

STATEMENT OF

KEITH M. GRAVES

THE NATIONAL NARCOTICS OFFICERS ASSOCIATION COALITION

BEFORE THE

UNITED STATES SENTANCING COMMISSION

**FOR A PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE FEDERAL SENTENCING
GUIDELINES RELATED TO SYNTHETIC DRUGS AND FIRST OFFENDERS/ALTERNATIVES TO
INCARCERATION**

PRESENTED

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Members of the Sentencing Commission, thank you for the opportunity to give the National Narcotics Officers Association Coalition's view on the Commission's proposed amendments to the federal sentencing guidelines related to synthetic drugs.

The National Narcotic Officers' Associations' Coalition represents 40 State Narcotic Officers Associations, several Associate Member Organizations and their 50,000 members across the United States. The NNOAC takes an active role in addressing policy and legislative initiatives by encouraging and supporting policies and laws that will result reductions in drug availability and abuse, addiction and violent crime. Our goal is to make our communities safer.

The NNOAC has been consistent in our positions on sentencing. Let me reiterate some of those for you:

Contrary to popular belief, our prisons are not filled with "low level, non-violent" offenders. People who find themselves in our prisons are participants in often sophisticated and wide-ranging criminal activities, who have committed violent crimes and who have continually proven their disregard for our laws by re-offending.

Drug trafficking is a crime of violence. Our courts recognize this, the Sentencing Commission acknowledges this and our members see it every day. That claim is evidenced by the thousands of people who have died, and continue to die at alarming rates, from drug poisonings here in our country. Over 64,000 people in 2016 alone, and that number continues to climb. Those numbers do not account for the thousands of others who fall victim to drug-fueled violence.

Drug cartels, trans-national and domestic trafficking organizations, gangs and neighborhood drug dealers often use violence and terror tactics to coerce and intimidate their workers, their customers and those who might cause interruption to their illegal enterprises.

Recidivism rates, particularly for drug offenders, remain high. A report issued by this very Commission in February 2017, *Recidivism Among Federal Drug Trafficking Offenders*, revealed that federal drug offenders have a 50% rate of re-arrest within 5 years of release. Recidivism rates for state drug offenders were over 75%.

Similarly, in another report from this Commission, *An Analysis of the Implementation of the 2014 Clemency Initiative*, it is revealed that the largest percentage of clemencies were granted to the offenders with the highest criminal history scores, while of those offenders who met all 6 of the criteria for review, only 5.1% of them were granted approval of their clemency petitions.

Significant cuts to sentencing guidelines and expanded use of diversion programs have resulted in prison populations at the lowest levels since 1996. Offenders who get convicted already have many opportunities to reduce the time they actually have to serve. Plea bargaining, reductions in charges, safety valve provisions, sentence reductions for cooperation and recent sentencing guidelines changes have already reduced prison sentences. Drug court, diversion and alternative sentencing programs keep many offenders from ever serving jail or prison sentences.

Due to initiatives on both the federal and state levels aimed at reducing prison populations over the past several years, prison beds are reserved for the most violent offenders and those who simply will not obey our laws. Those offenders must be held accountable. They have worked hard to get to prison and we should keep them there. Those who are serving time in our prisons now belong there.

Offenders are not the victims. The real victims are the law-abiding citizens who are bearing not only the cost, but the brunt of the violence and devastation caused by criminal activity. The NNOAC believes that the focus and first priority of sentencing and criminal justice reform efforts should be on making our communities safer and protecting our good citizens rather than the criminals that prey upon them.

Synthetic drugs including fentanyl and its analogues, synthetic cathinones and synthetic cannabinoids has had a profound impact on American law enforcement. In past decades, law enforcement only had to worry about a few drugs like heroin, methamphetamine and cocaine. But the new century brought with it new drugs. These new drugs brought with them a new scourge that has impacted our country in ways that we were not prepared to handle.

These synthetic drugs cannot be combatted like traditional street drugs of the past. Law enforcement officers around the country are having to change their tactics due to the strength and potency of not only fentanyl, but of synthetic cathinones and synthetic cannabinoids. For

ease of explanation, I'll go over each drug category to explain the problems these drugs present.

Synthetic Cannabinoids

Prior testimony has shown the potency of synthetic cathinones and their chemical structure. However, how synthetic cannabinoid drug dealers operate and the impact they have on our society needs attention. A high-level drug dealer will order multiple kilos of synthetic cannabinoids from China. Once in the United States, the dealer will take it to a facility in the United States where the chemical will be modified to be sprayed on vegetable matter such as damiana. After spraying the chemical compound on an herb, it is then placed in fancy foil packaging and shipped to internet dealers or retail facilities around the U.S. like smoke shops, liquor stores and gas stations. The foil packaging often depicts logos or characterizations that are attractive to younger Americans.

I have spoken to narcotics detectives whose job it is to investigate these spraying centers. They report that their team members are experiencing side effects from exposure to synthetic cannabinoids including kidney damage. As an example, one Nevada narcotics detective went to the doctor who said that his kidneys looked like he had been abusing drugs for years. Another HSI Special Agent has severe kidney damage that is traced back to chronic exposure from these spraying centers.

The Center for Disease Control (CDC) accompanied one Nevada Task Force and monitored them prior to raiding a synthetic spice factory and after the raid. All team members were wearing personal protective equipment that is standard for most drug lab investigations. The task force members provided a urine test prior to the raid and again after the raid. Four of five members tested showed a positive test for synthetic cannabinoids after the raid. It is apparent that, even with protective equipment, these powerful synthetic cannabinoids are causing damage to our narcotics investigators.

