

DRUG CHECKING EQUIPMENT, NEEDLES/SYRINGES, AND DRUG PARAPHERNALIA: SUMMARY OF STATE LAWS

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SUMMARY

Drug overdose statistics in the United States remain grim. According to data from the National Center for Health Statistics, Centers for Disease Control and Prevention, the total number of reported drug overdose deaths in the U.S. in the four years from January 2019 to December 2022 exceeded 380,000.¹ Successfully combatting this overdose trend will be challenging and will require federal, state, and local policymakers to implement a variety of programs designed to help people who use drugs (“PWUD”).

Two of the many emerging policies are: (1) increasing the distribution and use of drug checking equipment (DCE) by harm reduction organizations and PWUD; and (2) expanding the number and scope of [syringe services programs](#) (SSPs). The term DCE includes both simple drug checking methods and more complex options. Simple DCE, such as fentanyl test strips (FTS) and other rapid drug test strips,² liquid reagent tests, and thin layer chromatography kits,³ provide qualitative information about the presence of a particular drug/substance—or lack thereof—for which the test is designed, but do not shed light on the presence of substances beyond the scope of the test or quantitative information about potency. More complex and advanced DCE provide added information about the composition of drugs and other adulterants within a tested substance as well as drug potency. Advanced DCE includes Fourier-transform infrared spectroscopy, gas chromatography/mass spectrometry, high-performance liquid chromatography, and nuclear magnetic resonance techniques.⁴

State criminal laws pertaining to drug paraphernalia can hamper state efforts regarding both policies noted above. In many jurisdictions, needles, syringes, drug testing strips and/or other DCE fall within the state’s statutory definition of drug paraphernalia and the possession or use of such items is not always exempt from criminal penalty. Even if local law enforcement and prosecutors do not actively enforce drug paraphernalia laws with respect to these items, the existence of the prohibition still serves to chill the use of DCE and SSPs.

The underlying cause of this issue dates back many years. The first drug paraphernalia laws took effect in the mid-1970s in reaction to a perceived loophole in the federal Comprehensive Drug Abuse Prevention and Control Act, the legislation containing the federal Controlled Substances Act (CSA). Although the original form of the CSA criminalized possessing and selling controlled substances, it did not criminalize selling devices that facilitated

¹ F.B. Ahmad, et al., *Provisional drug overdose death counts*, NAT’L CENTER FOR HEALTH STATISTICS (December 3, 2023), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>. Using data as of December 3, 2023, the total number of reported deaths for these four years is 381,027.

² Formally, a rapid drug testing strip is a lateral flow chromatographic immunoassay.

³ Examples of these in the marketplace include fentanyl test strips (FTS), amphetamine test strips, and cocaine reagent kits.

⁴ Jia Pu et al., *Drug Checking Programs in the United States and Internationally: Environmental Scan Summary*, DEPT. OF HEALTH & HUM. SERVICES 6 (Sept. 17, 2021), <https://aspe.hhs.gov/sites/default/files/documents/79e1975d5921d309ed924148ef019417/drug-checking-programs.pdf> (discussing results of studies about drug checking).

the use of controlled substances.⁵ As sales of drug paraphernalia grew in the 1970s, states and localities enacted laws to prevent the sale and use of drug paraphernalia. Many courts, however, found early legislative attempts unconstitutionally vague. In response, the Drug Enforcement Administration (DEA) drafted a Model Drug Paraphernalia Act in August 1979 (the 1979 Act) for states to use.⁶

By December 1987, 38 states and the District of Columbia enacted the 1979 Act.⁷ Once enacted, these laws remained largely unchanged for over 30 years. The definition of drug paraphernalia in the 1979 Act—and thus, the definition during that time period in most states’ laws—defines drug paraphernalia to include items used for “testing, [or] analyzing” a controlled substance.⁸ Moreover, the 1979 Act lists numerous categories of items meeting the definition, including: (1) “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances” and (2) “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.”⁹ The 1979 Act also made it illegal for a person “to use, or to possess with intent to use” or “deliver, possess with intent to deliver, or manufacture with intent to deliver” drug paraphernalia. Accordingly, needles, syringes, and DCE are potentially subject to criminal penalty in any state whose law tracked the 1979 Act without subsequent amendment. Moreover, even if present-day local law enforcement and prosecutors do not actively enforce a state’s prohibition of needles, syringes, FTS, or other DCE, the existence of the prohibition continues to chill the use and distribution of these items.

Given the increased emphasis in recent years on using harm reduction strategies to slow the overdose crisis, the hurdle posed by state drug paraphernalia laws to freely allowing DCE or establishing SSPs is not inconspicuous.¹⁰ Accordingly, in early 2022, the Legislative Analysis

⁵ See, *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/>.

⁶ U.S. INT’L. TRADE COMM., *supra* note 5, at 2.

⁷ *Id.* (the 38 states not identified by name in the remainder of this footnote are the ones who enacted the 1979 Act on or before December 1987). As of December 1987, six states had drug paraphernalia laws not based on the 1979 Act (Colorado, New York, Ohio, Oregon, Tennessee, and West Virginia). *Id.* Six other states had no drug paraphernalia law at all as of December 1987 (Alaska, Hawaii, Illinois, Iowa, Michigan, and Wisconsin).

⁸ *Id.* at Appendix C. The 1979 Act does not define either “testing” or “analyzing.”

⁹ *Id.*

¹⁰ See, e.g., Madelyn Beck, *Fentanyl tests strips could prevent overdoses, but they’re often not allowed to*, BOISE STATE PUBLIC RADIO (Jan. 25, 2022), <https://www.boisestatepublicradio.org/health/2022-01-25/fentanyl-tests-strips-could-prevent-overdoses-but-theyre-often-not-allowed-to>; McKenna Schueler, *The fight to legalize life-saving fentanyl test strips in Southern states*, FACING SOUTH (Jan. 24, 2022), <https://www.facingsouth.org/2022/01/fight-legalize-life-saving-fentanyl-test-strips-southern-states>; *Syringe Distribution Programs Can Improve Public Health During the Opioid Overdose Crisis*, THE PEW CHARITABLE TRUSTS (March 2, 2021), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/03/syringe-distribution-programs-can-improve-public-health-during-the-opioid-overdose-crisis> (recommending, among other things, that states change drug paraphernalia laws).

and Public Policy Association (LAPPA) first undertook an extensive research project to determine how drug paraphernalia laws throughout the 50 states, District of Columbia, and all U.S. territories treat DCE (including FTS) and needles/syringes. The current version of this document, which sets forth a summary of state and territory laws as of December 2023, is an update to the original report. As of December 2023, 49 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have one or more criminal laws pertaining to drug paraphernalia. Alaska is the only state without a drug paraphernalia law. In addition, there appear to be no such laws in American Samoa, Guam, or the Northern Mariana Islands.

This document contains the results of this research project. Starting on page 18, LAPPA provides jurisdiction-by-jurisdiction tables describing aspects of each law currently in effect as of December 2023, including:

- Statutory citation(s) to laws relating to drug paraphernalia;
- Substantive amendments to the cited statutes, if any;¹¹
- Legality of DCE (including FTS, as well as whether any exception from illegal drug possession penalties exists for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing;
- Legality of needles and syringes;¹²
- Additional context(s) where FTS, other DCE, and needles/syringes are allowed (such as where an [overdose assistance exception](#) applies);
- Prohibited actions and penalties;
- Forfeiture provisions; and
- Recently proposed but not enacted legislation.

LAPPA designed this document to: (1) provide a singular resource for each jurisdiction's laws; (2) allow for a comparison of these laws between jurisdictions; and (3) identify and highlight interesting provisions. The primary conclusions from the research and analysis are set forth below—in separate categories for DCE and needles/syringes—accompanied by several maps depicting many of the results in graphic form.¹³

¹¹ This does not include substantive amendments to drug paraphernalia laws that relate to cannabis.

¹² This document does not discuss statutes authorizing or regulating syringe services programs in detail. More information on state-specific syringe services program laws can be found in *Syringe Services Programs: Summary of State Laws*, LEG. ANALYSIS & PUB. POLICY ASSOC. (Aug. 4, 2023), <https://legislativeanalysis.org/syringe-services-programs-summary-of-state-laws/>.

¹³ The goal of this research document is to provide accurate and complete information that is free of omissions or errors. If you believe that this document contains misinformation, omissions, or errors, please email LAPPA at info@thelappa.org.

Conclusions Specific to DCE (including FTS) as of December 2023

- Overall, in **45 states**, the **District of Columbia**, and **four U.S. territories**, at least one type of DCE is not potentially subject to criminal penalty for drug paraphernalia. In most states, the allowable DCE includes both FTS and DCE that tests for other substances. In a minority of states, only FTS (or DCE testing for fentanyl) escapes potential penalty.
- There are five different reasons why a jurisdiction may fall into the group of 50 noted above. These five reasons are: (1) the jurisdiction has no law against drug paraphernalia generally; (2) the jurisdiction does not prohibit the possession/use of drug paraphernalia without an intent to sell it; (3) the jurisdiction’s definition of drug paraphernalia is not broad enough to include any DCE; (4) the jurisdiction’s definition of drug paraphernalia expressly excludes some (or even all) forms of DCE; and (5) even though DCE may constitute drug paraphernalia in the jurisdiction, possessing/using certain types of DCE is exempt from drug paraphernalia penalties for at least some individuals. In several jurisdictions, more than one of the reasons applies, which makes categorizing jurisdictions somewhat complex. The next few bullet points describe each of these reasons (hereafter called “categories”).
- **Alaska** has no law that criminalizes any form of drug paraphernalia. Accordingly, in Alaska, the possession/use of all DCE (including FTS) is not subject to criminal penalty for drug paraphernalia. The same appears true in **three U.S. territories** (American Samoa, Guam, and the Northern Mariana Islands), although LAPP’s access to these territorial laws is limited.
- In **11 states**, although the definition of drug paraphernalia includes DCE, there is no criminal penalty for possessing/using drug paraphernalia in general without an intent to sell it. Accordingly, in these states, the possession/use of all DCE (including FTS) without the intent to sell it is not subject to criminal penalty for drug paraphernalia. These states are California, Massachusetts, Michigan, Minnesota, New Hampshire, New York, Oregon, Rhode Island, Vermont, Virginia, and West Virginia. Several of these states appear in other categories as well.
- In **nine states**, the definition of drug paraphernalia does not reference “testing” or “analyzing” a controlled substance, nor does it identify “testing equipment” as an example of such paraphernalia. Accordingly, the possession/use of all DCE (including FTS) in these states is not subject to criminal penalty for drug paraphernalia. In four of the states (Nebraska, New York, South Carolina, and Wyoming) it appears that the definition of drug paraphernalia first enacted decades ago did not reference testing or analyzing and has not changed. In the other five states (Colorado, Maine, Maryland, New Jersey, and Minnesota), legislators removed the references to testing, analyzing, and testing equipment in recent years. Several of these states appear in other categories as well.

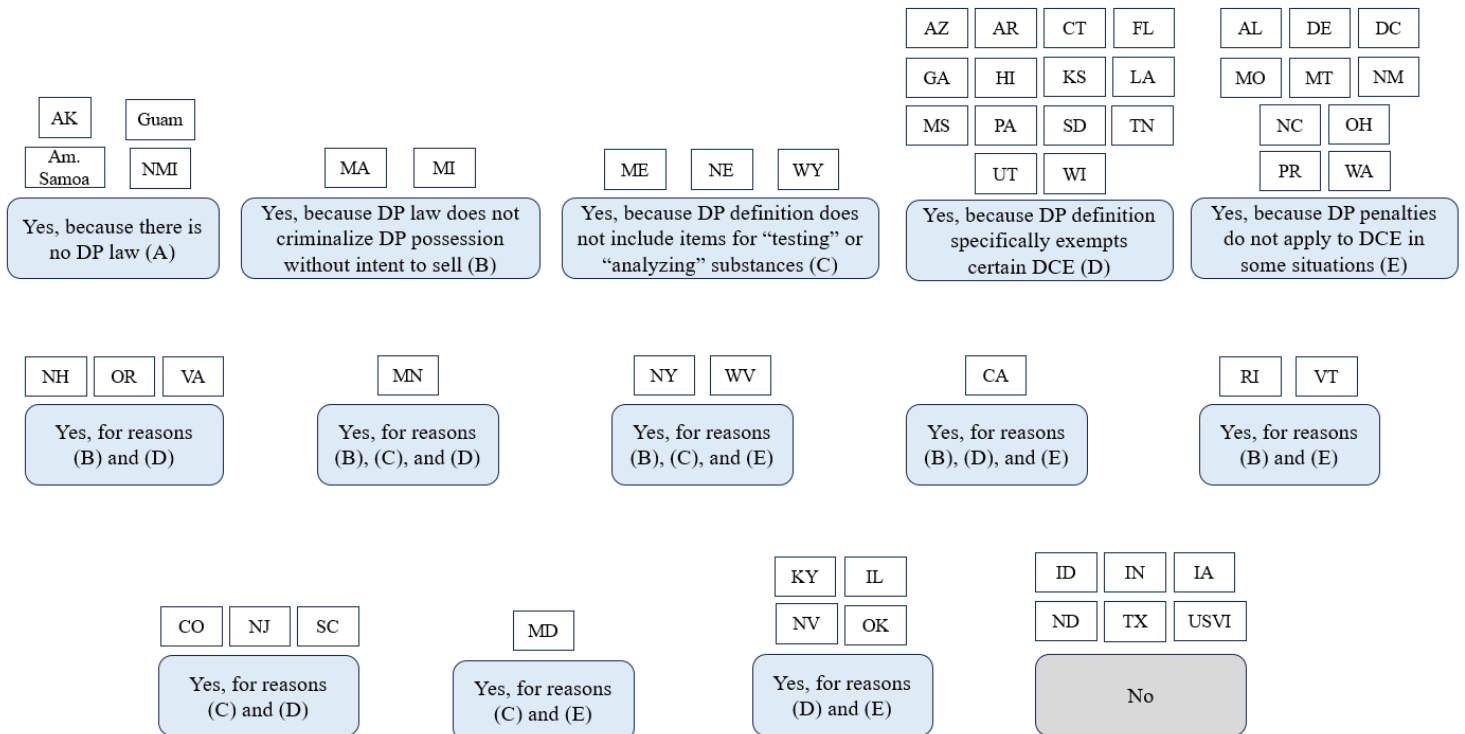
- In **27 states**,¹⁴ legislators recently (*i.e.*, since 2018) revised the definition of drug paraphernalia to expressly remove some or all types of DCE. (In all cases, these changes removed FTS from the definition. Many states, but not all, exempt additional types of DCE as well.) Accordingly, in these states, the possession/use of the types of DCE expressly identified are not subject to criminal penalty for drug paraphernalia. These 27 states are Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wisconsin. Several of these states appear in other categories as well.
- In **18 states**, the **District of Columbia**, and **Puerto Rico**, although the jurisdiction's definition of drug paraphernalia may include DCE, there is no criminal penalty for possessing/using some or all types of it by at least some individuals. In some instances, the exemption from potential penalty extends only to individuals working for SSPs or other harm reduction organizations. In other jurisdictions, the exemption applies to a broader group. These 20 jurisdictions are Alabama, California, Delaware, District of Columbia, Illinois, Kentucky, Maryland, Missouri, Montana, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, Vermont, Washington, West Virginia, and Puerto Rico. Several of these jurisdictions appear in other categories as well.
- In **Montana**, legislators recently removed the word “test” from the criminal prohibition against possessing drug paraphernalia, but they did not remove the word “analyze.”¹⁵ Accordingly, possessing any DCE to “test” a “dangerous drug” (as defined in Montana law) is not subject to criminal penalty for drug paraphernalia, but possessing it to analyze such a drug would appear to remain potentially subject to criminal penalties for drug paraphernalia, unless the exception in the bullet point just above also applies.
- This leaves **five states** and **one U.S. territory** where all types of DCE (including FTS) remain potentially subject to criminal penalty for drug paraphernalia without any exception (unless a [Good Samaritan fatal overdose prevention law](#) that covers drug paraphernalia crimes applies to a particular situation). These six jurisdictions are Idaho, Indiana, Iowa, North Dakota, Texas, and the U.S. Virgin Islands.

¹⁴ This counts Hawaii as one of the states. Please see the footnote in the [Hawaii-specific table](#) which discusses some confusion over the continued existence of Hawaii's legislative change.

¹⁵ As in the 1979 Act, Montana law does not define either “test” or “analyze.”

- The chart below depicts how the 56 jurisdictions (50 states, District of Columbia, and five U.S. territories) fall into the various categories described on pages 6-7, including showing the jurisdictions where multiple categories apply.

Is any type of DCE not potentially subject to drug paraphernalia (DP) penalties?

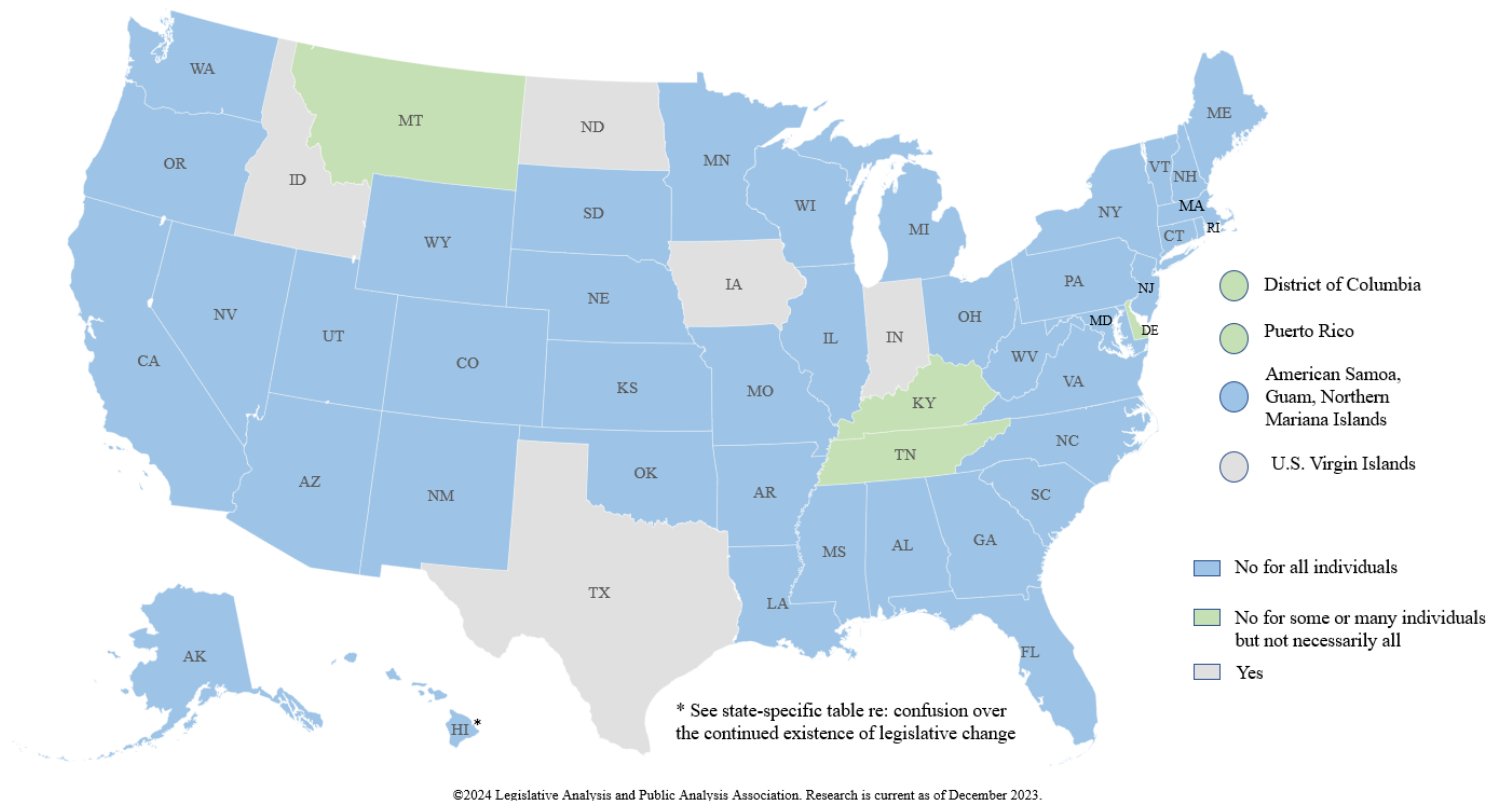


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- The type of DCE not potentially subject to criminal penalties for drug paraphernalia varies. Using the categories (A)-(E) from the chart above, any jurisdiction that falls into category (A), (B), or (C) alone, or in combination with other categories, does not subject the possession/use of any type of DCE to potential criminal penalty without an intent to sell it. This is because these three categories are not tied to express statutory language pertaining to DCE. In contrast, for jurisdictions that fall into categories (D), (E), or (D) and (E), one must look at the specific statutory language to determine which types of DCE are not potentially subject to criminal penalties for drug paraphernalia. The next four bullet points below (and associated maps) demonstrate how the type of DCE at issue affects whether the equipment is potentially subject to penalty. For this demonstration, the groupings of DCE considered are: (1) FTS; (2) xylazine test strips; (3) a portable mass spectrometer used to look for the presence of fentanyl; and (4) all types of DCE.

- For at least some individuals, possessing or using FTS would not be potentially subject to criminal penalty for drug paraphernalia in **45 states**, the **District of Columbia**, and **four U.S. territories**. In six of these 50 jurisdictions, however, FTS may remain subject to potential penalty depending either on who possesses/uses it, or how it is used.¹⁶ The map below depicts this.

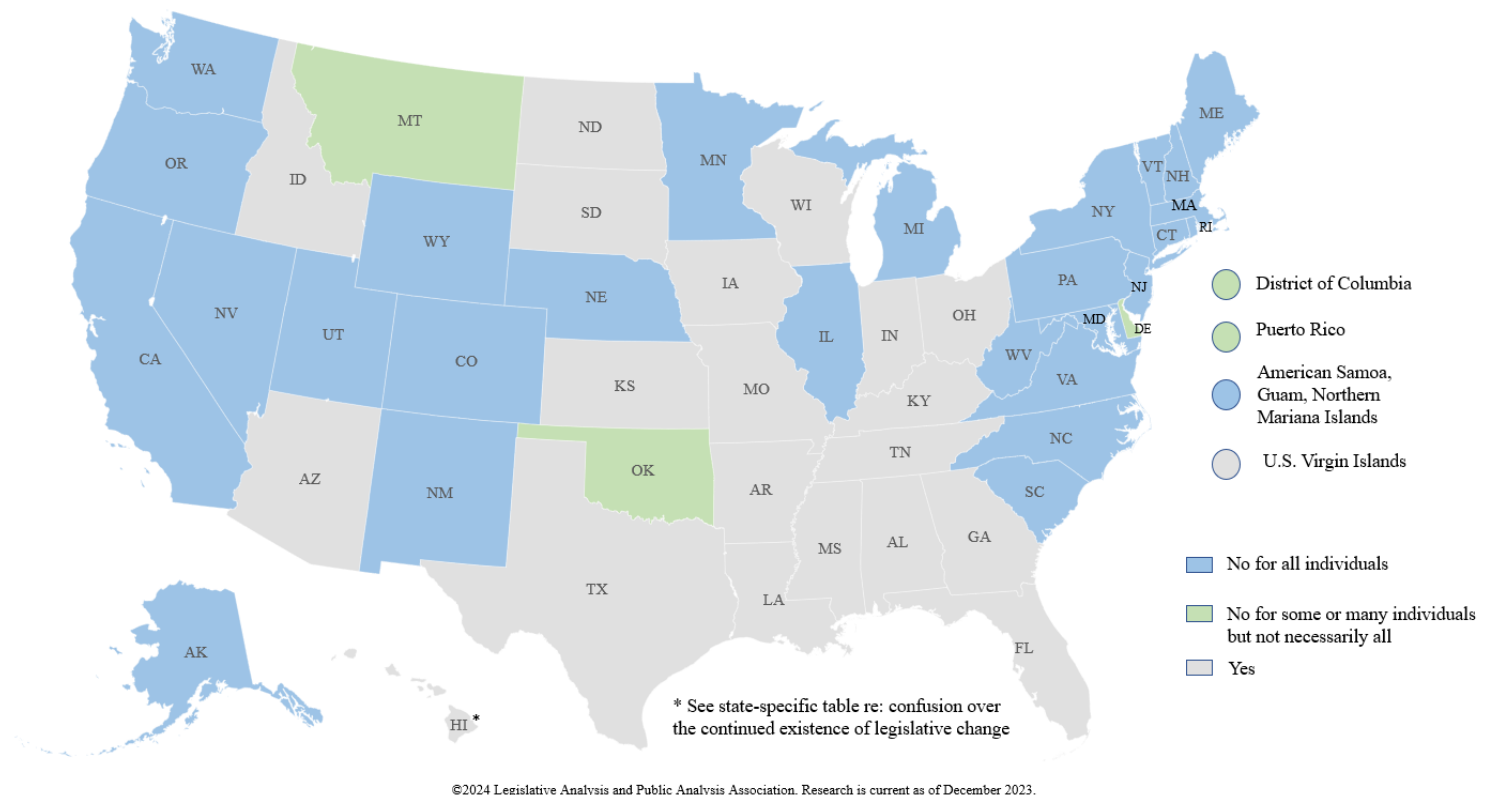
Is possessing or using an FTS potentially subject to penalty for drug paraphernalia?



¹⁶ For example, in Kentucky, drug paraphernalia does not include “narcotic drug testing products utilized in determining whether a controlled substance contains a synthetic opioid or its analogues,” unless such product is used “in conjunction with the importation, manufacture, or selling of fentanyl or a fentanyl analogue” in violation of Kentucky law. KY. REV. STAT. ANN. § 218A.500(7)(c) (West 2023). Thus, FTS are not universally excepted from drug paraphernalia penalties. Delaware provides a different type of example. In Delaware, any person may “provide a drug testing strip to an individual.” DEL. CODE. ANN. tit. 16, § 2226(d) (West 2023). However, this “immunity,” as the code calls it, does not expressly provide that any person may “use” a drug testing strip.

- For at least some individuals, possessing or using a xylazine test strip would not be potentially subject to criminal penalty for drug paraphernalia in **30 states**, the **District of Columbia**, and **four U.S. territories**. In five of these 35 jurisdictions, however, the xylazine test strip may remain subject to potential penalty depending either on who possesses/uses it, or how it is used.¹⁷ The map below depicts this.

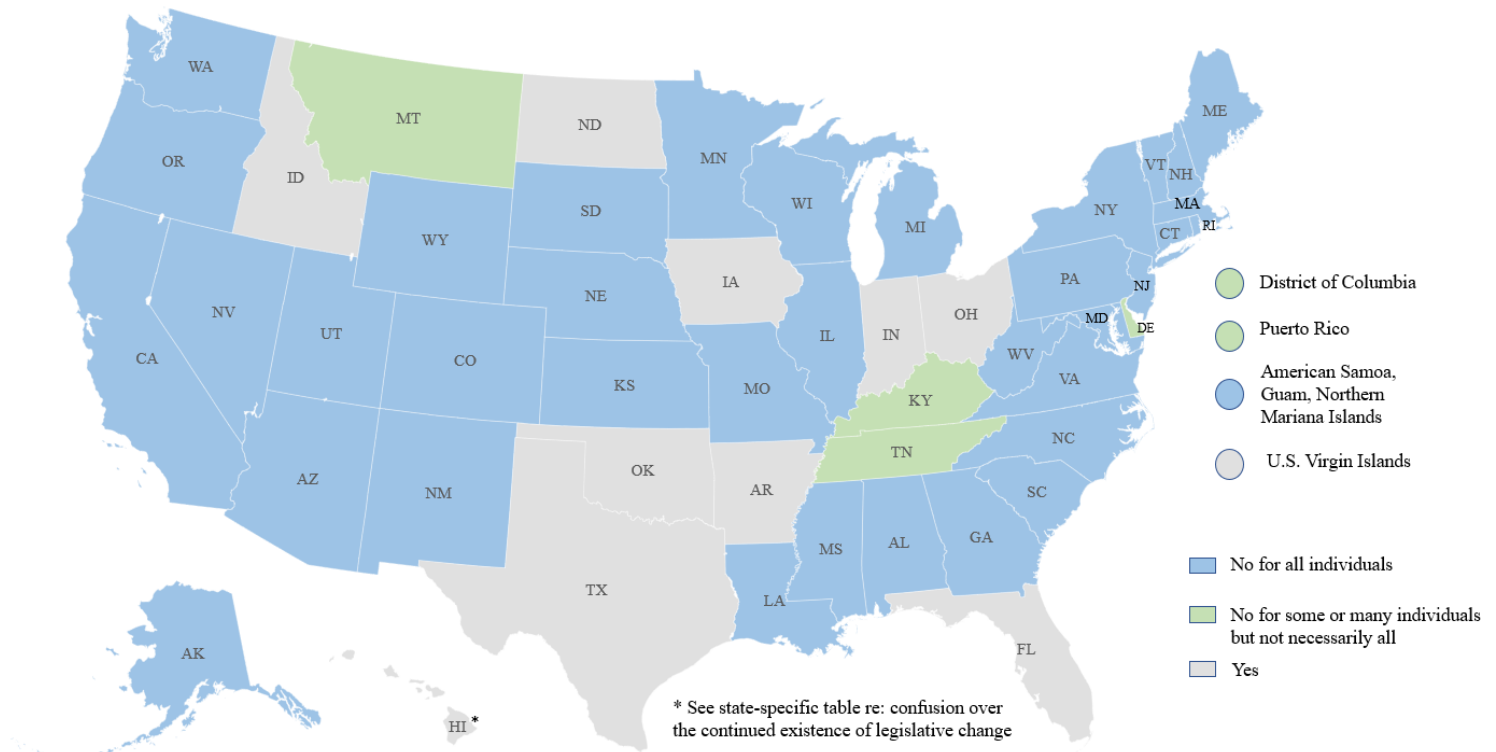
Is possessing or using a xylazine test strip potentially subject to penalty for drug paraphernalia?



