

INFORMATION PAPER

ATZR-JC
9 November 2011

SUBJECT: Abuse of Synthetic Cannabis and Other THC Substitutes (Spice in Variations)

1. Purpose. To Inform Individuals on the Current Status of the Law concerning Abuse of Synthetic Cannabis and Other THC Substitutes (Spice in Variations)

2. BLUF. Despite recent changes in the law that make use and possession of synthetic cannabis and other THC substitutes (Spice in variations) a potential violation of Article 112a or 134, Uniform Code of Military Justice (UCMJ), for violating either the federal or Oklahoma Schedule I, it is recommended that commanders pursue whatever action they deem appropriate, if any, as a violation of Article 92, UCMJ.

3. Facts.

a. Smokable herbal blends marketed as being "legal" and providing a marijuana-like high, have become increasingly popular, particularly among teens and young adults. These products consist of plant material that has been coated with research chemicals that mimic THC, the active ingredient in marijuana, and are sold at a variety of retail outlets, in head shops, and over the internet. These chemicals, however, have not been approved by the FDA for human consumption and there is no oversight of the manufacturing process. Brands such as "Spice," "K2," "Blaze," and "Red X Dawn" are labeled as incense to mask their intended purpose.

b. Army Regulation (AR) 600-85, paragraph 4-2.p.(1), dated 2 February 2009, prohibits Soldiers from using controlled substance analogues (designer drugs) for the purpose of inducing excitement, intoxication, or stupefaction of the central nervous system. Synthetic cannabis and other THC substitutes (Spice in variations) may properly be considered controlled substance analogues (designer drugs). AR 600-85, paragraph 4-2.q., makes violations of paragraph 4-2.p. punitive and subject to punishment under Article 92, UCMJ, and/or administrative action.

c. On 8 April 2010, MG Halverson approved Policy Memo 10-02 which prohibited the "purchase, use, possession or distribution" of all "psychoactive herbal products" adversely affecting the central nervous system, also referred to as "Spice." IAW CG Policy Memo 10-02, any Soldier who uses or possesses Spice is in violation of Article 92, UCMJ.

d. On 28 April 2010, the Oklahoma State Legislature passed HB 3241 which added four compounds commonly found in Spice to Schedule I of the Oklahoma State Uniform Controlled Dangerous Substances Act (63 Okl.St. Ann. § 2-204). This law became effective 1 November 2010. IAW the Federal Assimilative Crimes Act, any Soldier who violates the Oklahoma statute on a military installation is in violation of Article 134, UCMJ.

e. On 24 November 2010, the Drug Enforcement Agency issued a notice of intent to exercise its emergency scheduling authority to temporarily place five compounds commonly

found in Spice into Schedule I of the U.S. Controlled Substances Act (21 U.S.C. § 812). This temporary measure took effect 1 March 2011 and will expire in 12 months unless granted a one-time extension of six months or otherwise signed into law. IAW the UCMJ, any Soldier who wrongfully uses, possesses, manufactures, distributes, imports, exports, or introduces into a military installation any substance listed in Schedule I of the U.S. Controlled Substances Act is in violation of Article 112a, UCMJ.

f. On 10 February 2011, the Honorable John M. McHugh, Secretary of the Army, issued a Policy Memo prohibiting the use, possession, manufacturing, selling, distributing, importing into or exporting from the United States, or introducing into any installation, vessel, vehicle, or aircraft used by or under the control of the Army: any controlled substance analogue or homologue such as “Spice” or similar substances containing synthetic cannabis, any THC substitute, or any synthetic cannabinoid. This memorandum specifically notes that this prohibition will be included in the next revision of AR 600-85. IAW the Secretary of the Army’s policy, any Soldier in violation of the policy is in violation of Article 92, UCMJ.

g. On 1 November 2011, the Oklahoma State Legislature passed SB 919 which added approximately 250 compounds commonly found in synthetic drugs designed to mimic marijuana and cocaine to Schedule I of the Oklahoma State Uniform Controlled Dangerous Substances Act (63 Okl.St. Ann. § 2-204). IAW the Federal Assimilative Crimes Act, any Soldier who violates the Oklahoma statute on a military installation is in violation of Article 134, UCMJ.

4. Courts-Martial and Non-Judicial Punishment.

a. Insofar as judicial and non-judicial punishment are concerned, a Soldier may be charged with a violation of either Article 112a or 134 for violating the federal or Oklahoma state Schedule 1, respectively. However, this course of action requires the government to prove that the substance in question contains one of the compounds listed in the respective Schedule 1. This, of course, means that the substance must be tested at a certified lab. On 7 November 2011, the Forensic Toxicology Armed Forces Medical Examiner (AFME) announced that the special testing for Spice and Bath Salts has been suspended until 9 January 2012 due to relocation. Thus, the Army does not currently have a cost-efficient lab available for testing of synthetic drugs such as Spice. This point, however, may be moot as the various compounds in Spice are easily altered to avoid detection without changing the desired effect on the user. Thus, laboratory testing may not provide the evidence or deterrent effect desired.

b. A Soldier may also be charged with a violation of Article 92, UCMJ, for violating 1) the Secretary of the Army’s policy memorandum, 2) the Fort Sill Commanding General’s policy memorandum, or 3) AR 600-85, paragraph 4-2.p.(1). This course of action may allow the government to prove the nature of the substance through labeling or other circumstantial evidence without having to send the substance off to a lab. Thus, charging a Soldier with a violation of Article 92, UCMJ, for violating the Secretary of the Army’s policy memorandum (given that it is the highest authority) is the preferred method for addressing abuse of any controlled substance analogue or homologue such as “Spice” or similar substances containing synthetic cannabis, any THC substitute, or any synthetic cannabinoid.

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5. Administrative Separation.

a. Violation of Article 92, UCMJ, within itself, does not trigger the mandatory initiation of separation requirements under AR 635-200, paragraph 14-12(c)(2)(b). However, there is nothing that prevents a commander from initiating separation under chapter 14-12(c) based on an Article 92 violation. Similarly, violation of Article 92, UCMJ, within itself, does not require referral to the Army Substance Abuse Program IAW AR 600-85, par 7-5(b), or reporting to the MP, MPI, or CID. Again, however, there is nothing that prevents a commander from directing a Soldier to enroll in ASAP, or reporting the incident to the MP, MPI, or CID based on an Article 92 violation.

b. Conversely, violation of Article 112a or 134, UCMJ, pursuant to either the federal or Oklahoma schedule 1 respectively, does trigger the mandatory initiation of separation requirements under AR 635-200, paragraph 14-12(c)(2)(b). Similarly, violation of Article 112a or 134, UCMJ, pursuant to either the federal or Oklahoma schedule 1 respectively, requires referral to ASAP and reporting the MP, MPI, or CID.

6. For the most up to date information on the current status of the law concerning abuse of synthetic cannabis and other THC substitutes (Spice in variations), contact your unit Trial Counsel / Judge Advocate.

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