

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 76

(Senator Kelley, *et al.*)

Judicial Proceedings

Judiciary

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**Criminal Law - Controlled Dangerous Substances - Research - Synthetic  
Cannabinoids**

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This bill enables an authorized provider to conduct research on a controlled dangerous substance listed in Schedule I that is not scheduled under federal law if the authorized provider is approved by a federally registered institutional board or institutional animal care and use committee to conduct the research. The bill also adds “synthetic cannabinoids” to the list of Schedule I controlled dangerous substances under State law.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues and expenditures due to applicable controlled dangerous substances penalty provisions. Any increase in District Court caseloads can be handled with existing resources.

**Local Effect:** Minimal increase in local revenues and expenditures due to applicable controlled dangerous substances penalty provisions. Any increase in circuit court caseloads can be handled with existing resources.

**Small Business Effect:** Potential minimal loss of revenue for small businesses that currently sell substances that would be illegal under the bill.

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## Analysis

**Bill Summary:** The bill adds a material, compound, mixture, or preparation that contains “synthetic cannabinoids” to the list of Schedule I controlled dangerous substances. “Synthetic cannabinoids” is defined as a chemical compound that is chemically synthesized and (1) has been demonstrated to have binding activity at one or more cannabinoids receptors; or (2) is a chemical analog or isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoids receptors. Synthetic cannabinoids include:

- 1-[2-(4-(morpholinyl)ethyl)]-3-(1-naphthoyl) indole (also known as JWH-200);
- 1-Butyl-3-(1-naphthoyl) indole (also known as JWH-073);
- 1-hexyl-3-(1-naphthoyl) indole (also known as JWH-019);
- 1-pentyl-3-(1-naphthoyl) indole (also known as JWH-018);
- 1-pentyl-3-(2-methoxyphenylacetyl) indole (also known as JWH-250);
- 1-pentyl-3-(4-chloro-1-naphthoyl) indole (also known as JWH-398);
- 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) (also known as CP 47, 497 and its C6, C7, C8, and C9 homologues);
- (2-methyl-1propyl-1H-indol-3-yl)-1-naphthalenyl-methanone (also known as JWH-015);
- (6aR, 10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol) (also known as HU-210); and
- Dexanabinol, (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211).

A salt, isomer, or salt of an isomer of any of these substances is also a Schedule I controlled dangerous substance if the existence of the salt, isomer, or salt of an isomer is possible within the specific chemical designation.

**Current Law:** In Maryland, an authorized provider may conduct research in the State with a controlled dangerous substance listed in Schedule I if the authorized provider is registered under federal law to conduct research with a Schedule I substance and gives evidence of the registration to the Department of Health and Mental Hygiene.

Controlled dangerous substances are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Dangerous Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

On March 1, 2011, the U.S. Drug Enforcement Administration (DEA) announced that it would use its emergency scheduling authority to temporarily designate five synthetic cannabinoids (JWH-018; JWH-073; JWH-200; CP-47, 497; and cannabicyclohexanol) as Schedule I substances to “prevent an imminent threat to the public health and safety.” During this emergency action, the manufacture, possession, distribution, importation, and exportation of these chemicals or products containing them will be illegal. The emergency action was scheduled to expire on February 29, 2012, but was recently extended until August 29, 2012, or until rulemaking proceedings are completed, whichever comes first. During the ban, the DEA and the U.S. Department of Health and Human Services will study if these chemicals and their products should be permanently controlled. Under Maryland law, if the federal government places a substance on Schedule I, it is automatically considered a Schedule I substance in the State unless the Department of Health and Mental Hygiene (DHMH) objects to the designation. Since DHMH has not raised an objection, the synthetic cannabinoids designated by the DEA as Schedule I substances are currently illegal in Maryland.

No distinction is made in the law regarding the illegal possession of any controlled dangerous substance, regardless of which schedule it is on, with the exception of marijuana. When the substance is marijuana, the defendant is guilty of a misdemeanor and the maximum criminal penalties for a violation are one year imprisonment and/or a \$1,000 fine. If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. The use or possession of any other controlled dangerous substance is a misdemeanor with maximum criminal penalties of four years imprisonment and/or a \$25,000 fine.

