



THE NEW YORK STATE SENATE COALITION

THE STATE OF SYNTHETICS:

A Review of the Synthetic Cannabinoid Drug Problem in New York & Solutions on Ending the Epidemic

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INTRODUCTION

This past year, the City of New York and upstate communities, particularly in central New York, experienced a surge in hospitalizations related to synthetic cannabinoid exposure, also referred to as “K2,” “Spike,” and “synthetics.” Although many of the reported synthetic cannabinoid cases result in hospitalizations, death can also result as in the tragic case of Deirdre Canaday’s son, Aaron Stinson in Athens, New York. On September 26, 2011, Aaron smoked a packet of synthetic cannabinoids, labeled, “Mr. Nice Guy,” and immediately fell into cardiac and respiratory arrest. He passed away at just 26 years of age.

This report will explore this deadly epidemic as relayed to members of the Independent Democratic Conference (IDC) during two summits they held in New York City and Syracuse, and to members of the Senate Republican Conference. Further, this report argues that the economic costs of the synthetic cannabinoid crisis to the State is too large to ignore and thus meaningful legislation must be passed. Finally, this report will explain the inadequacies of existing laws and why new legislation is critical if the State is going to be able to successfully curb this epidemic. The package of bills proposed by the Majority Coalition includes felony penalties (S.2836 C Flanagan, S.4743 Funke) and license revocations for businesses that sell synthetic cannabinoids (S.6040 A Klein), a prohibition on analogous chemical compounds of drugs (S.1640 A Klein), and a comprehensive electronic database listing all synthetic cannabinoid compounds and common names of synthetic cannabinoid packages (S. 6496 Valesky). Passage of these bills would give communities throughout the State the power to fight the scourge of synthetic cannabinoids.

BACKGROUND

In recent years, the threat of synthetic cannabinoids to New Yorkers has grown steadily. In 2015 alone, more than 6,000 state residents were hospitalized due to use of synthetic cannabinoids, including 700 people in the Bronx.¹ These events prompted Senator Klein’s office to conduct an undercover investigation into the ease with which this dangerous drug could be purchased in New York City. Senator Klein’s office was able to purchase these drugs at over 20 stores in the Bronx for only \$5 per packet. Based on the findings of this investigation Senator Klein introduced legislation to suspend or revoke the licenses of businesses to sell alcohol, tobacco and lottery tickets if a business sells synthetic cannabinoids (S.6040A).²

In September 2015, Senator Klein released a report titled “The Online Smoke Shop³” which detailed the online sales of synthetic cannabinoids on Craigslist, eBay and Backpage. Many of these online listings were removed after letters were sent to the CEOs of these companies

¹ Hays, Tom, August 8, 2015, *Associated Press*, “NYC sees surge in use of synthetic marijuana, complicating efforts to deal with the homeless”. Available at: <http://www.usnews.com/news/us/articles/2015/08/08/nyc-sees-surge-in-synthetic-pot-use-with-dire-consequences>

² SENATOR KLEIN, LOCAL LEADERS & HEALTH OFFICIALS DEMAND A CRACKDOWN ON ILLICIT UNDERGROUND DRUG K2, August 12, 2015. Press release available at: <http://www.nysenate.gov/press-release/senator-klein-local-leaders-health-officials-demand-crackdown-illicit-underground-drug>

³ Press release and report available at: <https://www.nysenate.gov/newsroom/articles/jeffrey-d-klein/online-smoke-shop-buying-k2-online>

demanding they take action to stop the sale of the drug. On October 9, Senator Klein hosted New York's first Summit on K2 at Jacobi Medical Center. Roundtable discussion began with the stories of victims- the parents and family members who lost a child due to synthetic cannabinoid use or witnessed the harmful effects that synthetic cannabinoid exposure had on their loved ones. Panelists represented health and human service agencies, prosecutors and local law enforcement.

The harmful effects of synthetic drugs have also hit communities in upstate New York. This year, Onondaga County and other upstate communities witnessed huge increases in overdoses related to synthetic cannabinoids. More than half of all calls in 2015 to the Upstate New York Poison Control Center related to synthetic cannabinoid exposure came from Onondaga County, making it the synthetic cannabinoid capital of upstate New York. This problem has only worsened over the past five years with the total number of synthetic cannabinoid exposures more than doubling across upstate New York since 2011. The inexpensive cost of purchasing synthetic cannabinoids (\$5 for a 4-gram packet), coupled with its availability to customers at local corner stores and bodegas, has led to a surge in the use of synthetic cannabinoids and resulting in emergency room visits.

