

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1126
Judiciary

(Delegate Haddaway-Riccio, *et al.*)

Criminal Law - Synthetic Marijuana - Prohibition

This bill prohibits the purchase, use, possession, and distribution of synthetic marijuana. A violator is guilty of a misdemeanor and is subject to up to four years imprisonment and/or a \$25,000 fine. The bill further specifies that property seized in connection with the crime is subject to forfeiture. The bill exempts specified institutions from the bill's prohibitions.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: A person is prohibited from distributing a product (1) that the person represents is synthetic marijuana; (2) that the person intends for use or distribution as synthetic marijuana; or (3) under circumstances in which the person reasonably knows the product will be used or distributed as synthetic marijuana.

“Distribute” means to give, sell, deliver, dispense, or issue; offer to give sell, deliver, dispense or issue; or cause or hire another person to give, sell, deliver, dispense or issue.

“Synthetic marijuana” is defined as a psychoactive designer drug, cannabimimetic agent, or synthetic cannabinoids sprayed on natural herbs, incense, or other dried leafy plant material that mimics the intoxication effects of marijuana when ingested or consumed.

“Synthetic marijuana” includes any compound, mixture, or preparation that is reasonably indicated under all the circumstances to be marijuana or synthetic marijuana, including products commonly known or sold as “Spice,” “K2,” “Scooby Snax,” and “Potpourri.”

The bill does not apply to an accredited academic or medical institution or research facility, or an authorized agent of the institution or facility, that conducts research on synthetic marijuana.

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.

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. The distribution, possession with intent to distribute, or dispensing of a controlled dangerous substance, including marijuana, is a felony with maximum criminal penalties of five years imprisonment and/or a \$15,000 fine.

For information on primary crimes (other than possession) involving controlled dangerous substances, please refer to the **Appendix – Additional Primary Crimes Involving Controlled Dangerous Substances**.

Forfeiture: A State or local law enforcement unit may seize property in connection with a criminal proceeding that arose out of controlled dangerous substances law. A complaint seeking forfeiture must contain:

- a description of the property seized;
- the date and place of the seizure;
- the name of the owner, if known;
- the name of the person in possession, if known;
- the name of each lienholder, if known or reasonably subject to discovery;
- an allegation that the property is subject to forfeiture;

- if seeking forfeiture of a lienholder’s interest in property, an allegation that the lien was created with actual knowledge that the property was being or was to be used in violation of the controlled dangerous substances law;
- a statement of the facts and circumstances surrounding the seizure;
- a statement setting forth the specific grounds for forfeiture; and
- an oath or affirmation that the contents of the complaint are true to the best of the affiant’s knowledge, information, and belief.

Within 20 days after the filing of the complaint, copies of the summons and complaint must be sent by certified mail requesting “restricted delivery – show to whom, date, address of delivery” and first class mail to all known owners and lienholders whose identities are reasonably subject to discovery, including all real property owners and lienholders shown in the records required by law for notice or perfection of the lien.

Notice of the proceedings must be given by posting at the courthouse, on the land if the property is real property, and in a newspaper for three consecutive weeks. If the owner does not timely file an answer to the complaint, the court may order forfeiture of the property without a hearing. Otherwise, a hearing must be held. Subsequent to a full hearing, a court may order that the property be released, forfeited to the appropriate governing body, or released within five days to the first priority lienholder if the property is subject to a valid lien and the lienholder did not have actual knowledge of the property’s unlawful use.

Controlled Substance Analogues: Under federal law, a “controlled substance analogue” means a substance (1) with a chemical structure that is substantially similar to the chemical structure of a controlled substance in Schedule I or II; (2) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or (3) that is represented by or intended by a person to have a stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

Under 18 U.S.C. 813, also referred to as the Federal Analogue Act, a controlled substance analogue must be treated for the purposes of any federal law as a Schedule 1 controlled substance if the substance is intended for human consumption. Common criticisms of the Federal Analogue Act are that its “substantially similar” standard is vague and that the requirement that the substance be intended for human consumption can be easily countered by a person facing prosecution, since substances like bath salts are often packaged and marketed as beauty products.

Under the State’s Schedule I statute, a “controlled dangerous substance analogue” means a substance (1) that has a chemical structure substantially similar to the chemical

structure of a controlled dangerous substance listed in Schedule I or Schedule II and (2) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled dangerous substance listed in Schedule I or Schedule II. “Controlled dangerous substance analogue” does not include (1) a controlled dangerous substance; (2) a substance for which there is an approved new drug application; or (3) a substance exempted for investigational use under § 506 of the Federal Food, Drug, and Cosmetic Act.

To the extent intended for human consumption, each controlled dangerous substance analogue is a substance listed in Schedule I.

Background: In recent years, the public has seen the proliferation of new synthetic, designer drugs, with innocent names like “bath salts,” “spice,” and “smiles,” that until recently could be found at local convenience stores or smoke shops and remain widely available over the Internet. 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. This legislation bans compounds found in synthetic stimulants, synthetic marijuana, and synthetic hallucinogens. These designer drugs are now on the Drug Enforcement Agency’s list of Schedule I controlled dangerous substances, making it a federal crime to manufacture, possess, distribute, import, or export these chemicals or products containing them. In announcing the signing of the Act, the Office of National Drug Control Policy encouraged states that have not already done so to incorporate these substances into their state drug schedules “to ensure that state law enforcement agencies have full authority to act against these substances.”

In 2012, Maryland enacted Chapter 384, adding the chemical compounds in “bath salts” to the State’s Schedule I. Additionally, 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 and hallucinogens designated by federal law as Schedule I substances are illegal in Maryland.

In 2013, Maryland enacted Chapter 442, adding “cannabimimetic agents,” also referred to as “Spice,” “synthetic marijuana,” or “K2,” to the State’s list of Schedule I controlled dangerous substances.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard by the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 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 State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had 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 State 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 State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. 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 State 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Department of Natural Resources, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, University System of Maryland, University of Maryland Medical System, Department of Legislative Services

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ncs/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
