



Legality of Drug Checking Equipment in the United States

As of July 31, 2021

Background

Fentanyl and fentanyl analogs have infiltrated much of the country's opioid supply, driving a 10-fold increase in fentanyl-related overdose deaths from 2015 to 2020.¹ Until recently, fentanyl adulteration in the illicit drug market was largely confined to states east of the Mississippi River, but it has now spread westward and is impacting the illicit drug market throughout much of the United States.² Because fentanyl is more potent than many other opioids and its presence makes it difficult for people who use heroin and other street opioids to properly titrate their dose, fentanyl adulteration creates a heightened risk for overdose among people who use illicit opioids.³

Fentanyl has also been associated with increased overdose rates among people who use stimulants, such as cocaine and methamphetamine, suggesting that it may have infiltrated the illicit stimulant supply in some areas as well.⁴ Because a safe supply of most drugs is not readily available, helping people who use drugs determine what is in those drugs can be an impactful harm reduction intervention.⁵ For individuals in areas where fentanyl infiltration is relatively low, the easiest way to accomplish this is likely through the use of fentanyl test strips (FTS). FTS are small, disposable, relatively inexpensive strips that identify the presence of fentanyl in a sample of drugs.

Many people who inject drugs (PWID) change their behavior based on the results provided by FTS. A survey of PWID in North Carolina, for example, found that more than four in five PWID who received FTS used the strips to test their drugs before consumption, and people who obtained a positive result were five times more likely to report changes in drug use behavior than those who obtained a negative result.⁶ A survey of PWID in Rhode Island found that a positive FTS result was significantly associated with reporting a positive change in overdose risk behavior between baseline and followup, with approximately 45 percent of PWID reporting using a smaller amount of the drug and approximately 42 percent reporting using it more slowly.^{7,8} Based in part on these promising initial results, governmental and nongovernmental organizations in many states now provide FTS as part of a broader harm reduction strategy, and the Centers for Disease Control and Prevention (CDC) and the Substance Abuse and Mental Health Services Administration (SAMHSA) permit Federal funding to be used to purchase them.⁹

Although it is of particular importance because of its strength and ubiquity, fentanyl is not the only adulterant of concern. Drug checking at dance festivals, for example, has long been used to determine whether drugs sold, particularly pills, represented as one drug contained an additional substance.¹⁰ Most of these reagent tests have the same limitation as FTS: they test only for the presence of an adulterant and provide little to no



information about the adulterant's concentration. Because a considerable amount of the illicit drug supply in the United States is currently contaminated with fentanyl, it is possible that FTS may be less useful now than in the past. To address this concern, some organizations have begun to use more advanced equipment that provides a detailed analysis of the substances present in a sample of drugs.¹¹ This equipment has the advantage of providing much more extensive information than FTS or reagent tests, but it is much more expensive to acquire and often requires some training on the part of the operator.¹²

State Law Inventory

Because most state paraphernalia laws are based on a model act created in the late 1970's by the Drug Enforcement Administration, these laws typically classify nearly every object used in conjunction with illicit drugs—including those used for “testing” or “analyzing” those drugs—as illegal paraphernalia.¹³ These laws also generally prohibit the possession or distribution of such paraphernalia. Although these laws, in our (Network for Public Health Law's) experience, are almost never used to arrest or prosecute people for possession or distribution of drug checking equipment, can cause confusion and may deter uptake of these potentially promising interventions.

To provide insight into this problem and a potential framework for resolving it, we surveyed the legal landscape regarding drug checking equipment in all 50 U.S. States, the District of Columbia, and Puerto Rico as of July 31, 2021.¹⁴ The table in this document presents the results of that research. First, we note whether the possession of drug checking equipment is legal in each state. Where possession of some types of equipment is legal (e.g., equipment for the detection of fentanyl) and other types of equipment are not, that distinction is noted. For localities where the law is unclear, an explanation appears in the footnotes. Second, we note whether the free distribution of drug checking equipment is legal. In a few states, it is legal to give drug checking equipment for free but not legal to sell it; in places where this is the case, it is noted in the footnotes. Third, we list the potential penalties for a first conviction for both possession and distribution of drug checking equipment. Fourth, we show whether there are exceptions to the general rules regarding drug checking equipment obtained from, distributed by, or returned to a harm reduction program. Finally, we note whether drug checking equipment is covered by the state's overdose Good Samaritan law. Further information appears in the footnotes.

This research determined that it is clearly legal to possess drug checking equipment in 17 states. In four additional states, the possession of fentanyl testing equipment is clearly legal, but other checking equipment is not. In five states, the law is unclear, and in 26 states, possession of drug checking equipment is arguably a crime, typically because the law both defines paraphernalia as including testing equipment and criminalizes the possession of such paraphernalia. In 14 states, it is clearly legal to provide drug checking equipment for free.¹⁵ Four states permit the distribution of fentanyl testing equipment but not other drug checking equipment, and in four states, the law is unclear.

The potential penalties for possession and distribution of drug checking equipment, if those activities are deemed to violate the law, vary widely among states. For possession, penalties vary from a \$50 civil fine in New Mexico to up to 5 years in prison in North Dakota and a minimum of 6 years of incarceration in Arkansas. For distribution, potential penalties vary from a \$500 fine in Maryland to up to 20 years in jail in Arkansas.

The law regarding the distribution of drug checking equipment by harm reduction programs such as syringe services programs (SSPs) is often unclear, such as where the state paraphernalia law excludes “injecting supplies” obtained from an SSP. However, we found that in approximately a dozen states, SSPs are clearly permitted to distribute drug checking equipment, even if such distribution is not otherwise permitted. Finally, we found that the overdose Good Samaritan laws in 36 states provide protection from criminal action related to drug checking equipment.



Nevertheless, the fact that a state has not clearly legalized the possession or distribution of drug checking equipment does not necessarily mean that those activities are illegal. Indeed, many states in which drug checking equipment is not clearly legal distribute it via health departments and other entities. However, in those states, it may be helpful to modify or repeal relevant laws to clarify that drug checking equipment is not criminalized.¹⁶ We also note that the great disparities between the potential penalties related to paraphernalia possession and distribution, activities that are clearly legal in some states and subject to years-long prison terms in others, suggest that those penalties are not evidence-based and should be revisited.

Overdose deaths, particularly those due to fentanyl in the illicit drug supply, have increased dramatically throughout the United States. Until a safe supply is available, checking whether illicitly obtained drugs have been adulterated can be an important harm reduction tool. Clarifying or repealing drug paraphernalia laws would likely improve access to these promising technologies, potentially reducing overdose deaths.¹⁷

Legal Status of Drug Checking Equipment (DCE) as of July 31, 2021

State	Possession of DCE permitted ¹⁸	Free distribution of DCE permitted	Potential maximum penalty for first violation	Exceptions for Syringe Services Programs	Protections in overdose Good Samaritan law ¹⁹
Alabama	No ²⁰	No ²¹	Possession and distribution (Class A misdemeanor): 1 year in jail; \$6,000 fine ²²	SSP not authorized	Yes ²³
Alaska	Yes ²⁴	Yes ²⁵	Both possession and distribution legal	No, but possession and distribution are not prohibited	N/A
Arizona	Fentanyl: Yes Others: No ²⁶	Fentanyl: Yes Others: No ²⁷	Possession and distribution (class 6 felony): 4 months to 2 years in jail; \$150,000 fine ²⁸	Unclear ²⁹	Yes ³⁰
Arkansas	No ³¹	Yes (except to minors) ³²	Possession of DCE for substance not listed below (Class D felony): 6 years in jail; \$10,000 fine ³³ Possession of DCE for methamphetamine, heroin, fentanyl, or cocaine (Class B felony): 5 to 20 years in jail; \$15,000 fine ³⁴	No, but free distribution to adults is not prohibited	No ³⁵
California	Unclear ³⁶	No ³⁷	Distribution (misdemeanor): 6 months in jail; \$1,000 fine ³⁸	Yes, if deemed necessary by the local or state health department ³⁹	Yes ⁴⁰
Colorado	Yes ⁴¹	Yes ⁴²	Both possession and distribution legal	No, but possession and distribution are not prohibited	Yes ⁴³
Connecticut	No ⁴⁴	No ⁴⁵	Possession (Class C misdemeanor): 3 months in jail; \$500 fine ⁴⁶ Distribution (Class A misdemeanor): 1 year in jail; \$2,000 fine ⁴⁷	No ⁴⁸	Yes ⁴⁹
Delaware	Fentanyl strips: Yes Others: No ⁵⁰	Fentanyl strips: Yes Others: No ⁵¹	Possession (class B misdemeanor): 6 months in jail; \$1,150 fine ⁵² Distribution (class G felony): 2 years in jail; fine of any amount court deems appropriate ⁵³	Yes ⁵⁴	Yes ⁵⁵

State	Possession of DCE permitted ¹⁸	Free distribution of DCE permitted	Potential maximum penalty for first violation	Exceptions for Syringe Services Programs	Protections in overdose Good Samaritan law ¹⁹
Florida	No ⁵⁶	No ⁵⁷	Possession (misdemeanor of the first degree): 1 year in jail; \$1,000 fine ⁵⁸ Distribution (felony of the third degree): 5 years in jail; \$5,000 fine ⁵⁹	No ⁶⁰	Yes ⁶¹
Georgia	No ⁶²	No ⁶³	Possession and first offense for distribution (misdemeanor): 1 year in jail; \$1,000 fine ⁶⁴	Likely, for agents and employees only ⁶⁵	Yes ⁶⁶
Hawaii	No ⁶⁷	No ⁶⁸	Possession and distribution: \$500 fine ⁶⁹	Possibly, for participants, employees, and designees ⁷⁰	Yes ⁷¹
Idaho	No ⁷²	No ⁷³	Possession (misdemeanor): 1 year in jail; \$1,000 fine ⁷⁴ Distribution (felony): 9 years in prison; \$30,000 fine ⁷⁵	Possibly, for participants, volunteers, and staff ⁷⁶	Yes ⁷⁷
Illinois	Unclear ⁷⁸	Yes ⁷⁹	Possession (Class A misdemeanor): minimum fine of \$750 with potential incarceration of less than 1 year and fine up to \$2,500 ⁸⁰	Yes, for participants, volunteers, and employees ⁸¹	No ⁸²
Indiana	No ⁸³	No ⁸⁴	Possession (Class C misdemeanor): 60 days in jail; \$500 fine ⁸⁵ Distribution (Class A infraction): \$10,000 fine ⁸⁶ Distribution committed knowingly or intentionally (Class A misdemeanor): 1 year in jail; \$5,000 fine ⁸⁷	Likely, for volunteers and employees ⁸⁸	Yes ⁸⁹

State	Possession of DCE permitted ¹⁸	Free distribution of DCE permitted	Potential maximum penalty for first violation	Exceptions for Syringe Services Programs	Protections in overdose Good Samaritan law ¹⁹
Iowa	No ⁹⁰	No ⁹¹	Possession and distribution (simple misdemeanor): minimum fine of \$105 with potential for 30 days in prison and fine up to \$855 ⁹²	SSP not authorized	Yes ⁹³
Kansas	No ⁹⁴	No ⁹⁵	Possession (Drug severity level 5 felony): 10-12 months of probation ⁹⁶ Distribution (Nondrug severity level 9, nonperson felony): 6-7 months of probation ⁹⁷	SSP not authorized	No ⁹⁸
Kentucky	No ⁹⁹	No ¹⁰⁰	Possession and distribution (Class A misdemeanor): 1 year in jail; \$500 fine ¹⁰¹	Possibly, but only while at the SSP site ¹⁰²	Yes ¹⁰³
Louisiana	No ¹⁰⁴	No ¹⁰⁵	Possession and distribution: 15 days incarceration; \$300 fine ¹⁰⁶	Possibly ¹⁰⁷	No ¹⁰⁸
Maine	Yes ¹⁰⁹	Yes ¹¹⁰	Both possession and distribution legal	No, but possession and distribution are not prohibited ¹¹¹	Yes ¹¹²
Maryland	Unclear ¹¹³	Unclear ¹¹⁴	Possession and distribution (misdemeanor): \$500 fine ¹¹⁵	Yes ¹¹⁶	Yes ¹¹⁷
Massachusetts	Yes ¹¹⁸	Yes ¹¹⁹	Both possession and free distribution legal	No, but possession and free distribution are not prohibited ¹²⁰	N/A ¹²¹
Michigan	Yes ¹²²	Yes ¹²³	Both possession and free distribution legal	No, but possession and free distribution are not prohibited ¹²⁴	N/A ¹²⁵
Minnesota	Fentanyl: Yes Others: No ¹²⁶	Fentanyl: Yes Others: No ¹²⁷	Possession (petty misdemeanor): \$300 fine ¹²⁸ Distribution (misdemeanor): 90 days in prison; \$1,000 fine ¹²⁹	No, but possession and distribution of fentanyl testing equipment is not prohibited ¹³⁰	Yes ¹³¹

State	Possession of DCE permitted ¹⁸	Free distribution of DCE permitted	Potential maximum penalty for first violation	Exceptions for Syringe Services Programs	Protections in overdose Good Samaritan law ¹⁹
Mississippi	No ¹³²	No ¹³³	Possession and distribution (misdemeanor): 6 months in jail; \$500 fine ¹³⁴	SSP not authorized	Yes ¹³⁵
Missouri	No ¹³⁶	No ¹³⁷	Possession (class D misdemeanor): \$500 fine ¹³⁸ Distribution (class A misdemeanor): 1 year in jail; \$2,000 fine ¹³⁹	SSP not authorized	Yes ¹⁴⁰
Montana	No ¹⁴¹	No ¹⁴²	Possession and distribution (misdemeanor): 6 months in jail; \$500 fine ¹⁴³	Yes, but only for volunteers and employees ¹⁴⁴	Yes ¹⁴⁵
Nebraska	Unclear ¹⁴⁶	Unclear ¹⁴⁷	Possession (infraction): \$100 fine ¹⁴⁸ Distribution if illegal (Class II misdemeanor): 6 months in jail; \$1,000 fine ¹⁴⁹	SSP not authorized	Yes ¹⁵⁰
Nevada	Fentanyl: Yes Others: Unclear ¹⁵¹	Fentanyl: Yes Others: Unclear ¹⁵²	Possession (misdemeanor): 6 months in jail; \$1,000 fine ¹⁵³ Distribution (category E felony): 4 years in jail; \$5,000 fine ¹⁵⁴	Possibly, for staff and volunteers ¹⁵⁵	Yes ¹⁵⁶
New Hampshire	Yes ¹⁵⁷	No ¹⁵⁸	Distribution (misdemeanor): minimum fine of \$350 with potential for fine up to \$1,200 ¹⁵⁹	Probably ¹⁶⁰	No ¹⁶¹
New Jersey	No ¹⁶²	No ¹⁶³	Possession (disorderly persons offense): 6 months in prison; \$1,000 fine ¹⁶⁴ Distribution (crime of the fourth degree): 1.5 years in prison; \$10,000 fine ¹⁶⁵	No ¹⁶⁶	Yes ¹⁶⁷
New Mexico	No (civil violation only) ¹⁶⁸	No ¹⁶⁹	Possession: \$50 fine ¹⁷⁰ Distribution (misdemeanor): 1 year in jail; \$1,000 fine ¹⁷¹	Possibly, but only while directly engaged in services ¹⁷²	Yes ¹⁷³

State	Possession of DCE permitted ¹⁸	Free distribution of DCE permitted	Potential maximum penalty for first violation	Exceptions for Syringe Services Programs	Protections in overdose Good Samaritan law ¹⁹
New York	Yes ¹⁷⁴	Yes ¹⁷⁵	Both possession and free distribution legal	No, but neither the possession nor free distribution of drug checking equipment is prohibited.	Yes ¹⁷⁶
North Carolina	Yes, for personal use ¹⁷⁷	No ¹⁷⁸	Possession and distribution (Class 1 misdemeanor): 1-45 days of community punishment; fine of any amount court deems appropriate ¹⁷⁹	Yes ¹⁸⁰	Yes ¹⁸¹
North Dakota	No ¹⁸²	No ¹⁸³	Possession and distribution (class C felony): 5 years in prison; \$10,000 fine ¹⁸⁴	Unclear ¹⁸⁵	Yes ¹⁸⁶
Ohio	No ¹⁸⁷	Yes ¹⁸⁸	Possession (misdemeanor of the fourth degree): 30 days in jail; \$250 fine ¹⁸⁹	Yes, for staff and volunteers, and participants within 1,000 feet of SSP ¹⁹⁰	No ¹⁹¹
Oklahoma	No ¹⁹²	No ¹⁹³	Possession and distribution: 1 year in jail; \$1,000 fine ¹⁹⁴	SSP not authorized	Yes ¹⁹⁵
Oregon	Yes ¹⁹⁶	No (civil penalty) ¹⁹⁷	Distribution: minimum fine of \$2,000 with potential for fine up to \$10,000 ¹⁹⁸	Yes ¹⁹⁹	Yes ²⁰⁰
Pennsylvania	No ²⁰¹	No ²⁰²	Possession and distribution (misdemeanor): 1 year in prison; \$2,500 fine ²⁰³	SSP not authorized at state level ²⁰⁴	Yes ²⁰⁵
Puerto Rico	No ²⁰⁶	No ²⁰⁷	Possession (felony): 3 years in prison; \$3,000 fine [if aggravating circumstances, 5 years in prison; \$5,000 fine] Distribution (felony): 3 years in prison; \$30,000 fine [if aggravating circumstances, 5 years in prison; \$50,000 fine] ²⁰⁸	Yes ²⁰⁹	N/A ²¹⁰

State	Possession of DCE permitted ¹⁸	Free distribution of DCE permitted	Potential maximum penalty for first violation	Exceptions for Syringe Services Programs	Protections in overdose Good Samaritan law ¹⁹
Rhode Island	Yes ²¹¹	Yes ²¹²	Both possession and distribution legal	No, but possession and distribution are not prohibited ²¹³	Unclear, but possession and distribution are not prohibited ²¹⁴
South Carolina	Yes ²¹⁵	Yes ²¹⁶	Both possession and distribution legal ²¹⁷	No, but possession and distribution are not prohibited ²¹⁸	Yes ²¹⁹
South Dakota	No ²²⁰	No ²²¹	Possession (Class 2 misdemeanor): 30 days in jail; \$500 fine ²²² Distribution (Class 6 felony): 2 years in jail; \$4,000 fine ²²³	SSP not authorized	No ²²⁴
Tennessee	No ²²⁵	No ²²⁶	Possession (Class A misdemeanor): 11 months and 29 days incarceration; \$2,500 fine ²²⁷ Distribution (Class E felony): minimum prison time of 1 year with potential for up to 6 years in jail and \$3,000 fine ²²⁸	Yes, for staff, volunteers, and participants traveling to or from the SSP ²²⁹	Yes ²³⁰
Texas	No ²³¹	No ²³²	Possession (Class C misdemeanor): \$500 fine ²³³ Distribution (Class A misdemeanor): 1 year in jail; \$4,000 fine ²³⁴	SSP not authorized	Yes ²³⁵
Utah	No ²³⁶	No ²³⁷	Possession (class B misdemeanor): 6 months in jail; \$1,000 fine ²³⁸ Distribution (class A misdemeanor): 364 days in jail; \$2,500 fine ²³⁹	No ²⁴⁰	Yes ²⁴¹

