Expedited Scheduling of Novel Psychoactive Substances and Controlled Substance Analogues – Model Language

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2018 Policy Statement

The emergence and expansion of manufactured drugs designed to mimic the effects of illegal drugs over the past 10 years is one of the most significant public health issues facing the United States and other countries today. On what seems like a near-regular basis, there are reports of overdoses or bad reactions in a particular locality caused by the ingestion of one or more of these substances. Over the years, news reports have used many different terms to refer to all or a subset of these drugs, including: "synthetic drugs," "designer drugs," "spice," "bath salts," "synthetic marijuana," "synthetic cannabinoids," and "synthetic cathinones." According to federal sources, these synthetic drugs were first reported in the U.S. in 2008 when a shipment containing synthetic cannabinoids placed on plant materials was seized by the U.S. Customs and Border Protection.

In 2013, the National Alliance for Model State Drug Laws ("NAMSDL") convened a working group in Washington, D.C to discuss the emergence of these drugs, termed "novel/new psychoactive substances," or "NPS" for short. NPS includes synthetic cannabinoids, substituted cathinones, phenethylamines, opioids, tryptamines, benzodiazepines, and other classes. As an outgrowth of this meeting, NAMSDL published four model documents in 2014. The model documents addressed both NPS and a subset of NPS called "controlled substance analogues" or "analogues" (sometimes spelled "analogs"). The term "analogue" generally refers to a manufactured substance that is not a controlled substance, but is close enough in chemical structure or human effect to a controlled substance that the law either: (1) treats it as a controlled substance; or (2) makes possession/distribution illegal.

The policy statements contained within the 2014 documents described the nature of the public concern over NPS at that time, which fell then (and continue to fall now) into three primary areas. First, NPS consumption can lead to a number of problematic health episodes, including increased heart rate / blood pressure, agitation, anxiety, nausea, vomiting, tachycardia, tremors, seizures, hallucinations, paranoid behavior, and non-responsiveness. Second, NPS products are readily available, including at convenience stores, gas stations, "head" shops, discount beer and tobacco shops, and online entities, with the manufacturers/retailers selling the products via doses and packaging that appears designed to attract teenagers and young adults. Third, the chemists developing NPS can reconfigure the chemical structures of their products to create "new" versions of these synthetic drugs to circumvent state or federal controlled substance laws. Much

of the public's attention at that time, although certainly not all of it, focused on two types of NPS: synthetic cannabinoids and substituted cathinones ("bath salts").

NAMSDL designed its original four model documents to highlight concepts that federal, state, and local policymakers developed at that time in an attempt to make access to NPS more difficult, whether by scheduling the substances more comprehensively, creating specific criminal penalties for sale/distribution, or augmenting criminal actions with economic sanctions designed to financially impact NPS retailers, manufacturers, and distributors. Today, nearly four years later, numerous states and municipalities have enacted legislation/ordinances and implemented policies designed to address NPS use. Nevertheless, NPS use, abuse, and concerns remain in the United States and other countries.

For instance, in November 2017, the European Monitoring Centre for Drugs and Drug Addiction ("EMCDDA") reported that the European Union's Early Warning System ("EWS") currently monitored over 620 different NPS, an increase of more than 75% in the number of NPS as compared to 2013 (350).[1] Moreover, emerging NPS now overlap with the opioid and heroin abuse crisis throughout the United States. Along with the increase in misuse of prescription opioids and heroin in recent years, there has been an increase in overdoses caused by synthetic opioids, primarily in the form of fentanyl-related substances. In some cases, users specifically seek out fentanyl-related substances. However, in other cases, drug sellers use fentanyl-related substances to make counterfeit pharmaceuticals or combine with heroin. As certain fentanyl-related substances can be lethal to humans in very small amounts, large public health emergencies can result where users are not aware of the form or toxicity of the added fentanyl-related compound.

