



## HARM REDUCTION AND OVERDOSE PREVENTION

### 50-State Survey

## Legality of Drug Checking Equipment in the United States


### August 2023 Update

Contaminants including fentanyl and fentanyl analogs are now present in the illicit drug supply throughout the United States, driving a more than 700% increase in non-methadone synthetic opioid-related overdose deaths from 2015 to 2021.<sup>1</sup> Other adulterants, such as xylazine, have also appeared in drugs across the country.<sup>2</sup> Because fentanyl is more potent than many other opioids and its presence makes it difficult for people who use illicit opioids to properly titrate their dose, fentanyl adulteration creates a heightened risk for overdose among those individuals.<sup>3</sup> Xylazine is also associated with increases in overdose deaths and other harms.<sup>4</sup> Any drug that is other than what the user believes it to be can increase risk for overdose and other negative outcomes.

Because no safe supply of most illicitly used drugs is available, helping people determine what is in the drugs they obtain can be an impactful harm reduction intervention.<sup>5</sup> The easiest and most inexpensive way to accomplish this is often through use of fentanyl test strips (FTS) and xylazine test strips (XTS), small, disposable devices that identify the presence of contaminants in drug samples.

Because XTS have only relatively recently become widely available, most existing research on the efficacy of drug checking involves FTS. This research generally finds positive effects. A survey of people who inject drugs (PWID) in North Carolina, for example, found that more than four in five who received FTS used the strips to test their drugs before consumption, and people who obtained a positive result were five times more likely to report changes in drug use behavior than those who obtained a negative result.<sup>6</sup> A survey of PWID in Rhode Island found that a positive FTS result was significantly associated with positive changes in overdose risk behavior, with approximately forty-five percent of PWID reporting using a smaller amount of the drug and approximately forty-two percent reporting using it more slowly.<sup>7,8</sup> Based in part on these promising initial results, governmental and non-governmental organizations in many states now provide FTS, and the Centers for Disease Control and Prevention (CDC) and the Substance Abuse and Mental Health Services Administration (SAMHSA) permit federal funding to be used to purchase them.<sup>9</sup>

While the most prevalent, test strips are not the only drug checking technology. Drug checking at festivals, for example, has long been used to determine whether consumables that are represented as one drug contain another substance using reagent tests.<sup>10</sup> Most of these tests have the same limitation as FTS and XTS, however: they only identify the presence of an adulterant, not its concentration. To provide more detailed information, some organizations have begun to utilize more advanced equipment that provides a detailed analysis of the substances present in a drug sample.<sup>11</sup> This equipment has the advantage of providing much more extensive information than FTS or reagent tests but is much more expensive to acquire and maintain, and often requires a trained operator.<sup>12</sup>



State laws can limit the uptake of these drug checking initiatives. Because most state paraphernalia laws are based on a model created in the late 1970's by the Drug Enforcement Administration, they typically classify nearly every object used in conjunction with illicit drugs—including those used for “testing” or “analyzing” those drugs—as drug paraphernalia.<sup>13</sup> They also generally prohibit the possession or distribution of such paraphernalia. While in our experience these laws are rarely used to arrest or prosecute people solely for possession or distribution of drug checking equipment, they can cause confusion and may deter uptake of these promising interventions.<sup>14</sup>

To determine the potential legal barriers to drug checking posted by state laws, we systematically surveyed the relevant legal landscape in the fifty United States, the District of Columbia, and Puerto Rico (hereafter referred to as “states”) in August 2021, 2022, and 2023. The table in this document displays the characteristics of the law in each state as of August 31, 2023, and the figures show the changes in state laws regarding drug checking equipment between August 2020 and August 2023. First, the table notes whether the possession of drug checking equipment is clearly legal in each state. Second, we note whether the free distribution of drug checking equipment is clearly legal. If the state has modified its law to increase access to drug checking equipment, we then note when those changes occurred. The next column notes whether there are exceptions to the general rules regarding drug checking equipment for syringe services programs (SSP). Finally, we note whether drug checking equipment is covered by the state overdose Good Samaritan law.<sup>15</sup>

We found that it is clearly legal to possess all drug checking equipment in twenty-seven states.<sup>16</sup> In thirteen additional states the possession of fentanyl testing equipment is clearly legal.<sup>17</sup> Three states (Georgia, Kentucky, and Tennessee) permit equipment for testing all synthetic opioids. Kansas is unique in that it explicitly permits only testing equipment for fentanyl, fentanyl analogs, ketamine and gamma hydroxybutyric acid. In eight states (Idaho, Indiana, Iowa, Illinois, Missouri, North Dakota, Puerto Rico, and Texas) possession of all drug checking equipment remains arguably a crime, typically because the law both defines paraphernalia as including testing equipment and criminalizes the possession of such paraphernalia.

In twenty-four states the free provision of all drug checking equipment to adults is clearly permitted.<sup>18</sup> Eleven additional states permit the distribution of devices for testing for the presence of fentanyl, but not other drug checking equipment.<sup>19</sup> Three states (Georgia, Kentucky, and Tennessee) permit the distribution of equipment for the checking of all synthetic opioids. California and Kansas permit distribution of equipment for checking of fentanyl, fentanyl analogs, ketamine and gamma hydroxybutyric acid. Twelve states arguably continue to prohibit the free distribution of all drug checking equipment (Idaho, Indiana, Iowa, Missouri, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Puerto Rico, Texas, and Washington D.C.).

The law regarding the distribution of drug checking equipment by SSPs is sometimes unclear. However, we find that, in approximately thirteen states, SSPs are permitted to distribute drug checking equipment even if such distribution is not otherwise permitted. Finally, we find that the overdose Good Samaritan laws in thirty-nine states provide protection from criminal action related to drug checking equipment.

States have been rapidly modifying their laws to increase access to drug checking equipment. Between August 1, 2021, and August 31, 2022, laws that permit drug checking equipment to be possessed, distributed, or both went into effect in ten states,<sup>20</sup> and laws went into effect in an addition 19 states between September 1, 2022 and August 31, 2023.<sup>21</sup> An additional three states (Delaware, Illinois and New Hampshire) passed laws in that will go into effect after August 31, 2023. As with previously passed drug checking laws, there is some variation in the materials to which these new laws apply. Most comprehensive are those that apply to equipment for testing or analyzing all drugs. The laws in Georgia, Tennessee, and Kentucky are limited to devices used to detect synthetic opioids, while the Kansas law covers devices for detecting ketamine, gamma hydroxybutyric acid, and any analog of fentanyl. Laws in Alabama, Arizona, Florida, Louisiana, Mississippi, South Dakota and Wisconsin apply only to objects used to test for fentanyl or fentanyl analogues, while those in Arkansas, Hawaii, New Jersey, Ohio and Oklahoma apply only to fentanyl test strips.

We emphasize that the fact that a state has not clearly legalized the possession or distribution of drug checking equipment does not necessarily mean that those activities are illegal. Indeed, many states in which drug checking equipment is not clearly legal distribute it via health departments and other entities. However, in those states it may be helpful to modify or repeal relevant laws to clarify that drug checking equipment is not criminalized.<sup>22</sup>

## Legal Status of Drug Checking Equipment (DCE) as of August 31, 2023

State	Possession of DCE permitted <sup>23</sup>	Free distribution of DCE permitted	Effective date of law change	Exceptions for Syringe Services Programs	Good Samaritan law covers DCE
Alabama	Fentanyl: Yes Others: No <sup>24</sup>	Fentanyl: Yes Others: No <sup>25</sup>	June 1, 2022	SSP not authorized	Yes <sup>26</sup>
Alaska	Yes <sup>27</sup>	Yes <sup>28</sup>		No, but possession and distribution are not prohibited	N/A
Arizona	Fentanyl: Yes Others: No <sup>29</sup>	Fentanyl: Yes Others: No <sup>30</sup>	September 29, 2021	Likely <sup>31</sup>	Yes <sup>32</sup>
Arkansas	Fentanyl test strips: Yes Others: No <sup>33</sup>	Yes (except to minors) <sup>34</sup>	April 11, 2023	No, but free distribution to adults is not prohibited	No <sup>35</sup>
California	Yes <sup>36</sup>	Fentanyl and analogs, ketamine, and gamma hydroxybutyric acid: Yes Others: No <sup>37</sup>	January 1, 2023	Yes <sup>38</sup>	Yes <sup>39</sup>
Colorado	Yes <sup>40</sup>	Yes <sup>41</sup>	May 23, 2019	No, but possession and distribution are not prohibited	Yes <sup>42</sup>
Connecticut	Yes <sup>43</sup>	Yes <sup>44</sup>	July 1, 2022	No <sup>45</sup>	Yes <sup>46</sup>
Delaware	Fentanyl test strips: Yes Others: No <sup>47</sup>	Fentanyl test strips: Yes Others: No <sup>48</sup>	Fentanyl: June 3, 2021 Xylazine: November 29, 2023 or earlier to November 29, 2024	Yes <sup>49</sup>	Yes <sup>50</sup>

State	Possession of DCE permitted <sup>23</sup>	Free distribution of DCE permitted	Effective date of law change	Exceptions for Syringe Services Programs	Good Samaritan law covers DCE
Florida	Fentanyl: Yes Others: No <sup>51</sup>	Fentanyl: Yes Others: No <sup>52</sup>	July 1, 2023	No <sup>53</sup>	Yes <sup>54</sup>
Georgia	Synthetic Opioids: Yes Others: No <sup>55</sup>	Synthetic Opioids: Yes Others: No <sup>56</sup>	July 1, 2023 <sup>57</sup>	Likely, for SSP agents and employees <sup>58</sup>	Yes <sup>59</sup>
Hawaii	Fentanyl strips: Yes Others: No <sup>60</sup>	Fentanyl strips: Yes Others: No <sup>61</sup>	June 22, 2023 through December 31, 2023 <sup>62</sup>	Possibly <sup>63</sup>	Yes <sup>64</sup>
Idaho	No <sup>65</sup>	No <sup>66</sup>		Possibly <sup>67</sup>	Yes <sup>68</sup>
Illinois	No <sup>69</sup>	Yes <sup>70</sup>	Note: Drug adulterant equipment, products & materials legal effective January 1, 2024 <sup>71</sup>	Yes <sup>72</sup>	Yes <sup>73</sup>
Indiana	No <sup>74</sup>	No <sup>75</sup>		Likely, for SSP volunteers and staff <sup>76</sup>	Yes <sup>77</sup>
Iowa	No <sup>78</sup>	No <sup>79</sup>		SSP not authorized	Yes <sup>80</sup>
Kansas	Fentanyl, fentanyl analogs, ketamine and gamma hydroxybutyric acid: Yes Others: No <sup>81</sup>	Fentanyl, fentanyl analogs, ketamine and gamma hydroxybutyric acid: Yes Others: No <sup>82</sup>	July 1, 2023	SSP not authorized	No <sup>83</sup>
Kentucky	Synthetic Opioids: Yes <sup>84</sup> Others: No	Synthetic Opioids: Yes Others: No <sup>85</sup>	June 29, 2023	Yes, but only while at the SSP site <sup>86</sup>	Yes <sup>87</sup>
Louisiana	Fentanyl: Yes Others: No <sup>88</sup>	Fentanyl: Yes Others: No <sup>89</sup>	August 1, 2022	Yes <sup>90</sup>	Yes <sup>91</sup>
Maine	Yes <sup>92</sup>	Yes <sup>93</sup>	October 18, 2021	No, but possession and distribution are not prohibited <sup>94</sup>	Yes <sup>95</sup>

State	Possession of DCE permitted <sup>23</sup>	Free distribution of DCE permitted	Effective date of law change	Exceptions for Syringe Services Programs	Good Samaritan law covers DCE
Maryland	Yes <sup>96</sup>	Yes <sup>97</sup>	June 1, 2018	Yes <sup>98</sup>	Yes <sup>99</sup>
Massachusetts	Yes <sup>100</sup>	Yes <sup>101</sup>		No, but possession and free distribution are not prohibited <sup>102</sup>	N/A <sup>103</sup>
Michigan	Yes <sup>104</sup>	Yes <sup>105</sup>		No, but possession and free distribution are not prohibited <sup>106</sup>	N/A <sup>107</sup>
Minnesota	Yes <sup>108</sup>	Yes <sup>109</sup>	August 1, 2023	No, but possession and distribution of drug checking equipment is not prohibited <sup>110</sup>	Yes <sup>111</sup>
Mississippi	Fentanyl: Yes Others: No <sup>112</sup>	Fentanyl: Yes Others: No <sup>113</sup>	July 1, 2023	SSP not authorized	Yes <sup>114</sup>
Missouri	No <sup>115</sup>	No <sup>116</sup>		SSP not authorized	Yes <sup>117</sup>
Montana	Yes <sup>118</sup>	No <sup>119</sup>	May 22, 2023	Yes, for volunteers and employees <sup>120</sup>	Yes <sup>121</sup>
Nebraska	Yes <sup>122</sup>	Yes <sup>123</sup>		SSP not authorized	Yes <sup>124</sup>
Nevada	Yes <sup>125</sup>	Yes <sup>126</sup>	May 28, 2021	No, but possession and free distribution are not prohibited <sup>127</sup>	Yes <sup>128</sup>
New Hampshire	Yes <sup>129</sup>	No <sup>130</sup>	Note: Fentanyl and xylazine test strips legal effective October 10, 2023 <sup>131</sup>	Likely <sup>132</sup>	No <sup>133</sup>
New Jersey	Fentanyl test strips: Yes Others: No <sup>134</sup>	Fentanyl test strips: Yes Others: No <sup>135</sup>	January 18, 2022	Yes, but possession and distribution of fentanyl test strips are not prohibited <sup>136</sup>	Yes <sup>137</sup>
New Mexico	Yes <sup>138</sup>	No <sup>139</sup>	May 18, 2022	Yes <sup>140</sup>	Yes <sup>141</sup>
New York	Yes <sup>142</sup>	Yes <sup>143</sup>		No, but possession and free distribution are not prohibited	Yes <sup>144</sup>
North Carolina	Yes <sup>145</sup>	No <sup>146</sup>	July 22, 2019	Yes <sup>147</sup>	Yes <sup>148</sup>

State	Possession of DCE permitted <sup>23</sup>	Free distribution of DCE permitted	Effective date of law change	Exceptions for Syringe Services Programs	Good Samaritan law covers DCE
North Dakota	No <sup>149</sup>	No <sup>150</sup>		Yes <sup>151</sup>	Yes <sup>152</sup>
Ohio	Fentanyl strips: Yes Others: No <sup>153</sup>	Yes <sup>154</sup>	April 4, 2023	Yes, for staff and volunteers, and participants within 1,000 feet of SSP <sup>155</sup>	Yes <sup>156</sup>
Oklahoma	Fentanyl strips: Yes Others: No <sup>157</sup>	Fentanyl strips: Yes Others: No <sup>158</sup>	June 9, 2023	Yes, for volunteers and employees <sup>159</sup>	Yes <sup>160</sup>
Oregon	Yes <sup>161</sup>	Yes, except to minors <15 <sup>162</sup>	August 4, 2023	Yes <sup>163</sup>	Yes <sup>164</sup>
Pennsylvania	Yes <sup>165</sup>	Yes <sup>166</sup>	January 3, 2023	SSP not authorized, but possession and distribution are not prohibited <sup>167</sup>	Yes <sup>168</sup>
Puerto Rico	No <sup>169</sup>	No <sup>170</sup>		Yes <sup>171</sup>	No <sup>172</sup>
Rhode Island	Yes <sup>173</sup>	Yes <sup>174</sup>	July 2, 2018	No, but possession and distribution are not prohibited <sup>175</sup>	N/A <sup>176</sup>
South Carolina	Yes <sup>177</sup>	Yes <sup>178</sup>	June 15, 2023 <sup>179</sup>	No, but possession and distribution are not prohibited <sup>180</sup>	Yes <sup>181</sup>
South Dakota	Fentanyl: Yes Others: No <sup>182</sup>	Fentanyl: Yes Others: No <sup>183</sup>	July 1, 2023	SSP not authorized	No <sup>184</sup>
Tennessee	Synthetic opioid: Yes Others: No <sup>185</sup>	Synthetic opioid: Yes Others: No <sup>186</sup>	March 31, 2022 (sunset July 1, 2025)	Yes, for staff and volunteers, and participants engaging in or traveling to or from the SSP <sup>187</sup>	Yes <sup>188</sup>
Texas	No <sup>189</sup>	No <sup>190</sup>	September 1, 2021 (Good Samaritan law)	SSP not authorized	Yes <sup>191</sup>
Utah	Yes <sup>192</sup>	Yes <sup>193</sup>	May 3, 2023	No, but possession and free distribution are not prohibited <sup>194</sup>	Yes <sup>195</sup>
Vermont	Yes <sup>196</sup>	Yes <sup>197</sup>		No, but possession and free distribution are not prohibited <sup>198</sup>	N/A <sup>199</sup>

State	Possession of DCE permitted <sup>23</sup>	Free distribution of DCE permitted	Effective date of law change	Exceptions for Syringe Services Programs	Good Samaritan law covers DCE
Virginia	Yes <sup>200</sup>	Yes <sup>201</sup>	July 1, 2019	Yes <sup>202</sup>	Yes <sup>203</sup>
Washington D.C.	Yes <sup>204</sup>	No <sup>205</sup>	April 11, 2019	Yes <sup>206</sup>	Yes <sup>207</sup>
Washington	Yes <sup>208</sup>	Yes <sup>209</sup>	July 1, 2023	Yes, but possession and free distribution are not prohibited <sup>210</sup>	No, but possession and free distribution are not prohibited <sup>211</sup>
West Virginia	Yes <sup>212</sup>	Yes <sup>213</sup>	June 10, 2022	No, but possession and free distribution are not prohibited	No <sup>214</sup>
Wisconsin	Fentanyl: Yes Others: No <sup>215</sup>	Fentanyl: Yes Others: No <sup>216</sup>	March 18, 2022	SSP not authorized	Yes <sup>217</sup>
Wyoming	Yes <sup>218</sup>	Yes <sup>219</sup>		SSP not authorized	N/A <sup>220</sup>



