

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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SENATE BILL 616  
Finance Committee Substitute Adopted 5/9/17  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S616-CSTT-42 [v.10]  
05/29/2018 07:04:10 PM

Short Title: Heroin & Opioid Prevention & Enforcement Act.

(Public)

Sponsors:

Referred to:

April 5, 2017

A BILL TO BE ENTITLED

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 CREATING THE NEW CRIMINAL OFFENSES OF DEATH BY DISTRIBUTION  
OF CERTAIN CONTROLLED SUBSTANCES, AND AGGRAVATED DEATH BY  
DISTRIBUTION OF CERTAIN CONTROLLED SUBSTANCES.

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-diisopropylt  
ryptamine."

**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."



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

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

4           ...

5           (3d) Any person who sells, manufactures, delivers, transports, or possesses 28  
6 grams or more of ~~MDPV~~any substituted cathinone or any mixture containing  
7 such substance shall be guilty of a felony, which felony shall be known as  
8 "trafficking in ~~MDPV,"~~substituted cathinones," and if the quantity of such  
9 substance or mixture involved:

- 10           a. Is 28 grams or more, but less than 200 grams, such person shall be  
11 punished as a Class F felon and shall be sentenced to a minimum term  
12 of 70 months and a maximum term of 93 months in the State's prison  
13 and shall be fined not less than fifty thousand dollars (\$50,000);  
14           b. Is 200 grams or more, but less than 400 grams, such person shall be  
15 punished as a Class E felon and shall be sentenced to a minimum term  
16 of 90 months and a maximum term of 120 months in the State's prison  
17 and shall be fined not less than one hundred thousand dollars  
18 (\$100,000);  
19           c. Is 400 grams or more, such person shall be punished as a Class C felon  
20 and shall be sentenced to a minimum term of 225 months and a  
21 maximum term of 282 months in the State's prison and shall be fined  
22 at least two hundred fifty thousand dollars (\$250,000).

23           ~~(3e) Any person who sells, manufactures, delivers, transports, or possesses 28~~  
24 ~~grams or more of mephedrone or any mixture containing such substance shall~~  
25 ~~be guilty of a felony, which felony shall be known as "trafficking in~~  
26 ~~mephedrone," and if the quantity of such substance or mixture involved:~~

- 27           ~~a. Is 28 grams or more, but less than 200 grams, such person shall be~~  
28 ~~punished as a Class F felon and shall be sentenced to a minimum term~~  
29 ~~of 70 months and a maximum term of 93 months in the State's prison~~  
30 ~~and shall be fined not less than fifty thousand dollars (\$50,000);~~  
31           ~~b. Is 200 grams or more, but less than 400 grams, such person shall be~~  
32 ~~punished as a Class E felon and shall be sentenced to a minimum term~~  
33 ~~of 90 months and a maximum term of 120 months in the State's prison~~  
34 ~~and shall be fined not less than one hundred thousand dollars~~  
35 ~~(\$100,000);~~  
36           ~~c. Is 400 grams or more, such person shall be punished as a Class C felon~~  
37 ~~and shall be sentenced to a minimum term of 225 months and a~~  
38 ~~maximum term of 282 months in the State's prison and shall be fined~~  
39 ~~at least two hundred fifty thousand dollars (\$250,000).~~

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

- 48           a. Is four grams or more, but less than 14 grams, such person shall be  
49 punished as a Class F felon and shall be sentenced to a minimum term  
50 of 70 months and a maximum term of 93 months in the State's prison  
51 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 ~~MDA/MDMA.~~"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.** G.S. 90-107 reads as rewritten:

**"§ 90-107. Prescriptions, stocks, etc., open to inspection by officials.**

Prescriptions, order forms and records, required by this Article, and stocks of controlled substances included in Schedules I through VI of this Article shall be open for inspection only to ~~federal~~the following individuals:

- (1) Federal and State officers, whose duty it is to enforce the laws of this State or of the United States relating to controlled substances included in Schedules I through VI of this ~~Article,~~ and to authorized Article.
- (2) Certified diversion investigators affiliated with a qualified law enforcement agency, as those terms are defined in G.S. 90-113.74(i).
- (3) Authorized employees of the North Carolina Department of Health and Human Services.

