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Arkansas Code Title 5. Criminal Offenses § 5-64-101. Definitions

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As used in this chapter:

- (1) "Administer" means 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
- (B) The patient or research subject at the direction and in the presence of the practitioner;
- (2)(A) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.
- (B) "Agent" does not include a common or contract carrier, public warehouseman, or employee of the common or contract carrier or warehouseman;
- (3)(A) "Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestin, and corticosteroid that promotes muscle growth.
- (B)(i) "Anabolic steroid" does not include an anabolic steroid that is expressly intended for administration through an implant to cattle or another nonhuman species and that has been approved by the Secretary of the Department of Health for such administration.
- (ii) If any person prescribes, dispenses, or distributes a steroid described in subdivision (3)(B)(i) of this section for human use, the person is considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision (3);
- (4) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI;
- (5)(A) "Counterfeit substance" means a noncontrolled substance, that by overall dosage unit appearance including color, shape, size, markings, packaging, labeling, and overall appearance or upon the basis of representations made to the recipient, purports to be a controlled substance or to have the physical or psychological effect associated with a controlled substance.
- (B) In determining whether a substance is a "counterfeit substance", the following factors shall be utilized and a finding of any two (2) of these factors constitutes prima facie evidence that the substance is a "counterfeit substance":
- (i) A statement made by an owner or by anyone else in control of the substance concerning the nature of the substance, its use, or effect;
- (ii) The physical appearance of the finished product containing the noncontrolled substance is substantially the same as that of a specific controlled substance;
- (iii) The noncontrolled substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance;
- (iv) The noncontrolled substance is not labeled in accordance with [21 U.S.C. § 352](#) or [21 U.S.C. § 353](#);
- (v) The person delivering, attempting to deliver, or causing delivery of the noncontrolled substance states or represents to the recipient that the noncontrolled substance may be resold at a price that substantially exceeds the value of the substance;
- (vi) An evasive tactic or action utilized by the owner or person in control of the substance to avoid detection by a law enforcement authority; or
- (vii) A prior conviction, if any, of an owner, or anyone in control of the object under a state or federal law related to a controlled substance or fraud;
- (6) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance or counterfeit substance in exchange for money or anything of value, whether or not there is an agency relationship;
- (7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the controlled substance for that delivery;
- (8) "Dispenser" means a practitioner who dispenses;
- (9) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- (10) "Distributor" means a person who distributes;
- (11)(A) "Drug" means a substance:
- (i) Recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them;
- (ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- (iii) Other than food intended to affect the structure or any function of the body of humans or animals; and
- (iv) Intended for use as a component of any article specified in subdivision (11)(A)(i), subdivision (11)(A)(ii), or subdivision (11)(A)(iii) of this section.
- (B) "Drug" does not include a device or its components, parts, or accessories;
- (12)(A) "Drug paraphernalia" means any equipment, product, and material of any kind that 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 this chapter.
- (B) "Drug paraphernalia" includes, but is not limited to:
- (i) A kit used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived;
- (ii) A kit used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;
- (iii) An isomerization device used, intended for use, or designed for use in increasing the potency of any species of plant that is a controlled substance;
- (iv) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;
- (v) A scale or balance used, intended for use, or designed for use in weighing or measuring a controlled substance;
- (vi) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in cutting a controlled substance;
- (vii) A separation gin or sifter used, intended for use, or designed for use in removing a twig or seed from, or in otherwise cleaning or refining, marijuana;
- (viii) A blender, bowl, container, spoon, or mixing device used, intended for use, or designed for use in compounding a controlled substance;
- (ix) A capsule, balloon, envelope, or other container used, intended for use, or designed for use in packaging a small quantity of a controlled substance;
- (x) A container or other object used, intended for use, or designed for use in storing or concealing a controlled substance;
- (xi) A hypodermic syringe, needle, or other object used, intended for use, or designed for use in parenterally injecting a controlled substance into the human body; and
- (xii) An object used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing a controlled substance into the human body, such as:
- (a) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (b) A water pipe;
- (c) A carburetion tube or device;
- (d) A smoking or carburetion mask;
- (e) A roach clip, meaning an object used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
- (f) A miniature cocaine spoon or cocaine vial;
- (g) A chamber pipe;
- (h) A carburetor pipe;
- (i) An electric pipe;
- (j) An air-driven pipe;
- (k) A chillum;
- (l) A bong;
- (m) An ice pipe or chiller; and
- (n) An aluminum foil boat.
