



Department of Justice

STATEMENT OF

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U.S. DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

FOR A HEARING ENTITLED

**DEADLY SYNTHETIC DRUGS: THE NEED TO STAY AHEAD OF THE
POISON PEDDLERS**

PRESENTED

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Statement of Richard Hartunian
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Before the Committee on the Judiciary
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Chairman Grassley, Senator Leahy, and distinguished members of the Senate Judiciary Committee, on behalf of Attorney General Loretta Lynch and my colleagues at the United States Department of Justice, I appreciate your invitation to testify today regarding our prosecutorial efforts to combat the challenges presented by synthetic drugs comprised of new psychoactive substances.

By enacting the Synthetic Drug Abuse Prevention Act in 2012 (SDAPA),¹ Congress provided an immediate and forceful contribution to the overall effort to combat the designer drug threat. SDAPA permanently placed 26 substances into Schedule I of the Controlled Substances Act (CSA), including synthetic cannabinoids, cathinones, and phenethylamines. It also doubled the maximum period of time that the Drug Enforcement Administration (DEA) can administratively schedule substances under its emergency scheduling authority, from 18 to 36 months. While we have had significant success using the tools provided by Congress and administrative action, new psychoactive substances continue to flourish outside the statutory structure.

The proliferation of synthetic drugs in the past several years, including both illicit versions of scheduled Rx drugs and new unscheduled psychoactive substances, has presented unique challenges to law enforcement. The emergence of synthetic opioids, such as illicitly manufactured fentanyl and its derivatives present a serious risk of overdose and death by those who misuse these substances. The overlap of the opioid epidemic and the synthetic drug threat presents a significant danger to public health and safety. Federal prosecutors around the country are keenly focused on these threats and are working with the DEA and other law enforcement agencies to identify and prosecute those responsible for this ominous trend.

Community Impact

Dangerous new psychoactive substances have also had a horrible human cost. Comforting names and packaging tantalize people looking for a little extra help in dealing with the stresses of everyday life. Others are drawn by the claim that they can get high with legal alternatives to controlled substances, or that they can beat drug testing by using synthetics. Whether the drugs are synthetic cannabinoids, synthetic cathinones (commonly called “bath

¹ P.L. 112-144 – Food and Drug Administration Safety and Innovation Act, Subtitle D, Section 1151, titled “Synthetic Drug Abuse and Prevention Act of 2012.”

salts”), or mimic other stimulants, the consequences too often include hallucinations, violence, and hospitalization, or worse. Many of these dangerous synthetic drugs are produced in China by chemists misusing formulas discovered by legitimate scientists. As illicit manufacturers of synthetic drugs continue to vary the formulas to stay ahead of the scheduling process, the danger to users from a toxic mix of unknown chemicals increases. Even batches based on the same formula may have significant variations in potency and toxicity. For synthetic cannabinoids, the crude means of getting the product to market adds to the danger, as spraying chemicals haphazardly on plant material to mimic marijuana creates dangerous hot spots of highly concentrated chemicals.

Our cases and reports by law enforcement, hospital emergency departments, and the media reflect that users may suffer from a host of severe psychological symptoms. For example, one practitioner described a users’ response to the synthetic drug "Flakka" (now scheduled) as “severe anxiety, paranoia, and delusions, leading to a psychotic state, characterized by a surge of violence associated increased strength and loss of awareness of reality and surroundings.”² Local police officers in Utica, New York, were regularly challenged by irrational, combative, and delusional drug users who posed a serious physical threat to themselves, police officers, and the public. An example that garnered worldwide attention in 2012 involved a 54-year-old man under the influence of a synthetic cathinone who was seen naked in the street waving a tree branch. The man insisted to responding police officers that they would have to kill him to stop him. The officers deployed a Taser gun, but the man pulled the probes out of his chest and continued walking. It took two officers to finally subdue him. In March 2016, Syracuse Police took a 25-year-old man to the hospital after his mother reported that he had set his mattress on fire after ingesting synthetic cannabinoids. Other central New York incidents involving these substances have included: a woman who had to be Tasered to stop her from choking and punching her 3-year-old son; a woman trying to kill a ghost by shooting a gun into a tree behind her home; a man who jumped into a car of a female neighbor and then chased the woman into her house, where he tried to break down the door; and a woman who tried to bite the face of a responding police officer and screamed that she wanted to “kill someone and eat them.”

