



## D.C. Criminal Code Reform Commission

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### ADVISORY GROUP MEMORANDUM #23

**To:** Code Revision Advisory Group  
**From:** Criminal Code Reform Commission (CCRC)  
**Date:** July 12, 2019  
**Re:** Supplemental Materials to the First Draft of Report #37

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This Advisory Group Memorandum (Memo) supplements the First Draft of Report #37, *Controlled Substance and Related Offenses* with relevant information on the organization and scope of the Report and various background materials.

The most notable change to the distribution, manufacturing, and possession with intent to distribute or manufacture a controlled substance (re-labeled as “trafficking of a controlled substance”) presented in the report is the introduction of penalty grades based on the quantity of the controlled substance. Under the current statute, penalties for controlled substance offenses only differ based on the *type* of controlled substance involved in the offense.

The Criminal Code Reform Commission (CCRC) reviewed analogous drug offense statutes in the 29 reform code jurisdictions.<sup>1</sup> Of these 29 reformed code jurisdictions, 24 grade their analogous trafficking of a controlled substance offenses based on both type and quantity of controlled substance involved in the offense.<sup>2</sup>

The revised trafficking of a controlled substance offense is graded based on both type and quantity of a controlled substance. The first, second, and third grades of the offense all require trafficking in one of the substances designated as an “abusive” or “narcotic” drug under current law.<sup>3</sup> First and second degree trafficking each require a specified minimum quantity for each substance, and third degree trafficking requires any measurable amount. The quantity thresholds

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<sup>1</sup> See Paul H. Robinson & Markus D. Dubber, *The American Model Penal Code: A Brief Overview*, 10 NEW CRIM. L. REV. 319, 326 (2007) (listing 34 jurisdictions, six of which— Florida, Georgia, Iowa, Nebraska, New Mexico, and Wyoming—do not have general parts analogous to the Model Penal Code General Part). In addition, Tennessee reformed its criminal code after the publication of this article.

<sup>2</sup> These states are: Alabama, Alaska, Arkansas, Arizona, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Missouri, Minnesota, New Hampshire, New Jersey, New York, North Dakota, Ohio, Tennessee, Texas, Washington, and Wisconsin.

<sup>3</sup> As defined, “abusive” and “narcotic” drugs include: Opium, its phenanthrene alkaloids, or their derivatives (except isoquinoline alkaloids of opium), including any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical to these substances; opium poppy or poppy straw; cocaine, its salts, optical and geometric isomers, or salts of isomers; ecgonine, its derivatives, their salts, isomers, or salts of isomers; methamphetamine, its salts, isomers, or salts of its isomers; phenmetrazine, or its salts; or phencyclidine or a phencyclidine immediate precursor.

were based in part on national legal trends, and are intended to distinguish between ordinary street level distribution, distribution of unusually large quantities, and large scale distribution or manufacturing of controlled substances.

Attached as Appendix A to this memo is a red-inked collection of controlled substance statutes that shows how the Commission's recommendations would change the text in three parts of Title 48 of the D.C. Code: Chapter 9, Subchapter 1 (Definitions); Chapter 9, Subchapter IV (Offenses and Penalties); and Chapter 11, Drug Paraphernalia.

Current D.C. Code statutory text that would be unchanged is in black ink. Red ink with strikethrough indicates current D.C. Code statutory text that would be repealed. Red ink without strikethrough (clean) indicates CCRC recommended conforming amendments and the new statutory language presented in the First Draft of Report #37. No changes are recommended to any other statutes in Title 48 of the D.C. Code.

(Any discrepancies between the text in the First Draft of Report #37 and the text in Appendix A are errors and the recommended text in the First Draft of Report #37 is controlling.)

**APPENDIX A: COMPILATION OF AMENDED OR REPEALED STATUTES**

**TITLE 48 CHAPTER 9 CONTROLLED SUBSTANCES ACT**

**SUBCHAPTER I DEFINITIONS.**

**D.C. Code § 48-901.02. Definitions.**

As used in this chapter, the term:

(1) “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) A practitioner (or, in the practitioner's presence, by the practitioner's authorized agent); or

(B) The patient or research subject at the direction of and in the presence of the practitioner.

(2) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term “agent” does not include a common or contract carrier, a public warehouseman, or an employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

(3) “Cannabis” means all parts of the plant genus Cannabis, including both marijuana and hashish defined as follows:

(A) “Marijuana” includes the leaves, stems, flowers, and seeds of all species of the plant genus Cannabis, whether growing or not. The term “marijuana” does not include the resin extracted from any part of the plant, nor any compound, manufacture, salt, derivative, mixture, or preparation from the resin, including hashish and does not include the mature stalks of the plant, fiber produced from such stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(B) “Hashish” includes the resin extracted from any part of the plant genus Cannabis, and every compound, manufacture, salt, derivative, mixture, or preparation from such resin.

(3A) “Contraband” means an item the mere possession of which is unlawful under District or federal law.

(4) “Controlled substance” means a drug, substance, or immediate precursor, as set forth in Schedules I through V of subchapter II of this chapter.

(A) The term “controlled substance” does not include:

(i) Marijuana that is or was in the personal possession of a person 21 years of age or older at any specific time if the total amount of marijuana that is or was in the possession of that person at that time weighs or weighed 2 ounces or less;

(ii) Cannabis plants that are or were grown, possessed, harvested, or processed by a person 21 years of age or older within the interior of a house or rental unit that constitutes or at the time constituted, such person’s principal residence, if such person at that time was growing no more than 6 cannabis plants with 3 or fewer being mature flowering plants and if all persons residing within that single house or single rental unit at that time did not possess, grow, harvest, or process, in the aggregate, more than 12 cannabis plants, with 6 or fewer being mature, flowering plants; or

(iii) The marijuana produced by the plants which were grown, possessed, harvested, or processed by a person who was, pursuant to sub-subparagraph (ii) of this subparagraph, permitted to grow, possess, harvest, and process such plants, if such marijuana is or was in the personal possession of that person who is growing or grew such plants, within the house or rental unit in which the plants are or were grown.

