

The Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT  
STATE HOUSE • BOSTON 02133

EDWARD J. KING  
GOVERNOR

April 24, 1981

TO THE HONORABLE SENATE AND HOUSE OF REPRESENTATIVES:

Today, I am submitting for your consideration the accompanying legislative proposal entitled, "AN ACT PROHIBITING THE SALE OF DRUG PARAPHERNALIA."

This bill would establish a new criminal offense prohibiting the sale of drug paraphernalia with increased criminal penalties to be provided for the sale of paraphernalia to a minor.

One of my most important concerns is the widespread abuse of drugs among school-age children. To understand this problem, we must single out one element of the drug culture: drug paraphernalia big business. This business urges the public in general, and our youth in particular, to enjoy the escape of drugs.

The availability of drug paraphernalia has reached an epidemic level. An entire industry has developed which promotes -- indeed glamorizes -- the illegal use of drugs by adults and children alike. What was once a small phenomenon has now mushroomed into a multi-million dollar business, so well-entrenched that it has its own trade magazines and associations.

The drug paraphernalia business is now exposing even 8 to 12 year old children to a peer group education which glamorizes drugs and drug abuse. Many young people are often first attracted illegal drugs through the ready availability and open display of drug paraphernalia. It is disconcerting that while we are trying to teach youngsters the dangers of drug abuse, certain businesses are permitted to openly display and sell the very tools to lure our children into the use of illicit drugs.

In a society which is suffering greatly from widespread drug abuse, we simply cannot allow an industry to exist and flourish whose chief objective is to develop a market for devices which furthers the "acceptability" and the illegal use of dangerous drugs.

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

Respectfully submitted,

*Edward J. King*  
Edward J. King  
Governor

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty-One.

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 1071 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, or intended for use, in  
7 planting, propagating, cultivating, growing, harvesting, manufac-  
8 turing, compounding, converting, producing, processing, prepar-  
9 ing, testing, analyzing, packaging, repackaging, storing, contain-  
10 ing, concealing, injecting, ingesting, inhaling, or otherwise intro-  
11 duced into the human body a controlled substance in violation of  
12 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) The proximity of the object, in time and space, to a direct  
19 violation of this chapter;

20 (C) The proximity of the object to controlled substances;

21 (D) The existence of any residue of controlled substances on the  
22 object;

23 (E) Direct or circumstantial evidence of the intent of an owner,  
24 or of anyone in control of the object, to sell it to persons whom he  
25 knows intend to use the object to facilitate a violation of this  
26 chapter; the innocence of an owner, or of anyone in control of the

27 object, as to a direct violation of this chapter shall not prevent a  
28 finding that the object is used or intended for use, as drug para-  
29 phernalia;

30 (F) Instructions, oral or written, provided with the object con-  
31 cerning its use;

32 (G) Descriptive materials accompanying the object which ex-  
33 plain or depict its use;

34 (H) National and local advertising concerning its use;

35 (I) The manner in which the object is displayed for sale;

36 (J) Whether the owner, or anyone in control of the object, is a  
37 supplier of like or related items to the community, such as a  
38 licensed distributor or dealer of tobacco products;

39 (K) Direct or circumstantial evidence of the ratio of sales of the  
40 object(s) to the total sales of the business enterprise;

41 (L) The existence and scope of legitimate uses for the object in  
42 the community;

43 (M) Expert testimony concerning its use.

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

3 *Section 32I.* No person shall sell, possess with intent to sell, or  
4 manufacture with intent to sell drug paraphernalia, knowing, or  
5 under circumstances where one reasonably should know, that it  
6 will be used to plant, propagate, cultivate, grow, harvest, manu-  
7 facture, compound, convert, produce, process, prepare, test, ana-  
8 lyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or  
9 otherwise introduce into the human body a controlled substance in  
10 violation of this chapter. Whoever violates any provision of this  
11 section shall be punished by imprisonment in jail or house of  
12 correction for not less than one nor more than two years, or by a  
13 fine of not less than five hundred nor more than five thousand  
14 dollars, or both.

15 (b) Any person who violates the foregoing provision by selling  
16 drug paraphernalia to a person under eighteen years of age shall be  
17 imprisoned in the state prison for not less than three nor more than  
18 five years, or by a fine of not less than one thousand nor more than  
19 five thousand dollars, or both.

1 SECTION 3. 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, the  
5 following: —

6 (6) all drug paraphernalia.