The emergence of synthetic opioid-related NPS is evident in Drug Enforcement Administration ("DEA") data. On a quarterly basis, DEA's Special Testing and Research Laboratory's Emerging Trends Program publishes an Emerging Threat Report identifying the kinds of NPS found in drug evidence seized and analyzed by the DEA. During 2016-1st quarter, the number of synthetic opioids/analgesics identified by DEA (71) was slightly less than the combined number of synthetic cannabinoids and cathinones identified (81). Since then, synthetic opioids/analgesics are present in an increasing percentage of identifications. As of 2016-4th quarter, the number of synthetic opioids/analgesics identified by DEA was three times as high as the number of synthetic cannabinoids and cathinones (181 vs. 61) and by 2017-4th quarter, the number was over five times as high (311 vs. 60).[2]

In light of these new and sustained NPS issues, during 2017, NAMSDL worked to update its model documents and to develop possible new models. The intent behind the updates is to

[1] European Monitoring Centre for Drugs and Drug Addiction, News Release 16/2017 (11.21.2017) available at http://www.emcdda.europa.eu/news/2017/16/new-legislation-response-new-psychoactive-drugs_en.

[2] 2016 and 2017 DEA Emerging Threat Reports are available at https://ndews.umd.edu/resources/dea-emerging-threat-reports.

address better the current NPS-related challenges faced by states and localities. This updated Expedited Scheduling of Novel Psychoactive Substances and Controlled Substance Analogues – Model Language sets forth a streamlined process whereby NPS and analogues may be temporarily scheduled for a period of 18-24 months while a state agency and/or the state legislature has an opportunity to review additional information or research related to the substance before scheduling permanently. The additions to this model stress the need for states to not only develop mechanisms to temporarily schedule emerging NPS but also to focus on shortening the time from initial substance discovery to completed scheduling action.

2014 Policy Statement

The United States is experiencing a growing problem with novel psychoactive substances (i.e., synthetic drugs) and controlled substance analogues. Federal and state drug statutes control substances by listing them in their controlled substances act as a Schedule I, II, III, IV, or V substance. Each substance is listed according to its precise chemical structure. However, in today's world of the internet, no sooner is a substance made illegal than another appears to take its place. Novel psychoactive substances are cheap, easy to make, and return a high profit for manufacturers, distributors, and retailers. Novel psychoactive substances, particularly synthetic cannabinoids, substituted cathinones, and other synthetic substances, are sold as "legal" highs in convenience stores, gas stations, "head" shops, discount beer and tobacco shops, and on the internet. Typically, these substances are sold as "herbal incense," "bath salts," "plant food," "jewelry cleaner," and are labeled "not for human consumption."

In 2010, the American Association of Poison Control Centers ("AAPCC") received 2,906 calls relating to exposures to synthetic marijuana and 304 calls relating to exposures to bath salts (substituted cathinones). In 2011, the AAPCC received 6,959 calls relating to exposures to synthetic marijuana and 6,138 calls relating to exposures to bath salts. Those numbers dropped significantly in 2012 with the AAPCC receiving 5,202 calls relating to exposures to synthetic marijuana and 2,655 calls relating to exposures to bath salts. As of October 31, 2013, the AAPCC has received 2,222 calls relating to exposures to synthetic marijuana and 833 calls relating to exposures to bath salts.

Scheduling each of these substances as they appear can be a long process during which time more people may be injured through the use of a substance they believe to be harmless because they purchased it at their local gas station. The Model Law attempts to make it easier to address the problem of controlled substance analogues and novel psychoactive substances by providing emergency scheduling provisions of those substances.

Expedited Scheduling of Novel Psychoactive Substances and Controlled Substance Analogues – Model Language

Highlights

- Allows a state agency to schedule novel psychoactive substances and controlled substance analogues on an expedited basis.

- Provides a process where a substance can be scheduled temporarily for a period not to exceed eighteen (18) months to allow the state agency and/or legislature an opportunity to review additional information or research related to the substance.

