

S B

331

*Class A Misdemeanor
up to 5000
5 yr.*

5-1498B
Chenoweth
1/29/88

Original sponsor: Fischer

*Class C Felony
up to 50,000 &
5 yrs.*

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 331 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to drug paraphernalia; and providing
7 for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 11 is amended by adding a new chapter to read:

10 CHAPTER 74. DRUG PARAPHERNALIA.

11 Sec. 11.74.010. USE AND POSSESSION OF DRUG PARAPHERNALIA. A
12 person may not use, or possess with intent to use, drug paraphernalia
13 to plant, propagate, cultivate, grow, harvest, manufacture, compound,
14 convert, produce, process, prepare, test, analyze, pack, repack,
15 store, contain, conceal, inject, ingest, inhale, or otherwise intro-
16 duce into the human body a controlled substance in violation of
17 AS 11.71 or AS 17.30.

18 Sec. 11.74.020. MANUFACTURE AND DELIVERY OF DRUG PARAPHERNALIA.
19 A person may not deliver, possess with intent to deliver, or manufac-
20 ture with intent to deliver, drug paraphernalia, knowing, or under
21 circumstances where one reasonably should know, that it will be used
22 to plant, propagate, cultivate, grow, harvest, manufacture, compound,
23 convert, produce, process, prepare, test, analyze, pack, repack,
24 store, contain, conceal, inject, ingest, inhale, or otherwise intro-
25 duce into the human body a controlled substance in violation of
26 AS 11.71 or AS 17.30.

27 Sec. 11.74.030. ADVERTISEMENT OF DRUG PARAPHERNALIA. A person
28 may not place in a newspaper, magazine, handbill, or other publication
29 any advertisement, knowing, or under circumstances where one

1 reasonably should know, that the purpose of the advertisement, in
2 whole or in part, is to promote the sale of objects designed or in-
3 tended for use as drug paraphernalia.

4 Sec. 11.74.040. EVIDENCE CONSIDERED. In determining whether an
5 object is drug paraphernalia, a court or other authority shall consid-
6 er, in addition to all other logically relevant factors, the follow-
7 ing:

8 (1) statements by an owner or by a person in control of the
9 object concerning its use;

10 (2) prior convictions, if any, of an owner, or of a person
11 in control of the object, under state or federal law relating to a
12 controlled substance;

13 (3) the proximity of the object, in time and space, to a
14 direct violation of AS 11.71 or AS 17.30;

15 (4) the proximity of the object to a controlled substance;

16 (5) the existence of residue of a controlled substance on
17 the object;

18 (6) direct or circumstantial evidence of the intent of an
19 owner, or of a person in control of the object, to deliver it to a
20 person whom the owner or the person in control of the object knows, or
21 should reasonably know, intends to use the object to facilitate a
22 violation of AS 11.71 or AS 17.30; the innocence of an owner, or of a
23 person in control of the object, as to a direct violation of AS 11.71
24 or AS 17.30 does not prevent a finding that the object is intended for
25 use, or designed for use as drug paraphernalia;

26 (7) instructions, oral or written, provided with the object
27 concerning its use;

28 (8) descriptive materials accompanying the object that
29 explain or depict its use;

1 (9) national and local advertising concerning its use;

2 (10) the manner in which the object is displayed for sale;

3 (11) whether the owner, or the person having control of the
4 object, is a legitimate supplier of like or related items to the
5 community, such as a distributor or dealer of tobacco products;

6 (12) direct or circumstantial evidence of the ratio of sales
7 of the object to the total sales of the business enterprise;

8 (13) the existence and scope of legitimate uses for the
9 object in the community;

10 (14) expert testimony concerning its use.

11 Sec. 11.74.050. PENALTIES. (a) Except as provided in (b) of
12 this section, a person who violates this chapter is guilty of a class
13 A misdemeanor.

14 (b) A person 18 years of age or over who violates AS 11.74.020
15 by delivering drug paraphernalia to a person under 18 years of age who
16 is at least three years younger than the person delivering the drug
17 paraphernalia is guilty of a class C felony.

18 Sec. 11.74.060. FORFEITURES. (a) Drug paraphernalia may be
19 forfeited to the state either upon conviction of the defendant of a
20 violation of AS 11.74.010 - 11.74.020 or upon judgment of a court in a
21 separate civil proceeding in rem that an item of drug paraphernalia
22 was used in a violation of AS 11.74.010 - 11.74.020.

23 (b) It is not a defense in an in rem proceeding brought under
24 this section that a criminal proceeding is pending or has resulted in
25 a conviction or acquittal of a person of a violation of AS 11.74.010 -
26 11.74.020, or that a criminal proceeding has been dismissed, or that
27 the item of drug paraphernalia has not been forfeited in any criminal
28 proceeding, or that multiple actions are pending.

29 Sec. 11.74.070. SEIZURE OF DRUG PARAPHERNALIA. (a) Drug

1 paraphernalia subject to forfeiture under this section may be seized
2 by a peace officer upon an order issued by a court having jurisdiction
3 over the property upon a showing of probable cause that the parapher-
4 nalia is subject to forfeiture under AS 11.74.060(a).

5 (b) Seizure without a court order may be made if

6 (1) the seizure is incident to a valid arrest or search
7 under a valid search warrant;

8 (2) the paraphernalia subject to seizure has been the
9 subject of a prior judgment in favor of the state in a criminal pro-
10 ceeding or civil proceeding in rem based on a violation of AS 11.74.-
11 010 - 11.74.020; or

12 (3) there is probable cause that the paraphernalia was or
13 is being used in violation of AS 11.74.010 - 11.74.020 and the proper-
14 ty is easily movable; paraphernalia seized under this paragraph may
15 not be held for more than 48 hours or until an order continuing the
16 seizure may be applied for and issued by a court, whichever is
17 earlier.

18 Sec. 11.74.080. CUSTODY. Paraphernalia taken or detained under
19 AS 11.74.060(a) is in the custody of the Department of Public Safety
20 subject only to an order or decree of the court having jurisdiction
21 over the forfeiture proceedings. If property is seized under this
22 chapter, the Department of Public Safety may

23 (1) place the paraphernalia under seal;

24 (2) remove the paraphernalia to a place designated by the
25 court;

26 (3) take custody of the paraphernalia and remove it to an
27 appropriate location for disposition according to law.

28 (b) Within 10 days of a seizure under this section, the state
29 shall inventory the paraphernalia seized and its contents and appraise

1 the value of the items seized.

