

## CHAPTER 19-03.4 DRUG PARAPHERNALIA

### 19-03.4-01. Definition - Drug paraphernalia.

In this chapter, unless the context otherwise requires, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of chapter 19-03.1. The term includes:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
4. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
6. Diluents and adulterants, including quinine hydrochloride, mannitol, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
8. Blenders, bowls, containers, spoons, grinders, and mixing devices used, intended for use, or designed for use in compounding, manufacturing, producing, processing, or preparing controlled substances.
9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or products or materials used or intended for use in manufacturing, producing, processing, or preparing controlled substances.
11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, or tetrahydrocannabinol into the human body, including:
  - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, or punctured metal bowls.
  - b. Water pipes.
  - c. Carburetion tubes and devices.
  - d. Smoking and carburetion masks.
  - e. Objects, sometimes commonly referred to as roach clips, used to hold burning material, for example, a marijuana cigarette, that has become too small or too short to be held in the hand.
  - f. Miniature cocaine spoons and cocaine vials.
  - g. Chamber pipes.
  - h. Carburetor pipes.
  - i. Electric pipes.
  - j. Air-driven pipes.
  - k. Chillums.
  - l. Bongs.
  - m. Ice pipes or chillers.
13. Ingredients or components to be used or intended or designed to be used in manufacturing, producing, processing, preparing, testing, or analyzing a controlled

substance, whether or not otherwise lawfully obtained, including anhydrous ammonia, nonprescription medications, methamphetamine precursor drugs, or lawfully dispensed controlled substances.

#### **19-03.4-02. Drug paraphernalia - Guidelines.**

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

1. Statements by an owner or by anyone in control of the object concerning its use.
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.
3. The proximity of the object, in time and space, to a direct violation of chapter 19-03.1.
4. The proximity of the object to controlled substances.
5. The existence of any residue of controlled substances on the object.
6. Direct or circumstantial evidence of the intent of an owner, or of any person in control of the object, to deliver the object to another person whom the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of chapter 19-03.1. The innocence of an owner, or of any person in control of the object, as to a direct violation of chapter 19-03.1 may not prevent a finding that the object is intended or designed for use as drug paraphernalia.
7. Instructions, oral or written, provided with the object concerning the object's use.
8. Descriptive materials accompanying the object which explain or depict the object's use.
9. National and local advertising concerning the object's use.
10. The manner in which the object is displayed for sale.
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, for example, a licensed distributor or dealer of tobacco products.
12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
13. The existence and scope of legitimate uses for the object in the community.
14. Expert testimony concerning the object's use.
15. The actual or constructive possession by the owner or by a person in control of the object or the presence in a vehicle or structure where the object is located of written instructions, directions, or recipes to be used, or intended or designed to be used, in manufacturing, producing, processing, preparing, testing, or analyzing a controlled substance.
16. Whether the object is a needle or syringe collected during the operation of a needle exchange program under chapter 23-01 to aid in the prevention of bloodborne diseases.

#### **19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

1. A person may not use or 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, or conceal a controlled substance in violation of chapter 19-03.1. A person violating this subsection is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana or tetrahydrocannabinol, classified in schedule I, II, or III of chapter 19-03.1.
2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana or tetrahydrocannabinol, classified in schedule I, II, or III of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this title, other than an offense related to marijuana or tetrahydrocannabinol, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.

3. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, or repack marijuana or tetrahydrocannabinol in violation of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor.
4. A person may not use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana or tetrahydrocannabinol or possess with the intent to use drug paraphernalia to store or contain marijuana or tetrahydrocannabinol in violation of chapter 19-03.1. A person violating this subsection is guilty of an infraction.
5. A person sentenced to the legal and physical custody of the department of corrections and rehabilitation under this section may be placed in a drug and alcohol treatment program as designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the person from imprisonment to begin any court-ordered period of probation. If the person is not subject to court-ordered probation, the court may order the person to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
6. Probation under this section may include placement in another facility, treatment program, or drug court. If the person is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

**19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia - Penalty.**

A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana or tetrahydrocannabinol, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

**19-03.4-05. Unlawful delivery of drug paraphernalia to a minor - Penalty.**

A person eighteen years of age or over may not deliver drug paraphernalia, in violation of this chapter, to a person under eighteen years of age who is at least three years the deliverer's junior. Any person violating this section is guilty of a class C felony.

**19-03.4-06. Unlawful advertisement of drug paraphernalia - Penalty.**

A person may not place an advertisement in any newspaper, magazine, handbill, or other publication if that person knows or should reasonably know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person violating this section is guilty of a class A misdemeanor.

**19-03.4-07. Prima facie proof of intent.**

Possession of more than twenty-four grams of a methamphetamine precursor drug or combination of methamphetamine precursor drugs calculated in terms of ephedrine HCl and pseudoephedrine HCl is prima facie evidence of intent to violate sections 19-03.4-03 and 19-03.4-04. This section does not apply to a practitioner as defined in section 19-03.1-01 or to a product possessed in the course of a legitimate and lawful business.