No officer having knowledge by virtue of his or her office of any such prescription, order, or record shall divulge such knowledge other than to other law-enforcement officials or agencies, except in connection with a prosecution or proceeding in court or before a licensing board or

1 officer to which prosecution or proceeding the person to whom such prescriptions, orders, or  
2 records relate is a party."

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

4 **"§ 90-108. Prohibited acts; penalties.**

5 (a) It shall be unlawful for any person:

- 6 (1) Other than practitioners licensed under Articles 1, 2, 4, 6, 11, 12A of this  
7 Chapter to represent to any registrant or practitioner who manufactures,  
8 distributes, or dispenses a controlled substance under the provision of this  
9 Article that he or she is a licensed practitioner in order to secure or attempt to  
10 secure any controlled substance as defined in this Article or to in any way  
11 impersonate a practitioner for the purpose of securing or attempting to secure  
12 any drug requiring a prescription from a practitioner as listed above and who  
13 is licensed by this ~~State;~~State.
- 14 (2) Who is subject to the requirements of G.S. 90-101 or a practitioner to  
15 distribute or dispense a controlled substance in violation of G.S. 90-105 or  
16 ~~90-106;~~G.S. 90-106.
- 17 (3) Who is a registrant to manufacture, distribute, or dispense a controlled  
18 substance not authorized by his or her registration to another registrant or  
19 other authorized ~~person;~~person.
- 20 (4) To omit, remove, alter, or obliterate a symbol required by the Federal  
21 Controlled Substances Act or its ~~successor;~~successor.
- 22 (5) To refuse or fail to make, keep, or furnish any record, notification, order form,  
23 statement, invoice or information required under this ~~Article;~~Article.
- 24 (6) To refuse any entry into any premises or inspection authorized by this  
25 ~~Article;~~Article.
- 26 (7) To knowingly keep or maintain any store, shop, warehouse, dwelling house,  
27 building, vehicle, boat, aircraft, or any place whatever, which is resorted to by  
28 persons using controlled substances in violation of this Article for the purpose  
29 of using such substances, or which is used for the keeping or selling of the  
30 same in violation of this ~~Article;~~Article.
- 31 (8) Who is a registrant or a practitioner to distribute a controlled substance  
32 included in Schedule I or II of this Article in the course of his or her legitimate  
33 business, except pursuant to an order form as required by ~~G.S.~~  
34 ~~90-105;~~G.S. 90-105.
- 35 (9) To use in the course of the manufacture or distribution of a controlled  
36 substance a registration number which is fictitious, revoked, suspended, or  
37 issued to another ~~person;~~person.
- 38 (10) To acquire or obtain possession of a controlled substance by  
39 misrepresentation, fraud, forgery, deception, or ~~subterfuge;~~subterfuge.
- 40 (11) To furnish false or fraudulent material information in, or omit any material  
41 information from, any application, report, or other document required to be  
42 kept or filed under this Article, or any record required to be kept by this  
43 ~~Article;~~Article.
- 44 (12) To make, distribute, or possess any punch, die, plate, stone, or other thing  
45 designed to print, imprint, or reproduce the trademark, trade name, or other  
46 identifying mark, imprint, or device of another or any likeness of any of the  
47 foregoing upon any drug or container or labeling thereof so as to render such  
48 drug a counterfeit controlled ~~substance;~~substance.
- 49 (13) To obtain controlled substances through the use of legal prescriptions which  
50 have been obtained by the knowing and willful misrepresentation to or by the

1 intentional withholding of information from one or more  
2 ~~practitioners; practitioners.~~

3 (14) Who is a registrant or practitioner or an employee of a registrant or practitioner  
4 and who is authorized to possess controlled substances or has access to  
5 controlled substances by virtue of ~~his~~ employment, to embezzle or  
6 fraudulently or knowingly and willfully misapply or divert to his or her own  
7 use or other unauthorized or illegal use or to take, make away with or secrete,  
8 with intent to embezzle or fraudulently or knowingly and willfully misapply  
9 or divert to his or her own use or other unauthorized or illegal use any  
10 controlled substance which shall have come into his or her possession or under  
11 his or her care.

12 (15) Who is not a registrant or practitioner nor an employee of a registrant or  
13 practitioner and who, by virtue of his or her occupation or profession,  
14 administers or provides medical care, aid, emergency treatment, or any  
15 combination of these to a person who is prescribed a controlled substance, to  
16 embezzle or fraudulently or knowingly and willfully misapply or divert to his  
17 or her own use or other unauthorized or illegal use or to take, make away with,  
18 or secrete, with intent to embezzle or fraudulently or knowingly and willfully  
19 misapply or divert to his or her own use or other unauthorized or illegal use  
20 any controlled substance that is prescribed to another.

