

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1039 Controlled Substances

SPONSOR(S): Justice Appropriations Subcommittee; Patronis and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1886

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Williams	Cunningham
2) Justice Appropriations Subcommittee	14 Y, 0 N, As CS	McAuliffe	Jones Darity
3) Judiciary Committee	16 Y, 0 N	Williams	Havlicak

SUMMARY ANALYSIS

3,4-Methylenedioxymethcathinone, 3,4-Methylenedioxypyrovalerone (MDPV), Methylnmethcathinone, Methoxymethcathinone, Fluoromethcathinone, and Methylethcathinone, are psychoactive substances that, when used improperly, offer alternatives to illegal drugs. Much like the marketing of Synthetic Cannabinoids (Spice/K2) as incense, these substances are commercially available and are being marketed as "bath salts".

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances. Currently, Florida Statutes do not regulate the sale, purchase, possession, or manufacture of bath salts.

CS/HB 1039 amends s. 893.03, F.S., to add the following substances to Schedule I of Florida's controlled substance schedules:

- 3,4-Methylenedioxymethcathinone.
- 3,4-Methylenedioxypyrovalerone (MDPV).
- Methylnmethcathinone.
- Methoxymethcathinone.
- Fluoromethcathinone.
- Methylethcathinone.

As a result, anyone in possession of these substances will be guilty of a third degree felony in conformity with other Schedule I hallucinogens such as LSD and peyote. This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver these substances will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart. The purchase of these substances will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.

The Criminal Justice Impact Conference met April 4, 2011 and determined the bill will have an insignificant impact on state prison beds.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Bath Salts

3,4-Methylenedioxymethcathinone, 3,4-Methylenedioxypyrovalerone (MDPV), Methylethcathinone, Methoxymethcathinone, Fluoromethcathinone, and Methylethcathinone, are psychoactive substances that, when used improperly, offer alternatives to illegal drugs.¹ Much like the marketing of Synthetic Cannabinoids (Spice/K2) as incense, these substances are commercially available and are being marketed as “bath salts”.² While bath salts are comprised of the different unregulated chemical substances listed above, MDPV appears to be the substance most commonly referred to as bath salts.³

MDVP

MDVP is a central nervous system stimulant which was first seized in Germany in 2007.⁴ MDPV is structurally related to cathinone, an active alkaloid found in the khat plant,⁵ methamphetamine⁶, and methylenedioxymethamphetamine,⁷ and has not been approved for medical use in the United States.⁸

Bath salts are known by a variety of names, including "Red Dove," "Blue Silk," "Zoom," "Bloom," "Cloud Nine," "Ocean Snow," "Lunar Wave," "Vanilla Sky," "Ivory Wave," "White Lightning," "Scarface" "Purple Wave," "Blizzard," "Star Dust," "Lovey, Dovey," "Snow Leopard," "Aura," and "Hurricane Charlie." While they have become popular under the guise of being sold as bath salts, they are sometimes sold as other products such as insect repellent, or plant food with names like "Bonsai Grow" among others.⁹

Substance Abuse

In recent years, the abuse of bath salts has been increasing. Law enforcement and medical professionals have indicated that bath salts are becoming increasingly popular due to the perception that they pose a seemingly safer alternative to illegal methods of getting “high” and can easily be obtained.¹⁰

While the abuse of the substance MDPV has increased, particularly in Europe and Australia, in recent years, it has also begun to be increasingly used as a recreational drug in the U.S.¹¹ User population information in the U.S. is very limited; however, there have been reports of MDVP being used

¹ Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence. “Bath Salts” Receive Emergency Drug Scheduling. Brief # 10-194 Public, January 26, 2011. (http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf) (last accessed March 19, 2011).

² Hunterdon Drug Awareness Program, Comprehensive Drug Information on MDPV, Mephedrone (“Bath Salts”). (<http://www.hdap.org/mdpv.html>) (last accessed March 19, 2011).

³ *Id.*

⁴ Methylenedioxypyrovalerone (MDPV). Drug Enforcement Administration. March 2011. (http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).

⁵ “Khat” is a stimulant drug derived from a shrub that is native to East Africa and southern Arabia. The leaves of this plant contain the alkaloids cathine and cathinone, and are chewed for the stimulant effects. U.S. Drug Enforcement Administration. KHAT AKA: Catha Edulis. (<http://www.justice.gov/dea/pubs/pressrel/pr072606a.html>) (last accessed March 19, 2011).

⁶ “Methamphetamine” is a central nervous system stimulant drug that is similar in structure to amphetamine. National Institutes of Health. *NIDA InfoFacts: Methamphetamine*. March 2010. (<http://www.nida.nih.gov/infofacts/methamphetamine.html>) (last accessed March 19, 2011).

