



# Ohio Legislative Service Commission

## Bill Analysis

Dennis M. Papp

### Sub. H.B. 64

129th General Assembly  
(As Passed by the House)

**Reps.** Ruhl and Burke, Murray, Snitchler, Maag, Combs, Phillips, Stebelton, Boose, McClain, Grossman, Patmon, J. Adams, Winburn, Garland, Hayes, Bubp, Slaby, R. Adams, Amstutz, Ashford, Barnes, Blair, Blessing, Buchy, Budish, Butler, Celeste, Dovilla, Fedor, Gerberry, Gonzales, Hackett, C. Hagan, Hall, Heard, Landis, Letson, Newbold, O'Brien, Pillich, Schuring, Uecker, Weddington, Batchelder

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## BILL SUMMARY

- Includes five synthetic cannabinoids commonly known as K2 or Spice as Schedule I controlled substances with the result that all Revised Code provisions pertaining to Schedule I controlled substances, including the drug offenses, apply to those five synthetic cannabinoids except as otherwise specified in the bill.
- Provides that "possession of Spice" is a minor misdemeanor.
- Provides that "trafficking in Spice" is a fifth degree felony or, if committed in the vicinity of a school or juvenile, a fourth degree felony.
- Provides that if Spice is the drug involved in the offense of "corrupting another with drugs" the penalty for the offense is a fourth degree felony or, if committed in the vicinity of a school, a third degree felony (the same as if marihuana was the drug involved in the offense).

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## CONTENT AND OPERATION

### Inclusion of Spice as Schedule I controlled substance

#### Operation of the bill

The bill includes five synthetic cannabinoids commonly known as K2 or Spice as Schedule I controlled substances. Specifically, the bill includes as a Schedule I controlled substance any material, compound, mixture, or preparation that contains any

quantity of any of the following substances, including their salts, isomers, and salts of isomers, unless specifically excepted under federal drug abuse control laws, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 1-pentyl-3-(1-naphthoyl) indole (some trade or other names: JWH-018);
- (2) 1-butyl-3-(1-naphthoyl) indole (some trade or other names: JWH-073);
- (3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (some trade or other names: JWH-200);
- (4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (some trade or other names: CP-47,497);
- (5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (some trade or other names: cannabicyclohexanol; CP-47,497 C8 homologue).

Throughout the remainder of this analysis, these five listed synthetic cannabinoids shall simply be referred to as "Spice." They are included within the portion of Schedule I that lists hallucinogens that are Schedule I controlled substances.<sup>1</sup> Consequently, all of the Revised Code provisions pertaining to controlled substances (see "**Ohio law**" under "**Background**," below) will apply to Spice.

### **Controlled substances and existing law**

Existing law defines a "controlled substance" as any drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of Ohio's Controlled Substances Law.<sup>2</sup> Schedules I, II, III, IV, and V are established by statute,<sup>3</sup> but current law provides that the Schedules are amended automatically to reflect changes in the federal Drug Abuse Control Law Schedules that are made by the U.S. Attorney General and that the Schedules are subject to changes in them made by rule adopted by the State Board of Pharmacy.<sup>4</sup> Schedule I contains controlled substances that generally are considered to be the most dangerous (e.g., heroin, L.S.D., marihuana, mescaline, peyote, psilocybin, tetrahydrocannabinols, hashish, methaqualone, *Salvia divinorum*, etc.), whereas Schedule V contains controlled substances that generally are considered to be

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<sup>1</sup> R.C. 3719.41, Schedule I, (C)(35), (36), (37), (38), and (39).

<sup>2</sup> R.C. 3719.01, not in the bill.

<sup>3</sup> R.C. 3719.41, not in the bill.

<sup>4</sup> R.C. 3719.43 and 3719.44, not in the bill.

less potent but still dangerous (e.g., not more than specified small amounts of codeine or opium in medicinal usage, ephedrine unless otherwise exempted, etc.). Schedules II, III, and IV controlled substances fit in a continuum, as to potency and dangerousness, between Schedules I and V.

## **Possession of Spice**

Existing law prohibits a person from knowingly obtaining, possessing, or using a controlled substance.<sup>5</sup> Since the bill includes Spice, or a compound, mixture, preparation, or substance containing Spice, as a Schedule I controlled substance, this prohibition applies to Spice. Under the bill, if the drug involved in a violation of this prohibition is Spice, the offender is guilty of "possession of Spice," a minor misdemeanor.<sup>6</sup> Existing law provides for higher penalties when a person knowingly obtains, possesses, or uses a controlled substance that is a compound, mixture, preparation, or substance included in Schedule I or II, but includes an exception for marihuana, cocaine, L.S.D., heroin, and hashish. The penalties that apply when marihuana, cocaine, L.S.D., heroin, or hashish is the drug involved in the violation differ from those that apply when any other Schedule I or II controlled substance is involved in the violation. The bill includes Spice in this list of exceptions<sup>7</sup> and, as discussed above, possession of Spice is a minor misdemeanor.

