

NORTH CAROLINA GENERAL ASSEMBLY



TASK FORCE ON SENTENCING REFORMS FOR OPIOID DRUG CONVICTIONS (2017)

REPORT TO THE 2019 GENERAL ASSEMBLY OF NORTH CAROLINA

DECEMBER, 2018

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TRANSMITTAL LETTER

December 4, 2018

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TO THE MEMBERS OF THE 2019 GENERAL ASSEMBLY

The TASK FORCE ON SENTENCING REFORMS FOR OPIOID DRUG CONVICTIONS (2017), respectfully submits the following report to the 2019 General Assembly.

Sen. Jim Davis (Co-Chair)

Rep. Gregory F. Murphy, MD (Co-Chair)

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COMMITTEE PROCEEDINGS

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The Task Force on Sentencing Reforms for Opioid Drug Convictions ("Task Force") met 4 times following the end of the 2017 Regular Session. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library and on the Task Force's [website](#).

The Task Force's first meeting was held on March 6, 2018. The Task Force heard presentations regarding current sentencing and treatment options for individuals addicted to opioids from representatives of the North Carolina Sentencing and Policy Advisory Commission, Department of Public Safety, Department of Health and Human Services, and Administrative Office of the Courts. The meeting concluded with discussion of the incarceration statistics presented, and the sequential intercept model of treatment as part of the criminal justice system.

The Task Force's second meeting was held on April 24, 2018. The Task Force heard a presentation on the approaches to the opioid crisis currently taken by other states and the federal government. The Task Force also heard comments from the public and discussed the members' perspectives on the issues.

The Task Force's third meeting was held on August 7, 2018. The Task Force heard presentations regarding opioids from distribution to prosecution by representatives of the North Carolina state Crime Laboratory, the State Bureau of Investigation, and the North Carolina Department of Justice. The Task Force also heard a presentation by Families against Mandatory Minimums, a national coalition that lobbies for more discretion in sentencing. The Task Force concluded with a presentation about long-term residential treatment for substance abusers by Triangle Residential Options for Substance Abuser, Inc.

The Task Force's fourth meeting was held on December 4, 2018. The Task Force considered potential recommendations. After discussion of the recommendations, the Task Force adopted this report.

FINDINGS AND RECOMMENDATIONS

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FINDING 1: JUDGES IN NORTH CAROLINA HAVE NO DISCRETION IN SENTENCING OFFENSES OF TRAFFICKING IN OPIUM OR HEROIN DUE TO STATUTORY MANDATORY MINIMUMS.

The Task Force finds that the statutory mandatory minimum sentences for offenses of trafficking in opium and heroin do not allow a judge to apply discretion in the sentencing. In light of the role of opioid addiction, there may be cases where judicial discretion is appropriate when sentencing for offenses of trafficking in opium and heroin.

RECOMMENDATION 1: NORTH CAROLINA SHOULD ALLOW SOME JUDICIAL DISCRETION IN THE SENTENCING OF TRAFFICKING IN OPIUM AND HEROIN.

The Task Force recommends the General Assembly enact legislation creating a method to allow a judge to modify the mandatory minimums for offenses of trafficking in opium or heroin when appropriate.

FINDING 2: MODIFICATION OF CURRENTLY IMPOSED SENTENCES FOR TRAFFICKING IN OPIUM AND HEROIN IS A COMPLEX ISSUE.

The Task Force finds that there is no existing mechanism to review and resentence individuals currently incarcerated for any trafficking offense. The advisability and practicality of retroactively reducing sentences imposed for trafficking in heroin and opium offenses would need to be examined. The fairness and equity of expanding any proposed sentencing changes to include offenses of trafficking in controlled substances other than opium and heroin should be considered.

RECOMMENDATION 2: FURTHER STUDY IS NECESSARY TO EXAMINE THE ADVISABILITY OF REDUCING SENTENCES ALREADY IMPOSED FOR TRAFFICKING CONVICTIONS.

The Task Force recommends the General Assembly enact legislation allowing for continued study of (i) the advisability of reducing sentences already imposed under for trafficking convictions, (ii) the process that would be required to screen inmates for eligibility for resentencing, and (iii) the potential fiscal impact of early release for inmates convicted of trafficking offenses.

FINDING 3: INTERVENTION AT CRITICAL STAGES OF THE CRIMINAL JUSTICE PROCESS CAN MAKE A DIFFERENCE WITH OPIOID USERS.

The Task Force finds that the traditional criminal justice model is not equipped to curb the overwhelming opioid epidemic. Intervention at critical stages of the criminal justice process however can make a difference with opioid users. Opioid users facing criminal charges may benefit from the diversion programs, treatment options, and accountability provided in a drug court setting.

RECOMMENDATION 3: NORTH CAROLINA SHOULD EXPAND DRUG COURTS.

The Task Force recommends the General Assembly enact legislation providing more funding to be made available for drug courts.

FINDING 4: SUBSTANCE ABUSE RECOVERY PROGRAMS LIKE TROSA CAN LOWER RECIDIVISM BY SUBSTANCE ABUSERS.

The Task Force finds that Triangle Residential Options for Substance Abuser, Inc. (TROSA) is a licensed long-term residential recovery program that provides an alternative to incarceration for individuals who choose to participate. TROSA provides these services at no cost to the individual. TROSA's two-year program has shown a high degree of success in helping graduates to achieve and maintain sobriety.

RECOMMENDATION 4: NORTH CAROLINA SHOULD SUPPORT TROSA'S MISSION.

The Task Force recommends the General Assembly enact legislation providing funding to be made available for TROSA's program and expansion.