2 Sec. 11.74.090. DISPOSITION OF PARAPHERNALIA. Paraphernalia
3 forfeited under this section shall be disposed of according to court
4 order. The court may order the Department of Public Safety to

5 (1) destroy paraphernalia harmful to the public;

6 (2) take custody of the paraphernalia and use it in the
7 enforcement of this chapter, AS 11.71, or AS 17.30, or transfer it to
8 another agency of the state for a use designated by the court in
9 furtherance of the administration of justice;

10 (3) take custody of the paraphernalia and remove it for
11 disposition in accordance with law; or

12 (4) forward it to the United States Drug Enforcement Admin-
13 istration for disposition.

14 Sec. 11.74.100. DEFINITIONS. In this chapter

15 (1) "controlled substance" has the meaning given in AS 11.-
16 71.900;

17 (2) "drug paraphernalia" and "paraphernalia" mean equip-
18 ment, products, and materials of any kind that are used, designed for
19 use, or intended for use in planting, propagating, cultivating, grow-
20 ing, harvesting, manufacturing, compounding, converting, producing,
21 processing, preparing, testing, analyzing, packaging, repackaging,
22 storing, containing, concealing, injecting, ingesting, inhaling, or
23 otherwise introducing into the human body a controlled substance in
24 violation of AS 11.71 or AS 17.30; "drug paraphernalia" or "parapher-
25 nalia" includes, but is not limited to,

26 (A) kits used, designed for use, or intended for use
27 in planting, propagating, cultivating, growing or harvesting of
28 any species of plant that is a controlled substance or from which
29 a controlled substance can be derived;

1 (B) kits used, designed for use, or intended for use
2 in manufacturing, compounding, converting, producing, processing,
3 or preparing controlled substances;

4 (C) isomerization devices used, designed for use, or
5 intended for use in increasing the potency of a species of plant
6 that is a controlled substance;

7 (D) testing equipment used, designed for use, or
8 intended for use in identifying, or in analyzing the strength,
9 effectiveness, or purity of controlled substances;

10 (E) scales and balances used, designed for use, or
11 intended for use in weighing or measuring controlled substances;

12 (F) diluents and adulterants, such as quinine hydro-
13 chloride, mannitol, mannite, dextrose, and lactose, used, de-
14 signed for use, or intended for use in cutting controlled sub-
15 stances;

16 (G) blenders, bowls, containers, spoons, and mixing
17 devices used, designed for use, or intended for use in compound-
18 ing controlled substances;

19 (H) capsules, balloons, envelopes, and other contain-
20 ers used, designed for use, or intended for use in packaging
21 small quantities of controlled substances;

22 (I) containers and other objects used, designed for
23 use, or intended for use in storing or concealing controlled
24 substances;

25 (J) hypodermic syringes, needles, and other objects
26 used, designed for use, or intended for use in parenterally
27 injecting controlled substances into the human body;

28 (K) objects used, designed for use, or intended for
29 use in ingesting, inhaling, or otherwise introducing cocaine,

1 hashish, or hashish oil into the human body, such as

2 (i) metal, wooden, acrylic, glass, stone, plas-
3 tic, or ceramic pipes with or without screens, permanent
4 screens, hashish heads, or punctured metal bowls;

5 (ii) water pipes;

6 (iii) carburetion tubes and devices;

7 (iv) smoking and carburetion masks;

8 (v) miniature cocaine spoons and cocaine vials;

9 (vi) chamber pipes;

10 (vii) carburetor pipes;

11 (viii) electric pipes;

12 (ix) air-driven pipes;

13 (x) chillums;

14 (xi) bongs;

15 (xii) ice pipes or chillers.

16 * Sec. 2. AS 11.74.100(2), added by sec. 1 of this Act, is amended to
17 read:

18 (2) "drug paraphernalia" and "paraphernalia" mean equip-
19 ment, products, and materials of any kind that are used, designed for
20 use, or intended for use in planting, propagating, cultivating, grow-
21 ing, harvesting, manufacturing, compounding, converting, producing,
22 processing, preparing, testing, analyzing, packaging, repackaging,
23 storing, containing, concealing, injecting, ingesting, inhaling, or
24 otherwise introducing into the human body a controlled substance in
25 violation of AS 11.71 or AS 17.30; "drug paraphernalia" or "parapher-
26 nalia" includes, but is not limited to,

27 (A) kits used, designed for use, or intended for use
28 in planting, propagating, cultivating, growing or harvesting of
29 any species of plant that is a controlled substance or from which

1 a controlled substance can be derived;

2 (B) kits used, designed for use, or intended for use
3 in manufacturing, compounding, converting, producing, processing,
4 or preparing controlled substances;

5 (C) isomerization devices used, designed for use, or
6 intended for use in increasing the potency of a species of plant
7 that is a controlled substance;

8 (D) testing equipment used, designed for use, or
9 intended for use in identifying, or in analyzing the strength,
10 effectiveness, or purity of controlled substances;

11 (E) scales and balances used, designed for use, or
12 intended for use in weighing or measuring controlled substances;

13 (F) diluents and adulterants, such as quinine hydro-
14 chloride, mannitol, mannite, dextrose, and lactose, used, de-
15 signed for use, or intended for use in cutting controlled sub-
16 stances;

17 (G) blenders, bowls, containers, spoons, and mixing
18 devices used, designed for use, or intended for use in compound-
19 ing controlled substances;

20 (H) capsules, balloons, envelopes, and other contain-
21 ers used, designed for use, or intended for use in packaging
22 small quantities of controlled substances;

23 (I) containers and other objects used, designed for
24 use, or intended for use in storing or concealing controlled
25 substances;

26 (J) hypodermic syringes, needles, and other objects
27 used, designed for use, or intended for use in parenterally
28 injecting controlled substances into the human body;

29 (K) objects used, designed for use, or intended for

1 use in ingesting, inhaling, or otherwise introducing marijuana,
2 cocaine, hashish, or hashish oil into the human body, such as

3 (i) metal, wooden, acrylic, glass, stone, plas-
4 tic, or ceramic pipes with or without screens, permanent
5 screens, hashish heads, or punctured metal bowls;

6 (ii) water pipes;

7 (iii) carburetion tubes and devices;

8 (iv) smoking and carburetion masks;

9 (v) miniature cocaine spoons and cocaine vials;

10 (vi) chamber pipes;

11 (vii) carburetor pipes;

12 (viii) electric pipes;

13 (ix) air-driven pipes;

14 (x) chillums;

15 (xi) bongs;

16 (xii) ice pipes or chillers;

17 (xiii) roach clips and similar objects used to hold
18 burning material, such as a marijuana cigarette, that has
19 become too small or too short to be held in the hand;

20 (L) separation gins and sifters used, designed for
21 use, or intended for use in removing twigs and seeds from, or in
22 otherwise cleaning or refining, marijuana.

