or [webmaster@mail.pa.state.ky.us](mailto:webmaster@mail.pa.state.ky.us)

## DPA'S PHONE EXTENSIONS

During normal business hours (8:30am - 5:00pm) DPA's Central Office telephones are answered by our receptionist with callers directed to individuals or their voicemail boxes. Outside normal business hours, an automated phone attendant directs calls made to the primary number, (502) 564-8006. For calls answered by the automated attendant, to access the employee directory, callers may press "9". Listed below are extension numbers and names for the major sections of DPA. Make note of the extension number(s) you frequently call - this will aid our receptionist's routing of calls and expedite your process through the automated attendant. Should you have questions about this system or experience problems, please call Ann Harris or the Law Operations Division, ext. 136.

- Appeals - Renee Godbey #257
- Capital Appeals - Michelle Crickmer #134
- Capital Trials - Sauda Brown #135
- Computers - Ann Harris #130/#285
- Contract Payments - Vickie Manley #118
- Deputy Public Advocate Office - Patti Heying #236
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- Frankfort Trial Office - Kathy Collins (270) 564-7204
- General Counsel Office - Ed Monahan #236
- Post-Trial Division - Lisa Fenner #279
- Juvenile Post-Dispositional Branch - Dawn Pettit #220
- Law Operations - Tammy Havens #136
- Library - Will Hilyerd #120
- Payroll - Cheree Goodrich #114
- Personnel - Cheree Goodrich (temporarily) #114
- Properties - Larry Carey #218
- Protection & Advocacy (502) 564-2967 or #276
- Public Advocate Office - Debbie Garrison #108
- Recruiting - Doug Howard #117
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- Trial Division - Etolia White #230

## The Advocate

*The Advocate* provides education and research for persons serving indigent clients in order to improve client representation and insure fair process and reliable results for those whose life or liberty is at risk. It educates criminal justice professionals and the public on defender work, mission and values.

*The Advocate* is a bi-monthly (January, March, May, July, September, November) publication of the Department of Public Advocacy, an independent agency within the Public Protection and Regulation Cabinet. Opinions expressed in articles are those of the authors and do not necessarily represent the views of DPA. *The Advocate* welcomes correspondence on subjects covered by it. If you have an article our readers will find of interest, type a short outline or general description and send it to the Editor.

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## Letters To The Editor. . .

October 6, 1999

Re: Article (Kentucky's RCr 11.42's) in *The Advocate*

Dear Ms. Balliet:

Having been a trial judge and now being an appellate judge, I have read with interest the first two parts of your series of articles regarding RCr 11.42. As I look forward to the third article, I must say "good job!"

Sincerely,  
David C. Buckingham  
Kentucky Court of Appeals  
Murray, Kentucky

October 22, 1999

Re: Article (Kentucky's RCr 11.42's) in *The Advocate*

Dear Susan:

I want to compliment you in *The Advocate* dealing with the post judgment remedy of Criminal Rule 11.42. You have done a good job in covering this rule which has generated a considerable amount of litigation for trial judges.

You mention, however, in the article that, "The Court in *Strickland* never used "but for language". In reading the case, I find that the "but for language" appears in Keynote No. 19 as well as in Paragraph 19, Page 2068 of the 104 Supreme Court Reporter. Justice O'Connor states specifically that, "The defendant must show that there is a reasonable probability that, *but for* counsel's unprofessional errors, the result of the proceeding would have been different." (Emphasis added.) It appears that the "but for" standard and the "absence of error" standard are interchangeable.

I would welcome your thoughts on this, and once again, that you very much for your fine work.

Sincerely,  
Bill Cunningham  
Circuit Judge

### Response to Judge Cunningham:

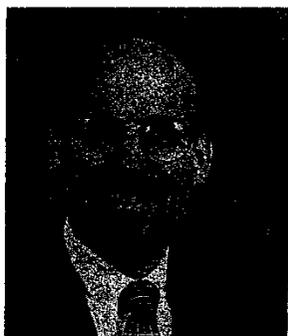
Thank you for your kind comments on the 11.42 series. You are correct in pointing out my error regarding "but for" language in *Strickland*. However, the "but for" standard and the "absence of error" standards are far from interchangeable, as explained more fully in Part III of the series, included in this issue. —Susan Balliet

# Revenue Report for 1998-1999

by Ernie Lewis, Public Advocate

Revenue figures for the Department of Public Advocacy have now become available. While we are still analyzing the results, some preliminary observations can be made based upon these figures. First, it is important to set the 1998-1999 figures into context, particularly the context provided by the Blue Ribbon Group which met and reported during the Spring of 1999.

## The Blue Ribbon Group Examined Revenue



Ernie Lewis

The three sources of revenue relied upon by DPA for 15% of its budget were addressed during the past fiscal year by the *Blue Ribbon Group on Improving Indigent Defense for the 21<sup>st</sup> Century* (hereinafter BRG). The BRG Report reached some of the following conclusions:

- Finding #2: "The Department of Public Advocacy is Effective in Indigent Defense Recovery Compared to Other States."
- "At almost 15% of the total DPA budget, Kentucky's public defender program is more dependent on alternative revenue than any other state public defender program."
- Kentucky has the highest administrative fee collection rate per capita of any of the comparison states.
- "It is our strong belief that these revenue funds are virtually tapped out."
- "Kentucky is already at the top of the list of comparable states when it comes to alternative revenue collections."
- Finding #9: "Without Additional General Fund Revenues, a Deficit will Occur in the Non-General Fund Account On or Before July 1, 2000."
- Recommendation #7: "The Department of Public Advocacy and the Court of Justice Must Increase their Efforts to Collect Reasonable Fees from Public Defender Clients, Including Considering the use of Private Collection Organizations."

There are then two messages being given to all of us by the Blue Ribbon Group: first, DPA is the most effect public defender agency in the nation at collecting revenue from clients, and is also the most highly reliant upon these alternative sources of revenue; second, unless revenue collections increase significantly, a significant deficit will occur.

## Recoupment Revenue is Up

In 1998, DPA received \$995,582 in recoupment, which is the partial fee collected from our clients pursuant to KRS 31.120. In 1998-1999, DPA collected \$1,012,473 in recoupment. This represented an increase of 2% over the previous year.

## DUI Revenue is Up

\$1,120,711 was recovered from clients convicted of DUI in 1997-1998. In 1998-1999, this figure was up 5%, to \$1,170,513.

## The Administrative Fee is Up

In 1997-1998, \$691,650 was collected from indigents appointed counsel. This is the administrative fee established in KRS 31.051(2). It is intended to be a mandatory fee, with a liberal waiver provision. In 1997-1998, the fee was \$40. In 1998-1999, beginning on July 15, 1999, the fee moved to \$52.50. \$2.50 of the fee goes to the clerks for salary improvements. \$50 is provided to the DPA for delivery of services. In 1998-1999, DPA received \$810,497 from the administrative fee, an increase of approximately 17%.

The increase in the statutory fee from 1998 to 1999 was 25%, from \$40 to \$50. DPA experienced a 17% increase in the amount collected between the two years. It is too early to say whether the administrative fee is being collected at a higher rate than previously. It appears, however, that DPA is continuing to collect in only approximately 15-20% of the cases.

Fayette County continues to collect the administrative fee at a high level. Fayette County moved from \$113,495 to \$123,976, and constituted 15% of the total funds. Fayette County handled approximately 7% of the total cases in 1998-1999.

On the other hand, Jefferson County continues to show a relatively low collection rate. They moved from \$51,521 in 1997-1998 to \$39,795 in 1998-1999, a decline of 29%. This occurred despite the fact that Jefferson County's caseload represented 34.25% of the cases, up from 1997-1998. In comparison, Hardin County collected \$36,428, while Christian County, with 3.53% of the cases collected \$37,328. DPA is considering private collections in Jefferson County in order to address this problem, utilizing one of the recommendations of the BRG. DPA is also going to study the collection practices of the two largest counties.

Some counties are doing particularly well. Some examples? Boyd County has .83% of the total caseload, but collects 1.40% of the administrative fee. Boyle County has .12% of the

(Continued on page 5)

(Continued from page 4)

caseload, with .58% of the administrative fee. Bullitt County has .76% of the caseload and .89% of the fee. Campbell has 1.65% of the caseload, with 2.29% of the fee. Floyd County has 1.09% of the cases, with 2.41% of the fee. Hopkins County has 1.36% of the cases, with 2.26% of the fee. Mason County has .79% of the caseload and 1.49% of the fee. Montgomery County has 1.08% of the cases, and 1.61% of the fee. Rowan County has .64% of the caseload, with 1.71% of the administrative fee. DPA is appreciative of the judges and their clerks who are conscientiously applying this statute to assist the DPA in delivering services.

**Revenue is Up 6%**

In FY 98, DPA collected a total of \$2,807,944. This increased to \$2,976,592 in FY99, a 6% increase.

**DPA is experiencing a serious revenue shortfall**

The BRG found that the DPA was going to experience a serious shortfall in the nonGeneral Fund by or before July 1, 2000. This has occurred for several reasons. The primary reason is that DPA has been chronically underfunded for many years. While caseloads have gone up, DPA's funding has not kept pace. Between 1996-1998, about the only increase in funding occurred from the collection of additional revenue. While positions can be funded with revenue, revenue has not gone up sufficiently to pay for increased overhead, Block 50s, reclassifications, and annual increments for state employees. At this time, DPA provides \$3.8 million of services yearly beyond that which is provided by the General Fund. Yet, in FY 99, we collected only \$2.9 million. It is increasingly clear that DPA has a budgetary structural imbalance of about \$900,000 per year that must be addressed. A significant cause of the structural imbalance is the increased reliance upon revenue, revenue which has "tapped out" according to the BRG and the Spangenberg Group.

**We must continue to do better**

That does not mean, however, that we should throw up our hands. DPA is seeking an appropriation in the 2000 General Assembly intended to address the structural imbalance. At the same time, however, DPA must do all it can in concert with the Court of Justice to collect a reasonable amount from the three revenue sources. It is not impractical to expect a 30% return from the administrative fee. If that goal were reached, DPA would collect approximately \$1,350,000 from the administrative fee, an addition of \$500,000. This would go a long way toward addressing the budget problems of DPA. ♦

Ernie Lewis  
Public Advocate

**12 RESOLUTIONS**  
**OF THE BRG**

**1. THE BRG FINDS THAT THE DPA IS GOING TO EXPERIENCE A SERIOUS SHORTFALL IN THE NON-GENERAL FUND BY OR BEFORE JULY 1, 2000. THIS HAS OCCURRED FOR SEVERAL REASONS. THE PRIMARY REASON IS THAT DPA HAS BEEN CHRONICALLY UNDERFUNDED FOR MANY YEARS. WHILE CASeloadS HAVE GONE UP, DPA'S FUNDING HAS NOT KEPT PACE. BETWEEN 1996-1998, ABOUT THE ONLY INCREASE IN FUNDING OCCURRED FROM THE COLLECTION OF ADDITIONAL REVENUE. WHILE POSITIONS CAN BE FUNDED WITH REVENUE, REVENUE HAS NOT GONE UP SUFFICIENTLY TO PAY FOR INCREASED OVERHEAD, BLOCK 50S, RECLASSIFICATIONS, AND ANNUAL INCREMENTS FOR STATE EMPLOYEES. AT THIS TIME, DPA PROVIDES \$3.8 MILLION OF SERVICES YEARLY BEYOND THAT WHICH IS PROVIDED BY THE GENERAL FUND. YET, IN FY 99, WE COLLECTED ONLY \$2.9 MILLION. IT IS INCREASINGLY CLEAR THAT DPA HAS A BUDGETARY STRUCTURAL IMBALANCE OF ABOUT \$900,000 PER YEAR THAT MUST BE ADDRESSED. A SIGNIFICANT CAUSE OF THE STRUCTURAL IMBALANCE IS THE INCREASED RELIANCE UPON REVENUE, REVENUE WHICH HAS "TAPPED OUT" ACCORDING TO THE BRG AND THE SPANGENBERG GROUP.**

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## \$11.7 Million Additional Revenue

### Requested by *Blue Ribbon Group*

The General Assembly's Joint Appropriations and Revenue Committee heard from Public Advocate Ernie Lewis on October 28, 1999 that Kentucky has had one of the lowest funded public defender systems in the nation for many years and needed \$11.7 million additional General Fund dollars as recommended by the *Blue Ribbon Group on Improving Indigent Defense in the 21<sup>st</sup> Century* (BRG). That Group consisted of 22 prominent legislators, criminal justice professional and Kentuckians.

*"Kentucky can't have a decent system of representation for indigent defendants, including those facing death row, without putting more money into it."*

*September 7, 1999  
Courier-Journal editorial, Equal Justice*

Lewis told the A & R Committee Members that the Blue Ribbon Group found this sum to be "reasonable and necessary to meet DPA's documented funding needs as described in PD21." (Recommendation #12).

The wisdom of this funding recommendation can be seen readily by examining where an \$11.7 increase would place the Kentucky public defender system in comparison to other states.

#### \$11.7 Million Would Place Kentucky in the Middle of the Nation

An \$11.7 million increase, according to the BRG and Lewis' testimony before A & R, would place Kentucky's in the middle when compared with other public defender systems. Examining the two benchmarks demonstrates this reality:

- ❑ Kentucky would increase from \$187 funding-per-case to \$303. In comparison, Kansas paid \$550 per case in 1998; Wisconsin paid \$532; Iowa paid \$472; Colorado paid \$420; North Carolina paid \$380; Missouri paid \$325; Oklahoma paid \$324; Minnesota paid \$243; Tennessee paid \$235.
- ❑ Kentucky would increase from \$4.90 funding-per-capita in 1998 to \$7.91. In comparison, Wisconsin was funded at \$12.13; Iowa was funded at \$10.30; Minnesota was funded at \$9.68; Florida was funded at \$8.58; North Carolina was funded at \$8.01; Tennessee was funded at \$6.73; Oklahoma was funded at \$5.82; Missouri was funded at \$4.61.

These increases would make up for years of neglect. As stated in the Blue Ribbon Group's Final Report, "Supplementing the DPA budget by \$11.7 million will bring Kentucky up to a more comparable position on the national scene, and equip public defenders with the resources they need to provide competent representation."

#### An Investment in the Future

The \$11.7 million increase would invest in the future. The funding would allow for the necessary completion of the full-time system in Kentucky, and will create a structure for effective leadership, management and supervision for the 21<sup>st</sup> Century.

New laws involving additional caseload will be able to be absorbed. Judges will have public defenders available in their juvenile, district, and circuit courtrooms. The General Assembly can rest assured that the public defender system is solid and stable, and that any future budget increases will be requested when the caseload increases, not due to the latest crisis in delivery or the latest lawsuit. Employees, particularly attorneys, will be treated fairly rather than their present status as the lowest paid defenders in the nation. Our state, courts, indigent clients and their families will be better served by a decent and fair public defender and criminal justice system that provides fair process and insures reliable results.

Kentucky newspaper Editorial Boards have endorsed the BRG Recommendations. The August 20, 1999 Lexington Herald-Leader's editorial, *Justice for All: Legislature must properly fund public defender system*, appears on the cover of this issue. The September 7, 1999 Courier-Journal editorial, *Equal Justice*, stated, "Kentucky can't have a decent system of representation for indigent defendants, including those facing death row, without putting more money into it." The Owensboro Messenger-Inquirer's August 17, 1999 editorial, *State Should Fund Indigent Defense Better*, urged that the right to a fair trial be upheld by providing additional funds to Kentucky's defender program.

In addition, the Criminal Justice Council endorsed recommendations #1 - 11, taking no position on #12 (as a policy matter, the CJC will not pass on specific agency budget requests). This endorsement by the pre-eminent long-range planning body for the Kentucky criminal justice system is strong support for the necessity of funding these recommendations. ♦

# The Juvenile Death Penalty

by Gary W. Potter

Department of Justice and Police Studies

In the United States twenty-five states allow the execution of juveniles, twenty-one states set the minimum age for execution at 16 and four states at 17. No other Western nation, no other industrial nation, no other democracy in the world allows the execution of juveniles. In fact, since 1990, the United States joins only Iran, Nigeria, Pakistan, Saudi Arabia and Yemen as nations that have executed children. With nine executions of juveniles since 1990, the United States criminal justice system kills more children than the rest of the world combined. In fact, the state of Texas, with five juvenile executions since 1990, kills more children than any other country in the world (Amnesty International, 1998).

One of the major reasons for this paucity of juvenile executions worldwide is that executing children, simply put, is a war crime. Almost all nations, even those with a death penalty, conform to the seven major international instruments which forbid juvenile executions. Those instruments are (Amnesty International, 1998):

1. *International Covenant on Civil and Political Rights (Article 6(5))*
2. *Convention on the Rights of the Child (Article 37(a))*
3. *American Convention on Human Rights (Article 4(5))*
4. *Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention) (Article 68)*
5. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) (Article 77(5))*
6. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) Article 6(4))*
7. *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (UN Economic and Social Council resolution 1984/50, adopted on 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984)*

But violations of treaties and protocols designed to maintain international civility is only one of the problems with executing children in America.

**The juvenile death penalty is even more arbitrary and capricious than the death penalty for adults.** Research has consistently shown that the application of capital punishment in the United States is entirely arbitrary. From state to state, and

even from jurisdiction to jurisdiction within states, defendants who commit similar homicides are treated differently for no apparent reason. Sometimes the state seeks the death penalty, sometimes not. Sometimes juries sentence the offender to death, sometimes not.

Researchers have compared the application of the death penalty to a lottery governed by no rational process at all (Berk, et al., 1993; Gross and Mauro, 1989; Paternoster 1991). The juvenile death penalty is even worse. About 1.8% of all persons executed in the United States were children (under 18 years of age) at the time of the crime (Capital Punishment Research Project, 1998). In the post-*Furman* era (up to December 1, 1998) there have been twelve juvenile executions, or about 2% of all executions since 1973 (Strieb, 1998: 3). Despite significant increases and declines in juvenile homicide rates in the 1980s and 1990s, the rate of juvenile death sentences has remained constant at about 2% of all executions, raising the question of whether its use is even related to incidence of homicide (Bureau of Justice Statistics, 1997).

**The juvenile death penalty is blatantly racist.** Over 2/3 of the 288 children executed in the United States have been African-Americans. In addition, all of the children executed in the United States for the crimes of rape or attempted rape (40 children in all) have been black. As of October 1, 1998 sixty-five percent (33 blacks and 15 Latinos compared to 26 whites) of the children on death row in the United States are minority offenders (Strieb, 1998). In addition, the issue of bias by victim race is also present in juvenile death penalty cases. As of October 1, 1998 sixty-eight percent (n=64) of the cases in which a juvenile was sentenced to death in the United States in the post-*Furman* era involved a white victim. Additionally, questions of age and gender bias also arise in view of the fact that 83% of the victims in these cases were adults and half were women. Ninety-eight percent of the juveniles sentenced to death were male (Strieb, 1998: 12). Only four cases involved females.

**Juvenile death sentences are subject to an extraordinarily high rate of reversal by the courts.** Of the 177 juvenile death sentences imposed since 1973, only 74 (42%) remain in force. Twelve have resulted in executions (7%) and ninety-one (51%) have been reversed on appeal (Strieb, 1998). For the 103 juvenile death sentences that have been resolved (excluding the seventy-four still under litigation) the reversal rate is 88% (91 out of 103) (Strieb, 1998). The clear implication of this sobering fact is that in cases where the state wishes to execute a child, serious problems of prosecutorial misconduct, defense attorney incompetence, and judicial error appear to dominate.

**The juvenile death penalty contradicts virtually every other law concerning children in the United States.** The law in most states assumes that juveniles are not of sufficient maturity and judgment to exercise a wide range of rights. In most states the age of majority is 18; 21 is earliest age at which

(Continued on page 8)

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alcohol may be bought, possessed and consumed; children may not enter into contracts until the age of 18; children may not buy cigarettes until the age of 18; children must be 18 before agreeing to donate their organs; children must be 18 before they may execute a will; children must be 18 before entering into a marriage; and, of course, the 26<sup>th</sup> Amendment to the Constitution sets the voting age in the United States at 18. The contradictions inherent in the laws which assume that juveniles do not have sufficient responsibility, maturity or judgment to make these many decisions, while at the same time assuming that they are fully in control of their judgments when they engage in criminal behavior is a horrific and illogical contradiction in the law. This is particularly the case in homicides where much evidence indicates that (1) children have an undeveloped and unsophisticated concept of death; and (2) the children are often impulsive and reckless in their actions.

*...the truth of juvenile executions in the United States is that we execute the ill and infirm without providing them with any advocacy*

But most importantly the horror of executing children cannot be fully understood until we look at the children who have been murdered by the state in America. Consistently, pervasively, and invariably the children we execute have four common characteristics: (1) they were mentally ill or mentally retarded at the time they committed their crime; (2) they were victims of horrifying sexual and physical abuse; (3) they were victimized by a society which has one of the highest child poverty and infant mortality rates in the world and which consigns many children to lives of hopelessness and grinding poverty; and, (4) they were represented by inexperienced, unskilled, and incompetent counsel. So the truth of juvenile executions in the United States is that we execute the ill and infirm without providing them with any advocacy. To say that such a policy reeks of eugenics and "ethnic cleansing" is almost an understatement. Consider the following (Amnesty International, 1998):

In 1977, Dalton Prejean, at the age of 17 murdered a police officer in Louisiana. This black child was tried before an all-white jury and represented by a court-appointed defense attorney. His IQ was measured at 71, which means he had virtually no capacity to reason. When he was two weeks old his mother abandoned him to the care of a relative with a long history of violence. At the age of 13 he was institutionalized suffering from a series of mental illnesses including schizophrenia. At the age of 14, after having been released from care because of inadequate state resources allocated to mental illness, he murdered a taxi driver. He was recommitted after the murder and doctors recommended long-term hospitalization related to his mental illness. Nonetheless, when state funds once again ran out, Dalton was once again released, and committed the crime for which he was executed in May 18,

1990. Dalton Prejean was murdered by a state that refused to provide him with medical care, refused to provide him with a fair trial and adequate counsel, and that apparently seeks to cure mental illness through execution.

Johnny Garret had a long history of mental illness, a history of severe sexual and physical abuse as a child, and suffered from chronic brain damage as a result of head injuries sustained in that abuse. At the age of 17 he murdered a 76-year-old nun and despite direct intervention by Pope John Paul II and the Franciscan Sisters (the order to which the nun had belonged), Johnny was finally provided with treatment by the state of Texas for his mental illness, chronic physical ailments and childhood sexual abuse by being executed February 11, 1992.

Curtis Harris was one of nine children brought up in family with an alcoholic father who regularly beat him throughout his childhood. Curtis was one of the 21% of all U.S. children raised in poverty (44% of all black children, and 37.9% of all Latino children in the U.S. are raised in poverty) (U.S. Bureau of the Census, 1994). Incidentally, the U.S. child poverty rate is double that of the United Kingdom (9.9%); triple that of France (6.5%), the Netherlands (6.2%) and Germany (6.8%) and eight times higher than Sweden (2.7%) (Rainwater and Smeeding, 1995). At his trial, despite the fact that Curtis was an African-American, the state excluded all black jurors. Curtis had an IQ of 77 and suffered from organic brain damage as a result of the beatings inflicted by his father. Once again, however, the state of Texas treated his physical and social infirmities by prescribing death on July 1, 1993.

Frederick Lashley murdered his cousin at the age of 17. At the time of the murder he was acting under the influence of drugs. Frederick had been abandoned by his mother as a young child, had become a heavy drinker of alcohol by the time he was ten, and was homeless at the time he committed the murder. Once again, this African-American child was sentenced to death by an all-white jury, after being represented by an attorney who had never handled a capital case. Incompetent counsel and a racist jury was the only drug treatment ever provided Frederick by the state of Missouri which murdered him July 28, 1993.

Christopher Burger had a low IQ; he was mentally ill; he was brain damaged as a result of severe physical abuse he received as a young child; he grew up in an unstable and highly disturbed family; and he attempted suicide at the age of 15. Despite the fact that these conditions are all statutory mitigators, which juries are required by law to consider in death penalty cases, his attorney, who had never previously handled a capital case, neglected to present any mitigating evidence. Once again, in the state of Georgia, the remedy for mental illness, child abuse and incompetent counsel is execution, which was carried out on December 7, 1993.

At four-years-old, Joseph John Cannon, was hit by a truck. He was left with a severe head injury, hyperactivity, and a speech

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impediment. Needless to say these conditions did not lead to great success in school, and at the age of six he was expelled and received no further education or care from the state of Texas. He filled his days, when he should have been in school or under medical care, with glue and solvent sniffing and at the age of ten was diagnosed as suffering from severe organic brain damage. Joseph attempted suicide at the age of 15 and was subsequently diagnosed as being schizophrenic and borderline mentally retarded. From the age of seven to the time he committed his murder, he suffered repeated and severe sexual abuse from a series of male relatives. So horrifying was Joseph's childhood that when he finally escaped his family after being confined on death row he was able to learn to read and write. The state of Texas had not protected him from his family, had not provided him with medical care for his chronic brain injuries, and had not treated his mental illness. Texas did however, reward the educational progress he made when finally sheltered from the day-to-day nightmare of his childhood by killing him in 1998.

Robert Anthony Carter was one of six children in an impoverished black family who grew up in one of the poorest neighborhoods in Houston, Texas. His mother and stepfather routinely beat him throughout his childhood with electrical cords. He suffered serious childhood head injuries, including being struck in the head by brick at age five and being hit on the head so hard with a baseball bat at age ten that the bat broke. Robert received no medical attention for either of these injuries. Shortly before the murder for which he was ultimately convicted, Robert was shot in the head by his brother and suffered thereafter from regular fainting spells and seizures. Nonetheless it took a Texas jury, who heard no mitigating evidence, only ten minutes to sentence him to death.

