

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 851
Judiciary

(Delegates Clagett and Hogan)

Criminal Law - Synthetic Cannabinoids - Penalties

This bill (1) adds “synthetic cannabinoids” to the State’s list of Schedule I controlled dangerous substances; (2) establishes that a person convicted of use or possession of synthetic cannabinoids is subject to the same criminal penalties as a person convicted of the use or possession of marijuana; and (3) specifies that an authorized provider may conduct research in the State with a controlled dangerous substance listed in Schedule I if the authorized provider is approved by a federally registered institutional review board or institutional animal care and use committee to conduct research on a controlled dangerous substance listed in the State’s Schedule I that is not scheduled under federal law and gives evidence of the approval to the Department of Health and Mental Hygiene (DHMH).

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to expanded application of 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 expanded application of 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 defines “synthetic cannabinoids” as a material, compound, mixture, or preparation that (1) is not listed as a controlled dangerous substance in Schedules I through V; (2) is not a drug approved by the Food and Drug Administration; and (3) contains a quantity of several specified substances, their salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs), unless specifically excepted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs), is possible within the specific chemical designation.

“Synthetic cannabinoids” also includes any other synthetic chemical compound that exhibits agonist activity and the cannabinoids 1 (CB1) receptor and mimics the pharmacological effect of naturally occurring cannabinoids that is not listed in Schedules II through V or is not a drug approved by the Food and Drug Administration.

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.

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.

In general, a defendant in possession of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. However, pursuant to Chapters 193 and 194 of 2012 (SB 214/HB 350), a person in possession of less than 10 grams of marijuana is subject to a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500.

The use or possession of less than 10 grams of marijuana may not be considered a lesser included crime of any other crime unless specifically charged by the State. If a person is convicted of possessing less than 10 grams of marijuana, the court must stay any imposed sentence that includes an unserved, nonsuspended period of imprisonment without requiring an appeal bond (1) until the time for filing an appeal has expired and (2) during the pendency of a filed appeal of the conviction.

If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. An affirmative defense is available to defendants for use or possession of marijuana or related paraphernalia due to a debilitating medical condition.

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 information on additional primary crimes involving controlled dangerous substances, please refer to the **Appendix – Additional Primary Crimes Involving Controlled Dangerous Substances**.

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 DHMH.

Background: Cannabimimetic agents, also referred to as “synthetic marijuana” or “synthetic cannabinoids,” are chemical substances that are not derived from the marijuana plant but are designed to affect the body in ways similar to THC, the primary psychoactive ingredient in marijuana. Synthetic cannabinoids are typically sprayed onto plant material and marketed under names such as “Spice” or “K2.” The popularity and availability of these substances has grown in recent years, and criminal enforcement of the sale and possession of these substances has been challenging, since manufacturers can elude legal bans on products by making slight changes to their chemical structures.

On July 9, 2012, President Obama signed the Synthetic Drug Abuse Prevention Act of 2012 (SDAPA). SDAPA placed 26 substances in the federal list of Schedule I controlled dangerous substances, including several of the substances specified in this bill. SDAPA also created a new definition of “cannabimimetic agents” with criteria by which similar chemical compounds are 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 DHMH objects to the designation. Since DHMH has not raised an objection, several of the substances encompassed by this bill are illegal in Maryland.

According to the National Conference of State Legislatures, as of November 28, 2012, 41 states and Puerto Rico have enacted legislation to ban synthetic cannabinoids.

According to DHMH, the Maryland Poison Control Center received 159 calls related to synthetic cannabinoids during the first eight months of 2012, compared to 151 calls in calendar 2011. The calls came from 20 of Maryland's 24 jurisdictions. A majority of the calls involved individuals age 19 or younger.

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

State Expenditures: Several synthetic cannabinoids are illegal in the State as a result of recent actions taken by the federal government, including a number of the substances included in this bill. However, to the extent that some of the substances listed in this bill are not on the State's list of Schedule I as a result of SDAPA, general fund expenditures increase minimally due to the expanded application of existing incarceration penalties.

Persons serving a sentence longer than 18 months are incarcerated in State correctional 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 State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 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 a State correctional facility. 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 State 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 State correctional 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: As previously stated, if the bill includes substances that were not added to the federal and State list of Schedule I substances through SDAPA, then local

expenditures increase minimally as a result of the bill's expanded application of existing 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 State 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: None.

Cross File: SB 651 (Senator Young, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

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mc/kdm

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Appendix – Additional Primary Crimes Involving Controlled Dangerous Substances

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
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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
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CDS (Schedule I or II Narcotic Drug)

First-time Offender – Schedule I or II narcotic drug	Maximum penalty of 20 years imprisonment and/or \$25,000 fine
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Second-time Offender – Schedule I or II narcotic drug	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000
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Third-time Offender – Schedule I or II narcotic drug	25-year mandatory minimum sentence and a fine of up to \$100,000
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Fourth-time Offender – Schedule I or II narcotic drug	40-year mandatory minimum sentence and a fine of up to \$100,000
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CDS (Specified Drugs)

First-time Offender – Specified Drugs	Maximum penalty of 20 years imprisonment and/or a fine of up to \$20,000
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Second-time Offender – Specified Drugs	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000
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Third-time Offender – Specified Drugs	25-year mandatory minimum sentence and a fine of up to \$100,000
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Fourth-time Offender – Specified Drugs	40-year mandatory minimum sentence and a fine of up to \$100,000
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Note: All mandatory minimum sentences listed in the exhibit are nonsuspendable and nonparolable.

Source: Department of Legislative Services