

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 402
Judiciary

(Frederick County Delegation)

Frederick County - Authority to Ban Synthetic Cannabinoids

This emergency bill authorizes the County Commissioners of Frederick County to adopt an ordinance that (1) prohibits the knowing or intentional possession of synthetic cannabinoids; (2) prohibits the sale or manufacture of synthetic cannabinoids; (3) makes real property used in violation of the ordinance a nuisance; and (4) establishes civil and criminal penalties for a violation of the ordinance.

The bill defines a “synthetic cannabinoid” to be a chemical compound that is chemically synthesized and has been demonstrated to have binding activity at one or more cannabinoid receptors or is a chemical analog or isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoid receptors. The bill also includes a number of specified substances as synthetic cannabinoids. The bill does not apply to a drug approved by the Food and Drug Administration or a drug used in research by an institute of higher learning or the National Institutes of Health.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures to the extent that an ordinance adopted by Frederick County pursuant to the bill’s authority results in additional fines in District Court cases and additional or longer incarcerations in State correctional facilities.

Local Effect: Potential minimal increase in local revenues and expenditures to the extent that an ordinance adopted by Frederick County pursuant to the bill’s authority results in additional fines in circuit court cases and additional or longer incarcerations in local correctional facilities.

Small Business Effect: Potential minimal loss of revenue for small businesses in Frederick County that sell substances that are currently legal under State law but would be illegal under an ordinance adopted pursuant to the bill's authority.

Analysis

Current Law: 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.

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.

In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapters 193 and 194 of 2012 (SB 214/HB 350), a person in possession of less than 10 grams of marijuana is subject to a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500.

The use or possession of less than 10 grams of marijuana may not be considered a lesser included crime of any other crime unless specifically charged by the State. If a person is convicted of possessing less than 10 grams of marijuana, the court must stay any imposed sentence that includes an unserved, nonsuspended period of imprisonment without requiring an appeal bond (1) until the time for filing an appeal has expired and (2) during the pendency of a filed appeal of the conviction.

If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. An affirmative defense is available to defendants for use or possession of marijuana or related paraphernalia due to a debilitating medical condition.

The use or possession of a controlled dangerous substance other than marijuana is a misdemeanor with maximum criminal penalties of four years imprisonment and/or a \$25,000 fine.

For information on additional primary crimes involving controlled dangerous substances, please refer to the **Appendix – Primary Crimes Involving Controlled Dangerous Substances**.

Background: Cannabimimetic agents, also referred to as “synthetic marijuana” or “synthetic cannabinoids,” are chemical substances that are not derived from the marijuana plant but are designed to affect the body in ways similar to THC, the primary psychoactive ingredient in marijuana. Synthetic cannabinoids are typically sprayed onto plant material and marketed under names such as “Spice” or “K2.” The popularity and availability of these substances has grown in recent years, and criminal enforcement of the sale and possession of these substances has been challenging, since manufacturers can elude legal bans on products by making slight changes to their chemical structures.

On July 9, 2012, President Obama signed the Synthetic Drug Abuse Prevention Act of 2012 (SDAPA). SDAPA placed 26 substances in the federal list of Schedule I controlled dangerous substances, including several of the substances specified in this bill. SDAPA also created a new definition of “cannabimimetic agents” with criteria by which similar chemical compounds are 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, several of the substances encompassed by this bill are illegal in Maryland.

According to the National Conference of State Legislatures, as of November 28, 2012, 41 states and Puerto Rico have enacted legislation to ban synthetic cannabinoids.

According to DHMH, the Maryland Poison Control Center received 159 calls related to synthetic cannabinoids during the first eight months of 2012, compared to 151 calls in calendar 2011. The calls came from 20 of Maryland’s 24 jurisdictions. A majority of the calls involved individuals age 19 or younger.

Additional Information

Prior Introductions: None.

Cross File: SB 320 (Senators Brinkley and Young) - Judicial Proceedings.

Information Source(s): Frederick County, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2013
mc/kdm

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Appendix – Additional Primary Crimes Involving Controlled Dangerous Substances

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.

Exhibit 1 contains the applicable sentences for these crimes.

Exhibit 1
Penalties for Distribution of Controlled Dangerous Substances (CDS)
and Related Offenses

Offense

Current Penalty

CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)

First-time Offender – CDS (other than Schedule I or II narcotic drugs and other specified CDS)	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
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Repeat Offender – CDS (other than Schedule I or II narcotic drugs and other specified CDS)	2-year mandatory minimum sentence Maximum penalty of 5 years imprisonment and/or \$15,000 fine
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CDS (Schedule I or II Narcotic Drug)

First-time Offender – Schedule I or II narcotic drug	Maximum penalty of 20 years imprisonment and/or \$25,000 fine
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Second-time Offender – Schedule I or II narcotic drug	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000
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Third-time Offender – Schedule I or II narcotic drug	25-year mandatory minimum sentence and a fine of up to \$100,000
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Fourth-time Offender – Schedule I or II narcotic drug	40-year mandatory minimum sentence and a fine of up to \$100,000
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CDS (Specified Drugs)

First-time Offender – Specified Drugs	Maximum penalty of 20 years imprisonment and/or a fine of up to \$20,000
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Second-time Offender – Specified Drugs	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000
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Third-time Offender – Specified Drugs	25-year mandatory minimum sentence and a fine of up to \$100,000
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Fourth-time Offender – Specified Drugs	40-year mandatory minimum sentence and a fine of up to \$100,000
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Note: All mandatory minimum sentences listed in the exhibit are nonsuspendable and nonparolable.

Source: Department of Legislative Services