On December 3, 2015, Senator Valesky hosted a synthetic drug roundtable discussion at Onondaga Community College with participants from law enforcement, hospitals, and providers with a focus on the effects of the synthetic cannabinoid epidemic on upstate New York. Particularly noteworthy was information shared by the Drug Enforcement Agency's (DEA) synthetic drug task force in central New York, which demonstrated the profitability of selling synthetics for criminal enterprises.

Senator Klein and Senator Valesky at the Onondaga Community College Summit:



THE DANGERS OF SYNTHETIC CANNABINOIDS

Although these drugs are often referred to as “synthetic marijuana”, synthetic cannabinoids are very different than marijuana because the chemicals in synthetic cannabinoids have a significantly more potent effect on the cannabinoid receptors in a person’s brain than tetrahydrocannabinols (THC). While the effects of these drugs can be unpredictable, the health effects of synthetic cannabinoids can include severe agitation and anxiety, a racing heartbeat, high blood pressure, nausea, vomiting, seizures, tremors, intense hallucinations, psychotic episodes, and thoughts of suicide. According to the National Institute on Drug Abuse, synthetic cannabinoids can also raise blood pressure and cause reduced blood supply to the heart, as well as kidney damage and seizures. Use of these drugs is associated with a rising number of deaths. Perhaps more worrying than the health effects of synthetic cannabinoids are their addictive nature as these drugs do not currently have any medications or therapies tailored for addiction treatment.⁴ Users who are attempting to stop abusing synthetic cannabinoids may experience headaches, anxiety, depression and irritability.

The process of manufacturing synthetic cannabinoids begins with kilograms of chemical powder smuggled into the United States via the postal service or other mail couriers. According to the Drug Enforcement Agency’s (DEA) Task Force on Synthetics, approximately 98% of synthetic cannabinoid substances come into the U.S. from China. Plant material from Mexico and Europe is then placed in a cement mixer and combined with an acetone compound. The mixture is then put in a drying tub and sprayed with flavored chemicals such as cherry, raspberry or pineapple. When the acetone dissolves, the final synthetic substance emerges and is packaged with the label of “not for human consumption.” Separate warehouses store each of the chemicals, plant materials, and final product. The below chart details some of the costs of materials needed in producing these substances.

Synthetic Cannabinoid Shopping List for Criminal Enterprises

1 kilogram of chemical powder	\$1500
50 pounds of leaves	\$500
8 ounce bottle of chemical flavoring	\$70
Tub container of Acetone	\$450
Miscellaneous materials	\$300

⁴ <http://www.drugabuse.gov/publications/drugfacts/synthetic-cannabinoids>

Total cost of all materials	\$2,820
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Criminal enterprises that sell synthetic cannabinoids have generated huge profits due to the cheap cost of buying materials and substances needed for the finished K2 product that is sold to the public. In 2015, the NYPD’s Organized Crime Control Bureau arrested 58 people related to the sale of K2 as part of a criminal enterprise. According to the DEA, one kilogram of finished product can net criminals a profit of \$87,000.

DOWNSTATE IMPACT

In the City of New York, the sale of synthetic cannabinoids is most prevalent in the Bronx, where Jacobi Medical Center witnessed a surge in hospitalizations due to synthetic cannabinoid exposure. According to the New York City Department of Mental Health and Hygiene, there have been more than 6,000 synthetic cannabinoid-related emergency room visits in the year 2015 with males accounting for 90% of these emergency room visits, and a median age of 37 for patients. Joint task force raids conducted by the NYPD civil enforcement division and the NYC sheriff’s office demonstrated that local bodega stores were the most common seller. However, Senator Klein, in conjunction with the New York City Council and Bodega Association of the United States, have secured pledges from more than 1700 bodega owners not to sell synthetic cannabinoids in their stores in an effort to “K.O. K2.”



Pictured above: Senator Klein, Councilman Torres, and Ramon Murphy, President of the Bodega Association of the United States

UPSTATE IMPACT

Exposure to synthetic drugs has spiked in the past five years, particularly in central New York. As the below data from the Upstate New York Poison Center shows, Onondaga County

experienced a 580% increase in overdoses of synthetic cannabinoids since 2011 and more than half of all calls to the Center in 2015 came from Onondaga County. In addition, the counties of Oneida, Oswego, Madison and Cayuga have experienced significant increases in synthetic cannabinoid exposure. In total, the Center received 529 reported cases of synthetic cannabinoid related overdoses from January 1, 2015 through September 17, 2015. By comparison, the Center only received 230 calls for the entire 2011 year.

