

24:21-46 to 24:21-53

LEGISLATIVE HISTORY CHECKLIST

NJSA 24:21-46 to 24:21-53 (Drug paraphernalia--regulate possession, manufacture and sale)
LAWS 1980 CHAPTER 133
Bill No. S1021 Substituted for A925 (not attached since identical to S1021)
Sponsor(s) DiFrancesco and others
Date Introduced Feb. 11, 1980
Committee: Assembly Judiciary, Law, Public Safety and Defense
Senate Law, Public Safety and Defense

Amended during passage Yes ~~No~~ Amendments denoted by asterisks
according to Governor's recommendations
Date of Passage: Assembly June 9, 1980 Re-enacted 10-16-80
Senate Oct 5, 1980 Re-enacted 10-6-80
Date of approval Oct. 27, 1980

Following statements are attached if available:

Sponsor statement	Yes	No
Committee Statement: Assembly	Yes	No
Senate	Yes	No
Fiscal Note	Yes	No
Veto Message	Yes	No
Message on signing	Yes	No

Following were printed:

Reports	Yes	No
Hearings	Yes	No

Cited in Assembly committee statement--(attached)

TB94 United States. Drug Enforcement Administration.
N2 Model drug paraphernalia act.
U5

Also attached: Guidelines issued by the Attorney General.
re: Drug Paraphernalia Act.

6/22/81

(over)

974.90 New Jersey. Legislature. General Assembly.
N222 Legislative Oversight Committee.
1981b Court invalidation of the drug paraphernalia
law: should the Legislature respond now?
Trenton, 1981.

153 80
10-21-80
[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1021

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1980

By Senators DiFRANCESCO, LASKIN, CAFIERO, GAGLIANO,
HAGEDORN, EWING, HIRKALA, GREGORIO, MUSTO and
RODGERS

Referred to Committee on Law, Public Safety and Defense

A SUPPLEMENT to the "New Jersey Controlled Dangerous Sub-
stances Act," approved October 19, 1970 (P. L. 1970, c. 226,
C. 24:21-1 et seq.)*, and repealing P. L. 1955, c. 277.*

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act, "drug paraphernalia" means all equip-
2 ment, products and materials of any kind which are used***[,]*** *or**
3 intended for use***[, or designed for use,]*** in planting, propagating,
4 cultivating, growing, harvesting, manufacturing, compounding,
5 converting, producing, processing, preparing, testing, analyzing,
6 packaging, repackaging, storing, containing, concealing, ***[inject-**
7 **ing,]*** ingesting, inhaling, or otherwise introducing into the human
8 body a controlled dangerous substance in violation of the provisions
9 of the act to which this act is a supplement. It shall include, but not
10 be limited to: a. kits used***[,]*** *or** intended for use***[, or designed**
11 **for use]*** in planting, propagating, cultivating, growing or harvest-
12 ing of any species of plant which is a controlled dangerous substance
13 or from which a controlled dangerous substance can be derived; b.
14 kits used***[,]*** *or** intended for use***[, or designed for use]*** in
15 manufacturing, compounding, converting, producing, processing,
16 or preparing controlled dangerous substances; c. isomerization de-
17 vices used***[,]*** *or** intended for use***[, or designed for use]*** in
18 increasing the potency of any species of plant which is a controlled
19 dangerous substance; d. testing equipment used***[,]*** *or** intended
20 for use ***[or designed for use]*** identifying, or in analyzing the
21 strength, effectiveness or purity of controlled dangerous substances;
22 e. scales and balances used***[,]*** *or** intended for use***[, or de-**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

23 signed for use]* in weighing or measuring controlled dangerous
 24 substances; f. diluents and adulterants, such as quinine hydro-
 25 chloride, mannitol, mannite, dextrose and lactose, used*[,]* *or*
 26 intended for use*[, or designed for use]* in cutting controlled
 27 dangerous substances; g. separation gins and sifters used*[,]* *or*
 28 intended for use*[, or designed for use]* in removing twigs and
 29 seeds from, or in otherwise cleaning or refining, marihuana; h.
 30 blenders, bowls, containers, spoons and mixing devices used*[,]*
 31 *or* intended for use*[, or designed for use]* in compounding con-
 32 trolled dangerous substances; i. capsules, balloons, envelopes and
 33 other containers used*[,]* *or* intended for use*[, or designed
 34 for use]* in packaging small quantities of controlled dangerous sub-
 35 stances; j. containers and other objects used*[,]* *or* intended
 36 for use*[, or designed for use]* in storing or concealing controlled
 37 dangerous substances; *k. hypodermic syringes, needles and other
 38 objects used, intended for use, or designed for use in parenterally
 39 injecting controlled dangerous substances into the human body;
 40 l.]* *k.* objects used*[,]* *or* intended for use*[, or designed for
 41 use]* in ingesting, inhaling, or otherwise introducing marihuana,
 42 cocaine, hashish, or hashish oil into the human body, such as (1)
 43 metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or
 44 without screens, permanent screens, hashish heads, or punctured
 45 metal bowls; (2) water pipes; (3) carburetion tubes and devices;
 46 (4) smoking and carburetion masks; (5) roach clips, meaning ob-
 47 jects used to hold burning material, such as a marihuana cigarette,
 48 that has become too small or too short to be held in the hand; (6)
 49 miniature cocaine spoons, and cocaine vials; (7) chamber pipes;
 50 (8) carburetor pipes; (9) electric pipes; (10) air-driven pipes;
 51 (11) chillums; (12) bonges; and (13) ice pipes or chillers.

