

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2018-44
SENATE BILL 616

AN ACT AMENDING LAWS PERTAINING TO THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT AND THE NORTH CAROLINA CONTROLLED SUBSTANCES REPORTING SYSTEM ACT, INCLUDING THE REVISION AND ESTABLISHMENT OF PENALTIES FOR CERTAIN VIOLATIONS, AND EXPRESSING 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 INVESTIGATION, AND TO AMEND THE STATEWIDE TELEPSYCHIATRY PROGRAM THAT DELIVERS MENTAL HEALTH AND SUBSTANCE ABUSE CARE.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known and may be cited as "The Heroin and Opioid Prevention and Enforcement (HOPE) Act of 2018."

PART II. AMENDMENTS TO THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT

SECTION 2. G.S. 90-89(3)ee. reads as rewritten:

"ee.

~~5-Methoxy-n-diisopropyltryptamine.~~
5-Methoxy-N,N-diisopropyltryptamine."

SECTION 3. For each NBOMe compound listed in G.S. 90-89(6)a. through l., the Revisor of Statutes is authorized to replace the hyphen that appears after "NBOMe" and before "2" with a space.

SECTION 4. G.S. 90-90(2) is amended by adding a new sub-subdivision to read:

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

SECTION 5. G.S. 90-95(d2) is amended by adding a new subdivision to read:

"(29a) N-phenethyl-4-piperidinone (NPP)."

SECTION 6. G.S. 90-95(d2)(31) reads as rewritten:

"(31) ~~Phenyl-2-propane.~~Phenyl-2-propanone."

SECTION 7. G.S. 90-95(h) reads as rewritten:

"(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

...

(3d) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of ~~MDPV~~any substituted cathinone, as defined in G.S. 90-89(5)(j), or any mixture containing such substance shall be guilty of a felony, which felony shall be known as "trafficking in ~~MDPV,~~substituted cathinones," and if the quantity of such substance or mixture involved:



- a. Is 28 grams or more, but less than 200 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);
 - b. Is 200 grams or more, but less than 400 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);
 - c. Is 400 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 at least two hundred fifty thousand dollars (\$250,000).
- (3e) ~~Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of mephedrone or any mixture containing such substance shall be guilty of a felony, which felony shall be known as "trafficking in mephedrone," and if the quantity of such substance or mixture involved:~~
- ~~a. Is 28 grams or more, but less than 200 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);~~
 - ~~b. Is 200 grams or more, but less than 400 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);~~
 - ~~c. Is 400 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 at least two hundred fifty thousand dollars (\$250,000).~~
- (4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of ~~opium or opiate~~opium, opiate, or opioid, or any salt, compound, derivative, or preparation of ~~opium or opiate~~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~~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);
 - 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);
 - 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).

...

- (4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or more tablets, capsules, or other dosage units, or 28 grams or more of 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA), including its salts, isomers, and salts of isomers, or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in ~~MDADMA~~." MDA/MDMA. If the quantity of the substance or mixture involved:
- a. Is 100 or more tablets, capsules, or other dosage units, but less than 500 tablets, capsules, or other dosage units, or 28 grams or more, but less than 200 grams, the person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 51 months in the State's prison and shall be fined not less than twenty-five thousand dollars (\$25,000);
 - b. Is 500 or more tablets, capsules, or other dosage units, but less than 1,000 tablets, capsules, or other dosage units, or 200 grams or more, but less than 400 grams, the 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);
 - c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams or more, the person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison and shall be fined not less than two hundred fifty thousand dollars (\$250,000).

...."

SECTION 8. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-107.1. Certified diversion investigator access to prescription records.

(a) A certified diversion investigator associated with a qualified law enforcement agency, as those terms are defined in G.S. 90-113.74(i), shall request and receive from a pharmacy copies of prescriptions and records related to prescriptions in connection with a bona fide active investigation related to the enforcement of laws governing licit or illicit drugs by providing in writing or electronically all of the following:

- (1) The certified diversion investigator's name and certification number.
- (2) The name of the qualified law enforcement agency for whom the investigator works.
- (3) The case number associated with the request.
- (4) A description of the nature and purpose of the request.
- (5) The first name, last name, and date of birth of each individual whose prescription and records related to the prescription the investigator seeks, including, when appropriate, any alternative name, spelling, or date of birth associated with each such individual.

