

**Chapter 85**  
**DRUGS AND DRUG PARAPHERNALIA**

§ 85-1. Definitions.

§ 85-3. Unlawful acts; violations and penalties.

§ 85-2. Determination of object as drug paraphernalia.

**[HISTORY: Adopted by the Council of the Borough of Berwick 5-17-1982 by Ord. No. 1156. Amendments noted where applicable.]**

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§ 85-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**CONTROLLED SUBSTANCE** — A drug, substance or immediate precursor, as defined in Schedule I through V of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-104, or any amendments thereto.

**DRUG PARAPHERNALIA** — Any object, device, instrument, apparatus, contrivance, equipment, product or material of any kind whose primary and traditionally intended use or design for use is involved with the illegal use of any and all controlled substances under the laws of the Commonwealth of Pennsylvania, and is further defined, by way of illustration and not by way of limitation, to include objects, devices, instruments, apparatus, equipment, products or materials used or 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 the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §§ 780-101 to 780-144. It 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, processing 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 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.
- J. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.
- K. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body.
- L. 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) 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) Chillums.
  - (11) Bongs.
  - (12) Ice pipes or chillers.

**HEAD SHOP** — Any business, the operation of which involves the sale, lease, trade, gift or display for sale of any and all types of drug paraphernalia.

**PUBLIC NUISANCE** — The conduct of head shop activities, as defined herein, or of any business or premises within the Borough of Berwick in which or from which drug paraphernalia as defined herein is disposed of by way of sale, barter, trade, exchange, use or in any other manner intended to induce a change of possession.

**§ 85-2. Determination of object as drug paraphernalia.**

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:

- A. Statements by an owner or by anyone in control of the object concerning its use.
- B. 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.
- C. The proximity of the object, in time and space, to a direct violation of 35 P.S. §§ 780-101 to 780-144.
- D. The proximity of the object to controlled substances.
- E. The existence of any residue of controlled substances on the object.
- F. 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 knows or should reasonably know intend to use the object to facilitate a violation of 35 P.S. §§ 780-101 to 780-144. The innocence of an owner or of anyone in control of the object as to a direct violation of 35 P.S. §§ 780-101 to 780-144 shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.
- G. Instructions, oral or written, provided with the object concerning its use.
- H. Descriptive materials accompanying the object which explain or depict its use.
- I. National and local advertising concerning its use.
- J. The manner in which the object is displayed for sale.
- K. 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.
- L. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- M. The existence and scope of legitimate uses for the object in the community.
- N. Expert testimony concerning its use.

**§ 85-3. Unlawful acts; violations and penalties.**

- A. Unlawful acts.
  - (1) Possession of drug paraphernalia. It is unlawful for any person to use or to possess with 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 in violation of 35 P.S. §§ 780-101 to 780-144.
  - (2) Manufacture or delivery of drug paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver or manufacture with intent to deliver drug

paraphernalia, knowing or under circumstances where one reasonably should know that it will be 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 in violation of 35 P.S. §§ 780-101 to 780-144.

- (3) Advertisement of drug paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.
- (4) Conducting of or continuation of place classified as head shop. It is unlawful for any person, persons, firm, association, partnership, corporation or other entity to conduct business determined to be a head shop, as defined herein, or to continue the operation of a premise classified as a head shop, as defined herein, after notice of said determination.

B. Enforcement and penalties.

- (1) Upon conviction before a District Justice in summary proceedings of violating any provision of this chapter, any such person, persons, firm, association, partnership, corporation or other entity found guilty thereof shall be sentenced to pay a fine of not more than \$300 and costs of such summary proceedings and/or be sentenced to imprisonment for a period not to exceed 30 days.
  - (2) Each and every day that violation continues after notice of declaring the activities the conduct of a head shop, or each and every day of any other violation under this chapter, shall be considered a separate and distinct violation.
- C. Forfeiture of paraphernalia. All drug paraphernalia as defined in § 85-1 of this chapter shall be subject to forfeiture to the Borough of Berwick, and no property right shall exist in them.