

# THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

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## Drug Checking Legislation and Advocacy

Alliance for Collaborative Drug Checking – 2023 Summit (one part of a panel presentation)

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Legislative Analysis and Public Policy Association (LAPPA)

# **ABOUT LAPPA**

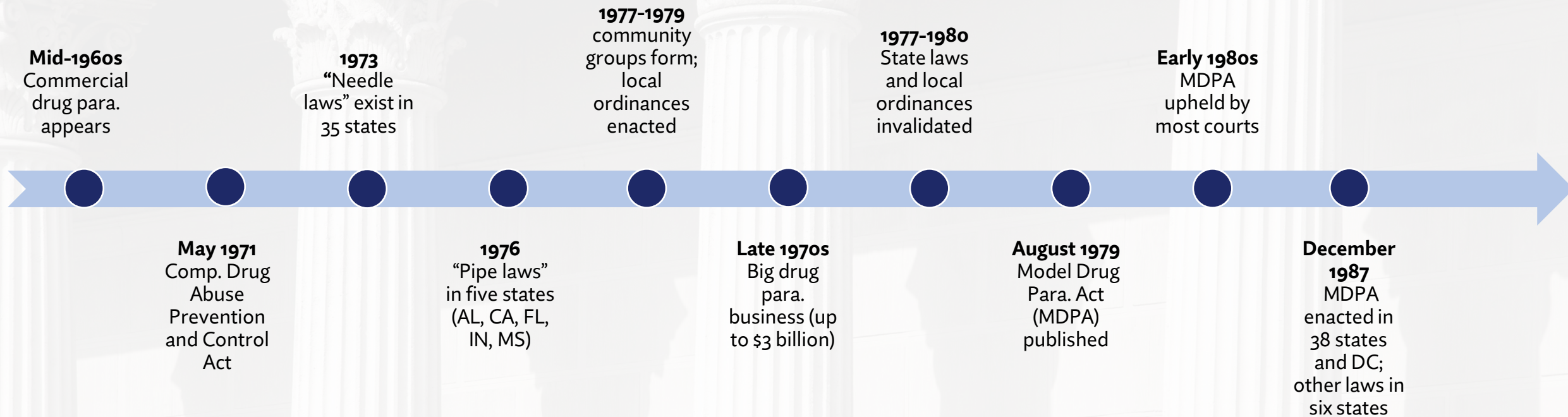
501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

ONDCP's Model Acts Program Grant recipient for 2019-21 and 2021-23.

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# History of U.S. drug paraphernalia



**SOURCES:**

*Importation of Certain Drug Paraphernalia into the United States*, USITC Publication 2223, U.S. INT’L. TRADE COMM. (Sept. 1989), <https://www.usitc.gov/publications/332/pub2223.pdf>;  
Michael J. Barbour, *Virginia’s Drug Paraphernalia Law*, 16 UNIV. OF RICH. L. REV. 161 (1981), <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1560&context=lawreview>;  
Michael D. Guinan, *Constitutionality of Anti-Drug Paraphernalia Laws-The Smoke Clears*, 58 U. OF NOTRE DAME L. REV. 833 (1983), <https://scholarship.law.nd.edu/ndlr/vol58/iss4/5/>.



# DEA's Model Drug Paraphernalia Act

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## Model Drug Paraphernalia Act

Drafted by the  
Drug Enforcement Administration  
of the  
United States  
Department of Justice

### MODEL DRUG PARAPHERNALIA ACT

(Drafted by the Drug Enforcement Administration of the U.S. Department of Justice, August 1979, With Prefatory Note and Comments)

#### PREFATORY NOTE

The Uniformed 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.

#### (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 any quantities of controlled substances;
- (10) Containers and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (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, 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) Carburator tubes and devices;
  - (d) Water pipes;
  - (e) Smoking and carburetor masks;
  - (f) Roach clips; meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - (g) Miniature cocaine spoons, and cocaine vials;
  - (h) Chamber pipes;
  - (i) Carburator pipes;
  - (j) Electric pipes;
  - (k) Air-driven pipes;
  - (l) Chillums;
  - (m) Bongs;
  - (n) Ice pipes or chillers;

SOURCE: *Importation of Certain Drug Paraphernalia into the United States*, USITC Publication 2223, U.S. INT'L. TRADE COMM. (Sept. 1989), <https://www.usitc.gov/publications/332/pub2223.pdf>.



