

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 189
Judiciary

(Delegate Eckardt, *et al.*)

Criminal Law - Controlled Dangerous Substances - Synthetic Cannabinoids

This bill designates several chemical compounds, known as synthetic cannabinoids, as Schedule I controlled dangerous substances.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to applicable controlled dangerous substances penalty provisions. Potential minimal increase in general fund expenditures for the Office of the Public Defender to accommodate any increase in cases as a result of the bill. Any increase in District Court caseloads can be handled with existing resources.

Local Effect: Potential minimal increase in local revenues and expenditures due to applicable controlled dangerous substances penalty provisions. Any increase in circuit court caseloads can be handled with existing resources.

Small Business Effect: Potential minimal loss of revenue for small businesses that currently sell substances that would be illegal under the bill.

Analysis

Bill Summary: The bill adds a material, compound, mixture, or preparation that contains any of the following hallucinogenic or hallucinogenic-like substances to the list of Schedule I controlled dangerous substances:

- 1-(2-(4-(morpholinyl)ethyl))-3-(1-naphthoyl) indole (also known as JWH-200);
- 1-Butyl-3-(1-naphthoyl) indole (also known as JWH-073);

- 1-hexyl-3-(1-naphthoyl) indole (also known as JWH-019);
- 1-pentyl-3-(1-naphthoyl) indole (also known as JWH-018);
- 1-pentyl-3-(2-methoxyphenylacetyl) indole (also known as JWH-250);
- 1-pentyl-3-(4-chloro-1-naphthoyl) indole (also known as JWH-398);
- 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) (also known as CP 47, 497 and its C6, C7, C8, and C9 homologues);
- (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone (also known as JWH-015);
- (6aR, 10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol) (also known as HU-210); and
- Dexanabinol, (6aS, 10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211).

A salt, isomer, or salt of an isomer of any of these substances is also a Schedule I controlled dangerous substance if the existence of the salt, isomer, or salt of an isomer is possible within the specific chemical designation.

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.

On November 24, 2010, the U.S. Drug Enforcement Administration (DEA) announced that it would use its emergency scheduling authority to temporarily designate five synthetic cannabinoids (JWH-018, JWH-073, JWH-200, CP-47, 497, and cannabicyclohexanol) as Schedule I substances to “avoid an imminent hazard to the public safety.” As a result, the manufacture, possession, distribution, importation, and exportation of these chemicals or products containing them will be illegal for at least one year. During the ban, the DEA and the U.S. Department of Health and Human Services will study if these chemicals and their products should be permanently 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, the synthetic cannabinoids designated by the DEA as Schedule I substances are currently illegal in Maryland.

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. When the substance is marijuana, the defendant is guilty of a misdemeanor

and the maximum criminal penalties for a violation are one year imprisonment and/or a \$1,000 fine. If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. The use or possession of any other controlled dangerous substance is a misdemeanor with maximum criminal penalties of four-years imprisonment and/or a \$25,000 fine.

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.

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 is subject to a mandatory minimum nonsuspendable, nonparolable sentence of two-years imprisonment.

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 second-time 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 third-time offender or conspirator who is convicted again of those same primary crimes involving a Schedule I or Schedule II narcotic drug and meets certain confinement and conviction prerequisites, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A fourth-time

offender or 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 is 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. In Maryland, an authorized provider may conduct research in the State with a controlled dangerous substance listed in Schedule I if the authorized provider is registered under federal law to conduct research with a Schedule I substance and gives evidence of the registration to the Department of Health and Mental Hygiene.

Background: Synthetic cannabinoids are chemically engineered substances that are similar to THC, the active ingredient in marijuana. When smoked or ingested, these substances produce a high similar to marijuana. The substances are often sprayed onto dried herbs and sold legally in convenience stores or on the internet under names like “Spice,” “K2,” or “Genie.” Synthetic cannabinoids are becoming a popular alternative to marijuana. In 2009, the American Association of Poison Control Centers documented 14 calls to poison control centers concerning synthetic cannabinoids. In 2010, the number of calls had grown to 2,867. Synthetic cannabinoids have been linked to hallucinations, tachycardia, and seizures.