Upstate New York Poison Center Case Data

January 1, 2011 to September 17, 2015						
County	2011	2012	2013	2014	2015	Change (%)
Onondaga	40	69	23	81	272	580%
Broome	8	12	4	4	23	187.5%
Monroe	29	26	3	9	18	-37.9%
Albany	2	5	0	2	15	650%
Madison	0	4	0	3	13	-
Oneida	7	8	0	5	12	71.4%
Oswego	7	10	0	6	12	71.4%
Franklin	0	1	0	4	9	-
Jefferson	2	3	2	3	7	250%
Erie	15	8	3	0	6	-60%
Cayuga	3	9	0	0	5	66.6%
Cortland	6	7	2	1	5	-16.6%
Ontario	3	11	1	0	5	66.6%
Sullivan	2	2	0	0	5	150%
Schenectady	1	0	0	1	4	300%
Niagara	4	6	1	2	3	-25%

Dutchess	4	2	0	2	2	-50%
Fulton	3	1	0	0	2	-33.3%
Orange	3	11	2	4	2	-33.3%
Orleans	0	1	0	1	2	-
Saratoga	8	1	0	1	2	-75%
Seneca	0	0	0	0	2	-
Allegany	1	2	0	0	1	0%
Cattaraugus	3	2	0	0	1	-66.6%
Chemung	7	4	1	0	1	-85.7%
Chautauqua	3	3	1	1	0	-100%
Chenango	0	0	2	0	0	0%
Clinton	16	6	2	1	1	-93.75%
Columbia	5	5	0	0	0	-100%
Delaware	4	0	0	0	0	-100%
Essex	3	2	0	0	0	-100%
Greene	0	0	0	0	1	-
Genesee	4	2	0	0	0	-100%
Hamilton	0	0	0	0	0	-
Herkimer	4	1	0	0	1	-75%
Lewis	0	2	0	1	0	-
Livingston	0	2	0	0	0	-
Montgomery	1	1	0	0	1	0%
Otsego	1	2	0	0	0	-100%
Putnam	0	0	0	0	0	-
Rensselaer	1	2	0	0	1	0%

Rockland	5	1	1	1	1	-80%
Schoharie	2	1	0	0	0	-100%
Schuyler	0	0	0	0	1	-
St. Lawrence	0	3	2	1	0	-
Steuben	5	9	1	0	1	-80%
Tioga	0	0	0	0	0	-
Tompkins	3	2	0	1	0	-100%
Ulster	4	8	1	2	0	-100%
Washington	0	1	0	0	0	-
Warren	0	0	0	2	1	-
Wayne	6	1	0	0	0	-100%
Wyoming	0	2	0	0	1	-
Yates	2	1	1	2	0	-100%
Unknown	3	-	-	-	2	-33.3%
Totals	230	262	53	141	529	130%

ECONOMIC IMPACT

Hospitals and emergency personnel have experienced a surge in patients requiring treatment after synthetic cannabinoid exposure. For example, Upstate Medical University treated 590 persons for overdose incidents related to synthetic drugs from April 1, 2015, through December 3, 2015, according to Gail Banach, Director of Public Education and Communications at Upstate Medical University. Crouse Hospital in Syracuse also received 240 cases related to synthetic cannabinoids between March and September 2015. This has led to an increase in personnel costs related to physicians, nurses, and ambulance workers.

Adding to this challenge is the fact that hospital doctors and staff have difficulty treating synthetic cannabinoid exposure because the chemical compounds ingested by patients are constantly changing and the compounds are not easily detected by routine drug tests. Without knowing which chemical compounds to treat, doctors and emergency personnel are left making educated guesses on what treatment should be applied to patients. The inability to determine the chemical compounds in synthetic cannabinoids also increases medical costs because unnecessary

medical procedures are administered to patients when emergency personnel cannot determine what substances the patient has ingested.

Calculating Financial Harm

According to the New York City Department of Health and Mental Hygiene, 6,000 New Yorkers were hospitalized in 2015 due to synthetic cannabinoid exposure. In addition, Upstate Medical University reported treating 590 persons while Crouse Hospital reported treating 240. This total of 6,830 persons hospitalized across the state serves as our baseline for calculating the financial harm.

In determining the financial cost of the synthetic cannabinoid use related to patient hospitalization and emergency room visits, analysis first begins with the direct care cost to hospitals after Medicaid or private insurance pays any portion of the patient's medical costs. According to Crouse Hospital, the approximate average direct care costs to the hospital for opioid and synthetic drug cases is \$247 per patient. The average New York Medicaid or Medicaid Managed Care cost is \$251 per patient and approximately 68% of patients hospitalized due to synthetic drugs have their costs paid by Medicaid. The average private insurance reimbursement cost is \$501 for the remaining patients. Accordingly, based on an estimate of 830 persons hospitalized in upstate New York, upstate hospitals will have incurred an average direct cost of \$65,603.20. Medicaid costs extrapolated statewide over 6,830 persons will cover up to \$1,165,744.40 and private insurance or other sources will pick up \$1,094,985.60. According to the City of New York, approximately \$2.5 million was spent at city health and hospitals on 2200 patients related to synthetic cannabinoid exposure from mid-September to mid-December 2015.