The Upstate New York Poison Center statistics show an alarming trend in the Northern District of New York: in 2015, there were 509 reported hospital cases involving synthetic cannabinoids, up from 123 in 2014. In 2015, the Onondaga County Health Commissioner found that 6 deaths were linked to the use of synthetic cannabinoids. In Syracuse, where the local term for synthetic cannabinoids is “spike,” there were 19 spike overdoses in one day (in April 2015), and users reportedly referred to the area as “spike nation.”

² Robert Glatter, MD, “Flakka: The New Designer Drug You Need To Know About” *Forbes*, April 4, 2015, <http://www.forbes.com/sites/robertglatter/2015/04/04/flakka-the-new-drug-you-need-to-know-about/#3c6cefdb20bf>.

Fatal overdoses from synthetic opioids continue to take our loved ones at a horrific pace. Acting Administrator Chuck Rosenberg of DEA detailed the recent scourge of fatalities in the Sacramento, California, region resulting from counterfeit hydrocodone laced with fentanyl. And the public health threat from both illicitly-manufactured and diverted fentanyl is nationwide. Through April 14, 2016, 92 people have fatally overdosed from fentanyl in the Cleveland area this year alone, in spite of the combined efforts of the U.S Attorney's Office for the Northern District of Ohio, law enforcement, and public health officials.³ In New Hampshire, approximately 65 percent of the state's overdose deaths in 2015 resulted from overdoses of fentanyl, either alone or in combination with other drugs.⁴ In response, the U.S. Attorney's Office for the District of New Hampshire formed a partnership with the Office of New Hampshire Attorney General to focus on overdose cases. In my district, opioid related deaths in Onondaga County increased by 140% over the last 5 years, and the heroin overdose mortality rate has gone from 8% to 170% above the national average.⁵ Fentanyl makes heroin more deadly, as we are seeing in a pending case involving the overdose death of a 24-year-old woman who was 5 months pregnant.

The Analogue Act

The Controlled Substances Act (CSA), passed in 1970, regulates the manufacture, possession, use, importation, and distribution of certain drugs, substances, and precursor chemicals. Prior to 1986, drug dealers and chemists evaded prosecution by manipulating the molecular structure of a scheduled drug in order to create an analogue that provided the same effects, taking advantage of the slow moving administrative scheduling process. In response, Congress amended the CSA by passing the Controlled Substances Analogue Enforcement Act in 1986 (Analogue Act).⁶ The Analogue Act seeks to "prohibit[s] persons who specifically set out to manufacture or to distribute drugs which are substantially similar to the most dangerous controlled substances from engaging in this activity."⁷ Under certain circumstances, the Analogue Act allows federal prosecutors to charge the manufacturing, distribution, dispensation, or possession of substances not specifically scheduled.

³ "The Heroin and Opioid Epidemic – Our Community's Action Plan," U.S. Attorney's Office for the Northern District of Ohio, <https://www.justice.gov/usao-ndoh/heroin-epidemic>.

⁴ Press Release, U.S. Attorney's Office for the District of New Hampshire, April 25, 2016, <https://www.justice.gov/usao-nh/pr/united-states-attorney-emily-gray-rice-and-new-hampshire-attorney-general-joseph-foster>.

⁵ The Onondaga County Health Commissioner has indicated that: a) the number of opioid related deaths there increased from 24 in 2010 to 55 in 2015; and b) the heroin-related overdose mortality rate in Onondaga County went from 0.2 per 100,000 in 2010 to 5.6 per 100,000 in 2014, while the national average went from 1.0 to 3.3 per 100,000.

⁶ 21 U.S.C. § 813.

⁷ *United States v. Forbes*, 806 F.Supp. 232, 235 (D. Colo. 1992) (quoting S. Rep. No. 99-196, at 5 (1985)).

