GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2023

H 3

HOUSE BILL 258

Committee Substitute Favorable 3/14/23 Senate Judiciary Committee Substitute Adopted 6/22/23

Short Title:	Novel Opioid Control Act of 2023.	(Public)
Sponsors:		
Referred to:		
	March 6, 2023	
THE FINE FENTAN DISTRIBUTED FOR THE CONTROL OF THE CONTROL OF THE CONTROL OF THE CONTROL OF THE GENERAL OF THE	esters, ethers, salts and salts of isomers, esters, and excepted, or listed in another schedule, whenever isomers, esters, ethers, and salts is possible with designation:	FFICKING IN HEROIN, FENSE OF DEATH BY Y AND INGESTION OF LATELY CAUSES THE MENTS FOR A PERSON FRIBUTION; TO ADD DLLED SUBSTANCE TO Y FROM PROSECUTION ASSISTANCE; AND TO STANYL AND HEROIN des, including the isomers, ethers, unless specifically for the existence of such
	rrr. Brorphine. <u>sss. AP-237.</u> <u>ttt. 2-methyl AP-237.</u>	
	uuu. (ortho, meta, or para)-methyl AP-237. vvv. AP-238. www. (ortho, meta, or para)-hydroxy 2-methyl AP xxx. 2-Naphthyl U-47700. yyy. 1-Naphthyl U-47700. zzz. 4-(Trifluoromethyl) U-47700. aaaa. Methoxy U-47700. bbbb. Furanyl UF-17.	<u>9-237.</u>



cccc. Cyclopropyl U-47700.