(b) When a certified diversion investigator transmits such a request to a pharmacy, the certified diversion investigator shall also transmit a copy of the request to the North Carolina State Bureau of Investigation, Diversion and Environmental Crimes Unit. The North Carolina State Bureau of Investigation shall conduct periodic audits of a random sample of these requests.

(c) A pharmacy shall provide copies of requested prescriptions and records related to prescriptions as soon as practicable and no later than two business days after receipt of the request from the certified diversion investigator.

(d) No certified diversion investigator having knowledge by virtue of his office of any such prescription or record related to prescriptions shall divulge such knowledge other than to other law enforcement officials or agencies involved in the bona fide active investigation, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party, or as provided in G.S. 90-113.74 (i)(4), or as otherwise allowed by law.

(e) A pharmacy or pharmacist that in good faith complies with this section and provides copies of prescriptions and records related to prescriptions to a certified diversion investigator shall have no liability for improper use of information divulged to the certified diversion investigator."

SECTION 9. G.S. 90-108 reads as rewritten:

"§ 90-108. Prohibited acts; penalties.

- (a) It shall be unlawful for any person:
- (1) Other than practitioners licensed under Articles 1, 2, 4, 6, 11, 12A of this Chapter to represent to any registrant or practitioner who manufactures, distributes, or dispenses a controlled substance under the provision of this Article that he or she is a licensed practitioner in order to secure or attempt to secure any controlled substance as defined in this Article or to in any way impersonate a practitioner for the purpose of securing or attempting to secure any drug requiring a prescription from a practitioner as listed above and who is licensed by this ~~State~~;State.
 - (2) Who is subject to the requirements of G.S. 90-101 or a practitioner to distribute or dispense a controlled substance in violation of G.S. 90-105 or ~~90-106~~;G.S. 90-106.
 - (3) Who is a registrant to manufacture, distribute, or dispense a controlled substance not authorized by his or her registration to another registrant or other authorized ~~person~~;person.
 - (4) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or its ~~suecessor~~;successor.
 - (5) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice or information required under this ~~Article~~;Article.
 - (6) To refuse any entry into any premises or inspection authorized by this ~~Article~~;Article.
 - (7) To knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of this Article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this ~~Article~~;Article.
 - (8) Who is a registrant or a practitioner to distribute a controlled substance included in Schedule I or II of this Article in the course of his or her legitimate business, except pursuant to an order form as required by ~~G.S. 90-105~~;G.S. 90-105.
 - (9) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another ~~person~~;person.
 - (10) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or ~~subterfuge~~;subterfuge.
 - (11) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Article, or any record required to be kept by this ~~Article~~;Article.

- (12) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled ~~substance;~~ substance.
- (13) To obtain controlled substances through the use of legal prescriptions which have been obtained by the knowing and willful misrepresentation to or by the intentional withholding of information from one or more ~~practitioners;~~ practitioners.
- (14) Who is a registrant or practitioner or an employee of a registrant or practitioner and who is authorized to possess controlled substances or has access to controlled substances by virtue of his—employment, to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use or to take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use any controlled substance which shall have come into his or her possession or under his or her care.
- (15) Who is not a registrant or practitioner nor an employee of a registrant or practitioner and who, by virtue of his or her occupation or profession, administers or provides medical care, aid, emergency treatment, or any combination of these to a person who is prescribed a controlled substance, to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use or to take, make away with, or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use any controlled substance that is prescribed to another.

(b) Any person who violates this section shall be guilty of a Class 1 misdemeanor. Provided, that if the criminal pleading alleges that the violation was committed intentionally, and upon trial it is specifically found that the violation was committed intentionally, such violations shall be a Class I felony unless one of the following applies:

- (1) A person who violates subdivision (7) of subsection (a) of this section and also fortifies the structure, with the intent to impede law enforcement entry, (by barricading windows and doors) shall be punished as a Class I felon.
- (2) A person who violates subdivision (14) or (15) of subsection (a) of this section shall be punished as a Class G felon.
- (3) A person who violates subdivision (14) or (15) of subsection (a) of this section and intentionally diverts any controlled substance by means of dilution or substitution or both shall be punished as a Class E felon. As used in this subdivision, the following terms have the following meanings:
 - a. Dilution. – The act of diluting or the state of being diluted; the act of reducing the concentration of a mixture or solution.
 - b. Substitution. – To take the place of or replace."