# DEA's Model Drug Paraphernalia Act

“( ) 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:

- (4)** Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

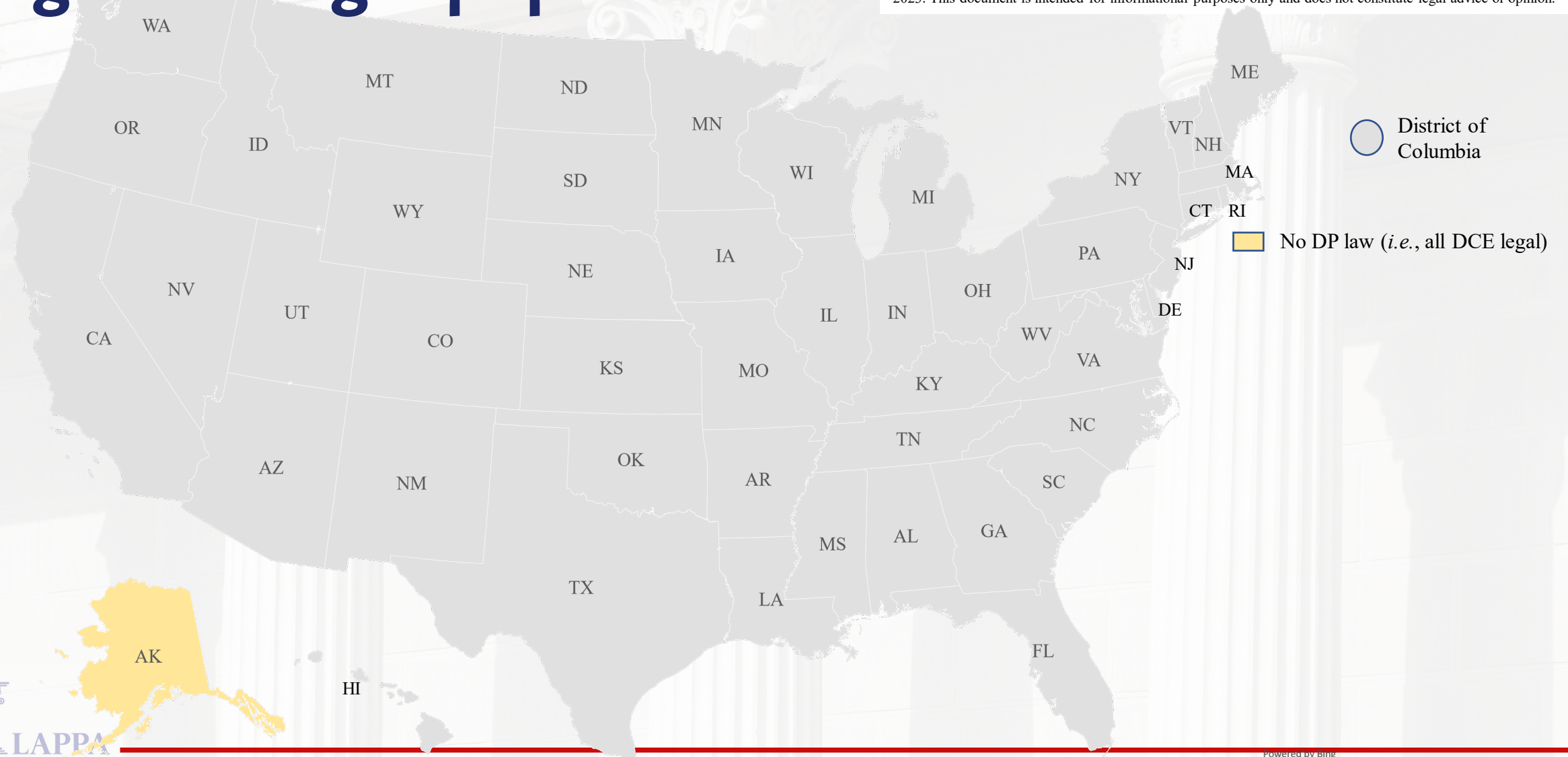
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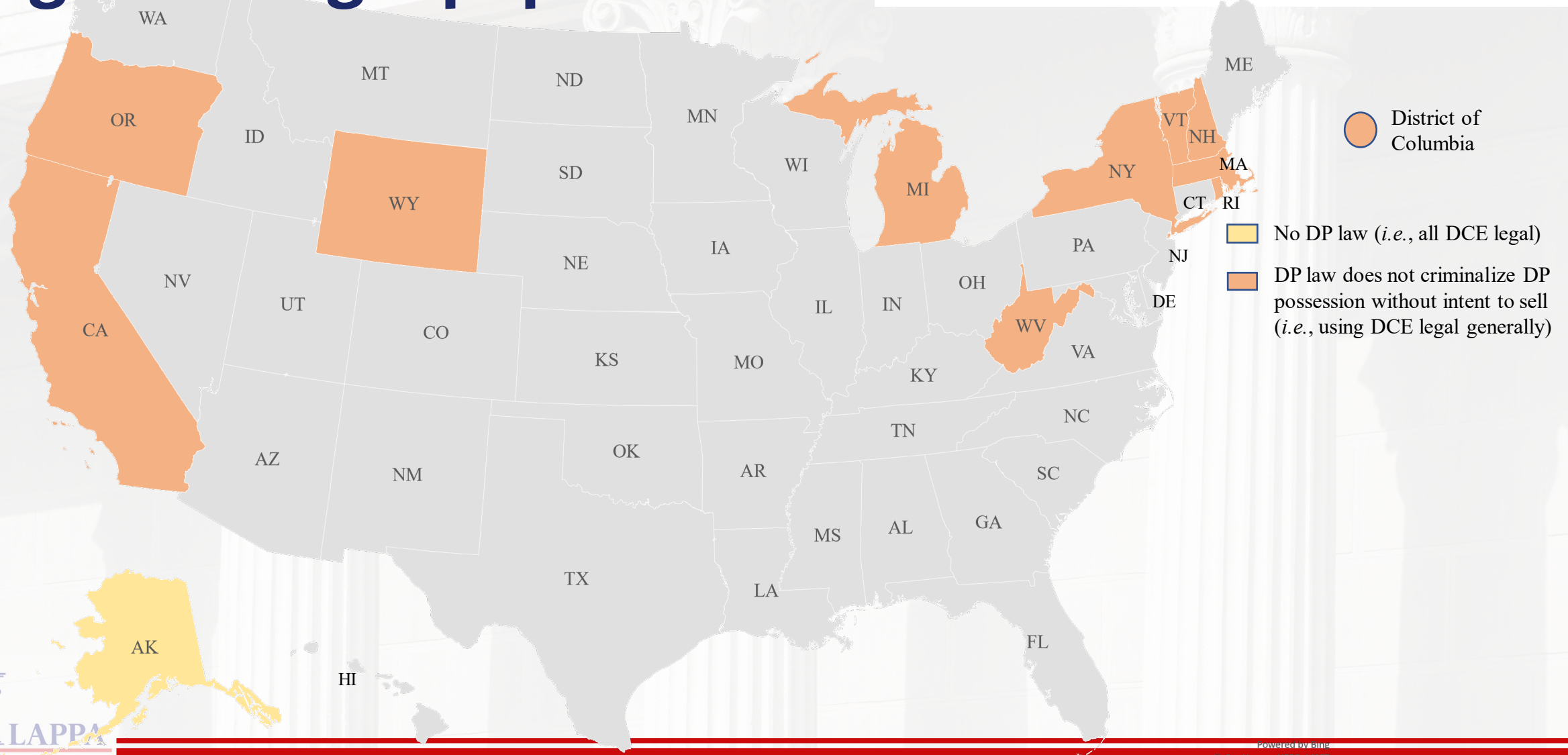
# Drug checking equipment