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

25 (1) A person who violates subdivision (7) of subsection (a) of this section and  
26 also fortifies the structure, with the intent to impede law enforcement entry,  
27 (by barricading windows and doors) shall be punished as a Class I felon.

28 (2) A person who violates subdivision (14) or (15) of subsection (a) of this section  
29 shall be punished as a Class G felon.

30 (3) A person who violates subdivision (14) or (15) of subsection (a) of this section  
31 and intentionally diverts any controlled substance by means of dilution or  
32 substitution or both shall be punished as a Class E felon. As used in this  
33 subdivision, the following terms have the following meanings:

34 a. Dilution. – The act of diluting or the state of being diluted; the act of  
35 reducing the concentration of a mixture or solution.

36 b. Substitution. – To take the place of or replace."  
37

### 38 PART III. AMENDMENTS PERTAINING TO THE NORTH CAROLINA 39 CONTROLLED SUBSTANCES REPORTING SYSTEM ACT

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

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

44 (1) ~~The dispenser's~~Dispenser's DEA number.

45 (1a) Dispenser's national provider identification number, for any dispenser that has  
46 a national provider identification number.

47 (2) ~~The~~Except as provided in subdivision (2a) of this subsection, the name of the  
48 patient for whom the controlled substance is being dispensed, and the  
49 patient's:

50 a. Full address, including city, state, and zip ~~code~~code.

51 b. Telephone ~~number, and~~number.

- 1 c. Date of birth.
- 2 (2a) For veterinary medicine, the name, age, and type of animal for whom the
- 3 controlled substance is being dispensed and the animal owner's:
- 4 a. First and last name.
- 5 b. Full address, including city, state, and zip code.
- 6 c. Date of birth.
- 7 (3) The date the prescription was written.
- 8 (4) The date the prescription was filled.
- 9 (5) The prescription number.
- 10 (6) Whether the prescription is new or a refill.
- 11 (7) Metric quantity of the dispensed drug.
- 12 (8) Estimated days of supply of dispensed drug, if provided to the dispenser.
- 13 (9) National Drug Code of dispensed drug.
- 14 (10) Prescriber's DEA number.
- 15 (10a) Prescriber's national provider identification number, for any prescriber that
- 16 has a national provider identification number.
- 17 (10b) With respect to any Schedule II controlled substance, or any of the Schedule
- 18 III controlled substances listed in subdivisions (1) through (8) of
- 19 G.S. 90-91(d):
- 20 a. Name of the person seeking the dispensation.
- 21 b. Pursuant to G.S. 90-106.1(a), type of photographic identification
- 22 presented by the person seeking the dispensation.
- 23 c. Photographic identification number.
- 24 (11) Method of payment for the prescription."

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

25 **"§ 90-113.74. Confidentiality.**

26 ...

27 (b1) The Department may review the prescription information data in the controlled  
28 substances reporting system and upon review may:

- 29 (1) Notify practitioners that a patient may have obtained prescriptions for
- 30 controlled substances in a manner that may represent abuse, diversion of
- 31 controlled substances, or an increased risk of harm to the patient.
- 32 (1a) Notify practitioners and their respective licensing boards of prescribing
- 33 behavior that (i) increases risk of diversion of controlled substances, (ii)
- 34 increases risk of harm to the patient, or (iii) is an outlier among other
- 35 practitioner behavior.
- 36 (2) Report information regarding the prescribing practices of a practitioner to the
- 37 agency responsible for licensing, registering, or certifying the practitioner
- 38 pursuant to rules adopted by the agency as set forth below in subsection (b2)
- 39 of this section.
- 40 (3) Report to the Medicaid Investigations Division of the North Carolina
- 41 Department of Justice information regarding data analysis that discloses
- 42 trends in prescribing practices that suggest possible fraudulent activities.

43 ...