Similarly, ambulance service providers and not-for-profits have experienced an increase in costs due to synthetic drugs. This cost is comprised of out-of-pocket Medicaid costs, of which the reimbursement rate is as low as 70% to 80% to put an ambulance in service. Emergency ambulance rates are divided into two categories: basic life support and advanced life support. Ambulance emergency calls related to synthetic cannabinoid exposure vary, which may result in the patient receiving basic life support or advanced life support. Basic life support is paid by Medicaid at a rate of \$155 per patient and advanced life support is paid at a rate of \$200. With at least 6,830 people exposed to synthetic cannabinoids in 2015, ambulance costs amounted to between \$1,058,650 and \$1,366,000. Information from the United New York Ambulance Network also indicated that the cost of a 24/7 advanced life support unit is \$750,000, which is comprised of medical and personnel costs.

Next, workers compensation claims have risen due to the injuries sustained by correctional officers or emergency medical service personnel responding to a person exposed to synthetic cannabinoids. Patients or inmates exposed to synthetic drugs are often found in a violent mental state and have assaulted correctional officers or emergency medical personnel. According to the New York State Volunteer Ambulance and Rescue Association, five ambulance workers in the Utica/Rome region were out of work and on workers compensation due to injuries sustained while responding to synthetic cannabinoid users. In one instance, a synthetic cannabinoid user tackled an EMS worker, causing the worker to have an ACL tear and blowing out his knee.

There were at least 13 correctional officers assaulted by inmates exposed to synthetic cannabinoids in 2015 as reported by NYSCOPBA. The chart below contains a summary of reported assaults resulting in workers compensation claims consisting of time off from work and medical care costs.

Reported Incidents from NYSCOPBA of K2-Related Assaults by Inmates

Date	Facility	Injuries Sustained
10/24/15	Marcy CF	Officer was bitten; taken to local hospital
9/25/15	Washington CF	Officer punched in the chest
9/20/15	Bare Hill CF	Officer was punched in the head; multiple officers required to restrain inmate
9/13/15	Gouverneur CF	Inmate assaulted 4 officers (officers punched in head, bitten); mechanical restraints needed
8/27/15	Auburn CF	Inmate punched 2 officers
August 2015	Collins CF	Inmate assaulted officer
4/28/15	Bare Hill CF	Officer was punched in the face
2/23/15	Marcy CF	Officer was punched and kicked by inmate; mechanical restrains required
1/7/15	Attica CF	Officer was punched in the face

While these incidents certainly have a cost in benefits to these workers, the real cost is to their fellow officers and EMS workers, and the further damage that is done to the public when these vital safety workers are not able to work.

Although synthetic cannabinoids may not be as addictive as heroin or other narcotic drugs, individuals exposed to synthetic cannabinoids may need outpatient treatment at an addiction treatment facility. In 2012, the average cost of outpatient treatment was between \$426 and \$668, depending on geographic region. The average cost of outpatient prescription medication also

varies from \$994 to \$1077.⁵ According to a 2012 OASAS survey of 48 outpatient programs, there were 1,265 outpatients who reported use of synthetic cannabinoids. In 2012, the Upstate New York Poison Control Center reported 262 cases of synthetic cannabinoid exposure, compared with at least 529 cases in 2015 (49.5%). Extrapolating this data to 2015, approximately 2,555 persons exposed to synthetic cannabinoids may have needed outpatient treatment for this past year, for a total cost of \$1,088,430 to \$1,706,740 for outpatient treatment and a cost of \$2,539,670 to \$2,751,735 for outpatient prescription medication.

Next, municipalities and their respective police department laboratories must pay for equipment to test for the presence of synthetic chemical compounds. In order to determine the identity of a chemical compound, the New York Police Department's (NYPD) technicians match the seized substance with standards on file. According to the NYPD's Controlled Substances Lab, each standard costs the NYPD \$150 to \$700 with each standard lasting 4 to 6 months. The NYPD lab has almost 20 standards on file of common synthetic cannabinoid compounds but worldwide there have been 541 potential compounds found in different synthetic cannabinoid substances seized as of July 2015, based on data from the NYC Health and Mental Hygiene Department. Accordingly, up to 541 standards may need to be purchased if the compounds keep changing in chemical structure. Assuming each county will need to purchase at least 20 standards and each standard will need to be purchased twice during the year, each county lab will have spent \$6,000 to \$28,000 on standards with a statewide cost of \$348,000 to 1,624,000 (counting NYC as one county plus 57 other counties).

