



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

NOTICE

AMENDMENTS TO THE NEZ PERCE TRIBAL CODE

This notice is being posted December 14, 2016, according to the Nez Perce Tribal Code § 1-4-2 to request written comments for the following proposed amendments to (see attached):

Nez Perce Tribal Code chapters/sections regarding drug paraphernalia - Chapter 3-1, §3-1-57 Possession of Drug Paraphernalia; Chapter 4-1, §4-1-1(m) Definitions, §4-1-132 Possession of Drug Paraphernalia, and §4-1-154 Possession of Drug Paraphernalia (see attached).

STATEMENT OF PURPOSE: The proposed Code amendment is for the purposes of clarifying and providing consistency within the Tribal Code regarding the definition of drug paraphernalia.

WRITTEN COMMENT PERIOD:

The Law and Order & Intergovernmental Affairs Subcommittee will be accepting written comments on the proposed amendment being applied to the Code. Please submit written comments to: Shannon Wheeler, Chair, Law and Order Subcommittee, P.O. Box 305, Lapwai, ID, 83540; email to leotism@nezperce.org, fax to (208) 843-7354 or hand deliver to the NPTEC offices in Lapwai. The deadline for receipt and consideration of such comments is January 16, 2017, at 4:30 p.m.

PROPOSED AMENDMENTS TO THE NEZ PERCE TRIBAL CODE:

Note: Added language is in **bold** and deleted language is by ~~strikeout~~

CHAPTER 3-1, FISH & WILDLIFE

Add language to the subheading: PROGRAM HEADS OF FISHERIES AND OF WILDLIFE DEPARTMENTS, FISH AND WILDLIFE COMMISSION **ON RESERVATION HUNTING/ RECREATIONAL FISHING**

§3-1-57 Possession of Drug Paraphernalia

(a) It shall be unlawful for any person to use, or possess with intent to use, drug paraphernalia to cultivate, grow, harvest, manufacture, compound, convert, produce, **process**, prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Title 21 U.S.C. § 812.

CHAPTER 4-1
CRIMINAL OFFENSES; GENERAL PROVISIONS

§4-1-1 Definitions

(m) "Drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in **growing, harvesting**, manufacturing, compounding, converting, concealing, producing, processing, preparing, **storing**, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this code. **It includes, but is not limited to:**

- (1) **Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;**
- (2) **Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;**
- (3) **Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;**
- (4) **Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;**
- (5) **Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;**
- (6) **Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;**
- (7) **Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;**
- (8) **Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:**

- (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (ii) Water pipes;
- (iii) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (iv) Miniature cocaine spoons, and cocaine vials;
- (v) Electric pipes;
- (vi) Air-driven pipes;
- (vii) Bongs.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone 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 this chapter;
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 of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
7. Instructions, oral or written, 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 its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) 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 its use.

DRUG AND ALCOHOL RELATED OFFENSES

§4-1-132 Possession of Drug Paraphernalia

(a) It shall be unlawful for any person to use, or possess with intent to use, drug paraphernalia to cultivate, grow, harvest, manufacture, compound, convert, produce, **process**, prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, synthetic drugs, and other substances as defined in Title 21 U.S.C. § 812.

FISH AND WILDLIFE OFFENSES

§4-1-154 Possession of Drug Paraphernalia

(a) It shall be unlawful for any person to use, or possess with intent to use, drug paraphernalia to cultivate, grow, harvest, manufacture, compound, convert, produce, **process**, prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Title 21 U.S.C. § 812.