State	Possession of DCE permitted ¹⁸	Free distribution of DCE permitted	Potential maximum penalty for first violation	Exceptions for Syringe Services Programs	Protections in overdose Good Samaritan law ¹⁹
Vermont	Yes ²⁴²	Yes ²⁴³	Both possession and free distribution legal ²⁴⁴	No, but neither the free distribution nor possession of drug checking equipment is prohibited ²⁴⁵	N/A ²⁴⁶
Virginia	Yes ²⁴⁷	Yes ²⁴⁸	Both possession and free distribution legal	Yes ²⁴⁹	Yes ²⁵⁰
Washington D.C.	Yes (for personal use) ²⁵¹	No ²⁵²	Possession for other than personal use: 30 days in jail; \$250 fine ²⁵³ Distribution: 6 months in jail; \$1,000 fine ²⁵⁴	Yes, for SSPs (simple possession is not prohibited) ²⁵⁵	Yes ²⁵⁶
Washington	Yes ²⁵⁷	No (civil infraction) ²⁵⁸	Distribution (class 1 civil infraction): \$250 fine ²⁵⁹	Yes ²⁶⁰	No ²⁶¹
West Virginia	Yes ²⁶²	Yes ²⁶³	Both possession and distribution legal	No, but the possession and free distribution of paraphernalia is not prohibited	No ²⁶⁴
Wisconsin	Unclear ²⁶⁵	Unclear ²⁶⁶	Possession: 30 days in prison; \$500 fine ²⁶⁷ Distribution if illegal: 90 days in prison; \$1,000 fine ²⁶⁸	SSP not authorized	Yes ²⁶⁹
Wyoming	Yes ²⁷⁰	Unclear ²⁷¹	Distribution: 6 months in prison; \$750 fine ²⁷²	SSP not authorized	No, but possession is not prohibited ²⁷³

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References

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- ⁵ Susan G. Sherman, et al., *Acceptability of implementing community-based drug checking services for people who use drugs in three United States cities: Baltimore, Boston and Providence*, 68 INT'L. J. DRUG POLICY 46-53 (2019).
- ⁶ Nicholas C. Peiper, et al., *Fentanyl test strips as an opioid overdose prevention strategy: findings from a syringe services program in the Southeastern United States*, 63 INT'L. J. DRUG POLICY 122–128 (2019).
- ⁷ Maxwell S. Krieger, et al., *Use of rapid fentanyl test strips among young adults who use drugs*, 61 Int'l. J. Drug Policy 52–58 (2018).
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- ⁹ Centers for Disease Control and Prevention & Substance Abuse and Mental Health Services Administration, *Federal Grantees May Now Use Funds to Purchase Fentanyl Test Strips* (2021), <https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html>. See also Regina LaBelle, et al., *Unlocking Federal Funding for Fentanyl Test Strips Will Save Lives*, Stat News (May 4, 2021), <https://www.statnews.com/2021/05/04/fentanyl-test-strips-unlocking-federal-funding-save-lives/> (“Making it easier to access fentanyl test strips is another essential step to save lives, foster engagement, and build trust with underserved and at-risk populations.”).
- ¹⁰ J. J. Palamar, et al., *Drug checking at dance festivals: A review with recommendations to increase generalizability of findings*, 29 Exp Clin Psychopharmacol (2021).
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- ¹² Wallace B. Hills R, Rothwell J, et al. Implementing an integrated multi-technology platform for drug checking: Social, scientific, and technological considerations. *Drug Test Anal.* 2021;13(4):734-746; Traci C. Green, et al., *An assessment of the limits of detection, sensitivity and specificity of three devices for public health-based drug checking of fentanyl in street-acquired samples*, 77 INT'L. J. Drug Policy 102661 (2020).
- ¹³ Michael D. Guinan, *Constitutionality of Anti-Drug Paraphernalia Laws-The Smoke Clears*, 58 Notre Dame L.R. 833 (1983).
- ¹⁴ This document captures all laws that had been chaptered as of July 31, 2021. In a few instances the effective dates of those laws are after July 31, 2021. Where this is the case, it is clearly noted in the footnotes.
- ¹⁵ Because the audience for this document is largely governmental and non-governmental organizations that provide fentanyl test strips and other drug checking equipment at no cost, we focus on the free distribution of those supplies. Some jurisdictions may have penalties for the sale of paraphernalia that are not captured here.
- ¹⁶ Corey S. Davis, et al., *Paraphernalia Laws, Criminalizing Possession and Distribution of Items Used to Consume Illicit Drugs, and Injection-Related Harm*, 109, no. 11 Am. J. Pub. Health, 1564-1567 (2019).

¹⁷ Peiper, *supra*.

¹⁸ Possession statutes generally come in two forms, criminalizing the “possession” or the “use or possession with intent to use.” This column will indicate a “no” for states in which either possession or use or possession with intent to use is either a criminal or civil infraction.

¹⁹ The protection provided by overdose Good Samaritan laws varies greatly by state on variables such as which parties are covered, at which point protection applies, as well as restrictions on generally provided protections. That information is not the focus of the document; please see [//www.networkforphl.org/resources/legal-interventions-to-reduce-overdose-mortality-overdose-good-samaritan-laws/](http://www.networkforphl.org/resources/legal-interventions-to-reduce-overdose-mortality-overdose-good-samaritan-laws/) for extensive information about each state’s overdose Good Samaritan law.

²⁰ 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 the controlled substances laws of this state.” Ala. Code § 13A-12-260(a). “It shall be unlawful for any person to use, or to possess with intent to use, or to use to inject, ingest, inhale or otherwise introduce into the human body, drug paraphernalia to... test... a controlled substance.... Any person who violates this subsection is guilty of a Class A misdemeanor...” Ala. Code § 13A-12-260(c).

²¹ “It shall be unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowing that it will be used to... test... a controlled substance.... Any person who violates this section is guilty of a Class A misdemeanor...” Ala. Code § 13A-12-260(e)(1).

²² A Class A misdemeanor is punishable by not more than one year “in the county jail or to hard labor for the county.” Ala. Code § 13A-5-7. Additionally, the convicted person can be ordered to pay a fine of “not more than \$6,000.” Ala. Code § 13A-5-12. Subsequent offenses are a Class C felony punishable by imprisonment of not more than 10 years or less than 1 year and a fine of not more than \$15,000, and any person over 18 delivering drug paraphernalia to a person under 18 at least three years younger is guilty of a Class B felony punishable by imprisonment of not more than 20 years or less than 2 years and a fine of not more than \$30,000. Ala. Code § 13A-12-260(e)(1)-(2); Ala. Code §§ 13A-5-6(a)(2); (3); 13A-5-11(a)(2); (3).

²³ “Excluding Section 32-5A-191 [charges relating to driving under the influence], an individual may not be prosecuted for a misdemeanor-controlled substance offense if law enforcement became aware of the offense solely because the individual was seeking medical assistance for another individual under this article.” Ala. Code § 20-2-281(b). See Ala. code § 20-2-281(c) (listing Good Samaritan law qualifications).

²⁴ Alaska does not have a statute criminalizing the use or possession with intent to use of drug paraphernalia on the state level. However, some municipalities within Alaska criminalize those activities. See, e.g., North Slope Borough, AK., Code § 11.20.030.

²⁵ Alaska does not criminalize the delivery of drug paraphernalia on the state level. However, some municipalities within Alaska criminalize activities related to paraphernalia. See, e.g., North Slope Borough, AK, Code § 11.20.020.

²⁶ “[i]t is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test...a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.” Ariz. Rev. Stat. § 13-3415(A). However, fentanyl testing equipment is specifically exempted: “other than narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” Ariz. Rev. Stat. § 13-3415(F)(2)(d) (modified by 2021 Ariz. Legis. Serv. Ch. 372 (S.B. 1486). The exemption goes into effect September 29, 2021.

²⁷ “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...test...a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.” Ariz. Rev. Stat. § 13-3415(B). In 2021 the definition of “drug paraphernalia” was modified to exempt fentanyl testing equipment, and as of that date reads, “Testing equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness, or purity of drugs, *other than narcotic drug testing products that are used to determine whether a controlled substance contains fentanyl or a fentanyl analog.* (Emphasis added)” Ariz. Rev. Stat. § 13-3415(F)(2)(d) (modified by 2021 Ariz. Legis. Serv. Ch. 372 (S.B. 1486). The exemption goes into effect September 29, 2021.

²⁸ The presumptive sentence for a class 6 felony is 1 year, but the sentence may vary from 4 months to 2 years. Ariz. Rev. Stat. § 13-702(D). Felonies may also be punishable by a fine of up to \$150,000. Ariz. Rev. Stat. §13-801(A). In some circumstances, “the court may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with chapter 9 of this title and refrain from designating the offense as a felony or misdemeanor until the probation is terminated.” Ariz. Rev. Stat. § 13-604. Class 1 misdemeanors are punishable by a maximum of 6 months imprisonment “to be served other than a place within custody of the state department of corrections” and a fine of no more than \$2,500. Ariz. Rev. Stat. §§ 13-707(a)(1); 13-802(A).

²⁹ Employees, volunteers, or participants may not be charged or prosecuted for possession of a needle, hypodermic syringe, or *other injection supply item* obtained from or returned to” an authorized SSP. (Emphasis added). Under this provision, testing equipment obtained from an SSP would likely be covered. Ariz. Rev. Stat. § 36-798.52(A)(1).

³⁰ “A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose may not be charged or prosecuted for the possession or use of a controlled substance or drug paraphernalia or a preparatory offense if the evidence for the violation was gained as a result of the person's seeking medical assistance.” Ariz. Rev. Stat. § 13-3423(A). “A person who experiences a drug-related overdose, who is in need of medical assistance and for whom medical assistance is sought pursuant to subsection A of this section [Good Samaritan law, previous provision] may not be charged or prosecuted for the possession or use of a controlled substance or drug paraphernalia if the evidence for the violation was gained as a result of the person's overdose and need for medical assistance.” Ariz. Rev. Stat. § 13-3423(B).

³¹ Drug paraphernalia “means any equipment, product, and material of any kind that are used, intended for use, or designed for use in..., testing, analyzing... or otherwise introducing into the human body a controlled substance in violation of this chapter.” Ark. Code Ann. § 5-64-101(12)(A). A person who uses or possesses with the purpose to use drug paraphernalia to...test, analyze...a controlled substance... upon conviction is guilty of a Class D felony.” Ark. Code Ann. § 5-64-443(b)(1). The same conduct is a Class B felony when the controlled substance is methamphetamine, heroin, fentanyl, or cocaine. Ark. Code Ann. § 5-64-443(b)(2).

³² Arkansas does not generally criminalize the distribution of drug paraphernalia. *See generally* Ark. Code Ann. § 5-64-443. However, it is unlawful in Arkansas to deliver drug paraphernalia, including drug checking equipment, to a person under 18 if the person delivering the paraphernalia is over 18 and at least 3 years older than the recipient. Ark. Code Ann. § 5-64-444. It is also illegal to engage in many activities related to “an illegal drug paraphernalia business.” Ark Code Ann. § 5-64-802.

³³ A Class D felony is punishable by a maximum of 6 years in prison and a fine of up to \$10,000. Ark Code Ann. §§ 5-4-401(a)(5); 5-4-201(a)(2).

³⁴ A Class B felony is punishable by not less than 5 years nor more than 20 years in prison and a fine of up to \$15,000. Ark Code Ann. §§ 5-4-401(a)(3); 5-4-201(a)(1). If the delivery to a minor was done in the course of and in furtherance of a felony violation, it is a Class B felony. Otherwise, it is a Class A misdemeanor. Ark Code Ann. § 5-64-444. A Class A misdemeanor is punishable by a maximum of one year and up to a \$2,500 fine. Ark. Code Ann. §§ 5-4-401(b)(1); 5-4-201(b)(1).

³⁵ See Ark Code Ann. § 20-13-1704.

³⁶ California’s definition of drug paraphernalia includes “Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.” Cal. Health & Safety Code § 11014.5(a)(4). Unlike many states, California only explicitly criminalizes the possession of drug paraphernalia used for a small number of activities: “It is unlawful to possess an opium pipe, or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking” a controlled substance. Cal. Health & Safety Code § 11364(a). It is therefore unclear whether the possession of drug checking equipment is unlawful.

³⁷ “Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance, except as provided in subdivision (b) [manufacturing controlled substances], in violation of this division, is guilty of a misdemeanor.” Cal. Health & Safety Code § 11364.7(a)(1).

³⁸ A misdemeanor is punishable by imprisonment in the county jail not exceeding 6 months and a fine not exceeding \$1,000. Cal. Penal Code § 19. There are increased penalties for delivering drug paraphernalia, including drug checking equipment, to a person under 18 if the person delivering the paraphernalia is over 18 and at least 3 years older than the recipient, or possessing a hypodermic needle on school property with the intent to deliver it to someone under 18 in order for that person to inject drugs, including up to one year in jail, a fine up to \$1,000, or both. Cal. Health & Safety Code § 11364.7(c).

³⁹ Per California law, “[s]taff and volunteers participating in an exchange project authorized by the state, county, city, or city and county pursuant to this chapter shall not be subject to criminal prosecution for violation of any law related to the possession, furnishing, or transfer of hypodermic needles or syringes or *any materials* deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability during participation in an exchange project. Program participants shall not be subject to criminal prosecution for possession of needles or syringes or *any materials* deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability acquired from an authorized needle and syringe exchange project entity.” Cal. Health & Safety Code § 121349.1 (emphasis added). Further, “[a] public entity, its agents, or employees shall not be subject to criminal prosecution for distribution of hypodermic needles or syringes or *any materials* deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability to participants in clean needle and syringe exchange projects.” Cal. Health & Safety Code § 11364.7(a)(2) (emphasis added). California regulations indicate that these additional materials might include equipment to prevent overdoses, such as drug checking equipment: “Each application [for syringe exchange program certification] shall contain the following information... [a] description of additional services that will accompany syringe exchange, such as overdose prevention supplies and education.” Cal. Code Regs. tit. 17, § 7002(a)(7). There is evidence that the state health department does deem drug checking equipment as necessary, and the California Department of Public Health provides fentanyl checking strips to SSPs for distribution to participants. Soumya Karlamangla, *California is now paying for people to test their drugs for fentanyl*, Los Angeles Times (2018), <https://www.latimes.com/health/la-me-ln-fentanyl-test-strips-20180531-story.html>. Further, the California Department of Public Health explains on its website that it “works closely with SSPs [Syringe Services Programs] to improve the health and wellbeing of those who inject drugs, including providing free fentanyl test strips... to SSPs throughout the state.” California Department of Public Health, *Harm Reduction*, <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/Harm-Reduction.aspx> (last visited Aug. 3, 2021). However, while syringes and needles are specifically carved out of the paraphernalia possession law, there is not a specific carve out for drug checking equipment. Cal. Health & Safety Code § 11364(b).

⁴⁰ “Notwithstanding any other law, it shall not be a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person experiencing a drug-related overdose that is related to the possession of a controlled substance, controlled substance analog, or drug paraphernalia of the person seeking medical assistance, and that person does not obstruct medical or law enforcement personnel. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.” Cal. Health & Safety Code § 11376.5(a).

“Notwithstanding any other law, it shall not be a crime for a person who experiences a drug-related overdose and who is in need of medical assistance to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.” Cal. Health & Safety Code § 11376.5(b). “This section shall not affect laws prohibiting the selling, providing, giving, or exchanging of drugs, or laws prohibiting the forcible administration of drugs against a person’s will.” Cal. Health & Safety Code § 11376.5(c).

⁴¹ “Testing equipment” is explicitly excluded from the definition of drug paraphernalia: “‘Drug paraphernalia’ does not include . . . [t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” Colo. Rev. Stat. § 18-18-426(2)(b).

⁴² “Testing equipment” is explicitly excluded from the definition of drug paraphernalia: “‘Drug paraphernalia’ does not include . . . [t]esting equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” Colo. Rev. Stat. § 18-18-426(2)(b).

⁴³ Colorado no longer criminalizes the use, possession with intent to use, or delivery of drug checking equipment. However, there is still a Good Samaritan law exemption specifically for possession: “The immunity described in subsection (1) of this section [Good Samaritan law] shall apply to the following criminal offenses...[p]ossession of drug paraphernalia, as described in section 18-18-428...” Colo. Rev. Stat. § 18-1-711(3)(g). See Colo. Rev. Stat. § 18-1-711(1)-(2).

⁴⁴ Drug paraphernalia includes “testing equipment used, intended for use or designed for use in identifying or analyzing the strength, effectiveness or purity of controlled substances.” Conn. Gen. Stat. § 21a-267(20)(A)(iv). “No person shall use or possess with intent to use drug paraphernalia...to...test, analyze...any controlled substance other than cannabis. Any person who violates any provision of this subsection shall be guilty of a class C misdemeanor.” Conn. Gen. Stat. § 21a-267(a). There are increased penalties for using or possessing with intent to use drug paraphernalia, including drug checking equipment, on or near school property. Conn. Gen. Stat. § 21a-267(c). A 2006 case held that a statute that provided that fewer than 31 “hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body” do not constitute drug paraphernalia also exempted related cottons and cookers. *Doe v. Bridgeport*, 434 F.Supp.2d 107 (2006). It is not clear whether this decision would extend to drug checking equipment, especially since that code section has now been repealed, as has any mention of “injecting” in the drug paraphernalia statute, while language specifically referring to “testing equipment” remains.