¹⁷ For example, the Delaware issue noted in footnote 16 also applies here.

- For at least some individuals, possessing or using a portable mass spectrometer to test for fentanyl or a fentanyl analog would not be potentially subject to criminal penalty for drug paraphernalia in **40 states**, the **District of Columbia**, and **four U.S. territories**. This answer would be smaller if an individual used the mass spectrometer to look for a substance other than fentanyl. This is because several jurisdictions’ recent law changes appear to apply to all DCE looking for fentanyl but not necessarily to any DCE looking for other substances. In six of these 45 jurisdictions, however, the mass spectrometer may remain subject to potential penalty depending either on who possesses/uses it, or how it is used. The map below depicts this.

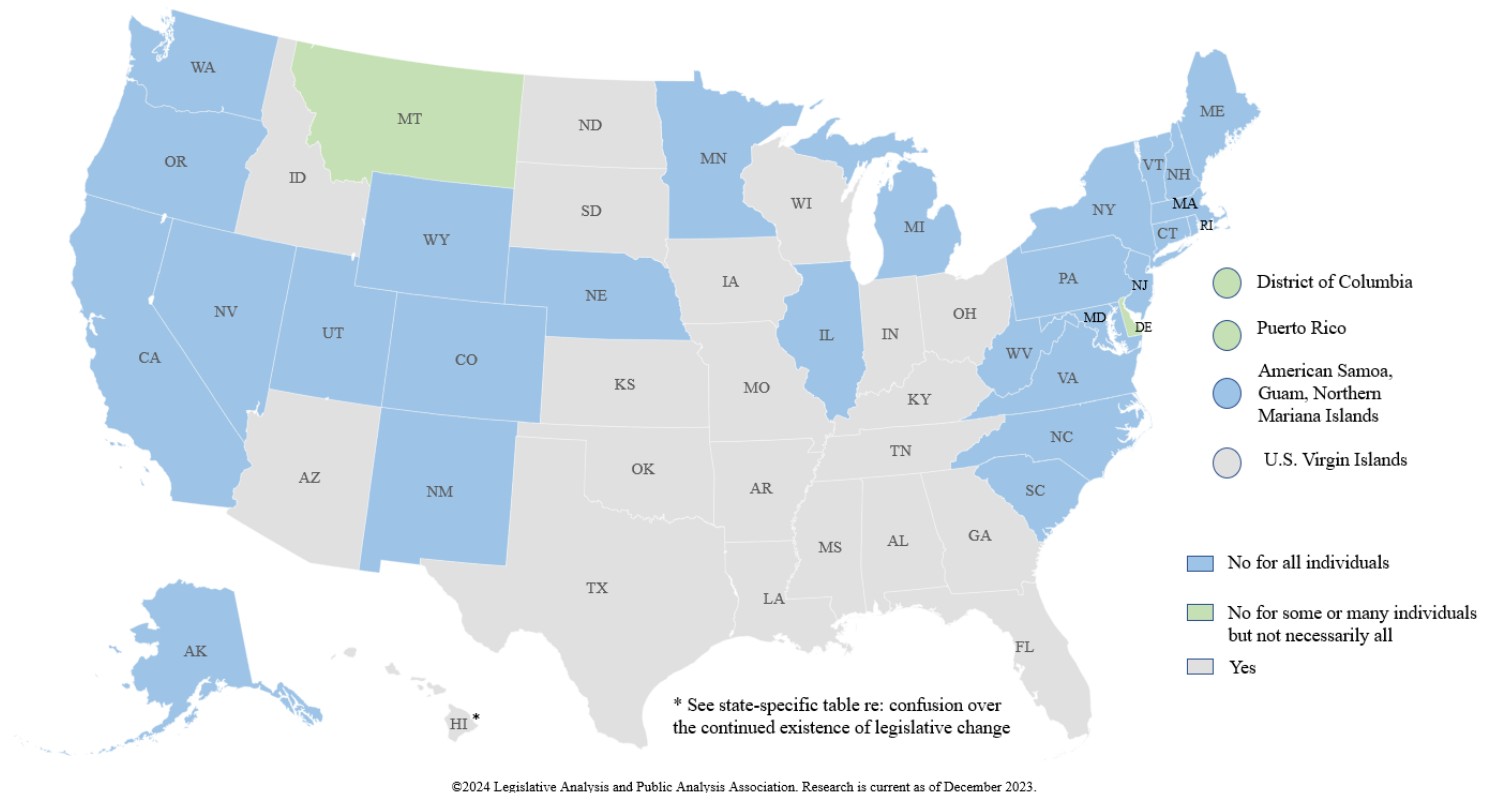
Is possessing or using a portable mass spectrometer to test for fentanyl potentially subject to penalty for drug paraphernalia?



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- For at least some individuals, possessing or using any form of DCE to test for the presence of any adulterant would not be potentially subject to criminal penalty for drug paraphernalia in **29 states**, the **District of Columbia**, and **four U.S. territories**. In four of these 34 jurisdictions, however, the DCE may remain subject to potential penalty depending either on who possesses/uses it, or how it is used. The map below depicts this.

Is possessing or using any type of DCE to look for any adulterant potentially subject to penalty for drug paraphernalia?

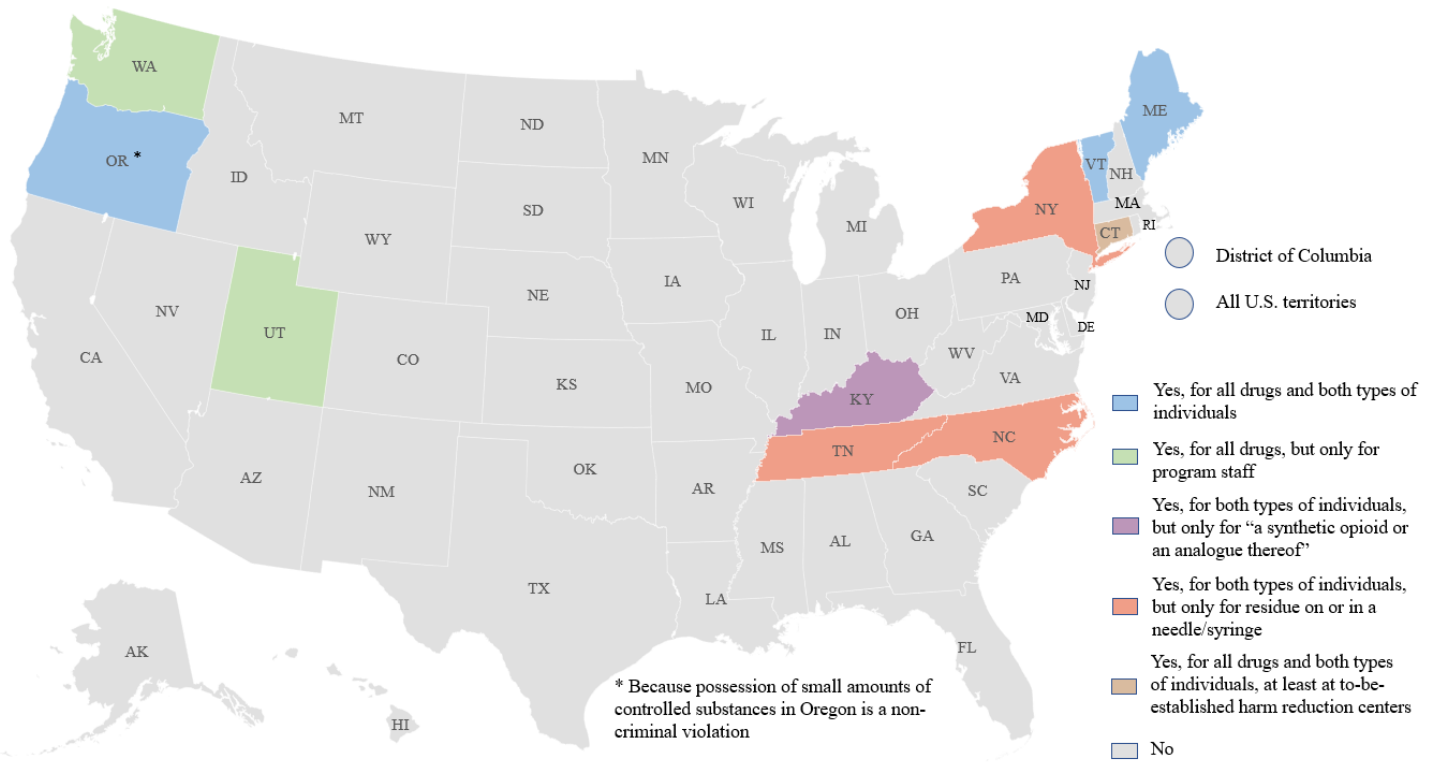


- Most DCE-related provisions detailed in this document do not clearly allow PWUD, or other individuals who provide drug checking services, to possess, handle, or transport samples for analysis without fear of violating illegal drug possession laws. Both groups worry that the lack of such authorization limits the usage of—and thus the effectiveness of—drug checking programs, even in jurisdictions where all forms of DCE are safe from criminal penalty for drug paraphernalia. Such concerns led to the inclusion of a provision in LAPPAs’s [Model Fentanyl/Xylazine Test Strip and Other Drug Checking Equipment Act](#) that authorizes any person to “possess, transport, deliver, or provide” drug packaging or a small amount of a substance for the purpose of drug checking.¹⁸ Currently, 10 states’ laws provide an authorization of this type, at least to some extent. In three states (Maine, Oregon, and Vermont), the authorization applies to both types of individuals (*i.e.*, users of drug checking services and program staff) and all drugs.¹⁹ In two states (Utah and Washington) the authorization applies to all drugs, but only for program staff providing drug checking services. In three states (New York, North Carolina, and Tennessee) the authorization applies to all individuals, but only as to residue on or inside a needle/syringe. In Kentucky, the authorization applies to both types of individuals, but only where the drug includes a synthetic opioid or synthetic opioid analogue. Finally, Connecticut law does not contain an express authorization, but recently enacted legislation requires the state to establish harm reduction centers, where all aspects of drug checking services appear to be fully authorized. The map on the next page depicts this.

¹⁸ *Model Fentanyl/Xylazine Test Strip and Other Drug Checking Equipment Act*, LEG. ANALYSIS & PUB. POLICY ASSOC. 14 (April 2023), <https://legislativeanalysis.org/model-fentanyl-xylazine-test-strip-and-other-drug-checking-equipment-act/>.

¹⁹ In Oregon, this is because the possession of a small amount of any controlled substance is a non-criminal violation.

Is there an exception from illegal drug possession penalties for users of drug checking services or program staff who provide such services?



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- DCE remains a very active area of the law. In 2022, 12 states made DCE-related changes to their laws. These 12 states were Alabama, California, Connecticut, Georgia, Illinois, Louisiana, New Jersey, New Mexico, Pennsylvania, Tennessee, West Virginia, and Wisconsin). In 2023, 25 states and the District of Columbia made such changes. These 26 jurisdictions were Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Kansas, Kentucky, Maine, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey,²⁰ New York, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Vermont, and Washington.

²⁰ Although the governor signed New Jersey’s bill in early January 2024, most legislative activity took place in 2023.

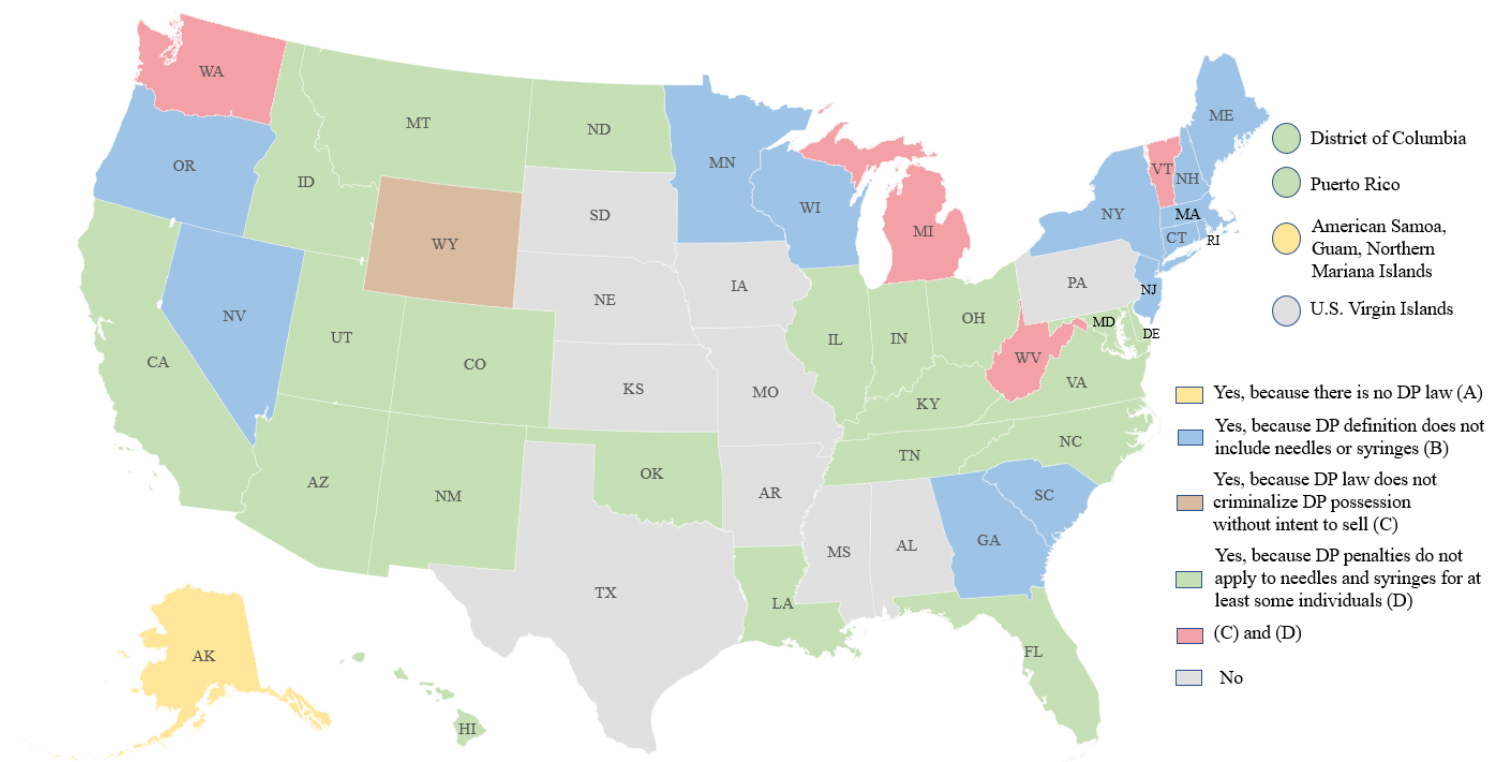
Conclusions Specific to Needles and Syringes as of December 2023

- As described below, for at least some individuals, the possession/use of needles and syringes is not potentially subject to criminal penalties for drug paraphernalia in **40 states**, the **District of Columbia**, and **four U.S. territories**.
- There are four different reasons why a jurisdiction may fall into the group of 45 noted above. These four reasons are: (1) the jurisdiction has no law against drug paraphernalia generally; (2) the jurisdiction's definition of drug paraphernalia does not include needles or syringes; (3) the jurisdiction does not prohibit the possession/use of drug paraphernalia without an intent to sell it; and (4) even though needles and syringes may constitute drug paraphernalia in the jurisdiction, possessing/using needles and syringes is exempt from drug paraphernalia penalties for at least some individuals. In several jurisdictions, more than one of the reasons applies, which makes categorizing jurisdictions somewhat complex. The next few bullet points describe each of these reasons (hereafter called "categories").
- **Alaska** has no law that criminalizes any form of drug paraphernalia. Accordingly, in Alaska, the possession/use of needles and syringes is not subject to criminal penalty for drug paraphernalia. The same appears true in **three U.S. territories** (American Samoa, Guam, and the Northern Mariana Islands), although LAPPAs' access to these territorial laws is limited.
- In **13 states**, the state law definition of drug paraphernalia does not include needles and syringes, making the possession/use of those items not subject to criminal penalty for drug paraphernalia. These 13 states are Connecticut, Georgia, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, South Carolina, and Wisconsin. Three states (Georgia, Minnesota, and New Jersey) are new additions to this category since the prior version of this document.
- In **five states**, although needles and syringes are included in the definition of drug paraphernalia, there is no penalty for possessing/using drug paraphernalia generally without an intent to sell. These five states are Michigan, Vermont, Washington, West Virginia, and Wyoming. All these states except Wyoming also appear in the category described just below.
- In **25 states**, the **District of Columbia**, and **Puerto Rico**, even though needles and syringes may constitute drug paraphernalia in the jurisdiction, possessing/using needles and syringes is exempt from drug paraphernalia penalties for at least some individuals. In some instances, the exemption from potential penalty extends only to individuals working for SSPs or other harm reduction organizations. In other jurisdictions, the exemption applies to a broader group such as SSP participants or individuals using a needle or syringe for the personal use of a substance. These 27 jurisdictions are Arizona, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Montana, New Mexico, North

Carolina, North Dakota, Ohio, Oklahoma, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Puerto Rico.

- This leaves **10 states** and **one territory** where needles and syringes remain potentially subject to criminal penalty for drug paraphernalia without any exception (unless a Good Samaritan fatal overdose prevention law that covers drug paraphernalia crimes applies to a particular situation). These 11 jurisdictions are Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Nebraska, Pennsylvania, South Dakota, Texas, and the U.S. Virgin Islands.
- The map below depicts how states fall into the various categories described on pages 15-16, including documenting the jurisdictions where multiple categories apply.

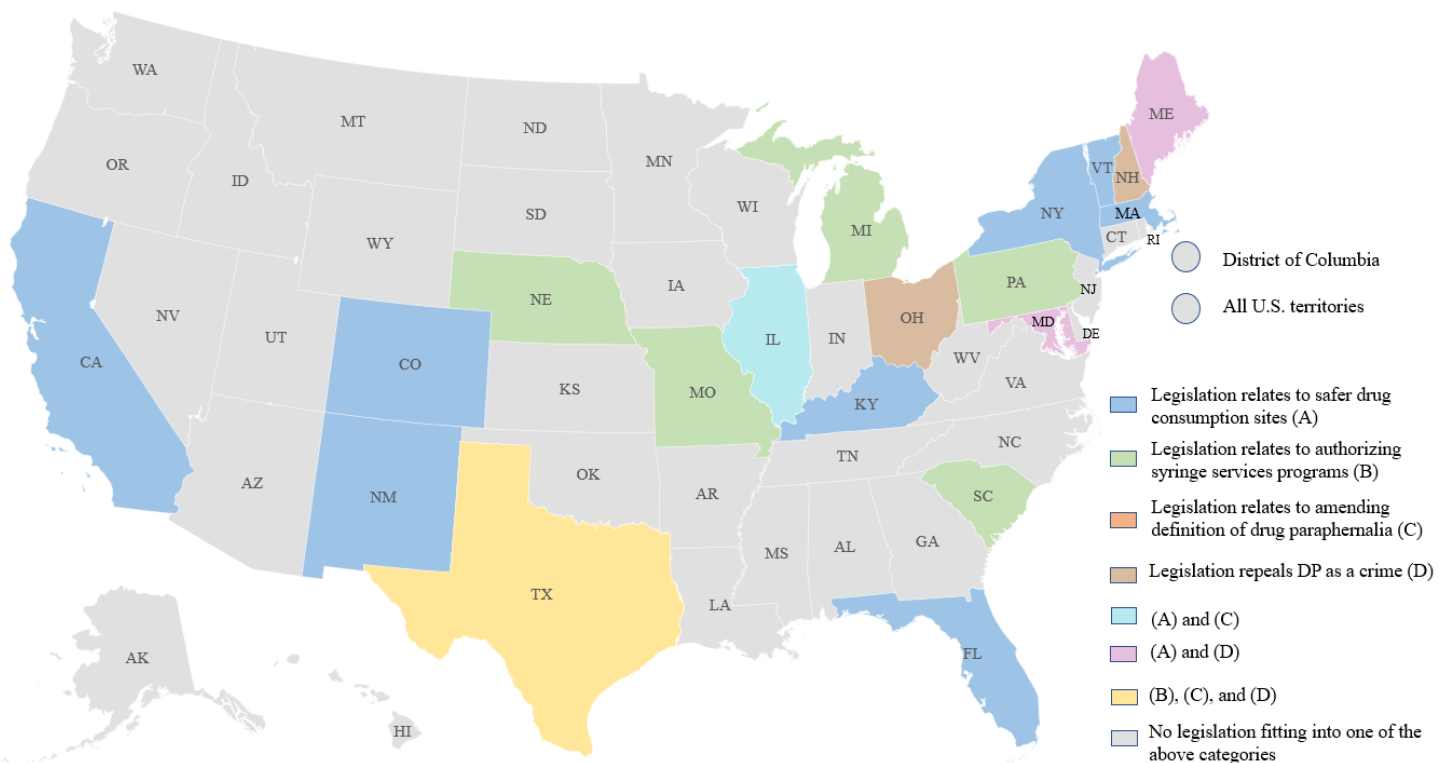
Are some uses of needles/syringes not potentially subject to drug paraphernalia (DP) penalties?



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- The laws of four states, Colorado, Kentucky, North Carolina, and Tennessee, contain a provision that allows an individual being searched by law enforcement to immediately advise the officer about his or her possession of a sharp object, such as a needle. If the individual discloses the existence of the needle, he or she may not be charged with possession of drug paraphernalia due to that object’s presence.
- In addition to legislation enacted during 2023, there was proposed-but-not enacted legislation in 19 states that would expand access to needles and syringes. These 19 states are California, Colorado, Florida, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Mexico, New York, Ohio, Pennsylvania, South Carolina, Texas, and Vermont. The bills relate to: (1) allowing safer consumption sites; (2) authorizing syringe services programs; (3) removing needles/syringes from the definition of drug paraphernalia; or (4) repealing drug paraphernalia as a crime. The map below depicts this.

Proposed-but-not-enacted legislation in 2023 that would expand access to needles/syringes



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<u>ALABAMA</u>	
Statute(s)	<ul style="list-style-type: none"> • ALA. CODE § 13A-12-260 (West 2023) (criminalizes drug paraphernalia) • ALA. CODE § 20-2-281 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • April 24, 2012 – Provision related to manufacturing a controlled substance added to § 13A-12-260 • June 5, 2015 – § 20-2-281 enacted • June 1, 2022 – Exception for testing equipment added to § 13A-12-260
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing, analyzing” a controlled substance as well as “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.” • It is not unlawful, however, for an individual to possess, deliver, or sell “testing equipment designed to detect the presence of fentanyl or any synthetic controlled substance fentanyl analogue.” • All types of DCE, or actions with DCE, other than that described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “injecting” a controlled substance, as well as “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<p>Individuals eligible for the overdose assistance exception in § 20-2-281 may not be prosecuted for a misdemeanor-level controlled substance offense, which can include first-time drug paraphernalia offenses.</p>

<u>ALABAMA</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • With respect to growing, storing, or ingesting a controlled substance in violation of the law, it is illegal to: (1) use paraphernalia; (2) possess with intent to use paraphernalia; or (3) use paraphernalia to inject, ingest, inhale, or otherwise introduce a controlled substance into the human body. A violation is a Class A misdemeanor (first offense) or a Class C felony (subsequent offense). • With respect to manufacturing a controlled substance in violation of the law, it is illegal to: (1) use paraphernalia; (2) deliver paraphernalia; (3) sell paraphernalia; (4) possess with intent to deliver or sell paraphernalia; (5) manufacture with intent to deliver or sell paraphernalia; or (6) possess with intent to use paraphernalia. A violation is a Class C felony, unless it also involves a firearm, in which case it is a Class B felony. • If an offender is aged 18 or older and he or she delivers drug paraphernalia to a person under age 18 who is at least three (3) years younger, the violation is a Class B felony.
Forfeiture	All drug paraphernalia used in violation of the law is contraband and subject to forfeiture.
Other provisions of note	Section 13A-12-260(b) contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>ALASKA</u>	
Statute(s)	There is no drug paraphernalia statute in Alaska.
Substantive amendment(s) to law(s) (unrelated to cannabis)	N/A
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • As there is no criminal prohibition against drug paraphernalia generally, Alaska allows the possession/use of FTS and all other DCE. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	As there is no criminal prohibition against drug paraphernalia generally, Alaska allows the use/possession of needles and syringes.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	N/A
Prohibited actions and penalties	N/A
Forfeiture	None
Other provisions of note	None
Is there any recently proposed legislation?	No.

<u>ARIZONA</u>	
Statute(s)	<ul style="list-style-type: none"> • ARIZ. REV. STAT. ANN. § 13-3415 (West 2023) (criminalizes drug paraphernalia) • ARIZ. REV. STAT. ANN. § 13-3423 (West 2023) (overdose assistance exception) • ARIZ. REV. STAT. ANN. §§ 36-798.51 to 798.52 (West 2023) (syringe services program exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • April 26, 2018 – § 13-3423 enacted • September 28, 2021 – The definition of “drug paraphernalia” in § 13-3415 amended to remove narcotic testing products • September 29, 2021 – §§ 36-798.51 to 798.52 added • April 6, 2023 – Sunset date for § 13-3423 extended to June 30, 2028
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used to “test [or] analyze” a drug in violation of Arizona law, including “[t]esting equipment used, intended for use, or designed for use in identifying, or analyzing the strength, effectiveness, or purity of drugs.” • Drug paraphernalia, however, does not include “narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” • All types of DCE, or actions with DCE, other than that described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used to “inject” a drug in violation Arizona law, including “[h]ypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting drugs into the human body.” • Accordingly, possessing/using needles and syringes is potentially subject to criminal penalties for drug paraphernalia, unless the exception in the bullet point below applies. • An employee, volunteer, or participant of an overdose and disease prevention program (program), including a syringe services program, may not be charged with or prosecuted for possession of a needle, hypodermic syringe, or other injection supply item obtained from or returned to the program. The person must provide “verification” that he or she obtained the needle, syringe, or other injection item from a program.

<u>ARIZONA</u>	
Other context(s) where FTS, other DCE, and needles/syringes are allowed	Individuals eligible for the overdose assistance exception in § 13-3423 may not be charged or prosecuted for the possession or use of drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • With respect to growing, manufacturing, storing, or ingesting a drug in violation of the law, it is a violation to: (1) use drug paraphernalia; (2) possess with intent to use drug paraphernalia; (3) deliver drug paraphernalia; (4) possess with intent to deliver drug paraphernalia; or (5) possess with intent to manufacture drug paraphernalia. A violation is a Class 6 felony. • Advertising to promote the sale of an object designed for or intended for use as drug paraphernalia is a Class 6 felony.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	Section 13-3415(E) contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>ARKANSAS</u>	
Statute(s)	<ul style="list-style-type: none"> • ARK. CODE. ANN § 5-64-101(12) (West 2023 (definition)) • ARK. CODE. ANN §§ 5-64-443 to 64-445 (West 2023) (criminalizes drug paraphernalia) • ARK. CODE. ANN. § 5-64-505 (West 2023) (forfeiture) • ARK. CODE. ANN § 5-64-802 (West 2023) (drug paraphernalia business) • ARK. CODE ANN. §§ 20-13-1701 to 20-13-1705 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 22, 2015 – §§ 20-13-1701 to 20-13-1705 enacted • August 1, 2017 – Provisions in §§ 5-64-443 to 64-445 related to using drug paraphernalia to store, contain, or conceal a controlled substance added • July 24, 2019 – References to heroin and fentanyl added to §§ 5-64-443 to 64-445 • July 28, 2021 – §§ 5-64-443 to 64-445 restructured • April 11, 2023 – Exception for FTS added to § 5-64-101(12)(D)
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Arkansas law, including “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of a controlled substance.” • Drug paraphernalia, however, does not include “a disposable, single-use test strip that can detect the presence of fentanyl or fentanyl analogs in a substance.” • All types of DCE, or actions with DCE, other than that described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a controlled substance in violation of Arkansas law, including a “hypodermic syringe, needle, or other object used, intended for use, or designed for use in parenterally injecting a controlled substance into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.

<u>ARKANSAS</u>	
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. The protection from arrest, charge, or prosecution provided by Arkansas' overdose assistance exception does not extend to drug paraphernalia violations.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful to possess drug paraphernalia with the intent to use it for ingesting, storing, or measuring a controlled substance in violation of the law. A violation is a: (1) Class A misdemeanor (first offense); (2) Class D felony (subsequent offense); or (3) Class D felony (if the controlled substance involved is methamphetamine, heroin, fentanyl, or cocaine). • With respect to growing, manufacturing, storing, or ingesting a controlled substance in violation of the law, it is unlawful to: (1) use drug paraphernalia; or (2) possess with intent to use drug paraphernalia. A violation is a: (1) Class D felony; or (2) Class B felony (if the controlled substance involved is methamphetamine, heroin, fentanyl, or cocaine). • Advertising to promote the sale of an object designed for or intended for use as drug paraphernalia is a Class C felony. • An offender aged 18 or older who violates the prohibition against delivering drug paraphernalia by delivering it to a minor at least three (3) years younger in furtherance of a felony commits a Class B felony. • An offender aged 18 or older who violates the prohibition against delivering drug paraphernalia by delivering it to a minor commits a Class A misdemeanor. • It is unlawful to conduct, finance, manage, supervise, direct, or own any part of a business that in the ordinary course of business, stores, possesses, gives away, or furnishes an object designed to be primarily useful as drug paraphernalia. A violation is a: (1) Class A misdemeanor (first offense); (2) Class C felony (second offense); or (3) Class B felony (subsequent offense).
Forfeiture	Other than an item in the possession or control of a practitioner during professional practice or research, drug paraphernalia is considered contraband and subject to forfeiture.
Other provisions of note	Section § 5-64-101(12)(C) contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No, other than legislation enacted in 2023.