Dwayne Allen Wright was raised in a poor family in an economically depressed neighborhood of Washington, D.C. When he was four his father was sent to prison. His mother suffered from mental illness and was unemployed throughout much of his childhood. When he was ten his half-brother, the only person Dwayne was close to was murdered. Dwayne developed serious emotional difficulties, did poorly at school and between the ages of 12 and 17 spent most of his time in juvenile detention facilities and hospitals. During this period he was treated for major depression with psychotic episodes, his verbal ability was evaluated as retarded, and doctors diagnosed him with organic brain damage. Upon release, at the age of 17 Dwayne committed a murder for which the commonwealth of Virginia executed him in 1998. The American Bar Association appealed for clemency, stating that his proposed execution "demeans our system of justice" and asserting that "a borderline mentally retarded child simply cannot be held to the same degree of culpability and accountability for the actions to which we would hold an adult."

Lastly, Ruben Cantu, a Latino child in Texas, was executed in 1993. He was 17 at the time of the crime. He was represented

by an inexperienced lawyer, had a troubled family upbringing and was of limited intellectual capacity.

So what children are selected for execution in the United States? For what conditions does this nation commit "war crimes?" The answers are the poor, the mentally retarded, the sexually and physically abused, those with chronic and congenital physical defects, those represented by incompetent counsel and those refused treatment for their maladies by the state which will ultimately murder them. We engage in state murder of children who are our social trash. That's why there's a Geneva Convention on war crimes, and that's why judges, prosecutors and juries who sentence children to death are guilty of war crimes. ♦

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Gary W. Potter

Department of Justice and Police Studies  
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The 10th anniversary of the United Nation's convention on the rights of the child was on November 20th. As you know, the convention prohibits imposing a death sentence or an lwop sentence on anyone who was under the age of 18 at the time the crime was committed. The U.S. and Somalia are the only two countries that have not ratified the convention.

## Sanders IS STILL GOOD LAW

BY ROGER GIBBS, EASTERN REGIONAL MANAGER

Around the time the new sentencing laws took effect in July 1998, the question was raised "Is *Sanders* still good law?" (*Sanders v Commonwealth*, 844 S. W. 2d 391 (Ky. 1992)). The reason for the question is that a quick reading of the new statutes gave the appearance that the new parole eligibility laws have "overruled" *Sanders*. The new law has not done so, and at least one Circuit Judge has agreed.

Following our murder trial where our client received a forty-year sentence recommendation from the jury, a group of attorneys were sitting around doing a post-operative review. Jim Norris asked if the sentence of forty years our client received ran afoul of *Sanders*. The initial reaction was no, since the law had been changed in 1998. Further review of the statute and cases led the defense team to challenge the new parole eligibility.

KRS 439.3401 controls parole eligibility for violent offenders. Specifically, subsection (1) defines violent offender as any person convicted of or pled guilty to a capital offense, Class A or Class B felony involving the death or serious physical injury to a victim. It also specifically includes anyone convicted or rape in the first degree or sodomy in the first degree.

Subsection (2) sets parole eligibility for violent offenders who receive a life sentence at 20 years. The legislative effort to get around *Sanders* is found here. "Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment."

Subsection (3) sets parole eligibility at 85% for violent offenders who receive a sentence of a term of years. In the documents distributed by the Department of Corrections, any defendant who receives a sentence greater than 23 years will have a greater parole eligibility than 20 years. (See Attachment A)

As indicated our client received a sentence recommendation of forty years. Her parole eligibility would be set under the 85% guidelines at 34 years. This gave her eligibility 14 years greater than if she had received a sentence of life imprisonment.

Two cases made clear that our client was entitled to some relief. *Sanders v Commonwealth*, 844 S. W. 2d 391 (Ky. 1992) and *Smith v Commonwealth*, 806 S. W. 2d 647 (KY. 1991) left little doubt that our client's situation required some action. As noted in the attached motion, both cases pointed in a very clear direction. (See Attachment B)

*Sanders* was a question of interpretation. If the defendant literally received 50% of his sentence, he would have parole eligibility of 85 years at a time when life sentences received eligibility of 12 years. The court changed the interpretation to

be one of 50% up to 12 years of eligibility.

*Smith* made clear that in Kentucky, a life sentence is greater than a term of years and the parole eligibility must reflect that. It is important to note the constitutional underpinnings of due process and equal protection that support this decision. The Supreme Court decided to correct a problem rather than find the statute unconstitutional. That was the choice we presented to our Judge.

In our motion we asked for alternative relief of either finding the statute unconstitutional or granting our client parole eligibility of twenty-years. Our Judge reviewed our authorities and at formal sentencing granted our motion to the extent that our client was ordered to serve the lesser of 85% or twenty years. (See Attachment C) This is consistent with *Smith*.



Roger Gibbs  
Eastern Regional Manager

Our client was convicted of offenses for August 13, 1998, shortly after the new laws took effect. For the violent offender cases that should be coming to trial now, the application of the law argued for in our motion affords our clients some relief. The legislative effort to allow violent offenders to have longer sentences than other offenses does not change the fact that violent offenders, as a group, must be rationally treated within the category in sentencing decisions. A life sentence is still greater than a term of years. Had our client received a sentence of life without possibility of parole for 25 years, she would still have parole eligibility 9 years less than she had under the strict reading of the 85% rule. *Sanders* and *Smith* compel a different result.

Our case will soon be on appeal. The Commonwealth Attorney has indicated he would seek certification of the law. The Kentucky Supreme Court will have a say in the future viability of *Smith* and *Sanders*. Until that time, defense counsel needs to seek the individualized relief available under these cases.

A special note of thanks to everyone who contributed to this motion. Thanks to my co-counsel Kristen Bailey, to Jim Norris, to Carol Camp for her once over on the motion, and to everyone else who gave suggestions large and small. Fourteen years is a lot of time.



(Continued from page 11)

- 9) The legislature is free to create different sentencing options for persons convicted of capital offenses. In fact the legislature added the punishment of life without possibility of parole as a sentencing option during the last legislative session. However, Kentucky has long treated a term of years as less harsh than a life sentence, and the current statute runs afoul of that rule. There is no rational basis for treating similarly situated individuals so radically different.
- 10) Either Karen Hampton should have a minimum parole eligibility date for the murder conviction set at 20 years or the statute should be declared unconstitutional.

The defendant respectfully moves this court to enter one of the attached orders either setting her parole eligibility at 20 years or declaring the statute unconstitutional.

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COMMONWEALTH OF KENTUCKY  
 27TH JUDICIAL CIRCUIT  
 LAUREL CIRCUIT COURT  
 DIVISION II  
 INDICTMENT NO. 98-CR-00170

COMMONWEALTH OF KENTUCKY	PLAINTIFF
VS.	
KAREN HAMPTON	DEFENDANT

**ORDER**

This order will serve to memorialize this Court's oral ruling at the Defendant's sentencing hearing in this case on August 31, 1999.

The Defendant, Karen Hampton, moved to have the Court declare KRS 439.3401 unconstitutional or, in the alternative, to rule that parole eligibility of the Defendant shall be at twenty (20) years.

The Defendant was found guilty of murder and was sentenced to forty (40) years confinement. She was found guilty of tampering with physical evidence and was sentenced to five (5) years for that offense.

As the Defendant is a violent offender convicted of a murder and the Defendant was sentenced to a term of years, she would not be eligible for parole until she has served eighty-five (85%) percent of her sentence pursuant to KRS 439.3401(3).

In this case, the Defendant could have received a sentence of life. Had she received that sentence, the Defendant would have been eligible for parole in twenty (20) years. KRS 439.3401 (2).

Kentucky's courts have long held that a sentence for a term of years can not exceed a life sentence. *Hampton v. Commonwealth, Ky.* 666 S.W.2d 737 (1984).

Furthermore, under KRS 532.030(1), when a person is convicted of a capital offense one of the sentencing options is life without parole for twenty-five (25) years.

In this case, the Defendant would be required to serve thirty-four (34) years before parole eligibility, but if sentenced to the greater sentence of life she would be eligible for parole in twenty (20) years.

In *Sanders v. Commonwealth, Ky.* 844 S.W.2d 391 (1993), the Kentucky Supreme Court addressed the issue now before the Court. At the time *Sanders* was decided, parole eligibility for a life sentence occurred at twelve years and a violent offender serving a term of years was required to serve fifty (50%) percent of his sentence before becoming eligible for parole.

The Court declined to declare KRS 439.3401 unconstitutional. Instead, the Court said that their interpretation of the statute as to the parole eligibility date for a life sentence "... is now properly extended to those serving a term of years."

The ruling of the Kentucky Supreme Court in *Sanders* is controlling in this case. As the Defendant was sentenced to a term of years, her parole eligibility shall be that of one serving a life sentence, or twenty (20) years, under KRS 439.3401.

This the 20th day of September, 1999

**KENTUCKY DEPARTMENT OF CORRECTIONS**

**CERTIFICATION ON THE CALCULATION OF PAROLE ELIGIBILITY**

I, Geraldine Glass, certify that I am Assistant Branch Manager of Offender Information Services, Department of Corrections, Commonwealth of Kentucky. In my official capacity and custody, in the absence of the Branch Manager, all offender records of the Department of Corrections are maintained. The following are true and accurate methods of the calculation of parole eligibility under parole regulations which use the twenty percent (20%) of time served criteria. Parole for violent offenders as defined in KRS 439.3401 is calculated for crimes identified by the Department of Corrections, Office of General Counsel.

Geraldine Glass, Geraldine Glass, Assistant Branch Manager of Offender Information Services

Subscribed and sworn before me on September 13, 1999.

Commission Expiration Notary Public, State at Large, KY  
My Commission Expires Oct. 17, 2000

Dorrie Hedy, Notary Public, Commonwealth of Kentucky,

**CALCULATION OF PAROLE ELIGIBILITY UNDER PAROLE REGULATIONS WHICH USE THE TWENTY PERCENT (20%) OF TIME SERVED CRITERIA, FOR CRIMES COMMITTED AFTER DECEMBER 3, 1980, LENGTH OF TIME TO SERVE FOR PAROLE ELIGIBILITY [PAROLE REGULATIONS 501 KAR 1:030 PROVIDES: 1 YEAR UP TO BUT NOT INCLUDING 2 YEARS, 4 MONTHS TO SERVE; 2 YEARS UP TO AND INCLUDING 39 YEARS, 20% OF SENTENCE RECEIVED; MORE THAN 39 YEARS, UP TO AND INCLUDING LIFE, 8 YEARS TO SERVE].**

SINCE JANUARY 1975, KRS 532.120 (3) ALLOWS FOR A DEDUCTION FOR TIME SPENT IN CUSTODY PRIOR TO COMMENCEMENT OF SENTENCE.

SENTENCE LENGTH	ORIGINAL PAROLE ELIGIBILITY MINUS JAIL CREDIT	SENTENCE LENGTH	ORIGINAL PAROLE ELIGIBILITY MINUS JAIL CREDIT
1 - 23 MONTHS	4 MONTHS	19 YEARS	3 YEARS & 10 MONTHS
2 YEARS	5 MONTHS	20 YEARS	4 YEARS
2 YEARS & 6 MONTHS	6 MONTHS	21 YEARS	4 YEARS & 2 MONTHS
3 YEARS	7 MONTHS	22 YEARS	4 YEARS & 5 MONTHS
3 YEARS & 6 MONTHS	8 MONTHS	23 YEARS	4 YEARS & 7 MONTHS
4 YEARS	10 MONTHS	24 YEARS	4 YEAR & 10 MONTHS
4 YEARS & 6 MONTHS	11 MONTHS	25 YEARS	5 YEARS
5 YEARS	1 YEAR	26 YEARS	5 YEARS & 2 MONTHS
5 YEARS & 6 MONTHS	1 YEAR & 1 MONTH	27 YEARS	5 YEARS & 5 MONTHS
6 YEARS	1 YEAR & 2 MONTHS	28 YEARS	5 YEARS & 7 MONTHS
7 YEARS	1 YEAR & 5 MONTHS	29 YEARS	5 YEARS & 10 MONTHS
8 YEARS	1 YEAR & 7 MONTHS	30 YEARS	6 YEARS
9 YEARS	1 YEAR & 10 MONTHS	31 YEARS	6 YEARS & 2 MONTHS
10 YEARS	2 YEARS	32 YEARS	6 YEARS & 5 MONTHS
11 YEARS	2 YEARS & 2 MONTHS	33 YEARS	6 YEARS & 7 MONTHS
12 YEARS	2 YEARS & 5 MONTHS	34 YEARS	6 YEARS & 10 MONTHS
13 YEARS	2 YEARS & 7 MONTHS	35 YEARS	7 YEARS
14 YEARS	2 YEARS & 10 MONTHS	36 YEARS	7 YEARS & 2 MONTHS
15 YEARS	3 YEARS	37 YEARS	7 YEARS & 5 MONTHS
16 YEARS	3 YEARS & 2 MONTHS	38 YEARS	7 YEARS & 7 MONTHS
17 YEARS	3 YEARS & 5 MONTHS	39 YEARS	7 YEARS & 10 MONTHS
18 YEARS	3 YEARS & 7 MONTHS		
MORE THAN 39 YEARS, UP TO AND INCLUDING LIFE PERSISTENT FELONY OFFENDER 1ST DEGREE		8 YEARS	10 YEARS

(Effective July 15, 1994 - Persons found to be Persistent Felony Offenders in the First Degree based solely on Class D Felony charges would not be required to serve 10 years for parole review, but would fall under the twenty percent (20%) criteria set out above. Persistent Felony Offenders in the First Degree based on Class A, Class B, or Class C Felonies would still be required to serve 10 years for parole review)

**CALCULATION OF PAROLE ELIGIBILITY UNDER KRS 439.3401 (PAROLE FOR VIOLENT OFFENDERS) FOR CRIMES IDENTIFIED BY THE DEPARTMENT OF CORRECTIONS, OFFICE OF GENERAL COUNSEL:**

FOR CRIMES COMMITTED AFTER JULY 15, 1988 AND PRIOR TO JULY 15, 1998, TIME SERVICE FOR ORIGINAL ELIGIBILITY - MINUS JAIL TIME:

**CAPITAL OFFENSES:**

FOR THE CRIMES OF MURDER, OR KIDNAPPING (WHICH INVOLVES THE DEATH OF THE VICTIM), OR COMPLICITY TO MURDER, OR KIDNAPPING (WHICH INVOLVES THE DEATH OF THE VICTIM),

SENTENCES OF A NUMBER OF YEARS 50 % OF SENTENCE IMPOSED OR 12 YEARS - WHICHEVER IS LESS  
SENTENCES OF LIFE 12 YEARS

**CLASS A & B FELONIES:**

FOR THE CRIMES OF MANSLAUGHTER I, RAPE I, SODOMY I, ASSAULT I, KIDNAPPING (WHERE THERE IS SERIOUS PHYSICAL INJURY OF THE VICTIM), ARSON I (WHERE THERE IS SERIOUS PHYSICAL INJURY OR DEATH), OR COMPLICITY TO MANSLAUGHTER I, RAPE I, SODOMY I, ASSAULT I, KIDNAPPING (WHERE THERE IS SERIOUS PHYSICAL INJURY OF THE VICTIM), ARSON I (WHERE THERE IS SERIOUS PHYSICAL INJURY OR DEATH),

SENTENCES OF A NUMBER OF YEARS 50 % OF SENTENCE IMPOSED OR 12 YEARS - WHICHEVER IS LESS  
SENTENCES OF LIFE 12 YEARS

EXEMPTIONS FROM KRS 439.3401 FOR VICTIMS OF DOMESTIC VIOLENCE AND ABUSE: PER KRS 439.3401(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 (EXEMPTION DOES NOT EXTEND TO RAPE 1ST DEGREE OR SODOMY 1ST DEGREE BY THE DEFENDANT). THE FINDINGS OF THE COURT SHALL BE NOTED IN THE FINAL JUDGMENT.

**CALCULATION OF PAROLE ELIGIBILITY FOR SENTENCES OF DEATH, LIFE WITHOUT PAROLE OR LIFE WITHOUT BENEFIT OF PAROLE FOR 25 YEARS, SENTENCE LENGTH - MINUS JAIL CREDIT:**

DEATH SENTENCE  
LIFE WITHOUT PAROLE  
LIFE WITHOUT BENEFIT OF PAROLE FOR 25 YEARS

NONE  
NONE  
25 YEARS

**CALCULATION OF PAROLE ELIGIBILITY UNDER KRS 439.3401 (PAROLE FOR VIOLENT OFFENDERS) (HB 455) FOR CRIMES IDENTIFIED BY THE DEPARTMENT OF CORRECTIONS, OFFICE OF GENERAL COUNSEL:**

FOR CRIMES COMMITTED ON OR AFTER JULY 15, 1996, TIME SERVICE FOR ORIGINAL ELIGIBILITY—MINUS JAIL TIME:

**CAPITAL OFFENSES:**

FOR THE CRIMES OF MURDER, OR KIDNAPPING (WHICH INVOLVES THE DEATH OF THE VICTIM), OR COMPLICITY TO MURDER, OR KIDNAPPING (WHICH INVOLVES THE DEATH OF THE VICTIM),

SENTENCES OF A NUMBER OF YEARS	85 % OF SENTENCE IMPOSED
SENTENCES OF LIFE	20 YEARS

**CLASS A & B FELONIES:**

FOR THE CRIMES OF MANSLAUGHTER I, RAPE I, SODOMY I, ASSAULT I, OR COMPLICITY TO MANSLAUGHTER I, RAPE I, SODOMY I, ASSAULT I, OR OTHER CRIMES IN WHICH THE SENTENCING COURT HAS DETERMINED THAT SERIOUS PHYSICAL INJURY TO THE VICTIM OCCURRED, AS SET FORTH IN THE SENTENCING JUDGMENT,

SENTENCES OF A NUMBER OF YEARS	85 % OF SENTENCE IMPOSED
SENTENCES OF LIFE	20 YEARS

Pursuant to KRS 197.045 (4) Any sex offender convicted on or after July 15, 1996 who does not complete the sex offender treatment program for any reason shall not be eligible for parole unless the sex offender is mentally retarded.

KRS 197.410 (1) A person is considered to be a "sexual offender" as used in this chapter when he: Has been adjudicated guilty of any felony described in KRS Chapter 510; or Has been adjudicated guilty of any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510; or Has been adjudicated guilty of any felony under KRS 508.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510; or Has been adjudicated guilty of a felony offense under KRS 530.020; or Has been adjudicated guilty of a felony offense relating to sexual activity under KRS 530.064; or Has been adjudicated guilty of a felony offense under KRS 531.310.

**Parole Eligibility: NONE**

For any person who was found guilty of a felony under KRS Chapters 218A, 507, 508, 509, 511, or KRS 237.040, 514.100, 625.020, 625.030, 527.070, 527.100 or Theft of A Motor Vehicle under KRS 514.030, and who was wearing body armor and was armed with a deadly weapon at the time of the offense shall not be granted: Probation, Shock Probation, PAROLE, Conditional Discharge, or any other form of Early Release.

EXEMPTIONS FROM KRS 439.3401 FOR VICTIMS OF DOMESTIC VIOLENCE AND ABUSE: PER KRS 439.3401(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 (EXEMPTION DOES NOT EXTEND TO RAPE 1ST DEGREE OR SODOMY 1ST DEGREE BY THE DEFENDANT). THE FINDINGS OF THE COURT SHALL BE NOTED IN THE FINAL JUDGMENT.

SENTENCE LENGTH	ORIGINAL PAROLE ELIGIBILITY MINUS JAIL CREDIT	SENTENCE LENGTH	ORIGINAL PAROLE ELIGIBILITY MINUS JAIL CREDIT
10 YEARS	8 YEARS & 6 MONTHS	31 YEARS	26 YEARS & 4 MONTHS
10 YEARS AND 6 MONTHS	9 YEARS	31 YEARS AND 6 MONTHS	26 YEARS & 10 MONTHS
11 YEARS	9 YEARS & 4 MONTHS	32 YEARS	27 YEARS & 2 MONTHS
11 YEARS AND 6 MONTHS	9 YEARS & 10 MONTHS	32 YEARS AND 6 MONTHS	27 YEARS & 8 MONTHS
12 YEARS	10 YEARS & 2 MONTHS	33 YEARS	28 YEARS & 6 MONTHS
12 YEARS AND 6 MONTHS	10 YEARS & 8 MONTHS	33 YEARS AND 6 MONTHS	28 YEARS & 12 MONTHS
13 YEARS	11 YEARS	34 YEARS	29 YEARS & 11 MONTHS
13 YEARS AND 6 MONTHS	11 YEARS & 6 MONTHS	34 YEARS AND 6 MONTHS	29 YEARS & 5 MONTHS
14 YEARS	11 YEARS & 11 MONTHS	35 YEARS	29 YEARS & 9 MONTHS
14 YEARS AND 6 MONTHS	12 YEARS & 5 MONTHS	35 YEARS AND 6 MONTHS	30 YEARS & 3 MONTHS
15 YEARS	12 YEARS & 9 MONTHS	36 YEARS	30 YEARS & 7 MONTHS
15 YEARS AND 6 MONTHS	13 YEARS	36 YEARS AND 6 MONTHS	31 YEARS & 1 MONTH
16 YEARS	13 YEARS & 7 MONTHS	37 YEARS	31 YEARS & 5 MONTHS
16 YEARS AND 6 MONTHS	14 YEARS & 1 MONTH	37 YEARS AND 6 MONTHS	32 YEARS
17 YEARS	14 YEARS & 5 MONTHS	38 YEARS	32 YEARS & 4 MONTHS
17 YEARS AND 6 MONTHS	15 YEARS	38 YEARS AND 6 MONTHS	32 YEARS & 10 MONTHS
18 YEARS	15 YEARS & 4 MONTHS	39 YEARS	33 YEARS & 2 MONTHS
18 YEARS AND 6 MONTHS	15 YEARS & 10 MONTHS	39 YEARS AND 6 MONTHS	33 YEARS & 8 MONTHS
19 YEARS	16 YEARS & 2 MONTHS	40 YEARS	34 YEARS
19 YEARS AND 6 MONTHS	16 YEARS & 8 MONTHS	40 YEARS AND 6 MONTHS	34 YEARS & 6 MONTHS
20 YEARS	17 YEARS	41 YEARS	34 YEARS & 12 MONTHS
20 YEARS AND 6 MONTHS	17 YEARS & 6 MONTHS	41 YEARS AND 6 MONTHS	35 YEARS & 4 MONTHS
21 YEARS	17 YEARS & 10 MONTHS	42 YEARS	35 MONTHS & 8 MONTHS
21 YEARS AND 6 MONTHS	18 YEARS & 4 MONTHS	42 YEARS AND 6 MONTHS	36 YEARS & 3 MONTHS
22 YEARS	18 YEARS & 8 MONTHS	43 YEARS	36 YEARS & 7 MONTHS
22 YEARS AND 6 MONTHS	19 YEARS & 2 MONTHS	43 YEARS AND 6 MONTHS	37 YEARS & 1 MONTH
23 YEARS	19 YEARS & 6 MONTHS	44 YEARS	37 YEARS & 5 MONTHS
23 YEARS AND 6 MONTHS	20 YEARS	44 YEARS AND 6 MONTHS	37 YEARS & 11 MONTHS
24 YEARS	20 YEARS & 4 MONTHS	45 YEARS	38 YEARS & 3 MONTHS
24 YEARS AND 6 MONTHS	20 YEARS & 10 MONTHS	45 YEARS AND 6 MONTHS	38 YEARS & 9 MONTHS
25 YEARS	21 YEARS & 2 MONTHS	46 YEARS	39 YEARS & 1 MONTH
25 YEARS AND 6 MONTHS	21 YEARS & 8 MONTHS	46 YEARS AND 6 MONTHS	39 YEARS & 7 MONTHS
26 YEARS	22 YEARS & 4 MONTHS	47 YEARS	39 YEARS & 11 MONTHS
26 YEARS AND 6 MONTHS	22 YEARS & 10 MONTHS	47 YEARS AND 6 MONTHS	40 YEARS & 3 MONTHS
27 YEARS	22 YEARS & 11 MONTHS	48 YEARS	40 YEARS & 7 MONTHS
27 YEARS AND 6 MONTHS	23 YEARS & 3 MONTHS	48 YEARS AND 6 MONTHS	40 YEARS & 11 MONTHS
28 YEARS	23 YEARS & 7 MONTHS	49 YEARS	41 YEARS & 3 MONTHS
28 YEARS AND 6 MONTHS	24 YEARS & 1 MONTH	49 YEARS AND 6 MONTHS	41 YEARS & 7 MONTHS
29 YEARS	24 YEARS & 5 MONTHS	50 YEARS	42 YEARS & 1 MONTH
29 YEARS AND 6 MONTHS	25 YEARS & 9 MONTHS		42 YEARS & 5 MONTHS
30 YEARS	25 YEARS & 11 MONTHS		42 YEARS & 9 MONTHS
30 YEARS AND 6 MONTHS	26 YEARS		42 YEARS & 11 MONTHS

Sentences over 50 years - 85% of sentence imposed

# KENTUCKY'S RCr 11.42's: A Farce and Mockery?

## Part III: What to do.

by Susan Jackson Balliet, Assistant Public Advocate

*Parts I and II of this 3-part series of articles (See May, 1999 and September, 1999 issues of The Advocate) addressed the standard for obtaining an RCr 11.42 hearing and the two burdens of proof inside the 11.42 hearing. This article offers practical suggestions for implementing the information in Parts I and II.*

### 1. Seek greater wisdom.

There are two important concerns for anyone pursuing relief under RCr 11.42. The first concern, of course, is to win the 11.42 in state court. However, since 11.42 relief is hard to come by, and the chance of winning in state court is slim, an equal concern is to adopt a strategy that will preserve important 11.42 issues for potential litigation in federal court. Whenever possible, the practitioner should seek consultation with more experienced attorneys for advice regarding the contents of the petition, the timing of the petition relative to the direct appeal and other post-trial litigation—including state or federal habeas, motions under RCr 60.02, or motions for funding to obtain experts or additional investigation. Decisions on 11.42 strategy will depend on the individual case, and sometimes even on the lawyers, or trial judge involved. To sum up, Rule Number One for 11.42's is seek greater wisdom.<sup>1</sup>

### 2. Be aware of the one-year deadline to file a federal habeas.

The deadline for filing a petition under RCr 11.42 is three years after a judgment becomes final, which means, basically, three years after a decision by the Kentucky Supreme Court, or three years after a denial of discretionary review by the Kentucky Supreme Court. However, the three-year 11.42 deadline can be misleading, because there is a brutally short one-year deadline for filing a federal habeas under 28 U.S.C. §2254. Because of the one-year federal habeas deadline, and because defendants are allowed only one habeas, they must not wait three years to file an 11.42. They must file a petition under RCr 11.42 within one year, to ensure that 11.42 issues will be "ripe" in time to include them in their one-and-only habeas proceeding.

