



SENATE BILL 616: Heroin & Opioid Prevention & Enforcement Act.

2017-2018 General Assembly

Committee:	House Health. If favorable, re-refer to Judiciary I	Date:	June 5, 2018
Introduced by:	Sen. J. Davis	Prepared by:	Jessica Boney* Staff Attorney
Analysis of:	PCS to Second Edition S616-CSTT-42		

OVERVIEW: *The PCS to Senate Bill 616 does the following:*

- *Amends laws pertaining to the North Carolina Controlled Substances Act and the North Carolina Controlled Substances Reporting System Act, and revises and creates penalties for certain violations.*
- *Expresses the intent to appropriate additional funds in the future for community-based substance use disorder treatment and recovery services, the purchase of overdose medications, Operation Medicine Drop, and a special agent position within the State Bureau of Investigations (SBI).*

BILL ANALYSIS:

The PCS makes the changes outlined below:

Part I. TITLE OF ACT

Section 1 sets forth the title of the act as the Heroin and Opioid Prevention and Enforcement (HOPE) Act of 2018.

Part II. AMENDMENTS TO THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT

Under current law, it is a felony to sell, manufacture, deliver, transport or possess 28 grams or more of MDPV or mephedrone.

Section 2 and **Section 3** make grammatical changes to the chemicals referenced in G.S. 90-89.

Section 4 adds the immediate precursor chemical required for the manufacture of fentanyl as a Schedule II Controlled Substance under G.S. 90-90.

Section 5 adds the precursor chemical used in the manufacturing process of fentanyl to the list of immediate precursor chemicals.

Section 6 make a grammatical correction to the chemical name.

Section 7 creates a felony offense for selling, manufacturing, delivering, transporting or possessing 28 grams or more of any substituted cathinone. Section 7 consolidates and streamlines the felony offenses pertaining to MDPV and mephedrone into a felony offense for substituted cathinone. Section 7 also adds opioid to the list of substances included in the felony offense of trafficking in opium, opiate or heroin, unless excepted otherwise, and makes a technical change.

Section 8 adds a new section to Article 5 of Chapter 90 of the General Statutes which:

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- Allows a certified diversion investigator associated with a qualified law enforcement agency to request and receive copies of prescriptions records in connection with an investigation by providing the name and certification number of the certified diversion investigator, name of the qualified law enforcement agency for whom the investigator works, the case number, the purpose of the request, the name and date of birth of the individual whose prescription records are sought.
- Requires the request to be sent to the North Carolina SBI, Diversion & Environmental Crimes Unit, who will conduct audits of the requests.
- Requires a pharmacy to provide the requested prescriptions records within 2 business days.
- Prohibits a certified diversion investigator from divulging any knowledge of the prescription record unless by virtue of his office or otherwise allowed by law.
- Provides a pharmacist who complies in good faith with this section is not liable for improper use of information divulged to a certified diversion investigator.

Section 9 makes the following a Class G felony if committed intentionally:

- For a registrant or a practitioner to willfully misapply or divert a controlled substance under the registrant's or practitioner's care for his or her own use or other illegal use.
- For individuals who by profession provide medical care, aid emergency treatment or any combination of these to a person who is prescribed a controlled substance, but are not a registrant, a practitioner, or an employee of a registrant or practitioner, to willfully misapply or divert a controlled substances of another for his or her own use or other illegal use.

Section 9 creates a Class E felony if either of the above mentioned individuals divert a controlled substance by means of dilution or substitution. Section 9 also makes technical changes to the statute.

Part III. AMENDMENTS PERTAINING TO THE NORTH CAROLINA CONTROLLED SUBSTANCES REPORTING SYSTEM ACT

The Controlled Substances Reporting System (CSRS) is a database maintained by DHHS that tracks prescriptions for Schedule II through Schedule V controlled substances. Dispensers are required to report certain information on prescriptions they fill within close of the next business day after the prescription is delivered, but are encouraged to report such information within 24 hours of delivery. Such information is confidential and may only be accessed by certain persons for specific purposes set forth by statute. Current law allows DHHS to release CSRS data to persons authorized to prescribe controlled substances, special agents of the North Carolina SBI, as well as others.

In addition to the information currently required by law, **Section 10** requires the dispenser to report the prescriber's national provider identification number.

Section 11(a) allows DHHS to release data in the CSRS to the Attorney General of North Carolina or a designee who is a full-time employee in the North Carolina Department of Justice, in order to monitor requests for inspection of records, and the Tactical Diversion Squad in North Carolina.

In addition to existing civil penalties and any other applicable civil or criminal penalties, Section 11(a) creates a Class I felony for certain individuals who access or disclose prescription information in the CSRS for an unauthorized purpose. An individual who accesses or discloses prescription information for an unauthorized purpose with an intent to use the information for commercial advantage, personal gain or to harm any person, is guilty of a Class H felony under Section 11(a). Section 11(a) permanently bars any person convicted of a criminal offenses under this subsection from accessing the CSRS, allows the SBI, Diversion & Environmental Crimes Unit, to investigate violations of this section and requires the SBI, Diversion & Environmental Crimes Unit, to notify DHHS of any charges or convictions.