⁷ “Methylenedioxymethamphetamine” (MDMA) is a synthetic, psychoactive drug that is chemically similar to the stimulant methamphetamine and the hallucinogen mescaline. National Institutes of Health. *NIDA InfoFacts: MDMA (Ecstasy)*. December 2010. (<http://www.drugabuse.gov/Infofacts/ecstasy.html>) (last accessed March 19, 2011).

⁸ Methylenedioxypyrovalerone (MDPV). Drug Enforcement Administration. March 2011. (http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).

⁹ *Id.*

¹⁰ Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence. “Bath Salts” Receive Emergency Drug Scheduling. Brief # 10-194 Public, January 26, 2011. (http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf) (last accessed March 19, 2011).

¹¹ Methylenedioxypyrovalerone (MDPV). Drug Enforcement Administration. March 2011. (http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).

predominantly by the youth population.¹² The Drug Enforcement Administration's (DEA) National Forensic Laboratory Information System indicates that state and local law enforcement officials encountered MDPV in 2009 and 2010 in Iowa, Kansas, Kentucky, Minnesota, North Dakota, Oklahoma, Texas, and Wisconsin.¹³

Bath salts are readily available at convenience stores, discount tobacco outlets, gas stations, pawnshops, tattoo parlors, and truck stops, among other locations.¹⁴ Bath salts are sold in 50mg to 500mg packets that usually contain a disclaimer, such as "not for human consumption."¹⁵ The costs of these substances range from \$25 - \$50 per 50mg packet. Bath salts are abused typically by injection, smoking, snorting, and less often, by the use of an atomizer.¹⁶ Some abusers describe the effects as similar to methamphetamine, ecstasy, and cocaine, and have referred to the substance as "complete crank" and "fake cocaine."¹⁷

Reports of the side effects of MDPV include tachycardia, hypertension, vasoconstriction, and sweating.¹⁸ However, higher doses of MDPV have caused intense, prolonged panic attacks in stimulant-intolerant users.¹⁹ The duration of the subjective effects is about 3 to 4 hours and the side effects continuing a total of 6 to 8 hours after administration.²⁰

There have been numerous calls to poison control centers throughout the U.S. concerning the abuse of bath salts. Poison control centers in Florida have reported 61 calls of bath salts abuse, making the state the second-highest in call volume after Louisiana.²¹ Most of Florida's cases have come from Central and Northern Florida, but disoriented users have also arrived in Broward County hospitals with high blood pressure and hallucinations, according to Nabil El Sanadi, Chief of Emergency Medicine at Broward Health.²² According to Panama City Beach police, one of the most shocking cases of bath salts abuse involved a woman who burst into her 71-year-old mother's room swinging a machete.²³

Drug Schedules

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.

The distinguishing factors between the different drug schedules are the "potential for abuse"²⁴ of the substance contained therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.²⁵ Cannabis and heroin are examples of Schedule I drugs.

Florida law

Currently, Florida Statutes do not regulate the sale, purchase, possession, or manufacture of bath salts. However, current law authorizes the Attorney General, by means of an emergency rule,²⁶ to

¹² *Id.*

¹³ *Id.*

¹⁴ National Drug Intelligence Center. U.S. Department of Justice. DRUG WATCH: Increasing abuse of bath salts. December 2010.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Methylenedioxypyrovalerone (MDPV). Drug Enforcement Administration. March 2011.

(http://www.deadiversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Alexia Campbell and Aaron Deslatte, Sun Sentinel, *Florida bans 'bath salt' drugs after violent outbursts*. January 27, 2011.

(http://articles.sun-sentinel.com/2011-01-27/news/fl-bath-salts-florida-20110126_1_salts-fake-cocaine-bath) (last accessed March 19, 2011).

²² *Id.*

²³ *Id.*

²⁴ See s. 893.02(19), F.S.

²⁵ See s. 893.03, F.S.

