

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE DRH80554-LHz-302 (05/13)

Short Title: Crimes of Torture and Enforced Disappearance. (Public)

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Sponsors: Representative Luebke.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO CREATE THE STATUTORY CRIMINAL OFFENSES OF TORTURE AND ENFORCED DISAPPEARANCE AND TO ADD THESE OFFENSES TO THOSE FOR WHICH AN INVESTIGATIVE GRAND JURY MAY BE CONVENED AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 8 of Chapter 14 of the General Statutes is amended by adding the following new sections:

**"§ 14-34.9. Torture; enforced disappearance.**

(a) Definitions. – The following definitions apply in this section:

- (1) Enforced disappearance of person. – The arrest, detention, or abduction of a person by, or with the authorization, support, or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or give information on the fate or whereabouts of the person, with the intention of depriving the detainee of due process of the law.
- (2) Official capacity. – Acting at the instruction of, on behalf of, or with the authority of a governmental body.
- (3) Public official. – Any person elected by the public, appointed or hired by a governmental body, or acting for or on the behalf of a governmental body.
- (4) Torture. – In addition to the definition of torture provided at the common law, the term also includes any act by which serious pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as obtaining from the person or from a third person information or a confession, punishing the person for an act he

1                   or she or a third person has committed or is suspected of having  
2                   committed, or intimidating or coercing the person or a third person, or  
3                   for any reason based on discrimination of any kind, when the pain or  
4                   suffering is inflicted by or at the instigation of or with the consent or  
5                   acquiescence of a public official or other person acting in an official  
6                   capacity. The term does not include pain or suffering arising only  
7                   from, inherent in, or incidental to lawful interrogation, detention,  
8                   arrest, use of force, or other lawful sanctions.

9           (b)   Offense of Torture. – Any person who commits the offense of torture is guilty  
10 of a Class E felony.

11           (c)   Offense of Enforced Disappearance. – Any person who commits the offense  
12 of enforced disappearance is guilty of a Class F felony.

13           (d)   Jurisdiction. – There is jurisdiction over the conduct prohibited in this section  
14 if the alleged offender:

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

16                   (2)   Committed an act in furtherance of a conspiracy to commit an offense  
17 under this section within the State of North Carolina even though other  
18 conduct occurred outside of the State of North Carolina or part of the  
19 conspiracy was formulated outside of the State of North Carolina; or

20                   (3)   Entered into the conspiracy to commit an offense under this section  
21 within the State of North Carolina even though part of the conspiracy  
22 was formulated outside of the State of North Carolina or conduct in  
23 furtherance of the conspiracy was performed outside of the State of  
24 North Carolina."

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

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

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

41                   (2)   The affidavit sets forth facts that establish probable cause to believe  
42 that the crimes specified in the petition have been committed and  
43 reasonable grounds to suspect that the persons named in the petition

1                    have knowledge related to the identity of the perpetrators of those  
2                    crimes.

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

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

20                    **SECTION 3.** This act becomes effective December 1, 2008, and applies to  
21 offenses committed on or after that date.