

October 4, 2011

The Honorable Lamar S. Smith
Chairman, House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member, House Committee on the Judiciary
2426 Rayburn House Office Building
Washington, D.C. 20515

RE: Synthetic Drug Control Act of 2011 (H.R. 1254)

Dear Chairman Smith and Ranking Member Conyers:

The Judiciary Committee is scheduled to markup the Synthetic Drug Control Act of 2011 (H.R. 1254), which would expand the application of Schedule I penalties to any quantity of certain synthetic drugs and subjects some individuals to mandatory minimum sentences. More people will be subject to long and costly prison terms under this proposal that our country cannot afford. We urge you to oppose this legislation.

H.R. 1254 would add more than two dozen chemical compounds found in synthetic drugs to Schedule I of the Controlled Substances Act, and expand the application of existing Schedule I penalties and mandatory minimum sentences to include these chemical compounds. Schedule I of the Controlled Substances Act authorizes federal prosecutors to seek up to 20 years imprisonment for individuals convicted of distribution, possession with intent to distribute, importation or manufacturing, and requires a mandatory minimum sentence of 20 years to life imprisonment for individuals engaged in this activity and charged with certain aggravating circumstances. We oppose these efforts to expand the application of existing Schedule I penalties and mandatory minimum sentences.

In addition, existing federal statute does not specify quantity thresholds that would trigger Schedule I penalties or mandatory minimum sentences. Thus, *any quantity* of a synthetic drug or chemical compound could be treated as a sufficient cause for the imposition of a mandatory minimum, or otherwise lengthy sentence under the Controlled Substances Act. In addition, individuals convicted of simple possession of synthetic drugs scheduled under this legislation could face up to a year imprisonment, and individuals with aggravating circumstances could face a minimum of 90 days or up to three years.

Implementation of this legislation will increase law enforcement and criminal justice costs at a time when Congress is focused on lowering government spending. No effort has been made to estimate the price tag of this criminal code expansion. In addition, federal Bureau of Prisons facilities are already operating at 36 percent above capacity. Expanding the application of Schedule I penalties to a whole new class of people will exacerbate prison overcrowding and prompt new spending.

We also believe that federal intervention is unwarranted since thirty states have already enacted legislation criminalizing synthetic drugs, and more state legislatures have bills pending. Passage of this legislation would pressure states to adopt criminal penalties identical to those listed under the federal Controlled Substances Act, which could undermine efforts by state lawmakers pursuing unique and innovative policies.

In fact, state lawmakers are already responding to the emergence of synthetic drugs in a way that they feel is appropriate for their constituents, including young people. However, passage of this legislation would subject youth charged with possessing or distributing synthetic drugs to federal prosecution and lengthy federal criminal sentences served in federal prison facilities. Applying Schedule I penalties to synthetic drugs will not deter most young people from using synthetic drugs, but it will expose more young people to a criminal record and contact with the criminal justice system.

The emergence of synthetic drugs should not warrant congressional action that will interfere with how parents address this issue with their son or daughter. Instead, the government should be doing what it can to help parents and community mentors educate young people about synthetic drugs. Congress should also reduce the availability of these products to minors through market regulation. For instance, the misuse of household and industrial aerosol products by young people resulted in a government response that balanced public education with efforts by merchants and lawmakers to prevent minors from purchasing or acquiring aerosol products.

Youth would also be better served by a proactive effort by Congress to fund studies and evaluations that give the public, lawmakers and health authorities a better understanding of the health implications of synthetic drugs. This legislation would significantly impede future scientific research by placing synthetic drugs under Schedule I.

We urge you to oppose the Synthetic Drug Control Act of 2011 and ensure that Members have the opportunity to express concerns about policy provisions and potential outcomes of this legislation.

Most Sincerely,

American Civil Liberties Union
Drug Policy Alliance
Justice Policy Institute
National Association for the Advancement of Colored People
National Association of Criminal Defense Lawyers
National Association of Social Workers
The Sentencing Project
StoptheDrugWar.org
Students for Sensible Drug Policy