

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

S

D

SENATE BILL 189  
PROPOSED COMMITTEE SUBSTITUTE S189-PCS45112-CE-5

Short Title: Fentanyl Drug Offenses and Related Changes.

(Public)

Sponsors:

Referred to:

March 2, 2023

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE FINE IMPOSED ON PERSONS CONVICTED OF  
3 TRAFFICKING IN HEROIN, FENTANYL, OR CARFENTANIL; TO MODIFY THE  
4 OFFENSE OF DEATH BY DISTRIBUTION TO INCLUDE THE UNLAWFUL  
5 DELIVERY AND INGESTION OF CERTAIN CONTROLLED SUBSTANCES THAT  
6 PROXIMATELY CAUSES THE DEATH OF A PERSON AND TO INCREASE THE  
7 PUNISHMENTS FOR A PERSON WHO COMMITS THE OFFENSE OF DEATH BY  
8 DISTRIBUTION; TO ADD POSSESSION OF LESS THAN ONE GRAM OF ANY  
9 CONTROLLED SUBSTANCE TO THE LIST OF OFFENSES FOR WHICH LIMITED  
10 IMMUNITY FROM PROSECUTION APPLIES FOR AN INDIVIDUAL WHO SEEKS  
11 MEDICAL ASSISTANCE; TO CREATE THE TASK FORCE ON ENFORCEMENT OF  
12 FENTANYL AND HEROIN DRUG VIOLATIONS; AND TO MAKE CERTAIN  
13 AUTOPSY LAW CHANGES.

14 The General Assembly of North Carolina enacts:

15  
16 **PART I. INCREASE FINE IMPOSED ON PERSONS CONVICTED OF CERTAIN**  
17 **DRUG TRAFFICKING OFFENSES**

18 **SECTION 1.** G.S. 90-95(h)(4) reads as rewritten:

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

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

- 31 1. A fine of five hundred thousand dollars (\$500,000) if the  
32 controlled substance is heroin, fentanyl, or carfentanil, or any  
33 salt, compound, derivative, or preparation thereof, or any  
34 mixture containing any of these substances.  
35 2. A fine of not less than fifty thousand dollars (\$50,000) for any  
36 controlled substance described in this subdivision and not



\* S 1 8 9 - P C S 4 5 1 1 2 - C E - 5 \*

- 1 otherwise subject to sub-sub-subdivision 1. of this  
 2 sub-subdivision.  
 3 b. Is 14 grams or more, but less than 28 grams, such person shall be  
 4 punished as a Class E felon and shall be sentenced to a minimum term  
 5 of 90 months and a maximum term of 120 months in the State's prison  
 6 and shall be fined ~~not less than one hundred thousand dollars~~  
 7 ~~(\$100,000);~~as follows:  
 8 1. A fine of seven hundred fifty thousand dollars (\$750,000) if  
 9 the controlled substance is heroin, fentanyl, or carfentanil, or  
 10 any salt, compound, derivative, or preparation thereof, or any  
 11 mixture containing any of these substances.  
 12 2. A fine of not less than one hundred thousand dollars  
 13 (\$100,000) for any controlled substance described in this  
 14 subdivision and not otherwise subject to sub-sub-subdivision  
 15 1. of this sub-subdivision.  
 16 c. Is 28 grams or more, such person shall be punished as a Class C felon  
 17 and shall be sentenced to a minimum term of 225 months and a  
 18 maximum term of 282 months in the State's prison and shall be fined  
 19 ~~not less than five hundred thousand dollars (\$500,000);~~as follows:  
 20 1. A fine of one million dollars (\$1,000,000) if the controlled  
 21 substance is heroin, fentanyl, or carfentanil, or any salt,  
 22 compound, derivative, or preparation thereof, or any mixture  
 23 containing any of these substances.  
 24 2. A fine of not less than five hundred thousand dollars  
 25 (\$500,000) for any controlled substance described in this  
 26 subdivision and not otherwise subject to sub-sub-subdivision  
 27 1. of this sub-subdivision."  
 28

29 **PART II. EXPAND THE SCOPE OF DEATH BY DISTRIBUTION OFFENSE**

30 **SECTION 2.(a) G.S. 14-17 reads as rewritten:**

31 **"§ 14-17. Murder in the first and second degree defined; punishment.**

32 ...