⁴⁵ “No person shall 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...test, analyze...any controlled substance, other than cannabis. Any person who violates any provision of this subsection shall be guilty of a class A misdemeanor.” Conn. Gen. Stat. § 21a-267(b). There are increased penalties for delivering or possessing with intent to deliver drug paraphernalia, including drug checking equipment, on or near school property. Conn. Gen. Stat. § 21a-267(c). However, the Connecticut Department of Health distributes fentanyl test strips, suggesting that their actual legal status is unclear. See Connecticut Dep’t of Public Health, *Fentanyl Testing to Prevent Overdose*, https://portal.ct.gov/-/media/Departments-and-Agencies/DPH/AIDS--Chronic-Diseases/Prevention/DPH_FentanylTestStrips.pdf (“As of January, 2019, FTS are made available through the CT DPH HIV Prevention Program.”).

⁴⁶ A Class C misdemeanor is punishable by a maximum of 3 months in prison and a fine of up to \$500. Conn. Gen. Stat. §§ 53a-36(3); 53a-42(3).

⁴⁷ A Class A misdemeanor is punishable by a maximum of 1 year in prison and a fine of up to \$2,000. Conn. Gen. Stat. §§ 53a-36(1); 53a-42(1). Possessing or delivering drug paraphernalia, including drug checking equipment, on or near school property is punishable by 1 year in prison consecutive with any other term imposed for possession or delivery of that paraphernalia. Conn. Gen. Stat. § 21a-267(c).

⁴⁸ Connecticut law authorizes syringe services programs but does not explicitly provide criminal immunity for either operators or participants of those programs. See Conn. Gen. Stat. § 19a-124.

⁴⁹ “The provisions of subsection (a) of this section [relating to the use or possession with intent to use drug paraphernalia] shall not apply to any person (1) who in good faith, seeks medical assistance for another person who such person reasonably believes is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, (2) for whom another person, in good faith, seeks medical assistance, reasonably believing such person is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, or (3) who reasonably believes he or she is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance and, in good faith, seeks medical assistance for himself or herself, if evidence of the use or possession of drug paraphernalia in violation of said subsection was obtained as a result of the seeking of such medical assistance. For the purposes of this subsection, ‘good faith’ does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search.” Conn. Gen. Stat. § 21a-267(d).

⁵⁰ “It is unlawful for any person to use, or possess with intent to use, drug paraphernalia.” Del. Code tit. 16, § 4771(a). “Drug paraphernalia” includes “all equipment, products or materials of any kind which are used, intended for use or designed for use in...testing, analyzing...a controlled substance the manufacture, delivery, possession or use of which is in violation of this chapter.” Del. Code tit. 16, § 4701(18). However, a law effective June 3, 2021 states that the prohibitions on drug paraphernalia do not apply to “Testing strips to determine the presence of fentanyl or fentanyl-related substances.” Del. Code tit. 16, § 4773(3).

⁵¹ “It is unlawful for any person to deliver, possess with intent to deliver, convert, manufacture, convey, sell or offer for sale drug paraphernalia... knowing or under circumstances where one should reasonably know that it will be used to... test, analyze... a controlled substance.” Del. Code tit. 16, § 4771(b). “Any person who delivers, possesses with the intent to deliver, conveys, offers for sale, converts, or manufactures with the intent to deliver drug paraphernalia is guilty of a class G felony.” Del. Code tit. 16, § 4774(c). However, a law effective June 3, 2021, states that the prohibitions on drug paraphernalia do not apply to “Testing strips to determine the presence of fentanyl or fentanyl-related substances.” Del. Code tit. 16, § 4773(3). A separate law, also effective June 3, 2021, provides protection against some civil damages in some situations related to the delivery of fentanyl testing strips. Del. Code tit. 16, § 2226.

⁵² “[A]ny person who uses or possesses with intent to use drug paraphernalia is guilty of a class B misdemeanor.” Del. Code tit. 16, § 4774(a). A class B misdemeanor is punishable by “up to 6 months incarceration at Level V [24-hour incarceration] and such fine up to \$1,150, restitution or other conditions as the court deems appropriate.” Del. Code tit. 11, § 4206(b).

⁵³ “Any person who delivers, possesses with the intent to deliver, conveys, offers for sale, converts, or manufactures with the intent to deliver drug paraphernalia is guilty of a class G felony.” Del. Code tit. 16, § 4774(c). A class G felony is punishable by “up to 2 years to be served at Level V” and “the court may impose such fines and penalties as it deems appropriate.” Del. Code tit. 11, § 4205(b)(7) and (k). There are increased penalties for a person over 18 delivering drug paraphernalia, including drug checking equipment, to a person under 18, which is a class E felony and punishable by up to 5 years imprisonment and “such fines and penalties as it deems appropriate.” Del. Code tit. 16, § 4774(d); Del. Code tit. 11, § 4205(b)(5); (k).

⁵⁴ Delaware law exempts drug paraphernalia, including drug checking equipment, from criminal liability when it has been obtained from a syringe exchange: “[e]xchanges under the sterile needle and syringe exchange program shall be exempt from the provisions of §§ 4762, 4771 [includes charges for use, possession with intent to use, and delivery of drug paraphernalia], and 4772 of Title 16 for the participant [“an injection drug user who exchanges a sterile needle and syringe unit pursuant to the program established in § 7991 of this title”] or for the employees of the Division [“the State Division of Public Health within the Department of Health and Social Services of the State”] or designated program staff, whenever the possession or distribution of the controlled paraphernalia or hypodermic syringe or needle is a direct result of the employee’s or participant’s activities in connection with the work of the program authorized under this subchapter.” Del. Code tit. 29, §§ 7990(2), (4), 7993(a) . The Delaware Division of Public Health’s website directs people to the availability of fentanyl checking strips at syringe exchanges. Delaware Division of Public Health, *Overdose Prevention: Get Help, Help is Here Delaware*, <https://www.helpisherede.com/Get-Help/Overdose-Prevention#PharmacistTraining> (last visited Feb. 3, 2021).

⁵⁵ “The immunity granted [Good Samaritan law] shall apply to all offenses in this chapter that are not class A, B, or C felonies, including but not limited to the following offenses... [p]ossession of drug paraphernalia as described in §§ 4762(c) [charges relating to possession of syringes] and 4771 [charges relating to possession of drug paraphernalia] of this title...” Del. Code tit. 29, § 4769(c)(4). A first-time offense of the delivery of drug paraphernalia is a class G felony and delivery to a minor is a class E felony; therefore, those offense would be included in the immunity. Del. Code tit. 29, §§ 4774(c), 4769(c)(4). See Del. Code tit. 29, § 4769(a)-(b) (listing Good Samaritan law definitions and qualifications).

⁵⁶ “The term “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in ... testing... a controlled substance in violation of this chapter or s. 877.111.” Fla. Stat. § 893.145. “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia... [t]o ... test ... a controlled substance.” Fla. Stat. § 893.147(1).

⁵⁷ “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... [t]o ... test ... a controlled substance.” Fla. Stat. § 893.147(2).

⁵⁸ “Any person who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 [sentencing] or s. 775.083 [fines].” Fla. Stat. § 893.147(1). A misdemeanor of the first degree is punishable by “imprisonment not exceeding 1 year” and a fine not exceeding \$1,000. Fla. Stat. §§ 775.082(4)(a); 775.083(1)(d).

⁵⁹ “Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082 [sentencing], s. 775.083 [fines], or s. 775.084 [enhanced penalties].” Fla. Stat. § 893.147(2). A felony of the third degree is punishable by “imprisonment not exceeding 5 years” and a fine not exceeding \$5,000. There are increased penalties for a person over 18 delivering drug paraphernalia, including drug checking equipment, to a person under 18, which is punishable by a felony of the second degree, punishable by up to 15 years imprisonment, \$10,000 dollar fine, and further sentences for the habitual felony offender, three-time violent felony offender, or violent career criminal. Fla. Stat. § 893.147(3); Fla. Stat. § 775.082(3)(c); 775.083(1)(b); and 775.084.

⁶⁰ Florida provides immunity for “needles or syringes as part of an exchange program” only. Fla. Stat. § 381.0038(7)(c).

⁶¹ “A person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol-related or a drug-related overdose may not be arrested, charged, prosecuted, or penalized for a violation of s. 893.147(1) [charges relating to the use or possession with intent to use of drug paraphernalia]... if the evidence for such offense was obtained as a result of the person’s seeking medical assistance.” Fla. Stat. § 893.21(1). “A person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related or a drug-related overdose and is in need of medical assistance may not be arrested, charged, prosecuted, or penalized for a violation of s. 893.147(1) [charges relating to the use or possession with intent to use of drug paraphernalia]... if the evidence for such offense was obtained as a result of the person’s seeking medical assistance.” Fla. Stat. § 893.21(2). Florida provides “making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose” as a mitigating factor for felony offenses, including charges relating to giving away drug paraphernalia. See Fla. Stat. §§ 893.147(2), 921.0026(2)(n).

62 “It shall be unlawful for any person to use, or possess with the intent to use, any object or materials of any kind for the purpose of...testing, analyzing...a controlled substance.” Ga. Code Ann. § 16-13-32.2(a).

63 “It shall be unlawful for any person or corporation to sell, rent, lease, give, exchange, otherwise distribute, or possess with intent to distribute any object or materials of any kind which such person or corporation intends to be used for the purpose of...testing...a controlled substance.” Ga. Code Ann. § 16-13-32.1(a). It is also unlawful to advertise the delivery of drug paraphernalia, including drug checking equipment. Ga. Code Ann. § 16-13-32(b).

64 Possession: “[a]ny person or corporation which violates any provision of this Code section shall be guilty of a misdemeanor.” Ga. Code Ann. § 16-13-32.2(b). A misdemeanor in Georgia is punishable by “confinement in the county or other jail, county correctional institution, or such other places as counties may provide for maintenance of county inmates, for a total term not to exceed 12 months” and “a fine not to exceed \$1,000.00.” Ga. Code Ann. § 17-10-3(a)(1). Distribution and advertising: “[f]or a first offense, any person or corporation which violates any provision of this Code section shall be guilty of a misdemeanor.” Ga. Code Ann. § 16-13-32(d). For a second offense, the defendant shall be guilty of a misdemeanor of a high and aggravated nature, punishable by a fine not to exceed \$5,000.00 or a term of imprisonment not to exceed 12 months, or both. Ga. Code Ann. § 17-10-4(a). For a third or subsequent offense, the defendant shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than five years and shall be fined not more than \$5,000.00.

65 Georgia law likely provides protection for the possession or free distribution of drug checking equipment for employees and volunteers of a syringe exchange: “A person employed by or acting as an agent of a registered syringe services program shall be immune from civil and criminal liability arising from the possession, distribution, or exchange of hypodermic syringes or needles and *related supplies* as part of such syringe services program.” Ga. Code Ann. § 16-13-32(c)(2) (emphasis added). Georgia law does not clarify whether “related supplies” includes drug checking equipment. However, Georgia’s statutes and regulations repeatedly reference the objective of the syringe services program to provide “safer injection supplie[s]” and “evidence-based interventions to reduce negative consequences of drug related behaviors.” Ga. Code Ann. § 16-13-32(c)(4); Ga. Comp. R. & Regs. 511-2-9-.04(1)(c), 511-2-9-.01(8), 511-2-9-.05(1)(b)(4)-(5). No protection is provided for participants.

66 “Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance. Any person who is experiencing a drug overdose and, in good faith, seeks medical assistance for himself or herself or is the subject of such a request shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of such drug violation resulted solely from seeking such medical assistance....” Ga. Code Ann. § 16-13-5(b) . “‘Drug violation’ means...A violation of Code Section 16-13-32.2, relating to possession and use of drug related objects.” Ga. Code Ann. § 16-13-5(a)(2)(C). See Ga. Code Ann. § 16-13-5(a) (listing relevant definitions).

67 Drug paraphernalia includes “all equipment, products, and materials of any kind which are used, primarily intended for use, or primarily designed for use, in ...testing... a controlled substance in violation of this chapter.” Haw. Rev. Stat. Ann. § 329-1. “[I]t is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test...a controlled substance in violation of this chapter.” Haw. Rev. Stat. Ann. § 329-43.5(a).

68 “[I]t 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...test...a controlled substance in violation of this chapter.” Haw. Rev. Stat. Ann. § 329-43.5(b).

69 “A violation of this subsection shall constitute a violation subject to a fine of no more than \$500.” Haw. Rev. Stat. Ann. § 329-43.5(a). “A violation of this subsection shall constitute a violation subject to a fine of no more than \$500.” Haw. Rev. Stat. Ann. § 329-43.5(b). A person over 18 delivering drug paraphernalia, including drug checking equipment, to a person under 18 who is at least 3 years younger than the deliverer is a class B felony punishable by a maximum of 10 years’ imprisonment or a \$25,000 fine. Haw. Rev. Stat. Ann. §§ 329-43.5(c); 706-660(1)(a); 706-640(1)(b).

⁷⁰ Participants, volunteers, and staff of a syringe services program may be exempt from possessing and giving away paraphernalia, including drug checking equipment: “[e]xchanges under the sterile needle and syringe exchange program shall not constitute an offense under section 329-43.5 [includes charges for the use, possession with intent to use, and delivery of drug paraphernalia] for the participant or for the employees of the department or its designees.” Haw. Rev. Stat. Ann. § 325-114.

⁷¹ “A person or persons who, in good faith, seek medical assistance for someone who is experiencing a drug or alcohol overdose and a person experiencing a drug or alcohol overdose who seeks medical assistance for the person’s self or is the subject of such a good faith request shall not be arrested, charged, prosecuted, or convicted; have their property subject to civil forfeiture; or otherwise be penalized for...[p]ossession of a controlled substance or drug paraphernalia under this chapter or part IV of chapter 712...if the evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of the seeking of medical assistance.” Haw. Rev. Stat. Ann. § 329-43.6(b)(1). The Good Samaritan law provides the act of seeking medical assistance for someone who is experiencing a drug or alcohol overdose as a mitigating factor for giving away paraphernalia, including drug checking equipment. See Haw. Rev. Stat. Ann. § 329-43.6(c). See also Haw. Rev. Stat. Ann. § 329-43.6(a) (listing relevant definitions).

⁷² “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test...a controlled substance.” Idaho Code § 37-2734A (1). “Drug paraphernalia” means “all equipment, products and materials of any kind 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 chapter.” Idaho Code § 37-2701(o).

⁷³ “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... test... a controlled substance.” Idaho Code § 37-2734B.

⁷⁴ “Any person who is in violation of the provisions...of this section is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than one thousand dollars (\$1,000), or both.” Idaho Code § 37-2734A (3).

⁷⁵ “Any person who is in violation of this section is guilty of a felony and upon conviction may be imprisoned for not more than nine (9) years, fined not more than thirty thousand dollars (\$30,000), or both.” Idaho Code § 37-2734B.

⁷⁶ Although it is not clear which individuals are specifically exempt, possessing and giving away paraphernalia, including drug checking equipment, is possibly legal for participants, volunteers, and staff of a syringe exchange in Idaho: “Notwithstanding any provision of law to the contrary... [a]n entity [the state department of health and welfare, a government entity, or a private organization, whether for profit or nonprofit] may supply a syringe and needle exchange program with *materials necessary to operate the program* if such entity complies with rules promulgated by the department.” Idaho Code §37-3404(1)(c) (emphasis added); similar language permits an entity to procure “supplies needed to operate a syringe and needle exchange program” Idaho Code §37-3404(1)(b). Idaho’s *Operating Recommendations and Requirements* for Idaho Safer Syringe Programs, define a syringe exchange program as one that “provides access to sterile syringes, needles, and other prevention materials, including cotton filters, bandages, and alcohol swabs” (emphasis added). Idaho Department of Health and Welfare Division of Public Health, *Operating Recommendations and Requirements*, Idaho Department of Health and Welfare Division of Public Health (July 1, 2020), <https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=6084&dbid=0&repo=PUBLIC-DOCUMENTS&cr=1>.

⁷⁷ “A person acting in good faith who seeks medical assistance for any person experiencing a drug-related medical emergency shall not be charged or prosecuted for... using or possessing with intent to use drug paraphernalia pursuant to section 37-2734A(1), Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the person seeking medical assistance.” Idaho Code § 37-2739C (1). “A person who experiences a drug-related medical emergency and is in need of medical assistance shall not be charged or prosecuted for... using or possessing with intent to use drug paraphernalia pursuant to section 37-2734A(1), Idaho Code, if the evidence for the charge of possession of or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the medical emergency and the need for medical assistance.” Idaho Code § 37-2739C (2).

78 It is not clear if possessing drug paraphernalia used to check drugs is unlawful: “A person who knowingly possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, or in preparing a controlled substance for that use, is guilty of a Class A misdemeanor for which the court shall impose a minimum fine of \$750 in addition to any other penalty prescribed for a Class A misdemeanor.” 720 Ill. Comp. Stat. 600/3.5(a). Under Illinois law, drug paraphernalia includes “all equipment, products and materials of any kind, other than methamphetamine manufacturing materials as defined in Section 10 of the Methamphetamine Control and Community Protection Act and cannabis paraphernalia as defined in Section 1-10 of the Cannabis Regulation and Tax Act, which are intended to be used unlawfully in... testing, analyzing... a controlled substance in violation of the Illinois Controlled Substances Act...”. 720 Ill. Comp. Stat. 600/2(d).

79 Illinois does not criminalize the free distribution of drug paraphernalia. See *generally* 720 Ill. Comp. Stat. 600. However, Illinois criminalizes the sale of drug paraphernalia. 720 Ill. Comp. Stat. 600/3(a) (2020).

80 The drug paraphernalia statute imposes a “minimum fine of \$750 in addition to any other penalty prescribed for a Class A misdemeanor.” 720 Ill. Comp. Stat. 600/3.5(a). A Class A misdemeanor is also punishable by imprisonment for “less than one year” and a fine “not to exceed \$2,500 for each offense.” 730 Ill. Comp. Stat. 5/5-4.5-55(a) and (e).

81 Possessing drug paraphernalia, including drug checking equipment, is legal for participants, volunteers, and staff of an SSP in Illinois: “Notwithstanding any provision of the Illinois Controlled Substances Act, the Drug Paraphernalia Control Act, or any other law, no employee or volunteer of or participant in a program established under this Act [Overdose Prevention and Harm Reduction Act] shall be charged with or prosecuted for possession of any of the following... [d]rug adulterant testing supplies such as reagents, test strips, or quantification instruments obtained from or returned, directly or indirectly, to a program established under this Act.” 410 Ill. Comp. Stat. 710/5(c)(3).

82 Illinois has an overdose Good Samaritan law, but it does not provide protection from paraphernalia-related charges. See 720 Ill. Comp. Stat. 570/414, 646/115; 730 Ill. Comp. Stat. 5/5-5-3.1(a)(14).