52 In determining whether *or not* an object is drug paraphernalia,
 53 *[a court or other authority should]* *the trier of fact, in addition*
 54 *to or as part of the proofs, may* consider*[, in addition to all other
 55 logically relevant factors,]* the following *factors*: a. statements
 56 by an owner or by anyone in control of the object concerning its

66 he knows***[**, or should reasonably know,**]*** intend to use the object
 67 to facilitate a violation of this act; the innocence of an owner, or
 68 of anyone in control of the object, as to a direct violation of this
 69 act shall not prevent a finding that the object is intended for use***[**,
 70 or designed for use**]*** as drug paraphernalia; ***[g.]*** **e.** instruc-
 71 tions, oral or written, provided with the object concerning its use;
 72 ***[h.]*** **f.** descriptive materials accompanying the object which
 73 explain or depict its use; ***[i.]*** **g.** national ***[and]*** **or** local
 74 advertising ***[**concerning its use; **j.]*** **whose purpose the person*
 75 *knows or should know is to promote the sale of objects intended*
 76 *for use as drug paraphernalia; h.** the manner in which the object
 77 is displayed for sale; ***[k.** whether the owner, or anyone in control
 78 of the object, is a legitimate supplier of like or related items to the
 79 community, such as a licensed distributor or dealer of tobacco
 80 products; l. direct or circumstantial evidence of the ratio of sales
 81 of the objects to the total sales of the business enterprise; **m.]*** **i.**
 82 the existence and scope of legitimate uses for the object in the com-
 83 munity; and ***[n.]*** **j.** expert testimony concerning its use.

1 2. It shall be unlawful for any person to use, or to possess with
 2 intent to use, drug paraphernalia to plant, propagate, cultivate,
 3 grow, harvest, manufacture, compound, convert, produce, process,
 4 prepare, test, analyze, pack, repack, store, contain, conceal, ***[in-**
 5 **ject,]*** ingest, inhale, or otherwise introduce into the human body a
 6 controlled dangerous substance in violation of the provisions of the
 7 act to which this act is a supplement. Any person who violates this
 8 section ***[**commits a crime of the fourth degree**]*** **is guilty of a*
 9 *disorderly persons offense**.

1 3. It shall be unlawful for any person to distribute or dispense, or
 2 possess with intent to distribute or dispense, or manufacture with
 3 intent to distribute or dispense, drug paraphernalia, knowing***[**, or
 4 under circumstances where one reasonably should know,**]*** that it
 5 will be used to plant, propagate, cultivate, grow, harvest, manu-
 6 facture, compound, convert, produce, process, prepare, test, analyze,
 7 pack, repack, store, contain, conceal, ***[inject,]*** ingest, inhale or
 8 otherwise introduce into the human body a controlled dangerous
 9 substance in violation of the provisions of the act to which this act
 10 is a supplement. Any person who violates this section commits a
 11 crime of the ***[third]*** **fourth** degree.

1 4. It shall be unlawful for any person to place in any newspaper,
 2 magazine, handbill, or other publication any advertisement, know-
 3 ing***[**, or under circumstances where one reasonably should know,**]***
 4 that the purpose of the advertisement in whole or in part, is to
 5 promote the sale of objects ***[**designed or**]*** intended for use as

6 drug paraphernalia. Any person who violates this section commits
7 a crime of the fourth degree.

1 5. Any person 18 years of age or over who violates section 3 of
2 this act by delivering drug paraphernalia to a person under 18
3 years of age who is at least 3 years his junior commits a crime of
4 the *~~second~~* *third* degree.

1 **6. a. No person shall sell, furnish, or give to any person or per-*
2 *sons other than a duly licensed physician, dentist, veterinarian,*
3 *undertaker, nurse, podiatrist, registered pharmacist, or a hospital,*
4 *sanitarium, clinical laboratory or any other medical institution or a*
5 *State or governmental agency, or a regular dealer in medical,*
6 *dental or surgical supplies, or a resident physician or intern of a*
7 *hospital, sanitarium or other medical institution, an instrument*
8 *commonly known as a hypodermic syringe, hypodermic needle or*
9 *any instrument adapted for the use of controlled dangerous sub-*
10 *stances as defined in P. L. 1970, c. 226 (C. 24:21-1 et seq.) by*
11 *subcutaneous injections without a written prescription of a duly*
12 *licensed physician, dentist or veterinarian. Such prescription shall*
13 *contain the name and address of the patient, the description of the*
14 *instrument prescribed and the number of instruments prescribed.*

15 *b. Every person who disposes of, or sells, or furnishes, or gives*
16 *away a hypodermic syringe or a hypodermic needle or an in-*
17 *strument adapted for the use of controlled dangerous substances*
18 *by subcutaneous injections, upon the written prescription of a*
19 *duly licensed physician, dentist, or veterinarian, shall record upon*
20 *the face of the prescription, over his signature, the date of the sale*
21 *or furnishing of the instrument. This prescription shall be retained*
22 *on file for a period of 2 years and shall be opened to inspection by*
23 *any public officer or employee engaged in the enforcement of this*
24 *section. A prescription filed in accordance with this section shall*
25 *be sufficient authority, without the necessity of a renewal or reissu-*
26 *ance, to permit subsequent sales or the furnishing of hypodermic*
27 *syringes or hypodermic needles or instruments adapted for the*
28 *use of controlled dangerous substances by subcutaneous injections*
29 *to the person to whom the prescription was issued, for a period of*
30 *6 months from the date of its original issuance.*

31 *c. It shall be unlawful for any person or persons, except a duly*
32 *licensed physician, dentist, veterinarian, nurse, podiatrist, hospital,*
33 *sanitarium or other medical institution, or a resident physician*
34 *or intern of a hospital, sanitarium or other medical institution,*
35 *to have under control or possess, a hypodermic syringe, hypodermic*
36 *needle or any other instrument adapted for the use of controlled*
37 *dangerous substances by subcutaneous injections with intent to*

38 *use such syringe, needle or instrument for such purpose, unless*
 39 *such possession be obtained upon a valid written prescription from,*
 40 *and such use be authorized or directed by a duly licensed physician*
 41 *or veterinarian. For the purposes of this subdivision no such*
 42 *prescription shall be valid, which has been outstanding for more*
 43 *than 6 months.*

44 *d. Any person who violates this section is guilty of a disorderly*
 45 *persons offense.**

1 ***[6.]*** ***7.*** Drug paraphernalia seized in violation of this act shall
 2 be subject to the forfeiture provisions of Chapter 64 of the "New
 3 Jersey Code of Criminal Justice" (N. J. S. 2C:1-1 et seq.).

