

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 589

(Delegate A. Miller, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Controlled Dangerous Substances - Mephedrone

This bill designates mephedrone and several similar chemical compounds (commonly referred to as “bath salts”) as statutory Schedule I controlled dangerous substances.

Fiscal Summary

State Effect: None. The substances listed under the bill have already been added through regulation to the State’s list of Schedule I substances.

Local Effect: None. The substances listed under the bill have already been added through regulation to the State’s list of Schedule I substances.

Small Business Effect: None.

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:

- 3,4-methylenedioxymethcathinone (methylone);
- 3,4-methylenedioxypyrovalerone (MDPV);
- 4-methylmethcathinone (mephedrone);
- 4-methoxymethcathinone (methedrone);
- 4-fluoromethcathinone (flephedrone); and
- 3-fluoromethcathinone (3-FMC).

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.

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

Offense	Current Penalty*
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: Mephedrone and MDPV (sometimes categorized as “substituted cathinones”) are synthetic psychoactive stimulants that can produce side effects such as increased blood pressure, delusions, paranoia, and psychosis. The substances are sold in powder and tablet form and are chemically similar to compounds found in the khat plant of eastern Africa. They have amphetamine-like qualities, and users often report experiencing effects similar to cocaine, ecstasy, and methamphetamines. Mephedrone and MDPV are often marketed as “bath salts” and have street names like “Zoom 2,” “Aura,” “Cloud Nine,” and “Meow-Meow.” Published research indicates that the products have been confirmed or suspected in more than 15 deaths nationwide. According to a July 2011 press release by the Department of Health and Mental Hygiene (DHMH), the State’s poison control center is aware of 22 cases of bath salts poisoning, including one death.

Actions by Federal Drug Enforcement Administration: On October 21, 2011, the U.S. Drug Enforcement Administration (DEA) invoked its “emergency scheduling authority” to make three bath salt chemicals illegal. The emergency action will remain in effect for one year, but may be extended beyond that period. During the ban, DEA and the U.S. Department of Health and Human Services will study whether these chemicals should be permanently controlled. The three bath salt chemicals are Mephedrone, MDPV, and Methylone.

Maryland Law: 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 DHMH objects to the designation. Since DHMH has not raised an objection, the bath salt chemicals designated by the DEA as Schedule I substances are currently illegal in Maryland.

Maryland law also authorizes DHMH to add substances to the State's schedules of controlled dangerous substances. On October 18, 2011, emergency regulations proposed by DHMH went into effect that added the six bath salt substances listed under the bill to Maryland's Schedule I. The permanent proposed regulations took effect on December 26, 2011.

Other States: According to the National Conference of State Legislatures, as of February 6, 2012, at least 30 states have banned certain bath salt chemicals.

Additional Information

Prior Introductions: HB 892 of 2011 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore, Garrett, 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; National Conference of State Legislatures; U.S. Drug Enforcement Agency; Department of Legislative Services

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mc/kdm

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