23 * Sec. 3. Section 2 of this Act takes effect on the later of

24 (1) the effective date of sec. 1 of this Act; or

25 (2) the effective date of an Act making the possession of any
26 amount of marijuana a crime.

2. Pg 3 - Penalties

3867.
5-1498A

Introduced: 1/11/88
Referred: Health, Education and Social Services and
Judiciary

Comprehensive intentionally
Section Analysis

1 IN THE SENATE

BY FISCHER

2 SENATE BILL NO. 331

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to drug paraphernalia."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 11 is amended by adding a new chapter to read:

9 CHAPTER 74. DRUG PARAPHERNALIA.

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11 person may not use, or possess with intent to use, drug paraphernalia
12 to plant, propagate, cultivate, grow, harvest, manufacture, compound,
13 convert, produce, process, prepare, test, analyze, pack, repack,
14 store, contain, conceal, inject, ingest, inhale, or otherwise intro-
15 duce into the human body a controlled substance in violation of
16 AS 11.71 or AS 17.30.

17 Sec. 11.74.020. MANUFACTURE AND DELIVERY OF DRUG PARAPHERNALIA.
18 A person may not deliver, possess with intent to deliver, or manufac-
19 ture with intent to deliver, drug paraphernalia, knowing, or under
20 circumstances where one reasonably should know, that it will be used
21 to plant, propagate, cultivate, grow, harvest, manufacture, compound,
22 convert, produce, process, prepare, test, analyze, pack, repack,
23 store, contain, conceal, inject, ingest, inhale, or otherwise intro-
24 duce into the human body a controlled substance in violation of
25 AS 11.71 or AS 17.30.

26 Sec. 11.74.030. ADVERTISEMENT OF DRUG PARAPHERNALIA. A person
27 may not place in a newspaper, magazine, handbill, or other publication
28 any advertisement, knowing, or under circumstances where one reason-
29 ably should know, that the purpose of the advertisement, in whole or
S

1 in part, is to promote the sale of objects designed or intended for
2 use as drug paraphernalia.

3 Sec. 11.74.040. EVIDENCE CONSIDERED. In determining whether an
4 object is drug paraphernalia, a court or other authority shall consid-
5 er, in addition to all other logically relevant factors, the follow-
6 ing:

7 (1) statements by an owner or by a person in control of the
8 object concerning its use;

9 (2) prior convictions, if any, of an owner, or of a person
10 in control of the object, under state or federal law relating to a
11 controlled substance;

12 (3) the proximity of the object, in time and space, to a
13 direct violation of AS 11.71 or AS 17.30;

14 (4) the proximity of the object to a controlled substance;

15 (5) the existence of residue of a controlled substance on
16 the object;

17 (6) direct or circumstantial evidence of the intent of an
18 owner, or of a person in control of the object, to deliver it to a
19 person whom the owner or the person in control of the object knows, or
20 should reasonably know, intends to use the object to facilitate a
21 violation of AS 11.71 or AS 17.30; the innocence of an owner, or of a
22 person in control of the object, as to a direct violation of AS 11.71
23 or AS 17.30 does not prevent a finding that the object is intended for
24 use, or designed for use as drug paraphernalia;

25 (7) instructions, oral or written, provided with the object
26 concerning its use;

27 (8) descriptive materials accompanying the object that
28 explain or depict its use;

29 (9) national and local advertising concerning its use;

1 (10) the manner in which the object is displayed for sale;

2 (11) whether the owner, or the person having control of the
3 object, is a legitimate supplier of like or related items to the
4 community, such as a distributor or dealer of tobacco products;

5 (12) direct or circumstantial evidence of the ratio of sales
6 of the object to the total sales of the business enterprise;

7 (13) the existence and scope of legitimate uses for the
8 object in the community;

9 (14) expert testimony concerning its use.

10 Sec. 11.74.050. PENALTIES. (a) Except as provided in (b) of
11 this section, a person who violates this chapter is guilty of a class
12 A misdemeanor. *up to 5000 + 1 yr*

13 (b) A person 18 years of age or over who violates AS 11.74.020
14 by delivering drug paraphernalia to a person under 19¹⁸ years of age who
15 is at least three years younger than the person delivering the drug
16 paraphernalia is guilty of a class C felony. *up to 10,000 + 5 yrs*

17 Sec. 11.74.060. FORFEITURES. (a) Drug paraphernalia may be
18 forfeited to the state either upon conviction of the defendant of a
19 violation of AS 11.74.010 - 11.74.020 or upon judgment of a court in a
20 separate civil proceeding in rem that an item of drug paraphernalia
21 was used in a violation of AS 11.74.010 - 11.74.020.

22 (b) It is not a defense in an in rem proceeding brought under
23 this section that a criminal proceeding is pending or has resulted in
24 a conviction or acquittal of a person of a violation of AS 11.74.010 -
25 11.74.020, or that a criminal proceeding has been dismissed, or that
26 the item of drug paraphernalia has not been forfeited in any criminal
27 proceeding, or that multiple actions are pending.

28 Sec. 11.74.070. SEIZURE OF DRUG PARAPHERNALIA. (a) Drug para-
29 phernalia subject to forfeiture under this section may be seized by a

1 peace officer upon an order issued by a court having jurisdiction over
2 the property upon a showing of probable cause that the paraphernalia
3 is subject to forfeiture under AS 11.74.060(a).

4 (b) Seizure without a court order may be made if

5 (1) the seizure is incident to a valid arrest or search
6 under a valid search warrant;

7 (2) the paraphernalia subject to seizure has been the
8 subject of a prior judgment in favor of the state in a criminal pro-
9 ceeding or civil proceeding in rem based on a violation of AS 11.74.-
10 010 - 11.74.020; or

11 (3) there is probable cause that the paraphernalia was or
12 is being used in violation of AS 11.74.010 - 11.74.020 and the proper-
13 ty is easily movable; paraphernalia seized under this paragraph may
14 not be held for more than 48 hours or until an order continuing the
15 seizure may be applied for and issued by a court, whichever is
16 earlier.