Filing the RCr 11.42 petition tolls the deadline, that is, it stops the time from running until the 11.42 also becomes final (again, after decision or denial of discretionary review by the Kentucky Supreme Court). Then the one-year time limit to file a federal habeas starts running again. This means, if you file an 11.42 one month after a final decision, you will have 11 months "left over" to work on your habeas after your 11.42

becomes final. If you take 6 months to file your 11.42, you'll have only 6 months left over to file the habeas after the 11.42 is final.

In each case, a defendant must decide how much time to spend on preparing and filing the 11.42, and how much time to save for preparing the federal habeas. In a simple case, an 11.42 motion might be put together swiftly, and that might be desirable. And in a death penalty case, unfortunately, the warrant policy/stay law forces the defendant to file a fast 11.42 after the direct appeal. Decisions on timing will depend on the type of case, the issues, what needs to be done to develop them, and what needs to be done to ensure raising every issue and fact that needs to be raised in the 11.42. The federal courts defer so much to state proceedings that it is important to get the 11.42 right from the outset. If it takes 11 months to do that, so be it. But be ready to file the habeas quickly within the month you have left if you lose the 11.42 on appeal.

### 3. List every possible ground for relief, and ask for a hearing.

In order to qualify for federal habeas relief, a state prisoner must first exhaust state remedies by giving the state courts an opportunity to act on all claims before presenting those claims in a federal habeas petition. In order to avoid the seemingly ever-increasing opportunities for procedural default spawned by *Wainwright v. Sykes*, 433 U.S. 72, 78, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977) (limiting courts' discretion to entertain procedurally defaulted claims) as well as those contained in 28 U.S.C. § 2254(b)(1), at a minimum it is vital to list in the RCr 11.42 petition every possible ground for relief, and to ask for a hearing. In Kentucky, it is also important to ask for appointment of counsel.<sup>2</sup>

### 4. Support each allegation with as many facts as possible.

Defendants should provide as many facts as possible in support of each allegation in an RCr 11.42 motion. Also, as to each factual matter stated, defendants should indicate whether it is already in the record, or outside the record. If there are facts in the record as to an allegation, defendants should say in the 11.42 whether these facts are incorrect, or incomplete. If facts in the record are incorrect, the correct facts should be stated, in detail. If facts in the record are incomplete, the additional facts

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should be stated, in detail.

## 5. Educate the trial court on the ease of proving prejudice under *Strickland*.

In order to throw out 11.42 claims without a hearing, or even to avoid giving any consideration at all to 11.42 claims, trial courts sometimes use the tactic of making a finding at the outset, without looking at one shred of evidence, and without reviewing the record, that the defendant cannot show sufficient prejudice to meet the standard in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and *Gall v. Commonwealth*, 702 S.W.2d 37 (Ky., 1986). In so doing, trial courts are almost always in error, because this tactic is based on a misunderstanding of *Strickland*.

Under *Strickland*, all the prejudice a defendant need show is a mere "reasonable probability" that "absent the error" the verdict *might have been* different. But what is a "reasonable probability"? Granted a one-in-a-million chance of a different verdict, like a one-in-a-million chance of winning the lottery, is not a reasonable probability. But how about a 10 % probability? A 10 % chance of winning a million dollar jackpot sounds very reasonable. Few in Kentucky would refuse to buy such a lottery ticket. And arguably, if there is a 10% chance that absent a lawyer's error, the verdict might have been different, that's a reasonable probability. If there is even a 10% chance that a lawyer's error may have influenced the jury to condemn an innocent person to prison or death, the *Strickland* test has been met. And under *Strickland* a court can't throw such a case out without 1) consideration of the record, and, 2) if the allegations are not conclusively refuted, a hearing. As discussed in Part II of this series (*The Advocate*, September 1999), under *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) a hearing must be granted in every case unless there is no reasonable probability, arguably less than a 10% chance that prejudice could possibly be shown.

## 6. Point out that defendants do not have to prove the big "But For."

This author asserted in Part II that *Strickland* did not use "but for" language. This was in error. See *Strickland*, 104 S.Ct. at 2068. What the author should have said is that *Strickland* did use the phrase "but for," but did not use it to mean the same thing as the "But For" in *Gall v. Commonwealth*, 702 S.W.2d 37, 39 (Ky., 1986). *Gall* requires proof by clear and convincing evidence that "but for" counsel's errors, the result would have been different. By contrast, *Strickland* requires proof only of a *reasonable probability* (that but for counsel's errors the result would have been different). The difference between the "But For" in *Gall* and the "but for" in *Strickland* is the

difference between a *certainty* that "but for the errors the result would have been different" (*Gall*) and a *reasonable probability* that "but for the errors the result would have been different." (*Strickland*)

It is hard to prove a certainty. It is much, much easier to prove a "reasonable probability." The test set out in *Gall* is in error. Defendants should point out this error, and urge Kentucky's trial courts to apply the correct test, from *Strickland*.

## 7. Set out the burdens of proof.

Each 11.42 motion should include a paragraph setting out the burdens of proof inside the 11.42 hearing (Part II, *The Advocate*, September 1999), and pointing out that if there is a mere "reasonable probability" that counsel's errors have caused prejudice, a "probability sufficient to undermine confidence in the outcome," *Strickland* requires a new trial.

In the 11.42 motion itself, defendants should also remind the trial court that a hearing must be granted unless the record conclusively refutes every allegation. Cite *Lewis v. Commonwealth*, Ky., 411 S.W.2d 321, 322 (1967). Under CR 52.01 findings of fact are not essential for appellate review of an RCr 11.42. Thus the defendant does not need to ask for findings. ♦

<sup>1</sup> And for their "greater wisdom" and contribution to this article, thanks to Randall L. Wheeler, Director of Capital Post-Conviction, and Sue Martin, Capital Post-Conviction.

<sup>2</sup> For additional details on the mechanics and details of litigating an RCr 11.42 petition, the Post Conviction Branch of the Department of Public Advocacy has an "11.42 Packet" available through the Frankfort office by request.

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## Should Mom and Dad Go To Jail When the Kids Don't Go To School?

by Karen Mead, Assistant Public Advocate

the definitions on the district courts and the directors of pupil personnel. However, in a later opinion, OAG 93-37, the Attorney General determined that KRS 600.020(25) controls over KRS 159.150.

When I was a kid I used to skip school on occasion. I never thought that skipping school was a crime that could land my parents in jail. Unfortunately, in some counties in Kentucky, a parent in jail for their child's failure to attend school is becoming a disturbing trend. Why are some prosecutors and judges putting these parents behind bars? What law are the parents breaking? Most important, how can we, as criminal defense lawyers, keep these parents out of jail? All of these questions seem simple to answer at first glance, but on further examination, the answers involve a myriad of complex social and legal issues.

An overview of the law gives part of the answer to these questions. KRS 159, the compulsory education statute, requires parents to enroll and send their children, ages 6 to 16, to school (KRS 159.010(1)). A definition of truancy is provided in KRS 159.150,

Any child who has been absent from school without valid excuse for three (3) or more days, or tardy without valid excuse on three (3) or more days, is a truant. Any child who has been reported as a truant three (3) or more times is an habitual truant. Being absent for less than half of a school day shall be regarded as being tardy. A local board of education may adopt reasonable policies that: (1) Require students to comply with compulsory attendance laws; (2) Require truants and habitual truants to make up unexcused absences; and (3) Impose sanctions for noncompliance.

On the other hand, KRS 600.020(25) defines an habitual truant as:

any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period.

In other words, Under KRS 159.150, a child must be absent or tardy without a valid excuse three times to be a truant. To be an habitual truant under 159.150 the child must be reported as truant three or more times. KRS 600.020(25) only requires that a child be absent three or more times without a valid excuse to be an habitual truant. The Attorney General issued two opinions attempting to deal with the inconsistencies in these definitions. OAG 91-79 places the burden to reconcile

KRS 159.990(1) provides a graduated penalty for any parent who "intentionally" fails to abide by the compulsory education statute. For the first offense a parent is subject to a fine of \$100; the second offense carries a penalty of \$250. For each offense thereafter the parent faces a Class B misdemeanor. In addition, a prosecutor can decide to proceed under KRS 530.070, Unlawful Transaction with a Minor in the Third Degree, a Class A misdemeanor.

Unlawful Transaction with a Minor in the Third Degree makes it a crime for a person to "knowingly induce, assist or cause a minor to become a habitual truant". The commentary to this statute makes it clear that while any person can be charged with this crime, including parents and guardians, it primarily applies to non-parents and non-guardians. OAG 87-40 and OAG 77-514 both addressed the issue of whether parents could be charged with Unlawful Transaction if their children were habitually truant. The Attorney General makes it clear that a charge can be brought against a parent under KRS 530.070.

1. Find out why the child is not going to school.
2. Through discovery, find out what steps the school has taken to remedy the truancy problems with the child and family.

The compulsory education statute and the use of KRS 530.070 against parents seem designed to force children to attend school. Education is certainly important in today's society. However, are children more likely to go to school while Mom and Dad are sitting in a cell in the county jail? Apparently some prosecutors and judges believe that putting parents behind bars will effectively deal with the problem of habitual truancy.

Defending a parent charged with Unlawful Transaction with a Minor for their children's failure to attend school can be difficult and time consuming. In general, the following steps can be taken when defending against this charge.

Find out why the child is not going to school. Maybe there is a valid medical reason and the parents are too indigent to take the kid to a doctor for every illness. Inability to perform the school work could be another reason children refuse to go to school. If this is the case, the defense lawyer should subpoena the child's records and discover whether this child should be evaluated for special education classes. Perhaps the child has been evaluated and for one reason or another the child was not placed in the appropriate class, then, depending on when the

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evaluation was performed, the child may need to be reevaluated. Often, when a child is placed in a setting where they are not frustrated with the schoolwork, the child will want to go to school. Finally there could be a dependency, neglect or abuse problem in the household. With your client's consent, it might be appropriate to make a motion to have the case transferred to the juvenile docket and heard as a dependency, neglect or abuse action.

Through discovery, find out what steps the school has taken to remedy the truancy problems with the child and family. Every school district has a Director of Pupil Personnel. KRS 159.140 clearly describes the duties of the school when a child is failing to attend. The Director of Pupil Personnel is required to "... (3) Acquaint the school with the home conditions of the student, and the home with the work and advantages of the school; (4) Ascertain the causes of irregular attendance and truancy, and seek the elimination of these causes;... (6) Visit the homes of students who are absent from school or who are reported to be in need of books, clothing or parental care;... [and] (8) Report to the superintendent of schools in the district in which the student resides the number and cost of books and school supplies needed by any student whose parent, guardian, or custodian does not have sufficient income to furnish the child with the necessary books and school supplies..." KRS 159.140.

In conclusion, while not many defense lawyers have had to defend a parent charged with Unlawful Transaction with a Minor in the Third Degree, there is a trend in our society to hold parents accountable for their children's actions and/or inaction. There are many avenues available to defend against this charge, including a constitutional attack on the statute. Perhaps the most effective method, however, is to address the underlying reason the child is not attending school. Education is one of the most important assets a person can have. Nevertheless, a child cannot become a productive citizen of this society if her parents are behind bars because she didn't go to school. ♦

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**Farmer v. Commonwealth**  
**1999 WL 631783**  
**(Ky. App. 8/20/99)**

Farmer had a wreck in Madison County and was taken to the hospital. The person he hit was killed. Before going to the hospital, a breathalyzer test was given to him. While at the hospital, he was interviewed, at which time he "consented" to blood and urine testing. After he was indicted, he moved to suppress the results of the testing, and he eventually was convicted and given 5 years on reckless homicide. He appealed.

One of the issues before the Court of Appeals was the trial court's denial of Farmer's motion to suppress. Farmer contended that his consent at the hospital was not valid, and thus the search was illegal. The Court of Appeals, in a unanimous decision written by Judge Combs and joined by Judges Emberton and McAnulty, affirmed the trial court. The Court agreed that the taking of blood or urine was appropriate for a Fourth Amendment analysis. "The taking of a blood sample from a criminal suspect for testing constitutes a search for real or physical evidence which implicates and activates the Fourth Amendment to the United States Constitution." However, the Court agreed with the trial court that the consent was valid. While Farmer had contended that the officer had told him he was required to submit to the testing, the Court agreed that the officer had told the defendant he was not under arrest, that Farmer had consented both verbally and in writing. As a result, the Court found that the trial court had not erred in denying Farmer's suppression motion.

**Wilson v. Commonwealth**  
**1999 WL 680249**  
**(Ky. 8/26/1999)**

The Kentucky Supreme Court has adopted the opinion of the Court of Appeals in *Wilson v. Commonwealth*. The case involves the warrantless search of a parolee by a parole officer. Wilson had received a positive drug test and had been sent to a half-way house as a result. Two parole officers went to see him at the halfway house to arrest him. They found \$373 in his pocket during a patdown. While waiting for the police to arrive, Wilson asked if he could call someone to move his car. The parole officers instead went to the car and searched it, finding marijuana and a scale in the trunk. Wilson was then charged and entered a conditional plea.

The Kentucky Supreme Court adopted the opinion of the Court of Appeals affirming the trial court's denial of Wilson's motion to suppress. The Court agreed that the condition of being on parole does not suspend the Fourth Amendment. On the other hand, the Court affirmed the applicability of *Griffin v. Wisconsin*, 483 U.S. 868 (1987), which had established probation

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searches within the special needs category. The Court held that *Griffin* applied, and thus only reasonable suspicion rather than probable cause and a warrant were required to justify the search of Wilson's car. The Court noted that the Department of Corrections had authority to place certain conditions of the parolees they are charged with supervising, that one of the conditions they had imposed was that Wilson would be subject to "search and seizure based upon a parole officer's reasonable belief that he had contraband on his person or property." Accordingly, because the parole officers in this case had reasonable suspicion, their warrantless search was legal.

***United States v. Ford***  
**1999 WL 701914**  
**(6<sup>th</sup> Cir. 9/1/1999)**

This case began with the issuance of an extremely general search warrant in Jefferson County, Kentucky in August of 1992. The police executing the search warrant took virtually all of the records from Don Ford's bingo business. These records were later turned over to the IRS.

Ford challenged one of the searches saying that a warrant to search for all records was overbroad and allowed for a general search. The Government argued that the records were admissible to prove the defendant's entire financial picture, and that the business was completely fraudulent.

The Court reversed in a decision written by Judges Gibson, Nelson, and Clay. This is an exceptionally fact specific case. The Court examined the issue under the particularity requirement, noting that the broad warrant clause involved in this case was identical to one they had previously approved in *United States v. Ables*, 167 F. 3d 1021 (6<sup>th</sup> Cir. 1999). The Court further noted that the "degree of specificity required in a warrant depends on what information is reasonably available to the police in the case." In this case, the warrant "authorized a broader search than was reasonable given the facts in the affidavit supporting the warrant." Accordingly, the search was a violation of the Fourth Amendment.

***Ingram v. Columbus***  
**185 F. 3d 579**  
**(6<sup>th</sup> Cir. 7/19/1999)**

The Sixth Circuit has examined the relationship of the hot pursuit and knock and announce doctrines in this civil rights case written by Judge Clay, and joined by Judge Daughtrey.

This case began as a street drug effort gone bad. Anthony Carroll offered to sell cocaine to the police, but later told them that someone had taken the money the police had given to him. When told he was under arrest, Carroll fled into a nearby house and hid under a bed. The police entered the house without a warrant, handcuffed one of the people in the house and pointed a gun at his head, eventually finding and arresting Carroll. The officers told some of the residents to shut up. One of the

officers hit Betty Ingram in the face. They handcuffed two women, including Ingram. When asked why they were taking Ingram to jail, the officers cursed the questioner and told her to shut up. As Ingram sat handcuffed on the couch, one of the officers "shook her violently and banged her head against the couch." Eventually, Ingram and Patricia Collins were charged with "obstructing official business." They spent 12 hours in jail prior to being released on bond. They then went to the hospital and were diagnosed with minor contusions of the scalp. Their charges were eventually dropped upon forfeiture of the bond.

Four residents, including Ingram and Collins, sued the City of Columbus, Ohio, and several of the police officers under 42 U.S.C. # 1983. The district court granted a summary judgment in favor of the defendants, and the plaintiffs sued. In an extensive opinion, the Court reversed the district judge's granting of the summary judgment motion.

The Court found that the officers had probable cause to believe Carroll had committed a felony when they began to pursue him. Thus, there were exigent circumstances for the police to enter the house without a warrant. In this regard, the district judge's summary judgment was upheld.

The Court also found that the police had failed to knock and announce prior to entering the house. The Court rejected the defendants' arguments that their entry was justifiable based upon the possibility of the destruction of evidence by Carroll and based upon "hot pursuit." "In this case, where no other justification for an unannounced entry exists and where Defendants did not know whether the home they entered was only the home of the suspect they pursued or had no reason to believe the occupants of 395 Stoddart were prepared for Defendants' entrance or were aware of their presence, we believe knocking and announcing would have been more than a superfluous act."

The Court rejected the defendant's arguments that they could handcuff the residents of the house without probable cause or reasonable suspicion. The Court also found that there was an issue of fact to be determined whether the defendants arrested Ingram and Collins without probable cause. Thus, a summary judgment was not appropriate on that issue.

The Court also held that the district court had erred in granting summary judgment on the issue of excessive force.

Judge Kennedy wrote concurring in part and dissenting in part. Judge Kennedy believed that the same exigent circumstances excusing the officers from obtaining a warrant prior to entering the house also excused the officers from knocking and announcing. "I would hold that the exigent circumstances of hot pursuit in this case excused the officers from complying with the knock and announce requirement." Judge Kennedy also would have held that the bond forfeitures by Ingram and Collins precluded their #1983 false arrest claims. ♦



## Capital Case Review

Julia K. Pearson,  
Paralegal/Law Clerk

983 S.W.2d 479, 484, quoting *Strickland*, 466 U.S. at 695.

### KENTUCKY SUPREME COURT

*Moore v. Commonwealth*, 983 S.W.2d 479 (Ky. 1998)

Unanimous decision, Stumbo (writing)

Brian Keith Moore was retried and resentenced to death for the kidnapping, robbery and murder of Virgil Harris, the father of a Louisville police officer, in 1984. His sentence was affirmed on direct appeal. *Moore v. Commonwealth*, 771 S.W.2d 34 (Ky. 1989). In September, 1990, he filed a post-conviction motion under Kentucky Rule of Criminal Procedure, RCr 11.42. In October, 1995, he filed a CR 60.02 motion based on newly discovered evidence. After an evidentiary hearing, the Jefferson Circuit Court denied both motions in January 1997.

#### ARGUMENTS RELATING TO GUILT

During the trial, Moore attempted to create reasonable doubt by showing that his co-defendant, Kenny Blair, shot the victim. Blair testified at both trials that he was getting his driver's license at about the time the victim was kidnapped.

At the second trial in 1984, Doris Riddle, who worked at the driver's licensing office, testified that she assisted Blair sometime between 11 a.m. and 12:30 p.m. on the day of the murder. However, her testimony was inconsistent with a statement given to a police officer three days after the murder. In the statement, she said that she was unsure exactly when Blair had been in the office. Another employee, Faye Thomas, told police officers that when she returned from lunch, co-workers told her about a couple who had been in the office while she was away from the office between 1 and 1:45 p.m. Trial counsel had the police report available for use, but failed to spot the inconsistencies. Moore argued that the failure to use the report to impeach Riddle and the failure to call Faye Thomas eliminated any doubt in the juror's minds that Blair was the real killer. Faye Thomas's testimony also bolstered Moore's testimony that Blair had gone to get his driver's license at about 1 p.m.

The Court found that trial counsels' failure to impeach Riddle with her statement was deficient performance, under the first prong of *Strickland v. Washington*, 466 U.S. 668 (1984). However, Moore could not satisfy the second prong: a reasonable probability that but for counsel's error, the outcome of the trial would have been different. That decision must be made upon the "totality of the evidence before the judge or jury." *Moore*,

Riddle's testimony did not completely destroy Moore's defense: the jury could have found that Blair was being assisted by Riddle at 11 a.m. and still have had time to kidnap the victim at 11:45. Blair's girlfriend also testified that she was with Blair as he did his errand. Lastly, Moore owned the gun which shot the victim, his fingerprints were found in the car and on a coin wrapper inside the car, and the victim's watch was found in the backseat of the cruiser in which Moore was transported. Lastly, Moore confessed.

Blair's mother testified that Moore was wearing a pair of pants containing soil from the crime scene shortly after the murder. Moore argued that by demonstrating that the pants did not fit him, defense counsel could have disproved Moore's linkage to the crime scene with physical evidence and impeached Blair's mother's testimony. The Court found that counsel's failure to present this evidence was a strategic decision. The retrial was five years after the crime; a demonstration that the pants were too small for Moore "was of limited evidentiary value." *Id.* In his closing argument, counsel had urged the jurors to compare the pants for themselves and made the same point much more forcefully than a demonstration during trial would have been.



Julia Pearson

Counsel was also not ineffective for failing to call two witnesses to testify that they heard Blair state that he had set Moore up. An investigator's memo about Ronald Daugherty showed that Daugherty did not actually hear Blair make the statement, but had gotten a message from Blair through an intermediary. Failure to call Tonya Benet, Blair's former girlfriend was also not improper. Her testimony was cumulative to seven other witnesses.

#### INTOXICATION IN GUILT AND PENALTY PHASES

At the first trial, counsel introduced an attorney's testimony that he had seen needle tracks on Moore's arms following his arrest. Moore argued that counsels' failure to introduce this testimony and photographs of Moore's arms resulted in the denial of a manslaughter instruction at the guilt phase and the lack of evidence of intoxication as a mitigator in the penalty phase. Evidence of Moore's intoxication was introduced at the second trial through other means. Counsel's failure to introduce the photographs, which did not clearly show the track marks was a strategic decision.

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### INTRODUCTION OF EVIDENCE THAT MOORE HAD A PREVIOUS FELONY

Moore argued that defense counsel should have argued that he would be unduly prejudiced in the penalty phase in order to exclude the evidence that Moore had a previous felony conviction from a guilty plea to robbery after his first trial. The Court found the argument speculative and without merit. The Supreme Court upheld the trial court's determination that introduction of this evidence was proper. *Id.*, at 485, citing *Moore v. Commonwealth*, at 37-38. Moore's argument that defense counsel should have been found ineffective for failing to request a penalty phase admonition that the jury should disregard the evidence. The Court found that counsel made a decision not to ask for the admonition because it would draw even more attention to the evidence. Such a decision was not unreasonable, under the *Strickland* standard.

During her testimony, Moore's aunt, Florine Shoptaw, read part of a statement in which she told the police that Moore told "tall tales" in order to get out of trouble. Counsel testified at the evidentiary hearing that he did not know why he did not make an objection. The Court found evidence in Mrs. Shoptaw's testimony: she angrily testified that her comment was taken out of context. According to the Court, counsel decided that Mrs. Shoptaw's later statement was more helpful than an objection.

### PENALTY PHASE INEFFECTIVE ASSISTANCE

Moore was not prejudiced by counsel's failure to request a directed verdict on the "no significant history of prior criminal activity" mitigator. The Court found such a request "ha[d] . . . never before been authorized by Kentucky law.

Counsel's other decisions during the penalty phase preparation and presentation did "not overcome the strong presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Moore*, at 486, citing *Strickland*, 466 U.S. at 690.

### DISQUALIFICATION OF PROSECUTOR'S OFFICE

The victim was the father of a Jefferson County police officer. Defense counsel testified at the evidentiary hearing that the prosecutor's office was unwilling to negotiate a plea bargain because the police department was insistent upon the death penalty. However, counsel also testified that neither thought to move for disqualification of the prosecutor's office. Moore argued that counsel was ineffective as a result.

The Court stated that prosecutors have broad discretion regarding what crime to charge, whether to seek the death penalty or

to enter into plea negotiations. Although there was pressure on the prosecutor's office to seek the death penalty in this case, the same would exist throughout the case, not just at the first or second trial.

### PRESENCE OF UNIFORMED POLICE OFFICERS IN COURTROOM

Although the court denied counsels' pre-trial motion to exclude uniformed police officers from the courtroom, he told counsel that the decision may be re-examined if it became a problem. At various times during the trial, as many as ten uniformed officers were in the courtroom; counsel never renewed the motion because he "forgot about it". The Court found counsels' decision not ineffective; had the disturbance from the officers' presence been so much that counsel would notice, the objection would have been renewed. The court found support in the trial court's failure to re-examine his decision.

### APPELLATE INEFFECTIVE ASSISTANCE OF COUNSEL

The court found counsel not ineffective for not raising several unpreserved errors on the direct appeal. Counsel was merely "winnowing out" the weaker arguments.

### TRIAL COURT'S CONSIDERATION OF COUNSELS' EXPERIENCE

Moore argued that the trial court improperly permitted testimony about trial counsels' reputation and abilities and then considered counsels' experience in criminal matters in deciding whether the 11.42 should be granted.

The Court found that the trial court was not concerned about trial counsel, but about the facts regarding counsels' representation of Moore. Thus, the Court found the trial court fairly weighed the allegations contained in Moore's motion.

