

**WARREN COUNTY BOARD OF SUPERVISORS**

**COMMITTEE: JOINT MEETING - CRIMINAL JUSTICE/LEGISLATIVE & RULES**

**DATE: MARCH 27, 2012**

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**CRIMINAL JUSTICE COMMITTEE MEMBERS PRESENT:**

SUPERVISORS BENTLEY  
KENNY  
STRAINER  
MONROE  
DICKINSON  
MASON

**OTHERS PRESENT:**

KATE HOGAN, DISTRICT ATTORNEY  
ROBERT IUSI, DIRECTOR OF THE PROBATION DEPARTMENT  
MARK SAGER, PROBATION OFFICER  
DANIEL G. STEC, CHAIRMAN OF THE BOARD  
PAUL DUSEK, COUNTY ADMINISTRATOR  
MARTIN AUFFREDOU, COUNTY ATTORNEY  
AMY BARTLETT, FIRST ASSISTANT COUNTY ATTORNEY  
AMANDA ALLEN, DEPUTY CLERK OF THE BOARD

**CRIMINAL JUSTICE COMMITTEE MEMBER ABSENT:**

SUPERVISOR VANSELOW

KEVIN GERAGHTY, BUDGET OFFICER

SUPERVISORS CONOVER

MERLINO

TAYLOR

**LEGISLATIVE COMMITTEE MEMBERS PRESENT:**

SUPERVISORS THOMAS  
SOKOL  
WOOD

TROOPER JIM WEST, NEW YORK STATE POLICE DEPARTMENT  
DAVID SAFFER, COUNCIL FOR THE PREVENTION OF ALCOHOL  
& SUBSTANCE ABUSE

DON LEHMAN, *THE POST STAR*

THOM RANDALL, *ADIRONDACK JOURNAL*

CHARLENE DIRESTA, SR. LEGISLATIVE OFFICE SPECIALIST

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**LEGISLATIVE COMMITTEE MEMBERS ABSENT:**

SUPERVISORS GIRARD  
FRASIER

Mr. Bentley called the Joint Meeting of the Criminal Justice and Legislative & Rules Committees to order at 11:57 a.m.

Copies of the agenda packet were distributed to the Committee members; *a copy of the agenda packet is on file with the minutes.*

Privilege of the floor was extended to Kate Hogan, District Attorney (DA), who introduced Trooper Jim West, of the New York State Police Department. Mrs. Hogan noted that she and Robert Iusi, Director of the Probation Department, had been collaborating on the issue of a potential local law to ban the sale of synthetic marijuana or synthetic cannabinoids (sold as herbal incense) in Warren County. She added that Martin Auffredou, County Attorney, had reviewed with her the draft version of the local law which would be presented today.

Ms. Hogan stated synthetic marijuana, which she referred to as the brand name "Posh", was vastly different from organic marijuana. She announced that Senator John Flannigan, from Long Island, and Senator Betty Little have co-sponsored legislation which was introduced in the Senate. She noted there was currently no sponsor from the Assembly for this legislation. While waiting for the State to act on this matter, Ms. Hogan implored the Warren County Board of Supervisors to enact a local law to ban the sale of synthetic marijuana and cannabinoids. She said she frequently saw cases involving the repercussions of using synthetic marijuana. She explained the largest difference between using synthetic marijuana and organic marijuana was the physical reaction of the user.

Ms. Hogan highlighted two cases involving the use of synthetic marijuana (Posh), as follows:

1. The first case involved a man who smoked synthetic marijuana and while under the effects, brutally beat a woman and small child, resulting in a ten year incarceration; and

2. The second case involved a young male who smoked synthetic marijuana and repeatedly stabbed his mother, resulting in a charge of attempted murder, a guilty verdict of assault and a five year incarceration. The young man reported he had wanted to kill his mother, who no longer had use of her hand following the incident.

Ms. Hogan requested Trooper West to describe the actions of the man in the first highlighted case, following his arrest. Trooper West stated the suspect kept rocking back and forth during the interview and continued to repeat that he had smoked a lot of Posh. Trooper West added the man was unresponsive to most questions and claimed to have no memory of what happened because he had "blacked out". He noted the suspect had begun to bite his own hand to the point that medical assistance was required. Ms. Hogan stated the young male in the second case was described as otherwise being a great kid who became violent after smoking synthetic marijuana.