(B) Notwithstanding the provisions of this paragraph, the terms “controlled substance” and “controlled substances,” as used in the District of Columbia Official Code, shall include any marijuana or cannabis plant sold or offered for sale or made available for sale.

(5) “Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) “D.E.A.” means the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(7) “Dispense” means to distribute a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(8) “Dispenser” means a practitioner who dispenses.

(9) “Distribute” means the actual, constructive, or attempted transfer from one person to another other than by administering or dispensing of a controlled substance, whether or not there is an agency relationship.

(10) “Distributor” means a person who distributes.

(11) “Drug” means: (A) substances recognized as drugs in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; (B) active substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (C) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (D) substances intended for use as a component of any article specified in clause (A), (B), or (C) of this paragraph. The term “drug” does not include devices or their components, parts, or accessories.

(12) “Immediate precursor” means a substance which the Mayor has found to be, and by rule designates as being, the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term “manufacture” does not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, or compounding, packaging, or labeling of a controlled substance:

(A) By a practitioner as an incident to administering or dispensing a controlled substance in the course of the practitioner's professional practice; or

(B) By a practitioner, or by his or her authorized agent under supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(14) “Mayor” means the Mayor as provided for in § 1-204.21, or the Mayor's designated agent.

(15) “Narcotic drug” means any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, its phenanthrene alkaloids, and their derivatives (except isoquinoline alkaloids of opium);

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;

(C) Opium poppy and poppy straw;

(D) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and

(F) Any compound, mixture, or preparation that contains any of the substances referred to in this paragraph.

(16) “Opiate” means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability and includes its racemic and levorotatory forms. The term “opiate” does not include, unless specifically designated as controlled under § 48-902.01, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).

(17) “Opium poppy” means the plant of the species *Papaver somniferum* L., except its seeds.

(18) “Person” means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or unincorporated business, or any other legal entity.

(19) “Poppy straw” means all parts, except the seeds, of the opium poppy, after mowing.

(20) “Practitioner” means:

(A) A physician, dentist, advanced practice registered nurse, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in the District of Columbia; or

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of its professional practice or research in the District of Columbia.

(21) “Production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) “State” when applied to a part of the United States, includes any state, the District of Columbia, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States government.

(23) “Ultimate user” means a person who lawfully possesses a controlled substance for that person's own use or for the use of a member of that person's household or for administering to an animal owned by him or her or by a member of that person's household.

(24) “Addict” means any individual who habitually uses any narcotic drug or abusive drug so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such narcotic drug or abusive drug as to have lost the power of self-control with reference to his addiction.

(25) “Retail value” means the value in the market in which the substance was being distributed, manufactured or possessed, or the amount which the person possessing such controlled substance reasonably could have expected to receive upon the sale of the controlled substance at the time and place where the controlled substance was distributed, manufactured or possessed.

(26) “Abusive drug” means any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(A) Phencyclidine or a phencyclidine immediate precursor;

(B) Methamphetamine, its salts, isomers, and salts of its isomers; and

(C) Phenmetrazine and its salts.

(27) “Isomer” means the optical isomer, except as used in § 48-902.04(3), (5), and (6) and § 48-902.06(1)(D). As used in § 48-902.04(3), (5), and (6), “isomer” means any optical, positional, or geometric isomer. As used in § 48-902.06(1)(D), “isomer” means any optical or geometric isomer.

(28) “Real property” means any right, title, or interest in any tract of land, or any appurtenance or improvement on a tract of land.

(29) “Playground” means any facility intended for recreation, open to the public, and with any portion of the facility that contains one or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards.

(30) “Video arcade” means any facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines.

(31) “Youth center” means any recreational facility or gymnasium, including any parking lot appurtenant thereto, intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

## TITLE 48 CHAPTER 9 CONTROLLED SUBSTANCES ACT

### SUBCHAPTER IV OFFENSES AND PENALTIES.

D.C. Code § 48-904.01. ~~Prohibited acts A; penalties.~~ Procedural Provisions.

~~(a)(1) Except as authorized by this chapter or Chapter 16B of Title 7 [§ 7-1671.01 et seq.], it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess, with intent to manufacture or distribute, a controlled substance. Notwithstanding any provision of this chapter to the contrary, it shall be lawful, and shall not be an offense under District of Columbia law, for any person 21 years of age or older to:~~

~~(A) Possess, use, purchase, or transport marijuana weighing 2 ounces or less;~~

~~(B) Transfer to another person 21 years of age or older, without remuneration, marijuana weighing one ounce or less;~~

~~(C) Possess, grow, harvest, or process, within the interior of a house or rental unit that constitutes such person's principal residence, no more than 6 cannabis plants, with 3 or fewer being mature, flowering plants; provided, that all persons residing within a single house or single rental unit may not possess, grow, harvest, or process, in the aggregate, more than 12 cannabis plants, with 6 or fewer being mature, flowering plants;~~

~~(D) Possess within such house or rental unit the marijuana produced by such plants; provided that, nothing in this subsection shall make it lawful to sell, offer for sale, or make available for sale any marijuana or cannabis plants.~~

~~(1A)(A) The terms "controlled substance" and "controlled substances," as used in the District of Columbia Official Code, shall not include:~~

~~(i) Marijuana that is or was in the personal possession of a person 21 years of age or older at any specific time if the total amount of marijuana that is or was in the possession of that person at that time weighs or weighed 2 ounces or less;~~

~~(ii) Cannabis plants that are or were grown, possessed, harvested, or processed by a person 21 years of age or older within the interior of a house or rental unit that constitutes or at the time constituted, such person's principal residence, if such person at that time was growing no more than 6 cannabis plants with 3 or fewer being mature flowering plants and if all persons residing within that single house or single rental unit at that time did not possess, grow, harvest, or process, in the aggregate, more than 12 cannabis plants, with 6 or fewer being mature, flowering plants; or~~