1 ***8.** *If any provisions of sections 2, 3, 4, 5, 6 and 7 or the applica-*
 2 *tion thereof to any person or circumstance are held invalid, the*
 3 *invalidity shall not affect other provisions or applications of the*
 4 *sections which can be given effect without the invalid provision or*
 5 *application, and to this end the provisions of sections 2, 3, 4, 5, 6*
 6 *and 7 are severable.*

1 **9.** *P. L. 1955, c. 277 (C. 2A:170-77.3 to 2A:170-77.7) is repealed,*
 2 *but this repealer shall not revive any act repealed thereby.**

1 ***[7.]*** ***10.*** This act shall take effect ****[immediately]**** ****120**
 2 *days from the date of enactment**.*

STATEMENT

The "New Jersey Controlled Dangerous Substances Act" (P. L. 1970, c. 226, C. 24:21-1 et seq.) prohibits the possession, manufacturing, distributing, or dispensing of certain controlled dangerous substances. It does not control the manufacturing, possession, advertising, sale or use of so-called drug paraphernalia. The purpose of this bill is to proscribe such activities.

Proposals aimed at controlling drug paraphernalia are often too vaguely worded and too limited in coverage to withstand constitutional attack or to be very effective. As a result, the availability of drug paraphernalia has reached epidemic levels. An entire industry has developed which promotes, even glamorizes, the illegal use of drugs by adults and children alike. Sales of drug paraphernalia are reported as high as three billion dollars a year. What was a small phenomenon at the time the Controlled Dangerous Substances Act was adopted has now grown into an industry so well-entrenched that it has its own trade magazines and associations.

This bill, modeled after a recommendation of the United States Drug Enforcement Administration, provides a comprehensive definition of the term drug paraphernalia and includes particular descriptions of the most common forms of paraphernalia. It also outlines the more relevant factors a court or other authority should consider in determining whether an object comes within the definition.

The bill sets out four criminal offenses intended to prohibit the use or possession, manufacture or delivery, delivery to a minor, and advertisement, of drug paraphernalia. Use of, or possession with intent to use, drug paraphernalia is a crime of the fourth degree. This involves a term of imprisonment for not more than 18 months with a presumptive sentence of 9 months, and a fine of not more than \$7,500.00. The delivery or manufacture of drug paraphernalia is a crime of the third degree. This involves a term of imprisonment from 3 to 5 years with a presumptive sentence of 4 years, and a fine of not more than \$7,500.00. The advertisement of drug paraphernalia is also a crime of the fourth degree.

Only printed advertisements promoting the sale of objects for use as paraphernalia are prohibited. The nonprinted media, including radio and television, is not affected. Printed matter criticizing the drug laws, glorifying the drug culture, glamorizing the use of drugs, or providing information or instruction on illicit drug is not affected. The target of section 4 is commercial advertising.

S1021 (1980)

Unlike so-called "printer's ink" statutes, which exempt printers and publishers from their coverage, section 4 contains no exemptions. It applies to anyone who prints or publishes paraphernalia advertisements, and to anyone who causes these advertisements to be printed or published. For this reason, it uses the general terms "any person" and "to place."

The knowledge requirement of section 4 is satisfied when the person placing the advertisement (i) has actual knowledge it is promoting the use of objects for use as drug paraphernalia; (ii) is aware of a high probability it is promoting the sale of objects for use as drug paraphernalia; or (iii) aware of facts and circumstances from which he should reasonably conclude there is a high probability the advertisement is promoting the sale of objects for use as drug paraphernalia. Whether an advertisement promotes the sale of objects for use as paraphernalia is to be determined from its content. Under section 4, one need not look beyond the face of the advertisement.

The delivery of drug paraphernalia by a person 18 years of age or older to a person under 18 years of age who is at least 3 years his junior is a crime of the second degree. This involves a term of imprisonment from 5 to 10 years, with a presumptive sentence of 7 years, and a fine of not more than \$100,000.00.

In lieu of the above fines for all the crimes, the court may impose a higher amount equal to double the pecuniary gain to the offender.

This bill also points out that drug paraphernalia seized in violation of any of its provisions are subject to the forfeiture provisions of Chapter 64 of the "New Jersey Code of Criminal Justice" (N. J. S. 2C:1-1 et seq.).

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY
AND DEFENSE COMMITTEE

STATEMENT TO
SENATE, No. 1021
with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 19, 1980

This bill, modeled after a recommendation of the United States Drug Enforcement Administration, provides a comprehensive definition of the term drug paraphernalia and includes particular descriptions of the most common forms of paraphernalia. It also outlines the more relevant factors a court or other authority should consider in determining whether an object comes within the definition. The bill sets out four criminal offenses intended to prohibit the use or possession, manufacture or delivery, advertisement and delivery to a minor of drug paraphernalia. The court may also impose fines equal to double the pecuniary gain to the offender. Drug paraphernalia seized in violation of any provisions of the bill are subject to the forfeiture provisions of chapter 64 of the "New Jersey Code of Criminal Justice" (N. J. S. 2C:1-1 et seq.).

The amendments adopted by the committee are meant to strengthen the bill in light of, and the event of further, constitutional challenges by eliminating vague and unenforceable provisions and any dangers of arbitrary and discriminatory enforcement. Four of the amendments are derived from the ruling of the U.S. District Court for the Northern District of Ohio (Eastern Division) in *Record Revolution No. 6 vs. Parma, Ohio*, N.C80-38 (N.D. Ohio, April 15, 1980). In this case, an ordinance adopted in Parma, Ohio, modeled after the same Model Drug Paraphernalia Act as is Senate Bill No. 1021, was ruled constitutional, with three exceptions — all of which were severable. The three exceptions were found to be vague. The reference to "a legitimate" supplier of like or related items to the community, contained in criteria K. of section 1 on page 3 of the bill was said to create a danger of arbitrary and discriminatory enforcement. The court also declared in the *Parma* decision that the offenses described in sections 3 and 4 of the bill were neither vague nor overbroad except for the provision that a person "reasonably should know." The fourth amendment is the need for a severability clause, which is provided in a new section 8 to Senate Bill No. 1021.