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dddd. Phenyl U-47700.
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                        eeee. Ethyl U-47700.
 3
                               (2,3- or 3,4)-difluoro-N,N-didesmethyl U-47700.
                        ffff.
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                        gggg. (2,3- or 3,4)-difluoro U-49900.
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                        hhhh. (2,3- or 3,4)-difluoro-N-desmethyl U-47700.
 6
                               4-fluoro U-47931E.
                        iiii.
 7
                               (2,3- or 3,4)-difluoro U-51754.
                        iiii.
 8
                        kkkk. (2,3- or 3,4)-difluoro Isopropyl U-47700.
 9
                               (2,3- or 3,4)-difluoro Propyl U-47700.
                        llll.
10
                        <u>mmmm.</u> (2,3- or 3,4)-difluoro U-50488.
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                        nnnn. (2,3- or 3,4)-difluoro U-48800.
                        oooo. (2,3- or 3,4 or 2,4)-difluoro U-47700.
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13
                        <u>pppp.</u> <u>UF-17</u>.
                        gqqq. <u>U-47109</u>.
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                               U-48520.
                        rrrr.
                               N,N-didesmethyl U-47700.
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                        SSSS.
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                               U-62066.
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                        uuuu. Propyl U-47700.
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                        vvvv. (2,3- or 3,4)-Ethylenedioxy U-51754.
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                                   4-phenyl U-51754.
                        www.
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                        xxxx. N-desmethyl U-47700.
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                        yyyy. (2,3- or 3,4)-Ethylenedioxy U-47700.
23
                        zzzz. N-methyl U-47931E.
24
                        aaaaa. (2,3- or 3,4)-Methylenedioxy U-47700.
25
                        bbbbb. U-69593.
26
                        ccccc. U-50488.
                        ddddd. U-48753E.
27
28
                        eeeee. U-47931E.
29
                        fffff. Butonitazene.
30
                        ggggg. Etodesnitazene (also known as Etonitazepyne).
31
                        hhhhh. Flunitazene.
32
                               Metodesnitazene.
                        iiiii.
33
                               N-Pyrrolidino Etonitazene.
                        <u>iiiii.</u>
34
                        kkkkk. Protonitazene."
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                SECTION 1.(b) G.S. 90-89(1a) reads as rewritten:
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                       Fentanyl derivatives. – Unless specifically excepted, listed in another
                        schedule, or contained within a pharmaceutical product approved by the
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38
                        United States Food and Drug Administration, any compound structurally
39
                                 from N-[1-(2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide
                        derived
40
                        (Fentanyl) by any substitution on or replacement of the phenethyl group, any
                        substitution on the piperidine ring, any substitution on or replacement of the
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42
                        propanamide group, any substitution on the anilido phenyl group, or any
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                        combination of the above unless specifically excepted or listed in another
                        schedule to include their salts, isomers, and salts of isomers. Fentanyl
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45
                        derivatives include, but are not limited to, the following:
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                        f.
48
                                  N-(2-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propana
49
                                       (also known as 2-fluorofentanyl).(also known as
50
                               ortho-fluorofentanyl).
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1	g.
2	N-(3-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propana
3	mide (also known as 3-fluorofentanyl).(also known as
4	meta-fluorofentanyl).
5	h.
6	N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carbox
7	amide (also known as tetrahydrofuran fentanyl).
8	i.
9	N-(4-fluorophenyl)-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]
10	-propanamid e (also known as 4-fluoroisobutyryl fentanyl,
11	4-FIBF).(also known as 4-fluoroisobutyryl fentanyl).
12	j. N-(4-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide
13	(also known as 4-fluorobutyryl fentanyl, 4-FBF).(also known as
14	4-fluorobutyryl fentanyl)."
15	SECTION 1.(c) G.S. 90-89 is amended by adding a new subdivision to read:
16	"(1b) Nitazene derivatives. – The N-substituted benzimidazole structural class,
17	including any of the following derivatives, their salts, isomers, or salts of
18	isomers unless specifically utilized as part of the manufacturing process by a
19	commercial industry of a substance or material not intended for human
20	ingestion or consumption, as a prescription administered under medical
21	supervision, or for research at a recognized institution, whenever the existence
22	of these salts, isomers, or salts of isomers is possible within the specific
23	chemical designation or unless specifically excepted or listed in this or another
24	schedule, structurally derived from benzimidazole by substitution at the
25	1-position nitrogen with an ethylamine group, and by substitution at the
26	2-position carbon with a benzyl group, whether or not the compound is further
27	modified in any of the following ways:
28	a. By monoalkyl or dialkyl substitution on the 1'-nitrogen of the
29	1-position ethylamine group, or by inclusion of the nitrogen in a cyclic
30	structure;
31	b. By substitution on the 2'-methylene carbon of the benzyl group by
32	alkyl or carboxamide groups;
33	c. By replacement of the 2'-methylene carbon group with an ethylbenzyl,
34	thiophenol, or methoxybenzene group, which may be further
35	substituted with alkyl, hydroxyl, alkoxy, acetoxy, halide, a fused
36	heterocyclic ring which may be further substituted, or sulfide groups;
37	d. By substitution at the 2'-position, 3'-position, or 4'-position of the
38	benzyl group, or both, with alkyl, hydroxyl, alkoxy, acetoxy, halide,
39	or sulfide groups;
40	e. By replacement of a phenyl hydrogen atom at either the 5-position or
41	6-position of the benzimidazole core with a nitro, or primary amine
42	group."
43	SECTION 1.(d) G.S. 90-89(3)mm. reads as rewritten:
44	"mm. 5-methoxy-N-methyl-N-propyltryptamine
45	5-methoxy-N-methyl-N-isopropyltryptamine (5-MeO-MiPT)."
46	SECTION 1.(e) G.S. 90-89(5)j. reads as rewritten:
47	"j. Substituted cathinones. A compound, other than bupropion, that is
48	structurally derived from 2-amino-1-phenyl-1-propanone by
49	modification in any of the following ways: (i) by substitution in the
50	phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl,
51	or halide substituents, whether or not further substituted in the phenyl

ring by one or more other univalent substituents; (ii) by substitution at the 3-position to any extent; or (iii) by substitution at the nitrogen atom with alkyl, dialkyl, benzyl, cycloalkyl, or methoxybenzyl groups or by inclusion of the nitrogen atom in a cyclic structure. For the purpose of this paragraph, the term "isomer" includes the optical, positional, or geometric isomer."

