

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 258
Committee Substitute Favorable 3/14/23
Senate Judiciary Committee Substitute Adopted 6/22/23

Short Title: Novel Opioid Control Act of 2023.

(Public)

Sponsors:

Referred to:

March 6, 2023

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE STATE CONTROLLED SUBSTANCES ACT; TO INCREASE THE FINE IMPOSED ON PERSONS CONVICTED OF TRAFFICKING IN HEROIN, FENTANYL, OR CARFENTANIL; TO MODIFY THE OFFENSE OF DEATH BY DISTRIBUTION TO INCLUDE THE UNLAWFUL DELIVERY AND INGESTION OF CERTAIN CONTROLLED SUBSTANCES THAT PROXIMATELY CAUSES THE DEATH OF A PERSON AND TO INCREASE THE PUNISHMENTS FOR A PERSON WHO COMMITS THE OFFENSE OF DEATH BY DISTRIBUTION; TO ADD POSSESSION OF LESS THAN ONE GRAM OF ANY CONTROLLED SUBSTANCE TO THE LIST OF OFFENSES FOR WHICH LIMITED IMMUNITY FROM PROSECUTION APPLIES FOR AN INDIVIDUAL WHO SEEKS MEDICAL ASSISTANCE; AND TO CREATE THE TASK FORCE ON ENFORCEMENT OF FENTANYL AND HEROIN DRUG VIOLATIONS.

The General Assembly of North Carolina enacts:

UPDATE THE STATE CONTROLLED SUBSTANCES ACT

SECTION 1.(a) G.S. 90-89(1) reads as rewritten:

"(1) Opiates. – Any of the following opiates or opioids, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

...

rrr. Brorphine.

sss. AP-237.

ttt. 2-methyl AP-237.

uuu. (ortho, meta, or para)-methyl AP-237.

vvv. AP-238.

www. (ortho, meta, or para)-hydroxy 2-methyl AP-237.

xxx. 2-Naphthyl U-47700.

yyy. 1-Naphthyl U-47700.

zzz. 4-(Trifluoromethyl) U-47700.

aaaa. Methoxy U-47700.

bbbb. Furanyl UF-17.

cccc. Cyclopropyl U-47700.



* H 2 5 8 - V - 3 *

1 dddd. Phenyl U-47700.
 2 eeee. Ethyl U-47700.
 3 ffff. (2,3- or 3,4)-difluoro-N,N-didesmethyl U-47700.
 4 gggg. (2,3- or 3,4)-difluoro U-49900.
 5 hhhh. (2,3- or 3,4)-difluoro-N-desmethyl U-47700.
 6 iiii. 4-fluoro U-47931E.
 7 jjjj. (2,3- or 3,4)-difluoro U-51754.
 8 kkkk. (2,3- or 3,4)-difluoro Isopropyl U-47700.
 9 llll. (2,3- or 3,4)-difluoro Propyl U-47700.
 10 mmmm. (2,3- or 3,4)-difluoro U-50488.
 11 nnnn. (2,3- or 3,4)-difluoro U-48800.
 12 oooo. (2,3- or 3,4 or 2,4)-difluoro U-47700.
 13 pppp. UF-17.
 14 qqqq. U-47109.
 15 rrrr. U-48520.
 16 ssss. N,N-didesmethyl U-47700.
 17 tttt. U-62066.
 18 uuuu. Propyl U-47700.
 19 vvvv. (2,3- or 3,4)-Ethylenedioxy U-51754.
 20 www. 4-phenyl U-51754.
 21 xxxx. N-desmethyl U-47700.
 22 yyyy. (2,3- or 3,4)-Ethylenedioxy U-47700.
 23 zzzz. N-methyl U-47931E.
 24 aaaa. (2,3- or 3,4)-Methylenedioxy U-47700.
 25 bbbb. U-69593.
 26 cccc. U-50488.
 27 dddd. U-48753E.
 28 eeee. U-47931E.
 29 ffff. Butonitazene.
 30 gggg. Etodesnitazene (also known as Etonitazepyne).
 31 hhhh. Flunitazene.
 32 iiii. Metodesnitazene.
 33 jjjj. N-Pyrrolidino Etonitazene.
 34 kkkk. Protonitazene."

