

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 909
Judiciary

(Delegates Vitale and Eckardt)

Crimes - Synthetic Cannabinoid - Schedule I - Penalties

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

Fiscal Summary

State Effect: Minimal decrease in general fund revenues from fines imposed in District Court cases due to the bill's monetary penalties. Minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services due to the bill's incarceration penalties.

Local Effect: Minimal decrease in local revenues from fines imposed in circuit court cases due to the bill's monetary penalties. Minimal decrease in local expenditures due to the bill's incarceration penalties.

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);
- 1-hexyl-3-(naphthalen-1-oyl) indole (also known as JWH-019);
- (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);
- 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);
- 2-(3-hydroxycyclohexyl)-5-(2-methylheptan-2-yl)phenol;
- 2-(3-hydroxycyclohexyl)-5-(2-methylnonan-2-yl)phenol; and
- 2-(3-hydroxycyclohexyl)-5-(2-24 methyldecan-2-yl)phenol.

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.

The bill also creates specific offenses and imposes specific penalties pertaining to a “synthetic cannabinoid.” The offenses and penalties do not apply to a drug approved by the federal Food and Drug Administration or a drug used in research by an institute of higher learning or the National Institutes of Health.

The bill’s penalties are controlling over any other penalties available for the same offenses under law. For purposes of the prohibited acts and penalties, a “synthetic cannabinoid” is a chemical compound that is chemically synthesized and (1) has been demonstrated to have binding activity at one or more cannabinoid receptors; or (2) is a chemical analog or isomer of a compound that has been demonstrated to have binding activity at one or more cannabinoids receptors. A synthetic cannabinoid includes the substances added to Schedule I under the bill or a preparation, mixture, or substance containing or infused with any detectable amount of those substances.

The bill imposes the following penalties for “synthetic cannabinoids”:

Knowing or Intentional Possession

Misdemeanor punishable by imprisonment for up to one year and/or maximum fine of \$1,000.

Sale, Distribution, or Possession with Intent to Sell (Penalties determined by quantity)

Less than one-half of an ounce: Misdemeanor punishable by imprisonment for up to two years and/or maximum fine of \$2,000.

At least one-half of an ounce but not more than one pound: Felony punishable by imprisonment for up to three years and/or maximum fine of \$10,000.

More than one pound: Felony punishable by imprisonment for at least 5 years (nonsuspendable) and up to 25 years and/or maximum fine of \$25,000.

Manufacturing

Felony punishable by imprisonment for at least 5 years (nonsuspendable) and up to 30 years and/or maximum fine of \$25,000.

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.

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.

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.

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: The bill adds substances to Schedule I and imposes penalties that differ from current penalties. Assuming that the substances currently banned by the DEA are more likely to be used by people than the nonbanned substances included under the bill, the bill will result in a minimal decrease in general fund revenues from fines imposed in District Court cases, which will be partially offset by fines imposed in District Court cases involving the currently legal substances included in the bill.

State Expenditures: Assuming that the majority of cases prosecuted under the bill will not involve manufacturing, general fund expenditures for the Department of Public Safety and Correctional Services decrease minimally due to the bill's incarceration penalties.

Local Revenues: Assuming that the majority of circuit court cases prosecuted under the bill's provisions will not involve manufacturing a synthetic cannabinoid, local revenues decrease from fines imposed in circuit court cases as a result of the bill's monetary penalties. This revenue decrease will be partially offset by fines imposed in circuit court cases involving currently legal substances.

Local Expenditures: Local expenditures decrease minimally due to the bill's incarceration penalties, partially offset by increases in expenditures for incarcerations involving currently legal substances and individuals who qualify for incarceration in a local correctional facility as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; 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; State's Attorneys' Association; Department of Legislative Services

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