~~(iii) The marijuana produced by the plants which were grown, possessed, harvested, or processed by a person who was, pursuant to sub-subparagraph (ii) of this subparagraph, permitted to grow, possess, harvest, and process such plants, if such marijuana is or was in the personal possession of that person who is growing or grew such plants, within the house or rental unit in which the plants are or were grown.~~

~~(B) Notwithstanding the provisions of this paragraph, the terms "controlled substance" and "controlled substances," as used in the District of Columbia Official Code, shall include any marijuana or cannabis plant sold or offered for sale or made available for sale.~~

~~(1B)~~ (a)(1) Notwithstanding any other provision of the District of Columbia Official Code, no District government agency or office shall limit or refuse to provide any facility



service, program, or benefit to any person based upon or by reason of conduct that is made lawful by this ~~subsection~~ D.C. Code § 48-904.01b.

~~(1C)~~ (2) Nothing in this ~~subsection~~ D.C. Code § 48-904.01b shall be construed to require any District government agency or office, or any employer, to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or to affect the ability of any such agency, office, or employer to establish and enforce policies restricting the use of marijuana by employees.

~~(1D)~~ (3) Nothing in this ~~subsection~~ D.C. Code § 48-904.01b shall be construed to permit driving under the influence of marijuana or driving while impaired by use or ingestion of marijuana or to modify or affect the construction or application of any provision of the District of Columbia Official Code related to driving under the influence of marijuana or driving while impaired by marijuana.

~~(1E)~~ (4) Nothing in this ~~subsection~~ D.C. Code § 48-904.01b shall be construed to prohibit any person, business, corporation, organization, or other entity, or District government agency or office, who or which occupies, owns, or controls any real property, from prohibiting or regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.

~~(1F)~~ (5) Nothing in this ~~subsection~~ D.C. Code § 48-904.01b shall be construed to make unlawful any conduct permitted by [Chapter 16B of Title 7](#) [[§ 7-1671.01](#) et seq.].

~~(2) Any person who violates this subsection with respect to:~~

~~(A) A controlled substance classified in Schedule I or II that is a narcotic or abusive drug shall be imprisoned for not more than 30 years or fined not more than the amount set forth in [§ 22-3571.01](#), or both;~~

~~(B) Any other controlled substance classified in Schedule I, II, or III, except for a narcotic or abusive drug, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than the amount set forth in [§ 22-3571.01](#), or both; except that upon conviction of manufacturing, distributing or possessing with intent to distribute ½ pound or less of marijuana, a person who has not previously been convicted of manufacturing, distributing or possessing with intent to distribute a controlled substance or attempting to manufacture, distribute, or possess with intent to distribute a controlled substance may be imprisoned for not more than 180 days or fined not more than the amount set forth in [§ 22-3571.01](#) or both;~~

~~(C) A substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than the amount set forth in [§ 22-3571.01](#), or both; or~~

~~(D) A substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than the amount set forth in [§ 22-3571.01](#), or both.~~

~~(b)(1) Except as authorized by this chapter, it is unlawful for any person to create, distribute, or possess with intent to distribute a counterfeit substance.~~

~~(2) Any person who violates this subsection with respect to:~~

~~(A) A counterfeit substance classified in Schedule I or II that is a narcotic or abusive drug shall be imprisoned for not more than 30 years or fined not more than the amount set forth in [§ 22-3571.01](#), or both;~~

~~(B) Any other counterfeit substance classified in Schedule I, II, or III, except for a narcotic or abusive drug, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than the amount set forth in § 22-3571.01, or both;~~

~~(C) A counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than the amount set forth in § 22-3571.01, or both; or~~

~~(D) A counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than 1 year, fined not more than the amount set forth in § 22-3571.01, or both.~~

~~(e) Repealed.~~

~~(d)(1) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter or Chapter 16B of Title 7 [§ 7-1671.01 et seq.], and provided in § 48-1201. Except as provided in paragraph (2) of this subsection, any person who violates this subsection is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 180 days, fined not more than the amount set forth in § 22-3571.01, or both.~~

~~(2) Any person who violates this subsection by knowingly or intentionally possessing the abusive drug phencyclidine in liquid form is guilty of a felony and, upon conviction, may be imprisoned for not more than 3 years, fined not more than the amount set forth in § 22-3571.01, or both.~~

~~(e)(1)~~ (b)(1) If any person who has not previously been convicted of violating any provision of this chapter, or any other law of the United States or any state relating to narcotic or abusive drugs or depressant or stimulant substances is found guilty of a violation of ~~subsection (d) of this section~~ D.C. Code § 48-904.01a and has not previously been discharged and had the proceedings dismissed pursuant to this subsection, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him or her on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him or her from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime ~~(including the penalties prescribed under § 48-904.08 for second or subsequent convictions)~~ or for any other purpose.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained under paragraph (1) of this subsection) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court

determines, after hearing, that such person was dismissed and the proceedings against him or her discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such arrest, or indictment, or trial in response to any inquiry made of him or her for any purpose.

(3) A person who was discharged from probation and whose case was dismissed pursuant to paragraph (1) of this subsection shall be entitled to a copy of the nonpublic record retained under paragraph (1) of this subsection but only to the extent that such record would have been available to the person before an order of expungement was entered pursuant to paragraph (2) of this subsection. A request for a copy of the nonpublic record may be made ex parte and under seal by the person or by an authorized representative of the person.

~~(f)~~ (c) The prosecutor may charge any person who violates the provisions of ~~subsection (a) or (b) of this § 48-904.01b or § 48-904.01c~~ section relating to the distribution of or possession with intent to distribute a controlled or counterfeit substance with a violation of ~~subsection (d) of this section § 48-904.01a~~ if the interests of justice so dictate.

