SPONSOR: Sen. Pinkney & Rep. Chukwuocha
Sens. Seigfried, Sokola, Sturgeon; Reps. Berry, Bolden, K. Johnson, Lambert, Morrison, Neal, Romer, Kamela Smith

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 249
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 16 AND TITLE 29 OF THE DELAWARE CODE RELATING TO SUBSTANCE USE HARM REDUCTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part IV, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 48. Substance Use Harm Reduction.

§ 4801. Definitions.

As used in this chapter:

(1) “Cooker” means a container used for mixing and heating a substance.

(2) “Division” means the Division of Substance Abuse and Mental Health.

(3) “Harm reduction” means the policies, programs, and practices that seek to reduce the adverse health, social, and economic harms associated with substance use.

(4) “Needle” means a device designed to inject, infuse, or withdraw a substance under the skin, other soft tissues or both. The term includes hypodermic needles.

(5) “Opioid antagonist” means as defined in Chapter 30G of this title.

(6) “Program” means a harm reduction program.

(7) “Secondary supply distribution” means the peer-to-peer distribution of new and sterile supplies.

(8)a. “Sexually transmitted disease barrier” means physical devices designed to prevent the transmission of sexually transmitted diseases.

b. “Sexually transmitted disease barrier” includes condoms, internal condoms, dental dams, and gloves.

(9)a. “Supplies” means objects used for injecting, ingesting, inhaling, or otherwise introducing substances into the human body.

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b. “Supplies” includes needles, syringes, cookers, cotton, tourniquets, clean water, mouthpieces, filters, and straws.

(10) “Syringe” means a device designed to inject, infuse, or withdraw a substance through a fixed or attached needle.

§ 4802. Declaration of policy.

(a) Individuals who use drugs experience a greater risk of health, social, and economic harm. It is the policy of this State to implement harm reduction strategies.

(b) Harm reduction is a pragmatic response that focuses on keeping individuals safe and minimizing death, disease, and injury associated with risky behaviors, while recognizing that the behavior may continue despite the risks. It is the policy of this State that harm reduction is an integral component of the health promotion, illness prevention, treatment, and care continuum.

(c) Individuals who use drugs are particularly vulnerable to health, social, and economic harm due to discrimination, marginalization, and stigmatization. It is the policy of this State to respect the human rights and dignity of individuals who use drugs by adhering to basic ethical principles such as fairness, beneficence, non-maleficence, and respect for autonomy.

(d) It is the policy of this State to solicit the voluntary, meaningful participation and active engagement of individuals who use drugs in the design, development, and delivery of harm reduction strategies.

§ 4803. Harm reduction programs; regulatory authority; deflection and referral pathways.

(a) Subject to this chapter, the Division may adopt regulations related to the licensing and operation of programs.

(b) Regulations adopted under this section must be evidence-based.

(c) Subject to regulations adopted under this section, a program may operate mobile components and provide peer-delivered services.

(d) The Division may coordinate with State, county, and municipal law enforcement agencies to establish voluntary deflection and referral pathways connecting individuals to programs and behavioral health treatment services, including pathways available before and after arrest.

§ 4804. Services, supplies, and referrals.

(a) A program must have all of the following available for distribution to participants:

(1) Sterile supplies.

(2) Sterile supplies and equipment for identifying and determining the potency of drugs and contaminants in drugs, including drug-testing strips as defined under § 2226 of this title.

(3) Opioid antagonists.

(4) Sexually transmitted disease barriers.

(b) A program must provide all of the following services:

(1) Safe recovery and disposal of supplies.

(2) Infectious diseases screening, including screening for HIV and hepatitis.

(3) Basic first aid and wound care.

(4) Education and training related to all of the following:

a. Recognizing overdoses and the administration of opioid antagonists.

b. Promotion of secondary supply distribution.

c. Injection hygiene.

d. Safe disposal of supplies.

(c) A program must provide referrals for primary and behavioral health care and vaccinations.

(d) A program must assist a participant with all of the following:

(1) Transportation and housing needs.

(2) Enrollment in public benefits programs to which a participant is entitled.

§ 4805. Confidentiality.

(a) Participants are entitled to participate in a program anonymously.

(b) A program must not require a participant to provide information that could compromise the participant's anonymity.

(c) Except if authorized in writing by a participant, a program must ensure the confidentiality of the participant's records.

(d) Information obtained by a program related to a participant is confidential, not a public record as defined under § 10002 of Title 29, and not discoverable in a legal proceeding.

§ 4806. Sterile supplies.

(a) A program must provide sterile supplies in quantities sufficient to ensure the sterile supplies are not shared or reused.

(b) A program must not require a one-for-one exchange of sterile supplies.

(c) A program must actively encourage secondary supply distribution.

§ 4807. Data collection and reporting.

(a) Except as otherwise provided under subsection (b) of this section, the Division may not require a program to collect data or provide reports.

(b) The Division may require a program to collect any of the following data and provide a report of that data to the Division:

(1) Data related to the operation of the program, including staffing, financial, and other operational information.