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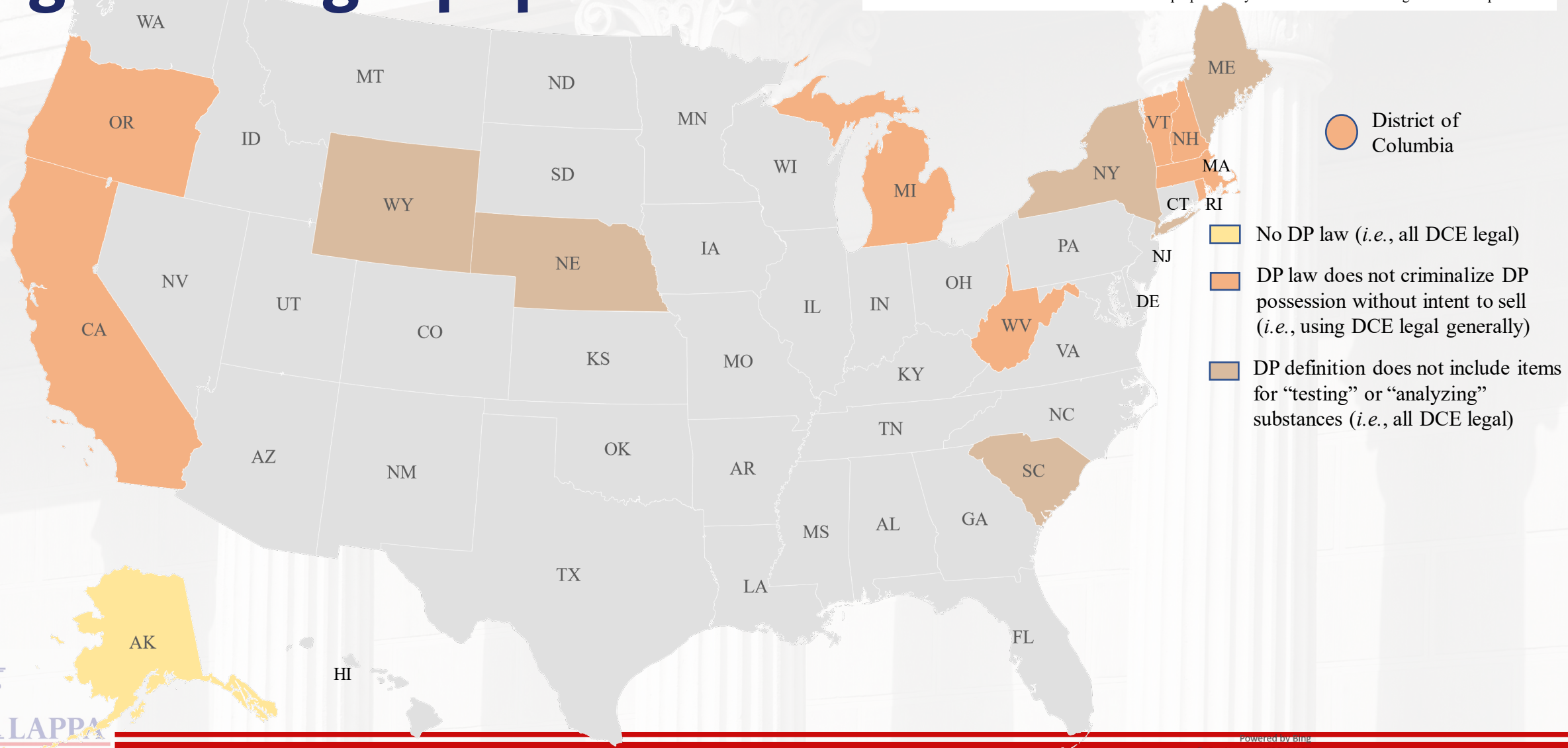
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