~~(g)~~ (d) For the purposes of this section, “offense” means a prior conviction for a violation of this section or a felony that relates to narcotic or abusive drugs, marijuana, or depressant or stimulant drugs, that is rendered by a court of competent jurisdiction in the United States.

### **RCC § 48-904.01a. Possession of a Controlled Substance.**

(a) *First Degree.* A person commits first degree possession of a controlled substance when that person:

- (1) Knowingly possesses a measurable amount of a controlled substance; and
- (2) The controlled substance is, in fact:

- (A) Opium, its phenanthrene alkaloids, or their derivatives, except isoquinoline alkaloids of opium;
- (B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;
- (C) Opium poppy or poppy straw;
- (D) Cocaine, its salts, optical and geometric isomers, or salts of isomers;
- (E) Ecgonine, its derivatives, their salts, isomers, or salts of isomers;
- (F) Methamphetamine, its salts, isomers, or salts of its isomers;
- (G) Phenmetrazine, or its salts; or
- (H) Phencyclidine or a phencyclidine immediate precursor.

(b) *Second Degree.* A person commits second degree possession of a controlled substance when that person knowing possesses a measurable amount of any controlled substance.

(c) *Exclusion from Liability.* Notwithstanding subsections (a) and (b), a person shall not be subject to prosecution under this section if a person possesses a controlled substance that was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his or her professional practice, or as authorized by this chapter or Chapter 16B of Title 7.

(d) *Penalties.*

(1) First degree possession of a controlled substance is a Class [X] offense subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) Second degree possession of a controlled substance is a Class [X] offense subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(e) *Definitions.* The term “knowingly” has the meaning specified in RCC § 22E-206; the term “possesses” has the meaning specified in RCC § 22E-701; and the terms “controlled substance,” “distribute,” “immediate precursor,” “manufacture,” “opium poppy,” and “person,” and “poppy straw” have the meanings specified in RCC § 48-901.02.

(f) *Interpretation of Statute.* The general provisions of Chapters 1 through 6 of Subtitle I of Title 22 of the D.C. Code apply to this offense.

**RCC § 48-904.01b. Trafficking of a Controlled Substance.**

(a) *First Degree.* A person commits first degree trafficking of a controlled substance when that person:

(1) Knowingly distributes, manufactures, or possesses with intent to distribute or manufacture, a measurable quantity of a controlled substance; and

(2) The controlled substance is, in fact:

(A) More than 200 grams of any compound or mixture containing opium, its phenanthrene alkaloids, or their derivatives, except isoquinoline alkaloids of opium;

(B) More than 200 grams of any compound or mixture containing any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;

(C) More than 200 grams of a compound or mixture containing opium poppy or poppy straw;

(D) More than 400 grams of a compound or mixture containing cocaine, its salts, optical and geometric isomers, or salts of isomers;

(E) More than 400 grams of a compound or mixture containing ecgonine, its derivatives, their salts, isomers, or salts of isomers;

(F) More than 200 grams of a compound or mixture containing methamphetamine, its salts, isomers, or salts of its isomers;

(G) More than 200 grams of a compound or mixture containing phenmetrazine, or its salts; or

(H) More than 100 grams of a compound or mixture containing phencyclidine or a phencyclidine immediate precursor;

(b) *Second Degree.* A person commits second degree trafficking of a controlled substance when that person:

(1) Knowingly distributes, manufactures, or possesses with intent to distribute or manufacture, a measurable quantity of a controlled substance; and

(2) The controlled substance is, in fact:

- (A) More than 20 grams of any compound or mixture containing opium, its phenanthrene alkaloids, or their derivatives, except isoquinoline alkaloids of opium;
  - (B) More than 20 grams of any compound or mixture containing any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;
  - (C) More than 20 grams of a compound or mixture containing opium poppy or poppy straw;
  - (D) More than 50 grams of a compound or mixture containing cocaine, its salts, optical and geometric isomers, or salts of isomers;
  - (E) More than 50 grams of a compound or mixture containing ecgonine, its derivatives, their salts, isomers, or salts of isomers;
  - (F) More than 20 grams of a compound or mixture containing methamphetamine, its salts, isomers, or salts of its isomers;
  - (G) More than 20 grams of a compound or mixture containing phenmetrazine, or its salts; or
  - (H) More than 10 grams of a compound or mixture containing phencyclidine or a phencyclidine immediate precursor;
- (c) *Third Degree.* A person commits third degree trafficking of a controlled substance when that person:
- (1) Knowingly distributes, manufactures, or possesses with intent to distribute or manufacture, a measurable quantity of a controlled substance; and
  - (2) The controlled substance is, in fact:
    - (A) Opium, its phenanthrene alkaloids, or their derivatives, except isoquinoline alkaloids of opium;
    - (B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;
    - (C) Opium poppy or poppy straw;
    - (D) Cocaine, its salts, optical and geometric isomers, or salts of isomers;
    - (E) Ecgonine, its derivatives, their salts, isomers, or salts of isomers;
    - (F) Methamphetamine, its salts, isomers, or salts of its isomers;
    - (G) Phenmetrazine, or its salts; or
    - (H) Phencyclidine or a phencyclidine immediate precursor;
- (d) *Fourth Degree.* A person commits fourth degree trafficking of a controlled substance when that person knowingly distributes, manufactures, or possesses with intent to distribute or manufacture, a measurable quantity of any controlled substance that is, in fact, listed in Schedule I, II, or III as defined in Subchapter II of this Chapter.
- (e) *Fifth Degree.* A person commits fifth degree trafficking of a controlled substance when that person knowingly distributes, manufactures, or possesses with intent to distribute or manufacture, a measurable quantity of any controlled substance.
- (f) *Aggregation of Quantities.* When a single scheme or systematic course of conduct could give rise to multiple charges under this section, the government instead may bring one charge and aggregate the quantities of a controlled substance involved in the scheme or systematic course of conduct to determine the grade of the offense.

