

CODE ENFORCEMENT

Synthetic Drugs—Isn't Home-Grown Better than Store-Bought?

By David Wesner

When we were kids, our moms would always tell us that homemade meals were better than store-bought. A meal was more satisfying when you made it yourself. Apparently, though, homemade or home-grown isn't necessarily better when it comes to drugs. A fast-growing problem amongst teens and young adults (although the problem isn't confined to this group) is the trend toward manufactured drugs that you can buy at the local gas station or online.

The trend seemed to begin (or at least became more well-known) with a substance known as K-2 or "spice," a synthetic form of cannabis that was supposed to mimic the effects of cannabis. The trend occurred due to industrious individuals trying to find a way around the criminalization of cannabis. Since K-2/spice was not naturally-grown cannabis, or a part of or made from the cannabis sativa plant, the argument was that the substance was not illegal. Legislatures, recognizing the problem, began to make amendments to include synthetic cannabis, or at least certain varieties. Unfortunately, the trend has continued with new versions of synthetic cannabis, and has spread to synthetic versions of controlled substances. Synthetic versions of controlled substances are known as "bath salts," and have names like "Bliss" and "Tranquility." What kid wouldn't want to try something like that? These drugs are easy to find, cheap to buy, and marketed as perfectly legal and mostly harmless alternatives to controlled substances. They are set up to make it easy for teens and others to fall into the trap of trying something, even though they have no idea of the effect it will have on them.

With cannabis and the more "traditional" controlled substances, most users and potential users have understood the effects and have an appreciation of how the amount taken will impact them. This is certainly not the case with synthetic drugs. This is definitely a situation where the devil you know is better than the devil you don't. The reality of these synthetic versions of hard drugs inside pretty packages is a devastating impact on the individual who decides to ingest them, and on those around him.

The effects of these drugs include unusual violence, physical suffering, psychotic episodes, and a distinct possibility of death. I've read stories about individuals threatening to perform surgery on themselves because they thought something was inside them; individuals tearing down walls in their house because they thought people were inside the walls; and parents killing their child and then themselves. One of the less known and very likely lethal aspects of these drugs is the difference from one package to another. A user may ingest the drug from one package and feel certain effects because the level of drug is not that significant; in getting the next package, the user may want to ingest a greater quantity to feel more of the effects. The problem is that the next package may have a higher level or concentration of the drug, which results in an overdose. A high probability of accidental overdose with these drugs exists, even for (or perhaps, especially for) regular users.

Initially, legislatures and municipalities attacked this drug trend by passing statutes or ordinances referencing the specific synthetic versions that were out at the time. The problem with this was that it didn't give the manufacturers any credit: some criminals just can't be counted on to be dumb. Instead of rolling over and moving on to something else, the manufacturers merely altered the chemical make-up of the substance just enough to get around the legislation dealing with a specific version of a synthetic drug. The drugs, predictably, changed as fast as the legislatures and municipalities amended their statutes and ordinances for the new products. I have been a firm advocate for attacking this problem at both the state and local level. However, I did not immediately draft any ordinances regarding this problem in order to see how this was going to play out. Now that we have seen how the manufacturers responded to amendments, legislatures and municipalities have recognized the need to not be completely specific about what substances they are banning.

In structuring an ordinance, the best option is to have general descriptions of the nature of the substance to be banned and their chemical make-up, and have some examples. The ban should also include structural derivatives and substances that mimic the effects of the known substances. You may end up with a couple of different categories (perhaps similar to the categories of controlled substances which are already illegal), such as "synthetic cannabinoid," "synthetic stimulant," and "synthetic psychedelic/hallucinogen." The ban should include sale, delivery, possession, and use of the substances.

The penalty provision should be significant in order to hopefully, provide some deterring effect. I know that many municipalities criminalize ordinance violations to provide for a possible period of incarceration for a conviction. I have not provided that level of penalty in ordinances I have drafted, including our ordinance on cannabis, because that kind of penalty comes with additional costs and burden for the municipality. I would prefer that the county prosecutor pursue charges at that level. However,