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

SECTION 10. G.S. 90-113.73(b) reads as rewritten:

"(b) The Commission shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

- (1) The dispenser's DEA number.

- (2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:
 - a. Full address, including city, state, and zip ~~code, code,~~
 - b. Telephone ~~number, and~~ number.
 - c. Date of birth.
- (3) The date the prescription was written.
- (4) The date the prescription was filled.
- (5) The prescription number.
- (6) Whether the prescription is new or a refill.
- (7) Metric quantity of the dispensed drug.
- (8) Estimated days of supply of dispensed drug, if provided to the dispenser.
- (9) National Drug Code of dispensed drug.
- (10) Prescriber's DEA number.
- (10a) Prescriber's national provider identification number, for any prescriber that has a national provider identification number. A pharmacy shall not be subject to a civil penalty under subsection (e) of this section for failure to report the prescriber's national provider identification number when it is not received by the pharmacy.
- (11) Method of payment for the prescription."

SECTION 11.(a) G.S. 90-113.74 reads as rewritten:

"§ 90-113.74. Confidentiality.

...
 (c) The Department shall release data in the controlled substances reporting system to the following persons only:

- (1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients. A person authorized to receive data pursuant to this paragraph may delegate the authority to receive the data to other persons working under his or her direction and supervision, provided the Department approves this delegation.
 The administrator of a hospital emergency department or hospital acute care facility shall provide the Department with a list of prescribers who are authorized to prescribe controlled substances for the purpose of providing medical care for patients of the hospital emergency department or hospital acute care facility and a list of delegates who are authorized to receive data on behalf of the providers listed. The administrator acting under this paragraph shall submit the lists to the Department no later than December 1 of the calendar year preceding the year during which the delegates are to receive data and may provide updated lists at any time during the course of the year. Within one week of receiving the initial or updated lists described in this paragraph, the Department shall establish all of the delegate accounts necessary to enable each delegate listed by the administrator of the hospital emergency department or hospital acute care facility to receive data on behalf of the listed prescribers. Delegations made pursuant to this paragraph are valid during the calendar year for which submitted by the administrator.
- (2) An individual who requests the individual's own controlled substances reporting system information.
- (3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication. SBI agents assigned to the Diversion & Environmental Crimes Unit may then provide this information to other SBI agents who are engaged

in a bona fide specific investigation related to enforcement of laws governing licit drugs. ~~The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.~~ The Attorney General of North Carolina, or a designee who is a full-time employee in the North Carolina Department of Justice, shall have access to the system to monitor requests for inspection of records.

- (4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.
- (5) To a sheriff or designated deputy sheriff or a police chief or a designated police investigator who is assigned to investigate the diversion and illegal use of prescription medication or pharmaceutical products identified in Article 5 of this Chapter of the General Statutes as Schedule II through V controlled substances and who is engaged in a bona fide specific investigation related to the enforcement of laws governing licit drugs pursuant to a lawful court order specifically issued for that purpose.
- (6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.
- (7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.
- (8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.
- (9) The federal Drug Enforcement Administration's Office of Diversion ~~Control~~ Control or Tactical Diversion Squad in North Carolina.
- (10) The North Carolina Health Information Exchange Authority (NC HIE Authority), established under Article 29B of this Chapter, through Web-service calls.

...

(k) In addition to the civil penalties provided in G.S. 90-113.75(a) and any other applicable civil or criminal penalties, the following criminal penalties apply to any individual authorized to access data in the controlled substances reporting system when that access is authorized by subdivisions (3) through (10) of subsection (c) of this section:

- (1) An individual who knowingly and intentionally accesses prescription information in the controlled substances reporting system for a purpose not authorized by this section shall be guilty of a Class I felony.
- (2) An individual who knowingly and intentionally discloses or disseminates prescription information from the system for a purpose not authorized by this section shall be guilty of a Class I felony.
- (3) An individual who willfully and maliciously obtains, discloses, or disseminates prescription information for a purpose not authorized by this section and with the intent to use such information for commercial advantage or personal gain, or to maliciously harm any person, shall be guilty of a Class H felony.