- Provides that when notice is received by the state agency under the state equivalent of Section Two of NAMSDL's Model Controlled Substance Analogue Statute that the controlled substance analogue will be scheduled on an expedited basis for a temporary period not to exceed eighteen (18) months unless permanently scheduled within that time period.

- Provides a six (6) month extension of the temporary scheduling order for both expedited scheduling of substances without Section Two notice and with Section Two notice for state legislatures that meet every two years.

- Allows a state's Office of Drug Policy (or an equivalent executive-level agency) and the state's Board of Forensic Science (or equivalent agency) to request the state scheduling agency to begin the expedited scheduling process for any substance that would meet the criteria for scheduling under state law.

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Section One. Expedited Scheduling Model Language.

Option 1. For states that schedule controlled substances via the legislature.

(a) The [Board, Department, or other state agency charged with oversight of controlled substances], by rule and without regard to the scheduling requirements of [code section], may schedule a controlled substance analogue in Schedule I of the [state equivalent of the federal Controlled Substances Act schedules of controlled substances] regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the [Board, Department, or other state agency charged with oversight of controlled substances] finds that scheduling of the substance on an expedited basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355.

(b) The [Board, Department, or other state agency charged with oversight of controlled substances], by rule and without regard to the scheduling requirements of [code section], may schedule a novel psychoactive substance in Schedule I, II, III, IV, or V of the [state equivalent of the federal Controlled Substances Act schedules of controlled substances] if the [Board, Department, or other state agency charged with oversight of controlled substances] finds that scheduling of the substance on an expedited basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355.

(c) In making the determination of whether to schedule a substance on an expedited basis, the [Board, Department, or other state agency charged with oversight of controlled substances] shall assess the degree of danger or probable danger of the substance by considering the following: (1) the actual or potential abuse of the substance, including: (A) its history and current pattern of abuse; (B) the scope, duration, and significance of abuse; and (C) a judgment of the degree of actual or possible detriment that may result from the abuse of the substance; and (2) the risk to public health. The [Board, Department, or other state agency charged with oversight of controlled substances] shall also consider whether the substance has been scheduled on a temporary basis under federal law and may also consider clandestine importation, manufacture, or distribution of said substance.

Subsection (d) – Option A

(d) The [Board, Department, or other state agency charged with oversight of controlled substances] shall post a public notice thirty (30) days prior to the effective date of the expedited scheduling action, at the state capitol, in the office of the governor, and on the [Board, Department, or other state agency charged with oversight of controlled substances]'s website for public inspection.

Subsection (d) – Option B

(d)(1) Upon making the initial determination to temporarily schedule a substance on an expedited basis, the [Board, Department, or other state agency charged with oversight of controlled substances] shall post a public notice of that decision for public inspection. The notice shall be posted at the state capitol, in the office of the governor, on the [Board, Department, or other state agency charged with oversight of controlled substances]'s website, and on any other state website designated for posting all meetings and notices. Notice of the proposed action shall also be sent to the state's Office of Drug Policy [if established] and the state's Board of Forensic Science [or equivalent agency].

(2) The public notice shall set a date, time, and location for a hearing on the proposed expedited scheduling action that is at least thirty (30) days after the date the public notice is posted.

(3) The public notice shall recommend that any person who wishes to object to the proposed expedited scheduling action should appear in person at the hearing to explain the basis for the objection.

(4) Once the hearing concludes, the [Board, Department, or other state agency charged with oversight of controlled substances] shall issue a ruling within twenty-four (24) hours that either upholds the proposed expedited scheduling action or withdraws it.

(e) If a substance is added or rescheduled on an expedited basis under this subsection, the control shall be for a temporary period not to exceed [eighteen (18) months] unless the legislature does not meet during that time period, in which case the temporary control may be extended by a period not to exceed [six (6) months]. If, at the next regular session of the state legislature, the temporary designation of the added or rescheduled substance is not made permanent by the legislature, such expedited addition or rescheduling shall expire.

