



E36 The Era of Designer Drugs: An Ever-Changing Landscape

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After attending this presentation, attendees will be familiar with: (1) the legal and scientific classifications of designer drugs; (2) the variety of legislative approaches to designer drugs, including class control, and analogue statutes; (3) the issue of designer drugs in sentencing; and, (4) recent legislative proposals from Congress and the states.

This presentation will impact the forensic science community by educating attorneys in the changing areas of controlled substance law, thus improving their advocacy skills in the courtroom.

Over the past 50 years, a relatively small group of drugs, including marijuana, cocaine, amphetamines, heroin, and a handful of diverted prescription medications, such as opiates and sedatives, made up the vast majority of drug possession and distribution cases. These substances were easily recognized by the police and easily identified by the crime laboratories. Designer drugs, which are designed to thwart both of those layers of law enforcement, first appeared in the late 1970s and has remained mostly in small, isolated communities of drug users for 35 years.

However, around 2009 to 2010, the illicit drug markets began to see new compounds. Entrepreneurial chemists with access to global shipping networks began to synthesize compounds previously hidden away in scientific journals and patents and distribute those compounds through Europe and then into the United States. These new designer drugs came in two main categories: stimulant and/or hallucinogenic drugs, such as “bath salts” or “plant food,” and, synthetic cannabinoids, compounds intended to work like marijuana but often with some very different effects. The synthetic cannabinoids, sold as “Spice” or “K2” most famously, represented an entirely new class of compounds in the world of controlled substance law enforcement.

Initially, the legislative control of the bath salt compounds utilized traditional mechanisms, such as acts of Congress or administrative scheduling. When compounds appeared that were not controlled, the standard analogue statutes provided another mechanism for prosecution of these cases. Recently, some states are trying new legislative approaches to these compounds in order to avoid difficult analogue prosecutions.

On the other hand, new synthetic cannabinoids came onto the market at such a rush in 2010 and 2011 that it was quickly apparent that the traditional means of scheduling drugs could not keep up with the marketplace. Out of this dilemma, class legislation was born. This represented a significant change from the prior 40 years of controlled substance law.

One of the major challenges for attorneys with class legislation is that more chemistry is involved in proving the major element of the crime: that the alleged compound is within the controlled class. This presents a challenge for prosecutors who need to prove this element to a jury, and this could be an opportunity for defense attorneys who can now challenge the classification of a compound that is not specifically listed in the statute.

When neither traditional scheduling nor class legislation includes a new designer drug that has been identified in the market, the prosecutor has the option of an analogue prosecution. While these cases have traditionally favored the prosecution, recent rulings indicate a shifting landscape in this mature, yet relatively unnoticed area of the law. Today these cases offer challenges and opportunities to both parties.

Because of the ever-changing market of designer drugs, legislatures across the country are trying new approaches to controlling today the drugs of tomorrow. To illustrate the challenges in this new landscape, this presentation will include some specific examples of emerging designer drugs for attendees to assess their legal status as controlled substances or analogues.

Designer Drug, Legislation, Analogue