



**NYSAC**  
NEW YORK STATE  
ASSOCIATION OF COUNTIES

## SYNTHETIC DRUG REGULATION



# Regulation of Synthetic Drugs

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# Introduction

For more than a decade, communities across the United States have experienced the scourge of synthetic drugs. These designer drugs have taken a toll on not only individuals and families, but also local governments, which perform important public health, safety, criminal justice, and regulatory functions to reduce drug abuse, addiction, overdoses, and crime.

In 2019, NYSAC's Standing Committee on Public Health/Mental Health called on New York State to improve upon the patchwork of local synthetic drugs regulations by enacting a comprehensive state regulatory plan. This white paper serves to inform this advocacy and educate county officials who may be interested in passing their own local laws about the avenues for regulating synthetic drugs and associated challenges.

## Background

Synthetic drugs, also referred to as designer drugs or club drugs, are lab-produced substances that are chemically similar to naturally occurring drugs and designed to mimic or enhance their effects. Many powerful synthetics were never designed to be brought to market; instead, they were patented by academic researchers and copied by illegal labs to sell on the black market.<sup>i</sup>



According to the U.S. Drug Enforcement Administration (DEA), one of the primary users of synthetic drugs are youth who purchase them online or in gas stations, convenience stores, smoke shops, and head shops.<sup>ii</sup> In stores, they are often marketed as herbal incense, bath salts, jewelry cleaner, potpourri, or plant food and labeled as “not for human consumption” in order to avoid regulation by the U.S. Food and Drug Administration (FDA).<sup>iii</sup> On the streets, these drugs are referred to by various names that downplay their danger, including Jazz, Scooby Snax, and Spice.<sup>iv</sup> Synthetic drugs are a challenge to regulate because manufacturers continually modify the molecular structures of illegal or controlled substances in order to circumvent existing drug laws.<sup>v</sup>

## Categories of Synthetic Drugs & Their Health Effects

Synthetic drugs are commonly divided into two categories: cannabinoids and stimulants. Cannabinoids, such as K2 and Spice, mimic the effect of tetrahydrocannabinol (THC), the main psychoactive compound in marijuana. Stimulants, such as bath salts, mimic the effects of cocaine, LSD, and methamphetamine. MDMA, sometimes referred to as ecstasy or molly, is a synthetic drug that is chemically similar to both stimulants and hallucinogens.

These substances can have life-threatening effects on the body and detrimental and often irreversible effects on the brain.<sup>vi</sup> The chart on the next page lists some of the adverse health effects of the three categories of synthetics described above.

## Health Effects of Synthetic Drugs <sup>vii</sup>

### Synthetic Cannabinoids

- Severe agitation and anxiety
- Nausea and vomiting
- Racing heartbeat
- Elevated blood pressure
- Tremors and seizures
- Hallucinations
- Suicidal thoughts and/or actions

### Synthetic Stimulants

- Increased heart rate and blood pressure
- Chest pain
- Extreme paranoia
- Hallucinations
- Delusions
- Violent behavior

### MDMA

- Severe hyperthermia
- Long-term learning impairment
- Nausea, chills, sweating
- Involuntary jaw clenching and teeth grinding
- Muscle cramping
- Blurred vision
- High blood pressure
- Heart failure
- Arrhythmia

## Brief Recent History of Synthetic Drugs in the U.S.

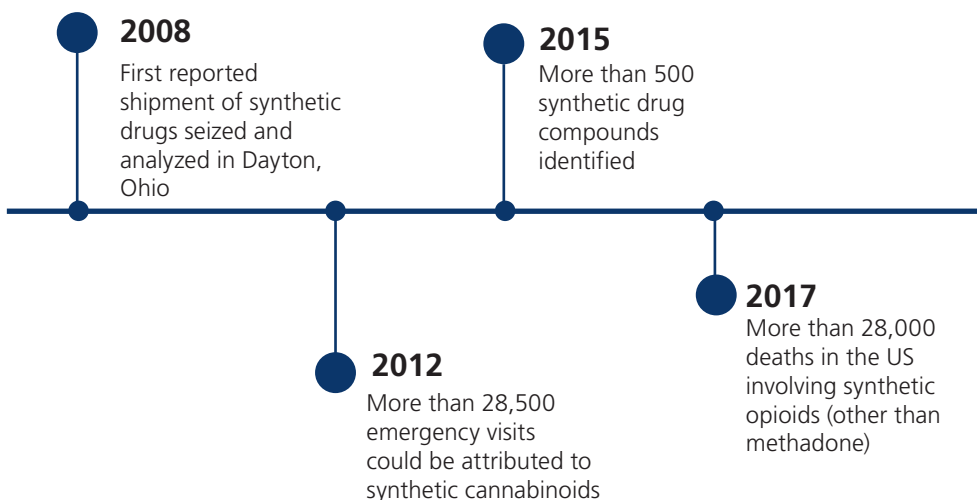
Many synthetic drugs are made abroad and smuggled into the United States.<sup>viii</sup> The first reported shipment of synthetic drugs was seized and analyzed in Dayton, Ohio in December 2008.<sup>xi</sup>

