

TITLE 48. FOOD AND DRUGS
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CHAPTER 11. DRUG PARAPHERNALIA

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SUBCHAPTER I. GENERAL

§ 48-1101. Definitions

For purposes of this chapter, the term:

(1) "Controlled substance" has the same meaning as that provided in § 48-901.02(4).

(2) "Court" means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(3) "Drug paraphernalia" means:

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

(B) Kits or other objects used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

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

(D) Testing equipment or other objects used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness, or purity of a

controlled substance;

(E) Scales and balances or other objects used, intended for use, or designed for use in weighing or measuring a controlled substance;

(F) Diluents and adulterants, including, but not limited to: quinine, hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting a controlled substance;

(G) Separation gins and sifters or other objects used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, Cannabis or any other controlled substance;

(H) Blenders, bowls, containers, spoons, and other mixing devices used, intended for use, or designed for use in compounding a controlled substance;

(I) Capsules, balloons, envelopes, glassy plastic bags, or zip-lock bags that measure 1 inch by 1 inch or less, and other containers used, intended for use, or designed for use in packaging small quantities of a controlled substance;

(J) Containers and other objects used, intended for use, or designed for use in storing or concealing a controlled substance;

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

(L) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing Cannabis, cocaine, hashish, hashish oil, or any other controlled substance into the human body, including, but not limited to:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

- (v) Roach clips;
- (vi) Miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (vii) Chamber pipes;
- (viii) Carburetor pipes;
- (ix) Electric pipes;
- (x) Air-driven pipes;
- (xi) Bongs;
- (xii) Ice pipes or chillers;
- (xiii) Wired cigarette papers; or
- (xiv) Cocaine freebase kits.

The term "drug paraphernalia" shall not include any article that is 50 years of age or older.

§ 48-1102. Factors to be considered in determining whether object is paraphernalia

(a) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically and legally relevant factors, the following factors:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) The proximity of the object, in time and space, to a violation of § 48-1103(a) or to a controlled substance;
- (3) The existence of any residue of a controlled substance on the object;
- (4) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of § 48-1103(a); the innocence of an owner, or of anyone in control of the object, as to a violation of § 48-1103(a) shall not prevent a finding that the object is intended for use, or designed for use as

drug paraphernalia;

(5) Instructions, oral or written, provided with the object concerning its use;

(6) Descriptive materials accompanying the object which explain or depict its use;

(7) National and local advertising concerning the use of the object;

(8) The manner in which the object is displayed for sale;

(9) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, including, but not limited to, a licensed distributor or dealer of tobacco products;

(10) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses for the object in the community; and

(12) Expert testimony concerning its use.

(b) Where the alleged violation of the act included the sale of glassy plastic bags or zip-lock bags that measure 1 inch by 1 inch or less and occurred at a commercial retail or wholesale establishment, the court or other authority may infer that the item sold is drug paraphernalia, based on the size of the bags, the packaging of the bags, and a consideration of the factors in subsection (a) of this section.

§ 48-1103. Prohibited acts

(a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inhale, ingest, or otherwise introduce into the human body a controlled substance. Whoever violates this subsection shall be imprisoned for not more than 30 days or fined for not more than \$ 100, or both.

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

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imprisoned for not more than 6 months or fined for not more than \$ 1,000, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this chapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than \$ 5,000, or both.

(c) Any person 18 years of age or over who violates subsection (b) of this section by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his or her junior is guilty of a special offense and upon conviction may be imprisoned for not more than 8 years, fined not more than \$ 15,000, or both.

(d) Where the violation of the section involves the selling of drug paraphernalia by a commercial retail or wholesale establishment, the court shall revoke the license of any licensee convicted of a violation of this section and the certificate of occupancy for the premises.

§ 48-1103.01. Needle Exchange Program

(a) The Mayor is authorized to establish within the Department of Human Services a Needle Exchange Program ("Program"), which may provide clean hypodermic needles and syringes to injecting drug users. Counseling on substance abuse addiction and information on appropriate referrals to drug treatment programs shall be made available to each person to whom a hypodermic needle and syringe is provided. Counseling and information on the Human Immunodeficiency Virus ("HIV") and appropriate referrals for HIV testing and services shall be made available to each person to whom a hypodermic needle and syringe is provided.