Any person who is convicted of a criminal offense under this subsection is permanently barred from accessing the controlled substances reporting system.

(l) The State Bureau of Investigation, Diversion & Environmental Crimes Unit, may investigate suspected violations of this section and shall notify the Department of any charges or convictions pursuant to this section."

SECTION 11.(b) G.S. 90-113.74 reads as rewritten:

"§ 90-113.74. Confidentiality.

...
(c) The Department shall release data in the controlled substances reporting system to the following persons only:

...
(5) To a sheriff or designated deputy sheriff or a police chief or a designated police investigator who is assigned to investigate the diversion and illegal use of prescription medication or pharmaceutical products identified in Article 5 of this Chapter of the General Statutes as Schedule II through V controlled substances and who is engaged in a bona fide specific investigation related to the enforcement of laws governing licit drugs pursuant to a lawful court order specifically issued for that purpose.

(5a) Local law enforcement officers pursuant to subsection (i) of this section.

...
(i) Data released by the Department from the controlled substances reporting system to local law enforcement officers is subject to all of the following conditions and requirements:

(1) The Department shall release data in the controlled substances reporting system to a local law enforcement officer only if all of the following conditions are satisfied:

a. The local law enforcement officer is a certified diversion investigator.

b. The agency that supervises the investigator is a qualified law enforcement agency.

c. The request is reasonably related to a bona fide active investigation involving a specific violation of any State or federal law involving a controlled substance.

d. The request has been reviewed and approved by the State Bureau of Investigation, Diversion & Environmental Crimes Unit.

(2) In the event a special agent of the State Bureau of Investigation, Diversion & Environmental Crimes Unit, takes action upon a request by a certified diversion investigator for access to data in the controlled substances reporting system, the special agent shall not incur criminal or civil liability for such action or for actions taken by the certified diversion investigator making the request.

(3) The conditions outlined in this subsection shall create an audit trail that may be used to investigate or prosecute violations of this section. The Department shall grant access to the system to the Attorney General of North Carolina or a designee and Special Agents of the State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit for the purpose of reviewing the audit trail. The State Bureau of Investigation shall conduct periodic audits of a random sample of requests from certified diversion investigators for access to data in the controlled substances reporting system.

(4) Data obtained by certified diversion investigators from the controlled substances reporting system in the manner prescribed by this subsection may be shared with other law enforcement personnel or prosecutorial officials (i) only 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

who are directly participating in an official joint investigation or as provided in subdivision (5) of this subsection.

- (5) In the event the data provided to the local law enforcement officer indicates transactions solely outside of that local law enforcement officer's jurisdiction, the matter shall be referred to the State Bureau of Investigation, Diversion & Environmental Crimes Unit, or to a certified diversion investigator employed by a qualified law enforcement agency with jurisdiction over the transactions at issue.
- (6) Certified diversion investigators may not request or receive prescription data from other states through PMP Interconnect or any other mechanism established by the Department to facilitate interstate connectivity of the controlled substances reporting system.
- (7) As used in this subsection, the following terms have the following meanings:
 - a. Bona fide active investigation. – An investigation of one or more specific persons conducted with a reasonable, good-faith belief based on specific facts and circumstances equivalent to those normally necessary for the issuance of a court order, as described in G.S. 90-113.74(c)(5).
 - a1. Certified diversion investigator. – An officer affiliated with a qualified law enforcement agency who is certified as a diversion investigator by either the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission. If for any reason a certified diversion investigator leaves a position involving diversion investigation, the qualified law enforcement agency shall notify the North Carolina Department of Health and Human Services Controlled Substance Reporting System and the State Bureau of Investigation, Diversion & Environmental Crimes Unit, within 72 hours after the effective date of the change.
 - b. Certified diversion supervisor. – The head of a municipal police department, a county police department, a sheriff's office, or the designee of the agency head with supervisory authority over that agency's diversion investigators who is certified as a diversion supervisor by either the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission.
 - c. Qualified law enforcement agency. – Any of the following entities whose head is a certified diversion investigator or that employs at least one certified diversion investigator and at least one certified diversion supervisor:
 1. A municipal police department.
 2. A county police department.
 3. A sheriff's office.
- (j) The Department shall do all of the following:
 - (1) Enable each certified diversion investigator associated with a qualified law enforcement agency to register with the controlled substances reporting system by providing, at a minimum, all of the following information:
 - a. The investigator's name and certification number.
 - b. The name of the qualified law enforcement agency for whom the investigator works.