- (C) In determining whether an object is "drug paraphernalia", a court or other authority shall consider, in addition to any other logically relevant factor, the following:
- (i) A statement by an owner or by anyone in control of the object concerning its use;
- (ii) A prior conviction, if any, of an owner or of anyone in control of the object under any state or federal law relating to any controlled substance;
- (iii) The proximity of the object in time and space to a direct violation of this chapter;
- (iv) The proximity of the object to a controlled substance;
- (v) The existence of any residue of a controlled substance on the object;
- (vi)(a) Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to a person whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of this chapter.
- (b) The innocence of an owner or of anyone in control of the object as to a direct violation of this chapter does not prevent a finding that the object is intended for use or designed for use as "drug paraphernalia";
- (vii) An oral or written instruction provided with the object concerning its use;
- (viii) Descriptive materials accompanying the object that explain or depict its use;
- (ix) National and local advertising concerning the object's use;
- (x) The manner in which the object is displayed for sale;
- (xi) Whether the owner or anyone in control of the object is a legitimate supplier of a like or related item to the community, such as a licensed distributor or dealer of a tobacco product;
- (xii) Direct or circumstantial evidence of the ratio of sales of the objects to the total sales of the business enterprise;
- (xiii) The existence and scope of legitimate uses for the object in the community; and
- (xiv) Expert testimony concerning the object's use.
- (D) "Drug paraphernalia" does not include a disposable, single-use test strip that can detect the presence of fentanyl or fentanyl analogs in a substance;
- (13) "Fentanyl" means the opioid known as fentanyl, an analog of fentanyl that is a fentanyl-related controlled substance, and any chemical structure modification to fentanyl or a fentanyl analog, including without limitation the isomers, esters, ethers, and salts of fentanyl;
- (14) "Immediate precursor" means a substance that the secretary has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture;
- (15)(A) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from a substance of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- (B) "Manufacture" includes any packaging or repackaging of a controlled substance or labeling or relabeling of a controlled substance's container.
- (C) However, "manufacture" does not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance:
- (i) By a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his or her professional practice; or
- (ii) By a practitioner or by his or her authorized agent under his or her supervision for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;
- (16)(A) "Marijuana" means:
- (i) Any part and any variety or species, or both, of the Cannabis plant that contains THC (Tetrahydrocannabinol) whether growing or not;
- (ii) The seeds of the plant;
- (iii) The resin extracted from any part of the plant; and
- (iv) Every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.
- (B) "Marijuana" does not include:
- (i) The mature stalks of the plant;
- (ii) Fiber produced from the stalks;
- (iii) Oil or cake made from the seeds of the plant;
- (iv) Any other compound, manufacture, salt, derivative, mixture, or preparation of the:
- (a) Mature stalks, except the resin extracted from the mature stalks;
- (b) Fiber;
- (c) Oil; or
- (d) Cake;
- (v) The sterilized seed of the plant that is incapable of germination; or
- (vi) Hemp-derived cannabidiol that:
- (a) Contains not more than three-tenths of one percent (0.3%) of delta-9 tetrahydrocannabinol (THC) on a dry weight basis as verified by a nationally accredited laboratory for quality, purity, and accuracy standards; and
- (b) Is not approved by the United States Food and Drug Administration for marketing as a medication;
- (17)(A)(i) "Narcotic drug" means any drug that is defined as a narcotic drug by order of the secretary.
- (ii) In the formulation of a definition of "narcotic drug", the secretary shall:
- (a) Include any drug that he or she finds is narcotic in character and by reason of being narcotic is dangerous to the public health or is promotive of addiction-forming or addiction-sustaining results upon the user that threaten harm to the public health, safety, or morals; and
- (b) Take into consideration the provisions of the federal narcotic laws as they exist from time to time and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the federal narcotic laws, so far as is possible under the standards established in this subdivision (17) and under the policy of this chapter.
- (B) "Narcotic drug" also means any of the following, whether produced directly or indirectly by extraction from a substance of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (i)(a) Opium, opiates, a derivative of opium or opiates, including their isomers, esters, and ethers whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.