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

- 46 (1) Persons authorized to prescribe or dispense controlled substances for the
- 47 purpose of providing medical or pharmaceutical care for their patients. A
- 48 person authorized to receive data pursuant to this paragraph may delegate the
- 49 authority to receive the data to other persons working under his or her
- 50 direction and supervision, provided the Department approves this delegation.
- 51

1           The administrator of a hospital emergency department or hospital acute  
2           care facility shall provide the Department with a list of prescribers who are  
3           authorized to prescribe controlled substances for the purpose of providing  
4           medical care for patients of the hospital emergency department or hospital  
5           acute care facility and a list of delegates who are authorized to receive data on  
6           behalf of the providers listed. The administrator acting under this paragraph  
7           shall submit the lists to the Department no later than December 1 of the  
8           calendar year preceding the year during which the delegates are to receive data  
9           and may provide updated lists at any time during the course of the year. Within  
10          one week of receiving the initial or updated lists described in this paragraph,  
11          the Department shall establish all of the delegate accounts necessary to enable  
12          each delegate listed by the administrator of the hospital emergency department  
13          or hospital acute care facility to receive data on behalf of the listed prescribers.  
14          Delegations made pursuant to this paragraph are valid during the calendar year  
15          for which submitted by the administrator.

- 16          (2) An individual who requests the individual's own controlled substances  
17          reporting system information.
- 18          (3) Special agents of the North Carolina State Bureau of Investigation who are  
19          assigned to the Diversion & Environmental Crimes Unit and whose primary  
20          duties involve the investigation of diversion and illegal use of prescription  
21          medication. SBI agents assigned to the Diversion & Environmental Crimes  
22          Unit may then provide this information to other SBI agents who are engaged  
23          in a bona fide specific investigation related to enforcement of laws governing  
24          licit drugs. ~~The SBI shall notify the Office of the Attorney General of North~~  
25          ~~Carolina of each request for inspection of records maintained by the~~  
26          ~~Department.~~ The Attorney General of North Carolina or a designee shall have  
27          access to the system to monitor requests for inspection of records.
- 28          (4) Primary monitoring authorities for other states pursuant to a specific ongoing  
29          investigation involving a designated person, if information concerns the  
30          dispensing of a Schedule II through V controlled substance to an ultimate user  
31          who resides in the other state or the dispensing of a Schedule II through V  
32          controlled substance prescribed by a licensed health care practitioner whose  
33          principal place of business is located in the other state.
- 34          (5) To a sheriff or designated deputy sheriff or a police chief or a designated  
35          police investigator who is assigned to investigate the diversion and illegal use  
36          of prescription medication or pharmaceutical products identified in Article 5  
37          of this Chapter of the General Statutes as Schedule II through V controlled  
38          substances and who is engaged in a bona fide specific investigation related to  
39          the enforcement of laws governing licit drugs pursuant to a lawful court order  
40          specifically issued for that purpose.
- 41          (6) The Division of Medical Assistance for purposes of administering the State  
42          Medical Assistance Plan.
- 43          (6a) The Medicaid Investigations Division of the North Carolina Department of  
44          Justice pursuant to an active investigation relating to Medicaid fraud, patient  
45          abuse, or patient neglect in a health care facility.
- 46          (7) Licensing boards with jurisdiction over health care disciplines pursuant to an  
47          ongoing investigation by the licensing board of a specific individual licensed  
48          by the board.
- 49          (8) Any county medical examiner appointed by the Chief Medical Examiner  
50          pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose  
51          of investigating the death of an individual.

- 1 (9) The federal Drug Enforcement Administration's Office of Diversion  
2 ~~Control~~.Control or Tactical Diversion Squad in North Carolina.  
3 (10) The North Carolina Health Information Exchange Authority (NC HIE  
4 Authority), established under Article 29B of this Chapter, through  
5 Web-service calls.

6 ...

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

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

22 Any person who is assessed a civil penalty pursuant to G.S. 90-113.75(a) or convicted of a  
23 criminal offense under this subsection is permanently barred from accessing the controlled  
24 substances reporting system.

25 (l) The State Bureau of Investigation, Diversion & Environmental Crimes Unit, may  
26 investigate suspected violations of this section."

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

28 "**§ 90-113.74. Confidentiality.**

29 ...

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

32 ...

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

40 (5a) Local law enforcement officers pursuant to subsection (i) of this section.

41 ...

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

- 44 (1) The Department shall release data in the controlled substances reporting  
45 system to a local law enforcement officer only if all of the following  
46 conditions are satisfied:  
47 a. The local law enforcement officer is a certified diversion investigator.  
48 b. The agency that supervises the investigator is a qualified law  
49 enforcement agency.  
50 c. The request is related to a bona fide active investigation related to the  
51 enforcement of laws governing licit or illicit drugs.