Figure 1: States with laws permitting possession of DCE, by year

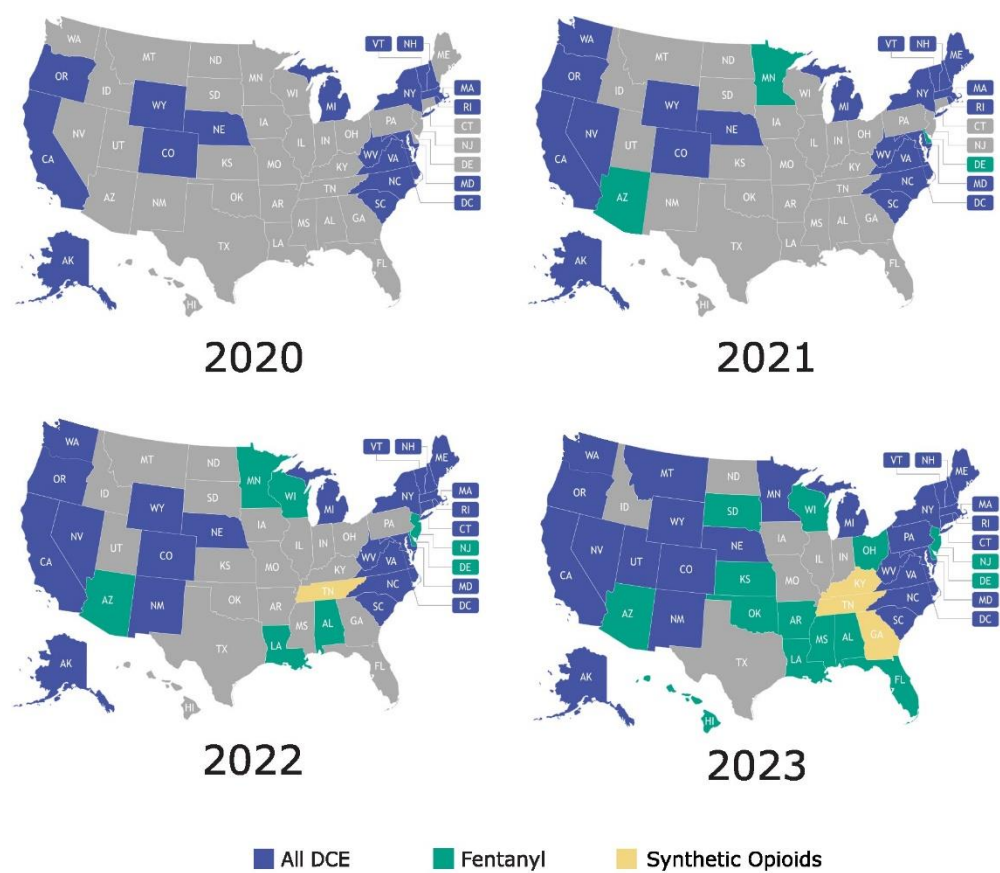
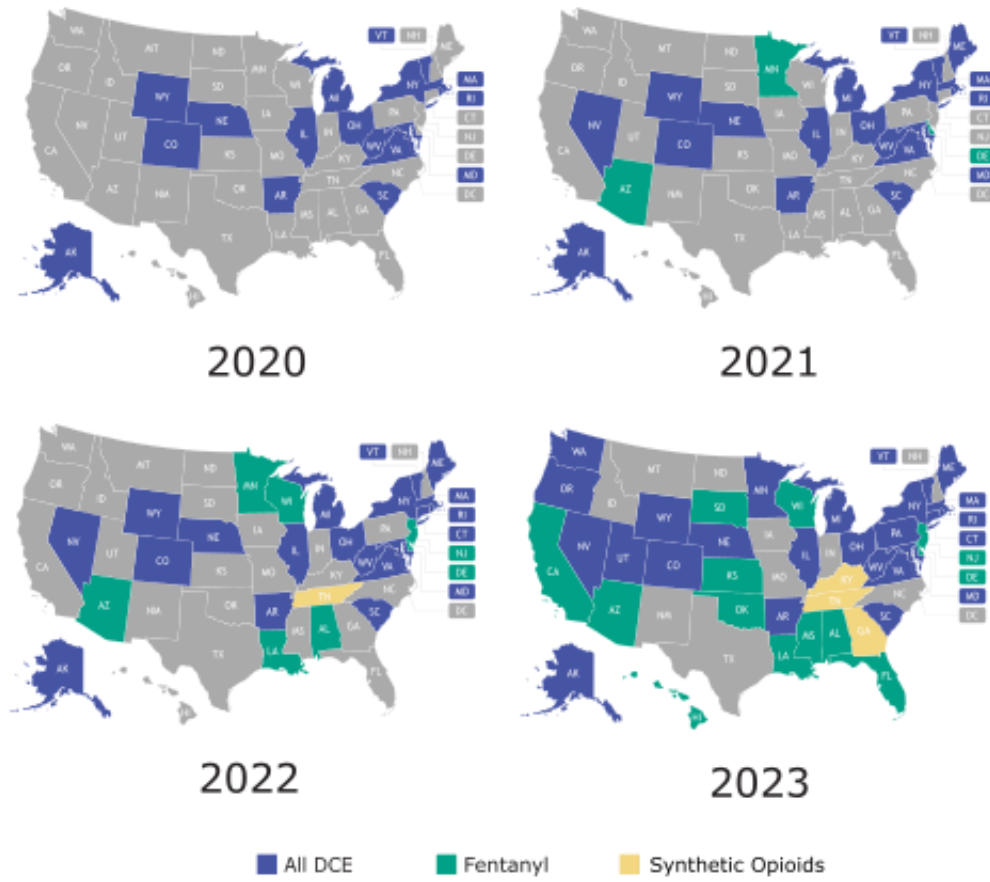




Figure 2: States with laws permitting free distribution of DCE, by year



## Appendix: Relevant legal changes between August 1, 2021 and August 31, 2023

**State:** Alabama

**Bill:** [2022 Ala. Laws Act 2022-154 \(S.B. 168\)](#)

**Change:** “[A] person may possess, deliver, or sell testing equipment designed to detect the presence of fentanyl or any synthetic controlled substance fentanyl analogue.”

**Date:** June 1, 2022

**Applies to:** Fentanyl and fentanyl analogs

**State:** Arizona

**Bill:** [2021 Ariz. Legis. Serv. Ch. 372 \(S.B. 1486\)](#)

**Change:** Drug paraphernalia definition was modified to exclude “[t]esting equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of drugs, *other than narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.*”

**Date:** September 29, 2021

**Applies to:** Fentanyl and fentanyl analogs

**State:** Arkansas

**Bill:** [2023 Arkansas Laws Act 584 \(H.B. 1456\)](#)

**Change:** “‘Drug paraphernalia’ does not include a disposable, single-use test strip that can detect the presence of fentanyl or fentanyl analogs in a substance”

**Date:** April 11, 2023

**Applies to:** Fentanyl and fentanyl analog test strips

**State:** California

**Bill:** [2022 Cal. Legis. Serv. Ch. 201 \(A.B. 1598\)](#)

**Change:** Drug paraphernalia definition modified to exclude “any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.”

**Date:** January 1, 2023

**Applies to:** Fentanyl, ketamine, gamma hydroxybutyric acid, and fentanyl analogs

**State:** Connecticut

**Bill:** [2022 Conn. Legis. Serv. P.A. 22-108 \(H.B. 5430\)](#)

**Change:** Drug paraphernalia law modified to note that the term “does not include a product used by a manufacturer licensed pursuant to this chapter for the activities permitted under the license or by an individual to test any substance prior to injection, inhalation or ingestion of the substance to prevent accidental overdose by injection, inhalation or ingestion of the substance, provided the licensed manufacturer or individual is not using the product to engage in the unlicensed manufacturing or distribution of controlled substances.”

**Date:** July 1, 2022

**Applies to:** Any substance

**State:** Delaware

**Bill:** [2023 Delaware Laws Ch. 170 \(S.B. 189\)](#)

**Change:** Modifies drug paraphernalia exemption to include “drug testing strips”, expanding the definition of “drug” to fentanyl and xylazine and also expanding the civil protections for distribution of testing strips to include those for xylazine

**Date:** “This Act shall be effective upon the expiration of the Emergency Order issued by the Secretary of State placing Xylazine in Schedule III of the Uniform Controlled Substance Act or November 29, 2023, whichever is earlier. Section 5. This Act expires on November 29, 2024.”

**Applies to:** Xylazine testing strips

**State:** Florida

**Bill:** [2023 Fla. Sess. Law Serv. Ch. 2023-297 \(C.S.S.B. 164\)](#)

**Change:** Excludes “narcotic-drug-testing products that are used solely to determine whether a controlled substance contains fentanyl as described in s. 893.03(2)(b) 9. or any other controlled substance specified in s. 893.135(1)(c)4.a” from the definition of drug paraphernalia while specifying the “exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.” Fla. Stat. Ann. § 893.145(4).

**Date:** July 1, 2023

**Applies to:** Fentanyl and analogs

**State:** Georgia

**Bill:** [2022 Georgia Laws Act 879 \(H.B. 1175\)](#)

**Change:** “[A]ny testing equipment used to determine whether a controlled substance has been adulterated and contains a synthetic opioid shall not be considered a drug related object as defined by Article 2 of Chapter 13 of Title 16.”

**Date:** July 1, 2023

**Applies to:** Synthetic opioids

**State:** Hawaii

**Bill:** [2023 Hawaii Laws Act 111 \(S.B. 671\)](#)

**Change:** “‘Drug paraphernalia’ does not include fentanyl test strips.”

**Date:** June 22, 2023 to December 31, 2023

**Applies to:** Fentanyl test strips

**State:** Illinois

**Bill:** [2023 Ill. Legis. Serv. P.A. 103-336 \(H.B. 3203\)](#)

**Change:** “‘Drug paraphernalia’ does not include equipment, products, or materials to analyze or test for the presence of fentanyl, a fentanyl analogue, or a drug adulterant within a controlled substance.”

**Date:** January 1, 2024

**Applies to:** Fentanyl, fentanyl analogs and “drug adulterants”

**State:** Kansas

**Bill:** [2023 Kansas Laws Ch. 94 \(S.B. 174\)](#)

**Change:** Drug paraphernalia does not include” any materials used or intended for use to test a substance for the presence of fentanyl, a fentanyl analog, ketamine or gamma hydroxybutyric acid.”

**Date:** July 1, 2023

**Applies to:** Fentanyl, fentanyl analogs, ketamine and gamma hydroxybutyric acid

**State:** Kentucky

**Bill:** [2023 Kentucky Laws Ch. 166 \(HB 353\)](#)

**Change:** Removed “identifying” from testing equipment entry and specifically exempts “narcotic drug testing products utilized in determining whether a controlled substance contains a synthetic opioid or its analogues” from the definition of drug paraphernalia. Notes, however, that a “narcotic drug testing product that is utilized in conjunction with the importation, manufacture, or selling of fentanyl or a fentanyl analogue in violation of this chapter shall be deemed drug paraphernalia under this section.”

**Date:** June 29, 2023

**Applies to:** Narcotic drug testing equipment used to determine whether a controlled substance contains a synthetic opioid or its analogs and all equipment used for identifying substances

**State:** Louisiana

**Bill:** [2022 La. Sess. Law Serv. Act 137 \(H.B. 212\)](#)

**Change:** “Notwithstanding any provision of law to the contrary, the term ‘drug paraphernalia’ shall not include rapid fentanyl test strips (FTS) or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues.”

**Date:** August 1, 2022

**Applies to:** Fentanyl and fentanyl analogs

**State:** Maine

**Bill:** [2021 Me. Legis. Serv. Ch. 434 \(H.P. 732\) \(L.D. 994\)](#)

**Change:** References to testing and analyzing as well as specific reference to testing equipment were removed from the definition of drug paraphernalia.

**Date:** October 18, 2021

**Applies to:** Not specific to any drug

**State:** Minnesota

**Bill:** [2023 Minn. Sess. Law Serv. Ch. 52 \(S.F. 2909\)](#)

**Change:** Repealed drug paraphernalia law except for intentional manufacture of drug paraphernalia for delivery and delivery of drug paraphernalia to a minor that was intentionally manufactured for delivery.

**Date:** August 1, 2023

**Applies to:** all drug checking equipment

**State:** Mississippi

**Bill:** [2023 Miss. Laws H.B. 722](#)

**Change:** "'Paraphernalia' does not include any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance."

**Date:** July 1, 2023

**Applies to:** Fentanyl and analogs

**State:** Montana

**Bill:** [2023 Montana Laws Ch. 723 \(H.B. 437\)](#)

**Change:** Removes "test" from statute criminalizing use and possession with intent to use drug paraphernalia

**Date:** May 22, 2023

**Applies to:** All drug checking equipment

**State:** New Hampshire

**Bill:** [2023 New Hampshire Laws Ch. 186 \(H.B. 287\)](#)

**Change:** Exempts from drug paraphernalia definition "fentanyl test strips, xylazine test strips, or other materials used or intended for use in testing for the presence of fentanyl, xylazine, or a fentanyl or xylazine analog in a substance, unless possessed in conjunction with other evidence forming the basis of a criminal charge involving the manufacturing, possessing with the intent to sell, or compounding"

**Date:** October 3, 2023

**Applies to:** Fentanyl, fentanyl analogs, xylazine and xylazine analogs

**State:** New Jersey

**Bill:** [2021 N.J. Sess. Law Serv. Ch. 403 \(S.B. 3493\)](#)

**Change:** "[f]entanyl test strips" were excluded from the definition of drug paraphernalia.

**Date:** January 18, 2022

**Applies to:** Fentanyl test strips only

**State:** New Mexico

**Bill:** [2022 New Mexico Laws Ch. 4 \(H.B. 52\)](#)

**Change:** "[S]upplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants" were exempted from the law that criminalizes paraphernalia possession and use. Note that this change did not modify the law that applies to paraphernalia distribution.

**Date:** May 18, 2022

**Applies to:** Supplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants

**State:** Ohio

**Bill:** [2022 Ohio Laws File 160 \(Am. Sub. S.B. 288\)](#)

**Change:** Criminalization of possession "does not apply to a person's use, or possession with purpose to use, any drug testing strips to determine the presence of fentanyl or a fentanyl-related compound" and provides protection from prosecution for individuals who seek medical assistance for themselves or another person experiencing an overdose

**Date:** April 4, 2023

**Applies to:** Fentanyl or fentanyl-related compound

**State:** Oklahoma

**Bill:** [2023 Okla. Sess. Law Serv. Ch. 165 \(H.B. 1987\)](#)

**Change:** Exempts “drug testing strips possessed by a person for purposes of determining the presence of fentanyl or a fentanyl-related compound” from the term drug paraphernalia.

**Date:** June 9, 2023

**Applies to:** Fentanyl or fentanyl-related compounds

**State:** Oregon

**Bill:** [2023 Oregon Laws Ch. 593 \(H.B. 2395\)](#)

**Change:** Removes testing equipment from drug paraphernalia definition list and specifies that the definition does not include “single-use drug test strips, drug testing tools or any other item designed to prevent or reduce the potential harm associated with the use of controlled substances, including but not limited to items that reduce the transmission of infectious disease or prevent injury, infection or overdose.” Adds code section specifically making it against the law “to provide single-use drug test strips or drug testing tools to a minor who is under 15 years of age unless the strips or tools are provided to the minor as part of the minor’s substance use disorder treatment provided by a mental health care provider and the strips or tools are provided by the mental health care provider.”

**Date:** August 4, 2023

**Applies to:** all drug checking equipment

**State:** Pennsylvania

**Bill:** [2022 Pa. Legis. Serv. Act 2022-111 \(H.B. 1393\)](#)

**Change:** removes all testing products, including fentanyl test strips, “utilized in determining whether a controlled substance contains chemicals, toxic substances or hazardous compounds in quantities which can cause physical harm or death”

**Date:** January 3, 2023

**Applies to:** all drug checking equipment

**State:** South Carolina

**Bill:** [2023 South Carolina Laws Act 72 \(H.3503\)](#)

**Change:** Explicitly removes fentanyl and analog drug checking equipment from the definition of drug paraphernalia.

**Date:** June 15, 2023

**Applies to:** Fentanyl and analogs

**State:** South Dakota

**Bill:** [2023 South Dakota Laws Ch. 73 \(HB 1041\)](#)

**Change:** Exempts “product[s] that detect[] the presence of fentanyl or a fentanyl analog in a controlled substance”

**Date:** July 1, 2023

**Applies to:** Fentanyl and analogs

**State:** Tennessee

**Bill:** [2022 Tennessee Laws Pub. Ch. 764 \(S.B. 2427\)](#)

**Change:** “[N]arcotic testing equipment used to determine whether a controlled substance contains a synthetic opioid” was removed from the definition of drug paraphernalia.

**Date:** March 31, 2022 (sunsets July 1, 2025)

**Applies to:** Narcotic testing equipment used to determine whether a controlled substance contains a synthetic opioid

**State:** Utah

**Bill:** [2023 Utah Laws Ch. 312 \(S.B. 86\)](#)

**Change:** “‘Drug paraphernalia’ does not include a testing product or equipment, including a fentanyl test strip, used or intended for use to determine whether a substance contains: (a) a controlled substance that can cause physical harm or death; or (b) a chemical or compound that can cause physical harm or death.”

**Date:** May 3, 2023

**Applies to:** all drug checking equipment.

**State:** Vermont

**Bill:** [2023 Vermont Laws No. 22 \(H. 222\)](#)

**Change:** Provides that “other harm reduction supplies” that is possessed or distributed as part of a needle exchange program is not included in the definition of drug paraphernalia as well as creates statutory authority for drug-checking services located at Vt. Stat. Ann. tit. 18, § 4240a.

**Date:** May 25, 2023

**Applies to:** all drug checking equipment

**State:** Washington

**Bill:** [2023 Wash. Legis. Serv. 1st Sp. Sess. Ch. 1 \(S.S.S.B. 5536\)](#)

**Change:** The law governing selling or giving away drug paraphernalia was modified to remove “gives”, “given”, “testing” and “analyzing” and specifically exempts public health and community-based HIV prevention programs and pharmacies are from the civil infraction related to giving away drug paraphernalia: “Nothing in subsection (1) of this section [the civil infraction related to giving away drug paraphernalia] prohibits distribution or use of public health supplies including, but not limited to, syringe equipment, smoking equipment, or drug testing equipment, through public health programs, community-based HIV prevention programs, outreach, shelter, and housing programs, and pharmacies. Public health and syringe service program staff taking samples of substances and using drug testing equipment for the purpose of analyzing the composition of the substances or detecting the presence of certain substances are acting legally and are exempt from arrest or prosecution under [the laws regulating possession controlled substances.]”