<u>CALIFORNIA</u>	
Statute(s)	<ul style="list-style-type: none"> • CAL. HEALTH & SAFETY CODE § 11014.5 (West 2023) (definition) • CAL. HEALTH & SAFETY CODE §§ 11364 to 11364.7 (West 2023) (criminalizes drug paraphernalia; syringe services program exception) • CAL. HEALTH & SAFETY CODE § 11376.5 (West 2023) (overdose assistance exception) • CAL. EDUCATION CODE § 67384 (West 2023) (FTS on college campuses)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • January 1, 1993 – Criminal penalties in §§ 11364 to 11364.7 increased • January 1, 2000 – Exemption from prosecution added to §§ 11364 to 11364.7 for public entities and employees who distribute needles or syringes to participants in syringe services programs • January 1, 2005 – Provision §§ 11364 to 11364.7 added to allow possession of a small number of hypodermic needles • September 17, 2012 – § 11376.5 enacted • June 27, 2018 – Exemption from prosecution added §§ 11364 to 11364.7 for public entities and employees who distribute items to prevent overdose or spread of communicable diseases to participants in syringe services programs • January 1, 2012 – Prohibition in §§ 11364 to 11364.7 regarding fewer than 30 needles made inoperative until January 1, 2015 • January 1, 2021 – Extends to January 1, 2026, a physician or pharmacist’s ability to give out hypodermic needles • January 1, 2023 – Exception added to §§ 11364 to 11364.7 for certain drug checking equipment • January 1, 2024 – FTS provision added to § 67384.
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of California law, including “[t]esting equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.” • Drug paraphernalia, however, does not include “any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.”

<u>CALIFORNIA</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • A public entity, its agents, or employees is not subject to criminal prosecution for distribution of “any materials deemed by a local or state health department to be necessary to prevent the spread of . . . drug overdose” to participants in syringe services programs authorized by the public entity. • Also, California does not criminalize the use or possession of most drug paraphernalia without the intent to deliver or sell it. • All types of DCE, or actions with DCE, other than that described the bullet points just above (one of those bullet points is on the prior page) are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a controlled substance in violation of California law, including “[h]ypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless one of the exceptions in the bullet points below applies. • A public entity, its agents, or employees is not subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in syringe services programs authorized by the public entity. • Although it is unlawful to possess any instrument used for unlawfully injecting a controlled substance, this prohibition does not apply to the possession of hypodermic needles or syringes until January 1, 2026. The exception is “a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases.”
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • Prohibition against possessing any drug paraphernalia used for unlawfully injecting or smoking in § 11364 does not apply to hypodermic needles or syringes placed for safe disposal into a container that meets state and federal standards for disposal of sharps waste. • It is not a crime for an individual meeting the requirements for applicability of the overdose assistance exception in § 11376.5 to possess drug paraphernalia for personal use.

<u>CALIFORNIA</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful to possess any drug paraphernalia used for unlawfully injecting or smoking certain controlled substances, including narcotic drugs. The statute does not identify the penalty level for a violation. • Unless the paraphernalia is covered by the bullet point just above, California does not criminalize the use or possession of drug paraphernalia without the intent to deliver or sell it. • Delivering, furnishing, or transferring, or possessing with intent to deliver, furnish, or transfer drug paraphernalia is a misdemeanor, unless it relates to cocaine, cocaine base, heroin, phencyclidine, or methamphetamine, in which case the penalty is a sentence of up to one (1) year. • Maintaining or operating any place of business in which drug paraphernalia is kept, displayed, or offered in any manner, sold, furnished, transferred, or given away unless such drug paraphernalia is kept in a separate room or enclosure not accessible to persons under age 18 unaccompanied by a parent or legal guardian. A violation can result in revocation or nonrenewal of any business license, permit, or other entitlement. • If an individual aged 18 or older violates the prohibition against delivering drug paraphernalia by delivering it to a minor at least three (3) years younger, the violation may result in a sentence of up to one (1) year, a \$1,000 fine, or both
Forfeiture	All drug paraphernalia is subject to forfeiture and may be seized by any peace officer unless its distribution has been authorized.
Other provisions of note	<ul style="list-style-type: none"> • Section 11014.5(c) contains a list of factors that a court or other authority may consider when determining whether an object is drug paraphernalia. • Effective January 1, 2024, the governing board of each community college district and the Trustees of the California State University must: (1) provide information about the use and location of fentanyl test strips as part of established campus orientations; and (2) notify students of the presence and location of fentanyl test strips. Additionally, these entities must require each campus health center to stock and distribute fentanyl test strips.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>COLORADO</u>	
Statute(s)	<ul style="list-style-type: none"> • COLO. REV. STAT. ANN. §§ 16-13-501 to 13-511 (West 2023) (forfeiture) • COLO. REV. STAT. ANN. § 18-1-711 (West 2023) (overdose assistance exception) • COLO. REV. STAT. ANN. §§ 18-18-425 to 18-430 (West 2023) (criminalizes drug paraphernalia) • COLO. REV. STAT. ANN. § 18-18-430.5 (West 2023) (exceptions to criminalization)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • May 29, 2012 – § 18-1-711 enacted • May 10, 2013 – Syringe service program participants added to § 18-18-430.5 • October 1, 2013 – Criminal penalties for paraphernalia possession/manufacture/advertisement lessened in §§ 18-18-425 to 18-430 • July 1, 2015 – Needlestick prevention provisions allowing persons to disclose possession of paraphernalia added to §§ 18-18-425 to 18-430 • August 10, 2016 – Immunity for arrest added to § 18-1-711 • May 23, 2019 – Testing equipment removed from §§ 18-18-425 to 18-430 • September 14, 2020 – Pharmacists and technicians selling needles/syringes added to § 18-18-430.5 • May 1, 2023 – Amendments made to § 18-1-711
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” does not reference testing or analyzing controlled substances. • Additionally, drug paraphernalia expressly does not include “[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalties for drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.

<u>COLORADO</u>	
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of drug paraphernalia includes equipment used for “injecting” a controlled substance into the body. Unlike many other states, however, Colorado law does not reference needles or syringes in the list of examples of drug paraphernalia. • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia, unless the exception in the bullet point below applies. • The following individuals are exempt from drug paraphernalia criminalization provisions: (1) an employee, volunteer, or participant in an approved syringe services program; or (2) pharmacist or pharmacy technician who sells nonprescription syringes or needles pursuant to state law.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • Prior to searching a person, a person’s premises, or a person’s vehicle, a law enforcement officer may ask the person whether the person (or the premises/vehicle) has or contains a needle or syringe that may cut or puncture the officer. If the person alerts the officer prior to the search, assessment, or treatment, the officer may not arrest or cite the person for possession of drug paraphernalia. • Prior to assisting a person, an emergency medical services provider or other first responder may ask if the person possesses a needle or syringe that may cut or puncture the responder. If the person alerts the provider or responder prior to assistance, a law enforcement officer may not arrest or cite the person for possession of drug paraphernalia. • Person meeting the requirements for applicability of the overdose assistance exception in § 18-1-711 is immune from arrest or prosecution for possessing drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • Possessing drug paraphernalia knowing that it could be used to violate state law is a petty offense subject to a fine of no more than \$100. • Selling, delivering, possessing with intent to sell or deliver, or manufacturing with intent to sell or deliver equipment, products, or materials knowing, or where it should be known, that such items could be used as drug paraphernalia is a Level 2 drug misdemeanor. • Advertising to promote the sale of equipment, products, or materials designed and intended for use as drug paraphernalia is a Level 2 drug misdemeanor.

<u>COLORADO</u>	
Forfeiture	Drug paraphernalia is a “contraband article” subject to forfeiture. As testing equipment is not a contraband article, it is not subject to forfeiture.
Other provisions of note	Section 18-18-427 contains a list of factors that a court may, in its discretion, consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>CONNECTICUT</u>	
Statute(s)	<ul style="list-style-type: none"> • CONN. GEN. STAT. ANN. § 21a-240(20)(A) (West 2023) (definition) • CONN. GEN. STAT. ANN. § 21a-263 (West 2023) (commissioner’s power to receive and destroy) • CONN. GEN. STAT. ANN. § 21a-267 (West 2023) (criminalizes drug paraphernalia; overdose assistance exception) • CONN. GEN. STAT. ANN. § 21a-270 (West 2023) (factors to consider) • Conn. Gen. Stat. Ann. § 21a-286 (West 2023) (distribution via secured machine) • CONN. GEN. STAT. ANN. § 54-36g (West 2023) (seizure and destruction) • 2023 Conn. Acts 23-97 (pilot program for harm reduction centers)²¹
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • June 26, 1989 – Provision about school property added to § 21a-267 • July 1, 1990 – Exception added to § 21a-267 for needles and syringes distributed as part of the demonstration needle and syringe exchange program (repealed July 1, 1992) • June 7, 2006 – References to injection, needles, and syringes removed from § 21a-267 • October 1, 2011 – Overdose assistance exception added to § 21a-267 • July 1, 2022 – Exception for drug checking equipment added to § 21a-240(20)(A) • June 13, 2023 – Provision about distributing “test strips” via secured machine added to § 21a-286 • June 23, 2023 – 2023 Conn. Act. 23-97 enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Connecticut law on “dependency-producing drugs,” including “testing equipment used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness or purity of controlled substances.”

²¹ LAPP did not locate a statutory citation containing the language contained in this Act. This may be an instance, like an appropriations bill, where an act does not result in codified language.

<u>CONNECTICUT</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • Drug paraphernalia, however, does not include a product used by an individual “to test any substance prior to injection, inhalation or ingestion of the substance to prevent accidental overdose by injection, inhalation or ingestion of the substance” so long as the individual does not use the product to “engage in the unlicensed manufacturing or distribution of controlled substances.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • However, there is no express exception to illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing. Nevertheless, the harm reduction centers established pursuant to Public Act 23-97 would presumably allow for drug checking program users and workers to possess drug samples for checking.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of drug paraphernalia contains no mention of injecting, injection, needles, or syringes. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<p>The provision described below making the use or possession with intent to use drug paraphernalia a Class C misdemeanor does not apply to a person meeting the requirements for applicability of the overdose assistance exception in § 21a-267.</p>
Prohibited actions and penalties	<ul style="list-style-type: none"> • Using or possessing with the intent to use drug paraphernalia to grow, store, or ingest a controlled substance other than cannabis. A violation is a Class C misdemeanor. • Delivering, possessing with intent to deliver, or manufacturing with intent to deliver drug paraphernalia to grow, store, or ingest a controlled substance other than cannabis. A violation is a Class A misdemeanor. • Committing or intending to commit a drug paraphernalia violation on the premises of, or within 200 feet of the perimeter of a public or private K-12 school subjects the offender to one additional year of imprisonment if the person is not enrolled in the school at issue.

<u>CONNECTICUT</u>	
Forfeiture	Under § 54-36g, at any time after the seizure drug paraphernalia in connection with a criminal arrest or pursuant to a search warrant without an arrest, the prosecuting official of the local court may petition the court for destruction of such paraphernalia. After notice to the defendant and his attorney, and hearing on the petition, the court may order the forfeiture and destruction of such paraphernalia.
Other provisions of note	<ul style="list-style-type: none"> • Section § 21a-286 governs the distribution and administration of opioid antagonists, including distribution via “secured machines” (<i>i.e.</i>, vending machines). Included in this statute is a statement that the statute does not “prevent a secured machine from distributing a test strip intended for use by an individual prior to injection, inhalation or ingestion of a particular substance to prevent accidental overdose by injection, inhalation or ingestion of such substance.” • Public Act 23-97 provides that no later than July 1, 2027, the Connecticut Department of Mental Health and Addiction Services, in consultation with the Connecticut Department of Public Health, must establish a pilot program to prevent drug overdoses through the establishment of harm reduction centers in three municipalities in the state. Among other things, activities at these harm reduction centers must include providing “test strips” to individuals who request them. • Section § 21a-270 contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>DELAWARE</u>	
Statute(s)	<ul style="list-style-type: none"> • DEL. CODE. ANN. tit. 16, § 2226 (West 2023) (immunity for test strips) • DEL. CODE. ANN. tit. 16, § 4701(18) (West 2023) (definition) • DEL. CODE. ANN. tit. 16, § 4769 (West 2023) (overdose assistance exception) • DEL. CODE. ANN. tit. 16, §§ 4771 to 4774 (West 2023) (criminalizes drug paraphernalia) • DEL. CODE. ANN. tit. 16, § 4784 (West 2023) (forfeiture) • DEL. CODE. ANN. tit. 29, §§ 7990 to 7993 (West 2023) (syringe services program exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 5, 2011 – Pilot syringe services program in §§ 7990 to 7993 modified to permanent program. • September 1, 2011 – Penalty for possession of drug paraphernalia in §§ 4771 to 4774 lessened • August 31, 2013 – § 4769 enacted • June 3, 2021 – § 2226 enacted (applied only to FTS) • August 9, 2023 – Amendments made to §§ 7990 to 7993 • August 17, 2023 – § 2226 expanded to include test strips for drugs other than fentanyl • November 29, 2024 – Expansion of § 2226 to all drug strips scheduled for repeal, absent further legislative action.
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “testing [or] analyzing” a controlled substance in violation of Delaware law, including “[t]esting equipment used, intended for use, or designed for use in analyzing the strength, effectiveness or purity of controlled substances.” • However, § 2226 provides that a “person,” defined as an individual or legal entity, “may provide a drug testing strip to an individual” so long as the person does so “in good faith and with reasonable care.” This appears to mean that criminal penalties for drug paraphernalia do not apply in this situation, although the criminal penalty provisions in §§ 4771 to 4774 do not explicitly reference § 2226. • In addition, except when the person willfully, wantonly, recklessly, or by gross negligence causes injuries or death, a person providing a drug testing strip to an individual is not subject to civil damages exceeding the limit of an applicable insurance policy.

<u>DELAWARE</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • Syringe services program participants and employees, as well as certain employees of the state division of public health are exempt from criminal liability whenever the possession or distribution of drug paraphernalia is a direct result of the employee’s or participant’s activities in connection with the work of the program. The exemption does not apply to unapproved program activities or the redistribution of hypodermic needles or syringes in any form. • All types of DCE, or actions with DCE, other than that described in the bullet points just above (two of which are on the prior page) are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a controlled substance in violation of Delaware law, including “[h]ypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances.” • Accordingly, using/possessing needles and syringes is potentially subject to criminal penalties unless the exception noted in the bullet point below applies. • Syringe services program participants and employees, as well as certain employees of the state division of public health are exempt from criminal liability whenever the possession or distribution of drug paraphernalia is a direct result of the employee’s or participant’s activities in connection with the work of the program. The exemption does not apply to unapproved program activities or the redistribution of hypodermic needles or syringes in any form.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<p>An individual meeting the requirements for applicability of the overdose assistance exception in § 4769(b) may not be arrested, charged, or prosecuted for possessing drug paraphernalia.</p>

<u>DELAWARE</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • Using or possessing with intent to use drug paraphernalia (except as to cannabis). A violation is a Class B misdemeanor. • Delivering, possessing with the intent to deliver, conveying, offering for sale, converting, or manufacturing drug paraphernalia knowing, or under circumstances where one should know, that it will be used to grow, store, or ingest a controlled substance. A violation is a Class G felony. • Any person aged 18 or older who commits a violation by delivering or selling drug paraphernalia to a person under age 18 is guilty of a Class E felony. • Advertising or promoting the sale of objects designed or intended for use as drug paraphernalia. A violation is an unclassified misdemeanor.
Forfeiture	All items of drug paraphernalia are subject to forfeiture and no property rights exist in them.
Other provisions of note	Section § 4772 contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No, other than legislation enacted in 2023.

<u>DISTRICT OF COLUMBIA</u>	
Statute(s)	<ul style="list-style-type: none"> • D.C. CODE ANN. § 7-403 (West 2023) (overdose assistance exception) • D.C. CODE ANN. §§ 48-1101 to 48-1121 (West 2023) (criminalizes drug paraphernalia; syringe services program exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • March 19, 2013 – § 7-403 enacted • April 11, 2019 – Several changes made to §§ 48-1101 to 48-1121, including: <ul style="list-style-type: none"> ○ Exceptions to criminal liability added for testing equipment for personal use quantities and community-based organizations ○ Personal use exception added to forfeiture statute ○ Express prohibition against distributing needles or syringes near schools eliminated • March 16, 2021 – Several changes made to §§ 48-1101 to 48-1121, including: <ul style="list-style-type: none"> ○ Testing exception modified to refer to the personal use of drug paraphernalia generally as opposed to testing of certain quantities ○ Statute prohibiting the possession of needles and syringes repealed • April 21, 2023 – Provision allowing certain District employees’ actions added to § 48-1103
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes “[t]esting equipment or other objects used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness, or purity of a controlled substance.” • However, it is not unlawful for an individual to use, or possess with the intent to use, drug paraphernalia for the “personal use” of a controlled substance. “Personal use” means “use or possession in circumstances where there is insufficient evidence of intent to distribute or manufacture a controlled substance.” • It is also not unlawful for a “community-based organization,” as defined in § 7-404(a)(1), to deliver or sell, or possess with intent to deliver or sell, drug paraphernalia for the personal use of a controlled substance.

<u>DISTRICT OF COLUMBIA</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • Moreover, it is not unlawful for District government employees, contractors, and grantees, “acting within the scope of their employment, contract, or grant,” to deliver or sell, or possess with intent to deliver or sell, drug paraphernalia for the personal use of a controlled substance. • All types of DCE, or actions with DCE, other than that described in the bullet points just above (some on prior page) are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting a controlled substance into the human body.” • Accordingly, the possession/use of needles/syringes is potentially subject to criminal penalties for drug paraphernalia, unless one of the exceptions noted in the bullet points below applies. • It is not unlawful for an individual to use, or possess with the intent to use, drug paraphernalia for the “personal use” of a controlled substance. “Personal use” means “use or possession in circumstances where there is insufficient evidence of intent to distribute or manufacture a controlled substance.” • It is not unlawful for a “community-based organization,” as defined in § 7-404(a)(1), to deliver or sell, or possess with intent to deliver or sell, drug paraphernalia for the personal use of a controlled substance. • It is not unlawful for District government employees, contractors, and grantees, “acting within the scope of their employment, contract, or grant,” to deliver or sell, or possess with intent to deliver or sell, drug paraphernalia for the personal use of a controlled substance. • It is not unlawful for: (1) a person participating in the syringe services program authorized by § 48-1103.1 to possess any hypodermic syringe or needle distributed as part of the program; or (2) a person authorized to exchange a syringe or needle under the program to deliver such items as part of the program.

<u>DISTRICT OF COLUMBIA</u>	
Other context(s) where FTS, other DCE, and needles/syringes are allowed	The offense of unlawful use, or possession with intent to use, drug paraphernalia does not apply to persons meeting the requirements for applicability of the overdose assistance exception in § 7-403.
Prohibited actions and penalties	<ul style="list-style-type: none"> • Subject to the “personal use” exception described above, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to make or ingest a controlled substance other than marijuana. The maximum penalty for a violation is a 30-day sentence, a \$250 fine, or both. • Subject to the “community-based organization” exception described above, it is unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia to make or ingest a controlled substance other than marijuana. The maximum penalty for a first violation is a six-month sentence, a fine of \$1,000, or both. • Any person aged 18 or older who violates the law by delivering drug paraphernalia to a person under age 18 at least three (3) years younger is guilty of a special offense, subject to a maximum penalty of an eight (8) year sentence, a fine of \$25,000, or both.
Forfeiture	All prohibited drug paraphernalia is subject to forfeiture immediately, and no property right exists in it after a final conviction by a court.
Other provisions of note	Section 48-1102 contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No, other than legislation enacted in 2023.

<u>FLORIDA</u>	
Statute(s)	<ul style="list-style-type: none"> • FLA. STAT. ANN § 381.0038 (West 2023) (syringe services program exception) • FLA. STAT. ANN. § 893.12 (West 2023) (forfeiture) • FLA. STAT. ANN. §§ 893.145 to 893.147 (West 2023) (criminalizes drug paraphernalia) • FLA. STAT. ANN. § 893.21 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 1, 2013 – Prohibition against retail sale of drug paraphernalia added to § 893.147 • July 1, 2016 – Needle and syringe exchange pilot program added to § 381.0038 • July 1, 2019 – Pilot program in § 381.0038 modified to permanent program • July 1, 2019 – Overdose assistance exception added to § 893.21 • July 1, 2023 – Narcotic drug testing products exception added to § 893.145
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “testing [or] analyzing” a controlled substance in violation of Florida law, including “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.” • However, drug paraphernalia does not include “narcotic-drug-testing products that are used solely to determine whether a controlled substance contains fentanyl . . . or any other controlled substance.” • All other types of DCE, or actions with DCE, other than that described in the bullet point above are potentially subject to criminal penalties for drug paraphernalia. This expressly includes the use or possession of a narcotic-drug-testing product “that can measure or determine the quantity, weight, or potency of a controlled substance.” • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a controlled substance in violation of Florida law, including “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.”

<u>FLORIDA</u>	
Legality of needles/syringes (continued)	<ul style="list-style-type: none"> • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia, unless the exception noted in the bullet point below applies. • An individual possessing, distributing, or exchanging needles or syringes as part of a syringe services program established under § 381.0038 does not violate the law. This protection does not apply, however, to program staff members, volunteers, or participants who: (1) possess needles or syringes that are not a part of the program; or (2) redistribute needles or syringes in any form, if acting outside the program.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	The offense of unlawful use, or possession with intent to use, drug paraphernalia does not apply to persons meeting the requirements for applicability of the overdose assistance exception in § 893.21.
Prohibited actions and penalties	<ul style="list-style-type: none"> • The following violations are first-degree misdemeanors: <ul style="list-style-type: none"> ○ Using, or possessing with intent to use, drug paraphernalia to make or ingest a controlled substance; ○ Using, possessing with the intent to use, or manufacturing with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport a controlled substance; or ○ Advertising or promoting the sale of objects designed or intended for use as 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 make or ingest a controlled substance. A violation is a third-degree felony. • Any person aged 18 or older who violates the law by delivering drug paraphernalia to a person under age 18 is guilty of a second-degree felony.
Forfeiture	Drug paraphernalia is contraband subject to civil forfeiture.
Other provisions of note	<ul style="list-style-type: none"> • Section 893.146 contains a list of factors that a court, jury, or other authority must consider when determining whether an object is drug paraphernalia. • Section 381.0038(e) provides that a law enforcement officer acting in good faith who arrests or charges a person later determined to be eligible for the syringe services program protection is immune from civil liability that might otherwise be incurred or imposed by reason of the officer's actions.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>GEORGIA</u>	
Statute(s)	<ul style="list-style-type: none"> • GA. CODE ANN. § 16-13-1 (West 2023) (criminalizes drug related objects) • GA. CODE ANN. § 16-13-5 (West 2023) (overdose assistance exception) • GA. CODE ANN. §§ 16-13-32 to 13-32.2 (West 2023) (criminalizes drug related objects; exceptions) • GA. CODE ANN. § 26-3-22 (West 2023) (testing equipment)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • April 24, 2014 – § 16-13-5 enacted • July 1, 2022 – References to hypodermic needles and syringes removed from § 16-13-1 and §§ 16-13-32 to 16-13-32.2 • July 1, 2023 – Testing equipment exception added to § 26-3-22
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug-related object” includes any machine, instrument, tool, or equipment intended to be used for, among other things, “test[ing] the strength, effectiveness, or purity of any dangerous drug or controlled substance under circumstances in violation of the laws of this state.” • However, a drug-related object does not include “any testing equipment used to determine whether a controlled substance has been adulterated and contains a synthetic opioid.” • All other types of DCE, or actions with DCE, other than that described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • Both definitions of “drug-related object” (found in § 16-13-1(a)(3) and § 16-13-32(a)(1)) explicitly note that the definition does not include a hypodermic needle or syringe. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia. • Additionally, an individual employed by or acting as an agent of a registered syringe services program: (1) may sell, lend, rent, lease, give, exchange, or otherwise distribute to any person a hypodermic syringe or needle designed or marketed primarily for human use; and (2) is immune from civil and criminal liability arising from the possession, distribution, or exchange of hypodermic syringes or needles and related supplies as part of a program.

<u>GEORGIA</u>	
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • The offense relating to possession or use of drug related objects does not apply to persons meeting the requirements for applicability of the overdose assistance exception in § 16-13-5. • It is an affirmative defense to a charge of unlawful distribution that the hypodermic syringe or needle was marketed for a legitimate medical purpose.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for any person to use, or possess with the intent to use, any object or materials of any kind for the purpose of making or ingesting a dangerous drug or controlled substance. A violation is a misdemeanor. • For each of the following violations below: (1) a first offense is a misdemeanor; (2) a second offense is a misdemeanor “of a high and aggravated nature;” and (3) a third or subsequent offense is a felony, subject to a sentence of one to five (1-5) years and a fine up to \$5,000: <ul style="list-style-type: none"> ○ Selling, lending, renting, leasing, giving, exchanging, or otherwise distributing any drug related object, knowing the drug related nature of the object; ○ Displaying for sale, or possessing with the intent to distribute, a drug related object, knowing the drug related nature of the object; ○ Advertising in any manner any kind or notice which gives information, directly or indirectly, on where, how, from whom, or by what means any drug related object may be obtained or made; or ○ Selling, lending, renting, leasing, giving, exchanging, or otherwise distributing to any person a hypodermic syringe or needle designed for human use, other than by a licensed pharmacist, practitioner, or syringe services program employees/agents. • It is unlawful for any person knowingly to sell, deliver, distribute, display for sale, or provide to a minor a drug related object, or knowingly possess with intent to do those things. A violation is a misdemeanor (first offense) or a felony (subsequent offense) subject to a sentence of one to five (1-5) years and a \$1,000 to \$5,000 fine. • It is unlawful for any minor to represent falsely to any person that he or she is 18 years of age or older with the intent to purchase or otherwise obtain any drug related object. A violation is a misdemeanor.

<u>GEORGIA</u>	
Forfeiture	Drug related objects which are distributed or possessed in violation of the law are contraband, subject to forfeiture, and no person has a property interest in them.
Other provisions of note	Section 16-13-32.1(c) contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>HAWAII</u>	
Statute(s)	<ul style="list-style-type: none"> • HAW. REV. STAT. ANN. § 325-114 (West 2023) (syringe services program exception) • HAW. REV. STAT. ANN. § 329-1 (West 2023) (definition) • HAW. REV. STAT. ANN. § 329-43.5 (West 2023) (criminalizes drug paraphernalia) • HAW. REV. STAT. ANN. § 329-43.6 (West 2023) (overdose assistance exception) • HAW. REV. STAT. ANN. § 329-55(a)(8) (West 2023) (forfeitures)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 7, 2015 – § 329-43.6 enacted • July 3, 2017 – Criminal penalties for drug paraphernalia violations substantially reduced • June 22, 2023 – Exception for FTS added to § 329-1 • January 1, 2024 – Exception for FTS possibly repealed²²
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “testing [or] analyzing” a controlled substance in violation of Hawaii law, including “[t]esting equipment used, primarily intended for use, or primarily designed for use in identifying, or in analyzing the strength, effectiveness, or purity of prohibited controlled substances.” • However, assuming it was not repealed in January 2024 (see footnote below), drug paraphernalia does not include “fentanyl test strips,” which are defined as small strips of paper that can detect the presence of fentanyl in: (1) “different kinds of drugs”; and (2) “different drug forms.” • All other types of DCE, or actions with DCE, other than that described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.

²² As of January 2, 2024, Westlaw’s annotated statutes for Hawaii no longer contain the changes made to HAW. REV. STAT. ANN. § 329-1 effective June 22, 2023. According to Westlaw, this is due to § 17 of 2022 Hawaii Laws Act 278 (House Bill 2171), which took effect January 1, 2024. Section 17 of Act 278 purported to change the phrase “department of public safety” to “department of law enforcement” in several places within § 329-1. According to Westlaw, § 17 of Act 278 also undid the changes made to § 329-1 on June 22, 2023. LAPP attorneys do not see anything in § 17 that clearly does this but notes that it is possible that Westlaw concluded the language in § 329-1 reverted to pre-June 2023 form because § 329-1 did not contain the FTS exception when the Hawaii governor signed Act 278 in July 2022. Given the Westlaw information, however, we note the fact that the FTS exception may no longer be in Hawaii’s law as of January 2024. **March 2024 UPDATE - Westlaw corrected its error.**

<u>HAWAII</u>	
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a controlled substance in violation of Hawaii law, including “[h]ypodermic syringes, needles, and other objects used, primarily intended for use, or primarily designed for use in parenterally injecting prohibited controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia, unless the exception noted in the bullet point below applies. • Syringe services programs operating under §§ 325-111 to 325-117 do not constitute prohibited acts related to drug paraphernalia under § 329-43.5 for the program participants, employees of the program, or the state department of health.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	The offense of possession of drug paraphernalia does not apply to persons meeting the requirements for applicability of the overdose assistance exception in § 329-43.6.
Prohibited actions and penalties	<ul style="list-style-type: none"> • The following violations are subject to a fine up to \$500: <ul style="list-style-type: none"> ○ Using or possessing with intent to use drug paraphernalia to make or ingest a controlled substance in violation of the law; or ○ Delivering, possessing with intent to deliver, or manufacturing with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used to make or ingest a controlled substance in violation of this chapter. • A person aged 18 or older who delivers drug paraphernalia to a person under age 18 at least three (3) years younger is guilty of a class B felony. • It is unlawful for any person to publish an advertisement to promote the sale of objects designed or intended for use as drug paraphernalia. A violation is a Class C felony.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	Section 329-1 contains a list of factors that a court or other authority should consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>IDAHO</u>	
Statute(s)	<ul style="list-style-type: none"> • IDAHO CODE ANN. § 37-2701 (West 2023) (definition) • IDAHO CODE ANN. §§ 37-2734A to -2734B (West 2023) (criminalizes drug paraphernalia) • IDAHO CODE ANN. § 37-2739C (West 2023) (overdose assistance exception) • IDAHO CODE ANN. § 37-2744 (West 2023) (forfeiture) • IDAHO CODE ANN. § 37-3404 (West 2023) (syringe services program exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 1, 2018 – § 37-2739C enacted • July 1, 2019 – § 37-3404 enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “testing [or] analyzing” a controlled substance in violation of Idaho law, including “[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” • Accordingly, the possession/use of all DCE is potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a controlled substance in violation of Idaho law, including “[h]ypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia, unless the exception noted in the bullet point below applies. • A syringe services program may operate and procure supplies in Idaho if the program adheres to state law, “notwithstanding any provision of law to the contrary.” This suggests— although not clearly—that distribution and possession of needles and syringes by authorized syringe services program agents and their participants is allowable.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	The offense of possession with intent to use drug paraphernalia does not apply to a person meeting the requirements for applicability of the overdose assistance exception in § 37-2739C.