35 **SECTION 1.(b)** G.S. 90-89(1a) reads as rewritten:

36 "(1a) Fentanyl derivatives. – Unless specifically excepted, listed in another
 37 schedule, or contained within a pharmaceutical product approved by the
 38 United States Food and Drug Administration, any compound structurally
 39 derived from N-[1-(2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide
 40 (Fentanyl) by any substitution on or replacement of the phenethyl group, any
 41 substitution on the piperidine ring, any substitution on or replacement of the
 42 propanamide group, any substitution on the anilido phenyl group, or any
 43 combination of the above unless specifically excepted or listed in another
 44 schedule to include their salts, isomers, and salts of isomers. Fentanyl
 45 derivatives include, but are not limited to, the following:

46 ...

47 f.

48 N-(2-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propana
 49 mide ~~(also known as 2-fluorofentanyl)~~ (also known as
 50 ortho-fluorofentanyl).

- g. N-(3-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide ~~(also known as 3-fluorofentanyl)~~ (also known as meta-fluorofentanyl).
- h. N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide (also known as tetrahydrofuran fentanyl).
- i. N-(4-fluorophenyl)-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide ~~(also known as 4-fluoroisobutyryl fentanyl, 4-FIBF)~~ (also known as 4-fluoroisobutyryl fentanyl).
- j. N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide ~~(also known as 4-fluorobutyryl fentanyl, 4-FBF)~~ (also known as 4-fluorobutyryl fentanyl)."

SECTION 1.(c) G.S. 90-89 is amended by adding a new subdivision to read:

"(1b) Nitazene derivatives. – The N-substituted benzimidazole structural class, including any of the following derivatives, their salts, isomers, or salts of isomers unless specifically utilized as part of the manufacturing process by a commercial industry of a substance or material not intended for human ingestion or consumption, as a prescription administered under medical supervision, or for research at a recognized institution, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation or unless specifically excepted or listed in this or another schedule, structurally derived from benzimidazole by substitution at the 1-position nitrogen with an ethylamine group, and by substitution at the 2-position carbon with a benzyl group, whether or not the compound is further modified in any of the following ways:

- a. By monoalkyl or dialkyl substitution on the 1'-nitrogen of the 1-position ethylamine group, or by inclusion of the nitrogen in a cyclic structure;
- b. By substitution on the 2'-methylene carbon of the benzyl group by alkyl or carboxamide groups;
- c. By replacement of the 2'-methylene carbon group with an ethylbenzyl, thiophenol, or methoxybenzene group, which may be further substituted with alkyl, hydroxyl, alkoxy, acetoxy, halide, a fused heterocyclic ring which may be further substituted, or sulfide groups;
- d. By substitution at the 2'-position, 3'-position, or 4'-position of the benzyl group, or both, with alkyl, hydroxyl, alkoxy, acetoxy, halide, or sulfide groups;
- e. By replacement of a phenyl hydrogen atom at either the 5-position or 6-position of the benzimidazole core with a nitro, or primary amine group."

SECTION 1.(d) G.S. 90-89(3)mm. reads as rewritten:

"mm. ~~5-methoxy-N-methyl-N-propyltryptamine~~
5-methoxy-N-methyl-N-isopropyltryptamine (5-MeO-MiPT)."

SECTION 1.(e) G.S. 90-89(5)j. reads as rewritten:

- "j. Substituted cathinones. A compound, other than bupropion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways: (i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl

ring by one or more other univalent substituents; (ii) by substitution at the 3-position to any extent; or (iii) by substitution at the nitrogen atom with alkyl, dialkyl, benzyl, cycloalkyl, or methoxybenzyl groups or by inclusion of the nitrogen atom in a cyclic structure. For the purpose of this paragraph, the term "isomer" includes the optical, positional, or geometric isomer."

