

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 188
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: Minimal increase in general fund revenues and expenditures due to applicable controlled dangerous substances penalty provisions. Any increase in District Court caseloads can be handled with existing resources.

Local Effect: 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-1propyl-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)-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 March 1, 2011, 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 “prevent an imminent threat to the public health and 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.

Controlled Dangerous Substances Offenses (Primary Crimes)

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.

Pursuant to Chapter 215 of 2011, in a prosecution for the use or possession of marijuana or related paraphernalia, it is an affirmative defense that the defendant used or possessed marijuana or related paraphernalia because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician-patient relationship (*i.e.*, a relationship in which the physician has an ongoing responsibility for the assessment, care, and treatment of a patient's medical condition); (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. The affirmative defense may not be used if the defendant was either using marijuana in a public place or in possession of more than one ounce 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.

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.

Background:

Synthetic Cannabinoids

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, and they have rapidly become a popular alternative to marijuana. The substances are typically sprayed onto dried herbs and sold under names like “Spice,” “K2,” or “Genie.” Synthetic cannabinoids have been linked to hallucinations, tachycardia, and seizures. In 2009, the American Association of Poison Control Centers documented 14 calls to poison control centers concerning synthetic cannabinoids. In 2010, the number had grown to 2,867.

Synthetic cannabinoids function similarly to a substance referred to as “THC.” On October 28, 2011, the Maryland Poison Control Center reported that there were 146 cases of exposures to THC homologues so far in 2011. According to DHMH, as of December 2011, there were no reported deaths from synthetic cannabinoids in Maryland and no reports of deaths attributable to synthetic cannabinoids were found in other states.

Other States

According to the National Conference of State Legislatures, as of October 24, 2011, at least 40 states have adopted laws or departmental rules to ban chemical substances related to synthetic cannabinoids.

Actions by Federal Drug Enforcement Administration

On March 1, 2011, the DEA invoked its “emergency scheduling authority” to make most synthetic cannabinoids illegal. These designer drugs are now on the DEA’s Schedule I, meaning that they have no accepted medical use and high potential for abuse. The emergency action will remain in effect for one year. During the ban, the DEA and the U.S. Department of Health and Human Services will study whether these chemicals should be permanently controlled.

Maryland Law

As previously stated, the synthetic cannabinoids designated by the DEA as Schedule I substances are currently illegal in Maryland since DHMH did not raise an objection to the DEA's classification. In August 2011, Ocean City banned the sale, possession, and manufacturing of synthetic cannabinoids.

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. Based on these factors, it is assumed that the number of additional arrests and convictions resulting from the bill will be minimal.

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 \$2,900 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 about \$385 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 sentenced 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 expanded application of current 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 the DOC 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: HB 189 of 2011 received an unfavorable report from the House Judiciary Committee. SB 171 of 2011, its cross file, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 310 (Senator Reilly) - Judicial Proceedings.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, and St. Mary's counties; City of Bowie; Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; National Conference of State Legislatures; Department of Legislative Services

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mc/kdm

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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
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
CDS (Schedule I or II narcotic drug)	
First-time Offender – Schedule I or II narcotic drug	Maximum penalty of 20 years and/or \$100,000 fine
Repeat Offender (One Prior Conviction) – Schedule I or II narcotic drug	10-year mandatory minimum sentence Maximum penalty of 20 years and/or \$100,000 fine
Repeat Offender (Two Prior Convictions) – Schedule I or II narcotic drug	25-year mandatory minimum sentence and a fine of up to \$100,000
Repeat Offender (Three or More Prior Convictions) – Schedule I or II narcotic drug	40-year mandatory minimum sentence and a fine of up to \$100,000
CDS (Specified Drugs)	
Repeat Offender (One Prior Conviction) – Specified Drugs	10-year mandatory minimum sentence and a fine of up to \$100,000
Repeat Offender (Two Prior Convictions) – Specified Drugs	25-year mandatory minimum sentence and a fine of up to \$100,000
Repeat Offender (Three or More Prior Convictions) – Specified Drugs	40-year mandatory minimum sentence and a fine of up to \$100,000

*All mandatory minimum sentences listed in Exhibit 1 are nonsuspendable and nonparolable.