

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 189

Short Title: Fentanyl Drug Offenses/Increase Punishment. (Public)

Sponsors: Senators McInnis, Britt, and Lazzara (Primary Sponsors).

Referred to: Rules and Operations of the Senate

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 FENTANYL
9 TO THE LIST OF OFFENSES FOR WHICH LIMITED IMMUNITY FROM
10 PROSECUTION APPLIES FOR AN INDIVIDUAL WHO SEEKS MEDICAL
11 ASSISTANCE; AND TO CREATE THE TASK FORCE ON ENFORCEMENT OF
12 FENTANYL AND HEROIN DRUG VIOLATIONS.

13 The General Assembly of North Carolina enacts:

14
15 **PART I. INCREASE FINE IMPOSED ON PERSONS CONVICTED OF CERTAIN**
16 **DRUG TRAFFICKING OFFENSES**

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

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

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

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



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- 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. GOOD SAMARITAN IMMUNITY LAW/ADD POSSESSION OF LESS THAN** 24 **ONE GRAM OF FENTANYL**

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.

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

33 (3a) A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of
34 fentanyl.

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

36 37 **PART IV. CREATE TASK FORCE ON ENFORCEMENT OF FENTANYL AND** 38 **HEROIN DRUG VIOLATIONS**

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

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

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

1 **SECTION 4.(d)** Per Diem, Travel, and Expenses. – Members of the Task Force shall
2 receive per diem and necessary travel and subsistence expenses in accordance with G.S. 120-3.1,
3 138-5, and 138-6, as applicable.

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

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

12 **SECTION 4.(g)** Effective Date. – This section is effective when it becomes law.
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14 **PART V. EFFECTIVE DATE**

15 **SECTION 5.** Except as otherwise provided, this act becomes effective December 1,
16 2023, and applies to offenses committed on or after that date.