SECTION 1.(f) G.S. 90-89(7) reads as rewritten:

"(7) Synthetic cannabinoids. – Any quantity of any synthetic chemical compound that (i) is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring substances or (ii) has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is not listed as a controlled substance in Schedules I through V, and is not an FDA-approved drug. Synthetic cannabinoids include, but are not limited to, the substances listed in sub-subdivisions a. through ~~p-r~~r. of this subdivision and any substance that contains any quantity of their salts, isomers (whether optical, positional, or geometric), homologues, and salts of isomers and homologues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, and salts of isomers and homologues is possible within the specific chemical designation. The following substances are examples of synthetic cannabinoids and are not intended to be inclusive of the substances included in this Schedule:

...

n. Indazole carboxaldehydes. Any compound structurally derived from 1H-indazole-3-carboxaldehyde or 1H-indazole-2-carboxaldehyde substituted in both of the following ways:

...

2. At the carbon of the carboxaldehyde by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group; whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.

o. Indazole carboxamides. Any compound structurally derived from 1H-indazole-3-carboxamide or 1H-indazole-2-carboxamide substituted in both of the following ways:

...

2. At the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group; whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: AKB-48, fluoro-AKB-48, APINACA, AB-PINACA, AB-FUBINACA, ADB-FUBINACA, and ADB-PINACA.

...."

SECTION 1.(g) G.S. 90-90(2)h1. reads as rewritten:

"h1. Fentanyl immediate precursor chemical,
4-anilino-N-phenethyl-4-piperidine
(ANPP), 4-anilino-N-phenethylpiperidine (ANPP)."

SECTION 1.(h) G.S. 90-91(k)11. reads as rewritten:

"11. ~~Dehydrochlormethyltestosterone~~, Dehydrochloromethyltestosterone,"

SECTION 1.(i) G.S. 90-91(k)16. reads as rewritten:

"16. ~~Mesterolene~~, Mesterolone,"

SECTION 1.(j) This section is effective on August 1, 2023, and applies to offenses committed on or after that date.

INCREASE FINE IMPOSED ON PERSONS CONVICTED OF CERTAIN DRUG TRAFFICKING OFFENSES

SECTION 2.(a) G.S. 90-95(h)(4) reads as rewritten:

"(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium, opiate, or opioid, or any salt, compound, derivative, or preparation of opium, opiate, or opioid (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium, opiate, opioid, or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 93 months in the State's prison and shall be fined ~~not less than fifty thousand dollars (\$50,000);~~ as follows:

1. A fine of five hundred thousand dollars (\$500,000) if the controlled substance is heroin, fentanyl, or carfentanil, or any salt, compound, derivative, or preparation thereof, or any mixture containing any of these substances.

2. A fine of not less than fifty thousand dollars (\$50,000) for any controlled substance described in this subdivision and not otherwise subject to sub-sub-subdivision 1. of this sub-subdivision.

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison and shall be fined ~~not less than one hundred thousand dollars (\$100,000);~~ as follows:

1. A fine of seven hundred fifty thousand dollars (\$750,000) if the controlled substance is heroin, fentanyl, or carfentanil, or any salt, compound, derivative, or preparation thereof, or any mixture containing any of these substances.

2. A fine of not less than one hundred thousand dollars (\$100,000) for any controlled substance described in this subdivision and not otherwise subject to sub-sub-subdivision 1. of this sub-subdivision.

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a

maximum term of 282 months in the State's prison and shall be fined not less than five hundred thousand dollars (\$500,000); as follows:

1. A fine of one million dollars (\$1,000,000) if the controlled substance is heroin, fentanyl, or carfentanil, or any salt, compound, derivative, or preparation thereof, or any mixture containing any of these substances.
2. A fine of not less than five hundred thousand dollars (\$500,000) for any controlled substance described in this subdivision and not otherwise subject to sub-sub-subdivision 1. of this sub-subdivision."

SECTION 2.(b) This section becomes effective December 1, 2023, and applies to offenses committed on or after that date.