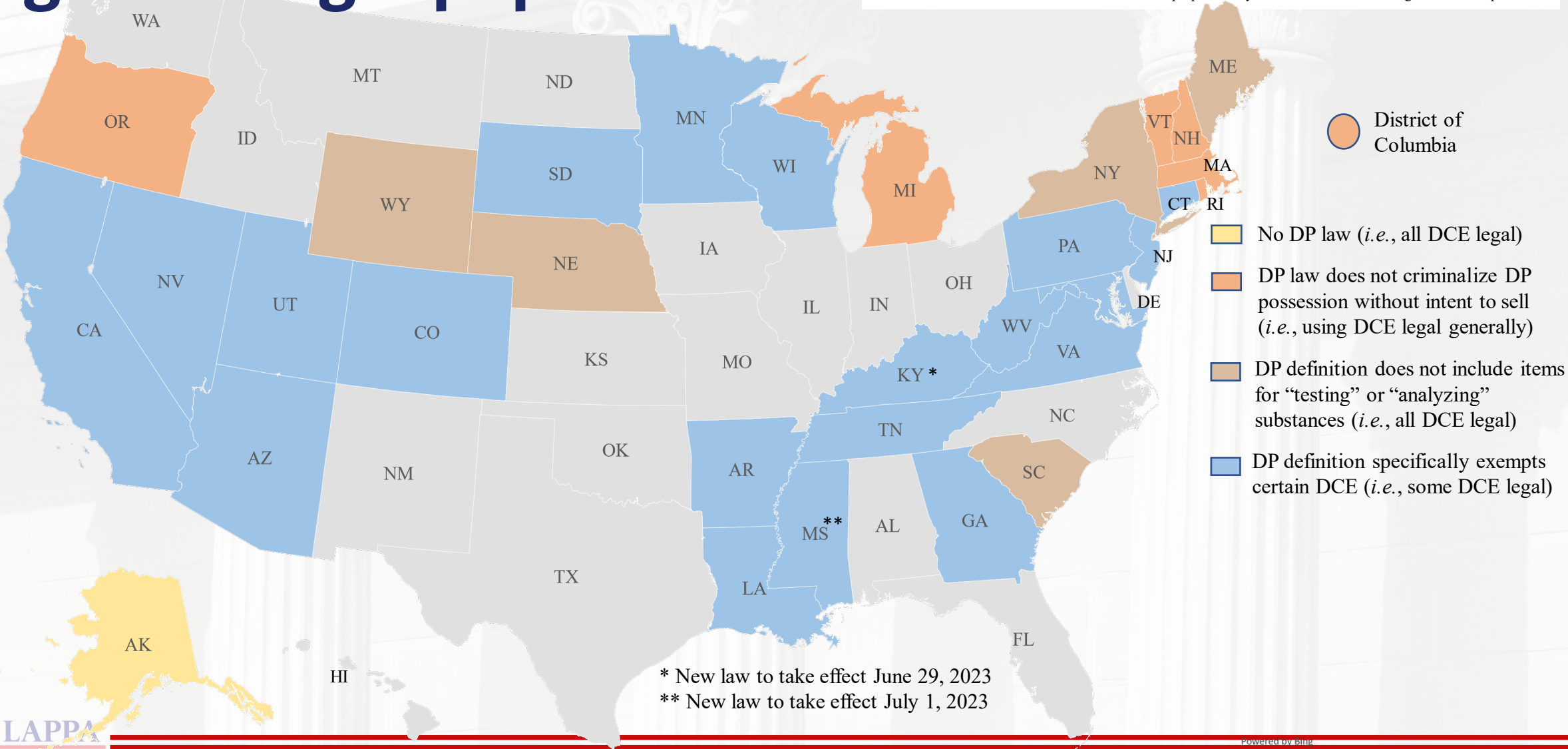
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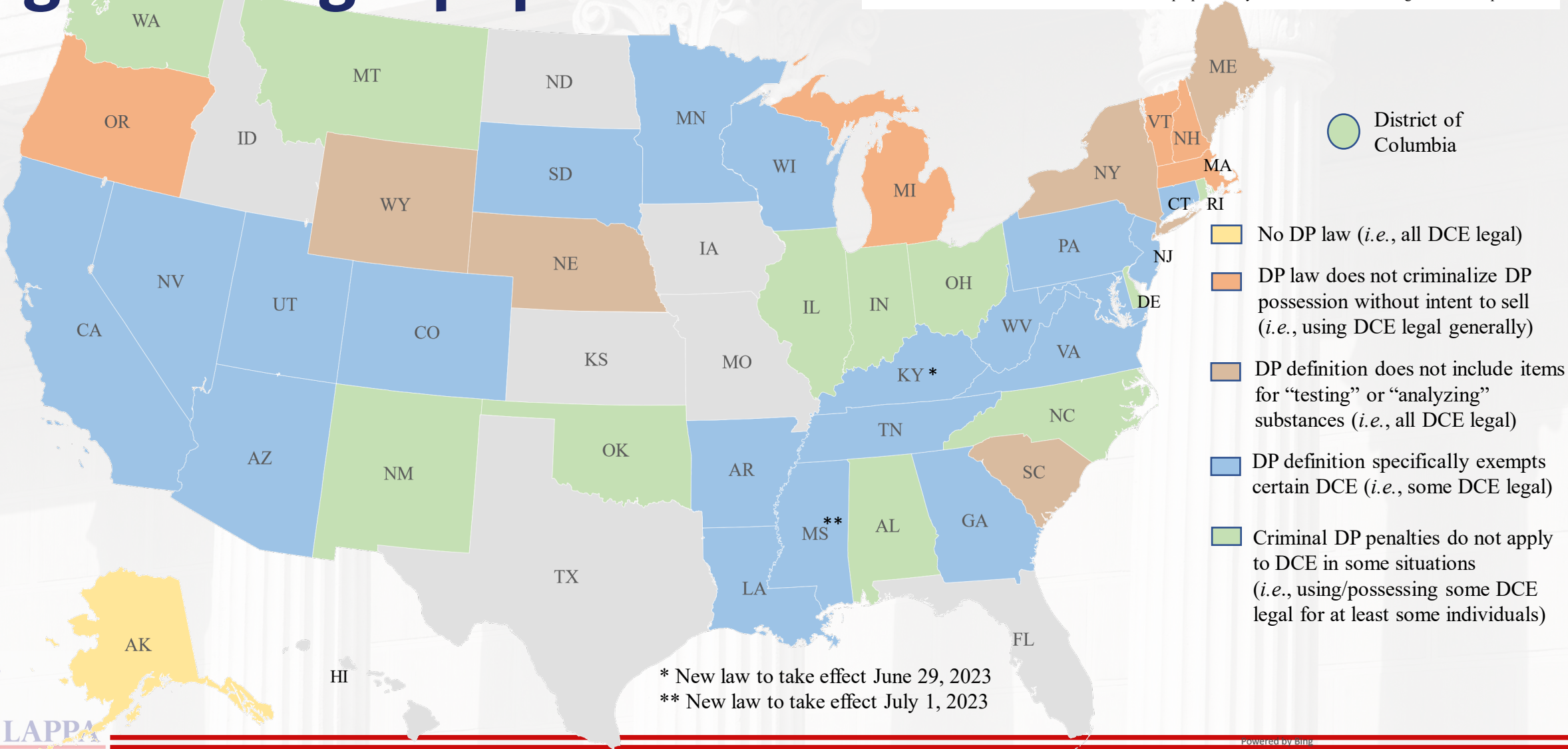