Another amendment adopted by the committee eliminated from the bill the phrase "designed for use," which is meant to describe objects whose sole, or at least dominate purpose is to produce, package, store, test or assist in the use of illicit drugs. The committee agreed that requiring that an object be used or be intended for use in connection with illicit drugs to determine if it can be considered to be drug paraphernalia is adequate and provides "fair warning" to persons in possession of property potentially subject to this bill. The phrase "designed for use" is vague and only serves to jeopardize the bill's enforceability and constitutionality.

The committee amendments also eliminated reference to hypodermic syringes, needles and other similar objects used for injecting controlled dangerous substances from the section 1 definition of drug paraphernalia. These types of paraphernalia are controlled by P. L. 1955, c. 277 (C. 2A:170-77.3 to C. 2A:170-77.7). For purposes of uniformity and consolidating all drug paraphernalia provisions in one law, however, P. L. 1955, c. 277 is repealed and its pertinent provisions are amended to Senate Bill No. 1021 in a new section 6.

The committee amendments revised the penalties for use or possession with intent to use drug paraphernalia from a crime of the fourth degree to a disorderly persons offense. Distribution or dispensing, or possessing with intent to distribute or dispense, or manufacturing with intent to distribute or dispense drug paraphernalia was changed from a crime of the third degree to a crime of the fourth degree. Distribution of drug paraphernalia to persons under 18 years of age was changed from a second degree crime to a third degree crime.

STATE OF NEW JERSEY

EXECUTIVE DEPARTMENT

September 22, 1980

SENATE BILL S-1021 OCR

CONDITIONAL VETO MESSAGE

Pursuant to Article I, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 1021 OCR with my objection for your reconsideration.

S-1021 supplements the "New Jersey Controlled Dangerous Substance Act" (L. 1970, c. 226, NJSA 24:21-1 et seq.) by prohibiting the use, possession with intent to use, distribution, dispensing, possession with intent to distribute or dispense and advertisement of drug paraphernalia.

Last February, I filed a similar bill (A-1594) without my approval because I believed it was unconstitutionally vague. I said then, though, that I would consider signing into law a bill dealing with this subject, if it could be drafted so as not to offend the constitution. If properly enforced, I believe S-1021 will withstand constitutional attack; I am advised that similar legislation, modeled after the Model Drug Paraphernalia Act which was drafted by the Federal Drug Enforcement Agency, has been upheld by the courts in several jurisdictions.

I believe, however, that the bill will be strengthened if the Attorney General were to promulgate guidelines to instruct law enforcement officers on the specific circumstances which would warrant prosecution under this bill. This would avoid potential abuse.

Since the Attorney General will need some time to draft and promulgate the guidelines, I herewith return S-1021 OCR for reconsideration and recommend that it be amended so that the effective date will be 120 days from enactment. The recommended amendment is as follows:

Page 5, Section 10, Line 1: Delete "immediately" and insert "120 days from the date of enactment."

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

JOHN J. DEGNAN
ATTORNEY GENERAL

13 ROSZEL ROAD
CN 14
PRINCETON, NEW JERSEY 08540
TELEPHONE 609-452-9500

EDWIN H. STIER
DIRECTOR

February 9, 1981

TO: ALL COUNTY PROSECUTORS

Re: Guidelines Governing Enforcement of
The New Jersey Drug Paraphernalia Act

Gentlemen:

The New Jersey Drug Paraphernalia Act, L. 1980, c. 133, takes effect on Monday, February 23, 1981. At the direction of the Governor, the Attorney General has issued the attached guidelines governing enforcement of the Act. The following is a summary of the guidelines.

1. Jurisdiction

- a. Any police officer may enforce the provisions concerning use or possession with intent to use, as well as those concerning hypodermic needles, syringes, etc.
- b. The sections concerning distribution and possession with intent to distribute may be enforced only by the Prosecutor or Attorney General.
- c. Only the Attorney General may act to enforce the section concerning advertising for the purpose of promoting sale.

2. Enforcement Criteria

- a. A prosecution for use or possession with intent to use may not be undertaken unless the object is found near CDS or contains residue, or the possessor makes an inculpatory statement.
- b. Otherwise innocent objects which are merely adaptable to use as paraphernalia may not provide the basis of a prosecution for distribution or possession with intent to distribute, unless they are displayed or offered for sale in connection with other paraphernalia.
- c. Before instituting criminal proceedings for distribution or possession with intent to distribute, "due consideration" shall be given to resolution through other means, such as the issuance of warnings or commencement of forfeiture proceedings.

3. Enforcement Procedures

- a. Prosecutor or Director must give prior approval for any arrest or filing of complaint for distribution or possession with intent to distribute.
- b. Seizures generally require a warrant, approved by Prosecutor or Director and presented to County District or Superior Court judge.
- c. All complaints for distribution and possession with intent to distribute must be filed in County District or Superior Court and prosecuted by assistant prosecutor or deputy attorney general.

4. Disposition Of Seized Property

- a. Representative samples may be retained for use as evidence during the pendency of criminal proceedings.

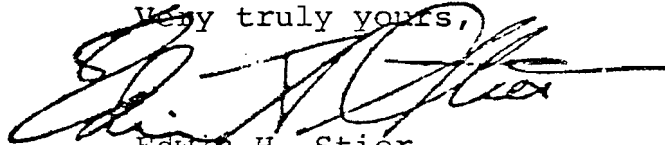
To: All County Prosecutors
Page Three

- b. Forfeiture proceedings for bulk quantities of contraband must be commenced within 30 days of seizure.
- c. Any property not included in a. or b. but which has investigative value may be retained for a reasonable period of time.
- d. All other property must be returned within 30 days of seizure.

