

Special Edition of Police Prosecutor Update

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On March 15, 2012, Governor Daniels signed new legislation regarding synthetic drugs and its provisions took immediate effect. Bath salts and other forms of synthetic drugs have continued to cause serious health problems for those who unwisely choose to use them for euphoric purposes. After the key drugs were added to the scheduled substance list last year, drug manufacturers reengineered their products. New drugs were created by adding molecules to the scheduled substances thus creating new unscheduled substances. These new drugs then reappeared legally on store shelves. The changes in Indiana law strengthen the ban on synthetic drugs and will allow prosecutors and police to charge individuals who possess or deal the synthetic drugs where they could not do so before. This special edition of the PPU will briefly discuss those changes.

The law changes the name of the drug group throughout all statutes from “synthetic cannabinoid” to “synthetic drug”. “Synthetic drugs” include, but is not limited to, what would be sold as synthetic cannabinoids, aka K2 and spice, as well as synthetic stimulants, aka bath salts.

Additionally the law also adds a definition of “analog” for purposes of the synthetic drug statutes and makes it clear that the definition of “synthetic drug” includes any analog of the compounds listed and defined. Under I.C. 35-41-1-3.5:

Sec. 3.5 “Analog” is defined as: a new or novel chemical entity, independent of synthetic route or natural origin, having substantially the same:

- (1) carbon backbone structure; and
- (2) pharmacological mechanism of action;

as a compound specifically defined as a synthetic drug.

The problem with the analog law is that the prosecutor will be required to prove the pharmacological effects of drugs that haven’t been tested or have proven effects. Expert witnesses would be forced to rely on small amounts of literature that exist, poison control and emergency room records.

Note: IC 35-48-1-9.3 also contains a definition of “controlled substance analog” that appears to conflict with the new “analog” definition.

More importantly the law also expands the definition of “synthetic drug”. The law adds a large number of chemical compounds to the defined list of synthetic drugs and also adds a series of structure based definitions. In reading the statute, none of this will make sense to you, but for the chemists analyzing the drugs, this will change everything. What was testing negative before this law should test positive with the changes. Even when the drug manufacturers make a small change to the chemical structure of the drug it will likely still be illegal under this new law **if** the base structure does not change. However, as we have seen happen in the past, it is likely that not all substitutions and chemical changes will be scheduled and therefore illegal. Some states are already looking at other chemical groups that need to be added to existing laws. Experts expect the drug manufacturers to make changes rapidly that would keep their products from being illegal under state and federal law.

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The penalty section for dealing in a synthetic drug has also changed. Under I.C. 35-48-4-10, the offense becomes a C felony only if the amount is greater than two (2) grams **and** the person delivered or financed the delivery of the synthetic drug on a school bus or in, on or within one thousand (1000) feet of school property, a public park, a family housing complex, or a youth program center. Under the prior law, dealing three hundred (300) grams or more of a synthetic drug or dealing any amount on a school bus or within a thousand (1000) feet of school property, a public park, a family housing complex, or a youth program center was a C felony.

These changes will not completely solve the problem as new euphoria causing chemicals will be discovered and distributed. In an effort to keep up with the manufacturers, the statute now provides that the Board of Pharmacy can declare a substance to be a synthetic drug on an emergency basis if the substance has been scheduled by the DEA or another state. This emergency rule remains in place until the General Assembly has the opportunity to pass legislation officially scheduling the substance or chemical base. This will allow the Board of Pharmacy to add new chemicals to the scheduled list if it becomes necessary in a much shorter period of time.

Finally, the law adds a section that hits retailers in the pocketbook as well. A section in Title 4 requires the suspension of the retail merchant certificate for the place of business for one (1) year if someone is convicted of selling out of that store. That should make the store owners think twice before allowing these substances to be sold in their stores. Police and prosecutors should keep this in mind when obtaining convictions out of local stores. Either the police or the prosecutor must communicate this information to the Department of Revenue to assure a hearing is held regarding the retailers merchant certificate.

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