83 “A person who knowingly or intentionally possesses an instrument, a device, or another object that the person intends to use for...testing the strength, effectiveness, or purity of a controlled substance...commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated judgment or conviction under this section.” Ind. Code § 35-48-4-8.3(b).

84 “A person who keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for...testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance...commits a Class A infraction for dealing in paraphernalia.” Ind. Code § 35-48-4-8.5(a). “A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated judgment or conviction under this section.” Ind. Code § 35-48-4-8.5(b).

85 “A person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days; in addition, he may be fined not more than five hundred dollars (\$500).” Ind. Code § 35-50-3-4. “A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars (\$5,000).” Ind. Code Ann. § 35-50-3-2.

86 “A judgment of up to ten thousand dollars (\$10,000) may be entered for a violation constituting a Class A infraction.” Ind. Code § 34-28-5-4(a).

87 “A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars (\$5,000).” Ind. Code § 35-50-3-2. For a person with a prior unrelated conviction, it is a Level 6 Felony punishable by between 6 months and 2.5 years imprisonment and a fine not more than \$10,000. Ind. Code § 35-50-2-7.

⁸⁸ The distribution of drug paraphernalia, including drug checking equipment, is possibly legal for volunteers and staff of a syringe exchange in Indiana: “This section [includes delivery of drug paraphernalia] does not apply to the following...[a] qualified entity (as defined in IC 16-41-7.5-3) that provides a syringe or needle as part of a program under IC 16-41-7.5 [syringe exchange program].” Ind. Code § 35-48-4-8.5(c)(3). The provision outlining the duties of a syringe exchange program list requirements to, “[o]perate in a manner consistent with public health and safety” and “[e]nsure the program is medically appropriate and part of a comprehensive public health response.” Ind. Code § 16-41-7.5-6(7)-(8). However, it is not clear which individuals are specifically exempt, or whether the exempted party would need to provide a syringe or needle at the same time as a drug checking kit to qualify for immunity.

⁸⁹ “A law enforcement officer may not take an individual into custody based solely on the commission of an offense described in subsection (h) [including IC 35-48-4-8.3 (possession of paraphernalia)], if the law enforcement officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that the individual... [lists factors including seeking medical emergency response for another person experiencing an overdose].” Ind. Code § 16-42-27-2(g), (h)(4). See Ind. Code § 16-42-27-2(g)(1)-(7) (lists Good Samaritan law qualifications).

⁹⁰ “It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.” Iowa Code § 124.414(2). The definition of “drug paraphernalia” includes equipment and products “to knowingly or intentionally and primarily...test the strength, effectiveness, or purity of a controlled substance.” Iowa Code § 124.414(1)(a)(3).

⁹¹ “It is unlawful for any person to knowingly or intentionally manufacture, deliver, sell, or possess drug paraphernalia.” Iowa Code § 124.414(2). “A person who violates this section commits a simple misdemeanor.” Iowa Code § 124.414(3).

⁹² “A person who violates this section commits a simple misdemeanor.” Iowa Code § 124.414(3). “For a simple misdemeanor, there shall be a fine of at least one hundred five dollars but not to exceed eight hundred fifty-five dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.” Iowa Code § 903.1. There are increased penalties for subsequent offenses of up to three times the term otherwise authorized, three times the amount otherwise authorized, or both. Iowa Code § 124.411.

⁹³ “Protected information shall not be considered to support probable cause and shall not be admissible as evidence against an overdose patient or overdose reporter for any of the following offenses...[v]iolation of section 124.414 (including charges for possessing and giving away drug paraphernalia).” Iowa Code § 124.418(2)(d). See Iowa Code § 124.418(1) (listing relevant definitions).

⁹⁴ “It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to...test...a controlled substance” Kan. Stat. Ann. § 21-5709(b)(1). Drug paraphernalia means “all equipment and materials of any kind that are used, or primarily intended or designed for use in...testing, analyzing... a controlled substance and in violation of this act.” Kan. Stat. Ann. § 21-5701(f).

⁹⁵ “It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used as such in violation of [provisions including subsection (b) of 21-5709 relating to the use or possession with intent to use of drug paraphernalia].” Kan. Stat. Ann. § 21-5710(c). “It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of subsection (b) of K.S.A. 21-5706” (possession of a controlled substance). Kan. Stat. Ann. § 21-5710(d).

⁹⁶ “[V]iolation of subsection (b)(1) is a: Drug severity level 5 felony.” Kan. Stat. Ann. § 21-5709(e)(2). The sentence for a drug severity level 5 felony is determined by reference to the sentencing guidelines grid for drug crimes set forth in Kan. Stat. Ann. § 21-6805 which provides the presumptive sentencing range based on the crime of conviction and the convicted person’s criminal history. For a person with no criminal record, the presumptive sentence for a drug level 5 felony is 10-12 months of probation. Kan. Stat. Ann. § 21-6805.

⁹⁷ “[V]iolation of subsection (c) is a: Nondrug severity level 9, nonperson felony.” Kan. Stat. Ann. § 21-5710(e)(3)(A). The sentence for a nondrug severity level 9, nonperson felony is determined by reference to the sentencing guidelines grid for nondrug crimes set forth in Kan. Stat. Ann. § 21-6804, which provides the presumptive sentencing range based on the crime of conviction and the person’s criminal history. For a person with no criminal record, the presumptive sentence for a nondrug severity level 9, nonperson felony is 6-7 months of probation. Kan. Stat. Ann. § 21-6804. Delivering drug paraphernalia, including drug checking equipment, to a minor on or near school property is either a nondrug severity nonperson level 9 felony or a drug severity level 5 felony determined by reference to the sentencing guidelines grid for drug crimes set forth in Kan. Stat. Ann. § 21-6805 which provides the presumptive sentencing range based on the crime of conviction and the person’s criminal history. For a person with no criminal record, the presumptive sentence for a drug level 5 felony is 10-12 months of probation. Kan. Stat. Ann. §§ 21-5710(e)(3)(B); 21-6805.

⁹⁸ Kansas has not passed an overdose Good Samaritan law.

⁹⁹ “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of...testing...a controlled substance in violation of this chapter.” Ky. Rev. Stat. Ann. § 218A.500(2). Drug paraphernalia includes “all equipment, products and materials of any kind which are used, intended for use, or designed for use in...testing, analyzing... or otherwise introducing into the human body a controlled substance in violation of this chapter.” Ky. Rev. Stat. Ann. § 218A.500(1).

¹⁰⁰ “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...test...a controlled substance in violation of this chapter.” Ky. Rev. Stat. Ann. § 218A.500(3).

¹⁰¹ “Any person who violates any provision of this section shall be guilty of a Class A misdemeanor.” Ky. Rev. Stat. Ann. § 218A.500(7). “For a Class A misdemeanor, the term [of imprisonment] shall not exceed twelve (12) months.” Ky. Rev. Stat. Ann. § 532.090(1). For a Class A misdemeanor, a maximum fine of \$500 may be imposed in addition to or in lieu of imprisonment. Ky. Rev. Stat. Ann. § 534.040(2)(a).

¹⁰² Per Kentucky law, “Items exchanged at the program shall not be deemed drug paraphernalia under this section [includes possessing and giving away drug paraphernalia] while located at the program [a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes].” Ky. Rev. Stat. Ann. § 218A.500(5)(a), (c). Notably, an opinion by the state’s Attorney General regarding whether harm reduction and syringe exchange programs (HRSEPs) may provide syringes regardless of whether the participant has syringes to exchange says, “If the legislature had wished to limit HRSEPs to a specific type of program, rather than allowing flexibility in determining which type of HRSEP to offer, it could have done so.” Ky. Att’y Gen. Op. No. 15-018 (Dec 18, 2015), 2015 Ky. AG LEXIS 232. Following the same line of reasoning, if the legislature had wished to limit the items exempt from the drug paraphernalia statute while located at a syringe exchange, it could have done so. Further, a presentation available on the Kentucky Cabinet for Health and Family Services website lists the provision of fentanyl checking strips by a harm reduction organization. Nunez, *Leading in Harm Reduction*, Kentucky Cabinet for Health and Family Services, https://chfs.ky.gov/agencies/dph/Harm_Reduction/nunez.pptx (last visited Feb. 3, 2021).

¹⁰³ “A person shall not be charged with or prosecuted for a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia if... [lists relevant factors].” Ky. Rev. Stat. Ann. § 218A.133(2). “The provisions of subsection (2) of this section [Good Samaritan law exemption] shall not extend to the investigation and prosecution of any other crimes committed by a person who otherwise qualifies under this section.” Ky. Rev. Stat. Ann. § 218A.133(3). See Ky. Rev. Stat. Ann. § 218A.133(1), (2) (listing relevant definitions and factors).

¹⁰⁴ “It is unlawful for any person to use, or to possess with intent to use, any drug paraphernalia, to...test...a controlled substance in violation of this Part.” La. Stat. Ann. § 40:1023(C). Drug paraphernalia means all “equipment, products, and materials of any kind which are used, intended for use, or designed for use in...testing, analyzing... or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Dangerous Substances Law.” La. Stat. Ann. § 40:1021(1).

¹⁰⁵ “It is unlawful for any person or corporation, knowing, or under circumstances where one reasonably should know, to sell, lend, rent, lease, give, exchange, or otherwise distribute to any person any drug paraphernalia.” La. Stat. Ann. § 40:1023(A). “It is unlawful for any person or corporation, knowing, or under circumstances where one reasonably should know, to...possess with the intent to distribute, any drug paraphernalia.” La. Stat. Ann. § 40:1023(B).

¹⁰⁶ “The first violation of or failure to comply with any provision of this Part shall subject the offender to a fine not in excess of three hundred dollars, or imprisonment of not more than fifteen days, or both.” La. Stat. Ann. § 40:1025(A)(1). There are increased penalties for a second offense of fines not more than \$1000, imprisonment for not more than six months, or both. On a third or subsequent conviction, the convicted person shall be fined not more than \$2500, or imprisoned, with or without hard labor, for not more than two years, or both. La. Stat. Ann. § 40:1025(B)-(C).

¹⁰⁷ Louisiana law provides a broad exemption to the state paraphernalia law for SSPs, but does not explicitly protect employees or volunteers, nor does it explicitly cover drug checking equipment: “[a]ny provision of law to the contrary herein notwithstanding, the provisions of this Part [including prohibitions on the use, possession with intent to use, and delivery of drug paraphernalia] shall not prohibit the establishment and implementation of a needle exchange program within the jurisdiction of a local governing authority, including but not limited to a city, town, or parish, upon the express approval of the local governing authority.” La. Stat. Ann. § 40:1024(C).

¹⁰⁸ Louisiana’s overdose Good Samaritan law does not provide protection from paraphernalia-related crimes. See La. Stat. Ann. § 14:403.10(A), (B).

¹⁰⁹ All references to testing and analyzing, as well as specific mentions of testing equipment, were removed from the definition of drug paraphernalia in a bill approved July 9, 2021. See 2021 Me. Legis. Serv. Ch. 434 (H.P. 732) (L.D. 994). As of the effective date of this bill, possession or distribution of testing equipment is neither a crime nor punishable by civil means.

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¹¹¹ Maine law impliedly permits the possession, transportation, and exchange of “hypodermic apparatuses” distributed by or returned to syringe services programs. However, no such carve-out exists for drug checking equipment. See 22 M.R.S.A. § 1341.

¹¹² “A person who in good faith seeks medical assistance for or administers naloxone hydrochloride to another person experiencing a drug-related overdose or who is experiencing a drug-related overdose and is in need of medical assistance may not be arrested or prosecuted for a violation of...1111-A [including use, possession with intent to use, and delivery of drug paraphernalia]...if the grounds for arrest or prosecution are obtained as a result of the person's seeking medical assistance, administering naloxone hydrochloride or experiencing a drug-related overdose.” Me. Stat. tit. 17-A, §1111-B.

¹¹³ While state law was modified in 2018 to remove “test” and “analyze” from the list of prohibited activities, the definition of “drug paraphernalia” continues to include “testing equipment used, intended for use, or designed for use in analyzing the strength, effectiveness, or purity of a controlled dangerous substance.” See Md. Code Ann., Crim. Law § 5-101(p)(2)(iv). Because that section was modified to remove “in identifying or” before “analyzing” we must assume that this was intentional. While fentanyl test strips are arguably used to test for the presence of fentanyl and not the “strength, effectiveness, or purity” of a controlled substance, there is no caselaw on the application of this definition to them. It is also not clear whether the activities prohibited would reach drug checking, since “testing” is not included in the list of activities that it is impermissible to undertake with drug paraphernalia: “Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia to: (i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, pack, repack, store, contain, or conceal a controlled dangerous substance; or (ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.” Md. Code Ann., Crim. Law § 5–619(c)(2)(i)-(ii). Therefore, while we suspect that the intent of the legislature was to legalize drug checking equipment, we list it as “unclear”.

¹¹⁴ While state law was modified in 2018 to remove “test” and “analyze” from the list of prohibited activities, the definition of “drug paraphernalia” continues to include “testing equipment.” See note above. It is also unlawful to advertise the delivery of drug paraphernalia, including drug checking equipment, without charge, punishable by a fine not exceeding \$500 for a first offense and for each subsequent violation, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both. Md. Code Ann., Crim. Law § 5–619(e).

¹¹⁵ “A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to... for a first violation, a fine not exceeding \$500.” Md. Code Ann., Crim. Law §§ 5–619(c)(3)(i); 5-619(d)(2)(i). There are increased penalties for subsequent possession offenses of up to 2 years imprisonment or up to a \$2,000 fine or both. Md. Code Ann., Crim. Law § 5–619(c)(3)(ii). There are increased penalties for subsequent distribution offenses of up to 2 years imprisonment or up to a \$2,000 fine or both, and for a person over 18 delivering drug paraphernalia to a person at least 3 years younger than the deliverer of up to 8 years imprisonment or up to a \$15,000 fine or both. Md. Code Ann., Crim. Law § 5–619(d)(2)(ii), (d)(3), (d)(4).

¹¹⁶ “No Program staff member or Program participant may be found guilty of violating [laws related to controlled substances and drug paraphernalia] for possessing or distributing controlled paraphernalia or drug paraphernalia whenever the possession or distribution of the controlled paraphernalia or drug paraphernalia is a direct result of the employee's or participant's activities in connection with the work of the Program authorized under this subtitle.” Md. Code Ann., Health - General § 24-808(a).

¹¹⁷ “A person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person reasonably believed to be experiencing a medical emergency after ingesting or using alcohol or drugs shall be immune from criminal arrest, charge, or prosecution for a violation of...§ 5-619 [including use, possession with intent to use, and the delivery of drug paraphernalia]...of the Criminal Law Article if the evidence for the criminal arrest, charge, or prosecution was obtained solely as a result of the person's seeking, providing, or assisting with the provision of medical assistance.” Md. Code Ann., Crim. Law § 1–210(b). “A person who reasonably believes that the person is experiencing a medical emergency after ingesting or using alcohol or drugs shall be immune from criminal arrest, charge, or prosecution for a violation of...§ 5-619 [including charges for use, possession with intent to use, and delivery of drug paraphernalia]...of the Criminal Law Article if the evidence for the criminal arrest, charge, or prosecution was obtained solely as a result of the person seeking or receiving medical assistance.” Md. Code Ann., Crim. Law § 1–210(c) . See Md. Code Ann., Crim. Law § 1–210(a) (listing relevant definitions).

¹¹⁸ Massachusetts does not criminalize the use or possession with intent to use of drug paraphernalia. See *generally* Mass. Gen. Laws ch. 94C, § 32I.

¹¹⁹ Massachusetts does not criminalize the free distribution of drug paraphernalia. See *generally* Mass. Gen. Laws ch. 94C, § 32I. However, Massachusetts does criminalize the sale of drug paraphernalia: “It is unlawful to “sell, possess or purchase with intent to sell, or manufacture with intent to sell drug paraphernalia.” Mass. Gen. Laws ch. 94C, § 32I(a).

¹²⁰ Further, caselaw has clarified that state approval is not required for a program to freely distribute syringes. *AIDS Support Group of Cape Cod, In. v. Town of Barnstable*, 447 Mass. 296, 76 N.E.3d 969 (2017).

¹²¹ Massachusetts does not criminalize the use, possession with intent to use, or free distribution of drug paraphernalia. The Massachusetts Good Samaritan law does not include charges related to drug paraphernalia. See Mass. Gen. Laws ch. 94C, § 34A(a), (b).

¹²² Michigan does not criminalize the use or possession with intent to use of drug paraphernalia. See *generally* Mich. Comp. Laws § 333.7451-61. However, some municipalities within Michigan criminalize these activities. See *e.g.*, Zeeland, Mich., Code § 28-290(b).

¹²³ Michigan does not criminalize the delivery of drug paraphernalia. See *generally* Mich. Comp. Laws §§ 333.7451-333.7461. However, some municipalities within Michigan criminalize these activities. See *e.g.*, Zeeland, Mich., Code § 28-290(c). Note that it is unlawful to sell drug paraphernalia knowing that it will be used to “...test...” a controlled substance in Michigan. Mich. Comp. Laws § 333.7453 (2020).

¹²⁴ Although Michigan does not have a statute criminalizing the use, possession with intent to use, or delivery of drug paraphernalia, it has a statutory provision that might exempt the sale of drug checking equipment: “Sections 7451 to 7455 [including Section 7453: the sale of drug paraphernalia] do not apply to any of the following... [a]n object sold, offered for sale, or given away by a state or local governmental agency or by a person specifically authorized by a state or local governmental agency to prevent the transmission of infectious agents.” Mich. Comp. Laws § 333.7457(f).

¹²⁵ Michigan does not criminalize the use, possession with intent to use, or delivery of drug paraphernalia on the state level. See *generally* Mich. Comp. Laws § 333.7451-61. Michigan’s Good Samaritan laws do not mention drug paraphernalia. See Mich. Comp. Laws Ann. §§ 333.7403(3), 333.7404(3).

¹²⁶ “Except as otherwise provided in paragraph (b), “drug paraphernalia” means all equipment, products, and materials of any kind, except those items used in conjunction with permitted uses of controlled substances under this chapter or the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in... 3) testing the strength, effectiveness, or purity of a controlled substance...” “It is unlawful for any person knowingly or intentionally to use or to possess drug paraphernalia. Any violation of this section is a petty misdemeanor.” Minn. Stat. § 152.092(a). Minn. Stat. § 152.01 subd 18. However, “products that detect the presence of fentanyl or a fentanyl analog in a controlled substance” are specifically excluded from the definition of drug paraphernalia as of July 1, 2021. Minn. Stat. § 152.01 subd. 18(b)(2).