(b) The Program authorized by subsection (a) of this section shall be administered by the Commission on Public Health in the Department of Human Services. Only qualified medical officers, registered nurses, counselors, community based organizations, or other qualified individuals specifically designated by the Commissioner of Public Health shall be authorized to exchange hypodermic needles and syringes under the provisions of subsections (c) through (i) of this section.

(c) The Commissioner of Public Health shall provide all persons participating in the Program authorized by subsection (a) of this section with a written statement of the person's participation in the Program, signed by the Commissioner of Public Health, or the Commissioner's designee. No person participating in the Program shall be required to carry such a statement.

(d) Notwithstanding the provisions of § 48-1103 or § 48-904.10, it shall not be unlawful for any person who is participating in the Program authorized by subsection (a) of this section to possess, or for any person authorized by subsection (b) of this section, to deliver any hypodermic syringe or needle distributed as part of the Program.

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(e) The District of Columbia, its officers, or employees shall not be liable for any injury or damage resulting from use of, or contact with, any needle exchanged as part of the Program authorized by subsection (a) of this section.

(e-1) A community based organization or other qualified individuals designated by the Commissioner of Public Health under subsection (b) of this section shall not be liable for any injury or damage resulting from the use of, or contact with, any needle exchanged as part of the Program authorized by subsection (a) of this section, unless such injury or damage is a direct result of the gross negligence or intentional misconduct of such community based organization or other qualified individuals.

(f) All needles and syringes distributed by the Commission of Public Health as part of the Program shall be made identifiable through the use of permanent markings, or color coding, or any other method determined by the Commissioner to be effective in identifying the needles and syringes.

(g) The Mayor shall issue an annual evaluation report on the Program. The report shall address the following components:

(1) Number of Program participants served daily;

(2) Demographics of Program participants, including age, sex, ethnicity, address or neighborhood of residence, education, and occupation;

(3) Impact of Program on behaviors which put the individual at risk for HIV transmission;

(4) Number of materials distributed, including needles, bleach kits, alcohol swabs, and educational materials;

(5) Impact of Program on incidence of HIV infection in the District. In determining this, the Mayor shall take into account the following factors:

(A) Annual HIV infection rates among injecting drug users entering drug treatment programs in the District;

(B) Estimates of the HIV infection rate among injecting drug users in the District at the start of the Program year as compared to the rate at the end of the third Program year;

(C) The annual number of HIV-positive mothers giving birth in the District;

(D) Annual estimates of the HIV infection rate among newborns; and

(6) Costs of the Program versus direct and indirect costs of HIV infection and Acquired Immunodeficiency Syndrome ("AIDS") in the District.

(h) Data on Program participants shall be obtained through interviews. The interviews shall be used to obtain the following information:

(1) Reasons for participating in Program;

(2) Drug use history, including type of drug used, frequency of use, method of ingestion, length of time drugs used, and frequency of needle sharing;

(3) Sexual behavior and history, including the participant's self-described sexual identity, number of sexual partners in the past 30 days or 6 months, number of sexual partners who were also intravenous drug users, frequency of condom use, and number of times sex was used in exchange for money or drugs;

(4) Health assessment, including whether the participant has been tested for HIV infection and whether the results were negative or positive; and

(5) Impact of Program on the participant's behavior and attitudes, including any increase or decrease in drug use or needle sharing, changes in high-risk sexual behaviors, or willingness to follow through with drug treatments.

(i) The Mayor shall explore the feasibility of establishing a system to test used needles and syringes received by the Commission of Public Health for HIV antibody contamination. The Mayor shall prepare a feasibility report on needle and syringe testing and shall submit this report to the Council for review no later than 120 days after June 30, 1992. If the report finds that needles and syringe testing would be beneficial and feasible to implement, such a system shall be incorporated into the Program.

§ 48-1104. Property subject to forfeiture

The following shall be subject to forfeiture immediately, and no property right shall exist in them after a final conviction by a court:

(1) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;

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(2) All money or currency which shall be found in close proximity to drug paraphernalia or which otherwise has been used or intended for use in connection with the manufacture, distribution, delivery, sale, use, dispensing, or possession of drug paraphernalia in violation of § 48-1103; and

(3) All drug paraphernalia as defined in §§ 48-1101 and 48-1102 and prohibited in § 48-1103.