17 **Sec. 11.74.080. CUSTODY.** Paraphernalia taken or detained under
18 AS 11.74.060(a) is in the custody of the Department of Public Safety
19 subject only to an order or decree of the court having jurisdiction
20 over the forfeiture proceedings. If property is seized under this
21 chapter, the Department of Public Safety may

22 (1) place the paraphernalia under seal;

23 (2) remove the paraphernalia to a place designated by the
24 court;

25 (3) take custody of the paraphernalia and remove it to an
26 appropriate location for disposition according to law.

27 (b) Within 10 days of a seizure under this section, the state
28 shall inventory the paraphernalia seized and its contents and appraise
29 the value of the items seized.

1 Sec. 11.74.090. DISPOSITION OF PARAPHERNALIA. Paraphernalia
2 forfeited under this section shall be disposed of according to court
3 order. The court may order the Department of Public Safety to

4 (1) destroy paraphernalia harmful to the public;

5 (2) take custody of the paraphernalia and use it in the
6 enforcement of this chapter, AS 11.71, or AS 17.30, or transfer it to
7 another agency of the state for a use designated by the court in
8 furtherance of the administration of justice;

9 (3) take custody of the paraphernalia and remove it for
10 disposition in accordance with law; or

11 (4) forward it to the United States Drug Enforcement Admin-
12 istration for disposition. *(Use to demonstrate in Ed.)*

13 Sec. 11.74.100. DEFINITIONS. In this chapter

14 (1) "controlled substance" has the meaning given in AS 11.-
15 71.900;

16 (2) "drug paraphernalia" and "paraphernalia" mean equip-
17 ment, products, and materials of any kind that are used or intended
18 for use in planting, propagating, cultivating, growing, harvesting,
19 manufacturing, compounding, converting, producing, processing, prepar-
20 ing, testing, analyzing, packaging, repackaging, storing, containing,
21 concealing, injecting, ingesting, inhaling, or otherwise introducing
22 into the human body a controlled substance in violation of AS 11.71 or
23 AS 17.30; "drug paraphernalia" or "paraphernalia" includes, *but not*
24 *limited to* (A) kits used, *use, intended or designed* *(all)* designed for use, or intended for use

25 in planting, propagating, cultivating, growing or harvesting of
26 any species of plant that is a controlled substance or from which
27 a controlled substance can be derived;

28 (B) kits used, designed for use, or intended for use
29 in manufacturing, compounding, converting, producing, processing,

1 or preparing controlled substances;

2 (C) isomerization devices used, designed for use, or
3 intended for use in increasing the potency of a species of plant
4 that is a controlled substance;

5 (D) testing equipment used, designed for use, or
6 intended for use in identifying, or in analyzing the strength,
7 effectiveness, or purity of controlled substances;

8 (E) scales and balances used, designed for use, or
9 intended for use in weighing or measuring controlled substances;

10 (F) diluents and adulterants, such as quinine hydro-
11 chloride, mannitol, mannite, dextrose, and lactose, used, de-
12 signed for use, or intended for use in cutting controlled sub-
13 stances;

14 (G) separation gins and sifters used, designed for
15 use, or intended for use in removing twigs and seeds from, or in
16 otherwise cleaning or refining, marijuana;

17 (H) blenders, bowls, containers, spoons, and mixing
18 devices used, designed for use, or intended for use in compound-
19 ing controlled substances;

20 (I) capsules, balloons, envelopes, and other contain-
21 ers used, designed for use, or intended for use in packaging
22 small quantities of controlled substances;

23 (J) containers and other objects used, designed for
24 use, or intended for use in storing or concealing controlled
25 substances;

26 (K) hypodermic syringes, needles, and other objects
27 used, designed for use, or intended for use in parenterally
28 injecting controlled substances into the human body;

29 (L) objects used, designed for use, or intended for

1 use in ingesting, inhaling, or otherwise introducing marijuana,
2 cocaine, hashish, or hashish oil into the human body, such as

3 (i) metal, wooden, acrylic, glass, stone, plas-
4 tic, or ceramic pipes with or without screens, permanent
5 screens, hashish heads, or punctured metal bowls;

6 (ii) water pipes;

7 (iii) carburation tubes and devices;

8 (iv) smoking and carburation masks;

9 (v) roach clips, meaning objects used to hold
10 burning material, such as a marijuana cigarette, that has
11 become too small or too short to be held in the hand;

12 (vi) miniature cocaine spoons and cocaine vials;

13 (vii) chamber pipes;

14 (viii) carburetor pipes;

15 (ix) electric pipes;

16 (x) air-driven pipes;

17 (xi) chillums;

18 (xii) bongs;

19 (xiii) ice pipes or chillers.
20

21
22 Effective date.

23 → should Marij be outlawed.

24
25
26 Sup. Ct. overturn
27
28
29

FISCAL NOTE

REQUEST

Revision Date: _____
Title: An Act relating to drug paraphernalia

Agency Affected: Public Safety
BRU: Alaska State Troopers

Sponsor: Sen. Fischer
Requestor: _____

Components: Criminal Investigations Bureau

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No increased enforcement level is anticipated to result from passage of this legislation.

Prepared by: Francis C. Allan
Division: Alaska State Troopers

Phone: 269-5691
Date: 1/26/88

Approved by Commissioner: Arthur E. English *Copden for*
Agency: Public Safety

Date: 1/26/88

Distribution: (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

YOU CAN GROW IT!



Indoor Gardening Made Easy. With URBAN PLANTATION's™ Innovative new packaging in hydroponics or soil, you'll be a successful CLOSET FARMER.™ With one toll free phone call you'll have everything you need to grow for a full year. Hydro Willie has packaged a superbly designed hi-tech growing system. Your choice of the 175w Metal Halide (15,000 lumens), or 150w High Pressure Sodium (16,000 lumens) comes with a 15" reflector and an 3' power cord. In addition there is the standard 160w Full Spectrum side lighting, on wheels and easily moveable. The CLOSET FARMER is discreetly enclosed in a stylish oak finished cabinet that will enhance your home. Inside you'll find an amazing 27 cu. ft. of energy efficient growing space, designed to produce results that will rival mother nature. With 15 minutes weekly maintenance you can get 100% results within 3 months from seed.