Criminal liability depends upon a finding, in each case, that the substance is an analogue intended for human consumption, and that the defendant knew the substance was one regulated under federal law or knew the identity of the substance.⁸ A controlled substance analogue, under the CSA, resembles a controlled substance in chemical structure and actual (or purported) pharmacological effect.⁹ Even if a substance is widely regarded as a “controlled substance analogue” under the CSA, each criminal prosecution must establish that fact anew at trial. Federal prosecutors may also need to establish this fact at a sentencing hearing pursuant to the U.S. Sentencing Guidelines.¹⁰ This requires extensive use of expert witnesses to prove substantial structural similarity and pharmacologic effect. For example, at least ten U.S. Attorneys’ Offices, including mine, utilized DEA experts to prove that the hallucinogenic substance AM-2201 had substantial structural similarity and similar pharmacologic effect to the Schedule I substance JWH-018. After the SDAPA placed AM-2201 into Schedule I of the CSA in 2012, synthetic drug manufacturers transitioned seamlessly to new psychoactive substances, such as the hallucinogenic substance UR-144. Then, at least eleven different U.S. Attorneys’ Offices repeatedly utilized expert witnesses to prove that UR-144 had substantial structural similarity and pharmacologic effect to the Schedule I substance JWH-018.

Proving that a substance was intended for human consumption presents another challenge. Mislabeling, marketing, and selling synthetic cathinones openly with names such as “bath salts,” “plant food,” “glass cleaner,” “tree mulch,” or “metal corrosion inhibitor,” along with a “not for human consumption” label, appears designed to provide manufacturers, wholesalers, and retailers with a “lack of knowledge” defense, setting up a claim of unawareness of a user’s ultimate intent to ingest the drug. Cases in my district have involved controlled purchases and evidence that included conversations about ingestion, i.e., how much to smoke, and the pharmacological effects of smoking the products. Such direct evidence of a supplier’s knowledge is difficult to obtain, particularly from manufacturers or individuals higher on the distribution chain. While we present circumstantial evidence of a target’s awareness of human consumption, the limits of such proof can sometimes allow more substantial targets to evade prosecution.

⁸*McFadden v. United States*, 135 S.Ct. 2298, 2302-04 (2015).

⁹ Under the CSA, and as interpreted by the courts, the government must prove that a substance is an analogue if: (1) the chemical structure of the substance is substantially similar to the chemical structure of a Schedule I or II controlled substance; AND EITHER that (2) the substance has a similar or greater pharmacological effect on the central nervous system than a schedule I or II controlled substance; OR that (3) with respect to a particular person, that such person represents or intends the substance to have a pharmacological effect substantially similar to or greater than a Schedule I or II controlled substance. *See* 21 U.S.C. § 802(32). The government must also always prove that the substance was intended for human consumption. *See* 21 U.S.C. § 813.

¹⁰ The United States Sentencing Guidelines lists a limited number of substances in a drug quantity table. When the substance is not listed in the drug quantity table, the Court must determine the most closely related controlled substance listed in the guidelines to convert these substances to their marijuana equivalency in order to determine the defendant’s base offense level under the guidelines. This determination mirrors the Analogue Act. *See* application Note 6 to U.S.S.G. § 2D1.1.

The primary problem in preventing the distribution and abuse of analogues and prosecuting violations is the wiggle room resulting from the absence of precise identification of analogues in the law to define their illegal status beyond question – in stark contrast to the controls and crimes that unquestionably apply to listed controlled substances.

Prosecutions Pursuant to the Analogue Act

Neither the challenges in utilizing the Analogue Act nor the evasive actions of synthetic drug manufacturers and distributors have deterred our efforts to protect the American public. U.S. Attorneys' Offices nationwide collaborated with law enforcement and the Criminal Division of the Department, in Organized Crime Drug Enforcement Task Forces (OCDETF) Operations Log Jam and Synergy to produce the successes articulated by Acting Administrator Rosenberg. In the Northern District of New York, we first used the Analogue Act in 2009, when local law enforcement learned of the distribution, in and around Syracuse, New York, of a new drug colloquially referred to as "Molly." The effects of this drug were similar to MDMA (ecstasy) and it field tested positive for MDMA, but laboratory analysis resulted in a negative finding for controlled substances. Soon, we learned that the substances being distributed were 4-MMC¹¹ and then 4-MEC¹², both analogues of methcathinone, a Schedule I controlled substance. A company called CEC Limited, based in Shanghai, China, owned and operated by Lei Zhang (aka "Eric Chang"), supplied these MDMA "knock offs" to distributors in the Syracuse area, including William Harper, a café owner and two-time city council candidate. Using time-tested investigative techniques, including confidential informants and wiretaps, we prosecuted 22 defendants under the Analogue Act, convicting 20 individuals and seizing large quantities of Molly, packaging, scales, cash and guns. Zhang, a Chinese national, and one other defendant remain fugitives. As we have seen in several subsequent cases, the synthetics were shipped from China in multi-kilogram quantities to residences and businesses in Central New York, concealed with false labeling which described the shipments as "metal corrosion inhibitor" and "camphanic acid," falsely stated the price of the contents, and falsely set out medical procedures to be used in the event the substance was inhaled. The defendants in this case received sentences as long as 188 months imprisonment.