(f) Upon receipt of a notice under [state equivalent of Section Five of NAMSDL's Model Controlled Substance Analogue Statute- see attached Appendix] and amendments thereto, the [Board, Department, or other state agency charged with oversight of controlled substances] shall initiate scheduling of the controlled substance analogue on an expedited basis pursuant to this subsection. The expedited scheduling of a substance under this subsection shall be for a temporary period of [eighteen (18) months] after the adoption of the scheduling rule unless the legislature does not meet during that time period, in which case the temporary scheduling may be extended by a period not to exceed [six (6) months]. If the substance is not scheduled on a permanent basis by the legislature at the next regular session or it is determined prior to the expiration of [eighteen (18) months] plus any extension that the substance should not be scheduled, the temporary scheduling shall expire.

(g) The state's Office of Drug Policy [if established, or an equivalent executive-level agency] and the state's Board of Forensic Science [or equivalent agency] may request that the [Board, Department, or other state agency charged with oversight of controlled substances] schedule any

substance that would meet the criteria for scheduling under state law. The [Board, Department, or other state agency charged with oversight of controlled substances] shall initiate scheduling of the requested substance on an expedited basis pursuant to this section within thirty (30) days.

(h) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in [code section].

2018 COMMENT

THE 2018 UPDATES TO THIS MODEL LANGUAGE CONTAIN THREE PRIMARY CHANGES. FIRST, THE TERMS "EMERGENCY" AND "EMERGENCY SCHEDULING" WERE REMOVED. IN MANY STATES, REGULATIONS CAN BE AMENDED QUICKLY (BUT ONLY TEMPORARILY) USING AN EMERGENCY RULEMAKING PROCESS. IN THESE CASES, THE CHANGES TO REGULATIONS REMAIN EFFECTIVE FOR ONLY A RELATIVELY SHORT PERIOD OF TIME, OFTEN 120-180 DAYS, AT WHICH TIME THE REGULATIONS REVERT BACK TO THE ORIGINAL. WHEN EMERGENCY RULEMAKING IS USED TO MODIFY CONTROLLED SUBSTANCE SCHEDULES TEMPORARILY, STATE POLICYMAKERS OFTEN DESCRIBE THE PROCESS AS "EMERGENCY SCHEDULING."

THIS MODEL LANGUAGE PROPOSES A SCHEDULING METHOD DIFFERENT FROM SUCH EMERGENCY SCHEDULING. HERE, THERE IS NO REQUIREMENT THAT A STATE FOLLOW ITS EMERGENCY RULEMAKING PROCEDURES (IF ANY) AND THE PROPOSED TEMPORARY SCHEDULING PERIOD IS CONSIDERABLY LONGER. ACCORDINGLY, NAMSDL BELIEVES THAT REMOVING THE TERM "EMERGENCY" WILL REDUCE POSSIBLE CONFUSION. INSTEAD, THE UPDATED MODEL LANGUAGE NOW USES THE PHRASE "EXPEDITED SCHEDULING" TO DESCRIBE A PROCESS THAT CAN BE MORE STREAMLINED THAN THE TYPICAL FULL SCHEDULING IN A PARTICULAR STATE, AND "TEMPORARY," TO DESCRIBE THE DURATION OF THE EFFECTIVE PERIOD. ULTIMATELY, THE MODEL LANGUAGE CONTAINS AN APPROACH SIMILAR TO THE AUTHORITY GRANTED TO THE U.S. ATTORNEY GENERAL TO TEMPORARILY PLACE A SUBSTANCE INTO SCHEDULE I OF THE CONTROLLED SUBSTANCES ACT FOR TWO YEARS UNDER 21 U.S.C. § 811(H).