- c. The name and certification number of each certified diversion supervisor with whom the investigator works.
- (2) Enable each certified diversion investigator associated with a qualified law enforcement agency to request and receive data in connection with a bona fide active investigation involving a specific violation of any state or federal law involving a controlled substance by providing, at a minimum, all of the following:
 - a. The case number associated with the request.
 - b. A description of the nature and purpose of the request.
 - c. The first name, last name, and date of birth of each individual whose prescription data the investigator seeks, including, when appropriate, any alternative name, spelling, or date of birth associated with each such individual.
 - d. An acknowledgement that the certified diversion investigator is aware of the penalties associated with improperly obtaining, disclosing, or disseminating data from the controlled substances reporting system.
- (3) Enable the State Bureau of Investigation, Diversion & Environmental Crimes Unit, to review each request for data from a certified diversion investigator associated with a qualified law enforcement agency and, upon such review, to determine if the request is approved, denied, or delayed pending further review or investigation.
- (4) Create an audit trail that may be used to investigate or prosecute violations of this Part and ensure that the Attorney General of North Carolina or a designee and Special Agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit have access to the system to review the audit trail."

SECTION 11.(c) The Department of Health and Human Services shall begin developing the capabilities necessary to implement Section 11(b) of this act.

SECTION 12. G.S. 90-113.75 reads as rewritten:

"§ 90-113.75. Civil penalties; other remedies; immunity from liability.

(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts to obtain information from the system in violation of a provision of this Article or a rule adopted pursuant to this Article shall be assessed a civil penalty by the Department not to exceed ten thousand dollars (\$10,000) per ~~violation~~-violation and shall be temporarily barred from accessing the system until further findings by the Department. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes. The Commission shall adopt rules establishing the factors to be considered in determining the amount of the penalty to be assessed."

(b) In addition to any other remedies available at law, an individual whose prescription information has been disclosed in violation of this Article or a rule adopted pursuant to this Article may bring an action against any person or entity who has intentionally, knowingly, or negligently released confidential information or records concerning the individual for either or both of the following:

- (1) Nominal damages of one thousand dollars (\$1,000). In order to recover damages under this subdivision, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.
- (2) The amount of actual damages, if any, sustained by the individual.

(c) ~~A~~Notwithstanding the foregoing, G.S. 8-53, G.S. 75-65, or any other provision of international, federal, State, or local law, a practitioner as defined in G.S. 90-87, a dispenser, or other person or entity permitted access to ~~data~~ or required or permitted to submit or transmit reports or other records, data, or information, including, without limitation, any protected health

information or any other individually identifying or personal information, under this Article that, in good faith, ~~makes a report or transmits data~~ submits or transmits such reports or other records, data, or information as required or allowed by this Article is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of ~~making the report or transmitting the data~~ submitting or transmitting such reports or other records, data, or information, or as a result of any subsequent actual or attempted access to or use or disclosure of such reports or other records, data, or information, whether by the Department, any law enforcement officer or agency, or any other person or entity."

SECTION 13. Article 5E of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-113.74E. Certification of diversion investigators and diversion supervisors.

Pursuant to its authority under G.S. 17C-6 and G.S. 17E-4, the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission, in consultation with the Department of Justice, North Carolina Justice Academy, and State Bureau of Investigation, shall ensure that educational materials are created and that training programs are conducted for the certification of diversion investigators and diversion supervisors, as defined in G.S. 90-113.74(i)."

