

SUBJECT: New penalty group for K2 and other synthetic marijuana products

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Gallego, Aliseda, Burkett, Carter, Rodriguez, Zedler
0 nays
3 absent — Hartnett, Christian, Y. Davis

WITNESSES: For — (*Registered, but did not testify:* Troy Alexander, Texas Medical Association; John Chancellor, Texas Police Chiefs Association; Lon Craft, Texas Municipal Police Association (TMPA); Erin Gamez, Texas PTA; Shanna Igo, Texas Municipal League; Jim Jones, San Antonio Police Department; Eric Niedermayer, Recovery Resource Council; Anne Olson, Texas Baptist Christian Life Commission; Gary Tittle, Dallas Police Department North Texas Crime Commission; Malini Ghoshal)

Against — Nicholas Krudy (*Registered, but did not testify:* Stefanie Collins, ACLU of Texas)

On — Colin Kane

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, except for marijuana, for which penalties are specifically assigned.

Penalties for possessing marijuana. Knowingly or intentionally possessing a usable amount of marijuana carries penalties from a class B misdemeanor for two ounces or less up to life in prison for 2,000 pounds or more.

Penalties for manufacture with intent to deliver. Knowingly manufacturing, delivering, or possessing with the intent to deliver a controlled substance in Penalty Group 2, which includes tetrahydrocannabinols, other than marihuana, carries penalties from a state-jail felony to life in prison, depending on the weight of the substance.

Federally approved research program. A person does not commit a possession of marijuana offense for possessing or delivering tetrahydrocannabinols, their derivatives, or related drug paraphernalia for use in a federally approved therapeutic research program.

Drug-free zones. Penalties are enhanced for offenses committed in drug-free zones. The minimum term of confinement for certain drug-related offenses is increased by five years and the maximum fine for the offense is doubled, if it is shown at trial that the offense was committed in, on, or within 1,000 feet of a school, a public or private youth center, a playground, or on a school bus. Punishment for other specified offenses are enhanced to third-degree felonies in a drug-free zone.

Procedures for controlled substance offenses. Code of Criminal Procedure, art. 14.06 requires that for most crimes the offender is brought before a magistrate within 48 hours after arrest, but for certain offenses, including for a class A or class B misdemeanor possession of marijuana charge, a citation can be issued. Code of Criminal Procedure art. 42.12 sec. 15 provides procedures for state-jail felony community supervision that require the judge to place the defendant on community supervision under certain circumstances for certain offenses, including a state-jail felony possession of marijuana.

DIGEST:

Creating Penalty Group 2-A. CSHB 597 would create Penalty Group 2-A, which would consist of any quantity of a synthetic chemical compound that was a cannabinoid receptor agonist and mimicked the pharmacological effect of naturally occurring cannabinoids. The bill lists all substances that would be included in the group.

Penalties for Penalty Group 2-A. Knowingly possessing a Penalty Group 2-A substance, unless it was obtained with a prescription, would carry the following penalties:

- class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), if the amount of the controlled substance possessed was two ounces or less;
- 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 was more than two ounces and up to four ounces;

- a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000), if the amount of the controlled substance possessed was more than four ounces and up to five pounds;
- a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), if the amount of the controlled substance possessed was more than five pounds and up to 50 pounds;
- a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000), if the amount of the controlled substance possessed was more than 50 pounds and up to 2,000 pounds; 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 was more than 2,000 pounds.

Penalties for manufacture with intent to deliver. Penalty Group 2-A would be included in this offense.

Federally approved research program. A person would not violate a Penalty Group 2-A offense if the person possessed or delivered tetrahydrocannabinols, their derivatives, or related drug paraphernalia, for use in a federally approved therapeutic research program.

Drug-free zones. A Penalty Group 2-A defendant's punishment would be enhanced by five years and the maximum fine doubled for an offense that was a third-degree felony, second-degree felony, or punishable by life if the offense were committed in a drug-free zone. A state-jail felony offense under Penalty Group 2-A would be enhanced to a third-degree felony punishment if committed in a drug-free zone.

Procedures for controlled substance offenses. A peace officer could issue a citation for a class A or class B misdemeanor Penalty Group 2-A offense. A judge would be required to place a Penalty Group 2-A state-jail felony offender on community supervision under certain circumstances unless the person possessed more than one pound of the controlled substance.

The bill would take effect September 1, 2011.

SUPPORTERS
SAY:

K2 or Spice is dangerous and should be illegal, as proposed in CSHB 597. The substance has been banned in 16 other states, 55 local Texas jurisdictions, and in April, the Texas Department of State Health Services banned the drug following the U.S. Drug Enforcement Administration's one-year ban in March for study. All these jurisdictions have recognized K2's danger, and Texas law should reflect that danger as well.

K2 and other forms of "herbal incense" are products that have been sprayed with a chemical compound that mimics the effects of THC, the active ingredient in marijuana. Smoking K2 can have dangerous health consequences, including hallucinations, severe agitation, elevated heart rate, elevated blood pressure, chest pains, black outs, tremors, seizures, and heart attacks.

Four teenagers who used K2 last summer required treatment for symptoms including chest pains and a racing heart. The Texas Poison Center Network reported 555 K2 related calls in 2010. This herbal incense has no beneficial or legitimate use and is being sold at gas stations and smoke shops and on the Internet. CSHB 597 would keep this dangerous drug off the shelves.

The punishments in the bill would be reasonable and intended to deter the dangerous use of K2, but not to make kids felons for using it. The real punishments in the bill would be reserved for manufacturers and those who are preying on our kids.

OPPONENTS
SAY:

CSHB 597 would ban an entire class of drugs that could prove to have important health and treatment benefits.

OTHER
OPPONENTS
SAY:

Because this substance is used mostly by teenagers, CSHB 597 would criminalize behavior that likely is a cry for help. Kids using K2 or Spice should be given the opportunity for treatment and counseling, not potential jail time.

NOTES:

The companion bill, SB 331 by Shapiro, passed the Senate by 31-0 on March 30 and was considered in a public hearing by the House Criminal Jurisprudence Committee on May 5 and left pending.