SECTION 1.(f) G.S. 90-89(7) reads as rewritten:

"(7) Synthetic cannabinoids. – Any quantity of any synthetic chemical compound that (i) is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring substances or (ii) has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is not listed as a controlled substance in Schedules I through V, and is not an FDA-approved drug. Synthetic cannabinoids include, but are not limited to, the substances listed in sub-subdivisions a. through p-r. of this subdivision and any substance that contains any quantity of their salts, isomers (whether optical, positional, or geometric), homologues, and salts of isomers and homologues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, and salts of isomers and homologues is possible within the specific chemical designation. The following substances are examples of synthetic cannabinoids and are not intended to be inclusive of the substances included in this Schedule:

. . .

n. Indazole carboxaldehydes. Any compound structurally derived from 1H-indazole-3-carboxaldehyde or 1H-indazole-2-carboxaldehyde substituted in both of the following ways:

. . .

- 2. At the carbon of the carboxaldehyde by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group; whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring.
- o. Indazole carboxamides. Any compound structurally derived from 1H-indazole-3-carboxamide or 1H-indazole-2-carboxamide substituted in both of the following ways:

. . .

2. At the nitrogen of the carboxamide by a phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group; whether or not the compound is further modified to any extent in the following ways: (i) substitution to the indazole ring to any extent, (ii) substitution to the phenyl, benzyl, naphthyl, adamantyl, cyclopropyl, or propionaldehyde group to any extent, (iii) a nitrogen heterocyclic analog of the indazole ring, or (iv) a nitrogen heterocyclic analog of the phenyl, benzyl, naphthyl, adamantyl, or cyclopropyl ring. Substances in this class include, but are not limited to: AKB-48, fluoro-AKB-48, APINCACA, AB-PINACA, AB-FUBINACA, AB-FUBINACA, ADB-FUBINACA, and ADB-PINACA.