From 2009 to 2011, synthetic drug abuse increased dramatically in the U.S.<sup>x</sup> Around this time, teenagers began overdosing on bath salts that were freely sold in gas stations, convenience stores, and tobacco shops.<sup>xi</sup> Synthetic cannabis, K2, and Spice also began appearing on retail shelves and were marketed to youth under alluring names, such as Scooby Snax and Blueberry Haze.<sup>xii</sup>

The number of hospital emergency rooms visits involving synthetic cannabinoids more than doubled between 2010 to 2011.<sup>xiii</sup> In 2012, more than 28,500 emergency visits could be attributed to synthetic cannabinoids, and nearly half of those visits involved individuals under 21 years old.<sup>xiv</sup>

By 2015, more than 500 synthetic drug compounds had been identified by law enforcement, compared to just two in 2009.<sup>xv</sup> On average, the U.S. market introduces five synthetic drugs every month, or 60 different compounds in a year.<sup>xvi</sup> Drug cartels reap huge profits from synthetic drugs because of the low cost of production compared to growing and processing naturally occurring drugs.<sup>xvii</sup>

Today, counties are grappling with a synthetic opioid, fentanyl, that is 50 times more potent than heroin and 100 times more potent than morphine.<sup>xviii</sup> In 2017, more than 28,000 deaths involving synthetic opioids (other than methadone) occurred in the United States – more deaths than from any other type of opioid.<sup>xix</sup> Among New Yorkers outside of New York City, overdose deaths involving fentanyl and its analogues increased by 124 percent in 2016 and again by 28 percent in 2017.<sup>xx</sup>







# Federal, State, and Local Regulation

Synthetic drugs pose unique regulatory challenges for all levels of government. Manufacturers are able to circumvent state and federal drug laws by slightly modifying the formula of substances regulated under controlled substance lists. When law enforcement cracks down on a new analogue, manufacturers slightly modify the molecular structure of the drug so it is no longer expressly prohibited by federal, state, or local law.<sup>xxi</sup> The following section provides a brief overview of the measures that the federal government and states have taken to regulate these substances.

## Federal Regulations

At the federal level, synthetic drugs are regulated under the Controlled Substances Act, which lists controlled substances in one of five schedules depending on their potential for abuse and other criteria.<sup>xxii</sup> Schedule I substances are the most tightly controlled. The DEA is the lead federal agency responsible for regulating controlled substances and enforcing the Controlled Substances Act, with help from the FDA.<sup>xxiii</sup>

Under the Controlled Substance Analogue Enforcement Act of 1986, many synthetic drugs may be treated as controlled substances if they are proven to be chemically and/or pharmacologically similar to a Schedule I or Schedule II controlled substance.<sup>xxiv</sup> In 2012, the Synthetic Drug Abuse Prevention Act of 2012 added 26 synthetic cannabinoids and cathinones (manmade amphetamines) to the list of Schedule I substances.<sup>xxv</sup> It also doubled the period of time during which the DEA can temporarily place substances in Schedule I under its emergency scheduling authority from 18 months to 36 months. The federal government has used this power to effectively ban additional synthetic drugs for up to three years while awaiting legislative action.



## State Regulations

Since 2011, all 50 states have banned synthetic cannabinoids and cathinones.<sup>xxvi</sup> Most have done so through legislation. Initially, states targeted specific versions of drugs with individual bans. However, because the chemical composition of synthetic drugs can be easily tweaked to avoid prohibition, legislation in more recent years has targeted entire classes of substances or used broad language to describe the prohibited drugs and their effects. The chart below summarizes the six types of laws that states have passed in recent years to protect residents from dangerous synthetic drugs and their analogues.