SECTION 14.(a) G.S. 17C-6(a) is amended by adding two new subdivisions to read:

- "(18) Establish minimum standards and levels of training for certification of diversion investigators and diversion supervisors, as defined in G.S. 90-113.74(i). As part of these minimum standards, the Commission shall require that certified diversion investigators receive training in the following:
- a. Definition of drug diversion.
 - b. Categories of drugs most subject to diversion and misuse.
 - c. Methods used to divert drugs.
 - d. Proper investigation of drug diversion cases.
 - e. Appropriate use of the controlled substances reporting system to investigate drug diversion cases.
 - f. Requests of prescriptions and records related to prescriptions pursuant to G.S. 90-107.1, including best practices for working with pharmacies in a manner that minimizes disruption of customer service and pharmacy operations.
 - g. Data privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other pertinent federal and State laws governing privacy and security of confidential data and records.
 - h. Proper handling of confidential data and records from any source.
 - i. Criminal and civil penalties under federal and State law for improperly accessing, handling, or disclosing confidential prescription data or other confidential data or records.
- (19) 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, as defined in G.S. 90-113.74(i)."

SECTION 14.(b) G.S. 17E-4(a) is amended by adding two new subdivisions to read:

- "(14) Establish minimum standards and levels of training for certification of diversion investigators and diversion supervisors, as defined in G.S. 90-113.74(i). As part of these minimum standards, the Commission shall require that certified diversion investigators receive training in the following:
- a. Definition of drug diversion.
 - b. Categories of drugs most subject to diversion and misuse.

- c. Methods used to divert drugs.
 - d. Proper investigation of drug diversion cases.
 - e. Appropriate use of the controlled substances reporting system to investigate drug diversion cases.
 - f. Requests of prescriptions and records related to prescriptions pursuant to G.S. 90-107.1, including best practices for working with pharmacies in a manner that minimizes disruption of customer service and pharmacy operations.
 - g. Data privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other pertinent federal and State laws governing privacy and security of confidential data and records.
 - h. Proper handling of confidential data and records from any source.
 - i. Criminal and civil penalties under federal and State law for improperly accessing, handling, or disclosing confidential prescription data or other confidential data or records.
- (15) 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, as defined in G.S. 90-113.74(i)."

PART IV. APPROPRIATIONS

SECTION 15.(a) It is the intent of the General Assembly to appropriate from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of ten million dollars (\$10,000,000) in recurring funds for the 2019-2020 fiscal year. These funds shall not be used for any purpose other than to increase the availability of community-based treatment and recovery services for substance use disorders, including medication-assisted treatment. These funds shall not supplant existing funds for community-based treatment and recovery services for substance abuse disorders.

SECTION 15.(b) It is the intent of the General Assembly to appropriate from the General Fund to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the sum of one million dollars (\$1,000,000) in recurring funds for the 2019-2020 fiscal year to purchase opioid antagonists, as defined in G.S. 90-12.7, which shall be distributed at no charge to North Carolina law enforcement agencies for the reversal of opioid-related drug overdoses.

SECTION 15.(c) It is the intent of the General Assembly to appropriate from the General Fund to the State Bureau of Investigation the sum of one hundred sixty thousand dollars (\$160,000) in recurring funds for the 2019-2020 fiscal year to fund Operation Medicine Drop.

SECTION 15.(d) It is the intent of the General Assembly to appropriate from the General Fund to the State Bureau of Investigation the sum of one hundred twenty-two thousand dollars (\$122,000) in recurring funds and the sum of fifty-eight thousand dollars (\$58,000) in nonrecurring funds for the 2019-2020 fiscal year. The State Bureau of Investigation shall use these funds to create one full-time equivalent special agent position within the State Bureau of Investigation to enhance drug investigations throughout the State. These funds shall not be used to supplant any other source of funding for this position.

SECTION 15.(e) G.S. 143C-5-2 does not apply to this act.

PART IV-A. TELEPSYCHIATRY

SECTION 15.1. G.S. 143B-139.4B reads as rewritten:

"§ 143B-139.4B. Office of Rural Health to oversee and monitor establishment and administration of statewide telepsychiatry program.