## **Trafficking in Spice**

Existing law prohibits a person from knowingly selling or offering to sell a controlled substance or preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.<sup>8</sup> Since the bill includes Spice or a compound, mixture, preparation, or substance containing Spice, as a controlled substance, this prohibition applies to Spice. Under the bill, a person who violates this prohibition when it involves Spice or a compound, mixture, preparation, or substance containing Spice is guilty of "trafficking in Spice." Except as described below, trafficking in Spice is a fifth degree felony and, when determining whether to impose a prison term on the offender, the court must consider the purposes of felony sentencing (to protect the public from future crime by the offender and others and to punish the

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<sup>5</sup> R.C. 2925.11(A).

<sup>6</sup> R.C. 2925.11(C)(8).

<sup>7</sup> R.C. 2925.11(C)(1).

<sup>8</sup> R.C. 2925.03(A).

offender), the seriousness of the conduct, and the likelihood of the offender's recidivism.<sup>9</sup> Trafficking in Spice is a fourth degree felony if the offense is committed in the vicinity of a school or in the vicinity of a juvenile. In that situation, the court must consider the same factors as described above when determining whether to impose a prison term on the offender.<sup>10</sup>

Existing law provides for higher penalties when a person knowingly sells or offers to sell a compound, mixture, preparation, or substance contained in Schedule I or II, or prepares for shipment, ships, transports, delivers, prepares for distribution, or distributes any such compound, mixture, preparation, or substance when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person, but includes an exception for marihuana, cocaine, L.S.D., heroin, and hashish. The penalties that apply when marihuana, cocaine, L.S.D., heroin, or hashish is the drug involved in the violation differ from those that apply when any other Schedule I or II controlled substance is involved in the violation. The bill includes Spice in this list of exceptions,<sup>11</sup> and, as discussed above, trafficking in Spice is a fourth or fifth degree felony.

### **Corrupting another with drugs**

Existing law prohibits a person from knowingly doing any of the following:<sup>12</sup>

(1) By force, threat, or deception, administering to another or inducing or causing another to use a controlled substance;

(2) By any means, administering or furnishing to another or inducing or causing another to use a controlled substance with purpose to cause serious physical harm to the other person, or with purpose to cause the other person to become drug dependent;

(3) By any means, administering or furnishing to another or inducing or causing another to use a controlled substance, and thereby causing serious physical harm to the other person, or causing the other person to become drug dependent;

(4) By any means, furnishing or administering a controlled substance to a juvenile who is at least two years the offender's junior, when the offender knows the age of the juvenile or is reckless in that regard, or inducing or causing a juvenile who is

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<sup>9</sup> R.C. 2925.03(C)(8)(a) and 2929.13(C), not in the bill.

<sup>10</sup> R.C. 2925.03(C)(8)(b) and 2929.13(C), not in the bill.

<sup>11</sup> R.C. 2925.03(C)(1).

<sup>12</sup> R.C. 2925.02(A).

at least two years the offender's junior to use a controlled substance or commit a felony drug abuse offense, when the offender knows the age of the juvenile or is reckless in that regard, or use a juvenile to perform certain activity related to the commission of a felony drug abuse offense or to prevent an arrest for the commission of that offense.

A person who violates any of the prohibitions described above in (1) to (4) is guilty of "corrupting another with drugs," and the penalty depends upon the involved controlled substance. Since the bill makes Spice a controlled substance, all of the prohibitions apply to Spice. Under the bill, if the controlled substance is Spice, "corrupting another with drugs" is a fourth degree felony and, when determining whether to impose a prison term on the offender, the court must consider the purposes of felony sentencing (to protect the public from future crime by the offender and others and to punish the offender), the seriousness of the conduct, and the likelihood of the offender's recidivism. If the offense involves Spice and was committed in the vicinity of a school, the violation is a third degree felony. In that situation, the court must consider the same factors as described above when determining whether to impose a prison term on the offender.<sup>13</sup>

Existing law provides for higher penalties, generally, when a person commits the offense of "corrupting another with drugs" and the compound, mixture, preparation, or substance involved is included in Schedule I or II, but includes an exception for marihuana, cocaine, L.S.D., heroin, and hashish. The penalties that apply when marihuana, cocaine, L.S.D., heroin, or hashish is the drug involved in the violation differ from those that apply when any other Schedule I or II controlled substance is involved in the violation. The bill includes Spice in this list of exceptions<sup>14</sup> and, as discussed above, "corrupting another with drugs" is a third or fourth degree felony, if the controlled substance involved is Spice.

The bill additionally excepts Spice from the mandatory prison terms the court must impose if the offender is found to be guilty of "corrupting another with drugs" and the court additionally finds that the offender is a major drug offender. Existing law already includes marihuana in this exception.<sup>15</sup>

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<sup>13</sup> R.C. 2925.02(C)(3).

<sup>14</sup> R.C. 2925.02(C)(1).

<sup>15</sup> R.C. 2925.02(E).