\* New law to take effect June 29, 2023  
 \*\* New law to take effect July 1, 2023



# Drug checking equipment

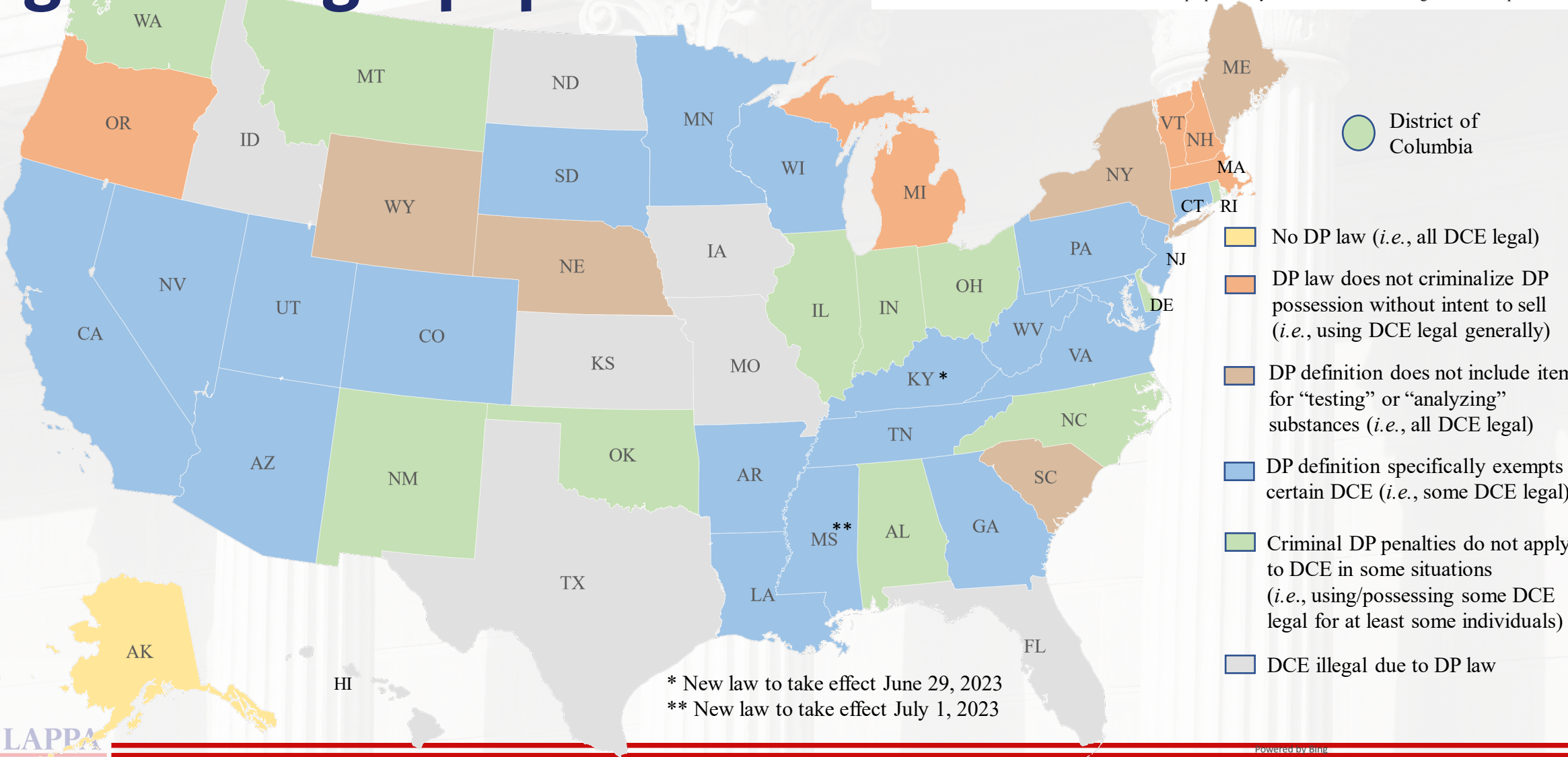
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# Key questions for laws (and legislation)

