

The Confusing State of Paraphernalia Laws

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IN FEBRUARY 2003, the United States Department of Justice launched its most misguided, indirect attack on Cannabis, known as Operation Pipe Dreams. At the time, four western states had already enacted legislation permitting the statewide use of medical Cannabis, despite the federal prohibition against it – and more states were about to do so.

In response, Attorney General John Ashcroft joined forces with U.S. Attorney Mary Beth Buchanan from the Western District of Pennsylvania to indict 55 individuals for selling hand-blown glass water pipes across state lines, breaking federal law.

Defendants would argue that federal law enforcement officials were looking for a high profile and outspoken defendant in which to make an example.

Those arrested and charged included comedy-icon-turned-entrepreneur Tommy Chong and his son.

In the end, in exchange for an agreement not to prosecute his son or wife, Chong agreed to plead guilty to one conspiracy count. He served the longest sentence from Operation Pipe Dreams – nine months in a minimum-security correctional facility in California – as well as paid a fine of \$20,000 and agreed to forfeit \$103,000 in earnings.

Eighteen years later, it is hard to see Attorney General Ashcroft and conservatives at the time as trying to hold back the ocean with a spoon.

Cannabis and the glass industry have won the culture wars by attrition. Sure, the use and possession of Cannabis remains illegal at the federal level, but the Cannabis genie is out of the bottle and she ain't going back in.

As Maryland lawmakers consider two legalization bills this session, a new poll shows that the state's residents are strongly on board with the policy change. Two-thirds (67 percent) of Marylanders now back legalizing Cannabis, according to a Goucher College survey published earlier this week. In fact, support for legalizing Cannabis in Maryland has risen in the two years since the last time

Goucher College asked about the issue in 2019, when 57 percent of residents backed the idea. In 2013, just 51 percent of Marylanders supported legalization.

In light of the nationwide normalization of Cannabis as a medicine and a recreational adult substance, what then do we do with the paraphernalia laws?

Why do we still continue with the legal fiction that bongs are “water pipes” or that pipes are “for tobacco use only?”

Maryland's prohibition against paraphernalia provides that “a person may not use or possess with intent to use drug paraphernalia to . . . ingest, inhale, or otherwise

introduce into the human body a controlled dangerous substance.”

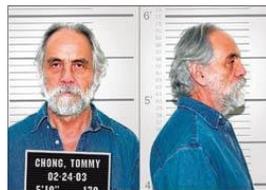
While both marijuana and its psychoactive derivatives are Schedule I drugs under the Controlled Substances Act, in 2016 after enacting the framework for medical Cannabis in Maryland, the Maryland General Assembly specifically added an affirmative defense for the possession of marijuana – meaning you cannot receive a paraphernalia charge if the substance you're using it to consume is Cannabis. Sound ridiculous? Wait, it gets more preposterous.

While there is an affirmative defense to possession of paraphernalia if you are intending to use it to ingest marijuana, there is no legal protection for the store that sold it to you.

That is why a head, glass or vape shop has to kick you out if you start talking about any drugs in the store. If the intent of the use of the pipe is to ingest or inhale a CDS that is not marijuana – including concentrates and any Cannabis product in its non-botanical form – then the store has committed a crime in selling you the glass pipe.

Confused? You should be. Not only do the laws against paraphernalia make no sense, they legitimately harm the dialogue that happens between a sales person and a prospective customer.

In that way, the paraphernalia laws harm everyone – restricting the free flow of accurate information and creating an adversarial relationship, where secrecy is encouraged and store owners are incentivized to learn nothing about their clients.



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Since 2008, Mike Rothman has counseled clients regarding Cannabis laws and regulations as the founder and principal of the Medical Cannabis Law Group and the Law Office of Mike Rothman in Rockville, Maryland. Mr. Rothman has testified on Cannabis laws and regulations before the Maryland House of Delegates, taught classes, and lobbied the federal government on behalf of patients and businesses. Mr. Rothman's Law Office focuses on criminal defense, including use of the medical Cannabis defense.