

§ 335-12. Possession of controlled substances; marijuana; toxic inhalants; drug paraphernalia.

A. Possession of controlled substances. It is unlawful for any person to possess a controlled substance, other than a controlled substance classified in Schedules I and II under Ch. 961, Wis. Stats., which is a narcotic drug, unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his/her professional practice, or except as otherwise authorized by this Code of Ordinances.

B. Possession of marijuana.

(1) No person shall possess 25 grams or less of marijuana (tetrahydrocannabinols, commonly known as "THC," in any form, including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized), as defined in § 961.01, Wis. Stats., unless it was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by Ch. 961, Wis. Stats.

(2) For purposes of this section, "practitioner" means:

(a) A physician, dentist, veterinarian, podiatrist, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in the State of Wisconsin.

(b) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in the State of Wisconsin.

(3) This subsection does not apply to any person who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of any amount of marijuana, in the State of Wisconsin.

C. Toxic inhalants.

(1) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

TOXIC INHALANT — Any glue, paint, gasoline, aerosol, adhesive cement, mucilage, plastic cement or any similar substance containing one or more of the following volatile substances:

(a) Acetone;

(b) Benzene;

(c) Butyl alcohol;

(d) Cyclohexanone;

(e) Ethyl acetate;

(f) Ethyl alcohol;

(g) Ethylene dichloride;

(h) Hexane;

- (i) Isopropyl alcohol;
 - (j) Methyl alcohol;
 - (k) Methyl celosove;
 - (l) Acetate;
 - (m) Methyl ethyl ketone;
 - (n) Methyl isobutyl ketone;
 - (o) Pentachlorophenol;
 - (p) Petroleum ether;
 - (q) Trichlorethylene;
 - (r) Tricresylphosphate;
 - (s) Toluene;
 - (t) Toluol; or
 - (u) Any other chemical capable of producing intoxication when inhaled.
- (2) Inhalation of vapors or fumes from toxic inhalants prohibited. No person shall inhale or otherwise introduce into his respiratory tract any toxic vapors or fumes which may be released from any toxic inhalants with the intent of becoming intoxicated, elated, excited, stupefied, irrational, or paralyzed, or of changing, distorting, or disturbing his/her eyesight, thinking process, judgment, balance or muscular coordination.
- (3) Limitations on sales, transfer, and possession of toxic inhalants. No person shall, for the purpose of violating or aiding another to violate any provision of this subsection, possess, buy, sell, transfer possession or receive possession of any toxic inhalants.

D. Drug Paraphernalia.

- (1) Definitions. As used in this section, the following terms shall have the meanings indicated:

DRUG PARAPHERNALIA — All equipment, products and materials of any kind that are used, designed for use or primarily intended 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 or controlled substance analog in violation of Ch. 961, Wis. Stats.

"Drug paraphernalia" includes, but is not limited to, any of the following:

- (a) Kits used, designed for use or primarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance or controlled substance analog can be derived.
- (b) Kits used, designed for use or primarily intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.
- (c) Isomerization devices used, designed for use or primarily intended for use in increasing the potency of any species of plant that is a controlled substance.

- (d) Testing equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.
- (e) Scales and balances used, designed for use or primarily intended for use in weighing or measuring controlled substances or controlled substance analogs.
- (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, designed for use or primarily intended for use in cutting controlled substances or controlled substance analogs.
- (g) Separation gins and sifters used, designed for use or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
- (h) Blenders, bowls, containers, spoons and mixing devices used, designed for use or primarily intended for use in compounding controlled substances or controlled substance analogs.
- (i) Capsules, balloons, envelopes and other containers used, designed for use or primarily intended for use in packaging small quantities of controlled substances or controlled substance analogs.
- (j) Containers and other objects used, designed for use or primarily intended for use in storing or concealing controlled substances or controlled substance analogs.
- (k) Objects used, designed for use or primarily intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
 - [1] Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.
 - [2] Water pipes.
 - [3] Carburetion tubes and devices.
 - [4] Smoking and carburetion masks.
 - [5] Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
 - [6] Miniature cocaine spoons and cocaine vials.
 - [7] Chamber pipes.
 - [8] Carburetor pipes.
 - [9] Electric pipes.
 - [10] Air-driven pipes.
 - [11] Chilams.
 - [12] Bonges.
 - [13] Ice pipes or chillers.

"Drug paraphernalia" excludes:

- (a) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body.
 - (b) Any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products.
- (2) Determination of drug paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally relevant factors, the following:
- (a) Statements by an owner or by anyone in control of the object concerning its use.
 - (b) The proximity of the object, in time and space, to a direct violation of Ch. 961, Wis. Stats.
 - (c) The proximity of the object to controlled substances or controlled substance analogs.
 - (d) The existence of any residue of controlled substances or controlled substance analogs on the object.
 - (e) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of Ch. 961, Wis. Stats.; the innocence of an owner, or of anyone in control of the object, as to a direct violation of Ch. 961, Wis. Stats., shall not prevent a finding that the object is designed for use or primarily intended for use as drug paraphernalia.
 - (f) Instructions, oral or written, provided with the object concerning its use.
 - (g) Descriptive materials accompanying the object that explain or depict its use.
 - (h) Local advertising concerning its use.
 - (i) The manner in which the object is displayed for sale.
 - (j) 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.
 - (k) The existence and scope of legitimate uses for the object in the community.
 - (l) Expert testimony concerning its use.
- (3). Prohibited acts.
- (a) Possession of drug paraphernalia. No person may use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of Ch. 961, Wis. Stats.
 - (b) Manufacture or delivery of 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 plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of Ch. 961, Wis. Stats.
 - (c) Exemption. This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Ch. 961, Wis.

Stats. This section does not prohibit the possession, manufacture or use of hypodermics, in accordance with Ch. 961, Wis. Stats.

- E. Additional penalties. In addition to the penalties in Chapter 1, Article I, of this Code:
- (1) If any adult violates Subsection B or C, the court shall, in addition to any other penalties that may apply to the offense, suspend or revoke the person's operating privilege for not less than six months nor more than five years. The court shall immediately take possession of any suspended or revoked license and forward it to the Department of Transportation, together with the record of conviction and notice of suspension or revocation.
 - (2) If any person who is under 18 years of age violates Subsection B or C, such person shall be subject to the same penalties set forth in Subsection D(1) or participation in a supervised work program, or both.
 - (3) If any person who is under 18 years of age violates Subsection B or C, the court shall, in addition to any other penalties that may apply to the offense, suspend or revoke the person's operating privilege for not less than six months nor more than five years. The court shall immediately take possession of any suspended or revoked license and forward it to the Department of Transportation, together with the record of conviction and notice of suspension or revocation.