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

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

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

17           (4)     Data obtained by certified diversion investigators from the controlled  
18                    substances reporting system in the manner prescribed by this subsection may  
19                    be shared with other law enforcement personnel or prosecutorial officials (i)  
20                    only upon the direction of the certified diversion investigator who originally  
21                    requested the information, and (ii) in the case of law enforcement personnel  
22                    from other law enforcement agencies, only with law enforcement personnel  
23                    who are directly participating in an official joint investigation or as provided  
24                    in subdivision (5) of this subsection.

25           (5)     In the event the data provided to the local law enforcement officer indicates  
26                    transactions solely outside of that local law enforcement officer's jurisdiction,  
27                    the matter shall be referred to the State Bureau of Investigation, Diversion &  
28                    Environmental Crimes Unit, or to a certified diversion investigator employed  
29                    by a qualified law enforcement agency with jurisdiction over the transactions  
30                    at issue.

31           (6)     Certified diversion investigators may not request or receive prescription data  
32                    from other states through PMP Interconnect or any other mechanism  
33                    established by the Department to facilitate interstate connectivity of the  
34                    controlled substances reporting system.

35           (7)     As used in this subsection, the following terms have the following meanings:

36           a.       Certified diversion investigator. – An officer affiliated with a qualified  
37                    law enforcement agency who is certified as a diversion investigator by  
38                    either the North Carolina Sheriffs' Education and Training Standards  
39                    Commission or the North Carolina Criminal Justice Education and  
40                    Training Standards Commission. If for any reason a certified diversion  
41                    investigator leaves a position involving diversion investigation, the  
42                    qualified law enforcement agency shall notify the North Carolina  
43                    Department of Health and Human Services Controlled Substance  
44                    Reporting System and the State Bureau of Investigation, Diversion &  
45                    Environmental Crimes Unit, within 72 hours after the effective date of  
46                    the change.

47           b.       Certified diversion supervisor. – The head of a municipal police  
48                    department, a county police department, a sheriff's office, or the  
49                    designee of the agency head with supervisory authority over that  
50                    agency's diversion investigators, who is certified as a diversion  
51                    supervisor by either the North Carolina Sheriffs' Education and

- 1                    Training Standards Commission or the North Carolina Criminal  
 2                    Justice Education and Training Standards Commission.  
 3                    c.    Qualified law enforcement agency. – Any of the following entities  
 4                    whose head is a certified diversion investigator or that employs at least  
 5                    one certified diversion investigator and at least one certified diversion  
 6                    supervisor:  
 7                    1.    A municipal police department.  
 8                    2.    A county police department.  
 9                    3.    A sheriff's office.  
 10                   d.    Active investigation. – An investigation that is being conducted with  
 11                   a reasonable, good-faith belief that it could lead to the filing of  
 12                   criminal proceedings.
- 13                   (j)    The Department shall do all of the following:  
 14                   (1)    Enable each certified diversion investigator associated with a qualified law  
 15                   enforcement agency to register with the controlled substances reporting  
 16                   system by providing, at a minimum, all of the following information:  
 17                   a.    The investigator's name and certification number.  
 18                   b.    The name of the qualified law enforcement agency for whom the  
 19                   investigator works.  
 20                   c.    The name and certification number of each certified diversion  
 21                   supervisor with whom the investigator works.  
 22                   (2)    Enable each certified diversion investigator associated with a qualified law  
 23                   enforcement agency to request and receive data in connection with a bona fide  
 24                   active investigation related to the enforcement of laws governing licit or illicit  
 25                   drugs by providing, at a minimum, all of the following:  
 26                   a.    The case number associated with the request.  
 27                   b.    A description of the nature and purpose of the request.  
 28                   c.    The first name, last name, and date of birth of each individual whose  
 29                   prescription data the investigator seeks, including when appropriate,  
 30                   any alternative name, spelling, or date of birth associated with each  
 31                   such individual.  
 32                   c.    An acknowledgement that the certified diversion investigator is aware  
 33                   of the penalties associated with improperly obtaining, disclosing, or  
 34                   disseminating data from the controlled substances reporting system.  
 35                   (3)    Enable the State Bureau of Investigation, Diversion & Environmental Crimes  
 36                   Unit, to review each request for data from a certified diversion investigator  
 37                   associated with a qualified law enforcement agency, and upon such review, to  
 38                   determine if the request is approved, denied, or delayed pending further  
 39                   review or investigation.  
 40                   (4)    Create an audit trail that may be used to investigate or prosecute violations of  
 41                   this Part and ensure that the Attorney General of North Carolina or a designee  
 42                   and Special Agents of the North Carolina State Bureau of Investigation who  
 43                   are assigned to the Diversion & Environmental Crimes Unit have access to  
 44                   the system to review the audit trail."