In addition, police laboratories need modern technology to identify potential synthetic compounds. The NYPD's Controlled Substance Lab uses an infrared detector to identify the compounds and compare them with their standards. This machine cost \$70,000 and was funded by a grant from the Division of Criminal Justice Services. This technology cost for each county amounts to \$4.06 million. The City is also appropriating \$700,000 for a Synthetic Cannabinoid Enforcement Investigative Group made up of law enforcement officials to assist the NYPD with stopping the sale of this drug. Similarly, the Governor's Executive Budget for State Fiscal Year 2016-2017 also includes \$2 million in funding for hand-held devices to be used by law enforcement for synthetic drug testing. Each device costs approximately \$20,000.

Based on the above calculations and analysis, the sale and use of synthetic cannabinoids have cost the state of New York, its municipalities and taxpayers a total of **\$22,731,308.20** or **\$22.7 million**.

⁵ NY State Office of Alcoholism & Substance Abuse, *Clinical Guidance on Synthetic Drug Use*; JEFFREY SWANSON, THE COST OF ASSISTED OUTPATIENT TREATMENT: CAN IT SAVE STATES MONEY? (2013)

Statewide Costs Resulting from Sale & Use of Synthetic Cannabinoids

Purchasing Standards for Lab Testing	\$1,624,000
Purchasing Infrared Detectors for Testing Chemical Compounds in K2 Packets	\$4,006,000
Direct Cost to Upstate NY Hospitals	\$65,603.20
Direct Cost to NYC Health & Hospitals	\$2,500,000
Medicaid Costs to Hospitals	\$1,165,744.40
Private Insurance	\$1,094,985.60
OASAS Public Awareness Campaign	\$2,000,000
NYC Public Awareness Campaign	\$1,000,000
Drug Testing Kits for Law Enforcement	\$2,000,000
Ambulance Costs (Basic & Advanced calls)	\$1,366,000
Advanced life support unit	\$750,000
Outpatient Treatment	\$1,706,740
Outpatient Medication Cost	\$2,751,735
NYC Synthetic Cannabinoid Enforcement Investigative Group	\$700,000
Total Costs to the State & Taxpayers	\$22,731,308.20

EXISTING FEDERAL, STATE & LOCAL LAWS

In 2012, the federal government passed the Synthetic Drug Abuse Prevention Act of 2012, which added 27 drugs, around 20 of which were synthetic cannabinoids, and their isomers and analogs to the list of schedule 1 substances. In addition, this legislation extended the period in which the Executive branch, without legislative action, can temporarily place substances in Schedule 1 from 18 months to 36 months. This allows the federal government to effectively ban substances through regulation for up to 3 years while awaiting legislative action. The federal government has used these powers to ban an additional 10 synthetic cannabinoids.

Governor Cuomo also announced via Executive Order on August 7, 2012,⁶ that the administration, using the powers granted to the Department of Health and the Public Health and Health Planning Council under section 225(4) of the Public Health Law had issued new sanitary code regulations banning the possession, manufacture, distribution, sale, or offer of sale of these synthetic cannabinoids by any individuals or entity (10 NYCRR 9.2). Section 228 of the Public Health Law states that the provisions of the state's sanitary code apply to and are effective in all portions of the state.

Under section 229 of the Public Health Law, violators of the state sanitary code can be fined up to \$250 for the first offense and up to \$500 for the second or subsequent offenses. In addition, violators can face up to 15 days in jail.⁷ Each packet, container, or separate unit of synthetic cannabinoids constitutes a separate violation under this section (10 NYCRR 9.4). Further, section 12 of the Public Health Law also states that a violator of the Public Health Law or health regulations shall be liable to the people of the state of New York for a fine of up to \$2,000 for each violation, and up to \$5,000 for each subsequent violation committed by the same person if the subsequent violation was committed within one year of the last health violation for the same violation.