(g) *Penalties.*

- (1) First degree trafficking of a controlled substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (2) Second degree trafficking of a controlled substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (3) Third degree trafficking of a controlled substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (4) Fourth degree trafficking of a controlled substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (5) Fifth degree trafficking of a controlled substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (6) *Enhanced Penalties.* In addition to any general penalty enhancements in RCC §§ 22E-605 – 22E-608, the penalty classification for any gradation of this offense may be increased in severity by one class when, in addition to the elements of the offense gradation, one or more of the following is proven:
  - (A) The actor is, in fact, 21 years of age or older, and distributes a controlled substance to a person who is, in fact, under 18 years of age;
  - (B) The actor knowingly possesses, either on the actor’s person or in a location where it is readily available, a firearm, imitation firearm, or dangerous weapon in furtherance of and while distributing, or possessing with intent to distribute, a controlled substance; or
  - (C) The actor commits an offense under this section when in a location that, in fact:
    - (i) Is within 100 feet of a school, college, university, public swimming pool, public playground, public youth center, public library, or children’s day care center; and
    - (ii) Displays clear and conspicuous signage that indicates controlled substances are prohibited in the location or that the location is a drug free zone.

(h) *Defenses.*

- (1) It is a defense to prosecution under this section for distribution or possession with intent to distribute that the actor distributes or possesses with intent to distribute a controlled substance but does not do so in exchange for something of value or future expectation of financial gain from distribution of a controlled substance.
  - (2) It is a defense to prosecution under this section for manufacturing or possession with intent to manufacture that the actor packaged, repackaged, labeled, or relabeled a controlled substance for his or her own personal use, or possessed a controlled substance with intent to do so.
  - (3) *Burden of Proof for Defenses.* If any evidence of either defense under this subsection is present at trial, the government must prove the absence of all requirements of the defense beyond a reasonable doubt.
- (i) *Definitions.* The terms “intent” and “knowledge” have the meanings specified in RCC § 22E-206; the terms “actor,” “dangerous weapon,” “firearm,” “imitation firearm,” and “possesses” have the meaning specified in RCC § 22E-701; and the terms and the terms “controlled substance,” “distribute,” “immediate precursor,” “manufacture,” “opium

poppy,” and “person,” and “poppy straw” have the meanings specified in RCC § 48-901.02.

- (j) *Interpretation of Statute.* The general provisions of Chapters 1 through 6 of Subtitle I of Title 22 of the D.C. Code apply to this offense.

### **RCC § 48-904.01c. Trafficking of a Counterfeit Substance**

- (a) *First Degree.* A person commits first degree trafficking of a counterfeit substance when that person
- (1) Knowingly distributes, creates, or possesses with intent to distribute a measurable quantity of a counterfeit substance; and
  - (2) The counterfeit substance is, in fact:
    - (A) More than 200 grams of any compound or mixture containing opium, its phenanthrene alkaloids, or their derivatives (except isoquinoline alkaloids of opium);
    - (B) More than 200 grams of any compound or mixture containing any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;
    - (C) More than 200 grams of a compound or mixture containing opium poppy or poppy straw;
    - (D) More than 400 grams of a compound or mixture containing cocaine, its salts, optical and geometric isomers, or salts of isomers;
    - (E) More than 400 grams of a compound or mixture containing ecgonine, its derivatives, their salts, isomers, or salts of isomers;
    - (F) More than 200 grams of a compound or mixture containing methamphetamine, its salts, isomers, or salts of its isomers;
    - (G) More than 200 grams of a compound or mixture containing phenmetrazine, or its salts; or
    - (H) More than 100 grams of a compound or mixture containing phencyclidine or a phencyclidine immediate precursor;
- (b) *Second Degree.* A person commits second degree trafficking of a counterfeit substance when that person
- (1) Knowingly distributes, creates, or possesses with intent to distribute a measurable quantity of a counterfeit substance; and
  - (2) The counterfeit substance is, in fact:
    - (A) More than 20 grams of any compound or mixture containing opium, its phenanthrene alkaloids, or their derivatives (except isoquinoline alkaloids of opium);
    - (B) More than 20 grams of any compound or mixture containing any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;
    - (C) More than 20 grams of a compound or mixture containing opium poppy or poppy straw;

- (D) More than 20 grams of a compound or mixture containing cocaine, its salts, optical and geometric isomers, or salts of isomers;
  - (E) More than 20 grams of a compound or mixture containing ecgonine, its derivatives, their salts, isomers, or salts of isomers;
  - (F) More than 20 grams of a compound or mixture containing methamphetamine, its salts, isomers, or salts of its isomers;
  - (G) More than 20 grams of a compound or mixture containing phenmetrazine, or its salts; or
  - (H) More than 10 grams of a compound or mixture containing phencyclidine or a phencyclidine immediate precursor;
- (c) *Third Degree.* A person commits third degree trafficking of a counterfeit substance when that person:
- (1) Knowingly distributes, creates, or possesses with intent to distribute a measurable quantity of a counterfeit substance; and
  - (2) The counterfeit substance is, in fact:
    - (A) Opium, its phenanthrene alkaloids, or their derivatives (except isoquinoline alkaloids of opium);
    - (B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;
    - (C) Opium poppy or poppy straw;
    - (D) Cocaine, its salts, optical and geometric isomers, or salts of isomers;
    - (E) Ecgonine, its derivatives, their salts, isomers, or salts of isomers;
    - (F) Methamphetamine, its salts, isomers, or salts of its isomers;
    - (G) Phenmetrazine, or its salts; or
    - (H) Phencyclidine or a phencyclidine immediate precursor;
- (d) *Fourth Degree.* A person commits fourth degree trafficking of a counterfeit substance when that person knowingly distributes, creates, or possesses with intent to distribute a measurable quantity of any counterfeit substance that is, in fact, a controlled substance under Schedule I, II, or III, as defined in Subchapter II of this Chapter.
- (e) *Fifth Degree.* A person commits fifth degree trafficking of a counterfeit substance when that person knowingly distributes, creates, or possesses with intent to distribute a measurable quantity of any counterfeit substance.
- (f) *Aggregation of Quantities.* When a single scheme or systematic course of conduct could give rise to multiple charges under this section, the government instead may bring one charge and aggregate the quantities of a counterfeit substance involved in the scheme or systematic course of conduct to determine the grade of the offense.
- (g) *Penalties.*
- (1) First degree trafficking of a counterfeit substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) Second degree trafficking of a counterfeit substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (3) Third degree trafficking of a counterfeit substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (4) Fourth degree trafficking of a counterfeit substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.