**Date:** July 1, 2023

**Applies to:** all drug checking equipment

**State:** West Virginia

**Bill:** [2022 West Virginia Laws Ch. 60 \(H.B. 4373\)](#)

**Change:** “[F]entanyl test strips shall not be considered drug paraphernalia...”

**Date:** June 10, 2022

**Applies to:** Fentanyl test strips

**Note:** West Virginia does not criminalize the possession or free delivery of paraphernalia; this provision applies only to the sale of paraphernalia.

**State:** Wisconsin

**Bill:** [2021-2022 Wisc. Legis. Serv. Act 180 \(2021 S.B. 600\)](#)

**Change:** “Any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance” were excluded from the definition of drug paraphernalia.

**Date:** March 18, 2022

**Applies to:** Fentanyl testing equipment

This document was created by the Harm Reduction Legal Project at the Network for Public Health Law. All opinions and conclusions are solely those of the authors and do not necessarily represent the position of and should not be attributed to the CDC or any other organization. The information provided in this document does not constitute legal advice or legal representation. The Harm reduction Legal Project provides free technical legal and policy assistance to individuals, governmental, and non-governmental organizations, and can be contacted at [harmreduction@networkforphl.org](mailto:harmreduction@networkforphl.org). For legal advice, please consult an attorney in your state.

## References

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- <sup>2</sup> Friedman, et al., *Xylazine spreads across the US: A growing component of the increasingly synthetic and polysubstance overdose crisis*, 233 DRUG ALCOHOL DEPEND (2022).
- <sup>3</sup> Bryce Pardo et al., *The Future of Fentanyl and Other Synthetic Opioids*, RAND Corporation, (2019), [https://www.rand.org/pubs/research\\_reports/RR3117.html/](https://www.rand.org/pubs/research_reports/RR3117.html/).
- <sup>4</sup> M. Kariisa, et al., *Illicitly Manufactured Fentanyl-Involved Overdose Deaths with Detected Xylazine - United States, January 2019-June 2022*, 72 MMWR MORB MORTAL WKLY REP (2023).
- <sup>5</sup> Susan G. Sherman, et al., *Acceptability of implementing community-based drug checking services for people who use drugs in three United States cities: Baltimore, Boston and Providence*, 68 INT'L. J. DRUG POLICY 46-53 (2019).
- <sup>6</sup> Nicholas C. Peiper, et al., *Fentanyl test strips as an opioid overdose prevention strategy: findings from a syringe services program in the Southeastern United States*, 63 INT'L. J. DRUG POLICY 122–128 (2019).
- <sup>7</sup> Maxwell S. Krieger, et al., *Use of rapid fentanyl test strips among young adults who use drugs*, 61 INT'L. J. DRUG POLICY 52–58 (2018).
- <sup>8</sup> Jacqueline E. Goldman, et al., *Perspectives on rapid fentanyl test strips as a harm reduction practice among young adults who use drugs: a qualitative study*, 16 HARM REDUCTION J. 3 (2019).
- <sup>9</sup> Centers for Disease Control and Prevention & Substance Abuse and Mental Health Services Administration, *Federal Grantees May Now Use Funds to Purchase Fentanyl Test Strips* (2021), <https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html>; see also Regina LaBelle, et al., *Unlocking Federal Funding for Fentanyl Test Strips Will Save Lives*, Stat News (May 4, 2021), <https://www.statnews.com/2021/05/04/fentanyl-test-strips-unlocking-federal-funding-save-lives/> (“Making it easier to access fentanyl test strips is another essential step to save lives, foster engagement, and build trust with underserved and at-risk populations.”).
- <sup>10</sup> J. J. Palamar, et al., *Drug checking at dance festivals: A review with recommendations to increase generalizability of findings*, 29 EXP CLIN PSYCHOPHARMACOL (2021).
- <sup>11</sup> Traci C. Green, et al., *An assessment of the limits of detection, sensitivity and specificity of three devices for public health-based drug checking of fentanyl in street-acquired samples*, 77 INT'L. J. DRUG POLICY 102661 (2020).
- <sup>12</sup> Wallace B. Hills R, Rothwell J, et al. Implementing an integrated multi-technology platform for drug checking: Social, scientific, and technological considerations. *Drug Test Anal.* 2021;13(4):734-746; Traci C. Green, et al., *An assessment of the limits of detection, sensitivity and specificity of three devices for public health-based drug checking of fentanyl in street-acquired samples*, 77 INT'L. J. DRUG POLICY 102661 (2020).
- <sup>13</sup> Michael D. Guinan, *Constitutionality of Anti-Drug Paraphernalia Laws-The Smoke Clears*, 58 NOTRE DAME L.R. 833 (1983).
- <sup>14</sup> Corey S. Davis, et al., *Legality of drug checking equipment in the United States: A systematic legal analysis*, 234 DRUG ALCOHOL DEPEND 109425 (2022)
- <sup>15</sup> The protection provided by overdose Good Samaritan laws varies greatly by state on variables such as which parties are covered, at which point protection applies, as well as restrictions on generally provided protections. That information is not the focus of the document; please see <https://www.networkforphl.org/resources/legal-interventions-to-reduce-overdose-mortality-overdose-good-samaritan-laws/> for extensive information about each state's overdose Good Samaritan law.
- <sup>16</sup> Alaska, California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington, Washington DC, West Virginia, and Wyoming.
- <sup>17</sup> Alabama, Arizona, Arkansas, Delaware, Florida, Hawaii, Louisiana, Mississippi, New Jersey, Ohio, Oklahoma, South Dakota, Wisconsin.
- <sup>18</sup> Those states are Alaska, Arkansas, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. Because the audience for this document is largely governmental and non-governmental organizations that provide fentanyl test strips and other drug checking equipment at no cost, we



focus on the free distribution of those supplies. Some jurisdictions may have penalties for the sale of paraphernalia that are not captured here.

<sup>19</sup> Alabama, Arizona, Delaware, Florida, Hawaii, Louisiana, Mississippi, New Jersey, Oklahoma, South Dakota, Wisconsin.

<sup>20</sup> Those states are Alabama, Arizona, Connecticut, Louisiana, Maine, New Jersey, New Mexico, Tennessee, West Virginia, and Wisconsin.

<sup>21</sup> Those states are Arkansas, California, Florida, Georgia, Hawaii, Kansas, Kentucky, Minnesota, Mississippi, Montana, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, and Washington.

<sup>22</sup> Corey S. Davis, et al., *Paraphernalia Laws, Criminalizing Possession and Distribution of Items Used to Consume Illicit Drugs, and Injection-Related Harm*, 109, no. 11 AM. J. PUB. HEALTH, 1564-1567 (2019).

<sup>23</sup> Possession statutes generally come in two forms, criminalizing the “possession” or the “use or possession with intent to use.” This column will indicate a “no” for states in which either possession or use or possession with intent to use is either a criminal or civil infraction.

<sup>24</sup> Drug paraphernalia “means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the controlled substances laws of this state.” Ala. Code § 13A-12-260(a). “It shall be unlawful for any person to use, or to possess with intent to use, or to use to inject, ingest, inhale or otherwise introduce into the human body, drug paraphernalia to... test... a controlled substance.... Any person who violates this subsection is guilty of a Class A misdemeanor....” Ala. Code § 13A-12-260(c). However, as of June 1, 2022, fentanyl testing equipment is specifically exempted: “a person may possess, deliver, or sell testing equipment designed to detect the presence of fentanyl or any synthetic controlled substance fentanyl analogue.” Ala. Code § 13A-12-260(f) (modified by 2022 Ala. Laws Act 2022-154 (S.B. 168)).

<sup>25</sup> “It shall be 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, knowing that it will be used to... test... a controlled substance.... Any person who violates this section is guilty of a Class A misdemeanor....” Ala. Code § 13A-12-260(e)(1). However, as of June 1, 2022, fentanyl testing equipment is specifically exempted: “a person may possess, deliver, or sell testing equipment designed to detect the presence of fentanyl or any synthetic controlled substance fentanyl analogue.” Ala. Code § 13A-12-260(f) (modified by 2022 Ala. Laws Act 2022-154 (S.B. 168)).

<sup>26</sup> “Excluding Section 32-5A-191 [charges relating to driving under the influence], an individual may not be prosecuted for a misdemeanor controlled substance offense if law enforcement became aware of the offense solely because the individual was seeking medical assistance for another individual under this article.” Ala. Code § 20-2-281(b); see Ala. code § 20-2-281(c) (listing Good Samaritan law qualifications).

<sup>27</sup> Alaska does not have a statute criminalizing the use or possession with intent to use of drug paraphernalia on the state level. However, some municipalities within Alaska criminalize those activities. See, e.g., North Slope Borough, AK., Code § 11.20.030.

<sup>28</sup> Alaska does not criminalize the delivery of drug paraphernalia on the state level. However, some municipalities within Alaska criminalize activities related to paraphernalia. See, e.g., North Slope Borough, AK, Code § 11.20.020.

<sup>29</sup> “[I]t is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test...a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.” Ariz. Rev. Stat. § 13-3415(A). However, the definition of “drug paraphernalia” was modified to exempt “narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog” as of September 29, 2021. Ariz. Rev. Stat. § 13-3415(F)(2)(d) (modified by. 2021 Ariz. Legis. Serv. Ch. 372 (S.B. 1486)).

<sup>30</sup> “It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to...test...a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.” Ariz. Rev. Stat. § 13-3415(B). However, the definition of “drug paraphernalia” was modified to exempt “narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog” as of September 29, 2021. Ariz. Rev. Stat. § 13-3415(F)(2)(d) (modified by. 2021 Ariz. Legis. Serv. Ch. 372 (S.B. 1486)).

<sup>31</sup> Employees, volunteers, or participants may not be charged or prosecuted for possession of a “needle, hypodermic syringe, or other injection supply item obtained from or returned to [an authorized SSP]” (emphasis added). Ariz. Rev. Stat. § 36-798.52(A)(1). Under this provision, testing equipment obtained from an SSP would likely be covered.

<sup>32</sup> “A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose may not be charged or prosecuted for the possession or use of a controlled substance or drug paraphernalia or a preparatory offense if the evidence for the violation was gained as a result of the person's seeking medical assistance.” Ariz. Rev.

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Stat. § 13-3423(A). “A person who experiences a drug-related overdose, who is in need of medical assistance and for whom medical assistance is sought pursuant to subsection A of this section [Good Samaritan law, previous provision] may not be charged or prosecuted for the possession or use of a controlled substance or drug paraphernalia if the evidence for the violation was gained as a result of the person's overdose and need for medical assistance.” Ariz. Rev. Stat. § 13-3423(B).

<sup>33</sup> Drug paraphernalia “means any equipment, product, and material of any kind that are used, intended for use, or designed for use in... testing, analyzing... or otherwise introducing into the human body a controlled substance in violation of this chapter.” Ark. Code Ann. § 5-64-101(12)(A). However, effective April 11, 2023, drug paraphernalia “does not include a disposable, single-use test strip that can detect the presence of fentanyl or fentanyl analogs in a substance.” Ark. Code Ann. § 5-64-101 (12)(D). A person who uses or possesses with the purpose to use drug paraphernalia to...test, analyze...a controlled substance... upon conviction is guilty of a Class D felony.” Ark. Code Ann. § 5-64-443(b)(1). The same conduct is a Class B felony when the controlled substance is methamphetamine, heroin, fentanyl, or cocaine. Ark. Code Ann. § 5-64-443(b)(2).

<sup>34</sup> Arkansas does not generally criminalize the distribution of drug paraphernalia. *See generally* Ark. Code Ann. § 5-64-443. However, it is unlawful in Arkansas to deliver drug paraphernalia, including drug checking equipment, to a person under 18 if the person delivering the paraphernalia is over 18 and at least 3 years older than the recipient. Ark. Code Ann. § 5-64-444. It is also illegal to engage in many activities related to “an illegal drug paraphernalia business.” Ark. Code Ann. § 5-64-802.

<sup>35</sup> Arkansas’s overdose Good Samaritan law provides protection from some drug possession charges, but does not provide protection for charges related to paraphernalia. *See* Ark. Code Ann. § 20-13-1704.

<sup>36</sup> California’s definition of drug paraphernalia includes “[t]esting equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.” Cal. Health & Safety Code § 11014.5(a)(4). Unlike many states, however, California only explicitly criminalizes the possession of drug paraphernalia used for a small number of activities: “It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking” a controlled substance. Cal. Health & Safety Code § 11364(a). Furthermore, the definition of drug paraphernalia “does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.” Cal. Health & Safety Code § 11014.5(d). The California legislature also added Health & Safety Code section 11376.6 effective January 1, 2024. Per this section, “it shall not be a crime for a person to possess for personal use a controlled substance, controlled substance analog, or drug paraphernalia if the person delivers the controlled substance or controlled substance analog to the local public health department or law enforcement and notifies them of the likelihood that other batches of the controlled substance may have been adulterated with other substances, if known.” - [2023 CA S.B. 250 \(NS\)](#).

<sup>37</sup> “Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance, except as provided in subdivision (b) [manufacturing controlled substances], in violation of this division, is guilty of a misdemeanor.” Cal. Health & Safety Code § 11364.7(a)(1). However, drug paraphernalia “does not include any testing equipment designed, marketed, intended to be used, or used, to test a substance for the presence of fentanyl, ketamine, gamma hydroxybutyric acid, or any analog of fentanyl.” Cal. Health & Safety Code § 11014.5(d).

<sup>38</sup> Per California law, “Staff and volunteers participating in an exchange project authorized by the state, county, city, or city and county pursuant to this chapter shall not be subject to criminal prosecution for violation of any law related to the possession, furnishing, or transfer of hypodermic needles or syringes or *any materials* deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability during participation in an exchange project. Program participants shall not be subject to criminal prosecution for possession of needles or syringes or *any materials* deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability acquired from an authorized needle and syringe exchange project entity.” Cal. Health & Safety Code § 121349.1 (emphasis added). Further, “A public entity, its agents, or employees shall not be subject to criminal prosecution for distribution of hypodermic needles or syringes or *any materials* deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability to participants in clean needle and syringe exchange projects.” Cal. Health & Safety Code § 11364.7(a)(2) (emphasis added). The California Department of Public Health designates all materials included in the California Syringe Exchange Supply Clearinghouse as necessary for the prevention of disease, injury, or overdose. CAL. DEP’T OF PUB. HEALTH, FACT SHEET: CALIFORNIA LAW AND SYRINGE SERVICES PROGRAMS (2021),

[https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/CA\\_Law\\_SSPs\\_Factsheet\\_ADA%20FINAL%20\(April%202021\).pdf](https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/CA_Law_SSPs_Factsheet_ADA%20FINAL%20(April%202021).pdf). As fentanyl test strips are made available through the Clearinghouse, they are covered under the aforementioned exemptions. CAL. DEP'T OF PUB. HEALTH, FENTANYL TESTING TO PREVENT OVERDOSE: INFORMATION FOR PEOPLE WHO USE DRUGS AND HEALTHCARE PROVIDERS, [https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/Fact\\_Sheet\\_Fentanyl\\_Testing\\_Approved\\_ADA.pdf](https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/Fact_Sheet_Fentanyl_Testing_Approved_ADA.pdf).

- <sup>39</sup> “Notwithstanding any other law, it shall not be a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person experiencing a drug-related overdose that is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel.” Cal. Health & Safety Code § 11376.5(a). “Notwithstanding any other law, it shall not be a crime for a person who experiences a drug-related overdose and who is in need of medical assistance to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose.” Cal. Health & Safety Code § 11376.5(b).
- <sup>40</sup> “Testing equipment” is explicitly excluded from the definition of drug paraphernalia as of May 23, 2019: “‘Drug paraphernalia’ does not include...[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” Colo. Rev. Stat. § 18-18-426(2)(b).
- <sup>41</sup> “Testing equipment” is explicitly excluded from the definition of drug paraphernalia as of May 23, 2019: “‘Drug paraphernalia’ does not include...[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” Colo. Rev. Stat. § 18-18-426(2)(b). Further, as of July 1, 2022, “[A] person who or entity that acts in good faith to furnish a non-laboratory synthetic opiate detection test, including an expired non-laboratory synthetic opiate detection test, to another person is not liable for any civil damages for acts, omissions made as a result of the act, or for any act or omission made if the non-laboratory synthetic opiate detection test is stolen, defective, or produces an inaccurate result.” Colo. Rev. Stat. Ann. § 13-21-108.8 (added by 2022 Colo. Legis. Serv. Ch. 225 (H.B. 22-1326), § 14, eff. July 1, 2022).
- <sup>42</sup> Colorado no longer criminalizes the use, possession with intent to use, or delivery of drug checking equipment. However, there is still a Good Samaritan law exemption specifically for paraphernalia possession: “The immunity described in subsection (1) of this section [Good Samaritan law] shall apply to ,,, [p]ossession of drug paraphernalia, as described in section 18-18-428....” Colo. Rev. Stat. § 18-1-711(3)(g); see Colo. Rev. Stat. § 18-1-711(1)-(2).
- <sup>43</sup> Drug paraphernalia includes “testing equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of controlled substances.” Conn. Gen. Stat. § 21a-240(20)(A)(iv). “No person shall use or possess with intent to use drug paraphernalia...to...test, analyze...any controlled substance other than cannabis. Any person who violates any provision of this subsection shall be guilty of a class C misdemeanor.” Conn. Gen. Stat. § 21a-267(a). As of July 1, 2022, “‘Drug paraphernalia’ does not include a product used by a manufacturer licensed pursuant to this chapter for the activities permitted under the license or by an individual to test any substance prior to injection, inhalation or ingestion of the substance to prevent accidental overdose by injection, inhalation or ingestion of the substance, provided the licensed manufacturer or individual is not using the product to engage in the unlicensed manufacturing or distribution of controlled substances.” Conn. Gen. Stat. Ann. § 21a-240(20)(A) (modified by 2022 Conn. Legis. Serv. P.A. 22-108 (H.B. 5430) (eff. July 1, 2022)).
- <sup>44</sup> “No person shall deliver, possess with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...any controlled substance, other than cannabis. Any person who violates any provision of this subsection shall be guilty of a class A misdemeanor.” Conn. Gen. Stat. § 21a-267(b). As of July 1, 2022, “‘Drug paraphernalia’ does not include a product used by a manufacturer licensed pursuant to this chapter for the activities permitted under the license or by an individual to test any substance prior to injection, inhalation or ingestion of the substance to prevent accidental overdose by injection, inhalation or ingestion of the substance, provided the licensed manufacturer or individual is not using the product to engage in the unlicensed manufacturing or distribution of controlled substances.” Conn. Gen. Stat. Ann. § 21a-240(20)(A) (modified by 2022 Conn. Legis. Serv. P.A. 22-108 (H.B. 5430) (eff. July 1, 2022)).
- <sup>45</sup> Connecticut law authorizes syringe services programs but does not explicitly provide criminal immunity for either operators or participants of those programs. See Conn. Gen. Stat. § 19a-124.
- <sup>46</sup> “The provisions of subsection (a) of this section [relating to the use or possession with intent to use drug paraphernalia] shall not apply to any person (1) who in good faith, seeks medical assistance for another person who such person reasonably believes is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any

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drug or substance, (2) for whom another person, in good faith, seeks medical assistance, reasonably believing such person is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, or (3) who reasonably believes he or she is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance and, in good faith, seeks medical assistance for himself or herself, if evidence of the use or possession of drug paraphernalia in violation of said subsection was obtained as a result of the seeking of such medical assistance. For the purposes of this subsection, 'good faith' does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search." Conn. Gen. Stat. § 21a-267(d).