EXPAND THE SCOPE OF DEATH BY DISTRIBUTION OFFENSE

SECTION 3.(a) G.S. 14-17 reads as rewritten:

"§ 14-17. Murder in the first and second degree defined; punishment.

...

(a1) If a murder was perpetrated with malice as described in ~~subdivision (1) of subsection (b) of this section~~, and committed against a spouse, former spouse, a person with whom the defendant lives or has lived as if married, a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), or a person with whom the defendant shares a child in common, there shall be a rebuttable presumption that the murder is a "willful, deliberate, and premeditated killing" under subsection (a) of this section and shall be deemed to be murder in the first degree, a Class A felony, if the perpetrator has previously been convicted of one of the following offenses involving the same victim:

- (1) An act of domestic violence as defined in G.S. 50B-1(a).
- (2) A violation of a domestic violence protective order under G.S. 50B-4.1(a), (f), (g), or (g1) or G.S. 14-269.8 when the same victim is the subject of the domestic violence protective order.
- (3) Communicating a threat under G.S. 14-277.1.
- (4) Stalking as defined in G.S. 14-277.3A.
- (5) Cyberstalking as defined in G.S. 14-196.3.
- (6) Domestic criminal trespass as defined in G.S. 14-134.3.

(b) A murder other than described in subsection (a) or (a1) of this section or in G.S. 14-23.2 shall be deemed second degree murder. Any person who commits second degree murder shall be punished as a Class B1 felon, except that a person who commits second degree murder shall be punished as a Class B2 felon ~~in either of the following circumstances:~~

- (1) ~~The if the~~ malice necessary to prove second degree murder is based on an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief.
- (2) ~~The murder is one that was proximately caused by the unlawful distribution of any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, or opiate, or opioid; cocaine or other substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant described in G.S. 90-92(a)(1), and the ingestion of such substance caused the death of the user.~~

...."

SECTION 3.(b) G.S. 14-18.4 reads as rewritten:

"§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

1 ...

2 (a1) Death by Distribution Through Unlawful Delivery of Certain Controlled Substances.

3 – A person is guilty of death by distribution through unlawful delivery of certain controlled

4 substances if all of the following requirements are met:

- 5 (1) The person unlawfully delivers at least one certain controlled substance.
- 6 (2) The ingestion of the certain controlled substance or substances causes the
- 7 death of the user.
- 8 (3) The commission of the offense in subdivision (1) of this subsection was the
- 9 proximate cause of the victim's death.

10 (a2) Death by Distribution Through Unlawful Delivery with Malice of Certain Controlled

11 Substances. – A person is guilty of death by distribution through unlawful delivery with malice

12 of certain controlled substances if all of the following requirements are met:

- 13 (1) The person unlawfully delivers at least one certain controlled substance.
- 14 (2) The person acted with malice.
- 15 (3) The ingestion of the certain controlled substance or substances causes the
- 16 death of the user.
- 17 (4) The commission of the offense in subdivision (1) of this subsection was the
- 18 proximate cause of the victim's death.

19 (b) Death by Distribution Through Unlawful Sale of Certain Controlled Substances. – A

20 person is guilty of death by distribution through unlawful sale of certain controlled substances if

21 all of the following requirements are met:

- 22 (1) The person unlawfully sells at least one certain controlled substance.
- 23 (2) The ingestion of the certain controlled substance or substances causes the
- 24 death of the user.
- 25 (3) The commission of the offense in subdivision (1) of this subsection was the
- 26 proximate cause of the victim's death.
- 27 ~~(4) The person did not act with malice.~~

28 (c) Aggravated Death by Distribution Through Unlawful Sale of Certain Controlled

29 Substances. – A person is guilty of aggravated death by distribution through unlawful sale of

30 certain controlled substances if all of the following requirements are met:

