

NACJ

Nevada Attorneys for Criminal Justice

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Statewide Substance Use Response Working Group (SURG)

Office of the Attorney General

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Carson City, NV 89701

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Sent Via Email

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Re: SURG Prevention Subcommittee Recommendation #10

Membership

Stacy Newman

Dear SURG Subcommittee Members,

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Augustus Claus

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Nevada Attorneys for Criminal Justice is a state-wide non-profit organization of criminal defense attorneys in Nevada. Our members represent clients in all phases of criminal proceedings in municipal, state, and federal courts in Nevada. Our members include attorneys in private firms as well as public defender offices.

We write to provide input on recommendation #10 in the 2023 SURG annual report regarding the definition of "drug paraphernalia."

Overall, NACJ strongly supports the proposed change. The suggested revision represents a significant step forward for public health and would also reduce the burden on the criminal justice system.

However, NACJ has some concerns regarding the proposed deletion of subsection K. We believe that the mere deletion of the items in subsection K creates a strong potential for legal ambiguity and inconsistent interpretations by prosecutors, who may still try to argue that those items can be used for "ingestion" and who are unaware of the legislative history and the efforts of the SURG Subcommittee. Unfortunately, by the time legal interpretation is debated in court, our clients have often already faced extended periods of incarceration and deprivation of their liberty, sometimes for weeks or even months.

To mitigate this risk, NACJ suggests that instead of entirely removing section K from the bill, it be relocated to a new section that explicitly states that the items previously listed in Section K are no longer to be considered "drug paraphernalia."

This approach would be similar to how "fentanyl test strips" and "testing products" are currently defined and exempted in the statute. For example, a new section could be added to part 2 and could read as follows:

N.R.S. 453.554

453.554. "Drug paraphernalia" defined

1. Except as otherwise provided in subsection 2, as used in NRS 453.554 to 453.566, inclusive, unless the context otherwise requires, "drug paraphernalia" means 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, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing or ingesting, ~~inhaling or otherwise introducing into the human body~~ a controlled substance in violation of this chapter. The term includes, but is not limited to:
 - a. 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;
 - b. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing or preparing controlled substances;
 - c. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
 - d. Testing 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;
 - e. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
 - f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
 - g. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
 - h. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
 - i. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances; ~~and~~
 - j. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances; ~~and~~
 - k. ~~Objects used, intended for use, or designed 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. Smoking masks;~~
- ~~4. Roach clips, which are 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;~~
- ~~5. Cocaine spoons and cocaine vials;~~
- ~~6. Carburetor pipes and carburetion tubes and devices;~~
- ~~7. Chamber pipes;~~
- ~~8. Electric pipes;~~
- ~~9. Air-driven pipes;~~
- ~~10. Chillums;~~
- ~~11. Bongs; and~~
- ~~12. Ice pipes or chillers.~~

2. The term does not include:

- a. Any type of hypodermic syringe, needle, instrument, device or implement intended or capable of being adapted for the purpose of administering drugs by subcutaneous, -intramuscular or intravenous injection; or
- b. Testing products.
- c. *Smoking Supplies*

3. As used in this section:

- a. "Fentanyl test strip" means a strip used to rapidly test for the presence of fentanyl or other synthetic opiates.
- b. "Testing product" means a product, including, without limitation, a fentanyl test strip, that analyzes a controlled substance for the presence of adulterants.
- c. "*Smoking Supplies*" means any objects used intended for use, or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, including, but without limitation:
 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. Smoking masks;
 4. Roach clips, which are 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;
 5. Cocaine spoons and cocaine vials;
 6. Carburetor pipes and carburetion tubes and devices;

- 7. Chamber pipes;*
- 8. Electric pipes;*
- 9. Air-driven pipes;*
- 10. Chillums;*
- 11. Bongs; and*
- 12. Ice pipes or chillers.*

NACJ believes that this proposed revision, with the inclusion of a clear definition for "Smoking Supplies," would help avoid potential legal pitfalls and ensure that the legislative intent is upheld. We appreciate the opportunity to contribute to this important discussion and are confident that this adjustment will strengthen the bill's alignment with public health objectives while safeguarding against unintended consequences in the criminal justice system.

Please let us know if there are any further details we can provide or if you would like to discuss this feedback in more depth. We look forward to continuing to support the Subcommittee's efforts in this and other initiatives.

Thank you again for considering our input.

Sincerely,

Emily K. Strand
President, Nevada Attorneys for Criminal Justice