In 2012, we investigated and prosecuted John Tebbetts, the owner/operator of nine Tebbs Head Shop stores in Central New York. DEA conducted several controlled purchases at all nine of his businesses, collecting synthetic cannabinoids and synthetic cathinones with names like "Spice," "K2," "Amped," "Clear," and "Legal Phunk." Once the substances were determined to

¹¹ DEA temporarily placed 4-MMC (mephedrone) in Schedule I of the Controlled Substances Act on October 21, 2011. Control of these compounds became permanent on July 9, 2012, via passage of the Synthetic Drug Abuse Prevention Act of 2012 (Public Law 112- 144, Title XI, Subtitle D).

¹² DEA temporarily placed 4-MEC in Schedule I of the Controlled Substances Act on March 7, 2014. DEA extended the temporary Schedule I status of 4-MEC on March 4, 2016, pending permanent scheduling action.

meet the scientific requirements of the Analogue Act, we executed search warrants and seized nearly 12 kilograms of synthetic cannabinoids, together with thousands of packages of cathinones and other substances, three vehicles, a recreational vehicle, and over \$314,000 in cash. Mr. Tebbetts was sentenced to imprisonment for 87 months.

From coast to coast and in the heartland, my fellow U.S. Attorneys have achieved similar successes against distributors of new psychoactive substances using a variety of federal statutes,¹³ including the Analogue Act. In North Dakota, after two teenagers died from analogue overdoses in the Grand Forks area in 2012, an interagency OCDETF investigation, Operation Stolen Youth, revealed that Charles William Carlton's company, Motion Resources, located near Houston, Texas, was importing analogue substances from several countries and distributing them across the United States under the guise of a research chemical vendor. Carlton admitted that he knew the danger posed by consuming these analogues, but sold them anyways to increase his profit margin.¹⁴ Carlton was sentenced to imprisonment for 246 months and forfeiture of \$385,000. Fourteen other defendants were also convicted, with sentences ranging from probation to 20 years imprisonment.

In the Eastern District of California, Victor Anthony Nottoli pleaded guilty to conspiracy to defraud the United States and causing at least 24 tons of misbranded smokable synthetic cannabinoids to be introduced into interstate commerce. This OCDETF investigation, Operation Sugar and Spice, revealed that between 2011 and 2013, Nottoli's six smoke shops, doing business under the name "The Stuffed Pipe," together with other outlets, generated more than \$20 million in proceeds. Nottoli and his coconspirators manufactured and distributed synthetic cannabinoids containing the hallucinogenic compounds AM-2201 and XLR11 marketed under names such as "Bizarro," "Posh," "Sonic Zero," "Headhunter," "Neutronium," and "Orgazmo." Nottoli also agreed to the forfeiture of over \$6 million.

In April 2016, in the Middle District of Florida, Wei Zhang, a/k/a David Liteng of Tianjin, China, was sentenced to 50 months in federal prison and forfeiture of \$1.5 million for conspiracy to import synthetic cannabinoids knowing they were intended for human consumption, and aiding and abetting the importation of controlled substances and synthetic cathinones. From 2010 until his arrest in April of 2014, Zhang provided hundreds of kilograms of these substances to the United States, Russia, and Europe in smaller, multi-kilo parcels. Zhang, a chemical engineer, monitored administrative and Congressional scheduling efforts and then altered his

¹³ Depending on the facts of the case, federal prosecutors may charge 18 U.S.C. § 371 - Conspiracy to Defraud the United States and 21 U.S.C. §§ 331(a)(2); 18 U.S.C. § 2 - Causing Misbranded Drugs to Be Introduced Into Interstate Commerce instead of the Analogue Act.

