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Memorandum

TO: Representative Cathy Muñoz
FROM: Chuck Burnham, Legislative Analyst
DATE: February 8, 2011
RE: Comparing States' Laws on Synthetic Cannabinoids to Selected Alaska Drug Laws
LRS Report 11.159

You asked us for information on states' laws on synthetic cannabinoids. Specifically, you asked for an account of where such substances appear on states' schedules of controlled substances and the crime classifications and penalties for possessing those substances. You also asked us to compare those other states' penalties for such crimes to those indicated for possession of substances in Alaska's controlled substance schedules IIA and IIIA.

We identified 11 states with laws prohibiting the possession of synthetic cannabinoids.¹ Classifications and penalties for a first criminal offense of possession in these states range from a Class B misdemeanor in Kentucky, which carries a maximum term of imprisonment of 90 days and a \$250 fine, to an unclassified felony in Georgia, for which an offender is subject to a prison sentence of 2-15 years. In addition to the 11 states that have synthetic cannabinoid prohibitions in place, at least 21 states, including Alaska, are currently considering similar legislation.

In Alaska, as you know, controlled substances are placed on a given level within the schedule of controlled substances based on the degree of danger or probable danger a given drug poses to a person or the public. Those schedules range from "IA," containing the most dangerous substances, to "VIA," which are perceived to be the least dangerous drugs. Possession of a Schedule IIA controlled substance in Alaska constitutes the crime of "misconduct involving a controlled substance in the fourth degree." That offense is a Class C felony punishable by a maximum of 5 years in prison and a \$50,000 fine. Please note, however, that the presumptive sentencing guideline in Alaska is far less severe, and a suspended sentence is possible for a first offense. Possession of a Schedule IIIA controlled substance in Alaska is a Class A misdemeanor for which an offender can receive a maximum of 1 year in prison and a \$10,000 fine.²

The attached table summarizes crime classifications and penalties for possessing synthetic cannabinoids in the eleven states where that activity has been criminalized, and compares that information to the crime classification and penalties for possession of items on Alaska's controlled substances Schedules IIA and IIIA. Please note that the penalties listed in our table are either maximum sentences or ranges of incarceration periods. Actual penalties are generally subject to considerable discretion by the sentencing courts.

We hope this is helpful. If you have questions or need additional information, please let us know.

¹ Those states are Alabama, Georgia, Illinois, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Oklahoma, and Tennessee. According to the National Conference of State Legislatures (NCSL), synthetic cannabinoids are "chemically engineered substances, similar to THC—the active ingredient in marijuana—that, when smoked or ingested, can produce a high similar to marijuana. Initially developed for research related to treatment of pain and the effects of cannabis on the brain, these substances have recently become a popular alternative to marijuana. The NCSL maintains information about these substances and states' responses to the issue at <http://www.ncsl.org/?tabid=21398>.

² Controlled Substance Schedules in Alaska are enumerated at AS § 11.71.140-190.

Comparing States' Laws on Synthetic Cannabinoids to Selected Alaska Drug Laws

State	Citation	Controlled Substance Schedule	Crime Classification (1st Offense--Possession)	Penalty
Alaska	AS § 11.71.040 and § 12.55.125	Schedule IIA (as proposed in HB 7)	Class C felony	Maximum 5 years imprisonment and \$50,000 fine (presumptive sentence is far less--suspended sentence possible)
	AS § 11.71.050	Schedule IIIA	Class A misdemeanor	Maximum 1 year imprisonment and \$10,000 fine
Alabama	CA § 13A-12-213 to 14.1	Not scheduled	Class A misdemeanor	Sentencing guidelines: up to 32 month sentence typically allotted by court among probation, community corrections, county jail/work release or an alternative
Georgia	OCGA § 16-30-25 and 16-13-30	Schedule I	Unclassified felony	2-15 years imprisonment
Illinois	720 ILCS § 570/204 and 402(c) and 730 ILCS § 5/5-4.5-45 and 5-4.5-50	Schedule I	Class 4 felony	1-3 years imprisonment and \$25,000 fine
Kansas	KSA § 21-36a06 and 4708	Schedule I	Class A non-person misdemeanor	Sentencing guidelines: typically, 10-12 months of probation
Kentucky	KRS § 218A.1427 and 534.040	Schedule I	Class B misdemeanor	Maximum imprisonment of 90 days and fine of \$250
Louisiana	LSA § 40:966	Schedule I	Unclassified	Maximum 6 months in jail and \$500 fine
Michigan	MCL § 333.7403	Schedule I	Unclassified misdemeanor	Maximum 1 year imprisonment and \$2,000 fine
Mississippi	MC § 41-29-113 and 139	Schedule I	Unclassified misdemeanor or felony depending upon amount of drug	For example, 0.1 grams to 2 grams, up to 2 years imprisonment and \$50,000 fine; 10-30 grams, 6-24 years imprisonment and up to \$50,000 fine.
Missouri	MRS § 195.202, 558.011, and 560.016	Schedule I	Class A misdemeanor	Maximum 1 year imprisonment and \$1,000 fine
Oklahoma	OSA 63 § 2-204 and § 2-402	Schedule I	Unclassified felony	2-10 years imprisonment and \$5,000 fine
Tennessee	TCA § 39-17-438	Not scheduled	Class A misdemeanor	Sentencing guidelines--wide latitude to courts

Notes and Source: This table provides information gleaned from the *Lexis* database of state statutes on first offenses for possessing small amounts of synthetic cannabinoids or the referenced drug schedule, as applicable. Please note that a variety of crime-specific circumstances and elements of criminal procedure impact actual sentences.