Salvia Divinorum: Establish Restrictions But Don’t Criminalize It

Currently, 22 states have criminalized Salvia divinorum, either by placing it into a Schedule I category or by prohibiting its consumption; several more state legislatures are considering legislation related to Salvia. However, some states have rejected criminalization and instead established age-control restrictions and other regulations such as marketing, branding and retail display limitations. Emerging scientific evidence demonstrates that Salvia has significant potential for medical applications and an extremely low risk for abuse. Outright prohibition of Salvia wastes scarce taxpayer funds, strains police resources, and deters scientists from studying its medical benefits. Moreover, criminalizing Salvia replaces a legal market that can be strictly and sensibly regulated with an underground economy that empowers black market criminals. The smarter approach is to keep Salvia legal while establishing restrictions to keep it out of the hands of minors.

Background

Salvia divinorum is a naturally occurring herb and a member of the Lamiaceae (mint) family. Basil, mint, common sage, rosemary and thyme are close relatives in the plant kingdom. It is one of approximately 1,000 species that make up the Salvia genus.

Salvia is native to the Mazatec zone in the Mexican state of Oaxaca, where the Mazatec people have consumed fresh, whole leaves for a variety of therapeutic and religious purposes for centuries. During a trip in Mexico, Harvard researchers first learned about Salvia and introduced the plant to the United States in 1962.

Salvia is most often smoked, but can also be used sublingually or orally (chewed and swallowed), producing effects that last longer but have a slower onset than when smoked. It is most commonly purchased online or at tobacco shops.

Facts

Salvia is not addictive. The scientific literature provides no indication that humans are susceptible to psychological or physiological dependence on or addiction to Salvia. Rather, new research based on animal studies suggests that Salvia may have an “aversive” effect that would limit frequent or long-term use after initial exposure. A growing body of evidence suggests that Salvia may even have the potential to treat drug dependence.

The effects of Salvia are extremely brief compared to other psychoactive drugs. Psychoactive effects typically subside within fifteen minutes. A recently conducted study of internet videos of Salvia users’ experiences found its effects to be short-lived (observable for about eight minutes), prompting the researchers to conclude that “the window of risk [for Salvia] seems much shorter than for most other drugs, including alcohol.”

There are no reported cases of Salvia poisoning or overdose. Research to date has failed to establish acute or chronic toxicity of Salvia in humans. No poisoning injuries or deaths have been reported as a result of Salvia consumption. No toxic effects to any organs or organ systems have resulted from either acute or long-term administration of the substance to animals, even at doses much higher than any human would ingest.

The potential for harm and widespread abuse is low. The National Survey on Drug Use and Health released data on Salvia usage for the first time in 2009, which showed that less than one half of one...
percent (0.3 percent) of people aged 12 and older reported past year use of the substance.xvi Salvia’s potential to induce anxiety is limited by its brief duration of effect.xvii Researchers report that Salvia’s psychoactive effects can be interrupted or terminated by speaking to the affected person or introducing other noise stimuli. As researchers note, “the plant’s bitter taste…and its short term effects, combined with exacting cultivation parameters, make it an unlikely candidate for widespread use…neither Salvia divinorum nor Salvinorin A have a high potential for abuse.xviii

Most people who try Salvia once choose not to use it again.xx The psychoactive effects of Salvia are undesirable for most people. People who use the drug report an intensely bitter taste and inconsistent, often unpleasant psychoactive effects.xviii Of a large college student sample, less than a quarter (22.6%) of students surveyed had even heard of Salvia, and a majority of those who had tried it said they would not do so again.xxx In fact, even the DEA in 2003 concluded that people who used the drug “indicate that they would not use it a second time,” and that “Salvia divinorum most likely will not become widely abused at social events.xxxi

Scheduling Salvia as a controlled substance will have unintended detrimental consequences. If Salvia were banned outright, young adults could face immediate, devastating and life-long legal barriers to education, employment, voting and government benefits for Salvia-related drug law violations, despite a lack of evidence of harm to themselves or others. The use of scarce government funds to enforce, prosecute and incarcerate people who use Salvia would put a strain on police and criminal justice resources.

What States Can Do: Regulate Salvia

By attempting to prohibit Salvia, lawmakers will miss the opportunity to establish greater control over access to the drug and ensure availability to researchers for continued study. Regulating Salvia, by restricting sale or use by persons under the age of 18, is the more sensible and effective approach.

Establish age-based restrictions. Prohibiting the sale or distribution of Salvia to minors is sensible policy. In 2006, the National Survey on Drug Use and Health determined that 1.8 million Americans had used Salvia in their lifetime. The survey found that Salvia use decreases with age, and that many respondents had already used Salvia by age 18.xxv Studies have also found that Salvia can be acquired through online retailers, many based in foreign countries, a threat that will not be removed if Salvia is prohibited.xxxi Ought criminalization would only drive the demand for the drug to the black market, which provides no age restrictions or other regulatory controls.

The most effective approach to Salvia combines age controls with comprehensive drug education. This approach is working for tobacco, a far more harmful drug that has contributed to more deaths than alcohol and illicit drugs combined.xxvi As a result of education initiatives and age restrictions, tobacco use has declined dramatically over time despite its legality for adults.xxxii

In addition to age controls, states can adopt other commonsense restrictions on Salvia, such as product labeling requirements to protect the health of adult consumers,xxvii as well as marketing, branding and retail display restrictions—all of which are proven to reduce youth access to tobacco products and impulse tobacco purchases among adults.xxxviii

Several states have rejected the criminalization of Salvia in favor of regulatory restrictions. In 2007, the Maine legislature enacted Legislative Document 66, outlawing the sale of Salvia or Salvinorin A to minors. The proposed legislation initially would have scheduled Salvia, but the Legislature wisely chose to amend the bill to prohibit sales to youth instead. According to the Legislature’s Joint Standing Committee on Criminal Justice and Public Safety, the penalties for sale of Salvia to a minor are modeled on the penalties in Maine’s statutes for tobacco sales to
The California State Assembly recently adopted Assembly Bill 259, which makes the sale or distribution of Salvia to any person under age 18 a misdemeanor, punishable by imprisonment in a county jail for not more than six months, by a fine of no more than $1,000 or both. The author of AB 259, Anthony Adams (R-Hesperia), has stated that the legislation seeks to “apply the same standard to Salvia that we apply to cigarettes.”

Like California and Maine, the Maryland Legislature rejected a bill that would have prohibited Salvia, instead unanimously adopting House Bill 1145, which makes sale of Salvia to any person under age 21 a misdemeanor, and possession of Salvia by persons under 21 a civil infraction. Arizona is considering following suit.

1 States that have placed *Salvia divinorum* and/or Salvinorin A into a Schedule I category: Delaware, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Virginia; states that otherwise prohibit consumption: Alabama, Louisiana, Minnesota, North Carolina, Tennessee, West Virginia, and Wisconsin.

2 States considering legislation related to *Salvia divinorum* in 2010: Alaska, Arizona, Hawaii, Iowa, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Rhode Island and South Carolina; states that considered legislation related to *Salvia divinorum* in 2009: Connecticut, New Mexico, Texas and Utah.


5 Prisinzano, 527.


10 Aashish S. Morani et al., “Effect of Kappa-Opioid Receptor Agonists U69593, U50488H, Spiradoline and Salvinorin A on Cocaine-Induced Drug-Seeking in Rats,” *Pharmacology,

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Babu, 146-148; Prisinzano, 527-531.


Gussow, 23.

Boire, 8-9.


Khey, 302.


Substance Abuse and Mental Health Services Administration (SAMHSA), *Use of Specific Hallucinogens.*