<u>IDAHO</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • The following two violations are misdemeanors subject to up to one (1) year imprisonment, a fine of \$1,000, or both: <ul style="list-style-type: none"> ○ Using, or possessing with intent to use, drug paraphernalia to make or ingest a controlled substance; or ○ Publishing an advertisement with the purpose of promoting the sale of objects designed or intended for use as 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 make or ingest a controlled substance. A violation is a felony, subject to up to nine (9) years imprisonment, a \$30,000 fine, or both.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	The definition of drug paraphernalia in § 37-2701 contains a list of factors that a court or other authority should consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>ILLINOIS</u>	
Statute(s)	<ul style="list-style-type: none"> • 410 ILL. COMP. STAT. ANN. 710/5 (West 2023) (syringe services program exception) • 410 ILL. COMP. STAT. ANN. 710/10 (West 2023) (dispensing drug adulterant testing supplies) • 410 ILL. COMP. STAT. ANN. 710/15 (West 2023) (sales of fentanyl test strips) • 720 ILL. COMP. STAT. ANN. 570/414 (West 2023) (overdose assistance exception) • 720 ILL. COMP. STAT. ANN. 600/1 to /7 (West 2023) (criminalizes drug paraphernalia) • 720 ILL. COMP. STAT. ANN. 635/0.01 to 635/6 (West 2023) (possession of hypodermic syringes and needles) • 720 ILL. COMP. STAT. ANN. 646/115 (West 2023) (methamphetamine overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 25, 2003 – Exception for hypodermic syringes or needles allowed under the Hypodermic Syringes and Needles Act added • August 12, 2003 – Definition of drug paraphernalia in § 600/2 changed to require that a person intend to use the object in question unlawfully • June 1, 2012 – §§ 570/414 and 646/115 enacted • August 9, 2019 – § 710/5 enacted • April 27, 2021 – Amendments to § 570/414 added, among other things: (1) protection for an eligible person against arrest; and (2) immunity for the possession of drug paraphernalia • June 2, 2022 – Provisions related to drug adulterant testing supplies changed in § 710/5 • June 2, 2022 – § 710/10 enacted • January 1, 2024 – Exception for DCE added to definition of drug paraphernalia • January 1, 2024 – Applicability of § 710/10 expands to additional individuals • January 1, 2024 – § 710/15 takes effect

<u>ILLINOIS</u>	
<p>Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)</p>	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “testing [or] analyzing” a controlled substance in violation of Illinois law, including “testing equipment intended to be used unlawfully in a private home for identifying or in analyzing the strength, effectiveness or purity of controlled substances.” • However, notwithstanding any other provision of Illinois law, no employee, volunteer of, or participant in a syringe services program established under Illinois law can be charged with or prosecuted for possession of drug adulterant testing supplies obtained from or returned to: <ul style="list-style-type: none"> ○ a syringe services program; or ○ a pharmacy, hospital, clinic, or other health care facility or medical office (or employee of such facility) dispensing drug adulterant testing supplies in accordance with § 710/10. • A pharmacist, physician, advanced practice registered nurse, or physician assistant, or such individual’s designee(s), may dispense drug adulterant testing supplies to any person. These supplies must be stored in such a way that limits access to the authorized dispensing individuals. In addition, no quantity of drug adulterant testing supplies greater than necessary to conduct five (5) assays of substances suspected of containing adulterants may be dispensed in any single transaction. • Until January 1, 2024, all types of DCE, or actions with DCE, other than those described in the two bullet points just above are potentially subject to criminal penalties for drug paraphernalia. • As of January 1, 2024, the definition of drug paraphernalia will not include “equipment, products, or materials to analyze or test for the presence of fentanyl, a fentanyl analogue, or a drug adulterant within a controlled substance.” • Accordingly, as of January 1, 2024, the possession/use of all types of DCE will not be subject to criminal penalty for drug paraphernalia. • Moreover, as of January 1, 2024, “a trained overdose responder for an organization enrolled in the Drug Overdose Prevention Program administered by the Department of Human Services, Division of Substance Use Prevention and Recovery” may distribute drug adulterant testing supplies pursuant to § 710/10.

<u>ILLINOIS</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • Also, as of January 1, 2024: (1) a pharmacist or retailer may sell FTS “over-the-counter to the public”; and (2) a county health department may distribute FTS at the county health department facility for no fee. • Despite these provisions, both before or after January 1, 2024, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of drug paraphernalia includes equipment used for “injecting” a controlled substance into the body. Unlike many other states, however, Illinois law does not reference needles or syringes in the list of examples of drug paraphernalia. • Accordingly, using/possessing needles and syringes is subject to criminal penalties for drug paraphernalia, unless one of the exceptions in the two bullet points below applies. • The crime of possession of drug paraphernalia does not apply to a person legally authorized to possess hypodermic syringes or needles under §§ 635/0.01 to 635/6. A person who is at least 18 years of age may purchase from a pharmacy and have in his or her possession up to 100 hypodermic syringes or needles. • Notwithstanding any other provision of Illinois law, no employee, volunteer of, or participant in a syringe services program established under Illinois law can be charged with or prosecuted for possession of needles, hypodermic syringes, or other drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	An individual meeting the requirements for applicability of the overdose assistance protections in § 570/414 or § 646/115 may not be arrested, charged, or prosecuted for the possession of drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • An individual who knowingly possesses drug paraphernalia with the intent to use it to make or ingest a controlled substance faces a minimum fine of \$750 along with any other penalty allowable for a Class A misdemeanor. • Any individual who keeps for sale, offers for sale, sells, or delivers for any commercial consideration drug paraphernalia commits a Class 4 felony subject to a minimum fine of \$1,000 for each such item.

<u>ILLINOIS</u>	
Prohibited actions and penalties (continued)	<ul style="list-style-type: none"> • Any individual aged 18 years or older who sells or delivers for any commercial consideration any item of drug paraphernalia to a person under age 18 is guilty of a Class 3 felony. • Any individual who sells or delivers for a commercial consideration any item of drug paraphernalia to a woman he or she knows to be pregnant is guilty of a Class 2 felony. • Any store, place, or premises from which or in which any item of drug paraphernalia is kept for sale, offered for sale, sold, or delivered for any commercial consideration is a public nuisance.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	<ul style="list-style-type: none"> • Section 600/4 contains a list of factors that a trier of fact should consider in determining if an object falls under an exemption for drug paraphernalia. • Section 600/7 provides that a local ordinance that imposes the same or greater restrictions on the availability of drug paraphernalia is allowable.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>INDIANA</u>	
Statute(s)	<ul style="list-style-type: none"> • IND. CODE ANN. § 16-42-19-18 (West 2023) (criminalizes drug paraphernalia) • IND. CODE ANN. § 16-42-27-2(d), (g), (h) (West 2023) (overdose assistance exception) • IND. CODE ANN. § 35-33-5-5 (West 2023) (disposition of property) • IND. CODE ANN. §§ 35-48-4-8.1 to 35-48-4.8.5 (West 2023) (criminalizes drug paraphernalia; syringe services program exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 1, 2003 – Penalty for a first-time offense of possessing drug paraphernalia and dealing in paraphernalia reduced in §§ 35-48-4-8.1 to 35-48-4.8.5 • July 1, 2014 – Offense of recklessly possessing drug paraphernalia removed from §§ 35-48-4-8.1 to 35-48-4.8.5 • May 5, 2015 – Exception for syringes and needles provided as part of a syringe services program added to §§ 35-48-4-8.1 to 35-48-4.8.5 • July 1, 2015 – Penalties for offense of possessing drug paraphernalia in §§ 35-48-4-8.1 to 35-48-4.8.5 reduced • March 21, 2016 – Overdose assistance exception added to § 16-42-27-2
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • Indiana law does not define the term “drug paraphernalia.” • However, it is illegal to for an individual to possess, sell, deliver, manufacture, finance the manufacture of, or design an object for the purpose of “testing the strength, effectiveness, or purity of a controlled substance.” In the case of selling/delivering, the prohibition extends to objects used for “testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance.” • Accordingly, the possession/use of all DCE is potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.

<u>INDIANA</u>	
Legality of needles/syringes	<ul style="list-style-type: none"> • Indiana law does not define the term “drug paraphernalia.” • However, it is illegal to for an individual to possess, sell, deliver, manufacture, finance the manufacture of, or design an object for the purpose of “introducing into the human body a controlled substance.” In the case of selling/delivering, the prohibition extends to objects used for “ingesting, inhaling, or otherwise introducing into the human body marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia, unless the exception noted in the bullet point below applies. • The offense of dealing in drug paraphernalia (selling, offering for sale, delivering, financing the sale) does not apply to: <ul style="list-style-type: none"> ○ A qualified entity, as defined, that provides a syringe or needle as part of a syringe services program under §§ 16-41-7.5-1 to 16-41-14.; or ○ Any entity or person that provides funding to a qualified entity to operate a syringe services program.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	An individual meeting the requirements for applicability of the overdose assistance protections in § 16-42-27-2(g) is “immune from criminal prosecution” for possession of drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • An individual may not possess a hypodermic syringe, needle, or an instrument adapted for the use of a drug by injection with an intent to violate the Indiana Legend Drug Act (§§ 16-42-19-1 to 16-42-19-30) or commit a controlled substance offense. A violation is a Level 6 felony. • For the first offense, it is a Class C misdemeanor for an individual to knowingly or intentionally possesses an instrument, a device, or another object that the person intends to use for: (1) introducing into the person's body a controlled substance; (2) testing the strength, effectiveness, or purity of a controlled substance; or (3) enhancing the effect of a controlled substance. A second or subsequent offense is a Class A misdemeanor. • For the first offense, it is a Class A infraction for an individual to manufacture, finance the manufacture of, or design a device that is intended to be used primarily for: (1) introducing into the human body a controlled substance; (2) testing the strength, effectiveness, or purity of a controlled substance; or (3) enhancing the effect of a controlled substance. A second or subsequent offense is a Level 6 felony.

<u>INDIANA</u>	
Prohibited actions and penalties (continued)	<ul style="list-style-type: none">• For a first offense, it is a Class A infraction for an individual to sell, offer for sale, deliver, or finance the delivery of a raw material or a device that is intended to be used for one or more of a list of things that generally coincide with drug paraphernalia. A second or subsequent offense is a Level 6 felony.
Forfeiture	With respect to items of property seized by any law enforcement agency because of an arrest, search warrant, or warrantless search, such agency may destroy or cause to be destroyed chemically contaminated equipment including drug paraphernalia associated with the illegal manufacture of drugs or controlled substances without a court order if certain conditions are met.
Other provisions of note	None.
Is there any recently proposed legislation?	No.

<u>IOWA</u>	
Statute(s)	<ul style="list-style-type: none"> • IOWA CODE ANN. § 124.414 (West 2023) (criminalizes drug paraphernalia) • IOWA CODE ANN. § 124.418 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	July 1, 2018 – § 124.418 enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes all equipment, products, or materials of any kind used or attempted to be used to “[t]est the strength, effectiveness, or purity of a controlled substance.” • Accordingly, the possession/use of all DCE is potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes all equipment, products, or materials of any kind used or attempted to be used to “[i]nject, ingest, inhale, or otherwise introduce into the human body a controlled substance.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception noted just below applies. • Hypodermic needles or syringes are allowable if manufactured, delivered, sold, or possessed for a lawful purpose.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	For any individual meeting the requirements for applicability of the overdose assistance exception in § 124.418, “protected information,” as the law defines that term, may not be considered to support probable cause and is not admissible as evidence for violating the prohibition against drug paraphernalia.
Prohibited actions and penalties	It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia. A violation is a simple misdemeanor.
Forfeiture	Iowa law does not expressly address forfeiture of drug paraphernalia.
Other provisions of note	None.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>KANSAS</u>	
Statute(s)	<ul style="list-style-type: none"> • KAN. STAT. ANN. § 21-5701(f) (West 2023) (definition) • KAN. STAT. ANN. §§ 21-5709 to 21-5711 (West 2023) (criminalizes drug paraphernalia)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • April 15, 2010 – Enhanced penalty for distribution to minors or near schools added to §§ 21-5709 to 21-5711 • July 1, 2012 – Penalty for certain use/possession with intent to use and distribution-related violations reduced in §§ 21-5709 to 21-5711 • July 1, 2017 – Penalty for use/possession with intent to use violations reduced in §§ 21-5709 to 21-5711 • July 1, 2023 – Exception for certain drug checking materials added to § 21-5701(f)
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Kansas law, including “testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” • Drug paraphernalia, however, does not include “any materials used or intended for use to test a substance for the presence of fentanyl, a fentanyl analog, ketamine, or gamma hydroxybutyric acid.” • All other types of DCE, or actions with DCE, other than that described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “injecting” a controlled substance in violation of Kansas law, including “hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. Kansas is one of two states without an overdose assistance exception of any kind (the other is Wyoming).

<u>KANSAS</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for any person to use, or possess with intent to use, any drug paraphernalia. A violation is a Class B non-person misdemeanor if it relates to introducing a controlled substance into the body. A violation is a Level 5 felony if it relates to analyzing or distributing a controlled substance. • It is unlawful for any person to distribute, possess with the intent to distribute or manufacture with intent to distribute any drug paraphernalia with the reasonable knowledge that it will result in a controlled substance violation. Penalties differ depending on what controlled substance violation occurs. • Distributing drug paraphernalia to a minor, or within 1,000 feet of a school, results in stiffer penalties.
Forfeiture	Not expressly addressed by statute.
Other provisions of note	Section § 21-5711 contains a list of factors that a court or other authority must consider in determining if an object is drug paraphernalia.
Is there any recently proposed legislation?	No, other than legislation enacted in 2023.

<u>KENTUCKY</u>	
Statute(s)	<ul style="list-style-type: none"> • KY. REV. STAT. ANN. § 15.525 (West 2023) (substance use disorder treatment referral) • KY. REV. STAT. ANN. § 218A.133 (West 2023) (overdose assistance exception) • KY. REV. STAT. ANN. § 218A.500 (West 2023) (criminalizes drug paraphernalia; syringe services program exception) • KY. REV. STAT. ANN. § 218A.510 (West 2023) (factors for consideration)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • March 25, 2015 – Exceptions to criminalization provisions in § 218A.500 added for: (1) syringe exchange programs; and (2) declaration to peace officer regarding the presence of a needle or other sharp object • March 25, 2015 – § 218A.133 enacted • June 29, 2017 – § 15.525 enacted • June 28, 2021 – Exception to criminalization provisions in § 218A.500 added for the sale of hypodermic syringes and needles by a retail pharmacy without a prescription • June 29, 2023 – Drug checking equipment provisions added to § 218A.500
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Kentucky law, including “testing equipment used, intended for use, or designed for use in analyzing the strength, effectiveness, or purity of controlled substances.” • Drug paraphernalia, however, does not include “narcotic drug testing products utilized in determining whether a controlled substance contains a synthetic opioid or its analogues” unless such product is used “in conjunction with the importation, manufacture, or selling of fentanyl or a fentanyl analogue” in violation of Kentucky law. • Moreover, local health departments may operate a substance use disorder outreach program that includes syringe services programs. Items exchanged at the program are not deemed drug paraphernalia while located at the program. • All other types of DCE, or actions with DCE, other than those described in the two bullet points just above are potentially subject to criminal penalties for drug paraphernalia.

<u>KENTUCKY</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • With respect to the users of drug checking services, or program staff providing such services, possessing drug samples for the purpose of testing, “possession of a narcotic drug testing product. . . 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.”
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “injecting” a controlled substance in violation of Kentucky law, including “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless one of the two exceptions in the bullet points below applies. • The retail sale of hypodermic syringes and needles without a prescription in pharmacies is allowed. Additionally, the hypodermic syringe and needle inventory of a pharmacy is not drug paraphernalia. • Local health departments may operate a substance use disorder outreach program that includes syringe services programs. Items exchanged at the program are not deemed drug paraphernalia while located at the program.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • An individual meeting the requirements for applicability of the overdose assistance exception in § 218A.133 may not be charged or prosecuted for the possession of drug paraphernalia. • An individual voluntarily seeking substance use disorder treatment assistance through a program created pursuant to § 15.525 may not be arrested or prosecuted for the possession of drug paraphernalia that is surrendered to the law enforcement agency. • Prior to searching a person, a person’s premises, or a person’s vehicle, a law enforcement officer may ask the person whether the person (or the premises/vehicle) possesses/contains a needle or syringe that may cut or puncture the officer. If the person so alerts the officer prior to the search, the officer may not arrest or cite the person for possession of drug paraphernalia.

<u>KENTUCKY</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia. A violation is a Class A misdemeanor. • It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia. A violation is a Class A misdemeanor.
Forfeiture	To receive the protection from arrest or prosecution for the substance use disorder treatment referral program, any drug paraphernalia on the person seeking assistance must be surrendered to law enforcement.
Other provisions of note	Section § 218A.510 contains a list of factors that a court or other authority should consider in determining if an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>LOUISIANA</u>	
Statute(s)	<ul style="list-style-type: none"> • LA. STAT. ANN. § 14:403.10 (West 2023) (overdose assistance exception) • LA. STAT. ANN. §§ 40:1021 to 1026 (West 2023) (criminalizes drug paraphernalia; syringe services program exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • August 1, 2014 – § 14:403.10 enacted • August 1, 2016 – Penalties for violations of drug paraphernalia laws in §§ 40:1021 to 1026 reduced. • June 3, 2017 – Exception for syringe service programs added to § 40:1024 • August 1, 2022 – DCE provision added to § 40:2021 • August 1, 2022 – Overdose assistance exception in § 14:403.10 expanded to include drug paraphernalia
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Louisiana laws including “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.” • Drug paraphernalia, however, does not include “rapid fentanyl test strips (FTS) or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogue.” • All other types of DCE, or actions with DCE, other than that described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “injecting” a controlled substance in violation of Louisiana law, including “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception noted just below applies. • Drug paraphernalia laws do not prohibit the establishment and implementation of a syringe services program within the jurisdiction of a local governing authority, including but not limited to a city, town, or parish.

<u>LOUISIANA</u>	
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • An individual meeting the requirements for the overdose assistance exception in § 14:403.10 may not be charged, prosecuted, or penalized for possession of drug paraphernalia. • The prohibition against drug paraphernalia does not apply to the manufacture, sale, distribution, or advertisement of any product or object designed and sold primarily for scientific research, industrial, veterinary, or agricultural purposes, or for bona fide medical or clinical use. • It is an affirmative defense to prosecution that the person who received the paraphernalia has a prescription from a licensed medical practitioner for cannabis or the controlled substance for which the object is primarily intended to be used. It is also an affirmative defense that the drug paraphernalia is designed or marketed primarily for veterinary or agricultural purposes.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for any person to use, or to possess with intent to use, any drug paraphernalia. • It is unlawful for any person or corporation, knowingly, or under circumstances where one reasonably should know, to sell, lend, rent, lease, give, exchange, or otherwise distribute to any person any drug paraphernalia. • Penalties for violations are: <ul style="list-style-type: none"> ○ For the first violation, the offender may be subject to a fine up to \$300, imprisonment of up to 15 days, or both; ○ For a second conviction, the offender may be subject to a fine up to \$1,000, imprisonment of up to six (6) months, or both; ○ For a third or subsequent conviction, the offender may be subject to a fine up to \$2,500, imprisonment up to two (2) years, or both; and ○ For a second or subsequent conviction, an individual's business license may be suspended or revoked.
Forfeiture	Drug paraphernalia is contraband and may be destroyed by the authorities making the seizure.
Other provisions of note	Section 40:1022 contains a list of factors that a court or other authority must consider in determining if an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>MAINE</u>	
Statute(s) and initial effective date(s)	<ul style="list-style-type: none"> • ME. REV. STAT. ANN. tit. 17-A, § 1111-A (West 2023) (criminalizes drug paraphernalia) • ME. REV. STAT. ANN. tit. 17-A § 1111-B (West 2023) (overdose assistance exception) • ME. REV. STAT. ANN. tit. 22 §2383-B(2)(H) (West 2023) (authorized possession of drug samples for drug checking)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • September 19, 2019 – § 1111-B enacted • October 18, 2021 – References to “testing equipment” removed from definition of “drug paraphernalia” in § 1111-A • October 18, 2021 - Crimes of possession of, or furnishing or trafficking in, hypodermic apparatuses repealed • August 8, 2022 – Wholesale changes to § 1111-B, amounting to a repeal and replace • June 26, 2023 – Drug checking provision added to § 2383-B(2)
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” does not reference testing or analyzing controlled substances. • Accordingly, the possession/use of all types of DCE is not subject to criminal penalties for drug paraphernalia. • With respect to the users of drug checking services, or program staff providing such services, possessing drug samples for the purpose of testing, individuals “possessing, receiving, transporting or storing one or more drug samples contained in one or more sample collection instruments or drug paraphernalia for the purpose of drug checking” do not commit the crime(s) of unlawful trafficking in scheduled drugs, trafficking or furnishing counterfeit drugs, or unlawful furnishing scheduled drugs.
Legality of needles/syringes	<ul style="list-style-type: none"> • Section 1111-A expressly provides that “drug paraphernalia does not include hypodermic apparatuses.” • Accordingly, the possession/use of needles or syringes is not subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • An individual meeting the requirements for the overdose assistance exception in § 1111-B is immune from arrest or prosecution from drug paraphernalia crimes. • It is an affirmative defense to prosecution that the drug paraphernalia used or possessed is used or possessed for the propagation, cultivation, or processing of hemp.

<u>MAINE</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • Using drug paraphernalia, or possessing it with the intent to use, is a civil violation subject to a \$300 fine. • Trafficking in or furnishing drug paraphernalia while knowing, or under circumstances when the person should know, that the paraphernalia will be used illegally, constitutes a Class D or E crime, depending on the age of the person(s) furnished paraphernalia. • Advertising drug paraphernalia is a Class E crime.
Forfeiture	Drug paraphernalia possessed in violation of Maine law is contraband and may be seized and confiscated.
Other provisions of note	<ul style="list-style-type: none"> • Section 1111-A(3) contains a list of factors that a court or other authority must consider in determining if an object is drug paraphernalia. • Pursuant to a resolution enacted in July 2023 (2023 Me. Legis. Serv. Resolves Ch. 120), the Maine Governor’s Office of Policy Innovation and the Future (Office) must convene a working group to study methods of preventing opioid overdose deaths by authorizing harm reduction health centers. A “harm reduction health center” means a facility that provides health screening, disease prevention and recovery assistance services and that allows persons to consume previously obtained controlled substances on the premises. The Office must submit a report of findings and recommendations by February 15, 2025.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>MARYLAND</u>	
Statute(s)	<ul style="list-style-type: none"> • MD. CODE ANN., CRIM. LAW. § 5-101 (West 2023) (definition) • MD. CODE ANN., CRIM. LAW. §§ 5-619 to 5-620 (West 2023) (criminalizes drug paraphernalia and controlled paraphernalia) • MD. CODE ANN., CRIM. LAW. § 5-808 (West 2023) (immunity for public officials/employees) • MD. CODE ANN., CRIM. PROC. § 1-210 (West 2023) (overdose assistance exception) • MD. CODE ANN., CRIM. PROC. § 12-102 (West 2023) (forfeiture) • MD. CODE ANN., HEALTH – GEN. § 24-808 (West 2023) (syringe services program exception) • MD. CODE ANN., HEALTH – GEN. § 24-908 (West 2023) (opioid overdose outreach exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • October 1, 2014 – Initial Good Samaritan protections added to § 1-210 • October 1, 2015 – § 24-908 enacted • June 1, 2018 – Definition of “drug paraphernalia” amended in § 5-101 with respect to DCE
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes “testing equipment used, intended for use, or designed for use in analyzing the strength, effectiveness, or purity of a controlled dangerous substance other than cannabis.” • However, the definition of drug paraphernalia does not reference “testing” or “analyzing” controlled substances, nor does it include testing equipment used for “identifying” a controlled substance. Legislators removed these terms from the definition in June 2018. • Accordingly, to the extent that any DCE or use of DCE falls under the bullet point just above, it is not subject to criminal penalty for drug paraphernalia. Conversely, the possession/use of DCE to analyze the strength, effectiveness, or purity of a controlled dangerous substance may remain potentially subject to criminal penalties for drug paraphernalia, unless the exception noted below applies. • Syringe services program staff or participants do not violate state law for possessing or distributing controlled paraphernalia or drug paraphernalia whenever such possession or distribution is a direct result of authorized program activities under § 24-808. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.

<u>MARYLAND</u>	
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used, intended for use, or designed for use in “injecting” a controlled dangerous substance in violation Maryland law, including “a hypodermic syringe, needle, or other object used, intended for use, or designed for use in parenterally injecting a controlled dangerous substance into the human body.” • “Controlled paraphernalia” includes “a hypodermic syringe, needle, or any other object or combination of objects adapted to administer a controlled dangerous substance by hypodermic injection.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception noted just below applies. • Syringe services program staff or participants do not violate state law for possessing or distributing controlled paraphernalia or drug paraphernalia whenever such possession or distribution is a direct result of authorized program activities under § 24-808.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • Public officials and certain authorized police department civilian employees may temporarily possess drug paraphernalia or controlled paraphernalia incidental to the discharge of official or employee duties. • Opioid overdose outreach program staff, volunteers, or participants do not violate state law for possessing or distributing controlled paraphernalia or drug paraphernalia whenever such possession or distribution is a direct result of authorized program activities. • An individual meeting the requirements for applicability of the overdose assistance exception in § 1-210 is immune from arrest, charge, or prosecution for a violation of using, possessing, and possessing with intent to sell drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • Each of the following acts constitutes a misdemeanor, subject to a fine of up to \$500 for a first violation: <ul style="list-style-type: none"> ○ Using or possessing with intent to use drug paraphernalia to administer a controlled dangerous substance; ○ Delivering or selling, or manufacturing or possessing with intent to deliver or sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that the drug paraphernalia will be used to administer a controlled dangerous substance; or ○ Advertising to promote the sale or delivery of drug paraphernalia..

<u>MARYLAND</u>	
Prohibited actions and penalties (continued)	<ul style="list-style-type: none"> • For each of the above violations, a second or subsequent conviction may result in a fine up to \$2,000, two (2) years imprisonment, or both • A person aged 18 or older who violates the prohibition against delivering, selling, or manufacturing drug paraphernalia by delivering it to a minor at least three (3) years younger is guilty of a separate misdemeanor, subject to eight (8) years imprisonment, a fine up to \$15,000, or both. • It is unlawful to obtain, attempt to obtain, possess or distribute controlled paraphernalia to administer a controlled substance. Except in cases of marijuana, a violation is a misdemeanor subject to imprisonment up to four (4) years, a fine up to \$25,000, or both.
Forfeiture	Drug paraphernalia and controlled paraphernalia are subject to forfeiture.
Other provisions of note	Section § 5-619 contains a list of factors that a court must consider in determining if an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>MASSACHUSETTS</u>	
Statute(s)	<ul style="list-style-type: none"> • MASS. GEN. LAWS ANN. ch. 94C, § 1 (West 2023) (definition) • MASS. GEN. LAWS ANN. ch. 94C, § 32I (West 2023) (criminalizes drug paraphernalia) • MASS. GEN. LAWS ANN. ch. 94C, § 47 (West 2023 (forfeiture)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 13, 2006 – Express reference to needles/syringes in drug paraphernalia definition in § 1 removed. In addition, amendment added the exception for the sale of needles/syringes • August 9, 2018 – Exception allowing the sale of needles/syringes in § 32I expanded to persons under age 18
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Massachusetts law, including “testing equipment used, primarily intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” • Although all DCE falls under the definition of drug paraphernalia, there is no criminal penalty in Massachusetts for using or possessing drug paraphernalia without the intent to sell it. • Accordingly, the possession/use of all DCE is not subject to criminal penalty for drug paraphernalia, so long as the individual has no intent to sell it. The sale of DCE, however, is subject to potential criminal penalty for drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of injecting, injection, needles, or syringes. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • The protection provided by Massachusetts’ overdose assistance exception does not extend to drug paraphernalia violations, likely because of the lack of prohibition against simple possession of such paraphernalia. • The prohibition against drug paraphernalia does not apply to the sale of hypodermic syringes or needles by a licensed pharmacist or wholesale druggist.