¹⁴ Law enforcements identified the analogue substance causing the fatal overdoses as 251-NBOMe, which becomes active at sub-milligram doses. DEA temporarily placed 251-NBOMe in Schedule I of the Controlled Substance Act on November 15, 2013 and extended this scheduling on November 15, 2015.

inventory accordingly. Zhang was the third Chinese national convicted in the United States for importation of synthetic drugs.¹⁵

In the Northern District of Iowa, Ahmad Saeed and Muhammad Anwar were convicted in late 2015 of conspiracy to distribute controlled substance analogues and conspiracy to launder drug money in another OCDETF investigation, Operation Scary Spice. Saeed and Anwar were wholesale distributors of synthetic cannabinoids containing XLR-11 and AB-FUBINACA, with trade names such as “Mr. Nice Guy” and “Mr. Happy,” as well as synthetic cathinones.¹⁶ Saeed provided customers with misleading laboratory reports to make it appear that he was complying with federal drug laws, though he knew he was not. Saeed and Anwar reportedly obtained the drugs from a group in Kansas City which had a supplier in China.¹⁷

Our experiences demonstrate that Analogue Act cases are complex and time-consuming. Whether the prosecutions have involved brick and mortar retailers, such as head shops and convenience stores, internet purchases from international suppliers using wire transfers and third party recipients, or manufacturers and wholesalers that attempt to create an aura of legitimacy, the challenges presented by these cases, and the exponentially increasing volume and variety of new psychoactive substances, continue to make our enforcement efforts more difficult.

Education and Prevention Efforts

Success in reducing the threat posed by any emerging pattern of criminal activity requires a comprehensive solution. In the areas of gang violence, child exploitation, investor fraud, and numerous others, United States Attorneys combat crime with both vigorous law enforcement and robust support for effective prevention programs. The fight against the abuse of new psychoactive substances requires the same binary commitment. As we use the Analogue Act to prosecute traffickers, we must do all we can to educate potential users about the dangers of these volatile substances.

United States Attorneys and DEA leaders have implemented effective prevention strategies in this area. In June 2013, DEA sent a letter to each of the top 100 retail convenience store and gas station chain corporations in the United States informing them of the alarming

¹⁵ Press Release, U.S. Attorney’s Office for the Middle District of Florida, April 27, 2016, <https://www.justice.gov/usao-mdfl/pr/chinese-chemical-engineer-sentenced-conspiracy-and-importation-synthetic-drugs-and>.

¹⁶ Press Release, U.S. Attorney’s Office for the Northern District of Iowa, October 30, 2015, <https://www.justice.gov/usao-ndia/pr/wholesale-synthetic-drug-distributor-convicted-drug-and-money-laundering-conspiracies>.

¹⁷ Press Release, U.S. Attorney’s Office for the Northern District of Iowa, October 22, 2015, <https://www.justice.gov/usao-ndia/pr/oklahoma-man-pleads-guilty-conspiring-distribute-synthetic-drugs-and-launder-money>.

trend of the sale and abuse of synthetic designer drugs masquerading as over-the-counter household items such as bath salts, incense, or jewelry cleaner. The police department in Syracuse sent similar letters in my district.

Prosecutors and investigators are partnering with health care providers, educators, and prevention organizations. We participate in events like the Eastside Community Forum on Substance Abuse, sponsored by three Syracuse area high schools. Our convening power brings together interdisciplinary groups to address substance abuse problems. We gather law enforcement and community leaders to share experiences and promote collaboration that furthers public health and safety. While our prosecutions punish offenders, deter others from engaging in such conduct, and raise public awareness of the dangers of synthetic drugs, we understand that prevention and rehabilitation are necessary components in a comprehensive solution. Accordingly, we invest substantial resources in youth education programs like our LEADership Project, reaching 5th grade students in New York's Capital Region, and the NDNY's Intensive Reentry Court, which helps high-risk post-release supervisees in Albany and Syracuse find the substance abuse help they need to deal with their addictions and successfully reintegrate into society.

Conclusion

To address the threats posed by new psychoactive substances and the opioids epidemic successfully, we must continue to apply a multi-pronged strategy of enforcement, prevention, and outreach. The tools Congress has given us have allowed us to take aggressive action against synthetic drug manufacturers and dealers, but we continue to face challenges in this area, such as the manipulation of synthetic substances to circumvent the statutory structure. We look forward to continuing our partnership with Congress to address this issue and others, including by finding ways to assist those who fall prey to these and other addictive substances. Thank you for the opportunity to engage on this important subject. We are committed to prosecuting and holding the poison peddlers accountable for as long as it takes.