According to the National Conference of State Legislatures (NCSL), 11 states have passed laws banning or placing restrictions on the use, possession, or manufacture of synthetic cannabinoids. The states that have enacted laws pertaining to synthetic cannabinoids are listed in **Exhibit 1**. Because there are at least seven documented categories of these substances, state laws often list the specific types or specific chemical substances subject to restriction. NCSL also reports that 21 states (excluding Maryland) had pending legislation concerning synthetic cannabinoids as of January 18, 2011.

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

State Expenditures: While some synthetic cannabinoids are currently illegal in the State as a result of recent actions taken by the DEA, it is unclear to what extent the current provisions are being enforced and what level of increased enforcement will occur as a result of the bill. That being said, it is assumed that the number of additional arrests and convictions resulting from the bill will be minimal.

General fund expenditures increase minimally for the Office of the Public Defender to handle additional cases generated by the bill. 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 \$2,920 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 \$390 per month. Excluding all medical care, the average variable costs total \$170 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. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has 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 DOC but are confined in a local facility. The State does not pay for pretrial detention

time in a local correctional facility. Persons incarcerated in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

It is assumed that any increase in District Court caseloads as a result of the bill can be handled with existing resources.

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 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 DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

It is assumed that any increase in caseloads for the circuit courts can be handled with existing resources.

Exhibit 1
Synthetic Cannabinoid State Laws
(As of January 18, 2011)

State	Schedule I	Crimes and Penalties	Chemical Substances
Alabama	No	Same penalties as possession of marijuana in the first or second degree	HU-210; JWH-018; and JWH-073
Georgia	Yes	Schedule I offense.	CP 47, 497 and homologues; HU-210; and JWH-018
Illinois	Yes	Schedule I offense.	JWH-018 and JWH-073
Kansas	Yes	Schedule I offense.	HU-210; JWH-018; and JWH-073
Kentucky	Yes	Possession – class B misdemeanor. Trafficking and manufacturing – class A misdemeanors. Subject to the same penalties and exclusions as marijuana for certain controlled substances crimes.	Any chemical compound that contains CP 47, 497 and homologues; dexanabinol; JWH-018; or JWH-073. Excludes synthetic cannabinoids that require a prescription, are approved by U.S. Department of Agriculture, and are legally dispensed.
Louisiana	Yes	Same penalties as possession, distribution and possession with intent to distribute marijuana.	CP 47, 497 and homologues; HU-210; JWH-018; and JWH-073.
Michigan	Yes	Schedule I offense.	CP 47, 497; HU-210; JWH-015; JWH-018; JWH-073; JWH-200; and JWH-250.
Mississippi	Yes	Same penalties and exclusions as marijuana for certain controlled substances crimes.	Cp-47, 497 and homologues; HU-210; JWH-018; JWH-019; JWH-073; JWH-200; JWH-250; and JWH-398.
Missouri	Yes	Possession of 35 grams or less – class A misdemeanor. Possession of more than 35 grams – class C felony.	HU-211; Indole or JWH-018, Indole or JWH-073; and Phenol CP 47, 497 and homologues.
Oklahoma	Yes	Schedule I offense.	HU-210; JWH-018; and JWH-073.
Tennessee	No	Same penalties as salvia divinorum for certain crimes.	HU-210; HU-211; JWH-018; and JWH-073. Excludes synthetic cannabinoids lawfully prescribed or substance approved by the U.S. Food and Drug Administration.

Source: National Conference of State Legislatures

Additional Information

Prior Introductions: None.

Cross File: SB 171 (Senator Kelley, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of State Police; Department of Public Safety and Correctional Services; State's Attorneys' Association; City of Frederick; City of Havre de Grace; Charles, Frederick, and Montgomery counties; National Conference of State Legislatures; U.S. Drug Enforcement Administration; American Association of Poison Control Centers; Department of Legislative Services

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