¹²⁷ “It is unlawful for any person knowingly or intentionally to deliver drug paraphernalia or knowingly or intentionally to possess or manufacture drug paraphernalia for delivery. Any violation of this section is a misdemeanor.” Minn. Stat. § 152.093. However, “products that detect the presence of fentanyl or a fentanyl analog in a controlled substance” are specifically excluded from the definition of drug paraphernalia. Minn. Stat. § 152.01 subd. 18(b)(2).

¹²⁸ “‘Petty misdemeanor’ means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed.” Minn. Stat. § 609.02 subd 4a. A person who has two previous convictions for paraphernalia possession “may be sentenced to imprisonment for up to 90 days or to payment of a fine of up to \$1,000, or both.” Minn. Stat. § 152.092(b).

¹²⁹ “‘Misdemeanor’ means a crime for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed.” Minn. Stat. § 609.02 subd 3. Delivering drug paraphernalia, including drug checking equipment, to a minor is a gross misdemeanor. Minn. Stat. § 152.094. Gross misdemeanors are punishable by a fine of up to \$3,000. Minn. Stat. § 609.02 subd 4.

¹³⁰ While drug paraphernalia “does not include the possession, manufacture, delivery, or sale of... products that detect the presence of fentanyl or a fentanyl analog in a controlled substance, there is no such carve-out for other testing equipment. Minn. Stat. § 152.01 subd 18(b).

¹³¹ “[P]roducts that detect the presence of fentanyl or a fentanyl analog in a controlled substance” are specifically excluded from the definition of drug paraphernalia. Minn. Stat. § 152.01 subd. 18(b)(2). However, “[a] person acting in good faith who seeks medical assistance for another person who is experiencing a drug-related overdose may not be charged or prosecuted for... possession of drug paraphernalia.” Minn. Stat. § 604A.05(1)(2020). See Minn. Stat. § 604A.05(1)(1), (2) (2020) (listing relevant factors). “A person who experiences a drug-related overdose and is in need of medical assistance may not be charged or prosecuted for... possession of drug paraphernalia. A person qualifies for the immunities provided in this subdivision only if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.” Minn. Stat. § 604A.05(2)(2020). “The act of providing first aid or other medical assistance to someone who is experiencing a drug-related overdose” may be a mitigating factor for charges including the delivery of drug paraphernalia. See Minn. Stat. § 604A.05(4)(2020). See also Minn. Stat. § 604A.05(5) (2020) (defining drug-related overdose).

¹³² “It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to...test, analyze...a controlled substance in violation of the Uniform Controlled Substances Law.” Miss. Code Ann. § 41-29-139(d)(1). “‘Paraphernalia’ means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in...testing, analyzing,...or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Law.” Miss. Code. Ann. § 41-29-105 (v)(i).

133 “It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of the Uniform Controlled Substances Law.” Miss. Code Ann. § 41-29-139(d)(2).

134 “Any person who violates [possession or distribution law] is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars (\$500.00), or both.” Miss. Code Ann. § 41-29-139(d)(1); (d)(2). A person 18 or over who delivers drug paraphernalia, to a person under 18 who is at least 3 years younger may be punished, upon conviction, by not more than one (1) year imprisonment, or a fine of not more than \$1,000.00, or both. Miss. Code Ann. § 41-29-139(d)(3).

135 Mississippi’s overdose Good Samaritan law exempts offenses located in provision § 41-29-139(d)(2), which concerns the delivery of drug paraphernalia. However, the law refers to this provision as “relating to possession and use of paraphernalia,” so it is not clear whether use, possession with intent to use, and/or the delivery of drug paraphernalia are exempted. See Miss. Code Ann. § 41-29-149.1(2)(b)(iii). “Any person who in good faith seeks medical assistance for someone who is experiencing a drug overdose shall not be arrested, charged, or prosecuted for a *drug violation* if there is evidence that the person is under the influence of a controlled substance or in possession of a controlled substance as referenced in subsection (2)(b) of this section.” Miss. Code Ann. § 41-29-149.1(3)(a) (emphasis added). “Any person who is experiencing a drug overdose and, in good faith, seeks medical assistance or is the subject of a request for medical assistance shall not be arrested, charged, or prosecuted for a *drug violation* if there is evidence that the person is under the influence of a controlled substance or in possession of a controlled substance as referenced in subsection (2)(b) of this section.” Miss. Code Ann. § 41-29-149.1(3)(b) (emphasis added). “Drug violation” is defined as including, “A violation of Section 41-29-139(d)(2) relating to possession and use of paraphernalia.” Miss. Code Ann. § 41-29-149.1(2)(b)(iii). See also Miss. Code Ann. § 41-29-149.1(2) (defining relevant terms).

136 “A person commits the offense of unlawful possession of drug paraphernalia if he or she knowingly uses, or possesses with intent to use, drug paraphernalia to...test, analyze...a controlled substance or an imitation controlled substance.” Mo. Rev. Stat. § 579.074(1). “Drug paraphernalia...includes, but is not limited to: Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances.” Mo. Rev. Stat. § 195.010(18)(d).

137 “A person commits the offense of unlawful distribution, delivery, or sale of drug paraphernalia if he or she unlawfully distributes, delivers, or sells, or possesses with intent to distribute, deliver, or sell drug paraphernalia knowing, or under circumstances in which one reasonably should know, that it will be used to... test, analyze... a controlled substance or an imitation controlled substance in violation of this chapter.” Mo. Rev. Stat. § 579.040(1).

138 “The offense of unlawful possession of drug paraphernalia is a class D misdemeanor.” Mo. Rev. Stat. § 579.074(2). A person who has been convicted of a class D misdemeanor may be sentenced to pay a fine which does not exceed \$500. Mo. Rev. Stat. § 558.002(1)(5). Subsequent offenses of possession or of other controlled substances laws are class A misdemeanors. Mo. Rev. Stat. § 579.074(2). Class A misdemeanors are punishable by up to a year in prison or a \$2,000 fine. Mo. Rev. Stat. §§ 558.011(1)(6); 558.002(1)(2). Possessing drug checking equipment to test “amphetamine or methamphetamine or any of their analogues” is a class E felony. Mo. Rev. Stat. § 579.074(3). Class E felonies are punishable by imprisonment of up to 4 years and up to a \$10,000 fine. Mo. Rev. Stat. §§ 558.002; 558.011(1)(5).

139 “The offense of unlawful delivery of drug paraphernalia is a class A misdemeanor.” Mo. Rev. Stat. §§ 579.040(2). A class A misdemeanor is punishable by “a term not to exceed one year.” Mo. Rev. Stat. § 558.011(1)(6). A person who has been convicted of a class A misdemeanor may also be sentenced to pay a fine which does not exceed \$2,000. Mo. Rev. Stat. § 558.002(1)(2).

¹⁴⁰ “A person who, in good faith, seeks or obtains medical assistance for someone who is experiencing a drug or alcohol overdose or other medical emergency or a person experiencing a drug or alcohol overdose or other medical emergency who seeks medical assistance for himself or herself or is the subject of a good faith request shall not be arrested, charged, prosecuted, convicted, or have his or her property subject to civil forfeiture or otherwise be penalized for the following if the evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking or obtaining medical assistance...[c]ommitting a prohibited act under section...579.074 [including use or possession with intent to use of drug paraphernalia].” Mo. Rev. Stat. § 195.205.2.(1). See Mo. Rev. Stat. § 195.205.1. (including relevant definitions).

¹⁴¹ “[I]t is unlawful for a person to use or to possess with intent to use drug paraphernalia to... test... a dangerous drug.” Mont. Code Ann. § 45-10-103. Drug paraphernalia includes “testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs”. Mont. Code Ann. § 45-10-101(1)(d).

¹⁴² “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...test a dangerous drug.” Mont. Code Ann. § 45-10-104.

¹⁴³ “A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.” Mont. Code Ann. § 45-10-103. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. Mont. Code Ann. § 45-10-104. A person 18 or over who delivers drug paraphernalia, including drug checking equipment, to a person under 18 who is at least 3 years younger commits a misdemeanor punishable by not more than 1 year imprisonment or not more than \$1,000 fine, or both. Mont. Code Ann. § 45-10-105.

¹⁴⁴ Under Montana law, “The provisions of this part [including prohibitions on possessing and giving away drug paraphernalia] do not apply to... persons acting as employees or volunteers of an organization, including a nonprofit community-based organization, local health department, or tribal health department, that provides needle and syringe exchange services to prevent and reduce the transmission of communicable diseases.” Mont. Code Ann. § 45-10-107(3).

¹⁴⁵ “The provisions of (law relating to paraphernalia possession) do not apply to: (a) a person who, acting in good faith, seeks medical assistance for another person who is experiencing an actual or reasonably perceived drug-related overdose if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the person's seeking medical assistance for another person; or (b) a person who experiences a drug-related overdose and is in need of medical assistance if the evidence supporting an arrest, charge, or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.” Mont. Code Ann. § 50-32-609(1). They also do not apply to “a pregnant woman seeking or receiving evaluation, treatment, or support services for a substance use disorder.” Mont. Code Ann. § 50-32-609(2). “A person's act of providing first aid or other medical assistance to a person who is experiencing an actual or reasonably perceived drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under this section [including the delivery of drug paraphernalia].” Mont. Code Ann. § 50-32-609(4).

¹⁴⁶ “It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.” Neb. Rev. Stat. § 28-441(1). Nebraska's definition of drug paraphernalia does not include “testing equipment,” but includes “all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.” Neb. Rev. Stat. § 28-439. Unlike some other state paraphernalia laws, this one has not been modified since 1980; that is, testing equipment was not removed from the law, it was simply never present. There is no relevant caselaw on the subject of whether drug checking equipment would fall under the broad definition in the law.

147 “It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance.” Neb. Rev. Stat. § 28-442(1). Nebraska’s definition of drug paraphernalia does not name “testing equipment,” but includes “all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.” Neb. Rev. Stat. § 28-439.

148 “Any person who violates this section shall be guilty of an infraction.” Neb. Rev. Stat. § 28-441(2). “Any person guilty of an infraction when a penalty is not otherwise specified shall: (1) For the first offense be fined not more than one hundred dollars; (2) upon a second conviction for the same infraction within a two-year period be fined not less than one hundred dollars and not more than three hundred dollars; and (3) upon a third or subsequent conviction for the same infraction within a two-year period be fined not less than two hundred dollars and not more than five hundred dollars.” Neb. Rev. Stat. § 29-436.

149 “Any person who violates this section shall be guilty of a Class II misdemeanor.” Neb. Rev. Stat. § 28-442(3). A Class II misdemeanor is punishable by a maximum “six months imprisonment, or one thousand dollars fine, or both.” Neb. Rev. Stat. § 28-106(1). A person 18 or over who delivers drug paraphernalia, including drug checking equipment, to a person under 18 who is at least 3 years younger commits a Class I misdemeanor punishable by up to 1 year imprisonment, a \$1,000 fine, or both. Neb. Rev. Stat. §§ 28-443; 28-106(1).

150 “A person shall not be in violation of section 28-441 [use and possession with intent to use drug paraphernalia]... if... [s]uch person made a good faith request for emergency medical assistance in response to a drug overdose of himself, herself, or another... [listing additional factors].” Neb. Rev. Stat. § 28-472(1). See Neb. Rev. Stat. § 28-472(1)(b)-(d), (2) (including additional relevant factors). “A person shall not be in violation of section 28-441 [use and possession with intent to use of drug paraphernalia]... if such person was experiencing a drug overdose and the evidence for such violation was obtained as a result of the drug overdose and a request for medical assistance by another person made in compliance with subsection (1) of this section.” Neb. Rev. Stat. § 28-472(3). See Neb. Rev. Stat. § 28-472(6) (defining “drug overdose”).

151 “Any person who uses, or possesses with intent to use, drug paraphernalia to...test, analyze...a controlled substance in violation of this chapter is guilty of a misdemeanor.” Nev. Rev. Stat. § 453.566. Drug paraphernalia includes “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”. Nev. Rev. Stat. § 453.554(1)(d). However, as of May 28, 2021 it does not include “testing products,” which are defined as “a product, including, without limitation, a fentanyl test strip, that analyzes a controlled substance for the presence of adulterants.” Nev. Rev. Stat. § 453.554(2)(b); (3). While fentanyl test strips are clearly not drug paraphernalia under this definition, it is not clear which other drug checking equipment was intended to be removed from the definition, since “testing equipment” is still included.

152 “[A] person who delivers or sells, possesses with the intent to deliver or sell, or manufactures with the intent to deliver or sell any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of this chapter is guilty of a category E felony and shall be punished as provided in NRS 193.130 [categories and punishment of felonies].” Nev. Rev. Stat. § 453.560. There are increased penalties for delivering drug paraphernalia, including drug checking equipment, to a minor. Nev. Rev. Stat. § 453.562.

153 Every person convicted of a misdemeanor shall be punished by imprisonment in the county jail for not more than 6 months, or by a fine of not more than \$1,000, or by both fine and imprisonment, unless the statute in force at the time of commission of such misdemeanor prescribed a different penalty... [i]n lieu of all or a part of the punishment which may be imposed pursuant to subsection 1, the convicted person may be sentenced to perform a fixed period of community service pursuant to the conditions prescribed in NRS 176.087.” Nev. Rev. Stat. § 193.150(1)-(2).

154 “A category E felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. Except as otherwise provided in paragraph (b) of subsection 1 of NRS 176A.100 or paragraph (a) of subsection 2 of NRS 453.336, upon sentencing a person who is found guilty of a category E felony, the court shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate. Such conditions of probation may include, but are not limited to, requiring the person to serve a term of confinement of not more than 1 year in the county jail. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater penalty is authorized or required by statute.” Nev. Rev. Stat. § 193.130(2)(e). Delivery of paraphernalia by a person 18 or older to a minor at least 3 years younger is a category C felony punished by a minimum of 2 years maximum of 5 years imprisonment and, in addition to any other penalty, a fine of not more than \$10,000. Further, “[i]n addition to any other penalty the court may order the convicted person to pay restitution for any reasonable costs incurred for the participation of the person to whom he or she delivered the paraphernalia in a program for the treatment of substance use disorders.” Nev. Rev. Stat. §§ 453.562; 193.130(2)(c).

155 Likely because hypodermic syringes, needles, and other injection equipment are not considered paraphernalia in Nevada, Nev. Rev. Stat. § 453.554(2), the state syringe access law, only provides exemption from civil liability: “[t]he State, any political subdivision thereof, a sterile hypodermic device program and the staff and volunteers thereof are not subject to civil liability in relation to any act or failure to act in connection with the operation of a sterile hypodermic device program, if the act or failure to act was in good faith for the purpose of executing the provisions of NRS 439.985 to 439.994, inclusive [provisions authorizing the establishment of and providing guidelines for a sterile hypodermic device program], and was not a reckless act or failure to act.” Nev. Rev. Stat. § 439.992. However, state law permits a “sterile hypodermic device program” to provide “[s]terile hypodermic devices and other related material for safer injection drug use” which may permit the provision of drug checking equipment. Nev. Rev. Stat. § 439.991.

156 “Notwithstanding any other provision of law, a person who, in good faith, seeks medical assistance for a person who is experiencing a drug or alcohol overdose or other medical emergency or who seeks such assistance for himself or herself, or who is the subject of a good faith request for such assistance may not be arrested, charged, prosecuted or convicted, or have his or her property subjected to forfeiture, or be otherwise penalized for violating...a provision of chapter 453 of NRS relating to...[d]rug paraphernalia, including, without limitation, NRS 453.554 to 453.566 [including the use, possession with intent to use, and delivery of drug paraphernalia], inclusive.” Nev. Rev. Stat. § 453C.150(1)(a)(1). See Nev. Rev. Stat. § 453C.150(3), (5) (defining relevant terms).

157 New Hampshire does not criminalize the use or possession with intent to use drug paraphernalia. See N.H. Rev. Stat. Ann. § 318-B:2.

158 “It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used or is customarily intended to be used to...test, analyze...a controlled substance.” N.H. Rev. Stat. Ann. § 318-B:2(II). “A person shall be guilty of a misdemeanor who...[m]anufactures with the intent to deliver, delivers or possesses with the intent to deliver any drug paraphernalia when such paraphernalia is knowingly manufactured, delivered or possessed for one or more of the uses set forth in RSA 318-B:2, II [including testing a controlled substance].” N.H. Rev. Stat. Ann. § 318-B:26(III)(c).

159 “Any person who violates any provision of this chapter shall be fined a minimum of \$350 for a first offense and \$500 for a second or subsequent offense.” N.H. Rev. Stat. Ann. § 318-B:26(XIII). The presumption is that distributing drug checking equipment is a class B misdemeanor: “Any crime designated within or outside this code as a misdemeanor without specification of the classification shall be presumed to be a class B misdemeanor unless: (1) An element of the offense involves an “act of violence” or “threat of violence” as defined in paragraph VII; (2) The state files a notice of intent to seek class A misdemeanor penalties on or before the date of arraignment. Such notice shall be on a form approved in accordance with RSA 490:26-d; or (3) The misdemeanor charge is filed directly in superior court.” N.H. Rev. Stat. Ann. § 625:9(IV)(c). A class B misdemeanor is punishable by a fine of up to \$1,200. N.H. Rev. Stat. Ann. § 651:2(IV)(a). A class A misdemeanor is punishable by “imprisonment not in excess of one year” and a fine of up to \$2,000. N.H. Rev. Stat. Ann. §§ 625:9(IV)(a) and 651:2(IV)(a).

¹⁶⁰ State law specifically authorizes the provision of, “sterile needles, syringes, and *other drug preparation equipment* and disposal services.” N.H. Rev. Stat. Ann. § 318-B:43(II)(C)(1) (emphasis added). See generally N.H. Rev. Stat. Ann. § 318-B:43. As noted, possession of drug paraphernalia is not illegal in the state.

¹⁶¹ The New Hampshire Good Samaritan law exempts “an offense of possessing or having under his or her control, a controlled drug in violation of RSA 318-B:2.” N.H. Rev. Stat. Ann. § 318-B:28-b(II), (III). Although prohibitions related to the delivery of drug paraphernalia are included in that subsection, a plain reading of the Good Samaritan law only exempts offenses specifically related to the possession of a “controlled drug,” not including drug checking equipment. See N.H. Rev. Stat. Ann. § 318-B:28-b(II), (III).