(2) Transaction-level data including any of the following:

a. Number and type of supplies distributed.

b. Number and type of used supplies received.

c. Date and time.

d. Location.

e. Participant information including gender, age, race, and ethnicity.

f. Number of people for whom the participant is obtaining supplies.

(3) Program-level data including any of the following:

a. Aggregation of data collected under this section.

b. Number of referrals.

c. Number of participants in training or other services offered by the program.

(c) Except if authorized by the Division, a program may not conduct or participate in research or behavior surveillance activities of participants, including interviews or surveys. If required by the Division to collect data under subsection (b) of this section, the program may not require participation in the collection of data as a prerequisite for obtaining services.

§ 4808. Immunity.

A person who acts under this chapter must do so in good faith and with reasonable care. Unless it is established that the person caused injuries or death as a result of unreasonable care, wilfully, wantonly, or by gross negligence, a person is not subject to any of the following as a result of acting under this chapter:

(1) Disciplinary or other adverse action under the professional licensing laws of this State.

(2) Criminal liability.

(3) Civil liability for damages for injuries or death.

Section 2. Amend § 4701, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4701. Definitions.

As used in this chapter:

(18) "Drug paraphernalia" ~~shall mean all equipment, products and materials of any kind which are used, intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, re-packaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled substance the manufacture, delivery, possession or use of which is in violation of this chapter.~~ means an object designed, intended, or used to analyze, compound, conceal, contain, convert, cultivate, grow, harvest, manufacture, package, plant, prepare, process, produce, or propagate a controlled substance in violation of this chapter. ~~The term "drug paraphernalia" includes, but is not limited to:~~ "Drug paraphernalia" includes all of the following, unless otherwise authorized by law:

a. ~~Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any~~ An object designed, intended, or used to cultivate, grow, harvest, manufacture, package, plant, or propagate a plant species which is a controlled substance, ~~the use, cultivation, delivery or possession of which is in violation of this chapter~~ or from which ~~such~~ a controlled substance can be ~~derived;~~ derived.

b. ~~Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;~~ An object designed, intended, or used to compound, convert, manufacture, prepare, process, or produce a controlled substance.

c. ~~Isomerization devices used, intended for use or designed for use in increasing~~ An isomerization device designed, intended, or used to increase the potency of ~~any species of~~ a plant species which is a controlled ~~substance, the use, manufacture, delivery or possession of which is in violation of this chapter; or~~ substance.

d. Testing equipment ~~used, intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;~~ designed, intended, or used to identify or analyze the effectiveness, purity, or strength of a controlled substance.

e. ~~Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;~~ A balance or scale designed, intended, or used to measure or weigh a controlled substance.

f. ~~Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose or lactose, which are used, intended for use or designed for use in cutting controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;~~ A diluent or adulterant including dextrose, lactose, mannite, mannitol, and quinine hydrochloride designed, intended, or used to cut a controlled substance.

g. ~~Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or otherwise cleaning or refining, marijuana;~~ [Repealed.]

h. ~~Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;~~ A blender, bowl, container, spoon, or other object designed, intended, or used to compound or mix a controlled substance.

i. ~~Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;~~ A balloon, capsule, container, envelope, or other object designed, intended, or used to package a small quantity of a controlled substance.

j. ~~Containers or other objects used, intended for use or designed for use in storing or concealing controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;~~ A container or other object designed, intended, or used to conceal or store a controlled substance for sale.

k. ~~Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter; and~~ [Repealed.]

l. ~~Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body such as:~~

~~1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;~~

~~2. Water pipes;~~

~~3. Carburetion tubes and devices;~~

~~4. Smoking and carburetion masks;~~

~~5. Roach clips or objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;~~

~~6. Miniature cocaine spoons, and cocaine vials;~~

~~7. Chamber pipes;~~

~~8. Carburetor pipes;~~

~~9. Electric pipes;~~

~~10. Air-driven pipes;~~

~~11. Chillums;~~

~~12. Bongs; and~~

~~13. Ice pipes or chillers.~~ [Repealed.]

Section 3. Amend § 4771, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4771. Drug paraphernalia.

(a) It is unlawful ~~for any person to use, or possess with intent to use,~~ to knowingly possess or use drug ~~paraphernalia.~~ paraphernalia in violation of this chapter. A violation of this subsection is a class B misdemeanor.

(b) It is unlawful ~~for any person~~ to knowingly deliver, possess with intent to deliver, convert, manufacture, convey, sell, or offer for sale drug ~~paraphernalia, knowing or under circumstances where one should reasonably 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.~~ paraphernalia in violation of this chapter. A violation of this subsection is a class G felony.

(c) ~~This section does not apply to items that are used, or intended primarily for use, with marijuana.~~ It is unlawful to knowingly deliver, possess with intent to deliver, convert, manufacture, convey, sell, or offer for sale drug paraphernalia in violation of this chapter to a child. A violation of this subsection is a class E felony.

(d) It is unlawful to knowingly place an advertisement to promote the sale of drug paraphernalia in violation of this chapter. A violation of this subsection is an unclassified misdemeanor punishable by a fine of up to $1,000.

(e) Nothing in this section precludes law enforcement from introducing drug paraphernalia as evidence in the investigation or prosecution of an offense under this chapter involving the manufacture, delivery, or possession with intent to deliver a controlled substance.