You are requested to provide these guidelines to all law enforcement agencies in your county in order to ensure uniform enforcement of the Act.

Thank you for your assistance.

Very truly yours,



Edwin H. Stier
Director

jm

c: Frederick DeVesa, Deputy Director
Robert T. Winter, Deputy Director
Michael J. Bozza, Assistant Director
Thomas J. O'Reilly, Assistant Director
Colonel Clinton L. Pagano, Superintendent, State Police
Dennis L. Bliss, Director of Administration
All Section Chiefs

Views

FOR IMMEDIATE RELEASE

February 11, 1981



JOHN J. DEGNAN
ATTORNEY GENERAL

Attorney General John J. Degnan today released guidelines to be relied upon by prosecutors and police in enforcing the State's Drug Paraphernalia Act that was enacted by the Legislature last fall.

Degnan said the guidelines have been prepared by the Division of Criminal Justice in consultation with the county prosecutors. The Act takes effect on February 23, 1981.

The Act and the guidelines were drafted to conform to recent court decisions elsewhere in the country which have ruled that some local ordinances restricting the business of so-called "headshops" are unconstitutional. The Attorney General noted that there have been no Federal or State court decisions on this issue that would appear to have an effect on New Jersey's statute.

"Now that we have the Act," Degnan said, "we intend to see that it is vigorously enforced with strict adherence to the guidelines that the Governor has asked me to prepare."

The statute, Chapter 133 of the Laws of 1980 (S-1021), was signed into law on October 27, 1980. The bill had been conditionally vetoed on September 22, 1980 by Governor Byrne, who noted that it might be strengthened and might better resist challenges to its constitutionality if it were amended to give the Attorney General time to prepare "guidelines to instruct law enforcement officers on the specific circumstances which would warrant prosecution...(in order to) avoid potential abuse. The Legislature complied with the Governor's wishes and amended the measure to take effect in 120 days, or February 23, 1981.

The statute was modeled after a recommendation of the United States Drug Enforcement Administration and provides a comprehensive definition of the term "drug paraphernalia" and includes descriptions of the most common forms of such paraphernalia.

The following is a summary of the guidelines:

1. Jurisdiction

- (a) Any police officer may enforce the provisions covering use or possession with intent to use, as well as those concerning hypodermic needles, syringes, etc.
- (b) The sections concerning distribution and possession with intent to distribute may be enforced only by the Prosecutor or Attorney General.
- (c) Only the Attorney General may act to enforce the section concerning advertising for the purpose of promoting sale.

2. Enforcement Criteria

- (a) A prosecution for use or possession with intent to use may not be undertaken unless the object is found near CDS or contains residue, or the possessor makes an inculpatory statement.
- (b) Otherwise innocent objects which are merely adaptable to use as paraphernalia may not provide the basis of a prosecution for distribution or possession with intent to distribute unless they are displayed or offered for sale in connection with other paraphernalia.
- (c) Before instituting criminal proceedings for distribution or possession with intent to distribute, "due consideration" shall be given to resolution through other means such as the issuance of warnings or commencement of forfeiture proceedings.

3. Enforcement Procedures

- (a) Prosecutor or Director must give prior approval for any arrest or filing of complaint for distribution or possession with intent to distribute.
- (b) Seizures generally require a warrant, approved by Prosecutor or Director and presented to County District or Superior Court judge.
- (c) All complaints for distribution and possession with intent to distribute must be filed in County District or Superior Court and Prosecuted by Assistant Prosecutor or Deputy Attorney General.

4. Disposition of Seized Property

- (a) Representative samples may be retained for use as evidence during the pendency of criminal proceedings.
- (b) Forfeiture proceedings for bulk quantities of contraband must be commenced within 30 days of seizure.
- (c) Any property not included in (a), or (b) but which has investigative value may be retained for a reasonable period of time.
- (d) All other property must be returned within 30 days of seizure.

The guidelines will be distributed to each of the 21 county prosecutors. A copy of the text of the guidelines and the statute is attached.

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GUIDELINES GOVERNING ENFORCEMENT

OF THE NEW JERSEY

DRUG PARAPHERNALIA ACT

These guidelines are promulgated by the Attorney General pursuant to the authority of the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., and shall govern the conduct of all law enforcement officers in the State.

I. Jurisdiction

A. Section 2 of the act, prohibiting unlawful use, or possession with intent to use, may be enforced by any officer otherwise empowered to enforce the criminal laws of this State.

B. Sections 3 and 5 of the act, prohibiting distribution, possession with intent to distribute, or manufacturing, may be enforced only by the county prosecutor or the Attorney General.

1. Any county or municipal law enforcement officer having knowledge of a possible violation of Section 3 or 5 of the act shall report the same to the county prosecutor, but take no further action except at the express direction of the prosecutor.

2. Any state law enforcement officer having knowledge of a possible violation of Section 3 or 5 of the act shall report the same to the county prosecutor or the Director of the Division of Criminal Justice, but take no further action except at the express direction of the prosecutor or the Director.

C. Section 4 of the act, prohibiting advertising for the purpose of promoting sale, may be enforced only by the Attorney General.

1. Any county or municipal law enforcement officer having knowledge of a possible violation of Section 4 of the

act shall report the same to the county prosecutor, but take no further action. The prosecutor, in turn, shall forward such report to the Director of the Division of Criminal Justice.

2. Any state law enforcement officer having knowledge of a possible violation of Section 4 of the act shall report the same to the Director of the Division of Criminal Justice, but take no further action.

D. Section 6 of the act, concerning hypodermic syringes, hypodermic needles and other injection instruments, may be enforced by any officer otherwise empowered to enforce the criminal laws of this State.

