

2012 Kansas Statutes

21-5711. Factors to consider when determining what is drug paraphernalia. (a) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or person in control of the object concerning its use;
- (2) prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance;
- (3) the proximity of the object, in time and space, to a direct violation of K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto;
- (4) the proximity of the object to controlled substances;
- (5) the existence of any residue of controlled substances on the object;
- (6) direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto. The innocence of an owner or person in control of the object as to a direct violation of K.S.A. 2012 Supp. 21-5701 through 21-5717, and amendments thereto, shall not prevent a finding that the object is intended for use as drug paraphernalia;
- (7) oral or written instructions provided with the object concerning its use;
- (8) descriptive materials accompanying the object which explain or depict its use;
- (9) national and local advertising concerning the object's use;
- (10) the manner in which the object is displayed for sale;
- (11) whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products;
- (12) direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- (13) the existence and scope of legitimate uses for the object in the community;
- (14) expert testimony concerning the object's use;
- (15) any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia; or
- (16) advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, distribution or cultivation of controlled substances.

(b) The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.

History: L. 2009, ch. 32, § 11; July 1.