

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 9 (Senator Colburn)
Judicial Proceedings

Criminal Law - Salvia Divinorum - Controlled Dangerous Substances

This bill establishes that a material, compound, mixture, or preparation that contains Salvia divinorum is a Schedule I controlled dangerous substance.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to applicable controlled dangerous substances penalty provisions.

Local Effect: Potential minimal increase in local revenues and expenditures due to applicable controlled dangerous substances penalty provisions.

Small Business Effect: None.

Analysis

Current Law: Generally, Schedule I drugs are considered to have the highest potential for abuse and offenses involving these drugs are generally treated as more serious than those involving substances on the other four schedules. 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.

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

- manufacture, distribute, dispense, or possess with intent to distribute a controlled dangerous substance;

- manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with intent to use it to produce, sell, or dispense a controlled dangerous substance;
- create, distribute, or possess with 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 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 must be sentenced to imprisonment for at least two years, which term is nonsuspendable and nonparolable.

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 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 a Schedule I or Schedule II narcotic drug, 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.

When the controlled dangerous substance was specified other drugs – including PCP, LSD, and MDMA – 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. (*See* Criminal Law Article, §§ 5-602 through 5-605, 5-607 through 5-609, and 5-612.)

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: According to various news accounts, *Salvia divinorum* has proliferated on the Internet and at college-area paraphernalia shops. It is sometimes referred to as 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 and 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). Since 2005, five states (Delaware, Illinois, Missouri, North Dakota, and Virginia) have banned *Salvia* outright by classifying it as a Schedule I hallucinogen, putting it in the same category as heroin, LSD, marijuana, and ecstasy.

According to the DEA, Schedule I substances are 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.

Thirteen states currently have statewide laws prohibiting possession or sale of *Salvia divinorum*: California, Delaware, Florida, Illinois, Kansas, Louisiana, Maine, Mississippi, Missouri, North Dakota, Oklahoma, Tennessee, and Virginia. The Maine prohibition against possession only applies to minors. A prohibition against the sale of *Salvia divinorum* to minors took effect in California on January 1, 2009. The Louisiana and Tennessee provisions allow possession of the plant when it is not intended for human consumption. In Oklahoma, all forms of *Salvia divinorum* are now illegal. Some localities, such as Suffolk County, New York, and the town of West Bridgewater, Massachusetts have enacted prohibitions.

To date, proposals at the federal level to include the substance in the controlled dangerous substances schedules have failed. The DEA 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, Brazil, Denmark, Estonia, Finland, Germany, Iceland, Italy, Japan, Norway, South Korea, Spain, Sweden, and the United Kingdom.

In a December 2005 report the Marketed Health Products Directorate, an arm of Health Canada, recommended that Salvia divinorum be placed under the Controlled Drugs and Substances Act. Thus far, the Canadian government has not taken any steps to restrict the substance.

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

State Expenditures: 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 \$2,600 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 \$342 per month. Excluding all medical care, the average variable costs total \$164 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. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC 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 applicable monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the applicable incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

Additional Information

Prior Introductions: None.

Cross File: HB 8 (Delegates Haddaway and Eckardt) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts, Department of Public Safety and Correctional Services, Department of Health and Mental Hygiene, Maryland State Criminal Sentencing Commission, sagewisdom.org, Department of Legislative Services

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