Section 4. Amend § 4772, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4772. Consideration of factors.

In determining whether ~~or not~~ an object is drug paraphernalia, a court or other authority shall consider~~, in addition to all other logically relevant factors,~~ all of the following:

(1) Statements concerning the object's use by ~~an~~ the object's owner or ~~by anyone in control of the object, concerning its use;~~ a person controlling the object.

(2) The proximity of the object~~, in time and space,~~ to a direct violation of this ~~chapter;~~ chapter.

(3) The proximity of the object to ~~controlled substances;~~ a controlled substance.

(4) The existence of ~~any residue of~~ a controlled ~~substance~~ substance's residue on the ~~object;~~ object.

(5) ~~Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom the owner knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;~~ Direct or circumstantial evidence of the intent of an object's owner or a person controlling the object to deliver the object to another person to facilitate a violation of this chapter. The innocence of the object's owner or a person controlling the object may not prevent a finding that the object is drug paraphernalia.

(6) Instructions ~~(oral or written)~~ concerning the object's use provided with the ~~object, concerning its use;~~ object.

(7) Descriptive materials explaining or depicting the object's use accompanying the ~~object which explain or depict its use;~~ object.

(8) ~~National and local advertising~~ Advertising concerning ~~its use;~~ the object's use.

(9) ~~The manner in which~~ How the object is displayed for ~~sale;~~ sale.

(10) ~~Whether or not the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;~~ Whether the owner or a person controlling the object is a legitimate supplier of related objects.

(11) ~~Direct or circumstantial evidence~~ Evidence of the ratio of sales of the ~~suspect~~ object to the total sales of the ~~business enterprise;~~ business.

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

(13) Expert testimony concerning ~~its~~ the object's use.

Section 5. Amend § 4773, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4773. Exemptions.

This subchapter ~~will~~ does not apply to:

(1) ~~Any~~ A person authorized by ~~local, state, or federal~~ law to manufacture, possess, or distribute ~~such items; or~~ an object potentially constituting drug paraphernalia.

(2) ~~Any item that in the normal lawful course of business is imported, exported, transported or sold and traditionally intended for use with tobacco products, including any pipe, paper or accessory.~~ An object potentially constituting drug paraphernalia intended for possession or use with a marijuana or tobacco product that is exported, imported, sold, or transported legally in this State.

(3) ~~A drug-testing strip as defined under § 2226 of this title.~~ An object designed, intended, or used to analyze or test a controlled substance, including testing equipment designed, intended, or used to analyze or identify the strength, effectiveness, or purity of a controlled substance, including a drug-testing strip as defined under § 2226 of this title.

(4) An object designed, intended, or used to conceal, contain, or store a controlled substance.

(5) An object designed, intended, or used to ingest, inhale, inject, or otherwise introduce into the human body a controlled substance, including any of the following:

a. A hypodermic syringe or needle.

b. A bong, carburetion mask or tube, chiller, chillum, cocaine spoon, cocaine vial, pipe, roach clip, or other object used to hold burning material.

Section 6. Amend § 4774, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4774. Penalties [For application of this section, see 80 Del. Laws, c. 38, § 6].

~~(a) Possession. Except as described in subsection (b) of this section, any person who uses or possesses with intent to use drug paraphernalia is guilty of a class B misdemeanor.~~

~~(b) Possession for personal use of marijuana. Any person who uses or possesses drug paraphernalia for the use or possession of a personal use quantity of marijuana shall be assessed a civil penalty of not more than $100, in addition to such routine assessments necessary for the administration of civil violations.~~

~~(c) Manufacture and sale. Any person who delivers, possesses with the intent to deliver, conveys, offers for sale, converts, or manufactures with the intent to deliver drug paraphernalia is guilty of a class G felony.~~

~~(d) Delivery to a minor. Any person 18 years of age or older who violates § 4771 of this title by delivering or selling drug paraphernalia to a person under 18 years of age is guilty of a class E felony.~~

~~(e) It is unlawful for any person to place in a newspaper, magazine, handbill or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement,~~

~~in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of an unclassified misdemeanor.~~ [Repealed.]

Section 7. Amend § 4775, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4775. ~~Consideration of factors.~~

~~Transferred to § 4772 of this title by 73 Del. Laws, c. 359, § 2, effective July 8, 2002.~~ [Reserved.]

Section 7A. Amend § 4795, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4795. Jurisdiction [For application of this section, see 80 Del. Laws, c. 38, § 6].

(a) The Superior Court shall have original and exclusive jurisdiction over any violation of this chapter by persons 18 years of age or older.

(b) The provisions of subsection (a) of this section or any other law to the contrary notwithstanding, the Court of Common Pleas shall have original jurisdiction over any violation of the following by persons 18 years of age or older:

(4) Section 4771 of this title, except where jurisdiction over the civil penalty resides in the Justice of the Peace Court pursuant to subsection (c) of this ~~section.~~ section or for violations of § 4771(d) of this title.

Section 8. Sections 7990 through 7996 of Title 29 of the Delaware Code are repealed in their entirety.