

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 781
Judiciary

(Delegate McComas, *et al.*)

Crimes - Distribution of Salvia Divinorum - Prohibition and Penalties

This bill imposes a statewide ban on the distribution of “Salvia divinorum.” Violators are guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a \$1,000 fine. “Salvia divinorum” includes Salvinorin A and any material, compound, mixture, preparation, or product that contains Salvia divinorum or Salvinorin A. The bill retains an exception for research conducted by a research facility or an accredited academic or medical institution.

The bill repeals lesser criminal penalties and the establishment of the code violation pertaining to the distribution and possession of Salvia divinorum.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from penalties imposed in District Court cases, offset in part by a decrease in general fund revenues from the repeal of lesser statutory penalties. Minimal increase in general fund expenditures due to the bill’s incarceration penalty. Any change in District Court caseloads can be handled with existing resources.

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

Small Business Effect: Potential minimal decrease in revenue for businesses that legally sell Salvia divinorum.

Analysis

Current Law: Chapter 201 of 2010 enacted the first statewide statutory prohibitions on the use and possession of “Salvia divinorum.” “Salvia divinorum” is defined as Salvinorin A and any material, compound, mixture, preparation, or product that contains Salvia divinorum or Salvinorin A. A person is prohibited from distributing Salvia divinorum to an individual younger than the age of 21. In a prosecution for a violation, it is a defense that the defendant examined the purchaser’s or recipient’s driver’s license or other valid identification issued by an employer, government unit, or institution of higher education that positively identified the purchaser or recipient as at least 21 years of age. A violator is guilty of a misdemeanor and subject to a maximum \$300 fine for a first violation. For a second violation occurring within two years after the first violation, the maximum fine is \$1,000. For each subsequent violation occurring within two years after the preceding violation, the maximum fine is \$3,000.

An individual under the age of 21 is also prohibited from possessing Salvia divinorum. A violation is a code violation, subjecting an adult violator to the issuance of a citation and a maximum \$500 fine for a first violation and a \$1,000 fine for a second or subsequent violation. A minor who violates the prohibition against possession of Salvia divinorum is subject to juvenile court procedures and dispositions, including referral to substance abuse education or rehabilitation.

Background: Salvia divinorum is a herbaceous plant in the mint family native to the Sierra Mazateca region of Oaxaca, Mexico. The plant is sometimes referred to as Maria Pastora, Sage of the Seers, 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, 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). Salvinorin A is the main active psychotropic molecule in Salvia divinorum.

According to various news accounts, Salvia divinorum has proliferated on the Internet and at college-area paraphernalia shops. The increased availability of the substance and its physical effects have motivated a number of states to enact laws to regulate or restrict the availability, possession, or sale of Salvia divinorum and/or Salvinorin A.

Salvia divinorum and/or Salvinorin A are classified as Schedule I substances in at least 13 states. Schedule I substances are typically 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. In California, the sale or distribution of Salvia divinorum or Salvinorin A, or any substance or material containing those

substances to a minor, is a misdemeanor subject to a \$1,000 fine and/or six months imprisonment.

In addition to some states as noted above, several localities have enacted legislation concerning salvia. Ocean City banned salvia products in August 2009 in response to extensive availability of the substance in boardwalk shops and numerous reports of police officers having to restrain individuals under the influence of salvia. Worcester County enacted a countywide ban effective September 2009.

To date, proposals at the federal level to include the substance in the controlled dangerous substances schedules have failed. The DEA has classified *Salvia divinorum* as a “drug of concern” and 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, Denmark, Finland, Germany, Iceland, Italy, Japan, Norway, Russia, South Korea, Spain, and Sweden.

In February 2011, Health Canada posted its intention to add *Salvia divinorum* and *Salvinorin A* to the Controlled Drugs and Substances Act, making it illegal to produce, possess, traffic, import or export the substances.

State Revenues: General fund revenues increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court. Revenues are partially offset by the bill’s repeal of lesser statutory penalties.

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

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 City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures increase 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 \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore and Montgomery counties, Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, CTV News, Department of Legislative Services

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