II. Enforcement Criteria & Procedures

A. Use or possession with intent to use - No proceeding for use or possession with intent to use in violation of Section 2 of the act may be instituted unless the object giving rise to the violation is found in close proximity to a controlled dangerous substance, residue of a controlled dangerous substance is found on the object, or the person in possession of the object admits that it was used or intended to be used for a prohibited purpose.

B. Distribution or possession with intent to distribute

1. No prosecution may be instituted under Section 3 or 5 of the act on the basis of any objects, for example, cigarette papers, alligator clips, etc., which are commonly used for lawful purposes and are merely adaptable for use as drug paraphernalia. This provision is not applicable to such potentially innocent objects if they are displayed or otherwise offered for sale in conjunction with or in close proximity to other kinds of drug paraphernalia.

2. Prior to instituting criminal proceedings under Section 3 or 5 of the act, the county prosecutor or Attorney General shall give due consideration to the employment of other devices calculated to result in discontinuation of the prohibited conduct, such as

(a) the issuance of warnings,

(b) the commencement of civil forfeiture proceedings under N.J.S.A. 2C:64-1 et seq.

3. No complaint may be filed or any arrest made for a violation of Section 3 or 5 of the act unless the county prosecutor or Director of the Division of Criminal Justice has determined that there is a reasonable likelihood of conviction. In making such a determination, the prosecutor or Director shall consider the existence or absence of the evidential factors listed in the second paragraph of Section 1 of the act.

4. In cases involving violations of Section 3 or 5 of the act, no seizure of prohibited objects may be made without a warrant.

- (a) The affidavit for the warrant shall detail the existence of any evidential factors listed in the second paragraph of Section 1 of the act.
- (b) The search warrant shall describe specifically the kinds of paraphernalia to be seized; use of the general term "drug paraphernalia" should be avoided.
- (c) No application for a search warrant may be presented to a judge until both the affidavit and form of warrant have been reviewed and approved by the prosecutor or the Director of the Division of Criminal Justice.
- (d) Search warrant applications shall be made only to judges of the County District or Superior Court.

Warrantless seizures may be made only when clearly necessary to prevent the destruction or removal of evidence, and when approved by the county prosecutor or the Director of the Division of Criminal Justice.

5. Property seized in connection with enforcement of the act shall be disposed of as follows:

- (a) A representative sample of objects sold or possessed for the purpose of sale may be retained for use as evidence until disposition of any criminal proceeding arising out of the seizure.
- (b) Other contraband or property subject to forfeiture shall be forfeited in a civil action instituted by the prosecuting agency within 30 days of the seizure, notwithstanding any provision of N.J.S.A. 2C:64-1 et. seq.
- (c) Objects not included in (a) or (b), but which have potential investigative value, may be retained for this purpose for a reasonable period of time.
- (d) All other property shall be returned to its owner within 30 days of its seizure.

6. Complaints charging violations of Section 3 or 5 the act, whether classified as indictable or disorderly persons offenses, shall be filed in the County District or Superior Court. The State shall be represented at all stages of the proceedings by an assistant county prosecutor or a deputy attorney general.

C. Violations involving hypodermic syringes, etc.

Arrests and prosecutions for violations of Section 6 of the act may be undertaken in the usual manner, unless there is a concurrent violation of another section of the act.

Model Drug Paraphernalia Act

*Drafted by the
U.S. Drug Enforcement Administration,
of the
United States
Department of Justice*

Article I (Definitions)

SECTION (insert designation of definitional section) of the Controlled Substances Act of this State is amended by adding the following after paragraph (insert designation of last definition in section):

"() The term '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 this Act (meaning the Controlled Substances Act of this State). It includes, but is not limited to:

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

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

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

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marihuana;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injected controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

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

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

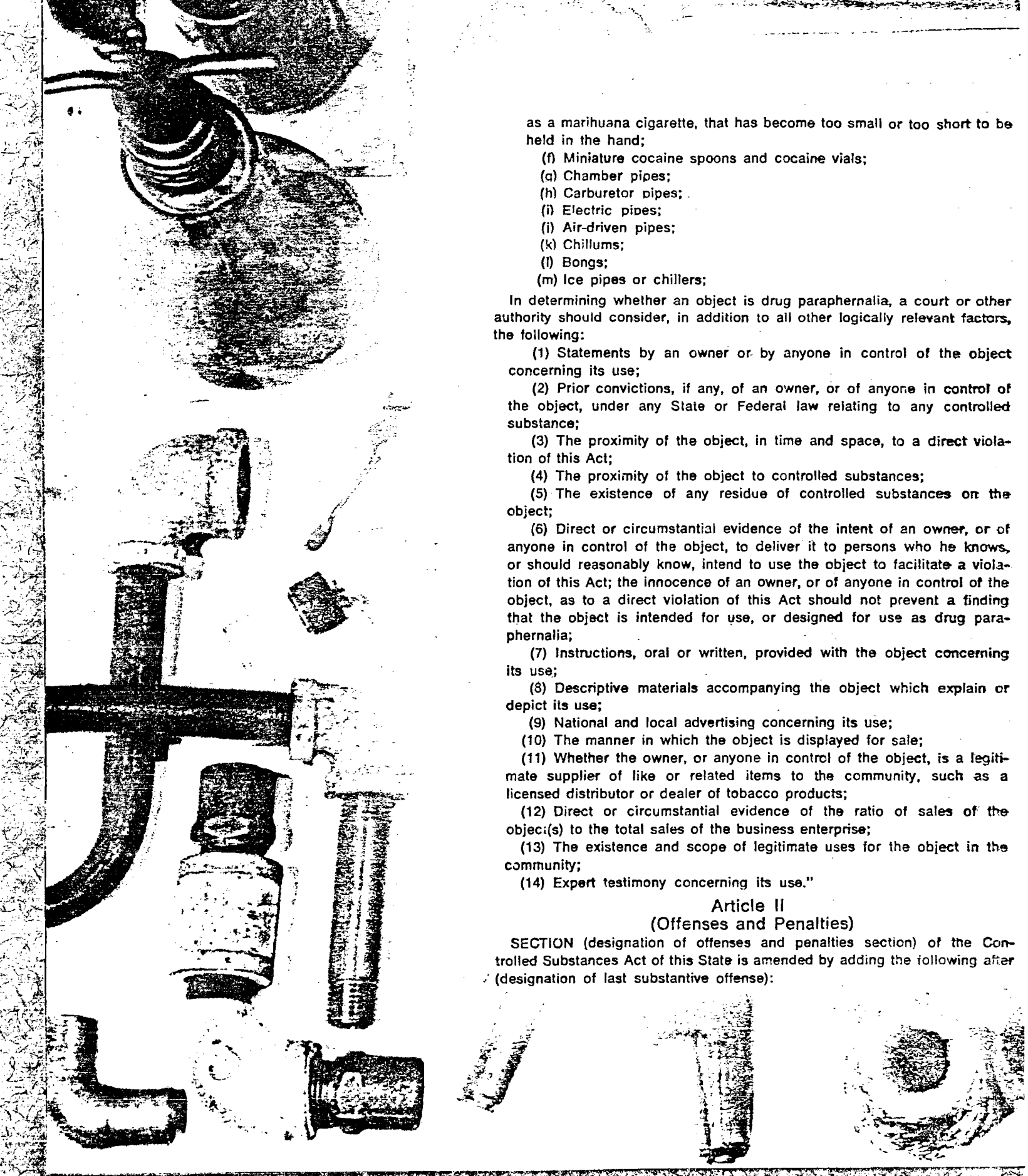
(e) Roach clips: meaning objects used to hold burning material, such