CLOSET FARMER™ kit includes:

- Cabinet—63" x 33" x 23"
- Mylar Reflection & Light Sealing
- Light Fixtures & Spectra Lights (spectrum of sunlight)
- 24 hr. Timer, Thermostat & Exhaust Fan
- Pots & Drain Pans
- Assembly & Growing Instructions
- One year Supply of Nutrients
- All Necessary Hardware & Cords

The CLOSET FARMER™ System II—\$449.00

The Deluxe CLOSET FARMER. System II with CO₂ enrichment & 4 hydro modulars —\$745.00 (electricity costs average \$5.00/\$6.00 per month)

The original CLOSET FARMER System I™ with 240w Spectra light is still available —\$399.00

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

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HAWAIIAN STING

continued from page 20

developers and businessmen with interests in the tourist trade have pushed local politicians to clear the potential tourist zone on the west coast of "hippie weirdos" who smoke and grow pot. (Prior to last summer's raids, and the recent sting, Hilo mayor Dante Carpenter had been noted for his low key policy toward enforcement of marijuana laws.)

Pot: Big Business for Hawaii

Acknowledged for years as a principal underground business in the economically depressed islands, the marijuana trade has long operated in an atmosphere of tolerant symbiosis between pot businessmen and local law enforcement. With an economy dependent on the tourist trade, and with a high unemployment rate, Hawaiians turned to marijuana as a major business over the last two decades: NORML's 1986 marijuana crop report estimates the value of the Hawaii crop at 1 billion, 722 million dollars. Some sources claim that as many as 30,000 Hawaiians are engaged in marijuana growing. Law enforcement officials offer lower though less precise figures, but admit that a substantial number of citizens are involved in growing and/or selling pot.

Citizens Protest

In a grass-roots reaction to these developments, a citizens' group has been formed to lobby for reform in the marijuana laws. At a press conference held in Hilo in mid-May, the Marijuana Issue Political Action Committee announced its purpose as that of an educational and political lobby. "The many potgrowers and smokers on this island will no longer passively tolerate government intervention or harassment," said MIPAC spokesman Ron Olson. "We are going to educate and agitate for reform along the lines of the Oregon Marijuana Initiative." At press time, a rally was planned for the Hilo Tennis Stadium in July, featuring local political figures, panel discussions, a chile and rice "pig-out" eating contest, and rock music. MIPAC claims that local politicians, aware of the economic necessities that encourage Hawaiians to become involved in the marijuana business, are susceptible to more enlightened attitudes toward law enforcement than those evident recently. For more information, contact MIPAC, 688 Kinole St., Suite 104B, Hilo, Hawaii (808) 935-0804.

Once again, the "War on Drugs" seems to have brought to a crisis point the many legal, economic, and political issues which swirl around the current marijuana policies.

Caveat

And remember, any sane grow store will NEVER discuss marijuana cultivation with its customers. They're under too much heat, trying to operate legitimately in public. Any grow store that does inquire about pot growing has to be viewed with extreme prejudice. If this sting has worked once, they're bound to try it again. ●



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John Sajo (right) of OMI receives an award from NORML National Director Jon Gettman.



Tom Alexander, publisher of SINSEMILLA TIPS, and John Howell, editor of HIGH TIMES.



HIGH TIMES Advertising Manager Sandy Rosen in front of her booth at the convention.



The final treat for conference attendees was a banquet at a North African restaurant, capped by an exotic belly dance.

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POSITION PAPER
ON
SENATE BILL NO. 331

"An Act relating to drug paraphernalia; and providing for an effective date."

CS SB 331 provides for legal penalties for an individual who is found guilty of manufacturing, delivering or advertising for the sale of drug paraphernalia.

The Department of Health and Social Services is supportive of the intent of this legislation. The Department, through the State Office of Alcoholism and Drug Abuse, discourages the use of drugs of all kinds and promotes this position through its support of community education and treatment of individuals who use drugs. This bill complements these efforts by restricting the availability to the public of drug paraphernalia associated with drug use.

Problems related to alcohol and drug abuse have frequently been discussed during recent meetings of the Governor's Interim Commission on Children and Youth and the Senate Special Committee on Suicide Prevention. Specific strategies recommended to impact these problems included increasing the availability of youth outpatient counseling and additional school curriculum programs.

While supportive of CS for SB 331, the DHSS defers examination of the enforcement provisions of this bill to the Departments of Public Safety and Law.

Myra M. Munson

Myra M. Munson
Commissioner

2-17-88

George M. Mardock

For Matthew C. Felix
Coordinator

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: Senate Bill 331
Publish Date: _____

Revision Date: _____

Agency Affected: Health & Social Services

Title: "An Act relating to drug paraphernalia and providing for an effective date."

BRU: Alcoholism & Drug Abuse

Sponsor: Fischer

Components: N/A

Requestor: N/A

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Matthew Felix by George Mundell
Division: Alcoholism and Drug Abuse

Phone: 586-6201
Date: 2/17/88

Approved by Commissioner: *Myka Le Munson*
Agency: *George Mundell*

Date: 2-17-88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

message from Linda Adams:

By 1980, 8 Fed District
Courts had upheld
model drug paraphernalia
laws.

Maryland, Delaware and
New Jersey have had law
challenged and upheld.

Harry Myers, Drug Enforcement
Agency in D.C. is original
drafter of model law. gave
following info to Ms. Adams.

In 1986, a comprehensive
study of all states having
passed model law was
authorized by National
Institute of Justice in
D.C. Publication is
called "State + Local
Experience with Drug

"Paraphernalia Laws"
by ABT Associates of
Cambridge, Mass.
about 200 pages.

Call Virginia Baldaw to
obtain copy @
(202) 724-2942.