<u>MASSACHUSETTS</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • There is no criminal penalty in Massachusetts for possessing or using drug paraphernalia without the intent to sell it. • It is unlawful to sell, possess or purchase with intent to sell, or manufacture with intent to sell drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to make or ingest a controlled substance. A violation is subject to up to two (2) years imprisonment, a fine up to \$5,000, or both. • Violating the prohibition against selling drug paraphernalia by selling it to a person under age 18 is subject to a three-to-five (3-5) year sentence, a \$1,000 to \$5,000 fine, or both.
Forfeiture	Drug paraphernalia is subject to forfeiture.
Other provisions of note	Section § 1 contains a list of factors that a court or other authority should consider in determining if an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>MICHIGAN</u>	
Statute(s)	<ul style="list-style-type: none"> • MICH. COMP. LAWS ANN. §§ 333.7451 to 333.7461 (West 2023) (criminalizes drug paraphernalia; exceptions) • MICH. COMP. LAWS ANN. § 333.7521 (West 2023) (forfeiture)
Substantive amendment(s) to law(s) (unrelated to cannabis)	None.
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance, including “[t]esting equipment specifically designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.” • Although all DCE falls under the definition of drug paraphernalia, there is no criminal penalty in Michigan for using or possessing drug paraphernalia without the intent to sell it. • Accordingly, the possession/use of all DCE is not subject to criminal penalty for drug paraphernalia, so long as the individual has no intent to sell it. The sale of DCE, however, is subject to potential criminal penalty for drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes equipment used for “injecting” a controlled substance into the body. Unlike other states, however, Michigan law does not reference needles or syringes in the list of examples of drug paraphernalia. • However, there is no criminal penalty in Michigan for using or possessing drug paraphernalia without the intent to sell it. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia, so long as the individual has no intent to sell them. Selling needles or syringes is subject to criminal penalty for drug paraphernalia unless the exception in the bullet point below applies. • The prohibition against selling drug paraphernalia does not apply to objects sold or given away by a state or local governmental agency, or by a person specifically authorized by a state or local governmental agency to prevent the transmission of infectious agents.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. The protection provided by Michigan’s overdose assistance exception does not extend to drug paraphernalia violations, likely because of the lack of a prohibition against simple possession of such paraphernalia.

<u>MICHIGAN</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • There is no criminal penalty in Michigan for possessing or using drug paraphernalia without the intent to sell it. • It is unlawful to sell or offer for sale drug paraphernalia, knowing that it will be used to make or ingest a controlled substance. A violation is a misdemeanor, punishable by up to 90 days in prison, a fine up to \$5,000, or both. • A person 18 or older who commits a violation by selling or offering to sell drug paraphernalia to a person less than 18 is guilty of a misdemeanor, punishable by imprisonment up to one (1) year, a fine up to \$7,500, or both.
Forfeiture	Drug paraphernalia is subject to forfeiture.
Other provisions of note	Under § 333.7453, prior to arrest for selling or offering to sell drug paraphernalia, the attorney general or a prosecuting attorney must notify the person in writing, at least two (2) business days before anticipated arrest that: (1) the person is in possession of specific, defined material determined to be drug paraphernalia; but (2) no arrest will be made if the person ceases selling the item(s). The person may commence a declaratory judgment action to determine the legality of the intended sale.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>MINNESOTA</u>	
Statute(s)	<ul style="list-style-type: none"> • MINN. STAT. ANN. § 151.40 (West 2023) (hypodermic needles and syringes) • MINN. STAT. ANN. § 152.01 (West 2023) (definition) • MINN. STAT. ANN. §§ 152.093 to 152.095 (West 2023) (criminalizes drug paraphernalia) • MINN. STAT. ANN. § 604A.05 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 1, 2014 – § 605A.05 enacted • July 1, 2021 – Exception for products detecting the presence of fentanyl added to definition of drug paraphernalia in § 152.01 • August 1, 2023 – Extent of prohibitions in § 151.40 lessened • August 1, 2023 – Language related to testing controlled substances removed from § 152.01 • August 1, 2023 – Prohibitions against using, possessing, or delivering drug paraphernalia (formerly in §§ 152.092 and 152.093) repealed
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no reference to testing or analyzing either a controlled substance generally or the strength, effectiveness, or purity of a controlled substance. Recent legislative changes removed this language. • Additionally, drug paraphernalia “does not include the possession, manufacture, delivery, or sale of . . . products that detect the presence of fentanyl or a fentanyl analog in a controlled substance.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • Moreover, as of August 2023, there is no criminal penalty in Minnesota for using, possessing, or delivering drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a controlled substance. • However, drug paraphernalia expressly “does not include the possession, manufacture, delivery, or sale of . . . hypodermic syringes or needles or any instrument or implement which can be adapted for subcutaneous injections.”

<u>MINNESOTA</u>	
Legality of needles/syringes (continued)	<ul style="list-style-type: none"> • Moreover, although it is unlawful for any person to manufacture or sell hypodermic syringes or needles, such prohibition does not apply to: <ul style="list-style-type: none"> ○ syringe services providers and their employees and agents; ○ a person disposing of hypodermic syringes and needles through an activity or program developed under state law governing HIV test kits; or ○ a participant receiving services from a syringe services provider, who accesses or receives new syringes or needles from a syringe services provider or returns used syringes or needles to a syringe services provider. • As of August 2023, there is no criminal penalty in Minnesota for using, possessing, or delivering drug paraphernalia. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • State law provides that an individual meeting the requirements for applicability of the overdose assistance exception in § 604A.05 may not be charged or prosecuted for possession of drug paraphernalia. There is no longer a criminal penalty for such possession, however. • Section §151.40(1) contains a list of individuals authorized to manufacture or sell hypodermic syringes or needles. • Registered pharmacy or a licensed pharmacist may sell—without the prescription or direction of a practitioner—unused hypodermic needles and syringes.
Prohibited actions and penalties	<ul style="list-style-type: none"> • As of August 2023, there is no criminal penalty in Minnesota for using, possessing, or delivering drug paraphernalia. • It is unlawful for any person to intentionally manufacture drug paraphernalia for delivery. A violation is a misdemeanor. • An individual aged 18 or older delivers drug paraphernalia to a person under age 18 at least three (3) years younger is guilty of a gross misdemeanor. • It is unlawful for any person knowingly or intentionally to advertise or promote the sale of drug paraphernalia. A violation is a misdemeanor.
Forfeiture	Minnesota statute does not expressly address forfeiture of drug paraphernalia.
Other provisions of note	None.
Is there any recently proposed legislation?	No, other than legislation enacted in 2023.

<u>MISSISSIPPI</u>	
Statute(s)	<ul style="list-style-type: none"> • MISS. CODE ANN. § 41-29-105 (West 2023) (definition) • MISS. CODE ANN. § 41-29-139(d) (West 2023) (criminalizes drug paraphernalia) • MISS. CODE ANN. § 41-29-149.1 (West 2023) (overdose assistance exception) • MISS. CODE ANN. § 41-29-153(a)(6) (West 2023) (forfeiture)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 1, 2015 – § 41-29-149.1 enacted • July 1, 2023 – DCE exception added to § 41-29-105
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Mississippi law, including “[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” • However, drug paraphernalia “does not include any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance.” • All other types of DCE, or actions with DCE, other than that described in the bullet point above are potentially subject to criminal penalties for drug paraphernalia.. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a controlled substance in violation of Mississippi law, including “[h]ypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • A person meeting the requirements for applicability of the overdose assistance exception in § 41-29-149.1 may not be arrested, charged, or prosecuted for a “drug violation,” which includes the possession and use of drug paraphernalia. • Individuals authorized to possess or use drug paraphernalia by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority.

<u>MISSISSIPPI</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • The following violations are misdemeanors, subject to up to six (6) months in jail, a fine up to \$500, or both: <ul style="list-style-type: none"> ○ Unauthorized use or possession with intent to use drug paraphernalia to violate state law; ○ Delivering, selling, possessing with intent to deliver or sell, or manufacturing with intent to deliver or sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to violate state law; and ○ Advertising to promote the sale of objects designed or intended for use as paraphernalia. • A person aged 18 or older who violates the prohibition against delivering or selling drug paraphernalia by delivering it to a person under age 18 at least three (3) years younger is guilty of a misdemeanor, subject to up to one (1) year in jail, a fine up to \$1,000, or both.
Forfeiture	Drug paraphernalia is subject to forfeiture.
Other provisions of note	Section 41-29-105(v) contains a list of factors that a court or other authority should consider in determining if an object is drug paraphernalia.
Is there any recently proposed legislation?	No, other than legislation enacted in 2023.

<u>MISSOURI</u>	
Statute(s)	<ul style="list-style-type: none"> • MO. ANN. STAT. § 195.010(18) (West 2023) (definition) • MO. ANN. STAT. § 195.140 (West 2023) (forfeiture) • MO. ANN. STAT. § 195.205 (West 2023) (overdose assistance exception) • MO. ANN. STAT. § 195.244 (West 2023) (criminalizes advertising) • MO. ANN. STAT. § 579.040 (West 2023) (criminalizes delivery) • MO. ANN. STAT. §§ 579.074 to 579.076 (West 2023) (criminalizes possession and delivery) • MO. ANN. STAT. § 579.088 (West 2023) (devices to detect presence of fentanyl)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • January 1, 2017 – Drug paraphernalia penalties in §§ 579.040 and 579.074 to 579.076 lessened, except with respect to amphetamine/methamphetamine where such penalties increased • August 28, 2017 – § 195.205 enacted • August 28, 2023 – § 579.088 enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances.” • However, “notwithstanding” this provision, it is “not . . . unlawful to manufacture, possess, sell, deliver, or use any device, equipment, or other material for the purpose of analyzing controlled substances to detect the presence of fentanyl or any synthetic controlled substance fentanyl analogue.” • All other types of DCE, or actions with DCE, other than that described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a controlled substance or imitation controlled substance in violation of Missouri law, including “[h]ypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances or imitation controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.

<u>MISSOURI</u>	
Other context(s) where FTS, other DCE, and needles/syringes are allowed	Person meeting the requirements for applicability of the overdose assistance exception in § 195.205 may not be arrested, charged, prosecuted, or convicted of the offense of unlawful possession of drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful to use, or possess with intent to use, drug paraphernalia to make or ingest a controlled substance. A violation is a Class D misdemeanor, unless: (1) the violator has a prior controlled substances offense; or (2) the drug paraphernalia is used in combination with amphetamine, methamphetamine, or any of their analogues. In the case of (1), the violation is a Class A misdemeanor. In the case of (2), a violation is a Class E felony. • The following violations are Class A misdemeanors, unless done for commercial purposes, in which case they are Class E felonies: <ul style="list-style-type: none"> ○ Delivering, selling, possessing, or possessing with intent to deliver or sell drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to violate controlled substance law; and ○ Manufacturing with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to violate controlled substance law. • It is unlawful for a person to advertise to promote the sale of objects designed or intended for use as paraphernalia. A violation is a Class B misdemeanor.
Forfeiture	Drug paraphernalia in the hands of law enforcement or the Department of Health and Senior Services is subject to forfeiture.
Other provisions of note	Section 195.010(18) contains a list of factors that a court or other authority should consider in determining if an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>MONTANA</u>	
Statute(s)	<ul style="list-style-type: none"> • MONT. CODE ANN. § 44-12-102 (West 2023) (forfeiture) • MONT. CODE ANN. §§ 45-10-101 to 10-107 (West 2023) (criminalizes drug paraphernalia; syringe services program exception) • MONT. CODE ANN. § 50-32-609 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • May 3, 2017 – § 50-32-609 enacted • July 1, 2017 – Requirement for violators to complete a dangerous drug information course offered by a chemical dependency facility repealed • May 22, 2023 – “Test” removed from criminal prohibition against possessing drug paraphernalia in § 45-10-103
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes products used for “testing [or analyzing] a dangerous drug, including “testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs.” • However, legislators removed the word “test” from the criminal prohibition against possessing drug paraphernalia in § 45-10-103. Accordingly, possessing any DCE to “test” a dangerous drug is not subject to criminal penalty for drug paraphernalia. • Additionally, drug paraphernalia penalties do not apply to individuals acting as employees or volunteers of an organization, including a nonprofit community-based organization, local health department, or tribal health department, that provides syringe services programs to prevent and reduce the transmission of communicable diseases. • All other types of DCE, or actions with DCE, other than that described in the bullet points just above, including possessing DCE to analyze a dangerous drug, or manufacturing it knowing that it will be used to test or analyze a dangerous drug, are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a dangerous drug. Unlike other states, however, Montana’s definition does not reference needles or syringes in the list of examples of drug paraphernalia.

<u>MONTANA</u>	
Legality of needles/syringes (continued)	<ul style="list-style-type: none"> • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception in the bullet point just below applies. • Criminal provisions do not apply to individuals acting as employees or volunteers of an organization, including a nonprofit community-based organization, local health department, or tribal health department, that provides syringe services programs to prevent and reduce the transmission of communicable diseases.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	Person meeting the requirements for applicability of the overdose assistance exception in § 45-10-103 may not be arrested, charged, prosecuted, or convicted of the offense of criminal possession of drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • Each of the following constitutes a misdemeanor, subject to a fine of up to \$500, a six (6) month sentence, or both: <ul style="list-style-type: none"> ○ Using or possessing with intent to use drug paraphernalia to administer a dangerous drug; ○ Delivering or selling, or manufacturing or possessing with intent to deliver or sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that the drug paraphernalia will be used to administer a dangerous drug; or ○ Advertising to promote the sale or delivery of drug paraphernalia. • For the first violation of the prohibition against using or possessing drug paraphernalia, there is a presumption of entitlement to a deferred imposition of any prison sentence. • A person aged 18 or older who violates the prohibition against manufacture or delivery of drug paraphernalia by delivering it to a person under 18 years of age who is at least three (3) years younger is guilty of a misdemeanor subject to one (1) year imprisonment, a fine of up to \$1,000, or both.
Forfeiture	A court may order, as part of a sentence imposed, the forfeiture of drug paraphernalia.
Other provisions of note	Section 45-10-102 contains a list of factors that a court or other authority should consider in determining if an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>NEBRASKA</u>	
Statute(s)	<ul style="list-style-type: none"> • NEB. REV. STAT. ANN. § 28-431 (West 2023) (forfeiture) • NEB. REV. STAT. ANN. §§ 28-439 to 28-444 (West 2023) (criminalizes drug paraphernalia) • NEB. REV. STAT. ANN. § 28-472 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • April 28, 2017 – Persons authorized to sell hypodermic needles expanded in § 28-442 to include pharmacist interns, pharmacy technicians, and pharmacy clerks • August 24, 2017 – § 28-472 enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of testing or analyzing controlled substances or products that test or analyze such substances. • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes products used for “injecting” a controlled substance in violation of Nebraska law, including “[h]ypodermic syringes, needles, and other objects used, intended for use, and designed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • A person meeting the requirements for applicability of the overdose assistance exception in § 28-472 will not be in violation of the offense of use or possession of drug paraphernalia. • The prohibition against delivering or manufacturing drug paraphernalia does not apply to pharmacists, pharmacist interns, pharmacy technicians, and pharmacy clerks who sell hypodermic syringes or needles for the prevention of the spread of infectious diseases.

<u>NEBRASKA</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for any person to use or to possess with intent to use drug paraphernalia to make or ingest a controlled substance in violation of the law. A violation is an infraction. • It shall be unlawful for a person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances when one reasonably should know, that it will be used to make or ingest a controlled substance in violation of the law. A violation is a Class II misdemeanor. • Any person aged 18 or older who violates the prohibition against delivering drug paraphernalia by delivering it to a person under age 18 at least three (3) years younger commits a Class I misdemeanor. • It is unlawful for a person to advertise to promote the sale or delivery of drug paraphernalia. A violation is a Class III misdemeanor.
Forfeiture	Drug paraphernalia is subject to forfeiture.
Other provisions of note	Section 28-440 contains a list of factors that a court or other authority must consider in determining if an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>NEVADA</u>	
Statute(s)	<ul style="list-style-type: none"> • NEV. REV. STAT. ANN. §§ 453.554 to 453.566 (West 2023) (criminalizes drug paraphernalia) • NEV. REV. STAT. ANN. § 453.301 (West 2023) (forfeiture) • NEV. REV. STAT. ANN. § 453C.150 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 1, 2013 – Hypodermic syringe, needle or other similar instrument removed from definition of drug paraphernalia in § 453.554. In addition, references to “inject” in definition removed • October 1, 2015 – § 453C.150 enacted • May 28, 2021 – “Testing products” expressly removed from definition of drug paraphernalia in § 453.554 • May 28, 2021 – § 453.557 pertaining to immunity when using testing products enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Nevada law, as well as “[t]esting equipment, other than testing products, used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.” • However, drug paraphernalia does not include “testing products,” which are defined as “a product, including, without limitation, a fentanyl test strip, that analyzes a controlled substance for the presence of adulterants.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • Moreover, § 453.557 provides that it is not unlawful to provide, administer or use a testing product to assist a person in determining whether a controlled substance contains chemicals, toxic substances or hazardous compounds and that any person who, in good faith, administers or uses a testing product to assist another person “is immune from sanction under any professional licensing statute and civil liability for such an act.” • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of injecting, injection, needles, or syringes.

<u>NEVADA</u>	
Legality of needles/syringes (continued)	<ul style="list-style-type: none"> • In addition, the definition expressly excludes “any type of hypodermic syringe, needle, instrument, device or implement intended or capable of being adapted for the purpose of administering drugs by subcutaneous, intramuscular or intravenous injection.” • Accordingly, the possession/use of needles or syringes is not subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	Person meeting the requirements for applicability of the overdose assistance exception in § 453C.150 may not be arrested, charged, prosecuted, or convicted, or have his or her property subjected to forfeiture, for a drug paraphernalia violation.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful to use, or possess with intent to use, drug paraphernalia to make or ingest a controlled substance. A violation is a misdemeanor. • It is unlawful to deliver or sell, possesses with the intent to deliver or sell, or manufacture with the intent to deliver or sell any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to make or ingest controlled substance. A violation is a Category E felony. • It is unlawful to advertise knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, is to promote the sale of objects designed use as drug paraphernalia. A violation is a misdemeanor. • A person aged 18 years or older who violates the law by delivering drug paraphernalia to a person under age 18 and at least three (3) years younger is guilty of a Category C felony. The court may order such person to pay restitution for any reasonable costs incurred for the participation of the person to whom he or she delivered the paraphernalia in a program for the treatment of substance use disorder.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	<ul style="list-style-type: none"> • Section 453.556 contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia. • Pursuant to § 453.558, the district attorney or city attorney of any county or city, respectively, in which there is drug paraphernalia, may file a complaint in the district court seeking to enjoin the possessor and owner of the drug paraphernalia from delivering or selling, or possessing with intent to deliver or sell, any drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>NEW HAMPSHIRE</u>	
Statute(s)	<ul style="list-style-type: none"> • N.H. REV. STAT. ANN. § 318-B:1 (West 2023) (definition) • N.H. REV. STAT. ANN. § 318-B:2 (West 2023) (criminalizes drug paraphernalia) • N.H. REV. STAT. ANN. § 318-B:26 (West 2023) (criminalizes manufacturing drug paraphernalia)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • January 1, 2001 – “Injecting” removed from definition of “drug paraphernalia” and “inject” removed from criminal penalty provision • October 3, 2023 – DCE provision added to § 318-B:1
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of New Hampshire law, as well as “[t]esting equipment used or intended for use or customarily intended for use in identifying, or analyzing the strength, effectiveness or purity of controlled substances.” • There is no criminal penalty in New Hampshire for the possession or use of drug paraphernalia without the intent to sell it. • Moreover, drug paraphernalia does not include “fentanyl test strips, xylazine test strips, or other materials used or intended for use in testing for the presence of fentanyl, xylazine, or a fentanyl or xylazine analog in a substance, unless possessed in conjunction with other evidence forming the basis of a criminal charge involving the manufacturing, possessing with the intent to sell, or compounding.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia, so long as the individual has no intent to sell it. The sale of DCE, however, remains potentially subject to criminal penalty for drug paraphernalia unless that DCE falls under the exception in the bullet point just above. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of injecting, injection, needles, or syringes. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalties for drug paraphernalia.

<u>NEW HAMPSHIRE</u>	
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. The protection from arrest, charge, or prosecution provided by New Hampshire's overdose assistance exception does not extend to drug paraphernalia violations, likely because of the lack of a prohibition against simple possession of such paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • There is no criminal penalty in New Hampshire for the possession or use of drug paraphernalia without the intent to sell it. • It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used to make or ingest a controlled substance. • It is unlawful for any person, at retail, to sell or offer for sale any drug paraphernalia. • A person is guilty of a misdemeanor who manufactures with the intent to deliver, delivers, or possesses with the intent to deliver any drug paraphernalia when such paraphernalia is knowingly manufactured, delivered, or possessed in violation of the law.
Forfeiture	New Hampshire law does not expressly address forfeiture of drug paraphernalia.
Other provisions of note	Section 318-B:2(IV) contains a list of factors that a court or other authority should consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>NEW JERSEY</u>	
Statute(s)	<ul style="list-style-type: none"> • N.J. STAT. ANN. §§ 2C:35-30 to 2C:35-31 (West 2023) (overdose assistance exception) • N.J. STAT. ANN. §§ 2C:36-1 to 2C:36-10 (West 2023) (criminalizes drug paraphernalia; syringe services program exception) • N.J. STAT. ANN. §§ 26:5C-25 to 26:5C-29 (West 2023) (bloodborne pathogens and harm reduction services)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • December 19, 2006 – Exception for participants in syringe services program added to § 2C:36-6a • January 29, 2007 – Additional examples of objects qualifying as drug paraphernalia added to definition in § 2C:36-1 • May 2, 2013 – §§ 2C:35-30 to 2C:25-31 enacted • January 18, 2022 – Repealed § 2C:36-6, resulting in the repeal of crime of possession of a hypodermic needle/syringe without a prescription • January 18, 2022 – FTS exception added to § 2C:36-1 • January 18, 2022 – §§ 26:5C-25 to 26:5C-29 enacted • January 8, 2024 – drug paraphernalia and harm reduction supply exemptions in § 2C:36-1 and § 26:5C-26.1 expanded
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • As of January 8, 2024, the definition of “drug paraphernalia” no longer includes items used for “testing [or] analyzing” a substance, nor does it include testing equipment used or intended for use identifying, or in analyzing the strength, effectiveness, or purity of a substance. • Moreover, the definition of “drug paraphernalia” expressly excludes “harm reduction supplies,” which are now defined to include “test strips and other supplies or equipment designed to identify or analyze the presence, strength, effectiveness, or purity of controlled dangerous substances, controlled substance analogs, toxic chemicals, or other substances used to potentiate or enhance the effects of controlled dangerous substances, controlled substance analogs, or toxic chemicals.” • In addition, pursuant to § 26:5C-28, an entity “authorized [under New Jersey law] to provide harm reduction services” may “deliver harm reduction services or other related supplies.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing

<u>NEW JERSEY</u>	
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of injecting, injection, needles, or syringes. • It is not unlawful for a person to use, or possess with the intent to use, a hypodermic needle or syringe for the personal use of a controlled substance. This includes a “hypodermic syringe or needle that contains a residual amount of a controlled dangerous substance or controlled substance analog.” • It is not unlawful for a consumer who participates in, or an employee or volunteer of, a syringe services program to possess a hypodermic needle or syringe. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<p>Person meeting the requirements for applicability of the overdose assistance exception in §§ 2C:35-30 to 25-31 may not be arrested, charged, prosecuted, or convicted for using or possessing drug paraphernalia, or possessing a needle, syringe or other instrument adapted to use a controlled substance.</p>
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is a disorderly persons offense to use, or possess with intent to use, drug paraphernalia to make or ingest a controlled dangerous substance. • The following offenses are crimes of the fourth degree: <ul style="list-style-type: none"> ○ Distributing or dispensing, or possessing with intent to distribute or dispense, or manufacturing with intent to distribute or dispense, drug paraphernalia, knowing that it will be used in connection with a controlled dangerous substance; and ○ Advertising, when knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement is to promote the sale of objects designed to be used as drug paraphernalia • It is a crime of the third degree to distribute or dispense drug paraphernalia to a person under age 18. • It is a petty disorderly persons offense for a person to discard a hypodermic needle or syringe in a place accessible to others without destroying it.

<u>NEW JERSEY</u>	
Forfeiture	Any drug paraphernalia, hypodermic syringe, or needle seized in violation of state law is subject to forfeiture.
Other provisions of note	Section 2C:36-1(b) contains a list of factors that a trier of fact may consider when determining whether an object is drug paraphernalia. As of January 8, 2024, this list includes “any indicia demonstrating that an object falls within the definition of ‘harm reduction supplies’ as set forth in [New Jersey law] or was obtained from or provided by an authorized harm reduction services program in accordance with [New Jersey law].”
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>NEW MEXICO</u>	
Statute(s)	<ul style="list-style-type: none"> • N.M. STAT. ANN. §§ 24-2C-1 to 24-2C-6 (West 2023) (harm reduction act) • N.M. STAT. ANN. § 30-31-2 (West 2023) (definition) • N.M. STAT. ANN. § 30-31-25.1 (West 2023) (criminalizes drug paraphernalia; exceptions) • N.M. STAT. ANN. § 30-31-27.1 (West 2023) (overdose assistance exception) • N.M. STAT. ANN. § 30-31-34 (West 2023) (forfeiture)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • June 15, 2007 – § 30-31-27.1 enacted • July 1, 2019 – Penalty provisions in § 30-31-25.1 lessened • July 1, 2019 - Overdose assistance exception for drug paraphernalia crimes added to § 30-31-27.1 • May 18, 2022 – Exception for use or possession of testing equipment added to § 30-31-25.1
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled dangerous substance or controlled substance analog in violation of New Mexico law, as well as “testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs.” • However, criminal penalties for possessing or using drug paraphernalia do not apply to “supplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants.” • In addition, a harm reduction program “shall provide participants with . . . supplies or devices used for testing controlled substances or controlled substance analogs for potentially dangerous adulterants.” • Moreover, criminal penalties for delivering, possessing with intent to deliver, or manufacturing drug paraphernalia do not apply to “department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act.”

<u>NEW MEXICO</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. The delivery, intent to deliver, or manufacturing DCE is subject to criminal penalty for drug paraphernalia, unless the bullet point just above (on prior page) applies. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes products used for “injecting” a controlled dangerous substance or controlled substance analog in violation of New Mexico law, as well as “hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless one of the exceptions described in the bullet points below applies. • Criminal penalties for possessing or using drug paraphernalia do not apply to a person in possession of either “hypodermic syringes or needles for the purpose of participation in or administration of the Harm Reduction Act” or “supplies or devices obtained pursuant to the Harm Reduction Act in accordance with rules established by the department of health for the harm reduction program.” • In addition, criminal penalties for delivering, possessing with intent to deliver, or manufacturing drug paraphernalia do not apply to either “department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act” or “the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act.”
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<p>An individual meeting the requirements for applicability of the overdose assistance exception in § 30-31-27.1 may not be arrested, charged, prosecuted, or otherwise penalized or have his or her property subjected to forfeiture, for a drug paraphernalia violation.</p>

<u>NEW MEXICO</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for a person to use or possess with intent to use drug paraphernalia to make or ingest a controlled substance. A violation is a penalty subject to a \$50 fine. • It is unlawful for a person to deliver, possess with intent to deliver, or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to make or ingest a controlled substance. A violation is a misdemeanor. • A person aged 18 or older who violates the prohibition against delivering drug paraphernalia by delivering it to a person under age 18 at least three (3) years younger is guilty of a fourth-degree felony.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	<ul style="list-style-type: none"> • Section 24-2C-5 provides that a harm reduction program shall provide participants with sterile needles and syringes as well as “supplies or devices used for testing controlled substances or controlled substance analogs for potentially dangerous adulterants.” • Section 30-31-2(T)(12) contains a list of factors that a court or other authority should consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>NEW YORK</u>	
Statute(s)	<ul style="list-style-type: none"> • N.Y. GEN. BUS. §§ 850 to 853 (McKinney 2023) (criminalizes drug-related paraphernalia) • N.Y. PENAL LAW §§ 220.50 to 220.55 (McKinney 2023) (criminalizes drug paraphernalia) • N.Y. PENAL LAW § 220.78 (McKinney 2023) (overdose assistance exception) • N.Y. PUB. HEALTH LAW § 3309-b (McKinney 2023) (dispensing drug adulterant testing supplies) • N.Y. PUB. HEALTH LAW § 3381 (McKinney 2023) (sale and possession of hypodermic syringes and needles)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • September 18, 2011 – § 220.78 enacted • October 7, 2021 – References to hypodermic needles and syringes removed from the definition of drug-related paraphernalia in § 850 • October 7, 2021 – Provisions: (1) criminalizing possession of needles/syringes and providing a syringe services program exception; (2) limiting the number of syringes a pharmacy or health care practitioner can prescribe; and (3) making it unlawful for a person to obtain or possess hypodermic syringes or needles without authorization or prescription removed from § 3381 • December 17, 2023 – § 3309-b enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug-related paraphernalia” contains no mention of testing or analyzing controlled substances or products that test or analyze such substances. • Moreover, a health care professional or pharmacist is authorized to dispense “drug adulterant testing supplies” (defined similarly to FTS, rather than all DCE) under § 3309-b. • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug-related paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing, unless it is a residual amount of a controlled substance in or on a needle or syringe.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug-related paraphernalia” expressly does not include “hypodermic needles, hypodermic syringes and other objects used for the purpose of parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug-related paraphernalia.

