



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

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

Date: March 18, 2011

Status: As Passed by the House

Sponsor: Reps. Ruhl and Burke

Local Impact Statement Procedure Required: No

Contents: Adds five types of synthetic cannabinoids to the list of Schedule I controlled substances and provides for penalties

State Fiscal Highlights

- **Incarceration expenditures.** As of March 1, 2011, several offenses associated with the use of these five cannabinoids could be subject to felony sanctions. However, once the bill becomes effective, some of these offenses will be adjudicated as misdemeanors. Since this number is expected to be relatively small, there may be a minimal annual decrease in the Department of Rehabilitation and Correction's GRF-funded incarceration costs as a result of fewer felony offenders being sentenced to prison.
- **Court cost revenues.** Due to the reasons stated in the preceding bullet point and because the fines for misdemeanors are less than felonies, the state may lose a negligible annual amount of locally collected court cost revenue that is deposited in the state treasury annually to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local Fiscal Highlights

- **Criminal justice system expenditures.** The number of individuals that could be arrested, charged, and prosecuted in any given local jurisdiction for violating any number of misdemeanor level drug-related offenses (i.e., possession) contained in the bill 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.
- **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.

Detailed Fiscal Analysis

Synthetic cannabinoids

The bill adds five forms of synthetic cannabinoids to the Schedule I controlled substance section of the Revised Code.¹ 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 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.² 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. The bill creates certain exceptions though by making possession of these substances a minor misdemeanor, punishable by a \$150 fine. 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.

Department of Rehabilitation and Correction

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 a small decrease in the number of felony offenders

¹ (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).

² Revised Code section 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 section 3719.41 of the Revised Code.

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. After this 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.

Court cost revenues (state and local)

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 for misdemeanors are less than the fines for felonies, local governments and the state could experience a decrease in revenue, likely to be minimal. Locally collected 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 any number of 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. These effects are more a result of the federal rule being enacted and not that of the bill directly.