Currently, Attorney General (AG) Schneiderman's office has been successful with charging stores and levying civil penalties against stores that sell synthetic cannabinoids. The AG's office has brought charges for false labeling of commodities (Agriculture & Markets Law §194), deceptive acts and practices for selling mislabeled and misbranded drugs (General Business Law §349), selling misbranded products (Education Law §6815), and selling nitrous oxide at retail stores for public intoxication (Public Health Law §3380). Legal efforts by the AG's office included the filing of 12 lawsuits against 16 store owners on July 10, 2012, in which the AG's

⁶ New York State Department of Health, Order for Summary Action, August 7, 2012, available at http://www.health.ny.gov/professionals/narcotic/docs/summary_order.pdf

⁷ See also DEPARTMENT OF HEALTH, SYNTHETIC PHENETHYLAMINES AND SYNTHETIC CANNABINOIDS (SP & SC) PROHIBITED 16, available at: https://www.health.ny.gov/regulations/recently_adopted/docs/2013-01-02_synthetic_phenethylamines_and_synthetic_cannabinoids_prohibited.pdf

office obtained temporary restraining orders against these stores from selling synthetic cannabinoids.⁸ However, current law limits the AG's office to pursuing only civil penalties, not criminal penalties.

Examples of synthetic cannabinoid packages:⁹



In addition, several municipalities have taken action on a local level to ban synthetic cannabinoids. New York City has recently (October 2015) passed a law that makes the sale of synthetic cannabinoids and possession with intent to sell synthetic cannabinoids a misdemeanor offense (Int. No. 917-A). Second, any business in New York City that sells synthetic cannabinoids is subject to a mandatory suspension upon a first violation, and subject to mandatory revocation of his or her retail dealer license for a second violation within a three-year period (Int. No. 885-A). Third, any area that is used for the sale of synthetic cannabinoids can be declared a public nuisance by the NYPD (Int. No. 897).

In July 2012, the Syracuse Common Council unanimously passed a ban on all synthetic drugs, making the sale or possession of synthetic drugs a misdemeanor, punishable by up to one year imprisonment, and a \$1,000 civil penalty. In addition, the Council urged the state to take action to ban these drugs. This past summer, the Oneida Common Council also banned the sale and possession of synthetic cannabinoids, making it a misdemeanor (Local Law #1 of 2015).

FINDINGS FROM THE SUMMITS ON SYNTHETIC CANNABINOIDS

1. Greater Awareness & Training About Synthetic Cannabinoids is Needed

Testimony from health care providers, emergency medical personnel and law enforcement indicated that the public's awareness needs to be heightened about the dangers of synthetic drug use. On September 30, 2015 the State Office of Alcoholism and Substance Abuse Services (OASAS) launched its public awareness campaign on synthetic drugs. The campaign includes television commercials, posters, and palm cards distributed in high drug use areas. Approximately \$2 million was allocated for this campaign in the 2015-2016 executive budget. The City of New York has also undertaken a public awareness campaign on synthetic cannabinoids. The campaign targets areas of the City where synthetic cannabinoid usage is prevalent with billboards, bus station posters and palm cards. The posters expressly note that K2 is not the same as marijuana.

⁸ Office of the New York Attorney General, Press Release, AG Schneiderman Wins Court Victory in Push to Ban Mislabeled Drugs from Head Shops, Oct. 25, 2012.

⁹ Photo credit: Michael Schwartz, For the *New York Daily News*

Panelists also discussed the need for additional training about synthetic cannabinoids by medical professionals and law enforcement. According to the federal Substance Abuse & Mental Health Services Administration, approximately 80% of doctors need additional training in treating synthetic cannabinoid exposure. To better prepare police officers, the NYPD began unit training on synthetic cannabinoids in September during its daily roll call. Officers in more than 77 precincts and 12 transit districts have already received such training. Law enforcement across the state should undergo similar training.

2. The Case for State Legislation

Despite these state and local actions, state legislation is needed to successfully “K.O. K2.” Local officials are not empowered to enforce federal laws, and the federal government is focused on targeting large criminal sellers, not small corner store sellers. In addition, law enforcement is empowered to use public health laws and health regulations under the state sanitary code to prosecute store owners that sell synthetic cannabinoids but the existing penalties of only 15 days in jail and fines that are up to \$2,000 per violation are not a sufficient deterrent. According to the New York County District Attorney’s Office, only two people arrested out of 606 arrests in 2015 received more than a day in jail for violations of the Public Health Law related to synthetic cannabinoids. State legislation is needed to make the sale of synthetic cannabinoids a felony offense.

The penal law does not prohibit the sale of synthetic cannabinoids, nor is it listed as a controlled substance, so there are no criminal actions that prosecutors can take with respect to synthetic cannabinoids under the penal law. This also means that prosecutors cannot use certain law enforcement tools for synthetic cannabinoid offenses that are available for other controlled substance offenses under Article 221 of the Penal Law including asset forfeiture, wiretapping and eavesdropping powers. These powers are particularly effective with tracking and prosecuting money laundering and drug trafficking of synthetic cannabinoids by criminal organizations. The legislation by Senator Flanagan and Senator Funke seeks to address these glaring deficiencies.



