

The Commonwealth of Massachusetts



EDWARD J. KING
GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

June 4, 1980

TO THE HONORABLE SENATE AND HOUSE OF REPRESENTATIVES:

Today, I am submitting for your consideration, "AN ACT PROVIDING CRIMINAL PENALTIES FOR CERTAIN ACTS RELATING TO DRUG PARAPHERNALIA".

This bill would make it a crime to:

- (1) Possess drug paraphernalia with the intent to use it in connection with illicit drugs;
- (2) Sell drug paraphernalia to a minor;
- (3) Advertise drug paraphernalia, knowing that the purpose of the advertisement is to promote the sale of the object for use with illicit drugs.

One of my most important concerns is the proliferation of drug abuse among school-age children today. To understand this proliferation, we must single out the new gospels of the drug culture: drug paraphernalia "big business". This business urges the public in general, and children in particular, to enjoy the escape of drugs.

The drug paraphernalia business is now exposing 8-12 year old children to a peer group education which means a glamorization about drugs and drug abuse. Many adolescent and pre-adolescent drug users are often first attracted into accepting illegal drugs through the ready availability and open display of drug paraphernalia. I find it outrageous that while we are trying to teach youngsters the dangers of drug abuse, certain businesses are permitted to openly display and sell to children the very tools to lure them into the use of drugs.

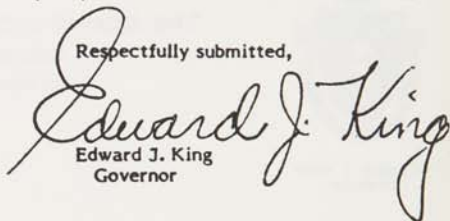
The mentality of the youth drug scene - namely, a glamorized view of drug use as "fun" and harmless - is a mentality which the paraphernalia industry, through its advertising and products, seems to be doing everything possible to promote. This "big business" seeks to bring to bear modern marketing techniques to make these materials appear attractive and readily available to vulnerable youngsters.

Even more distressing than the irresponsible glamorization of drugs by the paraphernalia industry is the absolutely amoral glamorization of deceit. The sophisticated gadgets and toys designed by paraphernalia "big business" are often made available solely to conceal drug use right under the noses of parents and teachers.

In a society which has suffered widespread injury from the abuse of drugs, we cannot allow the growth of an industry whose chief objective is to develop a market for gadgets and devices which increase the illegal use of dangerous drugs - especially use by our children.

For these reasons, I ask for your prompt attention and enactment of this legislation.

Respectfully submitted,

A large, elegant handwritten signature in cursive script that reads "Edward J. King". The signature is written in dark ink and is positioned above the printed name and title.

Edward J. King
Governor

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT PROVIDING CRIMINAL PENALTIES FOR CERTAIN ACTS RELATING TO DRUG PARAPHERNALIA.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section one of chapter 94C of the General Laws is
2 hereby amended by inserting after the definition of "Drug", as
3 appearing in section one of chapter 107 of the acts of 1971, the
4 following definition: —

5 "Drug Paraphernalia", all equipment, products, devices, and
6 materials of any kind which are used, intended for use, or designed
7 for use, in planting, propagating, cultivating, growing, harvesting,
8 manufacturing, compounding, converting, producing, process-
9 ing, preparing, testing, analyzing, packaging, repackaging, storing,
10 containing, concealing, injecting, ingesting, inhaling, or otherwise
11 introducing into the human body a controlled substance in viola-
12 tion of this chapter.