- What DCE does language cover?
- What drugs/adulterants does language cover?

Pennsylvania

This definition does not include testing products utilized in determining whether a controlled substance contains chemicals, toxic substances or hazardous compounds in quantities which can cause physical harm or death. The term "testing products" shall include, but is not limited to, fentanyl test strips.

\* \* \*

This subchapter does not apply to any of the following:

- (3) Testing strips to determine the presence of fentanyl or fentanyl-related substances.

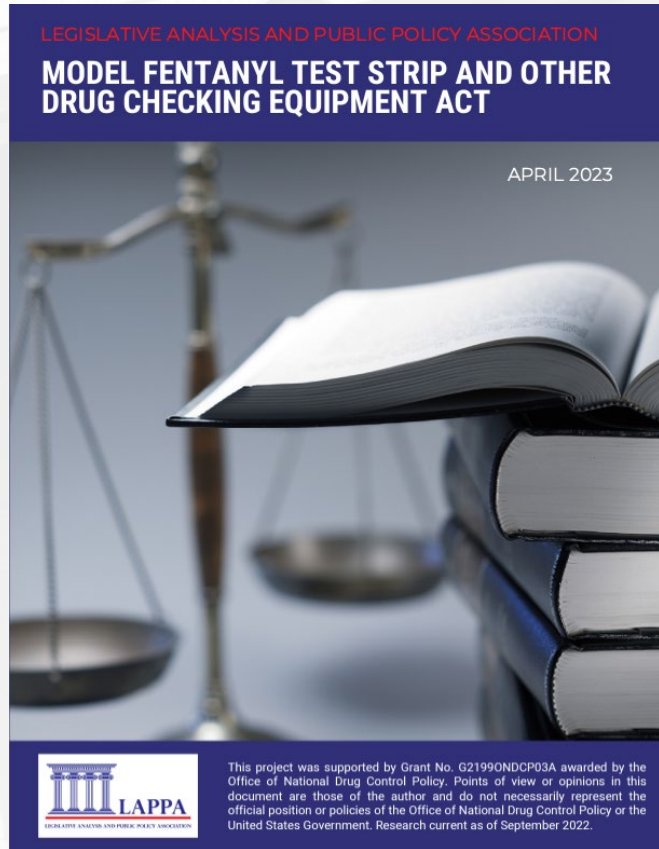
Delaware

- What about legality of items to be tested?

Kentucky

- (d) *Notwithstanding any other statute to the contrary, possession of a narcotic drug testing product used in accordance with paragraph (c)1. of this subsection that contains residual or trace amounts of a synthetic opioid or an analogue thereof shall not be prosecuted as possession of a controlled substance under any provision of this chapter.*

# Model legislation



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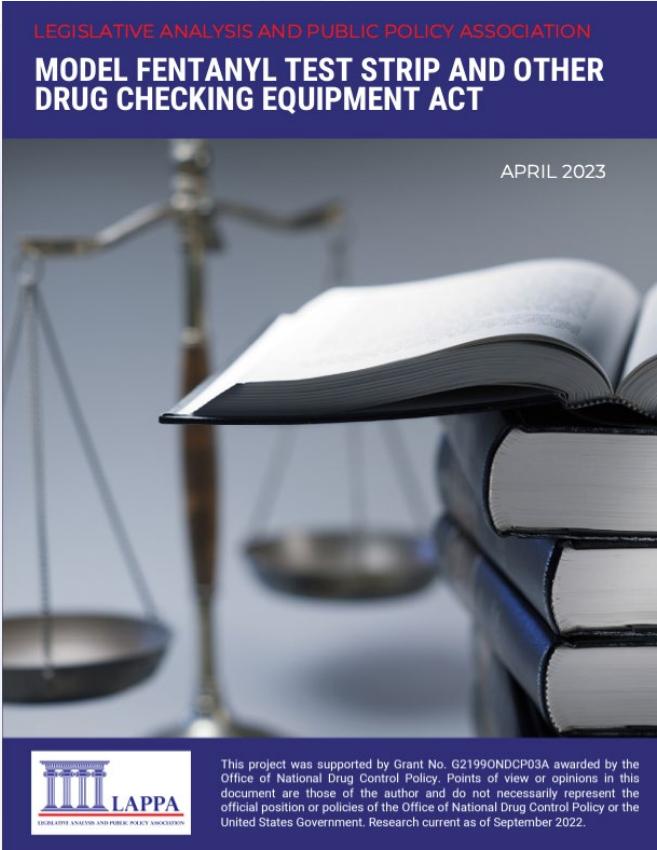
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<https://legislativeanalysis.org/model-fentanyl-test-strip-and-other-drug-checking-equipment-act/>