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as a marihuana cigarette, that has become too small or too short to be held in the hand;

- (f) Miniature cocaine spoons and cocaine vials;
- (g) Chamber pipes;
- (h) Carburetor pipes;
- (i) Electric pipes;
- (j) Air-driven pipes;
- (k) Chillums;
- (l) Bonges;
- (m) Ice pipes or chillers;

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

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any State or Federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this Act;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances on the object;
- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of this Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this Act should not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
- (8) Descriptive materials accompanying the object which explain or depict its use;
- (9) National and local advertising concerning its use;
- (10) The manner in which the object is displayed for sale;
- (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (13) The existence and scope of legitimate uses for the object in the community;
- (14) Expert testimony concerning its use."

Article II (Offenses and Penalties)

SECTION (designation of offenses and penalties section) of the Controlled Substances Act of this State is amended by adding the following after (designation of last substantive offense):

[THIRD OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1594

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 18, 1978

By Assemblyman FLYNN

Referred to Committee on Institutions, Health and Welfare

AN ACT concerning the *manufacturing*, advertising and sale of drug accessories, and supplementing the "New Jersey Controlled Dangerous Substances Act," approved October 19, 1970 (P. L. 1970, c. 226, C. 24:21-1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. It shall be unlawful for any person ***[not registered with the**
2 **State Department of Health for the manufacturing, distributing or**
3 **dispensing of any controlled dangerous substance,]*** ****not other-*
4 *wise authorized by law**** to *manufacture, sell, offer for sale,***
5 ****cause to be sold**** advertise ****[or]**** ***, display**, give***,*
6 *cause to be given**** or possess drug accessories. For the pur-
7 poses of this act, ****the**** term "drug accessories" shall ***[mean**
8 **anything, instrument or device the primary purpose of which]***
9 **include**, but not be limited to,*** *****[cigarette papers, hookah**
10 **pipes, stash cups, roach clips,]***** ****any instrument used,*
11 *designed for use, or intended for use in ingesting, smoking,*
12 *administering, or preparing marihuana, hashish, hashish oil,*
13 *cocaine or other controlled dangerous substances, and includes: a.*
14 *metal, wooden, acrylic, glass, stone, plastic, or ceramic marihuana*
15 *or hashish pipes with or without screens, permanent screens,*
16 *hashish heads, or punctured metal bowls; b. water pipes designed*
17 *for use or intended for use with marihuana, hashish, hashish oil, or*
18 *cocaine; c. carburetion tubes and devices; d. smoking and carbure-*
19 *tion masks; e. roach clips; f. separation gins designed for use or*
20 *intended for use in cleaning marihuana; g. cocaine spoons and*
21 *vials; h. chamber pipes; i. carburetor pipes; j. electric pipes; k. air*
22 *driven pipes; l. chilams; m. bongs; n. ice pipes or chillers; o.*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

23 *cigarette rolling papers; or p.*** other instruments or devices*
 24 *whose primary purpose* is to facilitate the sale, use or storage of*
 25 *a controlled dangerous substance* [, or]* *and any instrument or*
 26 *device* which is accompanied by advertising, instructions or other*
 27 *descriptive materials stating, directly or indirectly, its function in*
 28 *the sale, use or storage of a controlled *dangerous* substance.*

1 **[2. No person shall give, sell or cause to be given or sold, drug
 2 accessories to a person less than 18 years of age.]**

3 ***[**2. No person not otherwise authorized by law, shall give,
 4 sell or cause to be given or sold, drug accessories to any per-
 5 son.**]***

1 ***[3. a. Any person who violates section 1 of this act shall be
 2 guilty of a misdemeanor and shall be punished by imprisonment for
 3 not more than 1 year, a fine of not more than \$5,000.00 or both.]***

4 ***[b.]*** **2.** Any person who violates ***[section 2
 5 of]*** this act shall be guilty of a misdemeanor ***until Septem-
 6 ber 1, 1979, when he shall commit a crime of the third degree,***
 7 and shall be punished ***for said misdemeanor and crime of the
 8 third degree*** by imprisonment for not more than 2 years, a fine
 9 of not more than \$10,000.00 or both.

1 ***[4.]*** **3.** This act shall take effect immediately.