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

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

49 (b) A murder other than described in subsection (a) or (a1) of this section or in  
 50 G.S. 14-23.2 shall be deemed second degree murder. Any person who commits second degree

1 murder shall be punished as a Class B1 felon, except that a person who commits second degree  
2 murder shall be punished as a Class B2 felon ~~in either of the following circumstances:~~

3 (1) ~~The if the malice necessary to prove second degree murder is based on an~~  
4 ~~inherently dangerous act or omission, done in such a reckless and wanton~~  
5 ~~manner as to manifest a mind utterly without regard for human life and social~~  
6 ~~duty and deliberately bent on mischief.~~

7 (2) ~~The murder is one that was proximately caused by the unlawful distribution~~  
8 ~~of any opium, opiate, or opioid; any synthetic or natural salt, compound,~~  
9 ~~derivative, or preparation of opium, or opiate, or opioid; cocaine or other~~  
10 ~~substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant~~  
11 ~~described in G.S. 90-92(a)(1), and the ingestion of such substance caused the~~  
12 ~~death of the user.~~

13 ...."

14 SECTION 2.(b) G.S. 14-18.4 reads as rewritten:

15 "§ 14-18.4. **Death by distribution of certain controlled substances; aggravated death by**  
16 **distribution of certain controlled substances; penalties.**

17 ...

18 (a1) Death by Distribution Through Unlawful Delivery of Certain Controlled Substances.  
19 – A person is guilty of death by distribution through unlawful delivery of certain controlled  
20 substances if all of the following requirements are met:

21 (1) The person unlawfully delivers at least one certain controlled substance.

22 (2) The ingestion of the certain controlled substance or substances causes the  
23 death of the user.

24 (3) The commission of the offense in subdivision (1) of this subsection was the  
25 proximate cause of the victim's death.

26 (a2) Death by Distribution Through Unlawful Delivery with Malice of Certain Controlled  
27 Substances. – A person is guilty of death by distribution through unlawful delivery with malice  
28 of certain controlled substances if all of the following requirements are met:

29 (1) The person unlawfully delivers at least one certain controlled substance.

30 (2) The person acted with malice.

31 (3) The ingestion of the certain controlled substance or substances causes the  
32 death of the user.

33 (4) The commission of the offense in subdivision (1) of this subsection was the  
34 proximate cause of the victim's death.

35 (b) Death by Distribution Through Unlawful Sale of Certain Controlled Substances. – A  
36 person is guilty of death by distribution through unlawful sale of certain controlled substances if  
37 all of the following requirements are met:

38 (1) The person unlawfully sells at least one certain controlled substance.

39 (2) The ingestion of the certain controlled substance or substances causes the  
40 death of the user.

41 (3) The commission of the offense in subdivision (1) of this subsection was the  
42 proximate cause of the victim's death.

43 (4) ~~The person did not act with malice.~~

44 (c) Aggravated Death by Distribution Through Unlawful Sale of Certain Controlled  
45 Substances. – A person is guilty of aggravated death by distribution through unlawful sale of  
46 certain controlled substances if all of the following requirements are met:

47 (1) The person unlawfully sells at least one certain controlled substance.

48 (2) The ingestion of the certain controlled substance or substances causes the  
49 death of the user.

50 (3) The commission of the offense in subdivision (1) of this subsection was the  
51 proximate cause of the victim's death.

1           (4) ~~The person did not act with malice.~~

2           (5) The person has a previous conviction under this section, G.S. 90-95(a)(1),  
3           90-95.1, 90-95.4, 90-95.6, or trafficking in violation of G.S. 90-95(h), or a  
4           prior conviction in any federal or state court in the United States that is  
5           substantially similar to an offense listed, within ~~seven~~10 years of the date of  
6           the offense. In calculating the ~~seven-year~~10-year period under this  
7           subdivision, any period of time during which the person was incarcerated in a  
8           local, state, or federal detention center, jail, or prison shall be excluded.

9           ...

10          (e) Lesser Included Offense. – Death by distribution through unlawful sale of certain  
11          controlled substances constitutes a lesser included offense of aggravated death by distribution  
12          through unlawful sale of certain controlled substances in violation of this section.

13          ...

14          (h) Penalties. – Unless the conduct is covered under some other provision of law  
15          providing greater punishment, the following classifications apply to the offenses set forth in this  
16          section:

17           (1) ~~Death by distribution of certain controlled substances~~ A violation of  
18           subsection (a1) of this section is a Class C felony.