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Occupy Movement *Cont'd from page 9*

lives/2011/12/27/gIQAwCtNRP_story.html (last accessed May 8, 2012).
31. Meghan Barr, *Occupy Wall Street: 6 Months Later, What Has Occupy Protest Movement Achieved?*, The Huffington Post, Mar. 16, 2012, at http://www.huffingtonpost.com/2012/03/16/occupy-wall-street-6-months-later_n_1352752.html (last accessed May 8, 2012).
32. Colin Moynihan, *Evicted From Park, Occupy Protestors Take to the Sidewalks*, The New York Times, Apr. 12, 2012, at http://www.nytimes.com/2012/04/13/nyregion/evicted-from-park-occupy-protesters-take-to-the-sidewalks.html (last accessed May 8, 2012).
33. Gene Policinski, *Government must be careful with tactics against Occupy camps*, First Amendment Center, Mar. 02, 2012, at http://www.firstamendmentcenter.org/government-must-be-careful-with-tactics-against-occupy-camps (last accessed May 13, 2012).
34. Heffron v. Int'l Soc. for Krishna Consciousness, Inc., 452 U.S. 640, 650, (1981) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972)). ML

Public Employer *Cont'd from page 13*

against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit), Age Discrimination in Employment Act of 1967 (prohibits age discrimination against workers 40 or older and also makes it illegal to retaliate against a person because the person complained about age discrimination), Title VII of the Civil Rights Act of 1964 (discrimination on the basis of race, color, religion, national origin, or sex prohbited; the law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit), Genetic Information Nondiscrimination Act of 2008 (this makes it illegal to discriminate against employees or applicants because of genetic information).
8. Macy v. Holder, Appeal No. 0120120821, April 20, 2012 at http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt (transgender complainant's complaint of discrimination based on gender identity, change of sex, and/or transgender status held cognizable under Title VII).
9. As an example, the Civil Service Reform Act of 1978, prohibits federal employees who have authority to take, direct others to take, recommend or approve any personnel action from discriminating against applicants and employees on the bases of race, color, sex, religion, national origin, age, disability, marital status or political affiliation and from discriminating against an applicant or employee on the basis of conduct which does not adversely affect the performance of the applicant or employee. The Office of Personnel Management has interpreted the prohibition of discrimination based on "conduct" to include discrimination based on sexual orientation. *See* U.S. Office of Personnel Management, Addressing Sexual Orientation Discrimination In Federal Civilian Employment, A Guide to Employee's Rights, at http://www.opm.gov/er/address2/Guide01.asp (last visited July 22, 2012) and U.S. Equal Employment Opportunity Commission, Discrimination Based on Sexual Orientation, Status as a Parent, Marital Status and Political Affiliation, at http://www.eeoc.gov/federal/otherprotections.cfm (last visited July 22, 2012). ML

Supreme Court *Cont'd from page 23*

rantless "sniff test" violated his right against unreasonable searches under the Fourth Amendment.

The Florida court granted the motion to suppress. "Contrary to popular belief, a 'sniff test' conducted at a private residence is not necessarily a casual affair in which a canine officer and dog approach the front door and the dog then performs a subtle 'sniff test' and signals an 'alert' if drugs are detected." Instead, it was a "public spectacle," "a sophisticated undertaking that was the end result of a sustained and coordinated effort by various law enforcement departments." Accordingly, given the special status accorded a citizen's home under the Fourth Amendment, the "sniff test" was a "substantial government intrusion into the sanctity of the home" and constituted a search within the meaning of the Fourth Amendment. As such, the search had to be preceded by an evidentiary showing of probable cause. ML

Code Enforcement *Cont'd from page 31*

I do believe in making the penalties as stiff as possible. The penalty provision should also include attacking municipally-issued licenses, such as a tobacco dealer's license. This provision would allow pursuing businesses, such as gas stations and convenience stores selling these substances, which would be the likely places for teens and young adults to purchase the drugs.

Folks, the war on drugs just got bigger and more problematic. If the thinking on the previous version of the war on drugs is that it is unwinnable, what position are we in now as we deal with synthetic drugs, a moving target? We all need to work in concert to wage this war, as best we can. ML

Ordinances *Cont'd from page 29*

"Legislature's intent to allow not only local regulation of the geographic placement of collectives and the manner in which they conduct operations, but also local regulation of the creation of collectives. The local power to regulate creation, by definition, carries with it the power to regulate the number of collectives in existence." The trial court's order granting the preliminary injunction was therefore reversed. *420 Caregivers, LLC v. City of Los Angeles*, No. B230436, 2012 Cal. App. LEXIS 780 (Cal. Ct. App. July 03, 2012). The League of California Cities and California State Association of Counties participated as Amici Curiae on behalf of the City in this case. ML

Cases *Cont'd from page 35*

intended that the projectiles explode over the students' heads or against a wall, the officers' conduct resulted in Nelson being hit by a projectile that they intentionally fired towards a group of which he was a member. Their conduct was intentional, it was aimed towards Nelson and his group, and it resulted in the application of physical force to Nelson's person as well as the termination of his movement."

Regarding the reasonableness of the use of force, Nelson and his friends did not