

Current Law

Paraphernalia and Medical Marijuana:

A summary of currently allowed and prohibited paraphernalia and the impact for users of medical marijuana.

Paraphernalia and Medical Marijuana:

Section 893.147, F.S., prohibits the use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia with various criminal penalties imposed for such acts ranging from a first degree misdemeanor to a second degree felony. Drug paraphernalia, as defined in s. 893.145, F.S., includes

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, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter or s. 877.111, F.S.

Objects that are specified as paraphernalia in s. 893.145, F.S., which could be related to the use and production of marijuana include:

- Kits used, intended for use, or designed for use in the 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;
- Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances;
- Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis;
- Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances; and
- Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body.

Section 893.146, F.S., gives guidance to courts and other authorities on how to determine if an object is or is not drug paraphernalia. Courts must consider, in addition to all other logically relevant factors:

- Statements by an owner or by anyone in control of the object concerning its use.
- The proximity of the object, in time and space, to a direct violation of this act.
- The proximity of the object to controlled substances.
- The existence of any residue of controlled substances on the object.

- 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 or she 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 shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
- Instructions, oral or written, provided with the object concerning its use.
- Descriptive materials accompanying the object which explain or depict its use.
- Any advertising concerning its use.
- The manner in which the object is displayed for sale.
- 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 of or dealer in tobacco products.
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- The existence and scope of legitimate uses for the object in the community.
- Expert testimony concerning its use.

Users of medical marijuana under the proposed constitutional amendment, as well as registered medical marijuana treatment facilities, will most likely not violate Florida's ban on drug paraphernalia when using medical marijuana under the auspices of the amendment. The amendment language specifically allows the acquisition, possession, use delivery, and transfer of marijuana and "related supplies" under the definition of medical use. The amendment also allows medical marijuana treatment centers to acquire, cultivate, possess, process, transfer, transport, sell, distribute, and dispense such "related supplies." It is likely any items used by qualifying patients or medical marijuana treatment centers that would be considered drug paraphernalia would also fall under the category of "related supplies" and, as such, would be legal under the terms of the amendment.