



# HOUSE BILL 250: ME/IDS/Driving Privileges/Xylazine Changes.

2023-2024 General Assembly

<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	June 5, 2024
<b>Introduced by:</b>	Reps. Arp, K. Baker, Wray, Carson Smith	<b>Prepared by:</b>	Robert Ryan
<b>Analysis of:</b>	Third Edition		Staff Attorney

## OVERVIEW: House Bill 250 does the following:

- *Makes certain revisions pertaining to death investigations under the jurisdiction of the office of the Chief Medical Examiner.*
- *Modifies the membership of the Indigent Defense Services Commission.*
- *Makes certain changes related to limited driving privileges and ignition interlock system violations.*
- *Creates the new offense of death by distribution of xylazine.*

## CURRENT LAW AND BILL ANALYSIS:

### Revisions pertaining to death investigations under the jurisdiction of the office of the Chief Medical Examiner

**Section 1.(a).** G.S. 130A-382 contains the continuing education training requirements for county medical examiners. Under current law county medical examiners must complete continuing education training as directed by the Office of the Chief Medical Examiner based upon established and published guidelines for conducting death investigations. This continuing education training must include training regarding sudden unexpected death in epilepsy. Section 1.(a) would modify the training requirements to require that county medical examiners receive training on the duties of medical examiners contained in G.S. 130A-385, and the requirements related to autopsies contained in G.S. 130A-389.

**Section 1.(b).** G.S. 130A-385 contains the duties of a medical examiner upon receipt of a notice of certain types of death. A medical examiner is authorized to inspect all physical evidence and documents which may be relevant to determining the cause and manner of death of the person whose death is under investigation, including personal possessions associated with the death, clothing, weapons, tissue and blood samples, cultures, medical equipment, X rays and other medical images. A medical examiner is authorized to seek an administrative search warrant; however, no administrative search warrant can be issued unless the medical examiner submits an affidavit from the district attorney stating that the death in question is not under criminal investigation. G.S. 130A-385 further provides that a copy of the report of the medical examiner investigation may be forwarded to the appropriate district attorney.

Section 1.(b) would modify G.S. 130A-385 to provide the following investigative powers for medical examiners:

- In all cases a medical examiner may: (i) inspect the decedent's body, (ii) inspect and copy the decedent's medical records, (iii) collect and inspect the decedent's body and personal possessions associated with the death, and (iv) collect tissue and blood samples, X rays and other medical information.

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- In the case of a decedent whose death is not under criminal investigation, the medical examiner is authorized to inspect all other physical evidence that may be relevant and may apply for an administrative search warrant pursuant to G.S. 15-27.2.
- In the case of a decedent whose death is under criminal investigation, the medical examiner is not authorized to apply for an administrative search warrant and the medical examiner is not authorized to inspect other physical evidence at the scene except as permitted by the investigating law enforcement agency.

Section 1.(b) would also modify G.S. 130A-385 to require the medical examiner to provide a complete copy of the medical examiner investigation file to the appropriate district attorney upon request. It is further provided that this obligation is a continuing disclosure obligation, and any records or other materials requested that are added or discovered after the initial request must also be provided to the appropriate district attorney.

**Section 1.(c).** G.S. 130A-389 contains the laws related to autopsies. An autopsy must be performed if: 1) the Chief Medical Examiner believes it is advisable and in the public interest, 2) an autopsy is requested by the district attorney of the county or by any superior court judge, or 3) in any case in which the district attorney of the county asserts that there is probable cause to believe that a violation of G.S. 14-18.4 (death by distribution) has occurred. Section 1.(c) would provide that the district attorney has up to 72 weekday hours after pronouncement of death to make a request for an autopsy on the basis of probable cause for a violation of G.S. 14-18.4. It is further provided that the district attorney is not required to assert to the Chief Medical Examiner the facts supporting probable cause that a violation of G.S. 14-18.4 has occurred.

Section 1 becomes effective October 1, 2024.

## **Modify Indigent Defense Services Commission**

**Section 2.(a)** would modify appointments to the Commission on Indigent Defense Services as follows:

- Instead of appointing one member, who is a former or active member of the judiciary, the Chief Justice of the Supreme Court would appoint one member who is an attorney.
- Instead of appointing one attorney member, the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, would appoint four members, two attorneys who regularly serve as appointed counsel and two attorneys.
- Instead of appointing one attorney member, the General Assembly, upon the recommendation of the Speaker of the House, would appoint four members, two attorneys who regularly serve as appointed counsel and two attorneys.
- Instead of appointing one attorney member, the North Carolina Public Defenders Association would appoint one public defender member.
- Instead of appointing one attorney member, the North Carolina State Bar would appoint one member who regularly serves as appointed counsel.
- Instead of appointing three members residing in different judicial districts from one another, the Commission would appoint one attorney member.
- The North Carolina Academy of Trial Lawyers would continue to appoint one attorney member.
- The Governor, the North Carolina Bar Association, the North Carolina Association of Black Lawyers, and the North Carolina Association of Women Lawyers would no longer appoint one attorney member each.

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No appointees could reside in the same judicial districts.

Active public defenders and active employees of public defenders could be appointed to or serve on the Commission.

**Section 2.(b)** This section would become effective October 1, 2024, and applies to appointments made on or after that date. Notwithstanding any provision of law to the contrary, the terms of the Commission members appointed prior to October 1, 2024, would expire as follows:

- Members appointed by the North Carolina State Bar and the Commission would expire on October 1, 2024.
- Members appointed by the North Carolina Academy of Trial Lawyers, the North Carolina Association of Black Lawyers, and the North Carolina Association of Women Lawyers would expire with the appointment of a member by the Chief Justice of the North Carolina Supreme Court.
- Members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, the North Carolina Public Defenders Association, and the North Carolina Bar Association would expire with the appointment of members by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate.