<sup>47</sup> "It is unlawful for any person to use, or possess with intent to use, drug paraphernalia." Del. Code tit. 16, § 4771(a). "Drug paraphernalia" includes "all equipment, products or materials of any kind which are used, intended for use or designed for use in...testing, analyzing...a controlled substance the manufacture, delivery, possession or use of which is in violation of this chapter." Del. Code tit. 16, § 4701(18). However, effective June 3, 2021, the prohibitions on drug paraphernalia do not apply to "[t]esting strips to determine the presence of fentanyl or fentanyl-related substances." Del. Code tit. 16, § 4773(3). Effective November 28, 2024 or "upon the expiration of the Emergency Order issued by the Secretary of State placing Xylazine in Schedule III of the Uniform Controlled Substance Act" and until November 29, 2024, the protection is extended to include tests for determining the presence of fentanyl, xylazine, or a related substance. Del. Code Ann. tit. 16, § 4773(3) (incorporating the definition of "Drug testing strip" in Del. Code Ann. tit. 16, § 2226). (2023 Delaware Laws Ch. 170 (S.B. 189))

<sup>48</sup> "It is unlawful for any person to 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... test, analyze... a controlled substance." Del. Code tit. 16, § 4771(b). "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." Del. Code tit. 16, § 4774(c). However, effective June 3, 2021, the prohibitions on drug paraphernalia do not apply to "[t]esting strips to determine the presence of fentanyl or fentanyl-related substances." Del. Code tit. 16, § 4773(3). A separate law provides protection against some civil damages in some situations related to the delivery of fentanyl testing strips. Del. Code tit. 16, § 2226. Effective November 28, 2023 or "upon the expiration of the Emergency Order issued by the Secretary of State placing Xylazine in Schedule III of the Uniform Controlled Substance Act" and until November 29, 2024, the protection will also cover xylazine tests. (2023 Delaware Laws Ch. 170 (S.B. 189).) The Emergency Order expires September 30, 2023 unless extended. See <https://dpr.delaware.gov/wp-content/uploads/sites/93/2023/06/06.02.2023-Secretary-of-State-Emergency-Classifying-Xylazine-as-Schedule-III-Controlled-Substance.pdf>.

<sup>49</sup> Delaware law exempts drug paraphernalia, including drug checking equipment, from criminal liability when it has been obtained from a syringe exchange: "Distribution or return of needles and syringes under the sterile needle and syringe service program is exempt from the provisions of §§ 4762, 4771 [includes charges for use, possession with intent to use, and delivery of drug paraphernalia], and 4772 of Title 16 for the participant ["an injection drug user who obtains a sterile needle and syringe unit under the program established in § 7991 of this title"] or for the employees of the Division ["the State Division of Public Health within the Department of Health and Social Services of the State"] or designated program staff, whenever the possession or distribution of the controlled paraphernalia or hypodermic syringe or needle is a direct result of the employee's or participant's activities in connection with the work of the program authorized under this subchapter." Del. Code tit. 29, §§ 7990(2), (4), 7993(a). The Delaware Division of Public Health's website directs people to the availability of fentanyl checking strips at syringe exchanges. Delaware Division of Public Health, *Overdose Prevention: Get Help, Help is Here Delaware*, <https://www.helpisherede.com/Get-Help/Overdose-Prevention#PharmacistTraining> (last visited Aug. 24, 2023).

<sup>50</sup> "The immunity granted [Good Samaritan law] shall apply to all offenses in this chapter that are not class A, B, or C felonies, including but not limited to ... [p]ossession of drug paraphernalia as described in §§ 4762(c) [charges relating to possession of syringes] and 4771 [charges relating to possession of drug paraphernalia] of this title...." Del. Code tit. 29, § 4769(c)(4). Given that a first-time offense of the delivery of drug paraphernalia is a class G felony and delivery to a minor is a class E felony, these offenses would fall under the purview of Delaware's Good Samaritan law. Del. Code tit. 29, §§ 4774(c), 4769(c)(4); see Del. Code tit. 29, § 4769(a)-(b) (listing Good Samaritan law definitions and qualifications).

<sup>51</sup> "The term 'drug paraphernalia' means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in ... testing... a controlled substance in violation of this chapter or s. 877.111." Fla. Stat. § 893.145. "It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia... [t]o ... test ... a controlled substance." Fla. Stat. § 893.147(1). However, effective July 1, 2023, the definition of drug paraphernalia "exclude[s] narcotic-drug-testing products that are used solely to determine whether a controlled substance contains

- fentanyl as described in s. 893.03(2)(b) 9. or any other controlled substance specified in s. 893.135(1)(c)4.a. This exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.” Fla. Stat. Ann. § 893.145(4).
- <sup>52</sup> “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used... [t]o ... test ... a controlled substance.” Fla. Stat. § 893.147(2). However, effective July 1, 2023, the definition of drug paraphernalia “exclude[s] narcotic-drug-testing products that are used solely to determine whether a controlled substance contains fentanyl as described in s. 893.03(2)(b) 9. or any other controlled substance specified in s. 893.135(1)(c)4.a. This exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.” Fla. Stat. Ann. § 893.145(4).
- <sup>53</sup> Florida provides immunity for “needles or syringes as part of an exchange program” only. Fla. Stat. § 381.0038(7)(c).
- <sup>54</sup> “A person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol-related or a drug-related overdose may not be arrested, charged, prosecuted, or penalized for a violation of s. 893.147(1) [charges relating to the use or possession with intent to use drug paraphernalia]... if the evidence for such offense was obtained as a result of the person’s seeking medical assistance.” Fla. Stat. § 893.21(1). “A person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related or a drug-related overdose and is in need of medical assistance may not be arrested, charged, prosecuted, or penalized for a violation of s. 893.147(1) [charges relating to the use or possession with intent to use drug paraphernalia]... if the evidence for such offense was obtained as a result of the person’s seeking medical assistance.” Fla. Stat. § 893.21(2). Florida provides “making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose” as a mitigating factor for felony offenses, including charges relating to giving away drug paraphernalia. See Fla. Stat. §§ 893.147(2), 921.0026(2)(n).
- <sup>55</sup> “It shall be unlawful for any person to use, or possess with the intent to use, any object or materials of any kind for the purpose of...testing, analyzing...a controlled substance.” Ga. Code Ann. § 16-13-32.2(a). However, “[A]ny testing equipment used to determine whether a controlled substance has been adulterated and contains a synthetic opioid shall not be considered a drug related object as defined by Article 2 of Chapter 13 of Title 16.” Ga. Code Ann. § 26-3-22(a).
- <sup>56</sup> “It shall be unlawful for any person or corporation to sell, rent, lease, give, exchange, otherwise distribute, or possess with intent to distribute any object or materials of any kind which such person or corporation intends to be used for the purpose of...testing...a controlled substance.” Ga. Code Ann. § 16-13-32.1(a). It is also unlawful to advertise the delivery of drug paraphernalia, including drug checking equipment. Ga. Code Ann. § 16-13-32(b). However, “[A]ny testing equipment used to determine whether a controlled substance has been adulterated and contains a synthetic opioid shall not be considered a drug related object as defined by Article 2 of Chapter 13 of Title 16.” Ga. Code Ann. § 26-3-22(a).
- <sup>57</sup> Effective July 1, 2023, “[A]ny testing equipment used to determine whether a controlled substance has been adulterated and contains a synthetic opioid shall not be considered a drug related object as defined by Article 2 of Chapter 13 of Title 16.” Ga. Code Ann. § 26-3-22.
- <sup>58</sup> Georgia law likely provides protection for the possession or free distribution of drug checking equipment for employees and volunteers of a syringe exchange: “A person employed by or acting as an agent of a registered syringe services program shall be immune from civil and criminal liability arising from the possession, distribution, or exchange of hypodermic syringes or needles and *related supplies* as part of such syringe services program.” Ga. Code Ann. § 16-13-32(c)(2) (emphasis added). Georgia law does not clarify whether “related supplies” includes drug checking equipment. However, Georgia’s statutes and regulations repeatedly reference the objective of the syringe services program to provide “safer injection supplie[s]” and “evidence based interventions to reduce negative consequences of drug related behaviors.” Ga. Code Ann. § 16-13-32(c)(4); Ga. Comp. R. & Regs. 511-2-9-.04(1)(c), 511-2-9-.01(8), 511-2-9-.05(1)(b)(4)-(5). No protection is provided for participants.
- <sup>59</sup> “Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance. Any person who is experiencing a drug overdose and, in good faith, seeks medical assistance for himself or herself or is the subject of such a request shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance....” Ga. Code Ann. § 16-13-5(b). “‘Drug violation’ means...[a] violation of Code Section 16-13-32.2, relating to possession and use of drug related objects.” Ga. Code Ann. § 16-13-5(a)(2)(C); see Ga. Code Ann. § 16-13-5(a) (listing relevant definitions).
- <sup>60</sup> Drug paraphernalia includes “all equipment, products, and materials of any kind which are used, primarily intended for use, or primarily designed for use, in ...testing... a controlled substance in violation of this chapter.” Haw. Rev. Stat.



- Ann. § 329-1. “[I]t is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test...a controlled substance in violation of this chapter.” Haw. Rev. Stat. Ann. § 329-43.5(a). However, effective June 22, 2023 to December 31, 2023, “Drug paraphernalia’ does not include fentanyl test strips.” Haw. Rev. Stat. Ann. § 329-1.
- <sup>61</sup> “[I]t is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used to...test...a controlled substance in violation of this chapter.” Haw. Rev. Stat. Ann. § 329-43.5(b). However, effective June 22, 2023 to December 31, 2023, “Drug paraphernalia’ does not include fentanyl test strips.” Haw. Rev. Stat. Ann. § 329-1.
- <sup>62</sup> While likely unintended, it appears that 2022 Hawaii Laws Act 278 (H.B. 2171), which modifies Haw. Rev. Stat. Ann. § 329-1 and has an effective date of January 1, 2024, reverts to the previous language that does not exempt fentanyl test strips from the definition of drug paraphernalia. 329-1 has an effective date of 1/1/24.
- <sup>63</sup> Participants, volunteers, and staff of a syringe services program may be exempt from possessing and giving away paraphernalia, including drug checking equipment: “Exchanges under the sterile needle and syringe exchange program shall not constitute an offense under section 329-43.5 [includes the use, possession with intent to use, and delivery of drug paraphernalia] for the participant or for the employees of the department or its designees.” Haw. Rev. Stat. Ann. § 325-114.
- <sup>64</sup> “A person or persons who, in good faith, seek medical assistance for someone who is experiencing a drug or alcohol overdose and a person experiencing a drug or alcohol overdose who seeks medical assistance for the person's self or is the subject of such a good faith request shall not be arrested, charged, prosecuted, or convicted; have their property subject to civil forfeiture; or otherwise be penalized for...[p]ossession of a controlled substance or drug paraphernalia under this chapter or part IV of chapter 712...if the evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of the seeking of medical assistance.” Haw. Rev. Stat. Ann. § 329-43.6(b)(1). The Good Samaritan law provides the act of seeking medical assistance for someone who is experiencing a drug or alcohol overdose as a mitigating factor for giving away paraphernalia, including drug checking equipment. See Haw. Rev. Stat. Ann. § 329-43.6(c); see also Haw. Rev. Stat. Ann. § 329-43.6(a) (listing relevant definitions).
- <sup>65</sup> “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test...a controlled substance.” Idaho Code § 37-2734A(1). “Drug paraphernalia” means “all equipment, products and materials of any kind used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.” Idaho Code § 37-2701(o).
- <sup>66</sup> “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to... test... a controlled substance.” Idaho Code § 37-2734B.
- <sup>67</sup> Although it is not clear which individuals are specifically exempt, possessing and giving away paraphernalia, including drug checking equipment, is possibly legal for participants, volunteers, and staff of a syringe exchange in Idaho: “Notwithstanding any provision of law to the contrary... [a]n entity [the state department of health and welfare, a government entity, or a private organization, whether for profit or nonprofit] may supply a syringe and needle exchange program with *materials necessary to operate the program* if such entity complies with rules promulgated by the department.” Idaho Code §37-3404(1)(c) (emphasis added). Similar language permits an entity to procure “supplies needed to operate a syringe and needle exchange program.” Idaho Code §37-3404(1)(b). Idaho’s *Operating Recommendations and Requirements* for Idaho Safer Syringe Programs define a syringe exchange program as one that “provides access to sterile syringes, needles, and other prevention materials, including cotton filters, bandages, and alcohol swabs.” Idaho Department of Health and Welfare Division of Public Health, *Operating Recommendations and Requirements*, Idaho Department of Health and Welfare Division of Public Health (July 1, 2020), <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=6084&dbid=0&repo=PUBLIC-DOCUMENTS&cr=1> (emphasis added).
- <sup>68</sup> “A person acting in good faith who seeks medical assistance for any person experiencing a drug-related medical emergency shall not be charged or prosecuted for... using or possessing with intent to use drug paraphernalia pursuant to section 37-2734A(1), Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the person seeking medical assistance.” Idaho Code § 37-2739C(1). “A person who experiences a drug-related medical emergency and is in need of medical assistance shall not be charged or prosecuted for... using or possessing with intent to use drug paraphernalia pursuant to section 37-2734A(1), Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the medical emergency and the need for medical assistance.” Idaho Code § 37-2739C(2).

- <sup>69</sup> “A person who knowingly possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, or in preparing a controlled substance for that use, is guilty of a Class A misdemeanor for which the court shall impose a minimum fine of \$750 in addition to any other penalty prescribed for a Class A misdemeanor.” 720 Ill. Comp. Stat. 600/3.5(a). Under Illinois law, drug paraphernalia includes “all equipment, products and materials of any kind, other than methamphetamine manufacturing materials as defined in Section 10 of the Methamphetamine Control and Community Protection Act and cannabis paraphernalia as defined in Section 1-10 of the Cannabis Regulation and Tax Act, which are intended to be used unlawfully in... testing, analyzing... a controlled substance in violation of the Illinois Controlled Substances Act.” 720 Ill. Comp. Stat. 600/2(d).
- <sup>70</sup> Illinois does not criminalize the free distribution of drug paraphernalia. See *generally* 720 Ill. Comp. Stat. 600. Illinois generally criminalizes the sale of drug paraphernalia. 720 Ill. Comp. Stat. 600/3(a). However, a law effective June 2, 2022, provides that certain health professionals “may dispense drug adulterant testing supplies to any person” and imposes restrictions on where they can be stored and the locations from which they can be distributed. 410 Ill. Comp. Stat. 710/10. Additionally, effective January 1, 2024, “a pharmacist or retailer may sell fentanyl test strips over-the-counter to the public to test for the presence of fentanyl, a fentanyl analog, or a drug adulterant within a controlled substance [and] [a] county health department may distribute fentanyl test strips at the county health department facility for no fee.” 2023 Ill. Legis. Serv. P.A. 103-336 (H.B. 3203)
- <sup>71</sup> Effective January 1, 2024, “‘Drug paraphernalia’ does not include equipment, products, or materials to analyze or test for the presence of fentanyl, a fentanyl analogue, or a drug adulterant within a controlled substance.” 2023 Ill. Legis. Serv. P.A. 103-336 (H.B. 3203).
- <sup>72</sup> Possessing drug paraphernalia, including drug checking equipment, is legal for participants, volunteers, and staff of an SSP in Illinois: “Notwithstanding any provision of the Illinois Controlled Substances Act, the Drug Paraphernalia Control Act, or any other law, no employee or volunteer of or participant in a program established under [the Overdose Prevention and Harm Reduction Act] shall be charged with or prosecuted for possession of ... [d]rug adulterant testing supplies obtained from or returned, directly or indirectly, to a program established under this Act or a pharmacy, hospital, clinic, or other health care facility or medical office dispensing drug adulterant testing supplies in accordance with Section 10. This paragraph also applies to any employee or customer of a pharmacy, hospital, clinic, or other health care facility or medical office dispensing drug adulterant testing supplies in accordance with Section 10.” 410 Ill. Comp. Stat. 710/5(c)(3).
- <sup>73</sup> The Illinois Good Samaritan law was modified effective April 27, 2021, to provide immunity for the possession of drug paraphernalia. See 720 Ill. Comp. Stat. 570/414(b); 720 Ill. Comp. Stat. 646/115(b).
- <sup>74</sup> “A person who knowingly or intentionally possesses an instrument, a device, or another object that the person intends to use for...testing the strength, effectiveness, or purity of a controlled substance...commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated judgment or conviction under this section.” Ind. Code § 35-48-4-8.3(b).
- <sup>75</sup> “A person who keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for...testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance...commits a Class A infraction for dealing in paraphernalia.” Ind. Code § 35-48-4-8.5(a). “A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated judgment or conviction under this section.” Ind. Code § 35-48-4-8.5(b).
- <sup>76</sup> The distribution of drug checking equipment is likely legal for volunteers and staff of a syringe services program: “This section [which prohibits delivery of objects intended, designed, or marketed to be used primarily for testing the strength, effectiveness, or purity of a controlled substance] does not apply to ... [a] qualified entity (as defined in IC 16-41-7.5-3) that provides a syringe or needle as part of a program under IC 16-41-7.5 [syringe exchange program].” Ind. Code § 35-48-4-8.5(c)(3). The provision outlining the duties of a syringe exchange program includes requirements to “[o]perate in a manner consistent with public health and safety” and “[e]nsure the program is medically appropriate and part of a comprehensive public health response.” Ind. Code § 16-41-7.5-6(7)-(8). However, it is not clear which individuals are provided immunity under this provision.
- <sup>77</sup> “A law enforcement officer may not take an individual into custody based solely on the commission of an offense described in subsection (h) [including IC 35-48-4-8.3 (possession of paraphernalia)], if the law enforcement officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that the individual...[lists factors including seeking medical emergency response for another person experiencing an overdose].” Ind. Code § 16-42-27-2(g), (h)(4); see Ind. Code § 16-42-27-2(g)(1)-(7) (lists Good Samaritan law qualifications).