**19-03.4-08. Retail or over-the-counter sale of scheduled listed chemical products - Penalty.**

1. The retail sale of scheduled listed chemical products is limited to:
  - a. Sales in packages containing not more than a total of two and four-tenths grams of one or more scheduled listed chemical products, calculated in terms of ephedrine base, pseudoephedrine base, and phenylpropanolamine base; and
  - b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.
2. A person may not:
  - a. Deliver in a single over-the-counter sale more than two packages of a scheduled listed chemical product or a combination of scheduled listed chemical products; or
  - b. Without regard to the number of over-the-counter sales, deliver more than a daily amount of three and six-tenths grams of scheduled listed chemical products, calculated in terms of ephedrine base, pseudoephedrine base, and phenylpropanolamine base, to a purchaser.
3. When offering scheduled listed chemical products for sale, the person shall place the products behind a counter or other barrier, or in a locked cabinet, where purchasers do not have direct access to the products before the sale is made.
4.
  - a. When offering scheduled listed chemical products for retail sale, a person shall require, obtain, and make a written record of the identification of the person purchasing the scheduled listed chemical product, the identification being a document issued by a government agency as described in subdivisions a and b of subsection 6, and shall deliver the product directly into the custody of the purchaser.
  - b. The person shall maintain a written list of sales that identifies the product by name, the quantity sold, the names and addresses of the purchasers, the dates and times of the sales, a unique identification number relating to the electronic record submitted into the electronic recordkeeping system described in subsection 13, and a notice to a purchaser that the making of false statements or misrepresentations may subject the purchaser to federal and state criminal penalties. The purchaser shall sign the written list of sales and enter the purchaser's name, address, and the date and time of the sale. The person making the sale shall determine that the name entered by the purchaser corresponds with the name on the identification provided by the purchaser and that the date and time of the purchase is correct. The person making the sale shall enter the name of the product and the quantity sold on the list.
  - c. Before completing the transaction, the person making the sale shall submit all the information from the written record into the electronic recordkeeping system described in subsection 13.
  - d. The person shall maintain the record of identification required by this section for three years, after which the record must be destroyed. The person may not use or maintain the record for any private or commercial purpose or disclose the record to any person, except as required by law. The person shall disclose the record, upon request, to a law enforcement agency for a law enforcement purpose. A person who in good faith releases the information in the record of identification to federal, state, or local law enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.
5. A person may not deliver in an over-the-counter sale a scheduled listed chemical product to a person under the age of eighteen years.
6. It is a prima facie case of a violation of subsection 5 if the person making the sale did not require and obtain proof of age from the purchaser. "Proof of age" means a document issued by a governmental agency which:

- a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and
  - b. Includes a passport, military identification card, or driver's license.
7. It is an affirmative defense to a violation of subsection 5 if:
  - a. The person making the sale required and obtained proof of age from the purchaser;
  - b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;
  - c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and
  - d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.
8. This section does not apply to a product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.
9. A person may not:
  - a. Make a false statement or misrepresentation in the written list of sale that is prepared and maintained as required by subsection 4; or
  - b. Purchase more than nine grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in scheduled listed chemical products in a thirty-day period.
10. A person who willfully violates subsection 1 or 9 is guilty of a class A misdemeanor. A person who willfully violates subsection 2, 3, 4, or 5 is guilty of an infraction.
11. A person who is the owner, operator, or manager of the retail outlet or who is the supervisor of the employee or agent committing a violation of this section of the outlet where scheduled listed chemical products are available for sale is not subject to the penalties of this section if the person:
  - a. Did not have prior knowledge of, participate in, or direct the employee or agent to commit, the violation of this section; and
  - b. Certifies to the attorney general that the employee or agent, at the time of initial employment and each calendar year thereafter, participated in a training program approved by the attorney general providing the employee or agent with information regarding the state and federal regulations governing the sale, possession, and packaging of such products.

The approval of the training program by the attorney general is not subject to chapter 28-32.
12. A political subdivision, including a home rule city or county, may not enact any ordinance relating to the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing ordinance is void.
13.
  - a. The bureau of criminal investigation shall provide retailers of listed chemical products access to a real-time electronic recordkeeping system to enter into the record system any transaction required to be recorded by subsection 4.
  - b. The real-time electronic recordkeeping system must be maintained in a central repository as defined in subsection 1 of section 19-03.5-01, and must have the capability to calculate state and federal ephedrine base, pseudoephedrine base, and phenylpropanolamine base purchase limitations.
  - c. The electronic recordkeeping system must include a record of all the information in the written record, the unique identification number, and certification that a signature has been obtained.
  - d. The information entered into the electronic recordkeeping system is subject to subdivision d of subsection 4.
  - e. If feasible, the prescription drug monitoring system utilized under chapter 19-03.5 may be used as the electronic recordkeeping system. The bureau of criminal investigation may contract with a private vendor to implement this subsection. A

contractor shall comply with the confidentiality requirements of this chapter and is subject to sanctions for violation of confidentiality requirements, including termination of the contract.

- f. The bureau of criminal investigation may not charge a retailer a fee for the establishment of, maintenance of, or access to, the electronic recordkeeping system.