Mr. Myers highly recommends
publication for states

WHILE YOU WERE AWAY

FOR	Senator	DATE	2/18/88	TIME	11:00	A.M. P.M.
M	Linda Adams					
OF	Ketchikan					<input checked="" type="checkbox"/> TELEPHONED
PHONE	X	(800) 478-2273				<input type="checkbox"/> RETURNED YOUR CALL
MESSAGE	re: drug Paraphernalia laws					<input type="checkbox"/> PLEASE CALL
						<input type="checkbox"/> WILL CALL AGAIN
						<input type="checkbox"/> CAME TO SEE YOU
						<input type="checkbox"/> WANTS TO SEE YOU
SIGNED						TOPS FORM 4002

MODEL DRUG PARAPHERNALIA ACT
Drafted by the
Drug Enforcement Administration
of the
United States Department of Justice
August, 1979
With
Prefatory Note and Comments

MODEL DRUG PARAPHERNALIA ACT
Prefatory Note

The Uniform Controlled Substances Act, drafted by the National Conference of Commissioners on Uniform State Laws, has been enacted by all but a handful of states. The Uniform Act does not control the manufacture, advertisement, sale or use of so-called "Drug Paraphernalia." Other state laws aimed at controlling Drug Paraphernalia are often too vaguely worded and too limited in coverage to withstand constitutional attack or to be very effective. As a result, the availability of Drug Paraphernalia has reached epidemic levels. An entire industry has developed which promotes, even glamorizes, the illegal use of drugs by adults and children alike. Sales of Drug Paraphernalia are reported as high as three billion dollars a year. What was a small phenomenon at the time the Uniform Act was drafted has now mushroomed into an industry so well-entrenched that it has its own trade magazines and associations.

This Model Act was drafted, at the request of state authorities, to enable states and local jurisdictions to cope with the paraphernalia problem. The Act takes the form of suggested amendments to the Uniform Controlled Substances Act. The Uniform Act is extremely well-organized. It

contains a definitional section, an offenses and penalties section, a civil forfeiture section, as well as miscellaneous sections on administration and enforcement. Instead of creating separate, independent paraphernalia laws, it seems desirable to control Drug Paraphernalia by amending existing sections of the Uniform Controlled Substances Act.

Article I provides a comprehensive definition of the term "Drug Paraphernalia" and includes particular descriptions of the most common forms of paraphernalia. Article I also outlines the more relevant factors a court or other authority should consider in determining whether an object comes within the definition.

Article II sets out four criminal offenses intended to prohibit the manufacture, advertisement, delivery or use of Drug Paraphernalia. The delivery of paraphernalia to a minor is made a special offense. Article II clearly defines what conduct is prohibited, and it specifies what criminal state of mind must accompany such conduct.

Article III provides for the civil seizure and forfeiture of Drug Paraphernalia. Civil forfeiture can be an effective deterrent, particularly to commercial suppliers whose capital is invested in inventory. Civil forfeiture can also be utilized in circumstances where criminal penalties seem unjustified.

ARTICLE I (Definitions)

SECTION (insert designation of definitional section) of the Controlled Substances Act of this State is amended by adding the following after paragraph (insert designation of last definition in section):

"() The term 'Drug Paraphernalia' means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing,

compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act (meaning the Controlled Substances Act of this State). It includes, but is not limited to:

(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, such as quinine hydrochloride, mannitol, mannite, 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 and mixing devices used, intended for use, or designed for use in compounding 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;

(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 marihuana, cocaine, hashish, or hashish oil into the human body, such as:

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

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips: meaning objects used to hold burning material, such as a marihuana 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;

"In determining whether an object is Drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(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 this Act;

(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 anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this Act shall not prevent a finding that the object is intended for use, or designed for use as Drug paraphernalia;

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

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

(9) National and local advertising concerning its 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, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) 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 its use."

ARTICLE II

(Offenses and Penalties)

SECTION (designation of offenses and penalties section) of the Controlled Substances Act of this State is amended by adding the following after (designation of last substantive offense):

"SECTION (A) (Possession of Drug Paraphernalia)

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, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than (), fined not more than (), or both."

SECTION (B) (Manufacture or Delivery of Drug Paraphernalia)

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

be imprisoned for not more than (), fined not more than (), or both."

"SECTION (C) (Delivery of Drug Paraphernalia to a Minor)

Any person 18 years of age or over who violates Section (B) by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a special offense and upon conviction may be imprisoned for not more than (), fined not more than (), or both."

"SECTION (D) (Advertisement of Drug Paraphernalia)

It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than (), fined not more than (), or both."

ARTICLE III

(Civil Forfeiture)

SECTION (insert designation of civil forfeiture section) of the Controlled Substances Act of this State is amended to provide for the civil seizure and forfeiture of drug paraphernalia by adding the following after paragraph (insert designation of last category of forfeitable property):

"() all drug paraphernalia as defined by Section () of this Act."

ARTICLE IV

(Severability)

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity

does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

COMMENT [ARTICLE I]

Drug paraphernalia laws are most often attacked because they are too vaguely worded. They seldom explain what is meant by the term paraphernalia. They do not indicate whether it is the use, or the possession, or the sale of paraphernalia that is prohibited. Moreover, they are usually silent on the criminal state of mind that must accompany the prohibited conduct. This deprives an individual of fair warning as to what the law forbids. It also vests too much discretion in authorities to determine what property and what activities are controlled.

DEFINITION OF DRUG PARAPHERNALIA

Article I of the Model Act, in contrast, defines "drug paraphernalia" as equipment, products, and materials used, intended for use, or designed for use, essentially, to produce, package, store, test or use illicit drugs. The words "equipment, products and materials" should be interpreted according to their ordinary or dictionary meanings. They can apply to many forms of movable, tangible property. Real property, conveyances, monies, documents and intangible property are, on the other hand, not meant to be included within these terms.

Although this definition may appear too general in its wording, or too broad in its scope, there are so many forms of drug paraphernalia that any attempt to define the term in more specific language would guarantee major loopholes in the Act's coverage. The courts have repeatedly recognized that there are practical limitations in drafting legislation. Where the subject matter of a statute does not lend itself to exact description, the use of general language does not make the statute unconstitutionally vague. *United States v. Petrillo*, 332 U.S. 1, 67 S. Ct. 1538 (1947).

And see *United States v. Ryan*, 284 U.S. 52 S. Ct. 65 (1931).

To insure that innocently possessed objects are not classified as drug paraphernalia, Article I makes the knowledge or criminal intent of the person in control of an object a key element of the definition. Needless to say, inanimate objects are neither "good" nor "bad," neither "lawful" nor "unlawful." Inanimate objects do not commit crimes. But, when an object is controlled by people who use it illegally, or who intend to use it illegally, or who design or adapt it for illegal use, the object can be subject to control and the people subjected to prosecution. Article I requires, therefore, that an object be used, intended for use, or designed for use in connection with illicit drugs before it can be controlled as drug paraphernalia.

