

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 99  
Judiciary

(Delegate B. Wilson)

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Criminal Law - Synthetic Cannabinoids - Prohibition

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This bill prohibits a person from deliberately using, ingesting, possessing, or inhaling a synthetic cannabinoid in an amount that causes intoxication, excitement, stupefaction, or dulling of the brain or nervous system. A person who violates the bill's prohibitions is guilty of a misdemeanor and on conviction is subject to imprisonment for up to one year and/or a fine of up to \$500.

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Fiscal Summary

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Potential minimal increase in general fund expenditures for the Office of the Public Defender (OPD) to accommodate any increase in cases as a result of the bill. Any increase in District Court caseloads can be handled with existing resources. Enforcement can also be handled with existing resources.

**Local Effect:** Minimal increase in expenditures due to the bill's penalty provisions. Revenues are not affected. Enforcement can be handled with existing resources.

**Small Business Effect:** Minimal loss of revenue for small businesses that currently sell substances that become illegal under the bill.

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Analysis

**Bill Summary:** "Synthetic cannabinoid" means a synthetic chemical compound that is a cannabinoid receptor agonist and that mimics the pharmacological effect of a naturally occurring cannabinoid or a controlled dangerous substance (CDS) listed in Schedule I or Schedule II. The definition includes a substance or an analogue of a substance that is

designed, generated, or recombined to create a new structure using a three-component pharmacophore model and that contains one or more pharmacophores or components of a CDS listed in Schedule I or Schedule II. The definition does not include any drug approved by the federal Food and Drug Administration.

**Current Law:** Under the Maryland Controlled Dangerous Substances Act, a person may not deliberately smell or inhale specified substances in an amount that causes intoxication, excitement, stupefaction, or dulling of the brain or nervous system. Substances include drugs and other noxious substances that contain aldehydes, chlorinated or fluorinated hydrocarbons, nitrous oxide, or other specified chemicals (*e.g.*, inhalants). Violation is a misdemeanor subject to imprisonment of up to six months and/or a \$500 fine.

CDS 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 State law regarding the illegal possession of any CDS, regardless of which schedule it is on, with the exception of marijuana. The use or possession of a CDS other than marijuana is a misdemeanor with maximum criminal penalties of four years imprisonment and/or a \$25,000 fine.

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 Chapter 158 of 2014, possession of less than 10 grams of marijuana is a civil offense punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. Additionally, pursuant to Chapter 351 of 2015, if a court finds that the use or possession of marijuana was due to medical necessity, the court must dismiss the charge.

*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 that is substantially similar to or greater than the 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 that is substantially similar to or greater than the 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 I controlled substance if the substance is intended for human consumption.

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 CDS; (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 CDS 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 may be available at local convenience stores or smoke shops and are widely available over the Internet. The popularity and availability of these substances has grown in recent years. 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. Additionally, 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.

According to the National Institute on Drug Abuse, synthetic cannabinoids are man-made, mind-altering chemicals that are sprayed on dried plant material to be smoked or are vaporized and inhaled in e-cigarettes and other devices (*e.g.*, liquid incense). The chemicals are referred to as "cannabinoids" because they are related to chemicals found in marijuana. Synthetic cannabinoids may also cause some effects that are similar to the effects of marijuana, such as elevated mood, relaxation, altered perception, and symptoms of psychosis. Psychotic effects include anxiety, confusion, paranoia, and hallucinations.

The American Association of Poison Control Centers reports a national surge in the number of synthetic cannabinoid-related calls to U.S. poison centers; in calendar 2015, Maryland had the fifth-highest number of calls (350 calls). The Maryland Poison Center reports that there were 90 calls related to synthetic cannabinoids in calendar 2014.

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 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 substances. 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. "Cannabimimetic agents" are defined as substances that are cannabinoid receptor type 1 agonists as demonstrated by binding studies and functional assays within one of several listed structural classes and are listed as Schedule I substances. Thus, some synthetic cannabinoids as defined under the bill may already be illegal under State law.

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

**State Expenditures:** While some synthetic cannabinoids are illegal in the State under the definition of cannabimimetic agents, and as a result of the federal Synthetic Drug Abuse Prevention Act of 2012, as discussed above, it is unclear to what extent the provisions are being enforced and what level of increased enforcement occurs as a result of the bill. That being said, it is assumed that the number of additional arrests and convictions resulting from the bill is minimal. Thus, general fund expenditures increase minimally due to more people being committed to State correctional facilities for convictions in Baltimore City. General fund expenditures may also increase minimally for OPD to handle any additional cases generated by the bill.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

**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. 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, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Governor's Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Health and Mental Hygiene; Department of Public Safety and Correctional Services; Department of State Police; American Association of Poison Control Centers; Maryland Poison Center; National Institute on Drug Abuse; Department of Legislative Services

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