

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. H.B. 215** DATE: **May 6, 2008**
STATUS: **As Passed by the House** SPONSOR: **Rep. Collier**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Regulation of Salvia divinorum and Salvinorin A**

State Fiscal Highlights

STATE FUND	FY 2009 –FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	Potential, likely no more than minimal, annual gain in locally collected court costs
Expenditures	Potential incarceration cost increase, magnitude uncertain, but could exceed minimal annually
Victims of Crime/Reparations Fund (Fund 402)	
Revenues	Potential, likely no more than minimal, annual gain in locally collected court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Incarceration expenditures.** If LSC fiscal staff's assumptions relative to the bill's impact on criminal cases is true, then the number of individuals that could be sentenced to prison exclusively for conduct involving Salvia divinorum and/or Salvinorin A will be relatively small, especially in the context of a prison population that currently totals around 50,000 inmates. However, while LSC fiscal staff is unable to reliably project either the number of offenders that could be so sentenced annually or the length of the prison terms that a sentencing court might impose, it seems probable that the bill's fiscal effect on the Department of Rehabilitation and Correction's (DRC) annual incarceration costs could exceed minimal on an annual basis. For the purposes of this fiscal analysis, an increase in excess of minimal means an estimated cost of \$100,000 or more per year for the state.
- **Court cost revenues.** If, as expected, the number of additional convictions annually statewide is relatively small, then the amount of court cost revenue that will be deposited in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402) is likely to be minimal at most. For the purposes of this fiscal analysis, minimal means an estimated revenue gain of less than \$100,000 for either state fund per year.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 –FUTURE YEARS
Counties and Municipalities	
Revenues	Potential, likely no more than minimal, annual gain in court costs and fines
Expenditures	Potential, likely no more than minimal, annual increase in criminal justice system operating costs

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Criminal offenses.** Based on a number of conversations that LSC fiscal staff conducted during research into the bill's potential local fiscal effects, it appears that the number of individuals that could be charged, prosecuted, and sanctioned for miscellaneous drug offenses involving Salvia divinorum and/or Salvinorin A will be relatively small in any given local jurisdiction. Assuming that were true, then the annual costs for any affected county or municipal criminal justice system (investigation, prosecution, adjudication, defense if the individual is indigent, and sanctioning) to resolve these cases seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal cost means an estimated annual expenditure of no more than \$5,000 for any affected county or municipality.

- **Court cost and fine revenues.** In the matter of local revenues, as the likely number of cases that could be created by the bill in any given local jurisdiction appears to be relatively small, any resulting gain in annual court cost and fine revenues for any affected county or municipality would not be likely to exceed minimal. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated increase of no more than \$5,000 for any affected county or municipality.

Detailed Fiscal Analysis

Overview

The bill includes *Salvia divinorum* (perennial herb of the mint family) and Salvinorin A (an active ingredient of *Salvia divinorum*) as Schedule I controlled substances. According to the U.S. Drug Enforcement Administration's Office of Diversion Control, "the herb and its products are abused for their ability to evoke hallucinogenic effects, which, in general, are similar to those of other scheduled hallucinogenic substances, including LSD, DMT, psilocybin, and ketamine."¹

Based on its research into the use of *Salvia divinorum* and Salvinorin A in Ohio, LSC fiscal staff discerned the following:

- To the degree that abuse of the herb is occurring, anecdotal evidence suggests that it does not appear to be a widespread activity.
- City of Columbus law enforcement personnel have not yet seen a widespread emergence of the use of the herb in their jurisdiction, and this appears to be the case for other local jurisdictions in Ohio as well.
- The herb and its components are readily available for purchase via the Internet.
- Since purchase of the herb or its components are not regulated nor is possession or use of the herb a criminal offense, it is difficult to gauge the prevalence of abuse with much certainty or precision.
- Generally, drug offenses related to Schedule I controlled substances are felonies, most of which carry either a presumption for prison or mandate a prison term.

