



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** [Sub. H.B. 64 of the 129th G.A.](#)

**Date:** June 28, 2011

**Status:** As Enacted

**Sponsor:** Reps. Ruhl and Burke

**Local Impact Statement Procedure Required:** No

**Contents:** Adds five types of synthetic cannabinoids and six types of synthetic cathinones to the list of Schedule I controlled substances and provides for penalties, defines a controlled substance analog, and gives probation officers and bailiffs the same options as peace officers with respect to confidentiality of certain personal information

### State Fiscal Highlights

- **Incarceration expenditures.** As a result of the changes made by the bill to the Controlled Substances Law, additional felony drug offenders could be sentenced to terms in prison. The magnitude of the number of additional offenders that could be incarcerated annually is uncertain. Any increase would impact the Department of Rehabilitation and Correction's GRF-funded incarceration costs.
- **Court cost revenues.** Additional criminal drug convictions could generate additional revenue for the state through the collection of locally collected state court costs that would be deposited in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).
- **Public records redaction costs.** The requirement that certain personal information of probation officers and bailiffs be excluded from public records will likely create no more than a negligible ongoing operating expense for affected state entities to redact such information as necessary.

### Local Fiscal Highlights

- **Court system expenditures.** 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 and trafficking) contained in the bill is uncertain. There will likely be an increase in the annual costs for affected county and municipal criminal justice systems to resolve these cases, however.
- **Court cost and fine revenues.** County and municipal criminal justice systems may realize a minimal annual gain in court cost and fine revenue collections, as a result of new misdemeanor convictions related to violations involving certain synthetic cannabinoids and cathinones.

- **Redaction costs.** The requirement that certain personal information of probation officers and bailiffs be excluded from public records will likely create no more than a negligible ongoing operating expense for affected local entities, most likely counties and municipalities, to redact such information as necessary.

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## Detailed Fiscal Analysis

The bill amends the Controlled Substances Law to:

1. Add five types of synthetic cannabinoids to the list of Schedule I controlled substances and provide for related penalties;
2. Add six types of synthetic cathinones to the list of Schedule I controlled substances and provide for related penalties; and
3. Include a definition of a controlled substance analog, thereby making such substances subject to the Controlled Substances Law.

A fourth change contained in the bill gives probation officers and bailiffs the same options as peace officers with respect to confidentiality of certain personal information.

These four changes are discussed in more detail below, as well as their potential state and local fiscal effects.

### 1. Synthetic cannabinoids

The bill adds five forms of synthetic cannabinoids to the Schedule I controlled substance section of the Revised Code.<sup>1</sup> Synthetic cannabinoids are chemically engineered substances and can produce a high similar to marijuana. These substances are also commonly known as K2 or Spice.

Considered a designer drug, the U.S. Drug Enforcement Administration (DEA) first identified JWH-018 in December 2008. Since then, several other types of synthetic cannabinoids have come on the market and there have been several reports of adverse health effects. On November 24, 2010, the DEA used its emergency authority under the federal Controlled Substances Act (CSA) to issue a Notice of Intent to temporarily place five types of synthetic cannabinoids in Schedule I of the CSA. The rule was finalized a few months later with an effective date of March 1, 2011.

Once a substance is placed on the federal CSA, it is automatically included in Ohio's schedule of controlled substances pursuant to current law.<sup>2</sup> Drug offenses related to Schedule I controlled substances are generally felonies, most of which carry

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<sup>1</sup> (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), and (5) 5-(1,1-dimethyloctyl)-2-[(1R, 3S) -3-Hydroxycyclohexyl]-phenol (some trade or other names: cannabicyclohexanol, CP-47,497 C8 homologue).

<sup>2</sup> R.C. 3719.43 states that when pursuant to the federal drug abuse control laws the Attorney General of the United States adds a compound, mixture, preparation, or substance to a schedule of the laws, transfers any of the same between one schedule of the laws to another, or removes a compound, mixture, preparation, or substance from the schedules of the laws then such addition, transfer, or removal is automatically effected in the corresponding schedule or schedules in R.C. 3719.41.

either a presumption for prison or a mandatory prison term. The bill creates certain penalty exceptions by making possession of these substances a minor misdemeanor, punishable by a fine of up to \$150. The bill also provides that, if any of these substances is involved in an offense of corrupting another with drugs, the penalty for the offense is the same as if marijuana was the drug involved. However, until the bill goes into effect, the standard felony offenses apply.

### **State incarceration expenditures**

Since some activity related to these five synthetic cannabinoids is already illegal due to the recent federal rule going into effect, and because drug-related charges typically are one of many made against an alleged offender, there may be a minimal annual decrease in the Department of Rehabilitation and Correction's GRF-funded incarceration costs stemming from the resulting small decrease in the number of felony offenders being sentenced to prison. This effect is related to the number of offenders that could be sentenced for felonies between March 1, 2011, and the effective date of this bill. As of the bill's effective date, some of these felonies will be adjudicated as misdemeanors. However, the number of cases that could be affected by this change would likely be relatively small, especially in the context of a prison population that currently totals around 51,000 inmates.

### **State and local revenues**

The primary fiscal effect of the bill will involve cases that are generated between March 1, 2011, and the effective date of this bill. Since these five substances are now automatically included in Ohio's schedule of controlled substances, these substances are now subject to all the penalties associated with that schedule, which are generally felonies, as stated previously. Once effective, the bill will make some of these offenses misdemeanors rather than felonies (i.e., possession).