Pictured above: Senator Flanagan joined by Senator Little and Senator Ritchie discuss legislative efforts to crack down on “fake pot”

LEGISLATIVE SOLUTIONS

Felony Penalties for Sale of Synthetic Cannabinoids

The current penalties imposed for violating the public health law are insufficient to deter stores from selling synthetic cannabinoids. Currently, there are no criminal penalties under the penal law for the sale of these products, despite the harm they cause. Senator Flanagan has worked with prosecutors across the state and has carried legislation for a comprehensive penalty bill prohibiting the sale of synthetic cannabinoids for almost six years now (S.2836 C). While this bill has passed in the Senate almost every year since, it has never passed in the Assembly. Senator Flanagan’s bill adds synthetic cannabinoids to the Public Health Law schedule of controlled substances, thereby creating an avenue for the law enforcement community to properly investigate, charge and prosecute the sale of these drugs consistent with other harmful substances. Senator Funke’s bill, (S. 4743) seeks to address a new threat on the horizon, with the street name “flakka” or “gravel”. Adding Alpha-PVP, its salts, optical isomers and salts of optical isomers to the public health law schedule I of controlled substances, allowing law enforcement to remove these dangerous substances from our streets.

Analog Proposal

On August 6, 2015, Governor Cuomo updated the 2012 synthetic drug regulations to add a number of new versions of synthetic cannabinoids to the list of banned substances. The fact that these drugs are completely synthetic, created fully within labs, means that unscrupulous chemists can continue to tweak the chemical formulas in an attempt to circumvent the existing laws and regulations that are written to ban specific chemical substances. For several decades the federal government has included language in its controlled substances laws aimed at trying to curtail this kind of behavior. The federal analog statute permits the federal government to treat any chemical “substantially similar” to a controlled substance listed in Schedule I or Schedule II to be treated as if it were listed in those schedules, but only if intended for human consumption. Analogous substances are chemically similar compounds that have substantially the same effects on the human body as banned substances and share significant chemical similarities to those banned substances.

Unfortunately, New York State’s Controlled Substances Act under Article 33 of the Public Health Law does not include such analog language. This means that if someone is able to produce a substance that acts like a banned drug and is chemically similar but with certain inactive chemical structures that differ from a banned substance, then such person could possess or distribute that synthetic substance without fearing prosecution. To stay ahead of the chemists’ curve, Senator Klein has sponsored legislation (S. 1640 A), which would amend New York State’s Controlled Substances Act to add to the Schedule any analogous drugs. This bill has passed the Senate unanimously for three years in a row and the Majority Coalition urges the

Assembly to finally pass it. Passing the analog bill into law would add New York to the list of 34 states nationally, plus the District of Columbia, that have enacted analog drug statutes.¹⁰

Revoking Licenses for Businesses that Sell Synthetic Cannabinoids

Senator Klein has introduced legislation (S. 6040A) to increase civil penalties on stores that continue to sell synthetic cannabinoids. This proposal also creates a surrender program allowing for anonymous surrender of products containing synthetic cannabinoids where no civil or criminal penalty will apply. It further amends the general business law to prohibit any person, corporation, partnership, association limited liability company or other entity from selling, offer for sale, distribute, or give away any synthetic cannabinoid. A violation of this provision would subject the entity to a civil penalty of \$2,000 with a second or subsequent violation within a five year period subject to a civil penalty of \$5,000. Upon a third violation within a five year period, the entity would lose its license to sell lottery tickets, alcoholic beverages, cigarettes and tobacco products for a five year period.

Database Information

Senator Valesky has introduced legislation (S.6496) to require the Department of Health to establish and maintain an electronic database of known synthetic cannabinoids. The database would contain a list of all chemical compounds for the drug, a physical description of products that contain these compounds, and a list of brand names of products that contain these compounds. The purpose of the database is to give consumers, retailers and law enforcement the information needed to stop the sale and spread of this harmful drug.

CONCLUSION

The sale of synthetics continues to be a growing problem across New York State based on its inexpensive price and common availability in corner stores. This epidemic has put a financial strain on hospitals, emergency personnel and law enforcement, requiring resources to be allocated for treatment and enforcement instead of other public safety needs. Based on our analysis, synthetic cannabinoids have cost the state of New York and its taxpayers approximately \$22.7 million in 2015.