- <sup>78</sup> “It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.” Iowa Code § 124.414(2). The definition of “drug paraphernalia” includes equipment and products “to knowingly or intentionally and primarily...test the strength, effectiveness, or purity of a controlled substance.” Iowa Code § 124.414(1)(a)(3).
- <sup>79</sup> “It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.” Iowa Code § 124.414(2). “A person who violates this section commits a simple misdemeanor.” Iowa Code § 124.414(3).
- <sup>80</sup> “Protected information shall not be considered to support probable cause and shall not be admissible as evidence against an overdose patient or overdose reporter for ... [v]iolation of section 124.414 [prohibits knowingly and unlawfully testing the strength, effectiveness of purity of a controlled substance].” Iowa Code § 124.418(2)(d).
- <sup>81</sup> “It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to...test...a controlled substance.” Kan. Stat. Ann. § 21-5709(b)(1). Drug paraphernalia means “all equipment and materials of any kind that are used, or primarily intended or designed for use in...testing, analyzing... a controlled substance and in violation of this act.” Kan. Stat. Ann. § 21-5701(f)(1). However, effective July 1, 2023, drug paraphernalia does not include “any materials used or intended for use to test a substance for the presence of fentanyl, a fentanyl analog, ketamine or gamma hydroxybutyric acid.” Kan. Stat. Ann. § 21-5701(f)(3)(B).
- <sup>82</sup> “It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used as such in violation of [provisions including subsection (b) of 21-5709 relating to the use or possession with intent to use of drug paraphernalia].” Kan. Stat. Ann. § 21-5710(c). “It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of subsection (b) of K.S.A. 21-5706 [possession of a controlled substance].” Kan. Stat. Ann. § 21-5710(d). However, effective July 1, 2023, drug paraphernalia does not include “any materials used or intended for use to test a substance for the presence of fentanyl, a fentanyl analog, ketamine or gamma hydroxybutyric acid.” Kan. Stat. Ann. § 21-5701(f)(3)(B).
- <sup>83</sup> Kansas has not passed an overdose Good Samaritan law.
- <sup>84</sup> “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of...testing...a controlled substance in violation of this chapter.” Ky. Rev. Stat. Ann. § 218A.500(2). Drug paraphernalia includes “all equipment, products and materials of any kind which are used, intended for use, or designed for use in...testing, analyzing... or otherwise introducing into the human body a controlled substance in violation of this chapter.” Ky. Rev. Stat. Ann. § 218A.500(1). Effective June 29, 2023, “identifying” was removed from the definition of testing equipment as drug paraphernalia and “narcotic drug testing products utilized in determining whether a controlled substance contains a synthetic opioid or its analogue” were specifically exempted from the drug paraphernalia definition. 2023 Kentucky Laws Ch. 166 (HB 353). That same law holds that possession of a drug testing product that contains “residual or trace amounts” of a synthetic opioid or analog “shall not be prosecuted as possession of a controlled substance under any provision of this chapter.”
- <sup>85</sup> “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of this chapter.” Ky. Rev. Stat. Ann. § 218A.500(3). Effective June 29, 2023, “identifying” was removed from the explanation of testing equipment as drug paraphernalia and “narcotic drug testing products utilized in determining whether a controlled substance contains a synthetic opioid or its analogue” was specifically exempted from the drug paraphernalia definition. 2023 Kentucky Laws Ch. 166 (HB 353).
- <sup>86</sup> Per Kentucky law, “Items exchanged at the program shall not be deemed drug paraphernalia under this section [includes possessing and giving away drug paraphernalia] while located at the program [a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes].” Ky. Rev. Stat. Ann. § 218A.500(5)(c). Notably, according to an opinion by the state’s Attorney General regarding whether harm reduction and syringe exchange programs (HRSEPs) may provide syringes regardless of whether the participant has syringes to exchange, “If the legislature had wished to limit HRSEPs to a specific type of program, rather than allowing flexibility in determining which type of HRSEP to offer, it could have done so.” Ky. Att’y Gen. Op. No. 15-018 (Dec 18, 2015), 2015 Ky. AG LEXIS 232. Following the same line of reasoning, if the legislature had wished to limit the items exempt from the drug paraphernalia statute while located at a syringe services program, it could have done so. Further, the Kentucky Cabinet for Health and Family Services website notes that “[syringe services programs] are a great resource to obtain harm reduction supplies such as sterile syringes, naloxone, wound care kits and fentanyl test strips.” *Harm Reduction Program*, KY. DEP’T FOR PUB. HEALTH, <https://chfs.ky.gov/agencies/dph/Pages/harmreduction.aspx> (last visited Aug. 24, 2023).

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- <sup>87</sup> “A person shall not be charged with or prosecuted for a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia if... [lists relevant factors].” Ky. Rev. Stat. Ann. § 218A.133(2).
- <sup>88</sup> “It is unlawful for any person to use, or to possess with intent to use, any drug paraphernalia, to...test, analyze...a controlled substance in violation of this Part.” La. Stat. Ann. § 40:1023(C). Drug paraphernalia means all “equipment, products, and materials of any kind which are used, intended for use, or designed for use in...testing, analyzing... or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Dangerous Substances Law.” La. Stat. Ann. § 40:1021(1). Effective August 1, 2022, the definition of ‘drug paraphernalia’ excludes “rapid fentanyl test strips (FTS) or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues.” 2022 La. Sess. Law Serv. Act 137 (H.B. 212).
- <sup>89</sup> “It is unlawful for any person or corporation, knowing, or under circumstances where one reasonably should know, to sell, lend, rent, lease, give, exchange, or otherwise distribute to any person any drug paraphernalia.” La. Stat. Ann. § 40:1023(A). “It is unlawful for any person or corporation, knowing, or under circumstances where one reasonably should know, to...possess with the intent to distribute, any drug paraphernalia.” La. Stat. Ann. § 40:1023(B). Effective August 1, 2022, the definition of ‘drug paraphernalia’ excludes “rapid fentanyl test strips (FTS) or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues.” 2022 La. Sess. Law Serv. Act 137 (H.B. 212).
- <sup>90</sup> Although it does not clearly exempt particular individuals, Louisiana law provides a broad exemption to the state paraphernalia law for SSPs: “Any provision of law to the contrary herein notwithstanding, the provisions of this Part [including prohibitions on the use, possession with intent to use, and delivery of drug paraphernalia] shall not prohibit the establishment and implementation of a needle exchange program within the jurisdiction of a local governing authority, including but not limited to a city, town, or parish, upon the express approval of the local governing authority.” La. Stat. Ann. § 40:1024(C). We interpret this as meaning that those provisions do not apply to SSP operators or clients.
- <sup>91</sup> Effective August 1, 2022, Louisiana’s overdose Good Samaritan law provides protection from paraphernalia-related charges: “A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession or use of a controlled dangerous substance under the Uniform Controlled Dangerous Substances Law or of possession of drug paraphernalia as defined in R.S. 40:1021, if the evidence for such offenses was obtained as a result of the person’s seeking medical assistance.” 2022 La. Sess. Law Serv. Act 225 (H.B. 601).
- <sup>92</sup> Effective October 18, 2021, all references to testing and analyzing, as well as specific mentions of testing equipment, were removed from Maine’s definition of drug paraphernalia. See Me. Rev. Stat. tit. 17-A, § 1111-A(1) (modified by 2021 Me. Legis. Serv. Ch. 434 (H.P. 732) (L.D. 994)).
- <sup>93</sup> Effective October 18, 2021, all references to testing and analyzing, as well as specific mentions of testing equipment, were removed from Maine’s definition of drug paraphernalia. See Me. Rev. Stat. tit. 17-A, § 1111-A(1) (modified by 2021 Me. Legis. Serv. Ch. 434 (H.P. 732) (L.D. 994)).
- <sup>94</sup> Maine law impliedly permits the possession, transportation, and exchange of “hypodermic apparatuses” distributed by or returned to syringe services programs. However, no such carve-out exists for drug checking equipment. See 22 M.R.S.A. § 1341.
- <sup>95</sup> Except for certain specified crimes unrelated to drug paraphernalia, “a protected person is immune from arrest or prosecution for a violation of law if: A. The grounds for the arrest or prosecution are obtained as a result of a medical professional’s or law enforcement officer’s responding to a request for medical assistance; or B. The identity of the protected person is learned or the protected person is identified as a person subject to arrest or prosecution as a result of a medical professional’s or law enforcement officer’s responding to a request for medical assistance.” Me. Stat. tit. 17-A, §1111-B(2).
- <sup>96</sup> The definition of “drug paraphernalia” continues to include “testing equipment used, intended for use, or designed for use in analyzing the strength, effectiveness, or purity of a controlled dangerous substance.” See Md. Code Ann., Crim. Law § 5-101(p)(2)(iv). However, state law was modified effective June 1, 2018, to remove “test” and “analyze” from the list of activities that it is impermissible to undertake with drug paraphernalia. The law currently reads as follows: “Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia to: (i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, pack, repack, store, contain, or conceal a controlled dangerous substance; or (ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.” Md. Code Ann., Crim. Law § 5–619(c)(1)(i)-(ii).
- <sup>97</sup> The definition of “drug paraphernalia” continues to include “testing equipment used, intended for use, or designed for use in analyzing the strength, effectiveness, or purity of a controlled dangerous substance.” See Md. Code Ann., Crim. Law § 5-101(p)(2)(iv). However, state law was modified effective June 1, 2018, to remove “test” and “analyze” from the

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list of activities that it is impermissible to undertake with drug paraphernalia. The law currently reads as follows: “Unless authorized under this title, a person may not deliver or sell... drug paraphernalia to: (i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, pack, repack, store, contain, or conceal a controlled dangerous substance; or (ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.” Md. Code Ann., Crim. Law § 5–619(d)(1)(i)-(ii). It is also unlawful to advertise the delivery of drug paraphernalia in certain circumstances. Md. Code Ann., Crim. Law § 5–619(e).

<sup>98</sup> “No Program staff member or Program participant may be found guilty of violating [laws related to controlled substances and drug paraphernalia] for possessing or distributing controlled paraphernalia or drug paraphernalia whenever the possession or distribution of the controlled paraphernalia or drug paraphernalia is a direct result of the employee's or participant's activities in connection with the work of the Program authorized under this subtitle.” Md. Code Ann., Health - General § 24-808(a).

<sup>99</sup> “A person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person reasonably believed to be experiencing a medical emergency after ingesting or using alcohol or drugs shall be immune from criminal arrest, charge, or prosecution for a violation of...§ 5-619 [including use, possession with intent to use, and the delivery of drug paraphernalia]...of the Criminal Law Article if the evidence for the criminal arrest, charge, or prosecution was obtained solely as a result of the person's seeking, providing, or assisting with the provision of medical assistance.” Md. Code Ann., Crim. Law § 1–210(b). “A person who reasonably believes that the person is experiencing a medical emergency after ingesting or using alcohol or drugs shall be immune from criminal arrest, charge, or prosecution for a violation of...§ 5-619 [including charges for use, possession with intent to use, and delivery of drug paraphernalia]...of the Criminal Law Article if the evidence for the criminal arrest, charge, or prosecution was obtained solely as a result of the person seeking or receiving medical assistance.” Md. Code Ann., Crim. Law § 1–210(c); see Md. Code Ann., Crim. Law § 1–210(a) (listing relevant definitions). Effective October 1, 2023, the language “reasonably believes that the person” is removed from Md. Code Ann., Crim. Law § 1–210(c). 2023 Maryland Laws Ch. 717 (H.B. 427).

<sup>100</sup> Massachusetts does not criminalize the use or possession with intent to use drug paraphernalia. See generally Mass. Gen. Laws ch. 94C, § 32I.

<sup>101</sup> Massachusetts does not criminalize the free distribution of drug paraphernalia. See generally Mass. Gen. Laws ch. 94C, § 32I. However, Massachusetts does criminalize the sale of drug paraphernalia; it is unlawful to “sell, possess or purchase with intent to sell, or manufacture with intent to sell drug paraphernalia.” Mass. Gen. Laws ch. 94C, § 32I(a).

<sup>102</sup> Further, case law has clarified that state approval is not required for a program to freely distribute syringes. *AIDS Support Group of Cape Cod, Inc. v. Town of Barnstable*, 447 Mass. 296, 76 N.E.3d 969 (2017).

<sup>103</sup> The Massachusetts Good Samaritan law does not include charges related to drug paraphernalia. See Mass. Gen. Laws ch. 94C, § 34A(a), (b).

<sup>104</sup> Michigan does not criminalize the use or possession with intent to use drug paraphernalia. See generally Mich. Comp. Laws § 333.7451-61. However, some municipalities within Michigan criminalize these activities. See e.g., Zeeland, Mich., Code § 28-290(b).

<sup>105</sup> Michigan does not criminalize the free delivery of drug paraphernalia. See generally Mich. Comp. Laws §§ 333.7451-333.7461. However, some municipalities within Michigan criminalize these activities. See e.g., Zeeland, Mich., Code § 28-290(c). Note that it is unlawful to sell or offer for sale drug paraphernalia knowing that it will be used to “...test, analyze...” a controlled substance, although the person accused must be notified in writing not less than two business days before they are to be arrested that they are subject to arrest under this provision. Mich. Comp. Laws § 333.7453.

<sup>106</sup> Although Michigan does not criminalize the use, possession with intent to use, or non-sale delivery of drug paraphernalia, it has a statutory provision that might exempt the sale of drug checking equipment: “Sections 7451 to 7455 [including Section 7453, which criminalizes the sale of drug paraphernalia] do not apply to ... [a]n object sold, offered for sale, or given away by a state or local governmental agency or by a person specifically authorized by a state or local governmental agency to prevent the transmission of infectious agents.” Mich. Comp. Laws § 333.7457(f).

<sup>107</sup> Michigan does not criminalize the use, possession with intent to use, or non-sale delivery of drug paraphernalia on the state level. See generally Mich. Comp. Laws §§ 333.7451-61. Michigan's Good Samaritan laws do not mention drug paraphernalia. See Mich. Comp. Laws Ann. §§ 333.7403(3), 333.7404(3).

<sup>108</sup> “Except as otherwise provided in paragraph (b), ‘drug paraphernalia’ means all equipment, products, and materials of any kind, except those items used in conjunction with permitted uses of controlled substances under this chapter or the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in... 3) testing the strength, effectiveness, or purity of a controlled substance....” Minn. Stat. Ann. § 152.01 subdiv. 18(a). Minnesota's drug paraphernalia possession statute (Minn. Stat. Ann. § 152.092) was repealed effective August 1, 2023. 2023 Minn. Sess. Law Serv. Ch. 52 (S.F. 2909). In addition, “products that detect the presence of fentanyl or a fentanyl analog in a

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controlled substance” remain specifically excluded from the definition of drug paraphernalia. Minn. Stat. § 152.01 subdiv. 18(b)(2).

<sup>109</sup> The portions of the statute that previously prohibited the delivery of drug paraphernalia (Minn. Stat. § 152.093) were removed effective August 1, 2023. 2023 Minn. Sess. Law Serv. Ch. 52 (S.F. 2909). Intentional manufacture of drug paraphernalia for delivery and delivery of drug paraphernalia to a minor that was intentionally manufactured for delivery remain illegal. Minn. Stat. § 152.093; Minn. Stat. § 152.094. In addition, “products that detect the presence of fentanyl or a fentanyl analog in a controlled substance” remain specifically excluded from the definition of drug paraphernalia. Minn. Stat. § 152.01 subdiv. 18(b)(2).

<sup>110</sup> While Minnesota does not explicitly permit SSPs, the distribution and possession of drug paraphernalia is not prohibited effective August 1, 2023. 2023 Minn. Sess. Law Serv. Ch. 52 (S.F. 2909). In addition, “products that detect the presence of fentanyl or a fentanyl analog in a controlled substance” remain specifically excluded from the definition of drug paraphernalia. Minn. Stat. § 152.01 subdiv. 18(b)(2).

<sup>111</sup> Per the overdose Good Samaritan law, “[a] person acting in good faith who seeks medical assistance for another person who is experiencing a drug-related overdose may not be charged or prosecuted for... possession of drug paraphernalia.” Minn. Stat. § 604A.05 subdiv. 1; see Minn. Stat. § 604A.05 subdiv. 1(1), (2) (listing relevant factors). “A person who experiences a drug-related overdose and is in need of medical assistance may not be charged or prosecuted for... possession of drug paraphernalia. A person qualifies for the immunities provided in this subdivision only if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.” Minn. Stat. § 604A.05 subdiv. 2. “The act of providing first aid or other medical assistance to someone who is experiencing a drug-related overdose” may be a mitigating factor for charges including the delivery of drug paraphernalia. See Minn. Stat. § 604A.05 subdiv. 4; see also Minn. Stat. § 604A.05 subdiv. 5 (defining drug-related overdose). As noted above, the statute that previously prohibited paraphernalia possession has been repealed, and the simple delivery of paraphernalia is no longer prohibited. See 2023 Minn. Sess. Law Serv. Ch. 52 (S.F. 2909).

<sup>112</sup> “It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to...test, analyze...a controlled substance in violation of the Uniform Controlled Substances Law.” Miss. Code Ann. § 41-29-139(d)(1). “‘Paraphernalia’ means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in...testing, analyzing,...or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Law.” Miss. Code Ann. § 41-29-105(v)(i). However, effective July 1, 2023, paraphernalia “does not include any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance.” Miss. Code Ann. § 41-29-105(v)(iii).