<u>NEW YORK</u>	
Other context(s) where FTS, other DCE, and needles/syringes are allowed	Although the overdose assistance exception in § 220.78 provides immunity from being charged with possession of drug-related paraphernalia: (1) neither FTS, other DCE, needles, nor syringes are drug-related paraphernalia; and (2) there appears to be no penalty for no criminal penalty for possessing or using drug-related paraphernalia without an intent to sell it.
Prohibited actions and penalties	<ul style="list-style-type: none"> • There is no criminal penalty in New York for possessing or using drug-related paraphernalia without an intent to sell it. This does not extend to purchasing, however. • It is a violation for a person, firm, or corporation to possess with intent to sell, offer for sale, or purchase drug-related paraphernalia under circumstances evidencing that it will be used to violate the law. • It is a Class A misdemeanor for a person, firm, or corporation to manufacture drug-related paraphernalia intending, or under circumstances evincing knowledge, that such paraphernalia is to be used to violate the law. • Municipalities may revoke a business license or permit of a person, firm, or corporation who sells or offers for sale drug paraphernalia. • Actions constituting criminally using “drug paraphernalia” in the first or second degree (different from provisions related to “drug-related paraphernalia”) do not encompass use or possession of needles, syringes, or DCE.
Forfeiture	The possession with intent to sell or offering for sale of drug-related paraphernalia is a nuisance and such paraphernalia is subject to surrender and forfeiture.

<u>NEW YORK</u>	
Other provisions of note	<ul style="list-style-type: none"> • Any “drug adulterant testing supplies” dispensed under § 3309-b must be stored at a licensed pharmacy, hospital, clinic, or other health care facility or at the medical office of a health care professional and in a manner that limits access to the supplies. In addition, “[n]o quantity of drug adulterant testing supplies greater than necessary to conduct five assays of substances suspected of containing adulterants shall be dispensed in any single transaction.” • Only in the following circumstances may a person sell or furnish a hypodermic needle/syringe: (1) pursuant to a prescription; (2) to persons authorized by the state commissioner of health to obtain and possess them; or (3) by a pharmacy, facility, or practitioner authorized to prescribe needles or syringes, provided that such sale be to a person aged 18 or older. • The state commissioner of health, by regulation, designates persons or classes of persons who may obtain hypodermic syringes and needles without prescription and the way such transactions may take place. • The attorney general or any state or local health officer, town, village or city attorney, or the chief executive officer of a municipality may institute an action in a court of competent jurisdiction to enjoin the delivering or selling, or possessing with intent to deliver or sell, any drug paraphernalia. • It is not a violation of the prohibition against possessing a controlled substance when a person possesses a residual amount of a controlled substance, and the residual amount is in or on a hypodermic syringe or needle.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>NORTH CAROLINA</u>	
Statute(s)	<ul style="list-style-type: none"> • N.C. GEN. STAT. ANN. § 90-96.2 (West 2023) (overdose assistance exception) • N.C. GEN. STAT. ANN. §§ 90-113.20 to 113.29 (West 2023) (criminalizes drug paraphernalia; exceptions)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • April 9, 2013 – § 90-96.2 enacted • December 1, 2013 – Provision added to § 90-96.2 that grants immunity to a person for possession of drug paraphernalia if the person alerts a police officer of the presence of a needle or sharp object • July 11, 2016 – Syringe exchange program authorization added to § 90-113.27 • July 22, 2019 – Provision allowing use or possession of testing equipment added to § 90-113.22 • July 22, 2019 - Restriction on use of state funds to purchase needles or syringes removed from § 90-113.27
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” controlled substances, as well as “[t]esting equipment for identifying, or analyzing the strength, effectiveness, or purity of controlled substances.” • However, it is not unlawful for “a person who introduces a controlled substance into his or her body or intends to introduce a controlled substance into his or her body, to knowingly use, or to possess with intent to use, testing equipment for identifying or analyzing the strength, effectiveness, or purity of that controlled substance.” • It is also not unlawful for a “a governmental or nongovernmental organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors to possess such testing equipment or distribute such testing equipment to a person who intends to introduce a controlled substance into his or her body.” • All actions with all types of DCE falling under the two bullet points just above are not subject to penalties for drug paraphernalia. All other activities with DCE, such as manufacturing it or selling it, would appear to be subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing, unless it is a residual amount of a controlled substance in or on a needle or syringe possessed by an employee, volunteer, or participant of a syringe services program.

<u>NORTH CAROLINA</u>	
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes products used for “injecting” a controlled substance, as well as “[h]ypodermic syringes, needles, and other objects for parenterally injecting controlled substances into the body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception described in the bullet point below applies. • No employee, volunteer, or participant of a syringe services program may be charged with or prosecuted for possession of needles, hypodermic syringes, or other injection supplies obtained from or returned to a program.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • Prior to searching a person, a person’s premises, or a person’s vehicle, a law enforcement officer may ask the person whether the person (or the premises/vehicle) has (contains) a needle or syringe that may cut or puncture the officer. If the person so alerts the officer prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object, or for residual amounts of a controlled substance contained in the needle or sharp object. • A person meeting the requirements for applicability of the overdose assistance exception in § 90-96.2 may not be prosecuted for the possession of drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for any person to knowingly use, or to possess with intent to use, drug paraphernalia in conjunction with a controlled substance other than marijuana that is unlawful to possess. A violation is a Class 1 misdemeanor. • It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia knowing that it will be used in conjunction with a controlled substance to violate state law. A violation is a Class 1 misdemeanor. • Delivery of drug paraphernalia by a person over 18 years of age to someone under 18 years of age who is at least three (3) years younger is a Class I felony. • It is unlawful for any person to advertise to promote the sale of objects designed or intended for use as drug paraphernalia. A violation is a Class 2 misdemeanor.
Forfeiture	North Carolina law does not expressly address forfeiture of drug paraphernalia.

<u>NORTH CAROLINA</u>	
Other provisions of note	<ul style="list-style-type: none"> • Section 90-113.21(b) contains a list of factors that may be considered when determining whether an object is drug paraphernalia. • No employee, volunteer, or participant of a syringe services program established pursuant to § 90-113.27 shall be charged with or prosecuted for possession of residual amounts of a controlled substance contained in a used needle, used hypodermic syringe, or used injection supplies obtained from or returned to such program.
Is there any recently proposed legislation?	No.

<u>NORTH DAKOTA</u>	
Statute(s)	<ul style="list-style-type: none"> • N.D. CENT. CODE ANN. § 19-03.1-23.4 (West 2023) (overdose assistance exception) • N.D. CENT. CODE ANN. § 19-03.1-36 (West 2023) (forfeiture) • N.D. CENT. CODE ANN. §§ 19-03.4-01 to 19-03.4-08 (West 2023) (criminalizes drug paraphernalia) • N.D. CENT. CODE ANN. § 23-01-44 (West 2023) (syringe services program exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • August 1, 2015 – § 19-03.1-23.4 enacted • August 1, 2017 – Whether or not a needle or syringe is collected during the operation of a needle exchange program to aid in the prevention of bloodborne disease added to § 19-03.4-02 • August 1, 2017 – § 23-01-44 enacted • August 1, 2019 – Treatment program provision added to § 19-03.4-03 • August 1, 2021 – Definition of supplies added to § 23-01-44
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of North Dakota law, as well as “[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” • Accordingly, the possession/use of all DCE is potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes products for “injecting” a controlled substance in violation of North Dakota law, as well as “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception described in the bullet point below applies. • Syringes, needles, and supplies collected by an individual pursuant to § 23-01-44 authorizing syringe services programs are not considered drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	Person meeting the requirements for applicability of the overdose assistance exception in § 19-03.1-23.4 is immune from criminal prosecution for possession of drug paraphernalia.

<u>NORTH DAKOTA</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for a person to use or possess with the intent to use drug paraphernalia to make or ingest a controlled substance, other than cannabis or tetrahydrocannabinol, classified in Schedule I, II, or III. A first violation is a Class A misdemeanor. A subsequent violation is a Class C felony. • The following violations are Class C felonies with respect to Schedule I-III drugs other than cannabis: <ul style="list-style-type: none"> ○ Using or possessing with intent to use drug paraphernalia to grow, manufacture, store, or conceal a controlled substance; ○ Delivering, possessing with intent to deliver, or manufacturing with intent to deliver drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used in conjunction with a controlled substance; and ○ Violating the prohibition against delivering drug paraphernalia by a person aged 18 years or older who delivers drug paraphernalia to a person under 18 years of age who is at least three (3) years younger. • It is unlawful for any person to advertise to promote the sale of objects designed or intended for use as drug paraphernalia. A violation is a Class A misdemeanor.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	<ul style="list-style-type: none"> • Section 19-03.4-02 contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority shall consider, among other things, whether the object is a needle or syringe collected during the operation of a syringe services program to aid in the prevention of bloodborne diseases. • A person sentenced to the legal and physical custody of the North Dakota Department of Corrections (Department) and rehabilitation for violating the prohibition against possessing drug paraphernalia may be placed in a drug and alcohol treatment program as designated by the Department. • Pursuant to § 19-03.4-07, possession of more than 24 grams of a methamphetamine precursor drug or combination of methamphetamine precursor drugs <i>is prima facie</i> evidence of intent to violate sections drug paraphernalia laws.
Is there any recently proposed legislation?	No.

<u>OHIO</u>	
Statute(s)	<ul style="list-style-type: none"> • OHIO REV. CODE ANN. § 2925.11(B)(2) (West 2023) (overdose assistance exception) • OHIO REV. CODE ANN. § 2925.14 (West 2023) (criminalizes drug paraphernalia) • OHIO REV. CODE ANN. § 3707.57 (West 2023) (syringe services program exception) • OHIO REV. CODE ANN. § 3719.172 (West 2023) (possession, sale, and disposal of hypodermics)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • September 29, 2015 – § 3707.57 enacted • September 13, 2016 – § 2925.11(B)(2) enacted • April 4, 2023 – Immunity for possession or use of drug paraphernalia added to § 2925.11(B)(2) • April 4, 2023 – FTS exception added to § 2925.14
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Ohio law, as well as “[t]esting equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance, except for those exempted in division (D)(4) of this section.” • Division (D)(4) provides that the criminal prohibitions against possessing or using drug paraphernalia do not apply to “a person’s use, or possession with purpose to use, any drug testing strips to determine the presence of fentanyl or a fentanyl-related compound.” • All other types of DCE, or actions with DCE, other than those described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. This includes selling or manufacturing with the intent to sell all forms of DCE. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes products used for “injecting” a controlled substance in violation of Ohio law, as well as “[a] hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception described in the bullet point below applies.

<u>OHIO</u>	
Legality of needles/syringes (continued)	<ul style="list-style-type: none"> • If carrying out a duty under a component of a syringe services program under § 3707.57 would violate the prohibition against possessing drug paraphernalia, an employee or volunteer of the program is not subject to criminal prosecution for the violation.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	Person meeting the requirements for applicability of the overdose assistance exception in § 2925.11(B)(2) will not be arrested, charged, prosecuted, or convicted for the use or possession of drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for a person to knowingly use, or possess with purpose to use, drug paraphernalia. A violation is a misdemeanor of the fourth degree. • It is unlawful for a person to knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if the person knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia. A violation is a misdemeanor of the second degree. • Selling drug paraphernalia to a juvenile is a misdemeanor of the first degree. • It is unlawful for any person to advertise to promote the sale of objects designed or intended for use as drug paraphernalia. A violation is a misdemeanor of the second degree.
Forfeiture	Any drug paraphernalia used, possessed, sold, or manufactured in a violation of the law shall be seized, after a conviction for that violation shall be forfeited, and upon forfeiture must be disposed.
Other provisions of note	<ul style="list-style-type: none"> • Section § 2925.14(B) contains a list of factors that a court or a member of law enforcement must consider when determining whether an object is drug paraphernalia. • In addition to any other sanction imposed upon an offender for a violation of drug paraphernalia laws, the court may suspend for not more than five (5) years the offender's driver's or commercial driver's license or permit.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>OKLAHOMA</u>	
Statute(s)	<ul style="list-style-type: none"> • OKLA. STAT. ANN. tit. 63, § 2-101 (West 2023) (definition) • OKLA. STAT. ANN. tit. 63, § 2-101.1 (West 2023) (determination of drug paraphernalia) • OKLA. STAT. ANN. tit. 63, § 2-405 (West 2023) (criminalizes drug paraphernalia) • OKLA. STAT. ANN. tit. 63, § 2-413.1 (West 2023) (overdose assistance exception) • OKLA. STAT. ANN. tit. 63, § 2-503 (West 2023) (forfeiture) • OKLA. STAT. ANN. tit. 63, § 2-1101 (West 2023) (harm reduction services)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • November 1, 2004 – Provisions added in § 2-405 to criminalize the sale of drug paraphernalia and expand punishments for subsequent violations of drug paraphernalia offenses • November 1, 2018 – § 2-413.1 enacted • April 20, 2021 – Hypodermic syringes and needles used or distributed through harm reduction services removed from §§ 2-101 and 2-101.1 • April 21, 2021 – § 2-1101 enacted • November 1, 2021 – Harm reduction services exception in § 2-101 removed • June 9, 2023 – FTS provision added to § 2-101²³
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled dangerous substance in violation of Oklahoma law, as well as “testing equipment used, intended for use, or fashioned specifically for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances.” • However, the term drug paraphernalia “shall not include . . . drug testing strips possessed by a person for purposes of determining the presence of fentanyl or a fentanyl-related compound.” • Moreover, pursuant § 2-1101, certain entities may engage in “harm reduction services” activities, which include: (1) possessing and distributing “test kits” and (2) “rapid substance testing products used, intended for use, or fashioned specifically for the use in identifying or analyzing the potency or toxicity of unknown substances.”

²³ 2023 Oklahoma Session Laws Chapter 165 originally added the FTS provision to § 2-101 effective November 1, 2023. However, 2023 Oklahoma Session Laws Chapter 375, taking effect June 9, 2023, also amended § 2-101. Although Chapter 375 did not purport to change the definition of “drug paraphernalia,” the underlying bill fully restated § 2-101 using the drug paraphernalia definition scheduled to take effect in November 2023. As a result, enacting Chapter 375 likely moved up the effective date for the FTS language to June 9, 2023.

<u>OKLAHOMA</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • All other types of DCE, or actions with DCE, other than those described in the bullet point just above (on previous page) are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes products used for “injecting” a controlled dangerous substance in violation of Oklahoma law, as well as “hypodermic syringes, needles and other objects used, intended for use, or fashioned specifically for use in parenterally injecting controlled dangerous substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception described in the bullet point below applies. • Pursuant to § 2-1101, certain entities may engage in “harm reduction services” activities, which includes” collecting used hypodermic needles for safe disposal” and “possessing and distributing hypodermic needles.”
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • A person meeting the requirements for applicability of the overdose assistance exception in § 2-413.1 is immune from criminal prosecution for the offense of possession of drug paraphernalia. • Individuals holding an unrevoked license in the professions of podiatry, dentistry, medicine, nursing, optometry, osteopathy, veterinary medicine, or pharmacy are not subject to violations for possession of drug paraphernalia.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for a person to use drug paraphernalia to make or ingest a controlled dangerous substance in violation of state law. • It is unlawful for a person to deliver, sell, possess, or manufacture drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to make or ingest a controlled substance in violation of state law. • Violating either of the provisions above is a misdemeanor punishable as follows: <ul style="list-style-type: none"> ○ For a first offense, imprisonment in the county jail for up to one (1) year, a fine of up to \$1,000 or both; ○ For a second offense, imprisonment in the county jail for up to one (1) year, a fine of up to \$5,000, or both; and

<u>OKLAHOMA</u>	
Prohibited actions and penalties (continued)	<ul style="list-style-type: none"> ○ For a third or subsequent offense, imprisonment in the county jail for up to one (1) year, a fine of up to \$10,000, or both. ● Any person aged 18 or older who violates the provision against selling or delivering drug paraphernalia by delivering or selling it to a person under age 18 is guilty of a felony.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	<ul style="list-style-type: none"> ● Any person convicted of a drug paraphernalia offense must, in addition to any fine imposed, pay a special assessment trauma-care fee of \$100, to be deposited into the Oklahoma Trauma Care Assistance Revolving Fund. ● Section 2-101.1 contains a list of factors that a court or jury must consider when determining whether an object is drug paraphernalia. These factors, however, do not apply to objects in the possession of harm-reduction services providers.
Is there any recently proposed legislation?	No, other than legislation enacted in 2023.

<u>OREGON</u>	
Statute(s)	<ul style="list-style-type: none"> • OR. REV. STAT. ANN. §§ 475.525 to 475.565 (West 2023) (criminalizes drug paraphernalia; exceptions) • OR. REV. STAT. ANN. § 475.744 (West 2023) (providing device to minor) • OR. REV. STAT. ANN. § 475.757 (West 2023) (syringe services programs) • OR. REV. STAT. ANN. § 475.898 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • January 1, 2016 – § 475.898 enacted • July 23, 2019 – § 475.757 enacted • August 4, 2023 – DCE provisions added to § 475.525
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Oregon law. • As of August 2023, the definition no longer references “[t]esting equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” • In addition, drug paraphernalia “does not include . . . single-use drug test strips, drug testing tools or any other item designed to prevent or reduce the potential harm associated with the use of controlled substances, including but not limited to items that reduce the transmission of infectious disease or prevent injury, infection or overdose.” • Moreover, there is also no criminal penalty in Oregon for the possession/use of drug paraphernalia without the intent to sell it. • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • There is no express exception to illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing. However, there is no criminal penalty in Oregon for possession of small amounts of controlled substances (instead, it is a non-criminal “Class E violation”), which would seem to cover many drug checking situations. • Also, it is an affirmative defense to unlawful possession of a controlled substance that the person acted in the capacity of an employee or volunteer of a syringe services program.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” expressly does not include “hypodermic syringes or needles.” • Accordingly, the possession/use of needles or syringes is not subject to criminal penalties for drug paraphernalia.

<u>OREGON</u>	
Other context(s) where FTS, other DCE, and needles/syringes are allowed	A person meeting the requirements for applicability of the overdose assistance exception in § 475.898 is immune from arrest or prosecution for the offense of unlawful possession of drug paraphernalia with the intent to sell or deliver.
Prohibited actions and penalties	It is unlawful for any person to sell or deliver, possess with intent to sell, or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used in conjunction with a controlled substance. In addition to any other penalty provided by law, a violator shall incur a civil penalty between \$2,000 and \$10,000.
Forfeiture	Drug paraphernalia may be seized. Additionally, at trial, the court may order any item determined to be drug paraphernalia to be forfeited.
Other provisions of note	<ul style="list-style-type: none"> • Section 475.525(5)(b) contains a list of factors that the trier of fact must consider when determining whether an object is drug paraphernalia. • Amounts collected from violators of drug paraphernalia laws go into the General Fund to the credit of the Oregon Health Authority. The moneys shall be used for the development and implementation of substance use disorder prevention activities and adolescent treatment.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>PENNSYLVANIA</u>	
Statute(s)	<ul style="list-style-type: none"> • 35 PA. STAT. AND CONS. STAT. ANN. § 780-102 (West 2023) (definition) • 35 PA. STAT. AND CONS. STAT. ANN. § 780-113 (West 2023) (criminalizes drug paraphernalia) • 35 PA. STAT. AND CONS. STAT. § 780-113.7 (West 2023) (overdose assistance exception) • 35 PA. STAT. AND CONS. STAT § 780-141.1 (West 2023) (local ordinances) • 42 PA. STAT. AND CONS. STAT. ANN. § 5802 (West 2023) (forfeiture)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • December 1, 2014 – § 780-113.7 enacted • January 3, 2023 – DCE provision added to § 780-102
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Pennsylvania law, as well as “[t]esting equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” • However, drug paraphernalia “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.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • However, there is no exception to illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes products used for “injecting” a controlled substance in violation of Pennsylvania law, as well as “[h]ypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injected controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<p>A person meeting the requirements for applicability of the overdose assistance exception in § 780-113.7 will not be charged and will be immune from prosecution for (1) use of, or possession with intent to use, drug paraphernalia; and (2) delivery of, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia.</p>

<u>PENNSYLVANIA</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • Each of these violations is a misdemeanor subject to a fine of up to \$2,500, imprisonment for up to one (1) year, or both: <ul style="list-style-type: none"> ○ Using or possessing with the intent to use, drug paraphernalia to make or ingest a controlled substance; ○ Delivering, possessing with intent to deliver, or manufacturing with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it would be used to make or ingest a controlled substance; and ○ Advertising to promote the sale of objects designed or intended for use as drug paraphernalia. • Any person who violates the prohibition against delivering drug paraphernalia by delivering it to a person under age 18 at least three (3) years younger is guilty of a misdemeanor of the second degree, subject to a fine of up to \$5,000, imprisonment up to two (2) years, or both.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	<ul style="list-style-type: none"> • Section § 780-102 contains a list of factors that a court or other authority should consider when determining whether an object is drug paraphernalia. • Section § 780-141.1 expressly allows localities to enact “consistent” local ordinances addressing drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>RHODE ISLAND</u>	
Statute(s)	<ul style="list-style-type: none"> • R.I. GEN. LAWS §§ 21-28.5-1 to 28.5-4 (West 2023) (criminalizes drug paraphernalia) • R.I. GEN. LAWS § 21-28.9-3.1 (West 2023) (narcotic testing products) • R.I. GEN. LAWS § 21-28.9-4 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • September 1, 2000 – Hypodermic syringes and needles removed from the definition of drug paraphernalia in § 21-28.5-1 • January 27, 2016 – § 21-28.9-4 enacted • July 2, 2018 – § 21-28.9-3.1 enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Rhode Island law, including “[t]esting equipment intended for use or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” • However, a person “may provide, administer, or utilize a narcotic testing product” to assist another person in determining whether a narcotic or substance contains chemicals, toxic substances, or hazardous compounds. Narcotic testing products include fentanyl test strips. In addition, such person “shall not be subject to civil liability or criminal prosecution as a result of providing, administering, or utilizing the narcotic testing product to assist another person.” • There is no criminal penalty in Rhode Island for the possession or use of drug paraphernalia without the intent to sell it. • Accordingly, the possession/use of all types of DCE, either for oneself or to assist another person, is not subject to criminal penalty for drug paraphernalia. All other actions associated with DCE, such as selling or manufacturing it, would appear to be potentially subject to criminal penalty for drug paraphernalia. • Moreover, there is no exception to illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of injecting, injection, needles, or syringes. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	A person meeting the requirements for applicability of the overdose assistance exception in § 21-28.9-4 will not be charged or prosecuted for any crime related to the possession of drug paraphernalia.

<u>RHODE ISLAND</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • There is no criminal penalty in Rhode Island for the possession or use of drug paraphernalia without the intent to sell it. • It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowing that it will be used to make or ingest a controlled substance. A violation is subject to a fine up to \$5,000, imprisonment up to two (2) years, or both. • Any person aged 18 or older who violates the prohibition against delivering drug paraphernalia by delivering it to a person under age 18 is subject to a fine up to \$5,000, imprisonment up to five (5) years, or both.
Forfeiture	Rhode Island law does not expressly address forfeiture of drug paraphernalia, although the language of § 21-28-5.04 (“forfeiture of property and money”) suggests that it can be subject to forfeiture.
Other provisions of note	Section § 21-28.5-1(b) contains a list of factors that a court or other authority may consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>SOUTH CAROLINA</u>	
Statute(s)	<ul style="list-style-type: none"> • S.C. CODE ANN. § 44-53-110 (West 2023) (definition) • S.C. CODE ANN. § 44-53-391 (West 2023) (criminalizes drug paraphernalia) • S.C. CODE ANN. § 44-53-393 (West 2023) (fentanyl test strips) • S.C. CODE ANN. § 44-53-520 (West 2023) (forfeiture) • S.C. CODE ANN. §§ 44-53-1910 to 53-1970 (West 2023) (overdose assistance exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • June 10, 2017 – §§ 44-53-1910 to 44-53-1970 enacted • June 15, 2023 – § 44-53-393 enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of testing or analyzing controlled substances or products that test or analyze such substances. • In addition, drug paraphernalia expressly does not include “rapid fentanyl test strips or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of injecting, injection, needles, or syringes. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	A person meeting the requirements for applicability of the overdose assistance exception in §§ 44-53-1910 to 53-1970 will not be prosecuted for possessing drug paraphernalia or selling/delivering drug paraphernalia when the sale or delivery is to the person who appears to be experiencing a drug-related overdose.
Prohibited actions and penalties	It is unlawful for a person to advertise for sale, sell, manufacture, possess, deliver, or possess with the intent to deliver or sell paraphernalia. A violation subjects the person to a civil fine of not more than \$500.

<u>SOUTH CAROLINA</u>	
Forfeiture	South Carolina law does not expressly address forfeiture of drug paraphernalia, although the language of § 44-53-520(a)(8) suggests that it can be subject to forfeiture.
Other provisions of note	Section 44-53-391(b) contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>SOUTH DAKOTA</u>	
Statute(s)	S.D. CODIFIED LAWS § 22-42A-1 to 22-42A-4 (West 2023) (criminalizes drug paraphernalia)
Substantive amendment(s) to law(s) (unrelated to cannabis)	July 1, 2023 – Fentanyl testing provision added to § 22-42A-1
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes equipment used for “testing [or] analyzing” a controlled substance in violation of South Dakota law. South Dakota law, however, does not list “testing equipment for identifying, or analyzing the strength, effectiveness, or purity of controlled substances” within the examples of drug paraphernalia. • In addition, drug paraphernalia “does not include a product that detects the presence of fentanyl or a fentanyl analog in a controlled substance.” • All other types of DCE, or actions with DCE, other than those described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes all equipment, products, or materials of any kind used or attempted to be used for “injecting” and controlled substance in violation of South Dakota law, including “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. The protection from arrest, charge, or prosecution provided by South Dakota’ overdose assistance exception does not extend to drug paraphernalia violations.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is illegal to use or to possess with intent to use drug paraphernalia to make or ingest a controlled substance. A violation is a Class 2 misdemeanor. • It is illegal to 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 make or ingest a controlled substance. A violation is a Class 6 felony.

<u>SOUTH DAKOTA</u>	
Forfeiture	South Dakota law does not expressly address forfeiture of drug paraphernalia.
Other provisions of note	Section 22-42A-2 contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No, other than legislation enacted in 2023.

<u>TENNESSEE</u>	
Statute(s)	<ul style="list-style-type: none"> • TENN. CODE ANN. § 39-17-402 (West 2023) (definition) • TENN. CODE ANN. §§ 39-17-424 to 17-425 (West 2023) (criminalizes drug paraphernalia) • TENN. CODE ANN. § 39-17-428 (West 2023) (fines associated with violations) • TENN. CODE ANN. § 40-7-124 (West 2023) (disclosure of needles or sharp objects) • TENN. CODE ANN. § 53-11-451 (West 2023) (forfeiture) • TENN. CODE ANN. § 63-1-156 (West 2023) (overdose assistance exception) • TENN. CODE ANN. § 68-1-136 (West 2023) (syringe services program exception)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 1, 2015 – § 40-7-124 enacted • July 1, 2015 – § 63-1-156 enacted • May 18, 2017 – § 68-1-136 enacted • March 31, 2022 – Provision related to narcotic testing equipment added to § 39-17-402 • July 1, 2025 – Narcotic testing equipment provision in § 39-17-402 scheduled for repeal, absent additional legislative action
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance, as well as “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.” • Until July 1, 2025, however, testing equipment “does not include narcotic testing equipment used to determine whether a controlled substance contains a synthetic opioid” unless such equipment is used to violate Tennessee’s prohibition against manufacturing, selling, or delivering a controlled substance. • All other types of DCE, or actions with DCE, other than those described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing unless it is a residual amount of a controlled substance in or on a needle or syringe possessed by an employee, volunteer, or participant of a syringe services program.

<u>TENNESSEE</u>	
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes equipment used for “injecting” a controlled substance into the body. Unlike other states, however, Tennessee law does not reference needles or syringes in the list of examples of drug paraphernalia. • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception listed in the bullet point below applies. • It is an exception to Tennessee criminal drug penalties if an employee, volunteer, or participant of a syringe services program possesses “needles, hypodermic syringes, or other injection supplies obtained from or returned to a program established pursuant to this section.”
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<ul style="list-style-type: none"> • A person meeting the requirements for applicability of the overdose assistance exception in § 63-1-156 will not be arrested, charged, or prosecuted for the offense of possession of drug paraphernalia. • Drug paraphernalia is allowed when used, or possessed with the intent to use, by a person authorized to dispense, prescribe, manufacture, or possess a controlled substance.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to make or ingest a controlled substance or controlled substance analogue. A violation is a Class A misdemeanor. • 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 make or ingest a controlled substance or controlled substance analogue. A violation is a Class E felony. • Any person aged 18 or older who violates the prohibition against delivering drug paraphernalia by delivering it to a person under age 18 at least three (3) years younger commits a Class E felony. • It is unlawful for any person to advertise to promote the sale of objects designed or intended for use as drug paraphernalia. A violation is a Class A misdemeanor.
Forfeiture	All drug paraphernalia is subject to forfeiture.