¹⁶² “It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to... test, analyze... a controlled dangerous substance.” N.J. Stat. § 2C:36-2. Drug paraphernalia includes “testing equipment used or intended for use identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances or controlled substance analogs.” N.J. Stat. § 2C:36-1(a)(4).

¹⁶³ “It shall be unlawful for any person to distribute or dispense, or possess with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia, knowing that it will be used to...test, analyze...a controlled dangerous substance.” N.J. Stat. 2C:36-3.

¹⁶⁴ “Any person who violates this section is guilty of a disorderly persons offense.” N.J. Stat. § 2C:36-2. A disorderly persons offense is punishable by a term of imprisonment which “shall not exceed 6 months” and a fine not to exceed \$1,000. N.J. Stat. §§ 2C:43-8; 2C:43-3(c).

¹⁶⁵ “Any person who violates this section commits a crime of the fourth degree.” N.J. Stat. 2C:36-3. A crime of the fourth degree is punishable by a term of imprisonment which “shall not exceed 18 months” and a fine not to exceed \$10,000. N.J. Stat. §§ 2C:43-6(a)(4); 2C:43-3(b)(2). Delivery from a person over 18 to a minor is a crime of the third degree. N.J. Stat. § 2C:36-5. Crimes of the third degree are punishable by a term of imprisonment between 3 and 5 years and a fine not to exceed \$15,000. N.J. Stat. §§ 2C:43-7(a)(5); 2C:43-3(b)(1).

¹⁶⁶ New Jersey exempts “the possession of a hypodermic syringe or needle” from paraphernalia laws for participants, employees, and volunteers of SSPs. It does not provide protection for other materials. N.J. Stat. 2C:36-6a.

¹⁶⁷ “A person who experiences a drug overdose and who seeks medical assistance or is the subject of a good faith request for medical assistance pursuant to section 4 of this act shall not be... arrested, charged, prosecuted, or convicted for using or possessing with intent to use drug paraphernalia pursuant to N.J. Stat. 2C:36-2.” N.J. Stat. 2C:35-31(a)(6). “The provisions of subsection a. of this section shall only apply if the evidence for an arrest, charge, prosecution, conviction or revocation was obtained as a result of the seeking of medical assistance.” N.J. Stat. 2C:35-31(b).

¹⁶⁸ “It is unlawful for a person to use or possess with intent to use drug paraphernalia to...test, analyze...a controlled substance in violation of the Controlled Substances Act.” N.M. Stat. Ann. § 30-31-25.1(A). Drug paraphernalia includes “testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs.” N.M. Stat. Ann. § 30-31-2.T.4.

¹⁶⁹ “It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance in violation of the Controlled Substances Act.” N.M. Stat. Ann. § 30-31-25.1.B.

¹⁷⁰ “A person who violates the provisions of Subsection A of this section [use or possession with intent to use drug paraphernalia] shall be issued a penalty assessment pursuant to Section 3 [31-19A-1 NMSA 1978] of this 2019 act and is subject to a fine of fifty dollars (\$50.00).” N.M. Stat. Ann. § 30-31-25.1.C.

¹⁷¹ “A person who violates the provisions of Subsection B of this section [delivery of drug paraphernalia] is guilty of a misdemeanor.” N.M. Stat. Ann. § 30-31-25.1.C. “Where the defendant has been convicted of a crime constituting a misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.” N.M. Stat. Ann. § 31-19-1(A). A person over 18 delivering to a person under 18 who is at least 3 years younger is a fourth degree felony. N.M. Stat. Ann. §§ 30-31-25.1.D. A fourth degree felony is punishable by 18 months imprisonment and a fine of \$5,000. N.M. Stat. Ann. § 31-18-15.A.13; N.M. Stat. Ann. § 31-18-15.E.11.

¹⁷² New Mexico exempts people, presumably including all participants, volunteers, and staff of a syringe exchange, from provisions related to possession of drug paraphernalia while engaged in syringe exchange services: “The provisions of this subsection [concerning the use or possession with intent to use drug paraphernalia] do not apply to a person who is in possession of hypodermic syringes or needles at the time the person is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act [24-2C-1 to 24-2C-6 NMSA 1978].” N.M. Stat. Ann. § 30-31-25.1.A. New Mexico law also provides that the “possession of hypodermic syringes and needles in compliance with the procedures of the [syringe services] program shall not constitute a violation of the Controlled Substances Act for a participant in the program, an employee of the department administering the program or a private provider whom the department contracts with to operate the program.” N.M. Stat. Ann. § 24-2C-6. The provisions authorizing the harm reduction program do not reference the distribution of other materials besides syringes. See N.M. Stat. Ann. § 24-2C-1-6.

¹⁷³ “A person who, in good faith, seeks medical assistance for someone experiencing an alcohol- or drug-related overdose shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating any of the following if the evidence for the alleged violation was obtained as a result of the need for seeking medical assistance...[s]ubsection A of section 30-31-25.1 NMSA 1978 [including charges related to the use or possession with intent to use of drug paraphernalia].” N.M. Stat. Ann. § 30-31-27.1.A(1). “A person who experiences an alcohol- or drug-related overdose and is in need of medical assistance shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating any of the following if the evidence for the alleged violation was obtained as a result of the overdose and the need for seeking medical assistance...[s]ubsection A of section 30-31-25.1 NMSA 1978 [including charges related to the use or possession with intent to use of drug paraphernalia].” N.M. Stat. Ann. § 30-31-27.1.B(1). “The act of seeking medical assistance for someone who is experiencing an alcohol- or drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substances Act for which immunity is not provided pursuant to this section [including for charges related to the delivery of drug paraphernalia].” N.M. Stat. Ann. § 30-31-27.1.C. See N.M. Stat. Ann. § 30-31-27.1.D (defining “seeking medical assistance”).

¹⁷⁴ New York does not criminalize the use or possession with intent to use drug checking equipment. *But see* N.Y. Penal Law § 220.50 (Criminal provisions for using certain drug paraphernalia, not including drug checking equipment); N.Y. Penal Law § 220.45 (Criminal provisions for possessing a hypodermic instrument).

¹⁷⁵ New York does not criminalize the free distribution of drug paraphernalia. See *generally* N.Y. Penal Law § 220.50. However, it is unlawful in New York to possess with intent to sell, offer for sale, or purchase drug-related paraphernalia. N.Y. Gen. Bus. Law § 851.

¹⁷⁶ New York does not criminalize the use, possession with intent to use, or free distribution of drug checking equipment. However, the Good Samaritan law exempts charges relating to the sale of drug paraphernalia. N.Y. Penal Law § 220.78(1).

177 Drug paraphernalia means “all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including...testing, analyzing...or otherwise introducing controlled substances into the human body. N.C. Gen. Stat. § 90-113.21(a). North Carolina criminalizes the use or possession with intent to use “drug paraphernalia to...test, analyze...a controlled substance other than marijuana.” N.C. Gen. Stat. § 90-113.22(a). However, the law exempts drug checking equipment for personal use from these provisions: “Notwithstanding the provisions of subsection (a) of this section [concerning the use of and possession with intent to use drug paraphernalia], it is not unlawful for a person who introduces a controlled substance into his or her body, or intends to introduce a controlled substance into his or her body, to knowingly use, or to possess with intent to use, testing equipment for identifying or analyzing the strength, effectiveness, or purity of that controlled substance...” N.C. Gen. Stat. § 90-113.22(d)(i). This statutory scheme leaves open the possibility that someone possessing drug checking equipment for reasons other than personal use (i.e.: educational use, or to give to another person) could be charged with possession.

178 “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia knowing that it will be used to... test, analyze... a controlled substance which it would be unlawful to possess.” N.C. Gen. Stat. § 90-113.23(a). “Delivery, possession with intent to deliver, or manufacture with intent to deliver, of each separate and distinct item of drug paraphernalia is a separate offense.” N.C. Gen. Stat. § 90-113.23(b).

179 “Violation of this section is a Class 1 misdemeanor.” N.C. Gen. Stat. § 90-113.22(b); 90-113.23(b). The sentence for a Class 1 misdemeanor is determined by reference to the chart set forth in N.C. Gen. Stat. § 15A-1340.23(c)(2) which provides the authorized punishment for a crime based on the class of offense and the convicted person’s prior criminal history. For a person with no prior convictions, the presumptive sentence for a Class 1 misdemeanor is 1-45 days of community punishment. N.C. Gen. Stat. § 15A-1340.23(c)(2). Community punishment is a “sentence in a criminal case that does not include an active punishment or assignment to a drug treatment court, or special probation as defined in G.S. 15A-1351(a). It may include any one or more of the conditions set forth in G.S. 15A-1343(a1) [which include house arrest; performance of community service; substance abuse assessment, monitoring, or treatment; etc.]” N.C. Gen. Stat. § 15A-1340.11(2). “The amount of the fine for a Class 1 misdemeanor...is in the discretion of the court.” N.C. Gen. Stat. § 15A-1340.23(b). Depending on prior convictions, delivery from a person over 18 to a person under 18 at least 3 years younger is a Class I felony punishable by a sentence determined by reference to N.C. Gen. Stat. §§ 15A-1340.13; 14. The presumptive sentence for someone with no prior felonies would be 4-6 years imprisonment. N.C. Gen. Stat. 15A-1340.17(c). The amount of any fine for a Class I felony is at the discretion of the court. N.C. Gen. Stat. 15A-1340.17(b).

180 North Carolina exempts harm reduction organizations from provisions related to possessing and distributing drug checking equipment: “Notwithstanding the provisions of subsection (a) of this section [concerning the use or possession with intent to use drug paraphernalia], it is not unlawful for... a governmental or nongovernmental organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high-risk behaviors to possess such testing equipment or distribute such testing equipment to a person who intends to introduce a controlled substance into his or her body.” N.C. Gen. Stat. § 90-113.22(d)(ii). North Carolina further exempts participants, employees, and volunteers of a syringe exchange from possession charges, likely including possession of drug checking equipment: “Notwithstanding any... law, no employee, volunteer, or participant of a program established pursuant to this section [a needle and hypodermic syringe exchange program] shall be charged with or prosecuted for possession of any of the following... [n]eedles, hypodermic syringes, or *other injection supplies* obtained from or returned to a program established pursuant to this section.” N.C. Gen. Stat. § 90-113.27(a), (c)(1) (emphasis added). Further, North Carolina’s Department of Health and Human Services website says that, “most syringe exchange programs operate according to the practices and philosophy of harm reduction,” and describes harm reduction techniques as including, “drug-checking with fentanyl test strips.” North Carolina Department of Health and Human Services, *Syringe and Naloxone Access*, North Carolina Department of Health and Human Services, <https://www.ncdhhs.gov/about/departments/initiatives/opioid-epidemic/syringe-and-naloxone-access> (last visited Feb. 2, 2021).

¹⁸¹ A person acting in good faith who seeks medical assistance in the good faith belief that they are the first to seek assistance for an individual experiencing a drug-related overdose shall not be prosecuted for a violation of G.S. 90-113.22 [including charges for use or possession with intent to use drug paraphernalia] if the person provides their name and does not seek assistance during the execution of a warrant or lawful search, and evidence for prosecution under those sections was obtained as a result of the person seeking medical assistance for the drug-related overdose. N.C. Gen. Stat § 90-96.2(b). The same protections apply to the person who experienced the overdose. N.C. Gen. Stat § 90-96.2(c).

¹⁸² “A person may not use or possess with intent to use drug paraphernalia to...test, analyze...a controlled substance.” N.D. Cent. Code § 19-03.4-03(1). Drug paraphernalia includes “Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.” N.D. Cent. Code § 19-03.4-01(1).

¹⁸³ “A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used to...test, analyze...a controlled substance.” N.D. Cent. Code § 19-03.4-04. There are increased penalties for delivering drug paraphernalia, including drug checking equipment, to a minor. N.D. Cent. Code § 19-03.4-05.

¹⁸⁴ Possession: “A person violating this subsection is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to...test, analyze...a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1.” N.D. Cent. Code § 19-03.4-03(1). “A person sentenced to the legal and physical custody of the department of corrections and rehabilitation under this section may be placed in a drug and alcohol treatment program as designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the person from imprisonment to begin any court-ordered period of probation. If the person is not subject to court-ordered probation, the court may order the person to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.” N.D. Cent. Code § 19-03.4-03(5). Distribution: “Any person violating this section is guilty of a class C felony if the drug paraphernalia will be used to...test, analyze...a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.” N.D. Cent. Code § 19-03.4-04. “Class C felony, for which a maximum penalty of five years’ imprisonment, a fine of ten thousand dollars, or both, may be imposed.” N.D. Cent. Code § 12.1-32-01(4). “Class A misdemeanor, for which a maximum penalty of imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.” N.D. Cent. Code § 12.1-32-01(5). A person over 18 delivering drug paraphernalia, including drug checking equipment, to a person under 18 at least 3 years younger is also guilty of a Class C felony. N.D. Cent. Code § 19-03.4-05.

¹⁸⁵ North Dakota law requires syringe services programs to provide supplies as part of their operations, and specifically includes “testing strips” under the definition of “supplies”. See N.D. Cent. Code § 23-01-44. “Syringes, needles, and supplies appropriately collected under this section are not considered drug paraphernalia...”. N.D. Cent. Code § 23-01-44(7). However, the plain language of the statute appears to provide protection only to testing strips “collected” by an SSP. Since testing strips are generally distributed by an SSP, not collected by one, it is not clear what protection, if any, this section provides.

¹⁸⁶ “An individual is immune from criminal prosecution under...section 19-03.4-03 [use or possession with intent to use drug paraphernalia] if in good faith that individual seeks medical assistance for another individual in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with the medical treatment of the reported drug overdosed individual, and the overdosed individual must have been in a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search.” N.D. Cent. Code § 19-03.1-23.4.

¹⁸⁷ “As used in this section, “drug paraphernalia” means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in...testing, analyzing...or otherwise introducing into the human body, a controlled substance in violation of this chapter.” Ohio Rev. Code Ann. § 2925.14(A). “[N]o person shall knowingly use, or possess with purpose to use, drug paraphernalia.” Ohio Rev. Code Ann. § 2925.14(C)(1).

¹⁸⁸ Ohio does not criminalize the free distribution of drug paraphernalia. However, it is unlawful in Ohio to “sell, or possess or manufacture with purpose to sell” drug paraphernalia. Ohio Rev. Code Ann. § 2925.14(C)(2).

¹⁸⁹ “Whoever violates division (C)(1) of this section [use or possession with intent to use drug paraphernalia] is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.” Ohio Rev. Code Ann. § 2925.14(F)(1). “In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not more than five years the offender's driver's or commercial driver's license or permit.” Ohio Rev. Code Ann. § 2925.14(G)(1). A misdemeanor of the fourth degree is punishable by “not more than thirty days” in jail and a fine of “not more than two hundred fifty dollars.” Ohio Rev. Code Ann. §§ 2929.24(A)(4); 2929.28(A)(2)(a)(iv).

¹⁹⁰ Ohio law exempts participants of bloodborne infectious disease prevention programs (what the state terms SSPs) from paraphernalia possession under strict circumstances: “If participating in a component of a bloodborne infectious disease prevention program would be considered a violation of any of the following, a program participant who is within one thousand feet of a program facility and is in possession of documentation from the program identifying the individual as an active participant in the program is not subject to criminal prosecution for the violation...Division (C)(1) of section 2925.14 of the Revised Code regarding the prohibition against illegal possession of drug paraphernalia.” Ohio Rev. Code Ann. § 3707.57(F)(2)(c). Ohio also exempts volunteers and staff of a program: “If carrying out a duty under a component of a bloodborne infectious disease prevention program [authorized by Ohio Rev. Code Ann. § 3707.57] would be considered a violation of any of the following, an employee or volunteer of the program, when carrying out the duty, is not subject to criminal prosecution for the violation...Division (C)(1) of section 2925.14 of the Revised Code regarding the prohibition against illegal possession of drug paraphernalia.” Ohio Rev. Code Ann. § 3707.57(F)(1)(c).

¹⁹¹ Ohio's overdose Good Samaritan law provides protection from the crime of possessing controlled substances, but a similar provision does not exist within the statute criminalizing the use, possession with intent to use, or delivery of drug paraphernalia. See Ohio Rev. Code Ann. §§ 2925.11, 2925.14.

¹⁹² “No person shall use drug paraphernalia to...test, analyze...a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.” Okla. Stat. tit. 63 § 2-405(B). Drug paraphernalia includes “testing equipment used, intended for use, or fashioned specifically for use in identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances.” Okla. Stat. tit. 63 § 2-101(36)(d).

¹⁹³ “No person shall deliver, sell, possess or manufacture drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to...test...a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act.” Okla. Stat. tit. 63 § 2-405(C).

¹⁹⁴ Both possession and distribution are punishable as follows: “[f]or a first offense the person shall be punished by imprisonment in the county jail for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or both such fine and imprisonment.” Okla. Stat. tit. 63 § 2-405(E)(1). A second offense is punishable by not more than a year imprisonment or not more than a \$5,000 fine, or both. Okla. Stat. tit. 63 § 2-405(E)(2). A third or subsequent offense is punishable by not more than a year imprisonment or not more than a \$10,000 fine, or both. Okla. Stat. tit. 63 § 2-405(E)(3). Anyone over 18 delivering drug paraphernalia, including drug checking equipment, to anyone under 18 is guilty of a felony Okla. Stat. tit. 63 § 2-405(D). Such person is punishable by a fine not exceeding \$1,000, imprisonment in the state penitentiary not exceeding two years, or both. Okla. Stat. tit. 21 § 9. All persons convicted of any offense described here shall pay \$100 to a trauma care fund. Okla. Stat. tit. 63 § 2-405(F).

¹⁹⁵ “A person who meets the criteria of subsection A of this section [listing the factors to meet the Good Samaritan law] is immune from criminal prosecution for...possession of drug paraphernalia associated with a controlled dangerous substance, as defined in paragraph 36 of Section 2-101 of Title 63 of the Oklahoma Statutes. Further, a person is only immune from prosecution for the aforementioned offenses if the offense involved a state of intoxication caused by the use of a controlled dangerous substance by a person or if the offense involved the person being or becoming intoxicated as a result of the use of a controlled dangerous substance by a person.” Okla. Stat. tit. 63 § 2-413.1(B). See also Okla. Stat. tit. 63 § 2-413.1(A) (listing the factors to qualify for the Good Samaritan exception).

¹⁹⁶ Oregon does not criminalize the use or possession with intent to use drug paraphernalia. See generally Or. Rev. Stat. §§ 475.525-.744.