<sup>113</sup> “It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of the Uniform Controlled Substances Law.” Miss. Code Ann. § 41-29-139(d)(2). However, effective July 1, 2023, paraphernalia “does not include any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance.” Miss. Code Ann. § 41-29-105(v)(iii).

<sup>114</sup> Mississippi’s overdose Good Samaritan law exempts offenses located in Miss. Code Ann. § 41-29-139(d)(2), which prohibits delivery, sales, possession with intent to deliver or sell, and manufacture of drug paraphernalia. Miss. Code Ann. § 41-29-149.1(2)(b)(iii). However, the law refers to this provision as “relating to possession and use of paraphernalia,” so it is not clear whether use, possession with intent to use, and/or the delivery of drug paraphernalia are exempted (possession and use are prohibited by Miss. Code Ann. § 41-29-139(d)(1)). See Miss. Code Ann. § 41-29-149.1(2)(b)(iii).

<sup>115</sup> “A person commits the offense of unlawful possession of drug paraphernalia if he or she knowingly uses, or possesses with intent to use, drug paraphernalia to...test, analyze...a controlled substance or an imitation controlled substance.” Mo. Rev. Stat. § 579.074(1). “Drug paraphernalia...includes, but is not limited to: Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances.” Mo. Rev. Stat. § 195.010(18)(d).

<sup>116</sup> “A person commits the offense of unlawful distribution, delivery, or sale of drug paraphernalia if he or she unlawfully distributes, delivers, or sells, or possesses with intent to distribute, deliver, or sell drug paraphernalia knowing, or under circumstances in which one reasonably should know, that it will be used to... test, analyze... a controlled substance or an imitation controlled substance in violation of this chapter.” Mo. Rev. Stat. § 579.040(1).

<sup>117</sup> “A person who, in good faith, seeks or obtains medical assistance for someone who is experiencing a drug or alcohol overdose or other medical emergency or a person experiencing a drug or alcohol overdose or other medical emergency who seeks medical assistance for himself or herself or is the subject of a good faith request shall not be arrested, charged, prosecuted, convicted, or have his or her property subject to civil forfeiture or otherwise be penalized for the

- following if the evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking or obtaining medical assistance: ... [c]ommitting a prohibited act under section...579.074 [including use or possession with intent to use drug paraphernalia]." Mo. Rev. Stat. § 195.205(2)(1).
- <sup>118</sup> "[I]t is unlawful for a person to use or to possess with intent to use drug paraphernalia to... analyze... a dangerous drug." Mont. Code Ann. § 45-10-103. Effective May 22, 2023, the term "test" was removed from the list of activities it is illegal to possess drug paraphernalia to undertake. (2023 Montana Laws Ch. 723 (H.B. 437).)
- <sup>119</sup> "It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to...test, analyze... a dangerous drug." Mont. Code Ann. § 45-10-104.
- <sup>120</sup> Under Montana law, "The provisions of this part [including prohibitions on possessing and giving away drug paraphernalia] do not apply to...persons acting as employees or volunteers of an organization, including a nonprofit community-based organization, local health department, or tribal health department, that provides needle and syringe exchange services to prevent and reduce the transmission of communicable diseases." Mont. Code Ann. § 45-10-107(3).
- <sup>121</sup> "The provisions of [law relating to paraphernalia possession] do not apply to: (a) a person who, acting in good faith, seeks medical assistance for another person who is experiencing an actual or reasonably perceived drug-related overdose if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the person's seeking medical assistance for another person; or (b) a person who experiences a drug-related overdose and is in need of medical assistance if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance." Mont. Code Ann. § 50-32-609(1). They also do not apply to "a pregnant woman seeking or receiving evaluation, treatment, or support services for a substance use disorder." Mont. Code Ann. § 50-32-609(2). Further, "A person's act of providing first aid or other medical assistance to a person who is experiencing an actual or reasonably perceived drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under this section [including the delivery of drug paraphernalia]." Mont. Code Ann. § 50-32-609(5).
- <sup>122</sup> "It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance." Neb. Rev. Stat. § 28-441(1). Nebraska's definition of drug paraphernalia does not include "testing equipment," but includes "all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance." Neb. Rev. Stat. § 28-439. Unlike some other state paraphernalia laws, Nebraska's has not been modified since 1980. Notably, testing equipment was not removed from the law; it was simply never present.
- <sup>123</sup> "It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance." Neb. Rev. Stat. § 28-442(1). Nebraska's definition of drug paraphernalia does not include "testing equipment," but includes "all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance." Neb. Rev. Stat. § 28-439.
- <sup>124</sup> "A person shall not be in violation of section 28-441 [use and possession with intent to use drug paraphernalia]... if... [s]uch person made a good faith request for emergency medical assistance in response to a drug overdose of himself, herself, or another... [listing additional factors]." Neb. Rev. Stat. § 28-472(1); see Neb. Rev. Stat. § 28-472(1)(b)-(d), (2) (including additional relevant factors). "A person shall not be in violation of section 28-441 [use and possession with intent to use drug paraphernalia]... if such person was experiencing a drug overdose and the evidence for such violation was obtained as a result of the drug overdose and a request for medical assistance by another person made in compliance with subsection (1) of this section." Neb. Rev. Stat. § 28-472(3); see Neb. Rev. Stat. § 28-472(6) (defining "drug overdose").
- <sup>125</sup> "Any person who uses, or possesses with intent to use, drug paraphernalia to...test, analyze...a controlled substance in violation of this chapter is guilty of a misdemeanor." Nev. Rev. Stat. § 453.566. Drug paraphernalia includes "[t]esting equipment, other than testing products, used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances". Nev. Rev. Stat. § 453.554(1)(d). However, as of May 28, 2021, the definition for drug paraphernalia does not include "testing products," which are defined as "a product, including, without limitation, a fentanyl test strip, that analyzes a controlled substance for the presence of adulterants." Nev. Rev. Stat. § 453.554(2)(b); (3).

<sup>126</sup> “[A] person who delivers or sells, possesses with the intent to deliver or sell, or manufactures with the intent to deliver or sell any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of this chapter is guilty of a category E felony and shall be punished as provided in NRS 193.130 [categories and punishment of felonies].” Nev. Rev. Stat. § 453.560. There are increased penalties for delivering drug paraphernalia, including drug checking equipment, to a minor. Nev. Rev. Stat. § 453.562.

<sup>127</sup> Likely because hypodermic syringes, needles, and other injection equipment are not considered paraphernalia in Nevada, the state syringe access law only provides exemption from civil liability: “The State, any political subdivision thereof, a sterile hypodermic device program and the staff and volunteers thereof are not subject to civil liability in relation to any act or failure to act in connection with the operation of a sterile hypodermic device program, if the act or failure to act was in good faith for the purpose of executing the provisions of NRS 439.985 to 439.994, inclusive [provisions authorizing the establishment of and providing guidelines for a sterile hypodermic device program], and was not a reckless act or failure to act.” Nev. Rev. Stat. § 439.992. However, state law permits a “sterile hypodermic device program” to provide “[s]terile hypodermic devices and other related material for safer injection drug use,” which may permit the provision of drug checking equipment. Nev. Rev. Stat. § 439.991.

<sup>128</sup> “Notwithstanding any other provision of law, a person who, in good faith, seeks medical assistance for a person who is experiencing a drug or alcohol overdose or other medical emergency or who seeks such assistance for himself or herself, or who is the subject of a good faith request for such assistance may not be arrested, charged, prosecuted or convicted, or have his or her property subjected to forfeiture, or be otherwise penalized for violating...a provision of chapter 453 of NRS relating to...[d]rug paraphernalia, including, without limitation, NRS 453.554 to 453.566 [including the use, possession with intent to use, and delivery of drug paraphernalia], inclusive.” Nev. Rev. Stat. § 453C.150(1)(a)(1); see Nev. Rev. Stat. § 453C.150(3), (5) (defining relevant terms).

<sup>129</sup> New Hampshire does not criminalize the use or possession with intent to use drug paraphernalia. See N.H. Rev. Stat. Ann. § 318-B:2.

<sup>130</sup> “It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used or is customarily intended to be used to...test, analyze...a controlled substance.” N.H. Rev. Stat. Ann. § 318-B:2(II). “A person shall be guilty of a misdemeanor who...[m]anufactures with the intent to deliver, delivers or possesses with the intent to deliver any drug paraphernalia when such paraphernalia is knowingly manufactured, delivered or possessed for one or more of the uses set forth in RSA 318-B:2, II [including testing a controlled substance].” N.H. Rev. Stat. Ann. § 318-B:26(III)(c).

<sup>131</sup> Effective October 3, 2023, testing equipment “used or intended for use in testing for the presence of fentanyl, xylazine, or a fentanyl or xylazine analog” are exempt from the definition of drug paraphernalia “unless possessed in conjunction with other evidence forming the basis of a criminal charge involving the manufacturing, possessing with the intent to sell, or compounding.” 2023 New Hampshire Laws Ch. 186 (H.B. 287)

<sup>132</sup> State law permits certain entities to operate syringe services programs “to prevent the transmission of disease and reduce morbidity and mortality among individuals who inject drugs, and those individuals’ contacts.” N.H. Rev. Stat. Ann. § 318-B:43(1)(a). Among other things, such programs are required, as appropriate, to provide “sterile needles, syringes, and *other drug preparation equipment* and disposal services.” N.H. Rev. Stat. Ann. § 318-B:43(II)(C)(1) (emphasis added); see *generally* N.H. Rev. Stat. Ann. § 318-B:43. As noted, possession of drug paraphernalia is not illegal in the state.

<sup>133</sup> The New Hampshire Good Samaritan law exempts “an offense of possessing or having under his or her control, a controlled drug in violation of RSA 318-B:2.” N.H. Rev. Stat. Ann. § 318-B:28-b(II), (III). Although prohibitions related to the delivery of drug paraphernalia are included in that subsection, a plain reading of the Good Samaritan law only exempts offenses specifically related to the possession of a “controlled drug”. See N.H. Rev. Stat. Ann. § 318-B:28-b(II), (III).

<sup>134</sup> “It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to... test, analyze... or otherwise introduce into the human body a controlled dangerous substance, controlled substance analog or toxic chemical in violation of the provisions of chapter 35 of this title, other than when used, or possessed with intent to use, for ingesting, inhaling, or otherwise introducing marijuana or hashish into the human body.” N.J. Stat. § 2C:36-2(a); N.J. Stat. § 2C:36-1(a)(4). However, effective January 18, 2022, the definition of ‘drug paraphernalia’ excludes fentanyl test strips. See N.J. Stat. § 2C:36-1(a)(4) (modified by 2021 N.J. Sess. Law Serv. Ch. 403 (S.B. 3493)).

<sup>135</sup> “It shall be unlawful for any person to distribute or dispense, or possess with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia, knowing that it will be used to... test, analyze... or otherwise introduce into the human body a controlled dangerous substance, controlled substance analog or toxic chemical in violation of the provisions of chapter 35 of this title.” N.J. Stat. 2C:36-3. However, effective January 18,



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2022, the definition of 'drug paraphernalia' excludes fentanyl test strips. See N.J. Stat. § 2C:36-1(a)(4) (modified by 2021 N.J. Sess. Law Serv. Ch. 403 (S.B. 3493)).

<sup>136</sup> New Jersey exempts “the possession of a hypodermic syringe or needle” from the paraphernalia laws for participants, employees, and volunteers of SSPs. N.J. Stat. 2C:36-6a. The law also requires the health department “permit the establishment and operation of harm reduction services.” N.J. Stat. Ann. § 26:5C-27. Authorized harm reduction services is defined as “a suite of harm reduction services, approved by the Department of Health and provided in a manner that is consistent with State and federal law, which services shall include, but shall not be limited to: syringe access, syringe disposal, referrals to health and social services, harm reduction counseling and supplies including, but not limited to, fentanyl test strips, and HIV and hepatitis C testing.” N.J. Stat. Ann. § 26:5C-26.1. Harm reduction supplies is further defined as “any materials or equipment designed to identify or analyze the presence, strength, effectiveness, or purity of controlled dangerous substances or controlled substance analogs, including, but not limited to, fentanyl test strips; opioid antidotes and associated supplies; and any other materials or equipment that may be used to prevent, reduce or mitigate the harms of disease transmission, overdose, and other harms associated with personal drug use as are designated through rules prescribed by the Commissioners of Health or Human Services.” N.J. Stat. Ann. § 26:5C-26.1. Pursuant to the department of health regulations, a harm reduction center can further authorize secondary distribution of harm reduction supplies, so long as there is a policy in place for doing so. N.J. Admin. Code § 8:63-3.1(e).

<sup>137</sup> “A person who experiences a drug overdose and who seeks medical assistance or is the subject of a good faith request for medical assistance pursuant to section 4 of this act shall not be... arrested, charged, prosecuted, or convicted for using or possessing with intent to use drug paraphernalia pursuant to N.J. Stat. 2C:36-2.” N.J. Stat. 2C:35-31(a)(6). “The provisions of subsection a. of this section shall only apply if the evidence for an arrest, charge, prosecution, conviction or revocation was obtained as a result of the seeking of medical assistance.” N.J. Stat. 2C:35-31(b).

<sup>138</sup> Drug paraphernalia includes “testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs.” N.M. Stat. Ann. § 30-31-2(T)(4). “It is unlawful for a person to use or possess with intent to use drug paraphernalia to...test, analyze...a controlled substance in violation of the Controlled Substances Act.” N.M. Stat. Ann. § 30-31-25.1(A). However, “supplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants” were exempted from this prohibition effective May 18, 2022. N.M. Stat. Ann. § 30-31-25.1(A)(3) (modified by 2022 New Mexico Laws Ch. 4 (H.B. 52)).

<sup>139</sup> “It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of the Controlled Substances Act.” N.M. Stat. Ann. § 30-31-25.1(B). The exemption that applies to paraphernalia possession does not extend to its distribution.

<sup>140</sup> New Mexico law provides exemptions to the paraphernalia law for syringe services program staff, volunteers, and participants: “The provisions of this subsection do not apply to a person who is in possession of: (1) hypodermic syringes or needles for the purpose of participation in or administration of the Harm Reduction Act; (2) supplies or devices obtained pursuant to the Harm Reduction Act in accordance with rules established by the department of health for the harm reduction program; or (3) supplies or devices used for the testing of controlled substances or controlled substance analogs for dangerous adulterants.” N.M. Stat. Ann. § 30-31-25.1(A). As of May 18, 2022, New Mexico law requires that a harm reduction program provide participants “supplies or devices used for testing controlled substances or controlled substance analogs for potentially dangerous adulterants.” N.M. Stat. Ann. § 24-2C-5(C).

<sup>141</sup> “A person who, in good faith, seeks medical assistance for someone experiencing an alcohol- or drug-related overdose shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating [subsection A of section 30-31-25.1 NMSA 1978, including charges related to the use or possession with intent to use drug paraphernalia] if the evidence for the alleged violation was obtained as a result of the need for seeking medical assistance.” N.M. Stat. Ann. § 30-31-27.1(A)(1). “A person who experiences an alcohol- or drug-related overdose and is in need of medical assistance shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating [subsection A of section 30-31-25.1 NMSA 1978, including charges related to the use or possession with intent to use drug paraphernalia] if the evidence for the alleged violation was obtained as a result of the overdose and the need for seeking medical assistance.” N.M. Stat. Ann. § 30-31-27.1(B)(1). “The act of seeking medical assistance for someone who is experiencing an alcohol- or drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substances Act for which immunity is not provided pursuant to this section [including for charges



- related to the delivery of drug paraphernalia].” N.M. Stat. Ann. § 30-31-27.1(C); see N.M. Stat. Ann. § 30-31-27.1(D) (defining “seeking medical assistance”).
- <sup>142</sup> New York does not criminalize the use or possession with intent to use drug checking equipment. *But see* N.Y. Penal Law § 220.50 (Criminal provisions for using certain drug paraphernalia, not including drug checking equipment).
- <sup>143</sup> New York does not criminalize the free distribution of drug paraphernalia. *See generally* N.Y. Penal Law § 220.50. However, it is unlawful in New York to possess with intent to sell, offer for sale, or purchase drug-related paraphernalia. N.Y. Gen. Bus. Law § 851.
- <sup>144</sup> New York does not criminalize the use, possession with intent to use, or free distribution of drug checking equipment. However, the Good Samaritan law exempts charges relating to the sale of drug paraphernalia. N.Y. Penal Law § 220.78(1).
- <sup>145</sup> Drug paraphernalia means “all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including...testing, analyzing...or otherwise introducing controlled substances into the human body. N.C. Gen. Stat. § 90-113.21(a). North Carolina criminalizes the use or possession with intent to use “drug paraphernalia to...test, analyze...a controlled substance other than marijuana.” N.C. Gen. Stat. § 90-113.22(a). However, the law exempts drug checking equipment for personal use from these provisions: “Notwithstanding the provisions of subsection (a) of this section [concerning the use of and possession with intent to use drug paraphernalia], it is not unlawful for a person who introduces a controlled substance into his or her body, or intends to introduce a controlled substance into his or her body, to knowingly use, or to possess with intent to use, testing equipment for identifying or analyzing the strength, effectiveness, or purity of that controlled substance....” N.C. Gen. Stat. § 90-113.22(d)(i).
- <sup>146</sup> “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia knowing that it will be used to... test, analyze... a controlled substance which it would be unlawful to possess.” N.C. Gen. Stat. § 90-113.23(a). “Delivery, possession with intent to deliver, or manufacture with intent to deliver, of each separate and distinct item of drug paraphernalia is a separate offense.” N.C. Gen. Stat. § 90-113.23(b).
- <sup>147</sup> North Carolina exempts numerous organizations from provisions related to possessing and distributing drug checking equipment: “Notwithstanding the provisions of subsection (a) of this section [concerning the use or possession with intent to use drug paraphernalia], it is not unlawful for... a governmental or nongovernmental organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors to possess such testing equipment or distribute such testing equipment to a person who intends to introduce a controlled substance into his or her body.” N.C. Gen. Stat. § 90-113.22(d)(ii). North Carolina further exempts participants, employees, and volunteers of a syringe services program from possession charges, likely including possession of drug checking equipment: “Notwithstanding any...law, no employee, volunteer, or participant of a program established pursuant to this section [a needle and hypodermic syringe exchange program] shall be charged with or prosecuted for possession of ... [n]eedles, hypodermic syringes, or *other injection supplies* obtained from or returned to a program established pursuant to this section.” N.C. Gen. Stat. § 90-113.27(a), (c)(1) (emphasis added). Further, North Carolina’s Department of Health and Human Services website notes that “most syringe exchange programs operate according to the practices and philosophy of harm reduction” and describes harm reduction techniques as including “drug-checking with fentanyl test strips.” *Syringe and Naloxone Access*, N.C. DEP’T OF HEALTH AND HUM. SERVS., <https://www.ncdhhs.gov/about/departments/initiatives/opioid-epidemic/syringe-and-naloxone-access> (last visited Aug. 24, 2023).
- <sup>148</sup> A person acting in good faith who seeks medical assistance in the good faith belief that they are the first to seek assistance for an individual experiencing a drug-related overdose shall not be prosecuted for a violation of G.S. 90-113.22 [including use or possession with intent to use drug paraphernalia] if the person provides their name and does not seek assistance during the execution of a warrant or lawful search, and evidence for prosecution under those sections was obtained as a result of the person seeking medical assistance for the drug-related overdose. N.C. Gen. Stat. § 90-96.2(b). The same protections apply to the person who experienced the overdose. N.C. Gen. Stat. § 90-96.2(c).
- <sup>149</sup> “A person may not use or possess with intent to use drug paraphernalia to...test, analyze...a controlled substance.” N.D. Cent. Code § 19-03.4-03(1). Drug paraphernalia includes “[t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” N.D. Cent. Code § 19-03.4-01(1).
- <sup>150</sup> “A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used to...test, analyze...a controlled substance.” N.D. Cent. Code § 19-03.4-04. There are increased penalties for delivering drug paraphernalia, including drug checking equipment, to a minor. N.D. Cent. Code § 19-03.4-05.