- 31 (1) The person unlawfully sells at least one certain controlled substance.
- 32 (2) The ingestion of the certain controlled substance or substances causes the
- 33 death of the user.
- 34 (3) The commission of the offense in subdivision (1) of this subsection was the
- 35 proximate cause of the victim's death.
- 36 ~~(4) The person did not act with malice.~~
- 37 (5) The person has a previous conviction under this section, G.S. 90-95(a)(1),
- 38 90-95.1, 90-95.4, 90-95.6, or trafficking in violation of G.S. 90-95(h), or a
- 39 prior conviction in any federal or state court in the United States that is
- 40 substantially similar to an offense listed, within ~~seven~~ ten years of the date of
- 41 the offense. In calculating the ~~seven-year~~ ten-year period under this
- 42 subdivision, any period of time during which the person was incarcerated in a
- 43 local, state, or federal detention center, jail, or prison shall be excluded.

44 ...

45 (e) Lesser Included Offense. – Death by distribution through unlawful sale of certain

46 controlled substances constitutes a lesser included offense of aggravated death by distribution

47 through unlawful sale of certain controlled substances in violation of this section.

48 ...

49 (h) Penalties. – Unless the conduct is covered under some other provision of law

50 providing greater punishment, the following classifications apply to the offenses set forth in this

51 section:

- (1) ~~Death by distribution of certain controlled substances~~ A violation of subsection (a1) of this section is a Class C felony.
- (1a) A violation of subsection (a2) or (b) of this section is a Class C-B2 felony.
- (2) ~~Aggravated death by distribution of certain controlled substances~~ A violation of subsection (c) of this section is a Class B2-B1 felony."

SECTION 3.(c) This section becomes effective December 1, 2023, and applies to offenses committed on or after that date.

REVISE GOOD SAMARITAN IMMUNITY LAW FOR POSSESSION OF ANY CONTROLLED SUBSTANCE

SECTION 4.(a) G.S. 90-96.2(c3) reads as rewritten:

"(c3) Covered Offenses. – A person shall have limited immunity from prosecution under subsections (b) and (c) of this section for only the following offenses:

- (1) A misdemeanor violation of G.S. 90-95(a)(3).
- (2) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of ~~cocaine~~ any controlled substance.
- (3) ~~A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of heroin.~~
- (4) A violation of G.S. 90-113.22."

SECTION 4.(b) This section becomes effective December 1, 2023, and applies to offenses committed on or after that date.

CREATE TASK FORCE ON ENFORCEMENT OF FENTANYL AND HEROIN DRUG VIOLATIONS

SECTION 5.(a) Creation. – There is established the Task Force on Enforcement of Fentanyl and Heroin Drug Violations (Task Force). The Task Force shall consist of the Secretary of Public Safety, the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, the President of the North Carolina Sheriffs' Association, the President of the North Carolina Association of Chiefs of Police, and the Executive Director of the North Carolina Conference of District Attorneys, or their designees.

SECTION 5.(b) Study. – The purpose of the Task Force shall be to study ways to enhance the ability of law enforcement throughout the State to combat the illegal manufacturing, importation, and distribution of fentanyl, heroin, and other similar controlled substances.

SECTION 5.(c) Chair; Meetings; Quorum. – The members shall elect a chair, and the Task Force shall meet at the call of the chair. A majority of the Task Force shall constitute a quorum for the transaction of its business.

SECTION 5.(d) Per Diem, Travel, and Expenses. – Members of the Task Force shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 120-3.1, 138-5, and 138-6, as applicable.

SECTION 5.(e) Meeting Space; Staffing. – The Task Force may meet in the Legislative Building or in the Legislative Office Building. With the approval of the Legislative Services Commission, through the Legislative Services Officer, legislative staff may be made available to assist the Task Force.

SECTION 5.(f) Report. – The Task Force shall submit an interim report to the 2023 General Assembly when it reconvenes in 2024. The Task Force shall submit a final report, including findings and legislative recommendations, to the 2025 General Assembly. The Task Force shall terminate upon filing its final report.

SECTION 5.(g) Effective Date. – This section is effective when it becomes law.

EFFECTIVE DATE

1 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
2 law.