¹⁹⁷ “It is unlawful for any person to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to unlawfully...test...a controlled substance.” Or. Rev. Stat. § 475.525(1). Drug paraphernalia includes “Testing equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” Or. Rev. Stat. § 475.525(2).

¹⁹⁸ “In addition to any other penalty provided by law: (a) A person who violates ORS 475.525 [related to the delivery of drug paraphernalia] shall incur a civil penalty in an amount of at least \$2,000 and not more than \$10,000; and (b) The court may order other equitable remedies including but not limited to injunctive relief.” Or. Rev. Stat. § 475.565(1).

¹⁹⁹ “Sterile needles and syringes and *other items provided by a syringe service program* [a program that provides services including free sterile needles and syringes and safe disposal for needles and syringes] may not be considered ‘drug paraphernalia,’ as that term is defined in ORS 475.525 [related to the delivery of drug paraphernalia].” Or. Rev. Stat. § 475.757(1), (3) (emphasis added).

A presentation by the Oregon Health Authority Public Health Division about expanding harm reduction services in Oregon lists fentanyl checking strips as an overdose prevention tool. Judith M. Leahy, *Expanding Harm Reduction & Syringe Exchange Service Programming Capacity in Oregon*, Oregon Health Authority Public Health Division (Mar. 2019), <https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/SUBSTANCEUSE/HarmReduction/SSPManual/Oregon-SSP-Manual-Interactive.pdf>.

²⁰⁰ “The immunity conferred under subsections (1) and (2) of this section [listing the factors to qualify for the Good Samaritan exception] applies to arrest and prosecution for...[u]nlawful possession of drug paraphernalia with intent to sell or deliver as described in ORS 475.525.” Or. Rev. Stat. § 475.898(3)(k). See also Or. Rev. Stat. § 475.898(1),(2) (listing the factors to qualify for the Good Samaritan exception).

²⁰¹ “The following acts and the causing thereof within the Commonwealth are hereby prohibited...[t]he use of, or possession with intent to use, drug paraphernalia for the purpose of...testing, analyzing...a controlled substance in violation of this act.” 35 Pa. Stat. § 780-113(a)(32). Drug paraphernalia includes “[t]esting equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.” 35 Pa. Stat. § 780-102(b)(4). Note, however, that fentanyl test strips have been decriminalized by Executive Order in Philadelphia. City of Philadelphia, Mayor Signs Executive Order to Decriminalize Fentanyl Test Strips. August 2, 2021. <https://www.phila.gov/2021-08-02-mayor-signs-executive-order-to-decriminalize-fentanyl-test-strips/>.

²⁰² “The delivery of, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it would be used to...test...a controlled substance in violation of this act.” 35 Pa. Stat. § 780-113(a)(33).

203 “Any person who violates claus[e] (32)...of subsection a [possession of drug paraphernalia] is guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding two thousand five hundred dollars (\$ 2,500) or to imprisonment not exceeding one (1) year, or both.” 35 Pa. Stat. § 780-113(i). “Any person who violates claus[e]...(33)...of subsection (a) [the delivery of drug paraphernalia]...is guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding two thousand five hundred dollars (\$ 2,500) or to imprisonment not exceeding one (1) year, or both. 35 Pa. Stat. § 780-113(i). “Any person who violates clause (33) by delivering drug paraphernalia to a person under 18 years of age who is 3 or more years his junior shall be guilty of a misdemeanor of the second degree and subject to a fine not exceeding five thousand dollars (\$ 5,000) or imprisonment not exceeding two (2) years, or both.” 35 Pa. Stat. § 780-113(i).

204 While syringe services programs operate in Allegheny and Philadelphia counties under local authorization, neither provides explicit legal protection from paraphernalia laws. See Allegheny County Code § 851-1 et seq; Exec. Order No. 04-92 (July 27, 1992).

205 “The prohibition on charging or prosecuting a person as described in subsection (a) [listing the factors to qualify for the Good Samaritan exception] bars charging or prosecuting a person for probation and parole violations and for violations of section 13(a)(5), (16), (19), (31), (32) [charges for the use and possession with intent to use of drug paraphernalia], (33) [charges for the delivery of drug paraphernalia] and (37).” 35 Pa. Stat. § 780-113.7(b). See also 35 Pa. Stat. § 780-113.7(a), (c) (listing the factors to qualify for the Good Samaritan exception).

206 “It shall be unlawful for any person to knowingly and with criminal intent, use or possess with the intention of using drug paraphernalia to ...test, analyze...a controlled substance in violation of this chapter.” P.R. Laws Ann. tit. 24, § 2411b(c)(2). Drug paraphernalia includes “Testing equipment, or chemicals or alcohol used, or destined or designed for use in the identification, analysis or measurement of the potency, effectiveness, purity or quality of controlled substances.” P.R. Laws Ann. tit. 24, § 2411b(a)(4).

207 “It shall be unlawful for any person to knowingly, and with criminal intent, manufacture, distribute, sell, dispense, deliver, transport, conceal, or possess with the intent of distributing, selling, disposing, delivering, transporting or concealing drug paraphernalia, as this term is defined in subsection (a) of this section, in order to...test, analyze...a controlled substance into the human body in violation of this chapter.” P.R. Laws Ann. tit. 24, § 2411b(c)(1). There are increased penalties for a person over 18 delivering paraphernalia to a person under 18. P.R. Laws Ann. tit. 24, § 2405(c).

208 Possession: “[a]ny person who violates the provisions of this subsection shall be guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine not greater than three thousand dollars (\$3,000) or to imprisonment for a fixed term of three (3) years. Should there be aggravating circumstances, the fine shall not be greater than five thousand dollars (\$5,000); the term of imprisonment, not to exceed a maximum of five (5) years. Should there be extenuating circumstances, the fine shall not be greater than two thousand dollars (\$2,000); the term of imprisonment, not to exceed a maximum of two (2) years.” P.R. Laws Ann. tit. 24, § 2411b(c)(2). Distribution: “[a]ny person who violates the provisions of this subsection shall be guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine not greater than thirty thousand dollars (\$30,000) or to imprisonment for a fixed term of three (3) years. Should there be aggravating circumstances, the fine shall not exceed fifty thousand dollars (\$50,000); or the term of imprisonment, shall not exceed a maximum of five (5) years. Should there be extenuating circumstances, the fine shall not be greater than twenty thousand dollars (\$20,000); or the term of imprisonment, a maximum of two (2) years.” P.R. Laws Ann. tit. 24, § 2411b(c)(1). Aggravating circumstances are listed in P.R. Laws Ann. tit. 33, § 4700. Mitigating circumstances are listed in P.R. Laws Ann. tit. 33, § 4699. “Any person over the age of 18 who violates subsection (c)(1) of § 2411b of this title by distributing, delivering or dispensing drug paraphernalia to a person under the age of 18 shall be guilty of a separate crime, and upon conviction thereof, shall be sentenced to pay or serve double the amounts or terms provided in subsection (c)(1) of § 2411b of this title.” P.R. Laws Ann. tit. 24, § 2405(c).

209 “The provisions of § 2411b and 2405 of this title shall not apply to: (1) The Department of Health. (2) Non-profit entities duly authorized by the Department of Health that, with the purpose of preventing the transmission of contagious diseases, or as part of an educational or prevention program, distribute hypodermic needles and other accessories. (3) Duly identified participants of said programs for distribution and exchange of hypodermic needles and other accessories.” P.R. Laws Ann. Tit. 24, § 2608.

210 Puerto Rico enacted a Good Samaritan law in August 2021 that provides protection from paraphernalia charges. See 2021 Puerto Rico Laws Act 035 (P. del S. 71). It is not included here as it is out of the temporal scope of this document.

211 Rhode Island does not criminalize the use or possession with intent to use drug paraphernalia. See *generally* R.I. Gen. Laws §§ 21-28.5-1–4.

212 Rhode Island has explicitly legalized the provision and utilization of drug checking equipment: “(a) Any person may provide, administer, or utilize a narcotic testing product to assist another person in determining whether a narcotic or substance contains chemicals, toxic substances, or hazardous compounds. Narcotic testing products shall include, but not be limited to, fentanyl test strips. (b) A person who provides, administers, or utilizes a narcotic testing product to assist another person shall not be subject to civil liability or criminal prosecution as a result of providing, administering, or utilizing the narcotic testing product to assist another person. R.I. Gen. Laws § 21-28.9-3.1.

213 While syringe services programs are authorized in Rhode Island, the law does not provide explicit protection from paraphernalia-related crimes. See R.I. Gen. Laws § 23-11-19. However, any “person who provides, administers, or utilizes a narcotic testing product to assist another person shall not be subject to civil liability or criminal prosecution as a result of providing, administering, or utilizing the narcotic testing product to assist another person. R.I. Gen. Laws § 21-28.9-3.1(b).

214 The Rhode Island Good Samaritan law exempts possession of drug paraphernalia, even though this is not a crime in the state. See R.I. Gen. Laws § 21-28.9-4. The Good Samaritan law on its face does not apply to charges for the delivery of drug paraphernalia: “Any person who, in good faith, without malice and in the absence of evidence of an intent to defraud, seeks medical assistance for someone experiencing a drug overdose or other drug-related medical emergency shall not be charged or prosecuted for any crime related to the possession of a controlled substance or drug paraphernalia, or the operation of a drug-involved premises, if the evidence for the charge was gained as a result of the seeking of medical assistance.” R.I. Gen. Laws § 21-28.9-4(a). See *also* R.I. Gen. Laws § 21-28.9-4(b) (containing the Good Samaritan exception as applied to a person experiencing an overdose). However, the Good Samaritan law may provide a mitigating factor in sentencing for charges related to the delivery of drug paraphernalia: “The act of providing first aid or other medical assistance to someone who is experiencing a drug overdose or other drug-related medical emergency may be used as a mitigating factor in a criminal prosecution pursuant to the controlled substances act.” R.I. Gen. Laws § 21-28.9-4(c).

215 South Carolina’s definition of paraphernalia does not explicitly include drug checking equipment, nor does it encompass items used for injecting controlled substances: “‘Paraphernalia’ means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes but includes, but is not limited to [lists examples not including drug checking equipment].” S.C. Code § 44-53-110(33). “Administering” is defined in the Code as “the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (a) a practitioner (or, in his presence, by his authorized agent); or (b) the patient or research subject at the direction and in the presence of the practitioner.” S.C. Code of Laws § 44-53-110(1). “Practitioner” is defined as “a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this State.” S.C. Code of Laws § 44-53-110(36). SSPs and other similar entities are not “practitioners” under South Carolina law. We therefore conclude that it is not contrary to South Carolina law for a person who uses drugs to possess drug checking equipment. In South Carolina the possession of paraphernalia is a civil offense: “It shall be unlawful for any person to advertise for sale, manufacture, possess, sell or deliver, or to possess with the intent to deliver, or sell paraphernalia.” S.C. Code § 44-53-391(a).

216 South Carolina prohibits the delivery of paraphernalia: “It shall be unlawful for any person to advertise for sale, manufacture, possess, sell or deliver, or to possess with the intent to deliver, or sell paraphernalia.” S.C. Code § 44-53-391(a). However, South Carolina’s definition of paraphernalia does not explicitly include drug checking equipment: “‘Paraphernalia’ means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes but includes, but is not limited to [lists examples not including drug checking equipment].” S.C. Code § 44-53-110(33).

217 “Any person found guilty of violating the provisions of this section shall be subject to a civil fine of not more than five hundred dollars except that a corporation shall be subject to a civil fine of not more than fifty thousand dollars. Imposition of such fine shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.” S.C. Code § 44-53-391(c).

218 Syringe services programs are not explicitly permitted in South Carolina.

219 “A person who seeks medical assistance for another person in accordance with the requirements of subsection (A) may not be prosecuted for... (5) possessing paraphernalia in violation of Section 44-53-391; (6) selling or delivering paraphernalia in violation of Section 44-53-391, when the sale or delivery is to the person who appears to be experiencing a drug-related overdose.” S.C. Code § 44-53-1920(B)(5), (6). See also S.C. Code § 44-53-1920(A), (C), (D) (listing the factors to qualify for the Good Samaritan exception).

220 “No person, knowing the drug related nature of the object, may use or to possess with intent to use, drug paraphernalia to... test, analyze... any controlled substance.” S.D. Codified Laws § 22-42A-3. Drug paraphernalia includes “any equipment, products and materials of any kind which are primarily used, intended for use, or designed for use by the person in possession of them, in... testing, analyzing... or otherwise introducing into the human body any controlled substance or marijuana in violation of the provisions of this chapter. S.D. Codified Laws § 22-42A-1.

221 “No person, knowing the drug related nature of the object, may 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... test, analyze... a controlled substance... in violation of this chapter.” S.D. Codified Laws § 22-42A-4.

222 “Any person who violates any provision of this section is guilty of a Class 2 misdemeanor.” S.D. Codified Laws § 22-42A-3. A Class 2 misdemeanor is punishable by a maximum “thirty days imprisonment in a county jail or five hundred dollars fine, or both.” S.D. Codified Laws § 22-6-2(2).

223 “Any person who violates any provision of this section is guilty of a Class 6 felony.” S.D. Codified Laws § 22-42A-4. A Class 6 felony is punishable by a maximum “two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.” S.D. Codified Laws § 22-6-1(9). The court may, in the alternative, impose a sentence for a term of not more than one year imprisonment “in the county jail of the county where such person was convicted. S.D. Codified Laws § 22-6-1.1.

224 South Dakota’s Good Samaritan exception does not apply to charges related to drug paraphernalia. See S.D. Codified Laws §§ 34-20A-110, 34-20A-111. However, the Good Samaritan law might apply as a mitigating factor for charges relating to the use, possession with intent to use, or delivery of drug paraphernalia: “providing first aid or other medical assistance to someone who is experiencing a drug-related overdose may be used as a mitigating factor in a criminal prosecution for which immunity is not provided under §§ 34-20A-109 to 34-20A-113, inclusive.” S.D. Codified Laws § 34-20A-112. See also S.D. Codified Laws §§ 34-20A-109–34-20A-113 (listing factors to qualify for the Good Samaritan law, definitions, and other relevant information).

225 “Except when used or possessed with the intent to use by a person authorized... to dispense, prescribe, manufacture or possess a controlled substance, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to... test, analyze... a controlled substance or controlled substance analogue in violation of this part.” Tenn. Code Ann. § 39-17-425(a)(1). Drug paraphernalia includes “Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances.” Tenn. Code Ann. § 39-17-402(12)(B).

226 “Except when delivered, possessed with the intent to deliver, or manufactured with the intent to deliver by a person authorized... to dispense, prescribe, manufacture or possess a controlled substance, 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... test, analyze... a controlled substance or controlled substance analogue in violation of this part.” Tenn. Code Ann. § 39-17-425(b)(1).

227 “Any person who violates this subsection (a) commits a Class A misdemeanor.” Tenn. Code Ann. § 39-17-425(a)(2). A Class A misdemeanor is punishable by imprisonment “not greater than eleven (11) months, twenty-nine (29) days or a fine not to exceed two thousand five hundred dollars (\$2,500), or both, unless otherwise provided by statute.” Tenn. Code Ann. § 40-35-111(e)(1).

228 “Any person who violates subdivision (b)(1) [delivery of drug paraphernalia] commits a Class E felony.” Tenn. Code Ann. § 39-17-425(b)(2). A Class E felony is punishable by imprisonment “not less than one (1) year nor more than six (6) years. In addition, the jury may assess a fine not to exceed three thousand dollars (\$3,000), unless otherwise provided by statute.” Tenn. Code Ann. § 40-35-111(b)(5). A person over 18 who delivers paraphernalia to a person under 18 that is at least 3 years younger is guilty of a Class E felony. Tenn. Code Ann. § 39-17-425(b)(3).

229 Tennessee exempts participants, volunteers, and employees from the state paraphernalia law for paraphernalia obtained from or returned to a syringe exchange: “It is an exception to the application of title 39, chapter 17, part 4 [related to possessing or giving away drug paraphernalia, including drug checking equipment], if an employee, volunteer, or participant of a program established pursuant to this section [needle and hypodermic syringe exchange program] possesses... [n]eedles, hypodermic syringes, or *other injection supplies obtained from or returned to a program established pursuant to this section.*” Tenn. Code Ann. § 68-1-136(c)(1)(A) (emphasis added). “The exception provided in this subsection (c) shall apply only if the person claiming the exception provides written verification that a needle, syringe, or other injection supplies were obtained from a needle and hypodermic syringe exchange program established pursuant to this section. For a participant in the program, this exception shall only apply to possession when the participant is engaged in the exchange or in transit to or from the exchange.” Tenn. Code Ann. § 68-1-136(c)(2)(A). The statute authorizing the creation of a syringe exchange explains that syringe exchanges should include supplies in addition to syringes, likely including drug checking equipment: “Programs established pursuant to this section shall offer all of the following... [n]eedles, hypodermic syringes, and *other injection supplies.*” Tenn. Code Ann. § 68-1-136(b)(2) (emphasis added).

230 “Any person who in good faith seeks medical assistance for a person experiencing or believed to be experiencing a drug overdose shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of the drug violation resulted from seeking such medical assistance. Any person who is experiencing a drug overdose and who in good faith seeks medical assistance for or is the subject of a request for medical assistance shall not be arrested, charged, or prosecuted for a drug violation if the evidence for the arrest, charge, or prosecution of the drug violation resulted from seeking such medical assistance. This immunity from being arrested, charged, or prosecuted shall apply to the person experiencing a drug overdose only on the person’s first such drug overdose.” Tenn. Code Ann. § 63-1-156(b). As defined by the same provision, a “drug violation” includes a violation of § 39-17-425 [including charges for the use, possession with intent to use, and delivery of drug paraphernalia].” Tenn. Code Ann. § 63-1-156(a)(3)(B). See also Tenn. Code Ann. § 63-1-156(a) (listing additional relevant definitions).

231 “A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to...test, analyze...a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.” Tex. Health & Safety Code Ann. § 481.125(a). Drug paraphernalia includes “testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.” Tex. Health & Safety Code Ann. § 481.002(17)(D).

232 “A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to... test, analyze... a controlled substance in violation of this chapter.” Tex. Health & Safety Code Ann. § 481.125(b).

233 “An offense under Subsection (a) [use or possession with intent to use drug paraphernalia] is a Class C misdemeanor.” Tex. Health & Safety Code Ann. § 481.125(d). A Class C misdemeanor is punishable by “a fine not to exceed \$500.” Tex. Penal Code Ann. § 12.23.