Hinging the definition of drug paraphernalia on a specific intent to violate, or to facilitate a violation of, the drug laws also provides "fair warning" to persons in possession of property potentially subject to this Act. A statute is not unconstitutionally vague, if it embodies a specific intent to violate the law. *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 72 S. Ct. 329 (1952); *Screws v. United States*, 325 U.S. 91, 65 S. Ct. 1031 (1945).

Consider the application of Article I to a spoon, a hypodermic syringe, and a length of surgical tubing. Each object has legitimate uses in the community. None is specifically designed for illegal use. Thus, when these objects are manufactured, delivered and possessed in lawful commerce, they are not considered paraphernalia. But, if these same objects are assembled and used by an addict to illegally melt heroin and inject it into his body, they become drug paraphernalia. As such they become forfeitable under Article III, and the addict becomes subject to prosecution under Section A of Article II.

Actual use of an object to produce, package, store, test or use illicit drugs need not always be shown. An object is considered to be drug paraphernalia whenever the person

in control intends it for use with illicit drugs. This intent may be a generalized one, not necessarily pinpointing a specific time and place of future use. See *Palmer v. State*, 14 Md. App. 159, 286 A.2d 572 (1972). It can be proved directly such as by admissions of the person in control, or indirectly through circumstantial evidence. It should be noted that the person in immediate control of an object need not intend to use it personally in connection with drugs. It is enough if he holds the object with the intent to make it available to persons whom he knows will use it illegally. See *United States v. 2265 One-Gallon Paraffined Tin Cans*, 260 F.2d 105 (5th Cir. 1958).

Objects whose sole, or at least dominant purpose is to produce, package, store, test or use illicit drugs are considered to be "designed" for such use. A rebuttable presumption exists that these objects are intended for use for the purpose for which they are designed. See *Israel v. United States*, 63 F.2d 345 (3rd Cir. 1933). As such, they are presumed to be drug paraphernalia. Isomerization devices designed for use in increasing the THC content of marijuana provide a good example.

COMMON FORMS OF DRUG PARAPHERNALIA

Article I includes a detailed description of common forms of property that can fall within the definition of drug paraphernalia if used, intended for use, or designed for use to violate the drug laws. This list is not intended to be inclusive. Several of these descriptions, such as "chillums" and "bongs," may seem foreign to the lay reader. Nevertheless, these terms are part of the jargon of the drug culture and are understood by both users and merchants of drug paraphernalia. They are not unconstitutionally vague. See *Hydgrade Provision Co. v. Sherman*, 266 U.S. 497, 45 S. Ct. 141 (1925).

RELEVANT FACTORS IN CLASSIFYING PARAPHERNALIA

In addition to defining drug paraphernalia and describing the common forms, Article I sets out some of the more relevant factors to consider in determining whether an

object is paraphernalia. The listing of these factors in the Model Act is not intended to be peremptory; a court or other authority is not obligated to hear evidence on, or to consider, every listed factor. Rather, the factors have been included to guide law enforcement officers, judges, and juries in their determination of what is controlled. Providing guidance on the practical application of the Act minimizes the risk of arbitrary and discriminatory enforcement, sometimes associated with even the most carefully drafted statutes. See *Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676, 88 S. Ct. 1298 (1968).

Conversely, the listing of these factors is not meant to be inclusive. Any logically relevant factor may be considered.

COMMENT [ARTICLE II]

POSSESSION OF DRUG PARAPHERNALIA

Section A makes it a crime to: (i) possess an object; (ii) classifiable as drug paraphernalia; (iii) with the intent to use that object, essentially, to produce, package, store, test or use illicit drugs in violation of the Controlled Substances Act of the State. Section A does not make the mere possession of an object capable of use as drug paraphernalia a crime. Section A does not make the mere intent to violate the drug laws a crime. It is the possession of drug paraphernalia accompanied by an intent to use it to violate the drug laws that Section A forbids. Innocent citizens have nothing to fear from Section A.

It must be noted here that the activities of storing, testing and using illicit drugs are not in themselves violations of either the Uniform Controlled Substances Act or the federal Controlled Substances Act. But each activity necessarily includes the possession of illicit drugs, which is a violation of both laws.

MANUFACTURE OR DELIVERY OF DRUG PARAPHERNALIA

Suppliers who furnish goods or services knowing they will be used to facilitate a crime are not immune from liability. There are no legal obstacles to punishing sup-

pliers who knowingly or recklessly aid their customers to commit crimes. This is true whether the objects or services are restricted, or peculiarly suited for illegal use, such as a still, a gun, morphine or stolen goods. See *Direct Sales Company v. United States*, 319 U.S. 703, 63 S. Ct. 1265 (1943); *Bachun v. United States*, 112 F.2d 635 (4th Cir. 1940); *Israel v. United States*, 63 F.2d 345 (3rd Cir. 1933); *Weinstein v. United States*, 293 F. 388 (1 Cir. 1923); and *Commonwealth v. Stout*, 356 Mass. 237, 249 N.E.2d 12 (1969).

It is also true when the objects or services have widespread legitimate uses in the community, such as sugar, rye, yeast, grapejuice, rubbing alcohol or a telephone answering service. See *United States v. Ragland*, 306 F.2d 732 (4th Cir. 1962); *Chapman v. United States*, 271 F.2d 593 (5th Cir. 1959); *United Cigar Whelan Stores Corp. v. United States*, 113 F.2d 340 (9th Cir. 1940); *Vukich v. United States*, 28 F.2d 666 (9th Cir. 1928); *United States v. Burnett*, 53 F.2d 219 (W.D. Mo. 1931); and *People v. Lauria*, 251 Cal. App.2d. 471 (1967).

The reasonableness of this rule is clearly expressed in *Bachun v. United States*:

"To say that the sale of goods is a normally lawful transaction is beside the point. The seller may not ignore the purpose for which the purchase is made if he is advised of that purpose, or wash his hands of the aid that he has given the perpetrator of a felony by the plea that he has merely made a sale of merchandise. One who sells a gun to another knowing that he is buying it to commit a murder, would hardly escape conviction as an accessory to the murder by showing that he received full price for the gun; and no difference in principle can be drawn between such a case and any other case of a seller who knows that the purchaser intends to use the goods which he is purchasing in the commission of a felony. In any such case, not only does the act of the seller assist in the commission of the felony, but his will assents to its commission, since he could refuse to give the assist-

ance by refusing to make the sale" 112 F.2d 635 (4th Cir. (1940)).