- (b) "Narcotic drug" does not include an isoquinoline alkaloid of opium;
- (ii) Poppy straw and concentrate of poppy straw;
- (iii) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
- (iv) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
- (v) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
- (vi) Any compound, mixture, or preparation that contains any quantity of any substance referred to in subdivisions (17)(B)(i)-(v) of this section;
- (18) "Noncontrolled substance" means any liquid, substance, or material not listed in Schedules I through VI of the Schedules of Controlled Substances promulgated by the secretary;
- (19) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (20) "Practitioner" means:
- (A) A physician, dentist, veterinarian, 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; and
- (B) A pharmacy, hospital, or other institution 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;
- (21) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (22) "State" when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America; and
- (23) "Ultimate user" means a person who lawfully possesses a controlled substance for:
- (A) The person's own use;
- (B) The use of a member of the person's household; or
- (C) Administering to an animal owned by the person or by a member of his or her household.

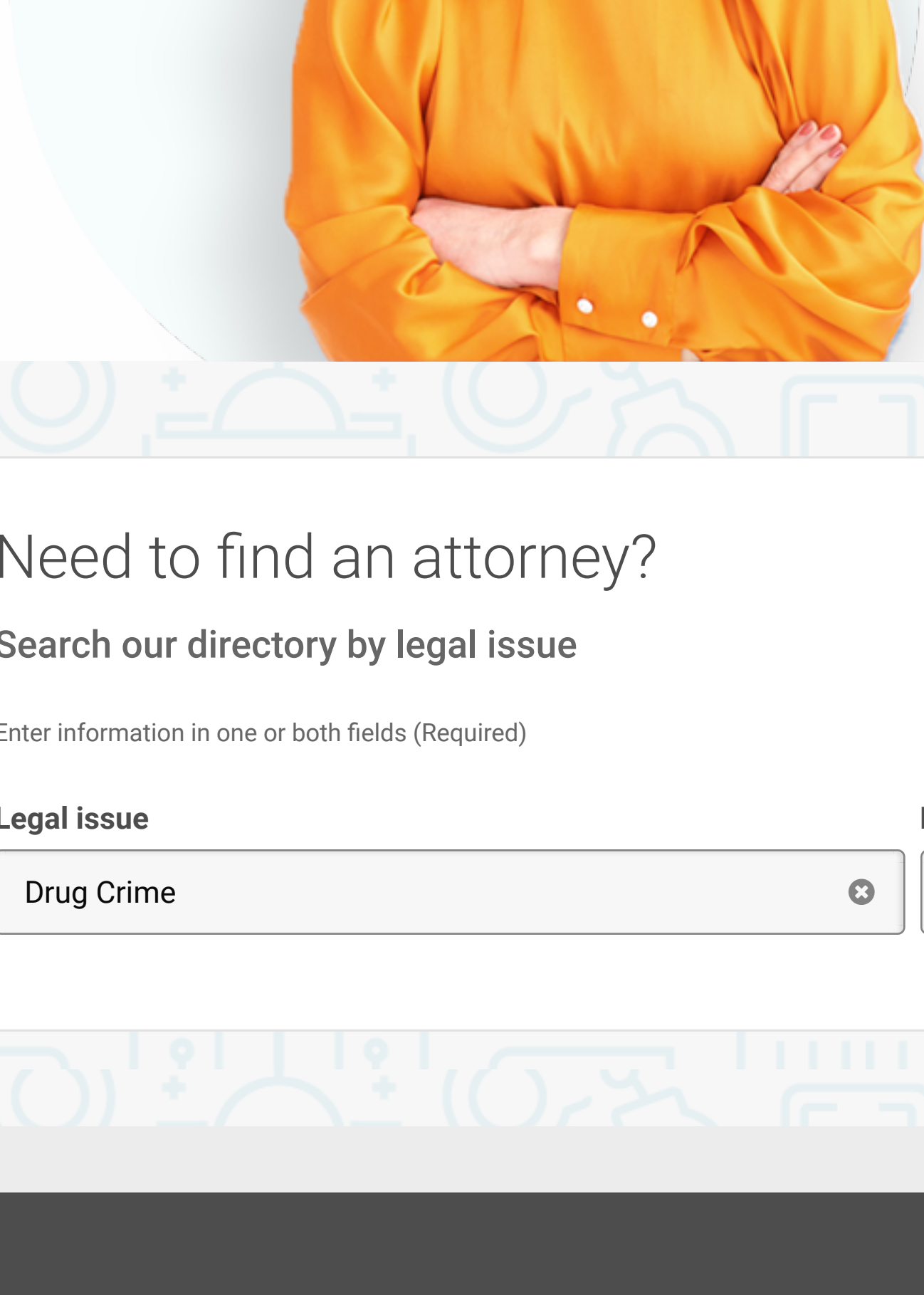
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