13 In determining whether an object is drug paraphernalia, a court
14 or other authority shall consider, in addition to all other logically
15 relevant factors, the following:

16 (A) Statements by an owner or by anyone in control of the
17 object concerning its use;

18 (B) Prior convictions, if any, of an owner, or of anyone in
19 control of the object, under any State or Federal law relating to any
20 controlled substance;

21 (C) The proximity of the object, in time and space, to a direct
22 violation of this chapter;

23 (D) The proximity of the object to controlled substances;

24 (E) The existence of any residue of controlled substances on the
25 object;

26 (F) Direct or circumstantial evidence of the intent of an owner,
27 or of anyone in control of the object, to deliver it to persons whom
28 he knows intend to use the object to facilitate a violation of this

29 chapter; the innocence of an owner; or of anyone in control of the
30 object, as to a direct violation of this chapter shall not prevent a
31 finding that the object is intended for use, or designated for use as
32 drug paraphernalia;

33 (G) Instructions, oral or written, provided with the object con-
34 cerning its use;

35 (H) Descriptive materials accompanying the object which ex-
36 plain or depict its use;

37 (I) National and local advertising concerning its use;

38 (J) The manner in which the object is displayed for sale;

39 (K) Whether the owner, or anyone in control of the object, is a
40 supplier of like or related items to the community, such as a
41 licensed distributor or dealer of tobacco products;

42 (L) Direct or circumstantial evidence of the ratio of sales of the
43 object(s) to the total sales of the business enterprise;

44 (M) The existence and scope of legitimate uses for the object in
45 the community;

46 (N) Expert testimony concerning its use;

1 SECTION 2. Chapter 94C of the General Laws is hereby
2 amended by inserting after section 32, the following sections: —

3 *Section 32A.* No person shall knowingly or intentionally use, or
4 possess with intent to use, drug paraphernalia as defined in section
5 one. Whoever violates any provision of this section shall be pun-
6 ished by imprisonment in jail or house of correction for not less
7 than six months and not more than two years, or by a fine of not
8 less than five hundred and not more than one thousand dollars, or
9 both.

10 *Section 32B.* No person shall knowingly or intentionally deliv-
11 er, possess with intent to deliver, or manufacture with intent to
12 deliver, drug paraphernalia, knowing, or under circumstances
13 where one reasonably should know, that it will be used to plant,
14 propagate, cultivate, grow, harvest, manufacture, compound, con-
15 vert, produce, process, prepare, test, analyze, pack, repack, store,
16 contain, conceal, inject, ingest, inhale, or otherwise introduce into
17 the human body a controlled substance to violation of this chapter.
18 Whoever violates any provision of this section shall be punished by
19 imprisonment in jail or house of correction for not less than one

20 and not more than two years, or by a fine of not less than one
21 thousand and not more than five thousand dollars, or both.

22 *Section 32C.* Any person eighteen years of age or over who
23 violates section thirty-two B by delivering drug paraphernalia to a
24 person under 18 years of age shall be imprisoned in the state prison
25 for not less than three nor more than five years, or by a fine of not
26 less than one thousand and not more than five thousand dollars, or
27 both.

1 SECTION 3. Chapter 94C of the General Laws is hereby
2 amended by inserting after section 46, the following new section: —

3 *Section 46A.* No person shall place any newspaper, maga-
4 zine, handbill, or other publication any advertisement, knowing,
5 or under circumstances where one reasonably should know, that
6 the purpose of the advertisement, in whole or in part, is to promote
7 the sale of objects designed or intended for use as drug parapherna-
8 lia. Whoever violates any provision of this section shall imprisoned
9 for not less than six months nor more than two and one-half years
10 in jail or house of correction or by a fine of not less than one
11 thousand and not more than ten thousand dollars, or both.

1 SECTION 4. Subsection (a) of section 47 of chapter 94C of the
2 General Laws, as most recently amended by sections one to three
3 inclusive of chapter 556 of the acts of 1977, is hereby further
4 amended by inserting after subparagraph (5) as so appearing, and
5 inserting in place thereof the following: —

6 (6) all drug paraphernalia.

1 SECTION 5. If any provision of this Act or the application
2 thereof to any person or circumstance is held invalid, the invalidity
3 does not affect other provisions or applications of the Act which
4 can be given effect without the invalid provision or application,
5 and to this and the provisions of this Act are severable.

