

SUBJECT: Adding salvia to Penalty Group 3 of the Texas Controlled Substances Act

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Carter, Canales, Leach, Moody

2 nays — Schaefer, Toth

1 absent — Hughes

1 present, not voting — Burnam

WITNESSES: For — (*Registered, but did not testify*: Jessica Anderson, Houston Police Department; Donald Baker, City of Austin Police Department; John Chancellor, Texas Police Chiefs Association; Lon Craft, TMPA, Texas Municipal Police Association; Daniel Earnest, San Antonio Police Officers Association; JoAn Felton, McLennan County Medical Society; Marisa Finley, Scott & White Center for Healthcare Policy; Bradford Holland, Texas Medical Association & McLennan County Medical Society; James Jones, San Antonio Police Department; Anne Olson, Texas Baptist Christian Life Commission; Gary Tittle, Dallas Police Department)

Against — (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Teresa Beckmeyer

On — (*Registered, but did not testify*: Pat Johnson, Department of Public Safety)

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 to 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 to less than 400 grams; and
- imprisonment in the Texas Department of Criminal Justice for life or for a term of five to 99 years, and a fine up to \$50,000, if the amount of the controlled substance possessed is 400 grams or more.

**DIGEST:** HB 124 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, 2013.

**SUPPORTERS SAY:** Salvia divinorum is a strong, naturally occurring plant hallucinogen that is extremely dangerous and should be illegal. Twenty states ban salvia divinorum, a few others ban it for minors, and about 50 Texas cities have some ordinance against the drug.

Teenagers and others 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 spatial disorientation, incapacitation, visions, experiences of alternate realities, and lack of pain sensation. The effects can 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 or others, and some believe salvia can be 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.

Placing salvia in Penalty Group 3 of the Controlled Substances Act would place it among other drugs that pose similar dangers. It would be in line with most other states that have penalized salvia at the high misdemeanor/low felony level. Most importantly, this would help protect Texans by getting it off the retail shelves.

The Controlled Substances Act already provides penalties for manufacturing and distributing substances in the act, and this framework should be used for salvia. Enacting a unique penalty structure for users and dealers of salvia would thwart the goal of having the act apply uniformly to all drugs in a penalty group. Using the current uniform structure for penalties gives the public and law enforcement more certainty and predictability.

Although education and treatment would be important components of responding to salvia use, it is important to criminalize it to prevent Texans from using this very dangerous drug in the first place.

OPPONENTS  
SAY:

This bill unnecessarily would impose government regulation on the sale and use of salvia divinorum, even though there is little or no evidence that it represents a public health or safety problem. Salvia's effects do not rise to the level of other illegal drugs, and the penalty imposed by HB 124 would be too harsh.

Banning salvia would be an overreach of government authority, especially for a natural plant associated with religious practices. If Texas wants to address the issue of salvia, it should impose penalties on sellers and manufacturers, not those who possess the plant.

OTHER  
OPPONENTS  
SAY:

HB 124 should impose the lowest criminal penalty for possession, a class C misdemeanor, with higher penalties for dealers.

A better approach to address an increasing use of salvia, especially among teenagers, would be education, counseling, and treatment, not potential jail time.

NOTES:

In 2011, an identical bill, HB 470 by Anderson, was approved by the House and died in the Senate.