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Section 11(b) governs how DHHS releases information to local law enforcement officers. Section 11(b) only allows DHHS to release data to a local law enforcement officer when the local law enforcement officer is a certified diversion investigator, the agency supervising the investigator is a qualified law enforcement agency, the request is reasonably related to a bona fide active investigation involving a specific violation of state or federal law and the request has been approved by the SBI, Diversion & Environmental Crimes Unit.

Section 11(b) does the following:

- Provides immunity from civil or criminal liability for a special agent of the SBI, Diversion & Environmental Crimes Unit, in the event action is taken upon a request by a certified diversion investigator for access to data in the CSRS.
- Creates an audit trail that may be used to investigate or prosecute violations of this section, grants the Attorney General of North Carolina and Special Agents of the SBI access to the audit trail for reviewing purposes, and requires the SBI to conduct periodic audits.
- Requires data obtained from certified diversion investigators from the CSRS may only be shared with law enforcement personnel or prosecutorial officials (i) upon the direction of the certified diversion investigator who originally requested the information, and (ii) in the case of law enforcement personnel from other law enforcement agencies, only with law enforcement personnel directly participating in an official joint investigation outlined in 90-113.74(i)(5).
- Requires referring the matter to the SBI, Diversion & Environmental Crimes Unit, or a certified diversion investigator if the data indicates transactions solely out of local law enforcement officer's jurisdiction.
- Prohibits certified diversion investigator from requesting or receiving prescription data from other states through PMP Interconnect or any other mechanism.
- Defines the following terms:
 - "certified diversion investigator" as an officer affiliated with a qualified law enforcement agency who also has certain certifications.
 - "certified diversion supervisor" as the head of a municipal or county police department, a sheriff's office, or the designee of the agency head with supervisory authority over that agency's diversion investigators with certain certifications.
 - "qualified law enforcement agency" as either a municipal or a county police department or a sheriff's office, whose head is a certified diversion investigator or an entity that employs at least one certified diversion investigator and certified diversion supervisor.
 - "active investigation" as one conducted of one or more persons, for which probable cause exists for the release of the information, including a likelihood that it could lead to criminal proceedings.
- Requires DHHS to enable:
 - Each certified diversion investigator associated with a qualified law enforcement agency to register name, certification number, the qualified law enforcement agency the investigator works for, and the name and certification number of each certified diversion supervisor with whom the investigator works with the CSRS.
 - Each certified diversion investigator associated with a qualified law enforcement agency to request and receive data in connection with an investigation involving a specific violation of law involving a monitored prescription by providing the case number, a description of the purpose of the request, the name and birth date of the individual whose prescription data the investigator seeks and requires

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acknowledgment the certified diversion investigator is aware of penalties of disclosing data from CSRS.

- SBI, Diversion & Environmental Crimes Unit to review data requests for approval, denial or delay.
- Requires DHHS to create an audit trail and allows the Attorney General of North Carolina or a designee and Special Agents of the North Carolina SBI assigned to the Diversion & Environmental Crimes Unit access to it.

Section 11(c) requires DHHS to begin developing the capabilities necessary to implement Section 11(b).

Section 12 clarifies a person assessed a civil penalty for misusing CSRS is temporarily barred from accessing CSRS until further findings by DHHS. Notwithstanding current law, Section 12 grants civil and criminal immunity to a practitioner, dispenser or other person required to transmit data under this Article, who incurs criminal or civil liability from a good faith transmission of data or subsequent actual or attempted access to, use or disclosure of such data.

Section 13 adds a section that requires the NC Criminal Justice Education and Training Standards Commission and the NC Sheriffs' Education and Training Standards Commission to facilitate education of certified diversion investigators and supervisors.

Section 14(a) amends Chapter 17C pertaining to the powers of the NC Criminal Justice Education and Training Standards Commission. **Section 14(b)** amends Chapter 17E pertaining to the powers of the NC Sheriffs' Education and Training Standards Commission. Both Commissions are required to establish minimum standards and levels of training for certification of diversion investigators and diversion supervisors, as defined in G.S. 90 113.74(i). Additionally, each Commission is required to ensure diversion investigators receive specified training and each Commission is required to certify and recertify at least once every three years, suspend, revoke, or deny, pursuant to the standards that it has established for the purpose, persons as qualified to be employed at entry level and retained as diversion investigators and diversion supervisors.

Part IV. APPROPRIATIONS

Section 15 makes it the intent of the General Assembly to appropriate: \$10 million in recurring funds for the 2019-2020 fiscal year from the General Fund to the Division of Mental Health, DHHS for use solely to increase the availability of community-based treatment and recovery services for substance abuse disorders; \$1 million in recurring funds for the 2019-2020 fiscal year from the General Fund to the Division of Mental Health, DHHS to purchase opioid antagonists for use by North Carolina law enforcement agencies; appropriate \$160,000 in recurring funds for the 2019-2020 fiscal year to the State Bureau of Investigation to fund Operation Medicine Drop; \$122,000 in recurring funds for the 2019-2020 fiscal year and \$58,000 in non-recurring funds for the 2019-2020 fiscal year to the SBI to create one full-time special agent position to enhance drug investigations.

Part V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

Section 16 makes any provisions of the bill held to be invalid by a court severable from the other provisions of the bill, which would remain in effect.

Section 17 contains the effective date which provides that Sections 8 and 11(b) would become effective July 1, 2019 and the remainder of the bill would become effective July 1, 2018.

* Theresa Matula and Jason Moran-Bates contributed to this Bill Summary.