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2	SECTION 1.	(g) G.S. 90-90(2)h1. reads as rewritten:
3	"h1.	Fentanyl immediate precursor chemical,
4		4-anilino-N-phenethyl-4-piperidine
5		(ANPP).4-anilino-N-phenethylpiperdine (ANPP)."
6	SECTION 1.	(h) G.S. 90-91(k)11. reads as rewritten:
7		lrochlormethyltestosterone, Dehydrochloromethyltestosterone,"
8		(i) G.S. 90-91(k)16. reads as rewritten:
9		rolene, Mesterolone,"
10		(j) This section is effective on August 1, 2023, and applies to offenses
11	committed on or after that	
	committed on or after tha	a date.
12	INCODE A CIE. EINIE. IM	IDOGED ON DEDGONG CONVICTED OF CEDEATN DDIG
13		IPOSED ON PERSONS CONVICTED OF CERTAIN DRUG
14	TRAFFICKING OFFE	
15		(a) G.S. 90-95(h)(4) reads as rewritten:
16		person who sells, manufactures, delivers, transports, or possesses four
17	9	or more of opium, opiate, or opioid, or any salt, compound, derivative,
18		paration of opium, opiate, or opioid (except apomorphine, nalbuphine,
19		sone and naltrexone and their respective salts), including heroin, or any
20		re containing such substance, shall be guilty of a felony which felony
21		be known as "trafficking in opium, opiate, opioid, or heroin" and if the
22	quanti	ty of such controlled substance or mixture involved:
23	a.	Is four grams or more, but less than 14 grams, such person shall be
24		punished as a Class F felon and shall be sentenced to a minimum term
25		of 70 months and a maximum term of 93 months in the State's prison
26		and shall be fined not less than fifty thousand dollars (\$50,000);as
27		follows:
28		1. A fine of five hundred thousand dollars (\$500,000) if the
29		controlled substance is heroin, fentanyl, or carfentanil, or any
30		salt, compound, derivative, or preparation thereof, or any
31		mixture containing any of these substances.
32		A fine of not less than fifty thousand dollars (\$50,000) for any
33		controlled substance described in this subdivision and not
34		otherwise subject to sub-sub-subdivision 1. of this
35		sub-subdivision.
36	b.	Is 14 grams or more, but less than 28 grams, such person shall be
37	0.	punished as a Class E felon and shall be sentenced to a minimum term
38		of 90 months and a maximum term of 120 months in the State's prison
39		and shall be fined not less than one hundred thousand dollars
40		(\$100,000);as follows:
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		1. A fine of seven hundred fifty thousand dollars (\$750,000) if
42		the controlled substance is heroin, fentanyl, or carfentanil, or
43		any salt, compound, derivative, or preparation thereof, or any
44		mixture containing any of these substances.
45		2. A fine of not less than one hundred thousand dollars
46		(\$100,000) for any controlled substance described in this
47		subdivision and not otherwise subject to sub-sub-subdivision
48		1. of this sub-subdivision.
49	c.	Is 28 grams or more, such person shall be punished as a Class C felon
50		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 1 2 not less than five hundred thousand dollars (\$500,000).as follows: 3 A fine of one million dollars (\$1,000,000) if the controlled 4 substance is heroin, fentanyl, or carfentanil, or any salt, 5 compound, derivative, or preparation thereof, or any mixture 6 containing any of these substances. A fine of not less than five hundred thousand dollars 7 2. (\$500,000) for any controlled substance described in this 8 9 subdivision and not otherwise subject to sub-sub-subdivision 1. of this sub-subdivision." 10 11 **SECTION 2.(b)** This section becomes effective December 1, 2023, and applies to offenses committed on or after that date. 12 13 14 EXPAND THE SCOPE OF DEATH BY DISTRIBUTION OFFENSE 15 **SECTION 3.(a)** G.S. 14-17 reads as rewritten: 16 "§ 14-17. Murder in the first and second degree defined; punishment. 17 18 (a1) If a murder was perpetrated with malice as described in subdivision (1) of subsection 19 (b) of this section, and committed against a spouse, former spouse, a person with whom the 20 defendant lives or has lived as if married, a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), or a person with whom the defendant shares 21 a child in common, there shall be a rebuttable presumption that the murder is a "willful, 22 23 deliberate, and premeditated killing" under subsection (a) of this section and shall be deemed to 24 be murder in the first degree, a Class A felony, if the perpetrator has previously been convicted 25 of one of the following offenses involving the same victim: 26 (1) An act of domestic violence as defined in G.S. 50B-1(a). 27 (2) A violation of a domestic violence protective order under G.S. 50B-4.1(a), (f), (g), or (g1) or G.S. 14-269.8 when the same victim is the subject of the 28 29 domestic violence protective order. Communicating a threat under G.S. 14-277.1. 30 (3) Stalking as defined in G.S. 14-277.3A. 31 (4) 32 Cyberstalking as defined in G.S. 14-196.3. (5) 33 Domestic criminal trespass as defined in G.S. 14-134.3. (6) 34 A murder other than described in subsection (a) or (a1) of this section or in 35 G.S. 14-23.2 shall be deemed second degree murder. Any person who commits second degree 36 murder shall be punished as a Class B1 felon, except that a person who commits second degree 37 murder shall be punished as a Class B2 felon in either of the following circumstances: 38 The if the malice necessary to prove second degree murder is based on an (1)39 inherently dangerous act or omission, done in such a reckless and wanton 40 manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief. 41 42 The murder is one that was proximately caused by the unlawful distribution (2)of any opium, opiate, or opioid; any synthetic or natural salt, compound, 43 derivative, or preparation of opium, or opiate, or opioid; cocaine or other 44 substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant 45 described in G.S. 90-92(a)(1), and the ingestion of such substance caused the 46 47 death of the user. 48 49 **SECTION 3.(b)** G.S. 14-18.4 reads as rewritten: 50

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

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- (a1) Death by Distribution Through Unlawful Delivery of Certain Controlled Substances.

