

Changes to the Drug Trafficking Chart

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Legislation that will come into effect on December 1, 2018, made some changes related to drug trafficking.

A new version of the drug trafficking sentencing chart is available [here](#). (The link will take you to an excerpt from the forthcoming new edition of the North Carolina Sentencing Handbook.)

The revised chart incorporates several statutory amendments made by [Session Law 2018-44](#), the “Heroin and Opioid Prevention and Enforcement (HOPE) Act of 2018.”

First, it amends G.S. 90-95(h)(3d) to replace the references to MDPV (Methylenedioxypropylvalerone, a particular type of substituted cathinone) with the broader term “substituted cathinone,” defined in G.S. 90-89(5)(j) to include a broader range of substances in the same family.

Second, it deletes subdivision G.S. 90-95(h)(3e), describing “trafficking in mephedrone,” presumably on the understanding that mephedrone is a substituted cathinone covered by broadened (3d). The punishment provisions are unchanged.

Third, and perhaps most importantly, the law amends subdivision G.S. 90-95(h)(4) to add the word “opioid.” Before the addition, the law mentioned only trafficking in opium, opiates, or heroin, not *opioids*. It was unclear in light of that omission whether the prior law covered trafficking in synthetics like fentanyl. No appellate case decided under prior law clearly resolved the ambiguity. In *State v. Beam*, 201 N.C. App. 643 (2010), the court of appeals affirmed a trafficking conviction involving methadone, but the only appellate issue in the case was whether the substance was “delivered” within the meaning of the trafficking law, not the identity of the substance itself.

The issue came into sharper focus in 2017, when “opioid” was defined in G.S. 90-87(18a) as any “synthetic narcotic drug having opiate-like activities but is not derived from opium.” [S.L. 2017-115](#). Once that definition of opioids came into effect, it became harder to argue that synthetics were included in the existing trafficking statute that didn’t mention opioids. And so the latest change makes clear that they are covered—at least for offenses committed on or after December 1, 2018.