Mrs. Hogan reported she had met with Jim Dexter, Superintendent of BOCES (Board of Cooperative Educational Services), to request that he speak at the public hearing for the proposed local law. She said the school system was frustrated by the lack of recourse for this situation. She remarked that Trooper West had responded to a call recently which highlighted how synthetic marijuana usage could potentially avoid the criminal justice system. Trooper West explained he had responded to a call involving a 14 year old juvenile who was out of control; however, he added, the juvenile had fled on foot by the time he arrived at the scene. He continued by saying the mother had reported her son had made threats to do harm to himself and had expressed a desire to kill the principal and other faculty members of his school. Trooper West said the mother had reported her son had begun smoking Posh on a regular basis and had been suspended from school for the remainder of the year. He commented the juvenile was detained a few hours later and was in possession of stolen property and some Posh; however, he added, since the Posh was currently not an illegal substance there was no means with which to confiscate or charge for the possession. Trooper West noted most of the containers in which synthetic marijuana were sold, were specifically marked "not for human consumption". He stated he had been on numerous calls which had been for possible overdoses only to discover the offender was "high" on Posh, often hallucinating or having a rapid heart rate.

Mr. Monroe noted the draft local law indicated the DEA (Drug Enforcement Agency) had taken action to render synthetic marijuana and cannabinoids illegal. Martin Auffredou, County Attorney, explained that Amy Bartlett, First Assistant County Attorney, had conducted research to assist with the drafting of the local law and had discovered that the DEA had taken emergency measures last year in order to add five synthetic compounds to the controlled substance list. He added that when an agency, such as the DEA, took emergency measures it was usually part of the process of making a permanent law. He noted the DEA's emergency measures were in force through August 29, 2012 but the permanent measures were currently unknown. Mr. Auffredou stated it was also unknown if the five compounds added to the controlled substance list would cover all of the compounds used in the production of synthetic marijuana and cannabinoids. He added there was also concern with the ability of local law enforcement to enforce the emergency measures enacted by the DEA. He explained the DEA's emergency measures were included in the draft local law to buttress the fact that there was a known danger and activities were taking place elsewhere to address the danger.

Mr. Auffredou announced that other agencies and municipalities had enacted local laws, including the State of New Jersey, the City of Albany, the City of Auburn and Suffolk County and he added the Village of Fort Edward was currently considering enacting a local law.

Ms. Hogan stated that she had no authority to prosecute a DEA case. She explained the DEA exercising their emergency authority was a tremendous asset for a Federal Prosecutor but was no

help to a prosecutor at the State level. She pointed out a letter from the Commissioner of the New York State Department of Health (NYS DOH) which alerted to the emerging threat associated with the use of synthetic marijuana and cannabinoids; *a copy of the letter is on file with the minutes*. Ms. Hogan stated that Terry Comeau, Warren County Sheriff's Investigator, was a member of the DEA Task Force and had assured her that they were currently working on plans to have a positive impact on Warren County with respect to the issue of synthetic marijuana and cannabinoids. Mr. Monroe inquired about the scope of the proposed local law and Mr. Auffredou replied the local law would make the sale, possession or consumption of synthetic marijuana and cannabinoids illegal.

Mr. Kenny thanked Mr. Iusi for providing him with the necessary information on the issue. He said he had not become aware of the issue until about a year ago and was surprised to discover that synthetic marijuana and cannabinoids had been sold for the last ten years. He opined the Board of Supervisors should take all necessary means to outlaw the sale and use in Warren County as soon as possible. Ms. Hogan pointed out that although synthetic marijuana and cannabinoids had been sold for the last ten years, they had not been a known issue in Warren County until approximately 18 months ago.

Mr. Auffredou reviewed the draft local law in detail with the Committee members; *a copy of the draft local law entitled "A Local Law Banning the Sale and/or Use of Synthetic Marijuana or Synthetic Cannabinoids" is on file with the minutes*. He explained the local law had been drafted using the format of local laws previously enacted or proposed by other municipalities which had been tailored to meet the needs of Warren County.

Mr. Dickinson asked the effect that the local law would have on the issue and Mr. Auffredou replied adoption of the local law would make it illegal to sell, possess or consume synthetic marijuana and cannabinoids and allow for criminal prosecution for these offenses. Mr. Dickinson inquired as to the means of recognizing the substance and Ms. Hogan replied the substance came in a variety of packages and reiterated the packages were usually marked "not for human consumption". Trooper West stated the substance resembled the appearance of organic marijuana and looked like an herbal mixture and smelled like incense. Mr. Dickinson asked if a list of ingredients were included on the packaging and Trooper West replied he was unsure as he currently did not have the authority to confiscate packages. Mr. Monroe questioned if it would be necessary to complete lab testing in order to prosecute for the use or possession of synthetic marijuana or cannabinoids and Mrs. Hogan replied there were several ways to prove the substance including the packaging; however, she continued, there were drug recognition experts in the New York State Police Department who could confirm the identity of the substance. Ms. Hogan said the local law would make the sale, possession or use a Class A Misdemeanor and it was unlikely they would send the substance to a lab for testing. She stated the most important purpose of the local law was to ensure it was illegal to use the substance due to the violent behavior and/or suicidal tendencies which were associated with synthetic marijuana and cannabinoids.

Discussion ensued.