 A person is guilty of death by distribution through unlawful delivery of certain controlled substances if all of the following requirements are met:
 - (1) The person unlawfully delivers at least one certain controlled substance.
 - (2) The ingestion of the certain controlled substance or substances causes the death of the user.
 - (3) The commission of the offense in subdivision (1) of this subsection was the proximate cause of the victim's death.
- (a2) <u>Death by Distribution Through Unlawful Delivery with Malice of Certain Controlled Substances.</u> A person is guilty of death by distribution through unlawful delivery with malice of certain controlled substances if all of the following requirements are met:
 - (1) The person unlawfully delivers at least one certain controlled substance.
 - (2) The person acted with malice.
 - (3) The ingestion of the certain controlled substance or substances causes the death of the user.
 - (4) The commission of the offense in subdivision (1) of this subsection was the proximate cause of the victim's death.
- (b) Death by Distribution <u>Through Unlawful Sale</u> of Certain Controlled Substances. A person is guilty of death by distribution <u>through unlawful sale</u> of certain controlled substances if all of the following requirements are met:
 - (1) The person unlawfully sells at least one certain controlled substance.
 - (2) The ingestion of the certain controlled substance or substances causes the death of the user.
 - (3) The commission of the offense in subdivision (1) of this subsection was the proximate cause of the victim's death.
 - (4) The person did not act with malice.
- (c) Aggravated Death by Distribution <u>Through Unlawful Sale</u> of Certain Controlled Substances. A person is guilty of aggravated death by distribution <u>through unlawful sale</u> of certain controlled substances if all of the following requirements are met:
 - (1) The person unlawfully sells at least one certain controlled substance.
 - (2) The ingestion of the certain controlled substance or substances causes the death of the user.
 - (3) The commission of the offense in subdivision (1) of this subsection was the proximate cause of the victim's death.
 - (4) The person did not act with malice.
 - (5) The person has a previous conviction under this section, G.S. 90-95(a)(1), 90-95.1, 90-95.4, 90-95.6, or trafficking in violation of G.S. 90-95(h), or a prior conviction in any federal or state court in the United States that is substantially similar to an offense listed, within seven-10 years of the date of the offense. In calculating the seven-year 10-year period under this subdivision, any period of time during which the person was incarcerated in a local, state, or federal detention center, jail, or prison shall be excluded.

. . .

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

48 ... 49 (h)

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

- Death by distribution of certain controlled substances A violation of (1) 1 2 subsection (a1) of this section is a Class C felony. 3
 - A violation of subsection (a2) or (b) of this section is a Class C-B2 felony. (1a)
 - Aggravated death by distribution of certain controlled substances A violation (2) of subsection (c) of this section is a Class B2-B1 felony."

SECTION 3.(c) This section becomes effective December 1, 2023, and applies to offenses committed on or after that date.

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REVISE GOOD SAMARITAN IMMUNITY LAW FOR POSSESSION OF ANY **CONTROLLED SUBSTANCE**

SECTION 4.(a) G.S. 90-96.2(c3) reads as rewritten:

- Covered Offenses. A person shall have limited immunity from prosecution under subsections (b) and (c) of this section for only the following offenses:
 - A misdemeanor violation of G.S. 90-95(a)(3). (1)
 - A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of (2) cocaine.any controlled substance.
 - A felony violation of G.S. 90-95(a)(3) for possession of less than one gram of (3) heroin.
 - A violation of G.S. 90-113.22." (4)

SECTION 4.(b) This section becomes effective December 1, 2023, and applies to offenses committed on or after that date.

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CREATE TASK FORCE ON ENFORCEMENT OF FENTANYL AND HEROIN DRUG **VIOLATIONS**

SECTION 5.(a) Creation. – There is established the Task Force on Enforcement of Fentanyl and Heroin Drug Violations (Task Force). The Task Force shall consist of the Secretary of Public Safety, the Director of the State Bureau of Investigation, the Commander of the State Highway Patrol, the President of the North Carolina Sheriffs' Association, the President of the North Carolina Association of Chiefs of Police, and the Executive Director of the North Carolina Conference of District Attorneys, or their designees.

SECTION 5.(b) Study. – The purpose of the Task Force shall be to study ways to enhance the ability of law enforcement throughout the State to combat the illegal manufacturing, importation, and distribution of fentanyl, heroin, and other similar controlled substances.

SECTION 5.(c) Chair; Meetings; Quorum. – The members shall elect a chair, and the Task Force shall meet at the call of the chair. A majority of the Task Force shall constitute a quorum for the transaction of its business.

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

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

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

SECTION 5.(g) Effective Date. – This section is effective when it becomes law.

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EFFECTIVE DATE

1 2 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes

law.