### APPLICATION OF THE WRONG STANDARD

Moore argued that the trial court applied the wrong legal standard in deciding upon the motion, when he concluded that counsels' errors "did not 'cause the jury's verdict.'" The Supreme Court found that the court had applied the correct, *Strickland* standard of "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different", but that even if the court had applied the wrong standard, as Moore alleged, the result would have been the same. *Moore*, at 488.

The United States Supreme Court denied certiorari on October 4, 1999.

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**Mills v. Commonwealth, --- S.W.2d --- (rendered  
April 22, 1999)**

**Unanimous decision: Johnstone (writing)**

John Mills was convicted of the robbery, burglary and murder of Arthur Phipps. Phipps' body was discovered by his son-in-law, who found a trail of blood leading up the steps to Phipps' house. He found more blood in the living room, bedroom, bathroom and kitchen before finally finding Phipps' body outside the house. While officers were securing the crime scene, they found a trail of blood leading away from Phipps to a house Mills rented from Phipps. There was blood on the exterior of the house, on the front door and another trail of blood leading to a window. Mills stared at the officer, who ordered Mills to remain inside and then entered the house. Mills surrendered to the policeman. Later, Mills confessed to the crime. The videotape of Mills' confession was played for the jury.

**FOURTH AMENDMENT ISSUES**

Mills argued that the police had no exigent circumstances with which to enter his home. The police followed the blood trail to the house. There was fresh blood in several places on the outside of the house. The police detective, Gary Partin, testified that after he saw the blood, he suspected that the person who killed Phipps was inside the house and possibly wounded. Thus, there were sufficient exigent circumstances for the police to enter the house.

Mills also argued that the fruits of the police search of his house after he was taken for medical treatment should have been suppressed. However, the videotape of Mills' confession showed that he acquiesced to the police request to search his house.

**CONFESSION ISSUES**

Mills filed a motion for the court to conduct an *in camera* review of his confession. He argued that his confession should be suppressed because his intoxication and the effects of his injuries rendered his confession involuntary and unreliable. However, the trial found that Mills' condition did not meet the standard set forth in *Britt v. Commonwealth*, 512 S.W.2d 496 (Ky. 1974) and that his injuries were not sufficiently serious to render the confession involuntary.

On appeal, Mills argued that the trial court did not meet the mandates of RCr 9.78, which mandates that the trial court hold an evidentiary hearing when a defendant moves to suppress his confession. The Supreme Court that while the judge did violate RCr 9.78, the error was harmless, even in light of Mills' low IQ and limited intelligence. Mills willingly answered the questions posed to him, and that he did not appear to be so intoxicated or injured that his confession was unreliable.

Mills also moved to suppress his confession on the grounds that he was not given his *Miranda* rights, or that the rights given to him were inadequate. The trial court found that Mills had been given adequate warnings and voluntarily waived his right to remain silent. Although he did not argue the issue at the evidentiary hearing held before trial, Mills argued on appeal that his waiver was coerced when he was questioned a second time by a detective. Using the analysis set forth in *Michigan v. Mosley*, 423 U.S. 96 (1976), the Supreme Court found that Mills had voluntarily waived his rights. When he was first advised of his rights, Mills told Detective Partin that he would not talk. Thereafter, Partin did not attempt to question Mills, nor did he pressure him to change his mind. A second detective, Hall, readvised Mills of his *Miranda* rights before speaking with him a short time later. This time, Mills was willing to speak and did so. Although the short lapse of time between both detectives speaking with Mills "concern[ed]" the court, examining the confession in the totality of the circumstances still gave evidence that the police scrupulously honored Mills' right to remain silent.

**PRIOR BAD ACTS**

Mills' wife, Sharon, testified that she and Mills had gotten into a scuffle when he asked her for the keys to the family van. She later testified that Mills had pushed her down and taken the van keys from her. Defense counsel did not object to the latter testimony. The court found concern with the testimony, but found in the totality of the circumstances that even had the evidence not been elicited, Mills would still have been found guilty of murder and sentenced to death.

Mills' former cellmate, Sam Shepherd testified that Mills had been convicted and imprisoned for a previous crime. The trial court denied a defense motion for mistrial. However, the court found nothing to review on appeal: Mills did not argue that the court erred in its failure to grant a mistrial or present evidence to rebut the presumption that the trial court's admonition to the jury cured the error.

Shepherd also testified to the physical confrontation between Mills and his wife, allegedly because Mills wanted to buy marijuana. The Court found counsel's failure to object to the evidence of marijuana usage helpful to Mills' intoxication defense. The remainder of the testimony was cumulative.

Mills' short statement in his videotaped confession that Gary Martin had sent him to the penitentiary was also found not to be reversible error.

**WAIVER OF COMPETENCY HEARING**

Before the trial, Mills filed notice that he would present psychiatric evidence. About one month later, the trial court ordered a psychiatric examination at Kentucky Correctional Psychiatric Center, at which Mills was found competent to

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assist in his defense. At a pre-trial hearing, defense counsel waived an evidentiary hearing regarding Mills' competency. KRS 504.100(3) states that after the report from a psychiatric examination is filed, "the court shall hold a hearing" to determine the defendant's competency to stand trial. The Supreme Court examined the circumstances surrounding the failure to hold a hearing under the standard of whether a reasonable judge should have had a doubt about the defendant's competency to stand trial. *Mills*, slip op. at 15, quoting *Williams v. Bordenkircher*, 696 F.2d 464, 467 (6<sup>th</sup> Cir. 1983), and found that the court did not order the KCPC exam because he had a reasonable doubt as to Mills' competency, but rather, because Mills had given notice that he intended to present psychiatric evidence at trial.

### JURY SELECTION

The trial court did not improperly limit voir dire. The questions asked by both the defense and prosecution were adequate to elicit the jurors' views.

The trial court did not abuse its discretion by failing to excuse to jurors for cause because of their views on drug and alcohol abuse. The court also did not abuse its discretion in excusing another juror for cause: she was excused not because she was equivocal on her views about the death penalty but because of her nervousness in answering the questions posed to her and a medical excuse stating she had a nerve disorder.

### VIDEOTAPE OF THE CRIME SCENE

A videotape of the crime scene was played for the jury. Detective Partin commented on the images as they were portrayed in the video. Defense counsel did not object to either. Partin properly testified—his testimony consisted of opinions and inferences based on his perceptions.

Detective Partin's qualification and testimony as a blood spatter expert was harmless error. Evidence of Mills' guilt was overwhelming.

### EXCLUSION OF EVIDENCE

Mills argued that the trial court improperly prevented the presentation of his defense by disallowing portions of the testimony of nine witnesses on hearsay grounds. However, Mills made no showing that the ruling prevented him from introducing the evidence in a manner other than hearsay. ♦

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## PRACTICE TIPS

### from DPA's Appellate Division

Collected by Susan Balliet, Assistant Public Advocate

#### Kentucky Supreme Court may rule no accomplice unless there's a principal.

In the case of Billy Ray Smith, the Kentucky Supreme Court is currently considering whether a defendant who commits some of the elements of a crime, but not all the elements, can be convicted as a principal to the whole crime based on inferred intent and absent an indictment and jury instruction on complicity. At oral argument, the Court posed a disturbing question: doesn't there have to be a principal before there can be an accomplice?

In anticipation that our high court may rule to this effect, trial counsel should immediately start moving for directed verdict on "no principal" grounds in all multiple defendant cases where intent is unclear, and where there is a question as to which defendant's actions caused a crime. For instance, consider a case where two people assault a victim with unclear intent, and the victim subsequently dies, but there is no way to tell whose assault caused death.

In such a case, counsel for both defendants should say, "I move for directed verdict on the grounds that no principal has been shown, and therefore my client cannot be convicted as an accomplice." If neither can be shown to be the principal, under the Kentucky Supreme Court's possible new ruling, neither can be convicted as an accomplice.

Counsel should also request an instruction in such cases to inform the jury they must first determine who is the principal, before any other defendant can be convicted as an accomplice.

Finally, in any case where no one has been convicted as a principal, a motion for JNOV should be filed arguing it is an "inconsistent verdict" to find your client guilty as an accomplice when no one has been convicted as a principal.

*Susan Balliet, Assistant Public Advocate*

#### Notify Ben Chandler III if you are challenging constitutionality

The newly amended version of CR 24.03 requires notice not just to the local commonwealth's attorney but also to the Attorney General (Himself) for any constitutional challenge to any statute. Challenges on appeal may not be allowed if a trial

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attorney fails to give the requisite notice prior to trial to the Hon. A. B. Chandler III, Attorney General, at 1024 Capital Center Drive, Frankfort, Kentucky 40601.

*Carol Camp, Assistant Public Advocate*

**Consider requesting *Daubert* hearing and expert funds in Megan's Law risk assessment**

In conjunction with a Megan's Law risk assessment hearing, you should request a *Daubert* hearing on the scientific acceptance and reliability of the actuarial instruments used to do risk assessments, currently the RRASOR, the MnSOST-R and the VRAG. You should also file a motion requesting expert funds for your own expert to challenge the use of these actuarial instruments and/or to do an independent assessment.

*Carol Camp, Assistant Public Advocate*

**Be aware of illegal DOC policy affecting Megan's Law cases**

Also, you need to be aware that DOC apparently has a policy of taking the highest score and basing an individual's risk level on it if there is a conflict in scores. This is a direct violation of 501 KAR 6:200 and must be challenged. You can obtain a copy of 501 KAR 6:200 from the legislative research commission's website.

*Carol Camp, Assistant Public Advocate*

**Spend Extra Time with Juvenile Clients**

Juvenile practice. tip number one: you can't spend too much time with a juvenile client. When talking with young children, teenagers, or any client with suspect cognitive capacity, make sure you have them repeat key points of the discussion. A competency motion can be based on the fact that a juvenile (even with heavy coaching) did not understand a *Boykin* colloquy well enough to repeat back a basic explanation of the role of the prosecutor, or witnesses.

*Tim Shull, Assistant Public Advocate, Juvenile Branch*

**Try Football Analogies**

In trying to understand the justice system, teenage (and other) clients may respond to football analogies. For instance, try comparing probable cause to a situation in football, when the government is moving the ball, but all they have to do is get the ball to the 50 yard line on the set of downs. If the case is weak, try asking the client who the best and worst teams are in pro

football, and describe the prosecution as the best and us as the worst (due to unequal power not ability). For proof beyond a reasonable doubt, try explaining they don't have to score a touch down, but they have to get way, way down the field, at least to where it's first and goal for them.

*Tim Shull, Assistant Public Advocate, Juvenile Branch*

*Kudos and thanks to District Judge Robert Heaton for inviting DPA attorneys to come to Nelson County to address a group of school personnel, parents, and staff from the Department of Juvenile Justice. Judge Heaton was concerned with a number of petitions filed by school personnel against special education children.*

*DPA Attorney Bill Morrison gave a presentation on why the Individuals with Disabilities Education Act (IDEA) is important and how schools and parents should be working together and not against each other.*

*Attorneys Tim Shull and Carol Camp talked about why schools must comply with IDEA due process procedures before filing juvenile court petitions against kids who either have been identified as needing special ed or who should have been identified as special ed kids.*

*The presentation was November 4, 1999 at the Nelson County Civic Center in Bardstown.*

**THERE HAS BEEN A STEEP DECLINE IN VIOLENT JUVENILE CRIME**

Nationally, the FBI has reported that for the seventh straight year serious crimes fell for juveniles and adults. The rate for all violent crime last year fell to its lowest level since 1985 for adults and juveniles. Arrests for those under 18 fell 4.2%. Arrests of those under 18 for murder decreased 11.6%.

# SCHEDULING OF DRUGS UNDER KRS CHAPTER 218A AND 902 KAR CHAPTER 55

Complete to January 1, 1999

Note: This Drug Schedule was developed and prepared by Helen Danser, R.Ph., Pharmacy Services Program Manager, Department for Mental Health and Mental Retardation Services, Kentucky Cabinet for Health Services, and is printed with permission.

## CHS DRUG CATEGORIES

### CHS DRUG LIST BY SCHEDULE

#### ALPHABETICAL LISTING

## CHS DRUG CATEGORIES

KRS Chapter 218A defines various schedules of drugs. KRS 218A.020 requires the Cabinet for Health Services (CHS) to place substances which are not listed in the statute into schedules based on the statutory criteria for each schedule.

Below are compilations of CHS's listings of drugs that fall into various schedules. The first list is by schedule; the second list is alphabetical. The lists are not guaranteed to be all-inclusive.

## CHANGES

The drugs placed in a particular schedule may be changed by either DEA or CHS. The change may be a movement from one schedule to another or removal from the controlled schedule. New drugs marketed are screened for abuse potential and may be placed into a schedule at the time of marketing or later depending on experience once the drug is in use. Therefore, one must check the validity of the scheduling of any drug at periodic intervals.

## ADMINISTRATIVE REGULATIONS

In addition to the KRS Chapter 218A, 902 KAR 55:010 - 55:080 will list drugs in the various schedules.

## FURTHER INFO

Inquiries may be addressed to Ms Dana Droz, R.Ph., Pharmacy Services Program Manager, Drug Control, Department of Health Services—(502)564-7985; or to Helen Danser, R.Ph., Pharmacy Services Program Manager, Department for Mental Health and Mental Retardation Services, Cabinet for Health Services, Frankfort, Kentucky 40601, (502)564-4448; fax (502)564-9010; e mail [hdanser@mail.state.ky.us](mailto:hdanser@mail.state.ky.us).

## REFERENCES

References used in developing the list of drugs in the various schedules are:

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1999 Edition  
USP DI  
U.S. Pharmacopeial Convention, Inc.  
P.O. Box 2248  
Rockville, MD 20852
2. *Facts and Comparisons* (1994)  
Drug Information  
13743 Shoreline Court East  
Earth City, MO 63045-1215
3. 902 KAR Chapter 55
4. KRS Chapter 218A
5. *The Pharmacological Basis of Therapeutics*  
Goodman & Gilman Macmillan Publishing Co., Inc.  
NY 1991

## CHS DRUG LIST BY SCHEDULE

### SCHEDULE I

#### A. OPIATES

- 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP)
- 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP)
- 3-methylfentanyl, N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide
- 3-methylthiofentanyl N-3-methyl-1-(2-phenylethyl)-4-piperidyl-N-phenylpropanamide
- Acetyl-alpha-methylfentanyl, N-1-(1-methyl-2-phenethyl)ethyl-4-piperidyl-N-phenylacetamide
- Acetylmethadol
- Allyprodine
- Alphacetylmethadol [except Levo-alphacetylmethadol (LAMM)]
- Alphameprodine
- Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine)

## Scheduling of Drugs Under KRS Chapter 218A

- Alpha-methylthiofentanyl,  
 N-1-1-methyl-2-(2-thienyl)ethyl-4-piperidyl-N-phenylpropanamide  
 Benzylfentanyl,N-1-benzyl-4-piperidyl-N-phenylpropanamide  
 Betacetylmethadol  
 Beta-  
   hydroxyfentanyl,N-1-(2hydroxy-2-phenethyl)-4-piperidinyl-N-phenylpropanamide  
 Beta-hydroxy-3-methylfentanyl,N-1-(2-hydroxy-2-phenylethyl)-4-piperidyl-N-phenylpropanamide  
 Beta-hydroxyfentanyl-3-methylfentanyl,N-1-(2hydroxy-2phenethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide  
 Betameprodine  
 Betamethadol  
 Betaprodine  
 Clonitazene  
 Dextromoramide  
 Dextrorphan  
 Diampromide  
 Diethylthiambutene  
 Difenoxin  
 Dimenoxadol  
 Dimepheptanol  
 Dimethylthiambutene  
 Dioxaphetylbutyrate  
 Dipipanone  
 Drotebanol  
 Ethylmethylthiambutene  
 Etonitazene  
 Etorphine (except the hydrochloride salt)  
 Etozeridine  
 Furethidine  
 Hydroxypethidine  
 Ketobemidone  
 Levomoramide  
 Levophenacymorphan  
 Morpheridine  
 Noracymethadol  
 Norlevorphanol  
 Normethadone  
 Norpipanone  
 Para-fluorofentanyl,(N-(4-fluorophenyl)-N-1(2phenethyl)-4-piperidinyl propanamide  
 Phenadoxone  
 Phenampromide  
 Phenomorphan  
 Phenoperidine  
 Piritramide  
 Proheptazine  
 Properidine  
 Propiram  
 Racemoramide  
 Thenylfentanyl,N-1-(2-thienyl)methyl-4-piperidyl-N-phenyl propanamide  
 Thiofentanyl,-N-phenyl  
   N-1-(2-thienyl)ethyl-4-piperidinylpropanamide  
 Tilidine
- B. OPIUM DERIVATIVES**
- Acetorphine  
 Acetyldihydrocodeine
- Benzylmorphine  
 Codeine Methylbromide  
 Codeine-N-Oxide  
 Cyprenorphine  
 Desomorphine  
 Dihydromorphine  
 Drotebanol  
 Etorphine  
 Heroin  
 Hydromorphinol  
 Methyl-desorphine  
 Methyl-dihydromorphine  
 Morphine Methylbromide  
 Morphine Methylsulfonate  
 Morphine-N-Oxide  
 Myrophine  
 Nicocodeine  
 Nicomorphine  
 Normorphine  
 Phenylcodine  
 Pholcodine  
 Thebacon
- C. HALLUCINOGENIC SUBSTANCES**
- 1-[1-(2-thienyl) cyclohexyl] pyrrolidine (TCPy)  
 2-Methylamino-1-phenylpropan-1-one (including, but not limited to, methcathione, Cat, and Ephedrone)  
 2,5-dimethoxy-4-ethylamphetamine (DOET)  
 2,5-dimethoxyamphetamine (2,5 DMA)  
 3,4 methylenedioxy-methamphetamine (MDMA)  
 3,4-methylenedioxy amphetamine  
 3,4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3,4(methylenedioxy) phenethylamine,N-ethyl MDA, MDE, MDEA  
 3,4,5-Trimethoxyamphetamine  
 4-bromo-2,5-dimethoxy-amphetamine  
 (4-bromo-2,5-DMA,4bromo-2,5dimethoxy-alpha-methylphenylamine  
 4-Methoxyamphetamine(PMA) -4-methoxy-alpha-methylphenethylamine  
 paramethoxyamphetamine  
 4-Methyl-2,5-dimethoxylamphetamine  
 5-dimethoxyamphetamine  
 5, Methoxy-3,4 methylenedioxy amphetamine  
 Alpha-ethyltryptamine (alpha-ethyl-1H-indole-3-ethanamine,3-(2-aminobutyl)indol  
 Bufotenine  
 Diethyltryptamine  
 Dimethyltryptamine  
 Ephedrine  
 Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine,cyclohexamine,(1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)ethylamine PCE)  
 Hashish  
 Ibogaine  
 Lysergic Acid diethylamide  
 Marijuana  
 Mescaline  
 N-ethyl-3-piperidyl benzilate  
 N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine,N-hydroxy MDA)

## Scheduling of Drugs Under KRS Chapter 218A

N-Methyl-3-piperidyl benzilate  
 Para-fluorofentanyl, (N-(4-fluorophenyl)-  
 N-1-(2-phenyl)-4-piperidyl propanamide  
 Parahexyl (Synhexyl,  
 3-Hexyl-1-hydroxy-7,8,10-tetrahydro-6,6,9-triethyl-6H-  
 dibenzo b,d pyran)  
 Peyote  
 Phencyclidine  
 Psilocybin  
 Psilocyn  
 Pyrrolidine analog of phencyclidine  
 (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP)  
 Tetrahydrocannabinols  
 Thiophene analog of phencyclidine  
 (1-(1-(2-thienyl)cyclo-hexyl) piperidine, TCP, TPCP)

**D. DEPRESSANTS**

Mecloqualone  
 Methaqualone(2-methyl-3-0-tolyl-4(3H)quinazolinone)

**E. STIMULANTS**

Aminorex (aminoxaphen,2-  
 amino-5-phenyl-2-oxazoline,4,5-dihydro-  
 5-phenyl-2-oxazolamine)  
 Cathinone (2-amino-1-phenyl-1-propanone, alpha-  
 aminopropiophenone,2-aminopropiophenone, and  
 norephedrone  
 (±) cis-4-methylaminorex (±)  
 -cis-4,5-dihydro-4methyl-5-phenyl-2-oxazolamine)  
 Fenethylamine  
 Methcathinone (2-(methylamino) propiophenone,  
 alpha(methylamino)-propiophenone, alpha  
 (methylamino)-propiophenone-2  
 (methylamino)-1-phenylpropane-1-one,alpha-N-  
 methylaminophenone, monomethylpropion,  
 ephedrone, N-methylcathinone, methylcathinone,  
 AL-464, AL-422, AL 463 and UR 1431), its salts,  
 optical isomers and salts of optical isomers  
 N-ethylamphetamine  
 N,N,alpha-trimethylphenylamine), its salts, optical  
 isomers and salts of optical isomers  
 N,N-dimethylamphetamine (N,N-alpha-trimethyl-  
 benzeneetha-namine  
 N,N alpha-trimethylphenethylamine), its salts, optical  
 isomers and salts of optical isomers

**SCHEDULE II****A. OPIATES AND DERIVATIVES**

1-Diphenyl-propane-carboxylic acid  
 2-Methyl-3-morpholino-1  
 4-Cyano-2-Dimethylamino-4  
 4-Diphenyl butane  
 Alfentanil  
 Alphaprodine HCl—(Nisentel)  
 Anileridine  
 Benztramide  
 Codeine  
 Dihydrocodeine  
 Diphenoxylate  
 Ethylmorphine  
 Etorphine hydrochloride  
 Fentanyl—(Sublimaze)  
 Granulated opium  
 Hydrocodone  
 Hydromorphone—(Dilaudid)

Isomethadone  
 Levo-alphaacetylmethadol (LAMB)  
 Levomethorphan  
 Levorphanol—(Levo-Dromoran)  
 Meperidine—(Demeral, Pethadol)  
 Metazocine  
 Methadone—(Dolophine)  
 Methadone-Intermediate  
 Metopon  
 Moramide-Intermediate  
 Morphine Sulfate—[Roxanol, RMS Uniserts (rectal  
 suppositories)]  
 Opium extracts  
 Opium fluid  
 Opium powder—Also listed as POWDERED OPIUM  
 Opium tincture—Also listed as INCTURE OF OPIUM  
 Oxycodone HCl  
 Oxymorphone—(Numorphan)  
 Pantopon—(Hydrochlorides, opium alkaloids)  
 Pethidine  
 Pethidine-Intermediate-A,4  
 cyano-1-methyl-4-phenylpiperidine  
 Pethidine-Intermediate-B  
 ethyl-4-phenylpiperidine-4-carboxylate  
 Pethidine-Intermediate-C  
 1-methyl-4-phenylpiperidine-4-carboxylic acid  
 Phenazocine  
 Piminodine  
 Powdered opium—Also listed as OPIUM POWDER  
 Racemethorphan  
 Racemorphan  
 Raw opium  
 Sufentanil—(Sufenta)  
 Thebaine  
 Tincture of opium—Also listed as Opium tincture

**B. COMBINATIONS OF OPIOIDS**

Oxycodone & Acetaminophen tablets  
 Oxycodone HCl, Oxycodone Terephthalate & Aspirin  
 tablets  
 Oxycodone with Acetaminophen  
 Oxycodone with aspirin tablets  
 Percodan—Demi tablets  
 Percodan Tablets  
 Tylox Capsules

**C. HALLUCINOGENIC SUBSTANCES**

Unless specifically excepted or listed in another  
 schedule, any material, compound, mixture, or  
 preparation which contains any quantity of:  
 1-Dronabinol (synthetic) in sesame oil and  
 encapsulated in a soft gelatin capsule is a U.S. Food  
 and Drug Administration approved drug product  
 (some other names for dronabinol: [6aR-  
 trans]-6a,7,8, or (-) delta-9-[trans]-  
 tetrahydrocannabinol)  
 2-Nabilone (another name for nabilone: (plus or  
 minus)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10, 10a-  
 hexahydro-1-hydroxy-6,6-dimethyl-9H-  
 dibenzo[b,d]pyran-9-one)

**D. OPIATES**

Alfentanil  
 Bulk Dextropropoxyphene (non-dosage forms)  
 Carfentanil

## Scheduling of Drugs Under KRS Chapter 218A

Sufentanil

**E. STIMULANTS**

Adderall

Cocaine

Dextroamphetamine

Methamphetamine

Methylphenidate

Phenmetrazine

**SCHEDULE II—DEPRESSANTS**

Amobarbital—(Amytal)

Amobarbital + Secobarbital—(Tuinal)

Glutethimide (Dorelin)

Pentobarbital (Nembutal)

Secobarbital—Seconal

Any drug approved by the United States Food and Drug Administration for marketing only as a suppository including Amobarbital, Pentobarbital or Secobarbital shall be in Schedule III.

**A. IMMEDIATE PRECURSORS**

1—Phenylcyclohexylamine, immediate precursor to Phencyclidine

Phenylacetone—other names include phenyl-2-propanone, P2P, benzyl methyl ketone and methylbenzylketone—immediate precursor to amphetamine and methamphetamine

1—Piperidinocyclohexanecarbonitrile, immediate precursor to Phencyclidine

**SCHEDULE III—OPIOID NARCOTICS****A. PRODUCTS CONTAINING CODEINE**

Aspirin with Codeine

Codimal PH

Empirin with Codeine

Fiorinal with Codeine

Hycodan tablets

Nalline—Nalorphine

Nucofed

Nucofed Expectorant Syrup with Codeine

Phenaphen with Codeine

Talwin—Pentazocine, Any material, compound, mixture, or preparation which contains any quantity of Pentazocine, including its salts.