THE SECOND MAJOR CHANGE IS TO ADD A SECOND OPTION FOR SUBSECTION (D) CONCERNING THE METHOD IN WHICH THE EXPEDITED SCHEDULING ACTION TAKES EFFECT. UNDER THE PRIOR MODEL, WHICH REMAINS AS SUBSECTION (D) – OPTION A, NAMSDL WAS SILENT ON THE PROCESS A STATE COULD USE TO DEVELOP AND ADOPT THE EXPEDITED SCHEDULING ACTION, OTHER THAN REQUIRING NOTICE TO THE PUBLIC OF AT LEAST 30 DAYS BEFORE EFFECT. IN CONTRAST, NEW SUBSECTION (D) – OPTION B PROPOSES A PARTICULAR METHOD OF ADOPTION THAT IS DESIGNED TO BE SIMILAR TO AN ADMINISTRATIVE HEARING PROCESS. UNDER OPTION (B), THE BOARD, DEPARTMENT, OR OTHER STATE AGENCY CHARGED WITH OVERSIGHT OF CONTROLLED SUBSTANCES HOLDS A HEARING CONCERNING THE PROPOSED SCHEDULING CHANGE AT LEAST THIRTY (30) DAYS AFTER PROVIDING NOTICE. THE BOARD, DEPARTMENT, OR OTHER STATE AGENCY CHARGED WITH OVERSIGHT OF CONTROLLED SUBSTANCES THEN VOTES ON THE CHANGE WITHIN 24 HOURS OF THE CONCLUSION OF THE HEARING. THIS PROCESS IS BASED ON THE EXPEDITED SCHEDULING PROCESS

USED IN VIRGINIA. THE PURPOSE FOR THIS SECOND CHANGE IS TO ENCOURAGE STATES TO DEVELOP SPECIFIC PROCEDURES TO ENSURE PROPOSED TEMPORARY SCHEDULING ACTIONS DO NOT STALL.

THE THIRD MAJOR CHANGE IS NEW SUBSECTION (G). THIS NEW SUBSECTION ALLOWS CERTAIN STATE AGENCIES WITH CONSIDERABLE EXPERTISE IN EMERGING DRUG TRENDS, SUCH AS THE STATE OFFICE OF DRUG POLICY AND THE STATE BOARD OF FORENSIC SCIENCE, TO REQUEST SPECIFICALLY THAT THE STATE CONTROLLED SUBSTANCE SCHEDULING AUTHORITY SCHEDULE A SUBSTANCE ON AN EXPEDITED BASIS. THIS PROVISION IS BASED ON KEN. REV. STAT. § 218A.020(5).