- (5) Fifth degree trafficking of a counterfeit substance is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (6) *Enhanced Penalties.* In addition to any general penalty enhancements in RCC §§ 22E-605 – 22E-608, the penalty classification for any gradation of this offense may be increased in severity by one class when, in addition to the elements of the offense gradation, if the actor knowingly possesses, either on the actor’s person or in a location where it is readily available, a firearm, imitation firearm, or dangerous weapon in furtherance of and while distributing, or possessing with intent to distribute, a counterfeit substance.
- (h) *Definitions.* The terms “intent” and “knowledge” have the meanings specified in RCC § 22E-206; the terms “actor,” “dangerous weapon,” “firearm” “imitation firearm,” and “possesses” have the meaning specified in RCC § 22E-701; and the terms “controlled substance,” “distribute,” “immediate precursor,” “manufacture,” “opium poppy,” and “person,” and “poppy straw” have the meanings specified in RCC § 48-901.02.
- (i) *Interpretation of Statute.* The general provisions of Chapters 1 through 6 of Subtitle I of Title 22 of the D.C. Code apply to this offense.

~~D.C. Code § 48-904.03a. Prohibited acts D; penalties.~~

- ~~(a) It shall be unlawful for any person to knowingly open or maintain any place to manufacture, distribute, or store for the purpose of manufacture or distribution a narcotic or abusive drug.~~
- ~~(b) Any person who violates this section shall be imprisoned for not less than 5 years nor more than 25 years, fined not more than the amount set forth in § 22-3571.01, or both.~~

~~D.C. Code § 48-904.06. Distribution to minors.~~

- ~~(a) Any person who is 21 years of age or over and who violates § 48-904.01(a) by distributing a controlled substance which is listed in Schedule I or II and which is a narcotic drug, phenacyclidine, or a phenacyclidine immediate precursor to a person who is under 18 years of age may be punished by the fine authorized by § 48-904.01(a)(2)(A), by a term of imprisonment of up to twice that authorized by § 48-904.01(a)(2)(A), or by both.~~
- ~~(b) Any person who is 21 years of age or over and who violates § 48-904.01(a) by distributing for remuneration any other controlled substance which is listed in Schedule I, II, III, IV, or V, except for phenacyclidine or a phenacyclidine immediate precursor, to a person who is under 18 years of age may be punished by the fine authorized by § 48-904.01(a)(2)(B), (C), or (D), respectively, by a term of imprisonment up to twice that authorized by § 48-904.01(a)(2)(B), (C), or (D), respectively, or both.~~

~~D.C. Code § 48-904.07. Enlistment of minors to distribute.~~

- ~~(a) Any person who is 21 years of age or over and who enlists, hires, contracts, or encourages any person under 18 years of age to sell or distribute any controlled substance, in violation of § 48-904.01(a), for the profit or benefit of such person who enlists, hires, contracts, or encourages~~

~~this criminal activity shall be punished for sale or distribution in the same manner as if that person directly sold or distributed the controlled substance.~~

~~(b) Anyone found guilty of subsection (a) of this section shall be subject to the following additional penalties:~~

~~(1) Upon a first conviction the party may be imprisoned for not more than 10 years, fined not more than the amount set forth in § 22-3571.01, or both;~~

~~(2) Upon a second or subsequent conviction, the party may be imprisoned for not more than 20 years, fined not more than the amount set forth in § 22-3571.01, or both.~~

~~D.C. Code § 48-904.07a. Drug free zones.~~

~~(a) All areas within 1000 feet of an appropriately identified public or private day care center, elementary school, vocational school, secondary school, junior college, college, or university, or any public swimming pool, playground, video arcade, youth center, or public library, or in and around public housing, as defined in section 3(1) of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 654; 42 U.S.C. § 1437a(b)), the development or administration of which is assisted by Department of Housing and Urban Development, or in or around housing that is owned, operated, or financially assisted by the District of Columbia Housing Authority, or an event sponsored by any of the above entities shall be declared a drug free zone. For the purposes of this subsection, the term “appropriately identified” means that there is a sign that identifies the building or area as a drug free zone.~~

~~(b) Any person who violates § 48-904.01(a) by distributing or possessing with the intent to distribute a controlled substance which is listed in Schedule I, II, III, IV, or V within a drug free zone shall be punished by a fine up to twice that otherwise authorized by this chapter to be imposed, by a term of imprisonment up to twice that otherwise imposed, or both.~~

~~D.C. Code § 48-904.08. Second or subsequent offenses.~~

~~(a) Any person convicted under this chapter of a second or subsequent offense may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.~~

~~(b) For purposes of this section, an offense is considered a second or subsequent offense if, prior to commission of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to a controlled substance.~~

~~(c) A person who is convicted of violating § 48-904.06 may be sentenced according to the provisions of § 48-904.06 or according to the provisions of this section, but not both.~~