# Model legislation



<https://legislativeanalysis.org/model-fentanyl-test-strip-and-other-drug-checking-equipment-act/>

## MODEL FENTANYL TEST STRIP AND OTHER DRUG CHECKING EQUIPMENT ACT

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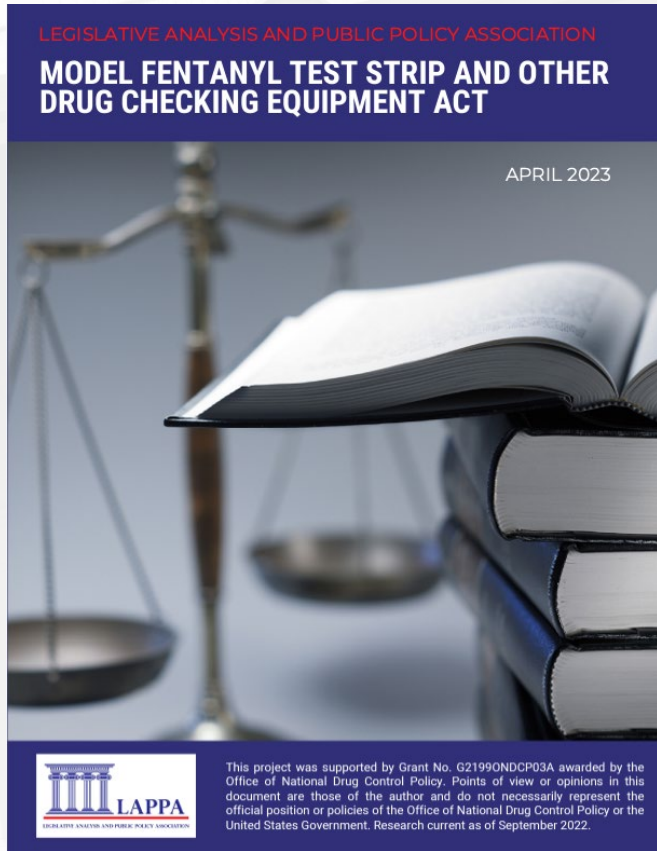
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# Model legislation



<https://legislativeanalysis.org/model-fentanyl-test-strip-and-other-drug-checking-equipment-act/>

(b) Authorized actions.—Notwithstanding any other law or regulation to the contrary, any person may:

- (1) Obtain, possess, purchase, sell, provide, transport, distribute, use, or request another person to use drug checking equipment;
- (2) Possess, transport, deliver, or provide drug packaging or a nominal amount of one or more controlled substances or controlled substance analogs for, or during, analysis by drug checking equipment; or
- (3) Possess, provide, or communicate the results of the drug checking analysis in paper, electronic, or verbal form.

(f) Probable cause.—The fact that a person engages in any action authorized by this Act may not:

- (1) Serve as the basis, in whole or in part, for a determination by a law enforcement officer or any court, of probable cause or reasonable suspicion to stop, search, seize, or arrest the person or the person's property, including but not limited to cell phones and computers;
- (2) Be used as evidence in a criminal case or administrative action against the person; or
- (3) Result in—
  - (A) Revocation of the person's probation, parole, or pre-trial release;
  - (B) Administrative action taken against the person; or
  - (C) Any other punitive action or penalty taken against the person;



# Legislation based on/consistent with model law

- 2023 Massachusetts Senate Bill 1081 (formerly Senate Docket No. 1715)
- 2023 New Hampshire House Bill 470
- 2023 Maine House Paper 1124
- 2023 New York Senate Bill No. 4880
- 2023 Vermont House Bill No. 423/Senate Bill No. 119

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