The Majority Coalition has been at the forefront of efforts to combat synthetic drugs with roundtable discussions hosted by Senator Valesky and Senator Klein being just the latest initiatives in a long history of targeted actions. The bills proposed in this report will penalize synthetic cannabinoid sellers with felony charges, suspend the licenses of corner stores to sell lottery tickets, alcohol, tobacco and cigarettes, will ban analogous drugs designed to avoid prosecution, and establish an electronic database of known synthetic cannabinoids. The Majority Coalition will continue to take action on this vital issue and urges the passage of these important pieces of legislation into law.

¹⁰ NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS, CONTROLLED SUBSTANCE ANALOGS STATUTORY COMPARISON AND COMPILATION 2(2012)

Appendix #1: Participants at the Bronx K2 Summit

Health & Human Service Officials

- Commissioner Mary Travis Bassett, NYC Department of Health and Mental Hygiene.
- Dennis Romero, Regional Administrator for the Substance Abuse and Mental Health Services Administration
- Joshua S. Vinciguerra, Director, Bureau of Narcotic Enforcement, New York State Department of Health
- Alison Burke, Representing the Greater New York Hospital Association
- Robert Kent, Chief Counsel, New York State Office of Alcoholism and Substance Abuse Services
- Jason Hansman, Special Assistant to the Deputy Commissioner of Adult Services, New York City Department of Homeless Services
- Warren Zysman, CEO of ACI Chemical Treatment Dependency Centers.

Law Enforcement Officials

- Commissioner Julie Menin, New York City Department of Consumer Affairs
- Roberto Lebron, Assistant Attorney General in Charge, Bronx and Manhattan
- Special Agent in Charge James Hunt, Drug Enforcement Administration
- Michael Osborn, Assistant Special Agent in Charge of the Violent Crimes Division, Federal Bureau of Investigations
- Robert Messner, Assistant Commissioner, Civil Enforcement Unit at the New York Police Department
- Lieutenant Robert Corbett, New York Police Department
- Sergeant Angel Arroyo, New York Police Department
- Sheriff Joe Fucito, New York City Sheriff's Office
- Michael Powers, President of the New York State Correctional Officers & Police Benevolent Society

Prosecutors

- Bridget Brennan, Special Narcotics Prosecutor
- Rhonda Ferdinand, Special Assistant District Attorney for Drug Prevention & Policy at the Office of the Special Narcotics Prosecutor
- Nitin Savur, Executive Assistant District Attorney for Strategic Initiatives at the New York District Attorney's Office
- William Schaeffer, Chief of Investigations, Kings County District Attorney's Office
- Lois Raff, Counsel to the Queens District Attorney
- Wilbert LeMelle, Queens County District Attorney Office Narcotics Division

- Karen Varriale, Chief of Narcotics Bureau for the Richmond County DA's Office
- Tony Girese, Bronx County District Attorney's Office, representing the District Attorney Association of the State of New York
- Julie DeLeon, Narcotics Division of the Bronx District Attorney's Office, representing the District Attorney Association of the State of New York

Appendix #2: Participants at the Syracuse Synthetics Summit

Health & Human Service Officials

- Gail Banach, Upstate NY Poison Control Center/ Upstate Medical University
- Dr. Ross Sullivan, Upstate NY Poison Control Center/ Upstate Medical University
- Michelle Caliva, Upstate NY Poison Control Center/ Upstate Medical University
- Melissa Carr, Rural Metro
- Monika Taylor, Crouse Hospital
- Bob Allen, Crouse Hospital
- Joshua Vinciguerra, NYS Department of Health
- Robert Kent, NYS OASAS
- John Coppola, NYS Association of Alcohol & Substance Abuse Providers
- Ronald Wood & Lauren Klemanski, Syracuse Behavioral Health
- Donna Knapp, Elizabeth Toomey & Beth Hurney, Prevention Network
- Andrew Felter, Wegman's Food Market, Pharmacy Operations Manager
- Jason Casanova, NAVAC Inc.

Law Enforcement

- Members of the Syracuse Police Department
- Edward Duffy & Christopher Vieni, US Drug Enforcement Agency
- Shane Lavigne, Onondaga County Sheriff's Office/ DEA Task Force
- Al Mothershed & Ray Rivera, NYSCOPBA
- Joe Miano, NYSCOPBA, Western Regional VP
- Paul Lashway, NYSCOPBA, Central Region VP
- Kim Kozlowski, Syracuse Community Treatment Court, Project Director

Prosecutors

- Carla Freedman, Assistant US Attorney, Northern District of NY
- Barry Weiss, Onondaga County District Attorney's Office
- Michael Ferrante, Onondaga County DA's Office, Senior ADA for Narcotics Division