

- SUBJECT:** Adding salvia to Penalty Group 3 of Texas Controlled Substances Act
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Gallego, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler
- 0 nays
- 1 absent — Hartnett
- WITNESSES:** For — (*Registered, but did not testify:* Troy Alexander, Texas Medical Association; Douglas Borys, Scott & White Healthcare, Center for Healthcare Policy; Lon Craft, Texas Municipal Police Association; Megan Dodge, City of San Antonio; Shanna Igo, Texas Municipal League; Anne Olson, Texas Baptist Christian Life Commission; Charley Wilkison, Combined Law Enforcement Associations of Texas)
- Against — Nicholas Krudy (*Registered, but did not testify:* Stefanie Collins, ACLU of Texas)
- BACKGROUND:** Texas regulates controlled substances through the Texas Controlled Substances Act and establishes criminal penalties for violations by including the drugs in different penalty groups. Knowingly or intentionally possessing a Penalty Group 3 substance, unless it was obtained with a prescription, carries the following penalties:
- class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), if the amount of the controlled substance possessed is less than 28 grams;
 - felony of the third degree (two to 10 years in prison and an optional fine of up to \$10,000), if the amount of the controlled substance possessed is 28 grams or more but less than 200 grams;
 - felony of the second degree (two to 20 years in prison and an optional fine of up to \$10,000), if the amount of the controlled substance possessed is 200 grams or more but less than 400 grams;
- and

- imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is 400 grams or more.

DIGEST: HB 470 would add salvia divinorum, including its seeds, compounds, derivatives and extracts, to Penalty Group 3 of the Texas Controlled Substances Act.

The bill would take effect September 1, 2011.

SUPPORTERS SAY: Salvia divinorum is a strong, naturally occurring hallucinogen that is extremely dangerous and should be illegal, as proposed in HB 470. Twenty three states and about 50 Texas cities already regulate possession of salvia divinorum to protect their citizens.

Many teenagers use salvia because it creates a legal “short high” and can be purchased in head shops and on the Internet. Common effects of salvia are extreme spatial disorientation, incapacitation, visions, experiences of alternate realities, and lack of pain sensation. The effects begin within 20 to 60 seconds of smoking the drug and can last from a few minutes to an hour.

In this period of altered reality, people could endanger themselves, such as in one reported case of a teenager committing suicide related to salvia use. The incapacitation effects could lead to date rape, and some believe salvia use is associated with the onset of psychiatric illness. In fact, even proponents of salvia use recommend a “sober sitter” to prevent the user from doing anything dangerous that could result in bodily harm or property damage. A frightening aspect of this drug is that people cannot feel pain when they are under its influence and may not even know if they had a broken bone or other serious injury.

Criminalizing salvia use would prevent minors from using this very dangerous drug in the first place, so treatment options would not be necessary.

OPPONENTS SAY: This bill unnecessarily would impose government regulation on the sale and use of salvia divinorum, even though there is little evidence that it represents a public health or safety problem.

OTHER
OPPONENTS
SAY:

Because this substance is used mostly by teenagers, HB 470 would criminalize behavior that is likely a cry for help. Kids using salvia should be given the opportunity for treatment and counseling, not potential jail time. SB 1073 by Ellis, requiring community supervision and treatment for low-level drug possession offenses, would be a better and more cost-effective approach to handling kids' exploratory use of salvia.

NOTES:

A related bill, SB 348 by Estes, which would criminalize the sale or delivery of salvia divinorum to a minor, was reported favorably, without amendment, by the Senate Criminal Justice Committee on April 7 and has been placed on the April 21 Local and Uncontested Calendar.

During the 2009 regular session, SB 257 by Estes, which would have criminalized the sale or delivery of salvia divinorum to a minor, passed the Senate, but died on the General State Calendar in the House. During the 2007 regular session, SB 1796 by Estes, which also would have criminalized the sale or delivery of salvia divinorum to a minor, passed the Senate, but died on the General State Calendar in the House.