## Background

### Ohio law

The sale and distribution of controlled substances is regulated pursuant to R.C. Chapters 3719. and 4729., and a series of criminal offenses contained in those Chapters and R.C. Chapter 2925. prohibit the sale, distribution, possession, use, manufacture, etc., of controlled substances other than in accordance with the regulatory provisions of R.C. Chapters 3719. and 4729. or in accordance with specified exceptions to the prohibitions. The criminal penalties for many controlled substance offenses vary, depending on whether the drug involved in the offense is a Schedule I, II, III, IV, or V controlled substance, with the penalties for offenses involving a Schedule I or II controlled substance generally being classified as a higher degree of misdemeanor or felony than the same offenses involving Schedule III, IV, or V controlled substances.

Fifteen Revised Code sections use the term "Schedule I controlled substance" in substantive provisions. Most of those sections are contained in the Drug Offenses Law and use the term in criminal prohibitions, in determining the penalty for a prohibition, or in related provisions.<sup>16</sup> Others pertain to criminal sentencing, penalties under the Controlled Substances Law, licensing of terminal distributors, and penalties under the Pharmacy Law.<sup>17</sup>

### Federal policy and law

The U.S. Drug Enforcement Agency (DEA), issued a final order on March 1, 2011, to temporarily place five synthetic cannabinoids into the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions. The substances are 1-pentyl-3-(1-naphthoyl)indole (JWH-018), 1-butyl-3-(1-naphthoyl)indole (JWH-073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200), 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497), and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue).

The Comprehensive Crime Control Act of 1984,<sup>18</sup> which was signed into law on October 12, 1984, gives the U.S. Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year if he finds that such action is necessary to avoid imminent hazard to the public safety. According to the final order, "[t]he temporary placement of these five synthetic cannabinoids into Schedule I of the

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<sup>16</sup> R.C. 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.11, 2925.22, 2925.23, 2925.36, and 2925.51.

<sup>17</sup> R.C. 2929.14, 3719.99, 4729.54, and 4729.99.

<sup>18</sup> Pub. L. 98-473.

CSA is necessary in order to avoid an imminent hazard to the public safety. First, these substances are not intended for human consumption, but there has been a rapid and significant increase in abuse of these substances in the United States. As a result of this abuse, synthetic cannabinoids are banned in at least 18 states in the United States and several countries, and all five branches of the U.S. military prohibit military personnel from possessing or using synthetic cannabinoids. Second, law enforcement has seized synthetic cannabinoids in conjunction with controlled substances and based on self-reports to law enforcement and health care professionals, synthetic cannabinoids are abused for their psychoactive properties. Third, numerous state and local public health departments and poison control centers have issued health warnings describing the adverse health effects associated with synthetic cannabinoids. Based on scientific data currently available, these five substances have the potential to be extremely harmful and, therefore, pose an imminent hazard to the public safety."<sup>19</sup>

### **Federally listed "Drugs and Chemicals of Concern"**

The DEA's Office of Diversion Control includes on its Internet web site a list entitled "Drugs and Chemicals of Concern." Included within that list are five substances referred to as "Spice Cannabinoids." The Spice Cannabinoid substances are: (1) JWH-018, JWH-073, CP-47,497, and CP-47,497 C8 homologue, which the bill adds to Ohio's Schedule I, (2) HU-210, [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c] chromen-1-ol)], which is not addressed in the bill, and (3) HU-211, (dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol), which is not addressed in the bill. The list specifies illicit uses for each of the substances, stating that JWH-018 and JWH-073 have been identified in "Spice," "K2," "K3," and "other similar herbal incense products," that CP-47,497 and homologues have been identified in "Spice," "Spike 99," and other herbal incense products, that HU-210 and HU-211 are purported ingredients of "Spice," and that "Spice," "K2," "K3," "Spike 99," and the "other similar herbal products" may be smoked for their psychoactive effects. As of April 2011, the list provided the following information regarding HU-210 and HU-211 and regarding reports of synthetic cannabinoids:

(1) HU-210, which is not included within the bill, is structurally and pharmacologically similar to  $\Delta$ 9-THC. It is used in basic scientific research to identify cannabinoid receptors in the brain and study the mechanisms of action of  $\Delta$ 9-THC. HU-211, which is not included within the bill, is structurally similar to  $\Delta$ 9-THC. It is used in scientific research as a pharmacological tool to study the brain, and is being explored for several therapeutic uses. *HU-210 is a Schedule I controlled substance under*

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<sup>19</sup> Federal Register Volume 76, Number 40 (Tuesday, March 1, 2011).

*federal controlled substances law.* HU-211 is not a controlled substance in the U.S. under federal controlled substances law.

(2) The System to Retrieve Drug Evidence (STRIDE), a federal database for the seized drugs analyzed by DEA forensic laboratories, and the National Forensic Laboratory System (NFLIS), a system that collects drug analysis information from state and local forensic laboratories, contain more than 1,300 reports of various synthetic cannabinoids in seized exhibits from over 30 states. As of July 2009, the Systems did not contain reports of HU-210 or HU-211.

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## HISTORY

ACTION	DATE
Introduced	02-01-11
Reported, H. Criminal Justice	03-09-11
Passed House (95-1)	03-16-11

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