Mr. Auffredou noted the draft local law defined the term "sell" to include the act of giving and included a broad definition of synthetic cannabinoids. He added the draft local law also discussed the effects that the substances had on the user. He thanked Mr. Iusi for all the information he had provided which assisted with the drafting of the local law. Mr. Auffredou stated if the Committee authorized the introduction of the local law, a public hearing would be held and the local law could be adopted at the May 18, 2012 Board meeting. Mr. Dickinson questioned if the local law would be subject to challenge and Mr. Auffredou replied that every local law was subject to challenge. Mr.

Auffredou said it was his hope that Warren County and every municipality would enact a similar local law and that Statewide legislation would pre-empt the issue. He explained that if the State enacted a law it would render the county and municipality local laws no longer necessary. Mr. Dickinson asked if the County local law would make it unnecessary for each of the Towns in Warren County to enact a similar local law and Mr. Auffredou replied affirmatively. Mr. Dickinson suggested the Committees move forward with the proposed local law. Mrs. Wood commended all of the people who had worked so quickly in the drafting of the local law.

Ms. Hogan informed that Senate Bill 6694 was sponsored by Senator Little. She said if Warren County enacted a local law and other counties followed suit, it would lend a stronger voice to the proposed legislation at the State level. Mr. Kenny opined the Board should act as quickly as possible to enact this local law. He added the problem had been recognized by the DEA, the NYS DOH and New York State Senators had sponsored the proposed legislation. Mr. Monroe asked if there was a test available to determine if a person was under the influence of synthetic marijuana or cannabinoids and Trooper West replied there was no test available yet because the substance was not illegal. Mr. Auffredou stated the proposed local law had been drafted to allow law enforcement the greatest amount of flexibility for enforcement.

Mr. Taylor said he was in support of the proposed local law; however, he asked if the impact to the criminal justice system had been considered. Ms. Hogan responded that the first impact would be to the school system who would be provided with a mechanism to control the use of the substance on their premises. She added the use of synthetic marijuana and cannabinoids by school aged children would be an issue for the Family Courts, as opposed to Criminal Courts. She stated it was not her intent to incarcerate youthful offenders, her intent was to mandate counseling to keep the youths from using the substance. She commented the impact to the criminal justice system in Warren County would be greatest in the Probation Department. Mr. Iusi commended the Board for looking into this issue and said the Probation Department had seen an increase in the number of cases involving synthetic marijuana and cannabinoids since December of 2011. Mr. Bentley opined that enacting the local law would make it more difficult for the youths to buy synthetic marijuana as the sale of the substance would be illegal. Ms. Bartlett announced there were six youths currently in the Family Court System due to their use of synthetic marijuana.

Mr. Monroe said possession of a small amount of organic marijuana was a violation and he asked where synthetic marijuana would be on the hierarchy of drug possession charges. Mrs. Hogan explained that possession of organic marijuana with the intent to sell was a misdemeanor but possession of a small amount was a violation. She added the sale, possession or use of synthetic marijuana would be an unclassified misdemeanor under the law and therefore would be treated as a Class A Misdemeanor, which was one step up from a violation. She reiterated the intent was to prevent use of the substance and not to incarcerate the offenders. Mr. Monroe opined that it sounded as if synthetic marijuana was viewed as being worse than small amounts of organic marijuana and Trooper West responded that the New York State Police rarely received calls pertaining to people acting violent or suicidal after smoking organic marijuana; however, he added, calls pertaining to violent or suicidal behavior caused by the use of synthetic marijuana were very frequent. Ms. Hogan stated the impact to the smoker was greater from synthetic marijuana than from organic marijuana.

Mark Sager, Probation Officer, agreed there was an upsurge in the use of synthetic marijuana in Warren County. He said a large percentage of the adults on probation were switching from consumption of alcohol or use of illegal drugs to smoking synthetic marijuana in order to pass any

alcohol or drug screening tests. He opined that rendering the substance illegal would assist the Probation Department who currently had no recourse when they discovered a probationer was using synthetic marijuana or cannabinoids due to the fact that they were considered legal.

Motion was made by Mr. Kenny, seconded by Mr. Strainer and carried unanimously by the Criminal Justice Committee to refer the issue of a possible Local Law banning the sale and/or use of synthetic marijuana or synthetic cannabinoids to the Legislative & Rules Committee.

Motion was made by Mrs. Wood, seconded by Mr. Thomas and carried unanimously by the Legislative & Rules Committee to introduce Local Law No. 6 of 2012, entitled "A Local Law Banning the Sale and/or Use of Synthetic Marijuana or Synthetic Cannabinoids" and to set a Public Hearing for same. *A copy of the draft local law is on file with the minutes and the necessary resolution was authorized for the April 20, 2012 Board meeting.*

There being no further business to come before the Criminal Justice or Legislative & Rules Committees, on motion made by Mr. Kenny and seconded by Mr. Strainer, Mr. Bentley adjourned the meeting at 12:42 p.m.

Respectfully submitted,  
Charlene DiResta, Sr. Legislative Office Specialist