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

47                   **SECTION 12.** G.S. 90-113.75(a) reads as rewritten:

48                   "(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts  
 49                   to obtain information from the system in violation of a provision of this Article or a rule adopted  
 50                   pursuant to this Article shall be assessed a civil penalty by the Department not to exceed ten  
 51                   thousand dollars (\$10,000) per ~~violation~~-violation and shall be permanently barred from

1 accessing the system. The clear proceeds of penalties assessed under this section shall be  
2 deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter  
3 115C of the General Statutes. The Commission shall adopt rules establishing the factors to be  
4 considered in determining the amount of the penalty to be assessed."

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

7 "**§ 90-113.74E. Certification of diversion investigators and diversion supervisors.**

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

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

16 "(18) Establish minimum standards and levels of training for certification of  
17 diversion investigators and diversion supervisors, as defined in  
18 G.S. 90-113.74(i). As part of these minimum standards, the Commission shall  
19 require that certified diversion investigators receive training in the following:

- 20 a. Definition of drug diversion.
- 21 b. Categories of drugs most subject to diversion and misuse.
- 22 c. Methods used to divert drugs.
- 23 d. Proper investigation of drug diversion cases.
- 24 e. Appropriate use of the controlled substances reporting system to  
25 investigate drug diversion cases.
- 26 f. Inspection of prescriptions, order forms and records pursuant to  
27 G.S. 90-107, including best practices for working with pharmacies in  
28 a manner that minimizes disruption of customer service and pharmacy  
29 operations.
- 30 g. Data privacy and security provisions of the Health Insurance  
31 Portability and Accountability Act of 1996 (HIPAA) and other  
32 pertinent federal and State laws governing privacy and security of  
33 confidential data and records.
- 34 h. Proper handling of confidential data and records from any source.
- 35 i. Criminal and civil penalties under federal and State law for improperly  
36 accessing, handling, or disclosing confidential prescription data or  
37 other confidential data or records.

38 (19) Certify and recertify at least once every three years, suspend, revoke, or deny,  
39 pursuant to the standards that it has established for the purpose, persons as  
40 qualified to be employed at entry level and retained as diversion investigators  
41 and diversion supervisors, as defined in G.S. 90-113.74(i)."

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

43 "(14) Establish minimum standards and levels of training for certification of  
44 diversion investigators and diversion supervisors, as defined in  
45 G.S. 90-113.74(i). As part of these minimum standards, the Commission shall  
46 require that certified diversion investigators receive training in the following:

- 47 a. Definition of drug diversion.
- 48 b. Categories of drugs most subject to diversion and misuse.
- 49 c. Methods used to divert drugs.
- 50 d. Proper investigation of drug diversion cases.

- 1 e. Appropriate use of the controlled substances reporting system to  
2 investigate drug diversion cases.
- 3 f. Inspection of prescriptions, order forms and records pursuant to  
4 G.S. 90-107, including best practices for working with pharmacies in  
5 a manner that minimizes disruption of customer service and pharmacy  
6 operations.
- 7 g. Data privacy and security provisions of the Health Insurance  
8 Portability and Accountability Act of 1996 (HIPAA) and other  
9 pertinent federal and State laws governing privacy and security of  
10 confidential data and records.
- 11 h. Proper handling of confidential data and records from any source.
- 12 i. Criminal and civil penalties under federal and State law for improperly  
13 accessing, handling, or disclosing confidential prescription data or  
14 other confidential data or records.
- 15 (15) Certify and recertify at least once every three years, suspend, revoke, or deny,  
16 pursuant to the standards that it has established for the purpose, persons as  
17 qualified to be employed at entry level and retained as diversion investigators  
18 and diversion supervisors, as defined in G.S. 90-113.74(i)."