There are courts which have hesitated to hold a supplier guilty of conspiracy with, or of aiding and abetting a buyer. See *United States v. Falcone*, 311 U.S. 205, 61 S. Ct. 204 (1940); and *United States v. Peoni*, 100 F.2d 401 (2 Cir. 1938). A careful reading of these decisions makes clear that they were based upon the court's unwillingness to hold a supplier *equally* responsible with a buyer based simply upon the supplier's knowledge that the buyer intended to commit a crime. At common law, the punishment is the same for the co-conspirator and the aider and abetter as it is for the actual perpetrator. Nothing in these cases suggests, however, that a supplier enjoys complete immunity from punishment, or that a state cannot make the conduct of the supplier a separate offense. See Note, *Falcone Revisited: The Criminality of Sales to an Illegal Enterprise*, 53 Columbia Law Rev. 228 (1953).

Section B makes it a crime to: (i) deliver, possess with intent to deliver, or manufacture with intent to deliver an object; (ii) classifiable as drug paraphernalia, (iii) knowing, or under circumstances where one reasonably should know, that it will be used, essentially, to produce, package, store, test or use illicit drugs in violation of the Controlled Substances Act of the State. The term "deliver" has the same basic meaning attributed to it by the Uniform Controlled Substances Act; namely, the actual, constructive, or attempted transfer from one person to another, whether or not there is an agency relationship. The term "manufacture," appearing in the phrase "manufacture with intent to deliver," is used in a general sense to express the entire process by which an object is made ready for sale in open commerce, including designing, fabricating, assembling, packaging and labeling. See *Danovitz v. United States*, 281 U.S. 389, 50 S. Ct. 344 (1930).

The knowledge requirement of Section B is satisfied when a supplier: (i) has actual knowledge an object will be

used as drug paraphernalia; (ii) is aware of a high probability an object will be used as drug paraphernalia; or (iii) is aware of facts and circumstances from which he should reasonably conclude there is a high probability an object will be used as drug paraphernalia. Section B requires a supplier of potential paraphernalia to exercise a reasonable amount of care. He need not undertake an investigation into the intentions of every buyer, but he is not free to ignore the circumstances of a transaction. Suppliers of objects capable of use as paraphernalia may not deliver them indiscriminately. Since each element of Section B must be proven beyond a reasonable doubt, legitimate, prudent suppliers will not be affected by this section.

ADVERTISEMENT OF DRUG PARAPHERNALIA

Section D makes it a crime to: (i) advertise an object; (ii) classifiable as drug paraphernalia; (iii) knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement is to promote the sale of the object for use, essentially, to produce, package, store, test or use illicit drugs.

Only printed advertisements promoting the sale of objects for use as paraphernalia are prohibited. The non-printed media, including radio and television, is not affected. Printed matter criticising the drug laws, glorifying the drug culture, glamorizing the use of drugs, or providing information or instructions on illicit drugs is not affected. The target of this Section is commercial advertising.

Unlike so-called "printer's ink" statutes, which exempt printers and publishers from their coverage, Section D contains no exemptions. It applies to anyone who prints or publishes paraphernalia advertisements, and to anyone who causes these advertisements to be printed or published. For this reason, it uses the general terms "any person" and "to place."

The knowledge requirement of Section B is satisfied when the person placing the advertisement (i) has actual knowledge it is promoting the sale of objects for use as drug paraphernalia; (ii) is aware of a high probability it is promoting the sale of objects for use as drug paraphernalia; or (iii) is aware of facts and circumstances from which he should reasonably conclude there is a high probability the advertisement is promoting the sale of objects for use as drug paraphernalia. Whether an advertisement promotes the sale of objects for use as paraphernalia is to be determined from its content. Under Section D, one need not look beyond the face of the advertisement.

Section D does not compromise First Amendment rights. The sale of objects for use as drug paraphernalia is made illegal by Section B, and Section D simply prohibits advertisements promoting these sales. Commercial solicitation of illegal activities is not protected speech. *Pittsburgh Press Co. v. Pittsburgh Commission on Human Rights*, 413 U.S. 376, 93 S. Ct. 2553 (1973); and see *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 96 S. Ct. 1817 (1976).

COMMENT [ARTICLE III]

Civil forfeiture actions are directed against property and are totally independent of any criminal proceedings against individuals. Section 505 of the Uniform Controlled Substances Act provides for the seizure and civil forfeiture of: (1) illicit drugs; (2) equipment and materials used to make, deliver, import or export illicit drugs; (3) containers used to store illicit drugs; (4) conveyances involved in transporting illicit drugs; and (5) books, records and research connected with illicit drugs. States that have adopted Section 505 can seize these objects without making any compensation to the owners. The legality of civil forfeiture statutes, similar to 505, and their usefulness in helping deter crime, have been repeatedly recognized by virtually every state and federal court, including

the Supreme Court of the United States. *Calero-Torres v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 94 S. Ct. 2080 (1974).

Article III extends the civil forfeiture section of the Uniform Act to include drug paraphernalia. This allows states to keep and destroy drug paraphernalia, rather than returning it after criminal proceedings have ended. It also allows states to keep drug paraphernalia seized during an investigation, in cases where criminal proceedings are not initiated. Finally, since the standard of proof in a civil forfeiture action is simply "probable cause," or "reasonable cause," rather than "proof beyond a reasonable doubt," Article III permits states to seize and forfeit drug paraphernalia in circumstances where an arrest might not seem justified. For example, an officer who encounters a minor in possession of a hypodermic syringe, or in possession of a bong (a device especially designed for smoking marijuana), has reasonable cause to believe these objects are intended for use to introduce illicit drugs into the human body. Subjecting drug paraphernalia to civil forfeiture permits the officer to seize these objects, though he decides not to arrest the minor.

Civil forfeiture can also be an effective deterrent to commercial suppliers. See *Utley Wholesale Company v. United States*, 308 F.2d 157 (5th Cir. 1962); *United States v. 2265 One-Gallon Paraffined Tin Cans*, 260 F.2d 105 (5th Cir. 1958); *United States v. 1,922 Assorted Firearms, Etc.*, 330 F. Supp. 635 (ED Mo. 1971); *United States v. 600 Bags of Southcoast Turbinado Brand Sugar*, 225 F. Supp. 705 (WD La. 1964); *Vinto Products Co. v. Goddard*, 43 F.2d 399 (D Minn. 1930); and *United States v. Roitman*, 36 F.2d 86 (ND Ill. 1929).