



MEMORANDUM

Date: May 1, 2024

Subject: Guidance re Disqualifying Felony Offenses under KRS Chapter 218B

Relevant authority: KRS 218B.010(11), KRS 218B.055, KRS 218B.095

Prepared by: Sam Flynn, Executive Director *SRF*
The Kentucky Medical Cannabis Program

KRS Chapter 218B establishes various requirements for individuals to obtain a medical cannabis card (also known as a registry identification card) or work for a cannabis business licensed to operate in Kentucky. One of those requirements is that the card applicant or potential employee has not been convicted of a disqualifying felony offense. The purpose of this Memorandum is to provide guidance on what constitutes a disqualifying felony offense for the purpose of the Kentucky Medical Cannabis Program.

KRS 218B.010(11) defines “disqualifying felony offense” as:

- (a) A felony offense that resulted in the person being classified by the Department of Corrections as a violent offender under KRS 439.3401; or
- (b) A violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted, except:
 - 1. An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed five (5) or more years earlier; or;
 - 2. An offense that, as determined by the cabinet, consisted of conduct for which this chapter would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this chapter or was prosecuted by an authority other than the Commonwealth of Kentucky.

Please note the above definition reflects the changes made to the original definition by House Bill 829, which was signed into law by Governor Andy Beshear on April 17, 2024.

Violent Offenders Under Kentucky Law

As defined by KRS 439.3401, a “violent offender” is any person who has been convicted of or pled guilty to the commission or attempted commission of a capital offense, a Class A felony, or a felony sexual offense described in KRS Chapter 510. A “violent offender” is also any person who has been convicted of or pled guilty to the commission of:

- (a) A felony involving the death of the victim or serious physical injury to a victim;
- (b) Use of a minor in a sexual performance as described in KRS 531.310;
- (c) Promoting a sexual performance by a minor as described in KRS 531.320;
- (d) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);
- (e) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
- (f) Criminal abuse in the first degree as described in KRS 508.100;
- (g) Burglary in the first degree accompanied by the commission or attempted commission of an assault as described in KRS 508.010, 508.020, 508.032, or 508.060;
- (h) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as described in KRS 509.040;
- (i) Burglary in the first degree as described in KRS 511.020, if a person other than a participant in the crime was present in the building during the commission of the offense;
- (j) Robbery in the first degree as described in KRS 515.020;
- (k) Robbery in the second degree as described in KRS 515.030;
- (l) Incest as described in KRS 530.020(2)(b) or (c).
- (m) Arson in the first degree as described in KRS 513.020;
- (n) Strangulation in the first degree as described in KRS 508.170;
- (o) Carjacking as described in KRS Chapter 515;
- (p) A Class C felony violation of promoting contraband in the first degree as described in KRS 520.050; or

(q) Wanton endangerment in the first degree as described in KRS 508.060 involving the discharge of a firearm.

Please note the above definition of “violent offender” reflects the changes made by House Bill 5, which was passed by the Kentucky General Assembly during the 2024 legislative session.

Violations of State or Federal Controlled Substance Law

Under KRS 218A.010(8) “controlled substance” is defined as methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue, which is defined by KRS 218A.010(9). Violations of controlled substance law includes unlawful possession, trafficking, sale, or manufacturing of a controlled substance, as well as the offenses of forged prescriptions or theft of a blank prescription pad. KRS Chapter 218A provides a list of controlled substance offenses in Kentucky.

Notably, KRS 218B.010(11)(b) contains two (2) exceptions that explain when a conviction for a controlled substance offense will not disqualify a card applicant or potential cannabis business employee from participating in the Kentucky Medical Cannabis Program. Those two (2) exceptions are: (1) the individual completed his or her sentence, including any term of probation, incarceration, or supervised release, five (5) or more years ago, or (2) the offense consisted of conduct for which KRS Chapter 218B would likely have prevented a conviction, but the conduct occurred prior to January 1, 2025 or was prosecuted by an authority other than the Commonwealth of Kentucky. Accordingly, the second exception excludes prior marijuana related offenses from the definition of “disqualifying felony offense”. These excluded offenses include KRS 218A.1421 (trafficking in marijuana), KRS 218A.1422 (possession of marijuana), and KRS 218A.1423 (marijuana cultivation).

ISSUED BY:



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Kentucky Medical Cannabis Program
Cabinet for Health and Family Services

Date: 5/1/2024