<u>TENNESSEE</u>	
Other provisions of note	<ul style="list-style-type: none"> • Prior to searching a person, a person’s premises, or a person’s vehicle, a law enforcement officer may ask the person whether the person (or the premises/vehicle) has (contains) a needle or sharp object that may cut or puncture the officer. If the person alerts the officer prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object. This exception does not apply to any other drug paraphernalia that may be present and found during the search. • It is an exception to Tennessee criminal drug penalties if an employee, volunteer, or participant of a syringe services program possesses “[r]esidual amounts of a controlled substance contained in a used needle, used hypodermic syringe, or used injection supplies obtained from or returned to” such program. • Section 39-17-424 contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>TEXAS</u>	
Statute(s)	<ul style="list-style-type: none"> • TEX. HEALTH & SAFETY CODE ANN. § 481.002 (West 2023) (definition) • TEX. HEALTH & SAFETY CODE ANN. § 481.125 (West 2023) (criminalizes drug paraphernalia; overdose assistance exception related to drug paraphernalia) • TEX. HEALTH & SAFETY CODE ANN. § 481.151 (West 2023) (forfeiture) • TEX. HEALTH & SAFETY CODE ANN. § 481.183 (West 2023) (determination of drug paraphernalia)
Substantive amendment(s) to law(s) (unrelated to cannabis)	September 1, 2021 – Overdose assistance exception added to § 481.125.
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Texas law, as well as “testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.” • Accordingly, the possession/use of all DCE is potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes all equipment, products, or materials of any kind used or attempted to be used for “injecting” a controlled substance in violation of Texas law, including “a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	A person meeting the requirements for applicability of the overdose assistance exception in § 481.125(g) and (h) has a defense to prosecution of possession or delivery of drug paraphernalia.

<u>TEXAS</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful to knowingly or intentionally use or possess with intent to use drug paraphernalia to make or ingest a controlled substance. A violation is a Class C misdemeanor. • It is unlawful for a person to knowingly or intentionally deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends to use it to make or ingest a controlled substance. A first violation is a Class C misdemeanor. A second or subsequent violation is punishable by confinement in jail for a term of not more than one (1) year or less than 90 days. • A person violating the prohibition against delivering drug paraphernalia by delivering it to a person under age 18 at least three (3) years younger commits a state jail felony.
Forfeiture	All drug paraphernalia that is manufactured, delivered, or possessed in violation of law is subject to forfeiture.
Other provisions of note	Section 481.183 contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>UTAH</u>	
Statute(s)	<ul style="list-style-type: none"> • UTAH CODE ANN. § 58-37-8(11) (West 2023) (temporary possession of substance) • UTAH CODE ANN. § 58-37-8(16) (West 2023) (overdose assistance exception) • UTAH CODE ANN. §§ 58-37a-1 to 58-37a-7 (West 2023) (criminalizes drug paraphernalia)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • May 10, 2011 – Exemption added to § 58-37a-5 for hypodermic syringes that are sealed in sterile packaging and are for a legitimate medical purpose • March 20, 2014 – Overdose assistance exception added to § 58-37-8 • May 3, 2023 – Allowance for temporary possession of controlled substance by facility conducting drug checking added to § 58-37-8 • May 3, 2023 – Exception for DCE added to § 58-37a-3
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance in violation of Utah law, as well as “testing equipment used, or intended for use, to identify or to analyze the strength, effectiveness, or purity of a controlled substance” except for that noted below. • Drug paraphernalia, however, does not include “a testing product or equipment . . . used or intended for use to determine whether a substance contains: (a) a controlled substance that can cause physical harm or death; or (b) a chemical or compound that can cause physical harm or death.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • Additionally, it is not unlawful for a healthcare facility, substance use harm reduction services program, or treatment facility to “temporarily possess[] a controlled or counterfeit substance to conduct a test or analysis on the controlled or counterfeit substance to identify or analyze the strength, effectiveness, or purity of the substance for a public health or safety reason.” This protection does not extend to a person unaffiliated with the three types of facilities.

<u>UTAH</u>	
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “injecting” a controlled substance in violation of Utah law, as well as “hypodermic syringes, needles, and other objects used, or intended for use to parenterally inject a controlled substance into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless one of the exceptions noted in the two bullet points just below applies. • A person may not be charged with distribution of hypodermic syringes as drug paraphernalia if at the time of sale or distribution, the syringes are in a sealed sterile package and are for a legitimate medical purpose, which includes the: (1) injection of prescription medications as prescribed by a practitioner; or (2) prevention of disease transmission. This includes syringe services programs authorized under Utah law. • A person may not be charged with possession of hypodermic syringes as drug paraphernalia if the syringe is unused and is in a sealed sterile package.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	A person eligible for the overdose assistance exception in § 58-37-8(16) has an affirmative defense to an allegation of any violation of Utah drug paraphernalia law
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to make or ingest a controlled substance. A violation is a class B misdemeanor. • It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia will be used to make or ingest a controlled substance. A violation is a class A misdemeanor. • Any person aged 18 or older who violates the provision against delivering drug paraphernalia by delivering it to a person under age 18 at least three (3) years younger commits a third-degree felony. • It is unlawful for any person to advertise to promote the sale of objects designed or intended for use as drug paraphernalia. A violation is a Class B misdemeanor.
Forfeiture	All drug paraphernalia is subject to forfeiture.

<u>UTAH</u>	
Other provisions of note	<ul style="list-style-type: none"> • Section 58-37a-7 provides that if a court finds that a minor violates Utah drug paraphernalia laws, the court may order the minor to complete: <ul style="list-style-type: none"> ○ A substance use disorder screening; ○ A substance use disorder assessment, if the screening indicates an assessment to be appropriate; and ○ An educational series or substance use disorder treatment as indicated by an assessment. • Section 58-37a-4 contains a list of factors that the trier of fact should consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>VERMONT</u>	
Statute(s)	<ul style="list-style-type: none"> • VT. STAT. ANN. tit. 18 § 4201(45) and (46) (West 2023) (drug checking definitions) • VT. STAT. ANN. tit. 18 § 4240a (West 2023) (drug checking for contaminant detection) • VT. STAT. ANN. TIT. 18 §§ 4475 to 4478 (West 2023) (criminalizes drug paraphernalia; exceptions)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • May 19, 1999 – Needles and syringes distributed or possessed as part of an organized community-based syringe services program are both exempted from definition of drug paraphernalia in § 4475 and decriminalized • July 1, 2018 – Amendment to § 4476 decriminalized the sale, possession with intent to sell, or manufacture with intent to sell, drug paraphernalia to an individual over age 18 • May 25, 2023 – Harm reduction supplies other than needles and syringes removed from drug paraphernalia definition in § 4475 • May 25, 2023 – § 4240a enacted and drug checking definitions added to § 4201
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a regulated drug in violation of Vermont law.²⁴ The definition, however, does not include the “testing equipment” provision found in many states’ laws. • Although all DCE likely falls under the definition of drug paraphernalia, there is no criminal penalty in Vermont for using, possessing, or selling drug paraphernalia, unless it is sold to a person under age 18. • Moreover, § 4240a authorizes drug checking services by, and at, an “approved drug-checking service provider.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • It is not unlawful for “an approved drug-checking service provider to receive, possess, transport, or store samples of a substance that may contain a regulated drug solely for purposes of analyzing the substance to determine its chemical composition and disseminate information regarding the analysis to the provider of the substance.”

²⁴ Vermont law uses the term “regulated drug” rather than “controlled substance.” A regulated drug means “(A) a narcotic drug; (B) a depressant or stimulant drug, other than methamphetamine; (C) a hallucinogenic drug; (D) Ecstasy; (E) cannabis; or (F) methamphetamine.” VT. STAT. ANN. tit. 18 § 4201(19) (West 2023).

<u>VERMONT</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • In addition, an individual possessing a regulated substance who provides it to a drug-checking service provider for purposes of obtaining drug-checking services “shall not be subject to arrest, charge, or prosecution for possession of a regulated substance pursuant to this chapter or civil or administrative penalty or disciplinary action by a professional licensing board for a violation of this chapter based on the individual's use or attempted use of drug-checking services.”
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “injecting” a regulated drug in violation of Vermont law. The definition, however, does not include hypodermic needles and syringes provision found in many states’ laws. • Although needles and syringes in general likely fall under the definition of drug paraphernalia, there is no criminal penalty in Vermont for using, possessing, or selling drug paraphernalia, unless it is sold to a person under age 18. • In addition, drug paraphernalia does not include “needles, syringes, or other harm reduction supplies distributed or possessed as part of an organized community-based” syringe services program. • Also, the distribution and possession of needles and syringes as part of a community-based syringe services program is not a violation. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. Vermont’s overdose assistance exception does not address drug paraphernalia, as the possession of it is not prohibited.
Prohibited actions and penalties	<ul style="list-style-type: none"> • Vermont does not criminalize: (1) the possession/use of drug paraphernalia; or (2) selling drug paraphernalia to non-minors. • It is unlawful for a person to sell drug paraphernalia to a person under age 18. A violation is subject to imprisonment up to two (2) years, a fine up to \$2,000, or both.
Forfeiture	Upon conviction, all drug paraphernalia is subject to forfeiture.
Other provisions of note	Section 4475(b) contains a list of factors that a court or other authority may consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>VIRGINIA</u>	
Statute(s)	<ul style="list-style-type: none"> • VA. CODE ANN. § 18.2-251.03 (West 2023) (overdose assistance exception) • VA. CODE ANN. §§ 18.2-265.1 to 265.5 (West 2023) (criminalizes drug paraphernalia) • VA. CODE ANN. § 19.2-386.26 (West 2023) (forfeiture) • VA. CODE ANN. § 32.1-45.4 (West 2023) (syringe services program exception) • VA. CODE ANN. § 54.1-3466 (West 2023) (criminalizes controlled paraphernalia) • VA. CODE ANN. § 54.1-3467 (West 2023) (distribution of hypodermic needles and syringes) • VA. CODE ANN. § 54.1-3469 (West 2023) (storage)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 1, 2015 – § 18.2-251.03 enacted • July 1, 2017 – § 32.1-45.4 enacted • March 2, 2018 – Provisions regarding possessing needles and syringes for purposes of injecting naloxone added to § 54.1-3466 and § 54.1-3467 • July 1, 2019 – Narcotic testing product exceptions added to § 18.2-265.1 and § 54.1-3466 • July 1, 2020 – Provisions regarding possession or distribution of drug paraphernalia through a syringe services program added to § 32.1-45.4 and § 54.1-3466
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “strength testing [or] analyzing” cannabis or a controlled substance, including “[t]esting equipment intended for use or designed for use in identifying or in analyzing the strength or effectiveness of marijuana or controlled substances.” • However, drug paraphernalia does not include “narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” • Also, there is no criminal penalty in Virginia for using or possessing drug paraphernalia without the intent to sell it. (Note that there exists a prohibition against possessing “controlled paraphernalia.”) • The definition of “controlled paraphernalia”: (1) does not reference testing or analyzing controlled substances; and (2) expressly provides that such paraphernalia “does not include narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.”

<u>VIRGINIA</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • All other types of DCE, or actions with DCE, other than those described in the bullet points just above (on prior page) are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “injecting” cannabis or a controlled substance, including “[h]ypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body.” • The definition of “controlled paraphernalia” includes “a hypodermic syringe, needle, or other instrument or implement or combination thereof adapted for the administration of controlled dangerous substances by hypodermic injections under circumstances that reasonably indicate an intention to use such controlled paraphernalia for purposes of illegally administering any controlled drug.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia or controlled paraphernalia unless one of the exceptions in the four bullet points just below apply. • There is no criminal penalty in Virginia for using or possessing drug paraphernalia without the intent to sell it. (Note that there exists a prohibition against possessing controlled paraphernalia.) • It is lawful for a person to possess or distribute hypodermic needles and syringes for the purpose of injecting naloxone. • It is lawful for a person to possess or distribute controlled paraphernalia on behalf of a syringe services program. • It is lawful for a person to possess controlled paraphernalia obtained from a syringe services program when such possession is incidental to the provision of services as part of a comprehensive harm reduction program.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	A person eligible for the overdose assistance exception in § 18.2-251.03 may be subject to arrest or prosecution for possession of controlled paraphernalia.

<u>VIRGINIA</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • The following actions constitute Class 1 misdemeanors: <ul style="list-style-type: none"> ○ Selling, or possessing with intent to sell, drug paraphernalia to make or ingest a controlled substance; ○ Possessing or distributing controlled paraphernalia; ○ Distributing controlled paraphernalia; ○ Distributing drug paraphernalia by a person aged 18 or older to a person under age 18; and ○ Advertising to promote the sale of objects designed or intended for use as drug paraphernalia. • A person aged 18 or older who sells drug paraphernalia to a person under age 18 at least three (3) years younger commits a Class 6 felony.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	<ul style="list-style-type: none"> • Each person, association or corporation which has lawfully obtained possession of controlled paraphernalia must exercise reasonable care in the storage, usage, and disposition of such devices or substances to ensure that they are not diverted for reuse for any purposes other than those for which they were lawfully obtained. • Section 18.2-265.2 contains a list of factors that a court may consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>WASHINGTON</u>	
Statute(s)	<ul style="list-style-type: none"> • WASH. REV. CODE ANN. § 69.50.102 (West 2023) (definition) • WASH. REV. CODE ANN. § 69.50.412 (West 2023) (criminalizes drug paraphernalia) • WASH. REV. CODE ANN. § 69.50.4121 (West 2023) (penalty for selling drug paraphernalia) • WASH. REV. CODE ANN. § 69.50.505 (West 2023) (forfeiture) • WASH. REV. CODE ANN. § 69.50.612 (West 2023) (pre-emption by state)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • June 13, 2002 – Added an exception for individuals over the age of 18 to possess sterile hypodermic syringes and needles for the purpose of reducing blood-borne diseases and allowed for the legal distribution of injection syringe equipment through public health and community-based HIV prevention programs and pharmacies • May 13, 2021 – The words “prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body” removed from the criminal penalties for drug paraphernalia in § 69.50.412 • July 1, 2023 – Drug checking related changes, as well as removal of the prohibition against “giving” drug paraphernalia, made to § 69.50.4121 • July 1, 2023 – § 69.50.612 enacted
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance, including “[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” • However, the words “test” or “analyze” are no longer in the list of prohibited actions in § 69.50.412 (does not cover selling) that can result in drug paraphernalia penalties. • In addition, the words “testing” or “analyzing” are no longer in the list of prohibited actions related to selling drug paraphernalia in § 69.50.4121. • Also, nothing in § 69.50.4121 “prohibits distribution or use of public health supplies including . . . drug testing equipment, through public health programs, community-based HIV prevention programs, outreach, shelter, and housing programs, and pharmacies.” • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia.

<u>WASHINGTON</u>	
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS) (continued)	<ul style="list-style-type: none"> • In addition, public health and syringe service program staff taking samples of substances and using drug testing equipment for the purpose of analyzing the composition of the substances or detecting the presence of certain substances “are acting legally and are exempt from arrest and prosecution under [certain Washington controlled substance penalties].” This protection does not extend to the person seeking the drug checking services.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “injecting” a controlled substance, including “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.” • However, the word “inject” is no longer in the list of prohibited actions in § 69.50.412 (does not cover selling) that can result in drug paraphernalia penalties. • In addition, nothing in § 69.50.4121 prohibiting the selling of drug paraphernalia “prohibits distribution or use of public health supplies including . . . syringe equipment. . . through public health programs, community-based HIV prevention programs, outreach, shelter, and housing programs, and pharmacies.” • Finally, it is lawful for any person over the age of 18 to possess sterile hypodermic syringes and needles for the purpose of reducing blood borne diseases. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	<p>None. Washington’s overdose assistance exception does not address drug paraphernalia penalties.</p>

<u>WASHINGTON</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • Every person who sells or permits to be sold, to any person any drug paraphernalia in any form commits a Class I civil infraction. • The following actions constitute misdemeanors: <ul style="list-style-type: none"> ○ Using drug paraphernalia to make or ingest a controlled substance other than marijuana; ○ Delivering, possessing 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 make or ingest a controlled substance other than marijuana; and ○ Advertising to promote the sale of objects designed or intended for use as drug paraphernalia • Any person aged 18 years or older who delivers drug paraphernalia to a person under age 18 at least three (3) years younger commits a gross misdemeanor.
Forfeiture	All drug paraphernalia, other than paraphernalia possessed, sold, or used solely to facilitate cannabis-related activities, is subject to forfeiture.
Other provisions of note	<ul style="list-style-type: none"> • Section 69.50.102(b) contains a list of factors that a court or other authority should consider when determining whether an object is drug paraphernalia. • Section 69.50.612 provides that the state “fully occupies and preempts the entire field of drug paraphernalia regulation within the boundaries of the state including regulation of the use, selling, giving, delivery, and possession of drug paraphernalia” and that “[c]ities, towns, and counties or other municipalities may enact only those laws and ordinances relating to drug paraphernalia that are specifically authorized by state law and are consistent with this chapter.”
Is there any recently proposed legislation?	Yes, see Recent Federal and State Legislation .

<u>WEST VIRGINIA</u>	
Statute(s)	<ul style="list-style-type: none"> • W. VA. CODE ANN. § 16-64-8 (West 2023) (syringe services program exception) • W. VA. CODE ANN. §§ 47-19-1 to 19-8 (West 2023) (criminalizes drug paraphernalia).
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • July 9, 2021 – § 16-64-8 enacted • June 10, 2022 – FTS provision added to § 47-19-3
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • West Virginia does not penalize the possession or use of drug paraphernalia. • West Virginia does not penalize the licensed selling of drug paraphernalia to a person aged 18 or older unless it is done at: (1) a fair, festival, musical or theatrical production, or at any event performed or conducted outdoors; or (2) a temporary roadside booth or table along any municipal street or highway. • However, if marked for use or designed for use with controlled substances, the following items, among other things, are subject to West Virginia’s penalties for unlicensed selling of drug paraphernalia: “[t]esting equipment marketed for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.” • Nevertheless, FTS are not considered drug paraphernalia for purposes of the prohibition against the unlicensed selling of such paraphernalia. • In addition, an employee, volunteer, or participant of a licensed syringe services program may not be arrested, charged with, or prosecuted for possession of “safer drug use materials obtained from a program established pursuant to this article, including testing supplies for illicit substances.” • Accordingly, the combined effect of all the provisions listed above is to make the possession/use of all types of DCE not subject to penalties for drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • West Virginia does not penalize the possession or use of drug paraphernalia. • West Virginia does not penalize the licensed selling of drug paraphernalia to a person aged 18 or older unless it is done at: (1) a fair, festival, musical or theatrical production, or at any event performed or conducted outdoors; or (2) a temporary roadside booth or table along any municipal street or highway.

<u>WEST VIRGINIA</u>	
Legality of needles/syringes (continued)	<ul style="list-style-type: none"> • However, if marked for use or designed for use with controlled substances, the following items, among other things, are subject to West Virginia’s penalties for unlicensed selling of drug paraphernalia: “[h]ypodermic syringes, needles and other objects marketed for use, or designed for use in parenterally injecting controlled substances into the human body.” • In addition, an employee, volunteer, or participant of a licensed syringe services program may not be arrested, charged with, or prosecuted for possession of “[s]terile or used syringes, hypodermic syringes, injection supplies obtained from or returned to a program.” • Accordingly, the combined effect of all the provisions listed above is to make the possession/use of needles or syringes not subject to penalties for drug paraphernalia, unless such items are sold to a person under aged 18 or sold in unlicensed fashion.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. West Virginia’s overdose assistance exception does not address drug paraphernalia penalties as the possession of it is not prohibited.
Prohibited actions and penalties	<ul style="list-style-type: none"> • West Virginia does not penalize the possession or use of drug paraphernalia. • It is unlawful for a person to sell any items, effects, paraphernalia, accessories, or thing which is designed or marketed for use with controlled substances without obtaining a license therefor from the state tax commissioner. A violation is a misdemeanor subject to a fine of \$10-\$500. • It is unlawful for any person to sell or attempt to sell drug paraphernalia at: (1) a fair, festival, musical or theatrical production, or at any event performed or conducted outdoors; or (2) a temporary roadside booth or table along any municipal street or highway. A violation is a misdemeanor subject to a fine of \$10-\$500. • It is unlawful to sell drug paraphernalia to any person under age 18. A person aged 18 or older who violates the provision is guilty of a felony and subject to a fine up to \$15,000 and may be imprisoned for one to five (1-5) years or confined to a county jail for up to one (1) year.
Forfeiture	West Virginia law does not expressly address forfeiture.
Other provisions of note	Section 47-19-3(b) contains a list of factors that the state tax commissioner or other authority should consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>WISCONSIN</u>	
Statute(s)	<ul style="list-style-type: none"> • WIS. STAT. ANN. § 961.443 (West 2023) (overdose assistance exception) • WIS. STAT. ANN. § 961.55 (West 2023) (forfeiture) • WIS. STAT. ANN. §§ 961.571 to 961.577 (West 2023) (criminalizes drug paraphernalia)
Substantive amendment(s) to law(s) (unrelated to cannabis)	<ul style="list-style-type: none"> • April 9, 2014 - § 961.443 enacted • March 18, 2022 – Exception for testing equipment added to definition in § 961.571
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used in “testing [or] analyzing” a controlled substance or controlled substance analog in violation of Wisconsin law, including “[t]esting equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.” • However, drug paraphernalia does not include [a]ny materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance.” • All other types of DCE, or actions with DCE, other than those described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of injecting, injection, needles, or syringes. • In addition, drug paraphernalia expressly excludes “[h]ypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body.” • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	A person eligible for the overdose assistance exception in § 961.443 (called an “aider” in Wisconsin) is immune from prosecution for the offense of possession of drug paraphernalia

<u>WISCONSIN</u>	
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful to use, or possess with the primary intent to use, drug paraphernalia to make or ingest a controlled substance or controlled substance analog. A violation is subject to a fine up to \$500, imprisonment up to 30 days, or both. • It is unlawful to use, or possess with the primary intent to use, drug paraphernalia to make or ingest methamphetamine or a controlled substance analog of methamphetamine. A violation is Class H felony, unless the person is age 18 or older and commits a violation while in the presence of a child who is 14 years of age or younger, which is a Class G felony. • It is unlawful to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to make or ingest a controlled substance or controlled substance. A violation is subject to a fine of up to \$1,000, 90 days imprisonment, or both. If a person age 17 or older violates this provision by delivering drug paraphernalia to a person age 17 or under at least three (3) years younger may be fined up to \$10,000, imprisoned up to nine (9) months, or both. • It is unlawful to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to make or ingest methamphetamine or a controlled substance analog of methamphetamine. A violation is a Class H felony unless the person is age 17 or older and commits a violation by delivering to a person aged 17 or younger, which is a Class G felony • It is unlawful to advertise to promote the sale of objects designed or intended for use as drug paraphernalia. A violation is subject to a fine up to \$500, imprisonment up to 30 days, or both.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	Section 961.572 contains a list of factors that a court or other authority must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>WYOMING</u>	
Statute(s)	<ul style="list-style-type: none"> • WYO. STAT. ANN. § 35-7-1002 (West 2023) (definition) • WYO. STAT. ANN. § 35-7-1049 (West 2023) (forfeiture) • WYO. STAT. ANN. §§ 35-7-1056 to 7-1057 (West 2023) (criminalizes drug paraphernalia)
Substantive amendment(s) to law(s) (unrelated to cannabis)	None.
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” contains no mention of testing or analyzing controlled substances or products that test or analyze such substances. • In addition, there is no criminal penalty in Wyoming for the possession or use of drug paraphernalia without the intent to sell it. • Accordingly, the possession/use of all types of DCE is not subject to criminal penalty for drug paraphernalia. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes all equipment, products, or materials of any kind used or attempted to be used for “injecting” a controlled substance in violation of Wyoming law. Unlike many other states, however, Wyoming law does not reference needles or syringes in the list of examples of drug paraphernalia. • However, there is no criminal penalty in Wyoming for the possession or use of drug paraphernalia without the intent to sell it. • Accordingly, the possession/use of needles or syringes is not subject to criminal penalty for drug paraphernalia, so long as the individual has no intent to sell them.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. Wyoming is one of two states without an overdose assistance exception of any kind (the other is Kansas).

<u>WYOMING</u>	
Prohibited actions and penalties	<ul style="list-style-type: none">• It is unlawful for any person to deliver, or possess with intent to deliver, drug paraphernalia. Any person who violates this section is guilty of a crime and, upon conviction, may be imprisoned for not more than six (6) months, fined not more than \$750, or both.• Any adult who violates the prohibition against delivering drug paraphernalia by delivering it to a minor is guilty of a crime and, upon conviction, may be imprisoned for not more than five (5) years, fined not more than \$2,500, or both.
Forfeiture	All drug paraphernalia is subject to forfeiture.
Other provisions of note	None.
Is there any recently proposed legislation?	None.

<u>AMERICAN SAMOA</u>	
Statute(s)	There does not appear to be a drug paraphernalia statute in American Samoa. ²⁵
Substantive amendment(s) to law(s) (unrelated to cannabis)	N/A
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • As there is no criminal prohibition against drug paraphernalia generally, American Samoa appears to allow the use/possession of FTS and all other DCE. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	As there is no criminal prohibition against drug paraphernalia generally, American Samoa appears to allow the use/possession of needles and syringes.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	N/A
Prohibited actions and penalties	N/A
Forfeiture	None
Other provisions of note	None
Is there any recently proposed legislation?	No.

²⁵ Based upon a search of American Samoa's medicine and drug statutory code (AM. SAMOA CODE ANN. §§ 13.1001 to 13.1042) at <https://asbar.org/section/title-13-health-and-economic-welfare-services/chapter-10-medicine-and-drugs/> (last visited December 21, 2023).

<u>GUAM</u>	
Statute(s)	There does not appear to be a drug paraphernalia statute in Guam. ²⁶
Substantive amendment(s) to law(s) (unrelated to cannabis)	N/A
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • As there is no criminal prohibition against drug paraphernalia generally, Guam appears to allow the possession/use of FTS and all other DCE. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	As there is no criminal prohibition against drug paraphernalia generally, Guam appears to allow the use/possession of needles and syringes.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	N/A
Prohibited actions and penalties	N/A
Forfeiture	None
Other provisions of note	None
Is there any recently proposed legislation?	No.

²⁶ Based upon a search of Guam's Uniform Controlled Substances Act (9 GUAM CODE ANN. §§ 67.101 to 67.801 (West 2023)) using the Westlaw database.

<u>NORTHERN MARIANA ISLANDS</u>	
Statute(s)	There does not appear to be a drug paraphernalia statute in the Northern Mariana Islands. ²⁷
Substantive amendment(s) to law(s) (unrelated to cannabis)	N/A
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • As there is no criminal prohibition against drug paraphernalia generally, the Northern Mariana Islands appear to allow the possession/use of FTS and all other DCE. • However, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	As there is no criminal prohibition against drug paraphernalia generally, the Northern Mariana Islands appear to allow the use/possession of needles and syringes.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	N/A
Prohibited actions and penalties	N/A
Forfeiture	None
Other provisions of note	None
Is there any recently proposed legislation?	No.

²⁷ Based upon a search of the Northern Mariana Islands' controlled substance provisions (6 N. MAR. I. CODE §§ 2101 to 2151) at <https://www.cnmilaw.org/cmc.php#gsc.tab=0> (last visited December 21, 2023).

<u>PUERTO RICO</u>	
Statute(s)	<ul style="list-style-type: none"> • P.R. LAWS ANN. tit. 24, § 2411b (West 2023) (criminalizes drug paraphernalia) • P.R. LAWS ANN. tit. 24, § 2512 (West 2023) (seizure of property) • P.R. LAWS ANN. tit. 24, § 2608 (West 2023) (exclusions related to needles/syringes)
Substantive amendment(s) to law(s) (unrelated to cannabis)	July 23, 2007 – Word “injection” removed from definition of drug paraphernalia in § 2411b(a).
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “paraphernalia” includes items used for “testing [or] analysis” of a controlled substance in violation of Puerto Rico law, as well as “[t]esting equipment, or chemicals or alcohol used, or destined or designed for use in the identification, analysis or measurement of the potency, effectiveness, purity or quality of controlled substances.” • However, the criminal provisions of § 2411b do not apply to: (1) the Puerto Rico Department of Health (“Department”); (2) “non-profit entities duly authorized by the Department, with the purpose of preventing the transmission of contagious diseases, or as part of an educational or prevention program, distribute hypodermic needles and other accessories;” or (3) “duly identified participants” of the entities/programs falling under (2). • All other types of DCE, or actions with DCE, other than those described in the bullet point just above are potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “paraphernalia” contains no mention of injecting, injection, needles, or syringes. • However, in the penalty section, possessing or using paraphernalia to “inject” a controlled substance remains potentially subject to criminal penalty. • Accordingly, it appears that the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia unless the exception in the bullet point below (on next page) applies.