Tylenol with Codeine #1, 2, 3, and 4

Vanex-HD Liquid

**B. PRODUCTS CONTAINING HYDROCODONE**

Anexsia

Bancap

Codamine

Codiclear DH Syrup

Co-gesic tablets

Detussin, various

Duocet

Entuss D Liquid

Histussin HC

Hycodan

Hycomine

Hycomine Pediatric Syrup

Hycotuss Expectorant

Hydrocodone Compound Syrup

Hydropane

Hydrophen

Hy-Phen Tablets

Lorcet

Lortab

Rolatuss with Hydrocodone

S.T. Forte

S.T. Forte Liquid 2

Triaminic Expectorant DH

Tussaminic DH Forte

Tussionex

Vanex-HD

**C. PRODUCTS CONTAINING OPIUM**

Paregoric

**SCHEDULE III****1—STIMULANTS**

Benzphetamine—Didrex

Chlorphentermine

Chlortermine

Phendimetrazine, to include but not necessarily be limited to:

Adipost

Anorex

Bontril PDM

Bontril Slow-Release

Melfiat-105 Unicells

Obalan

Plegine

Prelu-2

Weh-less

Wehless-105 Timecells

**2—AMPHETAMINE AND METHAMPHETAMINE COMBINATIONS**

Mediatric; Tablet or capsule: Methamphetamine hydrochloride 1 mg.; conjugated estrogens-equine 0.25 mg.; methyl testosterone 2.5 mg.; and Mediatric Liquid; Solution (15 cc.): Methamphetamine hydrochloride 1 mg.; conjugated estrogens-equine 0.25 mg.; methyl testosterone 2.5 mg.

**3—DEPRESSANTS**

—any material, compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredient that is not a controlled substance.

—any suppository form that contains amobarbital, secobarbital, pentobarbital approved only for use in suppository form.

—tiletamine and zolazepam or any of their salts.

other names for tiletamine are:

2-(ethylamino)-2-(2-thienyl)-cyclohexanone

other names for zolazepam are:

4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) 99(1,4)-diazepin-7(1H)-one, fluprazpon

Butabarbital—Butisol

Chloral Hydrate

Mephobarbital

Metharbital

Methyprylon

Phenobarbital

Sulfomethane

Sulfondiethylmethane

## Scheduling of Drugs Under KRS Chapter 218A

Sulfonethylmethane  
Talbutal

**SCHEDULE III—ANABOLIC STEROIDS**

It is unlawful for a prescription or order to be written for an anabolic steroid; for such steroids to be distributed and/or sold for the following purposes:

- enhanced performance in exercise, sport, or game,
- the hormonal manipulation necessary to increase muscle mass, weight, strength without a medical necessity and further it is unlawful for anyone to intentionally make or deliver an anabolic steroid whether in a pure or unpure state and it is unlawful to possess an anabolic steroid for the purpose of illegal delivery or manufacture.

The following anabolic steroids or a material compound mixture or preparation that contain any of the following, including salts, isomers, and salts of isomers if the existence of such salts of isomers is possible within the specific chemical designation:

- 1) Boldenone
- 2) Chlorotestosterone
- 3) Clotesbol
- 4) Dehydrochloromethyltestosterone
- 5) Dihydrotestosterone
- 6) Drostanolone
- 7) Ethylestrenol
- 8) Fluoxymesterone
- 9) Formebolone
- 10) Mesterolone
- 11) Methandranone
- 12) Methandienone
- 13) Methandriol
- 14) Methenolone
- 15) Methyltestosterone
- 16) Mibolerone
- 17) Nandrolone
- 18) Norethandrolone
- 19) Oxandrolone
- 20) Oxymesterone
- 21) Oxymetholone
- 22) Stanolone
- 23) Stanozolol
- 24) Testolactone
- 25) Testosterone
- 26) Trenbolone

**Exempt Anabolic Steroid Products.** The Cabinet for Health Services exempts the following anabolic steroid containing compounds, mixtures, or preparations from the provisions of KRS 218A.150-218A.180 and 218A.200

- 1-Androgn L.A., vial, NDC number 0456-1005: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- 2-Andro-Estro 90-4, vial, NDC number 0536-1605: testosterone enanthate 90 mg/ml, estradiol 4 mg/ml;
- 3-DepANDROGYN, vial, NDC number 0456-1020: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 4-DEPO-T.E., vial, NDC number 52765-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

- 5-depTESTROGEN, vial, NDC number 51698-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 6-Duomone, vial, NDC number 52047-360: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- 7-DURATESTRIN, vial, NDC number 43797-016: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 8-DUO-SPAN II, vial, NDC number 0684-0102: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 9-Estratest, tablet, NDC number 0031-1026: esterified estrogens 1.25 mg, methyltestosterone 2.5 mg;
- 10-Estratest HS, tablet, NDC number 0032-1023: esterified estrogens 0.625 mg, methyltestosterone 1.25 mg;
- 11-PAN ESTRA TEST, vial, NDC number 0525-0175: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 12-Premarin with Methyltestosterone, tablet, NDC number 0046-0879: conjugated estrogens 1.25 mg, methyltestosterone 10.0 mg;
- 13-Premarin with Methyltestosterone, tablet, NDC number 0046-0878: conjugated estrogens 0.625 mg, methyltestosterone 5.0 mg;
- 14-Synovex H Pellets in process, drum: testosterone propionate 25 mg., estradiol benzoate 2.5 mg;
- 15-Synovex H Pellets in process granulation, drum: testosterone 10 parts, estradiol benzoate 1 part;
- 16-TEST-ESTRO Cypionate, vial, NDC number 0536-9470: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 17-Testagen, vial, NDC number 55553-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 18-Testosterone Cyp 50 Estradiol Cyp 2, vial, NDC number 0814-7737: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 19-Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 54274-530: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 20-Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0182-3069: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 21-Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0364-6611: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 22-Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0402-0257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- 23-Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0009-0253: testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0009-0253: testosterone cypionate 50 mg/ml, estradiol Cypionate 2 mg/ml;
- 24-Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0182-3073: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- 25-Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0364-6618: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- 26-Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0402-0360: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- 27-Tilapia Sex Reversal Feed (Investigational), plastic bags: methyltestosterone fish feed, 60 mg/1 kg.

**SCHEDULE IV**

## Scheduling of Drugs Under KRS Chapter 218A

Carisoprodol—(Soma)  
 Carisoprodol and Aspirin—(Soma Compound)  
 Carisoprodol and Aspirin with Codeine—Soma  
 Compound with Codeine  
 Chloral betain  
 Chloral Hydrate—(Noctec, Somnos, Nycton, Lorinal,  
 Chloralduurat)  
 Ethchlorvynol—(Placidyl)  
 Ethinamate—(Valmid)  
 Meprobamate—(Equanil, Miltown, Meprospan)  
 Paraldehyde  
 Petrichloral

**A. STIMULANTS**

Cathinel ((+))—Norpseudoephedrine)  
 Diethylpropion HCl—(Depletite-25; Tenuate; Tepanil;  
 Tenuate Dospan; Tepanil Ten-Tab)  
 Fencamfamin  
 Fenfluramine HCl—(Pondimin)  
 Fenproporex  
 Mazindol  
 Mefenorex  
 Modafinil  
 Pemoline including organometallic complexes and  
 chelates  
 Phentermine  
 Phentermine HCl—(Phentrol; Tora; Fastin; Obe-Nix;  
 Obephen; Obrmine; Obestin-30; Phentrol 2; Unifast  
 Unicells; Wilpowr; Adipex-P; Dapex-37.5 Ionamin;  
 Parmine; Phentrol 4; Phentrol 5)  
 Pipradrol—(Detaril; Gerodyl; Meratran; Pipradol)  
 Sibutramine  
 SPA((-)-1-Dimethylamino-1,2-Diphenyl ethane)

**B. DEPRESSANTS**

Alprazolam—(Xanax)  
 Bromazepam  
 Camazepam  
 Chlordiazepoxide—(Librium; Libritabs; A-Poxide;  
 Lipoxide; SK-Lygen; Mucil; Reposans-10; Sereen)  
 Clobazam  
 Clonazepam—(Klonopin)  
 Clorazepate—(Tranxene)  
 Clotiazepam  
 Cloxazolam—(Enadel; Sepazon)  
 Delorazepam  
 Diazepam—(Valium)  
 Estazolam—(Eurodin; Julodin)  
 Ethyl loflazopate  
 Fludiazepam  
 Flunitrazepam—(Rohypnol)  
 Flurazepam—(Dalmane)  
 Halazepam—(Paxipam)  
 Haloxazolam  
 Ketazolam  
 Loprazolam  
 Lorazepam—(Ativan; Emotival; Lorax; Psicopax;  
 Tavor; Temesta)  
 Lormetazepam  
 Mebutamate—(W-583; Capla; Butatensin; Carbuten;  
 Mebutina; Prean; Sigmafon; Vallene; Mega; No-  
 Press; Axiten; Ipotensivo)

Medazepam—Ansilan; Diepin; Elbrus; Esmail;  
 (Medazepol; Mezezan; Megasedan; Nobrium;  
 Pazital; Psiquium; Resmit; Rudotel; Serenium;  
 Siman)  
 Methohexital—(Brevital; Brevital Sodium; Brevimytal  
 Sodium, Brietal Sodium)  
 Midazolam  
 Nimetazepam  
 Nitrazepam—(Benozalin; Calsmin; Eunoctin; Mosadan;  
 Mogadon; Nelbon; Nitrenpax; Paxisyn; Pelson;  
 Radedorm; Relact; Sonebon; Sonnolin)  
 Nordiazepam  
 Oxazepam—(Serax; Aplakil; Bonare; Enidrel; Hilong;  
 Isodin; Limbial; Nesontil; Praxiten; Propax; Quilitrex;  
 Rondar; Sernal; Serenid; Serepax; Seresta; Sobril;  
 Tazepam)  
 Oxazolam—(Serenal)  
 Pinazepam  
 Prazepam—(Demetrix; Verstran; Centrax)  
 Quazepam  
 Temazepam—(Myolastin, Restoril)  
 Tetrazepam  
 Triazolam—(Halcion)  
 Zolpidem (Ambien) add product

**C. NARCOTICS**

A material, compound, mixture, or preparation  
 containing a quantity of the following narcotic drugs, or  
 their salts calculated as the free anhydrous base or  
 alkaloid, in limited quantities as set forth below:  
 Butorphanol (Stadol)  
 Dextropropoxyphene—(Darvon) (Alpha-(+)-4  
 dimethylamino-1,  
 2-diphenyl-3-methyl-2-propionoxybutane)  
 Not more than one (1) milligram of difenoxin and  
 not less than twenty-five (25) micrograms of atropine  
 sulfate per dosage unit  
 Nalbuphine

**SCHEDULE V**

Not more than 100 milligrams of dihydrocodeine per  
 100 milliliters or per 100 grams, and not more than two  
 and five-tenths (2.5) milligrams of diphenoxylate  
 hydrochlorid and not less than twenty-five (25)  
 micrograms of atropine sulfate per dosage unit  
 Actifed with Codeine Cough Syrup  
 Ambenyl Cough Syrup  
 Ambophen Expectorant  
 Bromanyl Expectorant  
 Bromphen DC with Codeine Cough  
 Buprenorphine HCl  
 Calcidrine Syrup  
 Cherocol Syrup  
 Codimal PH Syrup  
 Cophene-S Syrup  
 C-Tussin Expectorant  
 Deproist Expectorant with Codeine  
 Dihistine Expectorant  
 Dimetane DC Cough Syrup  
 Donnagel P.G.  
 Guiatuss DAC Liquid  
 Guiatussin DAC Syrup  
 Lomotil  
 Mytussin DAC Liquid  
 Naldecon-CX Suspension

## Scheduling of Drugs Under KRS Chapter 218A

Nucofed Pediatric Expectorant  
 Pediacof Cough Syrup  
 Phenergan Codeine Syrup  
 Phenergan VC with Codeine Syrup  
 Phenergan with Codeine Syrup  
 Phenhist DH with Codeine Liquid  
 Promethazine VC with Codeine  
 Promethazine with Codeine  
 Robitussin A.C. Syrup  
 Robitussin-DAC Syrup  
 Robitussin with Codeine  
 Ru-Tuss with Hydrocodone Liquid  
 Ryna-CX Liquid  
 Triacin C Syrup  
 Triafed with Codeine  
 Tussar 2 Cough Syrup  
 Tussar SF Cough Syrup  
 Tussi-Organidin NR  
 Tussirex  
 Tylenol with Codeine Elixir

**EXCLUDED OVER-THE-COUNTER  
 PRODUCTS. THE CABINET FOR HEALTH  
 SERVICES EXCLUDES THE FOLLOWING  
 PRODUCTS FROM THE PROVISION OF  
 KRS CHAPTER 218A:**

Asthma-Ese Tablet NDC code 00349-2018:  
 phenobarbital 8.10 mg  
 Azma-Aids tablet NDC code 00367-3153: phenobarbital  
 8 mg  
 Bronkoxir Elixir NDC code 00057-1004: phenobarbital  
 0.8 mg/ml  
 Bronkotabs Tablets NDC code 00057-1005:  
 phenobarbital, 8 mg  
 Choocate's Leg Freeze, liquid: Chloral Hydrate 246.67  
 mg/ml  
 Guiaphed Elixir NDC code 00182-1377: phenobarbital  
 4 mg/ml  
 Primatene (P-tablets), tablet, NDC code  
 0573-2940: phenobarbital 8 mg  
 Tedral tablet NDC code 00071-1230: phenobarbital 8  
 mg  
 Tedral Elixir, elixir NDC code 00071-0242:  
 phenobarbital 40 mg/ml  
 Tedral S.A. tablet NDC code 00071-1231:  
 phenobarbital 8 mg  
 Tedral Suspension, suspension, NDC code 00071-0237,  
 phenobarbital 80 mg/ml  
 Tedrigen, tablet, NDC code 00182-0134: phenobarbital  
 8 mg  
 Theophed, tablet, NDC code 00719-1945:  
 phenobarbital 8 mg  
 Vicks Inhaler, inhaler, NDC code  
 23900-0010; 1-Desoxyephedrine 113 mg

**Exempt Prescription Products.** The Cabinet for  
 Health Services exempts the following prescription  
 products from the provision of KRS  
 218A.150-218A.180 and 218A.200

1-Acetaminophen 325 mg/butalbital 50 mg, tablet, NDC  
 00456-0674: butalbital 50 mg;  
 2-Acetaminophen 500 mg/Butalbital 50 mg, tablet,  
 NDC 00456-0671: butalbital 50 mg;

3-ALAGESIC Tablets, tablet, NDC 55726-0300:  
 butalbital 50 mg;  
 4-Alkaloids of Belladonna and Phenobarbital, tablet,  
 NDC 00377-0527: phenobarbital 16.20 mg;  
 5-Amaphen Capsules (Reformulated), capsule, NDC  
 11311-0954: butalbital 50 mg;  
 6-Aminophylline and Phenobarbital, enteric coated  
 tablet, NDC 00115-2156: phenobarbital 15 mg;  
 7-Aminophylline and Phenobarbital tablets, tablet,  
 NDC 00115-2154: phenobarbital 15 mg;  
 8-Anaspaz PB, tablet, NDC 00225-0300: phenobarbital  
 15 mg;  
 9-Anolor 300 Capsules, capsule, NDC 51674-0009:  
 butalbital 50 mg;  
 10-Anoquan modified Formula, capsule, NDC  
 00166-0881: butalbital 50 mg;  
 11-Anti-Spas Elixir, elixir, NDC 00719-4090:  
 phenobarbital 3.24 mg/ml;  
 12-Anti-Spas Tablets, tablet, NDC 00719-1091:  
 phenobarbital 16.20 mg;  
 13-Antispas tablet, NDC 00377-0622: phenobarbital  
 16.20 mg;  
 14-Antispasmodic, tablet, NDC 00364-0020:  
 phenobarbital 16 mg;  
 15-Antispasmodic, tablet NDC 00367-4118:  
 phenobarbital 16.20 mg;  
 16-Antispasmodic, tablet, NDC 03547-0777:  
 phenobarbital 16.20 mg;  
 17-Antispasmodic Elixir, elixir, NDC 00182-0686:  
 phenobarbital 3.24 mg/ml;  
 18-Antispaosmodic Elixir, elixir, NDC 0036-7002:  
 phenobarbital 3.2 mg/ml;  
 19-Antispasmodic Elixir, elixir, NDC 00832-8009:  
 phenobarbital 3.24 mg/ml;  
 20-Antispasmodic Tablets, tablet, NDC 00182-0129:  
 phenobarbital 16.20 mg;  
 21-Antispasmodic Tablets, tablet, NDC 47679-0158:  
 phenobarbital 16.2 mg;  
 22-Antispasmodic Tablets, tablet, NDC 00839-5055:  
 phenobarbital 16 mg;  
 23-Antrocol, capsule, NDC 00095-0041: phenobarbital  
 16 mg;  
 24-Antrocol Elixir, elixir, NDC 00095-0042:  
 phenobarbital 3 mg/ml;  
 25-Antrocol Tablets, tablet, NDC 00095-0040:  
 phenobarbital 16 mg;  
 26-Arco-Lase Plus, tablet, NDC code 00275-0045:  
 phenobarbital 8 mg;  
 27-Atropine Sulfate with Phenobarbital, tablet, NDC  
 00463-6035: phenobarbital 15 mg;  
 28-Axotal, tablet, NDC 00013-1301: butalbital 50 mg;  
 29-Azap, tablet, NDC 00172-3747: phenobarbital 8 mg;  
 30-B-A-C Tablets, tablet, NDC 00259-1256: butalbital  
 50 mg;  
 31-Bancap, capsule, NDC 00456-0546: butalbital 50 mg;  
 32-Barbeloid (Revised) Green, tablet, NDC  
 00377-0365: phenobarbital 16.20 mg;  
 33-Barbeloid Yellow, tablet, NDC 00377-0498:  
 phenobarbital 16.20 mg;  
 34-Barbidonna Elixir, elixir, NDC 00037-0305:  
 phenobarbital 3.20 mg/ml;  
 35-Barbidonna No 2, tablet, NDC 00037-0311:  
 phenobarbital 32 mg;  
 36-Barbidonna Tablets, tablet, NDC 00037-0301:  
 phenobarbital 16 mg;

## Scheduling of Drugs Under KRS Chapter 218A

- 37-Barophen, elixir, NDC 00472-0981: phenobarbital 3.24 mg/ml;
- 38-Bel-phen-ergor s Tablets, tablet, NDC 00182-1847: phenobarbital 40 mg;
- 39-Bel-Phen-Ergot-S Tablets, tablet, NDC 00719-1686: phenobarbital 40 mg;
- 40-Bel-Tabs, tablet, NDC 00677-1171: phenobarbital 40 mg;
- 41-Belladrenal, tablet, NDC 00078-0028: phenobarbital 50 mg;
- 42-Belladrenal-S sustained release tablet, NDC 00078-0027: phenobarbital 50 mg;
- 43-Belladonna Alkaloids with Phenobarbital, elixir, NDC 00179-0045: phenobarbital 3.24 mg/ml;
- 44-Belladonna Alkaloids with Phenobarbital, elixir, NDC 00737-1283: phenobarbital 3 mg/ml;
- 45-Belladonna Alkaloids with Phenobarbital, tablet, NDC 51079-0168: phenobarbital 16.20 mg;
- 46-Belladonna Alkaloids and Phenobarbital, tablet, NDC 00143-1140: phenobarbital 16.20 mg;
- 47-Bellalphen, tablet, NDC 00223-0425: phenobarbital 16.20 mg;
- 48-Bellamine Tablets, tablet, NDC 00904-2548: phenobarbital 40 mg;
- 49-Bellamor Tablets, tablet, NDC 00839-7370: phenobarbital 40 mg;
- 50-Bellergal-S, sustained release tablet, NDC 00078-0031: phenobarbital 40 mg;
- 51-Bellophen, tablet, NDC 00115-2400: phenobarbital 16.20 mg;
- 52-Bilezyme Plus, tablet, NDC 00249-1112: phenobarbital 8 mg;
- 53-Bladder Mixture Plus Phenobarbital, liquid, NDC 11326-1624: phenobarbital 2.92 mg/ml;
- 54-Blue Cross Butalbital, APAP and Caffeine Tablets, tablet, NDC 00879-0567: butalbital 50 mg;
- 55-Broncholate, capsule, NDC 00563-0277: phenobarbital 8 mg;
- 56-Broncomar, elixir, NDC 12939-0128: butabarbital 1 mg/ml;
- 57-Bucet capsules, capsule, NDC 00785-2307: butalbital 50 mg;
- 58-Bucet Tablets, tablet, NDC 00785-2307: butalbital 50 mg;
- 59-Butace, capsule, NDC code 00539-0906: butabarbital 50 mg;
- 60-Butacrt Capsules, capsule, NDC 53121-0133: butalbital 50 mg;
- 61-Butalbital, Acetaminophen and Caffeine Capsules, capsule, NDC 46672-0228: butalbital 50 mg;
- 62-Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52555-0079: butalbital 50 mg;
- 63-Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 54696-0513: butalbital 50 mg;
- 64-Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00302-0490: butalbital 50 mg;
- 65-Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0053: butalbital 50 mg;
- 66-Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0059: butalbital 50 mg;
- 67-Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00832-1102: butalbital 50 mg;
- 68-Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52446-0544: butalbital 50 mg;
- 69-Butalbital and Acetaminophen Tablets, tablet, NDC 00879-0543: butalbital 50 mg;
- 70-Butalbital and Acetaminophen Tablets 50/325, tablet, NDC 46672-0099: butalbital 50 mg;
- 71-Butalbital and Acetaminophen Tablets 50/650, tablet, NDC 46672-0098: butalbital 50 mg;
- 72-Butalbital, APAP and Caffeine, tablet, NDC 00302-0490: butalbital 50 mg;
- 73-Butalbital, APAP and Caffeine Tablets, tablet, NDC 00182-1274: butalbital 50 mg;
- 74-Butalbital Compound Capsules, capsule, NDC 53506-0103: butalbital 50 mg;
- 75-Butalbital with Acetaminophen and Caffeine Tablets, tablet, NDC 00143-1787: butalbital 50 mg;
- 76-Butibel Elixir, elixir, NDC 00037-0044: butarbital sodium 3 mg/ml;
- 77-Butibel Tablets, tablet, NDC 00037-0046: butabarbital sodium 15 mg;
- 78-Cafatine-PB Tablets, tablet, NDC 00904-1750: pentobarbital sodium 30 mg;
- 79-Cafergot P-B Suppository, suppository, NDC 00078-0035: pentobarbital 60 mg;
- 80-Cafergot P-B Tablets, tablet, NDC 00078-0036: pentobarbital sodium 30 mg;
- 81-C.D.P. Plus Capsules, capsules, NDC 00182-1856: chlordiazepoxide HCl 5 mg;
- 82-Cephadyn, tablet, NDC 95702-0650: butalbital 50 mg;
- 83-Charpast, tablet, NDC 00377-0500: phenobarbital 16.20 (83) mg;
- 84-Chlordiazepoxide HCl and Clidinium Br., capsule, NDC 57247-1003: chlordiazepoxide 5 mg;
- 85-Chlordiazepoxide HCl 5 mg and Dlidinium BR 2.5 mg, capsule, NDC 52446-0096: chlordiazepoxide HCl 5 mg;
- 86-Chlordiazepoxide Hydrochloride + Clidinium Bromide, capsule, NDC 47679-0268: chlordiazepoxide HCl 5 mg;
- 87-Chlordiazepoxide with Clidinium Bromide, capsule, NDC 46193-0948: chlordiazepoxide HCl 5 mg;
- 88-Chlordinium, capsule, NDC 00719-1208: chlordiazepoxide HCl 5 mg;
- 89-Chlordinium Sealets, capsule, NDC 00580-0084: chlordiazepoxide HCl 5 mg;
- 90-Clindex, capsule, NDC 00536-3490: chlordiazepoxide HCl 5 mg;
- 91-Clinibrax Capsules, capsule, NDC 00832-1054: chlordiazepoxide HCl 5 mg;
- 92-Clinoxide, capsule, NDC 00879-0501: chlordiazepoxide HCl 5 mg;
- 93-CON-TEN, capsule, NDC 11584-1029: butalbital 50 mg;
- 94-Digestokraft, tablet, NDC 00796-0237: butabarbital sodium 8 mg;
- 95-Digestokraft, tablet, NDC 00377-0460: butabarbital sodium 8 mg;
- 96-Dilantin with Phenobarb 1/2, capsule, NDC 00071-0531: phenobarbital 32 mg;
- 97-Dilantin with Phenobarbital 1/4, capsule, NDC 00071-0375: phenobarbital 16 mg;
- 98-Dolmar, capsule, NDC 12939-0812: butalbital 50 mg;
- 99-Donalixir, elixir, NDC 00471-0095: phenobarbital 3.24 mg/ml;
- 100-Donna-Sed, elixir, NDC 00298-5054: phenobarbital 3.24 mg/ml;
- 101-Donnatal Capsules, capsule, NDC 00031-4207: phenobarbital 16.20 mg;