2014 COMMENT

THIS SECTION IS TAKEN IN PART FROM HAW. REV. STAT. § 329-11, KAN. STAT. ANN. § 65-4102, AND WASH. REV. CODE § 69.50.201. SUBSECTIONS (A) – (E) ARE INTENDED TO ALLOW A STATE AGENCY TO SCHEDULE NOVEL PSYCHOACTIVE SUBSTANCES AND/OR CONTROLLED SUBSTANCE ANALOGUES ON AN EXPEDITED BASIS WHILE THE LEGISLATURE IS IN OR OUT OF SESSION AS THE NEED ARISES FOR THE PROTECTION OF THE PUBLIC HEALTH. THESE SUBSECTIONS ARE INTENDED TO PROVIDE A FAST MECHANISM TO SCHEDULE THESE SUBSTANCES ON A TEMPORARY BASIS. THE EIGHTEEN MONTH TIME PERIOD IS PROVIDED TO GIVE THE STATE AGENCY AND/OR THE LEGISLATURE AMPLE OPPORTUNITY TO GATHER INFORMATION REGARDING THE SUBSTANCE AND MAKE AN EDUCATED DETERMINATION AS TO WHETHER THE SUBSTANCE IS A THREAT TO THE PUBLIC HEALTH AND SAFETY AND SHOULD BE SCHEDULED ON A PERMANENT BASIS OR THAT THERE IS NO THREAT TO THE PUBLIC HEALTH AND SAFETY AND THE TEMPORARY BAN SHOULD BE REVOKED. THE SIX MONTH EXTENSION IS INCLUDED FOR THOSE STATE LEGISLATURES THAT MEET ON AN INFREQUENT BASIS. SUBSECTION (F) PROVIDES FOR THE EMERGENCY SCHEDULING OF A CONTROLLED SUBSTANCE ANALOGUE WHEN NOTICE IS RECEIVED BY THE RELEVANT AGENCY UNDER THE STATE STATUTORY EQUIVALENT OF SECTION TWO OF NAMSDL'S MODEL CONTROLLED SUBSTANCE ANALOGUE STATUTE THAT PROSECUTION HAS BEEN INITIATED AGAINST A PERSON ACCUSED OF A CRIME RELATED TO A CONTROLLED SUBSTANCE ANALOGUE. AS WITH SUBSECTIONS (A) – (E), TEMPORARY SCHEDULING UNDER SUBSECTION (F) IS FOR A PERIOD NOT TO EXCEED EIGHTEEN MONTHS, WITH ONE SIX MONTH EXTENSION, TO PROVIDE AN OPPORTUNITY FOR THE LEGISLATURE OR STATE AGENCY TO GATHER INFORMATION ON THE SUBSTANCE AND MAKE AN EDUCATED DETERMINATION THAT THE SUBSTANCE SHOULD OR SHOULD NOT BE PERMANENTLY SCHEDULED. SUBSECTION (G) IS INTENDED TO PROVIDE THAT THE EMERGENCY SCHEDULING POWERS UNDER THIS SECTION DO NOT INCLUDE THE SCHEDULING OF CERTAIN SUBSTANCES.

Option 2. For states that schedule controlled substances via a state agency.

(a) The [Board, Department, or other state agency charged with oversight of controlled substances], by rule and without regard to the scheduling requirements of [code section], may schedule a controlled substance analogue in Schedule I of the [state equivalent of the federal Controlled Substances Act schedules of controlled substances] regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the [Board, Department, or other state agency charged with oversight of controlled substances] finds that scheduling of the substance on an expedited basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355.

(b) The [Board, Department, or other state agency charged with oversight of controlled substances], by rule and without regard to the scheduling requirements of [code section], may schedule a novel psychoactive substance in Schedule I, II, III, IV, or V of the [state equivalent of the federal Controlled Substances Act schedules of controlled substances] if the [Board, Department, or other state agency charged with oversight of controlled substances] finds that scheduling of the substance on an expedited basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355.

(c) In making the determination of whether to schedule a substance on an expedited basis, the [Board, Department, or other state agency charged with oversight of controlled substances] shall assess the degree of danger or probable danger of the substance by considering the following: (1) the actual or potential abuse of the substance, including: (A) its history and current pattern of abuse; (B) the scope, duration, and significance of abuse; and (C) a judgment of the degree of actual or possible detriment that may result from the abuse of the substance; and (2) the risk to public health. The [Board, Department, or other state agency charged with oversight of controlled substances] shall also consider whether the substance has been scheduled on a temporary basis under federal law and may also consider clandestine importation, manufacture, or distribution of said substance.

Subsection (d) – Option A

(d) The [Board, Department, or other state agency charged with oversight of controlled substances] shall post a public notice thirty (30) days prior to the effective date of the expedited scheduling action, at the state capitol, in the office of the governor, and on the [Board, Department, or other state agency charged with oversight of controlled substances]'s website for public inspection.

Subsection (d) – Option B

(d)(1) Upon making the initial determination to temporarily schedule a substance on an expedited basis, the [Board, Department, or other state agency charged with oversight of controlled substances] shall post a public notice of that decision for public inspection. The notice shall be posted at the state capitol, in the office of the governor, on the [Board, Department, or other state agency charged with oversight of controlled substances]'s website, and on any other state website designated for posting all meetings and notices. Notice of the proposed action shall also be sent to the state's Office of Drug Policy [if established] and the state's Board of Forensic Science [or equivalent agency].