<u>PUERTO RICO</u>	
Legality of needles/syringes (continued)	<ul style="list-style-type: none"> • The criminal provisions of § 2411b do not apply to: (1) the Puerto Rico Department of Health (“Department”); (2) “non-profit entities duly authorized by the Department, with the purpose of preventing the transmission of contagious diseases, or as part of an educational or prevention program, distribute hypodermic needles and other accessories;” or (3) “duly identified participants” of the entities/programs falling under (2).
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. There is no overdose assistance exception in Puerto Rico.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for any person to knowingly and with criminal intent, use or possess with the intention of using drug paraphernalia. A violation is a felony, subject to a fine not greater than \$3,000 or to imprisonment for a fixed term of three (3) years. • It is unlawful for any person to knowingly, and with criminal intent, manufacture, distribute, sell, dispense, deliver, transport, conceal, or possess with the intent of distributing, selling, disposing, delivering, transporting or concealing drug paraphernalia. A violation is a felony, subject to a fine not greater than \$30,000 or to imprisonment for a fixed term of three (3) years. • Advertising to promote the sale of equipment, products, or materials designed and intended for use as drug paraphernalia is a felony subject to a fine of \$10,000. • All maximum penalties listed above can be raised or lowered in the case of aggravating or extenuating circumstances.
Forfeiture	All paraphernalia equipment used or planned to be used in the fabrication, confection of compounds, manufacture, delivery, import or export of any controlled substance is subject to forfeiture.
Other provisions of note	Section 2411b(b) contains a list of factors that a court or other competent authority may consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>U.S. VIRGIN ISLANDS</u>	
Statute(s)	<ul style="list-style-type: none"> • V.I. CODE ANN. tit. 19, § 593 (West 2023) (definition) • V.I. CODE ANN. tit. 19, § 630 (West 2023) (criminalizes drug paraphernalia) • V.I. CODE ANN. tit. 19, § 630a (West 2023) (possession and sale of needles/syringes)
Substantive amendment(s) to law(s) (unrelated to cannabis)	None.
Legality of drug checking equipment (DCE) generally, including fentanyl test strips (FTS)	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes items used for “testing [or] analyzing” a controlled substance in violation of Virgin Islands’ law, as well as “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.” • Accordingly, the possession/use of all DCE is potentially subject to criminal penalties for drug paraphernalia. • In addition, there is no exception from illegal drug possession penalties for users of drug checking services, or program staff providing such services, to possess drug samples for the purpose of testing.
Legality of needles/syringes	<ul style="list-style-type: none"> • The definition of “drug paraphernalia” includes all equipment, products, or materials of any kind used or attempted to be used for “injecting” a controlled substance in violation of Virgin Islands law, including “[h]ypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.” • Accordingly, the possession/use of needles or syringes is potentially subject to criminal penalties for drug paraphernalia.
Other context(s) where FTS, other DCE, and needles/syringes are allowed	None. There is no overdose assistance exception in the Virgin Islands.
Prohibited actions and penalties	<ul style="list-style-type: none"> • It is unlawful for a person to use, or possess with intent to use, drug paraphernalia. A violation is a misdemeanor punishable by imprisonment of not more than one year, a fine of not more than \$5,000, or both. • It is unlawful for a person to deliver, furnish or transfer or possess with intent to deliver, furnish or transfer, or manufacture with intent to deliver, furnish or transfer drug paraphernalia. A violation is punishable by a term of imprisonment of not more than three years, a fine of not more than \$15,000, or both.

<u>U.S. VIRGIN ISLANDS</u>	
Prohibited actions and penalties (continued)	<ul style="list-style-type: none">• It is unlawful for any person to sell, offer for sale, or possess with intent to sell or offer for sale, or purchase, drug paraphernalia. A violation is punishable by a term of imprisonment of not more than three years, a fine of not more than \$15,000, or both.• It is unlawful for a person to advertise to promote the sale of objects designed or intended for use as drug paraphernalia. A violation is a misdemeanor punishable by imprisonment of not more than one year, a fine of not more than \$5,000, or both.
Forfeiture	Virgin Islands' law does not expressly address forfeiture of drug paraphernalia.
Other provisions of note	Section 593(M) contains a list of factors that a court, other authority, or jury must consider when determining whether an object is drug paraphernalia.
Is there any recently proposed legislation?	No.

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<u>Congress</u> H.R.5801 (2023) (introduced and referred to House committee Sept. 28, 2023)	This is the “Preventing Overdoses with Test Strips Act.” The purpose of the bill is to ensure that expenses relating to the acquisition or use of devices for use in the detection of fentanyl, xylazine, and other emerging adulterant substances, including test strips, are allowable expenses under certain grant programs.
<u>Congress</u> S.2484 (2023) (introduced and referred to Senate committee July 25, 2023)	This is the “Expanding Nationwide Access to Test Strips Act.” The bill uses the term “life-saving drug testing technologies” to include all types of DCE. Relying on the congressional regulation of interstate commerce, the bill proposes to prohibit a state from: (1) preventing an individual from “obtaining, possessing, distributing, or using” such technologies; and (2) prosecuting an individual “solely” for the same activities.
<u>Congress</u> S.2919 (2023) (introduced and referred to Senate committee Sept. 26, 2023)	This is the “Advancing Lifesaving Efforts with Rapid Test strips for Communities Act” or the “ALERT Communities Act”. The bill proposes to require research with respect to fentanyl and xylazine test strips, to authorize the use of grant funds for such test strips, and for other purposes. Specifically, the bill provides that “[t]he Secretary of Health and Human Services, in consultation with the Director of the National Institutes of Health, the Director of the Office of National Drug Control Policy, the Commissioner of Food and Drugs, and the Administrator of the Drug Enforcement Administration, shall develop and make publicly available research and marketing frameworks for developing, improving, and evaluating test strip technology for detecting fentanyl and other dangerous substances.”
<u>Arizona</u> S.B. 1192 (2023) (died upon legislature’s adjournment)	This bill proposed to appropriate \$30,000 from the state general fund in fiscal year 2023-2024 to the Arizona Department of Health Services to purchase and distribute FTS to institutions of higher education for availability in health centers located on the campuses of the institutions of higher education.
<u>Arizona</u> S.B. 1002 (2024) (pre-filed Dec. 6, 2023)	This bill proposes to eliminate the references to testing, analyzing, and testing equipment from the definition of “drug paraphernalia.” The bill also proposes to remove the exception for FTS, as moot in light of the other changes.

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<u>California</u> S.B. 58 (2023) (vetoed by the governor on Oct. 7, 2023)	Among other things, this bill would exempt from the prohibition against drug paraphernalia items related to psilocybin, psilocyn, dimethyltryptamine (DMT), ibogaine, and mescaline. The bill would also exempt from prohibition any items used for the testing and analysis of these specific controlled substances.
<u>California</u> S.B. 57 (2021) (vetoed by governor on Aug. 22, 2022)	This bill proposed to authorize the City and County of San Francisco, the County of Los Angeles, the City of Los Angeles, and the City of Oakland for approximately five (5) years to approve entities to operate overdose prevention programs including, among other things: (1) providing a hygienic space supervised by trained staff where people who use drugs can consume pre-obtained drugs; (2) providing sterile consumption supplies; (3) providing access or referrals to substance use disorder treatment; and (4) allowing program staff to be authorized and trained to provide emergency administration of an emergency opioid antagonist.
<u>Colorado</u> H.B. 1202 (2023) (passed House Mar. 11, 2023; died in Senate upon legislature's adjournment)	The bill proposed to permit municipalities to authorize the operation of an overdose prevention center within its boundaries after holding a public hearing. The bill defined overdose prevention centers as facilities providing space for individuals to use previously obtained controlled substances under the supervision of healthcare professionals or other trained staff for the purpose of providing life-saving treatment in the event of a potential overdose, as well as access to other harm reduction services.
<u>Connecticut</u> S.B. 889 (2023) (died upon legislature's adjournment)	This was a draft bill entitled "an act concerning the fentanyl crisis" that included a purpose but no proposed statutory language. One of the stated purposes was to "procure and make widely available fentanyl testing strips."
<u>Florida</u> S.B. 1650 (2023) (died upon legislature's adjournment)	The bill proposed to authorize the Florida Department of Health to approve entities to operate safer consumption services programs to provide a safer environment for those afflicted with a substance misuse problem so that they may consume such substances in hygienic conditions and under the monitoring of qualified health professionals.
<u>Hawaii</u> H.B. 431 (2023) (pending in House upon legislature's adjournment; may be carried over to 2024 session)	This bill proposes to repeal criminal penalties associated with drug paraphernalia under the state's uniform controlled substances act (<i>i.e.</i> , HAW. REV. STAT. ANN. § 329-43.5) (West 2023)).

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<p><u>Hawaii</u> H.B. 573 (2023) (passed House; deferred by Senate)</p>	<p>This bill proposed to add to the definition of drug paraphernalia a provision that it “does not include testing products utilized in determining whether a controlled substance contains chemicals, toxic substances, or hazardous compounds in quantities that can cause physical harm or death, including but not limited to fentanyl test strips.” This is broader than the legislative change enacted in 2023.</p>
<p><u>Illinois</u> H.B. 2 (2023) (pending in House upon legislature’s recess; may be carried over to next session) S.B. 78 (2023) (pending in Senate upon legislature’s recess; may be carried over to next session)</p>	<p>This bill creates a new section in Chapter 20, § 301/5-26, harm reduction services, including legislative findings and definitions. Definitions include “harm reduction,” and “overdose prevention sites,” which means a hygienic location where individuals may safely consume pre-obtained substances. Provides for licensure of such sites. Provides that pilot overdose prevention sites shall abide by certain core principles and shall be established in physical locations with high need determined by rates of overdoses and substance use and as a natural development or extension of existing harm reduction and outreach programming. The bill also provides that overdose prevention sites shall, among other things, provide sterile injection and other substance use supplies, collect used hypodermic needles and syringes, and provide secure hypodermic needle and syringe disposal services.</p>
<p><u>Illinois</u> H.B. 2118 (passed House; pending in Senate committee upon legislature’s recess; may be carried over to next session)</p>	<p>Amends ch. 720, § 635/1, possession of hypodermic syringes and needles, to delete the prohibition against possession of hypodermic syringes and needles by any person. Further amends statute to allow any person to purchase from any supplier and have in his or her possession any amount of hypodermic syringes or needles.</p>
<p><u>Iowa</u> H.F. 536 (2023) (passed House; pending in Senate committee upon legislature’s adjournment; may be carried over to 2024 session)</p>	<p>Among other things, this bill proposes to reduce the penalty for a person who knowingly or intentionally manufactures, delivers, sells, or possesses drug paraphernalia to a scheduled fine of \$260 for the first violation and \$520 for second or subsequent violations. This bill originated as H.F. 301.</p>
<p><u>Iowa</u> H.F. 545 (2023) (pending in House committee upon legislature’s adjournment; may be carried over to 2024 session)</p>	<p>This bill proposes to amend the definition of drug paraphernalia to remove “[e]quipment, products, or materials used to analyze or test for the presence of fentanyl, a fentanyl analog, or a drug adulterant within a controlled substance.”</p>

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<u>Kentucky</u> S.B. 59 (2023) (died upon legislature's adjournment)	Among other things, this bill proposed to allow: (1) local health departments to provide testing equipment, including drug testing strips, to determine the presence of fentanyl or a fentanyl derivative to participants; and (2) the retail sale of testing equipment, including drug testing strips.
<u>Kentucky</u> H.B. 98 (2023) (died upon legislature's adjournment)	This bill proposed to establish and regulate harm reduction centers, defined as "a community-based resource offering services which may include but are not limited to health screening, syringe support, drug checking, disease prevention, recovery assistance, and overdose prevention services where persons may safely consume pre-obtained substances."
<u>Maine</u> L.D. 1159 (2023) (died upon legislature's adjournment)	This bill proposed to direct the Maine Department of Health and Human Services to create a two-year pilot project establishing and operating a harm reduction health center to provide counseling and health service referrals and a place to use previously obtained controlled substances for clients of the center. The harm reduction health center must be approved by the municipality in which it is located, and the bill provides immunity to the State, the municipality or employees and clients of the center from criminal or civil liability. The bill creates an advisory board to provide guidance to the department and requires the department to report to the 132nd Legislature on the effectiveness of the project. The bill originated as H.P. 731.
<u>Maine</u> L.D. 1975 (2023) (carried over by House on July 26, 2023 to 2024 session)	Among other things, the bill proposes to repeal the laws that make possession and use of drug paraphernalia a crime. It also repeals the laws governing the civil violation of use of drug paraphernalia and possession with intent to use drug paraphernalia.
<u>Maryland</u> S.B. 762 (2023) (died upon legislature's adjournment)	The bill proposed to repeal the prohibition against controlled dangerous substances paraphernalia, adulterants, and dilutants that are used to inject, ingest, inhale, or otherwise introduce a substance into the human body.
<u>Maryland</u> H.B. 173 (2023) (passed House; died upon legislature's adjournment)	Similar to S.B. 762.

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<p><u>Maryland</u> H.B. 953 (2023) (died upon legislature's adjournment)</p>	<p>This bill proposed to authorize one or more community-based organizations (CBO) to establish an Overdose and Infectious Disease Prevention Services Program (a program). The CBO must first receive approval from the Maryland Department of Health (MDH), in consultation with the local health department (LHD) before opening a program. A program must, among other things, provide a supervised location in which drug users can consume pre-obtained drugs, as well as receive other services, education, and referrals. MDH may not approve more than six programs and, to the extent practicable, should distribute programs evenly among urban, suburban, and rural areas of Maryland, with each area receiving no more than two programs. Each program must operate at a single location in an area with a high incidence of drug use.</p>
<p><u>Massachusetts</u> S.B. 926 (2023) (replaced by S.B. 2458 on Oct. 10, 2023)</p>	<p>The bill proposes to amend the definition of “drug paraphernalia” to exclude “fentanyl test strips or any testing equipment or devices solely used, intended for use, or designed to be used to determine whether a substance contains fentanyl or its analogues.”</p>
<p><u>Massachusetts</u> S.B. 948 (2023) (committee hearing scheduled June 27, 2023)</p>	<p>The bill proposes to amend the overdose assistance exception to provide that a “person who, in good faith, provides, administers, or utilizes a controlled substance testing product to assist another person in determining whether a controlled substance contains chemicals, toxic substances, or hazardous compounds shall not be charged or prosecuted for possession of a controlled substance under section 34 if the evidence for the charge of possession of a controlled substance was gained as a result of providing, administering, or utilizing a controlled substance testing product to provide assistance to another person.”</p>
<p><u>Massachusetts</u> S.B. 1081 (2023) (committee hearing scheduled June 13, 2023)</p>	<p>Legislation based on LAPPAs' <u>Model Fentanyl/Xylazine Test Strip and Other Drug Checking Equipment Act</u>.</p>
<p><u>Massachusetts</u> S.B. 1242 (2023) H.B. 1981 (2023) (committee hearing scheduled Oct. 23, 2023)</p>	<p>These bills propose a 10-year pilot program establishing overdose prevention centers that utilize harm reduction tools, including clinical monitoring of the consumption of pre-obtained controlled substances in the presence of trained staff, for the purpose of reducing the risks of disease transmission and preventing overdose deaths.</p>

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<u>Massachusetts</u> S.B. 2458 (2023) (reported favorably by Senate committee and referred to second committee Oct. 10, 2023)	This bill proposes that the term “drug paraphernalia” shall not include FTS or any testing equipment or devices solely used, intended for use, or designed to be used to determine whether a substance contains fentanyl or its analogues. It also adds an immunity provision for persons who provide or use such test strips.
<u>Massachusetts</u> H.B. 1736 (2023) (replaced by S.B. 2458 on Oct. 10, 2023)	The bill proposes to exclude from the prohibition against selling or manufacturing with the intent to sell “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.”
<u>Massachusetts</u> H.B. 1818 (2023) (committee hearing scheduled July 25, 2023)	The bill proposes to eliminate mandatory minimum sentences related to drug offenses.
<u>Michigan</u> H.B. 5178 (2023) (pending in House committee upon legislature’s adjournment; may be carried over to 2024)	This bill proposes that an entity or person that receives authorization from the state or a local government agency may establish a needle and hypodermic syringe access program for the purposes of distributing sterile needles or hypodermic syringes to individuals or providing additional services, items, or equipment to individuals to decrease the spread of communicable diseases.
<u>Michigan</u> H.B. 5179 (2023) (pending in House committee upon legislature’s adjournment; may be carried over to 2024)	This bill proposes to add a provision that “drug paraphernalia” does not include “testing products utilized in determining whether a controlled substance contains chemicals, toxic substances, or hazardous compounds in quantities that can cause physical harm or death.”
<u>Missouri</u> S.B. 623 (2023) (died upon legislature’s adjournment)	The bill proposed that the offenses of delivery, sale, or manufacture of drug paraphernalia would not apply to “[a]ny entity registered with the department of health and senior services that possesses, distributes, or delivers hypodermic needles or syringes for the purpose of operating a syringe access program or otherwise mitigating health risks associated with unsterile injection drug use.”

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
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<u>Missouri</u> S.B. 973 (2023) (died upon legislature’s adjournment)	The bill proposed that “[t]he department of health and senior services shall establish a registration process for entities desiring to operate a program that distributes fentanyl testing strips in order to reduce drug overdoses and overdose deaths whereby any entity that would like to operate such a program shall be allowed to do so if it meets requirements set by the department of health and senior services.” Such entities, and their staff members, volunteers, or participants would be exempt from the offense of delivery or sale of drug paraphernalia.
<u>Missouri</u> H.B. 1245 (2023) (died upon legislature’s adjournment)	The bill proposed that the state department of health and senior services establish a registration process for entities desiring to operate a syringe access program. Such entities, and their staff members, volunteers, or participants would be exempt from the offense of delivery or sale of drug paraphernalia.
<u>Missouri</u> S.B. 997 (2024) (pre-filed Dec. 1, 2023)	Similar to 2023 S.B. 623 described above.
<u>Montana</u> H.B. 647 (2023) (died upon legislature’s adjournment)	The bill proposed that “drug paraphernalia” not include “a product that detects the presence of fentanyl or a fentanyl analog in a controlled substance.” Moreover, the bill would add a provision that the exception “does not apply to any person who, while in possession of the fentanyl testing product, possesses any controlled substance with the intent to distribute it as defined by 45-9-103.”
<u>Montana</u> S.B. 26 (2023) (died upon legislature’s adjournment)	The bill proposed that “drug paraphernalia” not include “fentanyl test strips designed and intended to detect the presence of fentanyl in substances.”
<u>Nebraska</u> L.B. 307 (2023) (pending when legislature adjourned; may be carried over to 2024 session)	The bill proposes to authorize pharmacies and local public health programs to provide hypodermic syringes or needles to prevent the spread of infectious disease.
<u>New Hampshire</u> H.B. 470 (2023) (retained in House committee; may be carried over to 2024 session)	Legislation based on LAPPAs’ <u>Model Fentanyl/Xylazine Test Strip and Other Drug Checking Equipment Act</u> . This is broader than what legislators enacted in 2023.

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<p><u>New Hampshire</u> H.B. 581 (2023) (deemed inexpedient to legislate Feb. 22, 2023)</p>	<p>This bill proposed to repeal the New Hampshire controlled drug act (§ 318-B) effective July 1, 2025, and establish a committee to recommend legislation to make the necessary policy and statutory changes to accompany the repeal.</p>
<p><u>New Jersey</u> S.B. 310 (2022) (introduced and referred to Senate committee Jan 11, 2022)</p>	<p>Among other things, this bill proposes to allow the expungement of a criminal record of unlawful possession or distribution of a hypodermic syringe or needle in cases where the person has had a previous expungement.</p>
<p><u>New Jersey</u> A.B. 2800 (2022) (reported and referred to Assembly committee Oct. 13, 2022) S.B. 1077(2022) (introduced and referred to Senate committee Jan. 31, 2022)</p>	<p>These identical (when introduced) bills require pharmacies to sell hypodermic needles and syringes to any customer over the age of 18. Under current law, needles and syringes may be sold in quantities of up to 10 without a prescription, and in quantities of more than 10 only with a valid prescription. Current law provides that over-the-counter sales of needles and syringes is allowed, but not required. This bill would make such sales mandatory, and would additionally require pharmacies to post a sign at the pharmacy sales counter advising consumers of the right to purchase needles and syringes.</p>
<p><u>New Mexico</u> H.B. 263 (2023) (died upon legislature’s adjournment)</p>	<p>This bill proposed to create an overdose prevention program, which would allow for the operation of overdose prevention facilities and provide liability protections for individuals operating or utilizing overdose prevention programs. The amendments would limit the data collected in association with harm reduction programs, require the state department of health to promulgate rules about the operation of overdose prevention programs, and require the program to provide participants with a safe and hygienic space to consume previously obtained substances under the supervision of trained personnel.</p>
<p><u>New York</u> A.B. 338 (2023) (referred to Assembly committee Mar. 21, 2023); S.B. 399 (2023) (referred to Senate committee May 23, 2023)</p>	<p>These bills propose to create Public Health Law Article 33-C, §§ 3399 to 3399e, the safer consumption services act. The bills provide that the department of public health may approve an entity to operate an overdose prevention center program that demonstrates the entity will, among other things, provide sterile injection and other consumption supplies, collect used hypodermic needles and syringes, and provide secure hypodermic needle and syringe disposal services.</p>

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
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<p><u>New York</u> A.B. 2908 (2023) (referred to Assembly committee Feb. 1, 2023); S.B. 5799 (2023) (referred to Senate committee Mar. 16, 2023)</p>	<p>These bills propose to add additional objects which a person would be guilty of criminally using drug paraphernalia in the second degree if he or she knowingly possesses or sells such objects.</p>
<p><u>New York</u> A.B. 5004 (2023) (referred to Assembly committee Feb. 27, 2023); S.B. 4393 (2023) (passed Senate and delivered to Assembly June 6, 2023)</p>	<p>These bills provide that when informational cards or sheets about opioid antagonists are distributed, such information shall include information about FTS and their uses.</p>
<p><u>New York</u> A.B. 5005 (2023) (referred to Assembly committee Apr. 25, 2023); S.B. 5671 (2023) (referred to Senate committee May 17, 2023)</p>	<p>These bills provide for free FTS to individuals at specified distribution facilities and require a public awareness campaign on the dangers of fentanyl and the provision of the test strips.</p>
<p><u>New York</u> A.B. 7221 (2023) (referred to Assembly committee May 15, 2023)</p>	<p>This bill proposes to permit the possession or use of narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.</p>
<p><u>New York</u> S.B. 7833 (2023) (referred to Senate committee Dec. 20, 2023)</p>	<p>This bill proposes to include xylazine in the definition of drug adulterant testing supplies for the purposes of the dispensing of such supplies by health care professionals or pharmacists to any person.</p>
<p><u>Ohio</u> H.B. 83 (2023) (referred to House committee Feb. 28, 2023)</p>	<p>This bill proposes to amend certain criminal offense statutes, including statutes related to drug paraphernalia, to delete offenses related to drug abuse instruments and drug paraphernalia, and amend syringe services program law to delete drug paraphernalia exceptions as unnecessary.</p>
<p><u>Ohio</u> S.B. 37 (2023) (referred to Senate committee Feb. 8, 2023)</p>	<p>Among many other things, the bill proposes to repeal the driver's license suspension provision in § 2925.14.</p>

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<p><u>Oregon</u> H.B. 2397 (2023) (died upon legislature’s adjournment)</p>	<p>The bill proposed to establish the Harm Reduction Clearinghouse Project (Clearinghouse Project) in the Oregon Health Authority to bulk purchase harm reduction supplies for use in the state by community organizations, first responders, and other entities that serve populations who are vulnerable to overdose, infections, or injuries due to opioid use and use of other controlled substances. The bill removed prohibitions on specified drug paraphernalia and equipment. The bill also proposed to provide immunity from civil liability to persons delivering hypodermic syringes or needles, single-use drug test strips, drug testing tools, or any other item designed to prevent or reduce the potential harm associated with the use of opioids and other controlled substances.</p>
<p><u>Oregon</u> H.B. 2880 (2023) (died upon legislature’s adjournment)</p>	<p>Among other things, the bill proposed to expand the affirmative defense to crime of unlawful possession of a controlled substance to include any person acting in capacity of employee or volunteer of harm reduction intervention program and not just a syringe services program.</p>
<p><u>Pennsylvania</u> H.B 1245 (2023) (referred to House committee May 24, 2023)</p>	<p>This bill proposes to define the term “syringe services program,” provide for the existence of such programs, and exempt from the definition of drug paraphernalia a syringe or needle “provided by a public or private entity, volunteer or health care provider through a syringe services program to a participant in the syringe services program.”</p>
<p><u>Pennsylvania</u> S.B 165 (2023) (passed Senate May 1, 2023; referred to House committee May 2, 2023)</p>	<p>This bill proposes to prohibit “the operation of a clinic or establishment that provides drug paraphernalia and knowingly provides space for any person to inject, ingest, inhale or otherwise introduce into the person's body a controlled substance.”</p>
<p><u>South Carolina</u> S.B 310 (2023) (pending in Senate committee upon legislature’s adjournment; may be carried over to 2024 session)</p>	<p>This bill proposed to enact the “South Carolina Harm Reduction Act.” The bill requires the state department of health and environmental control to establish and administer a syringe service program and develop policies and procedures for program employees and participants.</p>
<p><u>Texas</u> H.B. 85 (2023) (died upon legislature’s adjournment)</p>	<p>This bill proposed that the prohibition against possession or delivery of drug paraphernalia “does not apply to a person who uses, possesses with the intent to use, delivers, possesses with intent to deliver, or manufactures with intent to deliver testing equipment that identifies the presence of fentanyl, alpha-methylfentanyl, or any other derivative of fentanyl.”</p>

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<u>Texas</u> H.B. 224 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> H.B. 362 (2023) (passed House April 11, 2023; died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> H.B. 685 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> H.B. 753 (2023) (died upon legislature's adjournment)	This bill proposed to remove the criminal penalties for possession of drug paraphernalia.
<u>Texas</u> H.B. 867 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> H.B. 987 (2023) (died upon legislature's adjournment)	This bill proposed to remove "testing," "analyzing," and the testing equipment provision from the definition of drug paraphernalia.
<u>Texas</u> H.B. 1018 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> H.B. 1365 (2023) (died upon legislature's adjournment)	Similar to H.B. 987.
<u>Texas</u> H.B. 1365 (2023) (died upon legislature's adjournment)	Similar to H.B. 987.

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<u>Texas</u> H.B. 1403 (2023) (died upon legislature's adjournment)	This bill proposed to allow a county or hospital district to establish a "disease control pilot program" to prevent the spread of infectious and communicable diseases, including HIV, hepatitis B, and hepatitis C. Among other things, a program operator may distribute hypodermic needles and syringes to control the spread of certain infectious and blood-borne communicable diseases.
<u>Texas</u> H.B. 1584 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> H.B. 2042 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> H.B. 2775 (2023) (died upon legislature's adjournment)	This bill proposed to remove the hypodermic needle provision from the definition of drug paraphernalia. It also proposed to exempt needles and syringes from the prohibition against possession or delivery of drug paraphernalia.
<u>Texas</u> H.B. 4667 (2023) (died upon legislature's adjournment)	This bill proposed to prohibit the operation of supervised drug consumption sites by creating a criminal offense.
<u>Texas</u> S.B. 86 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> S.B. 207 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> S.B. 234 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> S.B. 495 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.

<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<u>Texas</u> S.B. 623 (2023) (died upon legislature's adjournment)	Similar to H.B. 987.
<u>Texas</u> S.B. 868 (2023) (died upon legislature's adjournment)	Similar to H.B. 85.
<u>Texas</u> S.B. 1388 (2023) (passed Senate May 3, 2023; died upon legislature's adjournment)	Similar to H.B. 4667.
<u>Texas</u> S.B. 68 – 3 rd Special session (2023) (died upon adjournment of special session)	This bill provided that the offense of possession or delivery of drug paraphernalia section does not apply to “a person who uses, possesses with the intent to use, delivers, possesses with intent to deliver, or manufactures with intent to deliver testing equipment that identifies the presence of fentanyl, alpha-methylfentanyl, or any other derivative of fentanyl.”
<u>Texas</u> S.B. 29 – 4 th Special session (2023) (died upon adjournment of special session)	This bill provided that the offense of possession or delivery of drug paraphernalia section does not apply to “to a person who uses, possesses with intent to use, delivers, possesses with intent to deliver, or manufactures with intent to deliver testing equipment that identifies the presence of a substance listed in Penalty Group 1-B.”
<u>Texas</u> S.B. 30 – 4 th Special session (2023) (died upon adjournment of special session)	This bill related to the defense to prosecution for certain offenses involving possession of small amounts of controlled substances, cannabis, dangerous drugs, or abusable volatile chemicals, or possession of drug paraphernalia for defendants seeking assistance for a suspected overdose.
<u>Utah</u> S.B. 122 (passed Senate Feb. 6, 2023; died upon legislature's adjournment)	The bill proposed to create an affirmative defense to possession of drug paraphernalia for any person if: (1) the hypodermic syringe or needle is stored in a sealed puncture-resistant container such as a medical sharps disposal container; and (2) the person is currently enrolled or participating in an established hypodermic syringe or needle exchange program.

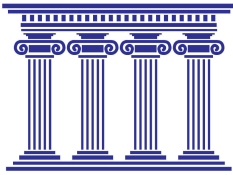
<u>RECENT FEDERAL AND STATE LEGISLATION</u>	
<u>State/Bill Number/Status</u>	<u>Description</u>
<p><u>Vermont</u> H.B. 72 (2023) (pending in House upon legislature’s adjournment; may be carried over to 2024 session)</p>	<p>Among other things, this bill proposes to eliminate criminal and civil penalties for operating a “safer drug consumption program” which includes providing: (1) a space supervised by health care professionals or other trained staff where persons who use drugs can consume pre-obtained drug; and (2) sterile injection supplies, collects used hypodermic needles and syringes, and provides secure hypodermic needle and syringe disposal services.</p>
<p><u>Vermont</u> H.B. 423 (2023) (pending in House upon legislature’s adjournment; may be carried over to 2024 session)</p>	<p>Among other things, this bill proposes to change the penalties for possession of a personal use supply of drugs from a misdemeanor or low-level felony to a civil offense subject to a \$50.00 penalty. A person cited for such an offense may avoid paying the penalty by agreeing to participate in a screening for substance use disorder treatment and related services. This bill also contains the drug checking program provisions enacted by other legislation in 2023.</p>
<p><u>Vermont</u> S.B. 70 (2023) (pending in House upon legislature’s adjournment; may be carried over to 2024 session)</p>	<p>This bill contains “safer drug consumption provisions” similar to H.B. 72.</p>
<p><u>Washington</u> S.B. 5022 (2023) (passed Senate Mar. 7, 2023; pending in House upon legislature’s adjournment; may be carried over to 2024 session)</p>	<p>This bill proposes to remove “testing equipment used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness, or purity of controlled substances” from the definition of “drug paraphernalia.”</p>

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