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- 102-Donnatal Elixir, elixir, NDC 00031-4221:  
phenobarbital 3.24 mg/ml;
- 103-Donnatal Extentabs, sustained release tablet, NDC 00031-4235: phenobarbital 48.60 mg;
- 104-Donnatal No 2, tablet, NDC 00031-4264:  
phenobarbital 32.40 mg;
- 105-Donnatal Tablets, tablet, NDC 00031-4250:  
phenobarbital 16.20 mg;
- 106-Donnazyme, enteric coated tablet, NDC 00031-4649: phenobarbital 8.10 mg;
- 107-Donphen, tablet, NDC 00093-0205: phenobarbital 15 mg;
- 108-E-Caff PB Tablets, tablet, NDC 00185-0982:  
pentobarbital 30 mg;
- 109-Endolar, capsule, NDC 00588-7777: butalbital 50 mg;
- 110-Ephedrine and Sodium Phenobarbital, tablet, NDC 00377-0109: phenobarbital sodium 16.20 mg;
- 111-Ephedrine with Phenobarbital, tablet, NDC 00463-6086: phenobarbital 15 mg;
- 112-EQUI-CET Tablets, tablet, NDC 57779-0111:  
butalbital 50 mg;
- 113-Erocaff-PB Tablets, tablet, NDC 00536-3801:  
pentobarbital sodium 30 mg;
- 114-Esgic Capsules, capsule, NDC 00456-0631:  
butalbital 50 mg;
- 115-ESGIC-PLUS, NDC 00456-0676, tablet, contains  
butalbital 50 mg;
- 116-Esgic Tablets, tablet, NDC 0456-0630: butalbital 50 mg;
- 117-Epasmotex, tablet, NDC code 11475-0835:  
phenobarbital 20 mg;
- 118-Exol, capsule, NDC 45985-0578: butalbital 50 mg;
- 119-Fabophen Tablets, tablet, NDC 00904-3280:  
butalbital 50 mg;
- 120-Febridyne Plain Capsules, capsule, NDC 05383-0001: butalbital 50 mg;
- 121-FEMCET Capsules, capsule, NDC 50474-0703:  
butalbital 50 mg;
- 122-Fioricet, capsule, NDC 00078-0084: butalbital 50 mg;
- 123-G-1 Capsules, capsule, NDC 43797-0244: butalbital 50 mg;
- 124-G.B.S., tablet, NDC 00456-0281: phenobarbital 8 mg;
- 125-Gutase Plus, tablet, NDC 00249-1121:  
phenobarbital 8 mg;
- 126-Hybephen, tablet, NDC 00029-2360: phenobarbital 15 mg;
- 127-Hyosital White, tablet, NDC 00361-2131:  
phenobarbital 16.20 mg
- 128-Hyosphen Capsules, capsule, NDC 00536-3926:  
phenobarbital 16 mg;
- 129-Hyosphen Tablets, tablet, NDC 00536-3920:  
phenobarbital 16.20 mg;
- 130-Hypnaldyne, tablet, NDC 00298-1778:  
phenobarbital 16.20 mg;
- 131-Hytrophen, tablet, NDC 00917-0244: phenobarbital 16.20 mg;
- 132-IDE-Cet Tablets, tablet, NDC 00814-3820:  
butalbital 50 mg;
- 133-ISOCET tablets, tablet, NDC 00536-3951:  
butalbital 50 mg;
- 134-Isolate Compound, elixir, NDC 00472-0929:  
phenobarbital 0.40 mg/ml;
- 135-Isolate Compound Elixir, elixir, NDC 00364-7029:  
phenobarbital 0.40 mg/ml;
- 136-Isopap Capsules, capsule, NDC 11735-0400:  
butalbital 50 mg;
- 137-Isophed, liquid, NDC 00298-5680: phenobarbital 0.40 mg/ml;
- 138-Isuprel, elixir, NDC 00024-0874: phenobarbital 0.40 mg/ml;
- 139-Isuprel Compound, elixir, NDC 00057-0874:  
phenobarbital 0.40 mg/ml;
- 140-Kinesed, tablet, NDC 00038-0220: phenobarbital 16 mg;
- 141-Levsin with Phenobarbital Elixir, elixir, NDC 00091-4530: phenobarbital 3 mg/ml;
- 142-Levsin with Phenobarbital Tablets, tablet, NDC 00091-3534: phenobarbital 15 mg;
- 143-Levsin-PB, drops, NDC 00091-4536: phenobarbital 15 mg/ml;
- 144-Lwevsinex with Phenobarbital, sustained release capsule, NDC 00091-3539: phenobarbital 45 mg;
- 145-Librax, capsule, NDC 000140-0007: clordiazepoxide HCl 5 mg;
- 146-Lufyllin-EPG Elixir, elixir, NDC 00037-0565:  
phenobarbital 1.60 mg/ml;
- 147-Lufyllin-EPG Tablets, tablet, NDC 00037-0561:  
phenobarbital 16 mg;
- 148-Malatal, tablet, NDC 00166-0748: phenobarbital 16.20 mg;
- 149-Margesic Capsules, capsule, NDC 00682-0804:  
butalbital 50 mg;
- 150-Medigestic Tablets, tablet, NDC 52747-0311:  
butalbital 50 mg;
- 151-Menrium 5-2, tablet, NDC 00140-0023:  
chlordiazepoxide 5 mg;
- 152-Menrium 5-4, tablet, NDC 00140-0024:  
chlordiazepoxide 5 mg;
- 153-Menrium 10-4, tablet, NDC 00140-0025:  
chlordiazepoxide 10 mg;
- 154-Micomp-PB Tablets, tablet, NDC 55053-0525:  
pentobarbital sodium 30 mg;
- 155-Milprem-200, tablet, NDC 00037-5501:  
meprobamate 200 mg;
- 156-Milprem-400, tablet, NDC 00037-5401:  
meprobamate 400 mg;
- 157-Mudrane, tablet, NDC 00095-0050: phenobarbital 8 mg;
- 158-Mudrane GG Elixir, elixir, NDC 00095-0053:  
phenobarbital 0.50 mg/ml;
- 159-Mudrane GG Tablets, tablet, NDC 00095-0051:  
phenobarbital 8 mg;
- 160-Pacaps Capsules, capsule, NDC 10892-0116:  
butalbital 50 mg;
- 161-Pacaps Modified Formula, capsule, NDC 48534-0884: butalbital 50 mg;
- 162-Panzyme, tablet, NDC 00377-0491: phenobarbital 8.10 mg;
- 163-Panzyme, tablet, NDC 00314-0310: phenobarbital 8.10 mg;
- 164-PB PhepBell, tablet, NDC 12908-7006:  
phenobarbital 16.2 mg;
- 165-Phedral C.T., tablet, NDC 00298-1173:  
phenobarbital 8.10 mg;
- 166-Phenerbel-S Tablets, tablet, NDC 00536-4234:  
phenobarbital 40 mg;

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- 167-Phenobarbital, Ergotamine and Belladonna Tablets, tablet, NDC 00781-1701: phenobarbital 40 mg;
- 168-Phenobarbital and Hyoscyamine Sulfate, tablet, NDC 00764-2057: phenobarbital 16.20 mg;
- 169-Phrenilin, tablet, NDC 00086-0050: butalbital 50 mg;
- 170-Phrenilin Forte, capsule, NDC 00086-0056: butalbital 50 mg;
- 171-PMB-200, tablet, NDC 00046-0880: meprobamate 200 mg;
- 172-PMB-400, tablet, NDC 00046-0881: meprobamate 400 mg;
- 173-Private Formula No 3095, tablet, NDC 00252-3095: phenobarbital sodium 15 mg;
- 174-Pulsaphen, tablet, NDC 00377-0652: phenobarbital 15 mg;
- 175-Pulsaphen Gray, tablet, NDC 00917-0113: phenobarbital 15 mg;
- 176-Quadrinal Suspension, suspension, NDC 00044-4580: phenobarbital 2.40 mg/ml;
- 177-Quadrinal Tablets, tablet, NDC 00044-4520: phenobarbital 24 mg;
- 178-Quibron Plus Capsules, capsule, NDC 00087-0518: butabarbital 20 mg;
- 179-Quibron Plus Elixir, elixir, NDC 00087-0511: butabarbital 1.33 mg/ml;
- 180-Repan capsules, capsule, NDC 00642-0163: butalbital 50 mg;
- 181-Repan Tablets, tablet, NDC 00642-0162: butalbital 50 mg;
- 182-Rexatal Tablets, tablet, NDC 00487-5477: phenobarbital 16.52 mg;
- 183-Rogesic capsules, capsule, NDC 31190-0008: butalbital 50 mg;
- 184-Sangesic, tablet, NDC 00511-1627: butalbital 30 mg;
- 185-Sedapap-10 Tablets, tablet, NDC 00259-1278: butalbital 50 mg;
- 186-Sedapar Elixir, elixir, NDC 00349-4100: phenobarbital 3.24 mg/ml;
- 187-Sedapar Tablets, tablet, NDC 00349-2355: phenobarbital 16.20 mg;
- 188-Sedarex No 3, tablet, NDC 00144-1575: phenobarbital 16.20 mg;
- 189-Seds, tablet, NDC 00418-4072: phenobarbital 16.20 mg;
- 190-Soniphen, enteric coated tablet, NDC 0456-0429: phenobarbital 16 mg;
- 191-Spaslin, tablet, NDC 00165-0029: phenobarbital 16.20 mg;
- 192-Spasmalones, tablet, NDC 00653-0002: phenobarbital 16 mg;
- 193-Spasmolin, tablet, NDC 00115-4652: phenobarbital 15 mg;
- 194-Spstemms Elixir, elixir, NDC 00463-9023: phenobarbital 3.24 mg/ml;
- 195-Spstemms Tablets, tablet, NDC 0463-6181: phenobarbital 15 mg;
- 196-Spastolate, tablet, NDC 00814-7088: phenobarbital 16.20 mg;
- 197-Spastrin Tablets, tablet, NDC 54580-0124: phenobarbital 40 mg;
- 198-Susano, elixir, NDC 00879-0059: phenobarbital 3.24 mg/ml;
- 199-Susano, tablet, NDC 00879-0058: phenobarbital 16.20 mg;
- 200-Tedral SA, sustained release tablet, NDC 00071-0231: phenobarbital 25 mg;
- 201-Tencet, tablet, NDC 47649-0370: butalbital 50 mg;
- 202-Tencet Capsules, capsule, NDC 47649-0560: butalbital 50 mg;
- 203-T-E-P, tablet, NDC 00364-0266: phenobarbital 8.10 mg;
- 204-T-E-P., tablet, NDC 00157-0980: phenobarbital 8 mg;
- 205-Theodrine Tablets, tablet, NDC 00536-4648: phenobarbital 8 mg;
- 206-Theophen, tablet, NDC code 12634-0101: phenobarbital 8 mg;
- 207-Theophenyllin, tablet, NDC 00839-5111: phenobarbital 8 mg;
- 208-Theophyllin, Ephedrine and Phenobarbital, tablet, NDC 00143-1695: phenobarbital 8 mg;
- 209-Triad, tablet, NDC 00785-2306: butalbital 50 mg;
- 210-Triad Capsules, capsule, NDC 00785-2305: butalbital 50 mg;
- 211-Triaprin, capsule, NDC 00217-2811: butalbital 50 mg;
- 212-Truxaphen, tablet, NDC 00377-0541: phenobarbital 16.20 mg;
- 213-Two-Dyne Revised, tablet, NDC 00314-2229: butalbital 50 mg;
- 214-Wescophen-S, tablet, NDC 00917-0135: phenobarbital 30 mg;
- 215-Wescophen S-II, tablet, NDC 00377-0628: phenobarbital 30 mg;
- 216-Wesmatic Forte, tablet, NDC 00917-0845: phenobarbital 8 mg; and
- 217-Wesmatic Forte, tablet, NDC 00377-0426: phenobarbital 8.10 mg.

**Listed chemicals subject to the Federal Requirements under the Controlled Substances Act amended by the Chemical Diversion and Trafficking Act of 1988.**

Detailed information for listed chemicals can be found in 21 CFR, Parts 1310 and 1313.

**LIST I: CHEMICALS 1**

Anthranilic Acid  
Benzaldehyde  
Benzyl Cyanide  
Ephedrine  
Ergonovine  
Ergotamine  
Ethylamine  
Hydriodic Acid  
Isosafrole  
Methylamine  
N-Acetylanthranilic Acid  
N-Methylephedrine  
N-Methylpseudoephedrine  
Nitroethane  
Norpseudoephedrine  
Phenylacetic Acid  
Phenylpropanolamine  
Piperidine  
Piperonal

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Pseudoephedrine  
Safrole  
3, 4-Methylenedioxyphenyl-2-propanone

## LIST II: CHEMICALS 2

Acetic Anhydride  
Acetone  
Benzyl Chloride  
Ethyl Ether  
Hydrochloric Acid  
Methyl Ethyl Ketone  
Potassium Permanganate  
Sulfuric Acid  
Toluene

- 1- List I Chemicals were formerly titled "precursor chemicals"  
2- List II Chemicals were titled essential chemicals

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## ALPHABETICAL LISTING

Note: See Schedule III for exempt Anabolic Steroid Products. But see following Schedule V for all other excluded over-the-counter and exempt prescription products.

The alphabetical listing does not provide a full description of the product. Please refer to the categorical listing to obtain full descriptive information.

- 1-Diphenyl-propane-carboxylic acid—Schedule II - Opioid Narcotics  
1-Dronabinol (synthetic) —Schedule II - Hallucinogenic Substances  
1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP)—Schedule I - Opiates  
1-Phencyclohexylamine —Schedule II - Immediate Precursors to phencyclidine  
1-Piperidinocyclohexanecarbonitrile —Schedule II - Immediate Precursors to phencyclidine  
1-[1-(2-Thienyl) cyclohexyl] pyrrolidine (TCPy)—Schedule I - Hallucinogenic Substances  
1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP) Schedule I Opiates  
2-Methyl-3-morpholino-1—Schedule II - Opioid Narcotics  
2-Methylamino-1-phenylpropan-1-one (including, but not limited to Methcathione, Cat, and Ephedrone)—Schedule I - Hallucinogenic Substances  
2-Nabilone —Schedule II - Hallucinogenic Substances  
2,5-Dimethoxy-4-ethylamphetamine (DOET)—Schedule I - Hallucinogenic Substances  
2,5-Dimethoxyamphetamine (2,5 DMA)—Schedule I - Hallucinogenic Substances  
3-( ± )Cis-4-methylaminorex  
( ± )cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine)—Schedule I - Stimulants

- 3-Methylfentanyl,N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide—Schedule I - Opiates  
3-Methylthiofenanyl,N-[3methyl-1-(2-(2thienyl)-4-piperidyl]-N-phenylpropanamide—Schedule I - Opiates  
3,4 Methylenedioxyamphetamine (MDMA)—Schedule I - Hallucinogenic Substances  
3,4-Methylenedioxyamphetamine-Schedule I  
3,4-Methylenedioxyphenyl-2-propanone—List I Chemicals  
3,4-Methylenedioxy-N-ethylamphetamine (N-ethyl-alpha methyl-3,4(methylenedioxy) phenethylamine,N-ethyl MDA, MDE, MDEA—Schedule I - Hallucinogenic Substances  
3,4,5-Trimethoxyamphetamine—Schedule I - Hallucinogenic Substances  
4-Bromo-2,5 dimethoxy-amphetamine (4-bromo-2,5-DMA,4-bromo-2,5-dimethoxy-alpha-methylphenethylamine) Schedule I Hallucinogenic Substances  
4-Cyano-2-dimethylamino-4—Schedule II - Opioid Narcotics  
4-Diphenyl butane—Schedule II - Opioid Narcotics  
4-Methoxyamphetamine(PMA), 4-methoxy-alpha-methylphenethylamine,paramethoxyamphetamine—Schedule I - Hallucinogenic Substances  
4-Methyl-2,5-dimethoxylamphetamine—Schedule I - Hallucinogenic Substances  
5,Methoxy-3,4 methylenedioxy amphetamine—Schedule I - Hallucinogenic Substances

## A

- Acetaminophen 325 mg/Butalbital 50 mg, Tablet, NDC 00456-0674, Exempt  
Acetaminophen 500 mg/Butalbital 50 mg, Tablet, NDC 00456-0671, Exempt  
Acetic Anhydride—List II Chemicals  
Acetone—List II Chemicals  
Anthranilic Acid—List I Chemicals  
Acetorphine—Schedule I - Opium Derivatives  
Acetyl-alpha-methylfentanyl,N-1-(1-methyl-2-phenethyl)-4-piperidiny-N-phenylacetamide—Schedule I - Opiates  
Acetyldihydrocodeine—Schedule I - Opium Derivatives  
Acetylmethadol—Schedule I - Opiates  
Actifed with Codeine Cough Syrup—Schedule V  
Adderall—Schedule II - Stimulants  
Adipost—Schedule III - Phendimetrazine  
Alagesic Tablets, NDC 55726-0300: butalbital 50 mg, Exempt  
Alfentanil—Schedule II - Opiates and Derivatives  
Alkaloids of Belladonna and Phenobarbital,tablet, NDC 00377-0527, phenobarbital 16.20 mg, Exempt  
Allylprodine—Schedule I - Opiates  
Alphacetylmethadol [except Levo-alpha-cetylmethadol (LAMM)]—Schedule I - Opiates  
Alpha-ethyltryptamine(alpha-ethyl-1 H-indole-3-ethanamine,3-(2-aminobutyl) indol)—Schedule I - Hallucinogenic Substances  
Alphameprodine—Schedule I - Opiates  
Alphamethadol—Schedule I - Opiates

## Scheduling of Drugs Under KRS Chapter 218A

- Alpha-methylfentanyl, N-1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine) Schedule I - Opiates
- Alpha-methylthiofentanyl, N-1-methyl-2-(2-thienyl) ethyl-4-piperidinyl-N-phenylpropanamide—Schedule I - Opiates
- Alphaprodine HCl—(Nisentel)—Schedule II - Opiates and Derivatives
- Alprazolam—(Xanax)—Schedule IV - Depressants
- Amaphen Capsules (Reformulated), capsule, NDC 11311-0954: butalbital 50 mg, Exempt
- Ambenyl Cough Syrup—Schedule V
- Ambophen Expectorant—Schedule V
- Aminophylline and Phenobarbital, enteric coated tablet, NDC 00115-2156: phenobarbital 15 mg, Exempt
- Aminophylline and Phenobarbital tablets, tablet, NDC 00115-2154, phenobarbital 15 mg, Exempt
- Aminorex (aminoxaphen, 2 amino-5-phenyl-2-oxazoline, 4,5-dihydro-5 phenyl-2-oxazolamine—Schedule I - Stimulants
- Amobarbital + Secobarbital—(Tuinal)—Schedule II - Depressants
- Amobarbital—(Amytal)—Schedule II - Depressants
- Anaspaz PB, tablet, NDC 00225-0300: phenobarbital 15 mg, Exempt
- Anatuss with Codeine Syrup—Schedule V
- Androgen L.A., Exempt, Anabolic Steroids
- Andro-Estro 90-4 Exempt Steroid
- Anileridine—Schedule II -Opiates and Derivatives
- Anolor 300 Capsules, capsule, NDC 51674-0009: butalbital 50 mg, Exempt
- Anoquan modified Formula, capsule, NDC 00166-0881: butalbital 50 mg, Exempt
- Anorex—Schedule III - Phendimetrazine
- Anti-Spas Elixir, elixir, NDC 00719-4090: phenobarbital 50 mg, Exempt
- Anti-Spas Tablets, tablet, NDC 00719-1091: phenobarbital 16.20 mg, Exempt
- Anti-Spas tablet, NDC 00377-0622: phenobarbital 16.20 mg, Exempt
- Antispasmodic, tablet, NDC 00364-0020: phenobarbital 16 mg, Exempt
- Antispasmodic, tablet, NDC 00367-4118: phenobarbital 16.20 mg, Exempt
- Antispasmodic, tablet, NDC 03547-0777: phenobarbital 16.20 mg, Exempt
- Antispasmodic Elixir, elixir, NDC 00182-0686: phenobarbital 3.24 mg/ml, Exempt
- Antispasmodic Elixir, elixir, NDC 0036-7002: phenobarbital 3.2 mg/ml, Exempt
- Antispasmodic Elixir, elixir, NDC 00832-8009: phenobarbital 3.24 mg/ml, Exempt
- Antispasmodic Tablets, tablet, NDC 00182-0129: phenobarbital 16.20 mg, Exempt
- Antispasmodic Tablets, tablet, NDC 47679-0158: phenobarbital 16.2 mg, Exempt
- Antispasmodic Tablets, tablet, NDC 00839-5055: phenobarbital 16 mg, Exempt
- Antrocol, capsule, NDC 00095-0041: phenobarbital 16 mg, Exempt
- Antrocol Elixir, elixir, NDC 00095-0042: phenobarbital 3 mg/ml, Exempt
- Antrocol Tablets, tablets, NDC 00095-0040: phenobarbital 16 mg, Exempt
- Arco-Lase Plus, tablet, NDC code 00275-0045: phenobarbital 8 mg, Exempt
- Asthma-Ese, tablet, NDC code 00349-2018: phenobarbital 8.10 mg, Excluded
- Aspirin with Codeine—Schedule III - Opioid Narcotics, Codeine
- Atropine Sulfate with Phenobarbital, tablet, NDC 00463-6035: phenobarbital 15 mg, Exempt
- Axotal, tablet, NDC 00013-1301: butalbital 50 mg, Exempt
- Azap, tablet, NDC 00172-3747: phenobarbital 8 mg, Exempt
- Azma-Aids, tablet, NDC code 00367-3153: phenobarbital 8 mg, Excluded

## B

- B-A-C Tablets, tablets, NDC 00259-1256: butalbital 50 mg, Exempt
- Bancap, capsule, NDC 00456-0546: butalbital 50 mg Exempt
- Barbeloid (Revised) Green, tablet, NDC 00377-0365: phenobarbital 16.20 mg, Exempt
- Barbeloid Yellow, tablet, NDC 00377-0498: phenobarbital 16.20 mg, Exempt
- Barbidonna Elixir, elixir, NDC 00037-0305: phenobarbital 3.20 mg/ml, Exempt
- Barbidonna No 2, tablet, NDC 00037-0311: phenobarbital 32 mg, Exempt
- Barbidonna Tablets, tablet, NDC 00037-0301: phenobarbital 16 mg, Exempt
- Barophen, Elixir, NDC 00472-0981: phenobarbital 3.24 mg/ml, Exempt
- Bel-phen-ergor-S Tablets, tablet, NDC 00182-1847: phenobarbital 40 mg, Exempt
- Bel-Phen-Ergot-S Tablets, tablet, NDC 00719-1686: phenobarbital 40 mg, Exempt
- Bel-Tabs, tablets, NDC 00677-1171: phenobarbital 40 mg, Exempt
- Belladenal, tablet, NDC 00078-0028: phenobarbital 50 mg, Exempt
- Belladenal-S sustained release tablet, NDC 00078-0027: phenobarbital 50 mg, Exempt
- Belladonna Alkaloids with Phenobarbital, elixir, NDC 00179-0045: phenobarbital 3.24 mg/ml, Exempt
- Belladonna Alkaloids with Phenobarbital, elixir NDC 00737-1283: phenobarbital 3 mg/ml, Exempt
- Belladonna Alkaloids with Phenobarbital, tablet, NDC 51079-0168: phenobarbital 16.20 mg, Exempt
- Belladonna Alkaloids and Phenobarbital, tablet, NDC 00143-1140: phenobarbital 16.20 mg, Exempt
- Bellaphen, tablet, NDC 00223-0425: phenobarbital 16.20 mg, Exempt
- Bellamine Tablets, tablet, NDC 00904-2548: phenobarbital 40 mg, Exempt
- Bellamor Tablets, tablet, NDC 00839-7370: phenobarbital 40 mg, Exempt
- Bellergal-S, sustained release tablet, NDC 00078-0031: phenobarbital 40 mg, Exempt
- Bellophen, tablet, NDC 00115-2400: phenobarbital 16.20 mg, Exempt
- Benzaldehyde—List I Chemicals
- Benzedrex—Excluded products
- Benzitramide—Schedule II - Opiates and Derivatives

