

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1145

(Delegate Mathias, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Salvia Divinorum and Salvinorin A - Distribution to and Possession by Individual Under 21 Years of Age

This bill prohibits the distribution of Salvia divinorum or Salvinorin A to an individual under the age of 21 and prohibits an individual under that age from possessing Salvia divinorum. The bill does not preempt any local or municipal law regulating the use, possession, or distribution of Salvinorin A or a derivative of Salvia divinorum or Salvinorin A. The bill's provisions do not prohibit an accredited academic or medical institution or research facility from conducting research on Salvia divinorum or Salvinorin A. On or before December 1, 2010, the Attorney General must submit a report detailing a recommended plan for the regulation of sales of Salvia divinorum and Salvinorin A, including requirements for sellers and the placement of products in stores.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's monetary penalty provisions. Any increase in District Court caseloads as a result of the bill can be handled with existing budgeted resources. Reporting requirements for the Office of the Attorney General can be handled with existing budgeted resources.

Local Effect: Potential minimal increase in local revenues from monetary penalties imposed in circuit court cases.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines “Salvia divinorum” as Salvinorin A and any material, compound, mixture, preparation, or product that contains Salvia divinorum or Salvinorin A. The bill prohibits the distribution of Salvia divinorum to an individual under 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.

The bill also prohibits an individual under the age of 21 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 \$1,000 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.

Current Law: Controlled dangerous substances are listed on one of five schedules set forth in statute. 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 maximum criminal penalties for a violation are one year imprisonment and/or a \$1,000 fine.

Salvia divinorum is currently not listed on the State or federal drug schedule and its use, possession, or sale is not prohibited by the State.

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 was 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: *Salvia divinorum* is an 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 and 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.

In 13 states (Delaware, Florida, Hawaii, Illinois, Kansas, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Virginia), *Salvia divinorum* and/or Salvinorin A are classified as Schedule I substances. 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. Louisiana, North Carolina, and Tennessee enacted laws that, for the most part, make *Salvia divinorum* legal for nonhuman consumption purposes only (*e.g.*, aesthetic, landscaping, or decorative purposes). In California, the sale or distribution of *Salvia divinorum* or Salvinorin A, or any substance or material containing those substances, is a misdemeanor subject to a \$1,000 fine and/or six months

imprisonment. In Maine, it is civil violation, punishable by a fine, to provide *Salvia divinorum* or Salvinorin A to a person under the age of 18. Possession or purchase of these products by a minor is also a civil violation, punishable by a fine, community service, or both.

In addition to the states listed above, some 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. The Johns Hopkins University School of Medicine has received federal grant funding from the National Institutes of Health, with the approval of the U.S. Food and Drug Administration, to study the effects of Salvinorin A in a controlled clinical laboratory trial connected to potential implication for understanding a variety of disease states, including Alzheimer’s disease, schizophrenia, bipolar disorder, dementia, and drug dependence.

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 a December 2005 report, the Marketed Health Products Directorate, an arm of Health Canada, recommended that *Salvia divinorum* be placed under the Controlled Drugs and Substances Act. Thus far, the Canadian government has not taken any steps to restrict the substance.

Local Revenues: In general, the District Court hears all misdemeanor cases. However, the District Court and the circuit courts have concurrent jurisdiction over cases in which the penalty may be confinement for three years or more or a fine of \$2,500 or more. The bill imposes a maximum fine of \$3,000 on third or subsequent violations occurring within two years after the preceding violation. These cases could be heard in the circuit courts, and local revenues may increase minimally to the extent that monetary penalties are imposed in these cases.

Additional Information

Prior Introductions: HB 1261 of 2009, a similar bill, passed the House and received a favorable report from the Senate Judicial Proceedings Committee, but no further action was taken. SB 317, another similar bill, was heard in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: Although not designated as a cross file, SB 17 (Senator Colburn – Judicial Proceedings) is identical.

Information Source(s): Allegany, Harford, and Montgomery counties; Commission on Criminal Sentencing Policy; Department of Natural Resources; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; washingtonpost.com; *Ocean City Today*; Salvia divinorum Research and Information Center; U.S. Drug Enforcement Agency; U.S. Office of National Drug Control Policy; Marketed Health Products Directorate; Department of Legislative Services

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