

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH60288-LB-345 (4/17)

Short Title: North Carolina No Place for Torture Act. (Public)

Sponsors: Representatives Jones and Luebke (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PUNISH TORTURE, KIDNAPPING, AND THE ENFORCED
DISAPPEARANCE OF PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.9. Torture, kidnapping, and enforced disappearances.

(a) Whoever commits torture, kidnapping, or the enforced disappearance of persons or attempts to commit torture, kidnapping, or the enforced disappearance of persons shall be punished as a Class C felon.

(b) Whoever conspires to commit any of the acts prohibited in subsection (a) of this section or conspires to attempt to commit any of the acts prohibited in subsection (a) of this section, whether the act or attempt takes place inside or outside the State of North Carolina, shall be punished as a Class D felon if any part of the conspiracy is performed or formulated within the State of North Carolina. If death results to any person from conduct prohibited by this section, it shall be punished as a Class B felony.

(c) Jurisdiction. – There is jurisdiction over the conduct prohibited in subsection (a) if the alleged offender:

(1) Committed the offense in the State of North Carolina;

(2) Committed an act in furtherance of the conspiracy within the State of North Carolina even though other conduct occurred outside of the State of North Carolina or part of the conspiracy was formulated outside of the State of North Carolina; or

(3) Entered into the conspiracy within the State of North Carolina even though part of the conspiracy was formulated outside of the State of North Carolina or conduct in furtherance of the conspiracy was performed outside of the State of North Carolina.

1 (d) For the purposes of this section:

2 (1) "Conspiracy" is as defined by common law and the law of North
3 Carolina.

4 (2) "Enforced disappearance of persons" means the arrest, detention, or
5 abduction of persons by, or with the authorization, support, or
6 acquiescence of, a State or a political organization, followed by a
7 refusal to acknowledge that deprivation of freedom or give information
8 on the fate or whereabouts of those persons, with the intention of
9 removing them from the protection of the law for a prolonged period
10 of time.

11 (3) "Kidnapping" is defined by G.S. 14-39.

12 (4) "Official capacity" means acting at the instruction of, on behalf of, or
13 with the authority of a governmental body.

14 (5) "Public official" means any person elected by the public, appointed or
15 hired by a governmental body, or acting for or on the behalf of a
16 governmental body.

17 (6) "Torture" means any act by which severe pain or suffering, whether
18 physical or mental, is intentionally inflicted on a person for purposes
19 such as obtaining from him or a third person information or a
20 confession, punishing him for an act he or a third person has
21 committed or is suspected of having committed, or intimidating or
22 coercing him or a third person, or for any reason based on
23 discrimination of any kind, when such pain or suffering is inflicted by
24 or at the instigation of or with the consent or acquiescence of a public
25 official or other person acting in an official capacity. It does not
26 include pain or suffering arising only from, inherent in, or incidental to
27 lawful sanctions."

28 **SECTION 2.** G.S. 15A-622(h) reads as rewritten:

29 (h) A written petition for convening of grand jury under this section may be filed
30 by the district attorney, the district attorney's designated assistant, or a special
31 prosecutor requested pursuant to G.S. 114-11.6, with the approval of a committee of at
32 least three members of the North Carolina Conference of District Attorneys, and with
33 the concurrence of the Attorney General, with the Clerk of the North Carolina Supreme
34 Court. The Chief Justice shall appoint a panel of three judges to determine whether to
35 order the grand jury convened. A grand jury under this section may be convened if the
36 three-judge panel determines that:

37 (1) The petition alleges the commission of or a conspiracy to commit a
38 violation of G.S. 14-34.9, ~~90-95(h)~~ or G.S. ~~90-95(h)~~, or 90-95.1, any
39 part of which violation or conspiracy occurred in the county where the
40 grand jury sits, and that persons named in the petition have knowledge
41 related to the identity of the perpetrators of those crimes but will not
42 divulge that knowledge voluntarily or that such persons request that
43 they be allowed to testify before the grand jury; and

- 1 (2) The affidavit sets forth facts that establish probable cause to believe
2 that the crimes specified in the petition have been committed and
3 reasonable grounds to suspect that the persons named in the petition
4 have knowledge related to the identity of the perpetrators of those
5 crimes.

6 The affidavit shall be based upon personal knowledge or, if the source of the
7 information and basis for the belief are stated, upon information and belief. The panel's
8 order convening the grand jury as an investigative grand jury shall direct the grand jury
9 to investigate the crimes and persons named in the petition, and shall be filed with the
10 Clerk of the North Carolina Supreme Court. A grand jury so convened retains all
11 powers, duties, and responsibilities of a grand jury under this Article. The contents of
12 the petition and the affidavit shall not be disclosed. Upon receiving a petition under this
13 subsection, the Chief Justice shall appoint a panel to determine whether the grand jury
14 should be convened as an investigative grand jury.

15 A grand jury authorized by this subsection may be convened from an existing grand
16 jury or grand juries authorized by subsection (b) of this section or may be convened as
17 an additional grand jury to an existing grand jury or grand juries. Notwithstanding
18 subsection (b) of this section, grand jurors impaneled pursuant to this subsection shall
19 serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons
20 shall be selected to constitute that grand jury. At any time for cause shown, the
21 presiding superior court judge may excuse a juror temporarily or permanently, and in
22 the latter event the court may impanel another person in place of the juror excused."

23 **SECTION 3.** This act becomes effective July 1, 2007.