ASSEMBLY, No. 1594

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 18, 1978

By Assemblyman FLYNN

Referred to Committee on Institutions, Health and Welfare

AN ACT concerning the advertising and sale of drug accessories, and supplementing the "New Jersey Controlled Dangerous Substances Act," approved October 19, 1970 (P. L. 1970, c. 226, C. 24:21-1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. It shall be unlawful for any person not registered with the
2 State Department of Health for the manufacturing, distributing or
3 dispensing of any controlled dangerous substance, to advertise or
4 display drug accessories. For the purposes of this act, the term
5 "drug accessories" shall mean anything, instrument or device the
6 primary purpose of which is to facilitate the sale, use or storage of
7 a controlled dangerous substance, or which is accompanied by
8 advertising, instructions or other descriptive materials stating,
9 directly or indirectly, its function in the sale, use or storage of a
10 controlled substance.

1 2. No person shall give, sell or cause to be given or sold, drug
2 accessories to a person less than 18 years of age.

1 3. a. Any person who violates section 1 of this act shall be guilty
2 of a misdemeanor and shall be punished by imprisonment for not
3 more than 1 year, a fine of not more than \$5,000.00 or both.

4 b. Any person who violates section 2 of this act shall be guilty
5 of a misdemeanor and shall be punished by imprisonment for not
6 more than 2 years, a fine of not more than \$10,000.00 or both.

1 4. This act shall take effect immediately.

STATEMENT

The sale to children and open display of items used to aid in the sale, storage and use of illegal drugs is a widespread and growing practice which is contrary to the public interest. In order to prevent children from being enticed into the drug culture by the appeal of attractively displayed drug paraphernalia in open view in store windows and showcases available for easy purchase, it is desirable to limit the sale and display of these materials.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1594

STATE OF NEW JERSEY

DATED: JUNE 14, 1979

This bill would prohibit the manufacture, advertisement, display, sale or other disposition, or possession of drug accessories.

Such items are often sold in "head" shops or in record or other kinds of stores and are openly promoted by merchants as items for use in the taking of drugs. The obvious promotion of such items, which is most often directed at young people, undermines and belies educational and law enforcement efforts to control and diminish the use of illegal drugs.

"Drug accessories" are defined in the bill and include hashish pipes, water pipes, carburetion masks, roach clips, cigarette rolling papers and other such instruments.

The bill was amended in committee to include this more specific definition which was taken from Senate Bill 3069.

A violation of the act is a misdemeanor and is punishable by a 2-year prison sentence and a \$10,000.00 fine.

The sponsor requested additional amendments to simplify the provisions of the bill and to have only one penalty provision.

STATEMENT

I am filing Assembly Bill No. 1594 in the State Library without my approval.

Under the provisions of Article V, Section I, Paragraph 14(b) of the Constitution, this bill does not become a law if it is not signed within the 45-day period, Sundays excepted, following the adjournment sine die of the Legislature. In these circumstances there is no provision for a veto, but I deem it to be in the public interest to state my reasons for deciding not to sign the bill.

Assembly Bill No. 1594 would supplement the "New Jersey Controlled Dangerous Substances Act," P.L. 1970, c. 226, N.J.S.A. 24:211 et. seq by prohibiting the manufacture, advertisement, display, sale, distribution, and possession of drug paraphernalia. The bill is directed at so-called "head shops" which promote items which are used in connection with the ingestion, administration, and preparation of controlled dangerous substances.

The purpose of the bill is to curb the use of illegal drugs by outlawing instruments and devices which are commonly associated with illegal drug use. By virtue of the State's interest in promoting the health, safety, and welfare of its citizens, and to the extent that illegal drug use relates to this interest, the purpose of A-1594 is a legitimate one. Further, there appears to be a sufficiently rational relationship between drug paraphernalia and illegal drug use to permit State regulation of the manufacture, sale, and distribution of the former. Nevertheless, the bill suffers from Constitutional infirmities which militate against adoption in its current form.

Enforcement of this bill would violate certain fundamental notions of due process. The terms of the bill are not sufficiently explicit to inform those who are subject to it what conduct on their part would render them liable to its penalties. It is true that the items prohibited by the bill are capable of being used for illegal purposes and undoubtedly are so used. But many of those items, such as cigarette paper, are in and of themselves, harmless and serve legitimate functions. The bill fails to provide adequate means by which manufacturers, retailers, and other individuals can determine whether or not an arguably legitimate item is forbidden.

The bill does not recognize or provide for the legitimate uses of the items designated as "drug accessories." Instead, it places a blanket prohibition on the manufacture, display, sale, distribution, and possession of such items. To the extent that this bill invades Constitutionally protected rights of possessing and dealing in legitimate items, and engaging in interstate commerce in such items, Assembly Bill No. 1594 is unconstitutionally overbroad.

The bill presents a further Constitutional issue. The prohibition against "advertising" and "display" of "drug accessories" may be sufficiently broad to permit prosecution of legitimate, nationally distributed periodicals which incidentally accept such advertising, possibly resulting in a "chilling effect" on the exercise of First Amendments rights.

Finally the penalty provision is disproportionate in comparison with other penalty provisions currently contained in the "Controlled Dangerous Substances Act." Possession of a drug related device is more severely penalized than possession of some outlawed drugs.

Although the purpose of the bill is laudable, due process considerations suggest that this bill is especially vulnerable to Constitutional attack. In that regard, it should be noted that similar enactments have been invalidated in other states including Georgia, Indiana, and North Dakota. Furthermore, ordinances aimed at "head shops" have been invalidated in several New Jersey municipalities including Paramus, Hillsdale, Newark and Lawrence Township.

I must emphasize that I am concerned about the drug problem in this State, especially as it affects our younger population, and that I support in principle any legislation intended to curb drug abuse. I believe the Legislature should consider other measures in this area, and that the possibility of adopting legislation dealing with drug paraphernalia in a more circumscribed way should be thoroughly explored. I would consider enacting such a bill into law.

Accordingly, I will file Assembly Bill No. 1594 without my approval.