(2) The public notice shall set a date, time, and location for a hearing on the proposed expedited scheduling action that is at least thirty (30) days after the date the public notice is posted.

(3) The public notice shall recommend that any person who wishes to object to the proposed expedited scheduling action should appear in person at the hearing to explain the basis for the objection.

(4) Once the hearing concludes, the [Board, Department, or other state agency charged with oversight of controlled substances] shall issue a ruling within twenty-four (24) hours that either upholds the proposed expedited scheduling action or withdraws it

(e) If a substance is added or rescheduled on an expedited basis under this subsection, the control shall be for a temporary period not to exceed [eighteen (18) months] and, if the temporary designation is not made permanent by the [Board, Department, or other state agency charged with oversight of controlled substances] within such time period, such expedited addition or rescheduling shall expire.

(f) Upon receipt of a notice under [state equivalent of Section Five of NAMSDL's Model Controlled Substance Analogue Statute – see attached Appendix] and amendments thereto, the [Board, Department, or other state agency charged with oversight of controlled substances] shall initiate scheduling of the controlled substance analogue on an expedited basis pursuant to this subsection. The temporary scheduling of a substance under this subsection shall expire [eighteen (18) months] after the adoption of the scheduling rule unless the substance is scheduled on a permanent basis or it is determined prior to the expiration of [eighteen (18) months] that the substance should not be scheduled.

(g) The state's Office of Drug Policy [if established, or an equivalent executive-level agency] and the state's Board of Forensic Science [or equivalent agency] may request that the [Board, Department, or other state agency charged with oversight of controlled substances] schedule any substance that would meet the criteria for scheduling under state law. The [Board, Department, or other state agency charged with oversight of controlled substances] shall initiate scheduling of the requested substance on an expedited basis pursuant to this section within thirty (30) days.

(h) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in [code section].

2018 COMMENT

SECTION ONE, OPTION (2) IS IDENTICAL TO SECTION ONE, OPTION (1) EXCEPT THAT IT REMOVES ANY REFERENCE TO THE STATE LEGISLATURE AND REMOVES THE SIX (6) MONTH EXTENSION AS UNNECESSARY FOR STATE AGENCIES. THE DISCUSSION OF THE CHANGES MADE THAT IS CONTAINED IN THE 2018 COMMENT TO SECTION ONE, OPTION (1) IS ALSO APPLICABLE TO OPTION (2).

2014 COMMENT.

THIS SECTION IS TAKEN IN PART FROM HAW. REV. STAT. § 329-11, KAN. STAT. ANN. § 65-4102, AND WASH. REV. CODE § 69.50.201. THIS SECTION IS IDENTICAL TO OPTION 1 EXCEPT THAT IT REMOVES ANY REFERENCE TO THE STATE LEGISLATURE AND REMOVES THE SIX (6) MONTH EXTENSION AS UNNECESSARY FOR STATE AGENCIES.

APPENDIX A

Model Controlled Substances Analogue Statute

Section Five. Controlled Substance Analogue Treated as Schedule I Substance.

A controlled substance analogue, must be treated, for the purposes of this [Act], as a substance included in Schedule I. Within [ ] days after the initiation of prosecution with respect to a controlled substance analogue by indictment or information, the [prosecuting attorney] shall notify the [appropriate person or agency] of information relevant to emergency scheduling. After final determination that the controlled substance analogue should not be scheduled, no prosecution relating to that substance as a controlled substance analogue may be commenced or continued.

2014 COMMENT

THIS SECTION IS TAKEN FROM § 214 OF THE UNIFORM CONTROLLED SUBSTANCES ACT (1990), WHICH PROVIDES THAT A CONTROLLED SUBSTANCE ANALOGUE BE TREATED AS A SCHEDULE I SUBSTANCE AND FURTHER PROVIDES FOR THE EMERGENCY SCHEDULING OF SUCH SUBSTANCE.