



SENATE BILL 189: Fentanyl Drug Offenses and Related Changes.

2023-2024 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: March 8, 2023
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Analysis of: Second Edition	Staff Attorney

OVERVIEW: *Senate Bill 189 does the following:*

- *Increases the fine amounts related to trafficking heroin, fentanyl, or carfentanil.*
- *Revises the laws related to Second Degree Murder and Death by Distribution to consolidate the laws and provide for new offenses related to deaths caused by the distribution of certain controlled substances.*
- *Provides for a limited criminal immunity for a person who possesses less than 1 gram of any controlled substance if the person seeks medical assistance for a victim of a drug-related overdose.*
- *Establishes the Task Force on Enforcement of Fentanyl and Heroin Drug Violations.*
- *Allows district attorneys and law enforcement agencies to request an autopsy of a victim of a drug-related death if that death is suspected to be in violation of the Death by Distribution law.*

CURRENT LAW AND BILL ANALYSIS:

Section 1.

Article 5 of Chapter 90 is the North Carolina Controlled Substances Act, and it contains the laws related to controlled substances which are listed on Schedules I through VI of the Controlled Substances Act.

G.S. 90-95(h) contains the criminal laws and punishments related to trafficking various controlled substances. Trafficking different types of controlled substances have different criminal punishments. G.S. 90-95(h)(4) is the law that punishes trafficking in opium, opiate, opioid, or heroin. (Heroin, fentanyl, and carfentanil are controlled substances that are covered by this law.) If a person trafficked 4 grams but less than 14 grams of one of these substances, the person would be guilty of a Class F felony, be subject to a mandatory prison sentence of at least 70 months and be fined at least \$50,000. If a person trafficked 14 grams but less than 28 grams of one of these substances, the person would be guilty of a Class E felony, be subject to a mandatory prison sentence of at least 90 months and be fined at least \$100,000. If a person trafficked 28 grams or more of one of these substances, the person would be guilty of a Class C felony, be subject to a mandatory prison sentence of at least 225 months and be fined at least \$500,000.

Section 1 of the bill would maintain the above felony levels and prison sentences but increase the fine amounts if the controlled substance was heroin, fentanyl, or carfentanil. The increased fines amounts are as follows:

- 4 grams but less than 14 grams → \$500,000
- 14 grams but less than 28 grams → \$750,000

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- more than 28 grams → \$1,000,000

Section 2.

G.S. 14-17(b)(2) ("Second-degree murder") is the unlawful killing of another human being with malice, but without premeditation or deliberation, and a killing that was proximately caused by the unlawful distribution of any opium, opiate or opioid or any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, opioid; cocaine, or other substance described in G.S. 90-90(1)d; methamphetamine; or depressant described in G.S. 90-92(a)(1). A violation of G.S. 14-17(b)(2) is punishable as a Class B2 felony.

G.S. 14-18.4 ("Death by distribution") provides that it is a Class C felony if a person unlawfully sells "one certain controlled substance" that proximately causes the victim's death if the substance is ingested, and the person acted without malice. It also provides that it is a Class B2 felony if a person satisfies the elements of Death by Distribution, and the person has a previous conviction for one of a list of certain controlled substance violations, within 7 years of the date of offense.

"Certain controlled substance" is defined to mean: "any opium, opiate or opioid or any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, opioid; cocaine, or other substance described in G.S. 90-90(1)d; methamphetamine; a depressant described in G.S. 90-92(a)(1) or a mixture of one or more of these substances."

Section 2 of the bill would effectively move the second-degree murder provision related to distribution of certain controlled substances to G.S. 14-18.4(a2) and make other certain changes to Death by Distribution. Section 2 of the bill would provide the following:

- (a1) It would be a Class C felony if:
 - A person delivers a certain controlled substance.
 - Another person dies because of ingesting the certain controlled substance.
 - Providing the certain controlled substance was the proximate cause of death.
- (a2) It would be a Class B2 felony if:
 - A person delivers a certain controlled substance.
 - The person acts with malice.
 - Another person dies because of ingesting the certain controlled substance.
 - Providing the certain controlled substance was the proximate cause of death.
- (b) It would be a Class B2 felony if:
 - A person sells a certain controlled substance.
 - Another person dies because of ingesting the certain controlled substance.
 - Providing the certain controlled substance was the proximate cause of death.
- (c) It would be a Class B1 felony if:
 - A person sells a certain controlled substance.
 - Another person dies because of ingesting the certain controlled substance.
 - Providing the certain controlled substance was the proximate cause of death.

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- The person has a previous conviction for one of a list of certain controlled substance violations, within 10 years of the date of offense.

Section 3.

G.S. 90-96.2 provides for a limited immunity for a person who possesses certain controlled substances if the person seeks medical assistance for a victim suffering from a drug-related overdose and meets certain criteria, or is the victim suffering from a drug-related overdose.

Section 3 would add a limited immunity for a person who possesses less than one gram of any controlled substance if that person seeks medical assistance for a victim suffering from a drug-related overdose, or is the victim suffering from a drug-related overdose.

Section 4.

Section 4 would establish the Task Force on Enforcement of Fentanyl and Heroin Drug Violations ("Task Force") consisting of six public safety officials to study ways to enhance the ability of North Carolina law enforcement to combat the illegal manufacturing, importation, and distribution of fentanyl, heroin, and other similar controlled substances. The Task Force shall submit an interim report to the General Assembly when it reconvenes in 2024 and a final report to the 2025 General Assembly. The Task Force shall terminate upon filing its final report.

This section is effective when it becomes law.

Section 5.

G.S. 130A-389(a) provides that a medical examiner investigating a case, or the Chief Medical Examiner, shall conduct an autopsy of a person, if doing so would be advisable and in the public interest. A district attorney of the county of the death or a superior court judge may also request that an autopsy be performed.

Section 5 would require the Chief Medical Examiner or the medical examiner of the county of the death to perform an autopsy if the district attorney of the county or an investigating law enforcement agency asserts that probable cause exists that the death was the result of a violation of the Death by Distribution law.

This section becomes effective December 1, 2023, and applies to autopsies conducted on or after that date.

EFFECTIVE DATE: Except as otherwise provided, this act is effective December 1, 2023, and applies to offenses committed on or after that date.