

**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. 2014 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. 2014 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. 2014 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.