

## Armed Forces Med Examiner Records High Positive Test Rates for Spice

By Lisa M. Windsor

Six months into the federal government's blitz on designer drugs, the military is making inroads in detecting synthetic marijuana users within its ranks. Citing statistics from the Armed Forces Medical Examiner System, Air Force Times

reported

that since March 45 of 86 airmen tested positive for spice, in addition to 164 of 242 and 113 of 183 and Marines. The services members who participated in these tests were already under investigation.

The stakes are now much higher for these service members who test positive for spice, a smokeable herbal product with psychoactive and hallucinogenic effects similar to marijuana. On March 1, the U.S. Drug Enforcement Administration temporarily classified

five chemicals used in spice products as Schedule I controlled substances. This one-year scheduling makes it illegal to possess and sell spice and other similar synthetic designer drugs.

Consequently, the scheduling action also makes the possession, distribution, and use of these substances a crime punishable under Article 112a of the Uniform Code of Military Justice

. Article 112a is generally used for offenses involving marijuana, methamphetamine, cocaine, and other illegal drugs. It is now a tool in the military's fight against spice. An Article 112a conviction could subject a service member to a dishonorable discharge a sentence of up to five years or more confinement, plus total forfeitures of pay and allowances.

Prior to March 1, service members could legally obtain spice, also known as K2 and many other names. Previously, the military was only able to deter such conduct under Article 92 as violations of general orders not to use or possess such substances. Under current laws and regulations, the armed forces have prohibited the ingestion, possession, distribution, and sale of designer drugs, such as spice, as well as naturally occurring intoxicating substances such as salvia divinorum ("salvia") with MARFORCOM Order 5355.1

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Even with its inclusion as a Schedule I controlled substance, practical problems still abound in

testing for the illegal substance. As the Air Force Times

article noted, not only is spice urine testing cost prohibitive on a recurring random basis, but the test using current procedures cannot differentiate between secondary exposure, also known as passive inhalation, and wrongful ingestion of the drug. To complicate matters even further, many of these synthetic substances are marketed as herbal incense, making innocent exposure a real possibility. So although stiffer penalties may now be available to the armed forces, proving the requisite criminal intent is as elusive as ever.

What service members need to know:

A Urinalysis tests for the metabolite that is created during the body's process of ingesting or excreting a drug.

For example, tetrahydrocannabinol (THC) is the primary metabolite for marijuana.

If a service member is inadvertently exposed and tests positive on a urinalyses test for spice, a defense of innocent ingestion (e.g. secondhand smoke) could be possible depending on the metabolite level and a number of other factors.

In some possession cases, service members who were unaware of the specific nature of what they purchased could raise a mistake of fact defense because some packages in which these substances are sold identify their contents as "incense only."

Service members who test positive for spice or salvia use should immediately contact a military attorney to explore whether any of these or other defenses may apply to their case.

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