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- <sup>151</sup> North Dakota law requires syringe services programs to provide supplies as part of their operations and specifically includes “testing strips” under the definition of “supplies.” See N.D. Cent. Code § 23-01-44. “Syringes, needles, and supplies appropriately collected under this section are not considered drug paraphernalia...” N.D. Cent. Code § 23-01-44(7). However, the plain language of the statute appears to provide protection only to testing strips “collected” by an SSP. Since testing strips are generally distributed by an SSP, not collected by one, it is not clear what protection, if any, this section provides.
- <sup>152</sup> “An individual is immune from criminal prosecution under...section 19-03.4-03 [use or possession with intent to use drug paraphernalia] if in good faith that individual seeks medical assistance for another individual in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance.” N.D. Cent. Code § 19-03.1-23.4.
- <sup>153</sup> “As used in this section, ‘drug paraphernalia’ means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in...testing, analyzing...or otherwise introducing into the human body, a controlled substance in violation of this chapter.” Ohio Rev. Code Ann. § 2925.14(A). “[N]o person shall knowingly use, or possess with purpose to use, drug paraphernalia.” Ohio Rev. Code Ann. § 2925.14(C)(1). However, effective April 4, 2023, the statute “does not apply to a person’s use, or possession with purpose to use, any drug testing strips to determine the presence of fentanyl or a fentanyl-related compound. Ohio Rev. Code Ann. § 2925.14(D)(4)
- <sup>154</sup> Ohio does not criminalize the free distribution of drug paraphernalia. However, it is unlawful in Ohio to “sell, or possess or manufacture with purpose to sell” drug paraphernalia. Ohio Rev. Code Ann. § 2925.14(C)(2).
- <sup>155</sup> Ohio law exempts participants of bloodborne infectious disease prevention programs (what the state terms SSPs) from paraphernalia possession under strict circumstances: “If participating in a component of a bloodborne infectious disease prevention program would be considered a violation of [Division (C)(1) of section 2925.14 of the Revised Code regarding the prohibition against illegal possession of drug paraphernalia], a program participant who is within one thousand feet of a program facility and is in possession of documentation from the program identifying the individual as an active participant in the program is not subject to criminal prosecution for the violation.” Ohio Rev. Code Ann. § 3707.57(F)(2)(c). Ohio also exempts volunteers and staff of a program: “If carrying out a duty under a component of a bloodborne infectious disease prevention program [authorized by Ohio Rev. Code Ann. § 3707.57] would be considered a violation of [Division (C)(1) of section 2925.14 of the Revised Code regarding the prohibition against illegal possession of drug paraphernalia], an employee or volunteer of the program, when carrying out the duty, is not subject to criminal prosecution for the violation.” Ohio Rev. Code Ann. § 3707.57(F)(1)(c).
- <sup>156</sup> Ohio law provides protection from the crime of possessing controlled substances in certain circumstances. Ohio Rev. Code Ann. § 2925.11(B)(2). Effective April 4, 2023, those protections extend to the statute criminalizing the use and possession with intent to use drug paraphernalia “when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person experiences a drug overdose and seeks medical assistance for that overdose, or a person is the subject of another person seeking or obtaining medical assistance for that overdose.” Ohio Rev. Code Ann. § 2925.14(D)(3)
- <sup>157</sup> “No person shall use drug paraphernalia to...test, analyze...a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.” Okla. Stat. tit. 63 § 2-405(B). Drug paraphernalia includes “testing equipment used, intended for use, or fashioned specifically for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances.” Okla. Stat. tit. 63 § 2-101(36)(d). However, effective June 9, 2023 “the term drug paraphernalia shall not include ... drug testing strips possessed by a person for purposes of determining the presence of fentanyl or a fentanyl-related compound.” Okla. Stat. Ann. tit. 63, § 2-101(36).
- <sup>158</sup> “No person shall deliver, sell, possess or manufacture drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.” Okla. Stat. tit. 63 § 2-405(C). However, effective June 9, 2023 “the term drug paraphernalia shall not include ... drug testing strips possessed by a person for purposes of determining the presence of fentanyl or a fentanyl-related compound.” Okla. Stat. Ann. tit. 63, § 2-101(36).

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- <sup>159</sup> Effective April 20, 2021, harm reduction organizations that have registered with the State Department of Health are authorized to “[p]ossess and distribute hypodermic needles, cleaning kits, test kits and opioid antagonists.” Okla. Stat. tit. 63 § 2-1101(B)(6). The paraphernalia law was also modified to note that “nothing in this section shall apply to objects in the possession of harm-reduction services providers as authorized by [the syringe services program law].” Okla. Stat. tit. 63 § 2-101.1.
- <sup>160</sup> “A person who meets the criteria of subsection A of this section [listing the factors to meet the Good Samaritan law] is immune from criminal prosecution for...possession of drug paraphernalia associated with a controlled dangerous substance, as defined in paragraph 36 of Section 2-101 of Title 63 of the Oklahoma Statutes.” Okla. Stat. tit. 63 § 2-413.1(B); see also Okla. Stat. tit. 63 § 2-413.1(A) (listing the factors to qualify for the Good Samaritan exception).
- <sup>161</sup> Oregon does not criminalize the use or possession with intent to use drug paraphernalia. See generally Or. Rev. Stat. §§ 475.525-.744.
- <sup>162</sup> “It is unlawful for any person to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to unlawfully...test, analyze...a controlled substance.” Or. Rev. Stat. § 475.525(1). Violations are punishable by a civil penalty of between \$2,000 and \$10,000. Or. Rev. Stat. § 475.565. Effective August 4, 2023, testing equipment was removed from the list of examples of drug paraphernalia and “single-use drug test strips, drug testing tools or any other item designed to prevent or reduce the potential harm associated with the use of controlled substances, including but not limited to items that reduce the transmission of infectious disease or prevent injury, infection or overdose” are explicitly excluded from the definition of “drug paraphernalia”. 2023 Oregon Laws Ch. 593 (H.B. 2395) However, the bill added a section specifically making it against the law “to provide single-use drug test strips or drug testing tools to a minor who is under 15 years of age unless the strips or tools are provided to the minor as part of the minor’s substance use disorder treatment provided by a mental health care provider and the strips or tools are provided by the mental health care provider.” 2023 Oregon Laws Ch. 593 (H.B. 2395)
- <sup>163</sup> “Sterile needles and syringes and *other items provided by a syringe service program* may not be considered ‘drug paraphernalia,’ as that term is defined in ORS 475.525 [related to the delivery of drug paraphernalia].” Or. Rev. Stat. § 475.757 (3) (emphasis added).
- <sup>164</sup> “The immunity conferred under subsections (1) and (2) of this section [listing the factors to qualify for the Good Samaritan exception] applies to arrest and prosecution for...[u]nlawful possession of drug paraphernalia with intent to sell or deliver as described in ORS 475.525.” Or. Rev. Stat. § 475.898(3)(k); see also Or. Rev. Stat. §§ 475.898(1),(2) (listing the factors to qualify for the Good Samaritan exception).
- <sup>165</sup> “The following acts and the causing thereof within the Commonwealth are hereby prohibited: ... [t]he use of, or possession with intent to use, drug paraphernalia for the purpose of...testing, analyzing...a controlled substance in violation of this act.” 35 Pa. Stat. § 780-113(a)(32). Drug paraphernalia includes “[t]esting equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” 35 Pa. Stat. § 780-102(b)(4). However, effective January 3, 2023 “[t]his definition does not include testing products utilized in determining whether a controlled substance contains chemicals, toxic substances or hazardous compounds in quantities which can cause physical harm or death [and] [t]he term “testing products” shall include, but is not limited to, fentanyl test strips.” 35 Pa. Stat. Ann. § 780-102.
- <sup>166</sup> “The delivery of, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it would be used to...test, analyze...a controlled substance in violation of this act.” 35 Pa. Stat. § 780-113(a)(33). However, effective January 3, 2023 “[t]his definition does not include testing products utilized in determining whether a controlled substance contains chemicals, toxic substances or hazardous compounds in quantities which can cause physical harm or death [and] [t]he term “testing products” shall include, but is not limited to, fentanyl test strips.” 35 Pa. Stat. Ann. § 780-102.
- <sup>167</sup> While syringe services programs operate in Allegheny and Philadelphia counties under local authorization, neither provides explicit legal protection from paraphernalia laws. See Allegheny County Code § 851-1 et seq; Phila. Exec. Order No. 04-92 (July 27, 1992).
- <sup>168</sup> “The prohibition on charging or prosecuting a person as described in subsection (a) [listing the factors to qualify for the Good Samaritan exception] bars charging or prosecuting a person for probation and parole violations and for violations of section 13(a)(5), (16), (19), (31), (32) [use and possession with intent to use drug paraphernalia], (33) [delivery of drug paraphernalia] and (37).” 35 Pa. Stat. § 780-113.7(b); see also 35 Pa. Stat. § 780-113.7(a), (c) (listing the factors to qualify for the Good Samaritan exception).
- <sup>169</sup> “It shall be unlawful for any person to knowingly and with criminal intent, use or possess with the intention of using drug paraphernalia to ...test, analyze...a controlled substance in violation of this chapter.” P.R. Laws Ann. tit. 24, § 2411b(c)(2). Drug paraphernalia includes “[t]esting equipment, or chemicals or alcohol used, or destined or designed

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for use in the identification, analysis or measurement of the potency, effectiveness, purity or quality of controlled substances.” P.R. Laws Ann. tit. 24, § 2411b(a)(4).

<sup>170</sup> “It shall be unlawful for any person to knowingly, and with criminal intent, manufacture, distribute, sell, dispense, deliver, transport, conceal, or possess with the intent of distributing, selling, disposing, delivering, transporting or concealing drug paraphernalia, as this term is defined in subsection (a) of this section, in order to...test, analyze...a controlled substance into the human body in violation of this chapter.” P.R. Laws Ann. tit. 24, § 2411b(c)(1). There are increased penalties for a person over 18 delivering paraphernalia to a person under 18. P.R. Laws Ann. tit. 24, § 2405(c).

<sup>171</sup> “The provisions of § 2411b and 2405 of this title shall not apply to: (1) The Department of Health. (2) Non-profit entities duly authorized by the Department of Health that, with the purpose of preventing the transmission of contagious diseases, or as part of an educational or prevention program, distribute hypodermic needles and other accessories. (3) Duly identified participants of said programs for distribution and exchange of hypodermic needles and other accessories.” P.R. Laws Ann. Tit. 24, § 2608.

<sup>172</sup> Puerto Rico enacted a Good Samaritan law in August 2021 that provides protection from some drug paraphernalia charges, but not charges related to testing equipment. See P.R. Laws Ann. tit. 24, § 2644(a)(1).

<sup>173</sup> Rhode Island does not criminalize the use or possession with intent to use drug paraphernalia. See *generally* R.I. Gen. Laws §§ 21-28.5-1–4.

<sup>174</sup> Rhode Island has explicitly legalized the provision and utilization of drug checking equipment: “(a) Any person may provide, administer, or utilize a narcotic testing product to assist another person in determining whether a narcotic or substance contains chemicals, toxic substances, or hazardous compounds. Narcotic testing products shall include, but not be limited to, fentanyl test strips. (b) A person who provides, administers, or utilizes a narcotic testing product to assist another person shall not be subject to civil liability or criminal prosecution as a result of providing, administering, or utilizing the narcotic testing product to assist another person. R.I. Gen. Laws § 21-28.9-3.1.

<sup>175</sup> While syringe services programs are authorized in Rhode Island, the law does not provide explicit protection from paraphernalia-related crimes. See R.I. Gen. Laws § 23-11-19. However, any “person who provides, administers, or utilizes a narcotic testing product to assist another person shall not be subject to civil liability or criminal prosecution as a result of providing, administering, or utilizing the narcotic testing product to assist another person. R.I. Gen. Laws § 21-28.9-3.1(b).

<sup>176</sup> The Rhode Island Good Samaritan law exempts possession of drug paraphernalia, even though this is not a crime in the state. See R.I. Gen. Laws § 21-28.9-4. The Good Samaritan law is confusingly written, although we believe it was intended to apply to the delivery of drug paraphernalia under the general rule that legislatures are presumed not to create laws that would have no effect: “Any person who, in good faith, without malice and in the absence of evidence of an intent to defraud, seeks medical assistance for someone experiencing a drug overdose or other drug-related medical emergency shall not be charged or prosecuted for any crime related to the possession of a controlled substance or drug paraphernalia, or the operation of a drug-involved premises, if the evidence for the charge was gained as a result of the seeking of medical assistance.” R.I. Gen. Laws § 21-28.9-4(a); see *also* R.I. Gen. Laws § 21-28.9-4(b) (containing the Good Samaritan exception as applied to a person experiencing an overdose).

<sup>177</sup> South Carolina’s definition of paraphernalia does not explicitly include drug checking equipment, nor does it encompass items used for injecting controlled substances: “‘Paraphernalia’ means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes but includes, but is not limited to [lists examples not including drug checking equipment].” S.C. Code § 44-53-110(33). “Administering” is defined in the Code as “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 his presence, by his authorized agent); or (b) the patient or research subject at the direction and in the presence of the practitioner.” S.C. Code of Laws § 44-53-110(1). “Practitioner” is defined as “a physician, dentist, veterinarian, podiatrist, 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 this State.” S.C. Code of Laws § 44-53-110(36). We therefore conclude that it is not contrary to South Carolina law for a person who uses drugs to possess drug checking equipment. In South Carolina the possession of paraphernalia is a civil offense: “It shall be unlawful for any person to advertise for sale, manufacture, possess, sell or deliver, or to possess with the intent to deliver, or sell paraphernalia.” S.C. Code § 44-53-391(a). “Any person found guilty of violating the provisions of this section shall be subject to a civil fine of not more than five hundred dollars except that a corporation shall be subject to a civil fine of not more than fifty

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thousand dollars. Imposition of such fine shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.” S.C. Code § 44-53-391(c).

<sup>178</sup> South Carolina prohibits the delivery of paraphernalia: “It shall be unlawful for any person to advertise for sale, manufacture, possess, sell or deliver, or to possess with the intent to deliver, or sell paraphernalia.” S.C. Code § 44-53-391(a). However, South Carolina’s definition of paraphernalia does not explicitly include drug checking equipment. ‘Paraphernalia’ means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes but includes, but is not limited to [lists examples not including drug checking equipment].” S.C. Code § 44-53-110(33).

<sup>179</sup> “Notwithstanding any provision of law to the contrary, the term ‘drug paraphernalia’ as defined in Section 44-53-110 shall not include rapid fentanyl test strips or any testing equipment or devices solely used, intended for use, or designed to determine whether a substance contains fentanyl or its analogues.” S.C. Code Ann. § 44-53-393. However, as noted above, we believe that such testing equipment or devices were not previously “drug paraphernalia” under South Carolina law.

<sup>180</sup> Syringe services programs are not explicitly permitted in South Carolina.

<sup>181</sup> “A person who seeks medical assistance for another person in accordance with the requirements of subsection (A) may not be prosecuted for...(5) possessing paraphernalia in violation of Section 44-53-391; (6) selling or delivering paraphernalia in violation of Section 44-53-391, when the sale or delivery is to the person who appears to be experiencing a drug-related overdose.” S.C. Code § 44-53-1920(B)(5), (6); see also S.C. Code § 44-53-1920(A), (C), (D) (listing the factors to qualify for the Good Samaritan exception).

<sup>182</sup> “No person, knowing the drug related nature of the object, may use or to possess with intent to use, drug paraphernalia to...test, analyze...any controlled substance.” S.D. Codified Laws § 22-42A-3. Drug paraphernalia includes “any equipment, products and materials of any kind which are primarily used, intended for use, or designed for use by the person in possession of them, in...testing, analyzing...or otherwise introducing into the human body any controlled substance or marijuana in violation of the provisions of this chapter.” S.D. Codified Laws § 22-42A-1. However, effective July 1, 2023, “drug paraphernalia does not include a product that detects the presence of fentanyl or a fentanyl analog in a controlled substance.” S.D. Codified Laws § 22-42A-1.

<sup>183</sup> “No person, knowing the drug related nature of the object, may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to... test, analyze... a controlled substance... in violation of this chapter.” S.D. Codified Laws § 22-42A-4. However, effective July 1, 2023, “drug paraphernalia does not include a product that detects the presence of fentanyl or a fentanyl analog in a controlled substance.” S.D. Codified Laws § 22-42A-1.