234 “An offense under Subsection (b) [delivery of drug paraphernalia] is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (b) [delivery of drug paraphernalia] or (c) [delivery of drug paraphernalia to a minor], in which event the offense is punishable by confinement in jail for a term of not more than one year or less than 90 days.” Tex. Health & Safety Code Ann. § 481.125(e). A Class A misdemeanor is punishable by “(1) a fine not to exceed \$4,000; (2) confinement in jail for a term not to exceed one year; or (3) both such fine and confinement.” Tex. Penal Code Ann. § 12.21. Delivery of paraphernalia by someone 18 and older to someone 18 and younger at least 3 years the deliverer’s junior is a separate crime. Tex. Health & Safety Code Ann. §§ 481.125(c); (f). It is punishable by confinement in a state jail for not more than 2 years or less than 180 days and a fine not to exceed \$10,000. Tex. Penal Code Ann. § 12.35(a); (b).

235 Effective September 1, 2021, Texas law provides a “defense to prosecution” for paraphernalia possession only if certain criteria are met. Tex. Health & Safety Code Ann. § 481.125(g)-(i).

236 “It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to...test, analyze...a controlled substance...in violation of this chapter.” Utah Code Ann. § 58-37a-5(1)(a). Drug paraphernalia includes “testing equipment used, or intended for use, to identify or to analyze the strength, effectiveness, or purity of a controlled substance.” Utah Code Ann. § 58-37a-3(4).

237 “It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia will be used to...test, analyze...a controlled substance...in violation of this act.” Utah Code Ann. § 58-37a-5(2)(a).

238 “Any person who violates Subsection (1)(a) [possession of drug paraphernalia] is guilty of a class B misdemeanor.” Utah Code Ann. § 58-37a-5(1)(b). A class B misdemeanor is punishable by imprisonment “for a term not exceeding six months,” and a fine not exceeding \$1,000. Utah Code Ann. §§ 76-3-204(2); 76-3-301(1)(d).

239 “Any person who violates Subsection (2)(a) [delivery of drug paraphernalia] is guilty of a class A misdemeanor.” Utah Code Ann. § 58-37a-5(2)(b).” A class A misdemeanor is punishable by imprisonment “for a term not exceeding 364 days,” and a fine not exceeding \$2,500. Utah Code Ann. §§ 76-3-204(1); 76-3-301(1)(c). “Any person 18 years of age or older who delivers drug paraphernalia to a person younger than 18 years of age and who is three years or more younger than the person making the delivery is guilty of a third degree felony.” Utah Code Ann. § 58-37a-5(3). A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Utah Code Ann. §§ ; 76-3-203(3); 76-3-301(1)(b).

240 While SSPs are authorized in Utah, no immunity is explicitly provided. See Utah Code Ann. § 26-7-8.

241 “It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person or bystander [lists the factors to qualify for the Good Samaritan exemption].” Utah Code Ann. § 58-37-8(16)(a). Subsection (16)(b) includes “any violation of Chapter 37a, Utah Drug Paraphernalia Act [including the use, possession with intent to use, and delivery of drug paraphernalia].” Utah Code Ann. § 58-37-8(16)(b)(iii). See also Utah Code Ann. § 58-37-8(16)(a); (c) (listing the factors to qualify for the Good Samaritan law exemption and the definition of “good faith”).

242 Vermont does not criminalize the use or possession with intent to use drug paraphernalia. See generally Vt. Stat. Ann. tit. 18, §§ 4475-78.

243 The free distribution of drug paraphernalia is not criminalized in Vermont. See generally Vt. Stat. Ann. tit. 18, §§ 4475-78. However, it is illegal in Vermont to sell drug paraphernalia to a minor. Vt. Stat. Ann. tit. 18, § 4476(a).

244 “A person who sells drug paraphernalia to a person under 18 years of age shall be imprisoned for not more than two years or fined not more than \$2,000.00, or both.” Vt. Stat. Ann. tit. 18, § 4476(a).

245 SSPs are authorized by state law, but no explicit immunity is provided. See Vt. Stat. Ann. tit. 18, § 4478.

246 The use, possession with intent to use, and free distribution of drug paraphernalia is not criminalized in Vermont. See generally Vt. Stat. Ann. tit. 18, §§ 4475-78. The application of the Good Samaritan law may provide a mitigating factor for selling drug paraphernalia, including drug checking equipment, to a minor. See Vt. Stat. Ann. tit. 18, § 4254(f).

247 “[I]t is unlawful for any person to possess controlled paraphernalia.” Va. Code Ann. § 54.1-3466(B). The definition of “controlled paraphernalia” is generally limited to instruments “adapted for the administration of controlled dangerous substances by hypodermic injections” and containers “suitable for the packaging of individual quantities of controlled drugs.” Va. Code Ann. § 54.1-3466(A). Further, “[c]ontrolled paraphernalia’ does not include narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” Va. Code Ann. § 54.1-3466(A).

248 “Except as authorized in this chapter, it is unlawful for any person to distribute controlled paraphernalia.” Va. Code Ann. § 54.1-3466(C). “‘Controlled paraphernalia’ does not include narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” § 54.1-3466(A). Note that the definition of “drug paraphernalia” does include “Testing equipment intended for use or designed for use in identifying or in analyzing the strength or effectiveness of marijuana or controlled substances, other than narcotic testing products used to determine whether a controlled substance contains fentanyl or a fentanyl analog.” Va. Code Ann. § 18.2-265.1(4). It is illegal to sell or possess with intent to sell such drug paraphernalia (but not to give it away). Va. Code Ann. § 18.2-265.3.

249 “The provisions of [sections related to possessing or giving away drug paraphernalia and controlled paraphernalia] and of § 18.2-265.3 [related to delivery of drug paraphernalia to a minor] shall not apply to (i) a person who possesses or distributes controlled paraphernalia on behalf of or for the benefit of a comprehensive harm reduction program established pursuant to § 32.1-45.4 or (ii) a person who possesses controlled paraphernalia obtained from a comprehensive harm reduction program established pursuant to § 32.1-45.4.” Va. Code Ann. § 54.1-3466(G). These exemptions are restated in the statute authorizing comprehensive harm reduction programs. Va. Code Ann. § 32.1-45.4(E)-(G). The statute authorizing comprehensive harm reduction programs explains that these programs should include supplies in addition to syringes, likely including drug checking equipment: “[a] comprehensive harm reduction program established pursuant to this section shall include...the provision of hypodermic needles and syringes and *other injection supplies...overdose prevention...access to overdose prevention kits.*” Va. Code Ann. § 32.1-45.4(B)(ii), (iv)(b), (v) (emphasis added).

250 “No individual shall be subject to arrest or prosecution for...possession of controlled paraphernalia pursuant to § 54.1-3466 if [lists factors to qualify for the Good Samaritan exemption].” Va. Code Ann. § 18.2-251.03(B). *See also* Va. Code Ann. § 18.2-251.03(A), (B)(1)-(4) (listing a definition for “overdose” and factors to qualify for the Good Samaritan exemption).

251 D.C. generally criminalizes the use or possession with intent to use drug paraphernalia, including drug checking equipment. *See* D.C. Code Ann. §§ 48–1101(3)(D), 48–1103(a)(1). However, D.C. exempts the use, and possession with the intent to use, drug paraphernalia for the personal use of a controlled substance.” D.C. Code Ann. § 48–1103(a)(1)(1A). This statutory scheme leaves open the possibility that someone possessing drug checking equipment for reasons other than personal use (ie: educational use, or to give to another person for use) could be charged with possession.

252 “[I] is unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowingly, or under circumstances where one reasonably should know, that it will be used to...test, analyze...a controlled substance.” D.C. Code Ann. § 48–1103(b)(1).

253 “Whoever violates this subsection [relating to use or possession with intent to use drug paraphernalia] shall be imprisoned for not more than 30 days or fined not more than the amount set forth in § 22-3571.01, or both.” D.C. Code Ann. § 48-1103(a)(2). An individual who has been found guilty of an offense “punishable by imprisonment for 30 days, or one month, or less but more than 10 days” may be fined a maximum of \$250. D.C. Code Ann. § 22-3571.01(b)(2).

254 “Whoever violates this subsection [relating to distribution or possession with intent to distribute drug paraphernalia] shall be imprisoned for not more than 6 months or fined not more than the amount set forth in § 22-3571.01, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this subchapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than the amount set forth in § 22-3571.01, or both.” D.C. Code Ann. § 48-1103(b)(2). An individual who has been found guilty of an offense “punishable by imprisonment for 180 days, or 6 months, or less but more than 90 days” may be fined a maximum of \$1,000. D.C. Code Ann. § 22-3571.01(b)(4). Further, delivery to a minor is prohibited: “[a]ny person 18 years of age or over who violates subsection (b) of this section by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his or her junior is guilty of a special offense and upon conviction may be imprisoned for not more than 8 years, fined not more than the amount set forth in § 22-3571.01 [\$25,000, or \$50,000 for an organization], or both.” D.C. Code Ann. § 48-1103(c).

255 “Notwithstanding paragraph (1) of this subsection [charges related to giving away drug paraphernalia], it shall not be unlawful for a community-based organization, as that term is defined in § 7-404(a)(1) to deliver or sell, or possess with intent to deliver or sell, the materials described in § 48-1101(3)(D) [including drug checking equipment].” D.C. Code Ann. §§ 7-404(b)(1)(1A). Community-based organization is defined as “an organization that provides services, including medical care, counseling, homeless services, or drug treatment, to individuals and communities impacted by drug use. The term ‘community-based organization’ includes all organizations currently participating in the Needle Exchange Program with the Department of Human Services under § 48-1103.01.” D.C. Code Ann. § 7-404(a)(1).

256 The District’s overdose Good Samaritan law provides that use or possession with intent to use drug paraphernalia “shall not be considered” a crime if the requirements of the law are met. D.C. Code § 7-403(a).

257 Effective May 13, 2021 Washington law was modified to remove “test” and “otherwise introduce into the human body” from the list of prohibited activities. Wash. Rev. Code § 69.50.412(1). It seems clear that this change was made to remove criminal sanctions associated with the use and distribution of drug checking equipment.

258 Effective May 13, 2021 the law was modified to remove “test” and “otherwise introduce into the human body” from the list of prohibited activities related to paraphernalia. Wash. Rev. Code § 69.50.412(2). However, it remains a civil infraction to sell or give drug paraphernalia, including “all equipment products, and materials...used, intended for use, or designed for use in...testing, analyzing...a controlled substance other than marijuana.” Wash. Rev. Code § 69.50.412(1).

259 “Every person who sells or gives, or permits to be sold or given to any person any drug paraphernalia in any form commits a class 1 civil infraction under chapter 7.80 RCW.” Wash. Rev. Code § 69.50.412(1). “The maximum penalty and the default amount for a class 1 civil infraction shall be two hundred fifty dollars, not including statutory assessments.” Wash. Rev. Code § 7.80.120(1)(a).

260 It is likely that public health and community-based HIV prevention programs and pharmacies would be exempt from the civil infraction related to giving away drug paraphernalia if a court interpreted drug checking equipment as “injection syringe equipment”: “[n]othing in subsection (1) of this section [the civil infraction related to giving away drug paraphernalia] prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies.” Wash. Rev. Code § 69.50.412(3). Syringes dispensed from SSPs were found exempt from state paraphernalia laws in a 1992 case, and, while there are no specific rulings on the question, it is likely that the holding there would apply to drug checking equipment as well. See *Spokane County Health District v. Brockett*, 120 Wash. 2d 140, 839 P.2d 324 (1992). Notably, in 2019, the Washington legislature designated funding specifically for syringe exchanges to give away fentanyl checking strips, and the Washington State Department of Health’s website includes resources to connect individuals to fentanyl checking strips through syringe exchanges. Washington State Department of Health, *Fentanyl Test Strip Project*, Washington State Department of Health, <https://www.doh.wa.gov/YouandYourFamily/DrugUserHealth/OverdoseandNaloxone/FentanylTestStrip> (last visited, Feb. 3, 2021).

261 Washington’s overdose Good Samaritan law does not provide protection from the law that makes it a civil infraction to sell or give away drug paraphernalia. See Wash. Rev. Code § 69.50.315.

262 West Virginia does not criminalize the use or possession with intent to use drug paraphernalia. See generally W. Va. Code §§ 47-19-1–8.

263 West Virginia does not criminalize the free distribution of drug paraphernalia. See generally W. Va. Code §§ 47-19-1–8. However, it is unlawful in West Virginia to sell drug paraphernalia, including drug checking equipment, to minors. W. Va. Code § 47-19-6 (2020). It is also unlawful to sell drug paraphernalia, including drug checking equipment, at certain events or outdoors. W. Va. Code § 47-19-8 (2020).

264 West Virginia does not criminalize the use, possession with intent to use, or free distribution of drug paraphernalia. See generally W. Va. Code §§ 47-19-1–8. West Virginia's Good Samaritan law does not include protections related to drug checking equipment. See W. Va. Code §§ 16-47-4, 16-47-5.

265 Wisconsin explicitly criminalizes the use or possession with primary intent to use drug paraphernalia: “[n]o person may use, or possess with the primary intent to use, drug paraphernalia to...test, analyze...a controlled substance or controlled substance analog in violation of this chapter.” Wis. Stat. § 961.573(1). Wisconsin’s drug paraphernalia definition includes “[a]ll equipment...used for...testing” with “testing equipment” listed explicitly. Wis. Stat. § 961.571(1)(a). However, excluded from Wisconsin’s drug paraphernalia definition are, “hypodermic syringes, needles and *other objects used or intended for use in parenterally injecting substances into the human body.*” Wis. Stat. § 961.571(1)(b)(1) (emphasis added). It is possible that this would include drug checking equipment. Indeed, numerous organizations in the state distribute fentanyl test strips. See https://www.gazettextra.com/news/local/new-in-the-opioid-toolkit-fentanyl-test-strips/article_c918c03b-5b48-568d-9eab-f2ef2f890611.html; https://www.mcw.edu/-/media/MCW/Departments/Epidemiology/OFR/OFR-Webinars/OFR-webinar-two_Vivent-Health_Sept-2020.pdf?la=en.

266 Wisconsin explicitly criminalizes the act of giving away 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...test, analyze...a controlled substance or controlled substance analog in violation of this chapter.” Wis. Stat. § 961.574(1). Wisconsin’s drug paraphernalia definition includes “[a]ll equipment... used for...testing” with “testing equipment” listed explicitly. Wis. Stat. § 961.571(1)(a). However, excluded from Wisconsin’s drug paraphernalia definition are, “hypodermic syringes, needles and *other objects used or intended for use in parenterally injecting substances into the human body.*” Wis. Stat. § 961.571(1)(b)(1) (emphasis added). It is possible that this italicized phrase would include drug checking equipment, and thus drug checking equipment would be excluded from crimes related to the delivery of drug paraphernalia.

267 “Any person who violates this subsection may be fined not more than \$500 or imprisoned for not more than 30 days or both.” Wis. Stat. § 961.573(1). If the person is 17 years old or younger they will instead be subject to penalties including suspension of their operating privileges for between 6 months and 5 years, as well as fines, supervised work, or other community services work as detailed in Wis. Stat. § 938.344(2e). Wis. Stat. § 961.573(2). Possessing drug checking equipment used to test methamphetamine or its analogs is a Class H felony. Wis. Stat. § 961.573(3)(a). A Class H felony is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both. Wis. Stat. § 939.50(2)(h). A person over 18 who possesses drug checking equipment for use with methamphetamine or methamphetamine analogs in the presence of a child under 14 is guilty of a Class G felony. Wis. Stat. § 961.573(3)(b)(2). A Class G felony is punishable by a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both. Wis. Stat. § 939.50(g).

268 “Any person who violates this subsection may be fined not more than \$1,000 or imprisoned for not more than 90 days or both.” Wis. Stat. § 961.574(1). If the person is 17 years old or younger they will instead be subject to penalties including suspension of their operating privileges for between 6 months and 5 years, as well as fines, supervised work, or other community services work as detailed in Wis. Stat. § 938.344(2e).. Wis. Stat. § 961.573(2). Delivering or possessing with intent to deliver paraphernalia for use with methamphetamine or a methamphetamine analog is a Class H felony. A Class H felony is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both. Wis. Stat. § 939.50(2)(h). If the person who delivers the paraphernalia is over 17 and they deliver the paraphernalia to a person under 17 who is at least 3 years younger, they may be fined not more than \$10,000, imprisoned for not more than 9 months, or both. Wis. Stat. § 964.575(1). A person over the age of 17 who delivers paraphernalia to a person under age 17 for use with methamphetamine commits a Class G felony. Wis. Stat. § 964.575(3). A Class G felony is punishable by a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both. Wis. Stat. § 939.50(g).



²⁶⁹ “An aider is immune from prosecution under s. 961.573 for the possession of drug paraphernalia.” Wis. Stat. § 961.443(2). See also Wis. Stat. § 961.443(1) (listing the definition for “aider” and factors to qualify under the Good Samaritan exemption).

²⁷⁰ Wyoming does not criminalize the use or possession with intent to use drug paraphernalia. See generally Wyo. Stat. Ann. §§ 35-7-1056–1057. Further, unlike in most states, the definition of “drug paraphernalia” under Wyoming law does not include “testing,” “analyzing,” or similar terms. Wyo. Stat. Ann. § 35-7-1002.

²⁷¹ Wyoming explicitly criminalizes the act of giving away drug paraphernalia. There are increased penalties for delivering drug paraphernalia to a minor. Wyo. Stat. Ann. § 35-7-1057. However, Wyoming’s definition of drug paraphernalia does not explicitly include drug checking equipment, but includes: “all equipment, products and materials of any kind when used, advertised for use, intended for use or designed for use for manufacturing, converting, preparing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.” Wyo. Stat. Ann. § 35-7-1002(a)(xxvii). There is no caselaw on the application of this definition to drug checking equipment.

²⁷² “It is unlawful for any person to deliver, or possess with intent to deliver, drug paraphernalia. Any person who violates this section is guilty of a crime and, upon conviction, may be imprisoned for not more than six (6) months, fined not more than seven hundred fifty dollars (\$750.00), or both.” Wyo. Stat. Ann. § 35-7-1056. Any adult who delivers paraphernalia to a minor “may be imprisoned for not more than five (5) years, fined not more than two thousand five hundred dollars (\$2,500.00), or both.” Wyo. Stat. Ann. § 35-7-1057.

²⁷³ Wyoming has not enacted an overdose Good Samaritan law.