~~D.C. Code § 48-904.09. Attempt; conspiracy.~~

~~Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.~~

~~D.C. Code § 48-904.10. Possession of drug paraphernalia.~~

~~Whoever, except for a physician, dentist, chiropractist, or veterinarian licensed in the District of Columbia or a state, registered nurse, registered embalmer, manufacturer or dealer in embalming supplies, wholesale druggist, industrial user, official of any government having possession of the proscribed articles by reason of his or her official duties, nurse or medical laboratory technician acting under the direction of a physician or dentist, employees of a hospital or medical facility acting under the direction of its superintendent or officer in immediate charge, person engaged in chemical, clinical, pharmaceutical or other scientific research, acting in the course of their professional duties, has in his or her possession a hypodermic needle, hypodermic syringe, or other instrument that has on or in it any quantity (including a trace) of a controlled substance with intent to use it for administration of a controlled substance by subcutaneous injection in a human being shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both.~~

**RCC § 48-904.10. Possession of Drug Manufacturing Paraphernalia.**

- (a) *Offense.* A person commits possession of drug manufacturing paraphernalia when that person knowingly possesses an object:
  - (1) That has been used to manufacture a controlled substance; or
  - (2) With intent to use the object to manufacture a controlled substance.
- (b) *Exclusions to Liability.* Notwithstanding subsection (a), it shall not be a violation:
  - (1) If the object possessed is 50 years of age or older; or
  - (2) If a person possesses an object:
    - (A) That has been used to package or repackage a controlled substance for that person's own use; or
    - (B) With intent to use the object to package or repackage a controlled substance for that person's own use.
- (c) *Penalty.* Possession of drug manufacturing paraphernalia is a Class [X] offense, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (d) *Definitions.* The terms "intent" and "knowingly" have the meanings specified in RCC § 22E-206; the term "possesses" has the meaning specified in RCC § 22E-701; and the term "controlled substance" has the meaning specified in D.C. Code § 48-901.02.
- (e) *Interpretation of Statute.* The general provisions of Chapters 1 through 6 of Subtitle I of Title 22 of the D.C. Code apply to this offense.

**RCC § 48-904.11. Trafficking of Drug Paraphernalia.**

- (a) *Offense.* A person commits trafficking of drug paraphernalia when that person:
  - (1) Knowingly sells or delivers, or possesses with intent to sell or deliver, an object;

- (2) With intent that another person will use the object to introduce into the human body, produce, process, prepare, test, analyze, pack, store, conceal, manufacture, or measure a controlled substance.
- (b) *Exclusions to Liability.* Notwithstanding subsection (a), it shall not be a violation of this section:
- (1) For a community-based organization to sell or deliver, or possess with intent to sell or deliver, testing equipment or other objects used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness, or purity of a controlled substance; or
  - (2) For person authorized by subsection (b) of 48-1103.01 to deliver any hypodermic syringe or needle distributed as part of the Needle Exchange Program authorized under D.C. Code § 48-1103.01; or
  - (3) For a person to sell or deliver or possess with intent to sell or deliver an object that is 50 years of age or older.
- (c) *Penalties.* Distribution of drug paraphernalia is a Class [X] offense, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (d) *Definitions.* The term “community based organization” has the meaning specified in D.C. Code § 7-404; the terms “intent” and “knowingly” have the meanings specified in RCC § 22E-206; the term “possesses” has the meaning specified in RCC § 22E-701; and the terms “controlled substance” and “distributes” have the meaning specified in § 48-901.02.
- (e) *Interpretation of Statute.* The general provisions of Chapters 1 through 6 of Subtitle I of Title 22 of the D.C. Code apply to this offense.

## TITLE 48 CHAPTER 11 DRUG PARAPHERNALIA

~~§ 48-1101. Definitions.~~

~~For purposes of this subchapter, the term:~~

~~(1) "Blunt wrap" means any product that is manufactured for encasing, wrapping, or rolling materials of any kind for purposes of smoking, if such product is designed to be filled by the consumer and is:~~

~~(A) Made wholly or in part of tobacco; or~~

~~(B) Made of paper or any other material that does not contain tobacco, and is:~~

~~(i) Intended, when filled by the consumer, to produce a finished wrap that measures more than 120 millimeters on its longest side; or~~

~~(ii) Sold as a pre-rolled hollow cone, the circumference of which is not equal at both ends.~~

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

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

~~(3) "Drug paraphernalia" means:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(ii) Water pipes;~~

~~(iii) Carburetion tubes and devices;~~

~~(iv) Smoking and carburetion masks;~~

~~(v) Roach clips;~~

~~(vi) Miniature spoons with level capacities of one-tenth cubic centimeter or less;~~

~~(vii) Chamber pipes;~~

~~(viii) Carburetor pipes;~~

~~(ix) Electric pipes;~~

~~(x) Air driven pipes;~~

~~(xi) Bongs;~~

~~(xii) Ice pipes or chillers;~~

~~(xiii) Wired cigarette papers;~~

~~(xiv) Cocaine freebase kits; or~~

~~(xv) Cigarette rolling paper or cigar wrappers sold at a commercial retail or wholesale establishment, which does not derive at least 25% of its total annual revenue from the sale of tobacco products and which does not sell loose tobacco intended to be rolled into cigarettes and cigars.~~

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

~~D.C. Code § 48-1102. Factors to be considered in determining whether object is paraphernalia.~~

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

~~(1) Statements by an owner or by anyone in control of the object concerning its use;~~

~~(2) The proximity of the object, in time and space, to a violation of § 48-1103(a) or to a controlled substance;~~

~~(3) The existence of any residue of a controlled substance on the object;~~

~~(4) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of § 48-1103(a); the innocence of an owner, or of anyone in control of the object, as to a violation of § 48-1103(a) shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;~~

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

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

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

~~(8) The size or packaging of the object, or the manner in which it is displayed;~~

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

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

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

~~(12) Expert testimony concerning its use.~~

~~(b) Where the alleged violation of the act occurred at a commercial retail or wholesale establishment, the court or other authority may infer, based upon consideration of the factors in subsection (a) of this section, that the following items are drug paraphernalia:~~