#### 19 PART IV. APPROPRIATIONS

20 **SECTION 15.(a)** It is the intent of the General Assembly to appropriate from the  
21 General Fund to the Department of Health and Human Services, Division of Mental Health,  
22 Developmental Disabilities, and Substance Abuse Services, the sum of ten million dollars  
23 (\$10,000,000) in recurring funds for the 2019-2020 fiscal year. These funds shall not be used for  
24 any purpose other than to increase the availability of community-based treatment and recovery  
25 services for substance use disorders, including medication-assisted treatment. These funds shall  
26 not supplant existing funds for community-based treatment and recovery services for substance  
27 abuse disorders.

28 **SECTION 15.(b)** It is the intent of the General Assembly to appropriate from the  
29 General Fund to the Department of Health and Human Services, Division of Mental Health,  
30 Developmental Disabilities, and Substance Abuse Services, the sum of one million dollars  
31 (\$1,000,000) in recurring funds for the 2019-2020 fiscal year to purchase opioid antagonists, as  
32 defined in G.S. 90-12.7, which shall be distributed at no charge to North Carolina law  
33 enforcement agencies for the reversal of opioid-related drug overdoses.

34 **SECTION 15.(c)** It is the intent of the General Assembly to appropriate from the  
35 General Fund to the State Bureau of Investigation the sum of one hundred sixty thousand dollars  
36 (\$160,000) in recurring funds for the 2019-2020 fiscal year to fund Operation Medicine Drop.

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

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

#### 45 PART V. NEW CRIMINAL OFFENSES

46 **SECTION 16.** Article 6 of Chapter 14 of the General Statutes is amended by  
47 adding a new section to read:

48 **"§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by**  
49 **distribution of certain controlled substances; penalties.**  
50

1        (a) Death by distribution of certain controlled substances. – A person is guilty of death  
2 by distribution of certain controlled substances if (i) the person proximately causes the death of  
3 another human being, without malice aforethought; (ii) by the unlawful distribution of a  
4 controlled substance described in subsection (c) of this section; and (iii) the ingestion or use of  
5 the substance or a mixture including the substance, caused the death of the user.

6        (b) Aggravated death by distribution of certain controlled substances. – A person is guilty  
7 of aggravated death by distribution of certain controlled substances if (i) the person proximately  
8 causes the death of another human being, without malice aforethought; (ii) by the unlawful  
9 distribution of a controlled substance described in subsection (c) of this section; (iii) the ingestion  
10 or use of the substance or a mixture including the substance, caused the death of the user; and  
11 (iv) the person engaged in unlawful distribution has a previous conviction under this section,  
12 G.S. 90-95(a)(1), G.S. 90-95(e)(5), G.S. 90-95.1, G. S. 90-95.4, G.S. 90-95.6, or trafficking in  
13 violation of G.S. 90-95, or a prior conviction in any federal or state court in the United States  
14 that is substantially similar to an offense listed, within seven years of the date of the offense.

15        (c) Certain controlled substances. – For the purposes of this section, the term "certain  
16 controlled substances" includes any opium, opiate, or opioid; any synthetic or natural salt,  
17 compound, derivative, or preparation of opium, opiate, or opioid; cocaine or any other substance  
18 described in G.S. 90-90(1)(d); methamphetamine; a depressant described in G.S. 90-92(a)(1); or  
19 any mixture containing one or more of those substances.

20        (d) Lesser included offense. – Death by distribution of certain controlled substances  
21 constitutes a lesser included offense of aggravated death by distribution of certain controlled  
22 substances in violation of this section; and of murder in violation of G.S. 14-17(b)(2).

23        (e) Penalties. – Unless the conduct is covered under some other provision of law  
24 providing greater punishment, the following classifications apply to the offenses set forth in this  
25 section:

26            (1) Death by distribution of certain controlled substances is a Class C felony.

27            (2) Aggravated death by distribution of certain controlled substances is a Class B2  
28 felony."

## 30 **PART VI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

31        **SECTION 17.** If any provision of this act or its application is held invalid, the  
32 invalidity does not affect other provisions or applications of this act that can be given effect  
33 without the invalid provisions or application, and to this end the provisions of this act are  
34 severable.

35        **SECTION 18.** Section 11(b) of this act becomes effective July 1, 2019. Part V of  
36 this act becomes effective December 1, 2018, and applies to offenses committed on or after that  
37 date. The remainder of this act becomes effective July 1, 2018.