For the purposes of this fiscal analysis, LSC fiscal staff has assumed that the bill could affect local criminal justice systems in two ways. First, individuals, who in the future would have been charged and prosecuted for the violation of various drug-related offenses under current law, may face additional charges if their conduct also involves *Salvia divinorum* and/or Salvinorin A. Second, new criminal cases may be generated, as individuals may be charged and prosecuted solely for the use, possession, trafficking, or manufacturing of the herb or its component Salvinorin A. As of this writing, the number of criminal cases that might be affected in either of the above-noted ways appears, based largely on anecdotal evidence, likely to be relatively small in any given local jurisdiction. If, however, demand and related use of the herb and/or its components increases, then the number of criminal cases that could be created or affected in some manner may be significantly larger in certain jurisdictions.

¹ http://www.dea diversion.usdoj.gov/drugs_concern/salvia_d/salvia_d.htm.

Local fiscal effects

Criminal justice system expenditures

It appears that, at least initially, the number of individuals that could be arrested, charged, and prosecuted in any given local jurisdiction for violating any number of drug-related offenses (i.e., possession, use, trafficking, and/or manufacturing), associated with the inclusion of Salvia divinorum and Salvinorin A as controlled substances will be relatively small. Assuming that were true, then the annual costs for any affected county or municipal criminal justice system (investigation, prosecution, adjudication, defense if the individual is indigent, and sanctioning) to resolve these cases seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal cost means an estimated annual expenditure of no more than \$5,000 for any affected county or municipality.

Court cost and fine revenues

In the matter of local revenues, as the likely number of cases that could be created by the bill in any given local jurisdiction appears to be relatively small, any resulting gain in annual court cost and fine revenues for any affected county or municipality would not be likely to exceed minimal. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated increase of no more than \$5,000 for any affected county or municipality.

State fiscal effects

Incarceration expenditures

If LSC fiscal staff's assumptions relative to the bill's impact on criminal cases were true, then the number of individuals that could be sentenced to prison exclusively for conduct involving Salvia divinorum and/or Salvinorin A will be relatively small, especially in the context of a prison population that currently totals around 50,000 inmates.

However, at the time of this writing, LSC fiscal staff is unable to reliably project either the number of offenders that could be so sentenced annually or the length of the prison terms that a sentencing court might impose. This means that whether the bill's fiscal effect on the Department of Rehabilitation and Correction's (DRC) annual incarceration costs will exceed minimal is uncertain. For the purposes of this fiscal analysis, a minimal increase means an estimated cost of less than \$100,000 per year for the state.

To put that \$100,000 cost threshold in perspective, DRC's average annual incarceration cost per inmate (fixed plus marginal expenses) is, as of April 2008, budgeted at \$25,192. LSC fiscal staff estimates DRC's marginal cost of adding an additional individual to the prison system at between \$3,500 and \$4,000 per year. Thus, depending upon whether one works from the full versus marginal cost figure, it could take as few as four additional individuals being sentenced to a prison term of at least one year (\$25,192 average annual incarceration cost per inmate times four prison-bound offenders), or as many as two dozen or so individuals being sentenced to a prison term of at least one year (\$3,500 to \$4,000 marginal annual incarceration cost per inmate times 25 to 29 prison-bound offenders) to increase DRC's incarceration costs by more than \$100,000 per year.

Court cost revenues

If individuals are convicted of criminal conduct involving Salvia divinorum and/or Salvinorin A, then the state potentially collects state court costs that the court is generally required to impose on that individual. Those locally collected court costs are forwarded for deposit in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402). The state court costs for a felony offense total \$45, of which the GRF receives \$15 and Fund 402 receives \$30. The state costs for a misdemeanor offense total \$24, of which the GRF receives \$15 and Fund 402 receives \$9.

If, as expected, the number of additional convictions annually statewide is relatively small, then the amount of revenue that will be collected by the state is likely to be minimal at most. For the purposes of this fiscal analysis, minimal means an estimated revenue gain of less than \$100,000 for either state fund per year.

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