19           (1a) A violation of subsection (a2) or (b) of this section is a Class C-B2 felony.

20           (2) ~~Aggravated death by distribution of certain controlled substances~~ A violation  
21           of subsection (c) of this section is a Class B2-B1 felony."

### 22 23 **PART III. REVISE GOOD SAMARITAN IMMUNITY LAW FOR POSSESSION OF** 24 **ANY CONTROLLED SUBSTANCE**

25           **SECTION 3.** G.S. 90-96.2(c3) reads as rewritten:

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

28           (1) A misdemeanor violation of G.S. 90-95(a)(3).

29           (2) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of  
30           ~~cocaine~~any controlled substance.

31           (3) ~~A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of~~  
32           ~~heroin.~~

33           (4) A violation of G.S. 90-113.22."

### 34 35 **PART IV. CREATE TASK FORCE ON ENFORCEMENT OF FENTANYL AND** 36 **HEROIN DRUG VIOLATIONS**

37           **SECTION 4.(a)** Creation. – There is established the Task Force on Enforcement of  
38           Fentanyl and Heroin Drug Violations (Task Force). The Task Force shall consist of the Secretary  
39           of Public Safety, the Director of the State Bureau of Investigation, the Commander of the State  
40           Highway Patrol, the Chairman of the North Carolina Sheriffs' Association, the President of the  
41           North Carolina Association of Chiefs of Police, and the Executive Director of the North Carolina  
42           Conference of District Attorneys, or their designees.

43           **SECTION 4.(b)** Study. – The purpose of the Task Force shall be to study ways to  
44           enhance the ability of law enforcement throughout the State to combat the illegal manufacturing,  
45           importation, and distribution of fentanyl, heroin, and other similar controlled substances.

46           **SECTION 4.(c)** Chair; Meetings; Quorum. – The members shall elect a chair, and  
47           the Task Force shall meet at the call of the chair. A majority of the Task Force shall constitute a  
48           quorum for the transaction of its business.

49           **SECTION 4.(d)** Per Diem, Travel, and Expenses. – Members of the Task Force shall  
50           receive per diem and necessary travel and subsistence expenses in accordance with G.S. 120-3.1,  
51           138-5, and 138-6, as applicable.

1           **SECTION 4.(e)** Meeting Space; Staffing. – The Task Force may meet in the  
2 Legislative Building or in the Legislative Office Building. With the approval of the Legislative  
3 Services Commission, through the Legislative Services Officer, legislative staff may be made  
4 available to assist the Task Force.

5           **SECTION 4.(f)** Report. – The Task Force shall submit an interim report to the 2023  
6 General Assembly when it reconvenes in 2024. The Task Force shall submit a final report,  
7 including findings and legislative recommendations, to the 2025 General Assembly. The Task  
8 Force shall terminate upon filing its final report.

9           **SECTION 4.(g)** Effective Date. – This section is effective when it becomes law.

## 10 11 **PART V. AUTOPSY LAW CHANGES**

12           **SECTION 5.(a)** G.S. 130A-389(a) reads as rewritten:

13           "(a) If, in the opinion of the medical examiner investigating the case or of the Chief  
14 Medical Examiner, it is advisable and in the public interest that an autopsy or other study be  
15 made; or, if an autopsy or other study is requested by the district attorney of the county or by any  
16 superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or  
17 by a competent pathologist designated by the Chief Medical Examiner. In any case where the  
18 district attorney of the county or the investigating law enforcement agency asserts to the Chief  
19 Medical Examiner or the medical examiner of the county in which the body was located that  
20 probable cause exists that a violation of G.S. 14-18.4 has occurred, a complete autopsy shall be  
21 conducted. A complete autopsy report of findings and interpretations, prepared on forms  
22 designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Subject  
23 to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of  
24 an autopsy, a copy of the report shall be furnished to any person upon request. The fee for the  
25 autopsy or other study shall be two thousand eight hundred dollars (\$2,800) to be paid as follows:

26           ...."

27           **SECTION 5.(b)** This section becomes effective December 1, 2023, and applies to  
28 autopsies conducted on or after that date.

## 29 30 **PART VI. EFFECTIVE DATE**

31           **SECTION 6.** Except as otherwise provided, this act becomes effective December 1,  
32 2023, and applies to offenses committed on or after that date.