

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1327

(Delegate Conaway)

Judiciary

Judicial Proceedings

Criminal Law - Salvia Divinorum - Distribution to Individual Under 21 Years of Age - Penalties

This bill increases the penalties for a conviction of the crime of distributing Salvia divinorum to a person under the age of 21 years. Under the bill, the maximum penalties are: (1) \$1,000 for a first violation; (2) \$2,000 for a second violation occurring within two years after the first violation; and (3) \$6,000 for a third or subsequent violation occurring within two years after the preceding violation.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from penalties imposed in District Court cases. State expenditures are not affected.

Local Effect: Minimal increase in local revenues from penalties imposed in circuit court cases. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: Chapter 201 of 2010 enacted the first statewide statutory prohibitions on the use and possession of “Salvia divinorum.” “Salvia divinorum” is defined as Salvinorin A and any material, compound, mixture, preparation, or product that contains Salvia divinorum or Salvinorin A. A person is prohibited from distributing Salvia divinorum to an individual younger than the age of 21. In a prosecution for a violation, it is a defense that the defendant examined the purchaser’s or recipient’s driver’s license or other valid identification issued by an employer, government unit, or institution of higher

education that positively identified the purchaser or recipient as at least 21 years of age. A violator is guilty of a misdemeanor and subject to a maximum \$300 fine for a first violation. For a second violation occurring within two years after the first violation, the maximum fine is \$1,000. For each subsequent violation occurring within two years after the preceding violation, the maximum fine is \$3,000. Each separate incident at a different time and occasion is a separate violation.

An individual younger than the age of 21 is also prohibited from possessing *Salvia divinorum*. A violation is a code violation, subjecting an adult violator to the issuance of a citation and a maximum \$500 fine for a first violation and a \$1,000 fine for a second or subsequent violation. A minor who violates the prohibition against possession of *Salvia divinorum* is subject to juvenile court procedures and dispositions, including referral to substance abuse education or rehabilitation.

Background: *Salvia divinorum* is a herbaceous plant in the mint family native to the Sierra Mazateca region of Oaxaca, Mexico. The plant is sometimes referred to as Maria Pastora, Sage of the Seers, Sally-D, Magic Mint, and Diviner's Sage. According to the U.S. Drug Enforcement Administration (DEA), it is usually sold as dried leaves in various degrees of potency and can cause a variety of hallucinogenic effects including a perception of overlapping realities, a loss of body awareness, dizziness, and impaired speech. Unlike hallucinogens like LSD or PCP, however, salvia's effects last for a shorter time (generally up to an hour). Salvinorin A is the main active psychotropic molecule in *Salvia divinorum*.

According to various news accounts, *Salvia divinorum* has proliferated on the Internet and at college-area paraphernalia shops. The increased availability of the substance and its physical effects have motivated a number of states to enact laws to regulate or restrict the availability, possession, or sale of *Salvia divinorum* and/or Salvinorin A.

Salvia divinorum and/or Salvinorin A are classified as Schedule I substances in at least 13 states. Schedule I substances are typically defined as having a high tendency for abuse and do not have a medicinal purpose. Possession of a Schedule I substance (except for marijuana) is often classified as a felony. In California, the sale or distribution of *Salvia divinorum* or Salvinorin A, or any substance or material containing those substances to a minor, is a misdemeanor subject to a \$1,000 fine and/or six months imprisonment.

In addition to some states as noted above, several localities have enacted legislation concerning salvia. Ocean City banned salvia products in August 2009 in response to extensive availability of the substance in boardwalk shops and numerous reports of police officers having to restrain individuals under the influence of salvia. Worcester County enacted a countywide ban effective September 2009.

To date, proposals at the federal level to include the substance in the controlled dangerous substances schedules have failed. The DEA has classified Salvia divinorum as a “drug of concern” and is currently studying Salvia divinorum and Salvinorin A for possible recommendations for inclusion in the federal schedules.

Several countries have enacted laws that restrict or prohibit possession and/or sale of Salvia divinorum, including Australia, Belgium, Denmark, Finland, Germany, Iceland, Italy, Japan, Norway, Russia, South Korea, Spain, and Sweden.

In February 2011, Health Canada posted its intention to add Salvia divinorum and Salvinorin A to the Controlled Drugs and Substances Act, making it illegal to produce, possess, traffic, import or export the substances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

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mm/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510