<sup>184</sup> South Dakota’s Good Samaritan exception does not provide protection for drug paraphernalia crimes. See S.D. Codified Laws §§ 34-20A-110, 34-20A-111. However, the Good Samaritan law might apply as a mitigating factor for charges relating to the use, possession with intent to use, or delivery of drug paraphernalia: “providing first aid or other medical assistance to someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under §§ 34-20A-109 to 34-20A-113, inclusive.” S.D. Codified Laws § 34-20A-112; see also S.D. Codified Laws §§ 34-20A-109, 34-20A-113 (listing factors to qualify for the Good Samaritan law, definitions, and other relevant information).

<sup>185</sup> “Except when used or possessed with the intent to use by a person authorized...to dispense, prescribe, manufacture or possess a controlled substance, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test, analyze...a controlled substance or controlled substance analogue in violation of this part.” Tenn. Code Ann. § 39-17-425(a)(1). Drug paraphernalia includes “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances,” but (from March 31, 2022 to July 1, 2025) does not include “narcotic testing equipment used to determine whether a controlled substance contains a synthetic opioid, unless the narcotic testing equipment is possessed for purposes of the defendant’s commission of an offense under § 39-17-417.” Tenn. Code Ann. § 39-17-402(12)(B) (modified by 2022 Tennessee Laws Pub. Ch. 764 (S.B. 2427)).

<sup>186</sup> “Except when delivered, possessed with the intent to deliver, or manufactured with the intent to deliver by a person authorized... to dispense, prescribe, manufacture or possess a controlled substance, it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance or controlled substance analogue in violation of this part.” Tenn. Code Ann. § 39-17-425(b)(1). Drug paraphernalia includes “[t]esting equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances,” but (from March 31, 2022 to July 1, 2025) does not include “narcotic

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testing equipment used to determine whether a controlled substance contains a synthetic opioid, unless the narcotic testing equipment is possessed for purposes of the defendant's commission of an offense under § 39-17-417.” Tenn. Code Ann. § 39-17-402(12)(B) (modified by 2022 Tennessee Laws Pub. Ch. 764 (S.B. 2427)).

<sup>187</sup> Tennessee exempts participants, volunteers, and employees from the state paraphernalia law for paraphernalia obtained from or returned to a syringe exchange: “It is an exception to the application of title 39, chapter 17, part 4 [related to possessing or giving away drug paraphernalia, including drug checking equipment], if an employee, volunteer, or participant of a program established pursuant to this section [needle and hypodermic syringe exchange program] possesses...[n]eedles, hypodermic syringes, or *other injection supplies obtained from or returned to a program established pursuant to this section.*” Tenn. Code Ann. § 68-1-136(c)(1)(A) (emphasis added). “The exception provided in this subsection (c) shall apply only if the person claiming the exception provides written verification that a needle, syringe, or other injection supplies were obtained from a needle and hypodermic syringe exchange program established pursuant to this section. For a participant in the program, this exception shall only apply to possession when the participant is engaged in the exchange or in transit to or from the exchange.” Tenn. Code Ann. § 68-1-136(c)(2)(A). The statute authorizing the creation of a syringe exchange explains that syringe exchanges should include supplies in addition to syringes, likely including drug checking equipment: “Programs established pursuant to this section shall offer all of the following: ... [n]eedles, hypodermic syringes, and *other injection supplies.*” Tenn. Code Ann. § 68-1-136(b)(2) (emphasis added).

<sup>188</sup> “Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of the drug violation resulted from seeking such medical assistance. Any person who is experiencing a drug overdose and who in good faith seeks medical assistance for or is the subject of a request for medical assistance shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of the drug violation resulted from seeking such medical assistance. This immunity from being arrested, charged, or prosecuted shall apply to the person experiencing a drug overdose on the person's first such drug overdose. This immunity from being arrested, charged, or prosecuted may be applied if the person experiences subsequent drug overdoses at the discretion of the responding law enforcement officer or the district attorney general's office.” Tenn. Code Ann. § 63-1-156(b). As defined by the same provision, a “drug violation” includes a violation of § 39-17-425 [including the use, possession with intent to use, and delivery of drug paraphernalia].” Tenn. Code Ann. § 63-1-156(a)(3)(B); *see also* Tenn. Code Ann. § 63-1-156(a) (listing additional relevant definitions).

<sup>189</sup> “A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to...test, analyze...a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.” Tex. Health & Safety Code Ann. § 481.125(a). Drug paraphernalia includes “testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.” Tex. Health & Safety Code Ann. § 481.002(17)(D).

<sup>190</sup> “A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to... test, analyze... a controlled substance in violation of this chapter.” Tex. Health & Safety Code Ann. § 481.125(b).

<sup>191</sup> Effective September 1, 2021, Texas law provides a “defense to prosecution” for paraphernalia possession if certain criteria are met. Tex. Health & Safety Code Ann. § 481.125(g)–(i) (modified by 2021 Tex. Sess. Law Serv. Ch. 808 (H.B. 1694)).

<sup>192</sup> “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test, analyze...a controlled substance...in violation of this chapter.” Utah Code Ann. § 58-37a-5(1)(a). Drug paraphernalia includes “testing equipment used, or intended for use, to identify or to analyze the strength, effectiveness, or purity of a controlled substance.” Utah Code Ann. § 58-37a-3(3)(d). However, effective May 3, 2023, drug paraphernalia “does not include a testing product or equipment, including a fentanyl test strip, used or intended for use to determine whether a substance contains: (a) a controlled substance that can cause physical harm or death; or (b) a chemical or compound that can cause physical harm or death. Utah Code Ann. § 58-37a-3(3).

<sup>193</sup> “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia will be used to...test, analyze...a controlled substance...in violation of this act.” Utah Code Ann. § 58-37a-5(2)(a). However, effective May 3, 2023, drug paraphernalia “does not include a testing product or equipment, including a fentanyl test strip, used or intended for use to determine whether a substance contains: (a) a controlled substance that can cause physical harm or death; or (b) a chemical or compound that can cause physical harm or death. Utah Code Ann. § 58-37a-3(3).

<sup>194</sup> While SSPs are authorized in Utah, no immunity is explicitly provided. See Utah Code Ann. § 26B-7-117.

<sup>195</sup> “It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person or bystander [lists the factors to qualify for the Good Samaritan exemption].” Utah Code Ann. § 58-37-8(16)(a).

Subsection (16)(b) includes “any violation of Chapter 37a, Utah Drug Paraphernalia Act [including the use, possession with intent to use, and delivery of drug paraphernalia].” Utah Code Ann. § 58-37-8(16)(b)(iii); see also Utah Code Ann. § 58-37-8(16)(a); (c) (listing the factors to qualify for the Good Samaritan law exemption and the definition of “good faith”).

<sup>196</sup> Vermont does not criminalize the use or possession with intent to use drug paraphernalia. See generally Vt. Stat. Ann. tit. 18, §§ 4475-78. Additionally, effective May 25, 2023, Vermont explicitly added “other harm reduction supplies distributed or possessed as part of an organized community-based needle exchange program” to the list of what is not included as drug paraphernalia, which would likely include drug checking equipment. Vt. Stat. Ann. tit. 18, § 4475.

<sup>197</sup> The free distribution of drug paraphernalia is not criminalized in Vermont. See generally Vt. Stat. Ann. tit. 18, §§ 4475-78. However, it is illegal in Vermont to sell drug paraphernalia to a minor. Vt. Stat. Ann. tit. 18, § 4476(a).

<sup>198</sup> SSPs are authorized by state law, but no explicit immunity is provided. See Vt. Stat. Ann. tit. 18, § 4478.

<sup>199</sup> The use, possession with intent to use, and free distribution of drug paraphernalia is not criminalized in Vermont. See generally Vt. Stat. Ann. tit. 18, §§ 4475-78. The Good Samaritan law may provide a mitigating factor for selling drug paraphernalia, including drug checking equipment, to a minor. See Vt. Stat. Ann. tit. 18, § 4254(f).

<sup>200</sup> “[I]t is unlawful for any person to possess controlled paraphernalia.” Va. Code Ann. § 54.1-3466(B). The definition of “controlled paraphernalia” is generally limited to instruments “adapted for the administration of controlled dangerous substances by hypodermic injections” and containers “suitable for the packaging of individual quantities of controlled drugs.” Va. Code Ann. § 54.1-3466(A). Further, Virginia law was modified effective July 1, 2019, such that “[c]ontrolled paraphernalia” does not include narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” Va. Code Ann. § 54.1-3466(A).

<sup>201</sup> “Except as authorized in this chapter, it is unlawful for any person to distribute controlled paraphernalia.” Va. Code Ann. § 54.1-3466(C). However, as of July 1, 2019, “[C]ontrolled paraphernalia” does not include narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” Va. Code Ann. § 54.1-3466(A). Similarly, the definition of “drug paraphernalia” includes “[t]esting equipment intended for use or designed for use in identifying or in analyzing the strength or effectiveness of marijuana or controlled substances, other than narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” Va. Code Ann. § 18.2-265.1(4). It is illegal to sell or possess with intent to sell such drug paraphernalia (but not to give it away). Va. Code Ann. § 18.2-265.3.

<sup>202</sup> “The provisions of [sections related to possessing or giving away drug paraphernalia and controlled paraphernalia] and of § 18.2-265.3 [related to delivery of drug paraphernalia to a minor] shall not apply to (i) a person who possesses or distributes controlled paraphernalia on behalf of or for the benefit of a comprehensive harm reduction program established pursuant to § 32.1-45.4 or (ii) a person who possesses controlled paraphernalia obtained from a comprehensive harm reduction program established pursuant to § 32.1-45.4.” Va. Code Ann. § 54.1-3466(G). These exemptions are restated in the statute authorizing comprehensive harm reduction programs. Va. Code Ann. § 32.1-45.4(E)-(G). The statute authorizing comprehensive harm reduction programs explains that these programs should include supplies in addition to syringes, likely including drug checking equipment: “[a] comprehensive harm reduction program established pursuant to this section shall include...the provision of hypodermic needles and syringes and *other injection supplies...overdose prevention...access to overdose prevention kits.*” Va. Code Ann. § 32.1-45.4(B)(ii), (iv)(b), (v) (emphasis added).

<sup>203</sup> “No individual shall be subject to arrest or prosecution for...possession of controlled paraphernalia pursuant to § 54.1-3466 if [lists factors to qualify for the Good Samaritan exemption].” Va. Code Ann. § 18.2-251.03(B); see also Va. Code Ann. § 18.2-251.03(A), (B)(1)-(4) (listing a definition for “overdose” and factors to qualify for the Good Samaritan exemption).

<sup>204</sup> D.C. generally criminalizes the use or possession with intent to use drug paraphernalia, including drug checking equipment. See D.C. Code Ann. §§ 48-1101(3)(D), 48-1103(a)(1). However, D.C. exempts the use, and possession with the intent to use, drug paraphernalia for the personal use of a controlled substance. D.C. Code Ann. § 48-1103(a)(1)(1A). When originally enacted effective April 11, 2019, this carveout was specific to testing equipment. However, it was extended to all paraphernalia as of March 16, 2021. This statutory scheme leaves open the possibility that someone possessing drug checking equipment for reasons other than personal use (i.e., educational use, or to give to another person for use) could be convicted of paraphernalia possession.

<sup>205</sup> “[I] 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...test, analyze...a controlled substance.” D.C. Code Ann. § 48-1103(b)(1).



- <sup>206</sup> “Notwithstanding paragraph (1) of this subsection [related to giving away drug paraphernalia], 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, drug paraphernalia for the personal use of a controlled substance [including drug checking equipment].” D.C. Code Ann. § 48-1103(b)(1A)). Community-based organization is defined as “an organization that provides services, including medical care, counseling, homeless services, or drug treatment, to individuals and communities impacted by drug use. The term ‘community-based organization’ includes all organizations currently participating in the Needle Exchange Program with the Department of Human Services under § 48-1103.01.” D.C. Code Ann. § 7-404(a)(1). Effective April 21, 2023, the exception is extended to “District government employees, contractors, and grantees, acting within the scope of their employment, contract, or grant.” D.C. Code Ann. § 48-1103(b)(1B) (modified by 2022 District of Columbia Laws 24-345 (Act 24-781).)
- <sup>207</sup> The District’s overdose Good Samaritan law provides that use or possession with intent to use drug paraphernalia “shall not be considered” a crime if the requirements of the law are met. D.C. Code § 7-403(a).
- <sup>208</sup> Effective May 13, 2021, Washington law was modified to remove “test, analyze” and “otherwise introduce into the human body” from the list of prohibited activities. Wash. Rev. Code § 69.50.412(1). It seems clear that this change was made to remove criminal sanctions associated with the use and distribution of drug checking equipment (among other previously prohibited objects).
- <sup>209</sup> Effective May 13, 2021, the law was modified to remove “test” and “otherwise introduce into the human body” from the list of prohibited activities related to paraphernalia. Wash. Rev. Code § 69.50.412(2). Effective July 1, 2023, the law governing selling or giving away drug paraphernalia was modified to remove “gives”, “given”, “testing” and “analyzing” Wash. Rev. Code § 69.50.412(1).
- <sup>210</sup> Effective July 1, 2023, Public health and community-based HIV prevention programs and pharmacies are exempt from the civil infraction related to giving away drug paraphernalia: “Nothing in subsection (1) of this section [the civil infraction related to giving away drug paraphernalia] prohibits distribution or use of public health supplies including, but not limited to, syringe equipment, smoking equipment, or drug testing equipment, through public health programs, community-based HIV prevention programs, outreach, shelter, and housing programs, and pharmacies. Public health and syringe service program staff taking samples of substances and using drug testing equipment for the purpose of analyzing the composition of the substances or detecting the presence of certain substances are acting legally and are exempt from arrest or prosecution under [the laws regulating possession controlled substances.]” Wash. Rev. Code § 69.50.412(3).
- <sup>211</sup> Washington’s overdose Good Samaritan law does not provide protection from the law that makes it a civil infraction to sell or give away drug paraphernalia. See Wash. Rev. Code § 69.50.315. However, effective July 1, 2023, language related to drug checking equipment was removed from the civil infraction regarding selling or giving away drug paraphernalia. 2023 Wash. Legis. Serv. 1st Sp. Sess. Ch. 1 (S.S.S.B. 5536)
- <sup>212</sup> West Virginia does not criminalize the use or possession with intent to use drug paraphernalia. See *generally* W. Va. Code §§ 47-19-1–8.
- <sup>213</sup> West Virginia does not criminalize the free distribution of drug paraphernalia. See *generally* W. Va. Code §§ 47-19-1–8. However, it is unlawful in West Virginia to sell drug paraphernalia, including drug checking equipment, to minors. W. Va. Code § 47-19-6 (2020). It is also unlawful to sell drug paraphernalia, including drug checking equipment, at certain events or outdoors. W. Va. Code § 47-19-8 (2020). As of June 10, 2022, fentanyl test strips are explicitly excluded from the definition of drug paraphernalia under West Virginia law. See W. Va. Code Ann. § 47-19-3(a)(4) (modified by 2022 West Virginia Laws Ch. 60 (H.B. 4373)); W. Va. Code Ann. § 60A-4-403a(h) (modified by 2022 West Virginia Laws Ch. 60 (H.B. 4373)).
- <sup>214</sup> West Virginia does not criminalize the use, possession with intent to use, or free distribution of drug paraphernalia. See *generally* W. Va. Code §§ 47-19-1–8. West Virginia’s Good Samaritan law does not include protections related to drug checking equipment. See W. Va. Code §§ 16-47-4, 16-47-5.
- <sup>215</sup> Wisconsin criminalizes the use or possession with primary intent to use drug paraphernalia: “No person may use, or possess with the primary intent to use, drug paraphernalia to...test, analyze...a controlled substance or controlled substance analog in violation of this chapter.” Wis. Stat. § 961.573(1). Wisconsin’s drug paraphernalia definition includes “[a]ll equipment...used for...testing, analyzing” with “testing equipment” listed explicitly. Wis. Stat. § 961.571(1)(a). However, as of March 18, 2022, “Any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance” are excluded from the definition of drug paraphernalia under Wisconsin law. See Wis. Stat. § 961.571(1)(b)(3). Also excluded from Wisconsin’s drug paraphernalia definition are “hypodermic syringes, needles and *other objects used or intended for use in parenterally injecting substances into the human body.*” Wis. Stat. § 961.571(1)(b)(1) (emphasis added).

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- <sup>216</sup> Wisconsin explicitly criminalizes the act of giving away drug paraphernalia: “No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to...test, analyze...a controlled substance or controlled substance analog in violation of this chapter.” Wis. Stat. § 961.574(1). Wisconsin’s drug paraphernalia definition includes “[a]ll equipment... used for...testing, analyzing” with “testing equipment” listed explicitly. Wis. Stat. § 961.571(1)(a). However, as of March 18, 2022, “Any materials used or intended for use in testing for the presence of fentanyl or a fentanyl analog in a substance” are excluded from the definition of drug paraphernalia under Wisconsin law. See Wis. Stat. § 961.571(1)(b)(3) (modified by 2021-2022 Wisc. Legis. Serv. Act 180 (2021 S.B. 600)).
- <sup>217</sup> “An aider is immune from prosecution under s. 961.573 for the possession of drug paraphernalia.” Wis. Stat. § 961.443(2); see also Wis. Stat. § 961.443(1) (listing the definition for “aider” and factors to qualify under the Good Samaritan exemption).
- <sup>218</sup> Wyoming does not criminalize the use or possession with intent to use drug paraphernalia. See generally Wyo. Stat. Ann. §§ 35-7-1056–1057. Further, unlike in most states, the definition of “drug paraphernalia” under Wyoming law does not include “testing,” “analyzing,” or similar terms. Wyo. Stat. Ann. § 35-7-1002.
- <sup>219</sup> Wyoming explicitly criminalizes the act of giving away drug paraphernalia. There are increased penalties for delivering drug paraphernalia to a minor. Wyo. Stat. Ann. § 35-7-1057. While Wyoming’s definition of drug paraphernalia does not explicitly include drug checking equipment, it does include “all equipment, products and materials of any kind when used, advertised for use, intended for use or designed for use for manufacturing, converting, preparing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.” Wyo. Stat. Ann. § 35-7-1002(a)(xxvii). There is no case law on the application of this definition to drug checking equipment.
- <sup>220</sup> Wyoming has not enacted an overdose Good Samaritan law.