For specified primary crimes involving controlled dangerous substances and paraphernalia, a person may not:

- distribute, dispense, or possess with the intent to distribute a controlled dangerous substance;
- manufacture a controlled dangerous substance or manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with the intent to use it to produce, sell, or dispense a controlled dangerous substance;
- create, distribute, or possess with the intent to distribute a counterfeit substance;
- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance (any place resorted to for the purpose of illegally administering controlled dangerous substances or where such substances or controlled paraphernalia are illegally manufactured, distributed, dispensed, stored, or concealed); or

- pass, issue, make, or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with the intent to distribute the controlled dangerous substance.

A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$15,000. A subsequent offender under these prohibitions is subject to a mandatory minimum nonsuspendable, nonparolable sentence of two years imprisonment.

When the controlled dangerous substance is a Schedule I or Schedule II narcotic drug, a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$25,000. A second-time offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A third-time offender or conspirator who is convicted again of those same primary crimes involving a Schedule I or Schedule II narcotic drug and meets certain confinement and conviction prerequisites, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A fourth-time offender or conspirator with three or more prior separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

When the controlled dangerous substance is specified other drugs – including PCP, LSD, and MDMA (Ecstasy) – a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$20,000. A repeat offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A second-time offender or conspirator convicted again of those same primary crimes involving the specified other drugs, if certain confinement and conviction prerequisites are met, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A convicted offender or a conspirator with three or more prior separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

A volume dealer, as defined by the amount of specified substances, is subject to a maximum fine of \$100,000 and a mandatory minimum nonsuspendable, nonparolable sentence of five years.

Federal policy dictates that a physician who prescribes Schedule I drugs to a patient may lose his or her federal license to prescribe drugs and be prosecuted.

## **Background:**

### *Synthetic Cannabinoids*

Synthetic cannabinoids are chemically engineered substances that are similar to THC, the active ingredient in marijuana. When smoked or ingested, these substances produce a high similar to marijuana, and they have rapidly become a popular alternative to marijuana. The substances are typically sprayed onto dried herbs and sold under names like “Spice,” “K2,” or “Genie.” Synthetic cannabinoids have been linked to hallucinations, tachycardia, and seizures. In 2009, the American Association of Poison Control Centers documented 14 calls to poison control centers concerning synthetic cannabinoids. In 2010, the number had grown to 2,867.

Synthetic cannabinoids function similarly to a substance referred to as “THC.” On October 28, 2011, the Maryland Poison Control Center reported that there were 146 cases of exposures to THC homologues so far in 2011. According to DHMH, as of December 2011, there were no reported deaths from synthetic cannabinoids in Maryland and no reports of deaths attributable to synthetic cannabinoids were found in other states.

### *Other States*

According to the National Conference of State Legislatures (NCSL), as of October 24, 2011, at least 40 states have adopted laws or departmental rules to ban chemical substances related to synthetic cannabinoids.

### *Maryland Law*

As previously stated, the synthetic cannabinoids designated by the DEA as Schedule I substances are currently illegal in Maryland since DHMH did not raise an objection to the DEA’s classification. In August 2011, Ocean City banned the sale, possession, and manufacturing of synthetic cannabinoids.

**State Revenues:** General fund revenues increase minimally as a result of applicable monetary penalty provisions from cases heard in the District Court.

**State Expenditures:** While some synthetic cannabinoids are currently illegal in the State as a result of recent actions taken by the DEA, it is unclear to what extent the current provisions are being enforced and what level of increased enforcement will occur as a result of the bill. Based on these factors, it is assumed that the number of additional arrests and convictions resulting from the bill will be minimal.

General fund expenditures increase minimally for the Office of the Public Defender to handle additional cases generated by the bill. General fund expenditures increase minimally as a result of the applicable incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of controlled dangerous substance offenses as a result of this bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$385 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

It is assumed that any increase in District Court caseloads as a result of the bill can be handled with existing resources.

**Local Revenues:** Revenues increase minimally as a result of the applicable monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the expanded application of current incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per

day grant for inmates who have been sentenced to the custody of the DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Garrett, and Montgomery counties; Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Drug Enforcement Administration; Department of Legislative Services

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