COMMITTEE MEMBERSHIP

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2015-2016

President Pro Tempore of the Senate
Appointments:

Sen. Jim Davis (Co-Chair)

Sen. Louis Pate

Chief William H. Hollingsed (Public Member)

Mrs. Julie H. Huneycutt (Public Member)

Hon. Daniel A. Kuehnert (Public Member)

Mr. Ernie Lee (Public Member)

Ms. Jessica Locklear (Public Member)

Hon. Steven H. Messick (Public Member)

Speaker of the House of Representatives
Appointments:

Rep. Gregory F. Murphy, MD (Co-Chair)

Rep. Josh Dobson

Mr. Brandon E. Gosey (Public Member)

Hon. Jefferson G. Griffin (Public Member)

Ms. Jennifer Harjo (Public Member)

Hon. Maureen Krueger (Public Member)

Hon. W. Todd Pomeroy (Public Member)

Mr. J. Beacham Wray (Public Member)

COMMITTEE CHARGE

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**SESSION LAW 2017-115
HOUSE BILL 464**

AN ACT REVISING THE SCHEDULE OF CONTROLLED SUBSTANCES TO ADD SYNTHETIC FENTANYLS, DESIGNER HALLUCINOGENICS, SYNTHETIC CANNABINOIDS, SYSTEM DEPRESSANTS, AND OTHER SUBSTANCES AND MAKING CONFORMING CHANGES; AND CREATING THE TASK FORCE ON SENTENCING REFORMS FOR OPIOID DRUG CONVICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Synthetic Opioid and Other Dangerous Drug Control Act."

...

SECTION 10.(a) Creation. – There is established the Task Force on Sentencing Reforms for Opioid Drug Convictions. The Task Force shall have 22 members. The Attorney General, Secretary of Health and Human Services, Secretary of Public Safety, Chief Deputy Secretary of Adult Correction and Juvenile Justice, Director of the Administrative Office of the Courts, and Executive Director of the North Carolina Sentencing and Advisory Commission or their designees shall be ex officio members of the Task Force and shall serve with the same rights and privileges, including voting rights, as other members. Appointments to the Task Force shall be made as follows:

- (1) The Speaker of the House of Representatives shall appoint the following members:
 - a. Two members of the House of Representatives.
 - b. A sitting or former superior court judge of the General Court of Justice.
 - c. A sitting or former district court judge of the General Court of Justice.
 - d. A person who is a substance abuse treatment and recovery professional.
 - e. A representative from the North Carolina Conference of District Attorneys.
 - f. A person who is a criminal defense attorney.
 - g. One member at large.

- (2) The President Pro Tempore of the Senate shall appoint the following members:
 - a. Two members of the Senate.
 - b. A sitting or former superior court judge of the General Court of Justice.
 - c. A sitting or former district court judge of the General Court of Justice.
 - d. A person who is a substance abuse and recovery professional.
 - e. A representative from the North Carolina of District Attorneys.
 - f. A person who is a criminal defense attorney.
 - g. One member at large.

SECTION 10.(b) Study. – The purpose of the Task Force shall be to study and review cases of inmates who are incarcerated solely for convictions of opioid drug offenses that require active sentences under structured sentencing; to consider how to identify inmates who would be able to successfully reintegrate into society; and to develop and consider options for modifying existing statutes. Specifically, the Task Force shall do all of the following:

- (1) Study the advisability of reducing sentences imposed under structured sentencing for opioid drug convictions based on the case facts and records of incarcerated inmates.
- (2) Study the potential cost-savings and fiscal impact of an early release process for inmates convicted of opioid drug offenses.
- (3) Identify and consider sentencing options that will help restore the ability of judges to use judgment, logic, and facts when imposing a sentence for a conviction of an opioid drug offense.
- (4) Consider whether the mandatory sentences imposed under structured sentencing for convictions of opioid drug offenses serve as a deterrent.
- (5) Consider options such as reclassifying opioid drug offenses, allowing courts to divert convicted offenders into treatment programs in lieu of imposing a sentence of active time in prison, increasing weight thresholds for trafficking in opioids or changing how quantities are measured, aligning minimum mandatory sentence lengths with those for most other drug offenses.
- (6) Consider establishing a "pardon and parole board" that may recommend pardons and paroles for inmates convicted of opioid drug offenses.
- (7) Consider any other options the Task Force deems relevant to this study.

SECTION 10.(c) Cochairs; Quorum; Vacancies. – The Speaker of the House of Representatives shall designate one representative to serve as cochair, and the President Pro Tempore of the Senate shall designate one senator to serve as cochair. A majority of the Task Force shall constitute a quorum for the transaction of its business. A vacancy on the Task Force shall be filled by the original appointing authority using the criteria set out in this act for the original appointment.

SECTION 10.(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 10.(e) Powers. – The Task Force, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Task Force may meet at any time upon the call of the chair. The Committee may meet in the Legislative Building or in the Legislative Office Building.

SECTION 10.(f) Staffing. – The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Task Force in its work. The Directors of Legislative Assistants of the Senate and of the House of Representatives shall assign clerical staff to the Task Force and the expenses relating to the clerical employees shall be borne by the Task Force.

SECTION 10.(g) Report. – The Task Force shall submit an interim report to the 2017 General Assembly when it reconvenes in 2018. The Task Force shall submit a final report, including findings and legislative recommendations, to the 2019 General Assembly. The Task Force shall terminate upon filing its final report.

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SECTION 12. Sections 1-9 and 11 of this act become effective December 1, 2017, and apply to offenses committed on or after that date. The remainder of this act becomes effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2017.