Law enforcement and prosecutors have also creatively used existing provisions in agricultural regulations, consumer protection laws, and public nuisance laws to prosecute those selling substances that are not specifically banned. In NYS, the Attorney General's office has brought charges for false labeling of commodities (Agriculture & Markets Law § 194); deceptive acts and practices related to the sale of 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).<sup>xxix</sup> Additionally, in many states, consumer protection laws have been used to restrict the marketing, display, labeling, and advertising of these substances.<sup>xxx</sup>

## Types of State Laws Restricting Synthetic Drugs

TYPE	SUMMARY
Individual Bans	Individual substances are added to controlled substance schedules using their trade/street names or the chemical structure of a substance.
Class Bans	Groups of structurally similar synthetic drugs are banned by scheduling a structural “class.” Laws define the chemical characteristics of the structural class and sometimes list examples of individual substances that fall within the class.
Analogue Laws	Substances that are not classified as controlled substances but are structurally similar to substances that are scheduled are banned by analogue laws. Generally, these laws require that the analogue drug be substantially similar in chemical structure and pharmacological effects as a scheduled controlled substance.
Neurochemical Approach	Substances are banned based on the effects they have on the brain rather than by individual name or class.
Administrative Actions	<p>Some states have delegated scheduling authority to pharmacy boards or other agencies to quickly ban substances when they are identified. Some state legislatures have authorized agencies to pass temporary bans that will then be reviewed and codified by the legislature after a specified period of time, while others have given agency bans the full force and effect of statutory law.</p> <p>In NYS, these powers are granted to the Department of Health and the Public Health and Health Planning Council under section 225(4) of the Public Health Law.<sup>xxvii</sup></p>
Non-Criminal Approaches	States have used other legal strategies aside from criminal prosecution to reign in the supply of synthetic drugs, including business licensure; nuisance abatement; consumer protection; and product labeling and branding regulation.

Source: National Conference of State Legislatures<sup>xxviii</sup>

## The County Perspective

Since 2009, counties have passed dozens of local laws to ban the sale and possession of synthetic drugs. These local law filings are available through the Department of State at <https://locallaws.dos.ny.gov/search/laws/synthetic>.

In January 2019, the NYSAC Standing Committee on Public Health/Mental Health passed a resolution that contended that synthetic drugs would be more effectively regulated on a statewide basis through a comprehensive regulatory plan that covers existing and newly created drug variants, rather than through a patchwork of regulations enacted by localities. The resolution calls for statewide legislation to regulate the sale and possession of synthetic drugs.

While such a proposal has not gained traction in the State Legislature, Governor Andrew M. Cuomo did propose to ban fentanyl analogues in his 2020 State of the State address. The Governor’s proposed legislation would explicitly designate fentanyl analogues as controlled substances; give police and law enforcement the authority to prosecute the manufacturing, sale, and distribution of these drugs to the fullest extent of the law; and give the State Department of Health Commissioner the authority to add additional analogues to the list of controlled substances.<sup>xxxi</sup> NYSAC will continue to track these and other proposals to protect our communities from the scourge of synthetic drugs.



# Conclusion

The emergence of manufactured drugs designed to mimic the effects of illegal drugs is among of the most significant public health issues the United States faced during the past decade. Federal, state, and local governments have responded to the proliferation of synthetics by placing additional substances into Schedule I of controlled substance lists; enhancing criminal penalties for persons or businesses found producing or selling the banned substances; finding creative ways to prosecute those selling substances that are not specifically banned; and restricting the marketing, display, labeling, and advertising of these substances. As counties continue to grapple with dangerous new synthetic drugs and their analogues, NYSAC will continue to urge a comprehensive state regulatory plan that covers existing drugs and can quickly add new variants.