Members appointed by the Chief Justice of the North Carolina Supreme Court, the Governor, and by the General Assembly, upon the recommendation of the Speaker of the House, would expire with the appointment of members by General Assembly, upon the recommendation of the Speaker of the House.

## **Ignition interlock and limited driving privilege changes**

An ignition interlock system is connected to a vehicle's ignition system, and it requires an individual to breathe into the system before the vehicle can be started. It prevents the vehicle from starting if the individual's breath alcohol concentration is outside the acceptable range.

G.S. 20-179.3 (Limited driving privilege) allows a court to grant a limited driving privilege to authorize an eligible person with a revoked drivers license to drive for certain essential purposes, including: employment, education, and medical care.

Subdivision (b)(1) provides the eligibility requirements for granting a limited driving privilege to a person whose drivers license is revoked because of a conviction for an offense of impaired driving under G.S. 20-138.1. Such a person is eligible for a limited driving privilege only if the following criteria are met:

- At the time of the offense the person held either a valid driver's license or a license that had been expired for less than one year.
- At the time of the offense the person had not within the preceding seven years been convicted of an offense involving impaired driving.
- Punishment Level Three, Four, or Five was imposed for the offense of impaired driving.
- Subsequent to the offense the person has not been convicted of, or had an unresolved charge lodged against the person for, an offense involving impaired driving.
- The person has obtained and filed the required substance abuse assessment.

Subsection (g3) allows the court to order an ignition interlock system as a requirement of any limited driving privilege.

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Subsection (g5) requires that if a person's license was revoked for driving while impaired and the person had an alcohol concentration of 0.15 or more, then the court must order the use of an ignition interlock system as a requirement of the limited driving privilege.

**Section 3.(a)** amends G.S. 20-179.3 by modifying the eligibility requirements to allow a person convicted of the offense of impaired driving under G.S. 20-138.1 to obtain a limited driving privilege if the person has been convicted of not more than one offense involving impaired driving within the preceding seven years if all the following requirements are met:

- At the time of the offense the person held either a valid driver's license or a license that had been expired for less than one year.
- At the time of the offense the person *did not* have an alcohol concentration of 0.15 or more.
- Punishment Level Three, Four, or Five was imposed for the offense of impaired driving, or Punishment Level Two was imposed but only if it was imposed because the person had a conviction for an impaired driving offense within the preceding seven years.
- Subsequent to the offense the person has not been convicted of, or had an unresolved charge lodged against the person for, an offense involving impaired driving.
- The person has obtained and filed the required substance abuse assessment.

Section 3.(a) also amends G.S. 20-179.3 by adding provisions that provide that a person who commits an ignition interlock system violation during the 90 days immediately preceding the date on which the person's initial compliance with the ignition interlock system is to end must have the period of compliance extended for an additional period of 90 days or until the person has been violation free for such extended period.

G.S. 20-17.8 (Restoration of license after certain driving while impaired convictions; ignition interlock) requires a person whose driver's license was revoked because of a conviction for a specified impaired driving offense (including impaired driving with an alcohol concentration of 0.15 or more and impaired driving with a prior conviction within 7 years) to only operate a vehicle equipped with an ignition interlock system as a condition of restoration of the license.

**Section 3.(b)** amends G.S. 20-17.8 by adding provisions that provide that a person who commits an ignition interlock system violation during the 90 days immediately preceding the date on which the person's initial compliance with the ignition interlock system is to end must have the period of compliance extended for an additional period of 90 days or until the person has been violation free for such extended period.

Section 3 becomes effective July 1, 2024.

## **Create the offense of death by distribution of xylazine**

G.S. 14-18.4 ("Death by distribution") provides four criminal offenses related to the distribution or sale of "one certain controlled substance" that proximately causes the victim's death. "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." Death by distribution provides the following offenses and punishments:

- (a1) Death by distribution through unlawful delivery of certain controlled substances. It is a Class C felony if:

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- 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) Death by distribution through unlawful delivery with malice of certain controlled substances. It is 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) Death by distribution through unlawful sale of certain controlled substances. It is 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) Aggravated death by distribution through unlawful sale of certain controlled substances. It is 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.
  - The person has a previous conviction for certain controlled substance violations, within 10 years of the date of offense.

**Section 4.(a)** creates a new section of the General Statutes: G.S. 14-18.5 ("Death by distribution of xylazine.") Like death by distribution, this new law would provide four criminal offenses related to the distribution or sale of xylazine that proximately causes the victim's death. Death by distribution of xylazine provides the following offenses and punishments:

- (b) Death by distribution through delivery of xylazine. It is a Class C felony if:
  - A person delivers xylazine.
  - Another person dies because of ingesting the xylazine.
  - Providing the xylazine was the proximate cause of death.
- (c) Death by distribution through delivery with malice of xylazine. It is a Class B2 felony if:
  - A person delivers xylazine.
  - The person acts with malice.
  - Another person dies because of ingesting the xylazine.
  - Providing the xylazine was the proximate cause of death.
- (d) Death by distribution through sale of xylazine. It is a Class B2 felony if:

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- A person sells xylazine.
- Another person dies because of ingesting the xylazine.
- Providing the xylazine was the proximate cause of death.
- (e) Aggravated death by distribution through sale of xylazine. It is a Class B1 felony if:
  - A person sells xylazine.
  - Another person dies because of ingesting the xylazine.
  - Providing the xylazine was the proximate cause of death.
  - The person has a previous conviction for certain violations, within 10 years of the date of offense.

Section 4 becomes effective December 1, 2024, and applies to offenses committed on or after that date.

**EFFECTIVE DATE:** Except as otherwise provided, this act is effective when it becomes law.