²⁶ Section 120.54, F.S.

schedule a substance on a temporary basis if it is found that scheduling the substance is necessary to avoid an imminent hazard to the public safety.²⁷

On January 26, 2011, Attorney General Pam Bondi, issued an emergency rule to add bath salts to Schedule I of Florida's controlled substance schedules.²⁸ Attorney General Bondi stated that "due to the violent nature of the side effects involved in taking these drugs, the emergency rule will provide law enforcement with the tools necessary to take this dangerous substance off the shelves and protect the abusers from themselves as well as others. These are dangerous drugs that should not be confused with any type of common bath product."²⁹ If the Legislature fails to take legislative action, the emergency rule scheduling bath salts will expire on June 30, 2011.³⁰

Other State Actions

Several states, including Hawaii, Michigan, Louisiana, Kentucky, and North Dakota, have introduced legislation to ban bath salts. In addition, several counties, cities, and local municipalities have also taken action to ban bath salts.³¹

Federal Actions

Currently, bath salts are not scheduled drugs under the Federal Controlled Substances Act.³² However, the DEA has MDPV and Mephedrone listed as drugs and chemicals of concern.³³

On February 1, 2011, Gil Kerlikowske, Director of National Drug Control Policy, released the following statement following recent reports indicating the emerging threat of synthetic stimulants, including MDPV and mephedrone:

*"I am deeply concerned about the distribution, sale, and use of synthetic stimulants – especially those that are marketed as legal substances. Although we lack sufficient data to understand exactly how prevalent the use of these stimulants are, we know they pose a serious threat to the health and well-being of young people and anyone who may use them. At a time when drug use in America is increasing, the marketing and sale of these poisons as "bath salts" is both unacceptable and dangerous. As public health officials work to address this emerging threat, I ask that parents and other adult influencers act immediately to discuss with young people the severe harm that can be caused by the use of both legal and illegal drugs and to prevent drug use before it starts."*³⁴

Effect of Bill

CS/HB 1039 amends s. 893.03, F.S., to add the following substances to Schedule I of Florida's controlled substance schedules:

- 3,4-Methylenedioxymethcathinone.
- 3,4-Methylenedioxypropylone (MDPV).
- Methylenedioxymethcathinone.

²⁷ Section 893.035(7), F.S.

²⁸ Office of the Attorney General of Florida Pam Bondi, New Release: *Attorney General Bondi Files Emergency Rule Banning the Dangerous Synthetic Drug Marketed as "Bath Salts"* January 26, 2011. (<http://www.myfloridalegal.com/newsrel.nsf/newsreleases/81CC463863D88DC4852578240077FD45>) (last accessed March 19, 2011).

²⁹ *Id.*

³⁰ Section 893.035(9), F.S.

³¹ Nora D. Volkow, M.D., National Institute of Drug Abuse, Message from the Director on "Bath Salts" - Emerging and Dangerous Products. (<http://www.nida.nih.gov/about/welcome/MessageBathSalts211.html>) (last accessed March 19, 2011).

³² Methylenedioxypropylone (MDPV). Drug Enforcement Administration. March 2011.

(http://www.dea diversion.usdoj.gov/drugs_concern/mdpv.pdf) (last accessed March 19, 2011).

³³ U.S. Department of Justice drug Administration. Drugs and Chemicals of Concern.

(http://www.dea diversion.usdoj.gov/drugs_concern/index.html) (last accessed March 19, 2011).

³⁴ Office of National Drug Control Policy, Press Release: Statement from White House Drug Policy Director on Synthetic Stimulants, a.k.a "Bath Salts". February 1, 2011. (<http://www.whitehousedrugpolicy.gov/news/press11/020111.html>) (last accessed March 19, 2011).

- Methoxymethcathinone.
- Fluoromethcathinone.
- Methylethcathinone.

As a result, anyone in possession of these substances will be guilty of a third degree felony³⁵ in conformity with other Schedule I hallucinogens such as LSD and peyote. This offense will be ranked in Level 3 of the offense severity ranking chart. The offense of sale, manufacture or delivery or possession with intent to sell, manufacture or deliver these substances will be a third degree felony and will be ranked in Level 3 of the offense severity ranking chart.³⁶ The purchase of these substances will be a third degree felony and will be ranked in Level 2 of the offense severity ranking chart.³⁷

The bill also reenacts ss. 893.13(1), (2), (4), and (5), 893.135(1)(l), and 921.0022(3)(b), (c), and (e), F.S., to incorporate changes made by the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 893.03, F.S., relating to standards and schedules.

Section 2: Reenacts s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3: Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 4: Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 5: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met April 4, 2011 and determined the bill will have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

³⁶ Sections 893.13(1)(a)2., and 921.0022, F.S. Section 893.13, F.S. provides for enhanced penalties if the sale occurs within close proximity to certain locations such as a church or school.

³⁷ Section 893.13(2)(a)2., F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill would make it illegal to sell bath salts which are currently sold over the Internet and in tobacco and smoke shops, drug paraphernalia shops, and convenience stores. Therefore, the bill could have a negative fiscal impact on such entities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 13, 2011, the Justice Appropriations Subcommittee adopted an amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment made technical name changes to the psychoactive substances in the bill. This analysis is drafted to the Committee Substitute.