## Sources

- i. <https://inpublicsafety.com/2018/05/illegal-synthetic-drugs-prompt-amendments-to-federal-sentencing-guidelines/>
- ii. <https://fas.org/sgp/crs/misc/R42066.pdf>
- iii. <https://americanaddictioncenters.org/synthetic-drugs>
- iv. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6048967/>
- v. <https://fas.org/sgp/crs/misc/R42066.pdf>
- vi. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6048967/>
- vii. <https://www.cadca.org/synthetic-drugs>
- viii. <https://www.justthinktwice.gov/article/facts-about-synthetic-drugs>
- ix. [https://www.cadca.org/synthetic-drugs#\\_ftn3](https://www.cadca.org/synthetic-drugs#_ftn3)
- x. <https://fas.org/sgp/crs/misc/R42066.pdf>
- xi. <https://www.governing.com/topics/public-justice-safety/gov-synthetic-drugs-states.html>
- xii. <https://www.governing.com/topics/public-justice-safety/gov-synthetic-drugs-states.html>
- xiii. <https://fas.org/sgp/crs/misc/R42066.pdf>
- xiv. <https://www.governing.com/topics/public-justice-safety/gov-synthetic-drugs-states.html>
- xv. <https://americanaddictioncenters.org/synthetic-drugs>; <https://obamawhitehouse.archives.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts>
- xvi. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6048967/>
- xvii. <https://inpublicsafety.com/2018/05/illegal-synthetic-drugs-prompt-amendments-to-federal-sentencing-guidelines/>
- xviii. <https://www.cdc.gov/drugoverdose/data/fentanyl.html>
- xix. <https://www.cdc.gov/drugoverdose/data/fentanyl.html>
- xx. <https://www.cdc.gov/drugoverdose/data/fentanyl.html>
- xxi. <https://inpublicsafety.com/2018/05/illegal-synthetic-drugs-prompt-amendments-to-federal-sentencing-guidelines/>
- xxii. <https://www.fda.gov/news-events/congressional-testimony/deadly-synthetic-drugs-need-stay-ahead-poison-peddlers>
- xxiii. <https://www.fda.gov/news-events/congressional-testimony/deadly-synthetic-drugs-need-stay-ahead-poison-peddlers>
- xxiv. <https://www.cadca.org/synthetic-drugs>
- xxv. <https://obamawhitehouse.archives.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts>
- xxvi. <https://www.ncsl.org/research/civil-and-criminal-justice/synthetic-drug-threats.aspx>
- xxvii. [https://www.nysenate.gov/sites/default/files/state\\_of\\_synthetics\\_full\\_report.pdf](https://www.nysenate.gov/sites/default/files/state_of_synthetics_full_report.pdf)
- xxviii. <https://www.ncsl.org/research/civil-and-criminal-justice/synthetic-drug-threats.aspx>
- xxix. [https://www.nysenate.gov/sites/default/files/state\\_of\\_synthetics\\_full\\_report.pdf](https://www.nysenate.gov/sites/default/files/state_of_synthetics_full_report.pdf)
- xxx. <https://www.ncsl.org/research/civil-and-criminal-justice/synthetic-drug-threats.aspx>
- xxxi. <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2020StateoftheStateBook.pdf>

# Appendix A

## 2019 NYSAC Legislative Conference

### Standing Committee on Public Health/Mental Health

#### Resolution #5

#### **Resolution in Support of Statewide Legislation Concerning the Sale and Possession of Synthetic Drugs**

**WHEREAS**, communities throughout New York State have experienced increased crimes, emergency room cases, illnesses, and deaths linked to the use and abuse of synthetic drugs and other similar substances or compounds; and

**WHEREAS**, such products are being openly sold and marketed through New York State and online; and

**WHEREAS**, while New York State has continued to update its schedule of controlled substances, many new variants of these substances are able to avoid prohibition by slightly changing their chemical composition; and

**WHEREAS**, the health, safety, and well-being of all New York State residents is furthered by prohibiting the sale, use, or possession of these substances; and

**WHEREAS**, synthetic drugs are more effectively regulated on a statewide basis through a comprehensive regulatory plan that covers existing and newly created drug variants, rather than through a patchwork of regulations enacted by localities.