~~(1) Glassy plastic bags or zip lock bags that measure 1 inch by 1 inch or less; or~~

~~(2) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctuated metal bowls.~~

**~~D.C. Code § 48-1103. Prohibited acts.~~**

~~(a)(1) Except as authorized by Chapter 16B of Title 7 [§ 7-1671.01 et seq.], it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inhale, ingest, or otherwise introduce into the human body a controlled substance; except that it shall be lawful for any person 21 years of age or older to use, or possess with intent to use, drug paraphernalia to possess or use marijuana if such possession or use is lawful under § 48-904.01(a), or to use, or possess with intent to use, drug paraphernalia to grow, possess, harvest, or process cannabis plants, the growth, possession, harvesting or processing of which is lawful under § 48-904.01(a).~~

~~(1A)(A) Notwithstanding paragraph (1) of this subsection, it shall not be unlawful for a person to use, or possess with the intent to use, the materials described in § 48-1101(3)(D) for the purpose of testing personal use quantities of a controlled substance.~~

~~(B) For the purposes of this paragraph, the term "personal use quantities" means possession of a controlled substance in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance.~~

~~(2) Whoever violates this subsection shall be imprisoned for not more than 30 days or fined not more than the amount set forth in § 22-3571.01, or both.~~

~~(b)(1) Except as authorized by Chapter 16B of Title 7 [§ 7-1671.01 et seq.], it is unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowingly, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance; except that it shall be lawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, drug paraphernalia under circumstances in which one knows or has reason to know that such drug paraphernalia will be used solely for use of marijuana that is lawful under § 48-904.01(a), or that such drug~~



~~paraphernalia will be used solely for growing, possession, harvesting, or processing of cannabis plants that is lawful under § 48-904.01(a).~~

~~(1A) Notwithstanding paragraph (1) of this subsection, it shall not be unlawful for a community-based organization, as that term is defined in § 7-404(a)(1), to deliver or sell, or possess with intent to deliver or sell, the materials described in § 48-1101(3)(D).~~

~~(2) Whoever violates this subsection shall be imprisoned for not more than 6 months or fined not more than the amount set forth in § 22-3571.01, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this subchapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than the amount set forth in § 22-3571.01, or both.~~

~~(c) Any person 18 years of age or over who violates subsection (b) of this section by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his or her junior is guilty of a special offense and upon conviction may be imprisoned for not more than 8 years, fined not more than the amount set forth in § 22-3571.01, or both.~~

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

~~(e)(1) Except as provided in paragraphs (2), (3), and (3A) of this subsection, it is unlawful to sell the following products in the District of Columbia:~~

~~(A) Cocaine free base kits;~~

~~(B) Glass or ceramic tubes less than 6 inches in length and 1 inch in diameter sold or possessed with or without any screen-like device;~~

~~(C) Cigarette rolling papers; and~~

~~(D) Cigar wrappers, including blunt wraps.~~

~~(2) A commercial retail or wholesale establishment may sell cigarette rolling papers if the establishment:~~

~~(A) Derives at least 25% of its total annual revenue from the sale of tobacco products; and~~

~~(B) Sells loose tobacco intended to be rolled into cigarettes or cigars.~~

~~(3) A wholesaler may sell cigarette rolling papers to retail establishments described in paragraph (2) of this subsection.~~

~~(3A) A cultivation center or dispensary may sell cigarette rolling papers in accordance with Chapter 16B of Title 7 [§ 7-1671.01 et seq.].~~

~~(4) A person who violates this subsection shall be imprisoned for not more than 180 days or fined not more than the amount set forth in § 22-3571.01, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this subchapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than the amount set forth in § 22-3571.01, or both.~~

#### **D.C. Code § 48–1103.01. Needle Exchange Program.**

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

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

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

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

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

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

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

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

- (1) Number of Program participants served daily;
- (2) Demographics of Program participants, including age, sex, ethnicity, address or neighborhood of residence, education, and occupation;
- (3) Impact of Program on behaviors which put the individual at risk for HIV transmission;
- (4) Number of materials distributed, including needles, bleach kits, alcohol swabs, and educational materials;
- (5) Impact of Program on incidence of HIV infection in the District. In determining this, the Mayor shall take into account the following factors:
  - (A) Annual HIV infection rates among injecting drug users entering drug treatment programs in the District;
  - (B) Estimates of the HIV infection rate among injecting drug users in the District at the start of the Program year as compared to the rate at the end of the third Program year;
  - (C) The annual number of HIV-positive mothers giving birth in the District;
  - (D) Annual estimates of the HIV infection rate among newborns; and
- (6) Costs of the Program versus direct and indirect costs of HIV infection and Acquired Immunodeficiency Syndrome (“AIDS”) in the District.

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

- (1) Reasons for participating in Program;
- (2) Drug use history, including type of drug used, frequency of use, method of ingestion, length of time drugs used, and frequency of needle sharing;
- (3) Sexual behavior and history, including the participant’s self-described sexual identity, number of sexual partners in the past 30 days or 6 months, number of sexual partners who

were also intravenous drug users, frequency of condom use, and number of times sex was used in exchange for money or drugs;

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

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

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

**D.C. Code § 48–1104. Property subject to forfeiture.**

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

(1) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of ~~this subchapter~~ § 48-904.10 or § 48-904.11;

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

~~(2) All money or currency which shall be found in close proximity to objects that have been used or are intended for use to manufacture or distribute a controlled substance; or which otherwise has been used or is intended for use with such objects in violation of § 48-904.10 or § 48-904.11; and~~

~~(3) All drug paraphernalia as defined in §§ 48-1101 and 48-1102 and prohibited in § 48-1103. All objects possessed, sold, or delivered in violation of § 48-904.10 or § 48-904.11.~~

~~(b) For the purposes of this section, the term "personal use" means the use or possession of drug paraphernalia in circumstances where there is no evidence of an intent to distribute or manufacture a controlled substance.~~