Since the fines and court costs for misdemeanors are less than the fines and court costs for felonies, local governments and the state could experience a decrease in revenue, likely to be minimal annually. Locally collected state court costs are forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

### **Local criminal justice system expenditures**

The number of individuals that could be arrested, charged, and prosecuted in any given local jurisdiction for violating drug-related offenses (i.e., possession, use, trafficking, and/or manufacturing) associated with the inclusion of these five synthetic cannabinoids as a controlled substance will likely be relatively small. As such, 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 will be minimal. One could argue that, rather than being a direct result of the bill, these local fiscal effects are more a result of the federal rule being enacted.

## **2. Synthetic cathinones**

The bill adds six forms of synthetic cathinones to the Schedule I controlled substance section of the Revised Code.<sup>3</sup> Also considered to be designer drugs, synthetic cathinones behave like stimulants. According to the DEA, "these chemicals are synthetic derivatives of cathinone, a central nervous system stimulant, which is an active chemical found naturally in the khat plant. Mephedrone and MDPV (3-4 methylenedioxypropylvalerone) are two of the designer cathinones most commonly found in these "bath salt" products."<sup>4</sup> Currently, these chemicals are not scheduled and the DEA is actively seeking additional information from the law enforcement community on the pharmacology, toxicity, and abuse of synthetic cathinones and products containing these substances to support possible scheduling of these substances.<sup>5</sup>

### **Local criminal justice system expenditures and revenues**

Drug offenses related to Schedule I controlled substances are generally felonies, most of which carry either a presumption for prison or a mandatory prison term. As such, there will likely be an increase in the number of criminal cases generated annually. The magnitude of this increase is uncertain, however. The sale of "bath salts" is a relatively new phenomenon nationwide.

As new criminal cases are generated, locally collected state court costs could be generated and then forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). Local courts could also experience a gain in court cost and fine revenue. It should be noted however, that many felony offenders are considered to be indigent and therefore typically do not pay their costs and fines.

### **Incarceration expenditures**

The number of individuals that could be sentenced to a term of incarceration in a state prison for violating a synthetic cathinone prohibition is uncertain. However, it is likely that some number of additional offenders will be sentenced to prison for violating such a prohibition, and as a result, the Department of Rehabilitation and Correction's prison population and related annual GRF-funded incarceration costs could increase.

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<sup>3</sup> (1) Methylone (3,4-methylenedioxymethcathinone), (2) MDPV (3,4-methylenedioxypropylvalerone), (3) Mephedrone (4-methylmethcathinone), (4) 4-methoxymethcathinone, (5) 4-fluoromethcathinone, (6) 3-fluoromethcathinone.

<sup>4</sup> Drugs of Abuse 2011 EDITION: A DEA Resource Guide, [http://www.justice.gov/dea/pubs/drugs\\_of\\_abuse.pdf](http://www.justice.gov/dea/pubs/drugs_of_abuse.pdf).

<sup>5</sup> Microgram Bulletin, Volume 44, Number 4, April 2011, U.S. Department of Justice, Drug Enforcement Agency, <http://www.justice.gov/dea/programs/forensicsci/microgram/mg2011/mg0411.pdf>.

### **3. Controlled substance analogs**

The bill adds the definition of a "controlled substance analog" to the Controlled Substances Law and makes those substances a Schedule I controlled substance. Generally speaking, these substances are substantially similar in chemical structure to another Schedule I controlled substance which causes a stimulant, depressant, or hallucinogenic effect on the central nervous system.

The effect of this definitional inclusion would be that more substances could be subject to the Controlled Substances Law.

#### **Local criminal justice system expenditures and revenues**

As stated earlier, drug offenses related to Schedule I controlled substances are generally felonies, most of which carry either a presumption for prison or a mandatory prison term. As such, there will likely be an increase in the number of criminal cases generated annually. The magnitude of this increase is uncertain but it seems that, for some jurisdictions, the increase could be more than marginal, relative to existing caseloads. However, it could also be argued that by making analogs of controlled substances subject to the same criminal prohibitions as other substances, cases could be more easily prosecuted and adjudicated. There will likely be a number of successful prosecutions related to violations of the bill's prohibited conduct related to controlled substance analogs. In some of these cases, multiple charges could be stacked against an individual.

As new criminal cases are generated, locally collected state court costs could be generated and then forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). Local courts could also experience a gain in court cost and fine revenue. It should be noted however, that many felony offenders are considered to be indigent and therefore typically do not pay their costs and fines.

#### **Incarceration expenditures**

The number of individuals that could be sentenced to a term of incarceration in a state prison for violating a controlled substance analog prohibition is uncertain. However, it is likely that some number of additional offenders will be sentenced to prison for violating such a prohibition, and as a result, increase the Department of Rehabilitation and Correction's prison population and related annual GRF-funded incarceration costs.

### **4. Probation officer and bailiff personal information**

The bill specifies that the residential and familial information of probation officers and bailiffs is not a public record. This provision would require state and local entities that keep information pertaining to probation officers and bailiffs to redact certain personal information from records that are currently deemed "public." This requirement that certain information be excluded from public records will likely create

no more than a negligible ongoing operating expense for affected state and local entities, most likely counties and municipalities.

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