- (a) The following definitions apply in this section:
- (1) Community-based site. – Community-based health care setting to include, but not limited to, public health department, rural health center, rural health clinic, federally qualified health center, school-based health center, free and charitable clinic that accepts reimbursement.
 - ~~(1) Consultant site.~~—~~The hospital or other site at which the consulting provider is physically located at the time the consulting provider delivers the acute mental health or substance abuse care by means of telepsychiatry.~~
 - (1a) Consultant site. – The hospital or other site at which the consulting provider is physically located at the time the consulting provider delivers the mental health or substance abuse care by means of telepsychiatry.
 - (1b) Consulting provider. – A physician or other health care provider licensed in this State to provide mental health or substance abuse care.
 - (2) Hospital. – A facility licensed under Chapter 131E or Chapter 122C of the General Statutes, or a State facility listed in G.S. 122C-181.
 - (3) Referring site. – The hospital or approved community-based site at which the patient is physically located.
 - (4) Telepsychiatry. – The delivery of ~~acute~~ mental health or substance abuse care, including diagnosis or treatment, by means of two-way real-time interactive audio and video by a consulting provider at a consultant site to an individual patient at a referring site. The term does not include the standard use of telephones, facsimile transmissions, unsecured electronic mail, or a combination of these in the course of care.
 - ~~(5) Consulting provider.~~—~~A physician or other health care provider licensed in this State to provide acute mental health or substance abuse care.~~

(b) The North Carolina Office of Rural Health shall oversee the establishment and administration of a statewide telepsychiatry program that allows referring sites to utilize consulting providers at a consultant site to provide timely psychiatric assessment and rapid initiation of treatment for patients at the referring emergency department site experiencing an ~~acute~~ mental health or substance abuse ~~crisis.~~ or for patients in need of mental health or substance abuse care at an approved community-based site. Notwithstanding the provisions of Article 3 of Chapter 143 of the General Statutes or any other provision of law, the Office of Rural Health shall contract with East Carolina University Center for Telepsychiatry and e-Behavioral Health to administer the telepsychiatry program. The contract shall include a provision requiring East Carolina University Center for Telepsychiatry and e-Behavioral Health to work toward implementing this program on a statewide basis by no later than January 1, 2014, and to report annually to the Office of Rural Health on the following performance measures:

- (1) Number of consultant sites and referring sites participating in the program.
- (2) Number of psychiatric assessments conducted under the program, reported by site or region.
- (3) Length of stay of patients receiving telepsychiatry services in the emergency departments of hospitals participating in the program, reported by disposition.
- (4) Number of involuntary commitments recommended as a result of psychiatric assessments conducted by consulting providers under the program, reported by site or region and by year, and compared to the number of involuntary commitments recommended prior to implementation of this program.

(c) The Office of Rural Health shall have all of the following powers and duties relative to the statewide telepsychiatry program:

- (1) Ongoing oversight and monitoring of the program.

- (2) Ongoing monitoring of the performance of East Carolina University Center for Telepsychiatry and e-Behavioral Health under its contract with the Department, including all of the following:
 - a. Review of the performance measures described in subsection (b) of this section.
 - b. Annual site visits to East Carolina University Center for Telepsychiatry and e-Behavioral Health.
- (3) Facilitation of program linkages with critical access hospitals and small rural hospitals.
- (4) Conducting visits to referring sites and consultant sites to monitor implementation of the program; and upon implementation, conducting these site visits at least once annually.
- (5) Addressing barriers and concerns identified by consulting providers, consultant sites, and referring sites participating in the program.
- (6) Encouraging participation in the program by all potential consultant sites, consulting providers, and referring sites throughout the State and promoting continued participation in the program by consultant sites, consulting providers, and referring sites throughout the State.
- (7) Compiling a list of recommendations for future tele-health initiatives, based on operation of the statewide telepsychiatry program.
- (8) Reviewing on a quarterly basis the financial statements of East Carolina University Center for Telepsychiatry and e-Behavioral Health related to the telepsychiatry program in order to compare and monitor projected and actual program costs.
- (9) Annually reporting to the Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division on or before November 1 on the operation and effectiveness of the program. The report shall include information on each of the performance measures described in subsection (b) of this section.

(d) The Department shall adopt rules necessary to ensure the health and safety of patients who receive care, diagnosis, or treatment under the telepsychiatry program authorized by this section."

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 16. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 17. Sections 8 and 11(b) of this act become effective July 1, 2019. Section 10 becomes effective September 1, 2018. Section 9 of this act, and the criminal offenses created in G.S. 90-113.74(k) by Section 11(a) of this act, and Sections 2-7 of this act become effective December 1, 2018. The remainder of this act becomes effective July 1, 2018.

In the General Assembly read three times and ratified this the 14th day of June, 2018.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 9:26 a.m. this 22nd day of June, 2018