**NOW, THEREFORE, BE IT RESOLVED**, that the New York State Association of Counties (NYSAC) hereby urges the Governor and State Legislature to introduce, support, and enact statewide legislation banning the sale and possession of synthetic drugs; and

**BE IT FURTHER RESOLVED**, that NYSAC hereby respectfully urges the Governor to sign said bill(s) forthwith upon passage; and

**BE IT FURTHER RESOLVED**, that copies of this resolution be sent to the counties of New York encouraging member counties to enact similar resolutions; and

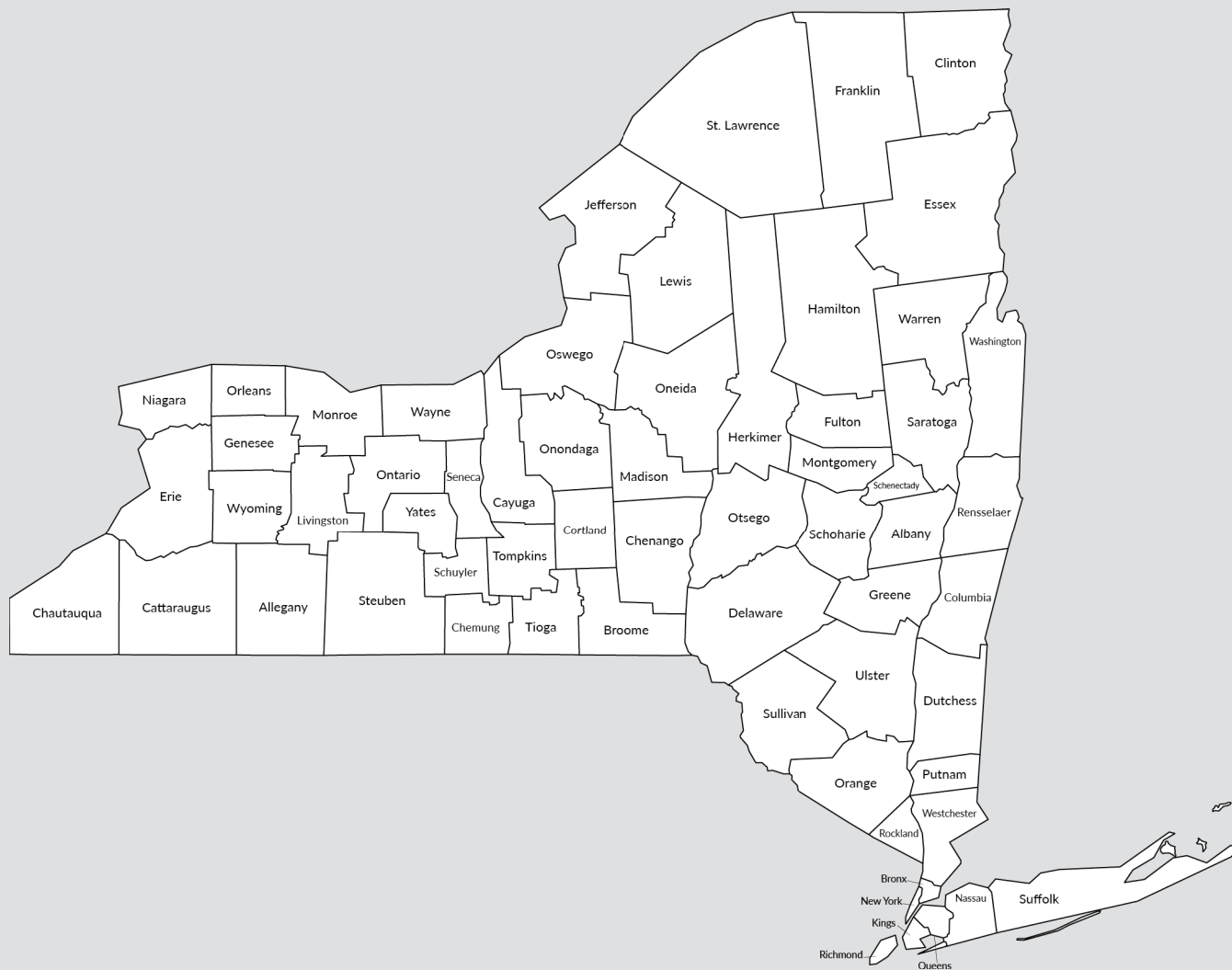
**BE IT FURTHER RESOLVED**, that NYSAC shall forward copies of this resolution to Governor Andrew M. Cuomo, the New York State Legislature, and all others deemed necessary and proper.



# NYSAC<sup>®</sup>

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