I am also a Drug Recognition Expert (DRE) Instructor. The DRE program is administered through the National Highway Traffic Safety Administration (NHTSA) and the International Association of Chiefs of Police (IACP). As an instructor, I not only evaluate people high on drugs, but I also talk to officers around the country that do these drug evaluations. Many DRE's are reporting that people high on synthetic cannabinoids exhibit signs and symptoms of drug influence that shows the person is in distress; more so than we have seen with traditional drugs in that same category of drugs they are usually compared against. We are having the same discussions that we are having here: that these new synthetic drugs will need their own category because they do not meet the norms of drugs we have been dealing with for the past several decades.

Fentanyl and Its Analogues

There has been much disinformation put out about fentanyl and its impact on law enforcement and our community. First and foremost, most of the medical community uses pharmaceutical fentanyl as a baseline for their comments about the drug. However, there are two types of fentanyl: Pharmaceutical fentanyl and street fentanyl.

As an example, you cannot compare fentanyl in pharmaceutical patch form to fentanyl found in the street. Pharmaceutical fentanyl is produced in a clean laboratory that must meet scientific standards as well as governmental standards. Street fentanyl is made in a lab in either China or in Mexico with no safeguards in place and no governmental oversight. Sometimes it may truly be the traditional fentanyl formula that we see in the hospital. However, some are analogues that were never meant for human consumption. Some analogues are more powerful than fentanyl, some less powerful.

We know that fentanyl has had a profound effect on America. We only need to look at recent overdose statistics to realize how bad the problem is. But, it is our belief that it will only get worse. A simple review of economics and logistics can make you come to the realization that fentanyl will become worse in the near future. Mexican Drug Cartels have realized the value of fentanyl and have started producing it and smuggling it into the US. It makes economic sense for them to do this. Cultivating an opium poppy field is labor intensive. You must score the poppy and return 24 hours later to collect the opium that seeps from the poppy. This is done to thousands of poppies in a field and is done over and over. Then, the opium is collected and taken to a heroin lab. At that lab, the opium is converted from opium to morphine and then to heroin. Then that heroin is smuggled to the United States.

But, if the Drug Cartel has a fentanyl lab, they can produce a kilo of fentanyl for as little as \$3,500 without the intensive labor listed above. 1 kilo of fentanyl is equal to 50 kilos of heroin when you compare potency. So, Drug Cartels need to only smuggle a fraction of fentanyl into the US compared to heroin. This makes economic sense for the Cartels.

One drug interdiction sergeant in Southern California told me that he is taking kilos of fentanyl off of the street in drug interdiction stops every week. To process these fentanyl seizures, officers must gear up in personal protective equipment that is cumbersome and time consuming. This creates a hazard for officers and takes valuable time off of the street and takes time from sensitive investigations.

Additionally, Fentanyl dosage units are measured in micrograms, whereas traditional drugs are measured in milligrams. It takes only a minute amount to add to another drug like heroin to make it much more powerful. A drug dealer could purchase one kilo of Mexican fentanyl for \$19,000. This kilo will make 1,000,000 pills and is the equivalent to 1,000,000 heroin points. At \$20 to \$40 per dose, one kilo can net a drug dealer millions of dollars. You do not see that with any other drug US law enforcement has dealt with in the past.

Synthetic Cathinones

Synthetic cathinones are synthesized primarily in foreign countries, including China, India, and Pakistan. Cathinones are generally synthesized by rogue chemists in foreign countries and are shipped directly to distributors or acquired by distributors and abusers over the

Internet. The United Kingdom has been identified as a principal transit country of some synthetic cathinones destined for the United States.

Synthetic cathinones, typically marketed as “bath salts” and “plant food,” are sold legally under various names (Ivory Wave, Blizzard, etc.) in most areas of the United States. The products are generally sold in retail establishments such as adult stores, independently owned convenience stores, gas stations, head shops, and skateboard shops. The products, as well as their raw chemical components, are also sold on many Internet sites, including popular Internet auction sites. Additionally, synthetic cathinones have been sold by independent dealers as ecstasy — in powdered form, in single-component tablets and capsules, and in tablets and capsules containing cathinones combined with MDMA (3,4-methylenedioxymethamphetamine) or other illicit controlled substances. Abusers typically ingest, inhale, inject, smoke, or snort (insufflate) the drugs to experience stimulant effects similar to those induced by amphetamine.

Manufacturers and distributors of synthetic cathinone products evade U.S. Drug Enforcement Administration (DEA) regulation and enforcement because many of these synthetic cathinones are not scheduled under the Federal Controlled Substances Act (CSA). When they are outlawed, manufacturers will use a similar, but different, formulation to circumvent the law. Possession and distribution of the synthetic cathinones may be prosecuted, albeit with greater difficulty, under the Federal Controlled Substance Analogue Enforcement Act of 1986 of the CSA. The availability and suitability of a prosecution under the analogue statute depends on the particular compound being trafficked and the facts of the case. Further,

distributors deceptively market synthetic cathinone products as “not for human consumption” to evade U.S. Food and Drug Administration (FDA) scrutiny.

Despite previously described legislation and orders, no substantial law enforcement or regulatory action has significantly prevented synthetic cathinone products from reaching distributors or consumers, partly due to availability of the chemicals, drugs, and products on the Internet. Until effective policies become widespread and applied consistently and enforcement and regulatory actions begin to effect the supply/demand balance, demand for the products will continue to fuel their production and distribution.

As you can see, the future of drug abuse lies with these new synthetic drugs. The problem will not go away and it will continue to grow and flourish under our antiquated drug laws. We will need to re-think how we go about investigating and prosecuting drug dealers that have turned to the future in drug abuse.