## Scheduling of Drugs Under KRS Chapter 218A

- Benzphetamine Didrex—Schedule III - Stimulants  
 Benzyl Chloride—List II Chemicals  
 Benzyl Cyanide—List II Chemicals  
 Benzylfentanyl,N-1-benzyl-4-piperidyl-N-phenyl propanamide—Schedule I - Opiates  
 Benzylmorphine—Schedule I - Opium Derivatives  
 Betacetylmethadol—Schedule I - Opiates  
 Beta-hydroxy-3-methylfentanyl,N-1-(2-hydroxy-2-phenylethyl)-4-piperidinyl-N-phenylpropanamide—Schedule I - Opiates this one is radically changed  
 Beta-hydroxyfentanyl,N-1-(2-hydroxy-2-phenylethyl)-4-piperidinyl-N-phenylpropanamide—Schedule I - Opiates  
 Beta-hydroxy fentanyl-3-methylfentanyl, N-1-(2-hydroxy-2-phenylethyl)-3-methyl-4-piperidinyl-N-phenylpropanamide—Schedule I Opiates  
 Betameprodine—Schedule I - Opiates  
 Betamethadol—Schedule I - Opiates  
 Betaprodine—Schedule I - Opiates  
 Bilezyme Plus, tablet, NDC 00249-1112: phenobarbital 8 mg, Exempt  
 Bladder Mixture Plus Phenobarbital, liquid, NDC 11326-1624: phenobarbital 2.92 mg/ml, Exempt  
 Blue Cross Butalbital, APAP and Caffeine Tablets, tablet, NDC 00879-0567: butalbital 50 mg, Exempt  
 Boldenone—Schedule III - Anabolic Steroids  
 Bontril PDM—Schedule III - Phendimetrazine  
 Bontril Slow-Release—Schedule III - Phendimetrazine  
 Bromanyl Expectorant—Schedule V  
 Bromazepam—Schedule IV - Depressants  
 Bromphen DC with Codeine Cough Syrup—Schedule V  
 Broncholate, capsule, NDC 00563-0277: phenobarbital 8 mg, Exempt  
 Bronkolixir, elixir, NDC code 00057-1004: phenobarbital 0.8 mg/ml, Excluded  
 Broncomar, elixir, NDC 12939-0128: butabarbital 1 mg/ml, Exempt  
 Bronkotabs, Tablets, NDC code 00057-1005: phenobarbital 8 mg, Excluded  
 Bucet Capsules, capsule, NDC 00785-2307: butalbital 50 mg, Exempt  
 Bucet Tablets, tablet, NDC 00785-2307: butalbital 50 mg, Exempt  
 Bufotenine—Schedule I - Hallucinogenic Substances  
 Bulk Dextropropoxyphene (non-dosage forms)—Schedule II - Opiates  
 Buprenorphine—Schedule V  
 Butabarbital—Butisol—Schedule III - Depressants  
 Butace, capsule, NDC code 00539-0906: butabarbital 50 mg, Exempt  
 Butacrt, Capsules, capsule, NDC 53121-0133: butalbital 50 mg, Exempt  
 Butalbital, Acetaminophen and Caffeine Capsules, capsule, NDC 46672-0228: butalbital 50 mg, Exempt  
 Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52555-0079: butalbital 50 mg, Exempt  
 Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 54696-0513: butalbital 50 mg, Exempt  
 Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00302-0490: butalbital 50 mg, Exempt  
 Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0053: butalbital 50 mg, Exempt  
 Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0059: butalbital 50 mg, Exempt  
 Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00832-1102: butalbital 50 mg, Exempt  
 Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52446-0544: butalbital 50 mg, exempt  
 Butalbital and Acetaminophen Tablets, tablet, NDC 00879-0543: butalbital 50 mg, Exempt  
 Butalbital and Acetaminophen Tablets 50/325, tablet, NDC 46672-0099: butalbital 50 mg, Exempt  
 Butalbital and Acetaminophen Tablets 50/650, tablet, NDC 46672-0098: butalbital 50 mg, Exempt  
 Butalbital, APAP and Caffeine, tablet, NDC 00302-0490: butalbital 50 mg, Exempt  
 Butalbital, APAP and Caffeine Tablets, tablet, NDC 00182-1274: butalbital 50 mg, Exempt  
 Butalbital Compound capsules, capsule, NDC 53506-0103: butalbital 50 mg, Exempt  
 Butalbital with Acetaminophen and Caffeine Tablets, tablet, NDC 00143-1787: butalbital 50 mg, Exempt  
 Butibel Elixir, elixir, NDC 00037-0044L butabarbital sodium 3 mg/ml, Exempt  
 Butibel Tablets, tablet, NDC 00037-0046: butabarbital sodium 15 mg, Exempt  
 Butorphanol—Stadol—Schedule IV - Opioid
- C**
- Cafegot P-B Suppository Exempt  
 Cafegot P-B tablet Exempt  
 Calcidrine Syrup—Schedule V  
 Camazepam  
 Carfentanil—Schedule II - Opiates  
 Carisoprodol—Soma —Schedule IV - Muscle Relaxant  
 Carisoprodol and Aspirin—Soma Compound—Schedule IV - Muscle Relaxant  
 Carisoprodol and Aspirin with Codeine—Soma Compound with Codeine—Schedule IV - Muscle Relaxant  
 Cathinel ((+))—Norpseudoephedrine—Schedule IV - Stimulants  
 Cathinone (2-amino-1-phenyl-1-propanone, alpha-amino-propiofenone,2-aminopropiofenone, and norephedrone—Schedule I - Stimulants  
 C.D.P. Plus Capsules, capsule, NDC 00182-1856: chlordiazepoxide HCl 5 mg, Exempt  
 Cephadyn, tablet, NDC 95702-0650: butalbital 50 mg, Exempt  
 Charpast, tablet, NDC 00377-0500: phenobarbital 16.20 (83) mg, Exempt  
 Cherocol Syrup—Schedule V  
 Choate's Leg Freeze, liquid chloral hydrate 246.67 mg/ml, Excluded  
 Chloral Betain Schedule IV  
 Chloral Hydrate—Schedule III - Depressants  
 Chloral Hydrate—(Noctec, Somnos, Nycton, Lorinal, Chloraldurat)—Schedule IV - Depressants  
 Chlordiazepoxide—(Librium; Libritabs; A-Poxide; Lipoxide; SK-Lygen; Murcil; Reposans-10; Screen)—Schedule IV - Depressants  
 Chlordiazepoxide HCl and Clidinium Br., capsule, NDC 57247-1003: chlordiazepoxide 5 mg, Exempt  
 Chlordiazepoxide HCl 5 mg and Clidinium Br 2.5 mg, capsule NDC 52446-0096: chlordiazepoxide HCl 5 mg, Exempt  
 Chlordiazepoxide Hydrochloride + Clidinium Bromide, capsule, NDC 47679-0268: chlordiazepoxide HCl 5 mg, Exempt

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- Chlordiazepoxide with Clindinium Bromide, capsule, NDC 46193-0948: chlordiazepoxide 5 HCl 5 mg, Exempt
- Chlordinium, capsule, NDC 00719-1208: chlordiazepoxide HCl 5 mg, Exempt
- Chlordinium Sealets, capsule, NDC 00580-0084L chlordiazepoxide HCl 5 mg, Exempt
- Chlorotestosterone—Schedule III - Anabolic Steroids
- Chlorphentermine—Schedule III - Stimulants
- Chlortermine—Schedule III - Stimulants
- Clindex, capsule, NDC 00536-3490: chlordiazepoxide HCl 5 mg, Exempt
- Clinibrax Capsules, capsule, NDC 00832-1054: chlordiazepoxide HCl 5 mg, Exempt
- Clinoxide, capsule, NDC 00879-0501: chlordiazepoxide HCl 5 mg, Exempt
- Clobazam—Schedule IV - Depressants
- Clonazepam—(Klonopin)—Schedule IV - Depressants
- Clonitazene—Schedule I - Opiates
- Clorazepate—(Tranxene)—Schedule IV - Depressants
- Clotesbol Schedule III, Anabolic Steroids
- Clotiazepam—Schedule IV - Depressants
- Cloxacolam—(Enadel; Sepazon)—Schedule IV - Depressants
- Cocaine—Schedule II - Stimulants
- Codamine—Schedule III - Opioid Narcotics, Hydrocodone
- Codeine Methylbromide—Schedule I - Opium Derivatives
- Codeine-N-Oxide—Schedule I - Opium Derivatives
- Codeine—Schedule II - Opiates and Derivatives
- Codclear DH Syrup—Schedule III - Opioid Narcotics, Hydrocodone
- Codimal PH Syrup—Schedule V
- Co-gesic tablets—Schedule III - Opioid Narcotics, Hydrocodone
- CON-TEN, capsule, NDC 11584-1029: butalbital 50 mg, Exempt
- Cophene-S Syrup—Schedule V
- C-Tussin Expectorant—Schedule V
- Cyprenorphine—Schedule I - Opium Derivatives
- D**
- Delorazepam—Schedule IV - Depressants
- Dep. ANDROGYN, vial, Exempt Anabolic Steroid
- Depo T. E. Exempt, Schedule Anabolic Steroids
- Deproist Expectorant with Codeine—Schedule V
- DeptTESTROGRN, vial Exempt Anabolic Steroid
- Desomorphine—Schedule I - Opium Derivatives
- Detussin—Schedule III - Opioid Narcotics, Hydrocodone
- Dextroamphetamine—Schedule II - Stimulants
- Dextromoramide—Schedule I - Opiates
- Dextropropoxyphene—(Darvon)—Schedule IV - Analgesics
- Dextrophan—Schedule I - Opiates
- Diampromide—Schedule I - Opiates
- Diazepam—(Valium)—Schedule IV - Depressants
- Diethylpropion HCl—(Depletite-25; Tenuate; Tepanil; Tenuate Dospan; Tepanil Ten-Tab)—Schedule IV - Stimulants
- Diethylthiambutene—Schedule I - Opiates
- Diethyltryptamine—Schedule I - Hallucinogenic Substances
- Difenoxin—Schedule I - Opiates
- Digestokraft, tablet, NDC 00796-0237: butalbital sodium 8 mg, Exempt
- Digestokraft, tablet, NDC 00377-0460: butalbital sodium 8 mg, Exempt
- Dihistine Expectorant—Schedule V
- Dihydrocodeine—Schedule II - Opiates and Derivatives
- Dihydromorphine—Schedule I - Opium Derivatives
- Dihydrotestosterone—Schedule III - Anabolic Steroids
- Dilantin with Phenobarb 1/2 capsule, NDC 00071-0531: phenobarbital 32 mg, Exempt
- Dilantin with Phenobarbital 1/4, capsule, NDC 00071-0375: phenobarbital 16 mg, Exempt
- Dimenoxadol—Schedule I - Opiates
- Dimepheptanol—Schedule I - Opiates
- Dimetane DC Cough Syrup—Schedule V
- Dimethylthiambutene—Schedule I - Opiates
- Dimethyltryptamine —Schedule I - Hallucinogenic Substances
- Dioxaphetylbutyrate—Schedule I - Opiates
- Diphenoxylate—Schedule II - Opiates and Derivatives
- Dipipanone—Schedule I - Opiates
- Dolmar, capsule, NDC 12939-0812: butalbital 50 mg, Exempt
- Donalixir, elixir, NDC 00471-0095: phenobarbital 3.24 mg/ml, Exempt
- Donnagel P.G.—Schedule V
- Donna-Sed, Elixir, NDC 00298-5054: phenobarbital 3.24 mg/ml, Exempt
- Donnatal Capsules, capsule, NDC 00031-4207: phenobarbital 16.20 mg, Exempt
- Donnatal Elixir, elixir, NDC 00031-4221: phenobarbital 3.24 mg/ml, Exempt
- Donnatal Extentabs, sustained release tablet, NDC 00031-4235: phenobarbital 48.60 mg, Exempt
- Donnatal No 2. Tablet, NDC 00031-4264: phenobarbital 32.40 mg, Exempt
- Donnatal Tablets, tablet, NDC 00031-4250: phenobarbital 16.20 mg, Exempt
- Donnazyme, enteric coated tablet, NDC 00031-4649: phenobarbital 8.10 mg, Exempt
- Donaphen, tablet, NDC 00093-0205: phenobarbital 15 mg, Exempt
- Dronabinol (synthetic)—Schedule II - Hallucinogenic Substances
- Drostanolone—Schedule III - Anabolic Steroids
- Drotebanol—Schedule I - Opium Derivatives
- Duocet—Schedule III - Opioid Narcotics, Hydrocodone
- Duomone, vial Exempt Anabolic Steroid
- Duo-SPAN II, vial Exempt Anabolic Steroid
- DURATESTRIN, vial Anabolic Steroid
- E**
- E-Caff PB Tablets, tablet, NDC 00185-0982: pentobarbital 30 mg, Exempt
- Empirin with Codeine—Schedule III - Opioid Narcotics, Codeine
- Endolar, capsule, NDC 00588-7777: butalbital 50 mg, Exempt
- Entuss D Liquid—Schedule III - Opioid Narcotics, Hydrocodone
- Ephedrine—List I Chemicals
- Ephedrine and Sodium Phenobarbital, tablet, NDC 00377-0109: phenobarbital sodium 16.20 mg, Exempt

## Scheduling of Drugs Under KRS Chapter 218A

Ergonovine—List I Chemicals  
 Ergotamine—List I Chemicals  
 Esgic capsules, capsule, NDC 00456-0631: butalbital 50 mg, Exempt  
 ESGIC-PLUS, NDC 00456-0676, tablet, contains butalbital 50 mg, Ex Digestokraft, tablet, NDC 00796-0237: butalbital sodium 8 mg, Exempt Digestokraft, tablet, NDC 00377-0460: butalbital sodium 8 mg, Exempt  
 Esgic Tablets, tablet, NDC 0456-0630: butalbital 50 mg, Exempt  
 Epasmotex, tablet, NDC code 11475-0835: phenobarbital 20 mg, Exempt  
 Estazolam—(Eurodin; Julodin)—Schedule IV - Depressants  
 Estratest tablet Exempt Anabolic Steroid  
 Estratest HS Tablet Exempt Anabolic steroid  
 Ethchlorvynol—(Placidyl)—Schedule IV  
 Ethinamate—(Valmid)—Schedule IV  
 Ethylamine—List I Chemicals  
 Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, (N-ethyl-1-phenylcyclohexyl) ethylamine, N-1-phenylcyclohexyl ethylamine, PCE) Schedule I - Hallucinogenic Substances  
 Ethylestrenol Schedule III Anabolic Steroid  
 Ethyl Ether—List II Chemicals  
 Ethyl loflazopate—Schedule IV - Depressants  
 Ethylmethylthiambutene—Schedule I - Opiates  
 Ethylmorphine—Schedule II - Opiates and Derivatives  
 Etonitazene—Schedule I - Opiates  
 Etorphine, except the hydrochloride salt) Schedule I - Opium Derivatives  
 Etorphine hydrochloride—Schedule II - Opiates and Derivatives  
 Etoxadine—Schedule I - Opiates  
 Exol, capsule, NDC 45985-0578: butalbital 50 mg, Exempt

## F

Fabophen Tablets, tablet, NDC 00904-3280: butalbital 50 mg, Exempt  
 Febridyne Plain capsules, capsule, NDC 05383-0001: butalbital 50 mg, Exempt  
 FEMCET Capsules, capsule, NDC 50474-0703: butalbital 50 mg, Exempt  
 Fencamfamin—Schedule IV - Stimulants  
 Fenethylamine—Schedule I - Stimulants  
 Fenfluramine HCl—(Pondimin)—Schedule IV - Stimulants  
 Fenproporex—Schedule IV - Stimulants  
 Fentanyl—(Sublimaze)—Schedule II - Opiates and Derivatives  
 Fioricet, capsule, NDC 00078-0084: butalbital 50 mg, Exempt  
 Fiorinal with Codeine—Schedule III - Opioid Narcotics, Codeine  
 Fludiazepam—Schedule IV - Depressants  
 Flunitrazepam—(Rohypnol)—Schedule IV - Depressants  
 Fluoxymesterone—Schedule III - Anabolic Steroids  
 Flurazepam—(Dalmane)—Schedule IV - Depressants  
 Formebolone—Schedule III - Anabolic Steroids

Furethidine—Schedule I - Opiates

## G

G-1 Capsules, capsule, NDC 43797-0244: butalbital 50 mg, Exempt  
 G.B.S., tablet, NDC 00456-0281: phenobarbital 8 mg, Exempt  
 Glutethimide (Dorelin)—Schedule II - Depressants  
 Granulated opium—Schedule II - Opioid Narcotics  
 Guiaphed Elixir, elixir, NDC code 00182-1377: phenobarbital 4 mg/ml, Excluded  
 Guiatuss DAC Syrup Liquid—Schedule V  
 Guiatussin—DAC, Liquid Schedule V  
 Gutase Plus, tablet, NDC 00249-1121: phenobarbital 8 mg, Exempt

## H

Halazepam—(Paxipam)—Schedule IV - Depressants  
 Haloxazolam—Schedule IV - Depressants  
 Hashish—Schedule I - Hallucinogenic Substances  
 Heroin—Schedule I - Opium Derivatives  
 Histussin HC—Schedule III - Opioid Narcotics, Hydrocodone  
 Hybephen, tablet, NDC 00029-2360: phenobarbital 15 mg, Exempt  
 Hycodan—Schedule III - Opioid Narcotics, Hydrocodone  
 Hycodan tablets—Schedule III - Opioid Narcotics, Codeine  
 Hycomine Pediatric Syrup—Schedule III - Opioid Narcotics, Hydrocodone  
 Hycomine—Schedule III - Opioid Narcotics, Hydrocodone  
 Hycotuss Expectorant—Schedule III - Opioid Narcotics, Hydrocodone  
 Hydriodic Acid—List I Chemicals  
 Hydrochloric Acid—List II Chemicals  
 Hydrocodone Compound Syrup—Schedule III - Opioid Narcotics, Hydrocodone  
 Hydrocodone—Schedule II - Opiates and Derivatives  
 Hydromorphone—Schedule I - Opium Derivatives  
 Hydromorphone—(Dilaudid)—Schedule II - Opiates and Derivatives  
 Hydropane—Schedule III - Opioid Narcotics, Hydrocodone  
 Hydrophen—Schedule III - Opioid Narcotics, Hydrocodone  
 Hydroxypethidine—Schedule I - Opiates  
 Hyosital White, tablet, NDC 00361-2131: phenobarbital 16.20 mg, Exempt  
 Hyosphen capsules, capsule, NDC 00536-3926: phenobarbital 16 mg, Exempt  
 Hyosphen Tablets, tablet, NDC 00536-3920: phenobarbital 16.20 mg, Exempt  
 Hy-Phen Tablets—Schedule III - Opioid Narcotics, Hydrocodone  
 Hypnaldyne, tablet, NDC 00298-1778: phenobarbital 16.20 mg, Exempt  
 Hytrogen, tablet, NDC 00917-0244: phenobarbital 16.20 mg, Exempt

## I

Ibogaine—Schedule I - Hallucinogenic Substances

## Scheduling of Drugs Under KRS Chapter 218A

- IDE-Cet Tablets, tablet, NDC 00814-3820: butalbital 50 mg, Exempt  
 Iphen-C Liquid—Schedule V  
 ISOCET Tablets, tablet, NDC 00536-3951: butalbital 5 mg, Exempt  
 Isolate Compound, elixir, NDC 00472-0929: phenobarbital 0.40 mg/ml, Exempt  
 Isolate Compound Elixir, elixir, NDC 00364-7029: phenobarbital 0.40 mg/ml, Exempt  
 Isomethadone—Schedule II - Opiates and Derivatives  
 Isopap Capsules, capsule, NDC 11735-0400: butalbital 50 mg, Exempt  
 Isophed, liquid, NDC 00298-5680: phenobarbital 0.40 mg/ml, Exempt  
 Isosafrole—List I Chemicals  
 Isuprel, elixir, NDC 00024-0874: phenobarbital 0.40 mg/ml, Exempt  
 Isuprel Compound, elixir, NDC 00057-0874: phenobarbital 0.40 mg/ml, Exempt
- K**
- Ketobemidone—Schedule I - Opiates  
 Ketazolam—Schedule IV - Depressants  
 Kinesed, tablet, NDC 00038-0220: phenobarbital 16 mg, Exempt
- L**
- Levo-alphaacetylmethadol (LAMB)—Schedule II - Opiates and Derivatives  
 Levomoramide—Schedule I - Opiates  
 Levomethorphan—Schedule II - Opiates and Derivatives  
 Levorphanol—(Levo-Dromoran)—Schedule II - Opiates and Derivatives  
 Levophenacymorphan—Schedule I - Opiates  
 Levsin with Phenobarbital Elixir, elixir, NDC 00091-4530: phenobarbital 3 mg/ml, Exempt  
 Levsin with Phenobarbital Tablets, tablet, NDC 00091-3534: phenobarbital 15 mg, Exempt  
 Levsin-PB, drops, NDC 00091-4536: phenobarbital 15 mg/ml, Exempt  
 Levsinex with Phenobarbital, sustained release capsule, NDC 00091-3539: phenobarbital 45 mg, Exempt  
 Librax, capsule, NDC 000140-0007: chlordiazepoxide HCl 5 mg, Exempt  
 Lomotil—Schedule V  
 Loprazolam—Schedule IV - Depressants  
 Lorazepam—(Ativan; Emotival; Lorax; Psicopax; Tavor; Temesta)—Schedule IV - Depressants  
 Lorcet—Schedule III - Opioid Narcotics, Hydrocodone  
 Lormetazepam—Schedule IV - Depressants  
 Lortab—Schedule III - Opioid Narcotics, Hydrocodone  
 Lufyllin-EPG Elixir, elixir, NDC 00037-0565: phenobarbital 1.60 mg/ml, Exempt  
 Lufyllin-EPG Tablets, tablet, NDC 00037-0561: phenobarbital 16 mg, Exempt  
 Lwevsinex with Phenobarbital Exempt  
 Lysergic acid diethylamide—Schedule I - Hallucinogenic Substances
- M**
- Malatal, tablet, NDC 00166-0748: phenobarbital 16.20 mg, Exempt  
 Magesic Capsules, capsule, NDC 00682-0804: butalbital 50 mg, Exempt  
 Marijuana—Schedule I - Hallucinogenic Substances  
 Mazindol—Schedule IV - Stimulants  
 Mebutamate—(W-583; Capla; Butatensin; Carbuten; Mebutina; Prean; Sigmafon; Vallene; Mega; No-Press; Axiten; Ipotensivo) Schedule IV Depressants  
 Mecloqualone—Schedule I - Depressants  
 Medazepam—Ansilan; Diepin; Elbrus; Esmail; (Medazepol; Mezepan; Megasedan; Nobrium; Pazital; Psiquium; Resmit; Rudotel; Serenium; Siman)—Schedule IV - Depressants  
 Mediatric—Schedule III - Combination, Amphetamine, Methamphetamine  
 Medigesic Tablets, tablet, NDC 52747-0311: butalbital 50 mg, Exempt  
 Mefenorex—Schedule IV - Stimulants  
 Melfiat-105 Unicells—Schedule III - Phendimetrazine  
 Menrium 5-2, tablet, NDC 00140-0023: chlordiazepoxide 5 mg, Exempt  
 Menrium 5-4, tablet, NDC 00140-0024: chlordiazepoxide 5 mg, Exempt  
 Menrium 10-4, tablet, NDC 00140-0025: chlordiazepoxide 10 mg, Exempt  
 Meperidine—(Demeral, Pethadol)—Schedule II - Opiates and Derivatives  
 Mephobarbitol—Schedule III - Depressants  
 Meprobamate—(Equanil, Miltown, Meprospan)—Schedule IV  
 Mescaline—Schedule I - Hallucinogenic Substances  
 Mesterolone Schedule III Anabolic Steroids  
 Metazocine—Schedule II - Opiates and Derivatives  
 Methadone—(Dolophine)—Schedule II - Opiates and Derivatives  
 Methadone Intermediate—Schedule II - Opiates and Derivatives  
 Methamphetamine—Schedule II - Stimulants  
 Methandienone Schedule III Anabolic Steroid  
 Methandranone—Schedule III - Anabolic Steroids  
 Methandriol—Schedule III - Anabolic Steroids  
 Methaqualone (2-methyl-3-o-tolyl-4(3H)-quinazolinone) Quaalude—Schedule I - Depressants  
 Metharbitol—Schedule III - Depressants  
 Methcathione (2-(methylamino)-propiofenone, alpha(methylamino)-propiofenone, alpha(methylamino)-propiofenone, 2-(methylamino)-1-phenylpropane-1-one, alpha-N-methylaminopropiofenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463 and UR1431) its salts, optical isomers, and salts of optical isomers—Schedule I Stimulants  
 Methohexital—(Brevital; Brevital Sodium; Brevimytal Sodium, Brietal Sodium)—Schedule IV - Depressants  
 Methylamine—List I Chemicals  
 Methyl-desorphine—Schedule I - Opium Derivatives  
 Methyl dihydromorphine—Schedule I - Opium Derivatives  
 Methyl Ethyl Ketone—List II Chemicals  
 Methylphenidate—Schedule II - Stimulants  
 Methyltestosterone—Schedule III - Anabolic Steroids  
 Methypylon—Schedule III - Depressants  
 Metopon—Schedule II - Opiates and Derivatives

## Scheduling of Drugs Under KRS Chapter 218A

Mibolerone—Schedule III - Anabolic Steroids  
 Micomp-PB Tablets, tablet, NDC 55053-0525:  
 pentobarbital sodium 30 mg, Exempt  
 Midazolam—Schedule IV - Depressants  
 Milprem-200, tablet, NDC 00037-5501: meprobamate  
 200 mg, Exempt  
 Milprem-400, tablet, NDC 00037-5401: meprobamate  
 400 mg, Exempt  
 Modafinil Schedule IV - Stimulants  
 Moramide-Intermediate—Schedule II - Opioid  
 Narcotics  
 Morpheridine—Schedule I - Opiates  
 Morphine Methylbromide—Schedule I - Opium  
 Derivatives  
 Morphine Methylsulfonate—Schedule I - Opium  
 Derivatives  
 Morphine-N-Oxide—Schedule I - Opium Derivatives  
 Morphine Sulfate—[Roxanol, RMS Uniserts (rectal  
 suppositories)]—Schedule II - Opiates and  
 Derivatives  
 Mudrane, tablet, NDC 00095-0050: phenobarbital 8 mg,  
 Exempt  
 Mudrane GG Elixir, elixir, NDC 00095-0053:  
 phenobarbital 0.50 mg/ml, Exempt  
 Mudrane GG Tablets, tablet, NDC 00095-0051:  
 phenobarbital 8 mg, Exempt  
 Myrophine—Schedule I - Opium Derivatives  
 Mytussin DAC Liquid—Schedule V

## N

N-Acetylanthranilic Acid—List I Chemicals  
 N-ethylamphetamine—Schedule I Stimulants  
 N-ethyl-3-piperidyl benzilate—Schedule I  
 Hallucinogenic Substances  
 N-hydroxy-3,4-methylenedioxyamphetamine(N-hydroxy-  
 alpha-methyl-3,4(methylenedioxy)  
 phenethylamine,N-hydroxy MDA)—Schedule I  
 Hallucinogenic Substances  
 Nalbuphine—Schedule IV Narcotics  
 Naldecon-CX Suspension—Schedule V  
 Nalline-Nalorphine—Schedule III - Opioid Narcotics,  
 Codeine  
 Nandrolone—Schedule III - Anabolic Steroids  
 Nicocodeine—Schedule I - Opium Derivatives  
 Nicomorphine—Schedule I - Opium Derivatives  
 Nimetazepam—Schedule IV - Depressants  
 Nitrazepam—(Benozalin; Calsmin; Eunocin; Mosadan;  
 Mogadon; Nelbon; Nitrenpax; Paxisyn; Pelson;  
 Radedorm; Relact; Sonebon; Sonnolin)—Schedule  
 IV - Depressants  
 Nitroethane—List I Chemicals  
 N-methyl-3-piperidyl benzilate—Schedule I  
 Hallucinogenic Substances  
 N-Methylephedrine—List I Chemicals  
 N-Methylpseudoephedrine—List I Chemicals  
 N,N,alpha-trimethylphenylamine), its salts, optical  
 isomers and salts of optical isomers—Schedule I -  
 Stimulants  
 N,N-dimethylamphetamine (N,N,alpha-trimethyl  
 benzeneetha-namine N,N,alpha-  
 trimethylphenethylamine), its salts, optical isomers  
 and salts of optical isomers—Schedule I - Stimulants  
 Noracymethadol—Schedule I - Opiates  
 Nordiazepam—Schedule IV - Depressants  
 Norethandrolone—Schedule III Anabolic Steroids

Norlevorphanol—Schedule I - Opiates  
 Normethadone—Schedule I - Opiates  
 Normorphine—Schedule I - Opium Derivatives  
 Norpipanone—Schedule I - Opiates  
 Norpseudoephedrine—List I Chemicals  
 Nucofed Expectorant Syrup with Codeine—Schedule  
 III - Opioid Narcotics, Codeine  
 Nucofed Pediatric Expectorant—Schedule V  
 Nucofed—Schedule III - Opioid Narcotics, Codeine

## O

Obalan—Schedule III - Phendimetrazine  
 Opium Extracts—Schedule II Opiates and Derivatives  
 Opium fluid —Schedule II - Opiates and Derivatives  
 Opium Powder—Schedule II, Opiates and Derivatives  
 Opium Tincture—Schedule II - Opiates and  
 Derivatives  
 Oxandrolone—Schedule III - Anabolic Steroids  
 Oxazepam—(Serax; Aplakil; Bonare; Enidrel; Hilong;  
 Isodin; Limbial; Nesontil; Praxiten; Propax; Quilitrex;  
 Rondar; Serenal; Serenid; Serepax; Seresta; Sobril;  
 Tazepam)—Schedule IV - Depressants  
 Oxazolam—(Serenal)—Schedule IV - Depressants  
 Oxycodone & Acetaminophen tablets—Schedule II -  
 Combinations of Opioids  
 Oxycodone HCl, Oxycodone Terephthalate & Aspirin  
 tablets—Schedule II - Combinations of Opioids  
 Oxycodone HCl—Schedule II - Opiates and Derivatives  
 Oxycodone with Acetaminophen—Schedule II -  
 Combinations of Opioids  
 Oxycodone with aspirin tablets—Schedule II -  
 Combinations of Opioids  
 Oxymesterone—Schedule III Anabolic Steroids  
 Oxymetholone—Schedule III - Anabolic Steroids  
 Oxymorphone—(Numorphan)—Schedule II - Opiates  
 and Derivatives

## P

Pacaps Capsules, capsule, NDC 10892-0116: butalbital  
 50 mg, Exempt  
 Pacaps Modified Formula, capsule, NDC 48534-0884:  
 butalbital 50 mg, Exempt  
 PAN ESTRA TEST, vial, Exempt—Schedule III  
 Anabolic Steroids  
 Pantopon—(Hydrochlorides, opium alkaloids)—  
 Schedule II - Opiates and derivatives, Schedule III  
 Panzyme, tablet, NDC 00377-0491: phenobarbital 8.10  
 mg, Exempt  
 Panzyme, tablet, NDC 00314-0310: phenobarbital 8.10  
 mg, Exempt  
 Para-fluorofentanyl(N-(4-fluorophenyl)-N-1(2  
 phenethyl)4 piperidinyl-propanamide—Schedule I -  
 Opiates  
 Parahexyl(Synhexyl, 3  
 Hexyl-1-hydroxy-7,8,10-tetrahydro-6,6,9-triethyl-6H-  
 dibenzob,d pyran)—Schedule I - Hallucinogenic  
 Substances  
 Paraldehyde—Schedule IV  
 Paregoric—Schedule III - Opioid Narcotics  
 PB PhepBell, tablet, NDC 12908-7006: phenobarbital  
 16.2 mg, Exempt  
 Pediacof Cough Syrup—Schedule V  
 Pemoline—Schedule IV - Stimulants  
 Pentobarbital (Nembutal)—Schedule II - Depressants

## Scheduling of Drugs Under KRS Chapter 218A

- Percodan—Demi tablets—Schedule II - Combinations of Opioids  
 Percodan Tablets—Schedule II - Combinations of Opioids  
 Pethidine—Schedule II - Opiates and Derivatives  
 Pethidine-Intermediate-A  
 4cyano-1-methyl-4-phenylpiperidine—Schedule II - Opiates and Derivatives  
 Pethidine-Intermediate-B  
 ethyl-4-phenylpiperidine-4-carboxylate—Schedule II - Opiates and Derivatives  
 Pethidine-Intermediate-C 1 methyl-4-phenylpiperidine-4 carboxylic acid—Schedule II - Opiates and Derivatives  
 Petrichloral—Schedule IV  
 Peyote—Schedule I - Hallucinogenic Substances  
 Phedral C.T., tablet, NDC 00298-1173: phenobarbital 8.10 mg, Exempt  
 Phenadoxone—Schedule I - Opiates  
 Phenampromide—Schedule I - Opiates  
 Phenaphen with Codeine—Schedule III - Opioid Narcotics  
 Phenazocine—Schedule II - Opiates and derivatives  
 Phencyclidine—Schedule I - Hallucinogenic Substances  
 Phendimetrazine—Schedule III - Stimulants  
 Phenerbel-S Tablets, tablet, NDC 00536-4234: phenobarbital 40 mg, Exempt  
 Phenergan Codeine Syrup—Schedule V  
 Phenergan VC with Codeine Syrup—Schedule V  
 Phenergan with Codeine Syrup—Schedule V  
 Phenhist DH with Codeine Liquid—Schedule V  
 Phenmetrazine—Schedule II - Stimulants  
 Phenobarbital—Schedule III - Depressants  
 Phenobarbital, Ergotamine and Belladonna Tablets, tablet, NDC 00781-1701: phenobarbital 40 mg, Exempt  
 Phenobarbital and Hyoscyamine Sulfate, tablet, NDC 00764-2057: phenobarbital 16.20 mg, Exempt  
 Phenomorphan—Schedule I - Opiates  
 Phenoperidine—Schedule I - Opiates  
 Phentermine—Schedule IV - Stimulants  
 Phentermine HCl—(Phentrol; Tora; Fastin; Obe-Nix; Obephen; Obrmine; Obestin-30; Phentrol 2; Unifast Unicells; Wilpowr; Adipex-P; Dapex-37.5 Ionamin; Parmine; Phentrol 4; Phentrol 5)—Schedule IV - Stimulants  
 Phenylacetic Acid—List I Chemicals  
 Phenylacetone—other names include phenyl-2-propanone, P2P, benzyl methyl ketone and methylbenzylketone—Schedule II - Immediate Precursor to Amphetamine  
 Phenylcodine—Schedule I - Opium Derivatives  
 Phenylpropanolamine—List I Chemicals  
 Phenzine—Schedule III - Stimulants  
 Pholcodine—Schedule I - Opium Derivatives  
 Phrenilin, tablet, NDC 00086-0050: butalbital 50 mg, Exempt  
 Phrenilin Forte, capsule, NDC 00086-0056: butalbital 50 mg, Exempt  
 Piminodine—Schedule II - Opiates and Derivatives  
 Pinazepam—Schedule IV - Depressants  
 Piperidine—List I Chemicals  
 Pipradrol—(Detaril; Gerodyl; Meratran; Pipradol)—Schedule IV - Stimulants  
 Pirtramide—Schedule I - Opiates  
 Piperonal—List I Chemicals  
 Plegine—Schedule III - Stimulants  
 PMB-200, tablet, NDC 00046-0880: meprobamate 200 mg, Exempt  
 PMB-400, tablet, NDC 00046-0881: meprobamate 400 mg, Exempt  
 Potassium Permanganate—List II Chemicals  
 Powdered opium—Schedule II - Opiates and Derivatives  
 Prazepam—(Demetrix; Verstran; Centrax)—Schedule IV - Depressants  
 Prelu-2—Schedule III - Stimulants  
 Premarin with Methyltestosterone, tablet, NDC number 0046-0879; conjugated estrogens 1.25 mg, methyltestosterone 10.0 mg, Exempt—Schedule III Anabolic Steroids  
 Premarin with Methyltestosterone, tablet, NDC number 0046-0878; conjugated estrogens 0.625 mg, methyltestosterone 5.0 mg, Exempt—Schedule III Anabolic Steroids  
 Primatene (P-Tablets), tablet, NDC code 0573-2940: phenobarbital 8 mg, Excluded  
 Private Formula No 3095, tablet, NDC 00252-3095: phenobarbital sodium 15 mg, Exempt  
 Proheptazine—Schedule I - Opiates  
 Promethazine VC with Codeine—Schedule V  
 Promethazine with Codeine—Schedule V  
 Properidine—Schedule I - Opiates  
 Propionic Anhydride—List I Chemicals  
 Propiram—Schedule I - Opiates  
 Pseudoephedrine—List I Chemicals  
 Psilocybin—Schedule I - Hallucinogenic Substances  
 Psilocyn—Schedule I - Hallucinogenic Substances  
 Pulsaphen, tablet, NDC 00377-0652: phenobarbital 15 mg, Exempt  
 Pulsaphen Gray, tablet, NDC 00917-0113: phenobarbital 15 mg, Exempt  
 Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP—Schedule I - Hallucinogenic Substances

## Q

- Quadrinal Suspension, suspension, NDC 00044-4580: phenobarbital 2.40 mg, Exempt  
 Quadrinal Tablets, tablet, NDC 00044-4520: phenobarbital 24 mg, Exempt  
 Quazepam—Schedule IV - Depressants  
 Quibron Plus Capsules, capsule, NDC 00087-0518: butabarbital 20 mg, Exempt  
 Quibron Plus Elixir, elixir, NDC 00087-0511: butabarbital 1.33 mg/ml, Exempt

## R

- Racemethorphan—Schedule II - Opiates and Derivatives  
 Racemoramide—Schedule I - Opiates  
 Racemorphan—Schedule II - Opiates and Derivatives  
 Raw opium—Schedule II - Opiates and Derivatives  
 Raw opium extracts—Schedule II - Opiates and Derivatives  
 Repan Capsules, capsule, NDC 00642-0163: butalbital 50 mg, Exempt  
 Repan Tablets, tablet, NDC 00642-0162: butalbital 50 mg, Exempt

## Scheduling of Drugs Under KRS Chapter 218A

Rexatal Tablets, tablet, NDC 00487-5477:  
phenobarbital 16.52 mg, Exempt  
Robitussin A.C. Syrup—Schedule V  
Robitussin-DAC Syrup—Schedule V  
Rogesic Capsules, capsule, NDC 31190-0008: butalbital  
50 mg, Exempt  
Rolatuss with Hydrocodone—Schedule III - Opioid  
Narcotics, Hydrocodone  
Ru-Tuss with Hydrocodone Liquid—Schedule V  
Ryna-CX Liquid—Schedule V

## S

Safrole—List I Chemicals  
Saneptic, tablet, NDC 00511-1627: butalbital 30 mg,  
Exempt  
Secobarbital—Seconal—Schedule II - Depressants  
Sedapap-10 Tablets, tablet, NDC 00259-1278:  
butalbital 50 mg, Exempt  
Sedapar Elixir, elixir, NDC 00349-4100: phenobarbital  
3.24 mg/ml, Exempt  
Sedpar Tablets, tablet, NDC 00349-2355: phenobarbital  
16.20 mg, Exempt  
Sedarex No. 3, tablet, NDC 00144-1575: phenobarbital  
16.20 mg, Exempt  
Seds, tablet, NDC 00418-4072: phenobarbital 16.20 mg,  
Exempt  
Sibutramine—Schedule IV Stimulant  
Soma—Schedule IV - Muscle Relaxant  
Soma Compound—Schedule IV - Muscle Relaxant  
Soma Compound with Codeine—Schedule IV - Muscle  
Relaxant  
Soniphen, enteric coated tablet, NDC 0456-0429:  
phenobarbital 16 mg, Exempt  
SPA-((-)-1-Dimethylamino-1,2-Diphenylthane—  
Schedule IV - Stimulants  
Spaslin, tablet, NDC 00165-0029: phenobarbital 16.20  
mg, Exempt  
Spasmalones, tablet, NDC 00653-0002: phenobarbital  
16 mg, Exempt  
Spasmodin, tablet, NDC 00115-4652: phenobarbital 15  
mg, Exempt  
Spassterms Elixir, elixir, NDC 00463-9023:  
phenobarbital 3.24 mg/ml, Exempt  
Spassterms Tablets, tablet, NDC 0463-6181:  
phenobarbital 15 mg, Exempt  
Spastolate, tablet, NDC 00814-7088: phenobarbital  
16.20 mg, Exempt  
Spastrin Tablets, tablet, NDC 54580-124:  
phenobarbital 40 mg, Exempt  
Stadol NS—Schedule IV - Opioid  
Stanolone—Schedule III - Anabolic Steroids  
Stanozolol—Schedule III - Anabolic Steroids  
S. T. Forte Schedule III Opioid Narcotics Hydrocodone  
S.T. Forte Liquid 2—Schedule III - Opioid Narcotics,  
Hydrocodone  
Sufentanil—Schedule II - Opiates and Derivatives  
Sufentanil—(Sufenta)—Schedule II - Opiates and  
derivatives  
Sulfomethane—Schedule III - Depressants  
Sulfondiethylmethane—Schedule III - Depressants  
Sulfonethylmethane—Schedule III - Depressants  
Sulfuric Acid—List II Chemicals  
Susano, elixir, NDC 00879-0059: phenobarbital 3.24  
mg/ml, Exempt

Susano, tablet, NDC 00879-0058: phenobarbital 16.20  
mg, Exempt  
Synovex H Pellets in Process, Exempt—Schedule III -  
Anabolic Steroids  
Synovex H Pellets in Process Granulation, Exempt—  
Schedule III - Anabolic Steroids

## T

Talbutal—Schedule III - Depressants  
Talwin—Pentazocine—all forms and all salts—Schedule  
III - Opioid Narcotics  
Tedral, tablet, NDC code 00071-1230: phenobarbital 8  
mg, Excluded  
Tedral Elixir, elixir, NDC code 00071-0242:  
phenobarbital 40 mg/ml, Excluded  
Tedral Suspension, suspension, NDC code 00071-0237:  
phenobarbital 80 mg/ml, Excluded  
Tedral S.A. tablet, NDC code 00071-1231:  
phenobarbital 8 mg, Excluded  
Tedral SA, sustained release tablet, NDC 00071-0231:  
phenobarbital 25 mg, Exempt  
Tedrigen, tablet, NDC code 00182-0134: phenobarbital  
8 mg, Excluded  
Temazepam—(Myolastin, Restoril)—Schedule IV -  
Depressants  
Tencet Capsules, capsule, NDC 47649-0560: butalbital  
50 mg, Exempt  
T-E-P, tablet, NDC 00364-0266: phenobarbital 8.10 mg,  
Exempt  
T.E.P., tablet, NDC 00157-0980: phenobarbital 8 mg,  
Exempt  
TEST-ESTRO Cypionate, vial, NDC number  
0536-9470: testosterone cypionate 50 mg/ml, estradiol  
cypionate 2 mg/ml, Exempt—Schedule III - Anabolic  
Steroids  
Testagen, vial, NDC number 55553-257: testosterone  
cypionate 50 mg/ml, estradiol cypionate 2 mg/ml,  
Exempt—Schedule III - Anabolic Steroids  
Testolactone—Schedule III - Anabolic Steroids  
Testosterone Cyp 50 Estradiol Cyp various  
concentrations, please check under the specific  
category for full details—Schedule III - Anabolic  
Steroids  
Testosteronepropionate—Schedule III - Anabolic  
Steroids  
Tetrahydrocannabinols —Schedule I - Hallucinogenic  
Substances  
Tetrazepam—Schedule IV - Depressants  
Thebacon—Schedule I - Opium Derivatives  
Thebaine—Schedule II - Opiates and derivatives  
Thenylfentanyl,N-[1-(2-thienyl) methyl-4-piperidyl] N-  
phenylpropanamide—Schedule I - Opiates  
Theodrine Tablets, tablet, NDC 00536-4648:  
phenobarbital 8 mg, Exempt  
Theophed, tablet, NDC code 00719-1945:  
phenobarbital 8 mg, Excluded  
Theophen, tablet, NDC code 12634-0101:  
phenobarbital 8 mg, Exempt  
Theophenyllin, tablet, NDC 00839-5111: phenobarbital  
8 mg, Exempt  
Theophyllin, Ephedrine and Phenobarbital, tablet,  
NDC 00143-1695: phenobarbital 8 mg, Exempt  
Thiofentanyl,N-[1-(2-thienyl) ethyl-4-piperidyl]-  
phenylpropanamide—Schedule I - Opiates

## Scheduling of Drugs Under KRS Chapter 218A

- Thiophene analog of phencyclidine (1-(1-(2-thienyl) cyclo-hexyl) piperidine, TCP, TPCP)—Schedule I - Hallucinogenic Substances
- Tilapia Sex Reversal Feed, Exempt, Anabolic Steroid
- Tiletamine—Schedule III depressant
- Tilidine—Schedule I - Opiates
- Tincture of Opium—Schedule II - Opiates and Derivatives; see also Opium Tincture
- Toluene—List II Chemicals
- Tolu-Sed Cough Syrup—Schedule V
- Trenbolone—Schedule III - Anabolic Steroids
- Triacin C Syrup—Schedule V
- Triad, tablet, NDC 00785-2306: butalbital 50 mg, Exempt
- Triad Capsules, capsule, NDC 00785-2305: butalbital 50 mg, Exempt
- Triafed with Codeine—Schedule V
- Triaminic Expectorant DH—Schedule III - Opioid Narcotics, Hydrocodone
- Triaprin, capsule, NDC 00217-2811: butalbital 50 mg, Exempt
- Triazolam—(Halcion)—Schedule IV - Depressants
- Truxaphen Tablets, Exempt
- Tussaminc DH Forte—Schedule III - Opioid Narcotics, Hydrocodone
- Tussar 2 Cough Syrup—Schedule V
- Tussar SF Cough Syrup—Schedule V
- Tussionex—Schedule III - Opioid Narcotics, Hydrocodone
- Tussi-Organidin Liquid—Schedule V
- Tussirex with Codeine Liquid—Schedule V
- Two-Dyne Revised, tablet, NDC 00314-2229: butalbital 50 mg, Exempt
- Tylenol with Codeine #1, 2, 3, and 4—Schedule III - Opioid Narcotics, Codeine
- Tylenol with Codeine Elixir—Schedule V
- Tylox Capsules—Schedule II - Combinations of Opioids

## V

Vanex-HD Liquid—Schedule III - Opioid Narcotics, Codeine

Vicks Inhaler, inhaler, NDC code 23900-1945: 1-Desoxyephedrine 113 mg, Excluded

## W

Weh-less—Schedule III - Stimulants

Wehless 105-Timecells—Schedule III - Stimulants

Wescophen-S, tablet, NDC 00917-0135: phenobarbital 30 mg, Exempt

Wescophen S-II, tablet, NDC 00377-0628: phenobarbital 30 mg, Exempt

Wesmatic Forte, tablet, NDC 00917-0845: phenobarbital 8 mg, Exempt

Wesmatic Forte, tablet, NDC 00377-0426: phenobarbital 8.10 mg, Exempt

## Z

Zolazepam—Schedule III depressant

Zolpidem (Ambien)—Schedule IV depressant

# FACTS ON THE JUVENILE DEATH PENALTY

## THE 1997 AMERICAN BAR ASSOCIATION (ABA) MORATORIUM CALL IS BASED IN PART ON THE FACT THAT THE STATES CONTINUE TO SENTENCE CHILDREN TO DEATH.

In the 1988 report of the Criminal Justice Section of the ABA, it was stated that "The spectacle of our society seeking legal vengeance through execution of a child should not be countenanced by the ABA."

### THE JUVENILE DEATH PENALTY IS RACIALLY BIASED IN KENTUCKY.

- 2/3rds of the 288 children executed in the nation's history were black.
- 100% of the 40 children executed in the U.S. for the crimes of rape or attempted rape were black.
- 2/3rds of children now on death row in the United States are black, including one of two individuals on Kentucky's death row who committed their crimes as juveniles.
- Four of six (67%) children executed in Kentucky history have been black:

NAME	RACE	COUNTY	CRIME	AGE AT EXECUTION	AGE AT DEATH
1. Silas Williams	B	Woodford	Murder	1913	16
2. Frank Carson	W	Nelson	Murder	1933	17
3. Burnett Sexton	W	Perry	Murder	1943	17
4. William Gray	B	Fayette	Murder	1943	17
5. Carl Fox	B	Campbell	Rape	1945	17
6. Arthur Jones	B	Mason	Murder	1946	16

### CHILDREN ARE DENIED MANY RIGHTS DUE TO THEIR INABILITY TO EXERCISE MATURE AND SOUND JUDGMENT.

- 18 is the age to vote. 26<sup>th</sup> Amendment.
- 18 is the age of majority in Kentucky. KRS 2.015.
- 21 is the age to buy and possess alcohol. KRS 244.080, .085, .087, .090.
- Children are not allowed to contract until they are 18. KRS 371.010(2).
- Children must be 18 before they are allowed to buy cigarettes. KRS 438.300.  
Persons under 18 are not permitted a driver's license if they have not graduated from high school or are not enrolled in school.
- Children must be 18 before donating their bodily organs. KRS 311.175.
- Children must be 18 generally (unless they are parents) before they are allowed to make a will. KRS 394.020-030.
- Children must be 18 (unless there is parental or judicial consent) in order to marry. KRS 402.020.

**THE DEATH PENALTY IS CONTRARY TO THE FUNDAMENTAL PREMISE OF THE JUVENILE JUSTICE SYSTEM: THAT CHILDREN CAN BENEFIT FROM A TREATMENT ORIENTED APPROACH WHICH INCLUDES ACCOUNTABILITY AND GRADUATED SANCTIONS.**

**IT IS NOT IN SOCIETY'S INTEREST TO GIVE UP ON CHILDREN.**

- A review of the literature by the American Psychological Association (APA) has led the APA to include the state-sanctioned taking of lives including juveniles in an August, 1996 policy statement on social practices that induce violence.

**THE DEATH PENALTY IS SELDOM USED AGAINST CHILDREN**

- Only 2% of the total of persons executed in this country were children at the time of the crime.
- In Kentucky, only 3 (*Ice, Stanford, Osborne*) juveniles were sentenced to death since 1976; only two persons (*Stanford* and *Osborne*) remain on death row who were juveniles at the time of their crimes.

**WHEN THE DEATH PENALTY IS USED AGAINST CHILDREN IN THE UNITED STATES, COURTS REVERSE AT A HIGH RATE**

- Between January 1973 and June 1999, there have been 180 juvenile death sentences. Of those 180, 70 are still under the sentence of death, 13 have been executed, and 97 or 54% have been reversed on appeal. Of the 180, 110 have been finally resolved as the remainder are still in litigation. Of those 110, 97 or 88% have been reversed. See Victor Streib, *The Juvenile Death Penalty Today; Death Sentences and Executioners for Juvenile Crime, January 1973-June 1999* (1999). This is a very high reversal rate in the criminal justice system and indicates that there are either many errors in these trials or that death is not an appropriate sentence for these offenders.

**THE DEATH PENALTY IS USED IN ONLY HALF THE STATES FOR JUVENILES**

- In 16 of the jurisdictions (15 states and the federal government) with the death penalty, 18 is the age of accountability: CA, CO, CT, IL, KS, MD, MT, NE, NJ, NM, NY\*, OH, OR, TN, WA (by Court decision), and U.S. Other states have either no minimum age or a minimum under 18. \*NY's law only allows the death penalty for those "more than 18."
- In 5 states, 17 year olds are eligible for death: FL, GA, NH, NC, TX.
- In 18 states, 16 year olds are eligible for the death penalty: AL, AZ, AK, DL, ID, IN, KY, LA, MS, MO, NV, OK, PA, SC, SD, UT, VA, WY.

**THE DEATH PENALTY IS UNCONSTITUTIONAL FOR THOSE BELOW THE AGE OF 16**

- The United States Supreme Court declared in *Thompson v. Oklahoma*, 487 U.S. 815 (1988) that it is a violation of the 8<sup>th</sup> Amendment to impose death upon children below the age of 16.
- The United States Supreme Court rejected a challenge under the 8<sup>th</sup> Amendment to capital punishment for those who are 16 or 17 years of age. *Stanford v. Kentucky*, 492 U.S. 361 (1989).

# The Advocate

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## THE ADVOCATE

### Upcoming DPA, NCDC, NLADA & KACDL Education

#### \*\* DPA \*\*

- 28th Annual DPA Education Conference; Covington, KY; June 12-14, 2000.
- 2000 Death Penalty LPI, Kentucky Leadership Center, Faubush, KY; October 15 - 20, 2000

NOTE: DPA Education is open only to criminal defense advocates.

For more information:

<http://dpa.state.ky.us/train/htm>

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#### \*\* KACDL \*\*

- KACDL Annual Conference - November 5-6, 1999 - Louisville, Kentucky

For more information regarding KACDL programs call or write: Linda DeBord, 3300 Maple Leaf Drive, LaGrange, Kentucky 40031 or (502) 243-1418 or George Soruberger at (502) 564-8006, ext. 230.

For more information regarding NLADA programs call Tel: (202) 452-0620; Fax: (202) 872-1031 or write to NLADA, 1625 K Street, N.W., Suite 800, Washington, D.C. 20006.

Web: <http://www.nlada.org>

For more information regarding NCDC programs call Rosie Flanagan at Tel: (912) 746-4151; Fax: (912) 743-0160 or write NCDC, c/o Mercer Law School, Macon, Georgia 31207.

#### \*\* NLADA \*\*

- NLADA Appellate Defender Conference New Orleans, Louisiana, December 4-7, 1999
- NLADA 77<sup>th</sup> Annual Conference, Weston Long Beach Hotel, California, November 10-13, 1999

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#### \*\* NCDC \*\*

- NCDC Trial Practice Institutes, Macon, Georgia - June 11-14, 2000 and July 16-29, 2000

The application deadline has been moved to March 15th. Brochures will be available by early December, 1999. Please notify NCDC if your address has recently changed.